

## **Symposium on Strengthening Capacities of Public Institutions for Transformational Leadership, Innovation and Inclusion to Realize the 2030 Agenda for Sustainable Development and Agenda 2063 in East Africa**

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### **Inclusive Services Delivery - Ensuring Access to Public Services among Persons with Disabilities in Kenya - Initiatives, successes and challenges**

#### **I. Inclusion legal framework**

The most notable endeavor to Disability inclusion success in Kenya is the adoption of a progressive legislative and policy framework to address economic, social, cultural, political and civil rights of persons with disabilities. Efforts towards this achievement has been influenced by both the international arena in respect to pursuit of the rights of persons with disabilities as well as national and local initiatives guided by the development trends. The country's ratification of the Convention on the Rights of persons with Disabilities (CRPD) in 2008 and its first review of its implementation in 2015 have greatly influenced the thinking of the Kenyan government, and more widely in society, in terms of persons with disabilities as rights holders. There is more discussion on them in respect to equality, equal recognition before the law, independent living, education, health, work and employment, social protection and participation in political and public life.

The legislative and policy framework is characterized by both specific legislations as well as specifically including disability concerns in some of the key mainstream legislations. The key specific legislation is the Persons with Disabilities Act of 2003 which among other things provide for the right to physical access, transport, communication, education, health care, employment and most important, access to justice. This Act is undergoing the process of amendment to align it with the CRPD and the Kenya Constitution of 2010 both of which came after it.

The Constitution of Kenya 2010 which is the supreme law of the Country in its bill of rights prohibits direct and indirect discrimination on the ground of disability. It specifically provides in article 54 for the right to be treated with dignity and respect; access to educational institutions and facilities integrated into society; accessing places, public transport and information; using sign language, Braille or other appropriate forms of communication; and accessing materials and devices to overcome disability-related constraints. Equally important, it provides for progressive

realization of five percent representation in all appointive and elective positions in all aspects of the society's life.

Among the key mainstream legislations that specifically address disability discrimination, participation and provision of services include Public Officers Act 2003 providing for non-discrimination of persons with disabilities in employment, Employment Act of 2012 revised edition 2017, Basic Education Act of 2013, Kenya National Employment Policy (2014), Ministry of Labour (MoL) Strategic Plan (2013 – 2017), The Public Procurement and Asset Disposal Act (2015), Labour Regulations Act (2007), Occupational Health and Safety Act (2007), Remuneration and Taxation Act, Kenya National Commission on Human rights of 2011, the National Gender and Equality Commission Act of 2011, National Elections Amendments Act 2016 and Political Parties Act of 2012.

This framework is enhanced by mainstream and disability specific policies which support the effort to be more inclusive. The key of these is the Vision 2030 which is the country's development blueprint. Its Social pillar recognized disability mainstreaming as a flagship project under the second Medium Term Implementation Framework (MTEF) and this has been reiterated in the third (2018-2021) MTEF. The implementation of the International 2030 Agenda— Sustainable Development Goals (SDGs) with its clarion call to “Leave no one behind” in Kenya is seen within the context of Vision 2030. On specific policies, the Country has the Learners with Disabilities Needs Policy of 2018. The country has also been working on a National disability policy which is now in its final stages of approval.

## **II. Legal framework Successes and Challenges**

Despite the very progressive legal and policy framework, the improvement of the lives of persons with disabilities remains a major challenge both for the duty bearers as well as for the rights holders, in this case persons with disabilities. Kenya has experienced challenges in implementation of many provisions in the legislations as well as in the policies.

The government has for instance faced challenges in enforcing certain aspects of the Persons with Disabilities Act of 2003 such as provisions on the adjustment orders for public buildings to make them accessible, to make public transport accessible and to make the infrastructure in general accommodating.

Similarly, the government has faced challenges adhering to the 5% quarter in employment, public appointment and/or election of persons with disabilities as provided for in both the Act and the Constitution. Even very well meant affirmative actions like the consideration of 30% of

government procurement tenders reservation for women, youth and persons with disabilities have presented challenges for persons with disabilities as they have for various reasons been unable to benefit from what would be their share.

A number of challenges have been attributed to inability to implement law and policy which is responsible for the slow progress in the improvement of the living standards of persons with disabilities. In the first place, there is the problem of inadequate budgetary allocation for the implementation of these legislations and policies, a factor attributed to limited resources as well as non-prioritization of disability, amongst others. The National Council for Persons with Disabilities (NCPWD) which is charged with follow up and enforcement of the law, for example, does not have adequate resources to audit the organizations and enforce the provision of the law which promote accessibility. With its current capacity, NCPWD is only able to audit between 20 -100 organizations in a year out of the over 1000 agencies that need to be audited.

In addition, the government's development of implementation guidelines for policies has tended to lag behind policy development and when these are developed, the process has not been fully inclusive. On employment, the placement of persons with disabilities to fill the 5 percent quota has been hampered by the low skill levels and requisite experience among persons with disability.

Another factor for the slow implementation of policies has been the relatively low involvement/unstructured engagement of non-state actors such as organizations of persons with disabilities and service providers in the planning and implementation. In cases where organizations of persons with disabilities have been called upon to participate, their participation has been limited owing to low organizational and management capacity due to inadequate human and financial resources.

Implementation has further been hampered by the fact that collaboration between various government departments providing services as well as other actors has been less than optimal, a factor that reduces the necessary synergy to accelerate compliance and implementation. Compliance and implementation is also hampered by low levels of awareness on disability among some policy makers and implementers which results in maintenance of prevailing negative attitude.

