

Assessing the Efficacy of Kenya's International and National Obligations in Enhancing the Effective Political Participation of Persons with Disabilities (PWDs) in Kenya

By Roy Michael Kasema Muasya (MSYROY001)

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DECLARATION

“I know the meaning of plagiarism and declare that all of the work in this dissertation, save for that which is properly acknowledged, is my own.”

Signed by candidate

Signed: ROY MUASYA

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I would like to acknowledge and thank everyone who has supported me through this journey. Mum, Dad, Milan, Beldina, Julie, Samukumba and the rest of my family and friends; I really could not have done it without you. Thank you for sticking with me through the ups and the downs, as well as the endless encouragement, words of affirmations, and love.

To my supervisors, Professor Elias Phaahla and Professor Annette Seegers, thank you for your time, patience, and guidance.

DEDICATION

To my baby boy.

Yet another one for you.

Thank you for teaching me to continue dancing in the rain.

The mission continues.

Now and always.

ABSTRACT

The overall objective of this research is to examine the effectiveness of Kenya's legal frameworks (including the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), Constitution of Kenya (CoK) and Persons with Disabilities Act (PDA)) that condition the political participation of persons with disabilities (PWDs)¹, and to explore the extent to which, consequently, PWDs do and can exercise their participatory rights². Based on a desktop-study, using primarily secondary literature and qualitative evidence, this study observed that, despite Kenya's broad legal framework in support of the full inclusion of PWDs in political activities, the same has not been effectively realized.

It also assesses why, despite the adoption of these seemingly progressive laws, PWDs have struggle to fully actualize their political rights. It is evidenced that, in some areas, there are gaps and shortfalls in the statutes thereby derogating PWDs' rights and submitting them to, as opposed to protecting them from, exclusion and marginalization in Kenya. Furthermore, there is a shortage in reasonable accommodations and measures to foster an environment conducive to PWDs effectively engaging in politics in Kenya. This, coupled with the underrepresentation of PWDs in decision-making, militates against, instead of promoting the exercise of their political rights in Kenya. Therefore, a lot more needs to be done to ensure that PWDs can fully and effectively participate in political affairs in Kenya.

ABBREVIATIONS & ACRONYMS

¹ Importantly here, as voters, candidates and elected/ appointed legislative leaders (in the National and County Assemblies and Senate).

² **For clarity** – the Persons with Disabilities Act (PDA) (2003), Constitution of Kenya (CoK or Constitution) (2010) and United Nations Convention on the Rights of Persons with Disabilities (UNCRPD or CRPD or Convention) (2006) necessitate, in summary, that PWDs in Kenya effectively participate in political governance whether indirectly or directly. These statutes have also made efforts to reduce the barriers faced by Kenya's PWDs and enhance their levels of political participation. To this end, this paper aims to ascertain if these laws have been successful in enhancing the participation of PWDs in political affairs in Kenya.

CA(s): County Assembly/Assemblies	NEC: National Executive Committee
CoK: Constitution of Kenya	NGEC: National Gender and Equality Commission
CSO(s): Civil Society Organization(s)	ORPP: Office of the Registrar of Political Parties
CRPD: Convention on the Rights of Persons with Disabilities	PDA: Persons with Disability Act
DPO(s): Disabled Persons' Organization(s)	PPA: Political Parties Act
D.R: Disability rights	PWAs: Persons with Albinism
EA: Elections Act	PWD: Person with a disability
GoK: Government of Kenya	PWDs: Persons with disabilities
H.R: Human rights	PWIDs: Persons with Intellectual Disabilities
HRI(s): Human Rights Institution(s)	PWMDs: Persons with Mental Disabilities
IEBC: Independent Electoral and Boundaries Commission	PWPSDs: Persons with Psycho-social Disabilities
KNCHR: Kenya National Commission on Human Rights	SIG(s): Special Interest Group(s)
MCA: Member of County Assembly	UNCRPD: United Nations Convention on the Rights of Persons with Disabilities
MP: Member of Parliament	UN: United Nations
NA: National Assembly	WWD(s): Women with Disabilities
NCPWD: National Council for Persons with disabilities	

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INTRODUCTION

In 2008 my family and I were devastated by the news that my nephew (at the time 4 years old) had a relatively rare condition that would eventually leave him unable to move and that reduced his life expectancy to merely 12 years. In years following, he became completely physically impaired and eventually passed away in 2019. During this period (2008-2019) my family and I put a lot of effort into gathering information on persons with disabilities (PWDs) with similar conditions in Kenya and into understanding what assistance if any (and appealing for any assistance that) the government provides to PWDs more generally. It was thus that I began to witness and understand the numerous challenges that Kenya's PWDs face. It became clear that, even though PWDs make up a significant segment of the population, the efforts and mechanisms of government aimed at enhancing their overall welfare are 'not well resourced nor coordinated.' This, coupled with the absence of any 'centralised repositories containing information on PWDs (resulting in a lack of sound data on PWDs), and exiguous literature on Kenya's PWDs and their rights, has negatively affected the protection and promotion of PWDs' rights'. In all, this raised questions regarding the government's obligations and its 'capacity in this regard and true commitment' to this end (Onyango, 2012).

The World Health Organization (WHO) (2011, 2023) estimates that PWDs constitute 16% of the global population – i.e., over 1.3 billion people live with some form of disability.

Whilst all efforts to determine the prevalence of disability in Kenya have so far been inconclusive, estimates include 2.2% (918,000 people aged 5 and above) (Kenya Population and Housing Census (KPHC), 2019); 2.8% (Kenya Integrated Household Budget Survey (KIHBS), 2015/16); 3.5% (1,333,300 people aged 5 and above) (Kenya Population and Housing Census, 2009); 4.6% (1,700,000 people aged 15 and above) (Kenya National Survey for Persons with Disabilities (KNSPWD), 2008); and 10.3% (4.44 million people) (World Health Survey (WHS), 2002-2004)³ (National Coordinating Agency for Population and Development (NCAPD) & Kenya National Bureau of Statistics (KNBS), 2008; Ingstad & Grut, 2007:13; Sightsavers, 2018:4; Owino, 2020:4-6; Kenya National Bureau of Statistics (KNBS), 2012:14-16, 2018, 2020; Kabare, 2018:7; Leonard Cheshire, 2018:36; Rohwerder, 2020:9; Westminster Foundation for Democracy (WFD), 2020a, 2022; Mugambi, 2022; Onyango, 2012:1-4; Kenya National Commission on Human Rights (KNCHR), 2014:viii-3; WHO, 2005).

At the global level, historically, PWDs have been marginalized and discriminated against, with even their most basic rights being denied, in the face of the continued failures by states to mainstream disability related laws and programmes, thus empowering PWDs to 'live with dignity'⁴ (United Nations (UN), 2007; Ocharo 2019:1-3).

Whilst many of the challenges faced by PWDs are universal, some issues – including harmful religious, cultural, and traditional beliefs and practices – are uniquely faced by Africa's community of PWDs (comprised of approximately 80-120 million people) (Toesland, 2018; Africa Health Organization (AHO), 2020; Brouillard, 2020; Vanderschuren & Nnene, 2021:3; Fefoame, 2022; African Studies Centre Leiden (ASCL), 2024; Disabled World, 2024; Yusuf, 2024). As such, PWDs in Africa are 'disproportionately more likely to experience extreme poverty and barriers to their active socio-

³ Overall, significant doubt has been raised regarding the validity of the various estimates of disability prevalence in Kenya (see for instance, Rohwerder (2020:9), Owino (2020) and pages 43-46 for a discussion on this).

⁴ According to the UN (2007), '20% of the population of PWDs lives in conditions of extreme poverty. Also, among adult PWDs, literacy rates are approximately 3%, with only 1% of women with disabilities being literate. Additionally, only 2% of children with disabilities in developing countries attend school.' More generally, it has been found that PWDs are one of the largest groups of 'marginalized persons' forced into surviving on the peripheries of society. Considering that over a billion people live with some form of disability, this could translate to over 2 billion people who are impacted, once the families of those with disabilities are considered (Ocharo, 2019:1-3; UN, 2007).

political participation (with many lacking just access to employment, housing, healthcare and education, social protection, and participation in public and political processes)’ (Fefoame, 2022).

In Kenya, PWDs have historically endured significant discrimination and marginalization – for instance amidst (still prevalent) old-fashioned belief systems that demean and associate disability with sin and ‘being cursed’ – thus, PWDs remain among the most vulnerable segments of society (NGEC, 2016:xviii; WFD, 2020, 2022; KNCHR, 2014). Consequently, PWDs suffer marginalization, inequality, and discrimination in almost all spheres of life. Societies interpretation and reaction to disability has occasioned deeply entrenched socio-economic and cultural biases, as well as stigmatizing and abuse of, and hostility towards PWDs in Kenya (Ingstad & Grut, 2007:11-13). For instance, given rampant stigmatization of those with disabilities, PWDs are reported as being kept ‘secret’ and hidden from public in various communities (NGEC, 2016:185-189). For many (if not most) of Kenya’s PWDs, life is characterized by lack and poverty, exclusion from employment and work opportunities, limited or poor access to education, healthcare, rehabilitation and other social services, and inaccessibility of public infrastructure (KNBS, 2018a:70-71; Mugambi, 2022a; KNCHR, 2014:viii-3; Onyango, 2012:1-4).

PWDs are also marginalized from public and political processes, and among the “least visible” segments of society⁵ (Stein, 2007:121; Onyango, 2012:1-4). Additionally, PWDs encounter many obstacles in accessing the justice system given a lack of accommodations and denial of their ability to exercise legal capacity (KNCHR, 2014:viii-3; Onyango, 2012:1-4). The stark reality of ‘multiple constant rights violations’ points to, beyond societal prejudice, either slow, poor, or inadequate responses by government to address PWDs’ basic and fundamental needs and rights (Mugambi, 2022; Mugambi, 2022a; KNCHR, 2014:viii-3; Jattani & Ochieng, 2022). This should concern all members of the Kenyan society since, ‘if the needs and rights of a (not insignificant) segment of Kenya’s population are not being catered to, then we cannot say in good faith that our country is inclusive and democratic’ (Gitonga, 2017/2020).

In short, the rights of PWDs are human rights which states ought to ‘protect and promote’ and ensure realization thereof (KNCHR, 2014:viii). Thus, for governments to conquer the difficulties (such as those described above), as primary duty-holders they must establish and enact mechanisms that effectively protect and promote PWDs’ needs and rights (Onyango, 2012:1-4).

Globally, official legal recognition and mainstreaming of human rights has become the principal modus operandi to securing socio-economic, cultural, and political justice for the historically marginalized, including PWDs (Merry, 2006; Onyango, 2012:2-4). Whilst, as stated in the preamble to the Universal Declaration on Human Rights (UDHR) (1948), “all human rights are interrelated, inalienable and indivisible,” the right to equally participate in political activities⁶ is often underscored as critical to these overall efforts (Ocharo, 2019:1-3).

Research has established that political participation is a crucial aspect of democracy; arguably, participation in political life is central to the very definition/ spirit of life under democracy, thus, fostering ‘inclusivity’ is pivotal to democratic consolidation (Owiti, 2019:1-6; Thuo, 2016:26-28; Onyango, 2012). It has also been observed that, democracy (hence, political participation) is

⁵ For example, as earlier noted, numerous PWDs across the country have not been officially registered. In some parts of the country, it is as if they do not exist given limited/ no available data on how many PWDs even possess identity cards (without which, adults cannot participate in political processes or access government services) (NGEC, 2016:185-189; WFD, 2020, 2020a).

⁶ NB – For the purposes of this research, in this paper political/participatory rights, participation in political processes/activities, political participation, participation in politics/political life/political sphere/governance, (and related terms) will be taken as referring to the rights to participate and participation as voters, candidates for and holders of office in the legislature (including the National Assembly, County Assembly and Senate) in Kenya. For clarity, the reader is reminded of this in succeeding sections.

fundamental to the just and equitable development of states, as it guarantees that the plight of each section of society is sufficiently addressed (Manus, 1997:65; Owiti, 2019:1-6; Inclusion International (II), 2015:1).

As it pertains to PWDs, by enabling PWDs to participate in governance and decision-making processes, this critical feature of the democratic process allows them to take part in and 'influence decisions that condition their lives', hence facilitating their right and capacity to live in/with (equal) dignity (Virendrakumar et al., 2017; Ocharo, 2019:1-3). In other words, the political participation of PWDs fosters 'socially inclusive development' given that it ensures that their voices are heard and adequately reflected in public policies and other decision-making processes (WFD, 2020:iv; Jattani & Ochieng, 2022). Moreover, since it provides them with the space to share their needs, concerns, and opinions on pertinent socio-economic issues on (among other things), employment, education, health and accessibility of public infrastructure, PWDs' right to participate in political life, 'is the one that all other disability rights depend on'; specifically, it is essential to enabling PWDs to fully and actively advocate for and gain access to their (needs and) other human rights (Ocharo, 2019:1-3; Mugambi, 2022; Mugambi, 2022a; Owiti, 2019:1-6; Onyango, 2012:1-4).

Historically, amidst an absence of disability-sensitive legislations, PWDs have suffered discrimination and marginalization with regards to political participation, with studies on the protection and promotion of PWDs' participatory rights confirming this trend globally (even more so in Kenya⁷) (Ocharo, 2019:1-3; WFD, 2020a, 2022).

However, globally, regionally, and nationally the importance of political participation of PWDs has continued to occupy discussions, thus, PWDs' rights to participate in politics have been progressively entrenched and recognized (especially) in laws at international and national levels (Oluchina, 2015; Owiti, 2019:1-6).

Accordingly, at the international level, various pronouncements, resolutions, and disability rights instruments that have attempted to increasingly protect and promote PWDs' rights exist; the most comprehensive of these is the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD or CRPD) (2006). This human rights instrument, firmly adopts and presents the view that PWDs are agents with rights and the capability to claim these rights, make independent decisions and participate actively in all areas of social life, including politics (Onyango, 2012:1-4).

As it pertains to political participation, this statute highlights the right of all persons (including PWDs) to equally participate in political processes, establishing the value of participation and representation at all levels of government and offering state parties a set of obligations upon which the inclusion and participation of PWDs in political activities should be enhanced. These requirements are set out primarily in Article 29 of the UNCRPD (Golding, 2010; Alberta, 2017:3; UN, 2006; Ocharo, 2019:1-3).

For instance, state parties are obligated with securing and promoting PWDs' political rights and opportunities, as well as providing an environment that is conducive to their full and effective realization of these rights 'on an equal basis with others' (Owiti, 2019:1-6; Onyango, 2012:1-4). Thus, states are required to guarantee the 'right and opportunity for PWDs to take part in (among others) voting and to stand for election or appointment to office and to be elected'; i.e., that PWDs can (and do) successfully and equally participate in political governance, 'directly or indirectly through

⁷ As earlier alluded and later returned to, as in many parts across the globe, historically, Kenya's PWDs have endured continued exclusion from public and political life (WFD, 2020a, 2022). It has been noted that PWDs have continuously faced structural ostracization from governance/ political activities, especially in terms of exclusion from elective and appointive positions of leadership in Kenya. This has been exacerbated by inadequate governmental efforts to establish 'an environment that is conducive to PWDs' active participation in Kenya's mainstream political processes (WFD, 2020, 2020a; Jattani & Ochieng, 2022).

representatives chosen of their free and informed consent' (Owiti, 2019:1-6; Ocharo, 2019:1-3; UN, 2006). Consequently, this requirement also calls on states to establish and provide suitable, easily accessible, convenient, and accommodative election/voting processes, materials, and premises. In addition, the CRPD charges member states with ensuring that PWDs can fully engage in campaign and election related activities, and that having stood for and been elected or appointed to office, they can efficaciously discharge their mandates, and execute all duties at any level of government⁸ (UN, 2006; Owiti, 2019:1-6; Onyango, 2012; Mugambi, 2022a; KNCHR, 2016).

It could be opined that through this international Convention PWDs' political rights are sufficiently protected in Kenya since, 'as a state party to the UNCRPD⁹, Kenya is required to observe and abide by its stipulations (Onyango, 2012:1-4).

The promulgation of a new Constitution in 2010 was a watershed moment in terms of Kenya's observance of international commitments. Through Article 2(5) of the Constitution of Kenya (2010) which provides that the '*general rules of international law are part of Kenya's law,*' and Article 2(6) which states that '*any treaty or convention ratified by Kenya forms part of the law of Kenya,*' provisions on the political participation of PWDs in international statutes were fundamentally adopted into Kenya's national legal framework¹⁰ (Onyango, 2012:1-4; Owiti, 2019:1-6). Thus, as member state to the UNCRPD, this Convention (and its provisions on the political rights of PWDs) 'form part of the law of Kenya and can, for instance, be unreservedly appealed to in law courts should the rights or freedoms of PWDs be infringed or in question' (Onyango, 2012:3-4; Ocharo, 2019; NGEC, 2016).

However, there are still reports that point to breaches of PWDs' right and opportunity to effectively participate in political processes in Kenya¹¹ (Onyango, 2012:1-4; Ocharo, 2019:1-3; WFD, 2022; Jattani & Ochieng, 2022; Mueni, 2017). Resultantly, despite its promise, questions remain as to whether the UNCRPD has or can effectively protect and promote PWDs' participatory rights 'guaranteed therein', thereby advancing the political participation of, and decreasing discrimination against PWDs in Kenya (Owiti, 2019; Onyango, 2012; Ocharo, 2019; Lang, 2009). As noted in the UNCRPD (2006, preamble(k)), '*despite the existence of numerous instruments and resolutions, persons with disabilities across the globe (often) continue to face barriers to their equal participation as members of society and flagrant violations of their human rights.*' Lang (2009:281) and Onyango (2012:3-4) support this, contesting that despite its merits, 'the UNCRPD is unlikely to, by and of itself (per se) be the cure-all that permanently halts the marginalization, socio-economic and political exclusion of PWDs within societies in all parts of the world.'

⁸ Furthermore, under the UNCRPD, state parties are compelled to safeguard PWDs' free will as voters by, defending their right and opportunity 'to vote through secret ballot' in public contexts free of intimidation, and should they so wish, permitting an agent of their picking to vote (or be voted for). Also, member states are expected to foster an enabling atmosphere in which PWDs can, 'on an equal basis with others,' effectively partake in the activities, and running and administration of public and political affairs in non-governmental organizations (NGOs), organizations of and for PWDs, political parties and other civic associations. Beyond this, the UNCRPD also enjoins state parties to facilitate the training and capacitation of PWDs and Disabled Persons' Organisations (DPOs) to advocate for and represent PWDs at all levels (national, regional, and international) (Owiti, 2019:1-6; UN, 2006; Ocharo, 2019).

⁹ 'Kenya signed and ratified the UNCRPD on the 30th of March 2007 and 19th of May 2008 respectively' (KNCHR, 2016).

¹⁰ In other words, with the new Constitution, Kenya moved from the status of a 'dualist state' – requiring that any extra-national treaty or convention be domesticated through 'enabling legislations' before being recognized and actionable in Kenya – to that of a 'monist state', under which any international (or regional) statutes ratified by the state form part of Kenyan law and can thereby be openly invoked (Onyango, 2012:1-4; Constitution of Kenya, 2010).

¹¹ For example, it has been reported that the rights and opportunities for the political participation of PWDs in Kenya have continued to be limited, with PWDs still operating on the fringes of political life. Despite some progress (and the government's disability rights rhetoric), there appears to be a significant gap between the expected protection and promotion of PWD's participatory rights and their lived reality, with Kenya lagging on the realization of the provisions of the CRPD. Thus, PWDs continue to face disconnection from political processes and unequal participation and representation in governance structures (NGEC, 2016, 2018; KNCHR, 2014:xii-2, 2016; WFD, 2020, 2022; Mueni, 2017).

Still, it could be advanced that the political rights of PWDs in Kenya are appropriately secured through the various existing national legal frameworks. Indeed, following decades of failed constitution-making processes, in August 2010 Kenya enacted a new Constitution which was a decisive moment in the recognition and inclusion of PWDs and other historically marginalized communities in public and political processes (Onyango, 2012:1-4).

The Constitution of Kenya (CoK) (2010:Preamble, Article 1(2)) asserts that democracy is a fundamental national principle. It is for this reason that Kenya's government is based on the essential values of democracy and equality – which aim for the representation of all individuals/groups in government – and, participation and inclusion of citizens in governance and decision-making structures are themes that are echoed throughout the Constitution¹² and national laws (Owiti, 2019:1-6; NGEC, 2016:167-168/185-189; Constitution of Kenya, 2010:Preamble).

For the first time in post-independence Kenya, the Constitution of Kenya (2010), in an effort to address and alleviate the difficulties traditionally suffered (especially) by marginalized sections of the community (including PWDs) – and thereby improve and equalize socio-economic, political, cultural, and civil opportunities in the public sphere – recognized and guaranteed protection of the human rights of all groups (including PWDs) (Onyango, 2012:1-4). It is in this spirit that Chapter 4 of the Constitution of Kenya (2010) contains the Bill of Rights which provides for, amongst other things, the political rights of all Kenyan citizens.

Article 38 of the Constitution of Kenya (2010) safeguards the political rights of all citizens (including PWDs), guaranteeing the right to participate in political activities at all levels of government, including (and importantly here) voting, contesting for election/appointment to, as well as holding legislative office. Additionally, the Constitution obliges the State to take 'steps, as well as affirmative action, to ensure that citizens (including PWDs) have opportunities to be represented and participate as members of all elective and appointive public bodies.' Further, the State is mandated with establishing affirmative action programs that guarantee all individuals (even more so from marginalized groups) can participate and be represented in the political sphere (Owiti, 2019:3-5; Onyango, 2012:3-4; Thuo, 2016b:106-109).

With regards to the participation of PWDs specifically, per Article 81 (Constitution of Kenya, 2010), the government must see to it that the voting/election system 'complies with (amongst other tenets), the just participation and representation of Kenya's PWDs.' To facilitate this, Article 82(2) necessitates the enactment of legislations to guarantee that the electoral process is 'simple, transparent and accounts for the needs of, among others, all PWDs' (NGEC, 2016:185-189).

Further, in accordance with Article 54(2) of the Kenyan Constitution, PWDs are classified as a marginalized group and are thus entitled to 'special political participation' (Constitution of Kenya, 2010). This provision emphasizes the need to enhance the participation and representation of PWDs in Kenya. As such, it effectively acts as an 'affirmative action clause that aims to cultivate the political representation of PWDs at all levels and, to this end, requires that PWDs occupy at least 5% of all elective and appointive positions (Thuo, 2016b:116-118; Constitution of Kenya, 2010; Onyango, 2012:3-4). Similarly, Article 27(6) of the Constitution of Kenya (2010) speaks to 'affirmative action to provide sufficient representation of PWDs in all political platforms.' This is bolstered by Articles 27(2)

¹² Following a long history of 'top-down centralized' and exclusionary governance, one of the main goals in promulgating a, and of the new Constitution was to decentralize decision-making and give power and authority over governance to the people. It is thus that Article 1 (Constitution of Kenya, 2010) affirms that 'sovereign power belongs to the people of Kenya, to be exercised directly or indirectly through democratically elected representatives' (NGEC, 2016:167-168).

and 27(4), which advocate for ‘positive actions to establish equality for, and prevent discrimination against PWDs’ (Constitution of Kenya, 2010). In short, the political participation and representation of PWDs in the political arena, across all levels of government, “is an absolute right, to be enjoyed absolutely” (Owiti, 2019:4; Onyango, 2012:3-4).

It is noteworthy that, apart from Kenya’s Constitution, other Acts of Parliament also play a central role in addressing the issue of participation and representation of PWDs in political processes (Owiti, 2019:4). This includes the Persons with disabilities Act (PDA) (2003), which seeks to address the challenges faced by PWDs and as elucidated in its preamble, ‘provide for the rights and rehabilitation of PWDs (and) achieve equalization of opportunities for PWDs ... (among other) connected purposes’ (Onyango, 2012:3-4; Owiti, 2019:5-6; PDA, 2003). It thus proscribes all forms of ‘disempowering/demoralizing discrimination,’ insisting that ‘PWDs ought to enjoy all rights and freedoms on an equal basis with others’ (NGEC, 2016:185-189; Jattani & Ochieng, 2022). Other legislative provisions are found in the Elections Act (2011) and Elections (Party Primaries and Party Lists) Regulations (2017) which identify PWDs as one of the ‘special interest groups’ (SIGs), and therefore deserving of ‘special participation’ and accommodations in line with the provisions of the Constitution of Kenya (Owiti, 2019:5-6).

The preceding discussion elucidates that there are various national legal frameworks relevant to the issue of political participation of PWDs in Kenya. Still, despite the rights and numerous opportunities guaranteed therein, evidence suggests inadequate progress on PWDs full and effective realization of these opportunities so far (Owiti, 2019:5-6).

To begin with, the National Gender and Equality Commission (NGEC) (2016:167-189, 2018) noted continued discrimination against PWDs in voting and election processes in Kenya. Generally, large numbers of PWDs do not have a national identity card (ID) (a prerequisite for registering to vote) and face inaccessible ID and voter registration stations and polling centres, hindering their ability to vote (International Disability Alliance (IDA), 2017:37; Ocharo, 2019; WFD, 2020). For instance, it estimated that in the 2013 general elections, of the already few PWDs that possessed IDs (51%), only 46% managed to register as voters, of which only 41% voted (all these figures being the lowest share among the SIGs), giving an effective participation rate of 10%¹³ (NGEC, 2016:167-189).

Furthermore, in terms of PWDs’ participation in positions of leadership, reports imply an environment of widespread inequality, with PWDs being underrepresented or entirely unrepresented (Wanambisi, 2017; Mueni, 2017; Cottrel-Ghai et al., 2013:2; Thuo, 2016:28-29). For example, in the 2013 general elections (the first under the new Constitution), no PWD ran for the position of Senator or Governor, (‘undermining the very spirit of the new Constitution’) (NGEC, 2016:185:189, 2018).

Additionally, it has also been observed that the legal thresholds for the political representation of PWDs – for instance, ‘the gradual implementation of the principle that PWDs ought to occupy at least 5% of all elective and appointive positions’ – have consistently not been achieved. In the 2017 election for example, only 42/2009 (2.09%) of the citizens elected/appointed to county assemblies were PWDs¹⁴. The absence of progressive implementation is also in the national legislature – of the 349 members of parliament (MPs) elected or appointed in 2017, only 5 (1.43%) were PWDs¹⁵ (Parliament of Kenya, 2021; Mueni, 2017; Owiti, 2019:5-7). Overall, the rate of inclusion of PWDs in the legislature

¹³ This figure is based on multiplying 0.51 (percentage of PWDs with ID cards), by 0.46 (percentage of PWDs registered as voters), by 0.41 (percentage of PWDs who voted in the 2013 elections) which gives us 0.096186, approximately 0.10 (or 10%) (NGEC, 2016:167-189).

¹⁴ In 2013 this figure was 74 PWDs of 2,222 members of county assemblies (MCAs) (3.33%) (KNCHR, 2014:43; NGEC, 2016:167-189).

¹⁵ In the 2013 government, the National Assembly had 9/349 MPs with disabilities (2.57%) (KNCHR, 2014:43; NGEC, 2016:167-189).

(National Assembly, Senate, and County Assemblies) is estimated at 3.29% in 2013, 1.9% in the 2017 government, and approximately 2.0% following the 2022 elections (Jattani & Ochieng, 2022; NGEC, 2016:185-189; United Disabled Persons of Kenya (UDPK), 2013; KNCHR, 2014:43).

There has also been poor inclusion of PWDs in nomination and appointment to government departments. In fact, the number of PWDs historically appointed to authoritative positions in government agencies and ministries can easily be counted¹⁶, signifying their continued marginalization (Onyango, 2012:3-4). Taken together, this suggests denial of the right and opportunities for PWDs to effectively participate in political life.

In sum, Kenya's legal frameworks (including the UNCRPD, CoK and PDA) aimed at protecting and promoting PWDs' rights and advancing their full and effective participation in politics (importantly here, as voters, candidates, and holders of legislative office) have not sufficiently achieved the anticipated good outcomes. Since the overall progress on protecting and promoting the rights and enabling the just political participation of PWDs has been below expectations, this implies that PWDs also continue to be rendered at a significant disadvantage in, beyond the political, other public domains – including, as earlier explained, socio-economic, cultural, and civil spheres (Onyango, 2012:3-4; NGEC, 2016:185-189, 2018; Owiti, 2019; II, 2015:3; Thuo, 2016, 2016b).

Once again, this raises questions as to the extent to which relevant legal frameworks in Kenya can and have successfully protected PWDs' political rights, thereby, reducing their exclusion and advancing their inclusion in Kenya's political processes (Owiti, 2019; Onyango, 2012; Ocharo, 2019; Lang, 2009).

PROBLEM STATEMENT

Kenya has put in place 'seemingly progressive legal frameworks' – including the UNCRPD, Constitution of Kenya and PDA – aimed at protecting PWDs' rights and enhancing their political participation¹⁷ in Kenya. However, these laws in support of PWDs seem to have not yet adequately addressed the challenges facing PWDs, nor attained the expected good outcomes (II, 2015:3; Thuo, 2016b; Owiti, 2019:4-6/41-44; Onyango, 2012:3-5/16-23).

These legal instruments establish the value of political participation and representation of PWDs on an equal basis with others, and necessitate, in summary, that PWDs in Kenya successfully participate in political governance, indirectly (through voting for representatives) or directly (through contesting for election, and/or being elected or appointed to legislative office) (Alberta, 2017:3; Golding, 2010; Owiti, 2019:4-6; Onyango, 2012:3-5/16-23; UN, 2006; Constitution of Kenya, 2010; PDA, 2003). Despite these legal frameworks, PWDs in Kenya appear to have not yet experienced increased opportunities, nor realized and exercised their full range of participatory rights (Ocharo, 2019:3-4; Mueni, 2017; Wanambisi, 2017; Cottrel-Ghai et al., 2013:2; Thuo, 2016:28-29; Owiti, 2019:6-7). In fact, evidence suggests that PWDs continue to endure discrimination and marginalization in political processes.

¹⁶ To illustrate, '2 Commissioners with disabilities served in the Constitution of Kenya Review Commission starting in about 2000 (Dr Oki Ooko Ombaka and Salome Muigai). The Kenya National Commission on Human Rights (KNCHR) had 2 Commissioners with disabilities (Lawrence Mute and Dr Samuel Kipngetich Arap Tororei appointed in 2003 and 2008 respectively). Also, there was 1 Commissioner with a disability (Dr Imaana Kibaaya Laibuta) in the Commission for the Implementation of the Constitution, and 1 Judge with a disability in the Court of Appeal (Justice Daniel S.K. Aganyanya)' (Onyango, 2012:3-4).

¹⁷ As noted earlier, and importantly for our purposes, as voters, candidates for and holders of office in the legislature (National and County Assemblies and Senate).

To begin with, the legal requirement that at least 5% of the membership in all elective and appointive bodies in Kenya be occupied by PWDs has not been achieved (NGEC, 2016:185-189, 2018; Mueni, 2017; Owiti, 2019:6-7). As earlier indicated, PWDs are still significantly under-represented, especially in critical decision-making (even more so legislative) platforms. In the 2013 and 2017 elections respectively, only 74/2,222 (3.33%) and 42/2009 (2.09%) of the members of county assemblies (MCAs) were PWDs (Mueni, 2017; KNCHR, 2014:43; NGEC, 2016, 2018; Owiti, 2019:6-7). Similarly, ‘despite the constitutional requirement that every county in Kenya nominates at least 2 persons with disabilities,’ 17 counties did not nominate any PWDs to county assemblies in the 2017 elections, with this figure increasing to 21 counties in 2022 (Jattani & Ochieng, 2022; NGEC, 2018:14/24-25; Mueni, 2017).

This has also been the case in the national assembly where in 2013, only 9/349 (2.57%) MPs were PWDs, with this figure decreasing to 5/349 (1.43%) in 2017 (Parliament of Kenya, 2021; Mueni, 2017; KNCHR, 2014:43; NGEC, 2016:167-189). The estimated rate of inclusion of PWDs in the legislature (National Assembly, Senate, and County Assemblies) is 3.29% (2013), 1.9% (2017) and 2.0% (2022)¹⁸ (Jattani & Ochieng, 2022; NGEC, 2016:185-189, 2018; KNCHR, 2014:43). The government has also failed ‘in the nomination/ appointive process; the number of PWDs nominated to positions of leadership in government ministries and agencies for instance, has been appalling’ (Mueni, 2017; NGEC, 2018:14/24-25; Owiti, 2019:5-7; Onyango, 2012:3-4).

Secondly, Kenya’s legislature has not sufficiently amended other relevant legal documents to fully address the contemplations of the UNCRPD, Constitution of Kenya and PDA, and to increase the opportunities for, and enable the effective political participation of PWDs in Kenya (II, 2015:3; Thuo, 2016b:116-121; Owiti, 2019:4-6/41-44; Onyango, 2012:3-5/16-23; WFD, 2020). For instance, the Political Parties Act (PPA) (2011), ‘despite being the principal document governing the activities of political parties in electoral matters in Kenya,’ lacks adequate provisions to reasonably accommodate and support PWDs in Kenya contesting as candidates in line with the UNCRPD and CoK¹⁹. With the PPA and other relevant documents, parliament ought to have tried to realize the expectations of and to put them in line with (among others) the Constitution – for instance, with the intention to meet ‘the 5% threshold’ (NGEC, 2018:13/60; Cottrel-Ghai et al., 2013:6-7; Owiti, 2019:5-7/47-50).

Additionally, there are shortcomings within the key statutes themselves. For instance, the Constitution of Kenya (2010), in various ways, limits the rights of PWDs to vie for and hold legislative posts. Article 99(2e) (Constitution of Kenya, 2010) for example, provides for the disqualification of persons specified as having an ‘*unsound mind*’ as a disability from vying for and being elected/appointed to the national legislature. Similarly, Article 83(1b) (Constitution of Kenya, 2010), and the Elections Act (2011) bar ‘those of unsound mind’ from participating as voters in electoral processes in Kenya.

Such references to legal capacity, given their frequent use in law, usually necessitate careful interpretation to prevent doubt when used. However, given their inherent ambiguity (hence, difficulties in and unclear interpretations of them when used in law), ‘formal and informal mechanisms have come to be relied on in determining the legal capacity of PWDs’ (Thuo, 2016b:116-121). In this regard, there has been a tendency to primarily rely on reports from ‘medical professionals’

¹⁸ Beyond this, the continued appeals to the Kenyan government by PWDs, DPOs and international agencies alike, for the enhanced inclusion of PWDs in governance/decision-making processes, indicates that Kenya’s PWDs are not yet equal participants in political activities in Kenya (Wanambisi, 2017; Mueni 2017; Parliament of Kenya, 2019; NGEC, 2018; Jattani & Ochieng, 2022).

¹⁹ PWDs’ capability to participate (or lack thereof) is a crucial part of the problem at hand (Thuo, 2016b). PWDs in Kenya face numerous capability related barriers – that are yet to be properly addressed within the relevant laws and – that limit their ability to exercise their rights on an equal basis with others (e.g., insufficient provisions on capacity building and reasonable accommodations) (Thuo, 2016b:121-127; Mueni, 2017). Whilst the Constitution (2010:Article 27(2), 27(4), 27(6), 38, 82(2)) and UNCRP (2006:Article 29) somewhat provide for such positive action on capacitation of PWDs by Parliament, this is yet to adequately materialize in relevant supplementary legal instruments (Onyango, 2012: 3-5/16-23; Owiti, 2019:4-6/41-50).

determining the legal capacity of PWDs, often, with a failure to consult PWDs in these matters that concern them. This has contributed to the continued systematic exclusion of PWDs, ‘with law courts and these formal/informal mechanisms in most cases **not** determining in favour of PWDs’ (Owiti, 2019:5-7; Cottrel-Ghai et al., 2013:2; Onyango, 2012).

A further concern is that the protections provided to PWDs’ rights to equally participate in political life are uncertain in some areas (Owiti, 2019:6-7). For instance, whilst legal capacity is a precondition to the political participation of PWDs, particularly in contesting for election/appointment to political office, there are no clearly identifiable legal mechanisms for determining the legal capacity of PWDs as required by Article 12 of the UNCRPD (2006). The resulting formal and informal approaches used in ‘determining legal capacities, overemphasize health models/definitions and doctors’ reports’ at the expense of all other opinions, especially those of PWDs themselves (Thuo, 2016b, 2016:43-44; Mute, 2010; II, 2015; Owiti, 2019:5-7). In certain instances, varying doctors’ reports and diverging opinions only serve to create confusion and unreasonably disempower PWDs for extend periods of time. Further, whilst the medical/health method of defining and determining ‘*unsound and sound mind*’ continues to be relied on in Kenya’s law courts, the Kenya Health Policy (2014-2030) – which is important to this approach – has no explicit definition of PWDs, (suggesting potentially unjust limitations and) adding to the confusion (Owiti, 2019:5-7; Thuo, 2016b:117-121).

In summary, PWDs are still far from actualizing their rights to participate in the political arena in Kenya, with (among other things) the pertinent legal frameworks seemingly falling short (Onyango, 2012; Ocharo, 2019). This research paper seeks to identify and address – in addition to other factors that limit the political participation of PWDs – the gaps within the relevant legal frameworks in Kenya.

Given the above concerns it asks, *how successfully have Kenya’s international and national obligations enhanced the political participation of PWDs as voters, candidates, and legislative leaders in Kenya?*

The overall objective of this research is to examine the success of Kenya’s legal frameworks (including the UNCRPD, Constitution of Kenya and PDA) that condition the political participation of PWDs²⁰, and to explore the extent to which, consequently, PWDs do and can exercise their participatory rights²¹ (Owiti, 2019; Ocharo, 2019; NGEC, 2016, 2018; Onyango, 2012).

It will also assess why, despite the adoption of these seemingly progressive laws, PWDs have struggle to fully actualize their political rights (Ocharo, 2019). It is evidenced that, in some areas, there are gaps and shortfalls in the statutes thereby derogating PWDs’ rights and submitting them to, as opposed to protecting them from, exclusion and marginalization in Kenya (Owiti, 2019). Furthermore, there is a shortage in reasonable accommodations and measures to foster an environment conducive to PWDs effectively engaging in politics in Kenya. This, coupled with the underrepresentation of PWDs in decision-making, militates against, instead of promoting the exercise of their political rights in Kenya. Therefore, a lot more needs to be done to ensure that PWDs can fully and effectively participate in political affairs in Kenya (Onyango, 2012; KNCHR, 2014, 2016, 2022; Ocharo, 2019; Owiti, 2019; WFD, 2020; Mute, 2023; NCPWD, 2023).

²⁰ Importantly here, as voters, candidates for and in elected/ appointed leadership roles in the legislature (National and County Assemblies and Senate).

²¹ **For clarity** – the Persons with Disabilities Act (PDA) (2003), Constitution of Kenya (CoK or Constitution) (2010) and United Nations Convention on the Rights of Persons with Disabilities (UNCRPD or CRPD or Convention) (2006) necessitate, in summary, that PWDs in Kenya effectively participate in political governance whether indirectly or directly. These statutes have also made efforts to reduce the barriers faced by Kenya’s PWDs and enhance their levels of political participation. To this end, this paper aims to ascertain if these laws have been effective in enhancing the participation of PWDs in public affairs in Kenya.

RELEVANCE/ JUSTIFICATION

The reasoning that justifies this research paper is therefore that, firstly, despite Kenya having in place seemingly progressive (international and national) legal frameworks to protect and promote PWDs' rights to, and improve the extent to which they participate in politics²² in Kenya, good results are yet to materialize (Mueni, 2017; Onyango, 2012:4-5; Owiti, 2019:6-8; Ocharo, 2019:1-4).

These statutes (including the UNCRPD, CoK and PDA) have made efforts to reduce the challenges and barriers faced by PWDs and enhance their levels of participation. Consequently, we do see some PWDs voting, vying for office, and holding legislative office in Kenya. Nonetheless, evidence suggests that PWDs continue to endure discrimination and marginalization, with low overall rates of inclusion and representation in these political processes in Kenya. Evidently, more effort is as of yet required to realize constitutional thresholds (and international standards), and more generally, to facilitate PWDs participation in politics 'in a manner consistent with the principles of democracy' in Kenya (Ocharo, 2019:iv/4-8; Owiti, 2019:6-8; Mueni, 2017; Parliament of Kenya, 2021; Wanambisi, 2017; Cottrel-Ghai et al., 2013:2; Thuo, 2016:28-29).

For this to be attained, it is within reason to assert that the inadequate levels of participation of PWDs as voters, candidates, and legislative leaders in Kenya, may be attributable to, among other factors, statutes that are not fit for purpose²³. For instance, gaps in the statutes (such as, insufficient provisions on the accommodation of PWDs); laws that limit and restrict as opposed to advance PWDs' political inclusion; non-alignment of international standards, constitutional contemplations and legislative provisions; and the low representation of PWDs in decision-making, all beckon for research into and suggestions of interventions 'to address them' (II, 2015:2-3; Owiti, 2019:6-8; Thuo, 2016:43-44/127-129; Wanambisi, 2017; NGEK, 2018:15-24/60-65; OSCE Office for Democratic Institutions and Human Rights (OSCE-ODIHR), 2019:77).

As such, it is imperative to critically evaluate how successfully Kenya's international and national obligations (legal frameworks) have enhanced, and their potential to advance the inclusion of PWDs in political activities in Kenya, as well as identify barriers to the same and provide recommendations to resolve them; this is the exact basis of this study.

Secondly, even though PWDs make up a significant proportion of Kenya's population and despite the legal framework in place, encounter discrimination and various challenges in the process of accessing and exercising their human (including political) rights, limited (empirical) research exists on PWDs and their human rights in Kenya. Indeed, few studies have been conducted evaluating PWDs' current political situation, and the efficacy and potential of Kenya's international and national obligations²⁴ – in enhancing, and to enhance PWDs' participation in political processes – with the aim of generating recommendations to ease the participatory challenges endured by PWDs in Kenya. Moreover, even the studies that do exist on the political situation of PWDs, and related barriers, have tended to focus on a single electoral cycle, particular towns/regions in Kenya, specific categories of PWDs in Kenya, and

²² Importantly here, as voters, candidates for and in positions of leadership in the legislature (National and County Assemblies, and the Senate).

²³ As Owiti (2019), Ocharo (2019), and Onyango (2012) correctly assert and observe, this issue can **also** be traced to failures in the implementation of current legal frameworks. This notwithstanding, it is important to question the adequacy and (potential) efficacy of the legal frameworks themselves. This concern may outweigh the issue of failed implementation, given that, for instance, gaps and shortfalls in the statutes themselves may serve to hinder effective implementation, and thus advancement of the participation of PWDs in Kenya. Similarly, these shortcomings may mean that, even if/ when implemented, the provisions in these statutes may still not adequately promote and protect PWDs' rights and may, in some instances, even limit these rights and PWDs' political participation in Kenya (as earlier alluded to – see pages 15-16) (Thuo, 2016, 2016b; Wanambisi, 2017; Owiti, 2019:5-7/47-50; Oyaro, 2015:360-369; Mute & Kalekye, 2016:68-76).

²⁴ i.e., 'international disability rights standards and constitutional and legislative contemplations at the national level.'

PWDs' participation as voters or in political parties in Kenya (see for example, Onyango, 2012; KNCHR, 2014, 2016; NGEC, 2016, 2018; II, 2015; Thuo, 2016, 2016b; USDS-BDHRL, 2017; USP-K, 2017; HI, UDPK & ANDY, 2017; Ocharo, 2019; Owiti, 2019; iKNOWPOLITICS, 2019; WFD, 2020; KUB, 2020; UDPK, 2021; MT, 2021; Thuo & Ambani, 2022; Onsomu, Mose & Munene, 2022; EU-EOM, 2022; ELOG, 2022; IRI & NDI, 2022; KPMG, 2022; Mute, 2023).

This could be attributable to the fact that, in dealing with questions related to PWDs, most institutions in Kenya have historically done so from medical and charity perspectives, as opposed to a human rights perspective in which PWDs are viewed as valuable and capable right-wielding agents (Onyango, 2012:4; Owiti, 2019:5-6). Also, with few PWDs holding positions of leadership and influence in these organizations and decision-making structures in Kenya, it is unsurprising that PWDs' human rights and research into, and monitoring thereof, have also rarely made it to the forefront of agendas/discussions (Mueni, 2017). Additionally, the domain of advocacy for PWDs' human rights is still 'relatively new for DPOs, (even more so) civil society organizations (CSOs), academic and governmental/non-governmental institutions in Kenya (Onyango, 2012:4-5; WFD, 2020:23-28; NGEC, 2018:64-66).

It is this that, at least partially, explains the absence of broad public awareness and debate on this issue, and, more generally, the weak/inadequate progress in the relative inclusion of PWDs in political affairs in Kenya (Onyango, 2012; National Gender and Equality Commission (NGEC), 2016; Owiti, 2019; Ocharo, 2019; WFD, 2020; Thuo & Ambani, 2022; Mute, 2023). This study, as such, seeks to add to the efforts to fill this gap in the literature, around the challenges of actualizing PWDs' human (including political) rights in Kenya, by firstly, establishing the level of PWDs' inclusion in political processes (as voters, candidates, and legislative leaders) in post-2010 Kenya, and thus, across time. This will allow for more reliable results. It will also evaluate the success and potential efficacy of Kenya's international and national legal frameworks (on the political participation of PWDs) in enhancing the political inclusion of PWDs in post-2010 Kenya.

Additionally,²⁵ there is an overall shortage of disability focused empirical studies undertaken in Kenya and Africa more generally²⁶ (Onyango, 2012:ix-1/4-6; Mute, 2010; Ocharo, 2019). Thus, the data and information referred to and results presented in such studies, are often premised on developed countries (especially from the West), with contexts that completely differ from those of developing African countries, such as Kenya (Ocharo, 2019:6-8; Owiti, 2019). As Onyango (2012:4-6) (as well as Grech, 2009:771) contend, this issue may be traceable to the history of 'monopolization of disability studies by western scholars with a focus on the industrialized countries of the West, occasioning assessments, results and recommendations – and based on cultural, ideological, historical and theoretical suppositions – that do not axiomatically fit the African context.'

Consequently, this study envisages contributing to the available body of knowledge on disability in Kenya (and Africa broadly) and more so from the perspective of African developing countries (Onyango, 2012:4-6; Oluchina, 2015).

Lastly, it is also anticipated that the knowledge acquired from this research will inform on and provide motivation for and support to the efforts of various stakeholders on the issue of protecting and

²⁵ And this is also one of the reasons (in the preceding point) for the limited existing research on PWDs and the realization of their human rights in Kenya (Onyango, 2012).

²⁶ Even less so in disability and political participation. In fact, very few studies (on some specific issues almost none), have been conducted on the question of PWDs and their participation in mainstream politics in Kenya (and Africa more generally). Even databases like Afrobarometer (2023) – praised for its focus on generating reliable and accessible data on democracy, governance, the economy, and society in Africa – have largely excluded Africa's (and even more so Kenya's) PWDs from the discussion on all fronts. There is thus a significant gap in the research, calling for studies that contribute to the efforts to fill such gaps.

promoting PWDs' political rights and enhancing their full inclusion in political activities in Kenya (Ocharo, 2019:6-8; Onyango, 2012:ix/4-5).

For instance, a richer understanding of the current political situation of PWDs in Kenya (including the extent of their political participation and the challenges thereof), as well as the efficacy of current legal frameworks in Kenya, will be crucial to influencing the conception of laws that will effectively protect PWDs' rights and enable them to fully (and effectively) participate in Kenya's political processes (Onyango, 2012:4-5).

This will also be essential for government and private sector institutions, CSO and DPOs, in designing and effecting targeted disability-related policies and measures to facilitate such effective participation. If Kenya is to attain full and meaningful participation and representation of PWDs, actions by the state, CSO, DPOs (and other relevant institutions) towards systematically including PWDs will be needed. Data that is accurate and easily accessible – hence, studies such as this elucidating the current political situation of PWDs – will be crucial to the development of such targeted efforts and delivering transformational change in Kenya²⁷ (Owino, 2020) (Fefoame, 2022; WFD, 2020; OSCE-ODIHR, 2019).

Relatedly, said knowledge may also prove useful in raising public awareness on the plight of PWDs in Kenya, thereby increasing support for and bolstering the efforts of the Kenyan Disability Rights Movement (including activists and organizations of and for PWDs) in advocating, and highlighting the need for continued action on the issue of political participation of PWDs in Kenya.

This study may also be useful in informing all concerned stakeholders on the performance of Kenya's government as far as protecting and promoting PWDs' rights is concerned, and by extension realizing Kenya's international and national obligations²⁸ that would enhance the inclusion of PWDs in political activities in Kenya (Ocharo, 2019:6-8; Onyango, 2012:4-5). This may provide impetus for continued government action to increase the implementation of these obligations (even more so in a context where, based on this information, pressure for such action increases from international and national organizations for and of PWDs).

Moreover, the acquired knowledge will also be to the benefit of academics and researchers²⁹ in terms of understanding where the gaps in the research and for research are with regards to the realization of the political rights of PWDs in Kenya³⁰. For instance, from the perspective of future research, this study will add depth and provide evidence for my next stage of research, which will focus on how Kenya's international obligations have been translated and domesticated into national laws (policies and programs) to drive the political participation of PWDs in Kenya, and importantly, the role played by the Kenyan legislature (as the key duty-bearer³¹) to this end.

²⁷ Put differently, as earlier indicated, it is evident that full and effective participation of Persons with Disabilities (PWDs), as voters, candidates, and legislative leaders, is contingent on (among other things) the efficacy of the relevant legal frameworks, and the elimination of barriers to such effective participation. Additionally, the development of appropriate and effective laws, policies and other response mechanisms is fundamentally dependent on the collection, disaggregation, and dissemination of relevant data – including on progress on, and the state of PWD's inclusion in electoral and legislative activities Kenya.

²⁸ In particular (in this instance) the contemplations of the UNCRPD, Constitution of Kenya and PDA.

²⁹ As it stands, conducting research, let alone policy making, on the political representation of PWDs in Kenya, is challenging given limitations in the availability of relevant information/data. Even where such disaggregated data, on the inclusion of PWDs in governance activities in Kenya, ought to be readily available – such as at county/national assembly offices, the Independent Electoral and Boundaries Commission (IEBC) and the National Council for Persons with Disabilities (NCPWD), as well as academic and research institutions – limited information exists.

³⁰ For instance, this study may be important to future research assessing how and the extent to which Kenya's international obligations have advanced the inclusion of PWDs in mainstream politics in Kenya. Similarly, it may also prove useful in the context of studies assessing Kenya's fulfilment of its obligations in so far as the political participation of PWDs in Kenya is concerned.

³¹ 'Representative parliaments are pivotal to a healthy democracy and just rule of law. As fulcrums of legislative matters and participation – hence, key democratic institutions – parliaments have a duty to be role models and champion the cause of creating a disability-inclusive government (at all levels), and by extension community. Through articulating and facilitating the realization of the rights of PWDs, as well

At a personal level, I am currently in the process of launching the Morris Mark Musau Foundation (MMMMF), which will not only promote and support the education of children with disabilities (CWDs), but will also be actively involved in research, monitoring, and advocacy around the human (and political) rights of PWDs in Kenya. I intend to use the knowledge gleaned on disability rights in the development of the Foundation's mission, principles, and strategies such that, eventually, the Foundation will influence the development of laws, policies and interventions that effectively promote and protect PWDs' human (and political) rights in Kenya. It is thus my wish to gain a more in-depth understanding of the rights of PWDs, and the area of disability rights advocacy and disability studies more generally in Kenya (Onyango, 2012).

