

**FACTORS AFFECTING ACCESS TO JUSTICE AND HUMAN RIGHTS FOR
PERSONS LIVING WITH DISABILITIES IN KENYA**

BY

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DECLARATION

I declare that this thesis is my original work and has not been presented for the award of degree in any other University.

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DEDICATION

To my family for the encouragement and support.

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LIST OF ABBREVIATIONS AND ACRONYMS

APHRC	African Population and Health Research Center
CRPD	Convention on the Rights of PWDs
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH
KNBS	Kenya National Bureau of Statistics
NCAPD	National Coordinating Agency for Population and Development
NCSS	Nairobi Cross-sectional Slums Survey
NGOs	Non-Governmental Organizations
PWD	PWDs
UN	United Nations
UNDP	United Nations Development Programs
UNICEF	United Nations International Children's Emergency Fund
WHO	World Health Organization
UNHR	United Nations High Commissioner for Refugees

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ABSTRACT

The study contextualizes access to human rights and justice for PWDs in Kenya and in particular Nairobi County. The study proceeds on grounds that access to justice and human rights is a broad concept. The study further appreciates that accessing to human rights and justice for PWDs is not a one-step affair but rather it encompasses procedures, administration of justice, information and how efficient people access the systems.

The study notes that on the subject of accessing human rights, that PWDs generally have repeatedly been denied equal treatment and fair access to prison systems, courts, law enforcement officials, tribunals and the general justice systems.

The study notes fundamentally that governments are accountable for making sure realization of people's human rights as the first duty bearers. In that regard, the study notes that the governments have a responsibility to make sure they have structured legal and political systems in place that advocate for human rights through policies, laws and programs for effective operation. That way, the study appreciates that duty of the government in ensuring acknowledgment of justice and accession of human rights for PWDs requires input from various stakeholders and as such, it is not only realized through a convergence of government systems.

As a global concern, the issue of accessing human rights and justice for PWDs is more critical particularly in most developing countries. In Kenya, the Constitution of Kenya, 2010 guarantees enjoyments of the rights of PWDs. The study notes that is major step but as the case may be, the study acknowledges that the realization of the rights of PWDs to is a progressive step that requires state implementation on a sustainable basis.

The study concludes that most of the human rights-based approaches to the challenges facing the disabled are mainly outdated comprehensions of disability those applied in Kenya not being an exception. As such, the study notes that this should not be the case, instead, the approach should be aimed at people empowerment including PWDs to be aware of their rights thus increase the capacity of responsibility of those institutions concerned for protecting and gratifying the rights. In the same fashion, the study concludes that strengthening of access to justice is relevant in all societies, not only in fragile but also in stable contexts for sustainability.

CHAPTER ONE

BACKGROUND OF THE STUDY

1.1 Introduction

World Health Organization (WHO) and World Bank carried out statistics which showed that the population of disabled people in the world are approximately one billion estimated being fifteen percent of the population.¹ Human rights are universal rights that are enjoyed even with PWDs (PWDs) like other individuals.² Nonetheless, this is not the case, in normal circumstances PWDs often face challenges which include legal, social, and practical in the course of demanding their human rights on the same basis as their non-disabled counterparts.³ More often than not, negative attitudes, misperceptions, stereotypes and myths, about disability are to blame for these disparities.⁴

The Convention on the Rights of disabled people PWDs (herein known as CRPD)⁵ and its adoption did present novel avenues in which PWDs, as well as the advocates for their rights can use to connect with other individuals in the human rights movement that campaign for the same objective.⁶ It is arguable that approaches for advocacy for human rights for PWDs are outdated.⁷ Instead, research shows that the proper approach should be to empower the PWDS. First to understand not only their rights but also to advocate for the same. Second, the need to ensure increased accountability both for institutions and individuals tasked with fulfilling and respecting the rights of the PWDs.⁸

¹See WHO, *World Report On Disability*, (2011). Available at <http://www.who.int/disabilities/world_report/2011/report.pdf><Accessed on 2nd August, 2017>.

²*Ibid*

³*Ibid*

⁴ *Ibid*

⁵ See Available at <<http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>><Accessed on 2nd August, 2017>.

⁶*Ibid*, See Preamble

⁷ See Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, 'A human rights -based approach to disability in development,' Available at <https://www.cbm.org/article/downloads/54741/A_human_rights-based_approach_to_disability_in_development.pdf><Accessed on 2nd August, 2017>.

⁸*Ibid*

Fundamentally, the CRPD gives a platform to individuals advocating for disability rights to channel their human rights claims on a higher ground with higher bargaining power.⁹ It is argued that strengthening the rights of the PWDs strengthens the rights of all humans as a whole.¹⁰

Justice and human rights are far-reaching concepts with diverse connotation.¹¹ Be that as it may, it mirrors that individuals not only access systems efficiently, but also to the structures, measures, locations and information used in administering justice.¹² It is argued that the PWDS in the world have, in most instances denied access to fair and equal treatment. This limitation of their rights is not only limited in their social and economic realization spheres of their rights but also before tribunals, courts, prison systems, law enforcement officials as well as other justice institutions.¹³

Moreover, PWDs individuals have faced challenges as regards to realizing positions in the justice system as judges and advocates. Such obstacles prevents those with disability from using the justice system, as well as limiting their capability to taking part in societal and communal justice administration.¹⁴

In view of the foregoing, the CRPD plainly refers to the right of PWDs in accessing justice.¹⁵ Accordingly, it engenders these rights by defining their rights and the duties of states have towards the disabled.¹⁶ It is vital to take into account a raft of these rights are also recognized in other United Nations Conventions which include: International Covenant on Economic Social and Cultural Rights,¹⁷ International Covenant on Political and Civil Rights¹⁸ and Convention against Torture¹⁹ amongst others at the international and regional level.

⁹ See also Lord J., (eds), *Human Rights. YES! Action and Advocacy on the Rights of PWDs* , HUMAN RIGHTS EDUCATION SERIES. Available at <http://hrlibrary.umn.edu/edumat/hreduseries/HR-YES/Human%20Rights%20YES%20Final%20PDF.pdf><Accessed on 2nd August, 2017>.

¹⁰See US Department of State, *Fact Sheet: Promoting the Rights of PWDs* , <https://www.state.gov/documents/organization/272852.pdf><Accessed on 2nd August, 2017>.

¹¹<http://hrlibrary.umn.edu/edumat/hreduseries/HR-YES/chap-12.html><Accessed on 2nd August, 2017>.

¹²*Ibid*

¹³*Ibid*

¹⁴*Ibid*

¹⁵ See Convention on the Rights of PWDs , 2006, Article 13

¹⁶*Ibid*, Articles 4–32 define the rights of PWDs

¹⁷ Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx><Accessed on 2nd August, 2017>.

¹⁸ Available at <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf><Accessed on 2nd August, 2017>.

¹⁹ Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx><Accessed on 2nd August, 2017>.

There is no international consensus on the definition of Disability. Many attempts have been made towards reaching an agreed definition of the term disability despite it being a complex concept.²⁰ However, every individual taking part in pushing for the rights of the PWDs is required to be well versed with this term. The definition and expression of disability encompasses how the society understands, approaches and its attitude towards the rights of the disabled.²¹

Without prejudice to the complexity of the definition of disability, many scholars debating the disability notion have centered their arguments on “impairment “on the impacts disability. The broad consensus on the definition of disability therefore has been premised on two major premises; the on social construction and impairment. This study proceeds on the latter conceptual approach throughout the study.

The first duty bearers are governments in charge of guaranteeing human rights of its citizens. Governments have a responsibility to put in place legal and political structures that advocate for human rights using different avenues like policies, programs and laws and ensuring that they function properly. In other instances, where there is lack of national laws, treaties and international conventions serve as the guiding law in ensuring that state meets its human rights legal obligations. Even in instances where states have legislations, the international instruments still form part of their laws.

Notably, many countries in Africa, domestic constitutions, legal frameworks and bills of rights, have been structured and or modified accordingly to encompass the standards in international law and the universal human rights principles as a whole.²² These provide twofold mechanism of ensuring reinforcement and protection of principles at nationwide level. It should also be noted that it is not exclusive responsibilities of governments to ensure the official legal responsibility for protecting, respecting, and realization of human rights as espoused under international human

²⁰See WHO, *World Report On Disability*, (2011). Available at http://www.who.int/disabilities/world_report/2011/report.pdf<Accessed on 2nd August, 2017>.

²¹*Ibid*; The CRPD defines the term disability in Article 1, as Purpose: PWDs involves individuals with prolonged intellectual, sensory, physical and mental disabilities cause obstruction in the course off interacting with the environment hence hindering the disabled individuals in taking active participation in societal issues on equal grounds with their counterparts.

²² See generally for instance Constitutions of Kenya and South Africa

rights law.²³ This duty should not be solely left for the government to ensure its realization. Private actors are also to ensure human rights are respected including the rights of PWDs.²⁴

However, it must be stated that human rights require a higher standard than legal requirements. Human rights epitomize a moral code of behaviour intended to uphold equality, fairness, considerate, tolerance, just but to name a few features pertinent to a peaceful and just societies.²⁵ Regardless of what legally may be enforced or not, a diversity of players, including groups, institutions and individuals in the society who also play significant roles in advancement and enactment of human rights.

