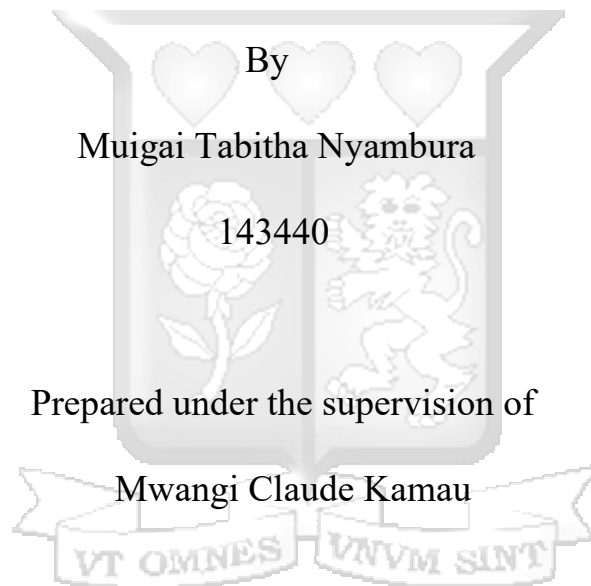


Legislative Landscape: Recognising Chronic Illnesses as Vulnerabilities — Bridging Legal Gaps for Health Equity and Inclusivity

Submitted in partial fulfilment of the requirements of the Bachelor of Laws
Degree, Strathmore University Law School



FEBRUARY 2025

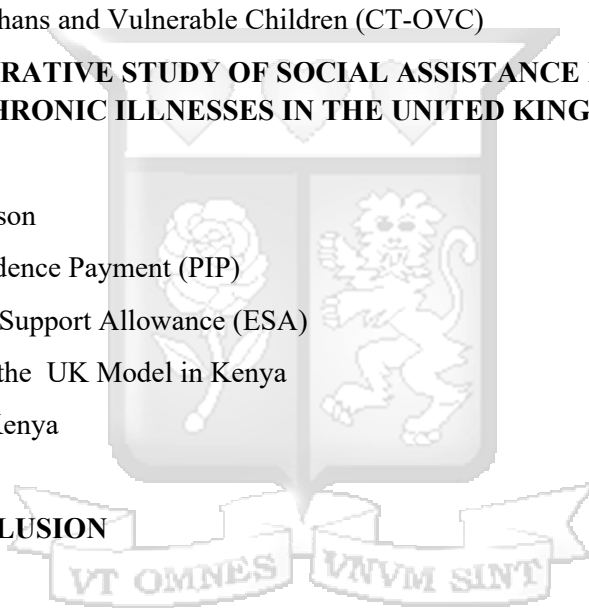
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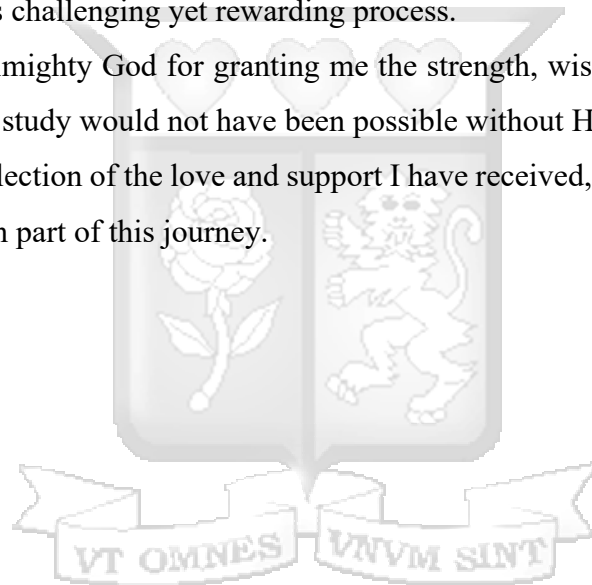
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To my family, I owe immeasurable thanks. My parents, my siblings - Ruth, Job and Eliud - have been a source of strength and resilience, reminding me of the power of determination, cheering me on with their unwavering belief and motivation. Together, they have been my foundation and my inspiration. Mum and Ruth — I am forever in awe of your strength and unwavering spirit. You are the heart of this work. I am also eternally grateful to my friends for their encouragement and understanding during this challenging yet rewarding process.

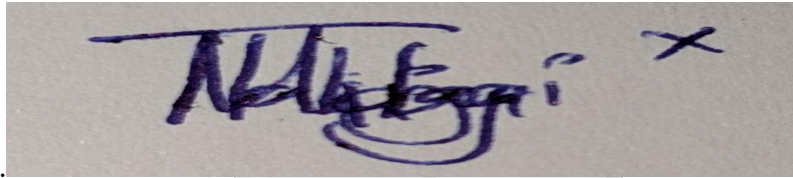
Above all, I thank the Almighty God for granting me the strength, wisdom, and perseverance to complete this work. This study would not have been possible without His grace.

This achievement is a reflection of the love and support I have received, and I am forever thankful to everyone who has been part of this journey.



DECLARATION

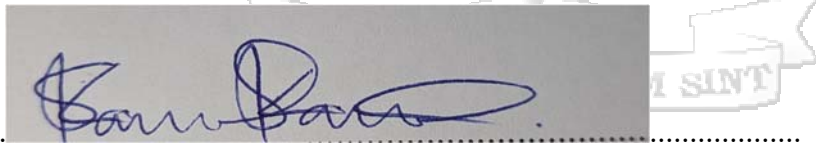
I, MUIGAI TABITHA NYAMBURA, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

A photograph of a handwritten signature in blue ink on a light-colored surface. The signature is stylized and appears to read 'Muigai Tabitha Nyambura' followed by an 'X' mark.

Signed:.....

Date: 14TH DAY OF MARCH 2025

This dissertation has been submitted for examination with my approval as University Supervisor.

A photograph of a handwritten signature in blue ink on a light-colored surface. The signature is stylized and appears to read 'Mwangi Claude Kamau'. To the right of the signature, there is a faint watermark of a crest featuring a lion and a rose, with the text 'I SINT' visible below it.

Signed:.....

MWANGI CLAUDE KAMAU

Date: 14TH DAY OF MARCH 2025

ABSTRACT

In Kenya, the Social Assistance Act 2013 was formulated to give effect to article 43 (1)(e) of the Kenyan constitution that provides for the right to social security. However, there seems to be a gap in its list of persons considered eligible to receive social assistance in the Kenyan jurisdiction due to the exclusion of people living with chronic illnesses. This study seeks to present a comprehensive analysis to understand whether there are legal implications flowing from the lack of inclusion of such persons in the act and especially the infringement of the human rights to dignity, attainment of the highest possible standard of health and social security. Further, it will seek to show whether there is a need for a precise legal framework protecting the same by carrying out a comparative analysis with the United Kingdom and how it has protected the rights of people living with chronic illness. This paper hopes to advance policy and discourse as well as recommendations that would enhance the legal recognition of vulnerability and protection of individuals with chronic illnesses in Kenya.



LIST OF ABBREVIATIONS

ADL - Activities of daily living

CCTP - Consolidated Cash Transfer Program

CHE - Catastrophic healthcare expenditure

CT-OVC - Cash Transfer for Orphans and Vulnerable Children (CT-OVC)

DSA - Directorate of Social Assistance

ESA - Employment Support Allowance

HSNP - Hunger Safety Net Program

HRBA - Human Rights-Based Approach

IADL - Instrumental activities of daily living

ICESCR - International Covenant on Economic, Social and Cultural Rights

NCD - Non-communicable disease

NSNP - National Safety Net Program (NSNP)

NSPP- National Social Protection Policy

OPCT - Older Persons Cash Transfer

PIP - Personal Independence Payment

PWSD-CT - Persons with Severe Disability Cash Transfer

UDHR - Universal Declaration of Human Rights

UFS-CT - Urban Food Subsidy Cash Transfer (UFS-CT)

UK - United Kingdom



LIST OF LEGAL INSTRUMENTS

Constitution of Kenya (2010)

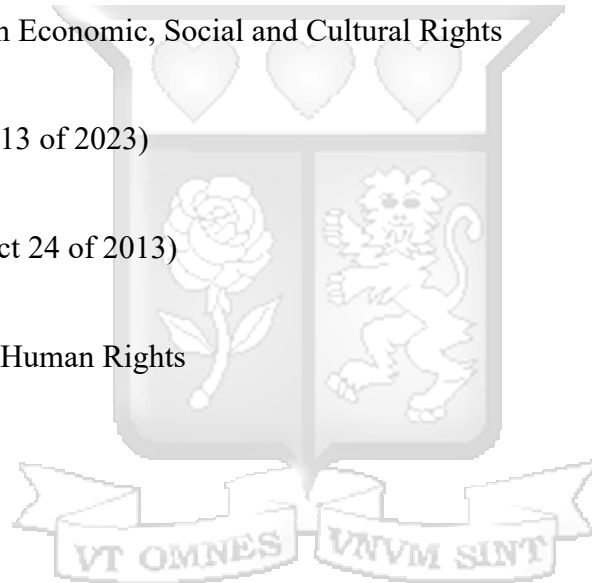
Equality Act, United Kingdom (2010)

International Covenant on Economic, Social and Cultural Rights

Primary Health Act (Act 13 of 2023)

Social Assistance Act (Act 24 of 2013)

Universal Declaration of Human Rights



CHAPTER ONE: INTRODUCTION

1.1 Background

Chronic illnesses are defined as conditions that often begin very gradually and then persist over a long period of time, that is one year or more and even a lifetime that require medical attention or limit activities of daily life or both.¹ They are also known as non-communicable diseases which include cardiovascular diseases, cancers, respiratory diseases such as asthma and diabetes. Currently, these diseases are the leading causes of death globally taking approximately forty-one million lives every year which translates to 74% of all deaths in the world.² Of all these deaths, 77% are in middle and low-income countries including Kenya.³ In Kenya which will be the area of study for this research, the number of deaths from chronic illnesses has been recorded to have risen to 119,958 in 2019 from 87,865 registered deaths in 2011 which is a concerning increase.⁴ The spectrum of persons living with chronic illness can be understood in several categories⁵ which include persons with chronic conditions but functional limitations or activities of daily living (ADL) and instrumental activities of daily living (IADL) support needs are absent and persons with chronic conditions with functional limitations but do not create the need for ADL/IADL support are present. The final group is people living with chronic illness and are in need of support when it comes to ADLs or IADLs.⁶ It is therefore clear that chronic illnesses manifest in different ways even with individuals who at face value would appear healthy and normally abled.

¹ Encyclopedia Britannica, 15 ed.

² < [https://www.who.int/news-room/fact-sheets/detail/noncommunicable-diseases#:~:text=Noncommunicable%20diseases%20\(NCDs\)%20kill%2041,%2D%20and%20middle%2Dincome%20countries](https://www.who.int/news-room/fact-sheets/detail/noncommunicable-diseases#:~:text=Noncommunicable%20diseases%20(NCDs)%20kill%2041,%2D%20and%20middle%2Dincome%20countries) > on 16 November 2023.

³ < [https://www.who.int/news-room/fact-sheets/detail/noncommunicable-diseases#:~:text=Noncommunicable%20diseases%20\(NCDs\)%20kill%2041,%2D%20and%20middle%2Dincome%20countries](https://www.who.int/news-room/fact-sheets/detail/noncommunicable-diseases#:~:text=Noncommunicable%20diseases%20(NCDs)%20kill%2041,%2D%20and%20middle%2Dincome%20countries) . > on 16 November 2023.

⁴ Onyango E, 'Contribution of the Changes in Diet and Physical Inactivity' National Library of Medicine, 8 December 2018,- <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7325816/> on 15 January 2024.

⁵ Gulley S, 'At the intersection of chronic disease, disability and health services research: A scoping literature review' 11 *Disability Health Journal* 2,2018,198.

⁶ Gulley S, 'At the intersection of chronic disease, disability and health services research: A scoping literature review' 11 *Disability Health Journal* 2,2018,198.

Study in Australia shows that it is true that several chronic illnesses lead up to physical impairment and thus disability.⁷ Such conditions include stroke where 42% of those living with the condition suffer severe core activity limitation, emphysema with over 20% and diabetes with over 10% of the population living with the condition subject to the same predicament.⁸ Asthma is the one condition that has the least number of patients suffering from the illness displaying core activity limitation. The figures in the study in Australia paints a good picture of what is true worldwide including Kenya of those who are disabled as a result of chronic illness and those who are not. The number of people living with chronic illnesses but with no physical manifestation of the same is higher than those exhibiting physical impairment.

The Social Assistance Act of 2013 is an Act of Parliament that was enacted to give effect to Article 43(1)(e) of the Constitution through the establishment of the National Social Assistance Authority to provide for the rendering of social assistance to persons in need and for connected purposes. Article 43 (1)(e) of the Constitution states that every person has the right to social security⁹ and the act therefore aims to provide support to vulnerable groups in Kenya by ensuring their access to social security. Section 17 of the Social Assistance Act states that the national social assistance authority shall, in accordance with the Act, provide social assistance to persons who are in need.¹⁰ The most common issue leading to need is poverty which causes lack of basic necessities such as food, clean water, and shelter and inability to provide for oneself and his/ her dependents.¹¹ Section 17(3) further lists persons who are considered to be in need and thus eligible for social assistance and they include orphans and vulnerable children, poor elderly persons, unemployed persons, widows and widowers, persons with disabilities¹² and any other persons as may from time to time be determined by the minister. In order for one to qualify for social assistance a person must meet the criteria set out in this section of the act.¹³

However, a legal problem lies in the restrictive consideration of vulnerability in relation to persons living with chronic illnesses under Section 17(3)(d). The section specifies that in relation to

⁷ Australian Institute of Health and Welfare (2024), *People with disability in Australia*, 2024, 105.

⁸ Australian Institute of Health and Welfare (2024), *People with disability in Australia*, 2024, 105.

⁹ Article 43 (1)(e), *Constitution of Kenya*, 2010.

¹⁰ Section 17(1), *Social Assistance Act* (Act 24 of 2013).

¹¹ —< <https://convoyofhope.org/articles/people-in-need/> > on 15 October, 2024.

¹² Section 17(3), *Social Assistance Act* (Act 24 of 2013).

¹³ Section 17(4), *Social Assistance Act* (Act 24 of 2013).

chronic illnesses, those that are eligible to social assistance are persons that have been made disabled by acute chronic illnesses.¹⁴ This provision sets out an inadequacy in protecting individuals living with chronic illness in general due to the existing caveat. The eligibility criteria under section 19 for entitlement to social assistance under the act is stated as, if the individual is a person in need as provided for under section 17.¹⁵ This provision further restricts eligibility to individuals whose chronic illness results in physical disability, excluding those who, despite being chronically ill, do not have visible impairments. ÷

This exclusion of individuals living with chronic illnesses from being eligible for social assistance programs under Section 17(3)(d) of the Act contravenes indispensable legal and constitutional norms in Kenya and more specifically the right to attaining the highest attainable standard of health, right to social security, and the right to human dignity. These rights contained in the constitution's bill of rights, further impose positive obligations on the State to see to it that every individual and particularly those in vulnerable positions, have sufficient social protection, a life of dignity and appropriate healthcare made available to them.

The constitution guarantees the right to social security,¹⁶ mandating the State to provide appropriate social assistance to persons unable to support themselves and their dependants.¹⁷ Chronic illnesses often result in significant psychological, social and financial burdens that render individuals significantly needy and in need of support.¹⁸ For instance, conditions like diabetes, HIV/AIDS or hypertension may not result in physical disability but can lead to loss of employment due to diminished bodily strength, reduced income, and catastrophic healthcare expenditure. (CHE) in households with persons living with chronic illness, is a very common reality seeing that their medication is lifelong, focusing on care rather than cure and are also often hospitalised compared to those having non-chronic diseases.¹⁹ These expenses are often paid out of pocket and

¹⁴ Section 17(3)(d), *Social Assistance Act* (Act 24 of 2013).

¹⁵ Section 19, *Social Assistance Act* (Act 24 of 2013).

¹⁶ Article 43 (1)(e), *Constitution of Kenya*, 2010.

¹⁷ Article 43 (3), *Constitution of Kenya*, 2010.

¹⁸ Sav A, Kelly F, Michelle A, ' Burden of treatment for chronic illness: a concept analysis and review of literature' - <https://onlinelibrary.wiley.com/doi/full/10.1111/hex.12046> on 31 August 2024.

¹⁹ Nyakangi V, Variation of catastrophic health expenditure by chronic disease in Kenya' Published Thesis, University of Nairobi, Nairobi, 2020, 7.

often lead to limited spending on other necessities for example, education.²⁰ This significantly leads to such households slipping to poverty and thus in excluding these individuals from social assistance, the Act fails to fulfill the State's obligation to provide social security, diminishing their ability to support themselves and consequently undermining the constitutional objective of ensuring provision of social security to vulnerable populations.

