

**ENSURING A PARTICIPATORY AND INCLUSIVE ELECTORAL
ENVIRONMENT FOR PERSONS WITH PSYCHOSOCIAL DISABILITIES
DURING THE 2017 GENERAL ELECTIONS: ADVISORY BRIEF BY USERS
AND SURVIVORS OF PSYCHIATRY IN KENYA**

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ENSURING A PARTICIPATORY AND INCLUSIVE ELECTORAL PROCESS FOR PERSONS WITH PSYCHOSOCIAL DISABILITIES DURING THE 2017 GENERAL ELECTIONS: ADVISORY BRIEF BY USERS AND SURVIVORS OF PSYCHIATRY IN KENYA

I: Background

Aim

1. This advisory brief is prepared by the Users and Survivors of Psychiatry in Kenya (USP-K). USP-K is a nongovernmental membership organisation which was registered in 2007 with the key objective of promoting and advocating for the rights of persons with psychosocial disabilities. USP-K uses interventions on policy and law as well as rights-based advocacy and education to transform the lives of persons with psychosocial disabilities.¹
2. The context within which persons with psychosocial disabilities are participating in Kenya's 2017 general elections involves challenges on two fronts. First, there exist constitutional and legal provisions which have been interpreted as barring or limiting persons with psychosocial disabilities from voting or seeking to be elected to legislative or other political offices. Second, practical challenges exist which restrict or discourage persons with psychosocial disabilities from participating in the electoral process.
3. The key aim of this advisory brief is to identify and make recommendations to key election actors on how to ensure that persons with psychosocial disabilities participate fully in the 2017 general elections. It places emphasis on areas where practical administrative considerations by relevant agencies may have genuine positive impacts on the participation of persons with psychosocial disabilities in the elections. The recommendations in the advisory brief recognise that many of the electoral

1 <<http://www.uspkenya.org/about-us/>>

impediments faced by persons with psychosocial disabilities may be of a constitutional or legal nature and that more reforms are necessary at those levels in the medium-term so as to impact the next electoral cycle. Yet even this late in the day there are critical administrative interventions which these actors could take to enable voters with psychosocial disabilities to participate more effectively in this year's elections.

4. The advisory brief draws its explanations and recommendations from international and regional norms as well as good practices deriving from other countries. It also draws on the views of Kenyans with psychosocial disabilities regarding the difficulties they face while participating in the electoral process.
5. The advisory brief will form the basis for critical and rapid engagements with elections state actors, principally, the Independent Electoral and Boundaries Commission (IEBC).

Meaning and manifestations of psychosocial disabilities

6. Persons with psychosocial disabilities by and large still remain on the margins of political participation even in respect of arenas newly opened to persons with disabilities following Kenya's ratification of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and the country's promulgation of the 2010 Constitution. While the right to political participation by persons with disabilities is now universally recognised, policy, legal and administrative actions to operationalize this right for persons with disabilities have almost been made to the exclusion of persons with psychosocial disabilities. In consequence of this, supports and accommodations to enable persons with psychosocial disabilities to participate in elections as voters and as candidates have by and large not been acknowledged and implemented. Voter education for persons with psychosocial disabilities has historically not been a priority. These hurdles continue to be abetted by lack of understanding by policy-makers and implementers as well as the public generally on what psychosocial disabilities entail and what measures therefore should be taken to ensure first that their right to vote is guaranteed and then to operationalize that right.
7. This brief uses the term 'psychosocial disabilities' in respect of persons commonly referred to in Kenyan laws as persons with 'mental disabilities'. That term focuses on

the interaction between psychological and social/cultural components of disability. The psychological component refers to ways of thinking and processing experiences and perceptions of the world. The social/cultural component relates to societal and cultural limits for behaviour that interact with those psychological differences as well as the stigma that society attaches to the label of disabled.²

8. Persons with psychosocial disabilities define themselves in various ways: as users or consumers of mental health services; or as survivors of psychiatry or people experiencing mental health problems, issues or crises. In this sense, the term 'psychosocial disabilities' emphasises a social rather than the medical model of conditions and experiences usually labelled as 'mental illness'; and a recognition that both internal and external factors in a person's life situation can affect a person's need for support or accommodation beyond the ordinary. Mental health conditions associated with psychosocial disabilities include depression, anxiety, bipolar and schizophrenia.