At national level, The Constitution guarantees access to justice a fundamental right under the Bill of rights. Specifically, Article 54 of the Constitution underscores that provides that the PWDs ought not to be demeaned in any way and be should be treated with respect and dignity. This right includes accessing institutions of learning and amenities for PWDs. It also encompasses sensible information access, anywhere, Braille, Braille, sign language or other related suitable ways of passing information and finally access to relevant devices and materials to help them to cope with challenges faced by the PWDs.²⁶

The Convention on Rights of PWDs that Kenya ratified in the year 2007 and signed in 2008 provides for the foregoing rights.²⁷ The Convention presents new mechanisms. These mechanisms include the implementation models at the national level and the further provides for the monitoring systems or models necessary for States to ensure that there is compliance with the provision and implementation programs as ratified in the Convention regarding the rights of the PWDs. In the foregoing regard, the CRPD provides under Article 33 (2) for mechanisms to monitor national level implementation. This was a customary international human rights declaration which provided basic human rights to be upheld, protected, promoted and respected by all nations. Its preamble states that all nations all equal and no discrimination on basis should

²³See UN, 'The Foundation of International Human Rights Law,' Available at <http://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/>><Accessed on 2nd August, 2017>.

²⁴*Ibid*

²⁵*Ibid*

²⁶ Constitution of Kenya, 2010, Article 54.

²⁷ See also United Nations. "Convention on the Rights of PWDs and Optional Protocol."

<http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>><Accessed on 2nd August, 2017> .

take place. Subsequently a convention or treaty on PWDs was adopted and ratified by many states including Kenya.

1.2 Statement of the Research Problem

Human rights justice and access to information for the disabled individuals is a global concern.²⁸

The situation is more critical particularly in most developing countries where access to justice and human rights for individuals with disability is not fully realized. Kenya is not an exception to this. Like other human beings, individuals living with disabilities, first of all have guaranteed the universal human rights. Second, due to their disabilities, the law provides ‘further rights’ that guarantees entitlement of their human rights like other individuals. Therefore, it is a concern that respective governments have to meet or rather ensure that PWDs are entitled their rights as humans and that they get justice.

The Constitution guarantees the enjoyments of the rights of PWDs²⁹ and more importantly, it not only lists the rights to be guaranteed including the right to be respected and treated with dignity. Over and above, the Constitution engenders that the PWDs shall also have but also, give provision to access to various facilities for PWDs. Be that as it may, the enjoyment of the rights and access to justice for PWDs is not fully recognized within Nairobi County and Kenya as a whole. There are still numerous concerns that need to be addressed. The current situation that wants in full realization of the enjoyment of justice and rights just like other humans for PWDs is the heart of this study.

It should also be acknowledged that the realization of these rights is a progressive step that requires state implementation. In that case, an ideal situation is where; first, the government recognizes that indeed it has a responsibility of ensuring PWDs have easy access to justice as they equally enjoy their human rights. Second, the government implements its obligation towards the attainment of accessing justice and enjoyment of human rights for PWDs. The justification being that it has an obligation as is founded both in the Constitution and international instruments.

The current want in situation, in realization and enjoyment of justice and rights for PWDs in Nairobi is a concern spanning throughout Kenya. While the Constitution, 2010 guarantees the

²⁸ See generally, Larson, D. (2014). Access to Justice for PWDs: An Emerging Strategy. <www.mdpi.com/journal/laws>.

²⁹ Constitution of Kenya, 2010 article 54

enjoyment of their rights, it is safe to note that that has not been the case. There is more to be done in terms of implementation of Article 54 of the Constitutions that guarantees these rights. It is necessary therefore that this study seeks to look into these concerns. The study also recommends an ideal situation, in this case being the full realization not only within the confines of the Constitution but over and above what the law provides in an affirmative way for the benefit of enjoying human rights and accessing justice for PWDs.

1.3 Objectives of the Study

The general aim of this study is to discuss factors that affect human rights and access to justice for PWDs in Kenya but with a focus on Nairobi County.

1.3.1 Specific Objectives of the Study

1. To establish and discuss challenges that affect PWDs in accessing justice in Kenya.
2. To examine the impact of the challenges on the implementation of human rights policies for PWDs and access to justice.

1.4 Assumptions

- a) Legal frameworks affect access to justice and human rights:** The study is premised on amongst other assumptions that there are several factors that affect access to justice for PWDs in Kenya.
- b) Factors affecting access to justice and human rights:** The study proceeds on the premise that other challenges, besides the legal challenges also contribute to the overall impasse that hinders access to justice rights for the disabled people.
- c) The institutional frameworks and access to rights justice and human rights for PWDs:** the study is based on the assumption that the existing institutional frameworks are insufficient.

1.5 Justification of the Study

This study comes in handy to various groups of individuals particularly PWDs, the public, both government and non-governmental institutions. The study provide information to institutions that train different categories of PWDs for a better understanding of their rights, how they can access justice and also call for the government to meet its obligations. To the researchers, scholarship and research finding as adopted, this study adds knowledge on the rights and justice for disabled individuals.

The government officers may find the findings of this study necessary for the formulation of legal frameworks and provide as much information as possible on human rights and justice by PWDs. The findings of the study will benefit the civil society in terms of knowledge on the challenges that disabled individuals face in accessing justice and human rights. In that regard, it will be a useful impetus or catalyst for the relevant authorities to come up with solutions regarding the realization of their entitlement to justice and human rights for disabled individuals.

1.6 Scope and Limitations

The scope of PWDs is very wide. In this regard, the study considers a determination of the factors affecting access to justice and human rights for disabled individuals in Nairobi County, Kenya. Nairobi County being the capital city of Kenya, implicitly, is a representative of the face of Kenya. This is not only with regards to the concerns (or rather factors) affecting PWDs but also representative institutions mandated to represent them and address their concerns. Being a quantitative study, the researcher intends to rely on primary data collection, published information from various public and private institutions including: government actors, key human rights institutions, NGOs and other stakeholders dealing with factors affecting PWDs within Nairobi County in Kenya.

In light of the above, there are limitations expected in terms of data collection in the study on various fronts: first, it is a challenge for the researcher to cover the whole of the Nairobi County in terms of time and financial costs that come with primary data collection, Second, there is also the challenge of delayed or unresponsive respondents or participants in terms of government agencies. This is expected as most of the government agencies may perceive that the exercise is a form of an “audit” that may expose their inadequacies in terms of addressing the concerns of PWDs. Third, it is also expected challenges that in term of data collection that some respondents may be dishonest for fear of exposing systemic failures.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

This second chapter generally considers reviews on literature relevant to the study and in particular, addresses the review of literature under the following sub-topics: the general perspective, the case for Kenya, access to information, legal foundations and policies on disability.

2.2 General Perspectives on disability and access to justice

The PWDs are estimated to constitute fifteen percent of the total population.³⁰ The 2007 Kenya National Survey and Kenya National Bureau of Statistics for PWDs in collaboration with the National Coordinating Agency for Population and Development estimated³¹ the population of PWDs in Kenya at around 1.7 million persons.³² That figure translated to approximately 4.6 % of the entire population.³³ Research further indicates that sixty five percent of the people living with disability consider their locality as a main stumbling block in their day to day activities,³⁴ and particularly in light of enjoyment of their human rights and access to justice.³⁵

It is imperative to take into consideration that individuals living with disabilities in Kenya epitomize a certain class of the entire residents that have experienced challenges as a result of omission and or commission of the duty bearer in various respects in their lives.³⁶ Research shows that most of the PWDs cannot access institutions of learning or are restricted in accessing institutions of learning, jobs opportunities and health services and other related basic public socio-economic services and major among them justice and enjoyment of their basic rights.³⁷

³⁰See World Disability Report 2011. Available at http://www.who.int/disabilities/world_report/2011/report/en/<Accessed on 4th August, 2017>.

³¹ See National Coordinating Agency for Population and Development and Kenya National Bureau of Statistics, *Kenya National Survey for PWDs*, (2008). Available at <http://www.kenyanparaplegic.or.ke/wp-content/plugins/download-attachments/includes/download.php?id=155><Accessed on 4th August, 2017>.

³² *Ibid*

³³ *Ibid*

³⁴ *Ibid*

³⁵ *Ibid*

³⁶ *Ibid*

³⁷Understanding disability, Available at http://www.who.int/disabilities/world_report/2011/chapter1.pdf<Accessed on 4th August, 2017>.

The Legal Aid Service Providers' Network,³⁸ argues that it ought to be a global concern that PWDs are not in any way discriminated and hindered from maximum enjoyment of all the human rights guaranteed by international, regional and national standards.³⁹ It argues that it is also the foundation of all judicial or quasi-judicial instruments for guaranteeing protection for the human rights of the PWDs.⁴⁰

In the foregoing light, it is argued that there is a solid normative foundation for the management of different aspects inherent in access to justice.⁴¹ She further posits that the rights of PWDs and accessing justice includes upholding the rights which includes respecting peoples autonomy and their dignity, which includes freedom to be able make choices, being independent, non-discrimination of the person, fully inclusion in societal activities including participation and recognition of the disabled as part and parcel of human diversity.⁴²

According to CRPD, the foregoing is particularly significant as it is also important to ensure that the PWDs identities are preserved. This takes into account the concerns including accessibility; equal opportunities; equality for both genders and taking into regard the diversities of PWDs particularly children for that case and respect for their rights.⁴³

2.3 The Case for Kenya on disability and access to justice

Research points failure of policy and the law in addressing needs of the disabled as the main cause for their discrimination.⁴⁴ This position is not far from reality as regards the case for Kenya in view of accessibility of justice and the rights of PWDs. That notwithstanding, it is also imperative to consider that significant strides that Kenya has made in addressing the status of PWDs, yet their rights of accessing justice and enjoying their rights just like other human beings remains a challenge. In this regard, one of the main milestones achieved is in line with the adoption of the Constitution.

³⁸ Legal Aid Service Providers' Network, 'Access to Justice for the Poor, Marginalized and Vulnerable People of Uganda' <http://www.laspnet.org/index.php?view=download&alias=377-access-to-justice-for-the-poor-marginalised-and-vulnerable-people-of-uganda&category_slug=research-reports&option=com_docman&layout=table&Itemid=801><Accessed on 4th August, 2017>.

