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**THE PERSONS WITH DISABILITIES
(AMENDMENT) BILL, 2015**

A Bill for

AN ACT of Parliament to amend the Persons with Disabilities Act; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Persons with Disabilities (Amendment) Act, 2015.

Short title.

2. The Persons with Disabilities Act, hereinafter referred to as the “principal Act”, is amended in section 2 by inserting the following new definitions in their proper alphabetical sequence-

Amendment of section 2 of No.14 of 2013.

“Authority” means the Social Assistance Authority established under section 3 of the Social Assistance Act;

No. 24 of 2013

“county executive committee member” means the county executive committee member responsible for matters relating to persons with disabilities; and

“committee” means the county committee for persons with disabilities established under section 2C.

3. The principal Act is amended by inserting the following new Parts immediately after Part I-

Insertion of new part IA.

PART 1A—STATE OBLIGATIONS

Obligations of national government.

2A. The national government shall—

- (a) develop policies on the protection and promotion of the welfare of persons with disabilities;
- (b) cause to be undertaken surveys, investigations and research concerning the causes of the occurrence of disabilities and development of new assistive devices;
- (c) promote various measures for prevention of disabilities;
- (d) provide facilities and infrastructure for the training of

professionals in the rehabilitation of persons with disabilities;

- (e) promote the integration of persons with disabilities in schools and in employment within the public service; and
- (f) ensure access to free basic education and other social amenities to every child with a disability.

Obligations of county governments.

2B. County governments shall—

- (a) implement national policies for the protection and promotion of the welfare of persons with disabilities;
- (b) coordinate government sponsored and non-government sponsored programmes targeting persons with disabilities within their respective counties;
- (c) align county legislation and regulations with national policy relating to persons with disabilities; and
- (d) promote the integration of persons with disabilities in the county public service.

PART IIA—COUNTY COMMITTEES

County committees.

2C. (1) There is established, in each county, a county committee for persons with disabilities which consists of-

- (a) one public officer appointed by the Governor who shall be the chairperson to the committee;
- (b) two persons, one man and one woman, representing faith based organizations which deal with issues affecting persons with disabilities in the county,

appointed by notice in the *Gazette* by the Governor;

- (c) two persons, one a man and one a woman, who have knowledge and experience in running programmes related to persons with disabilities, appointed by notice in the *Gazette* by the Governor; and
- (d) one public officer working in the county appointed by the Governor who shall be an *ex officio* member and the secretary to the committee.

(2) The committee shall be a committee in the office of the county executive committee member.

Functions of the committee.

2D. The functions of the committee shall be to—

- (a) develop mechanisms for the identification of persons with disabilities residing in the respective county;
- (b) establish a database of persons with disabilities containing the following information—
 - (i) their names and places of residence;
 - (ii) the types of disability;
 - (iii) any interventions made in relation to such persons; and
 - (iv) and such other information that the committee may consider necessary;
- (c) monitor and evaluate the progress by the county in ensuring that Article 54(1) of the Constitution is realized;
- (d) advise the Governor on the appropriate measures and interventions to be put in place for the protection of persons with

disabilities in the county;

- (e) implement programmes to promote the socio-economic development of persons with disabilities in the county; and
- (f) coordinate the implementation of programmes relating to persons with disabilities in the county developed by the Council and the Authority.

Tenure and
conditions of service.

2E. (1) A person appointed under section 2C(1)(b) and (c) shall hold office for a term of three years and shall be eligible for reappointment for a further non-renewable term of two years.

(2) The members of the committee shall be paid such allowances as the county executive committee member shall, in consultation with the Salaries and Remuneration Commission, determine.

Vacancy.

2F. (1) The office of a member of the committee appointed under section 2C(1)(b) and (c) shall become vacant if the member—

- (a) is adjudged bankrupt;
- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (c) is convicted of an offence involving fraud, dishonesty or discrimination;
- (d) is absent, without reasonable cause, from three consecutive meetings of the committee;
- (e) resigns in writing addressed to the county governor;
- (f) is removed from office by the

county governor for—

- (i) being unable to perform the functions of the office by reason of mental or physical infirmity; or
- (ii) failing to declare his or her interest in any matter being considered or to be considered by the committee; or

(g) dies.

(2) Before the removal of a member under subsection (1)(f), the county governor shall request the committee to-

- (a) investigate the circumstances giving rise to the proposed removal; and
- (b) make recommendations on whether or not the member should be removed from office.

Amendment of
section 4 of No.14 of
2013.

4. Section 4 of the principal Act is amended in subsection (1)—

- (a) by deleting paragraph (b);
- (b) by deleting paragraph (c) and substituting therefor the following new paragraph-
- (c) four persons representing the Ministries responsible for—
 - (i) labour and social welfare;
 - (ii) devolution;
 - (iii) education; and
 - (iv) health;
- (c) by deleting paragraph (d);
- (d) in paragraph (g) by deleting subparagraph (i) and substituting therefor the following new subparagraph—
 - (i) the membership of the Council

shall not exceed fifteen persons, out of whom at least ten members shall be persons with disabilities;

5. Section 21 of the principal Act is amended by—

Amendment of
section 4 of No. 14
of 2013.

