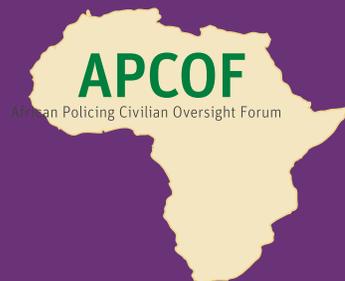




PRE-TRIAL DETENTION FOR PERSONS WITH DISABILITIES IN CORRECTIONAL INSTITUTIONS



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Published by African Policing Civilian Oversight Forum (APCOF) in collaboration
with the National Gender and Equality Commission (NGEC)

Suite 103–105A, Building 17
Waverley Business Park
Wyecroft Road
Mowbray 7925
South Africa

Tel: +27 21 447 2415/1691
Fax: +27 21 447 0373
Email: info@apcof.org.za
Web: www.apcof.org.za

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ACRONYMS

ACHPR	African Commission on Human and Peoples' Rights
APCOF	African Policing Civilian Oversight Forum
CRPD	Convention on the Rights of Persons with Disabilities
FGD	focus group discussion
KI	key informant
KNCHR	Kenya National Commission on Human Rights
KPS	Kenya Prison Service
NGEC	National Gender and Equality Commission
NGO	non-governmental organisation
NHRI	National Human Rights Institution
UDPK	United Disabled Persons of Kenya

TABLE OF STATUTES AND OTHER INSTRUMENTS

Borstal Institutions Act (Cap. 92)
Constitution of Kenya (2010)
Convention on the Rights of Persons with Disabilities
Criminal Procedure Code (Cap. 75)
Detention Camps Act (Cap. 91)
Kenya National Commission on Human Rights Act (Cap. 5B)
National Gender and Equality Act (Cap. 5C)
Penal Code (Cap. 63)
Persons Deprived of Liberty Act (No. 22 of 2014)
Persons with Disabilities Act (Cap. 133)
Prisons Act (Cap. 91)

FOREWORD

This is a pioneering case study of the Luanda Guidelines, which are fairly new, having been adopted on 8 May 2014. An initiative of the African Policing Civilian Oversight Forum (APCOF) based in South Africa in collaboration with the National Gender and Equality Commission (NGEC) in Kenya, this publication seeks to examine Pre-trial Detention for Persons with Disabilities in Kenya: Towards implementation of the guidelines on Arrest, Police Custody and Pre-trial Detention.

The guidelines are an add-on to the already existing robust legal framework contained in the Constitution of Kenya, 2010, regional and international instruments, and legislation regarding the rights of persons with disabilities though not specific to pre-trial conditions, police custody and pre-trial detention.

Article 33 of the Luanda Guidelines contains specific provisions regarding persons with disabilities with regard to pretrial conditions, police custody and pre-trial detention. It focuses on four main areas which include general principles, legal capacity, access to justice, accessibility, and reasonable accommodation. They seek to ensure that persons with disabilities legally deprived of their liberty are treated with respect, humanely, and in a manner that takes into account their needs because of their disability. They stress that persons with disabilities are entitled to and eligible to benefit from all programmes and other services available to other persons, and that their disability should not be a reason for deprivation of their liberty, discrimination or unequal treatment by others. They provide for strategies, restate specific rights and clarify how state parties, Kenya being among them, are to mainstream issues affecting persons with disabilities.

This case study has provided Kenya with an opportune moment not only to assess implementation of Article 33 of the Luanda Guidelines, but also to create awareness of the existence of broader issues such as treatment of other vulnerable groups like women, children and the elderly.

This publication is intended for a wide range of stakeholders especially in the criminal justice system including the police, prison services, the judiciary and oversight institutions including NGEC, to ensure rights of persons with disabilities in detention are respected, promoted and upheld.

Winfred O Lichuma, EBS
Chairperson, National Gender and Equality Commission

ACKNOWLEDGEMENTS

We are sincerely grateful to Commissioner Lawrence Mute together with Elizabeth Kyalo for undertaking the study and putting together the report. We are also grateful to Commissioner Winfred Lichuma, the chair of the National Gender and Equality Commission (NGEC) for her technical review of the draft report and valuable comments on form and presentation of the report. We wish to thank Paul Kuria and Sylvester Mbithi for their contribution in the entire process in undertaking the study, and George Kimani for spearheading the validation process with multiple stakeholders who included the Judiciary, Constitutional Commissions, The Kenya Prisons Service, institutions of higher learning, development partners, civil society organisations, faith-based organisations and corporates.

Finally, we thank all persons who accepted to be key informants.

SUMMARY

The overall aim of the study is to assess the impact of pre-trial detention on persons with disabilities, with particular focus on correctional institutions.

The key conclusions of the study are that:

1. Absence or inadequate procedural or substantive guarantees for detainees with disabilities, including denial of reasonable accommodation, amount to violation of the right to access justice.
2. The law is not a neutral arbiter in ensuring the pre-trial detention rights of persons with disabilities. Inherent biases exist against prisoners with certain types of disabilities who by dint of such disabilities are incarcerated without recourse. This situation is illustrated aptly by the continuing denial of legal capacity for many persons with disabilities.
3. There is a willingness within the Kenya Prison Service to do the right thing. The Service therefore should be provided with technical support as well as resources to undertake needed reforms.

The study makes a series of policy, legal and institutional recommendations which State and non-state actors should implement in endeavours to ensure the rights of detainees with disabilities. These recommendations cover law reform, approaching disability as a social phenomenon, reasonable accommodation, accessibility, human dignity, and training and capacity-building.

Finally, the study calls upon the Rapporteur on Prisons, Conditions of Detention and Policing in Africa to use his good offices to ensure that African States protect and promote the rights of detainees with disabilities.

I INTRODUCTION

A: Background of study

This research study is commissioned by the African Policing Civilian Oversight Forum (APCOF) in collaboration with the National Gender and Equality Commission (NGEC). APCOF is a network of African policing practitioners which promotes democratic policing through strengthening civilian oversight over the police in Africa. APCOF undertakes research and provides technical support to State and non-state actors.¹ NGEC is a commission established by statute in 2011 as one of the successors to the Kenya National Human Rights and Equality Commission established under Article 59 of the Constitution of Kenya (2010). NGEC contributes to the reduction of gender inequalities and the discrimination of women, men, persons with disabilities, the youth, children, the elderly, minorities and marginalised communities.²

The Guidelines on Conditions of Arrest, Police Custody and Pre-trial Detention³ ('Luanda Guidelines' or 'Guidelines') were adopted by the African Commission on Human and Peoples' Rights ('African Commission' or 'Commission') on 8 May 2014 during its 55th Ordinary Session held in Luanda, Angola. The Guidelines were prepared pursuant to Article 45 (2) (b) of the 1981 African Charter on Human and Peoples' Rights⁴ ('ACHPR' or 'African Charter') which establishes the Commission's functions as including formulating and laying down principles and rules for solving legal problems relating to human and peoples' rights and fundamental freedoms.

The Luanda Guidelines are a soft-law instrument which provides authoritative interpretation to assist States when implementing their obligations under the African Charter in relation to conditions of arrest, police custody and pre-trial detention. They offer specific detail on the measures States Parties to the African Charter need to take to uphold, protect and promote the rights of people subject to arrest, police custody and pre-trial detention, thereby reinforcing the importance of a criminal justice system built on core human rights principles. They focus on the decisions and actions of the police, correctional services, judiciary and other criminal justice sector actors.

1 <http://www.apcof.org/home/>

2 <http://www.ngeckkenya.org/>

3 http://www.achpr.org/instruments/guidelines_arrest_detention/

4 African Charter on Human and Peoples' Rights, adopted on 27 June 1981, entered into force on 21 October 1986, <http://www1.umn.edu/humanrts/instrree/z1afchar.htm>

The Luanda Guidelines comprise 47 sections set out in the following parts: arrest; police custody; decisions on pre-trial detention; registers; deaths; serious human rights violations in custody; conditions in detention; vulnerable groups; accountability and remedies; and implementation.

While the African Charter as well as some other African human rights instruments include limited provisions covering the rights of persons with disabilities,⁵ these instruments by and large deal with persons with disabilities using the medical model of disability which locates the 'problem' of disability in the person. The Luanda Guidelines approach disability as a social phenomenon by locating the 'problem' of disability within the physical and social environment in which a person with impairment interacts. The Guidelines include multiple provisions that endeavour to ensure that the environment within which detainees with disabilities may interact is devoid of physical and social barriers. Various provisions in the Guidelines seek to ensure that inmates with disabilities are treated on an equal basis with others.

Provisions in the Luanda Guidelines on the rights of persons with disabilities to a great extent conform with the 2006 United Nations Convention on the Rights of Persons with Disabilities⁶ (CRPD) which establishes the overall global human rights normative basis for ensuring the rights of persons with disabilities. While at least 45 African States are party to the CRPD, conditions of arrest, police custody and pre-trial detention for inmates with disabilities remain difficult even in these countries. This is the context within which this research study seeks to assess the extent to which African States ensure the rights of inmates with disabilities with the aim of encouraging the use of the Luanda Guidelines as a framework for promoting their rights in detention settings.

B: Objectives and expected outcomes

The overall aim of the study is to assess the impact of pre-trial detention on persons with disabilities, with particular focus on correctional institutions. The study evaluates the extent to which the pre-trial detention of persons with disabilities in Kenya conforms to the Luanda Guidelines, taking special account of Section 33 of the Guidelines which makes provisions in respect of persons with disabilities.

Kenya is used as the case study for this research. Kenya is both a party to the African Charter as well as the CRPD which it ratified on 19 May 2008. In 2010, Kenya also promulgated a new Constitution with specific protections for persons with disabilities. Yet the country too continues to face many of the challenges in respect of detainees with disabilities which are the subject of the Luanda Guidelines.

