

UNITED DISABLED PERSONS OF KENYA



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UDPK

Our Ref: M/NA/03/20

18th February, 2020,
The Joint Secretaries
Att: Ambassador Martin Kimani, Mr. Paul Mwangi,
National Steering Committee on Implementation of BBI Taskforce,
12th Floor, Kenyatta International Conference Centre.

Dear Sirs,

RE: RESPONSE TO THE PUBLIC INVITATION BY NATIONAL STEERING COMMITTEE ON IMPLEMENTATION OF BBI TASKFORCE BY UDPK AND CDRA

The United Disabled Persons of Kenya (UDPK) is an umbrella organization of national and grassroots associations of persons with disabilities in Kenya. Currently, UDPK has eighty – six member organizations. Caucus on Disability Rights Advocacy (CDRA) is a coalition of organizations of and for persons with disabilities. CDRA seeks to promote the interests of persons with disabilities under the constitution of Kenya and the law.

In pursuit of their mandates, UDPK and CDRA have since 2013 engaged in a number of studies, research and policy change recommendations to ensure that interests of persons with disabilities are promoted and protected in all laws in Kenya.

The purpose of the Memorandum and proposals contained in it are intended to put the views of persons with disabilities in Kenya on record so as to elicit appropriate implementation action on the same for their sustainable benefit.

The Memorandum has been submitted in accordance with Articles 1, 10, 54 and other relevant provisions of the Constitution of Kenya on Public Participation and the Persons with Disabilities Act, No. 14 of 2003. More specifically, it provides CDRA's and UDPK's proposals to the National Steering Committee on Implementation of BBI Taskforce report.

We have made concrete proposals by way of a formal memo (copy herein attached) to National Steering Committee on Implementation of BBI Taskforce report in exercise of its mandate set out in Kenya Gazette, Vol. CXX—No. 64 of 31st May, 2018; Notice No. 5154 dated 24th May, 2018. Paragraph 2 (i) of the Gazette Notice provides that "In the performance of its functions, the Taskforce shall solicit, receive and consider written memoranda or information from the public ..."

It is our humble prayer that you will use your good office to guide the task force in prioritizing our memo under reference for the benefit of persons with disabilities in Kenya. We also request for a face to face meeting with your committee to expound further on the proposals highlighted in the Memo.

Yours Sincerely,

Anderson Gitonga, CEO – UDPK

FOR AND ON BEHALF ON UNITED DISABLED PERSONS OF KENYA (UDPK) AND CAUCUS ON DISABILITY RIGHTS ADVOCACY (CDRA)



February 2020



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CAUCUS ON DISABILITY RIGHTS ADVOCACY (CDRA)

MEMORANDUM SUBMITTED TO THE NATIONAL STEERING COMMITTEE ON IMPLEMENTATION OF THE BUILDING BRIDGES INITIATIVE TASKFORCE

February 2020

MEMORANDUM TO THE NATIONAL STEERING COMMITTEE ON IMPLEMENTATION OF THE BUILDING BRIDGES INITIATIVE TASKFORCE REPORT

Prepared by Caucus on Disability Rights Advocacy (CDRA) and United Disabled Persons of Kenya (UDPK)

I. Introduction

1. This memorandum is prepared by the Caucus on Disability Rights Advocacy (CDRA) and the United Disabled Persons of Kenya (UDPK).
2. CDRA is a coalition of organizations of and for persons with disabilities which seeks to promote the interests of persons with disabilities in terms of the Constitution of Kenya, 2010. UDPK is an umbrella organization of national and grassroots associations of persons with disabilities in Kenya, presently comprising 86 organizations.
3. This memorandum has been prepared in response to a call for feedback from the Building Bridges Initiative (BBI) on its report entitled, *'Building Bridges to a United Kenya: from a Nation of Blood Ties to a Nation of Ideals'* (BBI Report). The memorandum was drawn from the conclusions of a meeting held on 31st January 2020 involving 120 representatives drawn from 35 counties which were representative of all the 47 counties.
4. The memorandum sets out the challenges which continue to face Kenyans with disabilities, and it makes recommendations on the measures which the BBI should include as an integral part of the national agenda.

