A review of current accessibility legislation in Kenya

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Abstract

The aim of this paper is to review the current accessibility legislation on the built environment in Kenya and document the current situation in the light of persons with disabilities. The paper will briefly explain the various categories of disability.

In addressing disability and current legislation, the paper will embark on a detailed description of government policies. In the light of the foregoing information, various legislations will be discussed each in detail as they affect the overall design of the built environment.

The paper will compile in its conclusion a list of feasible recommendations which the government can consider in order to cater adequately for the disabled person. In itemizing the recommendations, a distinction will be made of those which can be tackled immediately, i.e. addition of a ramp to buildings and those which require to be implemented over time and for those to be included in new building designs.

In many parts of the world, the 1970's emerged as the decade of persons with disabilities - when the disabled people in different parts of the world started to band together and in a common voice demanded recognition for their existence, their needs and their rights. (Falta 1976)

Among others, their agitation was based on familiar human rights principles such as equal opportunities, non-discrimination, integration and normalization. It was argued, and rightly so, that their lives were severely handicapped by social, political, economic and physical barriers in society which not only hampered their full participation in society but also reduced them to objects of pity and welfare recipients and thus suffered segregation and debasement.

Patricia Falta, for instance, argued that "whatever program received by the handicapped has been in response to activist political pressure by the handicapped themselves rather than a recognition of their valid rights". She cited unwillingness, fears and disgust "nurtured by traditional unfounded myths and unknowns" in the parts of the governments as the main factors which have hindered them from giving people with disabilities freedom to participate in development, the opportunity to develop their abilities, express

their individuality as well as economic and social freedom. (Falta 1976) In very general terms, the needs facing disabled persons which should be addressed can be divided into two main categories:

First and foremost is the need to be incorporated into the economic mainstream as full and equal members of society. Thus shifting emphasis from merely the physical strength or limitation to the brains.

Secondly, and of equal importance, is the need for governments to recognize and address the needs of disabled people as equally important as those of other members of society and hence form the basis of all planning and development strategies.

In response to these unique needs facing people with disabilities, 1981 was designated as the United Nations' Year of the Disabled Persons with the aim of sensitizing and directing the attention of the member states to the plight of disabled people. In 1982, all member states unanimously adopted the World Plan of Action aimed at making the physical environment accessible to all including persons with various types of disabilities. This was in recognition of the fact that the situation of the disabled persons should, as Weiss puts it, "be improved mainly by the adaptation of society and not necessarily through measures related to individuals. It is therefore the built environment that ought to adapt to peoples' possibilities of using it not the other way round". (Weiss 1984)

In order to achieve the above objectives, it is important to develop programs and strategies that will eliminate all design barriers that tend to limit the degree of integration and independence of those with disabilities. This can, as may have been pointed out, be achieved through amending the Building Codes and Regulations to incorporate accessibility in the design and construction of the built environment and secondly, adopt the existing buildings to the special needs of persons with disabilities. This, if achieved, will go a long way in affording disabled persons an opportunity to integrate freely with the rest of society. It has been noted by many and indeed by disabled people themselves that "any attempts to segregate them into special schools, special housing, special transport, etc. is interpreted as an evidence of over-protection and patronizing of the society and indeed the worst oppression. This is because, to people with disabilities, all these acts are a constant reminder that they are different from the rest of society and this tends to extend handicapism to those already vulnerable". (Thiberg 1984)

Following the 1982 UN Resolutions, many countries, especially in the developed world, joined those which had already enacted access legislation.

In countries such as Britain, United States of America, the Scandinavian countries and some developing countries such as China, South Africa, etc. efforts were made to create a barrier-free environment in response to the international concern over the accessibility of disabled persons to the built environment. A lot of successes have definitely been achieved towards this end. For instance, on Wangfujing Street in Beijing, China, a very busy shopping street, disabled people could not use the street despite the fact that most

commercial activities were concentrated there. Numerous obstructions hampered accessibility by disabled people to the street:

- 47 per cent of persons with disabilities were blocked by entrance steps
- 45 per cent by narrow corridors
- 40 per cent by impassable sidewalks
- 39 per cent by staircases