The specific objectives of the study are to:

1. Assess the policy, legislative and administrative context within which detainees with disabilities undergo pre-trial detention in Kenya;
2. Explore the extent to which that policy, legislative and administrative environment conforms with the Luanda Guidelines;

5 For example, see Article 18 (4) of the African Charter; Article 13 of the 1990 African Charter on the Rights and Welfare of the Child; Article 23 of the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; and Article 24 of the 2006 African Youth Charter.

6 Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006, entered into force on 3 May 2008, <http://www.un.org/disabilities/convention/conventionfull.shtml>

3. Make recommendations which various actors, including the Rapporteur on Prisons, Conditions of Detention and Policing in Africa, national agencies, regional and national non-state actors as well as disabled peoples' organisations (DPOs) may use to ensure the rights of detainees with disabilities; and
4. Form the initial basis for guiding the Rapporteur on Prisons, Conditions of Detention and Policing in Africa on how to promote the effective domestic implementation of the Guidelines by African Union states.

The outcomes of this study will be of importance to the Rapporteur on Prisons, Conditions of Detention and Policing in Africa, whose mandate prepared the Luanda Guidelines. As the Rapporteur explains in the preface to the Guidelines, he is keen on promoting a rights-based approach on decisions to arrest and detain suspects, and on conditions and safeguards with respect to police custody and pre-trial detention. This study will gather country-specific experiences to guide him as he advocates for Africa-wide use of the Guidelines.

C: Methodology

This research study was undertaken by a team of two persons⁷ between February and April 2016. Information for the study was derived from both secondary and primary sources. Policy, legislative and administrative instruments were reviewed. Individuals were interviewed in face-to-face meetings, by phone as well as by email.

The study spoke to at least 24 key informants, including individuals from State institutions, others from nongovernmental organisations (NGOs) and DPOs, inmates and former inmates. Two FGDs were held: one with inmates with disabilities at Shimo la Tewa Maximum Security Prison, and the other one in the office of a member of the County Assembly of Mombasa involving former inmates of various prisons. Two study sites were visited: Nairobi and Mombasa; and the study visited three prisons in Nairobi and Mombasa. The study sought and obtained express permission from the KPS to visit these prisons.

The study generated a draft report which was finalised on the basis of comments provided by a number of experts.

The Annex to this study sets out the biodata of the key informants.⁸

The following key limitations were encountered in the course of executing the study:

1. The Luanda Guidelines centre on four key public services which are at the heart of the criminal justice system: the police, the judiciary, the prosecution and the correctional service. In view of time and logistical constraints, the focus of the study was narrowed to the correctional service.
2. The research study could not be undertaken within any government establishments without permission from the authorities. Permission was gotten to visit prisons which were specified in a circular to those establishments. It was not therefore practical to amend listed institutions when it, for example, turned out that Kamiti Maximum Security Prison no longer lodged remand

⁷ Lawrence Mute as the principal researcher and Elizabeth Kalekye as researcher.

⁸ The identities of some interviewees have not been disclosed fully where such disclosure may cause them inconvenience. In some instances express permission has been sought before individuals' names have been cited.

- prisoners. As stated above, the study mitigated this limitation by undertaking interviews in that Prison and extrapolating collected information for relevant information.
3. While the Guidelines cover pre-trial detainees, pre-trial detainees in many instances used the same facilities and services as convicted detainees. The responses of some key informants therefore covered the conditions of convicts as much as the conditions of pre-trial detainees. The study mitigated this limitation by extrapolating obtained information as necessary to arrive at conclusions and recommendations on pre-trial detention.
 4. It was anticipated that at least one other study site would be visited; but this was not possible in view of time limitations.

D: Definition of key terms

This study uses the following terms as described here:

1. Intellectual disability is characterised by significant limitations both in intellectual functioning and adaptive behaviour as expressed in conceptual, social and practical skills. Conditions associated with intellectual disability include autism, cerebral palsy and Down syndrome.
2. According to the CRPD, persons with disabilities: ‘... include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others’. It should be noted that the Constitution as well as a number of other statutes also define disability or person with disability.
3. Psychosocial disability is the interaction between psychological and social/cultural components of disability. The psychological component refers to ways of thinking and processing experiences and perceptions of the world. The social/cultural component refers to societal and cultural limits for behaviour that interact with those psychological differences as well as the stigma that society attaches to the label of disabled.⁹

The study is divided into this introduction and four other parts. Part II introduces Kenya's Prison Service. Part III provides the global, regional and national normative context for pre-trial detention. Part IV sets out the study's findings, while Part V makes conclusions and recommendations.

9 World Network of Users and Survivors of Psychiatry, 'Implementation Manual for the UN Convention on the Rights of Persons with Disabilities' (2008) <http://wnusp.rafus.dk/documents/WNUSP_CRPD_Manual.pdf> accessed 5 December 2012.

II THE KENYA PRISON SERVICE

A: Background

The prisons system began in Kenya in 1902 pursuant to the East Africa Prisons Regulations of that year. The Kenya Prison Service (KPS) was established in 1911 to undertake deterrent and punitive functions for the colonial government. In 1953, following declaration of a state of emergency in 1952, the prisoner population mushroomed from 9 954 to 20 251 inmates.¹⁰ As of April 2015, the prison population including pre-trial detainees stood at 54 154. With an official capacity of 26 757, this means the occupancy level was 202.4 per cent.¹¹ The KPS has at least 113 penal institutions, two borstal institutions and one youth corrective training centre. There are 20 008 staff, and this is within the recommended staff-to-inmate ratio of 1–3. The KPS though argues that a significant proportion of staff are involved in tasks not entailing direct prisoner supervision and hence more staff are required.¹²

The KPS operates in terms of the Prisons Act (Cap. 90)¹³ and the Borstal Institutions Act (Cap. 92),¹⁴ laws last reviewed in 1977 and 1967 respectively.

B: A history of torture and ill-treatment

In the course of its century-long history, multiple allegations have been made, and many proved, about acts of torture and ill-treatment which the Prison Service has facilitated or condoned.¹⁵ Some prison officers were convicted for torturing or even killing prisoners. Notably, though, many acts whose effect was violative of human rights were legislated in law. The Service, for example, implemented many detention orders to implement constitutionally-sanctioned judicial or presidential orders under statutes such as the Detention Camps Act (Cap. 91). Evidence adduced before the Truth, Justice and Reconciliation Commission cited deplorable prison conditions where

10 Kenya Prisons Service, Strategic Plan 2013-2017.

11 Kenya World Prison Brief, <http://www.prisonstudies.org/country/kenya>

12 Kenya Prisons Service, Strategic Plan 2013-2017, *supra*.

13 Prisons Act (Cap. 90), <http://www.kenyalaw.org/8181/exist/kenyalex/actview.xql?actid=CAP.90>

14 Borstal Institutions Act (Cap. 92), <http://www.kenyalaw.org/8181/exist/kenyalex/actview.xql?actid=CAP.92>

15 A 1950 manifesto circulated by inmates of Nairobi Prison demanded equal treatment and better prison conditions. (Cited in Kenya Prison Service, Strategic Plan 2013-2017.)

inmates were subjected to inhuman and degrading treatment: lack of medical attention; being fed only once a day; overcrowding; solitary confinement; and the use of overflowing buckets as toilets.¹⁶

There is no specific history highlighting how the KPS treated inmates with disabilities. Patrick Onyango (known as Paddy), a key informant who has a physical disability, who was imprisoned twice in the 1980s, notes that:

*'I have been in prison on two occasions. The first time was after the 1982 disturbances. I was the secretary general of the student union at the University of Nairobi. I was remanded for eight months in Nairobi Area Remand. I was put together with everybody else and my calliper was taken away from me and I was forced to hop around. They took it at the point of admission and they told me that they do not allow any form of instrument that would potentially be used as a weapon to harm others. I would hop to the loo. It was difficult to get into the vehicle that would transport us to court. They were oblivious to my disability and I was treated like all the other prisoners. In addition to this they made derogatory remarks about my disability, asking why I got involved in such things (politics). There was one person who had a mental disability and another who was deaf. The mentally disabled prisoner was put in the "lunatics" section. The prison officers always thought that the deaf prisoner was being rude and we told the magistrate that he was being mistreated by officers.'*¹⁷

When Paddy was arrested again in 1985, he was tortured cruelly for many days in the infamous Nyayo House torture chambers, before remaining incarcerated until 1990. The torture caused more disability and subsequently he could not walk without a calliper at all. Paddy further notes:

*'... the detention conditions were not good at all especially for persons with disabilities ... I was put on the second floor of the prison building and the distance between the toilet and the cell were too long and at one point the toilets were blocked and I had to hop down stairs to use the toilet. I decided to hop because it was a lot faster than crawling. In addition to this the conditions were not hygienic enough for one to consider crawling as a means to go around.'*¹⁸

C: Crack-in-the-door

A breeze of change began to blow in the corridors of prisons in 2003 following the election of Kenya's first post-KANU government as well as the establishment of the country's National Human Rights Institution (NHRI) during that year. Prior to that, in 2000, the Service had introduced its open-door policy – really a crack-in-the-door, under which collaboration with stakeholders was no longer discouraged, and NGOs and other organisations could undertake programmes with prisons. According to a Kenya National Commission on Human Rights (KNCHR) report, reform initiatives in due course included recruitment of professional staff in substantive numbers, review

¹⁶ Truth Justice and Reconciliation Commission Report, Vol. IIA, page 633-635.

¹⁷ KI1, Patrick O. Onyango (also known as Paddy), 8 February 2016.