OBJECTIVES

The overall objective then, is to contribute to the literature and field of research on how disability rights in Kenya are being protected and promoted. Thus, this study will critically evaluate the extent of PWDs' participation in political processes in Kenya, and whilst doing so, examine the efficacy (and potential) of the legal frameworks that ought to protect and promote the political participation of PWDs in Kenya. It will also identify (and recommend solutions to) some of the key challenges hindering the full and effective inclusion of PWDs in political activities in Kenya (Onyango, 2012; Owiti, 2019; Ocharo, 2019; Alberta, 2017; Suping & Moswela, 2018).

The *specific objectives* of this study are as follows:

1. To ascertain the extent to which PWDs participate in political processes in Kenya.
2. To evaluate the success/efficacy of the international and national statutes, on the political participation of PWDs in Kenya, in advancing the inclusion of PWDs in political activities in Kenya.
3. To identify (some of the) obstacles to the full and effective political participation of PWDs in Kenya, as well as recommend measures to address them and improve their inclusion in political affairs in Kenya.

RESEARCH QUESTIONS

GUIDING QUESTION:

How successfully have Kenya's international and national obligations enhanced the political participation of PWDs as voters, candidates, and legislative leaders in Kenya?

Sub-questions

1. To what extent are PWDs participating in political processes³² in Kenya?
2. How successful/effective have the international and national legal frameworks³³ – that ought to protect and enhance the political participation of PWDs in Kenya – been?
3. What barriers continue to limit the participation of PWDs in political activities in Kenya? How can they be addressed?

RESEARCH HYPOTHESES

1. The extent of PWDs' participation in political activities in Kenya is inadequate (Onyango, 2012; Mueni, 2017; Wanambisi, 2017; Ocharo, 2019; Owiti, 2019; Mute, 2023).
2. Thus far, Kenya's legal frameworks (including the UNCRPD, CoK³⁴ and PDA) that protect and promote the exercise of PWDs' political rights, have been relatively ineffective. Consequently, despite some progress, PWDs' participation in political processes in Kenya remains low. This suggests that, to prevent further exclusion, and attain adequate levels of PWDs' political participation in Kenya, among other things, significant reform and improvement of these frameworks is needed (Mute, 2010; Onyango, 2012; Thuo, 2016b; Ocharo, 2019; Owiti, 2019; Jattani & Ochieng, 2022, 2023).
3. PWDs face numerous challenges that militate against their full effective participation in political activities in Kenya. To support PWDs in realizing their political rights, measures that can enhance the effective participation of PWDs in political processes in Kenya, therefore need to be put in place (Onyango, 2012; Thuo, 2016; Mueni, 2017; Owiti, 2019; Ocharo, 2019).

³² Importantly here, as voters, candidates, and leaders in the legislature (National Assembly, Senate, and County Assemblies) in Kenya.

³³ Including the UNCRPD, CoK, and PDA.

³⁴ NB – whilst here, reference is only made to the CoK (2010), reference will also be made to subsequent amendments and legislative supplements to the Constitution, that were enacted after 2010 with the intention of realizing/ operationalizing its provisions (importantly, the Elections Act (EA) (2011) and Political Parties Act (PPA) (2011)).

LITERATURE REVIEW^{35,36}

- **Q1 & Q2: The extent of and progress on the political inclusion of PWDs**

This section reviews the findings, in the included literature and studies, on the extent of PWDs' participation as voters, candidates, and legislative leaders in Kenya³⁷.

ELECTORAL PARTICIPATION:

Historical context - pre-2010³⁸

Concerning the historical participation of PWDs in electoral processes in Kenya, studies by, among others, the Westminster Foundation for Democracy (WFD) (2020:5/42, 2022a) (also see, Handicap International (HI), United Disabled Persons of Kenya (UDPK) & Action Network for the Disabled (ANDY) (HI, UDPK & ANDY), 2017; National Gender and Equality Commission (NGEC), 2016) reported that, historically, PWDs faced marginalization and systemic exclusion from electoral and political processes more broadly. Supporting this, the Kenya National Commission on Human Rights (KNCHR) (2014:2) and NGEC (2016:xviii/167-189) observed that, pre-2013, PWDs and DPOs were minimally involved in electoral activities in Kenya, amidst discriminatory and marginalizing attitudes and practices. Similarly, according to Onsomu, Mose and Munene (2022:103) and HI, UDPK and ANDY (2017:15-16), despite gaps in the available data historical anecdotes and practices³⁹ suggest that stigma and negative social attitudes have, for a long time, hindered PWDs from fully and effectively participating in electoral activities in Kenya.

Post-2010⁴⁰

The 2022 general elections in Kenya were the third held under the Constitution of Kenya (CoK) (2010), the previous national polls being in 2013 and 2017. Unlike pre-2010 contests, these elections were the first to be conducted under the 'transformative' constitutional framework which for the first time, not only protected and promoted the representation of historically marginalized groups (including PWDs), but also officially domesticated various international statutes, including the UNCRPD (Mute, 2023:11). Unsurprisingly then, the reviewed literature generally agrees that there has been some noticeable progress in the inclusion of PWDs in electoral processes since the promulgation of the CoK in 2010 (see for example, WFD, 2020, 2020a, 2022).

³⁵ See Table 1 (Appendix A). This table summarizes the findings, on the key indicators of interest, from the literature included in this review.

³⁶ NB: '1997:' = 1997 general elections in Kenya/1997 electoral cycle (i.e., 1997-2002); '2007/2008:' = 2007 general elections/2008 electoral cycle (i.e., 2008-2013); '2013:' = 2013 general elections/2013 electoral cycle (i.e., 2013-2017); '2017:' = 2017 general elections/ 2017 electoral cycle (2017-2022); '2022:' = 2022 general elections/2022 electoral cycle (i.e., 2022-2027); NA = National Assembly, CA = County Assembly.

³⁷ Whilst focus is given to the proportion of PWDs participating as voters, candidates, and legislative leaders (including in the National Assembly, Senate, and County Assembly) in Kenya, some information on PWDs' engagement in other relevant political activities is also referenced for two reasons. First, to provide information on the participation of PWDs in political activities that are crucially related to the measures of interest e.g., possession of national identity card (ID), voter registration and registration with NCPWD). Secondly, given the overall limitations in the availability of data on the participation of PWDs as voters, candidates and legislative leaders in Kenya, this additional information is useful to contextualizing the data of interest, thus, allowing for, where necessary, (more) reliable generalizations and conclusions to be drawn.

³⁸ i.e., prior to the promulgation of the CoK in 2010, or in all Kenyan elections prior to the introduction of the CoK (2010).

³⁹ In particular, the Kenyan government's approach to governance, prior to the enactment of the CoK (2010), which consisted of the broad exclusion of all citizens (even more so marginalized groups such as PWDs) from governance activities in Kenya (Onsomu, Mose and Munene, 2022; Mute 2023; Owiti, 2019; Onyango, 2012).

⁴⁰ i.e., following the introduction of the CoK in 2010, or in elections in Kenya post-2010.

In its report, the United Disabled Persons of Kenya (UDPK) (2021:vi/35) noted that, post-2010, the participation and representation of PWDs in Kenyan elections became evident, adding that, between 2010 and 2021, PWDs' participation in electoral activities in Kenya somewhat widened. Illustrating this, in its briefing paper on implementing article 12 of the UNCRPD in Kenya, the Kenya National Commission on Human Rights (KNCHR) and Open Society Initiative for Eastern Africa (OSIEA) (KNCHR & OSIEA) (2014:60), reported that during the 2010 referendum on the CoK (2010), amidst unprecedented support from the Government of Kenya (GoK), some adults with intellectual disabilities were able to register and vote.

Likewise, studies by the NGEC (2016:167-182) and the KNCHR (2014:43, 2016:62) found that unlike in previous elections, in 2013 and thereafter, there was an increase in the electoral participation of PWDs in Kenya. This is supported by the KNCHR and OSIEA (2014:107-108), who observed that support from the government during the 2013 Kenyan elections, led to a record number of PWIDs voting.

In addition, the report by HI, UDPK and ANDY (2017:13-105) highlights that, because of (among others) the CoK (2010), since 2013, there has been significant progress in the electoral participation of PWDs in various counties across Kenya. For example, an average of 94.8% of surveyed PWDs, in 2016-2017 across 6 counties⁴¹ in Kenya, were registered as voters (HI, UDPK & ANDY, 2017:13-102). Also, in the same survey, approximately 89.3% of the surveyed PWDs (across 6 counties⁴² in Kenya) said that they had voted at least once in the past, whilst about 99.5% of them intended to vote in the 2017 Kenyan elections⁴³ (HI, UDPK & ANDY, 2017:13-105).

Building on this, Jattani and Ochieng (2022, 2023), WFD (2020:19) and KPMG Advisory Services Limited (KPMG) (2022:17-18), highlighted that whereas in 2017 there were 0.14million PWDs in the voter register, in 2022 there were 0.16million PWDs registered as voters in Kenya – hence, a 5.4% increase. Additionally, in its monitoring report on the 2017 Kenya elections, the NGEC (2018:26), detailed that 15.6% of those in special interest groups (SIGs)⁴⁴ observed attending pre-elections voter verification exercises were PWDs.

Moreover, the European Union Election Observation Mission (EU-EOM) (2022:18-19) (also see, KPMG, 2022:17-18), revealed that PWDs comprised approximately 18.96% of the voters registered during the pre-2022 voter registration exercise in Kenya, thus, exceeding the 5% constitutional benchmark⁴⁵.

Consequently, it is evident that, especially post-2010, there has been some progress in the overall inclusion of PWDs in electoral activities in Kenya. Further, in some areas, such as voter registration, the upwards trend, in the level of participation of PWDs in Kenya, is particularly clear (for more see, Gichana, 2022; Thuo & Ambani, 2022).

Nevertheless, as it relates to the participation of PWDs as voters in Kenya following the passage of the CoK (2010), most of the literature included in the review concluded that, in general, it has been and remains low (Ombane, 2022). For example, commenting on their review of published and unpublished literature on the inclusion of PWDs in elections, Virendrakumar et al., (2018:509), confirmed that most

⁴¹ 6 counties: Nairobi, Kiambu, Taita Taveta, Homabay, Bomet & Isiolo (HI, UDPK & ANDY, 2017:13-20/35-42/56-59/72-76/87-90/102-105).

⁴² Ibid.

⁴³ It is however important to note that this survey was based on a small sample (6 counties and n = 192) and was carried out by key local DPOs who likely sought out PWDs with some interest in politics (e.g., as shown by results across the 6 counties that almost all surveyed PWDs had voted in the past) (HI, UDPK & ANDY, 2017).

⁴⁴ Special interest groups (SIGs) including, women, youth, elderly, ethnic minorities and PWDs.

⁴⁵ However, recent work by Mute (2023:27-28), as well as the International Republican Institute (IRI) and National Democratic Institute (NDI) (IRI & NDI) (2022:10-11), found that overall, PWDs constituted only 8.7% of Kenyans registered during the pre-2022 voter registration exercise.

PWDs, not just in Kenya but across Africa, have been unable to vote. Loch (2021), bolsters this, noting that in the first decade of the CoK (2010), many PWDs did not/could not vote during Kenya elections. Similarly, the NGEC (2016:185-189; 2018), also highlighted that, despite the new constitution, there has been inadequate progress in the state of equality in, and the inclusion of PWDs in Kenya elections.

Research by the International Disability Alliance (IDA) (2014:31) and KNCHR (2016:108), provides confirmatory evidence that PWDs have been restricted from effectively engaging in electoral activities in Kenya, pointing out that (for instance) whilst many PWIDs were supported to register to vote during the 2010 referendum in Kenya, only a modest share voted.

Adding to this, the KNCHR (2016:62), reported that during the 2013 Kenyan elections, despite the noticeable increase in the number of PWDs that voted relative to previous elections, not all PWDs eligible to vote, could/did vote. In an earlier effort, the KNCHR & OSIEA (2014:109-110) (also see, Ngulu, 2012:3-4), had already established that few of Kenya's PWDs were able to participate in voting since, for example, many of them lacked national identity cards (IDs) – a mandatory prerequisite – and thus, could not even register as voters. Findings from studies by the WFD (2020:17), NGEC (2016:167-168) and Onsomu, Mose and Munene (2022:100-102) build on this, showing that in 2013 of the 51.1% of PWDs with IDs in Kenya, merely 46% registered to vote⁴⁶. Also, of the 46% registered as voters, in 2013, only 41% of PWDs in Kenya voted, giving an effective participation rate of approximately 10%⁴⁷. PWDs thus had the lowest share of ID holders, registered voters, and voters among all SIGs during the 2013 electoral cycle in Kenya (ibid).

Ocharo (2019), assessed the level of participation of PWDs in the 2017 elections in Kenya and found low representation of PWDs in the voter register, especially given the not-insignificant population of PWDs in Kenya. She, with support from Gitonga (2017) and WFD (2020:19) reports that, in 2017, there were approximately 143,000-145,000 PWDs on the voters register (or merely 21% of eligible PWDs) in Kenya. Thus, PWDs only accounted for about 0.73%⁴⁸ of all registered voters in Kenya. Ocharo's (2019:1/22-24/39) work also showed low voter turnout (especially) of persons with mobility-impairment during the 2017 Kenyan elections; for example, across 4 constituencies in Nairobi, less than 47% of persons with mobility-impairment voted.

Relatedly, the report on human rights practices in Kenya, by the United States Department of State (USDS) Bureau of Democracy, Human Rights and Labor (BDHRL) (USDS-BDHRL) (2017:28), indicated that, (among other SIGs) the voting rates of PWDs were even lower than expected. HI, UDPK and ANDY (2017:1) also reported the relative underrepresentation of PWDs among registered voters and voters in Kenya's 2017 elections. Furthermore, the NGEC (2016:167-189), expounds that, since a significant share (over 45%) of eligible PWDs did not possess IDs in 2016, it was unlikely that they would be able to register and vote in 2017; rather, PWDs' participation was likely to continue being minimal or entirely absent in some counties in Kenya. These results were later confirmed in their 2018 report on equality and inclusion during the 2017 general elections in Kenya (NGEC, 2018; WFD, 2020).

On the political participation of PWDs during the most recent electoral cycle (2022), Thuo and Ambani (2022:5) – in a policy brief evaluating the impact of the first decade of devolution (hence, the CoK (2010)) on the political inclusion of PWDs in Kenya – shed light on the continuation in the pattern of insufficient inclusion of PWDs in Kenya's electoral processes. Mugambi (2022) concurs, observing that,

⁴⁶ Among the special interest groups (including youth, women, elderly, ethnic minorities and PWDs), PWDs had the lowest share of those with IDs registered as voters (for more, see WFD, 2020:17; NGEC, 2016:167-189; Onsomu, Mose & Munene, 2022).

⁴⁷ This figure is arrived at by multiplying 0.51 (% of PWDs with IDs) X 0.46 (% of PWDs registered as voters) X 0.41 (% of PWDs who voted in 2013) = 0.10 (or 10%) of eligible PWDs with IDs, registered as voters and voted. This was the lowest share among all the SIGs (ibid).

⁴⁸ N (total registered voters) = 19,646,637 (IEBC, 2023).

whilst this was certainly the case during the 2022 elections, since 2010 many PWDs have been unable to register as voters and vote during Kenyan elections.

Further support is found in the survey report, on the inclusion of SIGs in electoral processes in Kenya, from the Elections Observation Group (ELOG) (2022:11/15), which asserts that Kenya's electoral processes have failed to fully include the voices of PWDs (among other SIGs). For example, 55% of the surveyed respondents believed that **most** PWDs in Kenya had not registered to vote, whilst at least 32% were personally aware of PWDs (and other SIGs) who were **not** registered as voters for the 2022 Kenyan elections (ELOG, 2022:12-28).

From the preceding discussion, it is evident that, on balance, the reviewed literature supports the conclusion that, whereas since 2010 there has been some progress, the participation of PWDs in electoral activities in Kenya has remained extremely low. Overall, PWDs have been unable to participate, fully and effectively, in electoral processes in Kenya (WFD, 2020; UDPK, 2021).

HIGH-LEVEL PARTICIPATION:

*Historical Context - pre-2010*⁴⁹

Candidates

According to the OSCE-ODIHR (2019:7), across the world, historically, PWDs have severely been underrepresented among candidates vying for election to positions of leadership.

As confirmed by Hassan (2022) and Thuo and Ambani (2022:2-3), this has also been the case in Kenya, with few PWDs vying for and being nominated as candidates for election prior to the promulgation of the Constitution of Kenya (CoK) in 2010. Relatedly, the Committee on the Rights of Persons with Disabilities (CRPWD) (2014:45-46) and KNCHR (2016:38) reported that, despite Kenya's adoption and ratification of the UNCRPD in 2007 and 2008, in the 2007/2008 Kenyan elections, the number of PWDs vying for election to office was modest at best⁵⁰.

Similarly, in the baseline survey conducted by HI, UDPK and ANDY (2017:1), on the electoral and political participation of PWDs in Kenya, it was noted that PWDs have historically been relatively underrepresented among candidates vying for election. For instance, in the same survey, an average of 0% of surveyed PWDs across 6 counties⁵¹ reported having **ever** vied for a political position in previous electoral cycles in Kenya (HI, UDPK & ANDY, 2017:24-106).

Overall, like Onsomu, Mose and Munene (2022:vi/102), most of the included studies, that review the historical political participation of PWDs in Kenya, reveal that Kenya's post-independence and pre-2013 parliaments were characterized by the extreme underrepresentation of PWDs as candidates, as well as legislative leaders (as noted below).

⁴⁹ i.e., prior to the promulgation of the CoK in 2010, or in all Kenyan elections prior to the introduction of the CoK (2010).

⁵⁰ For example, in Nairobi City Council, only 1 PWD was nominated as a councillor during the 2008 elections (KNCHR, 2016:38; CRPWD, 2014:45-46).

⁵¹ None (0) of the surveyed PWDs, across 6 counties in Kenya, including Nairobi, Kiambu, Taita Taveta, Homabay, Bomet and Isiolo, reported having ever vied for a political position (for more, see HI, UDPK & ANDY, 2017:24-25/42/59-60/76/91/105-106).

Legislative leaders (NA, Senate & CA)

Just as with the participation of PWDs as candidates, the OSCE-ODIHR (2019:7) observed that across the world, PWDs have historically been severely under-represented as leaders in (among others) national and local legislatures. Fefoame (2022) and Ombane (2022) add to this, noting that Africa's history is one of exclusion of and discrimination against PWDs, with most PWDs across Africa having been denied equal access to participation in political life.

In Kenya particularly, Owiti (2019:54), asserts that Kenya's parliamentary history has also been characterized by the insufficient representation of PWDs in leadership positions. This is supported by the WFD's (2020:18) baseline report, on the state of PWDs' political inclusion in Kenya, which notes that, historically, PWDs have rarely been elected to leadership positions. Similarly, research by Jattani and Ochieng (2022), MT (2021:1-2), IFES (2017:1) and the NGEK (2016:185-189), established that pre-2010, PWDs were continuously excluded from political affairs in Kenya, especially as candidates and elected or appointed legislative leaders.

Indeed, since Kenya's independence in 1963, PWDs have not done well in elective contests, whilst the appointment of PWDs to positions of power has also been poor (ELOG, 2022:11/15; HI, UDPK & ANDY, 2017:20). The report by ELOG (2022:11/15), adds that PWDs' representation has especially been limited in races for higher offices in Kenya (i.e., executive, and legislative offices). This is supported by the fact that, for example, no PWDs ran for or held office as president, deputy president, governor, or deputy Governor between 1963 and (2020) the end of the first decade of the new constitution (Thuo & Ambani, 2022:5). Also, even the last Kenyan parliament under the previous Constitution (2008-2013 – 10th Parliament), included no legislators with disabilities (Mute, 2023:11; HI, UDPK & ANDY, 2017:20). In fact, since 1963 (and pre-2013) only one post-independence parliament (1997-2002 – 8th Parliament) included a legislator with a disability⁵² (Mute, 2023:11).

It is for reasons such as these that Kwenda (2010) – in an article on the historical marginalization of PWDs across Africa, including in Kenya – asserts that pre-2010, overall, PWDs were not well represented in the legislature nor other decision-making organs in Kenya, and thus, generally lacked political influence.

Post-2010⁵³

Candidates

As it pertains to the participation of PWDs as candidates in Kenya post-2010, and as observed by the CRPwD (2014:45-46), it would be remiss to **fail to** recognize the improvements in the relative representation of PWDs.

Research by HI, UDPK and ANDY (2017:117-118) provides some confirmatory evidence of this, noting that in 2013 there were 13 and 71 PWDs across the party lists of 7 selected political parties⁵⁴ for the NA and CA respectively in Kenya. Additionally, the NGEK (2018:26) observation report on inclusion

⁵² In 1998-99, Josephine Sinyo was nominated as an MP representing PWDs, replacing Richard Leakey in the 8th Kenyan Parliament (1997-2002). The repealed Constitution (1963:Article 33(I)), indicated that at least 12 Members of Parliament (MPs) representing 'special interest groups' (SIGs) (including, women, youth, ethnic minorities, the elderly and PWDs), were to be appointed by the President. However, the broad powers this provision gave to presidents allowed them to use it as a reward mechanism for loyalists, as opposed to facilitating the inclusion of historically marginalized SIGs (Mute, 2023:11).

⁵³ i.e., following the introduction of the CoK in 2010, or in elections in Kenya post-2010.

⁵⁴ This includes, Orange Democratic Movement (ODM), The National Alliance (TNA), United Republican Party (URP), Wiper Democratic Movement (WDM), Forum for the Restoration of Democracy-Kenya (Ford-Kenya), Forum for the Restoration of Democracy-People (FORD-People) and United Democratic Forum Party (UDF) (HI, UDPK & ANDY, 2017:117-118).

during the 2017 Kenyan elections, identified a not-insignificant number of PWDs (both independent candidates and political party nominees) contesting for election in the **NA** and **Senate**⁵⁵.

In an article the WFD (2022) concurs, asserting that there has been an uptick in the participation of PWDs in political party primaries, more generally, in the number of PWDs vying for election and nomination to political office in Kenya since 2010. In other initiatives, the WFD (2020:16, 2022a) (also see Jattani & Ochieng, 2023) expand on this revealing that in 2017 there were over 150 PWD aspirants in political party primaries, 29 (19.3%) of whom were successfully nominated by these parties as candidates for election. Also, in 2022, more PWDs (600+) vied for election, than in all previous elections (WFD, 2022a; Jattani & Ochieng, 2022, 2023; Hassan, 2022; Mute, 2023:29).

However, despite some improvements, overall, the inclusion of PWDs is reported to have remained low and well below constitutional benchmarks (CRPwD, 2014:45-46). Supporting this, the NGEc (2016:185-189), highlighted that PWDs were not well represented as candidates in the 2013 Kenyan elections; for instance, 0 PWDs vied for election as a Senator or Governor/Deputy governor (also see WFD, 2020:17). Jattani and Ochieng (2022, 2023) and WFD (2020:16) add that, in 2017, the 29 PWDs nominated as candidates by political parties accounted for only 0.2% of the total candidates vying for election⁵⁶ in Kenya.

Related to this, the post-election evaluation report by the Office of the Registrar of Political Parties (ORPP) (2023:88), on the 2022 Kenyan elections, reveals that, even with the noted 'improvements', the proportion of PWDs participating as candidates was relatively low. For example, PWDs comprised 1.5% of all cleared independent candidates⁵⁷, and 3.05% of all the candidates nominated by political parties⁵⁸ to contest in the 2022 Kenyan elections (ORPP, 2023:58-60/62-63; IEBC, 2023, 2023a).

In addition, various studies/articles (including, WFD, 2020:32-40, 2020a:4-5; MT, 2021:9; Mugambi, 2022a; Jattani & Ochieng, 2023) concluded that, even post-2010, political parties have continued to nominate relatively few PWDs, both as candidates for direct election and in party lists for seats reserved for SIGs⁵⁹. Confirming this Mute (2023:29), notes that in 2022 only 2/20 women with disabilities (WWDs), who were part of the Women Challenged to Challenge program that supported WWDs in party primaries, were successfully nominated by their parties to contest for election.

Furthermore, research by the IDA (2014:1) and TOC (2023:18) agree that post-2010, PWDs still endure restricted access to political opportunities, and are thus not full and equal participants in political processes in Kenya. For example, these assertions are supported by observations from the NGEc (2016:167-168), that in 2013-2016 a significant share of PWDs lacked IDs, and therefore, could not register as voters or as candidates to vie for elections in 2017 in Kenya. Similarly, in 2022, whilst news of Kenya's first presidential aspirant with a disability was heralded as a sign of great progress,

⁵⁵ However, the exact number could not be conclusively ascertained (NGEC, 2018:26; Mute, 2023).

⁵⁶ 29 nominated PWDs/14,523 total candidates vying for election in Kenya = (0.00199) 0.2% (WFD, 2020:16; Jattani & Ochieng, 2022, 2023).

⁵⁷ Total number of PWDs cleared as independent candidates = 104/6,944 (total number of independent candidates cleared to compete for election in Kenya = (0.015) 1.5% (ORPP, 2023:58-60; IEBC, 2023).

⁵⁸ Approximately 500 PWDs nominated by political parties as candidates/16,400 (estimated total number of candidates) = (0.0305) 3.05% (ORPP, 2023:62-63; IEBC, 2023, 2023a; Mute, 2023, Thuo & Ambani, 2022).

⁵⁹ This has been traced to, firstly, political parties' disproportionate bias toward nominating other SIGs (including, women, youth, and the elderly), whilst leaving out PWDs. Secondly, parties' tendency to locate PWDs lower down, if not at the bottom of party lists, amidst perceptions that PWDs are 'less of a priority.' Thirdly, weak political will and poor enforcement of laws – that result in, for example, PWDs being left out of some party lists or replaced post-submission of lists to the IEBC, and thus contrary to the provisions of (among others) the CoK (2010) (WFD, 2020:32-40; Jattani & Ochieng, 2022, 2023).

celebrations were dampened by Reuben Kigame's subsequent exclusion from the presidential contest, due to his 'late submission of relevant documents'⁶⁰ (Mute, 2023:29-30; Gichana, 2022).

As such, the reviewed literature suggests that, despite some noticeable advances, since 2010, progress on the inclusion of PWDs as candidates in post-2010 Kenya has, overall, been below expectations.

Legislative leaders (NA, Senate & CA)

With regards to the representation of PWDs as legislative leaders in post-2010 Kenya, across the literature, there is some evidence of advances in the inclusion of PWDs in the National Assembly (NA), Senate and County Assemblies (CAs) in Kenya.

According to Thuo and Ambani (2022:9-10), compared to the situation before (pre-2010), the extent of PWDs' participation as legislative leaders in Kenya has certainly improved. For instance, the CRPwD (2014:20) and KNCHR (2014) submitted that it was only in 2013 – amid the election and appointment of approximately 80 PWDs – that Kenya's legislature, for the first time in history, experienced a commendable increase in the participation of PWDs in leadership positions.

Jattani and Ochieng (2022, 2023) also highlight that, whilst in 2017 only 3 PWDs were **elected** as legislators, this figure increased to at least 7 following the 2022 elections, indicating some progress in the representation of PWDs in Kenya (also see, WFD, 2022a; Hassan, 2022; NGEC, 2022; Mugambi, 2022a). Thuo and Ambani (2022:5), with support from the WFD (2020:15-16) and MT (2021:1-2/17), also add that, in 2017, most counties in Kenya (64%) had at least 1 PWD appointed as a member of county assembly (MCA)⁶¹. Similarly, findings by the WFD (2022) suggest that based on preliminary results from the 2022 Kenyan elections, more PWDs were appointed to 'reserved positions' in the NA and CA in comparison to 2017.

Thus, it is evident that, since 2010, there have been some gains in the relative inclusion of PWDs as legislative leaders in Kenya (for more see, Mugambi, 2022a; KNCHR, 2014; NGEC, 2016, 2018).

Nonetheless, on balance, majority of the literature included in the review concludes that these 'gains' were **not** robust. Rather, significant gaps still exist in PWDs' access to and representation in leadership positions in Kenya's post-2010 legislatures; overall, the representation of PWDs in the NA, Senate and CA in Kenya has been below average, if that.

National Assembly (NA):

On the representation of PWDs as leaders in the NA in Kenya, the available literature mostly sides with Jattani and Ochieng (2022, 2023), contesting that since 2010, the extent of PWDs' participation in this regard has remained extremely low.

For example, in its status report, the KNCHR (2014:43), established that in 2013 PWDs comprised 9/349 (2.6%) of all elected and nominated MPs in Kenya (see also, KNCHR, 2016:88; TOC, 2023:15-16). Likewise, research by Kenya Union of the Blind (KUB) (2020:57-60/63) – with similar findings by WFD (2020:15-16), Mugambi (2022a) and MT (2021:1-2/17) – identified that in 2017, this figure was 1.43%

⁶⁰ Despite various appeals, based on the principles of accommodating PWDs, Reuben Kigame was charged with 'late submission of requisite documents' and eventually barred from contesting in the 2022 Kenyan elections (Mute, 2023:29-30; Gichana, 2022).

⁶¹ In addition, in 2017 2 counties in Kenya (Migori and Mandera) had 3 MCAs representing PWDs (Thuo & Ambani, 2022:5).

(5/349)⁶². It also reported that in 2017, only 1 woman with a disability (WWD) and 1 man with a disability (MWD) were elected to Kenya's NA (KUB, 2020:11-12). Mute (2023:33-34), in his paper on inclusivity during the 2022 Kenyan elections, determined that 5 (1.43%)⁶³ of MPs currently serving in the NA are PWDs; thus, implying a pattern of decline and stagnation in the relative participation of PWDs in Kenya's NA(s), following the promulgation of the CoK in 2010 (also see, Hassan, 2022; NGEC, 2022; Jattani & Ochieng, 2023).

Senate:

Compared to their relative inclusion as MPs and MCAs in post-2010 Kenya, PWDs seem to have fared better in the Senate in Kenya. Findings in the KNCHR's (2016:88) 'compendium of Kenya's submissions to the CRPWD,' and from Thuo and Ambani (2022:3-4), divulge that, in 2013, 4.47% (3/67) of the Senators elected and appointed in Kenya were PWDs⁶⁴.

Observations following the 2017 elections – including from MT (2021:1-2/17), KUB (2020:57-60/63), TOC (2023:15-16) and WFD (2020:15-16) – estimated that PWDs accounted for just below 3% (2/67) of the senators in Kenya. As with the NA, Mute (2023:33-34) and TOC (2023:15-16), confirmed that this figure remained the same in 2022, with 2 PWDs appointed to the Senate in Kenya.

Accordingly, across Kenya's post-2010 election cycles, despite somewhat falling short and recently showing signs of stagnation, only the Senate is documented (by among others, Onsomu, Mose & Munene, 2022:103-104; NGEC, 2016:185-189, 2018; KNCHR, 2016, 2022), as championing inclusivity, having consistently been 'close' to the 5% constitutional quota on the political representation of PWDs in Kenya.

County Assembly (CA):

On the other hand, as with the NA, the available information indicates that, since the establishment of CAs by the CoK in 2010, inadequate progress, and in some instances deterioration in the overall representation of PWDs as MCAs in Kenya, has been observed (Thuo & Ambani, 2022:1-2).

MT (2021:1-2), NGEC (2016:185-189), Jattani and Ochieng (2022) and WFD (2020:iv/1) agree with this assertion, noting a continuation in the relative exclusion of PWDs from elective and appointive positions in CAs in Kenya. They (ibid) conclude that post-2010, PWDs have been unable to participate, fully and effectively, in governance processes at the county level in Kenya.

For instance, TOC (2023:15-16) (also, WFD, 2020:15-16; KUB, 2020:57-60/63) indicate that, whilst in 2013 at least 71 PWDs⁶⁵ were elected and appointed across CAs – i.e., PWDs made up about 3.2% of the 2,222 MCA in Kenya – in 2017, this figure was 44⁶⁶ or 1.98% of elected and nominated MCAs in Kenya. Preliminary findings on the 2022 Kenyan elections – including from the ORPP (2023), Hassan (2022), Onsomu, Mose and Munene (2022), Mute (2023:33-34) and Jattani and Ochieng (2022, 2023)

⁶² Other estimates place this figure at 1.14% (4/349) (see for example, TOC, 2023:15-16).

⁶³ Other studies (see ibid), estimate a figure of 1.14%.

⁶⁴ KNCHR (2014:43) and TOC (2023:15-16), recorded 4 Senators with disabilities in 2013 in Kenya (i.e., approximately 6%).

⁶⁵ According to KNCHR (2014:43), 74 PWDs were elected and appointed in the CA (3.33%).

⁶⁶ TOC (2023:15-16), estimates a lower figure of 38 (or 1.71%).

– estimate that PWDs constitute 1.89% (42/2,222)⁶⁷ of the MCAs in Kenya, though there are at least 4 appointments pending confirmation.

In addition, Mute (2023:33-38) and Thuo and Ambani (2022:5) also shed light on the increase in the number of CAs failing to nominate at least 1 PWD as an MCA in post-2010 Kenya (also see, Jattani and Ochieng, 2022, 2023; TOC, 2023:16-17). In 2013, as per KNCHR (2016:88), WFD (2020:15-16) and MT (2021:1-2/10/17), only 3/47 counties (6.38%)⁶⁸ were reported to have 0 MCAs representing PWDs, increasing to 17/47 (36%) of CAs in Kenya in 2017. Following the 2022 Kenyan elections, according to Mute (2023:33-38), Jattani and Ochieng (2022, 2023) and Thuo and Ambani (2022), there was a further increase to 44.68% (21/47) of CAs, suggesting that overall, in post-2010 Kenya, PWDs have faced increasing exclusion from positions of leadership at the county level.

Overall (NA, Senate & CA):

Overall, majority of the literature included in the review (see for example, KNCHR, 2016:62; USDS-BDHR, 2017:29/39; WFD, 2020:15-16; MT, 2021; Gichana, 2022; Hassan, 2022; TOC, 2023:15-16; Mute, 2023), notes the continued underrepresentation of PWDs in Kenya's parliament (NA and Senate) post-2010, as the share of PWDs elected and appointed to parliament was 2.88% in 2013 and 1.68% in 2017 and 2022⁶⁹.

This is bolstered by results from the KNCHR (2014), NGEC (2016, 2018, 2022) and ORPP (2023), which established that the total representation of PWDs, in the NA, Senate and CA in Kenya, dropped from 3.18% to approximately 1.9% in 2017 and 1.86% in 2022⁷⁰ (also see, KUB, 2020:11-12/57-60/63; WFD, 2020a; Jattani & Ochieng, 2022, 2023; Mute, 2023:33-38).

As such, most of the available literature supports the conclusion that, though there has been some progress, the extent of PWDs' participation in Kenya's legislature has remained low and well below expectations. At both county and national levels, a significant and persistent gap in the relative representation of PWDs, as elected and appointed legislative leaders in post-2010 Kenya, has been observed (for more, see NGEC, 2016; WFD, 2020, 2020a, 2022; Gichana, 2022; Jattani & Ochieng, 2022, 2023; Mugambi, 2022a; Mute, 2023).

In all, the reviewed literature supports the conclusion that, whereas since 2010 there has been some progress, PWDs' participation of as voters, candidates and legislative leaders in Kenya is inadequate. Overall, PWDs have been unable to, fully and effectively, exercise their political rights in Kenya.

⁶⁷ Research from TOC (ibid) estimated that only 37 PWDs were elected and appointed in Kenya CA (with at least 4 nominations pending) (i.e., 1.67%).

⁶⁸ The ORPP (2023:91) indicates a figure of 4 as opposed to 3 counties in Kenya.

⁶⁹ This is further supported by Thuo and Ambani (2022:3) (also, TOC, 2023:16-17), who identified that in 2022, out of the 600+ PWDs vying for election, only 7 (i.e., 1.16%) were elected across the NA, Senate, and CA in Kenya.

⁷⁰ At least 4 nominees with appointments pending confirmation (Jattani & Ochieng, 2022, 2023; Mute, 2023:33-38).

- **Q3 – Barriers to the full and effective participation of PWDs**

Evidence suggests low overall rates of inclusion and representation of PWDs in political processes in Kenya due to various challenges/barriers that militate against the effective political participation of PWDs in Kenya.

Mugambi (2022), notes that ‘barriers’ refer to any factors (whether physical/environmental, structural attitudinal or otherwise), which unjustly force PWDs into lives characterized by ‘unreasonable dependency, isolation and exclusion’ from (among others) public and political life. In her study on the inclusion of PWDs in Kenyan elections, Ocharo (2019:12-13) adds that these obstacles endured by PWDs in Kenya’s political processes occur, not only during campaigns and elections, but also in the preparation stage before the election period, as well as after the elections once leaders assume office.

Most of the included literature describes (or at least states) some barriers to the full and effective participation of PWDs in political life in Kenya (see Table 1, Appendix A). There is thus an extensive list of factors that directly and indirectly function as exclusionary or limiting mechanisms. Accordingly, this section reviews the findings, in the included literature, on **some** of the major obstacles limiting the political participation of PWDs in Kenya.

BARRIERS:

Lack of national identity cards (IDs)

Mugambi (2022) (also see, KNCHR & OSIEA, 2014:109-110; KNCHR, 2016:102; WFD, 2020:17; Thuo & Ambani, 2022; Jattani & Ochieng, 2023) for example, elucidates that PWDs face various administrative barriers that obstruct their participation in politics in Kenya. This includes, firstly, the lack of IDs among many PWDs in Kenya. Studies by the WFD (2020:17, 2020a, 2022) (also, KNCHR, 2016; NGEC, 2016; 2018; USP-K, 2017a) – estimated that for example, in 2016, only 51.1% of PWDs eligible to vote possessed IDs. As also confirmed by, for instance, Gitonga (2017), USP-K (2017:9) and ELOG (2022:12/28), since PWDs, as with all other Kenyans, require an ID to be able to register as voters, vote and vie for election, the widespread lack of IDs among PWDs has negated the exercise of their right to vote and run for and hold office in Kenya (also see HI, UDPK & ANDY, 2017:13/20/26-27; Mugambi, 2022, 2022a; NCPWD, 2023; ORPP, 2023).

Findings from the analysis by Onsomu, Mose and Munene (2022:105), also reveal that, the absence of IDs among PWDs is worse in certain counties in Kenya – for example some counties reported that no (0) PWDs in the county had IDs, thus, PWDs were completely excluded from electoral and high-level processes in those counties in Kenya. In addition, in certain counties, many PWDs were not registered as voters, despite being in possession of IDs.

Per the reviewed literature (for example, KNCHR & OSIEA, 2014:109-110; II, 2015:1-2; KNCHR, 2016:102; HI, UDPK & ANDY, 2017:13/20/26-27; Rohwerder, 2020:5), the main causal factors include low access to information and guidance on obtaining IDs and registering as a voter; physical accessibility challenges at registration centres; long waiting periods and administrative failures; and, amidst stigma and stereotypes that characterize PWDs as ‘lesser citizens’, limited support from family and community members in obtaining relevant documents and registering with key institutions such as the NCPWD. The WFD (2020:17) (also, HI, UDPK & ANDY, 2017), add that certain groups of PWDs, for example PWIDs and others with ‘less visible disabilities’ endure more significant challenges in obtaining IDs and registering with relevant institutions. These challenges result in some PWDs being unable or unwilling to participate as voters, candidates and legislative leaders in Kenya.

Inadequate training and sensitization of staff, clerks, and officials

Research from the OSCE-ODIHR (2019:39), shed light on the fact that the inadequate training of electoral, polling, and general government staff on PWDs' rights, as well as considerately interacting with PWDs and reasonably accommodating their needs, negatively impacts on the political participation of PWDs in Kenya.

Kwenda (2010) and HI, UDPK and ANDY (2017:122-126) (also, UNDESA-DSPD, 2016), agree with this, contending that this is the result of an environment where PWDs and their participatory needs are not prioritized, or are entirely overlooked by the government and other political institutions in Kenya. Also, since staff and officials generally lack knowledge on policy and processes to address PWDs' accessibility and accommodation needs (e.g., how to handle and support accommodation requests), PWDs often face inefficient and unresponsive systems – as seen in electoral and other political activities in Kenya.

The findings from the studies by the KNCHR (2016:109) and WFD (2020:17) concur, noting that in interviews and focus group discussions, numerous PWDs reported that IEBC and other officials are in most cases not inadequately informed on assisting PWDs with ID and voter registration processes, especially as it relates to accessing accommodations (including at polling centres). Due to these difficulties, PWDs are at times unable, or hesitant to engage in electoral and candidacy processes in Kenya (also see, KNCHR & OSIEA, 2014; KNCHR, 2014; NGEC, 2016, 2018; Macharia, 2020).

Similarly, Thuo (2016:41-42), OSCE-ODIHR (2019:39), Mugambi (2022) and Jattani and Ochieng (2022, 2023) also observe that, as a result of poor training and sensitization of officials on PWDs' rights and civilly engaging with PWDs, PWDs are, in some cases, subjected to discriminatory attitudes regarding their political capacities from electoral and public officials. Such stereotyping and stigmatizations have been reported to at times result in physical and verbal violence against PWDs. For example, in interviews, some PWDs re-counted instances being pulled out of registration and polling queues “kuongelehwa”⁷¹. Others reported that their rights to register and possess an ID, or register as voters or candidates, were questioned by officials at registration centres, and that officials frequently use insensitive language when interacting with PWDs during registration exercises in Kenya.

It is thus that across the literature (also see, Virendrakumar et al., 2018:528; HI, UDPK & ANDY, 2017:122-126; Alberta, 2017:1; UNDESA-DSPD, 2016; Kwenda, 2010), it is concluded that restrictive attitudes among electoral and other public officials – by engendering apathy among some PWDs – contributes to the low participation of PWDs, including as voters, candidates and legislative leaders in Kenya.

Negative social attitudes and perceptions

According to Thuo (2016:41-42) and Kanyinga (2014:91), discriminatory attitudes and practices, and their impact on PWDs' political participation, are also a concern more generally at the societal level in Kenya. In particular, negative social attitudes and perceptions continue to detract from PWDs' full integration into political life in Kenya. For example, PWDs' families and guardians often assume and claim that the needs of PWDs are catered to entirely by their relatives and caregivers, including the

⁷¹ This is a well-known Kiswahili phrase in Kenya that is often used in association with government and other public officials. It means 'to be spoken to' and often has the negative connotation of citizens being pulled to the side to be privately pressured to some end.

exercise of their political rights, thus, there is no reason to encourage PWDs' political participation. As such, PWDs are rarely encouraged to actively engage in any political activities in Kenya.

This is supported by research from the KNCHR and OSIEA (2014:107-108) and WFD (2020:35, 2020a), which identifies that PWDs endure discriminatory attitudes regarding their participatory and other capabilities from the public, politicians, and relatives/guardians in Kenya. Such restrictive attitudes often result in PWDs being discouraged and their desires disparaged, by caregivers, other candidates and the community, if the express interest in voting or vying for office⁷². For instance, KNCHR (2016:49) and Gichana (2022) state that some candidates and leaders with disabilities reported being mocked and humiliated by the public and politicians, as well as the use of discriminatory and harmful language and the perpetuation of false claims by other candidates during campaigns. Consequently, many of those that endeavour to vote or run for public office usually end up dropping out amid negative perceptions and questions as to the value of PWDs' participation and even shunning by community members.

They, (also, Thuo, 2016:41-42; OSCE-ODIHR, 2019:36-37; UNDESA-DSPD, 2016; Opokua, Mprah & Saka, 2016:988-993; Rohwerder, 2020:10; KNCHR, 2014, 2022), add that, in addition, the stigma and discrimination is worse for particular segments of PWDs – e.g., those with intellectual disabilities, psychosocial disabilities, albinism, as well as women and girls with disabilities. Overall, since PWDs are looked down upon, their capacities questioned and their contributions/value degraded, some are often hesitant or disinterested in participating as candidates or legislative leaders in Kenya. This contributes to the limited inclusion of PWDs in politics affairs at the national and local level in Kenya.

Furthermore, findings from Kanyinga (2014:91) and Owiti (2019:27-54), highlights that PWDs experience discrimination and marginalization during ID and voter registration processes in Kenya. In interviews and focus group discussions, some PWDs reported being stigmatized during ID and voter registration exercises, for example, as they do not have fingers and thus could not have their fingerprints taken and sign relevant documents. Some also described instances of hostility and the use of discriminatory language and mocking at registration and polling centres (for similar arguments, see Alberta, 2017:1; UNDESA-DSPD, 2016; Thuo, 2016; Ocharo, 2019).

These assertions are bolstered by the observation – including by II (2015) and UNDESA-DSPD (2016) – that PWDs also face discrimination, marginalization, and stereotyping within political parties and during campaigns in Kenya. For instance, given misconceptions of PWDs as low value, and false claims (often from opponents) that PWDs make little or no contribution, political parties rarely invest in inclusion and PWDs' political participation, especially as candidates, in Kenya (also see, HI, UDPK & ANDY, 2017; TOC, 2023; NCPWD, 2023).

This is supported by Mute (2023:22-23), MT (2021:9) and WFD (2020:iv–viii/21/34-40, 2020a:4-5), who note that, political parties tend to perceive PWDs as inadequately equipped and too weak for direct elective contests; rather PWDs are said to be better suited for appointment to 'reserved positions.' Such stereotypes, that view and position PWDs as being 'less capable' candidates and leaders, are in many instances propagated by other candidates and political leaders during campaigns. Consequently, PWDs are usually discouraged or not adequately supported when vying for election, and when in engaging in most other political activities in Kenya. In all, such stigma and discrimination

⁷² It is important to note that in some cases, family members/caregivers stated that they dissuaded the participation of PWDs due to fear over their well-being and wanting to protect them, for e.g., from Kenya's electoral and campaign context historically known for eruptions of protests and violence in which PWDs have been unable to escape/defend themselves (KNCHR & OSIEA, 2014; WFD, 2020, 2020a, 2022).

lead to PWDs avoiding voter registration processes, as well as opting out of electoral and high-level political activities in Kenya.

In short, this suggests that discriminatory attitudes and practices, especially when coupled with the various difficulties PWDs already endure on an everyday basis, such as in meeting their basic needs, dissuades PWDs from prioritizing the exercise of their political rights in Kenya.

Physical and infrastructural barriers

Across most of the literature included in the review, it is agreed that physical and architectural barriers severely constrain PWDs' participation in political activities in Kenya (for example, see Table 1 Appendix A).

Indeed, as contested by (among others), Kanyinga (2014:91), IFES (2017:2-3), TOC (2023:18) and Ombane (2022), the physical and built environment in Kenya, is known for being hostile to PWDs' political (and broader societal) participation.

NCAPD and KNBS (2008, 2008a:1-12), Thuo (2016:40-41) and OSCE-ODIHR (2019:37), reveal that most buildings and infrastructure that currently exist are products of a time before accessibility concerns were recognized and adopted into architectural codes in Kenya. Whereas some have been renovated and upgraded to meet inclusivity standards, physical inaccessibility (such as difficulties in using mobility devices), remains a challenge. They – including USP-K (2017:6-8), KUB (2020) and Jattani and Ochieng (2022, 2023) – add that, in some cases, even newer structures and those currently under development, have failed to adequately assess and ensure the safety and accessibility of their facilities for all PWDs.

Supporting this, WFD (2020:5-20), UNDESA-DSPD (2016) and Hassan (2022) disclose that, whilst there has been some progress in establishing and improving their accessibility, most government, public and institutional buildings in Kenya, including the NA, CAs, courts and venues used for political meetings/rallies, are physically inaccessible. This includes, for example, instances of no ramps and railings, steep staircases, narrow doors and hallways that preclude wheelchair use and small or non-functional elevators.

Kwenda (2010), SGPwD and IDA (2017) and Thuo (2016:40-41) concur, reporting that, in Kenya, some leaders with disabilities stated that they encounter difficulties in accessing government and public buildings and venues for gatherings and consultations, as well as finding suitable campaign venues. CA offices were particularly noted as being infamous for their many accessibility challenges and failure to provide reasonable accommodations. These obstacles lower their ability, and at times willingness, to effectively engage in political activities in Kenya (also see, KNCHR, 2014, 2016; Thuo, 2016; NGEC, 2016, 2018; HI, UDPK & ANDY, 2017:13-27/122-126; OSCE-ODIHR, 2019; MT, 2021:18).

Much of the literature on the barriers to PWDs' political inclusion (see for example, Mute, 2023:12/31-32; IRI & NDI, 2022:10-11; Thuo, 2016:40-41; KNCHR, 2014:43, 2016:108; NGEC, 2016:167-168), identify limited (physical) access to ID, voter registration and polling centres as a key barrier to PWDs' political participation in Kenya. They contend that, across most registration and polling stations, physical accessibility issues exist, especially the lack of ramps and the location of offices on upper floors. Few are recorded as 'accessible' (KNCHR & OSIEA, 2014; Macharia, 2020; WFD, 2020; Mugambi, 2022).

Similarly, according to ELOG (2022:12/28), KUB (2020:71) and Opokua, Mprah and Saka (2016:988-993), in studies respondents specified that polling centres, especially in rural areas, often struggle to fit those using wheelchairs and other mobility devices, while the tables in the voting areas and which house the ballot boxes are usually too high. HI, UDPK and ANDY (2017:122-126) and Thuo (2016:40-41), also add that most registration and polling centres, given their small size and administrative inefficiencies, are usually congested and experience long delays and queues (with Kenyans often exposed to the elements) (also see, TOC, 2023:18; WFD, 2020:17/20; UNDESA-DSPD, 2016; Alberta, 2017:1; SGPwD & IDA, 2017:37). This suggests that physical barriers are, as such, a great strain to the full effective participation of PWDs in Kenya's political affairs.

A commonly related barrier, as outlined by Owiti (2019), OSCE-ODIHR (2019:37) and NCPWD (2023), is the inaccessibility of transportation services and systems in Kenya.

Transport related infrastructure and public transportation vehicles (across the various modes of service), were not originally designed with accessibility concerns in mind. A combination of gaps in the legal and regulatory frameworks, and unimplemented/unenforced provisions, have resulted in this continuing to be the case; even modern transport routes and public service vehicles remain largely inaccessible for some PWDs in Kenya (also see, NGEN, 2022a; Thuo & Ambani, 2022). Specifically, vehicle designs and access ways that do not consider the needs various categories of PWDs, and public transport operators who refuse to accommodate certain PWDs (e.g., those using bulky mobility devices), or levy 'extra' charges to transport assistive devices, such as wheelchairs, mean that transport services are difficult to access and very expensive for majority of the PWDs in Kenya. This is supported by, among others, KNCHR (2014:33-34), Thuo (2016:40-41), KUB (2020:71) and DI and IF (2021, 2021a:7), who conclude that, as a result, PWDs' active engagement in Kenya's political processes is often compromised.

According to, Ocharo (2019), HI, UDPK and ANDY (2017:122-126) and NCPWD and KNBS (2008:xvi/33, 2008a), in surveys, interviews and focus groups, respondents indicated that the lack of transport to public rallies, political meetings, government offices and events, and, especially in rural areas, rough impassable terrains, limit their mobility and opportunities to exercise their political rights in Kenya. In related and follow up studies (see, for example, WFD, 2020; UNDESA-DSPD, 2016; Opokua, Mprah & Saka, 2016:988-993; Rohwerder, 2020:5-6), participants also reported difficulties in accessing transport to registration, polling centres, and campaign venues as a key reason for their limited or non-participation in politics in Kenya.