II. Overall positive aspects

5. We welcome the broad policy and administrative reforms which the BBI Report has proposed to resolve the nine challenges identified as facing the country. Kenyans with disabilities are, first and foremost, citizens of this country, and they are keen on ensuring the overall sustainable development of Kenya as well as the full enjoyment of human rights by all.

III. Concerns and recommendations

6. As persons with disabilities, we are gravely concerned that the proposed policy, legislative and administrative reforms by the BBI report make no recommendation to deal with the challenges faced by persons with disabilities. While the BBI Report identifies some of the challenges that persons with disabilities face, including stigma, exclusion and inadequate policy and legislative responses, it does not draw disability-specific conclusions and recommendations.
7. Our specific concerns and recommendations are set out here.

Process

8. We are extremely concerned that BBI has thus far paid scanty attention to including persons with disabilities in its processes. The structures of the BBI, including the BBI Presidential Taskforce and the BBI secretariat, do not represent the face of Kenya since they have, respectively, no members or technocrats with disabilities.

9. Indeed, to our knowledge, even the recently gazzeted National Steering Committee on Implementation of BBI Taskforce does not include any persons with disabilities.
10. This situation violates the United Nations Convention on the Rights of Persons with Disabilities (CRPD) as well as the national Constitutional values and principles, including participation of the people, human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized (see articles 4.3 and 33.3 of the CRPD and, 10(2); 27(4) and 54 of the Constitution).
11. The National Steering Committee on Implementation of the BBI Taskforce is constitutionally-bound to give full consideration to the views of persons with disabilities including by making appropriate conclusions and recommendations on them. In that regard, we recommend that:
 - a. The National Steering Committee on Implementation of BBI Taskforce report should forthwith be reviewed to include persons with disabilities at its various levels.
 - b. The National Steering Committee on Implementation of BBI Taskforce report should organize a high-level national forum for persons with disabilities to collect their views and thus ensure their full and meaningful participation.
 - c. The National Steering Committee on Implementation of BBI Taskforce county forums should specifically include persons with disabilities, and be held in facilities that are accessible in terms of physical facilities, transport, communication and information, including the use of Kenya Sign Language, Braille and other augmentative means of communication. To this end, we hereby annex to this memorandum a list of our contact persons with their specified disabilities across various counties.
 - d. The National Steering Committee on Implementation of BBI Taskforce report should also review and take account of the initial memorandum submitted by CDRA and UDPK, dated 5th August 2019 on matters of concern to persons with disabilities.
 - e. The National Steering Committee on Implementation of BBI Taskforce report should also take account of recommendations submitted to it on disability by State institutions that are established to promote and protect the rights of persons with disabilities, including the Kenya National Commission on Human Rights and the National Gender and Equality Commission.
 - f. Reports deriving from the National Steering Committee on Implementation of BBI Taskforce process should be disseminated to persons with disabilities in accessible formats including Kenya Sign Language, Braille and other augmentative means of communication.

Review of National Policy on Disability

12. The National Disability Policy which has been outstanding since April 2016 should be expeditiously finalized, adopted and implemented; ensuring that it recognizes the multiple marginalization of persons with disabilities, including on the basis of disability, gender and social class. The Policy should also anchor sustainable attainment of commitments made at various regional and international platforms, including CRPD, the East African Community

Disability Policy, the Global Disability Summit and the 2030 Agenda for Sustainable Development.

Replacement of the Persons with Disabilities Act with a new statute on persons with disabilities

13. The Persons with Disabilities Act No. 14 of 2003 should be repealed in its entirety and replaced with a new law. Disability stakeholders have lobbied long and hard for the enactment of a new legislation to reflect the country's changed normative situation relating to persons with disabilities, following the country's ratification in 2008 of the CRPD and the promulgation in 2010 of the New Constitution. The new law should be anchored in the social model of disability, as distinct from the charity model of disability which permeated policy and law-making on disability.