¹⁸ KI1, supra.

of relevant laws, the opening of prisons to human rights organisations, humane transportation of prisoners and prison staff, and improved accommodation and general prison conditions.¹⁹

The subsequent constitutional review process also generated critical discussions on the roles of the KPS, and it was generally agreed that the Prison Service should be transformed from a penal institution into a correctional service. The KPS itself identified its priorities to include:

1. Organisational transformation;
2. Review of its business model to provide an environment apt for delivering the Service's vision; and
3. Legal reforms.

The key function of KPS is the control and supervision of all prisoners in the country (Section 5). According to its 2013–2017 Strategic Plan, its functions include:

1. Containing and providing safe-custody for inmates through static and dynamic security;
2. Rehabilitating and reforming offenders through vocational training and placement within formal education and the provision of guidance and counselling services for behaviour modification and stress management;
3. Facilitating the administration of justice including by the timely production of inmates before courts, and assisting inmates who wish to appeal their convictions or sentences;
4. Controlling and training young offenders in borstal institutions and youth corrective training centres; and
5. Providing facilities for children under four years accompanying their mothers to prison.

KPS has for some years now been in the process of reviewing its key statutes to bring them in line with Kenya's changed constitutional and political realities.

19 Kenya National Commission on Human Rights, *A Nation Under Siege: The State of Security in Kenya*, 2015.

III NORMATIVE AND INSTITUTIONAL BASIS FOR THE PRE-TRIAL DETENTION OF PERSONS WITH DISABILITIES

A: Treaty and charter-based norms

The CRPD recognises the importance of ensuring liberty and access to justice for persons with disabilities. This is because a necessary and close nexus exists between liberty and access to justice. A person may not exercise their right to liberty effectively if they cannot access the institutions that ensure justice when their liberty is threatened or taken away.

Article 14 (1) of the Convention requires States Parties to ensure that persons with disabilities, on an equal basis with others, enjoy the right to liberty and security of person; and that they are not deprived of their liberty unlawfully or arbitrarily. Any deprivation of liberty should conform with the law, and the existence of a disability should in no case justify a deprivation of liberty. Sub-article (2) requires States Parties to ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and that they are treated in compliance with the objectives and principles of the Convention, including by provision of reasonable accommodation.

Article 13 of the Convention makes two essential provisions to ensure access to justice for persons with disabilities. First, States Parties are required to ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages. Second, they are to help to ensure effective access to justice for persons with disabilities by promoting appropriate training for those working in the field of administration of justice, including police and prison staff.

The African Charter does not make disability-specific provisions on liberty and access to justice, yet it too makes forthright provisions in respect of these two norms. Article 6 of the Charter provides as follows:

*‘Every individual shall have the right to liberty and to the security of his person.
No one may be deprived of his freedom except for reasons and conditions*

previously laid down by law. In particular, no one may be arbitrarily arrested or detained.'

Article 7 of the Charter establishes other provisions with direct or indirect implications for liberty and access to justice. Sub-article (1) provides every individual with the right to have their cause heard, including the right to be presumed innocent until proved guilty by a competent court or tribunal, and the right to be tried within a reasonable time by an impartial court or tribunal.

In *Purohit and Moore v Gambia*, Communication 241/01,²⁰ the African Commission has noted that:

*'Human dignity is an inherent basic right to which all human beings, regardless of their mental capabilities or disabilities as the case may be, are entitled to without discrimination. It is therefore an inherent right which every human being is obliged to respect by all means possible and on the other hand it confers a duty on every human being to respect this right.'*²¹

Addressing itself to Article 6 of the Charter, this Communication affirmed that the right to liberty and security of the person in the Charter is guaranteed to every individual, be they disabled or not. No law may justify deprivation of such liberty if it does not conform to international norms and standards.²²

B: The Luanda Guidelines

Section 33 of the Luanda Guidelines provides for protections in respect of the arrest and pre-trial detention of persons with disabilities.

Sub-section (a) defines persons with disabilities as including those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. That subsection then establishes the following as relevant general principles:

1. The arrest or detention of a person with disability shall be in conformity with the law and consistent with the right to humane treatment and the inherent dignity of the person. The existence of a disability can in no case justify deprivation of liberty. No person with a disability shall be deprived of his or her liberty unlawfully or arbitrarily.
2. Every person with a disability deprived of his or her liberty shall be treated with humanity and respect, and in a manner that takes into account the needs of persons with physical, mental, intellectual or sensory disabilities, including by provision of reasonable accommodation.²³ The State shall uphold the right of individuals to informed consent with regard to treatment.
3. States shall ensure the entitlement of persons with disabilities in custody or detention to be eligible for all programmes and other services available to others, including voluntary engagement in activities and community release programmes. Considerations of alternatives to detention should be given with a framework that includes reasonable accommodation.

20 *Purohit and Moore v Gambia*, Communication 241/01, <http://www.achpr.org/communications/decision/241.01/>

21 *Ibid.*, para. 57.

22 *Ibid.*, para. 64.

23 Also see Rule 5 (2) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

4. Subsection (a) of Section 33 of the Guidelines also requires States to ensure that disciplinary actions take account of a person's disability.

Section 33 (b) of the Luanda Guidelines provides that persons with disabilities shall enjoy full legal capacity, have access to justice on an equal basis, be treated equally before the law and have recognition as a person before the law.

Under Section 33 (c), States are required to ensure that persons with disabilities are informed about, and provided access to, promptly and as required, appropriate support to exercise their legal capacity, including through the provision of interpreters, information in accessible formats and/or independent third parties who are not employed by the law enforcement authorities and who are appropriately qualified.²⁴

Subsection (d) requires States to take measures on accessibility and reasonable accommodation for inmates with disabilities by ensuring that:

1. Persons with disabilities can access, on an equal basis with other persons subject to police custody and pre-trial detention, the physical environment, information and communications, and other facilities provided by the detaining authority. Accessibility should also take into account the gender and age of persons with disabilities, and equal access should be provided regardless of the type of impairment, legal status, social condition, gender and age of the detainee.
2. The physical conditions of police custody and pre-trial detention are adapted to take into account the needs of persons with disabilities, and that the detention of persons with disabilities does not amount to inhuman or degrading treatment.
3. Communication with and by persons with disabilities in custody or detention on an equal basis with others.
4. The provision of reasonable accommodation, and procedural and substantive due process.
5. The right of persons with disabilities to informed consent to treatment.
6. Persons with disabilities are permitted to keep in their possession any form of aid relevant to their disability. If a genuine security reason requires the removal of any form of aid, suitable alternatives shall be provided.

Other sections of the Luanda Guidelines also make provisions relevant to persons with disabilities.

Regarding arrests:

1. Alternatives to arrest and detention should be promoted in a manner which includes reasonable accommodation for persons with disabilities (Section 1);
2. Arrests must not be undertaken on the basis of discrimination of any sort, including the ground of disability (Section 2);
3. An arrested person has the right to be availed information in accessible formats and the right to an interpreter; and the right to reasonable accommodation which ensures equal access to substantive and procedural rights for persons with disabilities (Section 4); and
4. At the time of their arrest, all persons shall be informed of their rights orally and in writing and in a language and format that is accessible and understood by the arrested person (Section 5).

²⁴ See Rule 55 (2) of the Nelson Mandela Rules, *supra*.

Regarding police custody:

1. Persons subject to police questioning shall be afforded the right to the presence and services of an interpreter, and access to accessible formats, if the arrested person does not understand and speak the language in which the questioning will take place or has a disability (Section 9); and
2. Every questioning session shall record information including that the detained person had access to an interpreter during questioning, including sign language for the hearing impaired and any accommodations necessary to ensure the detainee's understanding of and participation in the process (Section 9).

Regarding pre-trial detention:

1. Judicial authorities shall only order pre-trial detention on clearly established grounds which do not constitute discrimination of any kind including disability (Section 11);
2. At hearings to determine the legality of an initial detention order, detainees have the right to reasonable accommodation to ensure equal enjoyment of rights by persons with disabilities (Section 11); and
3. Pre-trial detention orders shall not be motivated by discrimination of any kind, including on the ground of disability (Section 14).
4. Registers in which all arrests and detentions are recorded shall include information on observations on the state of the mental and physical health of the arrested or detained person (including any visible physical injuries), and whether they requested or required medical assistance or reasonable accommodation, with due respect for medical confidentiality (Section 16).
5. Regarding procedural and other safeguards, States are required to put in place and make known appropriate policies, laws and standard operating procedures covering matters such as the provision of reasonable accommodation (Section 25).

C: Constitutional and statutory framework for arrested persons with disabilities in Kenya

The rights of arrested persons set out in Article 49 of the Constitution by and large coincide with the ones established in the Luanda Guidelines. Established rights include the rights:

1. To be informed promptly, in language that the person understands, of the reason for the arrest, the right to remain silent and the consequences of not remaining silent;
2. To remain silent;
3. To communicate with an advocate, and other persons whose assistance is necessary;
4. Not to be compelled to make any confession or admission that could be used in evidence against the person;
5. To be held separately from persons who are serving a sentence;
6. To be brought before a court not later than 24 hours after being arrested, or if the 24 hours ends outside ordinary court hours, or on a day that is not an ordinary court day, the end of the next court day;
7. At the first court appearance, to be charged or informed of the reason for the detention continuing, or to be released; and
8. To be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

Article 51 of the Constitution affirms that a person who is detained, held in custody or imprisoned retains all the rights and fundamental freedoms in the Bill of Rights not incompatible with such detention, custody or imprisonment. Such persons are entitled to petition for an order of habeas corpus.

The Persons Deprived of Liberty Act (No. 23 of 2014)²⁵ details the rights of arrested persons, those held in lawful custody and those detained or imprisoned in execution of a lawful sentence.