Further, the Constitution under article 43 guarantees the right to attaining the highest standard of health, including access to healthcare services.²¹ Individuals managing chronic illnesses are particularly faced by the overwhelming financial burden of ongoing and constant treatment, and especially if they are unable to work as a result of the same.²² This results in reduced financial resources to afford and cater for necessary medication and still afford other needs,²³ pushing them to choose between one or the other. With the exclusion from social assistance programs, whose provision could assist in acquiring these medications without forgoing other basic necessities, their right to the highest attainable standard of health is undermined. This is because of their exacerbation into poverty which diminishes their ability to afford necessary medical care. This exclusion thus violates the constitutional requirement of ensuring access to healthcare services by the State, regardless of an individual's financial situation.

The constitution provides that every person has inherent dignity and has the right to have that dignity respected and protected.²⁴ The lack of inclusion of individuals with chronic conditions as a vulnerable population eligible for social assistance programs undermines their dignity by pushing them to live in conditions of deprivation and poverty, despite their significant needs. Additionally, the reduced ability to afford the necessary medication which often leads to deteriorating health not only leads to their increased dependence on other people, especially family members for finances but also dependence in doing activities of daily living. This diminishes their autonomy and

²⁰ Nyakangi V, Variation of catastrophic health expenditure by chronic disease in Kenya' Published Thesis, University of Nairobi, Nairobi, 2020, 7.

²¹ Article 43 (1)(a), *Constitution of Kenya*, 2010.

²² Nyakangi V, Variation of catastrophic health expenditure by chronic disease in Kenya' Published Thesis, University of Nairobi, Nairobi, 2020, 8.

²³ Nyakangi V, Variation of catastrophic health expenditure by chronic disease in Kenya' Published Thesis, University of Nairobi, Nairobi, 2020, 37.

²⁴ Article 28, *Constitution of Kenya*, 2010.

effectively denies them the means to live a life of dignity, in direct conflict with the constitutional guarantee of dignity.

Despite not being physically disabled which is the case for the majority of those living with chronic illnesses, the lifelong treatment of the same often pays attention to care rather than cure and thus imposes great financial burden on individuals and their families alongside other implications away from the physical.²⁵ This financial strain reduces resources available for engaging in social and economic activities and even provision of basic needs, often leading to development of poverty especially in low income households which in turn contribute to a decline in overall well-being and even personal dignity due to diminished self autonomy.²⁶ The social assistance act in section 17(d) seems to not take into account this fact that chronic illnesses extend further than physical disability and especially in an economy where most (15.1 million) of the population works in the informal sector.²⁷ For instance, individuals with diabetes may incur high medical expenses for insulin and regular health check-ups, yet because they are not physically disabled, they do not qualify for social assistance. For informal workers, such a burden of treatment leads to catastrophic expenditures.²⁸

The lack of social assistance for individuals living with chronic illnesses and thus reliance on their own finances to cater for health expenses, leads to the diminishing of the financial resources available to individuals for other essential needs, such as housing, education, and social participation. A consequence of this is that over time, the financial burden of managing a chronic illness can drive these individuals and their families into poverty, exacerbating their vulnerability as they have to forego other important basic needs for treatment. Owing to the heightened risk of poverty, social isolation, and diminished well-being, the recognition of vulnerability for persons living with chronic illnesses, and thus eligibility to social assistance aligns with the constitutional guarantee of the right to social security²⁹ as they are financially vulnerable. Additionally, it aligns

²⁵ Sav A, Kelly F, Michelle A, 'Burden of treatment for chronic illness: a concept analysis and review of literature' - <https://onlinelibrary.wiley.com/doi/full/10.1111/hex.12046> on 31 August 2024.

²⁶ Wilder L, Mertens F, 'Living with a chronic disease: insights from patients with a low socioeconomic status', National Library of Medicine- <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8598397/> on 21 September 2024.

²⁷ Kenya National Bureau of Statistics, *Economic Survey 2020,2020*, 6.

²⁸ Jung J, Social Health Insurance for Informal Sector on the path to Universal Health Coverage: A Case of Kenya National Hospital Insurance Fund (NHIF)' 13 *International Development and Cooperation Review Journal* 2, 2021, 49.

²⁹ Article 43 (1)(e), *Constitution of Kenya*, 2010.

with the right to dignity³⁰ which is undermined when individuals are forced into financial hardship due to the high costs of managing chronic illnesses. The inclusion of these individuals would further align with Kenya's obligation under the International Covenant on Economic, Social and Cultural Rights (ICESCR) to ensure that all individuals have access to social security.³¹

The inclusion of various vulnerable groups in the Social Assistance Act has led to implementation of measures to protect their rights such as social security, livelihoods, social image, reduction of vulnerability to poverty and self-development of these vulnerable populations in the country.³² The most prominent and successful framework for this protection, finding basis in the Social Assistance Act, is cash transfer programs. This was pioneered by the establishment of the National Safety Net Program (NSNP), which aims to expand the coverage of several cash transfer programs.³³ For example, for elderly persons recognised in the Social Assistance Act, there is the Older Persons Cash Transfer (OPCT) and for orphans and vulnerable children, there is the Cash Transfer for Orphans and Vulnerable Children (CT-OVC).³⁴ Inclusion and recognition of vulnerability in the Social Assistance Act thus offers gain more than loss for individuals in need. This research paper will look at the United Kingdom's Equality Act 2010 which offers a more inclusive approach vis a vis chronic illnesses by defining impairment in broader terms, encompassing individuals whose long-term health conditions substantially limit their ability to perform day-to-day activities.³⁵ This broader interpretation allows individuals with chronic illnesses, even without visible physical impairments, to access social security benefits and shall be discussed to see if such broad interpretation is fit for the Kenyan jurisdiction.

1.2 Problem statement

The Social Assistance Act of Kenya, while designed to provide financial and social protection to vulnerable individuals, inadequately addresses the needs of people living with chronic illnesses.

³⁰ Article 28, *Constitution of Kenya*, 2010.

³¹ UNGA, *International Covenant on Economic, Social and Cultural Rights*, UN A/Res/2200A (XXI) 16 December 1966.

³² National Gender and Equality Commission, *The Cash transfers in Kenya*, 2014, 7-8.

³³ National Gender and Equality Commission, *The Cash transfers in Kenya*, 2014, 7-8.

³⁴ National Gender and Equality Commission, *The Cash transfers in Kenya*, 2014, 7-8.

³⁵ Section (2)(2), Schedule 1, *Equality Act 2010*, United Kingdom

Section 17(d) restricts eligibility to individuals whose chronic illness results in visible physical disability creating a gap in legal protection for persons living with chronic illnesses. This inadequacy seems to not factor in the significant financial strain, social isolation and healthcare challenges faced by individuals living with chronic illnesses, regardless of whether the illnesses are visibly disabling. As a result, these individuals are denied their right to social security and dignity as guaranteed under the Constitution of Kenya. The impact is profound, as those excluded are often unable to access essential healthcare services, maintain financial stability, or participate fully in social and economic life, further entrenching them in poverty and marginalisation.

1.3 Research Objectives

1. To identify the legal challenges arising from the lack of qualification of individuals living with chronic illnesses as eligible for social assistance.
2. To highlight the benefits that accrue from the recognition of being vulnerable in society under the Social Assistance Act.
3. To analyse how the United Kingdom interprets and applies the laws relating to persons living with chronic illness.

1.4 Research questions

1. What are the legal challenges arising from the lack of qualification of individuals living with chronic illnesses as eligible for social assistance?
2. What are the benefits that accrue from being eligible for social and financial assistance in the Social Assistance Act?
3. How does the legal system in the United Kingdom try to protect the rights of individuals living with chronic illness despite not having physical disability ?

1.5 Hypothesis

This study follows the hypotheses that:

- 1.The Social Assistance Act *vis a vis* chronic illnesses is not quite sufficient in recognising the vulnerability of such persons.
- 2.The state plays a crucial role in ensuring that vulnerable individuals have their rights to equality, dignity and social security protected.
- 3.The diverse inclusion and applicability of the United Kingdom’s Equality Act is a favourable model to follow to ensure protection of the rights of persons living with chronic illnesses.

1.6 Justification of the study

The exclusion of individuals with chronic illnesses from legal recognition of vulnerability in Kenya represents a critical issue with a great implication for human rights, social justice, and public health. This proves to be challenging especially with the increasing number of individuals being affected by the said illnesses which eventually even trickles down to the state of the country’s economy.³⁶ Seeing that there exists a glaring gap in legal frameworks and societal attitudes that fail to adequately acknowledge the vulnerability of this population, this paper shines a spotlight on this marginalised population, and seeks to amplify their voices, experiences, and rights within the legal discourse. With this, not only are the rights of these individuals protected but also interests of the state preserved.

1.7 Theoretical framework

This dissertation tries to examine the legislative landscape in Kenya regarding the recognition of individuals living with chronic illnesses as vulnerable and deserving of social and financial assistance, focusing on the gaps in the Social Assistance Act. In order to analyse the impact of exclusion of such individuals and whether there would be benefits that would accrue from their inclusion, this research will adopt two theoretical frameworks: Social Justice Theory and Human Rights Theory.

³⁶ -< <https://medicalxpress.com/news/2021-08-chronic-diseases-kenya-income-percent.html> > on 10 August 2024.

1.7.1 Social Justice Theory

Social Justice Theory is a theory proposed by different scholars, a notable proponent being John Rawls in his work *A Theory of Justice* (1974). He argues that equality, fairness and social welfare are key components of having a just society. In his book, Rawls takes the concept of justice to be defined by the role of its principles in distributing rights and duties and in defining the appropriate division of social benefits.³⁷

In his book, Rawls takes the concept of justice to be defined by the role of its principles in distributing rights and duties and in defining the appropriate division of social benefits.³⁸ In order to understand this concept of justice, Rawls talks about a hypothetical social contract, with an original position, where the principles of justice are the object of the social agreement. These principles in essence are those that free and rational persons concerned to further their own interests would accept in an initial position of equality, without knowing their place in society, their social status, abilities, intelligence and even strength.³⁹ The principles of justice are thus chosen behind a “veil of ignorance” which ensures that no one is advantaged or disadvantaged in the choice of principles affecting the final outcome of social circumstances. Since all are similarly situated and no one is able to design principles to favour his particular condition, the principles of justice are the result of a fair agreement and thus justice is seen as fairness⁴⁰ because the initial situation is fair. In the context of this dissertation, the social justice theory is highly relevant as it emphasises the need for fair distribution of resources and state responsibility to protect vulnerable populations. It will help to critique the unequal access to social assistance experienced by individuals living with chronic illnesses but without disabilities in Kenya, helping in framing of the challenges that come about as a result of lack of this inclusion.

1.7.2 Human Rights Theory

Donnelly states that human rights, also referred to as the rights of man are literally the rights that one has because one is human.⁴¹ A set of human rights thus can be seen as a standard of political

³⁷ Rawls J, *A theory of justice*, revised ed, Harvard University Press, Massachusetts, 1999,3.

³⁸ Rawls J, *A theory of justice*,3.

³⁹ Rawls J, *A theory of justice*, 11.

⁴⁰ Rawls J, *A theory of justice*, 11.

⁴¹ Donnelly J, *Universal human rights in theory and in practice*, 3rd ed, Cornell University Press, United States of America, 2013,8

legitimacy. Governments get legitimacy to the extent that they protect human rights.⁴² Human rights are needed not for life but for enjoying a life of dignity, a life worthy of a human being.⁴³ This dignity is inherent in human beings by the simple virtue of being human and the practice of human rights is aimed at realising it.⁴⁴ In order to realise the protection of human rights, the state has the duty to respect the right that is to not deprive the right-holder of the enjoyment of their right, to protect against deprivation, to provide what is necessary to ensure that right-holders are able to enjoy their rights and to aid those who are deprived of enjoyment of their right.⁴⁵

Donnelly further goes ahead and states that the right to social security is fundamentally about ensuring that one has available, and when necessary is provided with financial and other resources that are needed to lead a dignified life.⁴⁶ This is crucial especially when they are confronted with unemployment, old age, disability or in general, dire situations that are beyond their control. This is to be accomplished through social security systems that vary in different societies in terms of degree from family to society to self-provisioning and even to state.⁴⁷

These institutions play an essential role in providing social security but at the heart of the human right to social security is the obligation of the state to ensure that some system of provision of necessary goods and services is in place that ensures that everyone has a reasonable guarantee of social security. The state however need not be the only or even the principal provider which is often the case but nonetheless, the state has the primary and ultimate responsibility for implementing an effective system of national provision and especially to those facing circumstances beyond their control that limit their enjoyment of some human rights.⁴⁸ Paying attention to the condition of ‘beyond control’ as talked about by Donnelly, chronic illnesses fit into that category as they are caused by pathological changes in the body that are non reversible or permanent⁴⁹ a fact beyond the external actions of an individual. Hill, in interpretation of Kant’s

⁴² Donnelly J, *Universal human rights in theory and in practice*,12.

⁴³ Donnelly J, *Universal human rights in theory and in practice*,15.

⁴⁴ Donnelly J, *Universal human rights in theory and in practice*,39.

⁴⁵ Donnelly J, *Universal human rights in theory and in practice*,36.

⁴⁶ Donnelly J, *Universal human rights in theory and in practice*,37.

⁴⁷ Donnelly J, *Universal human rights in theory and in practice*,38.

⁴⁸ Donnelly J, *Universal human rights in theory and in practice*,38.

⁴⁹ Funk S, Tornquist E, Leeman J, Miles M, Harrell J,’ *Key Aspects of Preventing and Managing Chronic Illness*’ 1st ed, Springer Publishing Company, New York,2001,3.

work regarding dignity and humanity, affirms that dignity directly relates to autonomy which he describes as a capacity to self-determine the objective ground through practical reason.⁵⁰

People living with chronic illnesses may have this capacity diminished when they reach a point whereby they are unable to carry out normal day to day activities on their own due to weakness of the body and thus are in need of a caregiver. This is especially true for persons living with chronic illness and are in need of support when it comes to both activities of daily living and instrumental activities of daily living.⁵¹ This affects self-dignity as many would wish to be able to take care of themselves and preserve their personal autonomy and freedom.

Additionally, autonomy is lost when financial strain reduces resources available for engaging in social activities for people living with chronic illnesses which is as a result of finances being used in health care.⁵² This may contribute to a decline in overall well-being, including declining mental health which is in detriment to the achievement of the right to attain the highest standards of health. Furthermore, these lifestyle diseases also have a profound impact on individuals' social participation. Patients may face restrictions in participating in activities they once enjoyed, affecting their overall quality of life as they especially focus their finances on the need to preserve life which takes precedence over engaging in normal social interactions.⁵³ This inherently is a loss of autonomy and personal freedom and thus dignity, if they are not presented with the ability to choose. The denial of social assistance contributes to this as financial aid could go a long way in availing surplus that could be used in engaging in social activities that were accessible to them before the financial restraint.⁵⁴ The state in this case in order to ensure that individuals living with chronic illnesses live a dignified life needs to avail mechanisms that provide social security to them.

⁵⁰ Hill T, ' *Dignity and Practical Reason in Kant's Moral Theory*', 1st ed, Cornell University Press, United States of America, 1992,84

⁵¹ Gulley S, 'At the intersection of chronic disease, disability and health services research: A scoping literature review' 11 *Disability Health Journal* 2,2018,198.

⁵² Sav A, Kelly F, Michelle A, ' Burden of treatment for chronic illness: a concept analysis and review of literature' - <https://onlinelibrary.wiley.com/doi/full/10.1111/hex.12046> on 31 August 2024.

⁵³ Wilder L, Mertens F, 'Living with a chronic disease: insights from patients with a low socioeconomic status', National Library of Medicine- <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8598397/> on 21 September 2024.

⁵⁴ Wilder L, Mertens F, 'Living with a chronic disease: insights from patients with a low social economic status', National Library of Medicine- < <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8598397/> > on 21 September 2024.

1.8 Literature review

1.8.1 The question of vulnerability

Disability in Kenya which is viewed as vulnerability is mostly seen from an individual model of disability that mostly focuses on impairment.⁵⁵ Impairment is seen as a departure from human normality and an abnormality in the structure of functioning of the body.⁵⁶ The Persons with disabilities Act further shows the adoption of this model through its interpretation of disability in section 2 of the act that defines disability as follows:

*a physical, sensory, mental or other impairment, including any visual, hearing, learning or physical incapability, which impacts adversely on social, economic or environmental participation.*⁵⁷

It is important for this to be noted as vulnerability in relation to chronic illnesses within the jurisdiction is only identified when disability is manifested. This is observed from the Social Assistance Act that describes one of those in need of social welfare are those disabled by acute chronic illness.⁵⁸ The meaning of an acute chronic illness as captured in the act is however hard to describe. This is because acute illness and chronic illness have striking differences. An acute condition is one that is severe and sudden in its manifestation and can often be treated⁵⁹ for example, a common cold. A chronic condition on the other hand is however one that takes a long time to develop⁶⁰ and in most cases is not curable, just manageable. The best attempt to interpret an acute chronic illness then can be made by looking at the examples of asthma and osteoporosis which are examples of chronic illnesses. An acute manifestation of asthma is when someone living with the condition gets an acute asthma attack. Osteoporosis on the other hand can lead to the breaking of a bone which is an acute condition.⁶¹ In the Kenyan context, the broken bone which possibly leads to impairment would be the 'accurate' description of disability caused by an acute

⁵⁵ Terzi L, 'The Social model of disability: A philosophical critique' 21 *Journal for applied philosophy* 2, 2004, 142.