Replacement of the Mental Health Act 1989 with a new statute on persons with mental/psychosocial disabilities

14. As a State Party to the CRPD, Kenya should recognize persons with mental health conditions as persons with psychosocial disabilities. The Mental Health Act of 1989 should be repealed in its entirety and replaced with a new law. The current law is based on outdated notions where persons with mental/psychosocial disabilities are deprived of their legal capacity and viewed only as objects of care rather than as full and equal citizens capable of exercising their rights on an equal basis with others. In addition, the current law is not aligned with community-based approaches of providing services and focuses largely on curative aspects to the exclusion of approaches that promote wellness for all. Parliament should fast-track the review of the Mental Health Act in line with the World Health Organizations' Quality Rights Initiative on mental health as well as the CRPD.

Representation of persons with disabilities

15. We remain extremely concerned by the statutory and institutional failings which have undermined the full representation of persons with disabilities in elective and appointive bodies. For instance, despite the provision in the Constitution for the representation of persons with disabilities in county assemblies, 17 of the 47 county assemblies do not have any persons with disabilities as representatives while 8 have only 1 representative. The BBI Report does not recognize that inclusion cannot be attained if specific interventions are not made to ensure the full participation of persons with disabilities both as voters and as candidates to elective and appointive positions. In that regard, we recommend that:
 - a. The electoral process should be accessible in terms of physical facilities, transport, communication and information including provision of Kenya Sign Language Interpretation, Braille and other augmentative means of communication.
 - b. An electoral college should be adopted as the model for the election of persons with disabilities to serve in the National Assembly, Senate and County Assemblies. The law

to make this model operational should require that persons with disabilities specifically determine who should represent them. In addition, elections of persons with disabilities at all levels must put into consideration representation by both men and women with disabilities as well as different disability categories.

- c. The political parties must adhere to the CRPD, rule of law and the Constitution on inclusion and self-representation of persons with disabilities.
- d. A substantive law should be enacted to give effect to Article 100 of the Constitution with regard to representation of persons with disabilities.
- e. The integrity of the electoral process for persons with disabilities should be specifically protected. Persons who purport to have a disability for purposes of exploiting seats set aside for persons with disabilities should be sanctioned severely.
- f. The representation of persons with disabilities should be enforced to the effect that the National Assembly, Senate and County Assemblies which do not have members with disabilities will be deemed not to be properly constituted as per the Constitution.
- g. The electoral laws should be amended to ensure inclusion of persons with disabilities and ensure implementation or compliance with relevant laws. For instance, political parties should ensure funding for disability concerns and the Independent Electoral and Boundaries Commission should ensure that the register of voters capture disaggregated data on persons with disabilities in terms of disability categories, age and gender.
- h. National and county governments must include persons with disabilities in senior appointive positions such as cabinets, constitutional offices and other senior, middle and starting-level positions.

Economic and social issues

16. Implementation of the principle established in Article 54 (2) of the Constitution which provides that at least five percent of the members of elective and appointive bodies should be persons with disabilities, should be realized fully with immediate effect and not on a progressive basis. A law to this effect should be put into place. Similarly, Article 232(1) (i) (iii) of the Constitution on affording adequate and equal opportunities for appointment, training and advancement at all levels of the public service should be realized in respect to persons with disabilities.
17. In this regard, it is worth noting that data from the Public Service Commission on employment of persons with disabilities in the Public Service highlights that of the 251 institutions evaluated in the 2017/2018 financial year, there were 2,155 persons with disabilities represented, accounting for 1.1% of the in-post. The performance gap therefore is 3.9% of the 5% requirement. Out of the 251 evaluated institutions, 10 (4%) complied with the 5% requirement, out of which 8 were from State Corporations and Semi- Autonomous Government Agencies(SAGAs), one each from Constitutional Commissions, Independent Offices and Public Universities. None of the 44 Ministries and State Departments and all the 7 Statutory Commissions and Authorities complied. This is according to the *Public Service Commission*,

Evaluation Report for the Year 2017/2018 on the Public Service Compliance with the Values and Principles in Articles 10 and 232 of the Constitution, pg. 33-34.