The Act requires relevant institutions to maintain registers where information of detained persons or those under custody, detention or imprisonment is to be recorded. The information to be recorded includes:

1. Personal details, including name, age and address;
2. Physical condition of the person;
3. Reason for the detention, custody or imprisonment;
4. Steps taken to ensure that the person arrested or detained is subjected to due process of the law; and
5. The medical history of the person.

The rights of detained persons or those under custody, detention or imprisonment include the following:

1. The right to be treated in a humane manner and with respect for inherent human dignity;
2. The right to have a reasonable opportunity to secure personal property within their possession not subject to exhibition as evidence;
3. The right to be notified of legal aid where it is available and its use;
4. The right to the due process of law, including the right to be promptly informed in a language the person understands of the reasons for their deprivation of liberty and of the charges, if any, preferred against them;
5. The right to be informed of their constitutional rights and guarantees relating to personal liberty and other fundamental rights and freedoms and arising constitutional limitations;
6. The right to access the services of an interpreter or other intermediary during detention and legal proceedings;
7. The right to communicate with their family or other person of one's choice;
8. The right not to be compelled to make a confession;
9. The right not to be compelled to plead guilty to any charge preferred against them;
10. The right to communicate privately with their advocate;
11. The right to communicate with any person of his or her choice including upon being held in custody, detention or imprisonment or upon transfer to another institution;
12. The right to inspect and verify the receipt book listing the person's property and the right to have such property restored to the person upon his or her release;
13. The rights not to be subjected to an unreasonable body search and for such search to be undertaken by a person of the same sex;
14. The right to be entitled to a nutritional diet, taking account of the nutritional requirements of children, pregnant women, lactating mothers and any other category of persons whose physical conditions require a prescribed diet;

²⁵ The Persons Deprived of Liberty Act, No. 23 of 2014, <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.23of2014>.

15. The rights to be provided with beddings sufficient to meet the requirements of hygiene and climatic conditions, to be provided with clothing sufficient to meet requirements of hygiene, climatic conditions and special needs on account of gender and religion, and adequate sanitary material for women;
16. Entitlement to medical examination, treatment and health care, including preventive health care, on the recommendation of a medical officer;
17. The right to confidentiality regarding his or her health status save in relation to infectious or communicable diseases which should be disclosed to the official in charge of the institution;
18. The right not to be subjected to treatment that unreasonably violates the person's religious practices and convictions;
19. The rights to access educational opportunities and reading material that is beneficial to rehabilitation and personal development, and to reasonable access to news media; and
20. The right not to be subjected to forced labour.

The Act also makes specific provisions in respect of persons with disabilities. Section 23 provides that persons with disabilities lawfully deprived of liberty shall be treated on an equal basis with others in terms of the Constitution and other relevant laws. They shall be accommodated in facilities that adequately meet their personal needs, taking account of the condition and nature of their disabilities. The Act requires the competent authorities to take appropriate measures to facilitate humane treatment and respect for the privacy, legal capacity and inherent dignity of persons with disabilities deprived of liberty.

IV THE STATE OF PRE-TRIAL DETENTION FOR PERSONS WITH DISABILITIES IN KENYA

A: Introduction

This part of the study assesses conditions under which persons with disabilities stay in pre-trial detention, with particular focus on correctional facilities. It describes and analyses policy, legislative, administrative and practical issues of relevance to ensuring that detainees with disabilities may access justice fully while living with human dignity. The challenges which the KPS and other relevant institutions face are described and assessed.

Four premises inform the analysis in this part of the study. First, systemic social and institutional inhibitions determine how persons with disabilities are treated by society. Assumptions about the lack of ability or capacity by persons with disabilities have over time been infused into policy and law as manifested in measures such as the denial of legal capacity to persons with disabilities. Illustratively, the marginalisation of persons with psychosocial disabilities is founded on the stigma which society attaches to them because of the assumed consequences deriving from their mental status, which in turn has engendered self-stigma (self-doubt) on individuals with psychosocial disabilities causing them to disengage from society. A practicing advocate told the study that one of her clients who had a psychosocial disability at the age of 42 years still did not have the national identification document because he was fearful of approaching the authorities. Another individual did not talk to her for three days because he was fearful she would report him to the police because she was a lawyer.²⁶ She states further that:

‘There is a perception that persons with psychosocial disabilities are violent, bewitched, evil etc. The police are also prejudiced. When I go with a client to the police station and disclose that they are schizophrenic, they (police) say they (client) are violent and that they do not want them in the police station. ... Some judges have misconceptions and the minute they hear mental disability they give orders to go straight to Mathare. This was the case with one of my clients.’²⁷

While this study assesses some consequences of this systemic discrimination of persons with disabilities, its scope is limited to the specific operation of pre-trial detention for inmates with

²⁶ KI21, Felicia Mburu, practicing advocate, 24 March 2016.

²⁷ Ibid.

disabilities, and more in-depth policy and legal reviews are required to tackle the root of the overall problem.

Second, substantive access to justice cannot be realised if any pre-trial rights of an accused are violated. As such, even the absence of reasonable accommodations for a detainee with disability amounts to violation of the right to access justice.

The other key premise of this study is that remand prisoners should not be excused from any crimes they may have committed on the mere basis of their disabilities. A convicted prisoner similarly should not be excused from their punishment on the basis of disability. Indeed, as Mr Benjamin Njoga, Deputy Director-General of the KPS, told the study, the KPS has taken cognisance of the need to facilitate detainees with disabilities to interact with fellow inmates and prison authorities while at the same time ensuring such inmates receive rehabilitation as they serve their sentences.²⁸ It is the case though that instances exist where persons may be incarcerated because of their disabilities or where a person's disability exacerbates their incarceration. People with psychosocial disabilities, for example, might find themselves in remand because of laws which criminalise behaviour associated with their disabilities.²⁹ While disability as a sole basis should not therefore be pleaded in mitigation during a sentence hearing, such plea may be valid if it is linked to inadequacies of accommodations whose effect would be to treat the convict with disability on an unequal basis with other inmates.³⁰

Finally, this study recognises that the perennial challenge of inadequate or ineffectual implementation of policy or law affects all detainees and not just those with disabilities. Where clear provisions are in place it is even more frustrating when they are not implemented particularly for individuals who suffer double-jeopardy on account of being remand or convicted prisoners as well as being disabled. While the Persons Deprived of Liberty Act came into force only in 2015, most prison officials do not know about the Act, and no communications about it seem to have been made to staff. Thus, provisions covering persons with disabilities in that statute are not known to prison staff.

Even more frustratingly for detainees with disabilities, the Persons with Disabilities Act (Cap. 133)³¹ has since 2003 included specific provisions which if implemented would have had positive impact on pre-trial detainees with disabilities.³² Notably, Section 38 of that Act requires the Attorney General in consultation with the National Council for Persons with Disabilities and the Law Society of Kenya to make regulations providing for free legal services for persons with disabilities including in respect of matters affecting the violation of their rights and cases involving capital punishment of persons with disabilities. The Chief Justice is required to make rules relating to the exemption of persons with disabilities from paying fees in relation to matters relating to the violation of their rights; and the provision to persons with disabilities who attend court of free sign language interpretation, braille services and physical guide assistance. Section 38 also requires that accused persons with disabilities should be held in custody in facilities modified appropriately to accommodate their disabilities. Finally, Section 38 requires the Chief Justice to ensure that suits involving persons with disabilities are disposed of expeditiously '... having due regard to the disability and suffering of such persons'.

28 K15, Benjamin Njoga, Deputy Director-General, Kenya Prison Service, 10 February 2016.

29 K18, Elizabeth Kamundia, Researcher, 1 March 2016.

30 Ibid.

31 The Persons with Disabilities Act (Cap. 133), http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP_133

32 K14, Colins Omondi, formerly legal officer of the National Council for Persons with Disabilities, 10 February 2016.

B: Categorisation, data and statistics

Remand versus convicted prisoners

As of April 2015, the prison population including pre-trial detainees stood at 54 154 persons. According to October 2012 figures, pre-trial detainees constituted 40% of the prison population.³³

The study found that some prisons house both remand and convicted prisoners while others house only one or other of those categories. On 3 March 2016, Lang'ata Women's Maximum Prison, with a capacity of 1 000 convicted prisoners and 80 remand prisoners, 365 remandees with 26 children as well as 291 convicted prisoners with 17 children.³⁴ Kamiti Maximum Security Prison no longer housed remand prisoners, all such remandees having been moved to Nairobi Industrial Area Remand Prison in 2014–2015. That Prison now lodges prisoners whose sentences are over 10 years.³⁵

Table I: Biodata of prisoners in Shimo la Tewa Maximum Security Prison: 7 March 2016³⁶

Condemned	188
Life	287
Presidential Pleasure	22
Long sentences	522
Short Sentences	06
Remand	914
TOTAL	1939

Disaggregated data

The study found that disaggregated data of the prison population on bases such as gender and age is available. According to October 2012 figures, 5.3% of the prison population were female, and juvenile prisoners as at 5 June 2009 were 0.5%.³⁷

Information on pre-trial and convicted detainees disaggregated on the basis of disability was inadequate and incomplete. Information from the KPS³⁸ suggested that as of 15 February 2016, there were only 83 detainees with disabilities within Kenya's prisons. This figure of 83 was constituted by 51 inmates with 'amputated and lame limbs', two 'totally blind persons', 14 'who were blind in one eye', four 'dumb and deaf' and seven 'paralysed' inmates. The KPS report noted that the available data varies from day to day on account of new admissions and discharges.