³⁹*Ibid*

⁴⁰*Ibid*

⁴¹*Ibid*

⁴² See Guiding Principles of the Convention, Available at <http://www.un.org/esa/socdev/enable/convinfoguide.htm> <Accessed on 4th August, 2017>.

⁴³ See CRPD, 2014

⁴⁴See Understanding disability, Available at http://www.who.int/disabilities/world_report/2011/chapter1.pdf <Accessed on 4th August, 2017>.

The Constitution hallmarks enjoyment of the rights of PWDs in Kenya is engendered under Article 54.⁴⁵ It is also worth noting milestones taken by Government of Kenya in adoption of numerous laws and policies as regards to the rights of the disabled individuals, including their productive right and decent employment and basic services. The Constitution being the grund norm specifically provides for the platform upon which the legislations pertaining PWDs are premised.

According a disability survey in Nairobi City,⁴⁶ found disabled individuals : have much lesser rates of education, much lower rates of economic activity and much higher rates of illiteracy, and as such, this affects their enjoyment of their basic rights and justice as compared to other persons.⁴⁷

There exist various institutions under the new Constitutional regime that handle matters concerning PWDs in Kenya. As regards equality, the Constitution among other raft of measures it has put in place engenders that that every individual has a right to the benefit of the law and in the same manner every individual has an equal right before the law and has liberty to seek law protection.⁴⁸ The same measures in the Constitution provides specifically the category of PWDs shall constitute five percent of individuals in both appointive and elective public positions.⁴⁹

2.4 Access to Information

Information and access to it is a right.⁵⁰ As such, relaying information is an important characteristic of human daily lives as the information itself. Research points that disabled individuals in most instances report frustration at the hitches they encounter in getting access to public information in all kinds depending on the form of disability of the particular individual.⁵¹ It is worth pointing out that communication difficulties are commonly related to many

⁴⁵ See Constitution of Kenya, 2010

⁴⁶ See National Coordinating Agency for Population and Development and Kenya National Bureau of Statistics, *Kenya National Survey for PWDs*, (2008). Available at <<http://www.kenyanparaplegic.or.ke/wp-content/plugins/download-attachments/includes/download.php?id=155>><Accessed on 4th August, 2017>. See also African Population and Health Research Center (APHRC). 2014. Population and Health Dynamics in Nairobi's Informal Settlements: Report of the Nairobi Cross-sectional Slums Survey (NCSS) 2012. Nairobi: APHRC. Available at <<http://aphrc.org/wp-content/uploads/2014/08/NCSS2-FINAL-Report.pdf>><Accessed on 4th August, 2017>.

⁴⁷ *Ibid*

⁴⁸ Article 27(1)

⁴⁹ Article 54(2)

⁵⁰ See Article 35

⁵¹ See National Coordinating Agency for Population and Development and Kenya National Bureau of Statistics, *Kenya National Survey for PWDs*, (2008). Available at <<http://www.kenyanparaplegic.or.ke/wp-content/plugins/download-attachments/includes/download.php?id=155>><Accessed on 4th August, 2017>.

disabilities which are: hearing loss or deafness; low vision or blindness; and disabilities impacting an individual's cognitive abilities particularly to think and learn, such as cognitive disability, an intellectual or psychiatric illness.”⁵²

Persons with various disabilities have varied limitations in enjoying the right of accessing information. Information in this perspective is wide-reaching including the use of information telecommunication. For individuals with sight disability they may experience difficulty in accessing web content displayed on screens. Inclusivity and accessibility can however be ensured by the usage of text to audio reader applications.”⁵³ However, the texts to audio readers characteristically have challenges where the application's design fails to put suitable text cues and tags on links, graphics, tables or forms. For individuals with motor disability, like restricted or no use of hands or fingers, the obstructions are produced by buttons, links and cluttered layout that might be too small including other significant considerations like ease of navigation that may make whole sites and functions useless.⁵⁴

For individuals with hearing disabilities, the absence of documented parallels of audial form can cut off enormous amount of primary information. Conferencing features and shared web chats may also be impossible.⁵⁵

Individuals with communication and speech disabilities can also be exempted from conferencing features and shared web chats. For those with cerebral difficulties, such as dementia, traumatic brain injury, autism, the issues of navigability, design and layout are the alteration put in place to be able to use a site.⁵⁶ Individuals with explicit learning incapacities, dependent on their nature, are prone to encounter the similar obstacles as individuals with sight disability or individuals with cognitive disabilities.

Research points that the provision of simple and clearly written and easy to read material in English is a way of overcoming number communication complications. For instance, for the partially or completely blind, it is imperative to ensure freely accessible information in substitute

⁵²*Ibid*

⁵³See Disability Studies Quarterly Winter 2009, Volume 29, No.1. Available at <<http://dsq-sds.org/article/view/167/167>><Accessed on 4th August, 2017>.

⁵⁴*Ibid*

⁵⁵*Ibid*

⁵⁶*Ibid*

set-ups like large prints, audio cassette or CD and Braille.⁵⁷ Relaying material by electronic mail or having it accessible in a reachable set-up on the specialist's website also makes it more reachable for numerous individuals with vision impairment.⁵⁸

Undistinguishable signs for the physically disabled individuals may exacerbate the difficulty they experience in accessing their destination. Intellectually challenged individuals require signs with clear words and symbols. Similarly, the visually impairment are better placed with signs having with colours, texture and contrast.⁵⁹

2.5 Legal Foundations

In 2008, the United Nations Commission on Legal Empowerment of the Poor approximated that 4 billion persons had been excluded from the benefits that come with the rule of law.⁶⁰ Similar study recently found that a wide gap exists in access to justice for a number of world's populace estimated to as high as two thirds.⁶¹ Studies estimate that one in every eight people annually finds themselves in an inevitable conflict either with the local authorities, at home or at work.⁶² Notwithstanding the inevitable nature of conflict, proper resolution of those conflicts and access to justice still remains an elusive concept. This lacuna affects PWDs and their livelihoods as they are more vulnerable to violations of access to justice.⁶³

Gender and minority groups equality has been guaranteed in legal documents including statutes and constitutions of countries worldwide. Those provisions notwithstanding, the propriety and effectiveness of those laws has been put into question. Additionally, those laws have suffered implementation and enforcement setbacks. That lacuna has resulted in a scheme of hollow pieces of legislation that have not been able to adequately guarantee gender groups, minority groups

⁵⁷ *Ibid*

⁵⁸ *Ibid*

⁵⁹ See *Disability Access and Inclusion Plans for Local Government*, Available at <<http://www.disability.wa.gov.au/Global/Publications/For%20business%20and%20government/DAIPs/DAIP-localgovt-part-1-introduction.doc>><Accessed on 4th August, 2017>.

⁶⁰ See United Nations, 'Legal Empowerment of the poor and eradication of poverty,' (2009) Available at <<http://www.un.org/esa/socdev/documents/reports/Legal%20empowerment%20of%20the%20poor.pdf>><Accessed on 8th August, 2017>.

⁶¹ Carter B., 'Facts about security and justice challenges,' (2015). Available at <<http://www.gsdrc.org/wp-content/uploads/2015/09/HDQ1273.pdf>><Accessed on 8th August, 2017>.

⁶² *Ibid*

⁶³ CLEP, 2008

and PWDs substantive rights.⁶⁴ Even with the recognition of the centrality of justice in ensuring equality in decision-making on minorities, women and PWDs issues, no country has freed itself from the shackles of inequality in the administration of justice.⁶⁵ Although minority groups and PWDs had been guaranteed access to justice in both international and municipal legislation, inequality in access to justice is still prominent and evidenced by numerous factors.⁶⁶

Studies also indicate that due to under-representation in legal services, discrimination, language barriers and higher levels of social exclusion, PWDs and other minority groups have been and are still more vulnerable to arbitrary arrests and low chances of receiving a fair trial.⁶⁷ The Commissioner for Human Rights in the Council of Europe⁶⁸ found that on equal comparison with others on same grounds, PWDs have often been denied access to justice. The Commissioner raised concerns that there was an alarming trend of the rise in violations of the right of access to justice committed against minority groups and PWDs.⁶⁹ As a result, there was an urgent need to integrate and recognize gender and minority perspectives into criminal justice systems as a decisive step to guaranteeing women, men and PWDs the right of access to justice⁷⁰

Hailed as the pioneer international instrument by which PWDs could litigate and enforce their rights, the CRPD shifted its approach to a social model of disability from a medical approach.⁷¹ According to Michael Stein and Janet Lord, the Convention sought to affirm the social model of disability through by recalling its origin as barriers that hamper PWDs efficient, and equal – basis full involvement in society. Michael Stein and Janet Lord sought to underscore and verify that disability had no source from inherent limitations.⁷²

⁶⁴UNDP, *Strengthening Judicial Integrity through Enhanced Access to Justice*, Available at <<http://www.undp.org/content/dam/rbec/docs/Access%20to%20justice.pdf>><Accessed on 4th August, 2017>; See also Melissa J., 'New UN Women Report Highlights Disparity Between Law and Practice,' Available at <<http://theglasshammer.com/2011/07/08/new-un-women-report-highlights-disparity-between-law-and-practice/>><Accessed on 4th August, 2017>.

⁶⁵ See UNDP, *Strengthening Judicial Integrity through Enhanced Access to Justice*, Available at <<http://www.undp.org/content/dam/rbec/docs/Access%20to%20justice.pdf>><Accessed on 4th August, 2017>.