In summary, these challenges in accessing the physical built environment, and related transportation barriers, impede PWDs' full effective participation in socio-economic, cultural and political activities in Kenya. Therefore, many PWDs prefer to abstain from (in addition to most activities that necessitate traveling far from their homes) political engagement in Kenya (for more on this see Ngulu, 2012; Tomlin, 2013; CRPwD, 2014; KNCHR, 2014, 2022; NGEN, 2016, 2018; USP-K, 2017, 2017a; Gitonga, 2017; USDS-BDHL, 2017; Virendrakumar et al., 2018; Owiti, 2019; KUB, 2020; UDPK, 2021; MT, 2021; Fefoame, 2022; Gichana, 2022; Onsomu, Mose & Munene, 2022; Hassan, 2022; Thuo & Ambani, 2022; IRI & NDI, 2022; Jattani & Ochieng, 2022, 2023; NCPWD, 2023; ORPP, 2023).

Low representation of PWDs as legislative leaders

Various studies in the included literature on the barriers to the full and effective political participation of PWDs in Kenya, identified the severe underrepresentation of PWDs as political leaders in Kenya's legislature (at both the national and local level) as being 'among the most 'prevalent exclusion

mechanisms' (see for example Table 1 Appendix A). In particular, and as concluded including by Onsomu, Mose and Munene (2022:vi/102-103), Mute (2023:18-19) and OSCE-ODIHR (2019:2/7), since PWDs' legislative participation is key to a focus on, and the realization of disability-responsive legislation, regulations and programs, the status of their inclusion as leaders in Kenya's post-2010 legislatures has undermined, not only the positioning of questions over the adequate and effective legislative representation of PWDs on the agenda, but also, to this end, the development and enactment of supportive laws, policies and structures. This has perpetuated the underrepresentation of PWDs in the legislative space in Kenya (also see, HI, UDPK & ANDY, 2017; Kabare, 2018:10; Rohwerder, 2020; WFD, 2020a; MT, 2021:10/18; Thuo & Ambani, 2022).

Kwenda (2010), Mute (2023:33-36) and NCPWD (2023:5-16) (also, USDS-BDHRL, 2017; IRI & NDI, 2022:10; Ocharo, 2019:1/39) observed that whilst there has been some progress in the participation of PWDs as legislative leaders in Kenya, because of (among other barriers), hostile social political environments, discrimination against PWDs in political party nominations, limited state support and insufficient political will to resolve legal and regulatory gaps that constrain PWDs' effective participation, overall, their representation in legislative (and other political) offices in Kenya is still comparatively low (Grut, Olenja & Ingstad, 2011; KNCHR & OSIEA, 2014:17; KNCHR, 2014, 2016:48-49/71; Thuo, 2016; IFES, 2017; Alberta, 2017:1-2; SGPwD & IDA, 2017:37/39; NGEC, 2018, 2022; Macharia, 2020; KUB, 2020; WFD, 2020:iv-viii/2/17-21/32-40; MT, 2021:1/9-10/18; UDPK, 2021; DI & IF, 2021/2021a; Onsomu, Mose & Munene, 2022; Jattani & Ochieng, 2022, 2023; ORPP, 2023).

Supporting this, Jattani and Ochieng (2022, 2023), contend that PWDs continue to be excluded from governance given their poor representation as leaders in elective and appointive positions. In fact, following the August 2022 Kenyan elections, PWDs are reported to have criticized the government and political parties for sidelining aspiring PWDs in nominations and appointments to legislative offices. The WFD (2020:5/18), Owiti (2019:27-54) and Mugambi (2022a) also noted that, since PWDs are rarely elected to legislative positions in Kenya, their participation in this crucial high-level political activity is limited.

Confirmatory evidence is provided by, for example, research from the KNCHR (2016:48-50/71) and MT (2021:9-10) which shows that the low inclusion of PWDs in the NA, coupled with their relative (and in some cases, escalating) exclusion across CAs, means that constitutional and other quotas on the representation of PWDs have not been realized in post-2010 Kenya (KUB, 2020; MT, 2021; NGEC, 2022; TOC, 2023; Jattani & Ochieng, 2023; Mute, 2023). In addition, according to KNCHR (2014), Mute (2023:33-36) and Jattani and Ochieng (2022, 2023) (also see, KNCHR, 2016; SGPwD & IDA, 2017; WFD, 2020; MT, 2021; Thuo & Ambani, 2022; Onsomu, Mose & Munene, 2022; TOC, 2023:18), whilst in 2013, 93.62% of CAs in Kenya had representation of PWDs, this figure declined to 63.83% then 55.32% in the 2017 and 2022 Kenyan elections respectively. This implies that PWDs' overall position, in Kenya's post-2010 CAs, has progressively worsened.

Similarly, the findings from UDPK (2021:19-23), Thuo and Ambani (2022:2-4) and Onsomu, Mose and Munene (2022:102-105), indicate a sharp decline then stagnation in the share of PWDs elected and appointed in Kenya's post-2010 legislatures; this figure decreased from about 3.2% in 2013, to 1.9%, then 1.86% following the 2017 and 2022 elections in Kenya (WFD, 2020, 2020a; MT, 2021; Jattani & Ochieng, 2022, 2023; Mute, 2023; ORPP, 2023:91). Accordingly, and as indicated by among others NGEC (2016, 2018, 2022), KUB (2020) and KNCHR (2014, 2016), between 2013 and 2022, the shortfall in the 'ideal' legislative representation of PWDs (i.e., relative to the constitutional stipulation of 5% in all elective and appointive offices in Kenya) increased from approximately 1.82% to 3.1% (also see, MT, 2021; DI & IF, 2021, 2021a; Onsomu, Mose & Munene, 2022; Jattani & Ochieng, 2022, 2023; TOC, 2023; Mute, 2023).

As such, and as confirmed by much of the reviewed literature (for instance, see NGEN, 2016, 2018:v/19; Alberta, 2017:1-2; KUB, 2020; WFD, 2020, 2020a:4-5; CIPESA, 2021; MT, 2021:1-2; Thuo & Ambani, 2022; Gichana, 2022; Mugambi, 2022a; Jattani & Ochieng, 2022, 2023; Mute, 2023), in post-2010 Kenya, the participation of PWDs as legislative leaders has been low. With few legislators (and in some CAs, none) representing PWDs, and PWDs rarely influencing decision-making, in most instances, PWDs and their interests have been weakly presented and pursued at national and county levels in Kenya. This – by impeding the promotion, formulation and implementation of effective legal frameworks, regulations, and programs to secure and enhance PWDs’ legislative participation – has reinforced their inadequate representation among elected and appointed leaders in Kenya’s post-2010 legislatures.

For example, Thuo (2016:40-42) and ELOG (2022:11/15), determined that not having enough PWDs in the Kenyan legislature has hindered efforts to highlight the accessibility issues PWDs endure during campaigns, as well as limited the advocacy for a just inclusion of PWDs in pre-electoral project and funding decisions in Kenya. This has obstructed the proclamation and operationalization of mechanisms and strategies to mitigate these barriers which significantly handicap PWDs’ ability and willingness to compete for and hold legislative office in Kenya, thus, contributing to their continued exclusion.

Furthermore, the reviewed documents including, for instance, IFES (2017:1-3), iKNOWPOLITICS (2019:2/3-4) and USP-K (2017:2/6-8) identified that whilst all PWDs face marginalization, the representation of WWDs, among legislative leaders in Kenya post-2010, has been particularly low. Confirming this, Thuo and Ambani (2022:2-4) disclose that the data, on Kenya’s post-2010 legislatures, shows a ‘great disparity’ in the inclusion of WWDs relative to both MWDs and women without disabilities. For instance, per the IFES’ (2017:1-3) results, whilst few WWDs had (often unsuccessfully) been nominated for appointment to previous national and local governments in Kenya, until 2013 no WWDs had ever been elected to the legislature (also see, Mute, 2023; MT, 2021; WFD, 2020; iKNOWPOLITICS, 2019). The KUB (2020:11-12/59-67) also established that the participation of WWDs, in appointive and elective legislative positions in Kenya, remains well below constitutional and other stipulations. This was bolstered by accompanying survey results which showed that 70% of respondents agreed that PWDs, even more so WWDs, are often underrepresented in elections and appointments at the national and local level in Kenya.

Rohwerder (2020:6/10-11), WFD (2020:5-7/32-40) and CRPwD (2014:47) agree, arguing that the Kenyan context, in which WWDs endure ‘double/multiple and compounding forms of discrimination,’ limits the legislative participation of WWDs far more than MWDs. Specifically, negative cultural practices and attitudes towards disability, as well as traditional gender biases on the role of women, intensify the extent of WWDs political exclusion relative to MWDs. Consequently – and as articulated by, for example, SGPwD and IDA (2017:37/39), CRPwD (2014, 2015) and iKNOWPOLITICS (2019) – WWDs have even less influence on the overall development of policy and legislation and (with limited focus on the rights and specific needs of WWDs) they are rarely included/provided for in discussions and programs on the political participation of PWDs (as well as women) in Kenya. This has occasioned a situation of weak frameworks, structures, and accommodations to enable and support WWDs’ participation as candidates and appointed or elected legislative leaders, hence, further constraining their representation in legislative activities in Kenya (also see KNCHR, 2016:39/74; Thuo, 2016; NGEN, 2016, 2018, 2022a; IFES, 2017:1; OSCE- ODIHR, 2019:39; UDPK, 2021; Thuo & Ambani, 2022; Mute, 2023).

What is more, like Kanyinga (2014:91), numerous studies in the review (including, KUB, 2020:11-12/59-67; IFES, 2017:1-3; OSCE-ODIHR, 2019:7/25; IDA, 2014:1/31) revealed that, since PWDs (even more so WWDs) face discrimination and marginalization in all sectors of political life, they are also

underrepresented in leadership positions across most (if not all) public and political institutions in Kenya. These authors also note that, for example, aside from the Kenya National Commission on Human Rights (KNCHR), where some notable PWDs have held key leadership positions, proactive efforts to include PWDs have been few and far between in Kenya (including in the executive, judiciary, county executive committees, IEBC and other election management bodies, diplomatic missions, parastatals and the civil service more generally). These observations are consistent with the KUB's (2020:66-67) findings that CAs and CA offices are known for using "shrewd tactics" to side-line PWDs from county level structures. Likewise, the IRI and NDI (2022:10-11) point out that following the 2022 Kenyan elections, PWDs criticized the IEBC for once again failing to secure the representation of PWDs in its decision-making processes. They (also UDPK, 2021; Thuo & Ambani, 2022; Mute, 2023) highlight that despite appeals to the GoK by PWDs and DPOs, the inadequate inclusion of PWDs in the IEBC, and other election management bodies in Kenya, is still an issue (KNCHR, 2014; CRPwD, 2014; NGEK, 2016, 2018, 2022; iKNOWPOLITICS, 2019; WFD, 2020, 2020a; MT, 2021; Jattani & Ochieng, 2022, 2023; ORPP, 2023).

Related to this, concern is also raised by, for example, KNCHR (2022:34) and IRI & NDI (2022:10) over the inadequate consultation of PWDs and DPOs during policy/decision-making in Kenya. They (also, KUB, 2020:39/59-60) contest that, often, PWDs and DPOs are not sufficiently consulted in the design and enactment of laws, policies, and programmes (including on political participation) that relate to or conditions PWDs' lives in Kenya. Thus, and as Mute (2023:28-29) also notes, in most cases PWDs are subjected to substituted decision-making (i.e., decisions and policies are developed and passed on their behalf without their input), a situation that tends to leave out or overlook many 'aspects' that are crucial to enabling PWDs' effective political participation in Kenya. Alternatively, limited or late consultations with DPOs and PWDs on their needs (e.g., during pre-election campaigns) leaves little space and time for any substantive contributions from, and actions in support of PWDs seeking election/appointment to political office in Kenya (for more see, KNCHR, 2014, 2016, 2022; IDA, 2014; KUB, 2020; IRI & NDI, 2022; Onsomu, Mose & Munene, 2022; TOC, 2023; Mute, 2023).

It is thus that most of the literature included in the review (see Table 1, Appendix A) concludes that, overall, their severe underrepresentation in leadership positions across Kenya's public and political offices, coupled with marginalization from political governance has significantly disadvantaged PWDs. Relative to those without disabilities, PWDs' interests are not successfully articulated, promoted and protected during key policy/decision-making processes in Kenya. This negatively affects the inclusion of PWDs (and their specific needs) in the drafting and implementation of frameworks and structures to safeguard and support adequate and effective political participation⁷³ in Kenya. As a result, this has fuelled the political (including legislative) marginalization of PWDs in Kenya (Grut, Olenja & Ingstad, 2011; KNCHR, 2014, 2022; HI, UDPK & ANDY, 2017; IFES, 2017:1-2; Macharia, 2020:vi/1; Mute, 2020a; CIPESA, 2021:21; MT, 2021:10; WFD, 2022a:4-5; Onsomu, Mose & Munene, 2022:vi/102-103; TOC, 2023:18).

Furthermore – and as articulated by (for instance) Grut, Olenja and Ingstad (2011:2), Mute (2020b:1-2) and Mueni (2017) – in limiting the number of PWDs who, by serving in key leadership positions challenge negative stereotypes regarding PWDs' capacity (thus, breaking down the associated social/attitudinal barriers to PWDs' political entry), the underrepresentation of PWDs in public and political offices has frustrated the overall inclusion agenda in Kenya. Similarly, with few leaders with disabilities serving as role models, and charting the course for other PWDs to vie for election or nomination to legislative and other offices in Kenya – hence, encouraging higher levels of political

⁷³ I.e., that are friendly towards the full and effective participation of PWDs as leaders in legislative (and other political) activities.

engagement among PWDs – the status of PWDs’ representation has, consequently, slowed the efforts to enhance the relative inclusion of PWDs as leaders in Kenya’s post-2010 political institutions, including the legislature (also see, NCAPD & KNBS, 2008a:1; Onyango, 2012; Ngulu, 2012; Cottrel-Ghai et al., 2013; Wanambisi, 2017; Thuo, 2016; Ocharo, 2019; Owiti, 2019; Parliament of Kenya, 2021).

In all, the literature reviewed suggests that the limited representation of PWDs in legislative and other political offices, physical and architectural barriers, transportation challenges, discriminatory attitudes and perceptions, inadequate training and sensitization of government staff and officials, and the lack of IDs are some of the key factors that negate PWDs’ exercise of their political rights in Kenya. Consequently, the participation of PWDs in political affairs in Kenya is limited (and in some instances, non-existent).

However, there are numerous other barriers and limiting factors identified in the literature, including (but not limited to), information and communication barriers, legal and regulatory gaps, socio-economic disadvantages, hostile social political environment, discrimination within political parties, limited awareness on PWDs’ rights, weak political will and limited state support, lack/loss of trust in the government, and the absence of reliable and sound data on PWDs in Kenya. A summary of these, and other findings in the literature included in the review, can be found in Table 1, Appendix A.

LIMITATIONS

There may be several limitations and challenges experienced during this study.

To begin with, there is a lack of complete and reliable empirical data on the political participation of PWDs, even in available government and political party records, thus making it difficult to accurately ascertain the extent of their participation⁷⁴, and draw comparison between different periods (Onyango, 2012:6-7; Suping & Moswela, 2018:61). Attempts will be made to address this limitation through extensive data mining of various government and political party sources, as well as the records of the Independent Electoral and Boundaries Commission (IEBC) and Office of the Registrar of Political Parties (ORPP) in Kenya. Data from studies that include key informant interviews will also help in establishing the extent of participation, though it may prove difficult to provide **exact** figures on the extent of participation of PWDs.

Secondly, not much has been written or research undertaken in Kenya on the various legal instruments in this area that relate to, or are in Kenya – e.g., the Political Parties Act (2011), Elections (Party Primaries and Party Lists) Regulations (2017), the African Disability Rights Protocol (2018), and the UNCRPD (2006) – since some are relatively new or have more recently been amended, but importantly, few researchers exist in this area of study especially in Kenya. Moreover, the little research that does exist is rarely specific to the rights (even more so political rights) of PWDs, tending to focus more generally on the human rights of minorities in Kenya, or other disability rights. While it may be difficult to completely overcome this limitation, the research will turn to relevant African and global literature and where possible, draw information from studies that undertook key interviews with knowledgeable informants (Onyango, 2012:6-7; Thuo, 2016b; Owiti, 2019; Suping & Moswela, 2018:10/61).

Thirdly, for a study of this nature, it would be ideal to conduct interviews with various stakeholders with disabilities in Kenya including, current and past legislative government officials (across the various

⁷⁴ As voters, candidates, and leaders in the legislature (National Assembly, Senate, and County Assemblies) in Kenya.

levels and committees), candidates for office (both independent and from the various political parties), employed officials and staff, DPOs, as well as PWDs engaged in various political activities. However, given limited time, resources, and the researchers' location, at this stage it is impossible to effectively conduct interviews and surveys. However, given the availability of some (though limited) studies that have conducted key informant interviews, other documentary data, and the researchers' knowledge, this limitation is not expected to affect the result to any significant extent (United Nations Development Programme (UNDP), 2015:6-7; Suping & Moswela, 2018:10/61).

In addition, while this study seeks to include information on all PWDs, the available literature is often focused on the political participation of persons with physical disabilities or a specific type of disability. For instance, there is limited information on the participation of persons with intellectual or psychosocial disabilities. This may be a result of the limited focus on disability rights, as well as discomfort/difficulties arising in defining disability (UNDP, 2015:6-7). It will be difficult to address this limitation fully given the (aforementioned) limitations in the availability of studies.

Lastly, this study will be limited in that it will only deal with disability rights related to participation of PWDs in political activities in Kenya, while there are other aspects of disability rights such as access to education that – whilst equally important – will not be considered (Owiti, 2019:24-25). It will be important for future research to include these aspects and any others that may be left out of this research.

CHAPTER BREAKDOWN

'**Chapter 1,**' the introductory chapter provides the background and context to the problem assessed in this paper. It thus includes the problem statement, justification, objectives, research questions, hypotheses, literature review and limitations for this study.

In '**Chapter 2,**' the conceptual framework, key concepts and methodology used in research paper are discussed.

As a base for the subsequent assessment, '**Chapter 3**' follows with a focus on the legal frameworks on the political participation of PWDs in Kenya, including their characteristics and the socio-historic processes that motivated their adoption and enactment. Importantly, this chapter also delineates the importance of PWDs' political participation within Kenya's constitutional democratic framework.

'**Chapter 4,**' includes the analysis and discussion of the research questions, while recommendations and the conclusions from the study are found in '**Chapter 5.**'

CHAPTER 2 – METHODOLOGY

This chapter includes a discussion on the conceptual framework, key concepts and methodology used in research paper.

CONCEPTUAL FRAMEWORK

The variables in this study will be broadly categorized into two, independent and dependent variables. The dependent variable refers to the political participation⁷⁵ of PWDs, whilst independent variables include, the relevant international and domestic laws conditioning the effective participation of PWDs in political activities in Kenya and their efficacy to this end, and the challenges to PWDs' full and effective participation in politics in Kenya (Owiti, 2019:15).

KEY CONCEPTS – AN INTERLUDE

DISABILITY:

To fully grasp the discussion on the legal framework on and the extent of political participation of PWDs in Kenya, it is important to understand how disability is defined and the challenges thereof, and to appreciate some of the key conceptual frameworks that feature prominently in disability studies⁷⁶ (Onyango, 2012:8). Thus, this section defines 'disability', provides examples of different disabilities, interrogates the prevalence of disability in Kenya, and based on the literature, briefly highlights some frameworks that are key to how disability has been understood and conceptualized.

Defining 'disability' & the challenges thereof

Defining 'disability' is a difficult task given that, to begin with, there is no internationally agreed upon definition of disability (Mute, n.d.; Onyango, 2012:19-30; Degener & Quinn, 2002). Additionally, even in the UNCRPD, contrary to what might be expected, disability is not a clearly defined term⁷⁷ (international Knowledge Network of Women in Politics (iKNOWPOLITICS), 2019:2; Onyango, 2012:19).

This absence of a clear definition is explained by the fact that, firstly, the concept of disability and what it encapsulates is contested. For instance, the World Health Organisation (WHO) (2004, cited in Sultana (2010:212-213) and Onyango (2012:19-21)), asserts that, as opposed to something specific, disability is a hypernym that covers not only 'impairments, but also participatory and activity restrictions, and that speaks to a person's capacity to operate within particular socio-political, environmental (and other) milieus' (Freedman, Martin & Schoeni, 2004:3). Goodley (2007:31) concurs with this, contesting that it is 'an articulation of society's broad cultural, socio-political, and economic constitution of a very precise yet involved type of exclusion; that of individuals with impairments.'

In addition, based on the form of impairment, limiting or restricting context, and region/territory in question, 'disability' (and its particularities), may denote 'different things to different people' (Mute,

⁷⁵ As voters, candidates for and office holders in the legislature (National Assembly, County Assembly and Senate) in Kenya.

⁷⁶ As Friedman (2004) (also Onyango, 2012) assert, given that disability is an intricate 'phenomenon', to comprehend and relate with it constructively, it is crucial to at least be somewhat familiar with the evolution in the views on disability and the differing approaches to 'categorizing, measuring, and contemplating about disability' that they occasion.

⁷⁷ Indeed, the only indication of anything that even borders a definition of the term disability is the recognition of disability as "an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others" (UNCRPD, 2006:preamble(e)).

n.d.; Onyango, 2012:19-21/29-30; Sultana, 2010:212-213). This sentiment is echoed by Goodley (2007:319) and Basser & Jones (2002:260), both of whom argue for the importance of noting that ‘what comprises disability tends to differ across time and location.’

Moreover, there has been a tendency towards arguing **for** there to **not** be a precise definition of disability because, firstly, such a definition may cause the exclusion and marginalization of certain groups/individuals with disabilities who are not included or listed within the given definition (Mute, n.d.; Onyango, 2012:19-21/29-30; Sultana, 2010). Similarly, it is important to not severely confine what counts as a disability since the notion of disability is ever-changing; thus, even if a group is not specifically listed, it should be possible to include it in the definition, as opposed to letting it fall outside a restrictive scope⁷⁸ (Mute, n.d.; Onyango, 2012:29-30; OSCE Office for Democratic Institutions and Human Rights (ODIHR) (OSEC-ODIHR), 2019:9; Sultana, 2010:212-213). Consequently, defining what a ‘disability’ is – given the risk of exclusion – is argued to be an unsuitable approach to the effective protection and achievement of human rights (Onyango, 2012:19-21).

As such, and as contend by key scholars and institutions in the field of disability studies (see for e.g., Degener & Quinn, 2002:275-277; Onyango, 2012:19-30; Mute, n.d.; OSCE-ODIHR, 2019; Handicap International (HI), United Disabled Persons of Kenya (UDPK) & Action Network for the Disabled (ANDY) (HI, UDPK & ANDY), 2017), a more fitting approach is, as opposed to defining ‘what disability is’, to rather define “persons with disabilities”⁷⁹.

Accordingly, and since it is the most recognized and commonly used definition, this paper will adopt the CRPD’s definition of the concept and define PWDs as ‘...(including) those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others’⁸⁰ (UNCRPD, 2006:Article 1; OSCE-ODIHR, 2019:20-23; Westminster Foundation for Democracy (WFD), 2020a:2; Onyango, 2012:19-21; HI, UDPK & ANDY, 2017:vi).

Categories of disabilities: Some examples

There are numerous sorts of impairments which in interaction with various barriers can result in persons experiencing disability, including for example:

Intellectual Disabilities	This includes any condition present since infancy, childhood or adolescence that affects individuals’ ability to learn resulting in increased difficulties in learning ability and capacity to develop
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⁷⁸ Other reasons put forward for avoiding such a restrictive definition include, for instance, avoiding historical issues in the realization of sufficient inclusion and representation of the perspectives and opinions of members of the PWD community, given the decision to divide the community on symptomatic basis for the purpose of service delivery. As well as forestalling previously encountered challenges, in the interpretation and application of legislation, in instances where individuals (e.g., those that are epileptic) fit into various set categorizations e.g., mental, and physical disability (Degener & Quinn, 2002:276).

⁷⁹ In this way, taking an approach that is ‘broad and inclusive of as many PWDs as possible, and that allows for the lived experience of disability such that the meaning of ‘disability’ (or being a ‘PWD’) is – rather than a rigid, static concept that does not account for variation and evolution of ideas – a categorization that is dependent on and a feature of reality’ (Onyango, 2012:19-30; Degener & Quinn, 2002).

⁸⁰ Three important points about this definition should be noted. ‘Firstly, PWDs are initially PWIs (Persons with Impairments). Secondly, it is the interaction of these persons who have long-term physical, mental, intellectual, sensory (or other) impairments with various barriers (e.g., attitudinal, social, economic, political, and environmental), that prevent their effective, and equitable participation and full realization of potential in society, that leads to a state of disability. I.e., **IMPAIRMENT + BARRIERS = DISABILITY**’ (HI, UDPK & ANDY, 2017:113-117; OSCE-ODIHR, 2019:20). These points are important to note since, a key idea of disability rights advocacy (and the CRPD) is that individuals are not “disabled” if all the relevant barriers are removed. Thus, it is crucial to fully address these barriers for PWDs, hence ‘removing the disability’, enabling them to be independent and effectively participate in all aspects of society (HI, UDPK & ANDY, 2017:116-117; OSCE-ODIHR, 2019:20; WFD, 2020a:2). Lastly, in recognition of the fact that disability is a dynamic idea that continues to evolve, the CRPD’s definition does not unreasonably restrict what can be considered as a disability. Accordingly, even if a particular category of disability is not explicitly listed – e.g., HIV – it can and does still fit within the given definition (OSCE-ODIHR, 2019:20).

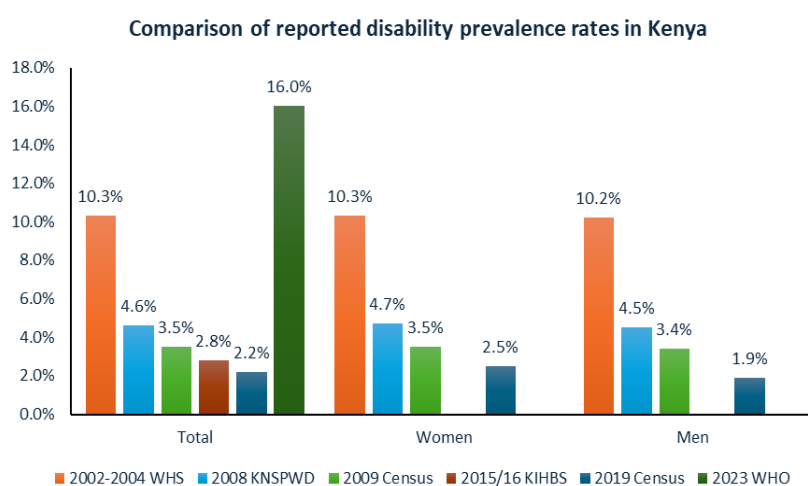
	adaptive and/or social skills. Commonly known examples include persons with Down syndrome, Dyslexia, Asperger syndrome, ADHD, and some instances of Autism.
Psychosocial Disabilities	This includes conditions that affect the mental, emotional, or cognitive health of people. Some examples of this are various phobias, obsessive-compulsive disorder, anxiety disorder, bipolar disorder, post-traumatic stress disorder, depression, and schizophrenia.
Physical Disabilities	This refers to conditions that lead to difficulties in physical movement or mobility, with those affected relying on mobility assistive mechanisms such as crutches or wheelchairs.
Sensory Disabilities	Whilst similar to physical disabilities, this relates specifically to conditions that impact on individual's sensory system, for instance their ability to see or hear. For instance, this includes those who are deaf or have reduced hearing ability (hard-of-hearing), deaf-blind, blind, or partially sighted, and those whose who are colour blind.

(Source: author, adapted from HI, UDPK & ANDY, 2017:vi; OSCE-ODIHR, 2019:20; UNCRPD, 2006; United Disabled Persons of Kenya (UDPK), 2016; Onyango, 2012; WHO, 2001; Owiti, 2019; NCAPD & KNBS, 2008; Priestley et al., 2016; Ocharo, 2019⁸¹).

There are many other examples of disability including (but not limited to) those with diabetes, epilepsy, HIV or Aids, memory loss, Alzheimer's, and little people (HI, UDPK & ANDY, 2017:vi; OSCE-ODIHR, 2019:20; WHO, 2011; OSCE-ODIHR; UNCRPD, 2006; Prince, 2009, 2012 – Thuo, 2016; United Nations Department of Economic and Social Affairs (DESA), Division for Social Policy and Development (DSPD) (UNDESA-DSPD), 2016; Inclusion International (II), 2015; Degener & Quinn, 2002; Committee on the Rights of Persons with Disabilities (CRPWD), 2014).

The prevalence of disability in Kenya: Interrogating the figures

GRAPH A: Comparison of the reported disability prevalence in Kenya.



Source: Author (with information from, Mobility International USA (MIUSA), 2024; KNBS, 2012, 2013, 2019; Kenya Population and Housing Census (KPHC), 2009, 2019; KIHBS, 2015/16, 2018:102-103; Kenya National Survey for Persons with Disabilities (KNSPWD), 2008; World Health Survey (WHS), 2002-2004; Rohwerder, 2020:9; Owino, 2020; Leonard Cheshire, 2018; KNCHR, 2014; NCAPD & KNBS, 2008; WHO, 2005, 2011, 2023).

NB: The estimated disability prevalence rates are based on different methodological approaches and not directly comparable.

⁸¹ It is important to note that this list is far from exhaustive and that depending on location and jurisdiction the categories of disability as well as terminology used may differ (Mute, n.d.; Onyango, 2012:19-21/29-30 – Goodley, 2007:319; Basser & Jones, 2002:260; OSCE-ODIHR, 2019:20; UNCRPD, 2006).

The World Health Organization (WHO) (2005, 2011, 2023) estimates that, globally, over 1.3 billion people live with a form of disability. There is no accurate nor reliable data on disability prevalence in Kenya. All efforts to determine the prevalence of disability in Kenya have so far been unconvincing (NCAPD & KNBS, 2008; Ingstad & Grut, 2007; Mugambi, 2022; Sightsavers, 2018:4; Owino, 2020:4; Rohwerder, 2020:9).

As elucidated by Graph A, given an upward revision in the WHO's (2005, 2011, 2023) approximation of the global disability prevalence rate (to roughly 16% of each population), the United States Agency for International Development (USAID) (2023), estimated that there are approximately 8.9 million PWDs in Kenya.

Another initiative, the World Health Survey (WHS) (2002-2004) indicated that over 10.3% of the Kenyan population are PWDs, with no significant differences in the proportion of men (10.2%) and women (10.3%) with disabilities in Kenya. Based on the estimated Kenya population at the time, this equates to approximately 2.24 million WWDs and 2.20 million MWDs (or 4.44 million PWDs) in Kenya (MIUSA, 2024; Rohwerder, 2020:9; Leonard Cheshire, 2018:36).

In addition, the Kenya National Survey for Persons with Disabilities (KNSPWD) (2008), the first (and only) survey to have ever specifically targeted PWDs in Kenya, was conducted in 2007. It established that PWDs comprise about 4.6% of all Kenyans aged 15 and above (or 1.7 million people), with WWDs making up at least 52% of this. Compared to around 4.7% of all women in Kenya, the survey found that about 4.5% of men are PWDs (NCAPD & KNBS, 2008:xi-xvi/20; Kabare, 2018:7).

Data on PWDs was also captured by the Kenya Integrated Household Budget Survey (KIHBS) (2015/16), according to which PWDs make up at least 2.8% of the Kenyan population (Kabare, 2018:7; KIHBS, 2018:102-103).

The Kenya National Bureau of Statistics (KNBS), the key agency tasked with data collection in Kenya, captured data on PWDs in both the 2009 and 2019 Kenya Population and Housing Census (KPHC). Drawing on guidance from the World Health Organization classifications on disability and the Washington Group's methodology⁸², the KNBS included a disability module 'tailored for Kenya' in the 2009 KPHC. This census found that at least 3.5% of all Kenyans (1.33 million people) aged 5 and above are PWDs, with no major difference by sex – per the findings, MWDs and WWDs account for about 3.4% (647,700) and 3.5% (682,700) of all men and women in Kenya respectively (KNBS, 2012:14, 2013; Sightsavers, 2018:4; Leonard Cheshire, 2018:32; Rohwerder, 2020:9).

The 2019 KPHC – which fully utilized the short set of questionnaires on PWDs from the WG, with additional questions to account for albinism – estimated that 2.2% of all Kenyans aged 5 and above (0.92 million people) are PWDs, with women constituting just over 57% (523,883) of all PWDs. Thus, unlike past censuses and surveys, the 2019 KPHC indicates a major difference in disability prevalence by sex; compared to 1.9% of men, over 2.5% of women are PWDs in Kenya (Buluma, 2019:31-38; Owino, 2020:6; Kipsaat, Onsomu & Mose, 2020; United Nations Population Fund-Kenya (UNFPA-Kenya), 2024).

The use of different methodologies (including, for example, the size and number of administrative units, the age groups considered, and the number and type of questions asked), as well as definitions and classifications of 'disability' during data collection, thus, occasioning differences in the resulting data sets and the degree of data disaggregation, precludes the direct comparison of the reported

⁸² The KNSPWD (2008) and KIHBS (2015/16) also drew on the World Health Organization classifications on disability and questions from the Washington Group on Disability Statistics (WG).

disability prevalence rates across time and location in Kenya (Owiti, 2019; Owino, 2020:6; Kipsaat, Onsomu & Mose, 2020; Rohwerder, 2020:9).

Furthermore, there is much doubt regarding the quality, accuracy, and reliability of the data on PWDs from these past censuses and surveys in Kenya.

For instance, the estimates from the WHO and WHS are based on very broad generalizations, with no evidence provided for their specific applicability to the Kenyan context (Ingstad and Grut, 2007; Onyango, 2012; Leonard Cheshire, 2018:36; Owiti, 2019; WHO, 2005, 2011, 2023; AHO, 2020; Owino, 2020:1/14; MT, 2021; WFD, 2020a, 2022).

As for the KNSPWD (2008), whilst this is the only (and perhaps, as argued by Kipsaat, Onsomu and Mose, (2020), most comprehensive) survey focused specifically on PWDs in Kenya, its estimates have also been questioned. Indeed, the challenges of generating sound statistics on the population of PWDs in Kenya – for example, given disagreements over the categorization and definition of disability, difficulties in navigating and controlling for stigma and discrimination, as well as low awareness of D.R – were identified early on by DPOs and HRIs. It is for this reason that PWDs and DPOs continue to criticize Kenya's past surveys and censuses for presenting estimates that significantly underrepresent the number of PWDs in Kenya (CRPWD, 2014; Leonard Cheshire, 2018:32-36; KNBS, 2012, 2020; Owino, 2020:4-6; UDPK, 2021).

KIHBS (2015/16, 2018), with its primary focus on household conditions and key economic and labour force indicators, seems to have included the question of PWDs merely as a 'by-the-way.' This is evidenced by, for example, the none or low-level disaggregation of the data on PWDs in Kenya even along basic parameters such as age, gender and disability type (Kipsaat, Onsomu & Mose, 2020; Rohwerder, 2020; Kabare, 2018:7). Consequently, these findings seem to not hold much weight.

Whilst Kenya has conducted censuses every 10 years since 1969, the first-time disability was considered was in the 1989 KPHC. However, concerns regarding the poor phrasing and formulation of questions meant that ultimately no disability related data was analysed (Buluma, 2019:31; KNBS, 2012, 2018; NCAPD & KNBS, 2008).

The data on PWDs from the 2009 census, as observed by the WG and its officials, was "an underestimate", given 'the various challenges they experienced during the formulation of the questions for the census – for example, the significant resistance to accepting changes and reaching a compromise on the questionnaire (Buluma, 2019:33/37/43; Owino, 2020:4/11/14; UDPK, 2021). This was compounded by the insufficient training and sensitization of personnel and enumerators to allow them to successfully identify and categorize PWDs, as well as methodological issues that made administering and responding to questionnaires a difficult and tedious process (Sightsavers, 2018:4; Leonard Cheshire, 2018:32; Rohwerder, 2020:9).

In the case of the 2019 census – and as noted by, for example, Rohwerder (2020:9), Owino (2020:11-12) and Buluma (2019:37-39/43) – the difficulties in accurately translating and conveying disability questions into Kenya's local languages, and the large number of officials and enumerators that needed to be trained, thus undermining supervision and sensitization, may have impacted the 2019 census results. Similarly, the stigma and superstition that Kenyans associate with disability, may have compromised people's willingness to acknowledge 'disability' and the accuracy of reporting by census takers. Importantly, the addition of 'Don't know' and 'Albinism' as possible choices is thought to have biased/prejudiced responses, thus, lowering Kenya's reported disability prevalence rate. As such, it is likely that the 2019 KPHC dramatically underestimated the population of PWDs in Kenya.

What is more, a crude comparison across time (2002-2019) implies a marked decline in the reported population of PWDs in Kenya from approximately 10% to 2.2%. This is contrary to global developments and patterns which reveal the increasing prevalence of disability across the world (with PWDs now constituting at least 16% of each population), hence, giving more reason to question the accuracy and validity of past (even more so recent) results (WHO, 2005, 2011, 2023; AHO, 2020; Owino, 2020:4/11; MT, 2021:1; USAID, 2023; Disabled World, 2024).

Overall, this confirms the absence of sound data on the total population of PWDs in Kenya (NCAPD & KNBS, 2008; Ingstad & Grut, 2007:13; Onyango, 2012:1-4; Sightsavers, 2018:4; Owino, 2020:4-6/12; Rohwerder, 2020:9). Such significant disparities are problematic; both the low and the high reported rates of disability prevalence, suggest that these estimates may not be true to reality. Whereas, for now, there is no definitive nor convincing answer as to the proportion of PWDs in Kenya, in-depth future analyses into the ‘demographic particularities of, and trends in Kenya’s population of PWDs’ should provide more clarity.

As it stands, it seems reasonable to simply conclude that, based on the results of previous attempts at determining the prevalence of disability in Kenya, PWDs make up anywhere between 2.2% (KPHC, 2019) and 16% (USAID, 2023; WHO, 2011, 2023) of the Kenyan population (i.e., approximately 0.92 million-8.9 million people) (for more see, KNBS, 2012:14-16, 2018, 2020; KNCHR, 2014:viii-3; Kamundia, 2014:185-205; NGEK, 2016:185-189; Leonard Cheshire, 2018; Kabare, 2018:7; Owino, 2020; Rohwerder, 2020; Gitonga, 2020; WFD, 2020a, 2022; Jattani & Ochieng, 2022; Mugambi, 2022).

Understanding the various perspectives on disability: A brief introduction to disability models

Across time, many different perspectives on disability have existed. However, from the literature review, four dominant models that pertain to and affect PWDs have been identified by scholars and institutions that focus on disability:⁸³ (OSCE-ODIHR, 2019:22-23)

The Charity Model	This model situates disability as being a problem of/with the individual and equates it with deficit or lack. Based on this perspective, PWDs are simply passive and suffering victims who are incapable of taking care of themselves. They are perceived as living sad lives and as objects deserving of pity and charity, and therefore who need to be supported and cared for by society. As such, there is no emphasis on the human rights of PWDs, nor any concern given to equality and justice for PWDs (Jongbloed, 2003:203-209; Goering, 2010:55; Onyango, 2012:13-14; WFD, 2020a:2; OSCE-ODIHR, 2019:22-23; Oluchina, 2015).
The Medical Model	As with the Charity model, this view focuses on disability as being a problem within an individual that results from disease and related health concerns. Thus, it also exhibits little regard for the human rights of PWDs. Rather, it emphasizes that PWDs are merely objects for medical interventions, whose ‘problems’ should be managed by medical/clinical experts. The ultimate aim of this is reducing or curing their ‘afflictions’ (or at least enabling them to adjust and change behavioural patterns), allowing them to better fit into society by being as ‘normal’ they can ⁸⁴ (OSCE-ODIHR,

⁸³ It is important to note that the aim here is not to argue for or against any of the models, rather, to simply introduce the reader to the various views affecting PWDs, as well as highlight the general position taken by scholars on the various models.

⁸⁴ Both the charity and medical models have been criticized for displaying little to no regard for PWDs as agents with rights and inherent human worth and dignity. Rather PWDs are treated as objects of pity who require charity in the former, and in the latter, as broken sick individuals who must be healed, fixed, and made as ‘normal’ as possible. In both instances it is highlighted that PWDs are incapable of participating in social and political life and that they must be categorized as ‘abnormal’ to continue receiving ‘sympathy and benefits’ from other members of society. ‘The tendency of these models is thus to focus on and spotlight what PWDs cannot do, as opposed to the value of difference and what they can do – i.e., the message is that the glass is half (or almost) empty, not half full’. Accordingly, scholars contest

	2019:22-23; Onyango, 2012:13-14; WHO, 2001:20; Jongbloed, 2003:203-209; Degener & Quinn, 2002:14-15; Oluchina, 2015).
The Social Model	<p>Contrary to the previous models, and the tendency to ‘problematize the person by focusing on their medical traits’, the social model holds that disability is the product of PWIs’ interaction with, non-accommodative and inaccessible environments and socio-economic structures. Thus, the existence of impairment is not denied, rather, this view highlights that most of the deficits affiliated with impairment are socially inflicted, i.e., that socio-cultural practices and attitudes, and exclusionary institutions, needlessly and unfairly disable individuals⁸⁵ (OSCE-ODIHR, 2019:22-23; Onyango, 2012:13-14/30-31; HI, UDPK & ANDY, 2017:113-116).</p> <p>Thus, the social model focuses on the socio-economic, civil (and other) rights of PWDs and seeks to address the oppression and marginalization of PWDs occasioned by stigma, discriminatory social and cultural attitudes and practices, and institutionalized exclusion. Accordingly, it calls for transformational social change that will facilitate the recognition of the value of PWDs and allow for their full and effective participation, as well as realization of their rights. As such, for this perspective then, the key to greater inclusion of and equality for PWDs is recognizing and eliminating socially imposed barriers (Onyango, 2012:13-14/21-22/30-31 – Goering, 2010:54; Terzi, 2004; Heyer, 2002:725; Basser & Jones, 2002:262; United Nations Children’s Fund (UNICEF), 2007).</p>
The Human Rights Model	<p>Put simply, the essence of the human rights perspective is that PWDs, given their inherent human worth, are equal to everyone else and therefore possess the same human rights, which the state must protect, and facilitate the realization of, on an equal basis with others (OSCE-ODIHR, 2019:22-23; Owiti, 2019:13-14).</p> <p>In this model, PWDs are viewed as subjects and agents, as opposed to objects defined by medical attributes; PWDs are thus seen as rights holders and active participants and not as problems in need of charity or care. Consequently, this perspective advocates for centring PWDs in all decision-making processes that may affect them. Importantly, it situates the ‘problem’ of disability in society and not within PWDs. The ‘main problem’, on this view, results from the non-responsiveness of the state and society to – and exclusionary social and economic process that fail to account for and accommodate – the difference of disability. Accordingly, it argues that the state is obligated to remove all socially constructed barriers, and remedy the long history of discrimination and marginalization of PWDs in ‘able-bodied environments’, thereby enhancing inclusion and respect for the human dignity and rights of PWDs (Sultana, 2010:212-213; Onyango, 2012:8-14/30-31; Degener & Quinn, 2002:1/14-15; OSCE-ODIHR, 2019:22-23; NCAPD & KNBS, 2008:5).</p> <p>Therefore, ultimately, the human rights model aims to compel society to acknowledge that PWDs are equal citizens, rightfully ‘entitled to participate’ in every sphere of life’s mainstream, and that the attainment of their independence and equal (political, civic, and socio-economic) inclusion, is both a right and societally preferable end (Bagenstos, 2004; Onyango, 2012:30-31; Degener & Quinn, 2002:26-27; Owiti, 2019:13-14).</p>

that these perspectives are inherently discriminatory (Donoghue, 2003:207; Onyango, 2012:22; UDPK, 2016:6; WFD, 2020a:2; OSCE-ODIHR, 2019:22-23).

⁸⁵ For instance, if an individual is unable to understand and take part in a debate in parliament given the absence of sign language interpreters, the ‘disability’ is not the fact that the individual is deaf, but rather the absence of interpreters (OSCE-ODIHR, 2019:22-23).

From the literature review it is evident that PWDs and modern disability rights work favour the human rights and social perspectives⁸⁶, highlighting that PWDs are equally entitled to the same rights as everyone else. As such, socially constructed obstacles must be tackled and eliminated thereby facilitating the full acceptance, and effective participation of PWDs in the activities of society⁸⁷ (OSCE-ODIHR, 2019:22-23; Owiti, 2019:13-14; NCPAD & KNBS, 2008:5; Onyango, 2012:8-14/30-31).

POLITICAL PARTICIPATION:

The focus here is on defining and conceptualizing the political participation of PWDs. As such, it will briefly define political participation and highlight its different manifestations, and for clarity, reiterate the scope of participation considered and used as measures in this study.

What is political participation?

Speaking very broadly, political participation is categorized as a concept relating to citizens' exercise of political power, particularly through activities which seek to influence 'existing administrative, legislative, and executive power structures' (Oluchina, 2015:311-312; Ekman & Amnå, 2012:283-300; Milbrath & Goel, 1977:2; Kaase & Marsh, 1979:42; Verba, Nie & Kim, 1978:1; van Deth, 2016a).

In other words, political participation refers to actions taken by citizens aimed towards influencing the people in power (including political institutions and structures) – and their decision-making processes, as well as strategies, choices and policies on public or societal affairs – so as to obtain optimal outcomes (II, 2015:1; Ekman & Amnå, 2012:283-300; Brady, 1999:737-738; Teorell, Torcal & Montero, 2007:336; Sairambay, 2020:120-127; Huntington & Nelson, 1976:4; Parry, Moyser & Day, 1992:16; Verba, Schlozman & Brady, 1995:37).

Therefore, political participation includes the many ways through which citizens freely construct and express their 'opinions about their society⁸⁸ and country and how it is administered, as well as attempt to partake in and determine the choices and political outcomes that condition their lives' (Oluchina, 2015:311-312; Kimanzi, 2016:1; Khasnabis, Heinicke & Achu et al., 2010; van Deth, 2016a).

Different manifestations of political participation

Political participation encapsulates a broad range of different activities, including but not limited to, expressing political opinions online, debating politics, registering for and voting, attending political assemblies, championing political causes, political activism such as protesting, vying for election and election/appointment to public office⁸⁹ (Oluchina, 2015:310-312; II, 2015:1; Kimanzi, 2016:1-2; Waltz

⁸⁶ Even more so following the promulgation of the UNCRPD (2006) which hastened the paradigm shift, from the charity/medical models, towards an emphasis on perspectives based on the human rights and social models (Onyango, 2012; Owiti, 2019; Oluchina, 2015; OSCE-ODIHR, 2019:22-23).

⁸⁷ Put differently, the social and human rights models seek to create an inclusive society that values all persons and casts difference in a positive light, and that acknowledges and celebrates the equality and human dignity of all persons, irrespective of difference. In this respect (disability studies and even more so) the disability rights movement is in line with a much broader push to establish a society that values and includes all persons and has even been termed the "next generation civil rights movement" (Degener & Quinn, 2002:14-15/26-27; Onyango, 2012:8-14/30-31; Oluchina, 2015).

⁸⁸ And the world more broadly.

⁸⁹ For PWDs specifically this may also include, for instance, working to advance perspectives on disability at the family or broader societal level, active participation in DPOs, advocating for disability rights at national, regional, or international levels, and engaging in broader efforts

& Schippers, 2021:518; Opokua, Mprah & Saka, 2016:980; Owiti, 2019:15-17; Khasnabis, Heinicke & Achu et al., 2010; van Deth, 2016a).

Based on the literature review and theory, the various manifestations of PWDs' political participation can be conceptualized according to 'levels of political involvement' and categorized – assuming the Milbrath (1965) model – as apathetic, 'spectator (basic level), transitional (mid-level) or gladiator (high level) political activities' (Waltz & Schippers, 2021:518; Owiti, 2019:15-17). This classification was developed with the aim of allowing for the plausibility of 'more or less intensive levels of participation,' with the ordering representing the increasing degree of involvement and cost (in time, effort, and resources) that higher forms of participation demand (Ruedin, 2005:9-11, 2007:8-10).

The apathetic level refers to the nonparticipation of, or citizens who do not participate in politics.

The spectator level refers to actors who are marginally engaged in political activities, tending to participate every now and again through 'the most basic' and widely engaged forms of participation. This includes for instance, voting, displaying political paraphernalia, and engaging in political discussions (Owiti, 2019:15-17; Pacheco & Barrett, 2015:224-225; Pizzorno, 1970:29-30).

Transitional political activities include, for example, attending political meetings, donating money to candidates or political parties, and liaising with political leaders. Participants at this level are moderately interested and involved in politics and participate regularly (Priestley et al., 2016:1-9; Gebrekidan, 2012:103-122 – Owiti, 2019:15-17; Cayamodin, 2021:135-137; Vyankayya, 1991:35-37).

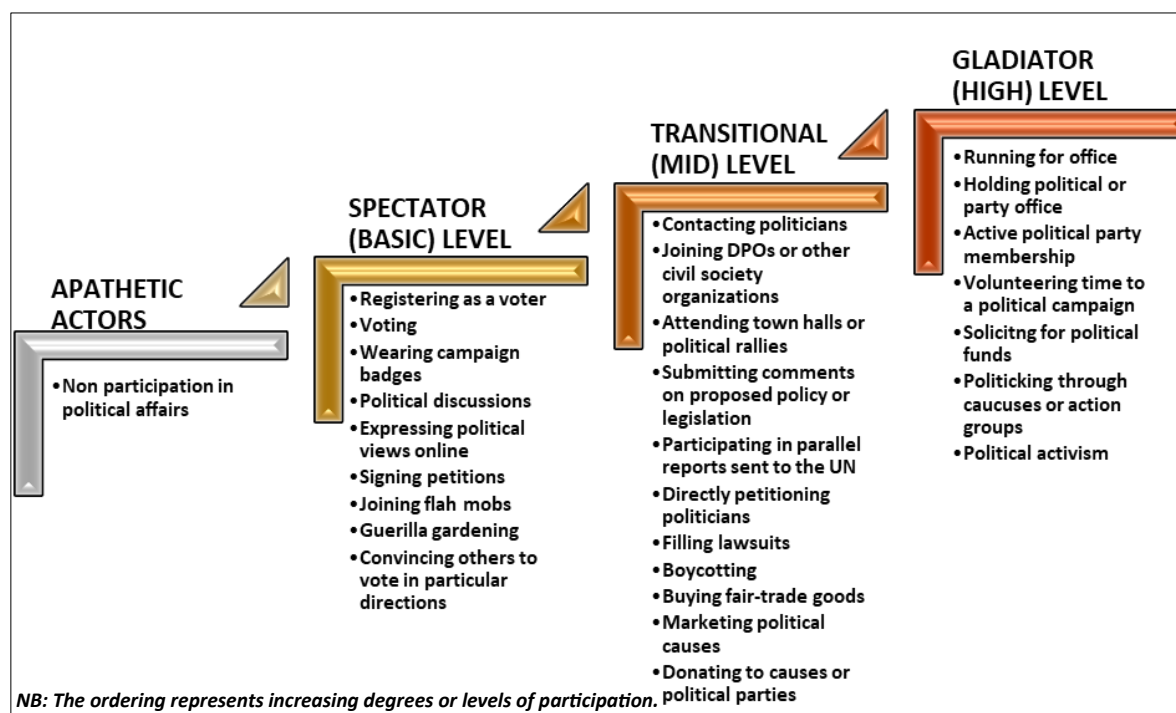
Gladiators are those who are full and active political fighters and that give constant attention to, or continuously engage in politics. Thus, they participate in the more advanced and demanding forms of participation (which are comparatively less popular and less often undertaken), such as, active political party membership, seeking and/or holding political office and political activism⁹⁰ (Owiti, 2019:15-17; Ruedin, 2007:8-10; Pacheco & Barrett, 2015:224-225; Milbrath, 1965).