Even assuming this total figure captures convicted inmates and excludes remandees or vice versa, this data is still implausible. At the time of the study, four remandees were recorded as having mental disabilities in Lang'ata Women's Maximum Prison, and there were nine remandees with mental disabilities during the year ended December 2015. Officials there recalled at least one convict in the recent past who had physical disability.³⁹ At Shimo la Tewa Maximum Security Prison,

33 Kenya World Prison Brief, <http://www.prisonstudies.org/country/kenya>

34 KI9, Documentalist, Lang'ata Women's Maximum Security Prison.

35 KI20, Deputy Officer-in-Charge, Kamiti Maximum Security Prison, 10 March 2016.

36 Data availed to study during field visit to the Prison.

37 Kenya World Prison Brief, <http://www.prisonstudies.org/country/kenya>

38 Report from F.K. Omundi Momanyi on inmates with disabilities, 17 February 2016.

39 KI9, supra.

the study interacted with at least six inmates with disabilities, both on remand and convicted.⁴⁰ Statistics from the Prison indicated there were 22 inmates incarcerated at the pleasure of the president, meaning they had intellectual or psychosocial disabilities. The study also spoke to a number of other persons with disabilities who had recently been in prison.⁴¹ Furthermore, a baseline assessment by the United Disabled Persons of Kenya (UDPK) found that there were a total of 260 prisoners with disabilities in 2012 across nine prisons.⁴²

The profile of detainees with disabilities varied from a few who were admitted into prison already with disabilities and many who became disabled while in prison. Some inmates had become disabled in the course of being arrested by the police while others' impairments were due to sicknesses or old age.

Definitional challenges

The Luanda Guidelines approach disability as a social rather than a medical phenomenon. They define persons with disabilities to '... include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.'

A key challenge of disability-specific data disaggregation arose from definitional conflation between disability and illness. While the study found KPS officers who understood that the prison environment and social context affected inmates with disabilities,⁴³ the KPS had not articulated a formal understanding of disability which located the social and physical environment in which inmates live as the arena that transforms impairments into disabilities. Templates for admitting prisoners did not have fields for capturing disability-specific information. Form PF10 which is used to assess a new inmate's health contains information on weight, sex, age, nationality, occupation and illnesses. An inmate also goes through a physical exam of the heart, lungs, ears and genitals.⁴⁴ The study was told that while PF10 was a medical form, it could also be used to establish mental disability.

Consequences of the above weaknesses are exemplified by inmates with mental impairments who were invariably listed as ill; whereas some inmates who were ill were categorised as being disabled. This conflation was also apparent when inmates with certain disabilities were made to lodge in prison infirmaries or sick bays.⁴⁵

C: Legal capacity

The Luanda Guidelines provide that persons with disabilities shall enjoy full legal capacity, be treated equally before the law and be recognised as a person before the law. This provision is in line with Article 12 (2) of the CRPD which provides that persons with disabilities shall enjoy legal capacity on an equal basis with others in all aspects of life. Yet despite this provision which is part of Kenyan law by dint of Article 2 (6) of the Constitution which domesticates treaties and

40 Participants of the first FGD held in Shimo la Tewa Maximum Security Prison.

41 Participants of the second FGD held in the office of a member of the County Assembly of Mombasa.

42 Kodiaga Prison, Nairobi Remand Prison, Kamiti Maximum Security Prison, Malindi Prison, Embu Prison, Kitui Prison, Nyeri Women Prison and Kakamega Prison. Baseline Assessment on Access to Criminal Justice System by Persons with Disabilities, United Disabled Persons of Kenya, page 18.

43 K19, supra; K120, supra; K113, infra.

44 Ibid.

45 United Disabled Persons of Kenya, Access to Justice by Persons with Disabilities, 2012.

conventions to which Kenya is a party, detainees with psychosocial and intellectual disabilities in particular continue to face challenges peculiar to them which relate to denial of legal capacity.

Psychosocial disabilities (unsoundness of mind) and intellectual disabilities (detention at the president's pleasure)

The study found that the law oversees the arbitrary and sometimes indefinite incarceration of persons with psychosocial disabilities and those with intellectual disabilities, thereby not conforming to the Luanda Guidelines which provide that judicial authorities shall only order pre-trial detention on clearly established grounds which do not constitute discrimination of any kind including disability.

Regarding persons with psychosocial disabilities, Section 11 of the Penal Code (Cap. 63)⁴⁶ provides that every person is presumed to be of sound mind until the contrary is proved. In effect, once a person by operation of law is deemed to be of unsound mind, critical rights such as access to justice, the right to liberty and indeed the right to a fair trial become suspended.

In particular, Section 12 of the Penal Code provides that:

'A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is through any disease affecting his mind incapable of understanding what he is doing, or of knowing that he ought not to do the act or make the omission ...'

Furthermore, Sections 162 and 163 of the Criminal Procedure Code⁴⁷ empower a court in the course of a trial or committal proceedings to determine that an accused is of unsound mind, and to transmit that information to the President who may in turn direct the accused to be detained in a mental hospital until such time as the person is certified capable of making his defence. These provisions are so permissive that their effect in many instances is the forcible and indefinite incarceration of an accused with a mental disability.

Under Section 166 of the Criminal Procedure Code, a court is empowered to enter the plea of 'guilty but insane' where an accused pleads the defence of insanity. In this latter instance, the President's order that such person be detained in a mental hospital is reviewed after three years and thereafter every two years. A key informant cited an instance where one client's sole defence was that of insanity because the alleged crime took place during a crisis, yet using that defence would result in a conviction of guilty but insane, with the further consequence that the accused would be imprisoned at the President's pleasure when in fact ordinarily that crime amounted to a misdemeanour.⁴⁸

Section 38 of the Prison Act empowers a medical officer to direct the removal to a mental hospital of a prisoner deemed to be of unsound mind. Such prisoner may be returned to complete his or her sentence or be released if he or she has completed the sentence only once declared of sound mind.

Regarding persons with intellectual disabilities, Section 167 (1) of the Criminal Procedure Code provides as follows:

46 Penal Code (Cap. 63), <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.63>

47 Criminal Procedure Code (Cap. 75), <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.75>

48 KI21, supra.

'(1) If the accused, though not insane, cannot be made to understand the proceedings – (a) in cases tried by a subordinate court, the court shall proceed to hear the evidence, and, if at the close of the evidence for the prosecution, and, if the defence has been called upon, of any evidence for the defence, the court is of the opinion that the evidence which it has heard would not justify a conviction, it shall acquit and discharge the accused, but if the court is of the opinion that the evidence which it has heard would justify a conviction it shall order the accused to be detained during the President's pleasure; but every such order shall be subject to confirmation by the High Court; (b) in cases tried by the High Court, the Court shall try the case and at the close thereof shall either acquit the accused person or, if satisfied that the evidence would justify a conviction, shall order that the accused person be detained during the President's pleasure.'

The effect of this provision is that a person who is deemed not to understand proceedings during their trial perhaps on account of intellectual disability, may be detained at the President's pleasure indefinitely, despite the Luanda Guidelines which provide that a person has the right to informed consent with regard to treatment.

The operation of the above laws is clearly cumbersome and bureaucratic. The study found that prisons did not have in-house psychiatric experts and inmates had to be transferred to Mathare Mental Hospital for treatment. The transfer procedure involved many delays. The hospital in due course generated a mental capability report which would be filed in the court to confirm that the prisoner was able to proceed with the trial. At the same time, inmates found guilty but insane stayed in prison for a long time before being transferred to Mathare Hospital. The bureaucracy entailed obtaining court proceedings, forwarding them to Prison Headquarters, and the proceedings being forwarded to the Cabinet Secretary who would then draw a removal instrument to allow the inmate to be transferred to Mathare. An informant noted, for example, that getting the proceedings of an inmate convicted in Mandera or Marsabit would take very long. One inmate with mental disability waited for six years while being processed. Prisoners on presidential pleasure in effect are in jail indefinitely until such time as they are certified sane.⁴⁹ The view from Shimo la Tewa Maximum Security Prison though was that the referral process for prisoners to Mathare Hospital was not overly long: acquiring the typed trial proceedings might take three days. Once a removal order was received from the Ministry of Interior, the prisoner would be transferred to Nairobi Main Prison where he or she would be held to await bed space at Mathare Hospital.⁵⁰

D: Reasonable accommodation

The Luanda Guidelines require States to ensure the provision of reasonable accommodation, and procedural and substantive due process to inmates with disabilities. Reasonable accommodation is: 'necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, 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 rights and fundamental freedoms'.⁵¹

49 K19, supra.

50 K113, Special Operations Officer, Kamiti Maximum Security Prison, 7 March 2016.

51 Article 2 of the CRPD.

The study found that prisons provided various forms of reasonable accommodations for inmates with disabilities. The level and quality of accommodations though varied from prison to prison and also the type of disability.

During the FGD with inmates of Shimo la Tewa Maximum Security Prison, an inmate with physical impairment explained that the authorities had made a stool which enabled him to use the toilet. He however explained that ensuring personal hygiene for inmates with disabilities was very difficult: it was difficult for him to wash his clothes since he had one hand. An inmate who became blind when his sight deteriorated while he was in prison said the authorities had provided him with a white cane. A deaf inmate who participated in the FGD could not contribute in the discussions because there was no sign language interpreter. Fellow inmates said that one prisoner had some sign language knowledge which he used to communicate with the inmate. The prisoners noted that having a disability forced them to rely on other prisoners to perform daily activities including queuing for food and fetching water, and that they had to recompense such helpers with their food rations or other toiletries brought for their use.

Another key informant told the study that he had encountered an inmate with albinism in Naivasha Prison who was refused the use of a hat because wearing a hat would make him superior to others.⁵²

The study found that provision of reasonable accommodation for detainees with psychosocial and intellectual disabilities was limited. Reasonable accommodation was associated with physical disabilities almost to the exclusion of invisible disabilities.

E: Accessibility

The Luanda Guidelines require States to ensure that persons with disabilities can access, on an equal basis with other persons subject to police custody and pre-trial detention, the physical environment, information and communications, and other facilities provided by the detaining authority.