18. The process of establishing and disaggregating data relating to persons with disabilities (monograph) from the 2019 National Census should be finalized on a priority basis to support their full inclusion in national development and planning.
19. We note that assessment of disability for purposes of registration as a person with disability and issuance of the disability card is currently at a cost to the applicant. This has hindered many from applying for assessment and therefore being registered as a person with disability. We recommend that the assessment, registration and issuance of the disability card be made free to ensure that the cost is not an impediment to those who deserve to be registered as persons with disabilities.
20. The registration of persons with disabilities should be completed at the level of the devolved government by the highest public health authority instead of requiring those seeking registration to appear before the Director of Medical Services at the Ministry of Health Headquarters in Nairobi. A disability card once issued should be the final proof that one is a person with disability and this should be used for all purposes including application for tax exemption. Consequently, permanent tax exemption certificates should be issued to persons who have been assessed and issued with disability card as having permanent disability. Such persons should not be required to prove their disability beyond the card.
21. Stiff criminal sanctions should be imposed on persons who purport to have a disability ('disability imposters') for purposes of enjoying tax exemption.
22. The tax exemption process should be decentralized to the counties to avoid the great inconvenience which applicants face when their applications are processed centrally in Nairobi.
23. Tax exemption should also be provided to startups by persons with disabilities as a mechanism and strategy of enhancing their capacity for income generation.
24. We acknowledge that the government has set aside 30% of the Access to Government Procurement Opportunities (AGPO) for women, youth and persons with disabilities. Experience has shown that persons with disabilities have largely not benefitted from this provision since the greater portion of the opportunity goes to women and youth. We recommend that the allocation is further segmented to ensure a fair share of opportunities for enterprises run by persons with disabilities. It should be streamlined by guaranteeing a minimum reserved procurement allotment for them; and should not only be seen in terms of numbers but also in terms of the value of the procurement. This should be the case both at the national and county levels.
25. We acknowledge the fact that the government through the president's Big Four Agenda is striving towards universal health care for all; this is not as yet achieved. We however note that health is a major concern for persons with disabilities. We therefore recommend fast tracking of the universal health care specifically for persons with disabilities. This should be especially the case for women and girls with disabilities with regard to sexual and reproductive health.

26. The government of Kenya came up with a policy, Sector Policy for Learners and Trainees with Disabilities in May 2018 whose emphasis is on inclusive education. While launching the policy, the President ordered the Ministry of Education to spend at least 20% of its infrastructural budget to make education accessible for all children. We recommend that this policy is fast tracked to ensure quality inclusive education for all learners with disabilities, paying specific attention to the children with Autism Spectrum Disorder, intellectual disabilities, cerebral palsy and other multi-sensory disorders.
27. Social Protection has been instituted where persons with severe disabilities are enrolled for cash transfer programmes at household level. Defining severe disability has been in itself a problem and targeting has at times been very discriminative. We recommend that social protection and thus cash transfer programme be extended to all persons with disabilities who do not have any other means of income at individual level and this should be extended also to caregivers who cannot work as their care giving services are required 24 hours.
28. We note that persons with disabilities in risk situations have at times not been given attention, and have often suffer as they are forgotten in rescue and rehabilitation services. We recommend that the safety and security of persons with disabilities be guaranteed and enhanced especially in humanitarian situations.
29. Past experience has shown that persons with disabilities and especially women and girls have been subjected to neglect, abuse and violence. We recommend that all forms of violence, abuse and neglect against women, girls and children with disabilities be urgently addressed, ensuring safe spaces as well as access to justice for the victims.

Institutional measures

30. It is appreciated that the National Council for Persons with Disabilities is a SAGA, specific to addressing concerns of persons with disabilities. We note that though established by law, it could be strengthened to give greater impact to disability concerns. In this regard we recommend that the roles of the National Council for Persons with Disabilities be enhanced so as to play supervisory, oversight, investigative and monitoring functions to ensure that all other government departments and service agencies such as Constituency Bursary Fund, Constituency Development Fund and Economic Programmes such as Women and Youth Enterprise Fund are fully inclusive of persons with disabilities in their provision of services; and thus avoiding segregation and separate service provision for persons with disabilities.

Conclusion

31. No Constitutional amendments should be carried out in whichever manner that in any way directly or indirectly erode or negate the rights of persons with disabilities contained in the Constitution of Kenya 2010.