

**THE THARAKA NITHI COUNTY PERSONS WITH
DISABILITIES BILL, 2016**

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**THE THARAKA NITHI COUNTY PERSONS WITH
DISABILITIES BILL, 2016**

A Bill for:

AN ACT of Tharaka nithi County Assembly to provide for the rights and rehabilitation of persons with disabilities; to achieve equalization of opportunities for persons with disabilities; to establish the County Committee for Persons with Disabilities; and for connected purposes

ENACTED by the Tharaka nithi County Assembly, as follows—

PART I—PRELIMINARY

Short title. **1.** This Act may be cited as the Tharaka nithi County Persons with Disabilities Act, 2016.

Interpretation. **2.** In this Act, unless the context otherwise requires—

“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 specialized 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;

“Committee” means the Tharaka nithi County Committee for Persons with Disabilities established under section 4;

“county” means the Tharaka nithi County;

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

“county government” means the county government of Tharaka nithi county;

“disability” includes any 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 an individual’s ability to carry out ordinary day to day activities;

“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, scandalize 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;

“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; and

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

Object and
purpose of the

3. The object and purpose of this Act is to ensure

Act. the realization of the rights of persons with disabilities in the County through—

- (a) the establishment of a Committee for persons with disabilities;
- (b) setting out of the rights and privileges of persons with disabilities; and
- (c) generally protect persons with disabilities from any form of discrimination and promote their welfare.

PART II—ADMINISTRATION

Establishment of the Committee. **4.** There is established the Tharaka nithi County Committee for Persons with Disabilities.

Membership of the Committee **5.** (1) The Committee shall consist of the following members appointed by the County Executive Committee Member with approval of the County Assembly—

- (a) three persons nominated by organizations representing persons with various categories of disabilities within the County;
- (b) two members appointed from a panel of names submitted to the county executive committee member by organizations for persons with disabilities subject to approval by the County Assembly;
- (c) Chief Officers or representatives not

below the level of Director representing the Departments responsible for the following—

- (i) culture and social services;
- (ii) education;
- (iii) labour; and
- (d) such other members as may be co-opted by the Committee subject to approval by the County Assembly.

(2) The membership of the Committee shall not exceed eleven persons, out of whom at least half of the members shall be persons with disabilities.

(3) The Committee shall elect a member under subsection 1(a) as the Chairperson.

(4) The Committee shall elect a member under subsection 1(b) as the Vice-Chairperson.

(5) The chairperson and the vice-chairperson shall be of the opposite gender.

(6) In nominating or appointing persons as chairperson and members of the Committee, the County Executive Committee member shall ensure that the process is carried out in an open and transparent manner and that—

- (a) the membership of the Committee shall equitably represent the types of disabilities occurring in the county;
- (b) not more than two-thirds of the

members are of the same gender;

- (c) the composition of the Committee shall reflect the regional and ethnic diversity of the people of Kenya; and
- (d) the Committee shall be put in place within 90 days after the enactment of the Act or upon expiry of the life of the Committee to be formed.

(7) The provisions of the Schedule shall apply to the Committee.

Tenure of office.

6. The chairperson, vice-chairperson and members shall hold office for a period not exceeding three years and shall be eligible for re-appointment for a further term not exceeding two years.

Chief Secretary.

7. (1) There shall be a Chief Secretary of the Committee.

(2) The Chief Secretary shall be appointed by the County Executive Member on recommendation of the County Public Service Board and recruited through a competitive process.

(3) To qualify for appointment as a Chief Secretary, a person shall—

- (a) be a holder of a degree in a relevant field from a recognized university;
- (b) have had experience in management for a period of not less than five years.

(4) The Chief Secretary shall hold office for a

period of three years, on such terms and conditions of employment as the Committee, in consultation with the County Public Service Board, may determine, and shall be eligible for re-appointment for a further and final term of three years.

(5) The Chief Secretary shall be an ex officio member and secretary to the Committee.

(6) The Chief Secretary shall—

- (a) subject to the direction of the Committee, be responsible for day to day management of the affairs of the Committee;
- (b) in consultation with the Committee, be responsible for the direction of the affairs and transactions of the Committee, the exercise, discharge and performance of its objectives, functions and duties and the general administration of the Committee;
- (c) carry out any other function as may from time to time be assigned by the Committee;
- (d) be appointed within 60 days after the new Committee has been put in place or at the expiry of the tenure of the serving Chief Secretary.

Functions of
the Committee.

