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SIAYA COUNTY BILLS, 2023

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Bill
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**THE SIAYA COUNTY PERSONS WITH DISABILITIES BILL,
2023**

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**THE SIAYA COUNTY PERSONS WITH DISABILITIES BILL,
2023**

A Bill for

AN ACT of the County Assembly of Siaya to protect the rights and privileges of Persons with Disabilities; to promote equal opportunities for Persons with Disabilities; to mainstream matters affecting Persons with Disabilities within the County and for connected purposes

ENACTED by the County Assembly of Siaya, as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Siaya County Persons with Disabilities Act, 2023

Interpretation

2. In this Act unless the context otherwise requires—

“Act” means the Siaya County Persons with Disabilities Act, 2023;

“Assistive devices and services” means tools, technology, equipment and specialized services for persons with disabilities;

“Committee” means the Siaya County Committee for Persons with Disabilities established under section 5;

“County Assembly” means the County Assembly of Siaya;

“County Government” means County Government of Siaya;

“Chief Officer” means a Chief Officer for the time being responsible for matters related to Persons with Disabilities;

“Secretary” means a secretary appointed under section 9;

“County Secretary” means an officer appointed under section 44 of the County Governments Act, 2012;

“County Public Service Board” means a body corporate established under section 57 of the County Governments Act, 2012;

“Public premise” means a built environment within Siaya County to which members of the public can access;

“County public service” shall bear the meaning ascribed to it by the County Governments Act, 2012;

“County Executive Committee Member” means a member of the County Executive Committee for the time being responsible for matters relating to Persons with Disabilities within County Government of Siaya;

“Fund” means the Siaya County Fund for Persons with Disabilities established under section 22(1);

“Habilitation” means a process aimed at helping people with disabilities gain, attain keep, improve certain skills or new skills, abilities, and knowledge, or improve skills and functioning for daily living;

“Member” means a member of the Committee established under section 4(1);

“organizations for persons with disabilities” means registered associations, groups or societies for the purposes of rendering services to persons with disabilities;

“Organizations of persons with disabilities” means registered associations, groups or societies formed by Persons with Disabilities for promoting their welfare and protection;

“Persons with Disabilities” means persons with any form of physical, sensory, mental, psychological or other impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on the person's ability to carry out ordinary day to day activities;

“Rehabilitation” means re-gaining skills, abilities or knowledge that may have been lost or compromised as a result of acquiring a disability, or due to a change in one's disability or circumstances.

Objects

3. The object of this Act is to—

- (a) establish a County Committee for Persons with Disabilities;
- (b) protect the rights and privileges of persons with disabilities;
- (c) promote equal opportunities and participation for persons with disabilities;
- (d) mainstream matters affecting Persons with Disabilities within the county.
- (e) Provide financial mechanisms that promote the inclusion and development activities for Persons with Disabilities.

Guiding principles

4. The following principles shall guide the implementation of the Act—

- (a) Participation of the people;
- (b) Human dignity;
- (c) Equity;
- (d) Social justice;
- (e) Inclusiveness;
- (f) Equality;
- (g) Human rights;
- (h) Non -discrimination and protection of the marginalized.

PART II—ESTABLISHMENT AND FUNCTIONS OF THE SIAYA COUNTY PERSONS WITH DISABILITIES COMMITTEE

Establishment

5. There is established the Siaya County Committee for Persons with Disabilities.

Composition

6. (1) The Committee shall consist of—

- (a) six Persons with Disabilities being representatives from each sub county nominated by the organization/s of persons with disabilities within the County and appointed by the County Executive Committee Member.
- (b) two persons of the opposite gender representing organizations for Persons with Disabilities
- (c) five (5) Chief Officers or their representatives who are not below the level of Director representing the following Departments within the County Public Service appointed by the County Executive Committee Member—
 - (i) Education, Youth Affairs, Gender, and Social Services;
 - (ii) Health Services;
 - (iii) Governance and Administration;
 - (iv) Finance and Economic Planning; and
 - (v) Roads and Public Works;
- (d) a representative of National Council for Persons with Disabilities who shall be an *ex-officio* member.
- (e) a Fund Administrator appointed under Section 24(1) of the Act who shall be the Secretary.

