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LEGAL NOTICE NO. 55 OF 2023

Disability and Equity (Procedure) Rules, 2023

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LEGAL NOTICE NO. 55 OF 2023

Disability and Equity (Procedure) Rules, 2023

Pursuant to section 32 of the Disability Equity Act, 2021¹, I,

S. P. SAKOANE

Chief Justice of Lesotho, make the following rules -

Citation and commencement

1. These Rules may be cited as the Disability Equity (Procedure) Rules, 2023 and shall come into force on the date of publication in the Gazette.

Objects

2. The purpose of the rules are to -
- (a) ensure effective access to judicial processes for persons with disabilities on an equal basis with others, through the provision of procedural and age appropriate accommodations which facilitate their effective participation, directly and indirectly, as accused persons, litigants and witnesses;
 - (b) ensure that the rights of persons with disabilities in the judicial processes are recognized, fully promoted, protected and ensured through appropriate support and procedural accommodations in compliance with the Disability Equity Act No. 23 of 2021 and the United Nations Convention on the Rights of Persons with Disability; and
 - (c) guide judicial officers, legal practitioners, court officials and other participants in judicial proceedings or processes on how to accommodate and support persons with disabilities to ensure their full and effective participation on an equal basis with others, in all interactions with such judicial proceedings or processes.

Application

3. Unless otherwise provided, these rules shall apply in pre-trial, trial and post-trial processes and interactions by both direct and indirect participants in the administration of justice.

Interpretation

4. (a) These rules shall be construed purposively to uphold the interests of persons with disabilities and to promote their maximum accommodation and effective participation in judicial proceedings.

(b) Unless the context indicates otherwise -

“Act” means the Disability Equity Act, 2021;

“Commissioner” means the Commissioner of the Correctional Service;

“communication” includes plain language, sign language, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;

“court” means the High Court and all courts subordinate to the High Court;

“intermediary” means a person appointed by the court through whom a person with disability gives evidence;

“testimonial aids” means and includes use of closed-circuit television, screens, one-way mirrors, curtains and other measures placed in court to enable a witness to testify without being seen by the accused or any other person the witness is afraid of or does not want to be seen by; and

“special measures directions” means a direction by the court as to which testimonial aids will be used to enable a person with disability to depose freely and in a safe, accessible, and comfortable environment.

Barriers hindering effective participation in the justice system

5. The court shall, after fully considering any factors which may amount to barriers to access to justice and effective participation in the justice processes, take all necessary steps to eliminate, mitigate or minimize such barriers, and such factors include -

- (a) complex or otherwise inaccessible legal procedures;
- (b) multiple depositions;
- (c) use of inappropriate and inaccessible language;
- (d) delays and repeated adjournments;
- (e) testifying more than once;
- (f) prolonged or protracted court proceedings;
- (g) aggressive and demeaning cross-examination, including asking irrelevant questions;
- (h) lack of adequate support, witness protection, and victim services;
- (i) anxiety about not being understood or being able to communicate effectively; and
- (j) inaccessibility of the courtroom.

Competency and compellability

6. (1) A person with disability is competent and compellable to testify in legal proceedings in terms of section 32 of the Act.

(2) A person with disability shall be provided appropriate support and accommodations to enable effective participation in judicial proceedings.

Accommodation and support needs assessment

7. (1) The court shall conduct an assessment aimed at determining the accommodation and support that a person with disability requires for effective participation in judicial proceedings.

(2) The court may hear -

- (a) evidence from an intermediary relating to the person's communication needs may be heard, or, the person allowed to testify, so that the court may determine whether that person can communicate and participate effectively in court proceedings; and
- (b) medical or other evidence alongside the process set out in paragraph (a) to assist the court in making such a determination.

(3) All evidence referred to in subrule (2) will be considered as supplementary to evidence presented by the person being assessed about their accommodation and support needs.

(4) In all judicial processes and proceedings -

- (a) the accommodation and support needs assessment shall be conducted by the presiding judicial officer alone;
- (b) where a court consists of a judicial officer and assessors, the accommodation and support needs assessment shall be done in the presence of assessors; and
- (c) the court shall make such an assessment only after a full consideration of all relevant circumstances and evidence, referred to in subrule (2).

(5) When testifying, a person must be permitted to communicate in his chosen manner of communicating assisted where necessary by or an inter-

mediary or an interpreter with competency in the manner of communicating.