8. (1) The functions of the Committee shall be to—

- (a) issue adjustment orders under the

provisions of this Act;

- (b) formulate and develop measures and policies designed to—
 - (i) achieve equal opportunities for persons with disabilities by ensuring to the maximum extent possible that they obtain education and employment, and participate fully in sporting, recreational and cultural activities and are afforded full access to community and social services;
 - (ii) co-operate with the National Government during the national census to ensure that accurate figures of persons with disabilities are obtained in the County, for purposes of planning;
 - (iii) advise the County Executive Committee Member on the provisions of any national legislation or agreement relating to the welfare or rehabilitation of persons with disabilities and its benefits to the county;
 - (iv) recommend measures to prevent discrimination against persons with

disabilities;

- (v) put into operation schemes and projects for self-employment or regular or sheltered employment for the generation of income by persons with disabilities;
 - (vi) encourage and secure the rehabilitation of persons with disabilities within their own communities and social environment;
 - (vii) encourage and secure the establishment of vocational rehabilitation centres and other institutions and other services for the welfare, rehabilitation and employment of persons with disabilities;
 - (viii) co-ordinate services provided in County for the welfare and rehabilitation of persons with disabilities and to implement programmes for vocational guidance and counselling; and
 - (ix) assist the persons with disabilities in accessing legal justice.
- (c) prepare regular reports for

submission to the County Assembly on the execution of the functions of the Committee.

- (d) develop a five year strategic plan for implementation of the Act.
- (e) register—
 - (i) persons with disabilities within Tharaka nithi County;
 - (ii) in liaison with National Council for Persons with Disabilities in keeping a register of all institutions, associations and organizations that provide services for the rehabilitation and welfare of persons with disabilities and accredit those providing services within Tharaka nithi County;
 - (iii) places at which services for the rehabilitation of persons with disabilities are provided; and
 - (iv) persons with disabilities whose condition requires constant medical attention for the purposes of availing subsidized medical services;
- (f) provide, to the maximum extent possible—

- (i) assistive devices, appliances and other equipment to persons with disabilities; and
- (ii) access to available information and technical assistance to all institutions, associations and organizations concerned with the welfare and rehabilitation of persons with disabilities, including those controlled and managed by the County Government;
- (g) consult with the County Government in the formulation of suitable curricula for vocational rehabilitation centres and other training facilities for persons with disabilities;
- (h) make provision for assistance to students with disabilities in the form of scholarships, loan programmes, fee subsidies and other similar forms of assistance in both public and private institutions;
- (i) assess and report to the County Executive Committee Member on the welfare and rehabilitation of persons with disabilities and to advise on the relative priorities to be given to the implementation of those measures;
- (j) consult with the County Government

in the provision of suitable and affordable housing for persons with disabilities;

- (k) generally to carry out measures for public information on the rights of persons with disabilities and the provisions of this Act;
- (l) perform such other functions in relation to the welfare and rehabilitation of persons with disabilities as the Committee may deem necessary; and
- (m) perform such other functions as may be assigned to the Committee under this Act or any other Law.

(2) Without prejudice to the provisions of subsection (1), the Committee shall have power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions and in particular—

- (a) to conduct inquiries into any matter relating to the welfare and rehabilitation of persons with disabilities;
- (b) to constitute sub-committees consisting of its members, and where necessary to co-opt experts to serve on such sub-committees with the approval of the county executive committee member;

- (c) to vest in or delegate to any sub-committee constituted under paragraph (b) such of the functions of the Committee as the Committee may with the approval of the county executive committee member determine; and
- (d) with the approval of the County Executive Committee Member, to engage or make other arrangements with any other person to carry out research on, or supply information on, any matter relating to the welfare and rehabilitation of persons with disabilities.

PART III—RIGHTS AND PRIVILEGES OF PERSONS WITH DISABILITIES

Rights of Persons with Disabilities

Realization of rights of persons with disabilities.

9. The County Government shall take steps to the maximum of its available resources with a view to achieving the full realization of the rights of persons with disabilities.

Right not to be discriminated in employment.

10. (1) A person shall not deny a person with a disability access to opportunities for suitable employment.

(2) A qualified employee with a disability shall be subject to the same terms and conditions of employment and the same compensation, privileges, benefits, fringe benefits, incentives or allowances as qualified able-bodied employees.

(3) The Committee shall endeavor to secure the reservation of five percent of all casual, emergency and contractual positions in employment in the public and private sectors in the County for persons with disabilities.