⁵⁶ Terzi L, 'The Social model of disability: A philosophical critique', 142.

⁵⁷ Section 2, *Persons with Disabilities Act* (Act 14 of 2003)

⁵⁸ Section 17(3), *Social Assistance Act* (Act 24 of 2013)

⁵⁹ —< <https://medlineplus.gov/ency/imagepages/18126.htm> > on 5 August 2024.

⁶⁰ —< <https://medlineplus.gov/ency/imagepages/18126.htm> > on 5 August 2024.

⁶¹ —< <https://medlineplus.gov/ency/imagepages/18126.htm> > on 5 August 2024.

chronic illness. This however does not acknowledge the fact that despite the acute condition, the bigger chronic illness is still an underlying fact. Regardless, for the purpose of this research, disability that causes core activity limitation⁶² among persons with chronic illness will be taken as the intended meaning of section 17(3)(d) of the act. Core activity limitation refers to when dire activities that are crucial for daily living are affected, that is mobility, communication and self-care.⁶³ The degree of core activity limitation determines the level of disability as well. This is seen true as individuals living with chronic illnesses with no core activity limitation are termed to not be disabled.⁶⁴ Study in Australia shows that it is true that several chronic illnesses lead up to core activity limitation which in its description can be seen to be physical impairment thus disability. Such conditions include stroke where 42% of those living with the condition suffer severe limitation, emphysema with over 20% and diabetes with over 10% of the population living with the condition subject to the same predicament.⁶⁵ Asthma is the one condition that has the least number of patients suffering from the illness displaying core activity limitation. Provision of social assistance to this group of people suffering from chronic illness is very important and the Kenyan legal framework has done its best to ensure that the same is ensured. However, as observed from the figures in Australia which give a good picture of what is true worldwide, the number of people living with chronic illnesses but with no physical manifestation of the same is higher than those exhibiting clear impairment.

Some philosophers have tried to argue that every living being can be termed vulnerable and the way to make a distinction between individuals is by identifying those who are more vulnerable and those who are less vulnerable.⁶⁶ The scale of identification of vulnerability when it comes to disability associated with chronic illness can be taken as those without the illness are the least vulnerable. Those with the chronic illness, noting that one could have multiple chronic illnesses at the same time, and challenged with core activity limitation can be termed to be the most vulnerable. However, this would be a biased approach to vulnerability as it only focuses on the physical

⁶² Australian Institute of Health and Welfare (2024), *People with disability in Australia*, 2024, 104.

⁶³ Australian Institute of Health and Welfare (2024), *People with disability in Australia*, 2024, 104.

⁶⁴ Australian Institute of Health and Welfare (2024), *People with disability in Australia*, 2024, 104.

⁶⁵ Australian Institute of Health and Welfare (2024), *People with disability in Australia*, 2024, 105.

⁶⁶ Muk V, 'Disability and Vulnerability — Impediments or Possibilities? A Hypothesis from the scope of social Christian ethics,' *Philosophical Research Bulletin*, 2018, 69.

manifestation of the chronic illness. Better understanding of vulnerability needs to include much more than just physical impairment and an analysis of the same shall be made.

So far, it has been established that the Kenyan legal framework mostly focuses on impairment when it comes to chronic illnesses to determine vulnerability, an approach this dissertation wants to move away from. Different approaches shall be analysed to determine whether they would protect even those living with chronic illnesses although without impairments to prevent marginalisation that comes about from focusing on vulnerability that is directly visible.⁶⁷

The focus on physical impairment to determine vulnerability when looking at people living with chronic illnesses is a position that has a significant amount of faults. This approach has been seen to cause marginalisation⁶⁸ among people living with chronic illness as some are considered to be doing better than others yet they all experience a certain challenge to their health and living in general. The challenges that those living with chronic illnesses regardless of not having disability shall be looked at in relation to various interpretations of vulnerability and comparison made to whether they fit the criteria given.

Chronic illness is frequently characterised by pain, fatigue, dizziness, nausea, depression, body weakness⁶⁹ and many other bodily setbacks that a person living without them would typically not experience regularly unless they happen to fall sick. Fatigue is a common yet most misunderstood challenge of living with a chronic illness.⁷⁰ For example, individuals living with diabetes which is a common lifestyle illness often experience fatigue and weakness as a result of frequent change in sugar levels and as a side effect to the medicines they take in some cases.⁷¹ This fatigue is not the ordinary fatigue experienced by healthy people. It causes more exhaustion, it lasts longer and is typically less predictable. Every activity including very mundane activities such as thinking, listening, speaking, watching and eating, requires energy. It is even possible to be too fatigued to do any of these.⁷² More often than not, this fatigue and other symptoms limit how one is able to

⁶⁷ Humphrey J, 'Researching Disability Politics, or, some problems with the Social Model in Practice' 15 *Disability and Society* 1, 2000, 67

⁶⁸ Humphrey J, 'Researching Disability Politics, or, some problems with the Social Model in Practice', 67

⁶⁹ Wendell S, 'Unhealthy Disabled: Treating Chronic Illness as Disabilities' 16 *Feminism and Disability* 4, 2001, 23

⁷⁰ Wendell S, 'Unhealthy Disabled: Treating Chronic Illness as Disabilities', 23

⁷¹ Fletcher J, 'Why diabetes causes fatigue' Medical News Today, 2 August 2022 — [Diabetes fatigue: Causes, management, and when to see a doctor \(medicalnewstoday.com\)](https://www.medicalnewstoday.com/articles/why-diabetes-causes-fatigue) on 12 August 2024.

⁷² Wendell S, 'Unhealthy Disabled: Treating Chronic Illness as Disabilities', 24

carry out their daily tasks as the activities become too exhausting to do. As a result, as they experience these symptoms, individuals tend to slow down and take more time to undertake what is expected of them. In other circumstances such as in arthritis where patients also suffer from chronic pain, they may need support altogether from another individual to carry out their normal functions. Looking at these challenges caused by the illness shows that the need to accommodate them is just as great as the need to accommodate blindness⁷³ which is a physical disability and enough to qualify one as a vulnerable person in the society.

The Netherland's policy on vulnerability focuses on whether an individual can rely on themselves wholly to perform their expected daily functions.⁷⁴ A vulnerable person is thus he who is unable to enjoy full physical, psychological and social well-being without the need of external help and the result is that the lack of this assistance could potentially lead them to fall behind in society.⁷⁵ Following this understanding of vulnerability, those living with chronic illness can be termed to be vulnerable as they often need external help owing to reasons such as fatigue to live comfortably.

The 'normal' worker in most workplaces is expected to be energetic, to display high concentration abilities and to even be well alert in order to adapt to changing conditions in the work environment, and be able to withstand mental, physical as well as interactive stress.⁷⁶ However, for persons living with chronic illnesses and especially when experiencing the 'challenges' mentioned earlier, their performance at work is not always similar to that of the normal worker. On some bad days being physically and mentally unwell, these individuals at the workplace may be unable to attend a meeting or workshop, to answer the phone, to respond to e-mails or to perform their assigned tasks at work altogether.⁷⁷ Further, they may need notice in advance of work to be done or extension of deadlines, in order to work only on good days or more slowly on days when they are very ill. They may also need to work in teams, so that someone else can take over when they cannot work at all.⁷⁸ Additionally, commitment at the workplace is often equated to the energy one

⁷³ Wendell S, 'Unhealthy Disabled: Treating Chronic Illness as Disabilities',23.

⁷⁴ Numans W, Regenmortel T, 'Vulnerable persons in society: an insider's perspective', National Library of Medicine,2020, 1.

⁷⁵ Numans W, Regenmortel T, 'Vulnerable persons in society: an insider's perspective', 1.

⁷⁶ Young I, *Americans with disabilities*, 1st ed, Routledge, New York, 2000,172.

⁷⁷ Wendell S, 'Unhealthy Disabled: Treating Chronic Illness as Disabilities',25.

⁷⁸ Wendell S, 'Unhealthy Disabled: Treating Chronic Illness as Disabilities',25.

expends to drive the cause, even to pushing one's body and mind to a great extent.⁷⁹ However, when it comes to individuals living with chronic illness pushing their bodies and minds excessively even at work often means a certain danger for example a risk of hospitalisation or long-lasting or permanent damage to their capacities to function.⁸⁰

Vulnerability has been viewed to have two sides, an external side and an internal one⁸¹ and in order to properly understand the concept, both sides have to be paid attention to. The external side encompasses the risks, challenges and stress that an individual is exposed to in the face of adversity.⁸² The external side of vulnerability encompasses the risks, challenges and stress that an individual is exposed to in the face of adversity.⁸³ One of the biggest challenges that individuals with chronic illness experience is financial loss. The burden of treatment greatly extends to their finances because the treatment of these illnesses mostly focuses on care rather than cure.⁸⁴ Seeing that cure is almost never an option, these conditions have to be managed for the rest of an individual's life which requires buying of medicine, frequent hospital visits, change in diet and many more which all require finances. Lack of the same almost always leads to death. This translates to such individuals not only worrying about finances to afford the healthy individuals' basic needs but also medicine for survival which are mostly very costly. In many cases, this investment of finances into health care often means the lack of investment into other income generating projects and thus often drives individuals living with these conditions and their families into poverty. On the other hand, the internal aspect of vulnerability relates to the lack of means to deal with adversity without extreme loss. This loss comes in many forms including becoming physically weaker, being socially dependent and psychological harm among others.⁸⁵ Following

⁷⁹ Wendell S, 'Unhealthy Disabled: Treating Chronic Illness as Disabilities',25.

⁸⁰ Wendell S, 'Unhealthy Disabled: Treating Chronic Illness as Disabilities',25.

⁸¹ Philip D, 'Vulnerability and Poverty: What are the causes and how are they related?' Zentrum fur Entwicklungsforschung Center for Development Research, Term Paper for Interdisciplinary Course, International Doctoral Studies Program at ZEF, Bonn, November 2004, — https://eu.docworkspace.com/d/sIIKxtLSFAcft1LUG?sa=wa&ps=1&fn=2004_3a_Philip_Rayan.pdf - on 5 August, 2024.

⁸² Philip D, 'Vulnerability and Poverty: What are the causes and how are they related?',11.

⁸³ Philip D, 'Vulnerability and Poverty: What are the causes and how are they related?',11.

⁸⁴ Sav A, Kelly F, Michelle A, ' Burden of treatment for chronic illness: a concept analysis and review of literature' — <https://onlinelibrary.wiley.com/doi/full/10.1111/hex.12046> > on 31st January 2013.

⁸⁵ Philip D, 'Vulnerability and Poverty: What are the causes and how are they related?',11

the internal side of vulnerability discussed earlier, these individuals may not be deemed as the most eligible employees at a workplace and in the case that this leads to them being laid off or having to quit work due to health challenges, financial burden increases because of lack of income thus they lack means to deal with the loss.

Additionally, the lack of physical and financial ability at times leads to these individuals missing out on social participation and even the chance to work to achieve their personal goals with the view of preserving their health.⁸⁶ Even though these goals may change in accordance with what their health allows them to achieve, it is still common for them to look back at the goals that they aimed for when they were healthy. The lack of this self-fulfillment often leads to development of a diminished esteem and sense of worth and even dignity leading to problems such as depression.

Paying attention to all these, it can be true to say that persons living with chronic illnesses regardless of not having a physical manifestation of the same can be considered to be in need of social services and financial assistance to promote their overall well-being. The government plays a great role in that as in ensuring social security for all its citizens, it promotes the protection and respect of the right to human dignity⁸⁷ which is enshrined in article 28 of the constitution of Kenya.

1.8.2 The role played by the state

The state plays an important role in protecting vulnerable populations. Martha Fineman argues that vulnerability is a universal human condition ranging in magnitude and potential on an individual level.⁸⁸ She further discusses that vulnerability is differentiated on two extreme ends by the level of capacity and independence. In acknowledgement of this, vulnerability is almost always going to be a constant state and thus there is a need to look to societal institutions for assistance.⁸⁹ While these societal institutions might not get rid of the vulnerability in its entirety, they play a significant role in mitigating the impact of vulnerability through several programs and structures. The state's role when it comes to such societal institutions which could include funding programs is to make

⁸⁶ Wilder L, Mertens F, 'Living with a chronic disease: insights from patients with a low social economic status', National Library of Medicine-< <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8598397/> > on 21st November 2021

⁸⁷ Article 28, *Constitution of Kenya* (2010).

⁸⁸ Fineman M, 'The vulnerable subject' 20 (1) *Yale Journal of Law and Feminism*, 2008, 9.

⁸⁹ Fineman M, 'The vulnerable subject' , 6.

sure that they are brought into legal existence⁹⁰ and especially to address the inequality between those who have their vulnerability limiting their active participation in society due to limited ability and independence. This ultimately means that the state has public authority to ensure social protection and thus enforcement of the right to social security for vulnerable members of society.⁹¹

In developing countries, there are several providers that work to reduce poverty among the vulnerable populations and they include governmental agencies, international organisations and non-governmental organisations. The state plays a pioneering role in ensuring this as it is mandated in the constitution with the duty to provide social security to vulnerable populations. The role of the state in ensuring effective social protection in developing countries is further emphasised by looking at the impacts that directly affect the state when this is not ensured. The gaps that arise in lack of social protection are responsible for not only excess short-term poverty but also responsible for chronic poverty, especially in situations where the coping strategies available to those below or near the poverty line are limited.⁹² As a result, those close to the poverty line could be forced to adopt alternatives with detrimental long run effects which include taking children out of school, cutting down on health care, and sub-standard nutrition which can push households into persistent poverty.⁹³ mirroring the underlying socioeconomic determinants. In Kenya, with this exposure to poverty among people living with chronic illnesses, a vicious cycle may ensue as poverty exposes people to behavioral risk factors for the non-communicable diseases(NCDs) such as unhealthy diet, insufficient physical activity and abuse of alcohol.⁹⁴ In turn, the resulting NCDs may become a further driver to the existing downward spiral that leads families towards poverty.⁹⁵ As a result, unless the NCD epidemic is aggressively confronted in the most heavily affected population, the mounting impact of NCDs will continue to grow and the national and global goals of reducing

⁹⁰ Fineman M, 'The vulnerable subject' , 6

⁹¹ Fineman M, 'The vulnerable subject' , 6

⁹² Barrientos A and Hulme D, 'Social protection for the poor and poorest in developing countries: Reflections on a quiet revolution' Brooksworld Poverty Institute, BWPI Working Paper Number 30,2008, 5 — <https://eu.docworkspace.com/d/sIIOxtLSFAfTVnrcG> on 2 September 2024.

⁹³ Barrientos A and Hulme D, 'Social protection for the poor and poorest in developing countries: Reflections on a quiet revolution',8.

⁹⁴ <https://ncpd.go.ke/wp-content/uploads/2021/02/Brief-57-ADDRESSING-THE-RAISING-BURDEN-OF-NON-COMMUNICABLE-DISEASES-IN-KENYA.pdf>.

⁹⁵ <https://ncpd.go.ke/wp-content/uploads/2021/02/Brief-57-ADDRESSING-THE-RAISING-BURDEN-OF-NON-COMMUNICABLE-DISEASES-IN-KENYA.pdf> .

poverty will be undermined, creating room for exposure to NCDs all over again.⁹⁶ Following the above, there are large long-term economic and human development losses associated with not having adequate social protection which consequently means that there are large gains to be captured by establishing strong social protection institutions by the state.

1.9 Research methodology

The research methodology section outlines a systematic approach to investigate the recognition of chronic illnesses as vulnerabilities within the legal framework. A mixed-methods research design will be employed. Data will be collected through legal document analysis and case studies, which will provide insights into the complexities of legal recognition. Thematic analysis will be used for qualitative data, while statistical analysis will be applied for quantitative data. Limitations will be acknowledged openly, and efforts will be made to mitigate their impact. The research methodology is designed to provide a comprehensive and nuanced exploration of the research topic, enhancing the study's credibility and generating meaningful insights. The systematic and transparent nature of the methodology enhances the study's credibility and contributes to the generation of meaningful insights.