The physical environment as well as information and communication are critical areas which detainees with disabilities have found daunting. Accessibility is important because it enables them to live independently and to participate fully in all aspects of life. Article 54 (1) (c) of the Constitution provides that a person with any disability is entitled to reasonable access to all places, public transport and information. Section 20 of the Persons with Disabilities Act provides that:

'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.'

Mobility aids and auxiliary devices

The Luanda Guidelines require States to permit persons with disabilities to keep in their possession any aids relevant to their disability. If a genuine security reason requires the removal of any form of aid, suitable alternatives should be provided.

52 KI3, Anderson Gitonga, Director of the United Disabled Persons of Kenya, 9 February 2016.

The study found that different prisons had different approaches on whether and the extent to which detainees with disabilities were allowed to keep mobility aids and auxiliary devices. Some prisons did not allow persons requiring such aids and devices to remain with crutches, callipers or even white canes and wheelchairs. Some prisons took away such aids and devices overnight. However, the study also found there were prisons where inmates were allowed to keep their aids and devices.

Arguments for and against the free use of aids and devices focus on how to balance between human dignity on one hand and questions of security on the other. Some mobility aids and devices have metal bars which may be employed to cause grievous harm to warders or other inmates. The study learnt that a number of years earlier an inmate's crutch had been used to kill another inmate.⁵³ And the concern of officers therefore was to ensure that the safety of inmates as well as warders was not compromised through the use of such aids and devices as weapons.⁵⁴ Under this approach, an inmate who required to go to the toilet would then be assisted by fellow inmates.⁵⁵

Addressing the very specific situation under which he was detained in the 1980s which entailed actual torture or ill-treatment including solitary confinement, a key informant noted:

*'I would agree with the prison officers who took away my calliper because having been in solitary confinement one is likely to become aggressive to fellow prisoners or prison officers.'*⁵⁶

In fact, the study encountered a commendable level of flexibility of approach regarding the use of aids and auxiliary devices, with some prisons using the discretion allowed to them in Station Standing Orders to ensure the dignity of inmates with disabilities would not be compromised.⁵⁷ As one officer in Shimo la Tewa Maximum Security Prison explained:

*'On the issue of allowing prisoners with disabilities to use their aides including wheel chairs, crutches, white canes, etc. in the prison facility, we of course have to strike a balance between security and convenience for the prisoners to be able to access the various facilities within the prison. There have been no recorded cases of prisoners with disabilities using their aides to harm others, therefore we allow them to use their aids while in prison. Furthermore these prisoners with disabilities recognise that being allowed to use their aids while in prison is truly a privilege. They therefore guard them and ensure that there are no instances of misuse of such aids. The Officer in Charge has the discretion to make such determinations through the Station Standing Orders which dictate the rules of operation in a specific prison.'*⁵⁸

Inmates with disabilities at Shimo la Tewa Maximum Security Prison confirmed that they were allowed to keep their aids with them at all times, a fact corroborated when the study spoke to former inmates of the prison.

Another key informant explained that determination on whether or not to allow an inmate with disability to use their aids and devices is made on a case by case basis. He noted the question of

53 K16, supra.

54 K15, supra.

55 Ibid.

56 K11, supra.

57 K113, supra; K120, supra.

58 K113, supra.

security was relative since prisoners assigned to the prison's workshops did use tools even more dangerous than crutches and canes.⁵⁹

Another key informant noted:

*'I think it (aids) should not be taken away. In the beginning it seems like a tool for potential violence but if a person stayed with it and the more you interact with them the more you realise that it puts the inmate on an equal basis with other prisoners.'*⁶⁰

Transportation

The study found that the buses that transport remandees to courts were better than the Lorries used for that purpose in the past. Nonetheless, accessibility was still a problem and some inmates had to be assisted or carried onto the buses by their colleagues.

Physical accessibility

The Luanda Guidelines provide that the physical conditions of pre-trial detention should be adapted to take into account the needs of persons with disabilities.

The study found that some prisons have some accessible pathways, but others do not. In Shimo la Tewa Maximum Security Prison, drainage trenches do cause a level of inaccessibility, although covered paths interconnect different parts of the Prison.⁶¹ All the buildings in Kamiti Maximum Security Prison are on the ground level and hence they are relatively accessible.⁶²

Table II: Accessibility audit at Kamiti Maximum Security Prison⁶³

Accessibility to facilities	Measures	Compliance level
Door handle	99 cm high	Accessible to persons with disabilities on wheelchairs
Sick bay	84 cm wide	There is enough space to allow movement of persons with disabilities on crutches
Height of door handle in Block C where persons with disabilities are housed	96 cm	Accessible to persons with disabilities on wheel chairs
Width of the door	84 cm	There is enough room to allow movement for persons with disabilities on crutches
Lighting in the cells/blocks	Adequate from both electricity and natural light through windows	This is sufficient
Depth of steps at the entrance of block C	28 cm	Not compliant. Persons with disabilities cannot access the building easily.

59 KI20, supra.

60 KI8, supra.

61 KI13, supra.

62 KI20, supra.

63 Drawn from study by UDPK, supra.

It was not clear to the study that KPS takes account of the concept of universal design when building new prisons, particularly in view of the fact that security establishments like prisons have to be built to certain specifications.⁶⁴ But the study was informed that whenever new prison buildings were designed they took account of accessibility for persons with disabilities. Building new prisons though was expensive and the KPS was undertaking infrastructural improvements in existing prisons to take care of inmates with disabilities. Such improvements included the building of ramps.⁶⁵ An informant though narrated to the study an anecdote on the dangers inherent in building ramps without adequate design inputs. A prison built a temporary ramp hurriedly when the authorities gathered that a senior civil servant who had a disability would be visiting that prison. When the dignitary arrived, it turned out that the ramp was built so steeply that she could not use it without the serious danger of slipping or falling over!⁶⁶

While it was clearly the case that all prison facilities could not be overhauled overnight to ensure full accessibility for inmates with disabilities, it was necessary that KPS should establish a plan with milestones which would ensure that all prisons would be accessible within a specified time-period.⁶⁷

F: Communication

The Luanda Guidelines provide that States should ensure that detainees with disabilities may communicate on an equal basis with others. Furthermore, an arrested person has the right to be availed information in accessible formats and the right to an interpreter; and the right to reasonable accommodation which ensures equal access to substantive and procedural rights for persons with disabilities.

Article 7 of the Constitution provides that the State shall promote the development and use of Kenyan sign language, braille and other communication formats and technologies accessible to persons with disabilities. Article 54 (1) (d) affirms the entitlement of persons with disabilities to use sign language, braille or other appropriate means of communication.

The study found that some prisons had inmates who were deaf. One such inmate who participated in the FGD held at Shimo la Tewa Maximum Prison was not able to interact with the study since there was no sign language interpretation. The lack of sign language interpreters was also noted within judicial proceedings. A key informant narrated to the study how he encountered a deaf inmate whose conviction on a count of rape was read out while he could not comprehend it because interpretation was not provided.⁶⁸ The study heard stories of instances when persons who were deaf were released by courts because of the absence of sign language interpreters. Indeed, in an instance where two deaf persons were booked into a police station for using abusive language, the officer commanding station wondered how this could be when they were deaf!⁶⁹

Most prison officers did not know sign language and relied on inmates who understood sign language to communicate with deaf inmates. It is improbable that inmates who understood sign language would be readily available, and so it is more likely that deaf inmates communicated

64 Article 2 of the CRPD defines universal design as: '... 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. "Universal design" shall not exclude assistive devices for particular groups of persons with disabilities where this is needed'.

65 KI5, supra.

66 KI20, supra.

67 KI8, supra.

68 KI2, supra.

69 FGD held at the office of a member of the Mombasa County Assembly.

using what was referred to as ‘village sign language’, which entails the repeated simulation and miming of certain actions and words.

Article 54 (1) (e) of the Constitution provides persons with disabilities entitlement to access materials and devices to overcome constraints arising from the person’s disability. Yet, an inmate who was blind explained that fellow inmates read his trial documents for him and that prison warders did not assist him in this since they had very many duties. He could not use the library since there were no braille books. He also pointed out that in any case he did not know braille since he became blind in prison.

G: Humane and dignified treatment

The Luanda Guidelines provide that the arrest or detention of a person with disability shall be consistent with the right to humane treatment and the inherent dignity of the person. Article 28 of the Constitution provides that every person has inherent dignity and the right to have that dignity respected and protected; and Article 54 (1) (a) reaffirms that persons with disabilities have the right to be treated with dignity and respect.

The study found that conditions in police cells can be extremely dehumanising. A person who is partially blind described his experiences in a police cell and in remand prison as follows:

‘... the conditions are deplorable: overcrowding in the cell, approximately 60 people in a 10 by 10 cell; there is no mattress or blanket; very little food and one has to relieve themselves in a bucket inside the cell. There is no proper reception. There are no social workers who attend to prisoners with disabilities once they are arrested.’⁷⁰

An advocate who represents clients with psychosocial disabilities noted:

‘Most of my clients are arrested during their manic periods. They are usually held for three or more days without medical treatment and even without food. My client in Taveta was held for 14 days with no food or water and was naked. I have asked the police how they know that a person will get sane in three days and they say that’s what usually happens.’⁷¹

She also notes that individuals with psychosocial disabilities have been brought into custody or even to court with their hands and legs tied with ropes like an animal.⁷²

A key informant with psychosocial disability who was charged with assault and attempted arson stated:

‘Once the police were notified of my illness (disability) they were very hostile. Everything that I said was nonsense to them because they thought I was “mad”.’⁷³

70 Second FGD.

71 KI21, supra.

72 Ibid.

73 KI22, anonymous, 24 March 2016.

Bail

The Luanda Guidelines require that persons with disabilities in custody or detention be eligible for all programmes and other services available to others, including voluntary engagement in activities and community release programmes. Considerations of alternatives to detention should be given with a framework that includes reasonable accommodation.