(6) The court may decide on the credibility and reliability of the witness, as well as the weight to accord such testimony, only after he has given such testimony with the appropriate support and accommodation.

Persons allowed at competency assessment

8. The following persons may be allowed to attend the competency assessment proceedings:

- (a) the judicial officer and such court personnel deemed necessary and specified by order of the judicial officer;
- (b) counsel for the parties;
- (c) translator, interpreter, expert or intermediary;
- (d) a person familiar with the manner of communication of the person with disability; and
- (e) any other person who in the opinion of the court can assist in the accommodation and support needs assessment.

Release from custody

9. (1) In every case where a person with disability is arrested for an offence the investigating officer shall, where required to do so by the provisions of a written law, and after having considered all the relevant circumstances, including the rights and needs of such a person -

- (a) detain the person in an accessible detention facility which has provision of necessary accommodation; or
- (b) release the person with immediately, if the interests of justice so permit, subject to reasonable conditions or without conditions.

(2) Where a person with disability is -

-
- (a) charged with an offence, the investigating officer shall bring the person to court and the remand court may remand him outside custody to subject to such conditions authorized by the court; and
 - (b) Where a person with disability is not released by the court the person shall be held in a correctional facility which has provision of necessary accommodations.

Pre-trial visit of witnesses to the court

10. Witnesses with disability shall be allowed a pre-trial courthouse tour accompanied by a person of choice to enable such witnesses to familiarise themselves with the layout, including a visit to and explanation of the following:

- (a) the location of the dock for the accused;
- (b) the location of the witness box;
- (c) court officials, what their roles are and where they sit;
- (d) who else might be in the court;
- (e) a run-through of basic court procedure;
- (f) the facilities available in the court which may include the waiting room, toilet, separate passage for entry and exit, and testimonial aids;
- (g) discussion of any particular fears or concerns, including concerns regarding safety from the accused, his relatives and friends and what the judicial officer will do to dispel the fear, trauma and anxiety in connection with the upcoming deposition at court; and
- (h) demonstration of any testimonial aids available and a demonstration of their use, where it is practical and convenient to do so.

Meeting with the judicial officer

11. The judicial officer may *mero motu* meet a person with disability for reasons to be recorded or on an application of either party in the presence of the prosecution and defence lawyer in criminal matters or their lawyers in civil matters, for explaining the court process in order to make them understand the procedure and sitting arrangements during the proceedings.

Assistance by interpreter, translator, intermediaries etc

12. (1) The court shall ensure that proceedings relevant to the testimony of a person with disability are conducted in a manner that is simple, comprehensible and not intimidating.

(2) Where the court appoints an intermediary, the respective counsel for the parties shall pose questions to the person only through them, either in the words used by counsel or, where the person is not likely to understand the same, in words, signs, or by such mode of communication comprehensible to the person and which conveys the meaning intended by counsel.

(3) The mediator shall always alert the judicial officer and counsel to overly open, complex and unclear questions and suggest ways of altering or simplifying them for the benefit of the person with disability.

Duty to provide comfortable environment

13. (1) Steps shall be taken to ensure that the courtroom is accessible to a person with disability.

(2) The person with disability may be allowed to testify from any place other than the witness stand to facilitate the person's testimony.

(3) In the case of a victim of sexual offence or gender-based violence, care shall be taken to avoid the exposure to the accused at the time of recording the evidence, while ensuring that the accused is in a position to hear the testimony of the victim and can communicate with the defence lawyer.

Special measures to prevent exposure of victim to the accused

14. (1) The court may *mero motu* or on an application made by the vic-

tim, prosecutor or counsel order testimonial aids such as screens, one-way mirrors, curtains or other devices to be placed in the courtroom in such a manner that the victim cannot see the accused while testifying and at the same time ensuring that the accused is in a position to hear the testimony of the witness and communicate with their lawyer.

(2) The court shall issue an order, in writing, stating the reasons and describing the approved courtroom arrangement in the judgment.

(3) Special measures directions may be discharged or varied during the proceedings, but normally continue to be in effect until the proceedings are concluded.

Explanation of manner of testifying

15. (1) The court shall explain to a person with disability to -

- (a) carefully listen to the questions posed and to tell the court the true version of events and, as far as possible, except in the case of young children, not to respond by shaking their head to mean yes or no, when answering;
- (b) specifically state where he does not remember or has forgotten something;
- (c) clearly ask for clarification when the question is not understood; and
- (d) indicate where he needs a short break.