1.10 Limitation of the study

The study covers a relatively underexplored area in law and seeing that there isn't much previous research or literature in the field the study is exploring, there are obstacles underlying the study. The breadth and depth of the research are limited by resources, including scarcity of literature and judicial precedents relating to the category of individuals being discussed. Reliability and accessibility of data is also essential for carrying out a thorough and legitimate investigation and lack of sufficient data also poses hindrance to the study. It may be challenging to reach significant findings due to the scarcity of available data together with the insufficiency of published literature

⁹⁶ <https://ncpd.go.ke/wp-content/uploads/2021/02/Brief-57-ADDRESSING-THE-RAISING-BURDEN-OF-NON-COMMUNICABLE-DISEASES-IN-KENYA.pdf> .

in the topic. To mitigate these challenges, the study employs robust research methodologies, acknowledges potential biases, and provides a transparent account of its constraints to enhance the credibility of its findings and recommendations.

1.11 Chapter breakdown

This paper is divided into distinct chapters that will help in contributing to a thorough exploration of the study's focus.

Chapter one (1) is the introduction of the research paper. It will contain the background, statement of problem, research objectives, research questions, hypothesis, justification of the study, literature review, theoretical framework and methodology. The chapter provides context for the following chapters.

Chapter two (2) will answer the first research question by exploring the legal challenges faced by individuals living with chronic illnesses in Kenya, focusing on their exclusion from the Social Assistance Act. It will highlight the discrimination these individuals face and how it impedes on their rights to dignity, equality and social protection.

Chapter three (3) will focus on the benefits that accrue from recognising chronic illness as a social vulnerability under the Social Assistance Act. It will examine how such recognition promotes access to social security. It will show the ripple effect of positive socio-economic impacts of including individuals with chronic illnesses in social protection frameworks and how they promote social justice principles.

Chapter four (4) will provide a comparative analysis of the United Kingdom's (UK) legal framework for protecting individuals living with chronic illnesses. It will examine how the UK's

laws and policies ensure inclusive social assistance policies, ensuring equal access to social protection. The chapter will draw lessons from the UK experience that could inform reforms in Kenya's Social Assistance Act.

Chapter five (5) will be the conclusion to the research paper that will summarise all the key findings and conclusions arrived at from the previous chapters. Based on the entire analysis and comparative study, the chapter will propose recommendations and thereafter conclude the study.



CHAPTER TWO: THE APPLICABLE LAW IN KENYA IN RELATION TO PERSONS LIVING WITH CHRONIC ILLNESSES

2.1 Introduction

This chapter provides an exposition of the legislative framework addressing social assistance for vulnerable groups in Kenya, with a focus on individuals living with chronic illnesses in Kenya without having suffered disability as a result of the same. It examines various legislations that capture the same including the Constitution of Kenya, the Social Assistance Act of 2013, and relevant national policies with an aim to answer the first research question that is what are the legal challenges arising from the lack of qualification of individuals living with chronic illnesses as eligible for social assistance and hopefully achieve the first objective which is to identify the legal challenges arising from the lack of qualification of individuals living with chronic illnesses as eligible for social assistance. Additionally, it examines several international instruments such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The analysis aims to highlight the legal gaps and inadequacies that exclude individuals living with chronic illnesses from the protective scope of these laws.

2.2 Legal Framework

2.2.1 The Social Assistance Act, 2013

The Social Assistance Act, 2013 was drafted as an Act of Parliament to give effect to article 43(1)(e) of the Constitution through establishing the National Social Assistance Authority so as to provide for the rendering of social assistance to persons in need and for connected purposes. The act thus recognises that certain populations require financial and social support to achieve a minimum standard of living. Its objective *vis a vis* this recognition is to establish structures and programs that alleviate poverty, reduce inequalities, and ensure social inclusion.

The provision of the act most relevant to this study is section 17 (3) that provides a list of persons that are considered to be needy and thus eligible for provision of social assistance. These persons include;

- a) orphans and vulnerable children,⁹⁷
- b) poor elderly persons,⁹⁸
- c) unemployed persons,⁹⁹
- e) widows and widowers¹⁰⁰
- f) persons with disabilities.¹⁰¹

The Act further lists another group of persons that are eligible for social assistance in subsection (d) of section 17(3), that is persons disabled by acute chronic illnesses.¹⁰² This provision is inadequate as it limits eligibility for social assistance to individuals with chronic illnesses that result in visible physical disabilities, excluding those whose illnesses impose socio-economic burdens without necessarily causing physical impairments.

While the act acknowledges chronic illnesses as a potential ground for vulnerability, it restricts its scope of provision by requiring a demonstrable physical disability.¹⁰³ Unfortunately, this leaves out the larger population of people living with chronic illnesses in need of social and financial support as those who suffer a physical impairment as a result of the condition they are managing are fewer than those who live with the condition but appear 'healthy.'¹⁰⁴ This creates a barrier for individuals whose conditions, though devitalising, do not manifest visibly but still severely affect their quality of life and financial stability in accessing dire social assistance that could help in slowing down the rate of exacerbation into poverty.

⁹⁷ Section 17(3)(a), *Social Assistance Act* (Act 24 of 2013).

⁹⁸ Section 17(3)(b), *Social Assistance Act* (Act 24 of 2013).

⁹⁹ Section 17(3)(c), *Social Assistance Act* (Act 24 of 2013).

¹⁰⁰ Section 17(3)(e), *Social Assistance Act* (Act 24 of 2013).

¹⁰¹ Section 17(3)(f), *Social Assistance Act* (Act 24 of 2013).

¹⁰² Section 17(3)(d), *Social Assistance Act* (Act 24 of 2013).

¹⁰³ Section 17(3)(d), *Social Assistance Act* (Act 24 of 2013) - (persons in need shall include persons disabled by acute chronic illnesses).

¹⁰⁴ Australian Institute of Health and Welfare (2024), *People with disability in Australia*, 2024, 105.

2.2.2 The Primary Health Care Act, 2023

The Primary Health Care Act, 2023, is an Act of Parliament that was enacted to provide a framework for the delivery of, access to and management of primary health care; and for connected purposes. Its objective is to promote and fulfill the rights of all persons in Kenya towards the progressive realization of their right to the highest attainable standards of health care.¹⁰⁵

The provision of the Act most relevant to this study is section 7 that states that each county government shall facilitate the service delivery of primary health care by—guaranteeing that primary health care services are optimally financed and resourced to offer quality care to all patients and residents in the republic of Kenya¹⁰⁶ which include promotive,¹⁰⁷ preventive¹⁰⁸ and curative care.¹⁰⁹

Despite its commendable provisions, the Act does not explicitly integrate the management of chronic illnesses into primary health care services. Persons living with chronic illnesses often require specialised care in regards to their conditions as it is often aimed towards management rather than cure.¹¹⁰ These include guidance on lifestyle modifications,¹¹¹ regular chronic disease screening and monitoring, basic chronic disease medications such as insulin,¹¹² counseling and even home-based care. The lack of a well defined provision for chronic illness care within primary healthcare settings translates to fractured service delivery leading to delays in diagnosis or ineffective disease management and thus increasing reliance on costly secondary healthcare. Without structured primary healthcare support and thus reliance on secondary healthcare, persons managing chronic illnesses often experience worsening health conditions,¹¹³ increasing their dependency on social and financial support and thus aggravating their vulnerability.

¹⁰⁵ Section 3(a), *Primary Health Act* (Act 13 of 2023).

¹⁰⁶ Section 7(e), *Primary Health Act* (Act 13 of 2023).

¹⁰⁷ Section 6(2)(a), *Primary Health Act* (Act 13 of 2023).

¹⁰⁸ Section 6(2)(b), *Primary Health Act* (Act 13 of 2023).

¹⁰⁹ Section 6(2)(c), *Primary Health Act* (Act 13 of 2023).

¹¹⁰ Sav A, Kelly F, Michelle A, ‘ Burden of treatment for chronic illness: a concept analysis and review of literature’ - <https://onlinelibrary.wiley.com/doi/full/10.1111/hex.12046> on 31 August 2024.

¹¹¹ < <https://www.who.int/news-room/fact-sheets/detail/noncommunicable-diseases> > 23 December, 2024.

¹¹² < <https://www.health.go.ke/> > on 2 February, 2025.

¹¹³ Hacker K, ‘ The Burden of Chronic Disease’, National Library of Medicine - <https://pmc.ncbi.nlm.nih.gov/articles/PMC10830426/> on 13 December 2024.

While the Primary Health Care Act of 2023 largely creates procedural rights rather than substantive rights, its impact in terms of social protection of those afflicted with chronic diseases is felt in its role as an administrative enabler for equal access to health care. The Act provides the necessary outline that will ensure primary healthcare institutions are adequately funded and resourced to take in all patients, but especially those who suffer from chronic diseases. By establishing provisions for county-level governance and implementation, the Act is a tool of instrumental policy that, when effectively utilized, can serve as a bridge between chronic disease care and financial vulnerability. County governments, in utilizing Section 7, may include specific programs for management of chronic disease like offering specialized funds for chronic disease management at primary healthcare levels in order to reduce the overreliance on expensive secondary and tertiary care and enhancing referral mechanisms between primary and secondary healthcare facilities to assure problem-free and inexpensive patient care. In addition, it can expand access to life-saving chronic disease medications at community health centers to reduce the cost burden on those affected.

2.3 National policies and frameworks

Kenya's national policies frameworks aim to advance equity and inclusivity for vulnerable populations through targeted social protection measures.¹¹⁴ The National Social Protection Policy (NSPP) 2011, for example, was established with social protection as one of the pillars to help contribute to the realisation of Article 43 of the Constitution by expanding health insurance coverage through public or social as well as private health insurance. This was with an aim to increase access to quality healthcare services and offer financial protection to people when accessing health care, aiming to mitigate poverty and reduce inequalities.¹¹⁵ Additionally, Kenya Vision 2030 highlights the necessity of social security as part and parcel of the country's broader development goals. This is brought out in the social pillar provision that aims to improve the quality of life for all Kenyans by targeting a cross-section of human and social welfare projects and programmes.¹¹⁶ These frameworks undeniably acknowledge the diverse forms of vulnerability within Kenyan society, including economic deprivation and health challenges.

¹¹⁴  < <https://www.nsps.socialprotection.go.ke/policies-and-legal-framework> > on 10 December, 2024.

¹¹⁵  < <https://www.nsps.socialprotection.go.ke/policies-and-legal-framework> > on 10 December, 2024.

¹¹⁶  < <https://vision2030.go.ke/social-pillar/#69> > on 10 December, 2024.

However, the policies also fall short in addressing the unique needs of individuals living with chronic illnesses without visible disabilities, which directly impacts their access to social protection. The Kenya Vision 2030 for example provides a policy framework for social protection programs such as cash transfers and health subsidies and lists down a list of vulnerable persons eligible for the same which includes children, elderly populations, persons with disabilities and persons living with albinism.¹¹⁷ Persons living with chronic illnesses are not seen to be included in that list of individuals.

Despite these policies emphasising social justice and inclusion, they are inadequate in offering practical solutions for individuals living with chronic illnesses that do not result in visible physical impairments. This is grounded on the fact that the burden of being chronically ill does not only lie upon the ill person but his whole family as well; therefore, the entire household ends up becoming indirect victims. This is due to the extensiveness and long duration of chronic conditions which require continuous caregiving to the patient and out-of-pocket expenses for medication.¹¹⁸ Additionally, ill health adversely affects productivity of employees which results in lower performance and decrease in pay and disposable income they receive. In the same breath, some chronic illnesses such as diabetes require life adjustments on many fronts including nutrition which may require paying extra costs to access the type of healthy diet necessary for managing the said condition. According to this logic, a chronic condition can thus raise the risk of pushing households towards poverty.¹¹⁹ People suffering from these diseases also end up having to make choices that are quite challenging that is to either ignore the condition they have, avoiding medical treatment, and hence face premature death and instead invest their earnings in fulfilling their key needs and wants, or to seek health care treatment by processing with out-of-pocket expenditures, thus, dragging their families to the ill effects of poverty.¹²⁰ This burden is especially severe when people suffer from multiple chronic conditions and disabilities which require additional health care services and frequent attention so as to prevent the looming probability of the condition becoming

¹¹⁷  < <https://vision2030.go.ke/social-pillar/#69> > on 10 December, 2024.

¹¹⁸ Jayathilaka R, Joachim S, ‘ Do chronic illnesses and poverty go hand in hand?’, National Library of Medicine- <https://pubmed.ncbi.nlm.nih.gov/articles/PMC7584216/#ref-list1> on 21rd October 2015.

¹¹⁹ Jayathilaka R, Joachim S, ‘ Do chronic illnesses and poverty go hand in hand?’, National Library of Medicine- <https://pubmed.ncbi.nlm.nih.gov/articles/PMC7584216/#ref-list1> on 21rd October 2015.

¹²⁰ Jayathilaka R, Joachim S, ‘ Do chronic illnesses and poverty go hand in hand?’, National Library of Medicine- <https://pubmed.ncbi.nlm.nih.gov/articles/PMC7584216/#ref-list1> on 21rd October 2015.

critical.¹²¹ Therefore, the lack of specificity on people living with chronic illness as a vulnerable group eligible for receiving social and financial assistance leaves a significant gap in Kenya's policy approach to promoting equity and inclusivity for all vulnerable populations.

2.4 Literature review on the identified problems

As discussed above, there seems to exist a significant gap in the legal and policy frameworks protecting the rights of persons living with chronic illnesses and especially in cases where their condition does not manifest into a physical disability. These gaps undermine rights such as right to social security and the right to attain the highest standards of health enshrined in the constitution and international treaties that Kenya is a dignitary to.

Existing literature underscores the inadequacy of these frameworks seeing that they provide a structural barrier to access of social assistance yet catastrophic health expenditures are some of the leading causes of poverty¹²² that leads to difficulty in the provision for oneself and their dependants, a criteria the constitution applies to justify for the provision of social assistance.¹²³ Research shows that streamlining social assistance and protection within the scope of justice and health is imperative for the building of social protection systems that alleviate healthcare and income challenges.¹²⁴ With the alleviation of these, poverty reduction is a reality that can be hoped for.

Hill, in interpretation of Kant's work regarding dignity and humanity, affirms that dignity directly relates to autonomy which he describes as a capacity to self-determine the objective ground through practical reason.¹²⁵ Financial instability greatly affects autonomy and as such, dignity, as financial strain causes dependency, reduces resources available for provision of their unique basic needs as well as capacity to engage in social activities that boost mental well-being. This is because for people living with chronic illnesses, finances are prioritised in health care as they have an aim

¹²¹ Jayathilaka R, Joachim S, 'Do chronic illnesses and poverty go hand in hand?', National Library of Medicine-
<https://pubmed.ncbi.nlm.nih.gov/articles/PMC7584216/#ref-list1> on 21rd October 2015.

¹²² Nyakangi V, Variation of catastrophic health expenditure by chronic disease in Kenya' Unpublished Thesis, University of Nairobi, Nairobi, 2020, 7.

¹²³ Article 43 (3) (e), Constitution of Kenya, 2010.

¹²⁴ Rustamova N, 'Social Protection in Developing Countries: Legal, Economic, and Social Trends' 5 Qubahan Academic Journal 1, 10 January 2025, 133.

¹²⁵ Hill T, 'Dignity and Practical Reason in Kant's Moral Theory', 1st ed, Cornell University Press, United States of America, 1992, 84.

to preserve life through care.¹²⁶ This exclusion thus undermines the constitutional principles of equality and dignity enshrined in articles 27 and 28. The limitation not only perpetuates indifference against persons with "invisible" illnesses but also fails to recognise the cumulative socio-economic and healthcare challenges they face.

Furthermore, economic literature develops the argument that financial instability and the inability to work due to chronic conditions significantly inhibits individuals' autonomy and dignity. Amartya Sen's *Development as Freedom* provides a compelling theoretical foundation for understanding how financial exclusion reinforces marginalisation.¹²⁷ He writes that development can be seen as a process of expanding the real freedoms that people enjoy. While growth of gross national product or increase of individual incomes are of course important as means to inflating the freedoms enjoyed by the members of the society, freedom also relies on other determinants, including sustainable social and economic arrangements for example, access to facilities for health care and education.¹²⁸ Thus in order to be seen as developed and truly free, there is a need for removal of major sources of unfreedom such as poverty and neglect of public facilities.¹²⁹ In getting rid of these sources of unfreedom, persons achieve economic capabilities which are essential for individuals to exercise their freedoms.¹³⁰ When legal frameworks fail to provide economic safeguards, the affected populations experience compounded disadvantages. The Social Assistance Act's omission of individuals living with chronic illnesses who lack visible disabilities highlights a systemic failure to recognise the economic dimensions of chronic disease management.