Article 49 (1) (h) of the Constitution provides that an arrested person has the right to be released on bond or bail on reasonable conditions pending a charge or trial unless there are compelling reasons not to be released. Bail and Bond Policy Guidelines issued by the Chief Justice provide in Guideline 4.28 that:

'In making a bail decision in the case of accused persons who are children and other persons with special needs (such as persons with special mental health care needs, persons with disabilities and transgender prisoners), the court should consider alternatives to remand such as close supervision or placement with a fit person determined by the court. In such cases, courts should resort to detention only as a last resort, taking into account the nature and circumstances of the offence, and the risks that such persons pose to the public.'

Informants for the study perceived bail as an effective way of ensuring dignity for detainees with disabilities. They contended that the relevant standard for application of bail is that of equality – that inmates with disabilities should be given bail on an equal basis with inmates without disabilities. Considerations of substantive equality should be guided by whether in-prison facilities are adequate for inmates with disabilities. A key informant⁷⁴ told the study that where a person with disability is incarcerated in a police cell with inadequate and unaccommodative facilities and services, they should be released on free bond. The informant noted that human dignity is at the core of the Constitution and a person must not be left to crawl about in a dirty police cell.

No statistics were available to assess whether the number of detainees with disabilities was impacted positively subsequent to the promulgation of the Constitution which had revitalised use of bail.⁷⁵ The study was however told that persons with psychosocial disabilities were by and large not given bail on the basis that they might harm themselves. The reality should be that giving them bail would be an important step to enable them to deal with their crises.⁷⁶

Bail terms can be unfavourable to persons with disabilities on account of relative disadvantages such as poverty and such relevant factors should accordingly inform positive variation of bail terms. Such accommodations should be understood as special measures to ensure substantive equality rather than as favouritism or pity. As a key informant with psychosocial disability related:

'My case on assault and attempted arson was reported by someone who knew my condition. I think people do not care about persons with mental disabilities and the easiest solution for dealing with people like us is to lock us up in jail for us to rot. I wrote my statement and my co-accused (ex-wife) also wrote a statement. I was remanded at Nairobi Area Remand for two days. ... I

74 KI7, Victor Kamau, Redress Department, Kenya National Commission on Human Rights, 10 February 2016.

75 KI9, supra.

76 KI21, supra.

*was lucid at that time and I tried to keep quiet so that I couldn't mess up but I was burning inside. My ex-wife was released immediately because she could raise the bail amount. I went to court and withdrew my case against her. I told the magistrate that I was unable to proceed because I was suffering from a mental illness. ... At this point I felt it necessary to disclose my bi-polar state because I could not have followed my proceedings because I was hyper.'*⁷⁷

The use of handcuffs

The Luanda Guidelines require States to ensure that disciplinary actions take account of a person's disability.

The thoughtless and improper employment of handcuffs has undermined the human dignity of persons with disabilities. In one instance, when the police arrested three persons, two of who were blind and the other one partially blind, the police handcuffed the three together so that the person who was partially blind would guide the others using the handcuffs. Another person who had a physical impairment (one leg was paralysed) was made to clamber onto the bus taking remandees to court while still handcuffed. A former inmate who was deaf explained how he was handcuffed upon arrest and therefore could not use his hands to communicate.⁷⁸

The 'squat-to-be-counted' phenomenon

A former inmate explained that inmates with disabilities who did not respond with alacrity to orders by prison officers were victimised by warders.⁷⁹ The study was informed that inmates are counted at least six times a day; but an officer in charge of a detail of prisoners may count them every 15 minutes. Prisoners are required to squat during such counts to ensure effectiveness, but, as an officer explained, prisoners with disabilities are allowed to sit on the ground or stand at the back.⁸⁰

On whether to separate or tag inmates on the basis of disability

The study found that different prisons take different approaches on whether to separate inmates with disabilities from the general prison population or whether to tag them as persons with disabilities. In Kamiti Maximum Security Prison, convicted inmates with mental and physical disabilities are separated: 'To ensure that their special needs are catered to.'⁸¹ Prisoners with mental disabilities are housed in one block, but other vetted prisoners are assigned to stay there too to help in taking care for those inmates.⁸² In Lang'ata Women's Maximum Prison, prisoners with psychosocial disabilities mix with the general prison population if they are not violent. These prisoners have a distinguishing yellow strip on their prison uniforms.⁸³ Officials find colour identifiers useful administratively to distinguish between different types of prisoners. The study found though

77 K122, supra.

78 Information from the second FGD.

79 Ibid.

80 K120, supra.

81 K120, supra.

82 Ibid.

83 Capital remandees wear grey uniforms; remandees wear zebra print uniforms with a white strip on the collar; convicts wear regular print uniforms; escapees from police custody wear zebra uniforms with a blue strip; etc.

that this yellow identifier also has the effect of stigmatising prisoners on the basis of disability. A key informant noted that the alternative to identifiers would be the isolation of such prisoners, but the Prison did not have adequate separation facilities.⁸⁴

Even individuals with disabilities and their organisations have wrestled with the question of whether to separate inmates with disabilities as a special measure to mitigate the practical disadvantages occasioned by the absence of adequate facilities and services in the general prison environment. The Director of UDPK recalls that their 2012 assessment recommended that remandees with disabilities should have accessible holding cells in police as well as prison remand.⁸⁵ The FGD of former prison inmates also argued that services for inmates with disabilities would be managed better if inmates with disabilities were housed separately from other inmates. One key informant noted that:

*'In the case of a person with a psychosocial disability in a crisis in the prison, it could be necessary for them to be apart from the main prison population until they are done with the crisis. Usually isolation is a punishment, but I am thinking about the case of someone who needs rest, who needs to be away from activity and too many people.'*⁸⁶

Yet, separation on the basis of disability too may amount to discrimination. Such separation reeks of separate standards.⁸⁷ Prison bureaucracies find it convenient to make regulations which lump many people together into categories with commonly applicable rules. As one key informant noted:

*'We must think about this on a case by case basis. This is the reasonable accommodation way. ... I think I now see why this segregation thing works: it is easier to deal with many people of one type together than apart.'*⁸⁸

While the Prison Act requires separate confinement for male and female prisoners (Section 36) as well as the separate confinement of prisoners detained for terrorist activities (Section 36A), no like provision is made in respect of prisoners with mental disabilities or indeed with any disabilities.

H: Training, capacity-building and awareness-raising

The KPS continues to have very limited specific knowledge and capacities on the needs of detainees with disabilities, and continual training and capacity-building is necessary. The candid responses of mainstream NGOs which work in the penal sector confirmed the study's premise that these organisations by and large did not undertake disability-specific work within prisons.⁸⁹ Only the UDPK, an umbrella organisation of persons with disabilities, had done a specific study on prisoners with disabilities. Even of more concern was the fact that neither KNCHR, the country's independent national institution nor the NGEC whose statutory equality mandates cover persons with disabilities, had done specific work on prisoners with disabilities. Indeed, common Section

84 K19, supra.

85 K13, supra.

86 K18, supra.

87 K18, supra.

88 K18, supra.

89 K110, Jane Munywoki, Director, Legal Resources Foundation, 4 March 2016; K115, Gertrude Angote, Executive Director, Kituo cha Sheria, 8 March; Ann Kamau, K1 23, Independent Medico-Legal Unit, 10 February 2016.

51 of the Kenya National Commission on Human Rights Act (Cap. 5B)⁹⁰ and Section 51 of the National Gender and Equality Commission Act (Cap. 5C)⁹¹ provide that:

'Every person in charge of a prison, remand or mental institution where a person is held in custody, or of any institution where a person is a patient or inmate shall ensure, notwithstanding the provisions of any other written law, that any correspondence from such person to the Commission is transmitted in confidence and any written communication in that regard shall remain sealed.'

It was not clear to the study that any such communications had been made to KNCHR, although incidents were narrated where officials intervened against a violation on an ad hoc basis.⁹²

It was clear to the study that KPS is keen on changing for the better. The Director of UDPK noted that following the organisation's 2012 assessment of the penal system, some lessons had been learnt and he, for example, knew of a prison officer stationed in Machakos Prison who had visual impairment. Prison staff now called UDPK for advice on rehabilitative including assistive devices both for staff and inmates. UDPK undertook a training activity with 1 500 trainees at Ruiru Prison College. The KPS had also raised its concerns about the curriculum which its officers might use for training cadres on sign language because the main government institute which offers such a course provided it for teachers rather than for practitioners such as prison officers.⁹³

90 Kenya National Commission on Human Rights Act (Cap. 5B), <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.5B>

91 National Gender and Equality Commission Act (Cap. 5C), <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.5C>

92 KI18, Keith Chungalwa, KNCHR Mombasa office, 8 March 2016.

93 KI3, *supra*.

V CONCLUSIONS AND RECOMMENDATIONS

A: Conclusions

The aim of this study was to review the extent to which pre-trial detention in Kenya conforms to the Luanda Guidelines in respect of detainees with disabilities within KPS. The study makes three key conclusions.

First, the ultimate goal of the various measures established in the Luanda Guidelines and indeed in international, regional and national legal instruments is to ensure full access to justice by detainees with disabilities. Absence or inadequate procedural or substantive guarantees including denial of reasonable accommodation therefore amount to violation of the right to access justice.

Second, it is clear that the law is not a neutral arbiter in ensuring the pre-trial detention rights of persons with disabilities. Inherent biases exist against prisoners with certain types of disabilities who by dint of such disabilities are incarcerated without recourse.

Third, there is a willingness within the KPS to do the right thing. The Service therefore should be provided with technical support as well as resources to undertake needed reforms.

