

ACCESSIBILITY AS A RIGHT: THOUGHTS ON PRIORITIES FOR PERSONS WITH DISABILITIES IN KENYA¹

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Introduction

In these remarks, I share my thoughts on the meaning of the right to accessibility; its relevance to persons with disabilities; and some considerations which state and non state actors in Kenya should have to enable THIS right for persons with disabilities.

Accessibility as a Right

Having signed and ratified the Convention on the Rights of Persons with Disabilities (CRPD), Kenya is constitutionally bound by the provisions in that Convention in terms of Article 2 (6) of the Constitution which provides that treaties and conventions ratified by Kenya are part of our national law.

Article 9 of the CRPD provides thus:

‘1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

- a. Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;

¹ Presentation at workshop on e-accessibility for persons with disabilities, organised by the Communications Commission of Kenya, Laico Regency Hotel, Nairobi, 10-11 May 2012

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b. Information, communications and other services, including electronic services and emergency services.

2. States Parties shall also take appropriate measures to:

a. Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;

b. Ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;

c. Provide training for stakeholders on accessibility issues facing persons with disabilities;

d. Provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;

e. Provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;

f. Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;

g. Promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;

h. Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.'

Bridging Policy and Law with the Realities of Disability

If I may, let me share my thoughts with you on how this powerfully phrased Article should be realised in Kenya. But before I do that, I want to say something about disability.

Who is disabled?

The CRPD has heralded a dramatic paradigm shift. Before its legislation, society acted on the basis that it was the disabled person who had a 'problem' that needed to be fixed or corrected usually using medical interventions; or that such disabled person needed to be taken care of and should be given charity by big capital or by brethren who desired to earn 'bonga' points with God. Subsequent to the CRPD, it is clear that the 'problem' must be located on the environment in which the person with disability lives: it is not my feet that have a 'problem',

it is the stairs your architect thoughtlessly designed; it is not my ears that have a ‘problem’, it is your inability to provide interpreters; it is not I who is disabled; it is you, the environment. The message there then is: provide technology; have a barrier-free environment, and I will not have a ‘problem’; I will not be disabled.

Independent living

The first thing Kenya’s state and non state actors should recognise is the end game of accessibility, its final intended outcome; the reason why each person with disability – be they physically or visually impaired, be they deaf, and significantly even be they with intellectual disability.

Even though we have a disability, each one of us has full personhood: I am because I am human; even though I may have a disability, I am human!

The implication of being persons fully is the recognition everywhere that we are persons before the law (CRPD Article 12, 1). This recognition is not a mere legal fiction: it has to be actualised by state and non state actors during service creation and service provision. This indeed is the basis on which the Constitution states that we are entitled to be treated with dignity and respect (Article 54 (1) (a)).

Independent living

Each one of us with disability wishes to live independently and participate fully in all aspects of life. So. What is independent living?

As a human rights norm, independent living aims to ensure that all persons with disabilities are fully included in and participate in community life (CRPD Article 19). Relevant questions for example for a person with intellectual disability would be:

- Do I too have the opportunity like others to choose where and with whom I live, or am I told to live in an institution because I am disabled?
- Do I have access to community support services to support me to live in the community?
- Are the community services and facilities available to the general population also available to me on an equal basis in a way that suits my needs?

So, then, how may Kenya's state and non state actors ensure that persons with disabilities have effective accessibility? I draw six relevant propositions from Article 9, 2:

Proposition one: effect minimum standards and guidelines for the accessibility of facilities and services open or provided to the public

The key message here is that if you provide any service or facility to the public, establish minimum guidelines and standards so that every person with disability may have effective access to your service or facility. Is that the case now? The Communications Commission of Kenya is beginning to do its bit with initiatives like the Disability Web Portal. Other regulators – the Kenya Bureau of Standards, the Media Council of Kenya, our parastatals – all these must develop minimum standards and guidelines: on accessible websites; on accessible ATM machines; on accessible computer products. So that while we may commend the Kenya Broadcasting Corporation for providing sign language interpretation of parliamentary debates, it really should create a minimum guideline making it easier for deaf students who are forced to crowd near their television set because the interpretation is limited to a tiny corner of the set.

Proposition two: Private entities too to the extent their services or facilities are provided to or open to the public must take account of accessibility for persons with disabilities

The Constitution of Kenya is quite clear that the Bill of Rights covers not only individual persons but also corporate persons (Article 260). This proposition is extremely important in a world where essential utilities like water, electricity and even toiletry has been privatised. Furthermore, the messaging is clear even regarding for-profit entities such as those providing telephony services or media content.

Proposition three: stakeholders should be trained on accessibility issues facing persons with disabilities; and not just training, also general awareness-raising

On far too many occasions service providers simply do not know how they may best provide services to each one of us: far too few people in society out there have encountered a person with Down's Syndrome; or one with autistic spectrum disorder; or perhaps one even who is blind! So, imagine the power of this: if Tahidi High included as a key character a sexy

student with callipers; or a very naughty mathematics genius with autistic spectrum disorder. Wouldn't that be an epiphany for the country, an aha moment?

Proposition four: signage in buildings and other facilities open to the public should be provided in easy to read and understand forms

Do I really need to speak about this? Many of you have been on team building exercises where they blind fold you and then get your colleagues to terrorise you. Now, imagine that, blind-folded, you had to walk to your bus-stop, climb onto Bus No. 31 (and not any other), alight at Ambassador (and not any other stop), cross Moi Avenue and find No. 48 for Kileleshwa! Or imagine you have to attend a conference at KICC – all those stairs and no signage!

Proposition five: Live assistance and intermediaries are a crucial component for facilitating accessibility to persons with disabilities

Guides, readers, sign language interpreters – all these are critical.

Proposition six: the Internet is one of the new information and communications technologies and systems which must be at the heart of ensuring effective access for persons with disabilities

State and non-state initiatives must ensure that the Internet is accessible to persons with disabilities. Effective access is about effective design. For many years now I have enjoyed the independence of reading news content on the internet from the Daily Nation and Standard websites. Last week the Standard Group relaunched its website. Now, suddenly, I can no longer access the commentaries and columns I used to read because the new design is simply impossible for me to navigate.

Conclusion: the Principle of Universal Design

Let me finish this presentation by introducing you to the principle of universal design, which is so key to enabling the rights of persons with disabilities, yet one which in the long run also portends fantastic value for money to state and non state actors providing services to the general public including persons with disabilities.

The CRPD defines universal design as: ‘... the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design.’

Are you ill? Are you elderly? Are you pregnant? Are you a toddler? Might not a ramp instead of stairs be more convenient for you? Might large print not be easier to read? So, who said that Airtel or Safaricom or Yu will not make a profit if they invest to subsidise screen readers for use by blind persons? Who says a sighted person may not want to listen to his messages instead of reading them? Isn't the audio books business on the internet roaring?