Seeing the state of affairs, the Municipal Council decided to eliminate those architectural barriers by installing ramps in the entrances of selected commercial and recreational stores with the surfaces of the ramps made of durable, non-slip materials. In addition, lowered handrails were mounted on both sides of the ramps and on one of the public toilets. Along the full length of the street sidewalk curbs were remodelled into ramps thus creating unobstructed passage for wheelchairs and crutch users as well as other pedestrians. Audio instruction boards were installed to help the visually impaired find their way along the street and Braille signs were put up at bus stops. (Bai Demao 1987)

Another good example of accessibility legislation and efforts is the Lesotho Paper on Accessibility which gives the technical details put into consideration in building a barrier-free environment. This has and will form the basis for other African countries contemplating Access Legislation. Despite success in this regard, there are feelings that full understanding of disabled persons and concrete progress to give them their full and rightful place has not been fully achieved even in these countries.

In the African region, the problem is even more critical with few countries having implemented the 1982 UN Resolution on Elimination of Design and Architectural Barriers in the built environment. In Kenya, in particular, one would not be exaggerating to say that "the built environment is designed by and for the healthy young persons, not children, the elderly one, expectant mothers and disabled". (Biswas 1988) In all the important legislations dealing with the design and construction of the built environment, there is direct and implied requirement that the built environment should accord 'a reasonable degree of safety and accessibility' to the public using it.

In interpreting the "reasonableness" of the design criteria, the yardstick used is that of a non-disabled person, thus the safety and accessibility for those with some physical or mental limitation of one kind or other being completely omitted as will be observed below.

Before any attempt is made to review the existing Access Legislation in Kenya, it is important to define what we mean when we talk of 'disabled' persons and try to group them into specific categories with the premise that their specific needs of access to the built environment depends on the particular kind of disability. This is to avoid banding persons with disabilities together under 'disabled persons' thus sacrificing and overlooking their varied individual needs as far as facilitating their mobility is concerned.

For the purposes of this paper, disabled persons shall be taken to mean those who, due to some physical, sensory, visual or mental impairment, experience difficulties in using the built environment if the building is not oriented to their needs. Their needs can be put into four main groups:

Persons with physical disabilities

This group includes all those persons without legs or whose legs are not able to support their weight or whose legs need extra support to support all the weight. This group is further divided into three sub-groups. (John Hunt & Lesley Hoyer 1982)

Persons who spend most of the time lying down

These are people confined to beds by the nature of their disability or as a result of a chronic illness. In their case, accessibility to the built environment is irrelevant. Their needs could be said to include a well-heated bedroom which offers a good view from the bed.

Wheelchair users

Wheelchair users require mobility building, offering access, adequate space in all rooms, doorways and passages for wheelchair circulation and handles, switches, windows and work surfaces at wheelchair height.

The semi-ambulant and ambulant

The former are people who do not use wheelchairs and are able to walk to a limited extent, in some cases only with the aid of another person.

The latter, on the other hand, are persons who do not use wheelchairs and walk with difficulties, in some cases only with the aid of another person. These two groups of people can comfortably be accommodated in mobility buildings with ramped access and wider doors.

In their research, John Hunt and Lesley Hoyes (1982) also found that age was still an important factor in the incidence of not only physical disability but also other types of disability such as sensory and mental disabilities. For instance, of the 1,446 disabled persons considered, 73 per cent were aged 60 years and over. As far as these people are concerned, the services provided should be based on the philosophy of enabling them through the provision of comprehensive support system and orientation of buildings to their needs. This provides a chance to retain an active and independent lifestyle away from the former philosophy of building homes for care and attention, which is not only expensive, but denies old persons an opportunity to be independent and active.

In their conclusion, Hunt and Hoyes recommended avoidance of steps, provision of wider doors and passages, and the location of switches, windows, work surfaces, and sanitary

facilities at a comfortable height. These would benefit disabled people, pregnant women, children, and to a large extent make life easier also for those who are still young.

Hearing impaired

These include those persons with varying degrees of difficulty in hearing and communicating. Their needs, with regard to accessibility to the built environment, primarily evolve around sound signals such as fire alarms, sounds of falling objects, etc. Since their disability limits them from hearing, very good visual indications should be included and planned for in the design of projects to ensure their safety in buildings. Additionally, some hearing problems are medically said to lead to imbalance of the body and so ramps would be preferably to stairs in case of a person falling. Handrails are an added advantage in such cases.