⁶⁶*Ibid*

⁶⁷*Ibid*; see also (ICCPR Article 12)

⁶⁸*Ibid*

⁶⁹*Ibid*

⁷⁰*Ibid*

⁷¹ Australian Disability Development Consortium, 'Response to the Draft Action Plan on Women, Peace and Security.' Available at <http://www.addc.org.au/documents/resources/20111018-draft-action-plan-women-peace-and-security-submission-addc_168.doc><Accessed on 4th August, 2017>.

⁷² See Lazar J., & Stein A., *Disability, Human Rights, and Information Technology*, Available at <<http://www.upenn.edu/pennpress/book/15640.html>><Accessed on 4th August, 2017>.

As a legitimate concern to PWDs, accessing justice has been touted as a fundamental human right. However, as posited by Katherine Guernsey, despite the import of this right, there has still been a long history of violation of access to justice. It is that violation and historic exclusion that article 13 of CRPD sought to act in response to in recognition of the far reaching ramifications of violation of justice and rights.⁷³ On that account, it is thus incumbent on member countries to support the apprehension of the right of access to justice for all PWDs.⁷⁴

Eric Posner reaffirms the duty of all⁷⁵state parties to recognize PWDs before the law as persons. Posner writes that the African Charter as the primary regional human rights instrument for Africa provides for universal human rights. Article 2 of the Charter indiscriminately guarantees every person rights and freedoms in Charter. Such rights are thus availed to every person without distinction of race, color, ethnic group, sex, religion, social origin, political, national, language and sex fortune or other status.⁷⁶

Following the enactment of the Constitution of Kenya, 2010, the African Charter was adopted into Kenya's legislation vide article 2(6) which decreed that any convention or treaty ratified by Kenya was to form part Kenya's under the 2010 Constitution. Of import is the trajectory, structure and degree to which the Constitution has sought to make sure the rights of PWD are protected. Specifically, the 2010 order recognizes as official languages special communication techniques for PWDs including – braille, sign language and other communication accessible to PWDs.⁷⁷

2.6 Policies on Disability

In order to churn PWDs friendly and sensitive policies, premium must be attached to the input of the PWDs as the persons who are likely to be impacted most by the outcome of those policies.⁷⁸

⁷³ See Guernsey K., et al 'Convention on the Rights of PWDs : Its implementation and relevance for the World Bank,' (2007) Available at <<http://siteresources.worldbank.org/DISABILITY/Resources/Publications-Reports/0712.doc>><Accessed on 4th August, 2017>.

⁷⁴*Ibid*

⁷⁵ See 'Why the U.S. Shouldn't Sign On to Empty Human Rights Treaties,' Available at <http://www.slate.com/articles/news_and_politics/view_from_chicago/2012/12/u_n_convention_on_the_rights_of_persons_with_disabilities_the_u_s_shouldn.html>

⁷⁶*Ibid*

⁷⁷ Constitution of Kenya, 2010 article 7 (3) b

⁷⁸See UNICEF, 'Take Us Seriously! Engaging Children with Disabilities in Decisions Affecting their Lives' Available at <https://www.unicef.org/disabilities/files/Take_Us_Seriously.pdf><Accessed on 4th August, 2017>.

The philosophy surrounding the import of that participation is anchored on the value of disability advocacy services and groups in championing PWDs rights and protection. Their participation is thus important in the process of overcoming hurdles that limit the enjoyment of their rights.⁷⁹ The PWDs advocacy groups thus play a fundamental responsibility of making sure that the rights of PWDs are not only promoted but also valued. Those advocacy groups therefore elevate the PWDs to higher pedestals of participation in the decision-making processes which ultimately help in protecting and advancing their rights, interests and wellbeing.⁸⁰

Systemic advocacy on the other hand intends to come up with measures that can promote long term changes to make sure that the rights of PWDs are achieved and maintained to positively impact on their lives. Systemic advocacy can positively impact amendments to legislation, service practices, policies and work towards promoting and raising society understanding and learning of disability issues.

Significant government policies on disability should include increased awareness and realization of the rights of PWDs .⁸¹While countries have had rights-focused legislative protections for PWDs for many years, it is vital to take into account the fact that understanding and reception of the rights of PWDs is always sustainable.⁸²

It is necessary that the state should also have policy measures necessary for removal societal hurdles in the community that hampers PWDs from participating as citizens equally.⁸³ This includes a host of factors. In some cases there exist obstacles that may hamper the way the society conducts its rights including political and justice systems.

Significantly, as a measure of guaranteeing PWDs fully access to justice on equal grounds like others, government policies on rights and interests of PWDs have to recognize the need and import of access to justice by PWDs. To that extent, it is incumbent upon the State to not only incorporate appropriate strategies in advancing the PWDs agenda but also establish proper aids

⁷⁹ *ibid*

⁸⁰ *ibid*

⁸¹See UNHR, *The Convention on the Rights of PWDs Training Guide Professional Training Series No. 19.* (2014) Available at http://www.ohchr.org/Documents/Publications/CRPD_TrainingGuide_PTS19_EN%20Accessible.pdf<Accessed on 4th August, 2017>.

⁸²*Ibid*

⁸³ See 'National And International Policies And Measures Designed To Eradicate Discriminatory Practices And Guarantee The Disabled The Full Enjoyment Of Human Rights,' *Human Rights and Disabled Persons.* Available at <http://www.un.org/esa/socdev/enable/dispaperdes4.htm><Accessed on 4th August, 2017>.

and equipment as a means of facilitating their effective participation in programs, systems and opportunities impacting of their interests.⁸⁴

The need for participation opportunities for PWDs is predicated on studies⁸⁵ which depict the existence of a series of barriers which negatively hinder PWDs from accessing systems, programs and avenues to air the voices including limitation of access of court premises and processes.⁸⁶

2.7 Theoretical Framework

There are various theoretical frameworks which seek to deconstruct the factors determine PWDs access to justice. This research was largely guided by the theory of justice advanced by Rawls. That theory is of value to the study as it takes into regard the main principles of the theory on liberty and equality. The above theory of justice was proposed by Rawl in 1971.⁸⁷ The theory is built on the fundamental ideologies of liberty and equality of justice which seeks assurance of a just and an ethically suitable society. Rawls advances the principles of liberty and equality as prerequisites of founding a well-ordered and harmonious society.⁸⁸ While the principle of freedom seeks to guarantee everyone widespread essential freedom that is attuned with the freedom of others, the principle of equality on the other hand advocates for economic and social situations that are not only open to all but are also for everyone's advantage.⁸⁹

The motive behind advocating for the principles of justice is to shape, guide and determine the conduct of the persons.⁹⁰ The principle sets to advance the inter-personal cooperation of persons

⁸⁴ Ibid

⁸⁵ See Gray, A, Forell, S & Clarke, S (2009), *Cognitive impairment, legal need and access to justice*, *Justice issues paper* 10, Law and Justice Foundation of NSW, Sydney. Available at <<http://www.lawfoundation.net.au/ljf/app/4016D540ECE363B3CA25756F001DEE70.html>><Accessed on 4th August, 2017>.

⁸⁶ Ibid

⁸⁷ See Rawls J., *A Theory Of Justice*, (Revised Ed), (1999). Available at <<http://www.univpripalembang.ac.id/perpus-fkip/Perpustakaan/American%20Phylosophy/John%20Rawls%20-%20A%20Theory%20of%20Justice~%20Revised%20Edition.pdf>> See also Rawls J., *A Theory Of Justice*, Available at <<http://www.csus.edu/indiv/c/chalmersk/econ184sp09/johnrawls.pdf>>; See also Hiranandani V., 'Towards a Critical Theory of Disability in Social Work.' Available at <<http://www1.uwindsor.ca/criticalsocialwork/towards-a-critical-theory-of-disability-in-social-work>><Accessed on 4th August, 2017>.

⁸⁸ Ibid

⁸⁹ Ibid

⁹⁰ Ibid

on the basis of mutually acceptable terms.⁹¹ Rawls proposes a fair choice situation model which give parties the opportunity to mutually make choices engendering acceptable principles of justice. ⁹²It is on that mutual choice model that that Rawls anchors his framework as a possible attractive and utilitarian model.⁹³

The theory further advances the position that at the minimum, any rational individual in pursuit of his/her own interests would expect a state of equality as a dictating position of his or her association.⁹⁴ That for the ends of justice to be met, a rational person decides what is good, being in the system that enables his pursuit of what constitutes his interests; in a system of men which decides what is just and unjust in society.⁹⁵

2.8 Relevance of the Theory to the Study

Rawl's theory postulates two fundamental concerns, particularly, first in attainment of a state of equality. Arguably, equality can be considered to be a state that all beings are placed on the same pedestal irrespective of the status or disability. As for those with disabilities, there should be 'structures' that allow them equal participation as their counterparts in attainment of this position. Therefore, the state can be achieved also by more allocation to those at a disadvantage to enable them attain a level ground on enjoyment of various rights.

Secondly, the theory also engenders a fundamental principle of what constitutes good in a system that decides what is just and unjust. At the social level, it is individuals who agree on what constitutes good and therefore just in a situation of equal liberty rights. This prism also serves to elucidate an understanding particularly on the rights of all persons particularly on PWDs and what in their case, is a situation for equal liberty.

According to Rawl, the relationships between PWDs and organizations has been characterized by elements struggle and pain whose mitigation or elimination has been elusive. The elusive nature of such impropriety notwithstanding, Rawl notes that those injustices have their roots in

⁹¹*Ibid*

⁹²*Ibid*

⁹³*Ibid*

⁹⁴*Ibid*

⁹⁵*Ibid*

the existing economic and social arrangements including the means and structures of industrial production as those systems fail to accommodate PWDs in their operations.⁹⁶

Rawl's theory is significant in this study as it facilitates the know-how of the various factors affecting access of justice and human rights by PWDs relate to one another and how the principle reconciliation of liberty and equality can be achieved for all. According to the theory, the concepts of equality and freedom are not exclusive on a mutually front. The theory of access to justice posits that it is imperative to afford everyone equal rights under the law as a fundamental prerequisite of ensuring that justice is truly just.⁹⁷

As such, the theory's position serves as an impetus for an assessment that guides the study which delves into an assessment of factors affecting access of justice and human rights for PWDs in Kenya. An assessment which, takes into account factors including legal framework, government disability policies and information access and how they relate to access of justice and human rights by PWDs.