In the realm of healthcare policy, the failure to integrate chronic illness care into primary healthcare structures has exacerbated the economic and social burden faced by patients. Study shows that chronic disease management is most effective when embedded within primary healthcare frameworks through measures such as individual service providers.¹³¹ It helps with the creation of confidentiality between patients and healthcare providers for example for patients living with

¹²⁶ Sav A, Kelly F, Michelle A, ' Burden of treatment for chronic illness: a concept analysis and review of literature' - <https://onlinelibrary.wiley.com/doi/full/10.1111/hex.12046> > on 14 January 2025.

¹²⁷ Sen A, *Development as freedom*, Oxford University Press, New York, 1999, 5.

¹²⁸ Sen A, *Development as freedom*, 3.

¹²⁹ Sen A, *Development as freedom*, 3.

¹³⁰ Sen A, *Development as freedom*, 4.

¹³¹ Harrison S, Aileen M, ' Chronic disease care integration into primary care services in sub-Saharan Africa: a 'best fit' framework synthesis and new conceptual model' , National Library of Medicine-<
<https://pmc.ncbi.nlm.nih.gov/articles/PMC9516220/> > on 26 September 2022.

HIV.¹³² This in turn helps such patients to even be comfortable to adhere to their medication and regular visits to healthcare facilities which promotes their ability to manage their conditions, keeping them from worsening and thus needing to incur more expenditure trying to access secondary healthcare.¹³³

In conclusion, the body of literature examined in this review demonstrates that Kenya's legal and policy frameworks remain insufficient in addressing the socio-economic vulnerabilities of individuals living with chronic illnesses. The failure to extend social assistance to this demographic is not only a violation of constitutional rights but also an economic oversight that exacerbates cycles of poverty and exclusion. To bridge this gap, legislative reforms must be pursued to align the Social Assistance Act, 2013, with international human rights standards, broaden the eligibility criteria for social assistance, and integrate chronic illness management into primary healthcare frameworks. Legal scholars and policy analysts must continue advocating for a more inclusive society. Future research should also explore the long-term economic impacts of chronic illness exclusion from social assistance programs and the potential for alternative financing mechanisms to mitigate these challenges.

2.5 Legislation Standards protecting the rights of individuals living with chronic illnesses

2.5.1 Constitution of Kenya (2010)

The Constitution of Kenya (2010) is the supreme law of the Republic binding all persons and all state organs at all levels of government.¹³⁴ Its purpose is to promote a fair and equitable society as can be seen through its preamble that recognises the need for a government founded on essential values of human dignity, equality, inclusivity, and social justice.¹³⁵ Additionally, the constitution's preamble affirms the state's commitment to protection and nurturing of every individual's well-

¹³² Harrison S, Aileen M, 'Chronic disease care integration into primary care services in sub-Saharan Africa: a 'best fit' framework synthesis and new conceptual model', National Library of Medicine-<
<https://pmc.ncbi.nlm.nih.gov/articles/PMC9516220/> > on 26 September 2022.

¹³³ Harrison S, Aileen M, 'Chronic disease care integration into primary care services in sub-Saharan Africa: a 'best fit' framework synthesis and new conceptual model', National Library of Medicine-<
<https://pmc.ncbi.nlm.nih.gov/articles/PMC9516220/> > on 26 September 2022.

¹³⁴ Article 2(1) *Constitution of Kenya*, 2010.

¹³⁵ Preamble, *Constitution of Kenya*, 2010.

being.¹³⁶ These objectives are reflected through various provisions that are particularly important in addressing the socio-economic challenges faced by individuals living with chronic illnesses, ensuring they are not excluded from access to social security or other essential protections that ensure their well-being. Chapter 4 of the constitution being the Bill of Rights explicitly supports the rights of vulnerable populations through various provisions which shall be discussed herein. Article 27 guarantees that every person is equal before the law and with the right to equal protection and benefit of the law.¹³⁷ It further mandates affirmative action through programs and policies to protect those in genuine need¹³⁸ in an effort to rectify any instances of inequalities. Article 28 discusses the inherent dignity of every person, affirming the right to have the same respected and protected.¹³⁹ Article 43 asserts that every person has to achieve the highest attainable standard of health,¹⁴⁰ adequate housing,¹⁴¹ and social security.¹⁴² It further goes ahead to provide that the state shall provide appropriate social security to persons who are unable to support themselves and their dependants.¹⁴³ In addition to all these, article 21 directs the state to prioritise and protect vulnerable groups in the country.¹⁴⁴ These provisions collectively present an obligation to the state to establish inclusive systems that address the unique needs of persons living with chronic illnesses, affirming their right to dignity, equality, and access to social assistance. While the constitution provides a robust rights framework, its implementation and operationalisation through statutory laws like the Social Assistance Act of 2013 reveals significant gaps. Section 17(d) of the Act limits social assistance to individuals with chronic illnesses resulting in visible disabilities which contradicts the broad protection envisioned under articles 27 and 43 of the constitution. This exclusion disproportionately affects individuals managing chronic conditions that do not manifest as physical impairments, leaving them without necessary social and financial support. Scholars have observed that indeed, there has often been inconsistency when it comes to operationalisation of provisions in the constitution.¹⁴⁵ This inconsistency often leads to

¹³⁶ Preamble, *Constitution of Kenya*, 2010.

¹³⁷ Article 27(1) *Constitution of Kenya*, 2010.

¹³⁸ Article 27(7) *Constitution of Kenya*, 2010.

¹³⁹ Article 28 *Constitution of Kenya*, 2010.

¹⁴⁰ Article 43 (1)(a) *Constitution of Kenya*, 2010.

¹⁴¹ Article 43 (1)(b) *Constitution of Kenya*, 2010.

¹⁴² Article 43 (1)(e) *Constitution of Kenya*, 2010.

¹⁴³ Article 43 (3) *Constitution of Kenya*, 2010.

¹⁴⁴ Article 21 *Constitution of Kenya*, 2010.

¹⁴⁵ Kangu JM, *Constitutional law of Kenya on devolution*, 1st ed, Strathmore University Press, Nairobi, 2015, 380.

challenges in governance, often being , determining what level of government is in charge of implementing a certain duty and challenges in service delivery as well.¹⁴⁶ There is therefore a need for transitional clauses whose interpretation should facilitate the full operation of provisions ensuring that they conform to the 2010 constitution.

2.5.2 International Legislation

International legislation and frameworks are recognised by the constitution of Kenya as part of the laws to be observed in the country. This is enshrined by the provision that any treaty or convention ratified by Kenya shall form part of the law of Kenya under the Constitution.¹⁴⁷

Some of these legislation provide foundational principles for ensuring the rights and dignity of vulnerable populations are protected. The Universal Declaration of Human Rights (UDHR) was established for the purpose of being a common standard of achievement for all peoples and all nations, setting out, for the first time, fundamental human rights to be universally protected. It was ratified in Kenya on the 31st of July, 1990 and is thus applicable as a law in the state. It establishes the right to social security by providing that everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation.¹⁴⁸ It also provides for the right to a standard of living adequate for the health and well-being of himself and of his family, including food, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.¹⁴⁹ Further in the preamble and in its articles, it states that all human beings are born free and equal in dignity and rights¹⁵⁰ as a guiding principle.

Another legislation that is relevant to this study is the International Covenant on Economic, Social and Cultural Rights (ICESCR) that was ratified in Kenya on the 1st of May, 1972. It emphasises the state's obligation to progressively realise socio-economic rights, including access to healthcare and social assistance. It provides that states parties to the covenant recognise the

¹⁴⁶ Kangu, Constitutional law of Kenya on devolution, 382

¹⁴⁷ Article 2(6) *Constitution of Kenya*, 2010.

¹⁴⁸ Article 22, *Universal Declaration of Human Rights*, 10 December 1948, 217 A.

¹⁴⁹ Article 25, *Universal Declaration of Human Rights*.

¹⁵⁰ Article 1, *Universal Declaration of Human Rights*.

right of everyone to social security, including social insurance.¹⁵¹ Additionally, it mandates that state parties recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.¹⁵²

Despite these robust international guidelines, the integration of these principles into domestic law and policy in Kenya remains quite inadequate. This is reflected in the Social Assistance Act, 2013, for example, which narrowly interprets vulnerability. This disconnection undermines Kenya's obligations under international legislation and thus limits the realisation of socio-economic rights for individuals living with chronic illnesses despite not being disabled, the main right being social security. This further leads to the undermining of dignity that is a right enshrined in the universal declaration of human rights. It is therefore key that Kenya's statutes should be streamlined to reflect these international obligations that the state has ratified to form part of its laws within the jurisdiction.

The analysis of the legislative and policy frameworks above answers the second research question as it reveals critical gaps in Kenya's approach to addressing the socio-economic vulnerabilities of individuals living with chronic illnesses but without physical impairment. While the Constitution of Kenya and international legislation provide a robust grounding for the protection of dignity, equality, and social security, the Social Assistance Act is inadequate in reflecting these ideals by narrowly defining eligibility for social assistance based on visible physical disabilities for people living with chronic illness. This exclusionary criterion disregards the financial, healthcare, and social challenges faced by individuals with chronic illnesses which are sufficient grounds for provision of social and financial assistance away from physical impairments. Similarly, Kenya's policy instruments, underscore the importance of inclusivity but fall short in implementing these aspirations into workable measures for this marginalised group. The lack of alignment between these frameworks and the lived realities of individuals with chronic illnesses propagates systemic inequities and infringes on their fundamental rights and deepens cycles of poverty and exclusion.

¹⁵¹ Article 10, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 2200A (XXI).

¹⁵² Article 12, *International Covenant on Economic, Social and Cultural Rights*.

CHAPTER 3: BENEFITS ACCRUING FROM ELIGIBILITY FOR SOCIAL AND FINANCIAL ASSISTANCE UNDER THE SOCIAL ASSISTANCE ACT

3.1 Introduction

This chapter aims to answer the second research question in this paper which asks what are the benefits that accrue from being eligible for social and financial assistance in the Social Assistance Act and hopefully achieve the objective of highlighting the benefits that accrue from the recognition of being vulnerable in society under the Social Assistance Act. It is also grounded on the hypothesis that the state plays a crucial role in ensuring that vulnerable individuals have their rights to equality, dignity and social security protected.

Article 43 of the constitution stipulates and guarantees that every person has the right to achieve the highest attainable standard of health,¹⁵³ adequate housing,¹⁵⁴ and social security.¹⁵⁵ It further goes ahead to provide that the state shall provide appropriate social security to persons who are unable to support themselves and their dependants.¹⁵⁶ In order to bring this right to life, the Social Assistance Act was drafted and came into force in 2013 with a view of establishing the National Social Assistance Authority so as to provide for the rendering of social assistance to persons in need and for connected purposes. The act lists vulnerable individuals eligible for social welfare and it is here that the legal problem captured in this work stems from as it only lists persons living with chronic illnesses who have been disabled by the same.¹⁵⁷ The act has interest in the development of social assistance programs which are a cornerstone of fostering equity, dignity, and social justice within a society. In light of this, the act establishes a framework referred to as the National Social Protection Policy (NSPP). The framework aims to strengthen the delivery of social assistance to poor and vulnerable populations in the national and county levels and assures the progressive realisation of the rights to social security and protection to the vulnerable population listed in the Social Assistance Act. The framework further establishes the National

¹⁵³ Article 43 (1)(a) *Constitution of Kenya*, 2010.

¹⁵⁴ Article 43 (1)(b) *Constitution of Kenya*, 2010.

¹⁵⁵ Article 43 (1)(e) *Constitution of Kenya*, 2010.

¹⁵⁶ Article 43 (3) *Constitution of Kenya*, 2010.

¹⁵⁷ Section 17(3)(d), *Social Assistance Act* (Act 24 of 2013).


Safety Net Program (NSNP), which aims to strengthen existing operational systems of provision for vulnerable populations through expanding the coverage of cash transfer programs.¹⁵⁸ These cash transfer programs include the Cash Transfer for Orphans and Vulnerable Children (CT-OVC), Persons with Severe Disability Cash Transfer (PWSD-CT), the Hunger Safety Net Program (HSNP), the Urban Food Subsidy Cash Transfer (UFS-CT), and the Older Persons Cash Transfer (OPCT).¹⁵⁹ On this foundation and in alignment with the research hypothesis that the state plays a crucial role in protecting the rights to dignity, social security, and equality, this chapter explores the benefits that accrue from recognising individuals as vulnerable under the Social Assistance Act. It evaluates the act's role in institutionalising, formalising and expanding the pre-existing schemes, while also examining its unique contributions.

3.2 Justification for Inclusion of People with Chronic Illnesses in the Social Assistance Act

The principle of social justice is concerned with the distribution of goods among subclasses of citizens or social groups, in proportion to their merit while a judge allocates in order to assure equal protection of the law.¹⁶⁰ Equality on the other hand includes the full and equal enjoyment of all rights and fundamental freedoms.¹⁶¹ Article 43 of the Constitution ensures that all persons who are plagued with socio-economic hardships receive adequate protection and support.¹⁶² The exclusion of people living with chronic illnesses from the Social Assistance Act contradicts the principles of social justice and equality as it denies them financial and social benefits despite meeting the merit of socio-economic hardships and thus being vulnerable.

Chronic illnesses, by their nature, impose a heavy economic burden on individuals and their families. These conditions often require ongoing medication, frequent hospital visits, and constant long-term medical care. Patients and families living with such individuals feel the pinch of strained finances due to reduced work days as a result of lowered capacity to work and lost employment.¹⁶³

¹⁵⁸  < <https://www.hsnp.or.ke/index.php/how-we-work/nsnp> > on 17 December, 2024.

¹⁵⁹  < <https://www.hsnp.or.ke/index.php/how-we-work/nsnp> > on 17 December, 2024.

¹⁶⁰ Sadurski W, 'Social Justice and Legal Justice' 3 Law and Philosophy 3, 1984, 331.

¹⁶¹ Article 27 (2) *Constitution of Kenya*, 2010.

¹⁶² Article 43 (3) *Constitution of Kenya*, 2010.

¹⁶³ World Health Organisation, *Innovative Care for Chronic Conditions*, 2022, 18.

In addition, patients (and families) incur costs that go beyond precise monetary calculation, such as lowered quality of life and shortened life span.¹⁶⁴ The Human Rights-Based Approach (HRBA) to social protection further insists that all persons who face a challenge in sustaining themselves economically especially due to reasons beyond their control should receive support to escape their circumstances.¹⁶⁵

3.3 Similarities Between Covered Groups and People with Chronic Illnesses

The Social Assistance Act under Section 17(3)(d) mentions the following groups as vulnerable and eligible for support; older persons, persons with severe disabilities, orphans and vulnerable children and persons living in extreme poverty.¹⁶⁶ A comparative analysis of the socio-economic challenges faced by these groups and individuals with chronic illnesses brings to light substantial similarities. Firstly, there is limited work capacity for the individuals mentioned. For example, older persons and persons with severe disabilities face challenges when it comes to working for a living due to aging which is a reason beyond their control,¹⁶⁷ and likewise, individuals with chronic illnesses often experience reduced ability to engage in full-time employment due to constant health challenges.¹⁶⁸ Additionally, as a result of diminished ability to provide for themselves, these individuals are at a high risk of falling into poverty. The main criteria for provision of financial assistance for these individuals is that there is proof that they come from poor households and there exists a challenge in self-provision.¹⁶⁹ The risk of poverty is thus a defining requirement and the catastrophic health expenditures that plague households with persons living with chronic illnesses which translates to increased threat of poverty,¹⁷⁰ makes them fall into the same category as those mentioned in the Act, and thus eligible for additional social and

¹⁶⁴ World Health Organisation, *Innovative Care for Chronic Conditions*, 2022, 18.

¹⁶⁵ Muigua K, Entrenching a Human Rights Based Approach to Sustainable Development, Kariuki Muigua and Company Advocates Website, 2023, 11.

¹⁶⁶ Section 17(3)(d), *Social Assistance Act* (Act 24 of 2013).

¹⁶⁷ International Labour Organisation, *Kenya: Inua Jamii Senior Citizens' Scheme*, 2018,2.

¹⁶⁸ Wendell S, 'Unhealthy Disabled: Treating Chronic Illness as Disabilities',25.

¹⁶⁹  < <https://www.socialprotection.go.ke/about-dsa> > on 3 February, 2025.

¹⁷⁰ Nyakangi V, Variation of catastrophic health expenditure by chronic disease in Kenya' Unpublished Thesis, University of Nairobi, Nairobi, 2020, 7.

financial support. Another similarity between the aforementioned groups and those living with chronic illnesses is increased economic and personal dependency on other parties in

in order to carry out and enjoy activities of daily living. This is especially true for older persons and persons with severe disabilities who need support to carry out day to day activities so as to maintain quality life. Persons living with chronic illness despite not having a disability, for example those with chronic fatigue, rely on caregivers and social networks for financial assistance, making them equally dependent.