II: Context

9. The electoral cycle preceding a general election includes voter registration, party primaries to elect/nominate candidates to compete in the polls, electoral campaigns which proceed side by side with voter education, and the polls and declaration of the polls. The electoral cycle for the country's second general election under the 2010 Constitution, which will culminate in the polls on Tuesday 8 August 2017, is well under way. The mass voter registration drive commenced on 16 January 2017 and it was concluded in February. Other key electoral timelines include party primaries which took place in April and May.
10. This advisory brief seeks to influence the present legal, institutional and administrative environment to enhance the extent to which persons with psychosocial disabilities may

² World Network of Users and Survivors of Psychiatry. 'Implementation Manual for the UN Convention on the Rights of Persons with Disabilities' (2008) <http://wnusp.rafus.dk/documents/WNUSP_CRPD_Manual.pdf>

participate fully in the processes to register voters, to elect or nominate election candidates, to participate in the campaigns, the actual polls, and assumption to elected positions. In this regard, cognisance is taken of a number of positive and negative factors.

11. Disability nowadays is understood as a social rather than a medical phenomenon. It is constructed by the social barriers and discrimination which society places in the way of individuals with impairments. The political establishment has for far too long marginalised persons with disabilities by employing various arguments to refuse them participation.
12. The social approach to disability has received normative backing from international and regional human rights instruments which bind Kenya and all its agencies. Notably, the CRPD requires that persons with disabilities should have the opportunity to enjoy political rights such as to vote and be elected on an equal basis with others – Article 29. This means that disability-based restrictions are impermissible. The Convention clarifies this point by stating that all persons with disabilities have the right to recognition everywhere as persons before the law, and that they enjoy legal capacity on an equal basis with others in all aspects of life – Article 12, paragraphs 1 and 2.
13. This indeed is the basis upon which the Constitution affirms the right of every adult citizen, without ‘unreasonable restrictions’, to be registered as a voter, to vote by secret ballot in any election or referendum, and to be a candidate for public office and, if elected, to hold office – Article 38 (3). The electoral system is required to comply with the principle of the fair representation of persons with disabilities – Article 81 (c).
14. This means that persons with psychosocial disabilities too have political rights and indeed can participate fully in elections as voters and as candidates for elective offices. As such, they too may be candidates for National Assembly, Senate and County Assembly seats established specifically for persons with disabilities under Articles 97, 98 and 177 of the Constitution.
15. A number of constitutional provisions are sometimes cited as prohibiting some persons with disabilities from participating in elections. Notably, Article 83 (b) of the

Constitution provides that a person is not qualified for registration as a voter if he or she is declared to be of unsound mind. Provisions with similar purport are made in a number of other articles in the Constitution.

16. In fact, the significance of these provisions has been misunderstood. Propositions that persons with psychosocial disabilities are prohibited from voting or standing for elective office are incorrect. While the validity of barring persons of unsound mind from voting or standing for elective office must be contested in the medium-term as part of the constitutional reforms agenda, these provisions have a quite narrow bearing: they cover persons who have been declared via a legally-established process as being of unsound mind. Such processes are set out in the Criminal Procedure Code and in the Mental Health Act. At the same time, the Constitution makes it clear that a right or freedom established in the Bill of Rights may not be limited except by law, and limitation may apply only to the extent that it may be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom – Article 24. This means that all persons with disabilities including those with psychosocial disabilities have the right to participate fully in elections. Indeed, the preface of Article 38 (3) is that unreasonable restrictions should not be used to interfere with the right of an adult citizen to vote or stand for elections.
17. Statutory provisions have been legislated to enable the constitutional requirement that the conduct, regulation and supervision of elections should take account of the special needs of persons with disabilities – Article 82 (1) (d) and (2) (c) (i). This provision enables Parliament and the IEBC to put in place reasonable accommodation measures to support the exercise of political rights by persons with disabilities. Pursuant to that constitutional mandate, a number of statutes establish measures which seek to ensure the political participation of persons with disabilities.
18. USP-K's continuing concern is that no specific and adequate measures have been put in place to enable effective political participation and inclusion of persons with psychosocial disabilities.

III: Barriers that Undermine the Effective Participation of Persons with Psychosocial Disabilities in Elections

19. Kenyans with psychosocial disabilities continue to encounter multiple barriers when they set out to participate in the electoral process. This advisory brief has identified these common barriers using a variety of methodologies. Notably, literature review has been undertaken and information was also gathered from a focus group discussion (FGD) comprising members of USP-K from different parts of the country.

Common difficulties and choices

20. Kenyans with psychosocial disabilities face the same electoral difficulties and choices which other Kenyans face. Voter apathy is as much a factor in the lives of these persons as it is in the lives of other Kenyans. However, over and above this common consideration, other factors undermine the effective participation of persons with psychosocial disabilities in the electoral process.