Cap. 226

(4) Subject to the provisions of the Employment Act, persons with disabilities shall be eligible for engagement as apprentices or learners where their disability is not such as to impede their performance in particular occupations for periods for which they are hired.

Discrimination
by employers
prohibited.

11. (1) Subject to subsection (2), an employer shall not discriminate against a person with a disability in relation to—

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

(2) Notwithstanding subsection (1), an employer shall be deemed not to have discriminated against a person with a disability if—

- (a) the act or omission alleged to constitute the discrimination was not wholly or mainly attributable to the disability of the said 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 a disability, which the employer cannot reasonably be expected to provide.

(3) A complaint by a person with a disability that his employer has discriminated against him in a way which is contrary to this Act may be presented to the Industrial Court through the appropriate trade union.

(4) Any contract for employment or for provision of goods, facilities or services, or any other agreement, shall be void insofar as it purports to deny any person any rights or privileges conferred under this Act or in any other way to limit the operation of this Act.

(5) An employer shall provide such facilities and effect such modifications, whether physical, administrative or otherwise, in the workplace as may reasonably be

required to accommodate persons with disabilities.

Records for job placement.

12. The Committee shall establish and maintain a record of persons with disabilities who are in possession of various levels of skills and training and shall update such records regularly.

Right not to be discriminated in an educational institution.

13. (1) A person or learning institution shall not deny admission to a person with a disability to any course of study by reason only of such disability, if the person has the ability to acquire substantial learning in that course.

(2) Learning institutions shall take into account the special needs of persons with disabilities with respect to the entry requirements, pass marks, curriculum, examinations, auxilliary services, use of school facilities, class schedules, physical education requirements and other similar considerations.

(3) The relevant County Executive Committee Member shall establish institutions to cater for the visually impaired, physically challenged persons, hearing and mentally challenged persons to cater for vocational education, skills development and self-reliance.

Special and non-formal education.

14. The Committee shall work in consultation with the relevant agencies of the County Government to make provisions in all County administrative units for an integrated system of special and non-formal education for persons with all forms of disabilities and the establishment where possible of Braille and recorded libraries for persons with visual disabilities.

Health of persons with disabilities.

15. The Committee shall ensure that the implementation of the County health programme puts measures in place for—

- (a) prevention of disability;
- (b) early identification of disability;
- (c) early rehabilitation of persons with disabilities;
- (d) enabling persons with disabilities to receive free rehabilitation and medical services in public and Tharaka nithi County Health facilities;
- (e) availing essential health services to persons with disabilities at an affordable cost;
- (f) availing field medical personnel to local health institutions for the benefit of persons with disabilities; and
- (g) prompt attendance by medical personnel to persons with disabilities.

Right to
accessibility
and mobility.

16. (1) 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.

(2) A proprietor of a public building or public service vehicle shall adapt it to suit persons with disabilities in such manner as may be specified by the Committee.

(3) All proprietors of public buildings shall comply

with subsection (2) within five years after this Act comes into operation while operators of public service vehicles shall comply with subsection (2) within two years after this Act comes into operation.

Adjustment
orders

17. (1) This section shall apply to-

- (a) any premises to which members of the public are ordinarily admitted whether on payment of a fee or otherwise; and
- (b) any services or amenities ordinarily provided to members of the public

(2) Without prejudice to the provisions of section 19, if the Committee considers that any premises, 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, subject to this section, serve upon the owner of the premises or the provider of the services or amenities and amenities concerned an adjustment order-

- (a) setting out-
 - (i) a full description of the premises, services or amenities concerned; and
 - (ii) the grounds upon which the Committee considers that the premises, services or amenities are inaccessible to persons with disabilities;
- (b) requiring the owner or provider concerned to undertake at his own expense such action as may be specified in order to secure reasonable access by persons with disabilities to the premises, services or

- amenities concerned; and
- (c) stipulating the period within which the action referred to in paragraph (b) shall be commenced and completed.
- (3) Before serving an order under sub-section (2), the Committee shall serve notice upon the person concerned-
- (a) specifying the ground upon which the adjustment order is to be issued and the nature of the action which the Committee considers necessary to rectify the situation which has given rise to the proposed order;
- (b) stipulating the maximum period that the Committee considers reasonable for the implementation of the action it proposes to order; and
- (c) calling upon the person concerned, if he wishes to do so, to make representations to the Committee within thirty days from the date of the service of the notice.
- (4) After considering any representations described in sub-section (3) (c), the Committee may issue, or refrain from or defer the issuing of, an adjustment order.
- (5) Within thirty days after an adjustment order is confirmed or issued under sub-section (4), the person concerned may appeal against the confirmation or issue to the High Court in the prescribed manner on any grounds including on the grounds that-
- (a) he or she cannot reasonably be expected to bear the whole or any part of the expense required in implementing the adjustment order;