⁹⁶*Ibid*; See also Hiranandani V., 'Towards a Critical Theory of Disability in Social Work.' Available at <<http://www1.uwindsor.ca/criticalsocialwork/towards-a-critical-theory-of-disability-in-social-work>><Accessed on 4th August, 2017>.

⁹⁷ *Ibid*, see also Okogbule N., 'Access to justice and human rights protection in Nigeria: problems and prospects,' Available at <http://www.scielo.br/scielo.php?pid=S1806-64452005000200007&script=sci_arttext&tlng=en><Accessed on 4th August, 2017>.

CHAPTER THREE

METHODOLOGY

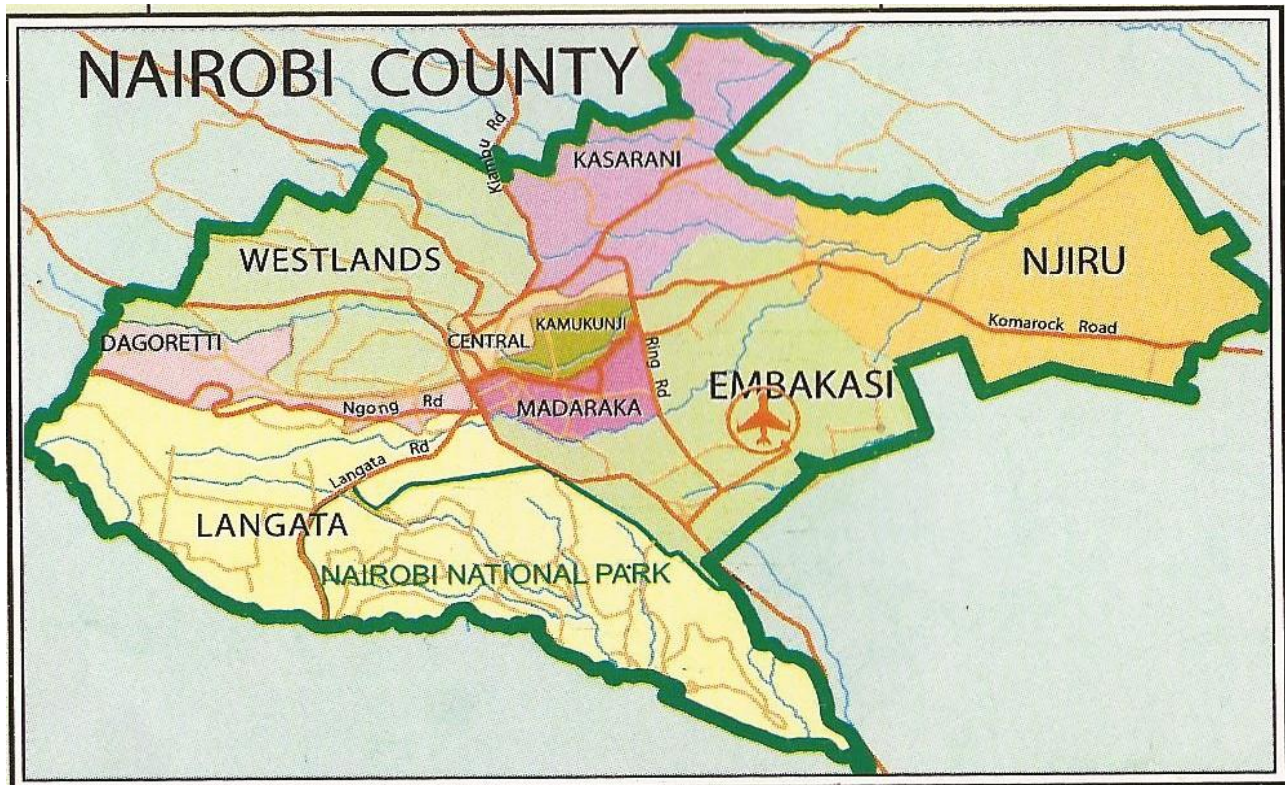
3.1 Introduction

The chapter discusses methods of research used. This comprises of the study design, study area, study population, sampling procedure, data analysis, data collection, and ethical considerations.

3.2 Study site

The research was mainly carried out in Nairobi City County being the capital city of Kenya; it is cosmopolitan city with a concentration of most government and NGOs in the heart of the city including its environs. Nairobi City is situated at $1^{\circ}27'S37^{\circ}06'E$ and $1^{\circ}09'S36^{\circ}39'E$, it occupies 696 square kl(270 sq. mi). The choice of Nairobi County as a study site is preferential to other areas or towns may not have many individuals and organizations that handle issues that deal with access to rights of PWDs in Kenya. Most of the head offices to the said organizations are located in Nairobi.

Figure 3.1 Map of Nairobi City County



3.3 Study Design

The study put to use descriptive approaches. The descriptive mode of research comprises of use of questionnaires in the field and observations in the study. This study sought to determine factors affecting access to justice and human rights for PWDs in Kenya. The study design sought to facilitate the collection of both qualitative and quantitative data.

3.4 Unit of Analysis and Study Population

This study was carried out in two broad categories of organizations. The first organization is governmental organizations within Nairobi and the second, Non-Governmental Organizations both situated within Nairobi City county handling matters related to rights for PWDs. The case studies did target 10 respondents from each category of the organizations.

Table 3.1 Target Population

Category	Target Respondents	Percentage (%)
Governmental organizations	10	50
Non-Governmental Organizations	10	50
TOTAL	20	100

3.5 The Sampling Procedure

This study employed stratified random sampling procedure. By this the population was categorized into different strata according to the different categories for instance; Governmental organizations and the Non-Governmental Organizations. The research used the concept of random selection where each employee (Respondent) had a chance of being selected as a respondent.

3.6 Data Collection Methods

The study employed Mixed Methods Approaches for collection of data of both qualitative data and quantitative. The survey, key informant interviews and case studies be the key methods of data collection methods. The instruments used in collection of data was the questionnaire, and Key Informant Interviews guide. These was augmented by secondary data sources.

3.7 Data Entry, Analysis and Report Writing

The cleaning of data and its entry was a continuous researcher's task carried out daily in the process of fieldwork. This was necessary to ensure not only reliability of the date but also the quality of the data. Quantitative data analysis from the respondents was coded and fed into the SPSS program and excel data editor. It was then filtered to disregard the errors and inconsistencies, which may have happened in the course of data entry and coding. Analysis was

carried out by computing essential statistics including frequencies, percentages and means and in other instances cross-tabulations. Descriptive formats were then used to present the data including but not limited to tables, narrations and graphs. Qualitative data was thematically and through content analysis and was then presented through anecdotal quotes and inferential narratives.

3.9 Ethical Issues

The study considered that there are ethical concerns that are necessary to protect the integrity of the study and its findings. First, prior to collection of data, authority to carry out research was sought from appropriate authorities which include University of Nairobi, the county government Nairobi, and National Commission for Science and Technology and Innovation (NACOSTI). The researcher ensured confidentiality of obtained information and data and was only applied solely for the purposes of this study. Respondents did have the option to decline to take part in the study. The dignity, interest and privacy and of the respondent/participants was at all times material to the study protected and respected. All the data collected remained confidential and all participants remained anonymous.

CHAPTER FOUR

PRESENTATION AND DISCUSSION OF FINDINGS

4.1 Introduction

The chapter presents findings, data analysis and interpretation gathered whose main objective is to explore factors affecting access to justice and human rights for PWDs in Nairobi County, Kenya.

4.1.1 Response Rate

Out of 30 questionnaires given out, 25 were answered making a response rate of (83.3%). Saunders et al., (2012) contends that response rate above 50% percent is ideal for a study and can be used to draw inference to the entire population.

4.2 Background Information

Background characteristics are an essential component in any social sciences. The importance of the role they bring into perspective about the responses on the main problem that is subject of the study. Be that this study also examines the responses with regards to the characteristics of the individuals to wit sex, age, occupation, education and the respondent the respondents that have been examined and their findings presented in this section of the study. Therefore, this aspect of data collection intended to establish the respondent's personal information. Information sought included the Gender, Age, Education level, Department attached and the number of years they have been in employment; either permanent or on contract.

Table: Background Characteristics

		Gender		Total
		Male	Female	
Department/Occupation	Government department	0	11	11
	Non-Governmental	2	7	9
	Other Individuals	3	2	5
Are you a Permanent employee	Yes	5	20	25
Age Category	26-35 yrs.?	5	17	22
	36-45 yrs.?	0	2	2
	Above 45 yrs.?	0	1	1

Highest level of Education	Tertiary/college	0	1	1
	University Graduate	4	5	9
	University Postgraduate	1	14	15
Total		5	20	25

4.2.1 Respondents Gender

An ideal social situation represents gender as a crucial component that is affected variably by any economic or social phenomenon, while at the same time modernization is not an exception. It was therefore necessary in the study to ask all their respondents to state and or rather indicate their gender as shown in the findings illustrated in figure 4.1.