To aid in understanding, a conceptual model depicting the various political activities, and their level of involvement, is shown in **Figure 1** below.

to ensure the government meets and accounts for its obligations on the rights of PWDs (for instance, partaking in monitoring committees, contributing to reports submitted to the UN and other institutions, being involved in committees or groups that represent PWDs in government and enlisting in alliances and similar undertakings to champion and advance PWDs' rights (Oluchina, 2015:310-312; II, 2015:1; Khasnabis, Heinicke & Achu et al., 2010; Owiti, 2019:15-17).

⁹⁰ Political activism includes legal activities, such as protests, legal strikes and picketing as well as illegal ones, such as damage to property, violence, suicide protests, civil disobedience (e.g., not paying taxes) and illegal strikes. It is important to note that, in its original form, Milbrath's (1965) model has been critiqued for failing to account for unconventional forms of political participation, specifically, direct or extreme actions and protest movements (i.e., political activism). However, later revisions of the model (see for e.g., Ruedin, 2005:9-11, 2007; Pacheco & Barrett, 2015:224-225; de Rooij, 2012), include political activism as a gladiatorial activity, given that evidence suggests that it is a relatively difficult and non-habitual form of participation, which is also highly costly (in time, money, and effort) to undertake. In other words, political activism requires engagement that goes beyond commonly held social and cultural norms.

FIGURE 1: conceptual framework depicting the hierarchy of political involvement/activities.



(Source: author, adapted from Milbrath, 1965; Owiti, 2019; Waltz & Schippers, 2021; Ruedin, 2005, 2007; Cayamodin, 2021).

In this study the focus will be on, firstly, PWDs' participation as voters. Voting is the most common form and primary means of participating in democracies. It is perceived as one of, if not the most influential illustrations of nationalism and citizenship, with its importance bolstered by the fact that, relative to other political activities, it facilitates the inclusion and representation of the opinions and voices of the largest proportion of citizens in the political system. Voting turnout is also the commonest measure used in assessing citizens' involvement and participation in democracies. As such, electoral participation is central to PWDs' engagement in political processes. It is thus unsurprising (and hence, a crucial consideration in authoring this paper) that the focus in the literature and available studies on the political participation of PWDs, is often on voting (Ekman & Amnå, 2012:283-300; Sairambay, 2020:120-127; van Deth, 2016; Nneka, 2022; Il, 2015:1; Kanyinga, 2014:115/123; Thuo, 2016:25-28; Degener & Quinn, 2002:21-25).

However, as earlier illustrated, whilst the focus is often on voting, political participation covers more than electoral participation and includes transitional and gladiator activities, importantly here, vying for and/or holding political office. Aside from voting, vying as a candidate for election and holding political office are often highlighted as the most impactful forms of participation since they act as the base for securing and realising all other disability rights⁹¹ (Thuo, 2016:25-31; Il, 2015:1; Degener & Quinn, 2002:21-25).

In particular, the participation and representation of PWDs as political leaders is pivotal to guaranteeing equitable laws and robust democracy. Through, not only accurately and effectively presenting the opinions and needs of PWDs, but also articulating PWDs' rights and establishing

⁹¹ As has been noted (see for e.g., Thuo, 2016:26; Fiala-Butora et al., 2014:71-83; Oluchina, 2015:312-313; Ocharo, 2019:1; Virendrakumar, 2017), in addition to having a say in the selection of lawmakers, in a democracy, no other right is as crucial as that of having representation (thus participating) among those who make the laws and policies which condition the lives of all citizens. 'Other rights, even the most fundamental, are likely to remain imaginary if these rights (and/or forms of participation) are compromised or limited'.

mechanisms to protect PWDs from discrimination in political and socio-economic life, PWDs' direct participation in policy and legislative processes can significantly improve the lives of PWDs. The representation of PWDs as candidates and in official government posts – i.e., in the key and most visible democratic institution – is also important since, it provides an unparalleled opportunity to challenge stereotypes regarding the capacity of PWDs, and serve as role models for other PWDs, charting a course to establishing truly inclusive societies. This level of engagement is therefore crucial to the creation of inclusive, accommodative, and disability-responsive governments and societies (OSCE-ODIHR, 2019:42-45/77/101; Thuo, 2016; II, 2015; Owiti, 2019:11-12; Finkin, 2001:292; Allan, 2003:13; Ocharo, 2019:1; Virendrakumar, 2017; Opokua, Mprah & Saka, 2016:980-981/995-996).

RESEARCH DESIGN

DATA COLLECTION METHODS:

To successfully conduct this study the qualitative research method will be adopted. The qualitative research method involves using flexible 'exploratory strategies/ means in order to understand a human or social problem' (Creswell, 2003, 2009; Alberta, 2017:53).

This exploratory qualitative (case) study will be conducted using a single, yet detailed, method of data collection, thus allowing for a comprehensive picture on the participation of PWDs in political activities⁹² in Kenya, including the challenges thereof (Suping & Moswela, 2018:7/27-28; Punch, 2013; Maykut & Morehouse, 2003).

In particular, the study will employ a document review (literature review and content analysis of official documents and grey literature). This will allow the researcher to capture and analyse 'as many relevant realities as possible in terms of the experience of PWDs in Kenya and arrive at reliable conclusions' (Onyango, 2012:5).

DOCUMENT/ LITERATURE ANALYSIS & REVIEW:

Data sources & search procedure

This study will use the desk research design; documents and literature related to the research questions will be scrutinized. Through analysis of, and data mining from available documents, the researcher will collect data and gain insight on the research topics.

The aforementioned documents, including the UNCRPD (2006), African Charter on Human and Peoples' Rights (1981), Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities (African Disability Rights Protocol) (2018), the Constitution of Kenya (2010), and other relevant national legislations such as, Persons with Disabilities Act (2003), Political Parties Act (2011) and the Elections (Party Primaries and Party Lists) Regulations of 2017, will form the basis of the discussion. This will also include literature and documents⁹³ from various secondary data sources – for instance, books, textbooks, case law, journals, reports, disability human rights

⁹² *ibid.*

⁹³ It is important to note that 'documents' also refers to quantitative documentary evidence, as well materials in other formats such as audio, video or visual (e.g., recorded interviews, parliamentary proceedings etc.) (Punch, 2013:231).

documents, government and institutional archives, records and publications and other relevant scholarly and internet sources (Punch, 2013:190; Suping & Moswela, 2018:7).

Prior to the desktop review, a list of potential sources will be developed using a normal search procedure, following which, documents that meet some basic criteria (see below) will be chosen to be included in the study (Suping & Moswela, 2018:27-28). The search strategy will be based on key words and synonyms, drawing on operational search terms related to the research objectives generated by the researcher. Boolean operators will also be used in establishing the search criteria.

The search will first focus on online-line databases such as JSTOR, SAGE Publications, GOOGLE SCHOLAR, EBSCOhost, and the University of Cape Town library database, to identify any potentially relevant peer-reviewed literature. A manual procedure of reviewing the reference lists of included documents that address the phenomenon under study will also be used, to locate additional articles and any missed sources.

This will be supplemented by grey literature and documents from other non-academic sources to make the search more comprehensive and capture as much relevant data as possible. This will be followed by standard internet searches – on Google chrome and other relevant websites, including grey literature databases such as Open UCT, Open Grey and ProQuest and government/ international agency websites – to find any papers, reports, documents, and other types of academic and non-academic materials, including e.g., news articles and recorded and published speeches and interviews with relevant stakeholders, that could be examined to contribute context and details. Where possible, the researcher may also attempt to contact authors and international, regional, and national agencies such as the African Union (AU) to request any potentially relevant documents and reports.

Selection

Firstly, the titles and abstract of all potential sources will be assessed against the inclusion criteria (see below) and any obviously unrelated texts, eliminated, followed by a ‘full-text review’ of the documents that remain.

Eligible documents will be peer-reviewed or grey/ non-academic literature written in English or with English translations readily available, that contain information, findings or content related to the research questions, and which have a clearly indicated date of publication (Suping & Moswela, 2018:27; Guzman & Caballero, 2021:159).

Documents will be excluded if they are,

1. not written in English or with immediately available English translations,
2. not focused on or related to the objectives of this study,
3. do not have a clearly indicated date of publication,
4. or they fail quality appraisal/ assessment.

Quality appraisal/ screening

A four-part screening process will be undertaken by the researcher.

To begin with, titles of documents will be reviewed. Thereafter, the titles and abstracts will be reviewed per the predefined inclusion and exclusion criteria. In the third stage, a full-text review of the remaining documents will be performed to confirm compliance with the inclusion/ exclusion criteria.

Lastly, in the fourth stage, the quality of the documents that meet the inclusion/ exclusion criteria will be critically appraised to determine their trustworthiness/ reliability, to guarantee the accuracy, consistency, and quality of the research (Owiti, 2019:17-18; Virendrakumar et al., 2018:513-514; Guzman & Caballero, 2021:157-159; Golafshani, 2003).

For this study which includes both peer-reviewed and grey/ non-academic literature, quality appraisal of documentary data will be based on: 'reliability, accuracy, methods, relevance, and coherence' (Arksey & O'Malley, 2005:19-32; Virendrakumar et al., 2018:513-514; Guzman & Caballero, 2021:159; Lewin et al., 2015; Singh, 2013; Tyndall, 2010)

Based on these criteria, each document will be assigned a level of confidence – ranging from 'high to moderate to low' confidence – depending on the extent to which the document meets the criteria. Documents will also be attributed 'low confidence' if there is inadequate information to evaluate the document based on the criteria. It is important to note that quality appraisal will not apply to the legal/ regulatory documents included (e.g., the UNCRPD, Constitution of Kenya etc.) (Guzman & Caballero, 2021:158).

Though data will not be excluded based on how it conceptualises disability or its theoretical underpinnings, where necessary, these theoretical frameworks and conceptualisations will be highlighted to appropriately contextualize/ position the evidence (Virendrakumar et al., 2018:512).

DATA COLLECTION, MANAGEMENT, AND STORAGE

It is anticipated that at least 50-80 documents will be included in the review. (Physical and digital copies of) notes or memos and all documentary evidence, will be saved and stored in separate folders according to the relevant chapters and/or stage in the research process.

The researcher's personal computer, which is password protected, will be used to store all electronic data – including, notes or memos, all downloaded documentary evidence and research drafts. Duplicates of this data will be stored on a password protected external hard drive and on the researchers One Drive accessed through UCT, where files are user access protected.

Once the data has been cleaned and analysed and the study is completed, all the data will be stored on UCT's ZivaHub database.

DATA ANALYSIS

Data analysis will begin with the researcher extracting data (from the documents), according to a basic 'data extraction form' arranged according to the research questions. The researcher will also, whilst reading through the evidence, highlight and pick out themes, information, and details related to the research topics that stand out (Virendrakumar et al., 2018:513-515; Owiti, 2019:17).

Next, the data will be analysed using the qualitative/ inductive content analysis approach, where the data that was extracted is coded according to the key themes corresponding to the research questions and objectives, and any themes/ sub-themes that emerge from the data (Alberta, 2017:63-64; Opokua, Mprah & Saka, 2016:985; Virendrakumar et al., 2018:513-515). To elaborate, this technique to analysing data systematically is often used in social science research (Schreier, 2012). It will involve the researcher reading through documents to familiarise themselves with the data and assess the quality of the source. This will be followed by 'editing and prepping the raw data for analysis, reading through

it and grouping it according to the key themes under study, and finally assigning appropriate codes (including codes to identify interrelated issues) to allow for effective description, analysis and interpretation of the data.' Pertinent evidence will then be presented 'alongside each other to allow for reduction, summarising, comparison and contrasting' to arrive at conclusions on the research questions (Creswell, 2007; Alberta, 2017:63-64; Schreier, 2012; Opokua, Mprah & Saka, 2016:985; Punch, 2013:202-204; Miles & Huberman, 1994).

Findings from the various documents reviewed will be triangulated to sharpen and verify conclusions/propositions. This will be followed by a 'refocus on the literature to allow for further analysis and interpretation of study findings' (Opini, 2012:69-70; Punch, 2013). A lot of focus will be given to any literature authored by PWDs so as to ground interpretation and mitigate against the possibility of implicit researcher biases. This approach will result in the study giving voice to the main points and concerns of PWDs in Kenya, and 'interpretations/conclusions based on their experiences and accounts' which is in line with a Human Rights Based Approach (HRBA) and disability rights research more broadly (Larkin & Thomson, 2012:101; Virendrakumar et al., 2018:512; Suping & Moswela, 2018).

Since the document review is likely to contain few quantitative data sources, no complex statistical analysis will be possible (Virendrakumar et al., 2018:513-515). However, data displays (e.g., graphs, diagrams, causal models) will be used where possible during the study. Qualitative data can, at times, be 'bulky and dispersed', displays may thus allow for the data to be conveniently compressed and summarised. They may also be useful in highlighting the different stages of analysis and helping the analysis move forward (Punch, 2013:203; Miles & Huberman, 1994).

It is important to note that whilst no evidence will be left out based on how it conceptualizes and defines disability, the underlying theoretical framework will, where necessary, be highlighted to appropriately position the data (Virendrakumar et al., 2018:512; Alberta, 2017:63-64; Owiti, 2019).

CHAPTER 3 – THE POLITICAL INCLUSION OF PWDs IN KENYA'S LEGAL DEMOCRATIC FRAMEWORK

As a base for the later assessments, this chapter discusses the characteristics of the international and national legal frameworks (including the UNCRPD, CoK, and PDA) that ought to protect PWDs' political rights and enhance their participation in Kenya's political processes. In doing so, it begins by providing a brief account of the socio-historic processes that motivated the Kenyan government's decision to adopt these statutes that provide for and promote the political participation of PWDs in Kenya.

Importantly, this section will also elucidate why it is important to take issue with the political participation of PWDs within Kenya's constitutional democratic framework, arguing that PWDs' active engagement is sacrosanct given the tremendous value that it adds to the political dynamics in Kenya.

LEGAL FRAMEWORK ON PWDs' POLITICAL PARTICIPATION IN KENYA

HISTORICAL CONTEXT:

Introduction

Key to this research is the assessment/ evaluation of the efficacy of the statutes intended to protect and promote the political participation of PWDs in Kenya. There are 'numerous mechanisms in Kenya that address the welfare and rights of PWDs'. With regards to provisions on the political participation of PWDs, three documents which stand out – and which form the basis of this paper – are the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), the Persons with Disability Act (PDA) (2003), and 2010 Constitution of Kenya (CoK). It is primarily through the PDA (2003) and CoK (2010)⁹⁴ that the Government of Kenya (GoK) has sought to translate and domesticate the provisions of the UNCRPD.

In this section, by tracing the historical political processes that led to Kenya adopting these statutes, we provide context for the succeeding discussion on the characteristics of the UNCRPD, PDA, CoK and later assessment of the success/efficacy of these statutes in advancing the participation of PWDs in political processes in Kenya. Specifically, focus is given to the factors which created the political climate conducive to the impetus to draft and enact these statutes⁹⁵ (Onyango, 2012; Alberta, 2017).

***United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) (2006)*⁹⁶**

The Kenyan government's decision 'to adopt (the UNCRPD) in 2008 created the conditions for the enhanced and accelerated promotion and protection of the fundamental rights of PWDs in Kenya, especially since it was the first legally binding international mechanism that specifically enunciated the rights of PWDs' (Kannyo, 1984:128-129). Hence, the decision to accede to the UNCRPD and thus, the international disability rights system was particularly significant, marking the formal recognition (by Kenyan leaders) that disability rights (D.R) violations in Kenya, as elsewhere, were a matter of concern for the global community. Before this, despite the enactment of for instance the PDA – see later discussion on this – PWDs' rights had largely been ignored, and the failure to operationalize and enforce already existing regulations, shackled efforts to protect PWDs. As such, it is important to understand the factors that contributed to the political setting conducive to the ascension of Kenya, and other African states, to the UNCRPD).

The answer lies in a complex of factors 'deriving from developments within Kenya and Africa, as well as outside of Africa'⁹⁷ (Kannyo, 1984:120-130; Kufuor, 2010:33-35).

The key domestic factor was the efforts of the Kenyan Disability Rights Movement (KDM), which ultimately transformed the political context and made the GoK amenable to taking part in the drafting

⁹⁴ NB: whilst here, reference is made to the CoK (2010) alone, reference will also be made to subsequent amendments, and legislative supplements to the Constitution, enacted after 2010 with the intention of realizing/ operationalizing its provisions (importantly, the Elections Act (EA) (2011) and Political Parties Act (PPA) (2011)).

⁹⁵ There is significant overlap in these factors and their impact across the different statutes; thus, discussions in each of the sections on the UNCRPD, PDA and CoK build on each other.

⁹⁶ Kenya was among the first countries to sign the UNCRPD in 2007 (when it opened for signing); The UNCRPD came into force in 2008, and again, Kenya was among the first cohort of countries that ratified it.

⁹⁷ Incorporating the influence of regional and international factors into the explanation of the decision by the GoK, highlights that politics at the national level (hence, the disability rights system in Kenya) cannot be examined in isolation of the political developments in the broader international arena. Events emanating from the international context, combined with domestic (National/ Kenyan) and intra-African developments resulted in the GoK's decision (Kannyo, 1984:120-130; Kufuor, 2010:33-35).

and adoption of the CRPD⁹⁸ (Series, 2020:73-76). At the regional level, the activities of the Africa Disability Rights Movement (ADM), and the commitment of the Organisation of African Unity (OAU) (later African Union (AU)) were the primary intra-regional determinants. Years of 'laborious advocacy' by the ADM/OAU, shone a light on the lacuna in legislation that protects the (participatory) rights of PWDs, inculcated a 'better understanding of disability issues', and increased the focus on D.R by African leaders. Consequently this, 'moved the agenda and influence the attitude of African states (Kenya included) in favour of securing D.R' (Murungi, 2013; Grischow, 2019:147-152; UNDESA, 2018; Kanter, 2009; Kanter, 2003:1-10; Kabue, 2015). At the international level, the tireless efforts of the United Nations (UN), and the determined advocacy and support from the International Disability Rights Movement (IDM), were not only crucial to the development of the UNCRPD, but also, to the establishment of favourable attitudes towards D.R within the Kenyan government (and African states more generally).

In short, the 'confluence of domestic, regional, and international efforts pressed leaders (including from Kenya), into sitting down with PWD activists (and their allies) to develop legally enforceable laws on the human rights (H.R) (including, and importantly here, the political participatory rights of PWDs), in the international arena. It was against this background that (with the full support of member states, many from Africa, including Kenya) in 2001 the UN formed 'the Ad Hoc Committee on a Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities' and the work on, what has now formally become the UNCRPD, begun (Kanter, 2015:30-45; Kanter, 2003:1-10; Lang, 2009:267-273; van Reenen & Combrinck, 2011:138; Appiagyeyi-Atua, 2017:155-160/175; Murungi, 2013; Combrinck, 2013:361-368; Lord & Stein, 2013:98-100; Murungi, Mandlate & Armah, 2013:377-379; United Nations (UN), 2023; Possi, 2014; Grischow, 2019:147-152; UNDESA, 2018; Kanter, 2009; Kabue, 2015; Degener & Begg, 2017:1-24/36-39; Series, 2020; Grischow, 2019:142-150; Musakhi, 2017).

Persons with Disabilities Act (PDA) (2003)⁹⁹

The Persons with Disabilities Act (PDA), adopted in 2003, provides for the socio-economic, civil, and political rights of PWDs, with the aim of equalizing opportunities for, and facilitating the full inclusion and participation of PWDs (Opini, 2012:66). Prior to the PDA, Kenya's legal system did not recognize, nor protect the rights of PWDs. The PDA was thus the first document that makes specific provision to protect PWDs against discrimination¹⁰⁰ (The Equal Rights Trust (ERT) & Kenya Human Rights Commission (KHRC), 2012:132). Following Kenya's adoption of the CRPD (and as part of domesticating its provisions), the GoK began the (still incomplete) process of aligning the PDA with it.

The decision by the Kenyan government (to draft and adopt the PDA) was the product 'both internal and external¹⁰¹ influences.' Internally, the work of the KDM in advocating for PWDs' rights, and domestic mechanisms that specifically enunciate and protect these rights, was crucial to this

⁹⁸ It took sustained efforts by Kenyan D.R activists from the 1960s onwards to alter the political context and make the government amenable to taking part in the drafting of, and to adopting the CRPD (Series, 2020:73-76). In short, it was the efforts of the KDM that triggered and accelerated the breakdown of, the 'history of stigma and discrimination which had deemed PWDs as incapable of agency and so undeserving of (among other things) participatory rights, and the ableist attitudes that had rid the human rights (H.R) agenda of disability-related issues.' Their work also engendered a heightened interest in and receptivity of D.R issues – as evidenced by the government's initiatives on D.R (e.g., the PDA) and Kenya's robust involvement in the negotiations for, drafting and eventually adoption of the UNCRPD (Musakhi, 2017; Kanter, 2015:8-9).

⁹⁹ Adopted in 2003 and came into force in 2004.

¹⁰⁰ The rights of PWDs were largely ignored in human rights mechanisms until the new millennium. Unsurprisingly, this was also the case in Kenya; laws on the rights of PWDs came late and have been in operation for just under twenty years (Koech, 2020).

¹⁰¹ See footnote 97 above.

development¹⁰². Extra-nationally, efforts at the regional level by the OAU/AU and the ADM¹⁰³, and international developments – importantly, the activities of the IDM, and the persistent encouragement of action on D.R by the UN¹⁰⁴ – significantly influenced the attitudes of leaders in support of securing and advancing D.R. Accordingly, this triggered the development of national D.R statutes in (among other places) Kenya (Opini, 2012:66; Appiagyei-Atua, 2017:155-160/175; Lang, 2009:267-283; Kanter, 2015:30-45; Macha & Ngunyi, 2007; Hassan, 2021:1-2; Gebrekidan, 2012:104-120; Ingstad & Grut, 2007:11-14; Murungi, 2013; Combrinck, 2013:362-369; Chalklen, Swartz & Watermeyer, 2006:93; Wakene, 2011).

The Constitution of Kenya (CoK) (2010)

In August 2010, the Constitution of Kenya (CoK) was adopted ending the decades long struggle for a new constitution by the people. Among other things, the CoK domesticated the provisions of the UNCRPD and officially confirmed Kenya's 'recognition of PWDs' rights (including, and importantly for our purposes, their civil and political rights), as H.R' (National Gender and Equality Commission (NGEC), 2017:1; Murray, 2013:1; Mugenyi, 2012:3; Opini, 2012).

Just as with the PDA, influences both from within and outside of Kenya's borders played a part in the government's decision. However, unlike the PDA, the CoK is not a disability specific instrument; thus, the government's decision was the product of numerous factors (given the many domestic and extra-national interests). It is beyond the scope of this paper to account for **all the factors** that contributed to this development, hence, here the focus is specifically on the factors that explain the GoK's decision to include the concerns and rights of PWDs in the CoK – that, amongst other things, domesticated the UNCRPD and for the first time in Kenya's history, constitutionally entrenched the (participatory) rights of PWDs¹⁰⁵. Domestically, again, the unrelenting pressure from the KDM was important to this development¹⁰⁶.

¹⁰² Having continued to motivate for the development of programs to capacitate and mechanisms to protect PWDs and given their decades of work in advocating and lobbying for legal protections of PWDs' rights in Kenya, the movement achieved an important victory with and was pivotal to the adoption of the PDA in 2003.

¹⁰³ Specifically – by raising the profile of D.R issues, thus, states' interest in, and awareness/ receptivity of disability as a H.R issue – the work of the OAU/AU and ADM firmly placed disability concerns on the continental agenda, and triggered discussions at all levels (more so given the convergence with domestic and international pressures). This incentivized countries, to make good on (previous) commitments to advancing the plight of PWDs, thus, accelerating the development of domestic legislations – as seen in Kenya with the passing of the PDA during the African Decade (Appiagyei-Atua, 2017:155-160/175; Lang, 2009:267-283; Kanter, 2015:30-45).

¹⁰⁴ National and regional level initiatives (e.g., in the Americas, EU and US), coupled with the work of the IDM (with support from regional and national chapters), accelerated the UN's interest in and recognition of disability as a H.R issue. This set the pace for further UN activities in respect to PWDs, including the International Year on Disabled Persons (IYDP) (1981) and the International Decade on Disabled Persons (IDDP) (1983-1992) (during which various non-binding instruments were adopted). This not only raised the profile of disability issues, but also attracted more stakeholders into the discussion on D.R (e.g., activists from the mainstream H.R movement), thus, expanding the space for PWDs to advance their demands for among other things, legal recognition of their political rights (Macha & Ngunyi, 2007; Grischow, 2019). Furthermore, the work of the UN accelerated the formation of organizations of and for PWDs across the globe. With this came an intensification in the calls for binding mechanisms on PWDs' rights, solidifying the position of D.R on the global agenda. That the UN's (and IDM's) initiatives were crucial to states (including in Africa) adopting a positive attitude and approach towards D.R is clear, the outcome of which was a rapid proliferation of national/ regional disability legislation, more so in the new millennium (as seen with the PDA in Kenya) (Macha & Ngunyi, 2007:31-40; van Reenen & Combrinck, 2011; Degener & Begg, 2017).

¹⁰⁵ Whilst this paper recognizes that these factors are not necessarily divisible from numerous others that motivated adoption of the CoK, accounting for the abundance of different stakeholders (e.g., the concerns of refugees, women, minority ethnic groups, and the youth etc.) is beyond the reach of this paper.

¹⁰⁶ Learning from previous failures, and with new hope, the KDM (through various caucuses) intensified its calls and activities, to maintain pressure on the government for constitutional recognition of D.R. This increase in the movements' drive derived mainly from the momentum gained from the PDA, and the adoption of, and the KDM's robust involvement in the negotiation and drafting of the UNCRPD (2001-2008), which was pivotal to capacitating PWDs' and strengthening their resolve (Kabue, 2015:1-5; van Reenen & Combrinck, 2011; Onyango, 2012:27-29). Thus, the fight for the constitutional entrenchment of D.R, as opposed to ending, intensified, and accelerated with the adoption of the PDA and UNCRPD in Kenya (Macha & Ngunyi, 2007:31-40).

In 2008, following the near 'collapse of the state', it was agreed that a new constitution was crucial to preventing future reoccurrences of violence (Gichuki, 2015:132; Shilaho, 2016:185-193; Nderitu et al., 2012:50). In the negotiations for and drafting of this

Extra-nationally, the efforts of and within the OAU/AU to protect PWDs' rights¹⁰⁷, the influence of and support from the ADM and IDM¹⁰⁸, as well as the crucial role of the UN¹⁰⁹ (with support from the broader international community), were instrumental to the government's favourable attitude towards D.R.; this prompted the inclusion of D.R in the CoK (2010).

new law, the KDM made contributions on behalf of PWDs, and ensured that their voices were heard (Kabue, 2015:1-3). Specifically, the movement participated and made presentations in the numerous forums held by the Committee of Experts (COE) (mandated with drafting the new constitution), and through the Disability Caucus, formally presented the COE with a memorandum on PWDs' concerns and needs (Maingi, 2011:66-69). These efforts to have PWDs' interests reflected in the CoK (2010), were particularly successful (Kabue, 2015:1-3). Thus, the CoK, when it came into effect in 2010, was a watershed moment in the history of the KDM; it not only domesticated the provisions of (amongst others) the UNCRPD (creating 'a legal space for PWDs, at least in theory') but also, officially recognized the H.R of PWDs in the supreme law of the land – the dream that, since 'the first generation of KUB activists', had long been yearned for' (Gebrekidan, 2012:104-120; United Disabled Persons Of Kenya (UDPK), 2015; Onyango, 2012:24-29; Kabue, 2015:1-3).

¹⁰⁷ At the regional level, the efforts of the OAU (later AU) in promoting D.R were crucial to the recognition, by African states (Kenya included), of the importance of constitutionally entrenching D.R. Even prior to the new millennium, in support of the calls by the ADM and IDM, the OAU and its organs begun to include disability in already-existing H.R protocols and those in development (as seen with the ACHPR 1981, and Africa Women's Protocol 2003) (van Reenen & Combrinck, 2011:135-140; Kanter, 2015; Kanter, 2003; Possi, 2014; Hassan, 2021). Moreover, with its transition from the OAU to AU in 2001, the protection of human and other people's rights in Africa, was formalized as one of its goals. Accordingly, the AU increased its emphasis on, and encouragement of protection of (in addition to others) D.R in the African H.R system – as evidence by, for example, the calls for action to this end in the Grand Bay Declaration (1999) and Kigali Declaration (May 2003) (Kanter, 2015:30-45; Kanter, 2003; Possi, 2014:43-54; van Reenen & Combrinck, 2011:138-140).

The AU and its organs also played a role through encouraging member states (e.g., Kenya) to take part in the drafting of, and eventually to sign and ratify the UNCRPD. After that, the AU (in collaboration with D.R movements) continued to monitor and support implementation efforts (Combrinck, 2013:362-369; Grischow, 2019; Degener & Begg, 2017; Mkangi & Githaiga, 2012:1-8; Shilaho, 2016:185-195). What is more, in 2009, having noted that the first African Decade of Disabled Persons did not achieve as much as was hoped, the AU extended it for a second period to 2019. During this time, (also with support from the ADM/IDM) numerous continental campaigns and conferences to motivate legal protections for PWDs were organized by the AU, many in Kenya (van Reenen & Combrinck, 2011; Hassan, 2021; Appiagyei-Atua, 2017:153-175; Murungi, 2013). Again, the efforts of the OAU/AU confirmed the importance of D.R, thus increasing states' interest in and receptivity of disability as a H.R issue, firmly placing disability on national agendas (especially given the convergence with domestic and international pressures). This incentivized countries to make good on (previous) commitments to legally recognize PWDs' rights, inducing the development of domestic legislations – as seen in Kenya with the governments' decision to include disability in the CoK (2010) (more so during the extended African Decade on PWDs) (Mkangi & Githaiga, 2012:1-8; Shilaho, 2016:185-195; Mugenyi, 2012:9-17; Murray, 2013; Nderitu et al., 2012).

¹⁰⁸ The influence of the sustained advocacy by the ADM and IDM on the behaviour of African states (including Kenya) as it regards D.R cannot be overstated. The involvement of the ADM and IDM had a positive effect at national, regional, and international levels. At the international level, for example, the ADM and IDM took note of two important developments; firstly, the shift of winds in favour of Western style democracy (following the collapse of the Berlin Wall, Soviet Union, and global Communism), 'which occasioned decreasing willingness in states and institutions (e.g., development partners) to support authoritarian regimes, especially those that violated H.R (Hassan, 2021:1-2; Kabue, 2015:3-5; Kanter, 2015, 2009, 2003; Opini, 2012:66). Since African states were increasing their dependence on donor funding, disability movements noted that this could potentially also incentivize governments to take D.R more seriously.

Secondly, the authoritarian, undemocratic nature of many African states at the time, resulted in economic mismanagement and periodic disagreements/ 'breaking of relations with' donors and development partners. Accordingly, PWDs relied on these developments to illicit support from major donors and development partners, who started conditioning aid/ budgetary support also on respect for the rights of (amongst others) PWDs (Maingi, 2011:64-68; Gichuki, 2015:130-132; Nderitu et al., 2012:30-53). This certainly affected states' (including Kenya's) attitude and approach to the protection of PWDs' rights; amidst heightened international economic and political pressures, there was accelerated progress towards legally defining and protecting the rights of PWDs at regional and national levels (Nderitu et al., 2012:24; Kabue, 2015:3-5; Kanter, 2015; Hassan, 2021:1-2). Thus, that the work of the ADM and IDM moved states in favour of the legal recognition of D.R, to this end, triggering the development of domestic legislations – as seen with Kenya's decision to include D.R in the CoK (2010) – is clear.

¹⁰⁹ Perhaps the main extra-national influence on the Kenyan governments' attitude towards the constitutional recognition of D.R was the encouragement of such activities by the UN. In addition to the discussion in preceding sections, the UN's advocacy for PWDs (in the form of conferences/seminars, workshops, and public awareness campaigns across the globe) ramped up in the new millennium following the establishment of the Ad Hoc Committee on the CRPD. This raised awareness on D.R, and solidified its positioning on the global agenda thus, reinforcing the calls for action to secure D.R (Kanter, 2015:21-45; Macha & Ngunyi, 2007:31-40; Kanter, 2009; Lang, 2009:267-283; Appiagyei-Atua, 2017:155-175; Series, 2020).

Furthermore, by involving activists with disabilities (more so from Africa) in the entire negotiation and drafting process of the CRPD, the UN set an important precedent of including PWDs in policymaking. Hence, upon returning to their countries (e.g., Kenya) – what is more, with increased experience and capacity, and stronger transnational networks to call on – D.R activists, unwilling to tolerate further exclusion, strengthened their calls for formal recognition of PWDs' rights (van Reenen & Combrinck, 2011:142-143; Kanter, 2015:30-45; Kaime, 2009:55; Kanter, 2006-2007:308; Quinn, 2009:256; UNDESA, 2018; Murungi, 2013:48-98; Lord & Stein, 2013).

Additionally, following the UNCRPD's adoption, the UN (in collaboration with DPOs) continued to support implementation (e.g., through monitoring in the form of periodical reviews of countries), thus accelerating domestication efforts. In the case of Kenya, the first report on its progress on implementing the UNCRPD was due in 2010. As such, it is not unforeseeable that this, coupled with the UN's efforts in all, motivated the government to include D.R in – and to action the domestication of the CRPD through – the CoK (2010) (Degener & Begg, 2017; Thuo, 2016; Macha & Ngunyi, 2007:31-40; Murungi, 2013; Possi, 2014; Grischow, 2019:145-152; Combrinck, 2013).

CHARACTERISTICS OF THE LEGAL FRAMEWORKS:

Kenya has put in place ‘seemingly progressive legal frameworks’ – including the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD or CRPD) (2006), Constitution of Kenya (CoK) (2010) and PDA (2003) – aimed at protecting PWDs’ rights and enhancing their political participation¹¹⁰ in Kenya (II, 2015:3; Thuo, 2016b; Owiti, 2019:4-6/41-44; Onyango, 2012:3-5/16-23).

Whilst at the international level, there exists various pronouncements, and human rights instruments, with provisions that aim to protect and promote PWDs’ political rights¹¹¹, the most comprehensive of these is the UNRPD (2006). This statute firmly adopts and presents the view that PWDs are agents with rights, and the capacity to claim these rights, make independent decisions and participate actively in all areas of life, including politics (UNCRPD, 2006; Onyango, 2012).

As it pertains to political participation, this statute, having established the value of participation and representation in government, highlights the rights of PWDs to equally participate in political processes, and confers upon state parties a set of obligations aimed at protecting and promoting the political inclusion of PWDs at all levels of government. These requirements are set out primarily in Article 29 of the UNCRPD (UN, 2006; Golding, 2010; Alberta, 2017:3; Ocharo, 2019:1-3).

For instance, state parties are obligated with securing and promoting PWDs’ political rights and opportunities, as well as providing an environment that is conducive to the full and effective realization of these rights ‘on an equal basis with others’ (Owiti, 2019:1-6; Onyango, 2012:1-4). Thus, states are required to guarantee the ‘right and opportunity for PWDs to take part in (among others) voting and to stand for election or appointment to office and to be elected’; i.e., that PWDs can (and do) successfully and equally participate in political governance, ‘directly or indirectly through representatives chosen of their free and informed consent’ (Owiti, 2019:1-6; Ocharo, 2019:1-3; UNCRPD, 2006).

Consequently, this requirement also calls on states to establish and provide suitable, easily accessible, convenient, and accommodative election/voting processes, materials, and premises. In addition, the CRPD charges member states with ensuring that PWDs can fully engage in campaign and election related activities, and that having stood for and been elected or appointed to office, they can

¹¹⁰ As noted earlier, and importantly for our purposes, as voters, candidates, and legislative leaders (including in the National and County Assemblies and Senate) in Kenya.

¹¹¹ For example, the need for inclusive representation of all is also highlighted by the UN Sustainable Development Goals (SDGs) (2015); in particular, Target 2 of Goal 10 of the SDGs prioritizes (among other things) the promotion of the political inclusion of PWDs. Similar provisions exist at the regional level, as captured by, the African Charter on Human and Peoples’ Rights (1981) (‘African Charter’), Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities (‘African Disability Rights Protocol’) (2018) and East African Community Policy on Persons with Disabilities (2012) (Owiti, 2019:37-41).

In short, these legal instruments establish the value of political participation and representation of PWDs on an equal basis with others, and necessitate that PWDs successfully participate in political governance, indirectly (through voting for representatives) or directly – through contesting for election, and/or being elected or appointed to office (Alberta, 2017:3; Golding, 2010; Owiti, 2019:4-6; Onyango, 2012:3-5/16-23; UN, 2006; Constitution of Kenya (CoK), 2010; PDA, 2003). As such, they require that governments guarantee PWDs’ rights and opportunities to participate in political affairs (Thuo, 2016b:100-103; UNCRPD, 2006). This means that beyond the removal of legal restrictions that limit PWDs’ participation in politics, state parties are required to put in place concrete measures (including laws, policies and programmes) to not only capacitate PWDs, but also eliminate any barriers militating against their full and effective participation in political and public life (Opokua, Mprah & Saka, 2016:980-981; UN, 2006; UNDESA-DSPD, 2016:5/17; WFD, 2020). As a state party to these international and regional instruments, Kenya is required to observe and abide by their stipulations on the political inclusion of PWDs (Onyango, 2012:1-4).

efficaciously discharge their mandates, and execute all duties at any level of government^{112,113} (UNCPRD, 2006; Owiti, 2019:1-6; Onyango, 2012; Mugambi, 2022a; KNCHR, 2016).

The promulgation of a new Constitution in 2010 was a watershed moment in terms of Kenya's observance of its international commitments. Through Article 2(5) of the Constitution of Kenya (2010) which provides that the '*general rules of international law are part of Kenya's law*,' and Article 2(6) which states that '*any treaty or convention ratified by Kenya forms part of the law of Kenya*,' provisions on the political participation of PWDs in international statutes were fundamentally adopted into Kenya's national legal framework¹¹⁴ (Onyango, 2012:1-4; Owiti, 2019:1-6). Thus, as member state to the UNCRPD¹¹⁵, this Convention (and its provisions on the political rights of PWDs) 'form part of the law of Kenya and can, for instance, be unreservedly appealed to in law courts should the rights or freedoms of PWDs be infringed or in question' (Onyango, 2012:3-4; Ocharo, 2019; NGECE, 2016).

Following decades of failed constitution-making processes, in August 2010 Kenya enacted a new Constitution which was a decisive moment in the recognition and inclusion of PWDs and other historically marginalized communities in public and political processes (Onyango, 2012:1-4). The Constitution of Kenya (2010:Preamble, Article 1(2)) asserts that democracy is a fundamental national principle. It is for this reason that Kenya's government is based on the essential values of democracy and equality – which aim for the representation of all individuals/groups in government – and, participation and inclusion of citizens in governance and decision-making structures are themes that are echoed throughout the Constitution¹¹⁶ and national laws (Owiti, 2019:1-6; NGECE, 2016:167-168/185-189; CoK, 2010:Preamble).

For the first time in post-independence Kenya, the Constitution of Kenya (2010), in an effort to address and alleviate the difficulties traditionally suffered (especially) by marginalized sections of the community (including PWDs) – and thereby improve and equalize socio-economic, political, cultural, and civil opportunities in the public sphere – recognized and guaranteed protection of the human rights of all groups (including PWDs) (Onyango, 2012:1-4). It is in this spirit that Chapter 4 of the Constitution of Kenya (2010) contains the Bill of Rights which provides for, amongst other things, the political rights of all Kenyan citizens.

Article 38 of the Constitution of Kenya (2010) safeguards the political rights of all citizens (including PWDs), guaranteeing the right to participate in political activities at all levels of government, including (and importantly here) voting, contesting for election/appointment, as well as holding legislative office. Additionally, the Constitution obliges the State to take 'steps, as well as affirmative action, to

¹¹² Furthermore, under the UNCRPD, state parties are compelled to safeguard PWDs' free will as voters by, defending their right and opportunity 'to vote through secret ballot' in public contexts free of intimidation, and should they so wish, permitting an agent of their picking to vote (or be voted for). Also, member states are expected to foster an enabling atmosphere in which PWDs can, 'on an equal basis with others,' effectively partake in the activities, and running and administration of public and political affairs in non-governmental organizations (NGOs), organizations of and for PWDs, political parties and other civic associations. Beyond this, the UNCRPD also enjoins state parties to facilitate the training and capacitation of PWDs and DPOs to advocate for and represent PWDs at all levels (national, regional, and international) (Owiti, 2019:1-6; UN, 2006; Ocharo, 2019).

¹¹³ Article 29 is supported by other key Articles, including, for example, Article 12 (UNCRPD, 2006), which seeks to protect the rights all PWDs to participate in political affairs by barring the adoption of "capacity-based limitations" for any grouping of PWDs, and asserting that all PWDs should be guaranteed "legal capacity on an equal basis with others" when participating in (among others) public and political activities (for more on related/supplementary articles see, for e.g., Lang, 2009; Onyango, 2012; KNCHR, 2016; Owiti, 2019; Ocharo, 2019).

¹¹⁴ In other words, with the new Constitution, Kenya moved from the status of a 'dualist state' – requiring that any extra-national treaty or convention be domesticated through 'enabling legislations' before being recognized and actionable in Kenya – to that of a 'monist state', under which any international (or regional) statutes ratified by the state form part of Kenyan law and can thereby be openly invoked (Onyango, 2012:1-4; CoK, 2010).

¹¹⁵ 'Kenya signed and ratified the UNCRPD on the 30th of March 2007 and 19th of May 2008 respectively' (KNCHR, 2016).

¹¹⁶ Following a long history of 'top-down centralized' and exclusionary governance, one of the main goals in promulgating a, and of the new Constitution was to decentralize decision-making and give power and authority over governance to the people. It is thus that Article 1 (Constitution of Kenya, 2010) affirms that 'sovereign power belongs to the people of Kenya, to be exercised directly or indirectly through democratically elected representatives' (NGECE, 2016:167-168).

ensure that citizens (including PWDs) have opportunities to be represented and participate as members of all elective and appointive public bodies.’ Further, the State is mandated with establishing affirmative action programs that guarantee all individuals (even more so from marginalized groups) can participate and be represented in the political sphere (Owiti, 2019:3-5; Onyango, 2012:3-4; Thuo, 2016b:106-109; II, 2015:2).

With regards to the participation of PWDs specifically, per Article 81 (Constitution of Kenya (CoK), 2010), the government must see to it that the voting/election system ‘complies with (amongst other tenets), the just participation and representation of Kenya’s PWDs.’ To facilitate this, Article 82(2) necessitates the enactment of legislations to guarantee that the electoral process is ‘simple, transparent and accounts for the needs of, among others, all PWDs’ (NGEC, 2016:185-189).

Further, in accordance with Article 54(2) of the Constitution, PWDs are classified as a marginalized group and are thus entitled to ‘special political participation’ (CoK, 2010). This provision emphasizes the need to enhance the participation and representation of PWDs in Kenya. As such, it effectively acts as an ‘affirmative action clause that aims to cultivate the political representation of PWDs at all levels and, to this end, requires that PWDs occupy at least 5% of all elective and appointive positions (Thuo, 2016b:116-118; CoK, 2010; Onyango, 2012:3-4). Similarly, Article 27(6) of the CoK (2010) speaks to ‘affirmative action to provide sufficient representation of PWDs in all political platforms.’ This is bolstered by Articles 27(2) and 27(4), which advocate for ‘positive actions to establish equality for, and prevent discrimination against PWDs’ (CoK, 2010). In short, the political participation and representation of PWDs in the political arena, across all levels of government, “is an absolute right, to be enjoyed absolutely” (Owiti, 2019:4; Onyango, 2012:3-4).

It is noteworthy that, apart from Kenya’s Constitution, other Acts of Parliament also play a central role in addressing the issue of participation and representation of PWDs in political processes (Owiti, 2019:4). This includes the Persons with disabilities Act (PDA) (2003), which seeks to address the challenges faced by PWDs and as elucidated in its preamble, ‘*provide for the rights and rehabilitation of PWDs (and) achieve equalization of opportunities for PWDs ... (among other) connected purposes*’ (Onyango, 2012:3-4; Owiti, 2019:5-6; PDA, 2003). It thus proscribes all forms of ‘disempowering/demoralizing discrimination’ based on disability, insisting that ‘PWDs ought to enjoy all rights and freedoms on an equal basis with others’ (NGEC, 2016:185-189; Jattani & Ochieng, 2022). ‘It also requires the voting/electoral system to ‘account for the needs of PWDs and provide for the inclusion and representation of PWDs in electoral and other political processes in Kenya’ (PDA, 2003:Section 29; II, 2015:2)

Other legislative provisions are found in the Elections Act (2011) and Elections (Party Primaries and Party Lists) Regulations (2017) which identify PWDs as one of the ‘special interest groups’ (SIGs), and therefore deserving of ‘special participation’ and accommodations in line with the provisions of the Constitution. Relatedly, Section 7 (2)(c) of the Political Parties Act (PPA) (2011) – with similar provisions under Article 91(1)(e) of the CoK (2010) – necessitates that political parties adhere to and attend to ‘inclusion and diversity’ (WFD, 2020:iv–viii/34-40; Macharia, 2020:vi/1; Owiti, 2019; Onyango, 2012; II, 2015).

The preceding discussion elucidates that the legal framework on the political participation of PWDs in Kenya, and to its credit – as confirmed by some of the reviewed literature (see for example, Lang, 2009; Onyango, 2012; Owiti, 2019; NGEC, 2016, 2018; KCNHR, 2014, 2016; II, 2015; WFD, 2020, 2020a, 2022; Thuo, 2016; Thuo & Ambani, 2022; Mute, 2010, 2023; Jattani & Ochieng, 2022, 2023) – is broad and relatively progressive.

THE POLITICAL PARTICIPATION OF PWDs' WITHIN KENYA'S CONSTITUTIONAL DEMOCRATIC FRAMEWORK – DOES IT EVEN MATTER?

Let's be cynical; why even focus on the rights and political participation of PWDs? Do they add any value to the political dynamics in Kenya?

The political participation of PWDs within Kenya's constitutional democratic framework is sacrosanct given the tremendous value it adds (and can add) to the political dynamics in Kenya. As such, it is important to take concern with PWDs' rights and political participation in Kenya.

STRENGTHENING DEMOCRACY:

To begin with, the participation of PWDs in politics in Kenya, enriches and strengthens Kenya's democracy in numerous ways, two of which stand out (OSCE-ODIHR, 2019:42-45).

Promoting representativeness & inclusiveness

Whilst important to any political dispensation, political participation is a crucial component of democracy – as famously noted by Verba & Nie (1972:1), 'where few participate in decisions there is little democracy; the more that citizens participate in decisions, the more democratic a nation is¹¹⁷.' Indeed, the expansion of the franchise and the associated rights to vie for and hold public office, form part of the criteria for assessing democratic consolidation; i.e., the degree to which states open up to citizens' participation in political affairs is a crucial – perhaps even determining – measure of the extent and quality of democracy (van Deth, 2016a; Nneka, 2022; Kanyinga, 2014:xii; Degener & Quinn, 2002:20-21; Owiti, 2019:1; Finkin, 2001:292; Allan, 2003:13; Ocharo, 2019:1; UNDESA-DSPD, 2016:3/12-13).

This is because, it is only through citizens' participation in decision-making structures and processes that their voices can be heard and their interests effectively articulated, represented, and aggregated, thus ensuring the plight of every group is sufficiently addressed. Similarly, restrictions on citizens' political involvement may occasion inappropriate and ineffective policies or decisions, negatively impacting those affected by their outcomes¹¹⁸ (Ekman & Amnå, 2012:283-300; Kanyinga, 2014:xiv; OSCE-ODIHR, 2019:7/17; Thuo, 2016:25; Degener & Quinn, 2002:21-25; Owiti, 2019:1).

In addition, the equal political involvement of all citizens is essential to guaranteeing that the composition and leadership of key democratic institutions (for instance political parties and the legislative arms of government), is adequately representative of the society¹¹⁹ (United Nations General

¹¹⁷ From as far back as 'Pericles' renowned funeral speech (431 BCE) (Thucydides, 1919), academics and politicians alike have praised the distinctive standing of democratic systems by stressing the importance of the part citizens play in decision-making processes. Accordingly, the health and quality of a democracy has often been judged by the extent of active and meaningful engagement of its citizens in political and public affairs (van Deth, 2016a; Degener & Quinn, 2002; Owiti, 2019:1; Finkin, 2001:292; Opokua, Mprah & Saka, 2016:980-981).

¹¹⁸ This is supported by various scholars (see for e.g., OSCE-ODIHR, 2019; Thuo, 2016:26-28; Karlawish et al., 2008:65-66; Oluchina, 2015; Degener & Quinn, 2002; Owiti, 2019; Finkin, 2001; Allan, 2003; Ocharo, 2019; Onyango, 2012; Opokua, Mprah & Saka, 2016), who contend that a lack of political participation results in the continued systematic disregard of the concerns most pertinent to the marginalized individuals and handicaps their ability to protect their interest, thereby instantiating, according to Prince (2009, 2012), 'the phenomenon of *absent citizenship*.' Quoting from Foner, 1955:509 (cited in Shklar, 1989:387-408 & Thuo, 2016:26-28) "... without (being able to participate) in public affairs, one is in no better condition than a slave – not to one man but to the entire society – because one is at the mercy of the multitude (and) without any means of protecting oneself."

¹¹⁹ Considering that states (including Kenya) are diverse, and that political interest, skill and talent can exist in numerous unique forms, it seems reasonable that those who vie to (and who) speak for their communities and regions should mirror this diversity including in regard of 'physical and mental state and capability' as well (Waltz & Schippers, 2021:517-518; UNGA-HRC, 2016:8-9; OSCE-ODIHR, 2019:42-45/77; Owiti, 2019:1/11-12; Finkin, 2001:292; Allan, 2003:13).

Assembly, Human Rights Council (UNGA-HRC), 2016:10-12; Waltz & Schippers, 2021:517-518; OSCE-ODIHR, 2019:42-45/77; Owiti, 2019:1/11-12).

As such, the marginalization of particular individuals or groups from political processes not only creates increasingly fractured, unrepresentative, and undiversified polities, but also considerably undermines the capacity and prospects of the marginalized to represent and protect their interests¹²⁰ (OSCE-ODIHR, 2019:7; Thuo, 2016:26-28; Degener & Quinn, 2002:20-25; Opokua, Mprah & Saka, 2016:980-981/995-996).

Equal participation in political processes – as voters, candidates, and elected leaders – is particularly important for PWDs in Kenya. To begin with, this will enable them to highlight pertinent concerns for their community, influence the development of agendas and policies that appropriately and effectively cater to and protect their needs and interests, and to have a role in establishing an adequately responsive and accommodating society¹²¹ (OSCE-ODIHR, 2019:7/17/101; Thuo, 2016:25-26; Fiala-Butora et al., 2014:71-83; Karlawish et al., 2008:65-66; II, 2015:1; Degener & Quinn, 2002:21-25; Owiti, 2019:1; Ocharo, 2019:1).