- (a) by renumbering the existing paragraph as subsection (1); and
- (b) by inserting the following new subsection-

(2) The relevant state agency shall not approve the construction of a road, building or any other premises if the plans for the construction do not include access for persons with disabilities.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

Article 54(1) of the Constitution provides for various rights in relation to persons with disabilities. These include the right to access various social amenities and the right to be treated with dignity and respect. The Constitution further establishes two levels of government, the national government and the county governments. These two levels of government have an obligation to ensure that persons with disabilities within their jurisdiction are protected and that the requirements of Article 54(1) of the Constitution are met. It is in this context that this Bill proposes to impose on each level of government to address the socio-economic needs of persons with disabilities.

The Bill proposes to establish, in every county, a committee for persons with disabilities which shall have representations from the county government and organizations that run programmes for the benefit of persons with disabilities. The committee will be mandated to advise on and put in place measures to ensure the socio-economic development of persons with disabilities in the county.

The Bill further proposes to review the membership of the National Council for Persons with Disabilities in order to make the workings of the Council more efficient and representative.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers nor does it limit any fundamental rights and freedoms.

Statement on how the Bill concerns county governments

The Bill provides for the establishment of a county committee for persons with disabilities. The Bill is therefore a Bill concerning county governments in terms of Article 110(1)(a) of the Constitution.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 9th June, 2015.

GODLIVER OMONDI,
Senator.

Section 2 of Act No. 14 of 2013 of which it is proposed to amend—

2. Interpretation

In this Act, unless the context otherwise requires—

“adjustment order” means an order made by the Council under section 24;

“aged person” includes a person with a disability who has been forced into retirement from employment due to his disability;

“assistive devices and services” means implements, tools and specialised services (including the services of qualified interpreters for the deaf and qualified teachers for the blind) provided to persons with disabilities to assist them in education, employment or other activities;

“Council” means the National Council for Persons with Disabilities established under section 3;

“disability” means a physical, sensory, mental or other impairment, including any visual, hearing, learning or physical incapability, which impacts adversely on social, economic or environmental participation;

“discriminate” means to accord different treatment to different persons solely or mainly as a result of their disabilities and includes using words, gestures or caricatures that demean, scandalise or embarrass a person with a disability;

“doctor” means a person registered or licensed as a medical practitioner under the Medical Practitioners and Dentists Act (Cap. 253);

“Fund” means the National Development Fund for Persons with Disabilities established under section 32;

“organizations for persons with disabilities” means associations or societies formed for the purposes of rendering services to persons with disabilities; **“organizations of persons with disabilities”** means associations or societies formed by persons with disabilities for their welfare and protection;

“usual day-to-day activities” means the activities of daily living which an ordinary person would reasonably be expected to carry out.

Section 4 of Act No. 14 of 2013 of which it is proposed to amend—

4. Membership

(1) The Council shall consist of the following members appointed by the Minister—

- (a) not more than eight persons nominated in a manner approved by the Minister, by organizations representing persons with various categories of disabilities;
- (b) three members appointed from a panel of names submitted to the Minister by organizations for persons with disabilities;
- (c) eight members representing the Ministries responsible for the following—
 - (i) culture and social services;
 - (ii) local government;
 - (iii) health;
 - (iv) education;
 - (v) economic planning;
 - (vi) housing;
 - (vii) transport; and
 - (viii) labour;
- (d) one member representing the Attorney General;
- (e) one member appointed from a list of not less than three persons submitted by an organization which the Minister responsible for labour deems to be representative of employers in Kenya;
- (f) one member appointed in consultation with the organization for the time being recognized by the Government as the umbrella organization representing the interests of workers in the country; and
- (g) such other members as may be co-opted by the Council with the approval of the Minister:

Provided that—

- (i) the membership of the Council shall not exceed twenty-seven persons, out of whom at least twenty members shall be persons with disabilities;
- (ii) the members nominated under paragraph (a) shall equitably represent the types of disabilities occurring in the country; and
- (iii) one of the members of the Council shall be from a rural-based organization.

(2) The Minister shall appoint one of the members appointed under subsection (1)(a) as the chairman.

(3) The Minister shall appoint one of the members, other than a member appointed under subsection (1) (c) or (d), as the vice-chairman.

(4) The member appointed under subsection (1) (c) to represent the Ministry of Education shall be a child psychologist.

Section 21 of Act No. 14 of 2013 of which it is proposed to amend—

21. Accessibility and mobility

Persons with disabilities are entitled to a barrier-free and disability-friendly environment to enable them to have access to buildings, roads and other social amenities, and assistive devices and other equipment to promote their mobility.