(2) The Committee may *co-opt* two additional members on need basis from recognized institutions promoting matters relating to Persons with Disabilities.

(3) The Committee shall, in its first sitting, elect a chairperson and vice-chairperson from among the members who shall be of opposite gender.

(4) A person qualifies for appointment as a member of the Committee under paragraph 1(a) and (b) if the person —

- (a) is registered with National Council for Persons with Disabilities and holds a certified disability card;
- (b) holds a secondary qualification from an institution recognized in Kenya;

- (c) has experience of not less than two years in leadership or management; and
 - (d) meets the requirement of Chapter six of the Constitution and any other written law.
- (5) Members appointed under section 6(1a) and (b) may be removed from office for—
- (a) violation of the Constitution or any other law;
 - (b) gross misconduct in the performance of his/her duties;
 - (c) incompetence or neglect of duty; and,
 - (d) physical or mental incapacity to perform functions of the Office;
- (6) The position of a member of the Committee appointed under paragraphs 6(a) and (b) shall become vacant if the member —
- (a) resigns in writing to the County Executive Committee Member through the Secretary;
 - (b) is adjudged bankrupt by a court of competent jurisdiction;
 - (c) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
 - (d) is absent from three consecutive meetings of the Committee without reasonable excuse; and,
 - (e) dies.
- (7) The County Executive Committee Member may upon the recommendation of the Committee terminate the appointment of a member on any of the grounds specified under sub-section 5.
- (8) Without prejudice to the subsection 5, the County Executive Committee Member shall apply the provisions of Article 47 of the Constitution on fair administrative action.
- (9) In the appointment of a member of the Committee, the County Executive Committee member shall ensure that not more than two thirds of the members are of the same gender.
- (10) Without prejudice to Section 6(1) (a) of the Act, every Sub county shall nominate and submit to the County Executive Committee Member the names of two Persons with Disabilities of either gender who shall be eligible for appointment to the Committee.

Conduct of Business

7. The Committee shall conduct its business as prescribed in the Schedule.

Tenure of office

8. The members appointed under sections 6(1a) and (b) shall hold office for a term of three years and may be eligible for re-appointment for one further term.

Secretary

9. The Secretary to the Committee shall be responsible for —
- (a) managing and supervising the Secretariat of the Committee
 - (b) the day-to-day management of the affairs of the Committee; and,
 - (c) carrying into effect the decisions of the Committee;

Staff

10. The Chief Officer shall, in consultation with the County Secretary, deploy such number of staff of the Secretariat for effective discharge of its functions under the Act.

Functions of the Committee

11. In discharging its functions under the Act, the Committee shall—
- (a) liaise with relevant government agencies to cause issuance of an adjustment order in accordance with the provisions of this Act;
 - (b) ensure implementation of National and Siaya County Government policies and programs designed to achieve equal opportunities for Persons with Disabilities including issues relating to discrimination, rehabilitation or habilitation and subsidized services;
 - (c) liaise with relevant government and non-governmental agencies to establish and maintain a database of Persons with Disabilities in Siaya County;
 - (d) liaise with relevant government and non-governmental agencies to ensure disability mainstreaming within Siaya County;
 - (e) advise the County Executive Committee Member on the provisions of any policies, legislation or agreements relating to the welfare, rehabilitation or habilitation of persons with disabilities for appropriate action;
 - (f) provide to the extent possible access to available information and technical assistance to all institutions, associations and organizations concerned with the welfare and services for Persons with Disabilities;
 - (g) prepare and submit an annual report to the County Executive Committee Member on the welfare and services for Persons with Disabilities;
 - (h) perform such other functions in fulfillment of the objects of this Act as the Committee may deem necessary.