What is more, since it provides Kenya's PWDs with the space to raise their opinions and concerns on critical issues pertaining to PWDs (such as access to education, healthcare, and the physical environment), the political participation of PWDs in Kenya is the basis upon which the realization of all other disability rights and entitlements depend¹²². Thus, PWDs' political participation is key to preventing a continuation in the broad 'cycles of exclusion and marginalization historically endured by PWDs in Kenya' (Thuo, 2016:25-31; UNGA-HRC, 2016:8-12; Fiala-Butora et al., 2014:71-83; II, 2015:1; Oluchina, 2015:312-313; Degener & Quinn, 2002:21-25; Ocharo, 2019:1; Virendrakumar, 2017).

Additionally, the active participation of PWDs as political leaders, by challenging long held stereotypes regarding the capacity and agency of PWDs and demonstrating the positive effects of greater diversity (e.g., better, and more innovative policies), may also lead to the enhanced inclusion of PWDs at all levels of government in Kenya. This level of engagement also presents the ideal opportunity for leaders/candidates with disabilities to challenge and eliminate obstacles hindering the establishment of truly accessible and inclusive political institutions in Kenya. Thus, the participation of PWDs is central to promoting equal political environments for all citizens, and importantly, to the efforts to secure representative, disability-inclusive political and legislative processes in Kenya (OSCE-ODIHR,

¹²⁰ In short, the democratic doctrine envisions the representation and active participation of all citizens in political activities on an equal basis; given that everyone has rights, entitlements, and interests to defend, it stands to reason that no citizen should be excluded from participating in political affairs (Thuo, 2016:26-28; Degener & Quinn, 2002:20-21; Ocharo, 2019:10-12; UNDESA-DSPD, 2016:3/12-13).

¹²¹ To elaborate, the enhanced participation of PWDs in Kenya will counteract the historical (and protect against the continued) marginalization and invisibility of amongst the 'largest insufficiently represented' segments in Kenya's political community, as well as engender a greater comprehension of how certain laws and policies affect PWDs in Kenya.

In addition, Kenya's PWDs are likely to select parties and candidates who are better equipped to introduce the plight of PWDs and the challenges associated with disability into the government's overall agenda. Candidates and leaders with disabilities can also instantiate the development of laws, policies and programmes that more favourably accommodate and respond to PWDs' socio-economic, cultural, political, and other needs in Kenya.

As such, by enabling Kenya's PWDs to become actors/agents in policymaking and have a role in determining political and public affairs, the representation and active participation of PWDs in the political game in Kenya may result in more robust and 'disability-mainstreamed' laws, policies and decisions that effectively account for and protect PWDs' specific interests, desires and needs in Kenya (OSCE-ODIHR, 2019:7/42-45/77; Thuo, 2016:25-26; Fiala-Butora et al., 2014:71-83; II, 2015:1; Oluchina, 2015:312-313; Degener & Quinn, 2002:21-25; Owiti, 2019:11-12; Stakeholder Group of Persons with Disabilities (SGPWD) & International Disability Alliance (IDA) (SGPWD & IDA), 2017:15; Opokua, Mprah & Saka, 2016:980-981/996).

¹²² Whilst voting and participation as candidates and elected leaders alone may not immediately result in the full and effective realization of PWDs' rights (and their inclusion) across all spheres in Kenya, the inclusion of the voices and opinions of this marginalized section of the community on issues that are important to them – thereby also enhancing their capabilities and opportunities to advocate to this end – is a crucial first step in charting the long course towards a thriving and representative democracy (OSCE-ODIHR, 2019:101; Oluchina, 2015:312-313; II, 2015:1; Owiti, 2019:1; The Elections Observation Group (ELOG), 2022:11; UNDESA-DSPD, 2016:3/12-13; National Gender and Equality Commission (NGEC), 2016:168-171).

2019:17/42-45/77/101; II, 2015:1; UNGA-HRC, 2016:8-12; Owiti, 2019:11-12; Finkin, 2001:292; Allan, 2003:13; Ocharo, 2019:1; Virendrakumar, 2017; Opokua, Mprah & Saka, 2016:980-981/995-996).

In summary, as more PWDs participate in electoral processes, vie for office, and succeed in being elected/nominated to political posts¹²³, ‘the more their voices and contributions will chart the course towards an increasingly equitable, accessible, inclusive and representative tomorrow’ (OSCE-ODIHR, 2019:101; Thuo, 2016:25-26; Fiala-Butora et al., 2014:71-83; II, 2015:1; Degener & Quinn, 2002:25; Owiti, 2019:1; ELOG, 2022:11). And, given that political participation (or ‘rule by the people’) on an equal basis is the distinguishing principle of democratic governance, the engagement and representation of PWDs in the political affairs of the country is fundamental to the full and effective realization of democracy in Kenya (Nneka, 2022; Kanyinga, 2014:5; OSCE-ODIHR, 2019:42-45; Oluchina, 2015:312-313; Finkin, 2001:292; Allan, 2003:13; Ocharo, 2019:1/10-12; UNDESA-DSPD, 2016:3/12-13).

Enhancing accountability & defence against tyranny

Beyond serving as tool of empowerment, agency, and representation, thus facilitating citizens’ access to and ‘exercise of democratic control over state power and national policies’ (Thuo, 2016:5; Degener & Quinn, 2002:20-21), political participation is also essential in another regard; it augments citizens’ capabilities to hold governments accountable¹²⁴ (Oluchina, 2015:312-313; Ocharo, 2019:10; Kanyinga, 2014:5; Sairambay, 2020:120-127).

The ideal of democratic accountability – a hallmark of democracy – establishes the base for good governance and robust democracy. This is because, ensuring the accountability of elected leaders, by not only negating and counteracting state power but also shielding citizens against the abuse and misuse of political power, creates space for citizens to take control of their lives, collectively and freely determining their needs, interests, and desired ends, and collaborating to ensure their full and effective realization (II, 2015:1; Degener & Quinn, 2002:20-21; Kimanzi, 2016:2-3; Opokua, Mprah & Saka, 2016:980-981/995-996). Relatedly, it also serves to ‘oil the wheels of and keep the door open for peaceful democratic change in the political marketplace’, where necessary (i.e., in instances of failures in governance, or where the government fails to respond to and realize citizens’ aspirations) allowing the people to easily replace existing regimes, with newer more effective ones (Degener & Quinn, 2002:20-21; Kanyinga, 2014:xii/5/99/214).

Democratic accountability is thus the foundation upon which stable, responsive, and functional democratic governments are forged, and shifts towards despotism precluded¹²⁵ (Degener & Quinn, 2002:20-21; Oluchina, 2015:312-313).

Political participation is crucial to giving substance, power, and authority to the principle of democratic accountability. Through enabling citizens to install leaders who must respond and account to them – with the periodic renewal of their mandate contingent upon their performance in realizing and governing in accordance with citizens’ aspirations – the free and active participation of citizens in

¹²³ Importantly here, legislative posts.

¹²⁴ Especially in terms of their performance in realizing and protecting citizens’ rights and interests, and implementing collectively determined decisions, policies, programmes, and actions.

¹²⁵ Therefore, the consolidation of democracy entails not only advancements in creating space for the active involvement of citizens in public affairs, but also the heightening of government’s accountability to its people. Indeed, the extent of democratic consolidation is often also judged by the latitude that governments provide for their citizens to call them to account (Huntington & Nelson, 1976; Kanyinga, 2014:xii/6/31; ELOG, 2022; Ocharo, 2019; II, 2015).

political processes¹²⁶ is pivotal to consolidating democracy¹²⁷ (ELOG, 2022:13; Degener & Quinn, 2002:20-21; Oluchina, 2015:312-313; Kanyinga, 2014:6/99; Sairambay, 2020:120-127).

Accordingly, the political participation of PWDs in Kenya has the potential to be a decisive tool to this end, with PWDs bolstering the efforts to hold Kenya's elected leaders accountable (Ocharo, 2019:10; UNGA-HRC, 2016:10; Quinn, 2002; Oluchina, 2015:312-313; UDPK, 2016:1/4-5).

It has been noted that governments tend to take advantage of and abuse power in contexts where citizens do not participate in political structures and activities and are largely unaware of their fundamental rights and entitlements. There is thus a decreased likelihood of failures in governance and shifts towards despotism where more citizens are engaged in decision-making processes, and increasingly cognizant of and concerned with their constitutional rights. Sufficing to say then, ensuring accountability, and preventing despotism (hence consolidating democracy) depends on numbers or the size of citizens' collective 'political arsenal' (Degener & Quinn, 2002:21; Oluchina, 2015:312-313; Kanyinga, 2014:5-6; Huntington & Nelson, 1976; Nneka, 2022; Thuo, 2016:28-30; OSCE-ODIHR, 2019:77/101).

With the enhanced political participation of Kenya's PWDs – who comprise a significant percentage of the country's population – there will be a larger share of citizens participating and collectively invested in the political affairs of Kenya, with their opinions and influence unable to be overlooked by representatives with future political ambitions. Therefore, with this¹²⁸, if they are to have their mandate renewed, the government and elected leaders will have to increasingly be 'on their toes' and adhere to the will of the Kenyan people, thereby strengthening democratic governance in Kenya^{129, 130} (Ocharo, 2019:10; UNGA-HRC, 2016:10; Virendrakumar, 2017; WFD, 2020a:2-5; Oluchina, 2015:312-313; ELOG, 2022; Kanyinga, 2014:5-6; Nneka, 2022; CRPWD, 2014; UDPK, 2016:1/4-5).

¹²⁶ Especially as voters, candidates, and leaders.

¹²⁷ When the government effectively caters and accounts to the citizenry and governs according to the core tenet of democracy 'rule by the people', people will tend to support and consent to their authority. On the other hand, if elected leaders are unresponsive and fail to conscientiously abide to the will and political choices of the people, or there is a slide towards despotism, citizens will distance themselves from the government, with this disconnect widening in conjunction with the failures in democratic governance (Kanyinga, 2014:6/99/214; Degener & Quinn, 2002:21; Nneka, 2022; Owiti, 2019:1/11-12; Allan, 2003).

¹²⁸ In addition to the fact that given its mobilization and activism, the burgeoning Kenyan disability rights movement (KDM), has and will continue to develop strong partnerships with various civil society organizations advocating for Kenyan's political rights, and evolve new routes and opportunities for citizens to influence and hold the Kenyan government to account (Priestley et al., 2016:2; Dalton, Scarrow & Cain, 2004, Zakaria, 2007; UDPK, 2016; Series, 2020:73-76; Musakhi, 2017; Kabue, 2015:1; Lang, 2009:267-273; Murray, 2013:1-3; Mugenyi, 2012:1-10; Gichuki, 2015:130-132; Shilaho, 2016:185-200; Mrashui, 2011:1-11; Nderitu et al., 2012:1-30; Kanyinga, 2014:50-114).

¹²⁹ In other words, the political participation of PWDs in Kenya, especially given their potential to contribute numbers and resources (strengthening the overall political arsenal of Kenya's citizens), is fundamental to establishing an inclusive and accountable government, thus, consolidating democracy in Kenya.

¹³⁰ That it is crucial for PWDs to participate in political affairs in Kenya, can also be justified, **using similar reasoning to the argument above**, on the basis of this being vital to establishing and maintaining the legitimacy of and trust in the government in Kenya (Sairambay, 2020:120-127; Johnson, 2015:765-766/769; Opokua, Mprah & Saka, 2016:980-981/990; Christensen, 2011; Pahad, 2005:21-26; van Deth, 2016).

Legitimacy, the principle that a government and its right and authority to administer political affairs must be recognized, accepted, and consented to by the people, is a key element of democracy, in the absence of which, stable, peaceful, and effective democratic governance cannot exist (Sairambay, 2020:120-127; Whiteley, 2012:34; Eder & Stadelmann-Steffen, 2017; Degener & Quinn, 2002:21/25; Kanyinga, 2014). Given the underlying and founding principle of democracy, 'rule by the people', a democratic government precludes leaders that are forced or imposed on the people and is obliged to derive its authority from citizens (the supreme repository of power) within the state. It is this that results in citizens respecting and trusting laws and the government thereby consolidating and sustaining democracy within polities (Thuo, 2016:25-26/28-30; Fox, 2000:48-50; Degener & Quinn, 2002:20-21/25; van Deth, 2016a; Kanyinga, 2014:5).

Since political participation is the primary avenue through which Kenyan citizens grant or withdraw consent – thus, securing the greatest good for all and promoting stability and order, and strengthening democracy – the importance of the active participation of all citizens, including PWDs, in political processes in Kenya cannot be understated (van Deth, 2016; Thuo, 2016:28-30; International Foundation of Electoral Systems (IFES) and National Democratic Institute for International Affairs (NDI) (IFES & NDI), 2014:19; Degener & Quinn, 2002:20-25; UDPK, 2016; UNDESA-DSPD, 2016). For a more in-depth discussion see, UNGA-HRC, 2016:9-10; Opokua, Mprah & Saka, 2016; Christensen, 2011; Pahad, 2005:21-26; Degener & Quinn, 2002; Sairambay, 2020; Johnson, 2015; Whiteley, 2012.

SUPPORTING COMMITMENTS AND RESPONDING TO TRENDS:

Beyond enriching and strengthening Kenya's democracy, advancing PWDs' inclusion and access to political process (i.e., the enhanced political participation of PWDs in Kenya) is also important in terms of reflecting Kenya's respect for and conformance with its regional and international commitments to tackling the political exclusion of PWDs (OSCE-ODIHR, 2019:42-45).

The rights of PWDs to participate in political affairs are highlighted and protected by numerous international and regional statutes and agreements that Kenya is party to. For instance, they¹³¹ are part of the commitments acceded to by Kenya under, among other international and regional agreements¹³², the African Charter on Human and Peoples' Rights (ACHPR) (1981), African Charter on Democracy, Elections and Governance (2007), the International Covenant on Civil and Political Rights (ICCPR) (1966), the Declaration on the Rights of Disabled Persons (1975), the Sustainable Development Goals (SDGs) (2015), and importantly, the UNCRPD (2006). As such, the enhanced political participation of PWDs (and the government's proactive efforts towards facilitating this end) supports the various commitments, to combat and rectify the historical exclusion and marginalization of PWDs from political life, undertaken by Kenya (OSCE-ODIHR, 2019:42-45; UDPK, 2016; CRPWD, 2014; Onyango, 2012; Thuo, 2016; Kanyinga, 2014).

For the Kenyan government, this is important because Kenya stands to benefit from being portrayed as respectful of and responsive to international and other agreements, as well as being positioned, on the regional and international stage, as a champion and defender of disability rights (and human rights more broadly). The potential benefits associated with a proven track record and such positioning – including for instance, the increased willingness of states and regional/international institutions to cooperate on agreements and treaties with Kenya across various spheres, and the inclusion of Kenya and Kenyan as leaders in key bodies/committees on various matters – should not be overlooked (OSCE-ODIHR, 2019; Ocharo, 2019; SGPWD & IDA, 2017; UNDESA-DSPD, 2016; WFD, 2020a; HI, UDPK & ANDY, 2017; NCAPD & KNBS, 2008:ix/1; Owiti, 2019:11-12; Thuo, 2016; Opokua, Mprah & Saka, 2016:995; Meekosha, 1999).

The significance of this is bolstered by the fact that concern with and support for accessible and inclusive political processes, and the protection and advancement of disability rights, has gathered remarkable momentum internationally, regionally, and nationally¹³³. Increasingly, the expectation that all (including political) institutions should make efforts to reduce and remove obstacles hindering the

¹³¹Including the correlative obligation on governments to promote, protect and advance the political inclusion of PWDs.

¹³² Such as, the Protocol to the African Charter on the Rights of Women in Africa (2003), African Youth Charter (2006), the Plan of Action for the African Decade of Disabled People (2002/2012), the East African Community (EAC) Policy on Persons with Disabilities (2012), and the Universal Declaration of Human Rights (UDHR) (1948).

¹³³ Internationally and regionally – even prior to, but more so following the passage of the UNCRPD in 2006 – there has been notable growth in the support for PWDs' inclusion across social, economic, and political spheres. This is evidenced by the enthusiasm and support that efforts to ensure the recognition and entrenchment of disability rights in international and regional statutes have received, culminating in the identification and protection of PWDs' political rights in numerous documents and agreements at the international, regional, and national level (Ocharo, 2019:10-12; OSCE-ODIHR, 2019:42-45/101).

Additionally, in the past 20 years or so the global disability rights movement has expanded and strengthened substantially. Also, PWDs and disability rights organizations at the local level no longer experience and challenge injustices alone. Global disability rights movements are speaking the language of rights with a united voice and collectively (with the support of other human rights movements) engaging more intensely and directly with political actors at all levels (Degener & Quinn, 2002:25; Priestley et al., 2016; Degener & Begg, 2017:1-24/36-39; Series, 2020; Grischow, 2019:142-150; Appiagyei-Atua, 2017; Kanter, 2006-2007; Kanter, 2003:3-8; Kanter, 2015:1-8/21/37-45).

Furthermore, within Africa, increasing demands for the inclusion and accommodation of PWDs in political spaces, and enhanced recognition and protection of the civil and political rights of PWDs have been seen (Viljoen, 2007; Ocharo, 2019:10-12). This has been driven by the fact that, unlike most other regions, Africa does not yet have an explicit disability rights statute (Viljoen, 2007).

Moreover, recently in Kenya, there has been a growth in the public's awareness and support of disability inclusion as a critical element for equal and robust political and socio-economic development (OSCE-ODIHR, 2019:25/42-45; NCAPD & KNBS, 2008:ix/1; ELOG, 2022:11).

equal participation and representation of all citizens (even more so PWDs), across all domains especially politics, has become the norm (OSCE-ODIHR, 2019:25/42-45/101; NCAPD & KNBS, 2008:ix/1; ELOG, 2022:11; Ocharo, 2019:10-12; Viljoen, 2007; Degener & Quinn, 2002:25; Priestley et al., 2016).

As such, the Kenyan government's proactive efforts to increase the access to, and inclusion of PWDs in political processes (thus, the enhanced political participation of PWDs) in Kenya, will not only support Kenya's commitments, but importantly, also highlight the government's responsiveness to recent trends and expectations, as well as support for disability (and human) rights more generally. This is likely to not only be perceived as a praiseworthy development, but also serve to encourage and inspire voters, members of political and other organizations, and candidates/public officials at the national level, as well as donors, political leaders, and institutions at the international and regional level (Ocharo, 2019:10-12; Degener & Quinn, 2002; OSCE-ODIHR, 2019:25/42-45; NGEC, 2016; Kimanzi, 2016; Owiti, 2019; Oluchina, 2015; European Union Agency for Fundamental Rights (EUFRA), 2014; Waltz & Schippers, 2021:526/533; Logan, Darrah & Oh, 2012).

CHAPTER 4 – ANALYSIS & DISCUSSION

INTRODUCTION

As earlier indicated, it is evident that full and effective participation of Persons with Disabilities (PWDs), as voters, candidates, and legislative leaders, is contingent on (among other things) the efficacy of the relevant legal frameworks, and the elimination of barriers to such effective participation. Additionally, the development of appropriate and effective laws, policies and other response mechanisms is fundamentally dependent on the collection, disaggregation, and dissemination of relevant data – including on progress on, and the state of PWD's inclusion in electoral and legislative activities Kenya¹³⁴.

Conducting research – let alone policy making – on the representation of PWDs, as voters, candidates, and legislative leaders in Kenya, is challenging, given limitations in the availability of relevant information/data. Even where such disaggregated data, on the inclusion of PWDs in governance activities in Kenya, ought to be readily available – such as at county/national assembly offices, the Independent Electoral and Boundaries Commission (IEBC) and the National Council for Persons with Disabilities (NCPWD), as well as academic and research institutions – limited information exists. Moreover, even the studies that do exist on the political situation of PWDs, and related barriers, have tended to focus on a single electoral cycle, particular towns/regions in Kenya, specific categories of PWDs in Kenya, and PWDs participation as voters or in political parties in Kenya (see for example, Onyango, 2012; KNCHR, 2014, 2016; NGECE, 2016, 2018; 2022; Ocharo, 2019; Owiti, 2019; II, 2015; Thuo, 2016, 2016b; USDS-BDHL, 2017; USP-K, 2017 – also Table 1, Appendix A). This, at least partially, explains the absence of broad public awareness and debate on this issue, and, more generally, the weak/inadequate progress in the relative inclusion of PWDs in political affairs in Kenya (Onyango, 2012; National Gender and Equality Commission (NGECE), 2016; Owiti, 2019; Ocharo, 2019; WFD, 2020; Thuo & Ambani, 2022; Mute, 2023).

This chapter assesses the extent of PWDs' participation as voters, candidates, and legislative leaders (at the national and county level) in post-2010 Kenya¹³⁵. It also identifies the barriers that militate against the effective political participation of PWDs in Kenya.

As such, it provides baseline information against which, importantly, the success and potential efficacy of the legal framework, on the political participation of PWDs in Kenya, will thereafter be evaluated. Secondly, it forms a base which, to begin with, interested parties (including the GoK, DPOs and other HRIs) can draw upon when developing laws, policies and other response mechanisms targeting the political participation of PWDs in Kenya, as well as, when adjudging Kenya's adherence with its national and extra-national obligations on the political inclusion of PWDs.

¹³⁴ For clarity – the Persons with Disabilities Act (PDA) (2003), Constitution of Kenya (CoK or Constitution) (2010) and United Nations Convention on the Rights of Persons with Disabilities (UNCRPD or CRPD or Convention) (2006) necessitate, in summary, that PWDs in Kenya effectively participate in political governance whether indirectly or directly. These statutes have also made efforts to reduce the barriers faced by Kenya's PWDs and enhance their levels of political participation. To this end, this paper aims to ascertain if these laws have been effective in enhancing the participation of PWDs in public affairs in Kenya.

¹³⁵ Whilst focus is given to the proportion of PWDs participating as voters, candidates, and legislative leaders (including in the National Assembly, Senate, and County Assembly) in Kenya, some information on PWDs' engagement in other relevant political activities is also referenced for two reasons. First, to provide information on the participation of PWDs in political activities that are crucially related to the measures of interest e.g., possession of national identity card (ID), voter registration and registration with NCPWD). Secondly, given the overall limitations in the availability of data on the participation of PWDs as voters, candidates and legislative leaders in Kenya, this additional information is useful to contextualizing the data of interest, thus, allowing for, where necessary, (more) reliable generalizations and conclusions to be drawn.

ANALYSIS & DISCUSSION

- **Q1 – The extent of PWDs’ political participation in Kenya**

ELECTORAL PARTICIPATION:

As evidenced by **Table 1 (Appendix A)**, whilst disaggregated data on the representation of PWDs as candidates and legislative leaders is limited, there is an even shorter supply of data on the electoral participation of PWDs in Kenya, even more so quantitative data. Both at the IEBC and other government institutions/platforms in Kenya, disaggregated information on the participation of PWDs in Kenyan elections, particularly as voters, is glaringly absent, despite continued appeals from Disabled Persons’ Organizations (DPOs) and other human rights institutions (the UN included). In addition, the data that does exist is often incompatible, unsystematic, and rarely available across electoral cycles. Thus, assessments based on shifts/movements, and repeated series of data over time, are, as of now, virtually impossible (Thuo & Ambani, 2022; Mute, 2023).

Still, several key points can be deduced from the limited information that does exist.

First, it is important to note that, post-2010, there is evidence of some progress in the overall inclusion of PWDs in electoral processes in Kenya.

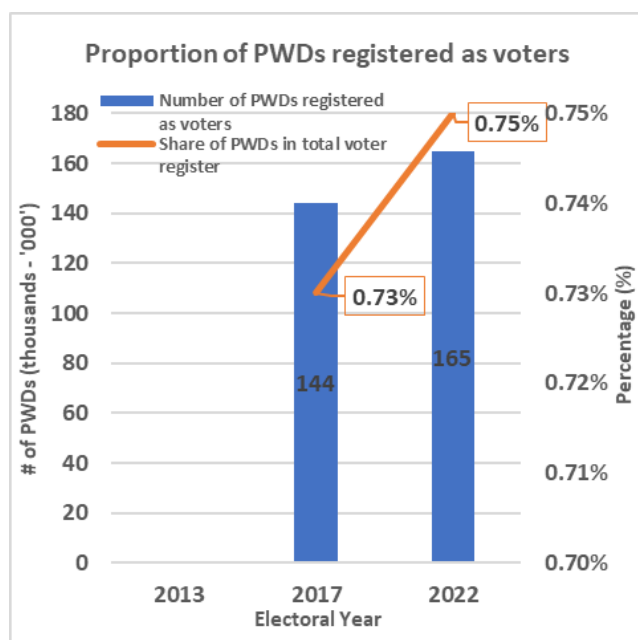
Until the 2013 Kenyan elections, when the first significant increase in the participation of PWDs as voters was witnessed, PWDs in Kenya had largely been marginalized and excluded from voting. PWDs’ electoral participation has however seen some improvement since the enactment of the CoK in 2010, with increases noted in, for instance, the proportion of PWDs registered as voters – e.g., 165,000 in 2022 compared to 144,000 in 2017 (see **Graph 1** below). In addition, PWDs comprised about 18.96%¹³⁶ of registered voters in pre-2022 voter registration exercises, thus, far exceeding the 5% constitutional threshold¹³⁷. Thus, as highlighted by, for instance UDPK (2021), EU-EOM (2022), KPMG (2022), IEBC (2023) and KNCHR (2014, 2016), since 2010, there has certainly been some semblance of improvement in the representation of PWDs in elections in Kenya.

However, over a decade of the CoK (2010), UNCRPD (2006) (and related statutes) has, as of yet, not achieved the sufficient inclusion of PWDs in Kenya’s electoral affairs (Gitonga, 2017; Ocharo, 2019:2; WFD, 2020:19; KPMG, 2022:17-18; Jattani & Ochieng, 2022, 2023).

Graph 1 (below) tracks the representation of PWDs as registered voters in post-2010 electoral cycles in Kenya. As shown, even though between 2017 and 2022, there was a 5.4% increase in the number of PWDs registered as voters (0.14million-0.16million), this equates to merely a 0.02% increase in the relative representation of PWDs among total registered voters in Kenya (0.73%-0.75%). Additionally, these figures, in both 2017 and 2022, accounted for approximately 20% of the PWDs eligible to register as voters in Kenya. As such, this casts doubt on the overall significance of the ‘progress that has been made’, rather suggesting that PWDs have remained in the peripheries during electoral exercises in post-2010 Kenya.

¹³⁶ Research by Mute (2023) and IRI and NDI (2022) place this figure much lower at 8.7%.

¹³⁷ Similarly, in 2017, 15.6% of all SIGs (including women, youth, elderly, ethnic minorities and PWDs) observed attending pre-election voter verification exercises, were PWDs (for more, see NGEC, 2018).

GRAPH 1: PWDs registered as voters in Kenya.

Source: Author (with information from Gitonga, 2017; Ocharo, 2019; WFD, 2020; KPMG, 2022; Jattani & Ochieng, 2022, 2023; IEBC, 2023, 2023a)^{138,139}.

Related activities

Thirdly, this situation is worsened by the fact that the inadequate inclusion of PWDs in Kenya features across – aside from voter registration – other key election related activities, importantly, national ID ownership.

Many PWDs who are eligible to vote, lack national IDs, and are therefore unable to register to vote and vote as possession of an ID is a mandatory prerequisite. For instance, in 2013-2016/17, reports indicate that about 50% of eligible PWDs in Kenya were **not** in possession of an ID. Also, in 2013, in some counties in Kenya, no (0% of) eligible PWDs possessed IDs¹⁴⁰, thus, they could not (legally) vote or run for office. This raises serious concerns regarding the representation of PWDs' interests in certain parts of Kenya¹⁴¹.

Whilst passports can be substituted for an ID when registering as a voter, voting, or contesting for election, even fewer PWDs own passports in Kenya. As such, in both 2013 and 2017, a significant share of PWDs lacked IDs and so would have been unable to register to vote or vote in both electoral cycles, supporting the conclusion that, even post-2010, PWDs have continuously faced relative exclusion during Kenyan elections (for more, see Users and Survivors of Psychiatry in Kenya (USP-K), 2017, 2017a; Stakeholder Group of Persons with Disabilities (SGPwD) & International Disability Alliance (IDA) (SGPwD & IDA), 2017; USDS-BDHRL, 2017; NGEC, 2016, 2018; WFD, 2020; Gitonga, 2017; Virendrakumar et al., 2018; Onsomu, Mose & Munene, 2022; NGEC, 2016).

¹³⁸ No data captured on the proportion of PWDs registered as voters in Kenya in 2013.

¹³⁹ N (Total number of registered voters in Kenya): 2013 = 14,352,545; 2017 = 19,646,637; 2022 = 22,120,458 (IEBC, 2023a).

¹⁴⁰ Surveys from 2013 (see, Onsomu, Mose & Munene, 2022; NGEC, 2016), show that in 3/44 counties in Kenya, 0% of PWDs had IDs and in 17/44 counties in Kenya, less than 50% of PWDs had IDs.

¹⁴¹ Out of all the SIGs (including youth, women, elderly, ethnic minorities and PWDs), PWDs were the most disadvantaged, having the lowest share of their eligible population with IDs, registered as voters, and voting in the period 2013-2017 (for more, see NGEC, 2016, 2018; Onsomu, Mose & Munene, 2022; WFD, 2020).

This is bolstered by the fact that – and this is the fourth point – even when in possession of an ID¹⁴², many PWDs have still been unable to register as voters in Kenya. It was reported that, in the period 2013-2017, of the approximately 50% of PWDs with IDs in Kenya, a majority (about 55%) failed to register as voters¹⁴³. Moreover, even when registered as voters, most PWDs in Kenya were unable to vote. For instance, of the estimated 46% of eligible PWDs registered as voters in Kenya, 59% did **not** vote in 2013¹⁴⁴. Thus, this suggests that PWDs are not yet full and equal participants in electoral politics in Kenya. For more on this see, for example, Onsomu, Mose and Munene (2022), WFD (2020) and NGEC (2016, 2018).

Cross-sectional concerns

Aside from the concerns raised above, it is crucial to also highlight that, while in general the electoral participation of all PWDs in Kenya is limited, some cross-sections of PWDs are more intensely excluded.

To begin with, in comparison to MWDs, WWDs have faced severe underrepresentation across all election related activities in post-2010 Kenya. The available data reveals that WWDs, amidst intense discrimination and discouragement, have partially, and in some counties entirely been eliminated from electoral processes in Kenya. Also, since majority of the PWDs lacking IDs in Kenya are WWDs, they (WWDs) are even less likely to and capable of exercising their voting rights (for a more in-depth discussion, see Thuo, 2016; HI, UDPK & ANDY, 2017; International Foundation for Electoral Systems (IFES), 2017; SGPwD & IDA, 2017; international Knowledge Network of Women in Politics (iKNOWPOLITICS), 2019; Ocharo, 2019; Mzalendo Trust (MT), 2021).

Secondly, those with ‘invisible disabilities’ – for example, persons with intellectual disabilities (PWIDs), persons with psychosocial disabilities (PWPSDs) and those that are deaf-blind – are also more severely excluded from electoral processes in Kenya, relative to those with ‘visible disabilities’ such as persons with physical disabilities and persons with albinism (PWAs).

This is supported by, for instance, results from focus groups where **few** PWIDs and PWPSDs reported having ever voted, as well as from key informant interviews which confirmed that PWPSDs and those with mental impairments are particularly excluded from voting in Kenya (for instance, see KNCHR, 2016; USP-K, 2017; Thuo, 2016). Relatedly, the recorded data also indicates that, since majority of those with less visible disabilities struggle with acquiring IDs, and ‘proving’ their disability status, they have generally been unable to register as voters and vote.

Consequently – and in agreement with the relevant literature included in the review (see for example, KNCHR, 2014, 2016; USP-K, 2017, 2017a; NGEC, 2016, 2018; Virendrakumar et al., 2018; Ocharo, 2019; WFD, 2020a; Onsomu, Mose & Munene, 2022; Mute, 2023; IEBC, 2023, 2023a) – this too serves to support the assertion that, even in post-2010 Kenya, PWDs have continued to endure discrimination and relative exclusion from electoral politics.

¹⁴² As earlier noted, possession of an ID is a mandatory prerequisite to voter registration and voting in Kenya.

¹⁴³ Related to this, in 2013, in 4/44 counties in Kenya 0% of surveyed PWDs with IDs registered as voters, whilst in 21/44 counties 50% or less of the PWDs with IDs were registered voters (see, Onsomu, Mose & Munene, 2022; NGEC, 2016 for more).

¹⁴⁴ Related to this, in 2013, in 5/44 counties across Kenya 0% of surveyed PWDs with IDs, registered as voters and voted; while in 24/44, hence majority of the counties in Kenya, 50% or less of PWDs with IDs, registered as voters and voted. For further discussion on this, see Onsomu, Mose and Munene (2022) and NGEC (2016).

Conclusion

Going by the available information, despite the promulgation of the CoK (2010) and other relevant legislations, and the associated semblance of progress, overall, since 2010, the representation of PWDs in Kenya's electoral processes has remained low. Additionally, it is not only their participation as voters that is inadequate, but also, their inclusion in related electoral activities, such as registering for an ID and as a voter in Kenya. In addition, certain segments of PWDs – especially WWDs and those with 'invisible disabilities' – have more severely been underrepresented across election related activities in post-2010 Kenya.

These findings concur with those from most of the literature included in the earlier review¹⁴⁵, which conclude that, despite the enactment of supposedly progressive legal frameworks in the past decade, the participation of PWDs in Kenya's electoral processes has, thus far, been well below expectations (for instance, see Table 1 Appendix A).

HIGH-LEVEL PARTICIPATION:

As was earlier noted¹⁴⁶, the level of PWDs' inclusion in key political structures, especially the legislature, is one of the most salient indicators of PWDs' full and effective participation in political affairs (OSCE-ODIHR, 2019; Mute, 2023).

Recently, the available literature on the representation of PWDs in political leadership in Kenya, has expanded. However, the data therein provided, at times, only relates to one electoral cycle, whilst less than a handful of papers inform on the inclusion of PWDs as candidates and legislative leaders in pre-2010 Kenya. Further, across the literature, there are various discrepancies and divergences in the available statistics on PWDs' participation as candidates and legislative leaders (in the NA, Senate, and CA) in Kenya. As such, it is difficult and taxing to – on the basis of 'trends and repeated patterns across time' – assess, compare, and evaluate the data, thus arriving at reliable conclusions, though possible (Thuo & Ambani, 2022).

Several key points can be deduced from the available information¹⁴⁷.

Candidates

Several of the papers included in the literature review reported that, despite showing signs of promise, there has been little to no progress in the relative representation of PWDs as candidates vying for election in Kenya¹⁴⁸. However, this is not necessarily the case (KNCHR, 2016; Thuo & Ambani, 2022).

In fact, out of all the indicators/measures considered in this paper, since 2010, most progress was observed in the relative inclusion of PWDs as candidates vying for election in Kenya.

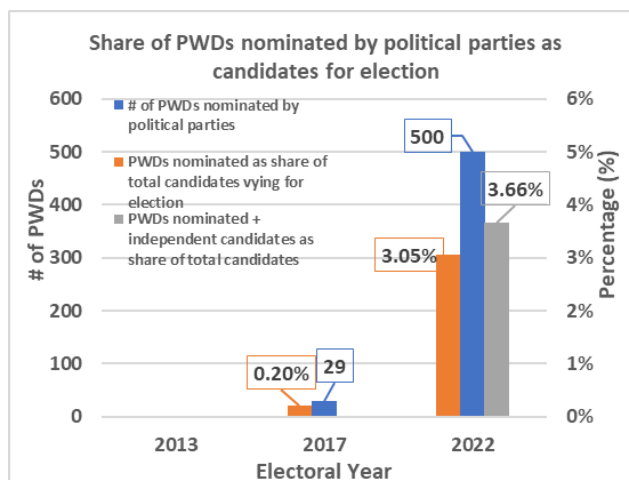
¹⁴⁵ For example – Onyango, 2012; KNCHR, 2014, 2016; Thuo, 2016; NGEC, 2016, 2018; USDS-BDHRL, 2017; USP-K, 2017, 2017a; HI, UDPK & ANDY, 2017; Gitonga, 2017; Ocharo, 2019; Owiti, 2019; iKNOWPOLITICS, 2019; WFD, 2020, 2022, 2022a; UDPK, 2021; MT, 2021; Thuo & Ambani, 2022; Onsomu, Mose & Munene, 2022; Jattani & Ochieng, 2022, 2023; EU-EOM, 2022; ELOG, 2022; IRI & NDI, 2022; KPMG, 2022; Mute, 2023; IEBC, 2023, 2023a.

¹⁴⁶ See pages 48-51.

¹⁴⁷ NB: all the referenced data is triangulated and averaged across all instances of a particular result/data point in the reviewed literature and additional sources. Results are rounded upwards in the case of absolute numbers.

¹⁴⁸ Whilst stats, such as that PWDs only comprised about 1.56% (100/6,400) of the independent candidates cleared to compete in the 2022 Kenyan elections, have been relied on as evidence of the lack of progress in the inclusion of PWDs as candidates in post-2010 Kenya (for more, see ORPP, 2023; Hassan, 2022; Jattani & Ochieng, 2022, 2023; IEBC, 2023; Mute, 2023).

GRAPH 2: (Estimated) share of PWDs nominated by political parties as a proportion of total candidates vying for election.



Source: Author (with information from WFD, 2020; Hassan, 2022; Jattani & Ochieng, 2022, 2023; ORPP, 2023; TOC, 2023; IEBC, 2023)^{149,150}.

As can be seen in **Graph 2**, there has been a significant increase in the share of PWDs nominated by political parties as candidates to vie for election in Kenya, from 0.2% (29/14,523) in 2017, to 3.05% (approximately 500/16,400) in 2022. Thus, even in the absence of data from 2013, based on the available information, that since the promulgation of the CoK in 2010, commendable progress has been made – in advancing the inclusion of PWDs as candidates vying for election in Kenya – is difficult to refute.

In addition, whereas in 2017, the proportion of PWDs nominated as candidates by political parties (0.2%) was very low relative to the total candidates vying for election in Kenya, given that 150 PWDs competed in the 2017 party primaries, this equates to a successes rate of 19.3% (29/150).

Related to this, in 2022, approximately 500 PWDs contested for election under party flags, accounting for 5% (500/10,000) of all persons nominated by political parties to contest the Kenyan elections. Taken with the preceding point, this indicates that, as it pertains to the representation of PWDs as nominated candidates in Kenya since 2010, political parties have (on certain scales) met constitutional expectations.

As such – and in line with findings from, for example, WFD, 2020; Hassan, 2022; Jattani & Ochieng, 2022, 2023; TOC, 2023; ORPP, 2023 – it is within reason to conclude that, despite falling short of expectations, there has been notable progress in the inclusion of PWDs as candidates vying for election in post-2010 Kenya (especially, relative to their inclusion as voters and legislative leaders).

Legislative leaders (NA, Senate & CA)

To begin with, since the promulgation of the CoK in 2010, there has certainly been some noticeable progress in the representation of PWDs as elected/appointed legislative leaders in Kenya.

For instance, as can be seen from **Table 2**, prior to the 2013 elections, only the 8th parliament (1997-2002) included an elected/appointed MP with a disability, and only the 2007/2008 Kenyan elections included candidates with disabilities. However, in every electoral cycle in Kenya since 2013, PWDs were

¹⁴⁹ NB: No information available for 2013.

¹⁵⁰ NB: No information available on independent candidates with disabilities in 2017.

present among candidates vying for election and elected/appointed legislative leaders in Kenya. As such, the adoption of the UNCRPD (2006), and later promulgation of the CoK (2010), does appear to have somewhat advanced the overall inclusion of PWDs as candidates and legislative leaders in post-2010 Kenya.

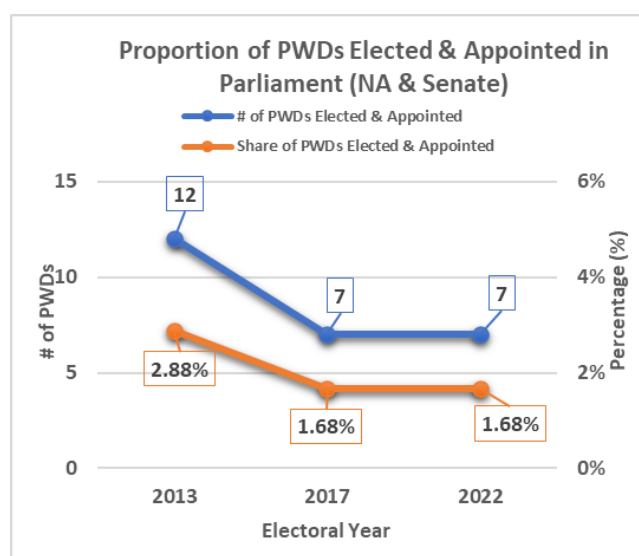
Year	Candidate(s) with disability reported?	Elected/appointed PWD(s) reported?
1963-1997 ¹⁵¹	x (no)	x (no)
1997-2002	x (no)	√ (yes)
2002-2007/8	x (no)	x (no)
2008-2013	√ (yes)	x (no)
2013-2017	√ (yes)	√ (yes)
2017-2022	√ (yes)	√ (yes)
2022-2027	√ (yes)	√ (yes)

Source: Author (with information from KNCHR, 2014; NGEC, 2016, 2018; UDPK, 2021; Thuo & Ambani, 2022; Onsomu, Mose & Munene, 2022; Mute, 2023).

This is further illustrated by the fact that, for instance, both the NA and Senate in Kenya have, in line with the constitutional requirement (CoK, 2010:Articles 97/98/177), included at least 2 nominated and appointed PWDs as MPs and Senators in all post-2010 parliaments in Kenya (2013, 2017 and 2022) (for more see, NGEC, 2016, 2018, 2022; Thuo & Ambani, 2022; Onsomu, Mose & Munene, 2022; Jattani & Ochieng, 2022, 2023; Mute, 2023).

Nevertheless, despite the notable progress, since 2010 the GoK has failed to achieve (among others) constitutional benchmarks on the inclusion of PWDs as legislative leaders in Kenya. Overall, the data shows the participation of PWDs, in legislative institutions in post-2010 Kenya, to have at best been modest. Moreover, between 2013 and 2022, a downward trend is observed in the proportion of PWDs elected and appointed as legislative leaders in national and county institutions in Kenya.

GRAPH 3: Share of PWDs elected and appointed in Kenya's parliament (NA & Senate).



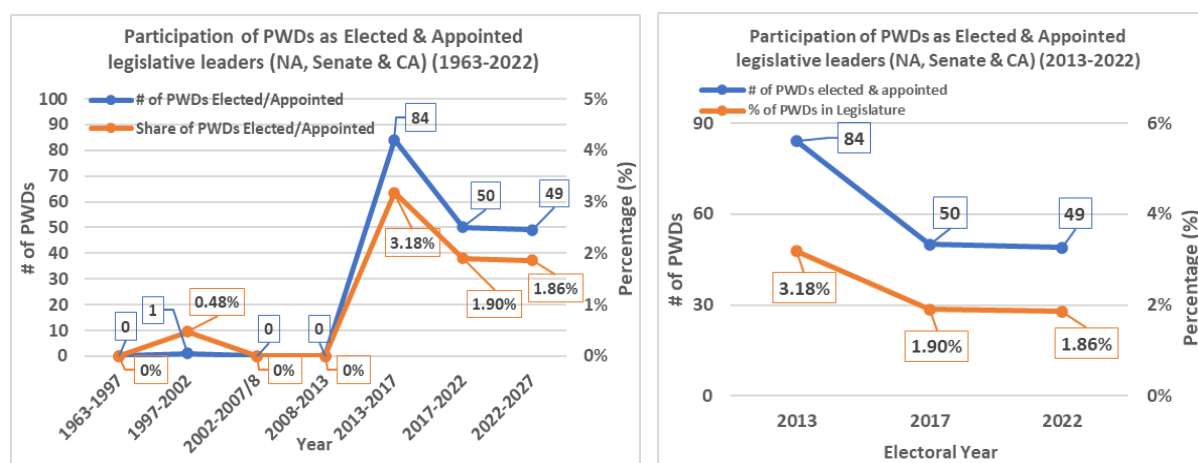
Source: Author (with information from KNCHR, 2016; USDS-BDHL, 2017; WFD, 2020; KUB, 2020; Hassan, 2022; Gichana, 2022; TOC, 2023; Mute, 2023)¹⁵².

¹⁵¹ All Kenyan parliaments from independence (1963) and pre-1997 – i.e., 1963-1969, 1969-1974, 1974-1979, 1979-1983, 1983-1988, 1988-1992, 1992-1997.

¹⁵² NB: N (NA + Senate) = 416.

Graph 3 – which shows the proportion of PWDs elected and appointed in post-2010 parliaments (NA and Senate) in Kenya – illustrates a sharp decline and thereafter stagnation in the relative representation of PWDs, from 2.88% in 2013 to 1.68% in 2017 and 2022. This confirms the inadequate participation of PWDs in Kenya’s parliaments following the promulgation of the CoK (2010).

GRAPH 3.1 & 3.2: (Estimated) Participation of PWDs as elected & appointed legislative leaders (NA, Senate & CA) (1963-2022).



Source: Author (with information from KNCHR, 2014; NGEK, 2016, 2018, 2022; KUB, 2020; WFD, 2020, 2020a; MT, 2021; Jattani & Ochieng, 2022, 2023; Mute, 2023; ORPP, 2023)^{153,154,155}.

Graphs 3.1 and 3.2 show the (estimated) participation of PWDs as elected and appointed legislative leaders (NA, Senate, and CA) between 1963 and 2022 in Kenya.

In comparison to pre-2010 legislatures in Kenya, there was a significant increase in the participation of PWDs as elected/appointed legislative leaders from 2013 onwards. Nevertheless, as in parliament (see **Graph 3**), the relative representation of PWDs in Kenya’s legislature overall, followed a similar pattern of sharp decline then stagnation between 2013 and 2022, dropping from approximately 3.18% in 2013, to just 1.9% in 2017 and 1.86% in 2022¹⁵⁶.

Thus, despite some initial signs of promise following the 2013 elections, since then, the data reveals an increase in the relative exclusion of PWDs from legislative activities in Kenya. This confirms the findings from, for example, UDPK (2021), Thuo and Ambani (2022) and Onsomu, Mose & Munene (2022), of a downwards trend in the share of PWDs elected and appointed to Kenya’s post-2010 legislatures (also see, KNCHR, 2014; NGEK, 2016, 2018, 2022; WFD, 2020, 2020a; MT, 2021; Jattani & Ochieng, 2022, 2023; Mute, 2023; ORPP, 2023).

¹⁵³ NB: Between 1997 and 2013 Kenya still had a unicameral legislature (NA). Thus, N (NA) (1997-2013) = 210. Whereas N (NA + Senate + CA) (2013+) = 2,638.

¹⁵⁴ NB: at least 4 appointments pending confirmation in 2022.

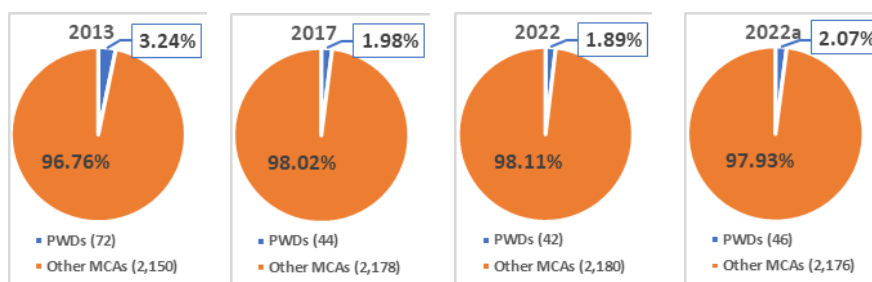
¹⁵⁵ NB: there is extraordinarily little information available on the political participation of PWDs between 2002 and 2008 in Kenya. In addition, data on this period is drawn from sources that only implicitly refer to it through broad statements, for example, ‘since 1963, and pre-2010, only Kenya’s 8th parliament included an appointed MP with a disability.’ As such, the data on the participation of PWDs in Kenya between 2002 and 2008 is somewhat less reliable.

¹⁵⁶ 2.0% (assuming the 4 pending appointments following the 2022 Kenyan elections are upheld).

Furthermore, and following on from the discussion above, it is evident that, since 2010, PWDs have particularly been excluded from positions of leadership at the county level in Kenya.

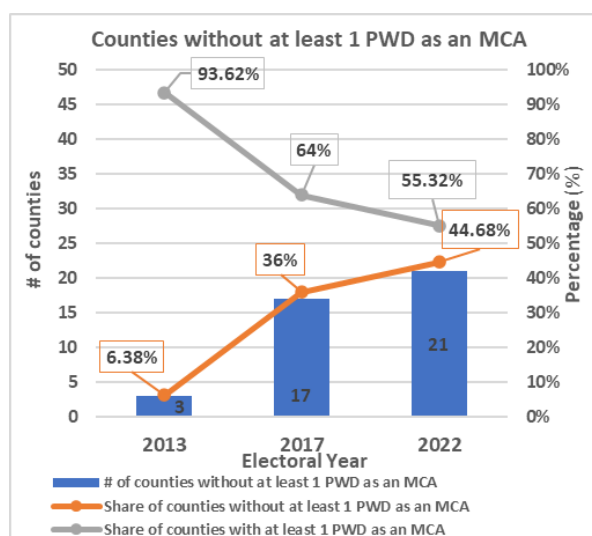
Graphs 4 and 4.1 elucidate that, since 2010, aside from constituting an increasingly smaller share of the MCAs in Kenya – with this figure declining from approximately 3.24% in 2013 (72/2,222), to 1.98% (44/2,222) in 2017 and 1.89% (42/2,222) in 2022¹⁵⁷ – this was accompanied by an escalation in the number of CAs, in post-2010 Kenya, with 0 PWDs elected or appointed as MCAs. Whereas in 2013, it was only 3/47 counties (6.38%), this figure increased to 17 (36.17%) in 2017, then 21 (44.68%) following the 2022 Kenyan elections¹⁵⁸.

GRAPH 4: Representation of PWDs as elected & appointed leaders in CAs in Kenya.



Source: Author (with information from: KNCHR, 2014; KUB, 2020; Thuo & Ambani, 2022; Onsomu, Mose & Munene, 2022; Mute, 2023)^{159,160,161,162}.

GRAPH 4.1: Share of counties in Kenya without at least 1 PWD as an MCA.



Source: Author (with information from: KNCHR, 2016; Mute, 2023; TOC, 2023; Jattani & Ochieng, 2023).

What is more, following both the 2017 and 2022 Kenyan elections, many of the same counties lacked representation of PWDs at the CA. In fact, of the 17 counties¹⁶³ from 2017, only 5 were not included

¹⁵⁷ 2.07% (46/2,222) (assuming the 4 pending appointments following the 2022 Kenyan elections are upheld).

¹⁵⁸ Stated differently, whilst in 2013, 93.62% of the counties in Kenya, had at least 1 PWD represented at the CA, this figure quickly declined to 63.83% then 55.32%, following the 2017 and 2022 Kenyan elections, respectively.

¹⁵⁹ NB: CAs were only introduced with devolution in the CoK 2010, thus, there is no pre-2013 information.

¹⁶⁰ NB: N (MCAs) (2013+) = 2,222.

¹⁶¹ NB: at least 4 appointments pending confirmation in 2022.

¹⁶² 2022a = estimate of 2022 result if 4 pending appointments are upheld.