(2) A gesture by a witness to explain what had happened shall be appropriately interpreted and recorded in the witness' deposition.

Mode of questioning

16. (1) To facilitate the ascertainment of the truth, the court shall exercise control over the examination and cross-examination of persons with disability by -

- (a) ensuring that questions are kept simple and stated in a

form appropriate to the comprehension of the witness;

- (b) protecting the person from harassment or undue embarrassment, character assassination, aggressive questioning, and ensure that the dignity of the person is maintained at all times during the trial;
- (c) disallowing questions which the court considers unacceptable due to their being improper, unfair, misleading, needless, unconnected to the case, or repetitive or expressed in language that is too complicated for the person to understand;
- (d) allowing the person to testify in a narrative form; and
- (e) in cases involving multiple accused persons or defendants, take steps to minimize repetition of questions, and the court may require counsel for different parties to provide their questions in advance.

(2) The court shall allow the questions to be put in simple language avoiding slang, esoteric jargon, proverbs, metaphors, acronyms and shall ascertain the mode of communication of the persons and the range of their vocabulary before recording the evidence.

(3) The court shall not allow a question carrying words capable of multiple meanings, questions having use of both past and present in one sentence, or multiple questions, which are likely to confuse a person.

(4) Where the person seems confused, instead of repeating the same question, the court shall direct its rephrasing.

(5) The reaction of the person shall be treated as sufficient clue that the question is not clear for it to be rephrased and put in a different way.

(6) Given the mental and intellectual level of a person with disability, excessively long questions shall not be allowed.

(7) Questions framed as compound or complex sentence structure or two-part questions or those containing double negatives shall be rephrased

and thereafter put.

Frequent breaks during testimony

17. The witness may be allowed reasonable periods of relief and breaks as often as necessary while testifying.

Expeditious disposal of cases

18. (1) A case of a person with disability shall receive high priority and shall be dealt with as expeditiously as possible, minimizing unnecessary delays and adjournments to avoid repeated appearances in the court.

(2) Whenever necessary and possible, the court schedule shall be altered to ensure that the testimony of a person with disability is recorded on sequential days without delays.

(3) Where the victim of crime is a person with disability, the victim's statement may be considered as a testimony in lieu of examination-in-chief.

(4) Additional measures may be taken to enable the recording of evidence of a person with disability such as -

- (a) recording witness testimony in Braille to ensure a person is not dependent on another person to read their testimony out;
- (b) use of amplification devices or document magnifiers ensuring that all notices that require a response or an action to be taken (e.g. summons, orders) are available by accessible means and in accessible formats;
- (c) use of video and audio guides,
- (d) engagement of sign language interpreters; and
- (e) enabling wheelchair access in the court premises, court room and witness box.

(5) Adequate time shall be given to witnesses using communication

boards during evidence.

Custodial sentences

19. (1) Before imposing a custodial sentence on a person with disability convicted of an offence, the court shall ensure that the correctional facility in which such a person is to serve the sentence is accessible and provides for the necessary accommodation and support.

(2) Where there is no correctional facility with such accommodation and support and custodial sentence is determined to be appropriate, the Commissioner shall be ordered to provide an accessible cell that provides for the necessary accommodations and supports.

Training

20. The Chief Justice shall ensure that judicial officers and court officials receive trainings on disability rights and the content of these rules in order to enable them to ensure the effective participation of persons with disabilities in all judicial proceedings and processes.

DATED: 16TH MAY, 2023

**S. P. SAKOANE
CHIEF JUSTICE OF LESOTHO**

NOTE

1. Act No. 2 of 2021

LEGAL NOTICE NO. 56 OF 2023

Persons with Disability Grant Notice, 2023

Pursuant to section 45(2) of the Persons with Disability Equality Act, 2021¹, I,

PITSO LESAOANA

Minister responsible for gender, youth, sports, arts, culture and social development make the following Notice:

Citation and commencement

1. This Notice may be cited as the Persons with Disability Grant Notice, 2023 and shall be deemed to have come into operation on the 1st April, 2023.

Disability grant

2. The disability grant shall be M600.00 per month.

DATED:

PITSO LESAOANA
MINISTER OF GENDER, YOUTH, SPORTS, ARTS,
CULTURE AND SOCIAL DEVELOPMENT

NOTE

1. Act No. 2 of 2021