Ultimately, with the looming threat of exacerbation into poverty, increased dependency and loss of autonomy, the groups covered in the act together with those living with chronic illnesses face a threat to their right to dignity. Relying on the similarities mentioned, the failure to recognise the vulnerability of individuals living with chronic illnesses in the Social Assistance Act save for when they have become disabled, there appears to be an unjustified legal gap that contradicts the principles of social justice and equity. Since the Act aims to provide for the rendering of social assistance to persons in need, with chronic illnesses—who face similar hardships as those already covered—ought to be considered for inclusion.

3.4 Evolution of Social Assistance Frameworks in Kenya

Social assistance programs have been existent in Kenya with a long history and with many initiatives predating the enactment of the Social Assistance Act. These programs were designed to be in line with the government aim to provide medical and hospital services, old age and disability benefits, free primary education, benefits for the unemployed, and financial aid to all who need and merit it for university work.¹⁷¹ They were in essence put in place to try to address both social and economic vulnerabilities.¹⁷² Some of these early institutions included the National Social Security Fund (NSSF), the National Hospital Insurance Fund (NHIF) and the Civil Service Pension Scheme (CSPS). The benefits of these schemes and policies were however largely limited to those working in the formal sector and additionally, discretionary, with the assistance given considered a

¹⁷¹ Kunzler D, ‘Social security reforms in Kenya: Towards a workerist or a citizenship-based system?’ 69 *International Social Security Review* 1, 2016, 69.

¹⁷² Kunzler D, ‘Social security reforms in Kenya: Towards a workerist or a citizenship-based system?’ 69(1), *International Social Security Review*, 2016, 69.

discretionary benefit rather than a legal entitlement.¹⁷³ This predicament thus set the stage for how Kenya's social protection system would evolve. The enactment of the Social Assistance Act provided a legal framework which allows abstract rights to become enforceable claims.¹⁷⁴ This law provides, inter alia, eligibility criteria, registration procedures and benefits payable. Further, it allows legal entitlement rather than a discretionary benefit as it aligns with constitutional provisions and also enhances accountability.¹⁷⁵ Therefore, despite some of these projects being introduced before the act, they did not give rights or legal protection to programme participants. Additionally, such programs, not backed by law, are more likely to close down.¹⁷⁶ In order to enforce and implement the social assistance programs in existence, the Directorate of Social Assistance (DSA) is mandated to coordinate and manage the implementation of the Consolidated Cash Transfer Program (CCTP) also known as the Inua Jamii Program.¹⁷⁷ The beneficiaries of the programme are older persons, orphans and vulnerable children, and persons with severe disabilities.¹⁷⁸ Its mandate includes identification and registration of beneficiaries and the facilitation of payment of cash transfers.¹⁷⁹ It operates within the Ministry of Labour and Social Protection and under the state department for social protection and senior citizens affairs. The development of the schemes under the Social Assistance Act shall thus be discussed below and shed light on the benefits that people living with chronic illnesses would also enjoy upon their inclusion.

3.5 Analysis of Specific Schemes under the Social Assistance Act

3.5.1 Older Persons Cash Transfer (OPCT)

The Older Persons Cash Transfer program was Initially established in 2006 and was governed by the National Policy on Older Persons and Aging (NPOA) which was introduced in 2009 and aligned with the constitution of Kenya in 2014.¹⁸⁰ This policy availed a framework to address

¹⁷³ International Labour Organisation, *Global research on governance and social protection: Kenya case study*, 2022, 8.

¹⁷⁴ United Nations Economic Commission for Africa, *The State of Social Assistance in Africa*, 2019, 10.

¹⁷⁵ United Nations Economic Commission for Africa, *The State of Social Assistance in Africa*, 2019, 11.

¹⁷⁶ United Nations Economic Commission for Africa, *The State of Social Assistance in Africa*, 2019, 11.

¹⁷⁷ <https://www.socialprotection.go.ke/directorates> > on 2 February, 2025.

¹⁷⁸ <https://www.socialprotection.go.ke/directorates> > on 2 February, 2025.

¹⁷⁹ <https://www.socialprotection.go.ke/directorates> > on 2 February, 2025.

¹⁸⁰ Ministry of Labour, *Social Security and Services, National policy on Older Persons and Ageing*, 2014, 2.

the challenges faced by older individuals, which include poverty, diminishing health and income insecurity.¹⁸¹ Under this National Policy, the OPCT operated on an ad hoc basis, relying on discretionary budgetary allocations through the collaboration of stakeholders who include government ministries, departments and agencies, the private sector and civil society.¹⁸² In order to ensure effective coordination and participation of all stakeholders, there was a need for an act that could solidify the right to social assistance benefits for older persons¹⁸³ whose right to live in dignity and respect has been recognised in the constitution.¹⁸⁴

The Social Assistance Act of 2013 significantly formalised the NPOA by codifying social assistance as a statutory right for older persons through their inclusion in the Social Assistance Act. The Act provides under section 21 that a person has the right to social assistance if he or she has attained the age of 65 and has been neglected or abandoned without any ascertainable means of support.¹⁸⁵ This mandating of sustainable funding, through an equitable eligibility criteria that aids in administration, adheres to constitutional guarantees of equity and dignity.¹⁸⁶ The Act also establishes clear oversight and funding mechanisms which have reduced inefficiencies in the provision of social assistance to older persons as well as the promotion of accountability. As a result, there has been a notable increase in the number of beneficiaries as well as the amount disbursed from the years 2008/2009, where there were 300 beneficiaries and Ksh. 4,000,000 annual disbursements, to 310,000 beneficiaries and Ksh 7,329,000,000 annual disbursements in the years 2015/2016.¹⁸⁷ This increase in provision for social and financial assistance through the OPCT as a legal entitlement through the Social Assistance Act has led to improved household food security, access to basic health care, retention of children in schools, increased self-esteem and dignity for the beneficiaries and establishment of small scale income generating initiatives.¹⁸⁸

3.5.2 Persons with Severe Disabilities Cash Transfer (PWSD-CT)

¹⁸¹ Ministry of Labour, Social Security and Services, *National policy on Older Persons and Ageing*, 2014, 2.

¹⁸² Ministry of Labour, Social Security and Services, *National policy on Older Persons and Ageing*, 2014, 20.

¹⁸³ Ministry of Labour, Social Security and Services, *National policy on Older Persons and Ageing*, 2014, 20.

¹⁸⁴ Article 57(c) *Constitution of Kenya*, 2010.

¹⁸⁵ Section 21, *Social Assistance Act (Act 24 of 2013)*.

¹⁸⁶ Article 28 *Constitution of Kenya*, 2010.


¹⁸⁷ Ministry of East African Community, Labour and Social Protection, *Performance Audit Report of the Auditor-General on Management of Older Persons Cash Transfer Programme*, January 2018, 8.

¹⁸⁸ Ministry of East African Community, Labour and Social Protection, *Performance Audit Report of the Auditor-General on Management of Older Persons Cash Transfer Programme*, January 2018, 8.


The development of the Persons with Disabilities National Policy prior to the enactment of the Social Assistance Act was informed by a number of developments key among them being the signing and ratification of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), the promulgation of the Constitution of Kenya, 2010 and the ratification of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa.¹⁸⁹ In order to bring life to the program, the Persons with Severe Disabilities Cash Transfer (PWSD-CT) was introduced in 2011 as part of Kenya's efforts to avail caregiving support and financial relief to households with severely disabled members and it operated under the National Policy on Disability.¹⁹⁰ While this was a good step towards the provision of social security to individuals with disabilities, there was a lack of a proper and dedicated national legal framework for structured support.


The Social Assistance Act 2013 provides that a person with disability shall be eligible for social assistance under the act if the person suffers from severe mental or physical disability and such disability renders them incapable of catering for their basic needs and there is no known source of income or support for the person.¹⁹¹ This inclusion into the Act formalised the PWSD-CT by grounding it within a statutory framework resulted in transitioning it from a policy-guided initiative to a legally mandated entitlement.¹⁹² This formalisation included the establishment of clear eligibility criteria and mechanisms for sustainable funding through appointed payment agents – currently the Kenya Commercial Bank and Equity Bank with a prescribed amount of Ksh. 2000 monthly.¹⁹³ to align with constitutional principles of equity and dignity. Through the provision of a legal foundation, the Act has enhanced the program's scope, enabling better targeting and increased accountability in its implementation. As a result, there has been alignment with constitutional principles of equality and non-discrimination.¹⁹⁴

¹⁸⁹ Ministry of labour and social protection, *Persons with disabilities national policy*, May 2024, 42.

¹⁹⁰  < <https://socialprotection.org/discover/programmes/persons-severe-disability-cash-transfer-pwsd%E2%80%93ct> > on 6 February, 2024.

¹⁹¹ Section 23, *Social Assistance Act* (Act 24 of 2013).

¹⁹²  < <https://socialprotection.org/discover/programmes/persons-severe-disability-cash-transfer-pwsd%E2%80%93ct> > on 6 February, 2024.

¹⁹³  < <https://socialprotection.org/discover/programmes/persons-severe-disability-cash-transfer-pwsd%E2%80%93ct> > on 6 February, 2024.

¹⁹⁴ Article 27 (d) *Constitution of Kenya*, 2010.

3.5.3 Cash Transfer for Orphans and Vulnerable Children (CT-OVC)

The Cash Transfer For Orphans and Vulnerable Children (CT-OVC) was established in 2004 by the Ministry of Gender, Children and Social Development, with assistance from UNICEF.¹⁹⁵ The objective of the Program was and still is to provide a social protection system through predictable and consistent cash transfers to families living with orphans or vulnerable children (OVC).¹⁹⁶ This is with the focus on encouraging growth and retention of OVCs within their families and communities, and to push forward their human capital development.¹⁹⁷ The latter particularly refers to increase in enrolment and attendance of basic school and to reduce incidences of early mortality¹⁹⁸

Prior to the enactment of the Social Assistance Act, the program was under operation as a policy-driven initiative and not necessarily a legal entitlement with limited reach. The Social Assistance Act of 2013 however came into effect with the provision that orphans and vulnerable children shall be considered persons in need and should be provided with social assistance.¹⁹⁹ The Act further provides criteria for such a child that is if they are an orphan with no parents and not under the care of a guardian who provides the basic needs of the child²⁰⁰ or is under the care of a person who suffers a serious long-term ailment or disability which renders the person unable to care for the child²⁰¹ or is under the care of parents or guardians who are unable to provide for the child's basic needs.²⁰² This inclusion into the Act formalised the PWSD-CT by grounding it within a statutory framework resulted in transitioning it from a policy-guided initiative to a program grounded in a clear legal framework.²⁰³ This recognition facilitated a steep increase in coverage from Kshs. 2.8

¹⁹⁵ Oxford Policy Management, *Cash transfer program for orphans and vulnerable children (CT-OVC)*, Kenya operational and impact evaluation, 2007-2009, July 2010, 1.

¹⁹⁶ Oxford Policy Management, *Cash transfer program for orphans and vulnerable children (CT-OVC)*, Kenya operational and impact evaluation, 2007-2009, July 2010, 1.

¹⁹⁷ Oxford Policy Management, *Cash transfer program for orphans and vulnerable children (CT-OVC)*, Kenya operational and impact evaluation, 2007-2009, July 2010, 1.

¹⁹⁸ Oxford Policy Management, *Cash transfer program for orphans and vulnerable children (CT-OVC)*, Kenya operational and impact evaluation, 2007-2009, July 2010, 1.

¹⁹⁹ Section 17 (3)(a), *Social Assistance Act* (Act 24 of 2013).

²⁰⁰ Section 20 (a), *Social Assistance Act* (Act 24 of 2013).

²⁰¹ Section 20 (b), *Social Assistance Act* (Act 24 of 2013).

²⁰² Section 20 (a), *Social Assistance Act* (Act 24 of 2013).

²⁰³ <<https://socialprotection.org/discover/programmes/cash-transfers-orphans-and-vulnerable-children-ct%E2%80%93ove>> on 3 February, 2025.

billion in the years 2011/2012 to a lion share of Kshs. 8 billion in the years 2013/2014.²⁰⁴ This formalisation also established a mechanism for sustainable funding through appointed payment agents – currently the Kenya Commercial Bank and Equity Bank with a prescribed amount of Ksh. 2000 monthly.²⁰⁵

In summary, the Social Assistance Act as deduced above can be seen to have led to significant contributions towards the protection of vulnerable individuals listed in section 17 of the Act. It has led to the strengthening of institutions mandated with the duty of ensuring social protection aligning them with the constitutional mandate of social security under Article 43. Additionally, it has led to grounded sizable budgetary enhancements,²⁰⁶ boosting the scope and number of recipients of the social protection programs, increasing their economic strength and reduction of reliance on other parties, thus preserving their right to dignity through maintenance of autonomy.

In February 2025, Inua Jamii beneficiaries lauded the government for ensuring they can access their funds in an easy and convenient way. This is because of the introduction of the payment of the funds through E-Citizen and MPESA, transitioning from depositing funds in bank accounts.²⁰⁷ This aids in saving on transportation which they would have used to access the banks. The president, H.E William Ruto, took this initiative so as to emphasise the government's commitment to guarantee the irreproachable disbursement of cash transfers so as to supplement the well-being of vulnerable citizens.²⁰⁸ In the second week of February 2025, the State Department for Social Protection disbursed Sh 3.52 billion to 1,760,074 beneficiaries under the Inua Jamii programme for the January 2025 payment cycle, with the payments commencing on February 11, 2025, with

²⁰⁴ National Gender and Equality Commission, *Participation Of Vulnerable Populations In Their Own Programmes*, The Cash Transfers in Kenya, 2014, 10.

²⁰⁵ <<https://socialprotection.org/discover/programmes/cash-transfers-orphans-and-vulnerable-children-ct%E2%80%93ovc> > on 3 February, 2025.

²⁰⁶ National Social Protection Secretariat, Kenya Social Protection Monitoring and Evaluation Framework 2018-2022, 2022, 18.

²⁰⁷ Meneto D, 'Inua Jamii beneficiaries laud government for enabling easy access to funds' Kenya News Agency, 15 February 2025 <https://www.kenyanews.go.ke/inua-jamii-beneficiaries-laud-government-for-enabling-easy-access-to-funds/#:~:text=Earlier%20this%20week%2Cthe%20State,each%20beneficiary%20receiving%20Sh%202%2C000.> on 15 February 2025.

²⁰⁸ Meneto D, 'Inua Jamii beneficiaries laud government for enabling easy access to funds' Kenya News Agency, 15 February 2025 <https://www.kenyanews.go.ke/inua-jamii-beneficiaries-laud-government-for-enabling-easy-access-to-funds/#:~:text=Earlier%20this%20week%2Cthe%20State,each%20beneficiary%20receiving%20Sh%202%2C000.> on 15 February 2025.

each beneficiary receiving Kshs 2,000.²⁰⁹ The funds can be accessed through the MPESA platform via E-Citizen by dialing *222#. Beneficiaries or their caregivers may visit any MPESA agent with their national ID to withdraw the full amount without transaction charges, or transfer the funds to their MPESA wallets for flexible use.²¹⁰ While the Act has contributed to the formalisation of social assistance under a legal framework, challenges such as limited funding and corruption which undermines the programs' coverage still remain and there exists the need to find plausible solutions for these challenges to further the Act's mandate. However, its existence represents a key step in furthering Kenya's social protection journey and the realisation of rights such as the right to dignity and social security enshrined in the constitution's bill of rights.

This chapter has answered the third research question as it has demonstrated that the recognition of individuals as vulnerable under the Social Assistance Act grants them significant benefits, including financial relief, access to healthcare, and protection of their autonomy and consequently, dignity. Through an analysis of existing social assistance programs, it has been shown that individuals with chronic illnesses face similar socio-economic hardships as groups already covered under the Act. The findings affirm that extending social and financial assistance to individuals with chronic illnesses would promote social justice, reduce dependency, and uphold their constitutional rights.



²⁰⁹Meneto D, 'Inua Jamii beneficiaries laud government for enabling easy access to funds' Kenya News Agency, 15 February 2025 <https://www.kenyanews.go.ke/inua-jamii-beneficiaries-laud-government-for-enabling-easy-access-to-funds/#:~:text=Earlier%20this%20week%2Cthe%20State,each%20beneficiary%20receiving%20Sh%202%2C000.> on 15 February 2025.

²¹⁰ Meneto D, 'Inua Jamii beneficiaries laud government for enabling easy access to funds' Kenya News Agency, 15 February 2025 <https://www.kenyanews.go.ke/inua-jamii-beneficiaries-laud-government-for-enabling-easy-access-to-funds/#:~:text=Earlier%20this%20week%2Cthe%20State,each%20beneficiary%20receiving%20Sh%202%2C000.> on 15 February 2025.