- (b) the period stipulated for implementing the adjustment order is unreasonable;
 - (c) the nature of the action required to be taken in terms of the adjustment order is, in the circumstances of the case, unreasonable; or
 - (d) adequate access to the premises, services or amenities concerned may be secured without recourse to the action required by the adjustment order
- (6) Upon hearing an appeal upon sub-section(5) the court may-
- (a) confirm, vary or set aside the adjustment order appealed against ;and
 - (b)make such order as to costs of the appeal as it finds necessary.

Denial of admission into premises, etc.

18. (1) A person shall not, on the ground of disability alone, deny a person with a disability—

- (a) admission into any premises to which members of the public are ordinarily admitted; or
- (b) the provision of any services or amenities to which members of the public are entitled, unless such denial is motivated by a genuine concern for the safety of such person.

(2) The proprietor of premises referred to in subsection (1) (a) shall not have the right, on the ground of a person's disability alone, to reserve the right of admission to his premises against such a person.

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

(4) Without prejudice to subsection (3), damages awarded under that subsection shall be recoverable summarily as a civil debt.

Prohibition of
adjustment
orders against
government
institutions.
Cap. 242

19. (1) The Committee shall not serve an adjustment order upon—

- (a) any hospital, nursing home or clinic controlled or managed by the County Government or registered under the Public Health Act except with the consent of the County Executive Committee Member responsible for health; or
- (b) any school or educational or training institution controlled or managed by the county government or registered under the Education Act except with the consent of the County Executive Committee Member responsible for the administration of the institution or Act concerned.

(2) Within sixty days after being requested to consent under subsection (1), the County Executive Committee Member shall either give or refuse his or her consent and if he or she fails to do so within that period, the Committee may proceed to serve the adjustment order as though the county executive committee member had

consented.

Right to sports
and recreation.

20. (1) All persons with disabilities shall be entitled, free of charge, to the use of recreational or sports facilities owned or operated by the County Government during social, sporting or recreational activities.

(2) Persons with disabilities shall be entitled to participate in all national, international and County sports events.

(3) For the purpose of subsection (2) the County Executive Committee Member responsible for sports shall, in consultation with the Committee, provide the necessary suitable environment including—

- (a) architectural infrastructure;
- (b) apparatus and equipment;

- (c) training and medical personnel; and
- (d) transportation facilities for the participants.

(4) Section (1) shall not apply in cases where there is exclusive private hire of such facilities.

Registration of organizations.

21. (1) The Committee shall register all organizations of or for persons with disabilities.

(2) All existing organizations of or for persons with disabilities shall, within twelve months after this section comes into operation, apply in the prescribed manner to the Committee for registration.

Non-derogation

22. The rights set out under this part are in addition to, and do not derogate in any way with the rights set out under Article 54 of the Constitution.

PART VI—MISCELLANEOUS PROVISIONS

Failure to obey an adjustment order and discrimination.

23. (1) A person commits an offence if the person—

- (a) fails to comply with an adjustment order issued under this Act;
- (b) discriminates against a person with disability contrary to this Act; or
- (c) on the ground of any ethnic, communal, cultural or religious custom or practice, discriminates against a person with a disability.

(2) A person who is convicted of an offence under subsection (1) is liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(3) A person convicted of an offence under this section may in addition to the penalty imposed by the court be ordered to pay the person injured by the offence such sums of money in compensation as the court may deem appropriate.

Concealment of persons with disabilities.

24. (1) No parent, guardian or next of kin shall conceal any person with a disability in such a manner as to deny such a person the rights set out under this Act or any other law.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

Negligence by doctor

25. (1) Any person who, being a doctor or other medical practitioner, negligently causes a disability to a patient is guilty of an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.

(2) The court may order a doctor convicted under this section to pay to the patient such sums of money in compensation as it may deem appropriate.

Giving false information to get registered.

26. A person commits an offence if the person knowingly gives false information to the Committee for the purpose of being registered or for the purpose of acquiring any privilege or right

due to persons so registered.

General
penalty.

27. A person convicted of an offence under this Act for which no penalty is expressly provided shall be liable to a fine not exceeding ten thousand shillings or imprisonment for a term not exceeding one year, or both such fine and imprisonment.

