FORMAL MEMORANDUM OPPOSING THE PROPOSED DISABILITY PERCENTAGE RATING SYSTEM FOR INCOME TAX EXEMPTION

To: The Commissioner General, Kenya Revenue Authority (KRA)

Cc: Cabinet Secretary, National Treasury and Economic Planning; Executive Director, National Council for Persons with Disabilities (NCPWD)

Dear Sir/Madam,

RE: FORMAL OBJECTION TO THE PROPOSED GRADUATED DISABILITY-RATING FRAMEWORK FOR INCOME TAX EXEMPTION

I respectfully submit this memorandum to formally oppose the proposal to adopt a graduated disability-rating system for purposes of determining eligibility for income tax exemption for persons with disabilities.

Upon reviewing the proposed framework, I am deeply concerned that it seeks to condition tax relief on impairment percentages such as 30%, 50%, 60% and 100%. This proposal is legally unsound, constitutionally questionable, discriminatory in effect, and inconsistent with both domestic and international disability rights principles.

1. The Proposal Contradicts the Constitutional Guarantee of Equality and Freedom from Discrimination

Article 27 of the Constitution of Kenya guarantees every person equality before the law and equal protection and equal benefit of the law. Further, Article 54 specifically recognises and protects the rights of persons with disabilities.

By creating tiers of entitlement based on impairment percentages, the proposed framework effectively establishes classes of persons with disabilities, thereby granting unequal tax treatment to individuals who already meet the legal threshold of disability.

Once a person has been recognised as having a permanent disability, the Constitution does not contemplate a hierarchy of disability rights whereby one disabled person is more deserving of constitutional protection than another. The proposal therefore creates differential treatment among persons belonging to the same protected class and is likely to offend the constitutional principles of equality, human dignity and non-discrimination.

2. The Proposal Misconceives the Legal Definition of Disability

Disability is not a percentage. Disability is a legal and social status arising from the interaction between an impairment and barriers that hinder a person's full and effective participation in society.

The Persons with Disabilities Act and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), to which Kenya is a State Party, do not establish disability rights on the basis of percentage ratings. Instead, they recognise disability as a condition requiring equal protection, accommodation and inclusion.

A person does not become less disabled because an assessor assigns a 30% rating instead of 100%. The barriers to employment, mobility, communication and participation remain real and substantial.

3. The Proposal Is Arbitrary and Lacks a Rational Basis

The proposed classification assigns varying percentages to different disabilities without establishing any objective legal justification for the distinction.

For example:

- Blindness qualifies for 100%.
- Severe physical disability qualifies for 60%.
- Severe intellectual disability qualifies for 60%.
- Moderate hearing impairment may qualify for 50%.

There is no evidence that the economic burden associated with blindness is inherently greater than that associated with severe physical disability, autism, cerebral palsy, amputation, multiple sclerosis or other permanent disabilities.

The proposal therefore creates arbitrary distinctions that may fail the constitutional test requiring administrative decisions to be reasonable, lawful and procedurally fair.

4. The Proposal Undermines the Purpose of Disability Tax Exemption

The rationale for disability tax exemption has never been to compensate for the degree of impairment. Rather, it is intended to mitigate the additional financial burden imposed by disability.

Persons with disabilities often incur expenses relating to:

- Assistive devices;
- Medication and healthcare;
- Mobility and transport;
- Personal assistance;
- Communication support;
- Workplace accommodation;

- Accessibility modifications.

These costs are not reduced because a medical assessor classifies a person's disability at 30%, 50% or 60%. Consequently, the proposed framework fails to address the actual economic realities that justify disability tax relief.

5. The Proposal Is Inconsistent with International Disability Rights Standards

The United Nations Convention on the Rights of Persons with Disabilities adopts a human-rights approach to disability. The Convention emphasises equality, non-discrimination, accessibility and inclusion rather than impairment-based rankings.

Most jurisdictions that provide disability-related tax relief do not subject disabled persons to a sliding scale based on impairment percentages. Eligibility is ordinarily based on recognised disability status, functional limitation or medical certification.

The proposed framework would therefore place Kenya at variance with the modern rights-based approach embodied in international disability rights standards.

Thank you for your consideration.

Eliab Joshua Otieno
PERSON WITH DISABILITY (PWD)