Remuneration

12. The members and staff of the Committee may be paid such allowances as may be determined by the County Executive Committee Member as prescribed by the Salaries and Remuneration Commission.

**PART III—RIGHTS AND PRIVILEGES OF PERSONS WITH
DISABILITIES****Non-discrimination in employment**

13. (1) A person shall not deny a Person with Disabilities access to employment opportunities within the County Public Service for reason of his or her disability.

(2) County Government may to the extent possible, ensure progressive implementation of the principle that at least 5 percent of Persons with Disabilities shall access employment opportunities within the County Public Service.

(3) Subject to the provisions of the Employment Act, a Person with Disability is eligible to be engaged within the County Public Service as an apprentice or learner where the disability does not impede performance in particular occupations during the period within which the person is engaged.

(4) The Committee shall promote the realization of the rights and privileges under this section in consultation with the County Secretary and the County Public Service Board.

Discrimination by employers prohibited

14. (1) Any employer operating within Siaya County shall not discriminate against a Person with Disability in relation to—

- (a) advertisement of employment;
- (b) recruitment for employment;
- (c) creation, classification or abolition of posts;
- (d) determination or allocation of wages, salaries, pensions, accommodation, leave or other benefits;
- (e) choice of persons for posts, training, advancement, apprenticeship, transfer, promotion or retrenchment;
- (f) provision of facilities related to or connected with employment; or
- (g) any other matter related to employment.

(2) Without prejudice to subsection 14(1), an employer shall not be deemed to have discriminated against a Person with Disabilities if—

- (a) the act or omission alleged to constitute the discrimination was not wholly or mainly attributable to the disability of the person;
- (b) the disability in question was a relevant consideration in relation to the particular requirements of the type of employment concerned; or
- (c) special facilities or modifications, whether physical, administrative or otherwise, are required at the work place to

accommodate the Person with Disability, which the employer cannot reasonably be expected to provide.

(3) A complaint by a Person with Disability that his or her employer has discriminated against him or her contrary to this Act may be presented to the Committee or any other relevant body for appropriate action.

(4) An employer shall provide such facilities or carry out such modifications, whether physical, administrative or otherwise, in the workplace as may reasonably be required to accommodate Persons with Disabilities.

Records for training and job placement

15. The Committee shall establish and maintain a record of Persons with Disabilities within the county who are in possession of various levels of skills and training and shall update such records regularly for the purposes of training and competitive job placement.

Admission into an educational institution

16. (1) A learning institution within Siaya County shall not deny (a) Person with Disability(ies) admission if the person qualifies pursuant to article 54 of the Constitution.

(2) Without prejudice to sub section (1) the learning institution shall offer special facilities or make modification whether physical, administrative or otherwise required to accommodate the Person with Disability.

(3) Intergovernmental relations Act will help in the enforcement of sub- section 16 (1).

Health Rights

17. Every Person with Disability within Siaya County has the right to the highest attainable standard of health, which includes the rights to health care services, reproductive health rights, rehabilitation and habilitation.

Accessibility and mobility

18. (1) Persons with Disabilities are entitled to—

(a) a barrier-free and disability-friendly built environment to enable them have access to buildings, roads, parking spaces and other social amenities;

(b) assistive devices and other equipment to promote their mobility.

(2) A government or proprietor of a public premise shall progressively adapt it to suit Persons with Disabilities in such manner as may be prescribed by the relevant public works laws and regulations.

Right of access

19. Every Person with Disability has a right of access to public premises, services or amenities whether on payment of a fee or not.

Adjustment orders

20. Without prejudice to the provisions of section 19, if the Committee considers that any county public premise, service or amenities are inaccessible to Persons with Disabilities by reason of any structural, physical, administrative or other impediment to such access, the Committee may serve upon the owner of such premise or amenity with an adjustment order setting out—

- (a) a full description of the premises, services or amenities concerned; and
- (b) the grounds upon which the Committee considers that the premises, services or amenities are inaccessible to Persons with Disabilities;

Admission into premises

21. (1) No person shall, on the ground of any disability, deny a Person with Disability—

- (a) admission into any public premise;
- (b) the provision of any service or amenity to which members of the public are entitled, unless such denial is for the safety of such person(s).