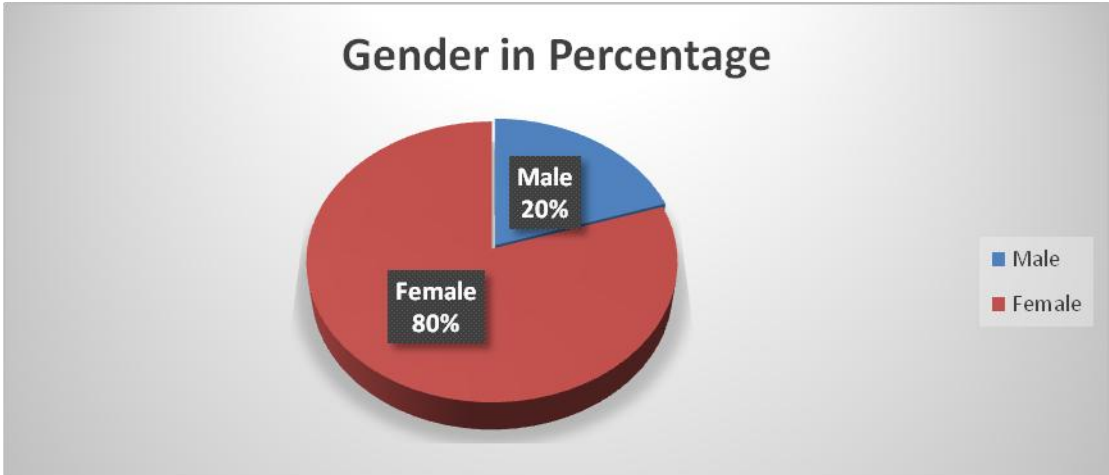


Figure 4.1; Gender of Respondents

The findings from analysis shows that 5(20%) of were male while 20 (80%) were female. This shows that the opinions of both genders were taken into consideration during this study and that there was no gender biasness. It clearly indicates that majority were the female. Females were more willing to respond and are privy to issues related to Persons with disability.

4.2.2 Respondents Age category

Research shows that various disciplines in social sciences reflect diverse opinions based on the range of the different groups of ages. This applies to the question of PWDs’ access to justice and human rights. As one of the background characterizes the respondents as a critical and essential component necessary for the understanding the respective opinions and views on particular problems and challenges be it as a subject of the study or otherwise, over and above, it is also essential to depict the maturity levels amongst the respondents and their understanding levels of particular issues that are subject as part and parcel of problem of the study. It was therefore necessary to ask the study respondent to indicate their ages as depicted in Figure 4.2.

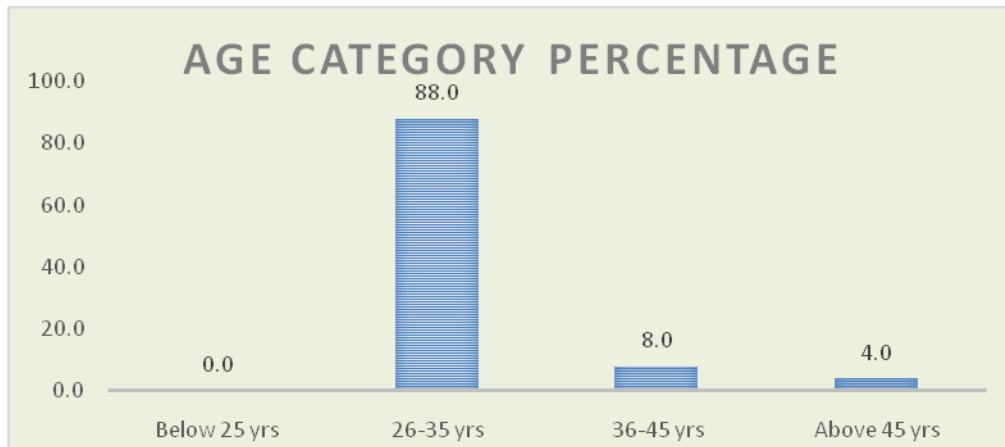


Figure 4.2: Respondents Age Category

From Figure 4.2, majority of the respondents were between 26-35 years (88.0%) while between 36- 45 years were (8.0%) and (4.0%) were above 45 years old. However, no respondents were aged below 25 years. Significantly, it was essential for the study to establish the age of the respondents so as to ascertain the age bracket that mostly responded.

4.2.3 Level of Education

Most often, study shows that there are notorious and diverse differences between respondents with diverse educational levels. At the same time, educational levels of individuals is often used as a yard stick for income. It is therefore important to measure the level of ones education as an important tool that puts into perspective the modus in which an individual appreciates things and similarly the attitudes that the said individuals have towards a particular social phenomena. It goes without saying therefore that the educational level of a respondent will in most instances be influenced and or be determined by the educational background and or status. Thus, it is significant to measure ones education level as part of the study. In this study, the respondents were asked about their education levels and the results are as in Table 4.1, (4.0%) of respondents had acquired tertiary college level with 36.0% of respondents having university graduate and 60.0% of respondents having university postgraduate level. No respondents had their highest level of education as secondary. Respondents in the study were mainly above secondary education with postgraduates leading.

Table 4.1: Respondents level of Education

Highest level of education		
Education	Frequency	Percent
Secondary	0	0
Tertiary/college	1	4
University Graduate	9	36
University Postgraduate	15	60

4.2.4 Kind of work and department.

An individual's occupation has a lot bearing on personality of that individual on many respects including appreciating on how one perceives challenges and or problems in real life and or problems presented to the individual. As such, the work of an individual socializes the individual in certain modes of operation and or fashions the individual's behavior patterns with regards to an approach of a phenomena. As such, it is necessary to know the kind of work an individual engages in as a necessary variable the researcher put under investigation. For this study, the kind of work one does exposes the respondents to people seeking justice in different ways, more so those with disabilities. It was with in mid that this variable was investigated for the study. The study asked respondents the kind of work and the departments they were in as Table 4.2 presents.

Table 4.2 Kind of work and department

Job Specification	Frequency	Percent
Unknown	7	28.0
Accountant	4	16.0
Administrator	1	4.0
Advocate	3	12.0
Associate	1	4.0
Business Developer	1	4.0
Consultant Advisor	1	4.0
fund manager	1	4.0
Lawyer	1	4.0
Manager	2	8.0
Prosecutor	3	12.0

From the analysis all of the respondents were in formal jobs. From table 4.2 majority 28.0% didn't want to specify the specification of the job they did. From those who responded there were 16.0% Accountants, 12.0% Advocates and Prosecutors. The rest had 4.0% with 1 each. This therefore means that respondents never wanted to reveal their job specification.

4.2.5 Employment experience

The period of time one has been employed also has a bearing on how they respond to situations. For this study, experience in employment provided an insight into how the duty bearers interact with PWDs in their search for justice in framework of human rights all of the respondents were permanent employees. From table 4.3, majority of them had experience between 4 to 9 years. Those who had experience of more than 10 years were only 4. These implies the informants gave the reliable information.

Table 4.3 Employment experience

How long have you been in employment		
Years in employment	Frequency	Percent
4	3	12.0
5	3	12.0
6	5	20.0
7	2	8.0
8	4	16.0
9	4	16.0
10	1	4.0
12	1	4.0
14	1	4.0
29	1	4.0

4.3 Factors Affecting Access to Justice and Human Rights for PWDs.

This study sought to determine the factors affecting access to justice and human rights for PWDs in Nairobi County in Kenya. The findings are presented in the following sections:

4.3.1 Interaction with persons with disability.

Respondents were asked to indicate how they got to interact with persons with disability. Majority (36%) of the respondents interacted with PWDs at work. Those who interacted at home and those who have never interacted were the same proportion (29%). The least interacted with people living with disabilities by the roadside (7%). From this, we can infer that the majority of PWDs are at home and work place.

Table 4.4 Points of Interaction with persons with disability

Interaction		Frequency	Percent
How you get to Interact with PWDs	Home	8	28.6%
	Work	10	35.7%
	Roadside/street	2	7.1%
	Never interacted	8	28.6%

4.3.2 Attitudes on how PWDs should be treated

When asked whether PWDs should be treated differently, the majority said yes (68%). The key informants were of the view that PWDs should be treated differently for the main fact of their disabilities. It is critical to note that they stated the same treatment should be positive treatment and not negative. They stated that persons living disabilities should be given more advantages to help them enjoy their rights like other individuals.

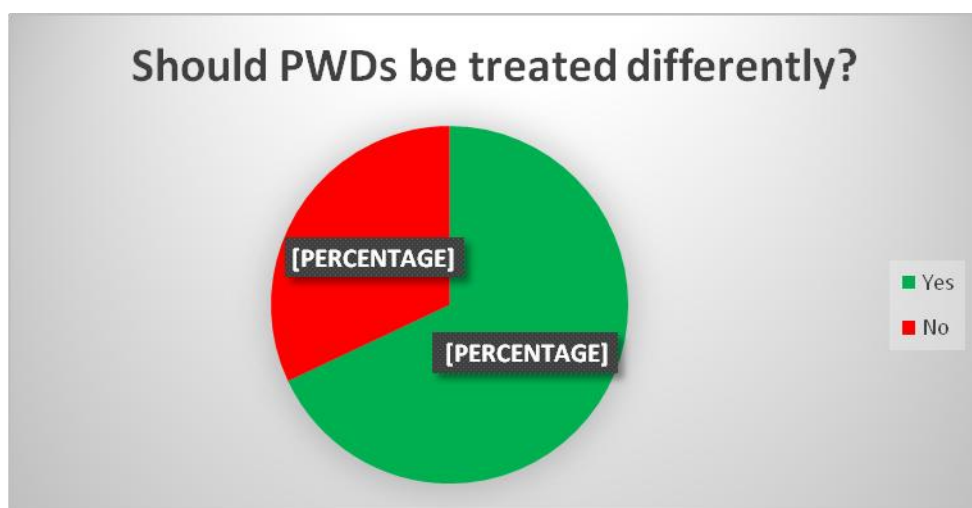


Figure 4.3: Whether PWDs should be treated differently

4.3.3 Challenges affecting PWDs

From those who considered that PWDs should be treated differently (68%), 29.8% of them said that access to buildings and means of transport was the biggest challenge they faced. The second challenge mentioned was discrimination and humiliation in different walks of life (21.1%) e.g. during appointments. The third most faced challenge was limited access to information, education and social amenities (17.5%). Affordable medical care and those who did not answer were third (12.3%) and the least mentioned was poverty and unemployment.