CHAPTER 4: A COMPARATIVE STUDY OF SOCIAL ASSISTANCE MECHANISMS FOR INDIVIDUALS WITH CHRONIC ILLNESSES IN THE UNITED KINGDOM AND KENYA

4.1 Introduction

This chapter examines the legal frameworks protecting individuals with chronic illnesses in Kenya and the UK, focusing on the Social Assistance Act of Kenya and the Equality Act 2010 of the UK.²¹¹ It is grounded on the third research objective that is to analyse how the United Kingdom interprets and applies the laws relating to persons living with chronic illness and the research question that seeks to analyse how the legal system in the United Kingdom tries to protect the rights of individuals living with chronic illness despite not having physical manifestation of disability. The hypothesis that the diverse inclusion and applicability of the United Kingdom's Equality Act is a favourable model to follow to ensure protection of the rights of persons living with chronic illnesses aims to guide in hopefully, identifying gaps in Kenya's legal system and suggest ways to improve it, considering the unique social, economic, and cultural contexts of the two countries. The analysis aims to provide recommendations for improving Kenya's legislation to better support this vulnerable group.

4.2 Evaluation via Comparison

The Kenyan Social Assistance Act aims to provide social protection to vulnerable individuals as discussed in previous chapters.²¹² However, its application under Section 17(3)(d) restricts eligibility to those with visible physical disability while discussing persons living with chronic illnesses,²¹³ effectively excluding those with non-visible chronic illnesses like diabetes, epilepsy,

²¹¹ *Equality Act 2010* (UK) 2010.

²¹² Section 17(3), *Social Assistance Act* (Act 24 of 2013)- (orphans and vulnerable children, poor elderly persons, unemployed persons, widows and widowers and persons with disabilities)

²¹³ Section 17(3) (d), *Social Assistance Act* (Act 24 of 2013).

and hypertension. This narrow scope does not recognise the full extent of their vulnerability, as they may face significant financial burdens from medical costs, income loss, and inability to engage in everyday activities or employment.²¹⁴ The Act's limited approach to social protection for persons living with chronic illness, which gives a prerequisite of a visible impairment, does not properly cover the challenges faced by those living chronic illness. This results in many individuals remaining marginalized, unable to access necessary healthcare services or receive support so as to sustain financial independence, autonomy and subsequently, dignity.²¹⁵ This exclusionary approach contradicts the constitutional guarantees of protection of human rights, fundamental freedoms so as to preserve dignity²¹⁶ and the guarantee of the right to social security.²¹⁷

The Equality Act 2010 in the UK however has a significant impact on the treatment of individuals with chronic illnesses, particularly through its broad interpretation of "impairment." This act adopts a more inclusive definition of disability, defining impairment as a physical or mental condition that significantly affects a person's ability to perform normal activities.²¹⁸ It goes further to list conditions like HIV, cancer, and multiple sclerosis, which can have profound effects on an individual's ability to work, access education, and perform daily activities as disabilities²¹⁹ even though they are not immediately visible. Additionally, progressive conditions which encompass many chronic illnesses like diabetes that get worse if not cared for, also qualify as impairments.²²⁰

The primary objective of the enactment of the Equality Act (2010) was to consolidate the anti-discrimination laws in the UK, protecting people from discrimination in the workplace and in wider society and to avail equality of opportunity based on the protected characteristics.²²¹ While it differs in objective with the Social Assistance Act which is a welfare statute, it provides a rights-based framework for ensuring equal treatment and inclusion of individuals with chronic illnesses

²¹⁴ Philip D, 'Vulnerability and Poverty: What are the causes and how are they related?' Zentrum fur Entwicklungsforschung Center for Development Research, Term Paper for Interdisciplinary Course, International Doctoral Studies Program at ZEF, Bonn, November 2004, — https://eu.docworkspace.com/d/sIIKxtLSFAcftlLUG?sa=wa&ps=1&fn=2004_3a_Philip_Rayan.pdf - on 5 August, 2024.

²¹⁵ Kenya National Commission on Human Rights, *Social Protection for Vulnerable Groups in Kenya: Challenges and Opportunities*, Kenya National Commission on Human Rights, 2018.

²¹⁶ Article 19 (2) *Constitution of Kenya*, 2010.

²¹⁷ Article (3) *Constitution of Kenya*, 2010.

²¹⁸ Section 6 (1)(b), *Equality Act* (United Kingdom).

²¹⁹ Section 6 (1)(b), Schedule I, *Equality Act* (United Kingdom).

²²⁰ Section 8 (1)(a), Schedule I, *Equality Act* (United Kingdom).

²²¹ Equality and Human Rights Commission, *Equality Act, 2010: Guidance*, 2015, 1.

despite not creating direct entitlement to social assistance. It has provided a basis for prevention of discrimination against individuals with chronic illnesses in accessing existing social support or employment which promotes the right to social security and ensures independence and autonomy and as a ripple effect, protection of the right to dignity. Additionally, it has provided support in ensuring equal access to public services and benefits, including social assistance schemes for such persons living with chronic illness. This is a result of the broad inclusion under the Act. The support accrued from the Act includes welfare programs like the Personal Independence Payment (PIP) and the Employment and Support Allowance (ESA), which aim to ensure that individuals with chronic conditions can still access financial support and social protection, regardless of whether their condition manifests physically.²²²

4.2.1 The Personal Independence Payment (PIP)

The Personal Independence Payment (PIP) is a UK welfare program designed to support individuals with chronic conditions and disabilities.²²³ It is a non-means-tested benefit, awarded based on the severity of functional limitations caused by the chronic illness or disability.²²⁴ PIP is particularly important for people with chronic illnesses as it recognises the impact of conditions that do not always show outward signs.²²⁵ For example, someone with chronic fatigue syndrome may not appear physically disabled but may experience severe fatigue that affects their ability to work, engage in social activities, or maintain their financial independence. The PIP assessment focuses on how the condition affects an individual's ability to carry out specific activities, such as mobility and daily living.²²⁶ PIP is awarded on a points-based system, with those with more severe impairments qualifying for higher levels of support.²²⁷ PIP provides financial assistance to cover

²²² Department for Work and Pensions, 'Personal Independence Payment (PIP) Eligibility Criteria', available at: <https://www.gov.uk/pip/eligibility>; Department for Work and Pensions, 'Employment and Support Allowance (ESA)', available at: <https://www.gov.uk/employment-support-allowance>.

²²³ Department for Work and Pensions, 'Personal Independence Payment (PIP)', available at: <https://www.gov.uk/pip>

²²⁴ Department for Work and Pensions, 'Personal Independence Payment (PIP) – Eligibility', available at: <https://www.gov.uk/pip/eligibility>.

²²⁵ Department for Work and Pensions, 'Personal Independence Payment (PIP) – Eligibility', available at: <https://www.gov.uk/pip/eligibility>.

²²⁶ Department for Work and Pensions, 'Personal Independence Payment (PIP) – Eligibility', available at: <https://www.gov.uk/pip/eligibility>.

²²⁷ Department for Work and Pensions, 'Personal Independence Payment (PIP) – Eligibility', available at: <https://www.gov.uk/pip/eligibility>.

other costs of living for those with a chronic illness or disability, such as extra help around the house, buying equipment or medication, or changing the home to suit the individual's needs.²²⁸ This model of financial support aligns with the principle of equal treatment in the Equality Act 2010, reducing financial barriers often associated with chronic illness.²²⁹

Kenya lacks an equivalent welfare program that recognises non-visible chronic illnesses. The Social Assistance Act which is the legal framework grounding social assistance programs,²³⁰ does not focus on eligibility based on functional limitations as evidenced by the provision that one needs to have been made disabled by acute chronic illness in order to qualify for social assistance.²³¹ This translates to individuals with chronic illnesses possibly being denied assistance despite substantial impairment as a result of their conditions affecting mobility and daily living.

4.2.2 The Employment and Support Allowance (ESA)

The Employment and Support Allowance (ESA) is a UK welfare program that provides income support to individuals with chronic illnesses who are unable to work due to illness or disability.²³² ESA does not require a physical disability but considers how the chronic illness affects an individual's ability to work.²³³ The assessment includes evaluating the individual's work capability, mental health impact, and potential for rehabilitation or return to work.²³⁴ ESA is provided in two tiers: the support group for those unable to work with reasonable accommodations and the work-related activity group for those capable of working in the future but needing support.²³⁵ The assessment is sensitive to the specific challenges faced by individuals with chronic illnesses and

²²⁸ Department for Work and Pensions, 'Personal Independence Payment (PIP) – Eligibility', available at: <https://www.gov.uk/pip/eligibility>.

²²⁹ Department for Work and Pensions, 'Personal Independence Payment (PIP) – Eligibility', available at: <https://www.gov.uk/pip/eligibility>.

²³⁰ United Nations Economic Commission for Africa, *The State of Social Assistance in Africa*, 2019, 10.

²³¹ Section 17(3) (d), *Social Assistance Act* (Act 24 of 2013).

²³² Department for Work and Pensions, 'Employment and Support Allowance (ESA)', available at: <https://www.gov.uk/employment-support-allowance>.

²³³ Department for Work and Pensions, 'Employment and Support Allowance (ESA)', available at: <https://www.gov.uk/employment-support-allowance>.

²³⁴ Department for Work and Pensions, 'Employment and Support Allowance (ESA): Work Capability Assessment', available at: <https://www.gov.uk/government/publications/employment-and-support-allowance-work-capability-assessment>.

²³⁵ Department for Work and Pensions, 'Employment and Support Allowance (ESA): Work Capability Assessment', available at: <https://www.gov.uk/government/publications/employment-and-support-allowance-work-capability-assessment>.

aims to provide financial stability while encouraging rehabilitation and reintegration into the workforce.²³⁶ ESA is non-means-tested, meaning financial aid is not contingent on the individual's savings or other assets.²³⁷ This is especially important for people with chronic illnesses who may face unexpected costs due to their condition.²³⁸ ESA further offers flexible support, allowing individuals to continue receiving aid if they are temporarily unable to work but have the potential to return to work in the future.²³⁹

Kenya's social protection framework in relation to persons living with chronic illnesses does not seem to accommodate the challenge of inability to work and consequently provide a dedicated financial support mechanism like ESA. In relation to old age which is a recognised vulnerability in the Social Assistance Act, a main consideration is the reduced capacity to work²⁴⁰ which is also a true reality for persons living with chronic conditions.

The UK's welfare programs, PIP and ESA, are crucial for protecting the rights of people with chronic illnesses.²⁴¹ They provide a safety net for those excluded from social protection programs designed for visible disabilities.²⁴² The enforcement body for these two welfare programs that accommodate persons living with chronic illnesses is the Department for Work and Pensions (DWP).²⁴³ As the United Kingdom's biggest public service department it administers state pension and a range of working age, disability and ill health benefits and is responsible for welfare, pensions and child maintenance policy.²⁴⁴ Other programs it is responsible for enforcing include

²³⁶ Department for Work and Pensions, 'Employment and Support Allowance (ESA): Work Capability Assessment', available at: <https://www.gov.uk/government/publications/employment-and-support-allowance-work-capability-assessment>.

²³⁷ Department for Work and Pensions, 'Employment and Support Allowance (ESA): How to Apply', available at: <https://www.gov.uk/how-to-claim-esa>.

²³⁸ Department for Work and Pensions. (2020). *Employment and Support Allowance: Annual Report*. UK Government.

²³⁹ Department for Work and Pensions. (2020). *Employment and Support Allowance: Annual Report*. UK Government.

²⁴⁰ International Labour Organisation, *Kenya: Inua Jamii Senior Citizens' Scheme*, 2018,2.

²⁴¹ Department for Work and Pensions. (2020). *Personal Independence Payment and Employment and Support Allowance: Annual Report*. UK Government.

²⁴² Department for Work and Pensions. (2020). *Personal Independence Payment and Employment and Support Allowance: Annual Report*. UK Government.

²⁴³  < <https://www.gov.uk/government/organisations/department-for-work-pensions/about> > on 2 February, 2025.

²⁴⁴  < <https://www.gov.uk/government/organisations/department-for-work-pensions/about> > on 2 February, 2025.

attendance allowance, carer's allowance and disability living allowance for both adults and children.²⁴⁵

The UK, through its Department for Work and Pensions (DWP), administers a wide range of benefits that are designed to provide monetary assistance to individuals afflicted with long-term medical conditions. Kenya's equivalent, the Directorate of Social Assistance (DSA) within the Ministry of Labor and Social Protection, has a far narrower scope in providing monetary assistance to individuals living with long-term illness whose illness doesn't manifest in a physical disability. The Equality Act 2010 broadens the definition of impairment, ensuring people with chronic conditions are not left behind despite their condition not showing outward signs of disability.²⁴⁶ This system respects the human dignity of individuals living with chronic illnesses, allowing them to enjoy their independence, take part in society, and access financial resources.²⁴⁷ These programs also promote social justice and inclusion, acknowledging that chronic illnesses can significantly affect an individual's daily life, which differs from the Kenyan model where only visible disabilities qualify for social assistance.²⁴⁸

Kenya can learn from the UK's legal protections for people with chronic illnesses. The country could broaden the provision for eligibility for those living with chronic illnesses from those made disabled by acute chronic illness to those living with chronic illnesses, or include a broad definition of impairment to factor in chronic illnesses, similar to the UK's Equality Act 2010.²⁴⁹ It could also broaden the consideration of vulnerability to encompass inability to work and the level of dependency in doing activities that are core to daily living. This would ensure that individuals with long-term health conditions that do not manifest physically are still eligible for social protection and other benefits.²⁵⁰ Kenya should also consider implementing targeted welfare programs for persons living with chronic illnesses just like it has other persons considered vulnerable under the

²⁴⁵  < <https://www.gov.uk/government/organisations/department-for-work-pensions/about> > on 2 February, 2025.

²⁴⁶ Equality and Human Rights Commission. (2010). *The Equality Act 2010: Guidance for Employers and Service Providers*. UK Government.

²⁴⁷ Department for Work and Pensions (DWP). (2020). *Personal Independence Payment (PIP) Guide*. UK Government.

²⁴⁸ Social Assistance Act, No. 24 of 2013, Laws of Kenya.

²⁴⁹ Department for Work and Pensions (DWP). (2020). *Personal Independence Payment (PIP) Guide*. UK Government.

²⁵⁰ Department for Work and Pensions (DWP). (2020). *Personal Independence Payment (PIP) Guide*. UK Government.

Social Assistance Act like the PIP and ESA in the UK, which provide financial aid based on the severity of the illness.²⁵¹ Additionally, Kenya should work towards improving healthcare access and affordability, particularly for those living with chronic conditions, by making essential medications and treatments more affordable and accessible.²⁵²

4.3 Difficulties in applying the UK Model in Kenya

Kenya faces challenges in implementing UK-style protections due to limited resources for comprehensive welfare programs.²⁵³ The UK's advanced economy allows for substantial public funds for welfare and healthcare services, which Kenya lacks.²⁵⁴ Direct adaptation of financial aid models like ESA and PIP may be difficult. This is grounded on the fact that Kenya already faces a challenge of proper administration of financial assistance to vulnerable groups due to seemingly limited resources invested in social protection.²⁵⁵ While full adaptation could be difficult, the country could expand the coverage of the national social protection system to accommodate those living with chronic illnesses so as to extend a wider population coverage as seen in international practice.²⁵⁶ The reason for this is that programmes with high coverage that include the 'missing middle' which is a group of individuals between the middle class and those living in poverty, are more likely to garner political support and thus increased government funding, compared to programmes targeted only at the poor.²⁵⁷ This is doable as the Inua Jamii Senior Citizens' Programme is such a pioneer initiative that includes the missing middle in social protection, as all citizens of Kenya are guaranteed a minimum income in their old age and thus has great government support²⁵⁸ which is an approach other social assistance programmes can embody.

²⁵¹ Department for Work and Pensions (DWP). (2020). *Personal Independence Payment (PIP) Guide*. UK Government.

²⁵² Department for Work and Pensions (DWP). (2020). *Personal Independence Payment (PIP) Guide*. UK Government.

²⁵³ Department for Work and Pensions (DWP). (2020). *Personal Independence Payment (PIP) Guide*. UK Government.

²⁵⁴ Social Assistance Act, No. 24 of 2013, Laws of Kenya.

²⁵⁵ Ministry of Labour and Social Protection, 'Kenya Social Protection Review', 2017, 19.

²⁵⁶ Ministry of Labour and Social Protection, 'Kenya Social Protection Review', 2017, 20.

²⁵⁷ Ministry of Labour and Social Protection, 'Kenya Social Protection Review', 2017, 20.

²⁵⁸ Ministry of Labour and Social Protection, 'Kenya Social Protection Review', 2017, 20.