B: Recommendations

These recommendations focus on the policy and practical steps which Kenya's State institutions as well as civil society and DPO actors should take to ensure the better protection of the rights of detainees with disabilities in pre-trial detention.

1. Law reform
 - a. Kenya should finalise reviewing its approach to the legal capacity of persons with disabilities. Policy and law positions which deny legal capacity to persons should be reformed so that all persons including those with disabilities are treated as full human beings.
 - b. In particular, statutes such as the Penal Code, the Criminal Procedure Code, the Mental Patients Act and the Evidence Act should be reviewed to conform to Article 12 of the CRPD which reaffirms that persons with disabilities have legal capacity on an equal basis with others.

- c. The letter as well as spirit of the law should be implemented to ensure the rights of detainees with disabilities. In particular, Section 38 of the Persons with Disabilities Act and Section 23 of the Persons Deprived of Liberty Act should be made operational fully.
2. Disability
 - a. KPS should review its definition of persons with disabilities and while doing so employ the social model of disability which locates the problem of disability in the social and physical environment and not in the individual with impairment.
 - b. Tools should be developed to capture biodata of detainees with disabilities, and the numbers of such persons should be recorded and analysed on a continuing basis. Measures should be taken to identify persons with disabilities in correctional institutions who remain unrecognised.
 - c. Correctional officers should be enabled to distinguish between disability and illness. They should also be trained to determine instances where a detainee may have a disability.
 3. Reasonable accommodation
 - a. The State and its agencies should provide clear technical guidance and resources to ensure implementation of reasonable accommodations for detainees with disabilities.
 - b. Individualised programmes should be put in place for remandees with disabilities, and one-size-fits-all solutions should not be forced upon collectives of persons on the sole basis of disability.
 - c. KPS should put in place measures to enable detainees with disabilities to enjoy prison amenities such as food without having to pay fellow inmates for services. Solicitation of such payments should be discouraged.
 - d. Where prison officers may need assistance from prison inmates to provide accommodations for inmates with disabilities, no assistance should be provided without the consent of the detainee being assisted, and the assister may be given incentives by the prison.
 - e. Clear guidelines should be enforced against the discretionary denial of reasonable accommodation on petty bases such as that a prisoner should not wear a hat.
 4. Mobility aids and auxiliary devices
 - a. Mobility aids and auxiliary devices should not be arbitrarily taken away from prisoners who need them.
 - b. The general rule should be that a prisoner must not be denied the use of their aids and devices simply on the assumption they may be a security risk.
 - c. Any security concerns should be dealt with on a case-by-case basis; and the authorities should not take away aids or devices where alternatives do not exist. Such measures must be assessed on the basis of proof of risk, weight of the risk and proportionality of the measure.
 - d. Prisons should facilitate the repair and replacement of such aids or auxiliary devices.
 5. Accessibility
 - a. KPS should put in place a mile-stoned plan for building or renovating prisons such that within the set timeline all prisons in the country will be accessible to persons with disabilities. Recognised standards of accessibility must be adhered to while doing this.
 - b. All new establishments should be built using the concept of universal design.
 - c. Detainees with disabilities should be transported to and from prison in vehicles adapted to take account of their disabilities.

6. Human dignity
 - a. Prisoners should not be separated from each other on the sole basis of disability.
 - b. Bail should be issued to prisoners with disabilities on the basis that prison facilities offer inadequate accommodations for such persons.
 - c. Handcuffs should not be used arbitrarily on detainees with disabilities.

7. Training, capacity-building and awareness-raising
 - a. The curricula of prison officers should include basic sign language lessons.
 - b. While it is not recommended that all prison officers should know sign language, all such officers should at least be aware of the rudiments of sign language.
 - c. KPS should establish a small cadre of sign language interpreters who may be deployed on a need-basis at short notice. Additionally or alternatively, KPS should identify locally-based personnel who it can call upon to provide interpretation as necessary.

8. Interventions by other stakeholders
 - a. The roles of NGEC and KNCHR in protecting and promoting the rights of detainees with disabilities and undertaking monitoring functions should be strengthened and made operational. Both Commissions should in particular engage with the KPS to ensure implementation of common Section 51 of their statutes which anticipates that prisoners may communicate confidentially with those Commissions.
 - b. Civil society organisations which work in prisons should focus specifically on prisoners with disabilities.

9. Roles of Rapporteur on Prisons, Conditions of Detention and Policing in Africa.

The Luanda Guidelines form a solid platform on which the Rapporteur on Prisons, Conditions of Detention and Policing in Africa may engage States on the question of detainees with disabilities. The Rapporteur should consider undertaking specific dialogue with States on this matter, in particular during promotional missions and the interactive dialogue which the African Commission undertakes with States under Article 62 of the African Charter.

Appendix⁹⁴

No.	Name	Title	Department/Institution/ Other	Disability	Gender	Date of interview
KI 1	Patrick O. Onyango (Paddy)	Former inmate	-	Physical	Male	8 February 2016
KI 2	Fred Ouko	Executive Director	Action Network for Disabled Youth (ANDY)	Physical	Male	9 February 2016
KI 3	Anderson Gitonga	Executive Director	United Disabled Persons of Kenya (UDPK)	Partially blind	Male	9 February 2016
KI 4	Collins Omondi	Legal Officer (former)	National Council for Persons with Disabilities (NCPD)	-	Male	10 February 2016
KI 5	Benjamin Njoga	Deputy Commissioner-General	Kenya Prisons Service	-	Male	10 February 2016
KI 6	Florence Omundi	Director Gender and Disability	Kenya Prisons Service	-	Female	10 February 2016
KI 7	Victor Kamau	Director of Redress	Kenya National Commission on Human Rights (KNCHR)	Blind	Male	10 February 2016
KI 8	Elizabeth Kamundia	Researcher	-	-	Female	1 March 2016
KI 9	-	Documentalist Officer	Lang'ata Women's Maximum Security Prison	-	Male	3 March 2016
KI 10	Jane Munywoki	Director	Legal resources Foundation	-	Female	4 March 2016
KI 11	Dr Samuel Kabue	Director	Ecumenical Disability Advocates Network	Blind	Male	10 February 2016
KI 12	Alan Omondi	-	Legal Resources Foundation	-	Male	7 March 2016
KI 13	-	Special Operations Officer	Shimo la Tewa Maximum Security Prison	-	Male	7 March 2016
KI 14	FGD of 15 individuals	Inmates	Shimo la Tewa Maximum Security Prison	Various disabilities	Males	7 March 2016
KI 15	Gertrude Angote	Executive Director	Kituo Cha Sheria	-	Female	8 March 2016
KI16	FGD of 6 individuals	-	Former inmates	Various disabilities	Males	8 March 2016
KI17	Annette Mbugua	Programme Coordinator	Kituo Cha Sheria, Mombasa	-	Female	8 March 2016
KI18	Keith Chagalwa	Programme Officer	Kenya National Commission on Human Rights	-	Male	8 March 2016
KI19	Njenga Saitoti	County official	Kiambu County	Blind	Male	9 March 2016
KI20	-	Deputy Officer in Charge	Kamiti Maximum Security Prison	-	Male	10 March 2016
KI21	Felicia Mburu	Advocate	Private Law firm/ Mental Disability Advocacy Centre	-	Female	24 March 2016
KI22	Anonymous	Accused	-	Psychosocial	Male	24 March 2016
KI23	Ann Kamau	Programme Officer	Independent Medico-Legal Unit	-	Female	10 February 2016
KI24	Winfred Lichuma	Chairperson	National Gender and Equality Commission	-	Female	21 April 2016

94 The identities of some interviewees have not been disclosed fully where such disclosure may cause them inconvenience. In some instances, express permission has been sought before individuals' names have been cited.

ABOUT APCOF

The African Policing and Civilian Oversight Forum (APCOF) is a network of African policing practitioners from state and non-state institutions. It is active in promoting police reform through strengthening civilian oversight over the police in Africa. APCOF believes that strong and effective civilian oversight assists in restoring public confidence in the police; promotes a culture of human rights, integrity and transparency within the police; and strengthens working relationships between the police and the community.

APCOF achieves its goals through undertaking research and providing technical support and capacity building to state and non-state actors including civil society organisations, the police and new and emerging oversight bodies in Africa.

APCOF was established in 2004, and its Secretariat is based in Cape Town, South Africa.

CONTACT APCOF

African Policing Civilian Oversight Forum
Suite 103–105A, Building 17, Waverley Business Park,
Wyecroft Road, Mowbray 7925, South Africa
Tel: +27 21 447 2415/1691 | Fax: +27 21 447 0373 | Email: info@apcof.org.za

ABOUT NGEK

The National Gender and Equality Commission is a Constitutional Commission set up pursuant to Article 59 (4) & (5) of the Constitution of Kenya 2010 and the National Gender and Equality Commission (NGEK) Act 2011. The broad mandate of the Commission is to promote gender equality and freedom from discrimination among all Kenyans. Special focus is placed on Special Interest Groups (SIGs), notably women, the youth, children, persons with disabilities, the elderly, minorities and marginalised groups and communities. The Commission plays a coordinating role, of facilitating the mainstreaming of issues and principles of substantive gender equality and inclusion with attention to SIGs in national development.

The NGEK Act 2011 section 8(f) gives the Commission powers to investigate, on its own initiative or on the basis of complaints, any matter in respect of any violations of the principle of equality and freedom from discrimination, and make recommendations for the improvement of the functioning of the institutions concerned.

CONTACT NGEK

National Gender and Equality Commission
Solution Tech Place, 1st Floor, Longonot Road, Upperhill
P.O BOX 27512 - 00506
Nairobi, Kenya

Tel: +254 203213199 | Fax: +254 203213199 | Email: info@ngeckkenya.org | www.ngeckkenya.org
www.facebook.com/NGECKKenya