Visually impaired

These persons are limited in mobility by blindness. Their safety and access is greatly improved by introduction of audio signals in strategic places such as audio instructions in elevators. Also, Braille signs should be put up at notice boards, bus stops and all other places deemed necessary to facilitate their access to buildings. Sudden changes in floor level, uneven staircases all hamper their mobility and indeed endanger their lives.

Mentally impaired

Mental disability could be characterized by disorientation in time and space, memory loss, confusion and functional mental illness, among others. Among disabled persons, the mentally disabled suffer the greatest social rejection and segregation, especially in severe cases where the disabled person shouts at people, has poor personal hygiene, etc. As J. A. Muir Gray notes, isolation given to those people "to say the least is brainwashing and damaging to the victim", thus, compounding an otherwise moderate problem. (Gray 1977)

Measures for improving access

Good and accessible design should therefore be flexible enough to cater for all these varying and at times conflicting needs of persons with disabilities. On the other hand, to group all the needs of the individual into one bundle, 'disabled', tends to limit the flexibility of design in combating the specialized needs of the different categories of disabled people. The challenge to the design team and the legislatures is to try as much as possible to incorporate all the needs into the design with the least cost.

Although it is virtually impossible to increase the stock of buildings quickly (especially housing) because of financial limitations, much can be done to help people with disabilities in phases.

Short term measures

This can be achieved through adaptations of the already existing buildings to orient them to the needs of persons with disabilities as in Beijing (see above notes). Most importantly, countries which have not drawn up Access Legislation can collect data analysis and enact legislation for future construction.

Medium term measures

The issue here is to ensure that all licences issued for the construction of public buildings are subject to those buildings incorporating mobility standards in their design to meet the needs of persons with disabilities.

The 1970-74 Development Plan recognized the vital role played by the welfare services rendered to the disadvantaged as a prerequisite to greater economic progress. The Plan asserted the fact that although "certain services have no immediate economic implication, their neglect has severe effects on the well-being of the whole society". (1970-74 Development Plan) This was in recognition to the "truism that economic development cannot be divorced from the social advancement of the society". (1970-74 Development Plan)

In the above regard, disabled persons were singled out among others as a priority group to be given special attention considering the limited resources at the disposal of the government. This was to be achieved through the introduction of rehabilitation centers where persons with disabilities would be trained in various skills and rehabilitated to fit in the social stream.

The government recognized that the development of the disability community was an asset to the nation rather than a liability. The same idea has been reflected throughout the Five-Year Development Plans where the objective has been to provide welfare services to persons with disabilities. Without underscoring the important role played by welfare services, the complete omission of accessibility to the built environment as a basic need in integrating persons with disabilities into both the economic and social life of the community is too obvious.

Factors leading to this state of affairs can be speculation ranging from lack of awareness on the side of government officials; traditional beliefs that, at best, disabled people should be treated with sympathy and pity and hence accord them welfare services on humanitarian grounds; lack of enthusiasm and a looking down on those with disabilities with the old belief that they are less human and hence no need to bother with them, etc. This, as will be seen below, is reflected in the complete omission of accessibility legislation in the various acts governing the construction industry. Such acts as the Street Act, the Building Code, the Public Health Act, the Factory Act etc. have some relevance in these areas. However, for the purposes of this paper only the Building Code and the Public Health Act have been reviewed. The others, though important, are completely silent on the issue of accessibility and to review them will amount to repeating ourselves. Nevertheless, in the event of Access Legislation in this country, all these acts and any

other related to accessibility of the individual should be redefined to incorporate accessibility to disabled people.

Public Health Act

This Act is the overriding legal authority regarding the local bylaws related to any matters that may be construed as affecting the health of the public. The Act does not in itself define standards of design and construction, but it requests and can require local authorities (Municipal Councils, Urban and Area Councils) to make by-laws to define those requirements. (Section 126A).

As in all other technical design issues the Act is completely quiet on issues relating to accessibility to buildings by persons with disabilities.