(2) A person with disability who is denied admission into any public premises or the provision of any service or amenity contrary to subsection (1) shall be deemed to have suffered an injury and shall have recourse to a court of competent jurisdiction.

PART IV—ESTABLISHMENT OF THE SIAYA COUNTY PERSONS WITH DISABILITIES FUND**Establishment of the Fund**

22. (1) There shall be established a Fund to be known as the Siaya County Persons with Disabilities Fund.

(2) The Fund shall be established as a permanent Fund and the income therefrom shall be used for the benefit of Persons with Disabilities in the County.

Sources of the Fund

23. (1) The Fund shall consist of—

- (a) monies as appropriated by the County Assembly;
- (b) sums received as contributions, donations, gifts or grants from any lawful source;

- (c) monies earned or arising from any investment of the Fund; and
- (d) any money that may be payable or vested in the Fund.

(2) Without prejudice to section 22(1), all departments of the County Government shall mainstream activities in furtherance of the rights of Persons with Disabilities.

(3) The funds under this section shall be managed in accordance with the Public Finance Management Act, 2012 (as amended from time to time), as Read together with Public Finance Management (County Government) Regulations, 2015.

Administration of the Fund

24. (1) The Fund shall be administered by a Fund Administrator appointed by the County Executive Committee Member for Finance pursuant to section 116 of the Public Finance Management Act, 2012.

(2) The Fund Administrator shall—

- (a) supervise and control the administration of the Fund;
- (b) be the accounting office of the Fund
- (c) prepare a budget and such plans for better administration of the Fund to be approved by the County Executive Committee;
- (d) impose conditions or restrictions on the use of any expenditures arising from the Fund;
- (e) cause to be kept proper books of account and other books and records in relation to the Fund as well as all the various activities and undertakings of the Fund;
- (f) prepare, sign and transmit to the Auditor General in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund in accordance with the Article 226 of the Constitution of Kenya 2010, and the provisions of the Public Audit Act, 2003, and the Public Finance Management Act, 2012 and in such details as the County Treasury may from time to time direct; and,
- (g) furnish such additional information as may be required for examination and audit by the Auditor General or under any law.

(3) The County Executive Committee Member for finance shall in consultation with the County Executive Committee Member make Regulations to operationalize the Fund.

Fund Expenditure

25. (1) Without limiting the generality of Section 22(2), the Fund shall be used for —

- (a) facilitating the procurement of assistive devices and services for Persons with Disabilities;
- (b) supporting training of Persons with Disabilities in Vocational and Technical Training Centers;
- (c) contributing to the capital expenses of projects undertaken by the County Government for the benefit of Persons with Disabilities in Siaya County;
- (d) facilitating issuance of an adjustment orders;
- (e) implementing National Government and County Government policies and programs designed to achieve equal opportunities for Persons with Disabilities;
- (f) facilitating the establishment of a database of Persons with Disabilities in Siaya County in conjunction with other relevant bodies;
- (g) meeting any expenditure related to the administration of the Fund as may be approved by the County Executive Committee Member:

Provided that not more than five per cent of the total monies consisting of the Fund shall be utilized for administration of the Fund.

Financial Year

26. The financial year is the period of twelve months beginning the 1st of July in any year to the 30th of June of the subsequent year, both days inclusive.

Financial Report

27. (1) The Fund Administrator shall in each financial year prepare and submit to the County Executive Committee Member for Finance a report on the activities undertaken by the Committee.

(2) The County Executive Committee Member for Finance and Economic Planning shall consider the report and thereafter submit to the County Assembly.

PART V—MISCELLANEOUS PROVISIONS

General Penalty

28. A person who contravenes the provisions of this Act shall upon conviction be liable to imprisonment for a term of one year or fine not exceeding one hundred thousand or both.