¹⁶³ Including, 'Baringo, Bungoma, Busia, Kericho, Kilifi, Kisii, Kwale, Laikipia, Makueni, Muranga, Nairobi, Nakuru, Narok, Nyeri, Taita Taveta, Turkana and West Pokot.'

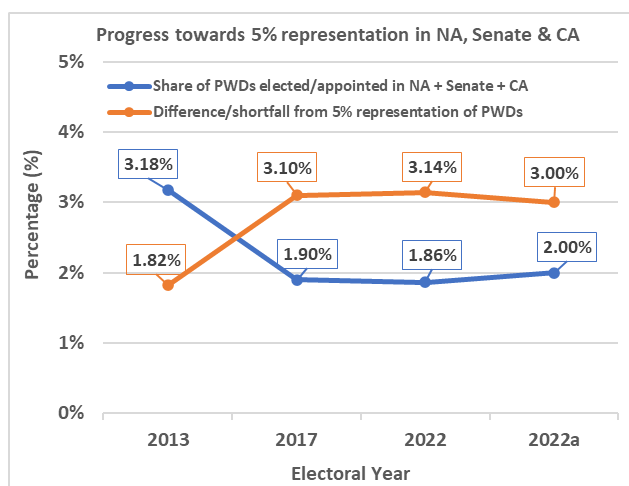
among the 21 counties¹⁶⁴ that failed to elect/appoint PWDs as MCAs in 2022. In other words, 12 counties in Kenya (see footnote 163 and 164 – highlighted in **bold**) had 0 PWDs represented among MCAs in both 2017 and 2022. As **also** noted by, for instance, Mute (2023) and Jattani and Ochieng (2022, 2023), this raises serious concerns regarding accountability and the representation of PWDs' interests across various CAs¹⁶⁵ in post-2010 Kenya (also see, WFD, 2020; MT, 2021; Thuo & Ambani, 2022; Onsomu, Mose & Munene, 2022).

Taken together, this suggest that the overall position of PWDs in Kenya's CAs has significantly deteriorated. Hence, it supports the conclusion that, despite the promulgation of the CoK in 2010, since then, PWDs have been unable to, fully and effectively, participate in legislative activities in Kenya, (both at national and local institutions) (KNCHR, 2014, 2016; SGPwD & IDA, 2017; MT, 2021; Mute, 2023; TOC, 2023).

5% Constitutional benchmark?

That this is the case is bolstered by the fact that, overall, since 2010, the representation of PWDs as elected and appointed legislative leaders in Kenya, has remained far below the 5% constitutional benchmark.

GRAPH 5: Progress relative to 5% Constitutional benchmark.



Source: Author (with information from KNCHR, 2014, 2016; KUB, 2020; MT, 2021; NGEK, 2022; TOC, 2023; Jattani & Ochieng, 2023; Mute, 2023)^{166,167}.

Graph 5 sheds light on the progress towards 5% representation in the legislature in Kenya in 2013, 2017 and 2022. Between 2013 and 2022, the 'shortfall from the ideal/5% representation of PWDs in the NA, Senate, and CA in Kenya increased from approximately 1.82% to 3.1%. Thus, the progress towards 5% representation of PWDs, in the Kenya's post-2010 legislatures, has been inadequate; if anything, the overall position of PWDs has worsened since 2013.

¹⁶⁴ Including, **'Kwale, Kilifi, Taita Taveta, Wajir, Marsabit, Isiolo, Meru, Tharaka Nithi, Machakos, Makeni, Turkana, West Pokot, Trans Nzoia, Uasin Ngishu, Baringo, Laikipia, Narok, Kericho, Bungoma, Nyamira and Nairobi.'**

¹⁶⁵ For example, in Nairobi County, following the 2017 elections in Kenya, the nominated PWD did not reside in Nairobi and therefore had to be replaced. This created a representation vacuum; thus, a candidate nominated under the party's 'gender top-up' list was appointed to fill this position. This occasioned accountability and representation challenges since, not only did the appointed legislator **not** represent PWDs' interests, but fewer PWDs were appointed as MCAs overall (for more, see MT, 2021; Thuo & Ambani, 2022; Mute, 2023).

¹⁶⁶ NB: at least 4 appointments pending confirmation in 2022.

¹⁶⁷ 2022a = estimate of 2022 result if 4 pending appointments are upheld. In this case the difference/shortfall would be 3%.

Graphs 5.1-5.3 (see Appendix B) disaggregate the results, on the progress towards 5% representation of PWDs in post-2010 Kenya, according to the various arms of Kenya's legislature (i.e., NA, Senate, and CA).

In the NA, the proportion of nominated and elected PWDs decreased from 2.6% to 1.43% between 2013 and 2022, indicating an increase in the shortfall from 2.4% in 2013 to 3.57% in 2022 (i.e., by 1.17%).

As for the Senate, in 2013 PWDs comprised 4.47% of the senators in Kenya, hence a difference of about 0.53% from the ideal 5% representation of PWDs, in elective and appointive positions, existed. In 2017 and 2022, with 2 PWDs nominated, the representation of PWDs dropped to just below 3%, increasing the shortfall to approximately 2%. Despite the steep increase in the 'shortfall' (1.47%), overall, the Senate showed the most progress overall towards 5% representation of PWDs, with PWDs accounting for at least 3% of the senators in Kenya's post-2010 Senates.

At the county level, **Graph 5.3** shows that whereas in 2013 PWDs constituted 3.24% of MCAs in Kenya, by 2022 this had decreased to approximately 1.86%¹⁶⁸. Thus, the relative shortfall increased by approximately 1.24% (1.76%-3%) in this same period.

As such – and in concurrence with, for example DI and IF (2021, 2021a), Onsomu, Mose and Munene (2022) and Mute (2023) – since 2010, the progress towards the 'ideal' representation of PWDs has been inadequate, particularly in Kenya's NA and CAs where, post-2010, PWDs have endured intense under-representation (also see, KUB, 2020; MT, 2021; NGEC, 2022; TOC, 2023; Jattani & Ochieng, 2022, 2023).

In all, the available data reveals that, despite the promise of the progress initially witnessed in 2013, since then, there has been a persistent and significant gap in the relative inclusion of PWDs, as elected and appointed leaders, in the legislature in Kenya. Accordingly, it is reasonable to conclude that, even after the enactment of the UNCRPD (2006), and promulgation of the CoK in 2010, at both county and national levels in Kenya, PWDs have been unable to, fully and effectively, participate as legislative leaders. Overall, and as confirmed by much of the reviewed literature (for instance, see NGEC, 2016, 2018; Alberta, 2017; KUB, 2020; WFD, 2020, 2020a; CIPESA, 2021; MT, 2021; Thuo & Ambani, 2022; Gichana, 2022; Mugambi, 2022a; Jattani & Ochieng, 2022, 2023; Mute, 2023), the representation of PWDs in legislative activities has been low, with PWDs rarely influencing decision-making in post-2010 Kenya.

Election vs. Nomination/Appointment

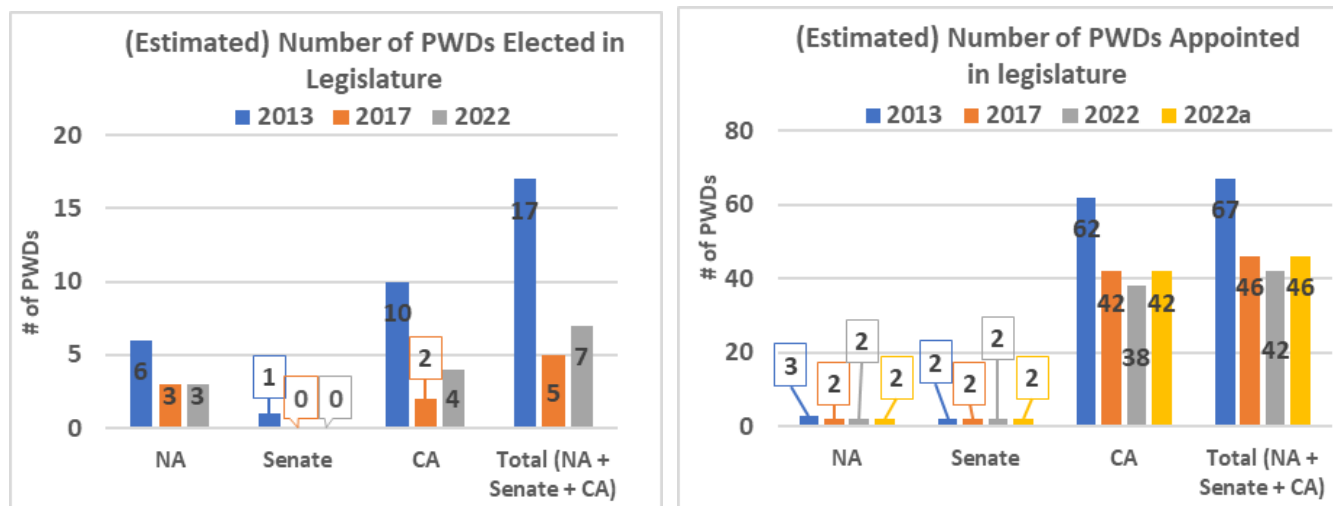
It is important to note that per the affirmative action clauses of the CoK (2010: Articles 54/97/98/177), PWDs are guaranteed at least 2 (1 MWD, 1WWD) appointed representatives in each of the 47 CAs, and in each of the parliamentary houses (NA and Senate) in Kenya (Jattani & Ochieng, 2022, 2023; Thuo & Ambani, 2022).

As revealed in Graphs 6 and 6.1, both the NA and Senate included at least 2 nominated and appointed PWDs in 2013, 2017 and 2022 in line with the constitutional requirement. This indicates the importance and efficacy of 'affirmative action clauses' – especially in the Senate where, aside from

¹⁶⁸ 2.07% (assuming the 4 pending appointments following the 2022 Kenyan elections are upheld).

2013 when 1 PWD was elected, the absence of such guarantees would have occasioned the complete exclusion of PWDs from Kenya's Senate in 2017 and 2022 (as 0 PWDs were elected).

GRAPH 6 & 6.1: (Estimated) Number of PWDs elected & appointed in Kenya's post-2010 legislatures.



Source: Author (with information from NGEN, 2016; HI, UDPK & ANDY, 2017; KUB, 2020; Onsomu, Mose & Munene, 2022; NGEN, 2022; Thuo & Ambani, 2022; Mute, 2023)^{169,170}.

At the county level, whilst the appointment of PWDs at times struggled (and more recently, fell flat) as an instrument for attaining constitutional and other obligations, nevertheless, this mechanism has been the main driver of PWDs' representation among legislative leaders in post-2010 Kenya.

For example, between 2013 and 2022, only 16 PWDs were elected across all CAs in Kenya, whereas, in the same period, approximately 142¹⁷¹ PWDs were appointed as MCAs across CAs. Similarly, in total, about 29 were PWDs elected in the NA, Senate, and CA between 2013 and 2022, whilst 155¹⁷² PWDs were nominated and appointed to Kenya's legislature.

It could be argued that this is simply the result of small numbers of PWDs vying for election. For instance, it is possible that amidst the difficulties associated with elective contests (especially high costs and the absence of accommodations), many PWDs have shied away from elective contests in Kenya, preferring to rather await appointments to 'reserved' positions (for example, see Thuo, 2016; NGEN, 2016, 2018; HI, UDPK & ANDY, 2017; WFD, 2020, 2020a; CIPESA, 2021; MT, 2021; Thuo & Ambani, 2022; Gichana, 2022).

However, to begin with, in 2022, there were 600+ PWDs who vied for election, yet only 7 PWDs were elected. Related to this, in 2017, out of 29 PWDs nominated as candidates by political parties, only 2 were elected. Moreover, despite numerous reports of PWDs vying for election as Senators in elections in post-2010 Kenya, only 1 PWD has ever been elected to Kenya's Senate (in 2013). In addition, there was a significant drop in the number of PWDs elected in CAs in Kenya, from 10 in 2013, to just 2 in 2017 and 4 in 2022. Taken together, it is evident that PWDs have not fared particularly well in (direct) elective contests in post-2010 Kenya.

¹⁶⁹ NB: at least 4 appointments pending confirmation in 2022.

¹⁷⁰ 2022a = estimate of 2022 result if 4 pending appointments are upheld.

¹⁷¹ 146 (assuming the 4 pending appointments following the 2022 Kenyan elections are upheld).

¹⁷² 159 (assuming the 4 pending appointments following the 2022 Kenyan elections are upheld).

As such, it is reasonable to conclude that, since 2010, the nomination and appointment of PWDs has been a critical (affirmative action) tool in the fight to advance the inclusion of PWDs as legislative leaders in Kenya (for more on this, see NGEC, 2016, 2022; KUB, 2020; Thuo & Ambani, 2022; Onsomu, Mose & Munene, 2022; Mugambi, 2022; Mugambi, 2022a; TOC, 2023; Mute, 2023).

Representation of WWDs

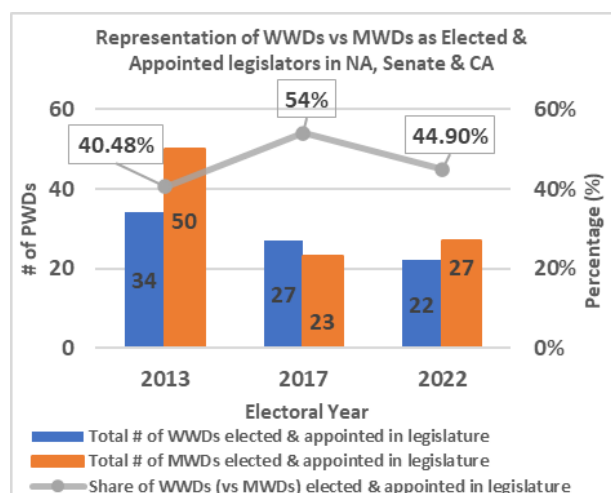
An important issue to consider is the contestation that, even in this context of under-representation of PWDs, men with disabilities (MWDs) have significantly dominated the lists of PWDs elected as legislative leaders in post-2010 Kenya, often at the expense of women with disabilities (WWDs) (for instance, see NGEC, 2016; HI, UDPK & ANDY, 2017; iKNOWPOLITICS, 2019; KUB, 2020; UDPK, 2021; Onsomu, Mose & Munene, 2022).

There are a few crucial points to note.

To begin with, the first PWD ever included in a post-independence Kenyan parliament was Josephine Sinyo – a WWD appointed as an MP in the 8th parliament 1997-2002. This was a milestone for WWDs and arguably, a promising sign for the future inclusion of WWDs in legislative activities in Kenya, with the gate having been opened (and by a WWD who is reported to have excelled at her post) (UDPK, 2021; IFES, 2017).

Importantly, the available data reveals that – contrary to the observations of for instance, SGPwD and IDA (2017), IFES (2017), iKNOWPOLITICS (2019) and Thuo and Ambani (2022) – the inclusion of WWDs as leaders in Kenya’s legislature, at national and county levels, somewhat increased in the post-2010 period.

GRAPH 7: Representation of WWDs vs MWDs as elected & appointed leaders in the legislature (NA, Senate & CA).



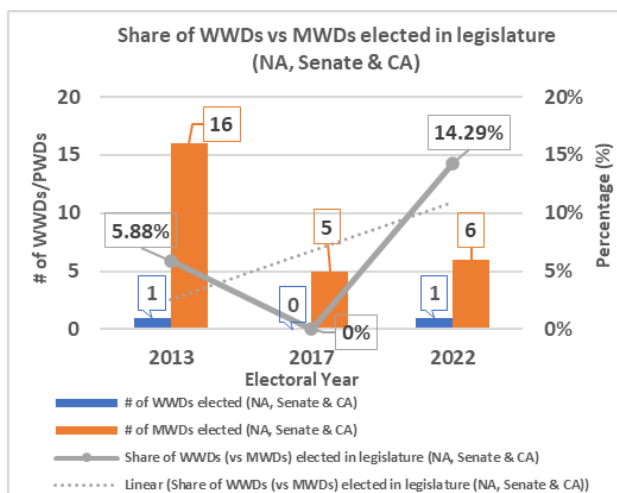
Source: Author (with information from NGEC, 2016; HI, UDPK & ANDY, 2017; KUB, 2020; Thuo & Ambani, 2022; Onsomu, Mose & Munene, 2022; Mute, 2023; Jattani & Ochieng, 2023).

Graph 7 illustrates the representation of WWDs relative to MWDs as elected and appointed legislative leaders in Kenya. It shows that in 2013, WWDs accounted for approximately 40.5% (34/84) of the PWDs elected and appointed across Kenya’s legislature. Despite the sharp decrease in the relative inclusion

of WWDs from 27/50 (54%) of all PWDs in 2017¹⁷³, to approximately 22/49 (44.90%) in 2022¹⁷⁴, overall, between 2013 and 2022, there was a minimal though upwards trend in the relative inclusion of WWDs, among elected and appointed PWDs, in Kenya's legislature (approximately 40.5%-45% in 2013-2022).

However, whilst pre-2013 0 PWDs had ever been elected to the legislature in Kenya¹⁷⁵, since then, MWDs have, and often at the expense of WWDs, overpoweringly dominated the list of PWDs elected to the legislature in Kenya.

GRAPH 8: Share of WWDs vs MWDs elected to the legislature (NA, Senate & CA).



Source: Author (with information from NGECC, 2016; IFES, 2017; HI, UDPK & ANDY, 2017; KUB, 2020; Thuo & Ambani, 2022; Onsomu, Mose & Munene, 2022).

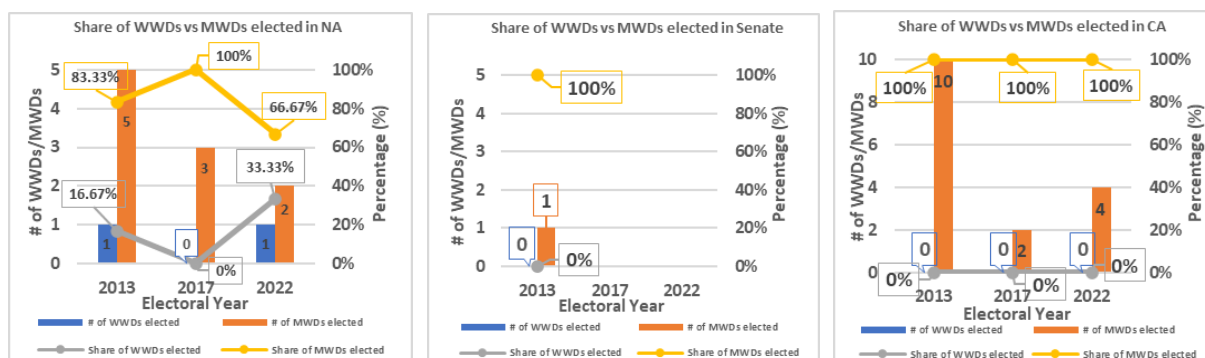
As can be seen from **Graph 8**, post-2010, the comparative participation of WWDs as elected leaders in Kenya's legislature (NA, Senate, and CA) has been extremely low. For instance, in 2013, only 1 WWD was elected across all legislative bodies in Kenya, compared to 16 MWDs. In 2017, 0 WWDs were elected, whilst 5 MWDs were elected across Kenya's legislature. Similarly, in 2022, out of the 7 PWDs elected across the legislature in Kenya, only 1 was a WWD.

Despite the increase in the share of WWDs relative to MWDs elected across the legislature in Kenya between 2013 and 2022 (5.88% to 14.29%), the absolute number of elected WWDs (1) did not change. What seems like an increase, in the relative representation of WWDs, is merely the result of (10) less MWDs being elected in this same period, not more WWDs being elected to the legislature in Kenya.

¹⁷³ In 2017 WWDs accounted for majority of PWDs elected/appointed as legislative leaders in Kenya. PWDs accounted for 1.9% (50/2,638) of the legislators across the NA, Senate, and CA in Kenya, of which 1.02% was WWDs, and 0.9% MWDs.

¹⁷⁴ NB: 2022 result is based on an estimate of the share of WWDs relative to MWDs appointed across Kenya's CAs in 2022. The estimated share of WWDs appointed to CAs in 2022 was 49.5% (i.e., 19 WWDs/38 PWDs appointed to CA). This is a reasonable estimate given: 1) [54% (share of WWDs in CA 2017) + 41% (share of WWDs in CA 2013)]/2 = approximately 48%; 2) the historical trend in the proportion of WWDs and MWDs appointed to Kenya's CAs, where the split has averaged 51% in favour of WWDs (2013: 30 WWDs/62 PWDs = 48%, 2017: 24/42 PWDs = 57%; 48%+57%/2 = 51%). Taken together, (48% + 51%)/2 = approximately 49.5% (i.e., 19 WWDs/38 PWDs).

¹⁷⁵ Few had been nominated for election, though none had ever been successfully elected. Until 2013, only Josephine Sinyo had represented PWDs in the legislature in Kenya, and even she was appointed in the 8th Parliament (see UDPK, 2021; IFES, 2017 for further details).

GRAPH 8.1, 8.2 & 8.3: Share of WWDs vs MWDs elected to the legislature (NA, Senate & CA).

Source: Author (with information from NGEN, 2016; IFES, 2017; HI, UDPK & ANDY, 2017; KUB, 2020; Thuo & Ambani, 2022; Onsomu, Mose & Munene, 2022).

Graphs 8.1-8.3 which show the same (i.e., the relative share of elected WWDs and MWDs), but disaggregated across the NA, Senate, and CA in post-2010 Kenya, elucidate that, firstly, no WWDs have ever been elected to the Senate in Kenya, whereas 1 MWD was elected in 2013¹⁷⁶.

Relatedly, since 2013, there has been a complete exclusion of WWDs from leadership positions in Kenya's CAs, with all the elected PWDs thus far being male.

In the NA, despite the seeming increase in the relative share of elected WWDs – from approximately 16.67% in 2013, to 33.33% in 2022 – again, there was no change in the absolute number of WWDs (1) elected to the legislature in Kenya. This 'appreciation' in the relative share of elected WWDs is simply explained by (3) less MWDs being elected in the Kenyan legislature during this time; hence, there was a decrease in the overall size of the pie, as opposed to an increase in the size of WWDs' share of the pie.

Thus, the data does support the assertion that even within this context of marginalization, an overwhelming majority of the PWDs elected to Kenya's legislatures, since the promulgation of CoK in 2010, have been MWDs. These findings correspond with those from various studies included in the literature review which conclude that, in post-2010 Kenya, MWDs have, at a significant cost to WWDs, overwhelmingly dominated the list of PWDs elected as legislative leaders (for example, see IFES, 2017; UDPK, 2021; KUB, 2020; Thuo & Ambani, 2022; Onsomu, Mose & Munene, 2022; Hassan, 2022).

That this is a cause for concern is bolstered by the fact that, to begin with, WWDs face double discrimination in Kenya, as PWDs, but also as women. Consequently, given gender discrimination and disparities, and considering that WWDs constitute over 52% of Kenya's population of PWDs, WWDs are, based on gender, severely underrepresented as legislative leaders in Kenya (for more on this see CRPwD, 2014, 2015; SGPwD & IDA, 2017; UDPK, 2021; Thuo & Ambani, 2022; Mute, 2023).

Secondly, the participation of WWDs as candidates vying for election in post-2010 Kenya, has also been below average. For instance, as earlier indicated, Mute (2023:29) notes that, in 2022, only 2/20 WWDs targeted by the Women Challenged to Challenge program, to be nominated as candidates by political parties in Kenya, succeeded (also see, IFES, 2017; iKNOWPOLITICS, 2019; Thuo & Ambani, 2022).

¹⁷⁶ NB: No (0) PWDs were elected to the Senate in 2017 and 2022.

Similarly, WWDs, amidst steep barriers, are more intensely removed from electoral processes in Kenya (see earlier discussion on pages 71-72).

Third, the representation of WWDs as political leaders is comparatively low, across **all** levels of the government in Kenya. For instance, 83% of those surveyed by KUB (2020:57-58), reported that WWDs are not well represented in elective and appointive offices in the GoK. There is consensus that WWDs are relatively excluded from governance and political life in general, hence, beyond legislative activities in Kenya (for example, see CRPwD, 2014; NGEK, 2016, 2018; iKNOWPOLITICS, 2019; UDPK, 2021; Mute, 2023). In other words, as it pertains to political affairs in Kenya, relative to MWDs, WWDs are significantly disadvantaged; they are more likely to lack representation, a voice and thus power. This paints a bleak picture in terms of the inclusion of WWDs in decision-making structures in Kenya, and the effective articulation, promotion, and protection of their interests (or rather, non-thereof).

Representation of ‘visible’ vs. ‘invisible’ disabilities

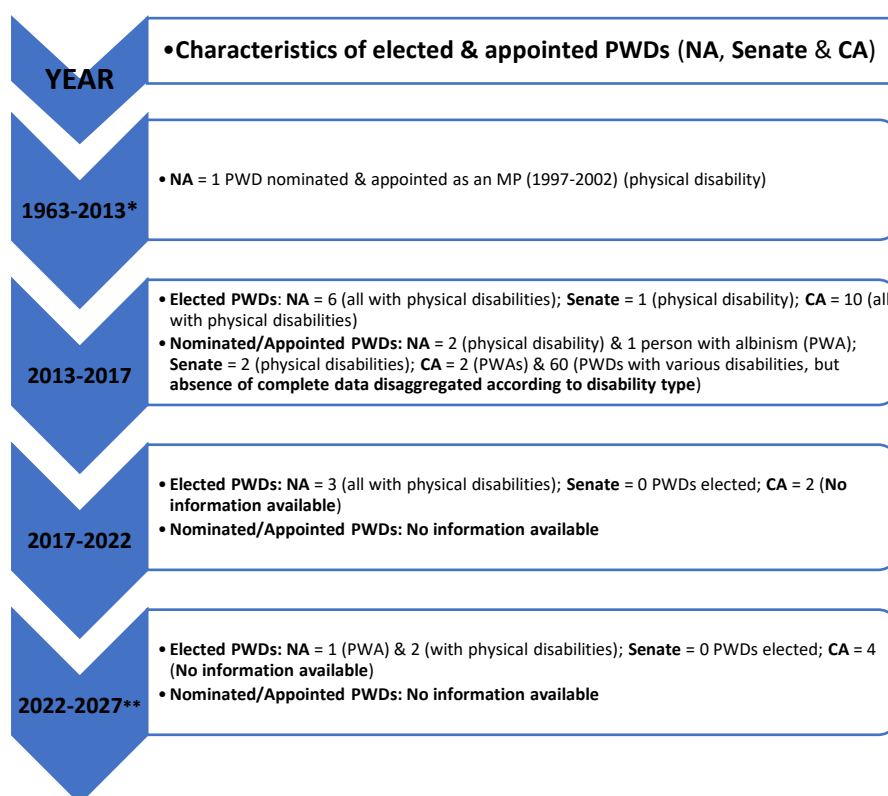
The data also sheds lights on the extreme bias towards the election and appointment of those with physical and other ‘visible’ disabilities, as opposed to, for example, Persons with Intellectual Disabilities (PWIDs)/ Persons with Mental Disabilities (PWMDs) and Persons with Psycho-social Disabilities (PWPSDs) (i.e., those with ‘less visible’ or ‘invisible’ disabilities), as legislative leaders in post-2010 Kenya.

Even though limited data exists on the characteristics of the PWDs elected and appointed in Kenya’s post-2010 legislatures, what is available (see **Figure 1** below) confirms that almost all of the elected/appointed PWDs, were those with ‘visible disabilities’ – for example, physical or visual impairments and PWAs – whilst those with ‘less-visible’/‘non-visible’ disabilities, such as the deaf-blind, PWIDs and PWPSDs, rarely made the cut.

Pre-2013, the only PWD nominated and appointed to the legislature in Kenya had a physical disability. Between 2013 and 2017, all **elected** PWDs had physical disabilities. In addition, 4 persons with physical impairments were appointed to parliament, while 3 PWAs were appointed across the NA and CA in Kenya. Further, from the available information, majority of elected PWDs across the NA, Senate and CA following both the 2017 and 2022 elections in Kenya, had physical disabilities. The first PWA ever elected to the NA in Kenya was also recorded in 2022.

In light of this – and as contested by much of the literature included in the review (including, for instance, MT, 2021; KUB, 2020; Hassan, 2022; KNCHR, 2016:49; HI, UDPK & ANDY, 2017; Onsomu, Mose & Munene, 2022; Mute, 2023; Thuo, 2016; Thuo & Ambani, 2022; IDA, 2014; NGEK, 2016, 2018) – it is evident that, following the introduction of (among others) the CoK in 2010, almost all of the PWDs elected and appointed to Kenya’s legislatures, have had physical or ‘visible’ disabilities. Others, such as PWIDs/PWMDs or those with ‘less visible’ disabilities, have comparatively been excluded, thus, rarely influencing decision-making within Kenya’s post-2010 legislative institutions.

Figure 1: Characteristics of PWDs elected and appointed in Kenya's NA, Senate & CAs (1963-2022).



Source: Author (with notes from IDA, 2014; KNCHR, 2016; Thuo, 2016; NGEC, 2016, 2018; HI, UDPK & ANDY, 2017; KUB, 2020; MT, 2021; Thuo & Ambani, 2022; Hassan, 2022; Mute, 2023)^{177,178}.

Related activities – registration with the National Council for Persons with Disabilities (NCPWD)

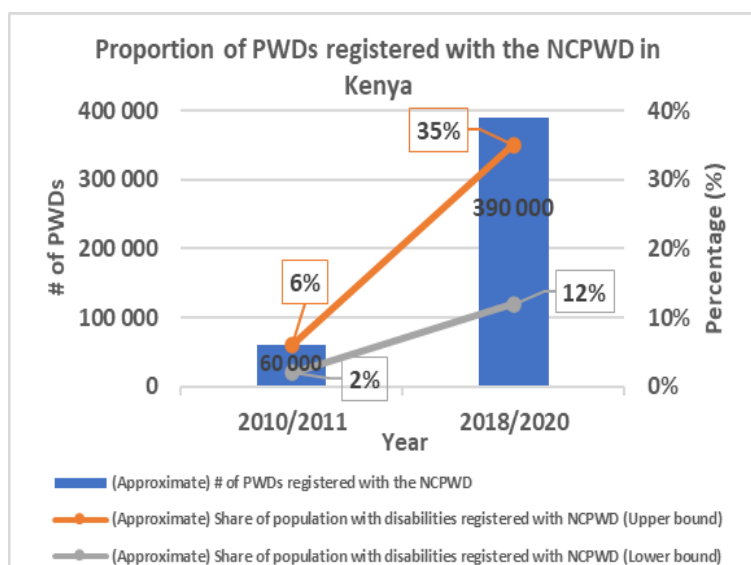
Finally, when assessing the extent of PWDs' participation as candidates and elected/appointed legislative leaders, it is also important to consider their registration with the National Council for Persons with Disabilities (NCPWD) in Kenya.

Registration with the NCPWD is a prerequisite to legally qualifying as 'a person with disability' when vying for office, or holding any political (including legislative) office, as well as being appointed to positions reserved for 'PWDs'¹⁷⁹ (CoK, 2010; Elections Act, 2011; KNCHR, 2016; HI, UDPK & ANDY, 2017; WFD, 2020).

¹⁷⁷ NB: 1963-2013 = all electoral cycles in Kenya between 1963 and 2013 (i.e., 1963-1969, 1969-1974, 1974-1979, 1979-1983, 1983-1988, 1988-1992, 1992-1997, 1997-2002, 2002-2007/8, 2008-2013).

¹⁷⁸ 2022-2027 is the current Kenyan parliament, thus, results are still somewhat preliminary.

¹⁷⁹ PWDs in Kenya can – unless barred for other reasons – seemingly participate in politics as 'general' citizens, but to gain 'disability status' and thereby qualify for constitutional guarantees and accommodations for PWDs, whether as a candidate or legislative leaders, they must be registered with the NCPWD ((CoK, 2010; Elections Act, 2011); Onyango, 2012; Thuo, 2016; NGEC, 2016, 2018; Owiti, 2019; Thuo & Ambani, 2022).

GRAPH 9: Proportion of PWDs registered with the NCPWD in Kenya.

Source: Author (with information from CRPwD, 2014; KNCHR, 2016; HI, UDPK & ANDY, 2017; Kabare, 2018; WFD, 2020)¹⁸⁰.

Graph 9 shows that in 2010/2011 merely 60,000 PWDs were registered with the NCPWD, accounting for 2%-6% of the total population of PWDs in Kenya depending on the assumed disability prevalence rate¹⁸¹. Estimates from 2018-2020 suggested that by 2020, this figure had risen to 390,000 PWDs registered with the NCPWD in Kenya, or 12%-35% of the population of PWDs in Kenya depending on the assumed prevalence of disability¹⁸².

Whereas there has certainly been more progress, assuming a population of approximately 1.1 million PWDs in Kenya – 29% increase in PWDs registered with the NCPWD, as opposed to a 10% increase – given the absence of sound and reliable estimates on the population of PWDs in Kenya, it is difficult to firmly claim that this figure is not closer to 3 million people. Still, as it stands, whether the proportion of registered PWDs is closer to 12% or 35%, a majority of PWDs in Kenya, are **not** registered with the NCPWD. Importantly, it is therefore likely that, most PWDs who are eligible to participate as candidates and legislative leaders – and benefit from the guarantees and reservations made for those with ‘disability status’ – are not registered with NCPWD¹⁸³.

These findings are in line with the observation of among others NGEC (2016, 2018), USP-K (2017, 2017a) and Mugambi (2022), according to which, across all counties in Kenya, low numbers of PWDs are registered with NCPWD, making it impossible for them to contest for election or vie for office as a ‘PWD’ (also see, CRPwD, 2014; KNCHR, 2014, 2016; WFD, 2020; Kabare, 2018). Consequently, a significant share of eligible PWDs have been unable to legally participate as candidates and legislative leaders in Kenya¹⁸⁴.

¹⁸⁰ NB: Upper/Lower bound = population with disabilities in Kenya as determined by disability prevalence rate used. Upper bound n(PWDs) = 3,300,000; Lower bound n(PWDs) = 1,100,000.

¹⁸¹ Estimates of total population of PWDs in Kenya range from an average of 3,300,000 on the higher end to an average of 1,100,000 on the lower end (see for example, NCAPD & KNBS, 2008; CRPwD, 2014; KNCHR, 2016; Kabare, 2018; WFD, 2020; Jattani & Ochieng, 2023).

¹⁸² Ibid.

¹⁸³ Research from, HI, UDPK and ANDY (2017:26-27/45/61/77-78/93/107), reported that in 2016-2017, an average of 71.6% of PWDs included in survey, across 6 counties in Kenya, had registered with the NCPWD. Whilst this would suggest that a majority of eligible PWDs are registered with the NCPWD, the survey was based on a small sample and conducted by DPOs who likely sought out PWDs with some interest in Kenyan politics – for example, this is implied by results from across the 6 counties that almost all surveyed PWDs had voted in the past, which is fiercely inconsistent with results from most of the reviewed literature.

¹⁸⁴ This is supported by the fact that even as recently as the 2022 elections, 4 PWDs appointed as MCAs (in seats reserved for SIGs) had their appointments suspended, pending confirmation of the status of their registration with the NCPWD, amidst charges of having failed to meet this requirement (for more, see Hassan, 2022; Jattani & Ochieng, 2022, 2023; Mute, 2023).

This, at least partially, explains the underrepresentation of PWDs in Kenya's legislatures post-2010.

Conclusion

In closing, out of all the indicators/measures considered in this paper, since 2010, most progress was observed in the relative inclusion of PWDs as candidates vying for election in Kenya. Despite falling short of expectations, overall, there has been commendable progress in the inclusion of PWDs as candidates vying for election in post-2010 Kenya (especially, relative to their inclusion as voters and legislative leaders). In addition, the nomination and appointment of PWDs has been a critical (affirmative action) tool in the fight to advance the inclusion of PWDs as legislative leaders in post-2010 Kenya.

Nevertheless, the available data reveals that, despite the promise of the progress initially witnessed in 2013, since then, there has been a persistent and significant gap in the relative inclusion of PWDs, as elected and appointed legislative leaders in Kenya. Overall, the GoK has failed to achieve (among others) constitutional benchmarks on the inclusion of PWDs as legislative leaders in Kenya. In fact, between 2013 and 2022, a downward trend is observed in the proportion of PWDs elected and appointed as legislative leaders in national and county institutions in Kenya. In other words, the progress towards the 'ideal'/5% representation of PWDs, in the Kenya's post-2010 legislatures, has been inadequate; rather, the overall position of PWDs has deteriorated since 2013.

What is more, the data also shows that even within this context of marginalization, an overwhelming majority of the PWDs elected to Kenya's post-2010 legislatures, have been men with physical disabilities, whilst others, such as WWDs and PWIDs/PWMDs (or those with 'less visible' disabilities), have comparatively been excluded, hence rarely influencing decision-making.

This corresponds with the findings from various studies included in the literature review (see for example, UDPK, 2021; Thuo & Ambani, 2022; Onsomu, Mose & Munene, 2022), which report the inadequate participation of PWDs, as elected and appointed leaders, in Kenya's post-2010 legislatures (also see, KNCHR, 2014; CRPwD, 2014; NGEK, 2016, 2018, 2022; iKNOWPOLITICS, 2019; WFD, 2020, 2020a; MT, 2021; Jattani & Ochieng, 2022, 2023; Mute, 2023; ORPP, 2023).

Accordingly, it is reasonable to conclude that, even after the enactment of the UNCRPD (2006), and promulgation of the CoK in 2010, at both county and national levels in Kenya, PWDs have been unable to, fully and effectively, participate as legislative leaders. In other words, as it pertains to legislative affairs in Kenya, relative to the general population, PWDs are significantly disadvantaged; they are more likely to lack representation, a voice and thus power. This paints a bleak picture in terms of the effective articulation, promotion, and protection of PWDs' interests in Kenya (or rather, non-thereof).

- **Q3 – Barriers limiting the political participation of PWDs.**

Kenya has put in place ‘seemingly progressive legal frameworks’ – including the UNCRPD, Constitution of Kenya and PDA – aimed at protecting the rights to and enhancing the extent of PWDs’ political participation in legislative processes in Kenya.

These statutes (including the UNCRPD, Constitution of Kenya and PDA) have made efforts to reduce the challenges and barriers faced by PWDs and enhance their levels of participation. Consequently, we do see some PWDs voting, vying for, and holding legislative office in Kenya. Nonetheless, evidence suggests that Kenya’s PWDs continue to endure discrimination and marginalization, with low overall rates of inclusion and representation across political processes in Kenya (Thujo, 2016).

This next section focuses on outlining **some** of the key barriers that limit PWDs’ political participation in Kenya¹⁸⁵.

BARRIERS:

‘Barriers,’ refer to any factors (whether physical, environmental, structural attitudinal or otherwise), which slow, limit, or obstruct the participation of PWDs in the political (and related) arenas¹⁸⁶ (DI & IF, 2021, 2021a). These obstacles occur not only during campaigns/elections, but also in the preparation stage before elections, as well as post-election once leaders assume office (Ocharo, 2019). Whilst some challenges affecting PWDs’ political engagement are group specific, most affect all PWDs in Kenya (Thujo, 2016).

PWDs experience numerous challenges in exercising their political rights in Kenya. Based on the literature review, this includes (among others), legal and regulatory challenges, compliance failures, limited inclusion, inaccessibility, negative attitudes and discriminatory practices, absence of reliable and verifiable data on PWDs, weak political will and state support, limited awareness, and loss of trust in the government.

However, 3 categories of challenges stand out, including, *legal, regulatory and policy gaps/shortfalls, limited participation of PWDs in key political processes, and socio-economic disadvantages.*

Legal, regulatory and policy gaps/shortfalls

The existence of ineffective and inadequately supportive laws, regulations, and policies on the political inclusion of PWDs in Kenya, continues to be among the most significant obstacles to the effective and enhanced participation of PWDs in political affairs in Kenya.

To begin with, Kenya’s legal and policy frameworks on the political participation of PWDs have been found to ‘contain discriminatory and exclusionary provisions’ that hinder PWDs’ active engagement in political processes in Kenya (II, 2015; USP-K, 2017; DI & IF, 2021, 2021a; WFD, 2020; KNCHR, 2014, 2016, 2022).

¹⁸⁵ Across the literature, a significant number of barriers to the effective inclusion of PWDs are identified. It is beyond the scope of this study to identify and discuss all the barriers; focus is thus given to what are, based on triangulation across the included literature, found to be the ‘key’ obstacles to PWDs’ effective exercise of their political rights in Kenya.

¹⁸⁶ Put differently, ‘barriers’ can be defined as factors (e.g., physical/environmental or information and communication), which unjustly force PWDs into lives characterized by ‘unreasonable dependency, isolation and exclusion’ from (among others) public and political life (Mugambi, 2022)).

To their credit (and as noted in the preceding sections), the CoK (2010) and PDA (2003) proscribe all forms of discrimination based on disability, insisting rather that ‘PWDs ought to enjoy all rights and freedoms on an equal basis with others.’ They further require that the electoral system ‘accounts for the needs of, among others, all PWDs and complies with (amongst other tenets), the sufficient inclusion and representation of PWDs across political processes in Kenya.’ (UNDESA-DSPD, 2016; CoK, 2010; PDA, 2003).

However, the Constitution in various ways, limits the rights of PWDs to participate in political life in Kenya. For example, Article 83 (1b) disqualifies anyone of “unsound mind” from registering to vote/voting (and thus by extension, standing for election). Similarly, Article 99(2e) provides for the disqualification of persons deemed to be of ‘*unsound mind*’ from standing for election for, or being elected as members of parliament (CoK, 2010).

Similar provisions are found in the Elections Act (2011) and the Local Government Act (2010), which assert that a voter cannot be of “unsound mind” (Thuo, 2016).

Such, and other similar references that equate mental capacity to legal capacity¹⁸⁷ are not defined under Kenyan law. Given their inherent ambiguity, their use – hence, provisions that condition political rights on legal capacity – has resulted in ‘formal and informal mechanisms to determine the legal capacity of PWDs,’ especially those with intellectual and mental disabilities. A tendency towards only relying on medical reports assessing the ‘capacity’ of PWDs – with PWDs not being consulted on these and other matters that concern them¹⁸⁸ – has contributed to the continued exclusion of those ‘deemed to be of unsound mind’ from voting and candidacy processes in Kenya¹⁸⁹ (Cottrel-Ghai et al., 2013; Onyango, 2012; KNCHR, 2016; Thuo, 2016b; II, 2015; USP-K, 2017; UNDESA-DSPD, 2016; Owiti, 2019; WFD, 2020).

These contradictory provisions can in certain instances be used to remove persons from office. For example, per Article 144 (CoK, 2010), the President can be removed from office were they to ‘become mentally or physically incapacitated’, while Section 11(1d) (Commission for the Implementation of the Constitution Act, 2010) also indicates that the commission’s members, including the chair, may be removed from their position if found to be physically or mentally infirmed¹⁹⁰ (II, 2015; Thuo, 2016).

It is difficult to ascertain the extent to which these provisions are implemented and practiced on an everyday basis¹⁹¹. Nevertheless, the very existence of these provisions directly violates Articles 29 and 12 of the CRPD (2006), which protect the rights all PWDs to participate in political affairs, and further, bar the adoption of “capacity-based limitations” for any grouping of PWDs. Rather, these Articles demand that all PWDs “enjoy legal capacity on an equal basis with others” in (among others) public and political activities.

Aside from this, the ‘negative message that is sent by the inclusion of these discriminatory provisions within Kenya’s legal framework, may have wide-ranging social and political consequences¹⁹² for the

¹⁸⁷ For e.g., “unsound mind, mental infirmity/incapacity”.

¹⁸⁸ This is in direct conflict with Article 12 of the UNCRPD (2006) which calls on states to guarantee PWDs’ right to supported rather than substituted decision-making, and advocates for consultation and soliciting of direct input from PWDs (and DPOs) on all disability related matters (OSCE-ODIHR, 2019).

¹⁸⁹ In addition, these provisions excluding those of “unsound mind” effectively rule out those with intellectual disabilities from being considered for nomination to fill legislative seats reserved for PWDs, or for any appointment or nomination made in accordance with the 5% quota provided for under Article 54(2) (CoK, 2010) (II, 2015; WFD, 2020; KNCHR, 2016).

¹⁹⁰ Also, according to section 21 (1a) of the National Land Commission Act (2012), the Secretary risks removal if they fail to adequately fulfil their role because of ‘physical or other impairments.’

¹⁹¹ Also, some reports have indicated that some PWDs have been to register to vote and vote in past Kenyan elections, though the examples are few and far between (see for e.g., Thuo, 2016; II, 2015; NGEC, 2016; KUB, 2020).

¹⁹² Including for Kenya, e.g., loss of the status and recognition as one of the champions of disability rights in Africa, and the associated benefits – see pages 66-67 for more.

inclusion of PWDs in Kenya – by for instance justifying discriminatory and exclusionary attitudes and practices (KNCHR, 2014, 2016; Thuo, 2016; II, 2015; OSCE-ODIHR, 2019; WFD, 2020; KUB, 2020; Thuo & Ambani, 2022).

Secondly, significant gaps and weaknesses exist in Kenya’s legal and policy framework on the political inclusion of PWDs, thus, limiting their participation across political processes in Kenya.

For instance, the Political Parties Act (PPA) (2011), ‘despite being the principal document governing the actions of political parties especially in electoral matters in Kenya,’ lacks provisions that ‘authoritatively’ compel political parties to include and cater to PWDs (Cottrel-Ghai et al., 2013; NGEC, 2018; Owiti, 2019). Even though through the PPA (2011:Section 7(2c)), and CoK (2010:Article 91(1e)) parties are obliged to guarantee the participation and representation of PWDs (and other SIGs), the Act fails to detail, for example, ‘the specific number of PWDs that ought to be represented across the general membership as well in leadership structures’, or more generally, how inclusion and diversity should be attained and within what period.

There are also no clearly enforceable penalties for parties that fail to comply with Constitutional and other provisions on the inclusion of PWDs (WFD, 2020; Macharia, 2020; TOC, 2023). Whilst Section 46 (PPA, 2011) provides a penalty for ‘conviction of non-compliance with the Act,’ including a fine of at least Ksh1million or/and at least 2years imprisonment, the monetary ‘fine’ may serve as an easy way out (assuming there is a ‘conviction’ to begin with).

It is this that perhaps explains the reports of continued disregard of the law by various political parties in Kenya (Thuo & Ambani, 2022). For example, following the 2022 Kenyan elections, it was reported that various parties, contrary to the requirements of the PPA (and Elections Act), did not include PWDs in their party lists. In addition, even where complaints were brought before relevant courts, and directives issued in favour of the aggrieved PWDs, these directives were often ignored¹⁹³, or ‘extra-legally’ circumvented^{194,195} (Mute, 2023; Jattani & Ochieng, 2022, 2023).

The fact that following the publication of the final nomination lists in July 2022, DPOs were critical of the continuation in this trend where (among other things) ‘political parties can ignore the law and nominate PWDs that are not members of the NCPWD,’ suggests systemic and enduring gaps and weakness in Kenya’s legal and regulatory frameworks. By, for example, failing to deter discriminatory practices within political parties, these shortcomings have served to hinder, as opposed to enhance, the political participation of PWDs in Kenya (IRI & NDI, 2022; Onsomu, Mose & Munene, 2022).

The situation is worsened by the absence of provisions that empower the IEBC (and other democratic institutions) with the ability to hold parties (and other key structures) liable for, for example, the insufficient inclusion and representation of PWDs. Much of the reviewed literature (see, for instance, NGEC, 2016, 2018; HI, UDPK & ANDY, 2017; USDS-BDHRL, 2017; KUB, 2020; IRI & NDI, 2022; Hassan, 2022; NGEC, 2022; ORPP, 2023) confirms that the IEBC lacks enough power to order investigations and to prosecute and enforce judgements on violation of PWDs rights. Therefore, and to the detriment of PWDs’ political inclusion, the decisions of the Commission and its Tribunals are often ignored by key

¹⁹³ As seen with the case where a candidate with a disability sought redress through the IEBC’s Election Disputes Resolution Tribunal – having applied to be nominated as an MCA in Kitui county by his party Wiper Democratic Movement of Kenya and being ‘egregiously’ overlooked – and despite a ruling in his favour, Wiper decided to not implement the tribunals decision (Mute, 2023; Onsomu, Mose & Munene, 2022).

¹⁹⁴ For example, some parties are reported to have implemented the courts’ decisions, and later, managed to simply ‘amend’ the list of candidates submitted on party lists (as seen in various Kenya Gazette notices) (for more, see Jattani & Ochieng, 2022, 2023).

¹⁹⁵ Numerous parties were also reported to have – again, contrary to the CoK and EA – nominated individuals not registered with National Council for Persons with Disabilities (NCPWD) into various positions in the legislature during the 2022 elections in Kenya – this (at least partly) explains the reporting of ‘provisional results’ and the variations/discrepancies identified in the earlier discussion on the extent of PWDs participation as legislative leaders in Kenya (IRI & NDI, 2022; Thuo & Ambani, 2022; TOC, 2023; Mute, 2023).

institutions, including political parties in Kenya (MT, 2021; Jattani & Ochieng, 2022, 2023; Onsomu, Mose & Munene, 2022; Mute, 2023).

More generally, there is also the concern that the protections, support, and accommodations provided to enable and advance PWDs' political participation in Kenya, are relatively unclear' (CRPwD, 2014, 2015; Thuo, 2016; KNCHR, 2014, 2016, 2022; IFES, 2017; Owiti, 2019; Onsomu, Mose & Munene, 2022; NGEC, 2022a; NCPWD, 2023; Mute, 2023).

For instance, there is an absence of policies and guidelines on how the 5% the representation of PWDs in elective and appointive leadership positions, is to be achieved. Also, Kenya's legal and policy frameworks do not provide for/compel the provision of various reasonable accommodations to lessen the accessibility challenges that often constrain PWDs' participation in political processes in Kenya. For instance, the laws/policies do not allow, nor provide for remote voting to accommodate PWDs in institutions, and those struggling with mobility issues and inaccessible environments (Grut, Olenja & Ingstad, 2011; NGEC, 2016; Alberta, 2017; SGPwD & IDA, 2017; USP-K, 2017; HI, UDPK & ANDY, 2017; UDPK, 2021; Mugambi, 2022; Jattani & Ochieng, 2022, 2023).

Further, there is a shortage of mechanisms to tackle cross-sectional concerns and multiple forms of discrimination, against certain segments of PWDs, such as, women with disabilities (WWDs). Surprisingly, even where laws and policies exist to promote gender equality, in most instance, they do not adequately account for issues unique to WWDs in Kenya – such as 'double invisibility and intense socio-cultural stereotypes.' Relatedly, limited support and accommodations (if any) exist, to promote and advance the participation of, for example, those with intellectual, mental, or psychosocial disabilities in Kenya. Again, even where provisions exist to cater to some PWDs, they often do not account for the diversity of needs across the various groups of PWDs in Kenya – as seen with, for example, the only regulation on assisted voting under the EA (2011:Section 72; PDA, 2003:Section 29) which merely accounts for PWDs who need the help of 'personal assistants' – thus, perpetuating the 'double exclusion' of those with 'less visible' forms of disability (CRPwD, 2014; Thuo, 2016; KNCHR, 2016; IFES, 2017; USP-K, 2017; Gitonga, 2017; iKNOWPOLITICS, 2019; KUB, 2020; WFD, 2020, 2020a; NGEC, 2016, 2018, 2022; Thuo & Ambani, 2022).