The Building Code

Currently the detailed requirements for the erection of buildings in Kenya are contained in the Local Government (Adoptive By-Laws) Building Order 1968 (Generally referred to as Grade I By-Laws) and the Local Government (Adoptive By-Laws) (Grade II) order, 1968. These two orders are published by the Republic of Kenya in one volume under the title of Building Code and are tantamount to a National Building Code, although it should be noted that they are adoptive and not mandatory and any municipal council may adopt them.

There is an apparent assumption by the Code that the degree of safety and access specified caters for all persons with reasonable normal mobility. Consequently, the safety and accessibility for those with some limitation of one kind or other is completely omitted. It is not a surprise then that specifications on sizes of door openings, corridors, stairs, etc., tend to assume a young person with no disability. Ramps, for instance, are treated very narrowly and not as focus for accessibility.

Codes are adoptive and not mandatory, this has a lot of weight when we are dealing with enforcement of accessibility legislation.

Problems related to Building Codes and Standards responsive to the safety needs of persons with disabilities can be grouped into five distinct areas. These include general problems, problems of information transfer, movement, protection, and search and rescue.

In the category of general problems, there is a lack of data in a form useful in making code decisions that relates the disabilities associated with specific disabilities to various building types and uses. There is no distinctive data base on the actual experience of the disabled person in emergencies. There is limited information on the abilities and disabilities of disabled individuals in using building safeguards for the non-disabled. There is a tendency in building code-making bodies to categorize all types of disability together, impending efforts to resolve problems related to specific disabilities.

Among the information transfer problems, current modes of occupant notification of initial threat to safety are ineffective for individuals with certain disabilities, and similarly existing modes of occupant location of exits, areas of refuge, and other safety feature are ineffective for individuals with certain disabilities. Neither are disabled individuals provided with information needed to evaluate personal risk in terms of their particular disabilities and the safety measures of the buildings they use, nor do current practices provide disabled individuals with means of obtaining assistance during an emergency.

Among the movement problems, disabled individuals can have problems moving from a threatening situation because they are obstructed by certain conditions or elements that become barriers because of their specific disabilities. These are conditions of elements which are not currently addressed in relevant building code provisions and include floor coverings, grates, mats, hardware, illumination signs, protruding objects, and level changes. The length of time that it takes a disabled person to move away from a threatening situation can be seen as a function of their particular disability. No current code provisions take into account this type of time and distance information on disabled persons. People with disabilities often cannot use conventional exit systems. The use of stairs as emergency exits in multi-storey buildings does not satisfy the exit needs of individuals with certain disabilities. Traditional elevator standards preclude the use of emergencies. Certain configurations and sizes of corridors can create exit problems for disabled persons. This is also a problem area for persons without disabilities. It is important for both disabled and non-disabled people to be able to immediately grasp a sense of direction when exiting a corridor in an emergency. The size of door openings and opening factors such as hardware can create exit problems for disabled individuals.

Certain disabilities may force individuals to seek safety within the building rather than trying to exit. Current practices may not provide adequate safety for these individuals. In providing areas of refuge from fire and smoke, it is particularly important that the individuals expected to use such areas have confidence in their safety.

Among search and rescue problems, it has been observed that in many building types, emergency service personnel are limited in their ability to identify the presence and location of disabled individuals in an emergency. Certain conventional rescue techniques (e.g. the use of aerial ladders, some carrying techniques) can pose problems in rescuing disabled individuals. Also the location and type of emergency warning systems may hamper or preclude their use by certain persons with disabilities.

In making general recommendations for building codes and standards for safety and persons with disabilities, it must be pointed out that no means of escape for disabled people should be either exclusive to them or of a character that would not meet Building Code Standards for the general population. If it is determined that different escape strategies for people with disabilities would be beneficial for both disabled and non-disabled persons, these potential escape strategies must be developed to fulfil all the requirements for acceptable escape.

Building codes and standards for disabled people should be cost-sensitive and should not

impose undue burden on society's resources. These codes and standards should be performance-based and readily amendable to take advantage of technological and other advances in life. safety.

To be credible, building codes and building standards should be based on adequate reliable data. At the same time, knowledge gaps should not be allowed to unduly impede the development of useful codes and standards. They should be developed as integral parts of general life provisions. There should be no separate safety codes and standards for disabled people.