Common manifestations

21. Persons with psychosocial disabilities manifest their impairments in very many ways and they may not be generalise or assumed. From an electoral perspective, a person with psychosocial disability's interactions with their social environment may engender the following:

- a. The resolve not to disclose their disability because of the danger of consequent discrimination;
- b. Stigma;
- c. Feelings of intimidation;
- d. Relapses or crises due to an un-accommodative environments; and
- e. Anxiety (for example when there is a lot of surrounding noise and hubbub);

Discriminatory laws

22. As we have already explained, the bar against voting by persons of unsound mind has been wrongly construed broadly and over-inclusively to cover persons with psychosocial disabilities as well as those with intellectual and developmental disabilities.
23. Persons with psychosocial disabilities have been discouraged from registering to vote when they come into contact with publicity material communicating that persons of unsound mind cannot vote. Some media outlets have communicated similar messages using ambiguous phrases in local languages which can be understood to refer to persons with psychosocial disabilities generally and not just those of unsound mind.

Competency tests

24. A related barrier which potential voters with psychosocial disabilities encounter is the assumption that competency tests should be used before they may be allowed to vote. Although competency tests as a justification have not been articulated in law or policy, the popular assumption is that persons with psychosocial disabilities are irrational – that they are ‘mad’ and hence they cannot make rational choices about political leaders. On this basis, it is then assumed that a person who may enter a crisis cannot be competent to vote. Persons under care face this particular restriction from carers who deem it their business to stop them from voting.

Reasonable accommodations

25. The CRPD defines ‘reasonable accommodation’ as:

‘... necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms ...’

26. Persons with psychosocial disabilities face absence of reasonable accommodations. The accommodations they require to facilitate their voting are ill-understood and hardly implemented. Voter registration and polling procedures and facilities fail to take account of the needs of persons with psychosocial disabilities. Voter education and political campaigns fail to or are dismissive of factoring the needs of persons with psychosocial disabilities.

27. Individuals with psychosocial disabilities may respond in unique ways to the electoral environment. Due to lack of supports and accommodations, some individuals are liable to have instances of extreme anxiety and this may influence how they respond to electoral demands such as having to queue for purposes of voter registration or voting. A participant in the FGD noted that when she was deployed as a presiding officer in a polling station with high potential for insecurity, anxiety made it difficult for her to perform her tasks; but when in the next elections she was deployed in a more secure polling station she performed her tasks effectively. The FGD also reported instances where adults with psychosocial disabilities had declined to register as voters because of the long queues.

Training and awareness-raising

28. Related to that, there is lack of training and awareness on psychosocial disabilities by electoral officials, officials of political parties, Disabled Persons Organizations and the public generally.

Hidden or invisible disabilities

29. The public and officialdom tend to assume that only persons with visible disabilities such as blindness or motor disabilities are legitimately disabled persons. Voter registration clerks on many occasions mark applicants as disabled even without consulting them on the basis they can identify the disability. This situation is problematic since registration clerks therefore may exclude from registration persons whose disabilities are not obvious such as those with psychosocial, intellectual or even hearing disabilities.

Self-identification and stigma

30. Many persons with psychosocial disabilities decline to self-identify themselves as disabled because they fear the consequent stigma.

The unsoundness of mind tag

31. As discussed earlier in this briefing paper, persons with psychosocial disabilities have the right to vote. Yet a lot of publicity communicates the message that persons of unsound

mind cannot vote. Individuals with psychosocial disabilities have been discouraged from participating in the polls by such messaging.

Other concerns

32. Some adults with psychosocial disabilities have still not secured documents of identification, meaning they cannot therefore participate in elections.
33. More broadly, there is quite limited advocacy by disabled peoples' organisations specific to psychosocial disabilities.
34. Some persons with psychosocial disabilities receive support from caregivers who sometimes also seek to control how those persons should perform everyday tasks including voting. One caregiver told the FGD that she had threatened the individual under her care that if he did not go to vote he would be arrested with all the other people whose thumbs had not been ink-marked. However, other caregivers recognise that persons with psychosocial disabilities should be left to choose whether or not to participate in the elections. On polling, typical concerns are that a caregiver may influence how a person with psychosocial disability votes. A further concern is that a person with psychosocial disability may if allowed to vote not make the right choice. Finally, caregivers of persons in institutions have undue power over the persons in those institutions.

IV: Proposals on Ensuring Persons with Disabilities Have Full Exercise of the Right to Vote during the 2017 General Elections

35. General. USP-K calls on all relevant agencies including the IEBC to ensure that persons with psychosocial disabilities may exercise their right to participate fully in the 2017 general election. Towards this end:
 - a. Persons with psychosocial disabilities should have effective access to voter registration, party primaries, participation in campaigns, voter education, and access to the polls.