Additionally, whilst legal capacity is a precondition for election/appointment of PWDs into the legislature, there is not a clearly identifiable and legally recognized mechanism for determining the legal capacity of PWDs as required by the UNCRPD (2006:Article 12). The resulting formal and informal approaches, used in determining capacities such as 'soundness of mind and mental capacity', over-utilize health models and doctors' reports at the expense of all other opinions. Often, varying doctors' reports and diverging opinions on definitions, e.g., the explicit definition of 'PWDs' – as seen in the Kenya Health Policy (2014-2030) – add to the confusion¹⁹⁶, and in all, limit the inclusion of PWDs in Kenya's political affairs (Mute, 2010; KNCHR & OSIEA, 2014; II, 2015; Thuo, 2016; Thuo, 2016b; Owiti, 2019; KNCHR, 2022; ORPP, 2023; TOC, 2023).

These challenges in the legal, regulatory and policy frameworks in Kenya exacerbate the exclusionary effects of disability, and hence, constrains the participation and representation of PWDs across political processes in Kenya¹⁹⁷ (for more, see NCAPD & KNBS, 2008, 2008a; NGEC, 2016, 2018; Ocharo, 2019; KUB, 2020; MT, 2021; KNCHR, 2014, 2016, 2022; Mute, 2023; NCPWD, 2023).

¹⁹⁶ Similarly, and contrary to the guarantees under Article 12 of the UNCRPD (2006), there is no clear legal mechanism to enable supported decision-making within Kenya's legal framework (KNCHR, 2016).

¹⁹⁷ A glaring example of the exclusionary consequences of gaps in the provisions on accommodations and weak (perhaps even discriminatory laws) was the exclusion of the 1st presidential aspirant with a disability from contesting in the 2022 elections in Kenya. Despite appeals

Evidence suggests that these challenges can be traced to the legislature's failure to – in line with for example, Articles 27(2,4,6), 54(2), 82(2) (CoK, 2010) – sufficiently amend and develop relevant laws, regulations and policies, so as to enable PWDs to effectively realize their political rights (Cottrel-Ghai et al., 2013; Il, 2015; Thuo, 2016b; NGEN, 2018; Owiti, 2019; WFD, 2020; Macharia, 2020; TOC, 2023).

It is well within reason – as seen in, for instance, Onyango (2012), NGEN (2016, 2018, 2022), Thuo (2016), Wanambisi (2017), OSCE-ODIHR (2019), Owiti (2019), Rohwerder (2020) and Jattani & Ochieng (2022, 2023) – to contest that PWDs' inadequate participation in political affairs is, at least primarily, a function of the failed implementation of Kenya's 'progressive' legal and regulatory frameworks; any 'gaps and weakness,' and related concerns are secondary.

This is not the approach taken in this study given that, firstly, this assertion has been extensively explored by various authors (see *ibid*), and importantly, implementation and enforcement related challenges are often intimately linked to legal, regulatory and policy gaps/shortfalls. For Kenya, for example, this includes weak or absent provisions outlining specific implementation processes, mechanisms, and timelines, or that sufficiently empower the IEBC (and other key institutions) with the ability and resources to compel and enforce the provisions in Kenya's frameworks. These gaps can hinder the effective implementation of even the most progressive laws and regulations¹⁹⁸ (for more, see for example, KNCHR, 2014; SGPwD & IDA, 2017; USDS-BDHRL, 2017; Ocharo, 2019; Onsomu, Mose & Munene, 2022; Thuo & Ambani, 2022; ORPP, 2023; Mute, 2023; NCPWD, 2023). In other words, as it pertains to the inadequate political participation of PWDs in Kenya, whilst implementation related failures are certainly a concern¹⁹⁹, gaps in the relevant frameworks, coupled with provisions that are discriminatory and, at times, unfit for purpose, are arguably more pressing concerns (also see footnote 23).

Limited participation of PWDs in political processes

'Among the most prevailing exclusion mechanisms is the limited participation of PWDs in key political processes in Kenya.' As earlier indicated (see page 69-86), PWDs continue to endure broad exclusion from public and political life in Kenya (HI, UDPK & ANDY, 2017; IFES, 2017; KNCHR, 2016; ELOG, 2022; Onsomu, Mose & Munene, 2022; Mute, 2023).

Across all the indicators/measures considered in this paper, since 2010, most progress was observed in the relative inclusion of PWDs as candidates vying for election in Kenya. Despite falling short of expectations, overall, there has been commendable progress in the inclusion of PWDs as candidates vying for election in post-2010 Kenya²⁰⁰ (especially, relative to their inclusion as voters and legislative leaders) (NCAPD & KNBS, 2008, 2008a; KNCHR, 2014, 2016; HI, UDPK & ANDY, 2017; WFD, 2020, 2020a, 2022a; Macharia, 2020; Mugambi, 2022, 2022a).

It is also important to note that the nomination and appointment of PWDs has been a critical (affirmative action) tool in the fight to advance the inclusion of PWDs as legislative leaders in post-2010 Kenya.

based on accommodating PWDs, and directives from the High Court, the IEBC (having appealed the court's orders), rejected Reuben Kigame's presidential nomination papers due to 'late submission of relevant documents' (Mute, 2023; Jattani & Ochieng, 2023).

¹⁹⁸ Especially, when amplified by related legal shortfalls, such as, insufficient provisions/mechanisms to hold people and institutions accountable where necessary, thus exacerbating the exclusion of PWDs (MT, 2021).

¹⁹⁹ For instance, lags in the full implementation of the UNCRPD has significantly hampered and slowed down the efforts to advance the inclusion of PWDs in politics in Kenya (KNCHR, 2014).

²⁰⁰ Still, the inclusion of PWDs, especially among candidates nominated by political parties, is comparatively low.

Nevertheless, the available data reveals that, despite the promulgation of the CoK (2010) and other relevant legislations, and the associated semblance of progress, overall, since 2010, the representation of PWDs in Kenya's electoral processes has remained low. Additionally, it is not only their participation as voters that is inadequate, but also, their inclusion in related electoral activities, such as registering for an ID and as a voter in Kenya. In addition, certain segments of PWDs – especially WWDs and those with 'invisible disabilities' – are more severely underrepresented across election related activities in post-2010 Kenya (for an in-depth discussion, see page 71). These findings – and those from most of the literature included in the earlier review²⁰¹ – concur that, despite the enactment of supposedly progressive legal frameworks in the past decade, the participation of PWDs in Kenya's electoral processes has, thus far, been well below expectations²⁰² (also see Table 1 Appendix A).

In addition, despite the promise of the progress initially witnessed in 2013, since then, there has been a persistent and significant gap in the relative inclusion of PWDs, as elected and appointed legislative leaders in Kenya. Overall, the GoK has failed to achieve (among others) constitutional benchmarks on the inclusion of PWDs as legislative leaders in Kenya. In fact, between 2013 and 2022, a downward trend is observed in the proportion of PWDs elected and appointed as legislative leaders in national and county institutions in Kenya. Of particular concern is the escalating absence of PWDs as MCAs in CAs across Kenya. In other words, the progress towards the 'ideal'/5% representation of PWDs, in the Kenya's post-2010 legislatures, has been inadequate; rather, since 2013, PWDs' overall position has deteriorated²⁰³ (also, see pages 69-86) (KNCHR, 2016; OSCE-ODIHR, 2019; WFD, 2020; KUB, 2020; CIPESA, 2021; MT, 2021; Jattani & Ochieng, 2022, 2023).

Furthermore, even within this context of marginalization, WWDs and those with 'less visible disabilities' are particularly underrepresented in political processes, especially among voters, candidates, and elected leaders. Overall, the representation of WWDs and others such as PWIDs, in public and political decision-making, is minimal²⁰⁴ (for more on this see pages 69-86). Similarly, the data also shows that young PWDs (aged between 18-35) tend to not participate in politics in Kenya. Young PWDs have historically had little impact on the overall development of policy and legislation and are rarely included/provided for in discussions and programs for the youth in Kenya (for a substantive analysis of this issue, see for example, Thuo, 2016; NGEC, 2016; OSCE-ODIHR, 2019; KUB, 2020).

What is more, the low representation of PWDs also features in key democratic institutions, such as in political parties and election management bodies in Kenya. Evidence suggests the inadequate representation of PWDs in political parties in Kenya. This is confirmed by findings from the ORPP (2023) that show extremely low numbers of PWDs registered as members of parties, as well as from the WFD (2020, 2020a), which indicate that, whilst most parties have at least 1 PWD in their NEC, they rarely include PWDs in other party organs. Overall, PWDs are often excluded from most internal party processes. The insufficient inclusion of PWDs in political parties presents a significant challenge in the efforts to reduce PWDs' political marginalization in Kenya, especially since it tends to translate and

²⁰¹ For example – Onyango, 2012; KNCHR, 2014, 2016; Thuo, 2016; NGEC, 2016, 2018; USDS-BDHRL, 2017; USP-K, 2017, 2017a; HI, UDPK & ANDY, 2017; Gitonga, 2017; Ocharo, 2019; Owiti, 2019; iKNOWPOLITICS, 2019; WFD, 2020, 2022, 2022a; UDPK, 2021; MT, 2021; Thuo & Ambani, 2022; Onsomu, Mose & Munene, 2022; Jattani & Ochieng, 2022, 2023; EU-EOM, 2022; ELOG, 2022; IRI & NDI, 2022; KPMG, 2022; Mute, 2023; IEBC, 2023, 2023a.

²⁰² PWDs are also not sufficiently included in other electoral activities, such as, election observation/monitoring (Mute, 2023).

²⁰³ Beyond this, the continued appeals to the Kenyan government by PWDs, DPOs and international agencies, for enhanced inclusion in legislative decision-making processes (see for instance, Wanambisi, 2017; Parliament of Kenya, 2019; NGEC, 2018), indicate that Kenya's PWDs are not yet equal participants in legislative activities in Kenya.

²⁰⁴ Even within this context of marginalization, an overwhelming majority of the PWDs elected to Kenya's post-2010 legislatures, have been men with physical disabilities, whilst others, such as WWDs and PWIDs (or those with 'less visible' disabilities), have comparatively been excluded, hence rarely influencing decision-making in Kenya (IFES, 2017; iKNOWPOLITICS, 2019; WFD, 2020; MT, 2021; Mute, 2023).

contribute to the limited participation of PWDs among elected and appointed political leaders²⁰⁵ (for more, see OSCE-ODIHR, 2019; MT, 2021; Onsomu, Mose & Munene, 2022; WFD, 2020, 2022, 2022a; TOC, 2023).

In all, these findings corresponded with those from most studies included in the literature review (see for example, UDPK, 2021; Thuo & Ambani, 2022; Onsomu, Mose & Munene, 2022), which report the inadequate participation of PWDs in politics, particularly as voters, candidates and elected/appointed leaders in Kenya's post-2010 governments (also see, KNCHR, 2014; CRPwD, 2014; NGEC, 2016, 2018, 2022; iKNOWPOLITICS, 2019; WFD, 2020, 2020a; MT, 2021; Jattani & Ochieng, 2022, 2023; Mute, 2023; ORPP, 2023). In other words, as it pertains to political affairs in Kenya, relative to those without disabilities, PWDs are significantly disadvantaged; they are more likely to lack representation, a voice and thus power. This paints a bleak picture in terms of the inclusion of PWDs' interests in decision-making processes in Kenya, and the effective articulation, promotion, and protection thereof (or rather, non-thereof).

These worries are heightened by concerns over the limited consultation with PWDs and DPOs during policy and decision-making processes in Kenya. The reviewed literature confirms that, overall, PWDs and DPOs are not sufficiently consulted during the design and implementation of relevant laws, policies, and programs, leading to lacklustre results. For instance, following the 2022 Kenya elections activists and DPOs criticized the IEBC, since, as a result of limited and late consultations with DPOs on the voter education needs of PWDs, the quality of voter education, in the lead up to the 2022 elections, was found to be narrow and generally lacking (for more, see for example, KNCHR, 2014, 2016, 2022; IDA, 2014; KUB, 2020; IRI & NDI, 2022; Onsomu, Mose & Munene, 2022; TOC, 2023; Mute, 2023).

For the sake of clarity, PWDs are generally under-represented across political activities, hence, generally excluded from overall policy/decision-making processes and governance in Kenya. Consequently, decisions on their interests and needs – thus, that condition their lives – are often made with limited or no input from Kenya's community of PWDs. This impedes the development and implementation of disability friendly and responsive legislation, policies, and mechanisms to ameliorate the overall inclusion and welfare of PWDs in Kenya (IDA, 2014; NGEC, 2018; OSCE-ODIHR, 2019; MT, 2021; ELOG, 2022; Onsomu, Mose & Munene, 2022; TOC, 2023; Mute, 2023).

For example, such difficulties may, at least partly, explain the existence of the gaps and weaknesses in the legal and regulatory framework on the political inclusion of PWDs in Kenya, as well as the implementation failures. They may also partially explain the continued delays in amending the PDA (and related statutes that were passed before the adoption of the UNCRPD and CoK and thereafter) to align them with the UNCRPD and CoK; all of which has served to constrain PWDs' inclusion in Kenya's political affairs.

This is supported by findings from, for example, Thuo (2016), CIPESA (2021) and MT (2021), which elucidate that the underrepresentation of PWDs in decision-making processes has led to insufficient highlighting and awareness raising on accessibility concerns, as well as limited the representation of PWDs across all relevant government committees, to enable the promotion PWDs' inclusion in projects and funding considerations. Consequently, insufficient progress has been made in mitigating physical, information, and communication barriers for instance.

²⁰⁵ Indeed, the inadequate representation of PWDs is rife across all political and public offices and institutions in Kenya, especially in positions of leadership. For instance, 83% of those surveyed by KUB (2020), reported that PWDs are not well represented in elective and appointive offices across all governmental departments/agencies in Kenya. For more on the relative exclusion of PWDs from governance and political life in Kenya, see, for example CRPwD (2014), NGEC (2016, 2018), IFES (2017), iKNOWPOLITICS (2019); UDPK, 2021; KUB (2020), CIPESA (2021), ELOG (2022), Jattani and Ochieng (2022), Onsomu, Mose and Munene (2022), Mute (2023) and Kanyinga, 2014).

This is further evidenced by the fact that the limited representation of PWDs in certain counties (such as in the Nairobi CA), has completely stalled the development of local legislation and policies on disability rights, as seen in other counties (for more on this, see KUB, 2020; MT, 2021; UDPK, 2021; Onsomu, Mose & Munene, 2022). In addition, it has been reported (see, for example, Mute, 2023; KUB, 2020; IRI & NDI, 2022; Onsomu, Mose & Munene, 2022; TOC, 2023), that the IEBC's responsiveness to disability and other inclusion concerns continues to be undermined by the lack of inclusion of PWDs/DPOs and disability rights experts within relevant sections of the IEBC. It is thus reasonable to conclude that the low participation of PWDs, has significantly obscured legal and policy development and implementation, including on PWDs' political participation, hence, further contributing to their inadequate representation in political life in Kenya²⁰⁶.

Beyond this, the relative decrease in the representation of PWDs among legislative leaders may have led to fewer and fewer leaders with disabilities who, as role models, not only challenged stereotypes regarding PWDs' capacities – hence, breaking down attitudinal barriers to political entry – but also, encouraged/motivated PWDs' political engagement in Kenya. Accordingly, with less people to look up to, many PWDs may have been discouraged from entering Kenya's political arena (see earlier discussion on page 72-75) (Grut, Olenja & Ingstad, 2011; Onyango, 2012; Cottrel-Ghai et al., 2013; Mueni, 2017; Wanambisi, 2017; Thuo, 2016; Ocharo, 2019; Owiti, 2019; Parliament of Kenya, 2021).

Socio-economic concerns

Another factor that significantly negates PWDs' effective exercise of their right to political participation in Kenya is socio-economic disadvantages. Socio-economic factors refer to any obstacles to PWDs' effective political participation, 'that have their roots in PWDs' socio-economic positioning' in Kenya (Thuo, 2016).

As earlier indicated (see pages 8-10), because of lower levels of education/educational attainment and their subsequent relegation to unemployment or low paying jobs, PWDs are plagued by disproportionately higher levels of illiteracy, poverty and difficulties in accessing the few available resources and services²⁰⁷ in Kenya. Resultantly, many PWDs in Kenya are simply not ready to prioritize political participation or are forced – by the severity of socio-economic disadvantaging – to deprioritize political engagement in favour of more urgent concerns.

At the same time, due to these disadvantages, some PWDs are not sufficiently equipped to effectively engage in political affairs in Kenya. For example, the exclusion from cultural, socio-economic, and political affairs (i.e., engaging in and with community) – and that results from the combination of poverty, limited access to education, unemployment, and stigmatization – limits PWDs' opportunities to develop the self-confidence, experience, and recognition/qualifications that political leadership (increasingly) demands. PWDs are, as a result, at times unwilling (perhaps even unable) to participate in political processes in Kenya.

²⁰⁶ Furthermore, by limiting the number of leaders with disabilities championing the plight of PWDs, the inadequate representation of PWDs in key political institutions may have eroded the focus on, and positioning of disability related concerns in the Kenyan government's agenda. Consequently, this may have slowed down and delayed efforts to secure and advance the political participation of PWDs in Kenya (also see pages 62-67).

²⁰⁷ For example, land, housing, education, health services (including mental healthcare and rehabilitation support), infrastructure and the built environment, social protection, skills building and job training and other socio-economic amenities (Kwenda, 2010; Thuo, 2016; Opokua, Mprah & Saka, 2016; KUB, 2020; Loch, 2021).

Similarly, low formal education coupled with the social marginalization of PWDs also undermines PWDs' possibilities of learning the intricacies of politics²⁰⁸ and acquiring the political acumen to effectively navigate Kenya's complex political landscape. Consequently, PWDs, amidst difficulties in effectively navigating and engaging in political activities in Kenya, often opt out of engagement²⁰⁹, contributing to PWDs' low political engagement in Kenya.

In addition to this, because of inequality, unemployment, and poverty, most PWDs depend on family member, relatives/guardians, or third parties for financial, material, social and other forms of support. However, amidst prevailing social attitudes – for instance, that PWDs are incapable of active political engagement, or, already provided for and thus, do not need to worry about politics – PWDs' 'support structures' often discourage their political participation, or simply find ways to deny them their rights²¹⁰. As such, this also adds to PWDs' relative exclusion from electoral and high level political activities in Kenya (for more on this and the preceding discussion see, for example, NCAPD & KNBS, 2008a; ILO, 2009; Ngulu, 2012; Tomlin, 2013; CRPwD, 2014, 2015; IDA, 2014; KNCHR & OSIEA, 2014; KNCHR, 2014, 2016; Thuo, 2016; SGPwD & IDA, 2017; IFES, 2017; NGEC, 2016, 2018; Kabare, 2018; OSCE-ODIHR, 2019; Owiti, 2019; WFD, 2020; UDPK, 2021; DI & IF, 2021, 2021a; Onsomu, Mose & Munene, 2022; EU-EOM, 2022; Mute, 2023; Jattani & Ochieng, 2022, 2023).

Moreover, these socio-economic disadvantages, in addition to stigma, discrimination and inadequate support, 'locks PWDs into a vicious cycle of deprivation and poverty' which, by limiting their access to resources/financing to fund their active engagement, hinders PWDs' participation in political processes in Kenya.

For instance, given their economic status, most PWDs in Kenya are unlikely to possess sufficient financial resources to effectively campaign/contest for election, in Kenya. These concerns are bolstered by the fact that the cost of entering and participating in politics in Kenya, is extremely high. For example, campaign budgets²¹¹ (mostly for transport and publicity) render the active participation in candidacy processes beyond the reach of most eligible PWDs in Kenya – especially when they are already disproportionately affected by poverty and unemployment (Opokua, Mprah & Saka, 2016; Thuo, 2016; NGEC, 2018, 2022a; WFD, 2020; MT, 2021; Hassan, 2022; Kanyinga, 2014).

PWDs also struggle with mobilizing resources, finances, and support for election bids. Successful mobilization of support and resources crucially depends on the strength of people's networks and connections, which does not naturally favour PWDs. Having been hindered – by, for instance, stigma and hostile environments – from engaging in socio-economic, cultural, and political activities, PWDs are often deprived of the opportunity to interact with their peers and develop large, strong personal networks which they can draw upon where necessary. In other words, the exclusionary effects of socio-economic disadvantages on PWDs in Kenya, are amplified by the high cost of politics and the impact

²⁰⁸ For instance, gaps in general and civic education, and exclusion from (even informal) political discussions have been associated with PWDs' limited knowledge on the basics of politics, such as the dynamics and operation of power and the functioning of democratic structures, as well as little understanding of PWDs' rights and entitlements (for more, see Opini, 2012; Opokua, Mprah & Saka, 2016; OSCE-ODIHR, 2019; DI & IF, 2021, 2021a; NGEC, 2022a; Mute, 2023).

²⁰⁹ It has also been reported that poverty (especially when coupled with concerns over corruption and mismanagement of the country) has tended to result in PWDs' loss/lack of trust in the government, which in turn, discourages their active engagement in political and wider societal activities (i.e., loss of trust manifests in political apathy) (for more see, for e.g., Thuo, 2016, 2016b; Mueni, 2017; Thuo & Ambani, 2022).

²¹⁰ For example, family members have been reported as refusing to assist PWDs with acquiring IDs and registering to vote in Kenya. This is a significant barrier to PWDs' political participation especially since, for some PWDs, their access, to even such basics as information on ID/voter registration, and registration centres, is completely dependent on guidance and support from relatives or third parties.

²¹¹ For example, a 2021 study on 'the cost of politics in Kenya' observed that the cost of competing for an electoral seat as a senator was approximately Ksh39 million, whilst for those running as Women Representatives this figure is about Ksh27.1 million. Competing for a seat in the National Assembly is likely to cost about Ksh24.6 million, while competing for a seat in CAs requires an estimated Ksh2.9 million (WFD, 2020, 2022; DI & IF, 2021/2021a; Hassan, 2022; Jattani & Ochieng, 2022, 2023; Kanyinga, 2014).

of weak personal networks (Grut, Olenja & Ingstad, 2011; Ngulu, 2012; IDA, 2014; Opokua, Mprah & Saka, 2016; Kabare, 2018; Owiti, 2019; WFD, 2020; UDPK, 2021; ELOG, 2022; ORPP, 2023).

Additionally, with unemployment and lower income levels (coupled with deficient state and institutional support) the costs involved in political party membership and vying for office, especially 'nomination fees' are often a challenge for most PWDs in Kenya, thus, constraining their participation in politics. These disadvantages also bar PWDs from easily accessing relevant technological and assistive devices to support their political participation, given that the costs of reasonable accommodations are, at times, unfavourably high. This is especially the case in instances where to effectively engage in political processes in Kenya PWDs' require support – such as a sign language interpretation or conversion of text to braille – on an ongoing basis. This being so, contributes to the underrepresentation of PWDs across political processes in Kenya (for a more nuanced discussion see, for example, Grut, Olenja & Ingstad, 2011; Ngulu, 2012; CRPwD, 2014; Thuo, 2016; NGEC, 2016; IFES, 2017; Alberta, 2017; Owiti, 2019; OSCE-ODIHR, 2019; DI & IF, 2021, 2021a; UDPK, 2021; WFD, 2020, 2022a; KNCHR, 2014, 2016, 2022; TOC, 2023).

In all, and given the preceding discussion, it is reasonable to conclude that socio economic factors considerably deter the political participation of PWDs, especially in electoral and high-level activities, in Kenya. These findings are confirmed by most of the reviewed literature on the barriers to the inclusion of PWDs in politics in Kenya (see Table 1 Appendix A).

Conclusion

In summary, whilst there is 'a long intricate web of related' factors that explain the limited participation of PWDs in political activities in Kenya (see Table 1 Appendix A), 3 categories of obstacles stand out, including, legal, regulatory and policy gaps, 'underrepresentation of PWDs in key political processes,' and socio-economic disadvantages.

To begin with, challenges in the legal, regulatory and policy frameworks in Kenya have aggravated the exclusionary effects of disability, hence, constraining the participation and representation of PWDs across political processes in Kenya.

Furthermore, the low participation of PWDs has significantly obscured legal and policy development and implementation, including on PWDs' political participation, thus, further contributing to their inadequate inclusion in political life in Kenya. Also, with less people to look up to, many PWDs have been discouraged from entering Kenya's political arena.

Moreover, these and other limiting factors, when coupled with the weight of socio-economic disadvantages, considerably deter PWDs' participation, especially in electoral and high-level political activities, in Kenya.

In addition, it is important to note that some barriers affect some subgroups of PWDs more intensely than others. As such, attention must be paid to intersecting and compounding concerns, and the varying situations and needs of persons with different categories of disability (Opokua, Mprah & Saka, 2016; WFD, 2020; Thuo & Ambani, 2022; NGEC, 2022a).

- **Q2 – Success/Efficacy of the legal frameworks in Kenya**

Based on the preceding assessments several key points stand out.

Firstly, PWDs are still underrepresented across political processes in Kenya, importantly, as voters, candidates and elected or appointed legislative leaders.

Going by the available information, despite the promulgation of the CoK (2010) and other relevant legislations, and some associated semblance of progress, overall, since 2010, the representation of PWDs in Kenya's electoral processes has remained low. Also, it is not only their participation as voters that is limited, but also, their inclusion in related electoral activities, such as registering for an ID and as a voter in Kenya.

In addition, relative to their inclusion as voters and legislative leaders in post-2010 Kenya, commendable progress has been observed in the representation of PWDs as candidates vying for election. Despite this, overall, PWDs are still comparatively underrepresented among candidates contesting for election in Kenya.

What is more, despite the promise of the progress initially witnessed in 2013, since then, there has been a persistent and significant gap in the relative inclusion of PWDs as legislative leaders in Kenya. In fact, between 2013 and 2022, a downward trend is observed in the proportion of PWDs elected and appointed as legislative leaders in national and county governments in Kenya. Similarly, the progress towards the 'ideal'/5% representation of PWDs, in the Kenya's post-2010 legislatures, has been inadequate; if anything, the overall position of PWDs seems to have deteriorated since 2013. In other words, the GoK has failed to achieve even constitutional benchmarks on the representation of PWDs as legislative leaders in Kenya.

In short, even after the enactment of the UNCRPD (2006), and promulgation of the CoK in 2010, PWDs have been unable to, fully and effectively, exercise their political rights in Kenya. This casts doubt on the success of Kenya's legal frameworks that ought to protect PWDs' political rights and promote their participation in political processes in Kenya.

Secondly, as indicated in the prior discussion (see pages 87-91), the existence of ineffective and inadequately supportive laws and regulations on the political inclusion of PWDs in Kenya, continues to be among the most significant obstacles to PWDs' effective and enhanced political participation in Kenya.

To begin with, Kenya's legal and policy frameworks 'contains discriminatory and exclusionary provisions' that, in various ways, limit the realization of PWDs' rights to participate in political life in Kenya. Even though it is somewhat difficult to ascertain the extent to which these provisions are implemented and practiced on an everyday basis, the very existence of these provisions directly violates (among others) the UNCRPD. Further, the 'negative message that is sent by the inclusion of these discriminatory provisions within Kenya's legal framework,' may have wide-ranging social and political consequences for the inclusion of PWDs in Kenya – by for instance justifying discriminatory and exclusionary attitudes and practices (for more see pages 87-90).

Moreover, there are significant gaps and weaknesses within Kenya's legal and policy framework, thus, limiting PWDs' participation across political processes in Kenya. For example, in general, there is the concern that the protections, support, and accommodations provided to enable and advance PWDs' political participation in Kenya, are relatively unclear' (also see pages 89-91)

These challenges in the legal, regulatory and policy frameworks in Kenya exacerbate (as opposed to mitigate and counteract) the exclusionary effects of disability, and hence, constrain PWDs' active engagement across political processes in Kenya. This suggests the (relative) inadequacy and inefficacy of Kenya's legal and other frameworks on the political participation of PWDs in certain instances.

Related to this – and this is also the third point – PWDs continue to experience numerous interrelated challenges that hinder the exercising of their political rights in Kenya. Based on the literature review, this includes (among others), legal and regulatory challenges, limited inclusion of PWDs in key political processes, socio-economic disadvantages, compliance failures within key democratic institutions, inaccessibility of political processes, negative attitudes and discriminatory practices, absence of reliable and verifiable data on PWDs, weak political will and state support, limited awareness, and loss of trust in the government.

These and other limiting factors (see, for example, Table 1 Appendix A), that PWDs' must deal with in their everyday lives, considerably deters their participation, especially in electoral and high-level political activities, in Kenya.

Moreover, for many of these challenges, there has been little progress on mitigating their exclusionary effects – even close to a decade (if not more) since they were first highlighted. This is evidence by the fact that, for example, in its concluding remarks on Kenya's first report on its implementation of the UNCRPD, the Committee on the Rights of Persons with Disabilities (CRPWDs) suggested that Kenya “repeal constitutional provisions that restricted the right of persons with disabilities to be elected as a member of parliament and to vote on an equal basis with others.” This has still not been attended to.

Accordingly, it is reasonable to conclude that overall, thus far, Kenya's legal frameworks (including the UNCRPD, CoK and PDA) that ought to protect and promote PWDs' political rights, have been relatively unsuccessful/ineffective.

Nevertheless, it is important to note that, as observed in various places across this study (see for example, pages 10-13/59-61), Kenya's legal framework, that ought to protect and enhance the political participation of PWDs, is commendably progressive. With the promulgation of the CoK in 2010, there were many advances for PWDs. Not only does the Constitution (also PDA) proscribe discrimination against PWDs, but it also protects and promotes PWDs' participation, on an equal basis with others, by explicitly guaranteeing and supporting the exercise of their political rights in Kenya. In addition, through Article 54(2), the CoK (2010) – to mitigate and redress the historic exclusion of minorities, including PWDs – calls for affirmative action in favour of PWDs (e.g., through the 5% quota), as well as the progressive advancement of their inclusion in Kenya's political affairs. It is for this reason that many (see for e.g., IFES, 2017; Owiti, 2019 UDPK, 2021; MT, 2021; KNCHR, 2014, 2022; Thuo & Ambani, 2022; IRI & NDI, 2022; Gichana, 2022; Onsomu, Mose & Munene, 2022; NCPWD, 2023) have argued that, the international and national statutes in Kenya, ‘provide a powerful framework for addressing political exclusion and protecting the exercise of PWDs' political rights’.

Additionally, there has certainly been some semblance of progress in the political participation of PWDs in post-2010 Kenya. For example, increases were noted in the proportion of PWDs registered as voters (from 144,000 in 2017 to 165,000 in 2022), as well as in the share of PWDs nominated by political parties among all nominated candidates in Kenya (approximately 0.2% in 2017 compared to 3.05% in 2022). Also, whilst, prior to the 2013 elections, only the 8th parliament (1997-2002) included

an elected/ appointed MP with a disability, and only the 2008 Kenyan elections included candidates with disabilities, in every electoral cycle in Kenya since 2013, PWDs have been present among candidates and elected/appointed legislative leaders. Further, both the NA and Senate in Kenya have, in line with Constitutional requirements (CoK, 2010:Articles 97/98/177), included at least 2 nominated and appointed PWDs as MPs and Senators in all of Kenya's post-2010 parliaments (for more, see pages 69-74).

Over and beyond this, it is also crucial to note that, in some cases, the legal framework has not been fully, nor effectively implemented (see, page 91) (for more on 'implementation failures, see for example, NGEC, 2016, 2018; KNCHR, 2016; USP-K, 2017, 2017a; Owiti, 2019; KUB, 2020; Fefoame, 2022; Hassan, 2022; Jattani & Ochieng, 2022, 2023; ORPP, 2023). As such, perhaps, at least for now, it should not be judged too harshly; it could be that, despite its shortcomings, it just needs more time (and support) to 'settle in' (especially given this idea of 'progressive realization of human rights').

CHAPTER 5 – RECOMMENDATIONS & CONCLUDING REMARKS

RECOMMENDATIONS ON ‘KEY’ BARRIERS*Legal, regulatory & policy frameworks*

Stakeholder(s)/Institution(s)	Recommendation/Action Item
National and County Governments (other arms of the GoK)	<p>1) Review and amend relevant legal frameworks on the political rights of PWDs in Kenya. Including (but not limited to):</p> <ul style="list-style-type: none"> • Revoke discriminatory provisions that impede some PWDs’ rights to vote and vie for election • Resolve significant gaps and weaknesses in laws/regulations. E.g.: <ul style="list-style-type: none"> ○ Develop regulations and policies to operationalize key constitutional provisions, especially the 5% representation of PWDs (with specified implementation guidelines and institutions, and set timelines) ○ Empower the IEBC (and ORPP) to enforce laws and tackle violations of D.R ○ Plug penalty ‘loopholes’ that encourage non-compliance by political parties ○ Enact pro-active and pre-emptive policies and plans targeting accessibility concerns ○ Attend to gaps in provisions that outline the reasonable accommodations PWDs’ are entitled to and how they can be accessed ○ Compel and finance the collection of reliable and sound disaggregated data on PWDs (including demographics and key participation indicators) = mitigate difficulties in planning for and implementing effective frameworks • Ensure alignment with contemplations of the UNCRPD (by for e.g., providing for a legal mechanism to determine legal capacity of PWDs as per Article 12). This will also contribute to resolving the gaps in frameworks • Complete alignment of PDA (and other parliamentary acts) with CoK and UNCRPD to eliminate conflicting provisions • In doing so, account for cross-sectional concerns and the diversity of PWDs needs. For example: <ul style="list-style-type: none"> ○ Outline policies, processes and mechanisms to dissuade and tackle multiple and compounding forms of discrimination against WWDs (e.g., National Policy on Disability and Equality) ○ Ensure inclusion of WWDs and youth PWDs in laws, policies and programs on women/gender equality and the youth respectively (e.g., include WWDs in the “two-third gender rule”) <p>2) Address knowledge gaps within key democratic institutions (including the legislature, political parties, IEBC and ORPP).</p> <ul style="list-style-type: none"> • Continuous civic education and sensitization on legal provisions that protect and promote the political

	<p>engagement of PWDs is needed to aid in addressing implementation and compliance related challenges</p> <ul style="list-style-type: none"> • Give more attention to issues of political inclusion of PWDs in periodic submissions to the UN on the status of implementation of the UNCRPD – in previous submission (2012) there was barely any analysis of the state of PWDs' participation in line with Article 29 of the UNCRPD²¹²
DPOs	<ol style="list-style-type: none"> 1) Advocate for and monitor the status of implementation of the legal provisions on the political participation of PWDs in Kenya 2) Work with leaders with disabilities (and HRIs) to determine the state of inclusion of PWDs in politics in Kenya and identify shortfalls in the domestication and implementation of the UNCRPD's provisions on PWDs' political rights. Contribute details as part of Kenya's submission to the UN on the UNCRPD – second submission was due in 2022 (as of now, still not submitted)

Source: Author (with information from, Onyango, 2012; Tomlin, 2013; CRPwD 2014, 2015; II, 2015; UNDESA-DSPD, 2016; UNDESA, 2016; Thuo, 2016; HI, UDPK & ANDY, 2017; IFES, 2017; USP-K, 2017, 2017a; OSCE-ODIHR, 2019; Ocharo, 2019; Owiti, 2019; KUB, 2020; WFD, 2020; UDPK, 2021; KNCHR, 2014, 2016, 2022; NGEK, 2016, 2017, 2018, 2022; Onsomu, Mose & Munene, 2022; Mute, 2023; Thuo & Ambani, 2022; Jattani & Ochieng, 2022, 2023; Mute, 2023; NCPWD, 2023).

Limited participation of PWDs in political processes

Stakeholder(s)/Institution(s)	Recommendation/Action Item
National and County Governments (other arms of the GoK)	<ol style="list-style-type: none"> 1) Act in-line with Constitutional provisions to outline and enact implementation guidelines, policies and mechanism to ensure (at least as a starting point) 5% representation of PWDs and accessible and accommodative electoral process <ul style="list-style-type: none"> • As Thuo (2016) points out, the GoK should 'take advantage of the fact that, Article 54(2) (CoK, 2010), contrary to other affirmative action clauses (e.g., the gender rule), does not explicitly outline, nor restrict the state to specific implementation procedures and mechanisms. Consequently, the legislature has wide latitude in terms of the measures it can use to advance the inclusion of PWDs in Kenya, including strategic and creative legislation/regulations that may encourage increased participation of PWDs in politics in Kenya. For e.g., the legislature could compel the appointment of PWDs to prominent visible positions as part of breaking down attitudinal barriers. The recent appointment of Isaac Mwaura (MP), who has a disability (albinism), as government's spokesperson, is encouraging to see and a step in the right direction. The legislature is also at liberty to, for e.g., establish mechanisms that guide (including identifying and seeking out) and support PWDs through

²¹² Note: Since the submission was in 2012 (originally due 2010), this was probably a result of the CoK only having been in effect for 2 years, thus, not much attention was being given to concerns of PWDs at the time; the government was under a lot of pressure to advance wider implementation challenges.

	<p>administrative barriers (such as registering for an ID/NCPWD certificate).</p> <ol style="list-style-type: none"> 2) Train electoral staff/officials on PWDs rights, inclusivity, accessibility and reasonable accommodations 3) Safeguard and enable participation of and consultation with PWDs, DPOs and CSOs in, for e.g.: <ul style="list-style-type: none"> • Decision-making in general • Developing and creating accessible electoral/political processes and materials • Developing and providing civic education • Training and sensitizing election officials 4) Address critical knowledge gaps and raise awareness – e.g., in political parties on value of inclusion and contributions of PWDs 5) Collect data on disability and type of disability during ID and voter registration (and include information on ID) to help with 5.1) data issues; and 5.2) providing guidance to officials on what support/ accommodations PWDs may require during registration and voting processes 6) Government should collaborate with key democratic institutions, including the IEBC and political parties on supporting PWDs and resolving accessibility and accommodation challenges: <ul style="list-style-type: none"> • E.g., co-funding accessibility and accommodations during campaign rallies • E.g., Incentivizing political parties to address accessibility in their budgets (by for instance, directing some of the government’s political party election/ campaign financing fund, exclusively towards addressing accessibility and accommodations, with a party’s qualification dependent on evidence of meeting a set of inclusion guidelines/benchmarks)
Political parties	<ol style="list-style-type: none"> 1) ‘Mainstream inclusion of PWDs in political parties’ issues, platforms and structures’ <ul style="list-style-type: none"> • E.g., include WWDs in Women wings which are already relatively strong and visible = enable and secure representation of WWDs (PWDs more generally) 2) Attend to reported difficulties that are barring PWDs from inclusion in decision-making processes, e.g.: <ul style="list-style-type: none"> • Waive excessive membership fees that are often required for those seeking positions within parties/nomination as party candidates • Promote the participation of PWDs through skills and capacity building provided through a portion of party funds • Develop pro-active, rather than reactive policies and plans on accessibility concerns that – e.g., policies should encourage assessments of event venues for accessibility prior to the event, and determine how to resolve any challenges (in collaboration with the GoK)
DPOs	<ol style="list-style-type: none"> 1) Support skills training and empowerment of PWDs through civic education

	<ul style="list-style-type: none"> • Focus on encouraging participation of young PWDs (through civic education, skills and capacity building) especially since the longer they remain distant from politics, the more likely they will never take an interest in politics (see Thuo, 2016 for more on this) <ol style="list-style-type: none"> 2) Continuous awareness raising and sensitization of public on value and contribution of PWDs and D.R 3) Lobby the government for disability mainstreaming and to advance the political inclusion of PWDs (by for e.g., advocating for and monitoring the implementation of PWDs' political rights)
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Source: Author (with information from, Onyango, 2012; Tomlin, 2013; CRPwD 2014, 2015; II, 2015; UNDESA-DSPD, 2016; UNDESA, 2016; Thuo, 2016; HI, UDPK & ANDY, 2017; IFES, 2017; USP-K, 2017, 2017a; OSCE-ODIHR, 2019; Ocharo, 2019; Owiti, 2019; KUB, 2020; WFD, 2020, 2020a; UDPK, 2021; KNCHR, 2014, 2016, 2022; NGEC, 2016, 2017, 2018, 2022, 2022a; Onsomu, Mose & Munene, 2022; Mute, 2023; Thuo & Ambani, 2022; Jattani & Ochieng, 2022, 2023; Mute, 2023; NCPWD, 2023).

Social-economic concerns

Stakeholder(s)/Institution(s)	Recommendation/Action Item
National and County Governments (other arms of the GoK)	<ol style="list-style-type: none"> 1) Address educational gaps, unemployment and poverty, through a substantial provision of resources. Resources to be put towards (among other things): <ul style="list-style-type: none"> • Increasing access of PWDs to, and accessibility of education and civic education (including, • Training and Upskilling of PWDs <ul style="list-style-type: none"> ○ Ensure inclusion of PWDs in innovative solutions e.g., Fourth Industrial Revolution (4IR) learning and skills development programs ○ Enable access to 'general, technical and vocational training, advanced training and job placement' ○ Provide for on job assistive devices and technologies for PWDs – e.g., screen reading technology such as Job Access with Speech (JAWS). Provision of such technologies can also be used to incentivize companies to hire PWDs • Supporting and promoting employment and self-employment, with financing for companies founded and managed by PWDs (and those who care directly for PWDs) <ul style="list-style-type: none"> ○ Compel the development of 'accessible announcements for employment vacancies' • Awareness raising and de-stigmatization efforts (e.g., targeting misconception of low capacity and value of PWDs within public and private sector) • Increasing the funding towards protection, welfare and rehabilitation of PWDs (not just those with 'severe disabilities' which is ambiguous and has been used to exclude many PWDs from state benefits)

	<ul style="list-style-type: none"> • In all these instances, special attention should be given to cross-sectional concerns and the varying needs of different categories of PWDs
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Source: Author (with information from, Onyango, 2012; Tomlin, 2013; CRPwD 2014, 2015; II, 2015; UNDESA-DSPD, 2016; UNDESA, 2016; Thuo, 2016; HI, UDPK & ANDY, 2017; IFES, 2017; USP-K, 2017, 2017a; OSCE-ODIHR, 2019; Ocharo, 2019; Owiti, 2019; KUB, 2020; WFD, 2020; UDPK, 2021; KNCHR, 2014, 2016, 2022; NGEK, 2016, 2017, 2018, 2022, 2022a; Onsomu, Mose & Munene, 2022; Mute, 2023; Thuo & Ambani, 2022; Jattani & Ochieng, 2022, 2023; Mute, 2023; NCPWD, 2023).

CONCLUDING REMARKS

This study critically evaluated the extent of PWDs' participation in political processes in Kenya, and whilst doing so, examined the efficacy (and potential) of the legal frameworks that ought to protect and promote the political participation of PWDs in Kenya. It also identified and recommend solutions to some of the 'key' challenges hindering the full and effective exercise of PWDs' political rights in Kenya.

Extent of political participation (Q1)

On the extent to which PWDs participate in political processes in Kenya, this study has established that over a decade of the CoK (2010), UNCRPD (2006) (and related statutes) has, as of now, not achieved the sufficient inclusion of PWDs in politics in Kenya.

Specifically, since 2010, the representation of PWDs in Kenya's electoral processes has been low, including their participation in related electoral activities, such as registering for an ID and as a voter in Kenya. Also, certain segments of PWDs – especially WWDs and those with 'invisible disabilities' – have more severely been excluded from election related activities in post-2010 Kenya.

Additionally, whilst relative to their inclusion as voters and legislative leaders in post-2010 Kenya, there has been notable progress in the representation of PWDs as candidates vying for election, overall, their inclusion is still (comparatively) well below expectations.

Further still, despite the promise of the progress initially witnessed in 2013, since then, there has been a persistent and significant gap in the relative inclusion of PWDs as elected and appointed legislative leaders in Kenya. At both county and national levels, a significant and persistent gap, in the relative representation of PWDs as legislative leaders, has been observed in post-2010 Kenya. Similarly, progress towards the 5% representation of PWDs, in the Kenya's post-2010 legislatures, has been weak; if anything, the relative position of PWDs has worsened since the 2013 electoral cycle in Kenya.

It is also important to note that, even within this context of marginalization, an overwhelming majority of the PWDs elected to Kenya's post-2010 legislatures, have been men with physical disabilities, whilst WWDs and PWIDs/PWMDs, and others with 'less visible' disabilities, have comparatively been excluded, hence, rarely having a say indecision-making.

It is for these reasons that this study concurs with much of the reviewed literature (see Table 1 Appendix A) in concluding that, in post-2010 Kenya, PWDs' participation in political activities, importantly as voters, candidates, and legislative leaders has been inadequate.

This supports the first hypothesis (H1) – the extent of PWDs’ participation in political activities in Kenya is inadequate

Barriers (Q3)

In summary, whilst PWDs continue to experience numerous interrelated challenges that hinder the exercise of their political rights in Kenya, based on a review of the literature, 3 categories of obstacles stand out, including, legal, regulatory and policy gaps, ‘underrepresentation of PWDs in key political processes,’ and socio-economic disadvantages.

Challenges in the legal, regulatory and policy frameworks in Kenya (which have heightened the exclusionary effects of disability) coupled with the low participation of PWDs – which has significantly obscured legal and policy development including in favour of PWDs’ political participation – and, the weight of socio-economic concerns, have, overall, significantly deterred PWDs’ participation especially in electoral and high-level political activities in Kenya. In addition, it is important to note that some barriers affect some subgroups of PWDs more intensely than others.

These findings are confirmed by most of the reviewed literature on the barriers to the inclusion of PWDs in politics in Kenya (see Table 1 Appendix A), and overall, giving credence to the third hypothesis (H3).

Efficacy of the legal framework (Q2)

In terms of the success (and efficacy) of the legal frameworks, that ought to protect and enhance the political participation of PWDs in Kenya, it is evidenced that,

Firstly, PWDs are still underrepresented across political processes in Kenya. Despite the enactment of the UNCRPD (2006), and promulgation of the CoK in 2010, since then, PWDs have been unable to effectively participate as voters, candidates and legislative leaders in Kenya. In other words, relative to the general population, PWDs are significantly disadvantaged; they are more likely to lack representation, a voice and thus power in Kenya. This paints a bleak picture in terms of the effective articulation, promotion, and protection of PWDs’ interests (or rather, non-thereof) in Kenya. This casts doubt on the success of Kenya’s legal frameworks that ought to protect PWDs’ political rights and promote their participation in Kenya’s political processes.

Furthermore, not only do Kenya’s legal and policy frameworks ‘contain discriminatory provisions,’ but also, significant gaps and weaknesses that limit the realization of PWDs’ political rights. These challenges, exacerbate the exclusionary effects of disability, and hence, impede PWDs’ active political engagement in Kenya. This further suggests the (relative) inefficacy of Kenya’s legal and other frameworks on the political participation of PWDs.

Moreover, there is a long complex web of interrelated factors that continue to limit the participation of PWDs in political activities in Kenya (see Table 1 Appendix A), especially in electoral and high-level political activities, in Kenya.

Accordingly, it is reasonable to conclude that overall, thus far, Kenya’s legal frameworks (including the UNCRPD, CoK and PDA) that ought to protect and promote PWDs’ political rights, have been and are relatively ineffective. Thus, supporting the second hypothesis (H2) (also see, Table 1 Appendix A).

Still, given that the progressiveness of Kenya's framework, and that there has certainly been some semblance of progress in PWDs' political engagement, but also, that in certain instances, the legal framework has not been fully, nor effectively implemented, perhaps we should not be too quick to pass harsh judgement; perhaps more time is needed for 'progressive realization.'

Recommendations (Q3)

Consequently, and as highlighted in the third hypothesis (H3), to prevent further exclusion, and attain adequate levels of PWDs' political participation in Kenya, among other things, significant reform and improvement of these frameworks is needed.

In addition, it is impossible to guarantee and advance PWDs' political participation, without attending to the causal factors – importantly, socio-economic disadvantages – that function to exclude PWDs from political affairs in Kenya. As observed by the literature, 'it is possible for the law to, on one hand, secure PWDs' political rights, whilst at the same time precluding their active engagement through legal, regulatory, and policy frameworks that fail to account for their needs and lived experience' (see pages 100-104) (Onyango, 2012; Thuo, 2016; Mueni, 2017; Owiti, 2019; Ocharo, 2019; Onsomu, Mose & Munene, 2022; Thuo & Ambani, 2022; Jattani & Ochieng, 2022, 2023; Mute, 2023).

APPENDICIES

APPENDIX A: SUMMARY OF FINDINGS

#	Paper/Study ²¹³	FINDINGS			
		Extent/ level of political participation of PWDs			Barriers ²¹⁴
		Electoral participation ²¹⁵	High-level participation ²¹⁶	Other political activities ²¹⁷	
1	Ombane, 2022		- 2022: 1 PWD Presidential aspirant (but, excluded from final elective contest)		- Absence of an accessible & empowering environment during campaigns
2	Loch, 2021	- Some PWDs excluded from electoral processes - Low electoral participation of PWDs in general			- Voter education & registration processes not accommodative of (all) PWDs - Many PWDs, e.g., the deaf, inadequately accommodated in preparation for & during election processes - Absence of sign language interpreters & braille materials at most polling/ registration centres
3	Kwenda, 2010		- PWDs not well represented in legislatures and other decision-making organs		- Difficulties in accessing education, public amenities (transport/buildings), information & public gatherings - Discriminatory attitudes/ practices & limited support - Disability & inclusion has not been mainstreamed - Financial constrains in DPOs & programs targeting PWDs

²¹³ NB: '1997:' = 1997 general elections in Kenya/1997 electoral cycle (i.e., 1997-2002); '2007/2008:' = 2007 general elections/2008 electoral cycle (i.e., 2008-2013); '2013:' = 2013 general elections/2013 electoral cycle (i.e., 2013-2017); '2017:' = 2017 general elections/ 2017 electoral cycle (2017-2022); '2022:' = 2022 general elections/2022 electoral cycle (i.e., 2022-2027); NA = National Assembly, CA = County Assembly; WWDs = Women with disabilities, MWDs = Men with disabilities.

²¹⁴ Barriers to the full and effective political participation of PWDs in Kenya.

²¹⁵ Electoral participation = Voting + supplementary activities (in particular: possessing an ID = mandatory for voter registration; voter registration = mandatory for voting and vying for office).

²¹⁶ High-level participation = Vying for political office + holding legislative office (National Assembly, Senate, and County Assembly) + key related activities (in particular, registration with the National Council for Persons with Disabilities (NCPWD) = mandatory for vying for office as a PWD and qualifying for positions reserved for PWDs, as well as accessing available accommodations).

²¹⁷ Participation in other key related political activities – for instance, political party membership, appointment to senior government positions, electoral monitoring, and civic/voter education. See footnote 135.