Enforcement.

28. (1) The Committee may cause to be taken appropriate legal action if the Committee believes that—

- (a) a person or group of persons is engaged in a practice which is discriminatory under this Act; and
- (b) the discrimination is a significant and substantial infringement of the rights of persons with disabilities and raises issues of public interest.

Regulations

29. The County Executive Committee Member may make regulations generally for the better carrying out of the provisions of this Act and, without limiting the generality of the foregoing, may make regulations—

- (a) prescribing the procedures, forms and fees applicable under this Act;
- (b) specifying and describing the nature of acts of discrimination against persons with disabilities; and
- (c) prescribing the procedure and forms for persons entitled to subsidized medical care under this Act.

SCHEDULE (s. 5(7))

**PROVISIONS AS TO THE CONDUCT OF BUSINESS
AND AFFAIRS OF THE COMMITTEE**

- 1.** A member of the Committee may—
 - a. resign from the Committee by notice in writing to the County Executive Committee Member; or
 - b. be removed by the County Executive Committee Member by notice in writing if he or she—

- (i) is subject to a vote calling for his removal by a two-thirds majority of all members of the Committee;
- (ii) has been absent from five consecutive meetings of the Committee without permission of the chairperson;
- (iii) is so incapacitated by prolonged physical or mental illness as to be unable to attend to and perform his duties;
- (iv) is an undischarged bankrupt;
- (v) is convicted by a Court of an offence punishable by a term of imprisonment; or
- (vi) is otherwise unable or unfit to discharge his functions.

2. Where the office of a member becomes vacant the vacancy may with the approval of the county executive committee member be filled through the majority vote of the members for the remainder of the term.

3. The Committee shall pay to its members such remuneration as the County Public Service Board may, in consultation with the county executive committee member for finance, approve.

4. The Committee shall meet not less than four

times in every year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

5. A meeting of the Committee shall be held on such date and at such time as the Committee shall decide, or in the absence of such a decision if the chairperson decides that a meeting is necessary, on a date and at a time determined by the chairperson.

6. Unless otherwise decided by a two-thirds majority of the members of the Committee, at least fourteen days' written notice of every meeting of the Committee shall be given to every member of the Committee.

7. The quorum of a meeting of the Committee shall be seven members.

8. The chairperson, or in his absence, the vice-chairperson, shall preside at every meeting of the Committee, and in the absence of both the chairperson and vice-chairperson, the members present may choose one of their number to preside at the meeting.

9. A decision of the majority of members of the Committee present at any meeting of the Committee shall be deemed to be the decision of the Committee and if upon any question the voting shall be equal, the chairperson, vice-chairperson or other person presiding shall have a second and casting vote.

10. No act, decision or proceedings of the Committee shall be invalid on account of a vacancy in the membership thereof or on account of the appointment of a member of the Committee being defective

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to provide for the rights and rehabilitation of persons with disabilities, to achieve equalization of opportunities for persons with disabilities and to establish the Tharaka nithi County Committee for Persons with Disabilities.

The Structure of the Bill is as follows:

Part I provides for the preliminary matters. It provides for short title and commencement date, interpretation and objects of the Act.

Part II of the Bill establishes the County Persons with Disabilities Committee and provides for its administrative framework and prescribes

its functions and powers of the Committee. The Committee shall comprise of key County Executives at the Executive Arm and other appointees to ensure gender and regional issues are mainstreamed. Among the functions of the Committee include the formulation of policies, registration of persons with disabilities, issuance of adjustment orders, provisions of assistive devices and other appliances and equipment.

Part III of the Bill provides for the rights of persons with disabilities and requires the County Government of Tharaka nithi county to take progressive measures to the maximum of its ability to avail resources for the full realization of the rights. Among the rights set out in this Part include the right not to be discriminated in any employment opportunity, right not to be discriminated in an educational institution, right to special health treatment, right to accessibility and mobility and the right to sports and recreation. This Part also makes provision for certain privileges to be enjoyed by persons with disabilities.

Part IV of this Bill contains miscellaneous provisions. These include offences, penalties, enforcement measures and the power by the relevant County Executive Committee Member to make Regulations.

Statement on whether Bill may incur additional expenditure of public funds

The enactment of this Bill shall occasion additional expenditure of public funds which shall be provided for in the County Government of Tharaka nithi county Budget Estimates.

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 fundamental rights and freedoms.

Dated the _____ Day of _____, 2019

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HON. ASUMPTA,
*Member of the County Assembly of
Tharaka nithi county*