### **III. Inclusion, participation, service delivery and challenges**

A Major concern in achieving inclusion at all levels and therefore service delivery is the need for awareness raising as highlighted in article 8 of the CRPD. The Disability Policy provides that ‘the Government shall conduct awareness campaigns in collaboration with organizations of and for persons with disabilities, parents groups, and other service providers’. Arguably, this should translate into targeted awareness creation efforts to reduce stigma and discrimination of persons with disabilities. While the Government has not made much deliberate effort towards public awareness program as should have been the case, there are some commendable initiatives which have resulted in a good measure of awareness. Among these is the NCPWD’s disability mainstreaming program which has managed to influence Government ministries and departments. Most important in this process of awareness raising methodology has been the inclusion of disability mainstreaming as a part of performance contract for the key staff in these ministries and departments. There is however the need to evaluate the impact of the Disability Mainstreaming Committees in these ministries and departments in terms of attitude change, reasonable accommodation, increased employment, retention and promotion of persons with disabilities at their places of work. The shortcoming of this process is that it has only targeted the Government leaving out the wider public sector who form a significant proportion of employers in the country.

Another initiative that has led to a good measure of awareness raising is the implementation (though not in full) of the constitutional provision for the nomination of persons with disabilities into political positions both at the level of the national assembly and county assemblies. The visibility of these members both in their various assemblies and in the general public life has made a big difference. One setback in this is that despite the provision in the Constitution for the progressive realization of 5 percent representation, the number both in the national and county assemblies was greatly reduced from the last term of the Parliament and county assemblies. For instance, out of a total of 47 Counties, there are 17 County Assemblies that do not have any disability representative even though this is stipulated in the legal framework.

Suffices to mention that we also have a limited number of Persons with Disabilities serving as judges, constitutional commissioners, Principal Secretary as well as other senior and middle level cadres. While the above is the case, the realization of five percent representation as envisaged in the Constitution is still far from being achieved, hence a great challenge to the State.

On open employment endeavours, Compliance with the 5 percent quota system has been hampered by, among other things stiff competition in the open labour market to the disadvantage of persons with disabilities, limited education and training on the part of persons with disabilities, the need

for both special measures and reasonable accommodation in the formal and informal sectors. While these may be contributing factors, there is an urgent need for the state to enforce the 5 percent quota system as a means of addressing the unemployment of persons with disability. This can be done by ensuring that there are sanctions for non-compliance. Denial of reasonable accommodation should also be included as a ground for discrimination and therefore sanctioned.

On other inclusive economic endeavor, efforts have been made to integrate persons with Disabilities in some mainstream economic activities like the Women and Youth enterprise funds. Although provision exist to set aside 10 percent of the women and youth fund to benefit women and youth with disabilities, this has in practical terms not been possible mainly because of the tight and inflexible rules and regulations governing the administration of the two different funds. No affirmative or accommodating measures have been put into place.

Other efforts to benefit persons with disabilities in self-employment include the access to government procurement opportunities [AGPO] capacity building initiative which focusses on funds management leading to issuance of AGPO certificates. This is a system which is on trial where persons with disabilities who secure Government tenders through the procurement order which sets aside 30 percent of the government tenders for women, youth and persons with disabilities are guaranteed by the National Council for Persons with Disabilities--NCPWD in providing the necessary capital fund on loan basset to be recovered directly by the council on the payment for the procured services or goods. This is a new initiative the impact of which is yet to be assessed.

In the field of Education, The Sector Policy for Learners and Trainees with Disabilities (2018) has been developed with an overall goal of promoting the provision of education and training for learners and trainees with disabilities. The policy is aimed at ensuring that it is aligned with the Convention on the Rights of Persons with Disabilities on the principle of inclusive education. The new Policy focuses on adoption of inclusive education approaches and strategies in the provision of education services to learners with disabilities in all levels of education, starting from early childhood to university.

While the government aims to ensure an inclusive education system for all, realizing this goal faces many hurdles among them:

- Inability to provide appropriate educational support such as personal assistants, psychosocial support, learning material, appliances, financial and other appropriate services to encourage inclusion;
- Lack of early identification, educational assessment and appropriate placement of children with disabilities;
- Inadequate or no trained teachers in all schools to handle children with disabilities;
- Poor or no skills in Braille and sign language to cope with learners with sensory disabilities;
- Inadequate monitoring, supervision and quality control in all schools to ensure that children with disabilities are provided for without discrimination;
- Lack of measures to provide reasonable accommodation in the administration of examinations for learners with disability;
- Lack of resources to make adaptations to schools to have accessible environment for learners with disabilities;

#### **IV. Conclusion**

Suffices to mention that during the Global Disability Summit held in London in July 2018, Kenya made commitment to address many of the herein above mentioned shortcomings. A National Action Plan to provide framework to guide in the implementation of the commitments was prepared and an Inter-Agency Coordinating Committee established and launched with the responsibility of coordination and monitoring of the implementation of the interventions. The Committee is made up of both Government and non state actors including persons with disabilities through their representative organizations. However, more than one year later, the committee is as yet to convene and this is in itself a challenge.

#### **V. Key Question.**

It will help to learn from the experience of others as to how the country can put more effort in the enforcement of the rich legal frame-work that already exists to ensure that persons with disability enjoy their rights as provided in both the international instruments, national legislations and policies. We see this as a gap that needs addressing. Further, it will help to learn how others have ensured disability inclusive budgeting across Government ministries and departments as this is the best way to achieve full inclusion.