Normally, building codes and standards are most suited to controlling physical elements of buildings and other aspects of the built environment. Educational programs, management practices, and others are efficiently dealt with by other means.

Efforts in access legislation in Kenya

So far the only literature available on this area is the work of a Task Force Report for the Association of Professional Societies in East Africa (1989). In its 140th meeting, the Council of the Association of Professional Societies in East Africa set up a Task Force to look into ways of enacting changes in Building Regulations in order to ensure accessibility of physically disabled persons to all new buildings and those undergoing major renovations and to which the public normally have rights of access. Their objectives were:

- to examine the existing regulations in relation to accessibility by physically disabled persons
- to formulate substantive proposals for presentation to the relevant bodies in respect of enactment of changes to regulations thereof
- to identify relevant authorities and statutory bodies with a view to lobbying them to enact the changes in question in order to ensure accessibility by physically disabled persons to all new buildings

To achieve the said objectives, the Task Force set up to examine and study at length the Lesotho Paper on Accessibility, and the Resolutions of the International Year for the Disabled Persons.

Some of the major recommendations

The Task Force recommended that a new Section covering ramps (sizes, construction, location, upkeep) be inserted into the Building Code as is the case with stairways; that the following public institutions be included in the Sixth Schedule as part of the Public Buildings: Banks, Post Offices, Central and Local Government Buildings and all other buildings to which the public has access. Finally, they recommended that the final report of their work to be sent to the Ministry of Local Government and Attorney General for effecting the changes/recommendations.

Conclusions

As can be seen from the recommendations of the Task Forces, the Council tended to concentrate solely on the technical aspects of design and even then the recommendations are general in nature and groups all types of disabilities under one 'bundle'. More serious work needs to have been carried out to determine the proportion of disabled people in the total population by category and determine their access needs accordingly. As Sven Thiberg (1984) puts it, disabled persons have to participate in developing solutions to their problems and defining the criteria for the evaluation of the same.

Disabled people are to be considered as the experts of their own lives and as experts to be included in the design, planning and execution of the built environment. The immediate need therefore is to arouse the enthusiasm of people with disabilities and expose them to their rights in the built environment. They should be encouraged to organize themselves not just for welfare services but as a pressure group to initiate, execute and implement their own policies. The tendency in Kenya has been for disabled people to organize themselves into societies which form a good forum for charitable aid rather than an active force for more tangible developmental strategies. Maybe the starting point is for disabled persons to accept themselves to be accepted by society.

Of importance too, in any attempt to enact Access Legislation is the need to determine and establish political and social awareness and enthusiasm towards Access Legislation. This, as has been noted elsewhere, tends to be the basis of success or failure in Access Legislation. (Falta 1976). Creation of political public and professional awareness to the plight of disabled people is mandatory in any attempt to change the current order of building design. To do this there is need to train and incorporate the following disciplines in the design stage of all buildings, behavior scientists, doctors, estate managers, social workers and developers. This would involve a review of current syllabus in schools for many disciplines. The Law Reform Commission would also benefit from the inclusion of some of the above disciplines.

Training in architecture and related fields should be geared towards mobility design as a long term tool in creating barrier-free environment. Various campaigns by community organizations, non-governmental organizations and welfare agencies would go a long way in sensitizing the needs of persons with disabilities.

Another important area that must be reckoned with in a bid to create barrier-free environment is the need for an enforcement body. In places such as the United States where Access Legislation has been in operation for a longer period of time, enforcement is quoted as one of the factors determining success or failure. For instance, when the legislation was introduced voluntary compliance was found not to work possibly because of the extra cost involved. Consequently, the need to create an enforceable act, violation of which would be punishable, was imperative. (DeJong, G. & Lifchez, R 1983)

In Kenya as has been clearly shown, a wide research gap exists and nationwide research should be carried out to ascertain the number of persons with disabilities and more importantly interpret those needs into design process. This way it will be possible to develop comprehensive standards/codes for accessibility legislation. One way of doing this is to make certain conditions through legislation for developers. This would involve putting constraints on them to develop a certain proportion of their development for special needs. The constraints could also come through their financiers.

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