Table 4.5 Challenges affecting PWDs

Challenges		Frequency	Percent
Challenges affecting PWDs	Access to the buildings and transport	17	29.8%
	Affordable medical care	7	12.3%
	Discrimination and humiliation	12	21.1%
	Poverty and unemployment	4	7.0%
	Limited access to Information, education and social amenities	10	17.5%
	Did not answer/ N/A	7	12.3%

4.3.4 Existing laws/regulations for PWDs

The major legislation on PWDs laws in Kenya is the PWDs Act, 2003. The Act's main objective is to give effect the constitutional requirement under Article 54 of the Constitution, 2010 which provides for the rights of PWDs. Similarly, the article provision together with the Bill of rights and Article 2 domesticates the application and implementation of International instruments/laws that relate to PWDs to form part and parcel of the laws regulating the rights of the PWDs in Kenya.

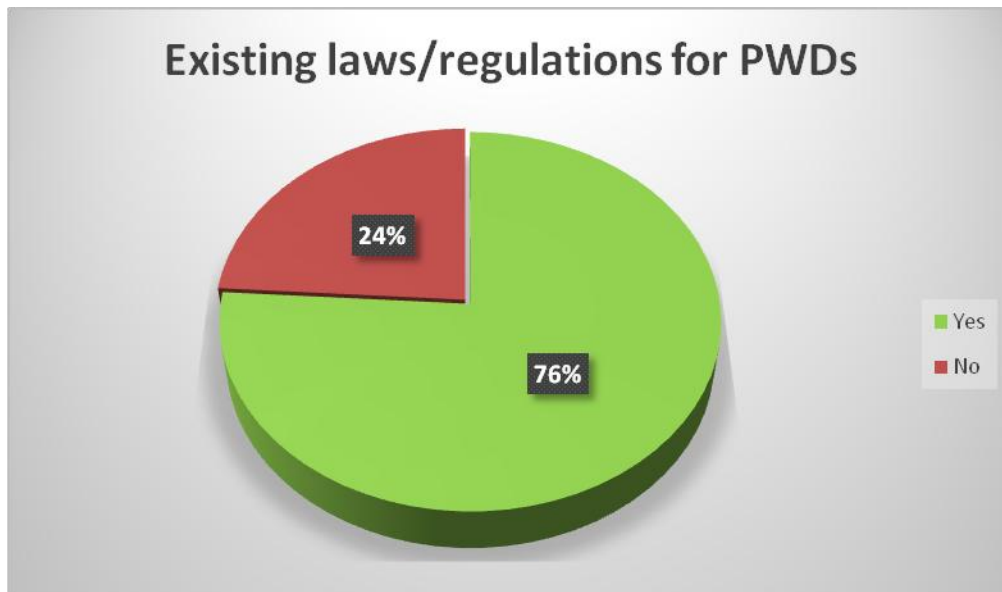


Figure 4.3: Existing laws/regulations for PWDs.

4.3.5 Existing laws/regulations for PWDs

On this variable, it was particularly significant to investigate the same to get a perspective about the level of knowledge on the existing laws that regulate the enjoyment of the rights of PWDs. From those who were aware of existing laws/regulations in Kenya governing PWD's (76%), the most mentioned Act was The PWDs Act (44.4%). The second mentioned was The Employment Act (22.2%) followed by those who did not answer (19.4%). The Law reforms commission Act (8.3%) and Workmate Compensation Act (5.6%) were the least mentioned.

Table 4.6 Existing laws/regulations for PWDs

Challenges		Frequency	Percent
Any existing laws/regulations for PWDs	Employment Act	8	22.2%
	Person with disability Act	16	44.4%
	Law reforms commission Act	3	8.3%
	Workmate compensation Act	2	5.6%
	Did not answer	7	19.4%

4.3.6 Effectiveness of the law in addressing concerns of PWDs

It is notable that formulation of the laws is one thing while implementation of the same is another aspect altogether. Laws existing without implementation is as well as no law at all. Over and above the implementation phase of any law, the concern should be stressed in ensuring that any form of implementation is effective to achieve the intended goals objective of the law. Likewise, it was necessary to test whether the existing laws regulating the rights of the PWDs are effective in realization of their rights.

In the question on whether the respondents felt that the law, if any currently in place was effective in addressing the concerns of persons living with disability, 64% said that the law was not effective while 36% felt it was effective.

Table 4.7 Laws Effectiveness in addressing concerns of PWDs

Laws Effectiveness in addressing concerns of PWDs			
In your own opinion, do you feel that the law, if any, currently in place is effective in addressing the concerns if PWDs		Frequency	Percent
	Yes	9	36.0%
	No	16	64.0%
	Law effective	Frequency	Percent
Law effective in addressing PWDs (YES)	Presence of sufficient laws	7	87.5%
	Presence of tax exemptions	1	12.5%
	Law not effective		
Law not effective in addressing PWDs (NO)	Lack of awareness	3	16.7%
	Lack of special considerations/treatments	7	38.9%
	Poor implementation of laws	8	44.4%

Out of the 36% who felt the law was effective, majority (87.5%) said the laws present were sufficient. One of the respondents (12.5%) gave the opinion that the presence of tax exemptions was justifiable to address the issues of PWDs. Of the 64% of the respondents who felt that the law was not effective, the majority (44.4%) said there was poor implementation of the laws concerning PWDs. The second most mentioned reason was the lack of special considerations and treatment of PWDs (38.9%). The last-mentioned reason for lack of effectiveness of the law was a lack of awareness to the general public about the laws and rights of PWDs (16.7%).

4.4 Institutional Capacity for Handling Issues of PWDs

One of the areas of concern was efficiency. Concerning information on institutional efficiency the respondent gave their views on how efficient they were in handling matters concerning PWDs' access justice. Majority of them (56%) felt they were less efficient, (32%) said they were moderately efficient while the rest (12%) claimed they were highly efficient. From the response we can say that the institutions are less efficient in handling matters concerning persons with disability.

Table 4.8 Efficiency in handling matters concerning PWDs to access justice.

Response	Frequency	Percent
less efficient	14	56.0%
Moderately efficient	8	32.0%
Highly efficient	3	12.0%

When respondents were asked whether they agreed that PWDs in Kenya face challenges in access to human rights and justice, majority of them (92%) concurred that they faced challenges. The rest were either not sure (4%) or strongly disagreed (4%). This means that PWDs face difficulties in access to justice and human rights. From the findings, key informants were of the view that the less efficiency was associated with institutional capacity in handling issues regarding PWDs rights due to the reason that major decision makers did not find it a priority amongst other issues.

Table 4.9 Challenges that PWDs face in access to justice and human rights

Response	Frequency	Percentage
Strongly agree	12	48.00%
Agree	11	44.00%
Not sure	1	4.00%
Strongly Disagree	1	4.00%

A number of concerns that were considered pressing and should be addressed were raised. They include affordable education (18%), available and accessible support facilities (24%), Law enforcement and public awareness/rights (22%), financial support (14%) and equity and fairness with (22%). In general, the concerns were mentioned by the respondents in nearly equal distribution. From the findings, key informants were of the view that they indeed understood and could also perceive that the PWDs face challenges including in the sectors of education, access facilities and financial support amongst other issues.

Table 4.10 Concerns about access to justice and human rights for PWDs.

	Pressing concerns	Frequency	Percent
Pressing concerns to be addressed	Affordable education	9	18.0%
	Available and accessible support facilities	12	24.0%
	Law enforcement and public awareness/rights	11	22.0%
	Financial support	7	14.0%
	Equality and fairness	11	22.0%

As stakeholders in the department handling matters regarding PWDs, respondents were asked to give their recommendations on how to improve PWDs' access to justice. The matters that were more stressed included; enforcement of laws protecting PWDs (28%), ensuring fairness and equality in daily life (26%) and increasing accessible support facilities (23%). The least mentioned were providing affordable education (12%) and increasing financial support allocation (5%). Those who did not recommend were (7%). It is also worth noting that key informants did stress or rather were in agreement that it was necessary for increased access to facilities by the PWDs in areas where the same has been neglected.

Table 4.11 Recommendations to improve PWDs' access to justice.

	Recommendations	Frequency	Percent
Recommendations	Provide affordable education	5	11.6%
	Increase accessible support facilities	10	23.3%
	Enforce laws protecting PWDs	12	27.9%
	Increase financial support allocation	2	4.7%
	Ensure fairness and equality	11	25.60%
	Did not recommend	3	7.0%

CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

5.1 Summary of Findings

The chapter seeks to give a general study conclusion as a whole. The topic of the study sought to discuss access to justice and human rights for PWDs in Kenya. The general outline of the whole study includes: chapter one, discussed a general introduction to the study. The second premised focused on literature review in view access to justice and human rights for PWDs in Kenya. In focusing, it shades light in the following thematic areas namely: general Perspective on access to justice and disability in Kenya, a contextual perspective on case for Kenya on disability and access to justice, legal foundations, access to information, and policies on disability.

Chapter three discussed the methodology and in particular focused on the following areas namely: introduction, study design, study site, unit of analysis, population, sampling procedure, data entry and collection methods, analysis and report writing and ethical issues. Chapter four of the study discussed data analysis, presentation, and interpretation.

