REMARKS BY THE CHAIRPERSON OF THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

DURING THE GANHRI SIDE EVENT

‘PARTICIPATION OF PERSONS WITH DISABILITIES IN THE WORK OF NHRI’s IN MONITORING AND PROMOTING IMPLEMENTATION OF THE CONVENTION’

TUESDAY 13th JUNE 2017 13:30 -14:30

NEW YORK
LADIES AND GENTLEMEN

Receive warm greetings from the Kenya National Commission on Human Rights.

I am privileged to participate in this forum as we discuss this very important issue regarding the Rights of Persons with Disabilities (PWDs) and what we can do as National Human Rights Institutions (NHRIs) to protect their rights and include them in our work. In my remarks, I seek to elaborate what Kenya has done, more specifically what the Kenya National Commission of Human Rights (KNCHR) has done in ensuring that PWDs are included in the work of KNCHR.

I would like to start by quoting Hubert Humprey who stated that, ‘The moral test of any government is how that government treats those who are in the dawn of life (children), those who are in the twilight of life (elderly), and those who are in the shadows of life (persons with disabilities).’

KENYA’S ACTIONS IN ACHIEVING THE RIGHTS OF PWDs

Kenya has ratified the United Nations (UN) Convention on Rights of Persons with Disabilities (CRPD). The effect of this ratification is that the State has undertaken to ensure and promote the full realization of all human rights and fundamental freedoms for persons with disabilities, without discrimination of any kind on the basis of disability.

The Constitution of Kenya, enhances the protection framework for the rights of persons with disabilities and secures significant gains for them. The Constitution among others;

1. Recognizes sign language, braille and other communication accessible to persons with disabilities as part of the official languages.
2. It provides that in the allocation of resources the state shall give priority to the widest possible enjoyment of the rights or fundamental freedoms having regard to prevailing circumstances including the vulnerability of particular groups or individuals.

3. It prohibits direct or on indirect discrimination against any person on any ground including disability.

4. It promotes respect and protection for human dignity of every person.

There is also in force the Persons with Disabilities Act of 2003 which provides a framework for access to services and inclusion of Persons With Disabilities in all facets of life. It provides for the achievement of equalization of opportunities by prohibiting discrimination in employment, education and health among others. Kenya is currently considering amendments to this Act which will in effect bind both the national and county governments to establish policies that specifically address the question of the welfare of persons with disabilities.

The KNCHR whose mandate is to protect and promote human rights is further obliged to ensure state compliance with human rights treaties or conventions ratified by the state.

**KNCHR’S ACTIONS IN ACHIEVING THE RIGHTS OF PWDs**

All NHRIs have a responsibility set out in Article 33 of the Convention on the Rights of Persons with Disabilities to independently monitor the human rights of PWDs in their respective countries.

In 2011, The Attorney General designated the KNCHR as the monitoring agency under the CRPD In line with this mandate, KNCHR undertook monitoring of the CRPD and findings were published in a report titled ‘From Norm to Practice: A Status Report on Implementation of the Rights of Persons with Disabilities in Kenya’. This survey targeted key institutions involved with PWDs. These included learning institutions, health facilities, courts, local authorities, public service offices, Disabled Persons Organizations (DPOs) and homesteads of disabled persons. It is important to note that in 2014, the Attorney General designated the monitoring responsibility to the National Gender and equality commission.

The monitoring report noted that, while positive strides have been made by the Kenyan Government in respect to PWDs, significant gaps in implementation of policies and access to infrastructure still places persons with disabilities at disadvantaged positions.
Article 12 of the CRPD addresses equal recognition before the law, legal capacity and decision making. In the same stead, the Kenyan Constitution recognizes the right to equal protection and benefit before the law for all persons, PWDs included. However, Kenya has other various laws that are in contradiction with this provision. The KNCHR conducted a study on legal capacity in Kenya based on article 12 of the CRPD. The Commission noted that legal capacity still remains a difficult area when it comes to implementation of rights in Kenya.

Unless legal capacity and equality before the law is explicitly defined in law and policy, implementation of Article 12 will not become reality. In this regard, the KNCHR recommended reforms in law and policies in the country as well as awareness creation through advocacy strategies by several organizations. Coordination between government structures as well as both governments, national and county, will go a long way into realizing the provisions of article 12. The KNCHR is part of the review process of the Persons with Disability Amendment Act and should this amendment pass, it will bind the national and county governments to establish policies that specifically address the question of the welfare of persons with disabilities.

Pursuant to a judgment of the High Court of Kenya in Petition No. 304 of 2015, the KNCHR was ordered to oversee the allocation of houses in the largest informal settlements in Kenya- Kibera; under the Kibera Slum Upgrading Program. Within the Post Judgment implementation framework, the Commission endeavored to identify persons with disabilities who were beneficiaries and prioritized the allocation of houses to ensure that they are able to access the houses. The Commission identified 13 persons with disabilities out of 690 beneficiaries.

CONCLUSION

The KNCHR is continuously committed to contribute and complement all efforts thus far which seek to ensure the realization and the advancement of equal human rights for all persons, especially persons with disabilities.

1 David Ngige Tharau and Others Versus Attorney General and Others (2016) e KLR available at http://kenyalaw.org/caselaw/cases/view/117266/
2 David Ngige and others versus Attorney General Post-Judgement Implementation Framework (signed on 23rd February 2016 and Filed in Court on 25th February 2016) page 10 Available at http://www.knchr.org/Portals/0/GeneralReports/09%2003%202016%20POST%20JUDGEMENT%20IMPLEMENTATION%20FRAMEWORK.pdf?ver=2016-07-16-111412-927