- b. Electoral officials and other players should be reminded and facilitated to ensure respect of the right to vote for persons with psychosocial disabilities.
 - c. The public and political parties should recognise that voters with psychosocial disabilities have the right to make any choices at all and that there is no 'wrong' choice when any voter goes into the polling booth. It should not be said therefore that persons with psychosocial disabilities will make the wrong choices and should not therefore be allowed to vote.
36. Messaging on unsoundness of mind. Messaging on unsoundness of mind should not be used because it leaves the wrong impression about whether persons with psychosocial disabilities may vote. Advertisements in the media and media talk-show hosts should be guided as such.
37. Reasonable accommodation measures.
- a. Reasonable accommodation measures pertinent to voters with psychosocial disabilities should be anticipated and responded to. Among other things, registration and polling centres should be established in inclusive and accommodative spaces and environments. Those environments should not be noisy, and there should be appropriate deterrents against overly long queues.
 - b. Information should also be distributed in easy-to-understand and accessible formats and platforms.
 - c. Election management officials such as presiding officers and returning officers should be enabled to exercise discretion to ensure that all voters who go to the polls actually do vote. These officials should be made to understand that reasonable accommodation measures are determined on a case-by-case basis and as such they should look out for voters with unique disability needs and ensure they do vote. Relevant organisations should meet with officials at local levels for these purposes.
 - d. Caregivers should respect the will and preferences of persons with psychosocial disabilities and the IEBC should enforce this requirement where assisted voting takes place.

- e. Discriminatory language should not be used.
38. Training and awareness-raising. Training of officials and awareness-raising with specific focus on psychosocial disability should be undertaken and it should involve organisations of persons with psychosocial disabilities.
39. Identification of voters with psychosocial disabilities
- a. The IEBC should use multiple approaches to determine which voters may have psychosocial disabilities. Some individuals may have disability identification cards issued by the National Council for Persons with Disabilities. Officials should also accept letters from doctors and as well they should be empowered to use their judgement where a person explains they have an invisible disability. The catch-word for ensuring everyone's right to vote is flexibility and creativity in the application of the rules.
 - b. The state should take special measures to ensure that individuals with psychosocial disabilities have documents requisite for registration. These persons may not have birth certificates and may not have identification cards.
 - c. The benefits and drawbacks of collecting disability-specific information should be assessed with care. The stigma attached to this disability should be a consideration. Election officials should be trained not to scoff or use degrading or demeaning language on these persons.
 - d. Disability-disaggregated data could be collected using standardised questions such as those of the Washington Group.³

³ The Washington Group Short Set Questions on Disability were designed to identify in a census or survey format people with disabilities. They comprise six questions covering the performance of basic universal activities such as seeing, hearing, walking, cognition, self-care and communicating. The question on cognition asks whether one has difficulty in remembering or concentrating. These questions focus on the barriers that persons with disabilities encounter rather than asking about specific types of disabilities. Each question has four response categories: no, no difficulty; yes, some difficulty; yes, a lot of difficulty; or, cannot do it at all. Information from responses is easily correlated with other measurement tools to identify persons at risk of participation restrictions taking account of the full bio-psychosocial model of disability. Another variation of this approach focuses on assessments under the category of affect, which focuses on the effect that conditions such as anxiety, nervousness or depression produce.

40. Intersections. The question of multiple disabilities and group intersections is critical too. Voters with psychosocial disabilities may also have other disabilities. As well, such voters also intersect into other social groups on the basis of characteristics or circumstances that engender discrimination or disadvantage, including gender and social as well as economic status. All players therefore should keep in mind the following considerations:
- a. Do voters operate in an accessible environment?
 - b. Do they access information on voter registration, campaigns or the polls?
 - c. Are alternative voting devices available?
 - d. Are voting methods accessible?
 - e. Is mobile voting or voting by mail allowed?
 - f. Does voter education reach these persons and does it cover their concerns?
 - g. Does electoral monitoring and polls observation focus on them?
 - h. Are they included in these two efforts? Are they funded?

41. Other issues.

- a. The participation of electors with disabilities can also be enhanced through judicial interventions. Electoral and other agencies as well as DPOs should keep this in mind.
- b. Finally, persons with psychosocial disabilities should be encouraged and supported to stand for office. They may face stigma when they self-identify as disabled but this is still an important aspect of their full emancipation.

Respondents are asked questions such as how often they feel worried, nervous or anxious. Responses to this question may include daily, weekly, monthly, a few times a year or never.