



MINISTRY OF LABOUR AND SOCIAL PROTECTION

CABINET MEMORANDUM ON THE RATIFICATION OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF PWDS IN AFRICA

(Memorandum submitted by the Cabinet Secretary for Ministry of Labour and Social Protection)

1.0 Objective of memorandum

The objective of this Memorandum is to brief and request the Cabinet to approve the ratification by Kenya the African Charter on Human and Peoples' Rights on the Rights of PWDs in Africa.

2.0 Background of the Subject Matter

The AU through Heads of States and Governments through Assembly Decision (Assembly/AU/Dec. 676 (XXX) of January 2018, adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of PWDs in Africa.

This Protocol was necessitated by pragmatic and Institutional realities in Africa coupled by high prevalence of disability on the Continent.

Kenya is a signatory to the UN Convention on the Rights of PWDs – UNCRPD. The Kenyan constitution also acknowledges PWDs as a special vulnerable group whose rights needs to be upheld and be treated with respect and dignity. The Constitution at Article 27(4) and 27(5)

acknowledges marginalization of Persons with Disabilities and hence entrenches the principle of non-discrimination and affirmative action to remedy historical marginalization. As a result, the Government introduced Disability Mainstreaming as a target in the annual performance contracting in the public service. All Ministries, Departments and State Corporations are expected to have annual targets to mainstream disability issues.

Kenya co-hosted the Global Disability Summit held in London in July 2018. Before proceeding to London for the Summit, Kenya held a ‘mini-summit’ bringing together state and non-state actors and came up with a ‘position paper’. This position paper formed the basis of commitments which Kenya made during the Summit. One of the Key commitments was to ratify the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of PWDs in Africa. Many organizations and governments have taken a keen interest in Kenya due to the progressive and far reaching commitments made.

Further, the national PWD policy forms a basis for provision of services and protection to Persons with Disabilities while according them an inclusive environment conducive for the enjoyment of their right to life, freedoms, liberties and pursuit of happiness. This policy was as a result of several years of intense, wide and exhaustive consultations involving Government departments, Persons with Disabilities, Organizations of Persons with Disabilities; parents’ support groups and other stakeholders. This policy draws heavily from National, Regional and International experiences by Government and various other stakeholders.

The Persons with Disabilities Act of 2003, which is currently under review, was brought into effect in June 2004. Its current review is meant to align it to the constitution of Kenya and bring it up to speed with the current realities in Kenya and the world today.

The Kenya Vision 2030 of 2008 recognizes disability mainstreaming as one of the flagship projects under the Social Pillar. The first medium term plan of the Vision established the National Development Fund for Persons with Disabilities, the Cash Transfers to Persons with Severe Disabilities and Guidelines for compliance of the 5 percent provision for Persons with Disabilities in employment.

In a breakfast meeting held on 29th March, 2019 at the Hilton Hotel, Nairobi, participants/partners/stakeholders unanimously supported the ratification of the protocol and vowed to support its ratification and implementation.

Kenya is an influential regional powerhouse in the East African region. No African country has ratified this protocol so far and requires ratification of 15 member states in order for it to come into force. Having been a co-host at the Global Disability Summit, Africa may be looking at Kenya to show direction on this matter.

2.1 Analysis of the Situation

Kenya has a robust Policy and legislative framework on disability. Some Ministries, Departments and Agencies and also various institutions and organizations have developed their individual policies and programs on

disability. Indeed, Kenya has made tremendous strides on this front. Whereas this is acknowledged, it should be appreciated that Disability is a versatile and dynamic field which cuts across cultures and national & international boundaries. Hence Kenya is not safe till the region and Africa is safe from violence against PWDs. Given the unique challenges facing PWDs in Africa, it is in the interest of Kenya that Kenya ratifies and also lobbies other countries to do the same.

3.0 SALIENT FEATURES OF AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF PWDS IN AFRICA

Some of the salient features are:

- (i) Ensure mainstreaming of disability in policies, legislations development plans, programs and activities.
- (ii) It outlaws discrimination of whatever kind
- (iii) Outlines right to access to services, facilities and devices
- (iv) Right to liberty and security and outlaws deprivation of liberty on the basis of disability or perceived disability
- (v) The charter outlaws harmful cultural practices (which are rampant in Africa).
- (vi) The right to self-representation
- (vii) The charter flags out women and girls, children, older persons and youth as a special category of PWDs

- (viii) The Charter acknowledges that PWDs have responsibilities and calls on State parties to give PWDs an opportunity to exercise these responsibilities
- (ix) Cooperation and collaboration among states in terms of sharing knowledge, information and best practices in PWD management

3.1 General principles of the Protocol

The overall principles of the Protocol are:

- i. To ensure respect, for, and protection of the inherent dignity, privacy of the individual
- ii. To Uphold non-discrimination
- iii. Respect for the difference and acceptance of PWDs as part of human diversity
- iv. Equality of opportunity
- v. Accessibility
- vi. Reasonable accommodation
- vii. Equality among gender
- viii. The best interest of the child
- ix. Respect for the evolving capacities of children with Disabilities and respect for the right of children with disabilities to preserve their identities

4.0 Institutional Framework

The Ministry responsible for disability matters shall spearhead the ratification and implementation of the Charter recognizing already achieved areas or provisions.

The Ministry will spearhead the reporting on the progress made as required by the Charter. The other Government Ministries, Departments and Agencies will be consulted to give direction and advise like the Ministry of Foreign Affairs, National Treasury, East African Community and office of the Attorney general among others.

5.0 Financial implications

The ratification and implementation of the Charter will require financial resources from the Government, Development Partners and other stakeholders including Civil Society Organizations (CSO). These funds will be requested through the sector process during the budget preparation cycle/process.

The initial financing expectation is as indicated below:

- (i) Printing of the Charter for dissemination – Kshs. 1,000,000
- (ii) Dissemination of the Charter in all counties; Kshs 10,000,000
- (iii) Attending pre-ratification sessions and meetings ~ 2,000,000

6.0 Recommendations to the Cabinet

The Cabinet is requested to:

- a) Approve and adopt that **Kenya agrees to ratify this protocol**
- b) Grant authority to the Ministry of Labour and Social Protection to take the lead in the ratification process as per the Executive Order
- c) Direct relevant Ministries, Departments and Agencies to support the process of ratification.

This Memorandum is presented to the cabinet by: -

Hon. (Amb.) Ukur Yatani

Cabinet Secretary

Ministry of Labour and Social Protection:

~~~~~

Date: ~~~~~