Chronic illnesses in Kenya are often stigmatised and misunderstood, leading to marginalisation and deterrence from seeking medical help or social assistance.²⁵⁹ There is a general lack of awareness about the challenges faced by individuals with chronic conditions, both among the public and healthcare professionals, contributing to a system that does not meet the needs of these individuals.²⁶⁰ Regardless, this does not make the development of a social assistance program that accommodates the vulnerability of those living with chronic illnesses impossible as public education about chronic illnesses can be done, bringing awareness about the many chronic illnesses and challenges that they present.

Kenya's social protection framework is less developed than the UK's, with inadequate monitoring and enforcement mechanisms for vulnerable groups, including those with chronic illnesses.²⁶¹ While Kenyan courts have made progress in enforcing constitutional rights, clearer guidelines can be put in place for the interpretation and application of laws protecting individuals with chronic illnesses.²⁶²

4.4 Recommendations for Kenya

A recommendation to Kenya would be to amend Section 17 (3)(d) of the Social Assistance Act to include chronic illnesses as a qualifying condition for social assistance, regardless of visible physical disabilities.²⁶³ This will align the Act with modern understandings of chronic illness and ensure non-visible but debilitating conditions are not excluded from assistance.²⁶⁴ Additionally, Kenya should initiate chronic illness programs to address the needs of individuals living with chronic illnesses, offering financial support, healthcare access, and social protection tailored to their unique challenges.²⁶⁵ These programs could be similar to the UK's ESA and PIP, based on

²⁵⁹ Kenya National Commission on Human Rights (KNCHR), *Report on the Rights of Persons with Disabilities in Kenya*. 2017.

²⁶⁰ World Health Organization (WHO), *Chronic Diseases and Their Impact in Kenya*. WHO Regional Office for Africa, 2020.

²⁶¹ Ministry of Health, Kenya, *Kenya Health Policy 2014-2030: Addressing Chronic Non-Communicable Diseases*. Government of Kenya, 2018, 4

²⁶² Ministry of Health, Kenya, *Kenya Health Policy 2014-2030: Addressing Chronic Non-Communicable Diseases*. Government of Kenya, 2018, 4

²⁶³ Kenya Law Reform Commission, *Review of Social Assistance Legislation in Kenya: Proposals for Reform*. KLRC, 2021, 12.

²⁶⁴ Ministry of Health, Kenya, *Strategic Plan for Chronic Disease Management in Kenya*. Government of Kenya.

²⁶⁵ World Health Organization (WHO), *Chronic Diseases and Public Health Policy: A Call for Integrated Care*. WHO Regional Office for Africa, 2020, 2

severity and daily life impact²⁶⁶ but should be tailored in a way that fits the socioeconomic state of the country. This is because prioritising healthcare reforms to make treatment more affordable and accessible, particularly for the informal sector, is crucial.²⁶⁷ Public-private partnerships could help bridge the healthcare access gap for individuals with chronic conditions.²⁶⁸

A national public awareness campaign could also be important so as to reduce the stigma surrounding chronic illnesses, promoting a more inclusive society and encouraging individuals to seek assistance without fear of judgment.²⁶⁹ Healthcare providers should be trained to recognize and address the needs of individuals with chronic illnesses, ensuring they receive appropriate care and are aware of available support systems.²⁷⁰ While this cannot happen overnight, it is important to remember that Rome wasn't built in a day and therefore slow progress is still progress and as the socioeconomic state of the country grows, so will the programs initiated to protect the rights to equality, social security and the highest attainable standard of health for persons living with chronic illnesses.

4.5 Conclusion

Kenya's Social Assistance Act is a starting point for addressing vulnerable populations' needs, but its scope is limited, especially for chronic illnesses.²⁷¹ The UK's Equality Act 2010 provides insights into inclusive laws for individuals with chronic conditions.²⁷² Expanding legal definitions and enhancing social protection systems could improve Kenya's support for chronic illnesses. Despite challenges like resource limitations and social stigma, a tailored approach based on UK lessons could significantly improve the lives of individuals with chronic illnesses in Kenya.

²⁶⁶ Kenya National Bureau of Statistics (KNBS), *Economic Survey 2019: Health Sector Report*. Government of Kenya, 2019.

²⁶⁷ World Health Organization (WHO), *Chronic Diseases and Public Health Policy: A Call for Integrated Care*. WHO Regional Office for Africa, 2020.

²⁶⁸ World Health Organization (WHO), *Chronic Diseases and Public Health Policy: A Call for Integrated Care*. WHO Regional Office for Africa, 2020.

²⁶⁹ Kenya National Commission on Human Rights (KNCHR), *Addressing Stigma in Health: A Study on Chronic Illnesses in Kenya*. KNCHR, 2019.

²⁷⁰ World Health Organization (WHO), *Global Action Plan for the Prevention and Control of Non-Communicable Diseases 2021–2030*. WHO, 2021.

²⁷¹ World Health Organization (WHO), *Addressing Chronic Illnesses in Low-Income Countries: A Call for Action*. WHO, 2020.

²⁷² Equality and Human Rights Commission, *Equality Act 2010: Guidance on Disability*. Government of the United Kingdom.

Through a comparative analysis between Kenya and the United Kingdom, this chapter has revealed that Kenya's approach to social assistance for individuals with chronic illnesses is significantly limited compared to the UK's more inclusive framework. The Equality Act 2010 and welfare programs such as the PIP and ESA in the UK demonstrate how a broader definition of vulnerability can broaden social protection. The findings confirm that Kenya can improve its legal framework by adopting similar inclusive measures, ensuring that individuals with chronic illnesses receive adequate financial and social support, regardless of visible physical disabilities.



CHAPTER FIVE: CONCLUSION

5.1 Introduction

This chapter summarises the findings of the study as developed and delved into in previous chapters. Recommendations will be made in this chapter that will hopefully help in addressing the issue of exclusion of individuals living with chronic illnesses from social assistance in Kenya. The research study will then come to an end with this chapter.

5.2 Summary of Findings

This study has scrutinized the legislative and policy framework governing social assistance in Kenya, paying attention to the exclusion of individuals living with chronic illnesses. It has sought to determine whether legal reforms are necessary to warrant the equitable access to social security for this group.

Chapter one formed the foundation of this study's research. It established the existence of a legal gap in the Social Assistance Act regarding the eligibility of individuals living with chronic illnesses for social and financial support. The chapter outlined the research questions, objectives and hypotheses that informed the research, provided a theoretical framework, assessed the relevant literature on the subject matter and highlighted the breakdown of the various chapters.

Chapter two explored the legal, policy, and judicial positions in Kenya concerning offering of social assistance for individuals living with chronic illnesses. It shed light on the fact that Kenya does not have a comprehensive legislative and policy framework explicitly recognising chronic illness as a criterion for vulnerability. The chapter also examined Kenya's social protection responsibilities under the constitution and international human rights treaties.

Chapter 3 discussed the advantages that accrue from the recognition of vulnerability under the Social Assistance Act. It also highlighted the importance of acknowledging people with chronic illnesses as deserving of social assistance. The chapter demonstrated how social protection policies support access to healthcare, the reduction of poverty, and the maintenance of human dignity. It

further showed that providing social support to those with long-term conditions is consistent with the values of equality and social justice.

Chapter four came up with a comparative analysis between Kenya and the United Kingdom. It highlighted the UK's broader definition of impairment under the Equality Act 2010 and examined welfare programs such as the Employment and Support Allowance (ESA) and the Personal Independence Payment (PIP). The chapter proposed that Kenya could benefit from adopting similar inclusive policies to provide financial and social security to individuals living with chronic illnesses.

Chapter 5 wraps up the study's analysis by providing a summary of the results and suggestions for resolving Kenya's exclusion of people with chronic illnesses from social assistance. It highlights particular UK insights and describes how Kenya's legislative and policy frameworks could incorporate them in the country for the greater good of those living with chronic illnesses.

5.3 Recommendations

This study advances the following recommendations:

1. Since the Social Assistance Act (Act No. 24 of 2013) is the primary legislation that governs research in Kenya, this study proposes an amendment to section 17 of the Act with regards to the recognition of persons living with chronic illnesses as vulnerable persons in society.

- Section 17(3)(d) of the Social Assistance Act currently provides that **persons disabled by acute chronic illnesses are recognised as persons in need**. This section should be amended to explicitly recognise individuals living with chronic illnesses, whether or not they result in visible disabilities, as eligible for social assistance. The eligibility criteria should be redefined to consider financial, social, and medical burdens associated with chronic illnesses.

2. Following insights from the United Kingdom, Kenya can look into incorporating a functional impairment assessment model during the vulnerability assessment and thus the social assistance eligibility criteria could factor in chronically ill individuals. In such an assessment, the ability to undertake day-to-day activities should be considered more than the overall physical outlook of these individuals.

3. At the administrative level, Kenya should embrace amendments to its social protection policies and implementation guidelines. The National Social Assistance Authority (NSAA) should establish clear guidelines ensuring that individuals with chronic illnesses are not factored out from social support. The Inua Jamii program should incorporate targeted cash transfer mechanisms for individuals with chronic illnesses. Additionally, inspired by the UK's welfare system, Kenya could introduce welfare models similar to PIP and ESA, tailored to provide financial relief to individuals with chronic illnesses who experience work-related impairments which is quite a significant problem most of these persons face. This approach would ensure fairness, transparency, and shared accountability among all stakeholders involved in social protection.

4. At the industry level, employers should be encouraged and legally mandated to adopt workplace policies that accommodate individuals living with chronic illnesses as their work capacity often differs with individuals who are not managing such conditions. Such policies can include flexible working practices. This could mean allowing staff to undertake remote working or adjust their work schedules to manage medical appointments and balance changing energy levels. Additionally, reasonable adjustments in the workplace could be made, such as the provision of ergonomic workspaces, reduced workload opportunities, or access to specific rest areas.

5 A recommendation to the judiciary would be to seek strategic litigation necessary to challenge the exclusion of chronically ill persons from social assistance benefits as guaranteed under Article 43 of the Constitution. Courts ought to interpret the Social Assistance Act in harmony with constitutional protection and even international human rights standards contained in instruments such as the International Covenant on Economic, Social and Cultural Rights (ICESCR).

5.4 Conclusion

In conclusion, this study has discovered that the Kenyan social assistance legislation is unclear regarding the eligibility of people with chronic conditions. The study found a number of practices and lessons from the UK that can be adopted to close this legal gap. By putting these suggestions into practice, not only would individuals with chronic illnesses benefit but also, Kenya would strengthen its social justice framework and its dedication to upholding the rights to equality and human dignity.

BIBLIOGRAPHY

Books

Donnelly J, '*Universal human rights in theory and in practice*', 3rd ed, Cornell University Press, United States of America, 2013.

Funk S, Tornquist E, Leeman J, Miles M, Harrell J,' *Key Aspects of Preventing and Managing Chronic Illness*' 1st ed, Springer Publishing Company, New York,2001.

Hill T, '*Dignity and Practical Reason in Kant's Moral Theory*', 1st ed, Cornell University Press,United States of America, 1992.

Kangu JM, *Constitutional law of Kenya on devolution*, 1st ed, Strathmore University Press, Nairobi, 2015.

Rawls J, *Atheory of justice*, revised ed, Harvard University Press, Massachusetts, 1999.

Sen A, *Development as freedom*, Oxford University Press, New York,1999.

Young I, *Americans with disabilities*, 1st ed, Routledge, New York, 2000.

Journal Articles

Fineman M, , 'The vulnerable subject' 20 (1) Yale Journal of Law and Feminism, 2008.

Humphrey J, 'Researching Disability Politics, or, some problems with the Social Model in Practice' 15 *Disability and Society* 1, 2000.

Gulley S, 'At the intersection of chronic disease, disability and health services research: A scoping literature review' 11 *Disability Health Journal* 2,2018,198.

Jung J, Social Health Insurance for Informal Sector on the path to Universal Health Coverage: A Case of Kenya National Hospital Insurance Fund (NHIF)' 13 *International Development and Cooperation Review Journal* 2, 2021.

Kunzler D, 'Social security reforms in Kenya: Towards a workerist or a citizenship-based system?' 69 *International Social Security Review* 1, 2016.

Rustamova N, 'Social Protection in Developing Countries: Legal, Economic, and Social Trends' 5 *Qubahan Academic Journal* 1, January 2025.

Sadurski W, 'Social Justice and Legal Justice' 3 *Law and Philosophy* 3, 1984.

Terzi L, 'The Social model of disability: A philosophical critique' 21 *Journal for applied philosophy* 2, 2004.

Wendell S, 'Unhealthy Disabled: Treating Chronic Illness as Disabilities' 16 *Feminism and Disability* 4, 2001.

Self-Published Articles

Muk V, Disability and Vulnerability — Impediments or Possibilities? A Hypothesis from the scope of social Christian ethics,' *Philosophical Research Bulletin*, 2018.

Muigua K, Entrenching a Human Rights Based Approach to Sustainable Development, Kariuki Muigua and Company Advocates Website, 2023.

Reports

Australian Institute of Health and Welfare (2024), *People with disability in Australia*, 2024.

International Labour Organisation, *Kenya: Inua Jamii Senior Citizens' Scheme*, 2018.

International Labour Organisation, *Global research on governance and social protection: Kenya case study*, 2022.

Kenya National Bureau of Statistics, *Economic Survey 2020*, 2020.

Kenya National Commission on Human Rights (KNCHR), *Report on the Rights of Persons with Disabilities in Kenya*, 2020.

Oxford Policy Management, *Cash transfer program for orphans and vulnerable children (CT-OVC), Kenya operational and impact evaluation, 2007-2009*, 2010.

United Nations Economic Commission for Africa, *The State of Social Assistance in Africa*, 2019.

Institutional authors

Ministry of Labour, Social Security and Services, *National policy on Older Persons and Ageing*, 2014.

National Gender and Equality Commission, *The Cash transfers in Kenya*, 2014.

Ministry of East African Community, Labour and Social Protection, *Performance Audit Report of the Auditor-General on Management of Older Persons Cash Transfer Programme*, January 2018. National Social Protection Secretariat, Kenya Social Protection Monitoring and Evaluation Framework 2018-2022, 2022.

World Health Organisation, *Innovative Care for Chronic Conditions*, 2022.

Dissertations and Thesis

Nyakangi V, Variation of catastrophic health expenditure by chronic disease in Kenya' Published Thesis, University of Nairobi, Nairobi, 2020.

Working Papers

Barrientos A and Hulme D, 'Social protection for the poor and poorest in developing countries: Reflections on a quiet revolution' Brooksworld Poverty Institute, BWPI Working Paper Number 30,2008 — <https://eu.docworkspace.com/d/sIIOxtLSFAfTVnrcG>

Other Internet Sources

Fletcher J, 'Why diabetes causes fatigue' Medical News Today, 2 August 2022 — [Diabetes fatigue: Causes, management, and when to see a doctor \(medicalnewstoday.com\)](https://www.medicalnewstoday.com/articles/151111) .

Hacker K, 'The Burden of Chronic Disease', National Library of Medicine - <https://pubmed.ncbi.nlm.nih.gov/articles/PMC10830426/> .

Harrison S, Aileen M,' Chronic disease care integration into primary care services in sub-Saharan Africa: a 'best fit' framework synthesis and new conceptual model' , National Library of Medicine-< <https://pubmed.ncbi.nlm.nih.gov/articles/PMC9516220/> > on 26 September 2022.

Jayathilaka R, Joachim S, ' Do chronic illnesses and poverty go hand in hand?', National Library of Medicine-< <https://pubmed.ncbi.nlm.nih.gov/articles/PMC7584216/#ref-list1> >

Meneto D, 'Inua Jamii beneficiaries laud government for enabling easy access to funds' Kenya News Agency, 15 February 2025 - <https://www.kenyanews.go.ke/inua-jamii-beneficiaries-laud-government-for-enabling-easy-access-to-funds/#:~:text=Earlier%20this%20week%2Cthe%20State,each%20beneficiary%20receiving%20Sh%20%2C000.>

Onyango E,' Contribution of the Changes in Diet and Physical Inactivity' National Library of Medicine, 8 December 2018,- <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7325816/> .

Philip D, 'Vulnerability and Poverty: What are the causes and how are they related?' Zentrum fur Entwicklungsforschung Center for Development Research, Term Paper for Interdisciplinary Course, International Doctoral Studies Program at ZEF, Bonn, November 2004, — https://eu.docworkspace.com/d/sIIKxtLSFAcft1LUG?sa=wa&ps=1&fn=2004_3a_Philip_Rayan.pdf.

Sav A, Kelly F, Michelle A, ' Burden of treatment for chronic illness: a concept analysis and review of literature' - <https://onlinelibrary.wiley.com/doi/full/10.1111/hex.12046> .

Wilder L, Mertens F, 'Living with a chronic disease: insights from patients with a low socioeconomic status', National Library of Medicine - <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8598397/> .

Encyclopedias and Dictionaries

Encyclopedia Britannica, 15 ed.