					- Lack of high-level political will
4	ORPP, 2023		<ul style="list-style-type: none"> - 2022: # of PWDs cleared as independent candidates = 104/6,944 (total cleared independent candidates) = 1.5% - 2022: # of PWDs nominated in party lists = 369/9388 (total persons in party lists) = 3.93% - Despite improving in 2022, # of PWDs nominated by political parties has remained low - # of counties without PWDs as Members of County Assemblies (MCAs): 2022 = 21; 2017 = 17; 2013 = 4 (i.e., increased exclusion) 	<ul style="list-style-type: none"> - 2022: # of PWDs registered as members of political parties = 201,375/24,195,297 (total membership) = 0.83% 	<ul style="list-style-type: none"> - Absence of accurate & verifiable data on # of PWDs in parties' registers - General lack of inclusion of PWDs in party lists - PWDs not equally prioritized in party lists especially for County Assemblies (CAs)
5	NCPWD, 2023			<ul style="list-style-type: none"> - 2021: IEBC reported that 96% of registered political parties have PWDs within their organizational structures, but it is unclear how active they are & what role they play 	<ul style="list-style-type: none"> - Insufficient financing of DPOs/ PWDs' programs - Lack of policy on political participation of PWDs - Weak commitment to mainstreaming disability - Inadequate representation of top leaders in disability mainstreaming committees - Poor/non-implementation of provisions of key statutes
6	SGPwD & IDA, 2017	<ul style="list-style-type: none"> - Many PWDs, (more so Women with disabilities (WWDs)) lacking national identity cards (IDs) 	<ul style="list-style-type: none"> - Inclusion of WWDs in national/ county leadership has increased, though overall, it is marginal at best - Generally, PWDs do not fully & effectively participate in legislative activities, especially at the county level 		<ul style="list-style-type: none"> - Limitations on available sound, reliable & quality data on PWDs - Poverty & inadequate standards of living & social protection - Struggles in accessing healthcare, education, housing, & public amenities - WWDs have added burden of gender inequalities - Difficulties in accessing polling stations

					<ul style="list-style-type: none"> - As candidates – violence & intimidation, limited campaign financing & cultural barriers - No policies & guidelines from legislature on achieving 5% representation of PWDs
7	NGEC, 2016	<ul style="list-style-type: none"> - PWDs' participation in electoral processes minimal or entirely absent - 2013/2016: Share of eligible PWDs with IDs = 51.1% - 2013/2016: Significant share of PWDs lacking IDs, so unable to register as voters in 2017 - 2013/2016: Share of PWDs with IDs registered as voters = 46.4% - 2013: % of PWDs with IDs, registered as voters & who voted = 40.9%. This gives an effective participation rate of 10% [0.51 (% of PWDs with ID cards) X 0.46 (% of PWDs registered as voters) X 0.41 (% of PWDs who voted in 2013) = 0.10 (10%) of eligible PWDs voted] - Inadequate progress made on equality & inclusion of PWDs in elections since the new Constitution (2010) - 2013: Share of surveyed PWDs with IDs across counties – 0% = 3 counties; 50% or less = 14 counties; 51%-99% = 20 counties; 100% = 7 counties - 2013: Share of surveyed PWDs with IDs, registered as voters across counties – 0% = 4 counties; 50% or less = 17 counties; 51%-99% = 18 counties; 100% = 5 counties - 2013: Share of PWDs with IDs, registered as voters & who voted across counties – 0% = 5 counties; 50% or less = 19 counties; 51%-99% = 	<ul style="list-style-type: none"> - 2013: PWDs not well represented in March 2013 elections - 2013: 0 PWDs vied for election as a Senator or Governor - 2013/2016: Significant share of PWDs with no ID who could not register as voters, thus contest for election in 2017 - Representation of PWDs in Senate, National Assembly (NA) & County Assembly (CA) has been below average, if that - 2013 PWDs' representation: Senate – Elected 1Man(M) & Nominated 1(M) + 1Woman(W) = 3/67 Senators (4.47%); NA – Elected 1(W) + 5(M) & Nominated 1(M) + 2(W) = 9/349 Members of Parliament (MPs) (2.57%); CA – Elected 10(M) & Nominated 31(M) & 30(W) = 71/2,222 MCAs (3.19%) - Only the Senate got close to the constitutional requirement of 5% of PWDs in elective & appointive positions - Many PWDs not registered with NCPWD across all counties 		<ul style="list-style-type: none"> - Cultural and structural barriers - Harmful anachronistic traditions, beliefs & perspectives - Physical barriers to accessing ID, voting registration & polling centres - Negative social attitudes - Limited access to sign language interpreters, braille materials & related assistive mechanisms - Weakly formulated policies/laws - Data on political participation of PWDs over time is relatively unreliable - Insufficient financial resources - Violence & intimidation - Demeaning and disempowering language - Harmful stereotypes

		17 counties; 100% = 3 counties			
8	Fefoame, 2022				- Harmful religious, cultural & traditional beliefs & practices
9	Mugambi, 2022		- Low number of PWDs registered with NCPWD and as voters		- Communication, attitudinal, infrastructural & administrative barriers - High costs & inadequate financing for assistive devices & technologies
10	Rohwerder, 2020				- Lower educational levels & skills - Low confidence among PWDs - Limited support from family & community - Poverty & financial constraints - Difficulties accessing transport - Non/poor implementation of legislation - Fear of negative attitudes of other voters/citizens - Limited knowledge on supporting PWDs - Inaccessible physical environment & absence of broad reasonable accommodations - Stigma & negative stereotypes on capacity of PWDs - WWDs face double discrimination given negative cultural practices & attitudes towards disability, as well as gender biases
11	Gitonga, 2017	- 2017: 146,000 PWDs in voters' register - Relatively low # of PWDs in Voter register - Many PWDs lacking IDs = cannot register to vote			- Stereotypes on capacity of PWDs - Many PWDs lacking IDs - Disabilities that are not easily visible underrepresented in voter registration - Data only collected on voters as having a disability if disability is easily visible - Inaccessible electoral related materials

12	NGEC, 2022b			<ul style="list-style-type: none"> - 2021-2022: 8 PWDs/ 1092 clerks = 0.7% of total IEBC clerks in the Voter Registration (VR) exercise pre-2022 elections - Efforts were made to include PWDs as clerks in the VR exercise, however, very few PWDs recruited, well below 5% constitutional threshold 	-
13	Hassan, 2022		<ul style="list-style-type: none"> - Historically, low # of PWDs vying for office overall - 2022: 600 PWDs vied for election - 2022: 7 PWDs elected in legislature - NA = 3(M) + 1(W); CA = 3(M) 		<ul style="list-style-type: none"> - Challenges when campaigning: Negative attitudes & stigma, barriers in accessing information & physical structures, extremely high cost of politics
14	WFD, 2022a		<ul style="list-style-type: none"> - 2022: more PWDs (600) vied for election to various positions than in all previous elections - 2022: 7 PWDs elected - Political parties nominated some PWDs to NA and CA 	<ul style="list-style-type: none"> - 2022: 13 political parties who were part of the Westminster Foundation for Democracy (WFD) (2022a) Kenya Inclusive Political Parties (KIPP) program formed & launched or re-launched disability leagues - 9 of the 13 political parties who were part of KIPP (WFD, 2022a), appointed and nominated PWDs to top party organs 	<ul style="list-style-type: none"> - Unequal participation of PWDs in politics
15	WFD, 2020	<ul style="list-style-type: none"> - Political participation of PWDs in electoral activities is extremely low - Many PWDs without IDs = cannot vote - 2016: 51.1% of PWDs eligible to vote possessed IDs - 2013/2016: Of the 51.1% of PWDs with IDs, 46% registered to vote - 2013: Of the 46% registered as voters, only 41% voted = approximately 10% of PWDs eligible to vote, 	<ul style="list-style-type: none"> - PWDs particularly excluded from elective and appointive positions - 2017: NA = 5 PWDs/350 MPs (1.4%) (3 Elected & 2 Nominated) (3W & 2M); Senate = 2 PWDs /67 Senators (3.0%) (1M & 1W) - 2017: Total leaders with disabilities as Members of Parliament (MPs & Senators) = 1.7% - 2017: CA = 42 MCAs with disabilities 	<ul style="list-style-type: none"> - 2020: 67/71 registered political parties in Kenya reported having at least 1 PWD in top party organ - National Executive Council (NEC), but few PWDs in other party organs & as members - Active Disability Leagues only found in 2/71 registered parties - Overall, PWDs inadequately 	<ul style="list-style-type: none"> - Absence of an accessible & empowering environment that encourages participation - Political parties mostly elect/nominate those with 'visible disabilities' - Barriers to participation in political parties: gaps in current laws & party statutes; history of violence & intimidation of PWDs; absence of

		<p>voted (see NGEC, 2016 above for explanation)</p> <ul style="list-style-type: none"> - 2013: Lowest share of ID holders, registered voters & voters among all SIGs = PWDs were most disadvantaged SIG - 2017: Estimated # of PWDs in voter register = 143,812 (0.73% of total registered voters & 20.9% of eligible PWDs) - PWDs & DPOs minimally involved across the various dimensions of the electoral process 	<p>nominated (24W & 18M)</p> <ul style="list-style-type: none"> - 2013: CA 62 MCAs with disabilities nominated (32M & 30W) - 2017: 30 counties had nominated at least 1 PWD as MCA; 17 counties had 0 nominees with disability - 2017: Total representation of PWDs in Parliament and County Assembly = 1.9% - 2017: 150 PWD aspirants in political party primaries; 29/105 PWDs (27.6%) nominated; 29 nominated PWDs/14,523 (0.2%) of total candidates vying for election - 2013: no PWD ran for the office of Senator or Governor - Historically, PWDs rarely elected to leadership positions - PWDs not equally prioritized to other SIGs in party lists - Political parties disproportionately nominate other SIGs (Women, Elderly, Youth), excluding PWDs - 2020: approximately 390,000 PWDs registered with NCPWD = 17%-28% of total # of PWDs in Kenya (depending on prevalence rate) 	<p>included in political parties in Kenya</p> <ul style="list-style-type: none"> - 2013: Many PWDs reported participating in various civic education & sensitization forums unlike in lead up to past elections - Positions of PWDs in party structures not sufficiently filled - Political parties report encountering difficulties in registering PWD members - 2020: In 10 sampled parties total reported # of PWDs = 91 (highest 28, lowest 0); WWDs = 52% 	<p>reasonable accommodations; mistaken perception of PWDs as low value; inadequate investment in PWDs by parties; Misuse of state allocated funds intended for programs on SIGs including PWDs; unaccommodating internal party policies; resources constraints; limited awareness by party leadership on inclusion; inclusion of PWDs rarely featured on agenda</p> <ul style="list-style-type: none"> - stigmatization & prejudice - insufficient knowledge among PWDs - harmful attitudes & judgement - non-inclusive party processes - insufficient provisions for PWDs - difficulties in mobilizing resources & support - high costs of entering politics - double/multiple forms of discrimination experienced by some PWDs, e.g., WWDs - Negative myths/lack of acceptance - limited access to socio-economic services - Physical barriers including inaccessible buildings and transport - NCPWD online database not fully functional - NCPWD registration process = lengthy & bureaucratic & large application backlog - PWDs face discrimination in electoral processes - Structural & cultural barriers
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					<ul style="list-style-type: none">- Significant challenges in obtaining ID for certain groups of PWDs- Officials inadequately informed on assisting PWDs with voter/ID registration- Poor access to ID, voter registration & polling centres- Communication & technical challenges- Negative societal attitudes- Concern over fairness of voting process- Historical violence during campaigns & voting- Obstacles in accessing polling centres & communication- Persons with intellectual disabilities (PWIDs) & persons with mental disabilities (PWMDs) unjustly excluded from electoral activities by laws- Weak policy implementation & absence of political will- Poor understanding of how to implement PWDs' electoral rights- Limited access to services, information, & pre-electoral activities- Perception of PWDs as too weak for competitive politics & suited for 'special seats'- PWDs not well-informed on voter registration & their political rights- Apathy amongst some PWDs- Limited awareness raising on PWDs- Political parties' PWDs leagues struggling due to – limited/low funding,
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					<ul style="list-style-type: none"> weak capacity to mobilize & represent PWDs' interests - PWDs not equally prioritized to other SIGs in party lists - Political parties lacking data on # of members with disabilities - Many PWDs not equipped & ready to engage in politics - Low interest in joining any party among some PWDs - PWDs in political parties mainly focused on winning 'reserved positions' - Weak & short-term disability mainstreaming policies & strategies in parties - ORPP system not up to date on # of PWDs registered in political parties - Unclear statistics on # of PWDs registered in political parties - Non-inclusive civic & voter education
16	WFD, 2022		<ul style="list-style-type: none"> - Increase in # of PWDs vying for election or nomination in NA/CA - 2022: Increased participation of PWDs in political party primaries 	<ul style="list-style-type: none"> - Various political parties have established disability leagues – For e.g., 10 political parties under the Kenya Inclusive Political Parties (KIPP) program had by 2020, established or reactivated their disability leagues - Since 2010, increase in participation of PWDs in party leadership organs, e.g., in NECs 	-
17	NGEC, 2022a				<ul style="list-style-type: none"> - PWDs endure multiple forms of discrimination & violations of their rights/liberties - Difficulties in accessing to communications, information, assistive technology, built

					<p>environment & transport</p> <ul style="list-style-type: none"> - PWDs not included in innovative solutions e.g., 4IR learning & skills development programs
18	NGEC, 2022		<ul style="list-style-type: none"> - Preliminary results indicated progress in representation of (among others) PWDs across the government - 2022 – Preliminary results indicated at least 5 PWDs elected to legislature [NA = 2(M) & 1(F); CA = 2(M)] 		<ul style="list-style-type: none"> - In 2022 elections, reports of violence & intimidation of PWD voters & candidates - Lack of enforcement of various laws
19	Jattani & Ochieng, 2022	<ul style="list-style-type: none"> - Increase in # of PWDs registered as voters: 2017 = 0.14million; 2022 = 0.16million (5.4% increase) 	<ul style="list-style-type: none"> - PWDs have continued to be excluded, especially as candidates & appointed leaders - 2017: Share of PWDs in legislature (NA, CA & Senate) = 1.9% - 2022: Share of PWDs in legislature (NA, CA & Senate) = 2.0% - Increase in # of elected PWDs in legislature: 2017 = 3; 2022 = 7 - NA & Senate included at least 2 nominated PWDs in 2017 & 2022 in line with law - Increase in # of counties without PWDs: 2017 = 17; 2022 = 21 - 2017: 150 PWD aspirants in political party primaries; 29/105 PWDs (27.6%) nominated; 29 nominated PWDs/14,523 (0.2%) of total candidates vying for election - Increased demand for electoral seats by PWDs 		<ul style="list-style-type: none"> - Inadequate efforts by political parties to establish disability friendly and supportive political environments - Weak support from GoK for equality & inclusion of PWDs in politics - IEBC lacking power to hold parties & counties liable for failure to include sufficient PWDs - PWDs excluded for lists by various political parties - Over-representation of other SIGs especially women in CA to detriment of PWDs - Cultural & physical/ structural barriers - communication barriers - Negative societal attitudes
20	KNCHR, 2014	<ul style="list-style-type: none"> - 2013: Increased participation by PWDs in elections unlike the past 	<ul style="list-style-type: none"> - 2013: NA = 9 PWDs (6 Elected, 3 Nominated); Senate = 4 PWDs; CA = 74 PWDs 		<ul style="list-style-type: none"> - Slow/weak or failed implementation of laws & policies - Negative stereotypes &

					<p>harmful cultural/traditional practices</p> <ul style="list-style-type: none"> - Socio-economic related challenges - Poor access to polling centres & communication
21	KNCHR, 2022				<ul style="list-style-type: none"> - PWDs traditionally excluded from participation by stereotypes - PWDs not consulted in decision-making & substituted decision-making
22	USDS-BDHRL, 2017	- Voting rates of PWDs (among other SIGs) have remained lower than expected	- 2013: PWDs = only 2.8% of the Senate & NA		- Legal provisions not effectively enforced (38)
23	Mzalendo Trust (MT), 2021		<ul style="list-style-type: none"> - 2017: 30 County Assemblies (CAs) (64%) had at least 1 PWD as an MCA; 17 CAs (36%) had 0 PWDs as MCAs - PWDs relatively excluded from nominations - PWDs do not participate fully in political & governance processes in CAs - PWDs still very under-represented in political & public life especially as leaders in NA/CA & as candidates - 2017: NA = 5 PWDs/349 MPs; Senate = 2 PWDs/67 Senators; CA = 17 CAs/47 lacked PWD representation - 2013-2017 = Escalating exclusion of PWDs from CAs 	<ul style="list-style-type: none"> - Low inclusion of PWDs in political parties - Major political parties, e.g., Orange Democratic Movement (ODM), Jubilee Party and National Alliance Rainbow Coalition Kenya (NARC-Kenya) have established disability leagues - PWDs still very under-represented in political and public life including as members of institutions such as election management bodies & as members of Political Parties 	<ul style="list-style-type: none"> - Lack of representation of PWDs in some counties & low representation in NA - Lack of accountability in various institutions - Political participation is extremely expensive - Barriers to participation in political parties: violence & intimidation of PWDs; mistaken perception of PWDs as low value; inadequate investment in participation of PWDs by parties; non-inclusive internal party policies and programs; unreliable data on demographics of PWDs - Tokenism approach to disability inclusion in parties - Weak support for inclusion of PWDs especially at County level - Disempowering discrimination & stigma - Inadequate support structures to enable participation of PWDs in parties - Failure to implement disability inclusive

					<p>policies & procedures by parties</p> <ul style="list-style-type: none"> - Most CAs & CA offices have accessibility challenges & do not provide reasonable accommodations
24	IRI & NDI, 2022	<ul style="list-style-type: none"> - 2022: PWDs made up 8.7% of total registered voters 		<ul style="list-style-type: none"> - 2022: Less than 1% of political party members are PWDs according to ORPP 	<ul style="list-style-type: none"> - Inclusion of PWDs has been largely symbolic/tokenistic - Parties failing to effectively identify, recruit & support PWDs - Parties nominating individuals not registered with NCPWD contrary to law - Inadequate inclusion of PWDs in decision-making by IEBC - IEBC's reliance on ad-hoc efforts & absence of long-term inclusivity policies - Accessibility issues in majority of polling stations
25	Mugambi, 2022a		<ul style="list-style-type: none"> - PWDs continuously excluded from elective contests & from party lists - 2017: NA = 5 MPs with disabilities - Several PWDs in both NA & CA 	<ul style="list-style-type: none"> - Parties continue to exclude PWDs from nominations & from party lists 	<ul style="list-style-type: none"> - Inadequate efforts to address PWDs needs & rights by parties - Limited awareness of their participatory rights among PWDs - Negative social perspectives - Disability leagues active & functional only during electoral periods
26	ODM, 2023			<ul style="list-style-type: none"> - 2023: # of PWDs as members in ODM = 1,141(W) + 4,859(M) = 6000 	
27	Ocharo, 2019	<ul style="list-style-type: none"> - 2017: Across 4 Constituencies in Nairobi, less than 47% of persons with mobility impairment voted - 2017: low voter turnout of persons with mobility-impairment - 2017: 143,812 PWDs/19,646,637 registered votes = 0.73% of registered voters - PWDs less likely to exercise their voting rights 			<ul style="list-style-type: none"> - PWDs face many physical accessibility barriers in electoral process - Architectural & other physical barriers - Negative attitudes - Inaccessible information & communication - Ineffective legal, policy & regulatory frameworks

					<ul style="list-style-type: none"> - Absence of transport to polling stations - Fear of electoral violence - Failure to fully implement laws on participation of PWDs
28	Macharia, 2020				<ul style="list-style-type: none"> - Social, structural, & legal barriers
29	USP-K, 2017	<ul style="list-style-type: none"> - Many individuals with psychosocial disabilities lack IDs = they cannot register to/vote 			<ul style="list-style-type: none"> - Support & accommodations to advance participation of those with psychosocial disabilities lacking/unimplemented - Voter education for persons with psychosocial disabilities (PWPSDs) not prioritized - Limited understanding of psychosocial disabilities by officials - Voter apathy - Stigma & discrimination - Non-accommodative environments - Discriminatory laws
30	USP-K, 2017a		<ul style="list-style-type: none"> - Many persons with psychosocial disabilities not registered with NCPWD = unable to vote/run for office as a PWD 		<ul style="list-style-type: none"> - Many PWDs not registered with NCPWD
31	KNCHR & OSIEA, 2014	<ul style="list-style-type: none"> - 2010 referendum: reported that some adults with intellectual disabilities able to register & vote through GoK's support - 2013: Increase in # of PWIDs able to vote due to support from the government - 2013: Many PWDs unable to vote due to lacking ID 			<ul style="list-style-type: none"> - Poverty & unemployment - Inaccessible physical-built environment - Weak state support - Limited access to services - Over-protective families - Lack of ID among many PWDs - Inadequate support from family & lack of relevant information
32	CRPwD, 2015				<ul style="list-style-type: none"> - Stigmatization - Limited access to health care, education & employment - Negative attitudes & stereotypes

					<ul style="list-style-type: none"> - Limited training to access participation opportunities
33	CRPwD, 2014		<ul style="list-style-type: none"> - 2007: A # of PWDs stood as candidates for election as MPs - 2007: 1 PWD nominated as councillor in Nairobi City Council - April 2011: About 60,000 PWDs registered with NCPWD so far - 2013: PWDs holding positions of responsibility/ leadership increased 	<ul style="list-style-type: none"> - 2000-2014: GoK appointed some PWDs to leadership positions [E.g., 2 PWDs served as Commissioners in the Constitution of Kenya Review Commission & 2 PWDs in the Kenya National Commission on Human Rights (KNCHR)] 	<ul style="list-style-type: none"> - WWDs face discrimination as women & as PWDs - Disability equated with being a curse & a burden - Some PWDs often concealed from public - PWDs subjected to physical & psychological abuse - Low awareness on PWDs' rights - Limited knowledge & understanding of pertinent issues affecting PWDs & their rights by officials - Majority of PWDs live in severe poverty - PWDs have less access to support & resources to fund their participation
34	ELOG, 2022	<ul style="list-style-type: none"> - 2022: 55% of respondents said that most PWDs not registered to vote - 2022: Over 32% of respondents were personally aware of PWDs (and other SIGs) who were not registered to vote 	<ul style="list-style-type: none"> - Since Kenya's independence (1963), PWDs have not done well in elective contests - PWDs' representation especially limited in races for higher offices (i.e., presidency, vice presidency & legislature) 		<ul style="list-style-type: none"> - Inadequate inclusion of PWDs in political activities - Limited registration centres/ centres located far away - lack of interest in elections/politics - Many PWDs without IDs - Fear that voting is useless
35	NCAPD & KNBS, 2008			<ul style="list-style-type: none"> - 32% of PWDs aware of DPOs; 3% of PWD members of DPOs 	<ul style="list-style-type: none"> - Lack of reliable relevant information on PWDs - Inaccessibility of transportation - Unavailability & inaccessibility of useful & usable information - Negative social attitudes - Harmful traditional practices linked to cultural/religious beliefs - Taboos & stigma - Negative view on PWDs' capacity - Loss of confidence to participate among some PWDs

36	NCAPD & KNBS, 2008a				<ul style="list-style-type: none"> - Social & economic disadvantages - Negative social attitudes - Barriers in accessing physical-built environment - Weak policies - Absence of reliable & conclusive data on PWDs - Inaccessible/ un-accommodative environments
37	WFD, 2020a		<ul style="list-style-type: none"> - PWDs relatively excluded from governance especially as leaders in elective & appointive office - 2017: 1.9% of PWDs in NA & CA - Few PWDs nominated as candidates 	<ul style="list-style-type: none"> - 2020: 67/71 (94%) of registered political parties had at least 1 PWD in their top party organ (NEC) - Only 2 political parties with active and functional Disability leagues - 2020: according to the ORPP parties had extremely low numbers of PWDs (highest 28 – lowest 0) - Inadequate representation of PWDs in parties 	<ul style="list-style-type: none"> - Political parties tend to nominate those with ‘visible disabilities’ to the exclusion of others - PWDs erroneously assumed to make little contribution to parties - Preference among parties to nominate other SIGs (Women & Youth for e.g.,) as opposed to PWDs
38	HI, UDPK & ANDY, 2017	<ul style="list-style-type: none"> - Relative underrepresentation of PWDs as registered voters & voters - Nairobi County: 97% of PWD respondents from Nairobi had registered as voters - Nairobi County: 97.1% of PWD respondents had taken part in voting in the past - Nairobi County: 97.1% of surveyed PWDs indicated they intended to vote in the upcoming elections (2017) - Kiambu County: 72% of PWD respondents in Kiambu registered as voters - Kiambu County: 63.5% of PWDs surveyed had voted in the past - Kiambu County: 100% of PWDs in survey intended to vote in 2017 - Taita Taveta County: 100% of PWD 	<ul style="list-style-type: none"> - Relative under-representation of PWDs as candidates - Since 1963, election/ appointment of PWDs has been poor - Kenya’s 10th Parliament (2008-2013) = 0 legislators with disabilities nominated/ elected - Nairobi: 0 of the surveyed PWDs had vied for any political position - Nairobi County: 74.9% of PWDs registered with NCPWD - Kiambu County: 0 of the PWDs surveyed had ever been nominated for political office - Kiambu County: 72.3% of PWD respondents registered with NCPWD 	<ul style="list-style-type: none"> - Nairobi County: 100% of PWD respondents had partaken in at least 1 civic education program for 2017 elections - Nairobi County: 64.7% of surveyed PWDs members in political parties - Kiambu County: 24.8% of PWD respondents had taken part in at least 1 civic education program pre-2017 - Kiambu County: 55.6% of surveyed PWDs members of political parties - Kiambu County: 31.8% of surveyed PWDs had vied for a seat in a political party in the past - Taita Taveta County: 100% of PWD respondents 	<ul style="list-style-type: none"> - Institutional, attitudinal & environmental barriers - Lack of ID for many PWDs - Inadequate assistance in voter registration process - Lack of guidance/ support to register to vote - Limited/non-existent civic education drives in certain areas - Some PWDs not interested in parties/ politics - Fear of politicians lying - Inadequate # of interpreters & assistants available - Lack of special accommodations for PWDs in parties - Some PWDs undecided on which political party to join

		<p>respondents registered as voters</p> <ul style="list-style-type: none"> - Taita Taveta County: 75% of surveyed PWDs had voted in the past - Taita Taveta County: 100% of PWDs in survey intended to vote in 2017 elections - % of surveyed PWDs registered to vote: Homabay = 100%; Bomet = 100%; Isiolo = 100% - % of PWDs in survey who had voted in the past: Homabay = 100%; Bomet = 100%; Isiolo = 100% - % of PWD respondents intending to vote in 2017: Homabay = 100%; Bomet = 100%; Isiolo = 100% - Overall, participation of PWDs in elections generally low - % of surveyed PWDs registered to vote): Nairobi = 97%; Kiambu = 72%; Taita Taveta = 100%; Homabay = 100%; Bomet = 100%; Isiolo = 100% – Average across 6 counties = 94.8% - % of PWDs in survey who had voted in the past): Nairobi = 97.1%; Kiambu = 63.5%; Taita Taveta = 75%; Homabay = 100%; Bomet = 100%; Isiolo = 100% – Average across 6 counties = 89.3% - 2016-2017 (% of PWD respondents intending to vote in 2017): Nairobi = 97.1%; Kiambu = 100%; Taita Taveta = 100%; Homabay = 100%; Bomet = 100%; Isiolo = 100% – Average across 6 counties = 99.5% 	<ul style="list-style-type: none"> - Taita Taveta County: 0 surveyed PWDs had vied for any political position - Taita Taveta County: 73.8% of PWD respondents registered with NCPWD - % of surveyed PWDs who had vied for a political position: Homabay = 0; Bomet = 0; Isiolo = 0 - % of PWD respondents registered with NCPWD: Homabay = 71.4%; Bomet = 73.5%; Isiolo = 63.5% - 2013: Number of PWDs in party lists of 7 selected parties for NA = 13; CA = 71 [7 selected political parties: ODM, TNA, URP, WDM, Ford Kenya, FORD People & UDF] - 2013: # of PWDs in NA = 9/349 MPs (6 Elected, 3 Nominated) (7M, 2W) (8 with physical disabilities & 1 with albinism); Senate = 3/67 Senators (1 Elected, 2 Nominated) (2M, 1W) (all 3 with physical disabilities); CA = 9 Elected (9M) (all 9 with physical disabilities) & 62 Nominated (32M, 30W) 2016-2017 (% of surveyed PWDs who had ever vied for a political position across counties): Nairobi = 0, Kiambu = 0, Taita Taveta = 0, Homabay = 0; Bomet = 0; Isiolo = 0 – Average across 6 counties = 0 - % of PWD respondents registered with NCPWD: Nairobi = 74.9%; Kiambu = 72.3%; Taita Taveta = 	<p>had taken part in at least 1 civic education program pre-2017</p> <ul style="list-style-type: none"> - Taita Taveta County: 50% of surveyed PWDs members of political parties - % of PWD respondents who had taken part in at least 1 civic education program pre-2017: Homabay = 50%; Bomet = 59%; Isiolo = 59% - % of PWDs in survey members in political party: Homabay = 83.4%; Bomet = 88.9%; Isiolo = 88.9% 	<ul style="list-style-type: none"> - Limited availability of sign language interpreters & braille material - Long queues - Discrimination - Rough/inaccessible terrain - Long distances to voter registration/ polling centres
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			73.8%; Homabay = 71.4%; Bomet = 73.5%; Isiolo = 63.5% – Average across 6 counties = 71.6%		
39	iKNOWPOLITICS, 2019	- WWDs extremely under-represented in electoral processes	- Representation of WWDs as political leaders is particularly low across all levels of government - Often fewer WWDs than MWDs vying as candidates & in office	- Often fewer WWDs than MWDs serving as polling clerks	- Inadequate data on participation of WWDs - Mostly those with mobility/physical or 'visible' disabilities nominated/elected
40	KUB, 2020		- PWDs underrepresented in appointive & elective positions - 2017: Only 1W & 1M PWD elected to NA - 83% of those surveyed said that WWDs are not well represented in elective & appointive office - 2017: 50 PWDs/2,638 legislators (NA, Senate & CA) = 1.9% (1.08%W, 0.9%M) (4 Elected, 46 Nominated) - 2017: NA = 4 PWDs/349 MPs = 1.14% (2M, 2W) (2 Elected, 2 Nominated); Senate = 2 PWDs/67 Senators = 2.98% (1M, 1W) (2 Nominated); CA = 44 PWDs/2,222 MCAs = 1.98% (24W, 20M) (2 Elected, 42 Nominated)	- 70% of surveyed respondents said that PWDs are not well represented in public appointments to state departments/agencies	- Many PWDs not aware of their political rights & relevant legislation - DPOs insufficiently consulted - Inadequate enforcement/accountability mechanisms - Insufficient allocation of resources to issues facing PWDs - Laws/policies in some instances do not adequately account for issues unique to for e.g., WWDs - CA offices explicitly discriminatory - Low levels of education - Stigmatization & discrimination - Lack of public awareness on PWDs' political rights - Long distances to voter registration/polling centres - Non-accessible public transport
41	IFES, 2017	- Minimal participation of WWDs in electoral politics	- Participation of WWDs as candidates & leaders is low - Until 2013, 0 WWDs had ever been elected to the legislature, though few had been nominated		- Broad discrimination - Negative stereotypes & attitudes - Ineffective & inadequately supportive laws, regulations & policies - WWDs endure 2x discrimination – as women and as PWDs - Inadequate access to education - Harmful myths & cultural practices

					<ul style="list-style-type: none"> - Disproportionately higher levels of poverty & unemployment - Limited funding for politics - Poor access to information/inaccessible formats - Lack of mechanisms to tackle multiple forms of discrimination against WWDs - WWDs not adequately included in policies/programs on gender equality - Physical, social, communication, institutional & attitudinal barriers - Challenges in accessing built environments - Limited representation in decision-making
42	CIPESA, 2021		<ul style="list-style-type: none"> - PWDs do not effectively participate at national & county levels 		<ul style="list-style-type: none"> - Relevant information is inaccessible (including in courts & state offices) - Some TV channels still inaccessible - Print media not available in braille - Limited access to assistive technology - Absence of communication accommodations at political meetings - Inadequate public awareness on accommodating communication needs of PWDs
43	Opini, 2012				<ul style="list-style-type: none"> - Inadequate access & enrolment in education
44	KNCHR, 2016	<ul style="list-style-type: none"> - 2013: increase in # of PWDs voting relative to previous elections; BUT not all PWDs eligible to vote, could vote - Many PWIDs with no IDs - 2010 referendum: PWIDs supported to register to vote but only a small % of them voted 	<ul style="list-style-type: none"> - 2007: A # of PWDs stood as candidates for election as MPs - 2007: 1 PWD nominated as councillor in Nairobi City Council - As at April 2011: About 60,000 PWDs registered with NCPWD 	<ul style="list-style-type: none"> - 2000-2014: GoK appointed some PWDs to leadership positions [E.g., 2 PWDs served as Commissioners in the Constitution of Kenya Review Commission & 2 PWDs in the Kenya National 	<ul style="list-style-type: none"> - Majority of PWDs live in severe poverty & are unemployed - PWDs have less access to resources to fund their participation - Political parties failing to adequately support PWDs as candidates

		<p>- In focus groups, few PWIDs & PPSDs reported having ever voted</p>	<p>- 2013: NA = 1 Person with Albinism (PWA); CA = 2 PWAs - 2013: NA + Senate = 5 PWDs nominated + 7 PWDs elected = 12 PWDs/416 (MPs & Senators) = 2.88% - 2013: NA = 9/349 PWDs as MPs = 2.6%; Senate = 3/67 PWDs among Senators = 4.74% - 2013: 3/47 counties = 0 MCAs with disabilities</p>	<p>Commission on Human Rights (KNCHR)]</p>	<ul style="list-style-type: none"> - WWDs face discrimination as women & as PWDs - Stigmatization, stereotyping & discriminatory attitudes - Harmful myths & misconceptions - Isolation & mocking - No accommodation of issues facing certain PWDs - Difficulties in accessing education & health care - Low # of PWDs as voters & in legislature Legal & social marginalization of PWDs [E.g., PWIDs/ PWMDs deprived of legal capacity] - Absence of clear legal mechanism to enable supported decision-making (gaps in laws/ policies) - Limited awareness on PWDs' rights especially in rural areas - PWDs lacking sufficient information - Underfunding of NCPWD & NGEC to support PWDs - Violence & discrimination - Unreliable/ inaccurate data on PWDs - Lack of ID among some PWDs - Many attitudinal & practical/ physical barriers at polling centres - Difficulties in accessing accommodations at polling centres - Some PWDs not interested in politics/voting
45	Grut, Olenja & Ingstad, 2011				<ul style="list-style-type: none"> - Poverty & unemployment - Limited funds for political participation - Illiteracy/ low education levels

					<ul style="list-style-type: none"> - Limited access to few available resources - Social exclusion & inadequate support for costs of impairment - Low representation in political processes - Limited awareness of available support - Limited data on PWDs
46	Virendrakumar et al., 2018	<ul style="list-style-type: none"> - Many PWDs across Africa unable to vote - Majority of PWIDs lacking IDs = cannot vote 			<ul style="list-style-type: none"> - Right of some PWDs to have IDs, e.g., PWIDs, questioned by clerks/ officials
47	Tomlin, 2013				<ul style="list-style-type: none"> - Lack of accurate data on PWDs - Severe & broad poverty
48	NGEC, 2018	<ul style="list-style-type: none"> - 2016: 49% of eligible PWDs lacked IDs - 2017: PWDs = 15.6% of all SIGs (women, youth, elderly, ethnic minorities & PWDs) observed attending voter verification 	<ul style="list-style-type: none"> - 2017: A # of PWDs observed in contest for NA & Senate though exact # not clear 	<ul style="list-style-type: none"> - PWDs mostly left out of leadership in key party organs e.g., the elections boards & dispute resolution mechanisms - 2016-2017: PWDs observed at 224/2836 = 7.9% of observed campaign rallies - 2017: 15.2% of polling stations had PWDs among officials for voter verification - 2016-2017: 49 PWDs/335 IEBC temporary staff = 14.6%; BUT 28/47 counties (59.6%) had 0 PWDs among IEBC officials in monitored polling centres 	<ul style="list-style-type: none"> - Low participation/ representation of PWDs = hinders policy development & implementation
49	OSCE-ODIHR, 2019		<ul style="list-style-type: none"> - PWDs severely under-represented as candidates & as leaders in (among others) the legislature at national & local level 	<ul style="list-style-type: none"> - PWDs poorly represented in (among others) political parties & election management bodies 	<ul style="list-style-type: none"> - Medical/charity approach to disability - Negative myths & stigmas - Poverty & inequality - Disasters (e.g., COVID) - Conflict (e.g., recent protests)
50	ILO, 2009				<ul style="list-style-type: none"> - Poverty - Difficulties in accessing employment, education & health care

					- Inaccurate data on PWDs
51	UDPK, 2021	- Overall, 2010-2021 = widening participation of PWDs in electoral activities	- 2021: Minimal & in some cases no inclusion of PWDs in county government; situation is worse for WWDs as representatives are mostly men - 2013-2021: Positive increase overall in # of PWDs in political office, despite decrease in 2017 relative to 2013		- Insufficient access to opportunities for political participation - Inadequate access to education & employment
52	IDA, 2014	- PWDs restricted from effectively engaging in electoral activities	- PWDs restricted from effectively standing for election & generally engaging in decision-making activities		- Poverty & difficulties in accessing education & employment - Fear of violence during campaigns/ elections
53	Ngulu, 2012	- Very few PWDs able to participate in voting			- Poverty & unemployment - Difficulty financing participation in politics - Lack of sufficient awareness on PWDs rights among public & state officials - Dependence of PWDs on family/ third parties
54	Alberta, 2017				- Medical/charity approach to disability - Discriminatory attitudes & marginalization - Stigmatization - Physical & attitudinal barriers - Challenges accessing public affairs, education, transport, employment & health care - Illness - Low education levels - Inadequate income/ resources - Gaps in regulations/ accommodations
55	Thuo, 2016	- Lack of engagement in elections by young PWDs	- Limited engagement as candidates & political leaders by young PWDs		- Fear of simply being used for votes during elections, with representatives failing deliver after - Poverty - Lack of trust in government

56	DI & IF, 2021				<ul style="list-style-type: none"> - Discriminatory public policies/laws - Stigmatization & stereotypes - Difficulties accessing physical & other infrastructure, transport & information systems - Poverty & unemployment - Financial constraints for participation - Lower education attainment
57	Kabare, 2018		<ul style="list-style-type: none"> - 2018: Approximately 390,000 PWDs registered with NCPWD = 17%-28% of PWDs in Kenya (depending on prevalence rate) 		<ul style="list-style-type: none"> - Poverty - Poor access to rehabilitation, education, skills & employment - Unreliable data on PWDs - Stigmatization & discriminatory & prejudiced attitudes - Violence & abuse - Many PWDs not aware of their political rights & the relevant legislation in place
58	DI & IF, 2021a		<ul style="list-style-type: none"> - Limited/relatively low participation of PWDs in elective & appointive office - 5% representation of PWDs in elective & appointive bodies is far from being achieved 		
59	Onsomu, Mose & Munene, 2022	<ul style="list-style-type: none"> - Low participation of PWDs in electoral processes - Many PWDs not registered as voters even when they possess an ID - In some counties PWDs have no IDs = cannot vote/ run for office - Many PWDs unable to, fully & effectively, participate in electoral processes - 2013: Share of surveyed PWDs with IDs across counties – 0% = 3 counties; 50% or less = 14 counties; 51%-99% = 20 counties; 100% = 7 counties - 2013: Share of surveyed PWDs with IDs, registered as voters 	<ul style="list-style-type: none"> - Low inclusion of PWDs in positions of leadership - Inadequate representation of PWDs in political institutions - Participation of PWDs in legislative institution has been at best modest - 2013: NA = 9 PWDs/349 MPs = 2.58% (6M, 3W) (6 Elected, 3 Nominated); Senate = 3 PWDs/67 members = 4.48% (2M, 1W) (2 Nominated, 1 Elected); CA = 71 PWDs/ 2,222 MCAs = 3.2% (41M, 30W) (61 	<ul style="list-style-type: none"> - PWDs continue to be systematically excluded in political parties - 2000-2010: 2 Commissioners with disabilities in the Constitution of Kenya Review Commission 	<ul style="list-style-type: none"> - High levels of poverty & severe poverty - Stigmatization, stereotyping, negative social & cultural assumptions - Low inclusion of PWDs in governance - Cultural & structural obstacles - Little/limited data on political & public participation of PWDs - Insufficient sign language interpreters, braille facilities & similar assistive mechanisms - Registration/ candidacy fees in some political parties

		<p>across counties – 0% = 4 counties; 50% or less = 17 counties; 51%-99% = 18 counties; 100% = 5 counties</p> <p>- 2013: Share of surveyed PWDs with IDs, registered as voters & who voted across counties – 0% = 5 counties; 50% or less = 19 counties; 51%-99% = 17 counties; 100% = 3 counties</p>	<p>Nominated, 10 Elected)</p> <p>- 2013: Only 1 WWD elected across all legislative bodies vs. 16 MWDs</p> <p>- 2013: Only the Senate came close to meeting constitutional quota of 5% representation of PWDs</p>		<ul style="list-style-type: none"> - Poor access to information - Failure to fully implement laws by political parties
60	TOC, 2023		<ul style="list-style-type: none"> - 2013: NA = 9 PWDs; Senate = 4 PWDs; CA = 62 PWDs - 2017: NA = 4 PWDs; Senate = 2 PWDs; CA = 38 PWDs - 2022: NA = 4 PWDs; Senate = 2 PWDs; CA = 37 PWDs - 2022: Increased participation of PWDs as candidates - 2022: Record of more than 600 PWDs sought election at national & county levels - 2022: 7 PWDs elected (across NA, Senate & CA) = 1.16% of PWD candidates elected - Counties lacking representation of PWDs as MCAs: 2022 = 21/47 (44.68%); 2017 = 17/47 (36.17%) (increasing exclusion of PWDs) 	<ul style="list-style-type: none"> - Inadequate inclusion of PWDs in political parties 	<ul style="list-style-type: none"> - Limited access to education, employment & healthcare (among other services) - Inaccessible physical environments - Discrimination & shaming - PWDs generally under-represented in political governance - Absence of equal opportunities to participate in politics - Gaps in legal statutes - Inactive/non-existent disability leagues within most parties - Within parties, PWDs restricted to focusing on disability issues only
61	Jattani & Ochieng, 2023	<ul style="list-style-type: none"> - # of PWDs registered as voters: 2017 = 0.14million; 2022 = 0.16million (increase of 5.4%) 	<ul style="list-style-type: none"> - Low representation of PWDs in elective & appointive office - 2022: PWDs still relatively marginalized in elections & nominations - Representation of PWDs in NA, CA & Senate: 2022 = 2.0%; 2017 = 1.9% - # of PWDs Elected (NA, CA & Senate): 2017 = 3; 2022 = 2 - # of Nominated PWDs (NA, CA & Senate): 2017 = 42; 2022 = 36 		<ul style="list-style-type: none"> - Weak policy - Difficulties in communicating - Negative social attitudes - Inadequate efforts by political parties to create enabling environments for PWDs - Insufficient support for inclusion of PWDs - Weak/partial implementation of laws & policies - IEBC lacking enough power to order investigations, prosecute & enforce judgements on

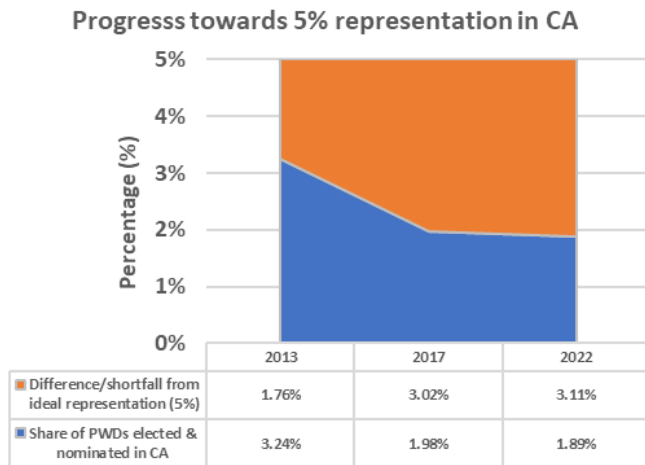
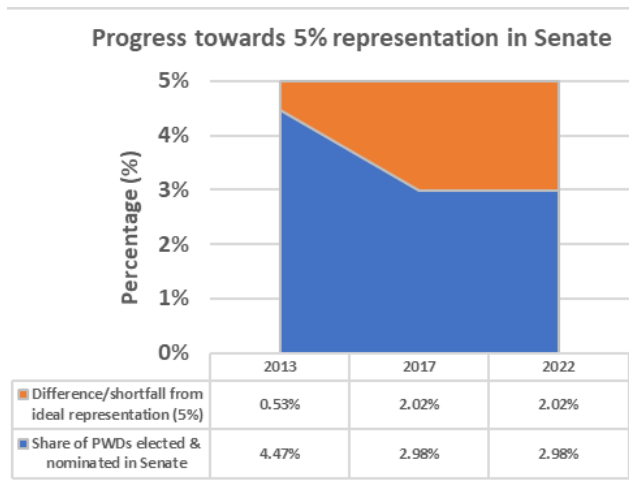
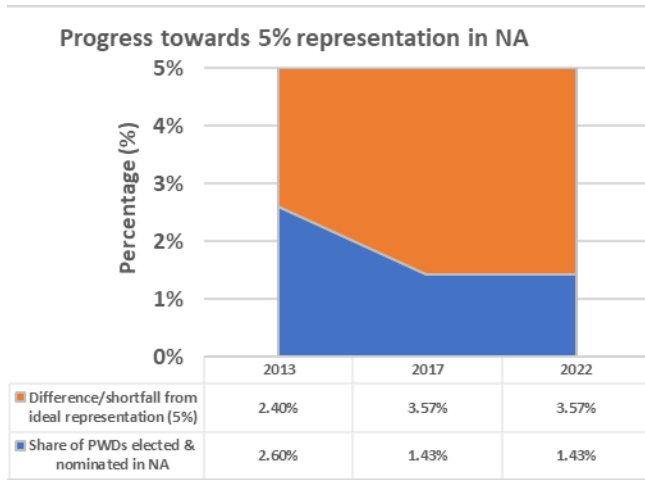
			<ul style="list-style-type: none"> - 2017 & 2022: both Senate & NA met legal requirement of nominating 2 PWDs - # of Counties without PWDs as MCAs: 2017 = 17; 2022 = 21 (increased exclusion) - PWDs left out of party lists/replaced post-submission - 2017: 150 PWDs in party primaries, but only 29/150 = 19.3% nominated to run for seats (29 PWDs from parties/14,523 total candidates = 0.2%) - Increasing demand for candidacy by PWDs 		<ul style="list-style-type: none"> violation of PWDs rights - PWDs left out of party lists/replaced last minute (Contravention of laws) - Cultural, physical/ structural & communication barriers
62	Gichana, 2022		<ul style="list-style-type: none"> - 2013: 12 PWDs in NA & Senate - 2017: 6 PWDs in NA & Senate - 2022: 1 presidential aspirant with a disability (but, excluded from vying for election) - Significant gap in relative representation of PWDs in higher offices 		<ul style="list-style-type: none"> - Stigmatization & traditional/cultural stereotypes - Discriminatory & harmful attitudes & practices by public & politicians
63	EU-EOM, 2022	<ul style="list-style-type: none"> - 2022 – IEBC: PWDs = 18.98% of registered voters - 2022 – KPMG Audit: PWDs = 18.94% of registered voters 			
64	KPMG, 2022	<ul style="list-style-type: none"> - 2022: PWDs = 18.94% of registered voters - PWDs registered as voters: 2017 = 0.14M, 2022 = 0.16M (5.42% increase) 			
65	Thuo & Ambani, 2022	<ul style="list-style-type: none"> - Insufficient participation of PWDs in electoral processes 	<ul style="list-style-type: none"> - Inadequate progress in the inclusion of PWDs in leadership positions at national & county level - Despite some noticeable progress, failure since 2010 to achieve constitutional & other quotas on inclusion of PWDs at national & county levels - Even with marginalization, 	<ul style="list-style-type: none"> - Historically, very low # of PWDs nominated to office by political parties 	<ul style="list-style-type: none"> - Little data on the political participation of PWDs exists - Continued failure by political parties & IEBC to adhere to laws - Relative exclusion of WWDs & those with 'invisible disabilities'

			<p>MWDs over-represented as leaders & WWDs excluded</p> <ul style="list-style-type: none"> - Majority of those elected/nominated = those with physical disabilities - Historically, very low # of PWDs nominated to office by political parties - # of PWDs elected – NA: 2013 = 6, 2017 = 3 (8M, 1W) (all 9 physical disabilities); Senate: 2013 =1, 2017 = 0; CA: 2013 = 9 (9M, all with physical disabilities) - 2013: # of PWDs in Senate (Elected & Nominated) = 3 - 2017 & 2022: At least 2 PWDs nominated in both NA & Senate in line with the Constitution - # of PWDs nominated in CA: 2013 = 62 (48.4%W), 2017 = 42 (57%W) - # of counties without PWDs as MCAs: 2017 = 17 - Overall, other studies confirm under-representation of PWDs in political leadership - No PWD aspirant ran for or held office as President, Deputy President, Governor, or Deputy Governor in first decade+ of new constitution - Numerous counties lacking PWDs as MCAs in all electoral cycles so far 		
66	Mute, 2023	- 2022: PWDs = 8.7% of registered voters	<ul style="list-style-type: none"> - 2007-2008: Kenya's 10th Parliament = 0 legislators with a disability - Since 1963 (independence) only 1 post-independence parliament (1997-2002, 8th Parliament) included a nominated legislator with a disability (Josephine 	<ul style="list-style-type: none"> - PWDs not sufficiently included in other electoral activities, e.g., observation/monitoring - 2022: 0 PWDs among IEBC commissioners administering election 	<ul style="list-style-type: none"> -Inaccessible polling stations & voter materials - Institutional inefficiencies (e.g., in getting NCPWD certificate) - Development/implementation of inclusion policies/laws undermined by low

			<p>Sinyo, nominated, MP)</p> <ul style="list-style-type: none"> - 2022: Some PWDs reported seeking nomination through various parties for various legislative positions, including 1 presidential aspirant - 2022: Only 2/20 WWDs targeted by Women Challenged to Challenge program to be picked by parties to contest election succeeded - 2022: 1st presidential aspirant with a disability excluded from contest due to late submission of relevant docs, despite appeals - 2022: NA = 4 PWDs Elected, 1 PWD Nominated; Senate = 2 PWDs Nominated; CA = 4 PWDs Elected, 38 PWDs Nominated (4 nominees with nominations pending) - 2022: CA = 4 PWDs in 1 county; 2 PWDs in 9 counties; 1 PWD in 16 counties - # of counties without PWDs as MCAs: 2022 = 21; 2017 = 17; 2013 = 4 (increase in exclusion of PWDs in counties) 	<ul style="list-style-type: none"> - 2020: 67/71 registered political parties had at least 1 PWD in their NEC 	<p>representation of PWDs in the legislature & the IEBC</p> <ul style="list-style-type: none"> - Barriers to participation in parties: history of violence & intimidation in parties; absence of reasonable accommodations; misconception of PWDs as being low value; disability leagues either inactive or ineffective & lacking influence; tokenism - Absence of disaggregated data on political participation of PWDs even from IEBC - Inadequate voter/civic education - Limited/late consultation with DPOs on voter education needs of PWDs - Non-implementation of IEBC/court decisions on PWDs grievances by parties - 2022: 1st presidential aspirant with a disability excluded from contest - Absence of sign language interpreters at most polling stations - Some PWDs unable to vote in secrecy - Inadequate efforts by courts, IEBC & parties to tackle disability rights violations & non-implementation of laws - Commitments not backed by practice

APPENDIX B: GRAPHS 5.1, 5.2 & 5.3

GRAPH 5.1, 5.2 & 5.3: Progress relative to 5% Constitutional benchmark (disaggregated)



Source: Author (with information from KNCHR, 2014, 2016; KUB, 2020; MT, 2021; NGEC, 2022; TOC, 2023; Jattani & Ochieng, 2023; Mute, 2023).

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