Enforcement

29. In liaison with enforcement agencies, the Committee may cause appropriate legal action to be taken if the Committee believes that—

- (a) a person or group of persons is engaged in a practice which is discriminatory under this Act.

- (b) the discrimination is a significant and substantial infringement of the rights of Persons with Disabilities and raise issues of public interest.

Regulations

30. (1) The County Executive Committee Member may make regulations generally, for the better carrying out of the objects of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may—

- (a) prescribe additional guidelines for the conduct of business of the Committee;
- (b) prescribe guidelines on the procedures for appointment of the Committee Members under Section 6(1) and (2);
- (c) prescribe guidelines for the administration of the Fund.

SCHEDULE

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CONDUCT OF BUSINESS AND AFFAIRS OF THE COMMITTEE**Vacancy**

1. The office of the chairperson or a member of the Committee becomes vacant if the holder —

- (a) dies;
- (b) resigns from office by notice in writing addressed to the County Executive Committee Member
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment exceeding six months;
- (d) term of office expires;
- (e) is absent from three consecutive meetings of the Committee without any good cause; or
- (f) is removed from office for any of the following grounds—
 - (i) violation of the Constitution or any other written law;
 - (ii) gross misconduct or misbehavior;
 - (iii) inability to perform functions of the office arising out of physical or mental infirmity;
 - (iv) incompetence or neglect of duty; or
 - (v) bankruptcy.

Validity of proceedings

2. Subject to paragraph (1), no proceedings of the Committee shall be invalid by reason only of a vacancy among the members thereof.

Meetings

3. (1) The Committee shall meet at least four times and not more than 8 times in any financial year.

(2) The first meeting of the Committee shall be convened by the County Executive Committee Member within 14 days after appointment of the members.

(3) The chairperson shall preside at every meeting of the Committee at which he or she is present and in the absence of the chairperson at a meeting, the vice-chairperson, shall preside and in the absence of both the chairperson and the vice chairperson, the members present shall elect one of their members who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

Time and place of meetings

4. A meeting of the Committee shall be held on such a date, time and place as the Committee may determine.

Special meetings

5. (1) The chairperson may in consultation with the County Executive Committee Member issue a seven-day notice for purposes of convening a special meeting of the Committee.

(2) In the event the Chairperson fails to convene a special meeting as stipulated in 5(1), and there is reasonable grounds for such a meeting, a special meeting may be convened in writing by at least seven members of the Committee and with the approval of the County Executive Committee Member.

Quorum

6. Quorum for the conduct of business at a meeting of the Committee shall be any seven members of the Committee excluding the ex-officio members.

Voting

7. (1) Voting during Committee meetings shall be by simple majority. In case of a tie, the Chairperson shall have a second and casting vote.

(2) A decision by majority of the members of the Committee shall be binding.

MEMORANDUM OF REASONS AND OBJECTS

The principal object of this Bill is to protect the rights and privileges of Persons with Disabilities; to promote equal opportunities for Persons with Disabilities and to mainstream matters affecting Persons with Disabilities within Siaya County and for connected purposes.

PART I provides for short title, interpretation and the objects of the Bill.

PART II establishes the Siaya County Committee for Persons with Disabilities and provides for its functions.

PART III provides for the rights and privileges of Persons with Disabilities and obligates the County government and other entities within Siaya County to take progressive measures to avail resources for the full realization of these rights and privileges.

PART IV Prescribes financial provisions to finance activities under this Act by stipulating the sources of funds and establishment of regulations.

PART V contains miscellaneous provisions. These include offences, penalties, enforcement measures and the power by the County Executive Committee member to make Regulations.

Statement of the delegation of legislative power and limitations of fundamental rights and freedoms

The enactment of this Bill shall promote the rights, privileges, general welfare and development of Persons with Disabilities within Siaya County.

ANDREW OMWENDE,
Member of County Assembly.