The study concludes that the human rights-based approaches to challenges facing PWDs are mainly outdated understandings as fitting charitable or medical or spheres of action. This should not be the case, instead, the approach should be about giving power to people including PWDs to be acquainted with and claim their rights and increase the capacity and liability of institutions and individuals responsible for protecting, respecting and fulfilling these rights.

The study also notes that the strengthening of PWDs access to justice is pertinent in societies, not only in weak but also in stable contexts for sustainability. And, as such, functioning justice

systems should offer platforms necessary for solutions to disputes devoid of violence as a component basic for access to justice. The study also notes that it is also a challenge on the manner in which disability is not only expressed but also defined, as it impacts majorly the attitude, approach and understanding of others toward PWDs access to human rights. It follows therefore; a wrong definition would mean that the response to disability issues and or challenges will always take the wrongful dimensions and hence inappropriate and or inadequate remedial responses.

The study also notes the role of the governments within which the PWDs are found and its role in making sure they access justice. Fundamentally, the study finds that the first duty bearers are governments accountable for realization of human rights are respected and upheld in the highest forms. The study further finds that the governments have a responsibility to ensure that the legal and political systems are geared towards upholding human rights through programs, policies and laws to operate effectively. If this is achieved, it forms as a stepping stone towards realization of ensuring the PWDs have access to justice.

The study notably records the gains in terms of legislative approaches in terms of aiding the access to justice for PWDs in Kenya. The major step taken is the inclusion of the right of PWDs in the Bill of Rights in Constitution of Kenya, 2010. Article 54 of the Constitution engenders that PWDs shall be treated respect and dignity and not to be demeaned in any way. The right includes access to educational bodies and amenities for PWDs. It also includes reasonable access to public transport, information, all places, braille sign language and or other suitable ways of passing information and lastly access to devices and materials essential to overcome limitations as a result of person's disability.

5.2 Conclusion of the Study

The study conclusions provide a nexus on the objectives of the study which inter alia include: to explore factors affecting access human rights for PWDs in Kenya; to examine and discuss the challenges that affect PWDs in accessing justice and to finally to examine the impact of the challenges on the application of policies on rights of PWDs in accessing justice. In the same breath, the conclusion of the study juxtaposes on assumptions of the study with findings.

The study notes that holding other factors constant, the quest for ensuring access to justice for PWDs should acknowledged that the realization of these rights is a progressive step that requires state implementation. In that case, an ideal situation is where; first, the government recognizes that indeed it has a duty of ensuring PWDs access justice. Second, government implements its obligation aimed at the realization of the right to access justice and protect human rights for PWDs. The justification being that it has an obligation as is founded both in the Constitution and international instruments.

In view of the above, the study on the aspect on whether the respondents felt that the law, if any currently in place was effective in addressing the concerns of persons living with disability, majority being 64% said that the law was not effective while 36% felt it was effective. Out of the 36% who felt the law was effective, majority (87.5%) said the laws present were sufficient. A few respondents (12.5%) gave the opinion that the presence of tax exemptions was justifiable to address the issues of PWDs.

The study finds that that PWDs in Kenya represent a major part of the entire population. For a long time, the study notes that they have encountered marginalization in various respects in their lives. It further notes that a bigger mainstream of PWDs have either no access or limited access

to health, education, rehabilitation and employment or related rudimentary socio-economic services and major among them access to and human rights and justice. This is over and above the right to access to justice for PWDs.

The study finds that a majority of the PWDs : have much lower rates of education, much lower rates of economic activity and much higher rates of illiteracy, and as such, this has an effect on their access to justice and human rights as compared to other persons in Nairobi. Being the capital city of Kenya, it can only be inferred that if that is the situation in Nairobi, the other counties are performing dismally in ensuring that there is access to justice and human rights for person with disabilities.

The study finds that a majority of PWDs face challenges. When respondents were asked whether they agreed that PWDs in Kenya face challenges in access to justice and human rights, majority (92%) concurred that they faced challenges. This means that PWDs face difficulties in access justice and human rights. The study also notes that in terms of the needs of PWDs, they are spread out evenly on the following needs namely: affordable education, available and accessible support facilities, law enforcement and public awareness/rights, financial support and equity and fairness with. The study concludes also that a majority of the PWDs consider the environment a main challenge in day to day lives, and particular to human rights and access to justice.

The study also finds that the significant steps have been taken in Kenya to address the situation of PWDs, yet their access to justice and human rights remains a challenge. Notably, one of the main milestones achieved is in line with the adoption of the Constitution of Kenya, 2010.

The study notes that it is a human rights obligations to ensure that there is access to justice. It is a pathway towards ensuring inclusion and equality of individuals living in poverty. Accessing justice is an indicator that individuals are in position of pursuing their rights for the purposes of

protecting their income, assets and livelihoods or see it as a solution against manipulation. All individuals should have access to Justice. Essentially, it is also an important pillar of rule of law. A justice system offers a mechanism to cordial solution to misunderstandings. It is important for all societies to reinforce access to justice, as it ensures for sustainability.

5.2 Recommendations

In terms of recommendations, the study notes that there is need for policy implementation by the government as a whole regarding the rights of the PWDs. In other areas where there same is wanting, the study recommends that policies be put in place on disability for increased awareness and realization of the rights of PWDs particularly on their access to justice and human rights. It is essential to safeguard that promotion of extensive mindfulness and acceptance of rights of PWDs is always sustainable. It is also necessary that the state should also have policy measures necessary for removal of societal hurdles that hinder PWDs participating as citizens equally. In most cases, societal hurdles barricade the right of way for people to exercise their rights as citizens in justice and political systems.

Second, the study notes that the need to ensure that there is implementation of the existing laws with regards to PWDs. The study notes that for a start, the main challenge is not inadequate legislations but failure to implement the existing laws relating to PWDs.

The government should also invest in ensuring that there is access to information as a fundamental right to PWDs. As such, receiving and giving information is as important aspect of human daily lives. The study notes that that PWDs frequently report challenges as the problems they experience in access to all forms of public information.

The government should also ensure that there is need to espouse apposite administrative, legislative and other means for implementation of the rights of PWDs and their access to justice. The government has a duty to undertake and promote full recognition of human rights and basic freedoms for all PWDs devoid of discrimination. This includes the duty to take into account all

measures appropriate as well as legislation that will modify or amend existing laws and practices, laws and regulations that discriminate against PWDs.

There is also need for government to ensure that there is suitable training for those engaged in administration of justice, as well as police and prison staff. This will without doubt positively impact on access to justice and human rights for PWDs.

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APPENDICES

Appendix I: consent statement

I am a Master's student at the University Nairobi. In partial fulfillment of the course DEGREE OF MASTER OF ARTS IN HUMAN RIGHTS OF THE UNIVERSITY OF NAIROBI requirements, I am conducting a study on "*FACTORS AFFECTING ACCESS TO JUSTICE AND HUMAN RIGHTS FOR PERSONS LIVING WITH DISABILITIES IN KENYA*". I would appreciate if you could spare a few minutes of your time to fill in the blanks in the attached list of questions to the best of your knowledge.

The information in this questionnaire will be strictly confidential. The information will not be used for any other purpose other than for this research. Your assistance in facilitating the same will be highly appreciated.

Thank you in advance.

RIUNGU, JOSEPH GITONGA

Appendix II: Questionnaire for Respondents

The questionnaire is meant to collect information on the factors affecting access to justice and human rights for PWDs in Kenya. Kindly answer the questions by writing a brief statement or ticking in the boxes provided as will be applicable.

Date ____/____/ 2017

Government Department Non- Government Dep Other Individu

SECTION 1: BACKGROUND INFORMATION

1. Are you a permanent Employee?

a. Yes

b. No

2. What is your Gender?

i. Male

ii. Female

3. Age Category

a. Below 25 years

b. 26 – 35 years

c. 36 – 45 years

d. Above 45 years

4. What is your highest level of education

a. Secondary

b. Tertiary College

c. University Graduate

- d. University Postgraduate
- e. Other (please specify) _____

5. What kind of work do you do in your department

- a. Formal
- b. Informal

Specify (Accountant, manager, etc) _____

6. How long have you been in employment? _____ years

SECTION 2: INFORMATION ON FACTORS AFFECTING ACCESS TO JUSTICE AND HUMAN RIGHTS FOR PWDS.

7. As an individual, briefly explain how you get to interact with PWDs at work or home place?

8. Do you consider that the PWDs should be treated differently whether at home or at the work places? **YES / NO**

9. If YES, what are some of the challenges that you consider that affect PWDs ? (List them)

- a) -----
- b) -----
- c) -----

- d) -----
- e) -----
- f) -----

10. Are you aware of any existing laws/regulations in Kenya for PWDs ? **YES / NO**

11. If **YES** in 10, above what are some of these laws/regulations:

- a) -----
- b) -----
- c) -----
- d) -----
- e) -----

12. In your own opinion, do you feel that the law, if any, currently in place is effective in addressing the concerns of PWDs ? **YES / NO**

Explain why:

SECTION 3: INFORMATION ON INSTITUTIONAL EFFICIENCY IN HANDLING ISSUES OF PWDS .

13. you work in, how efficient are you in handling matters concerning PWDs to access to justice?

- Less efficient**
- Moderately efficient**
- Highly efficient**

14. In your opinion, do you agree that there is to access to justice and human rights for PWDs in Kenya?

Strongly Agree

Agree

Not Sure

Disagree

Strongly Disagree

15. What are the most pressing concerns do you feel should be addressed in terms of facilitating access to justice and human rights for PWDs in Kenya?

a) -----

b) -----

c) -----

d) -----

e) -----

f) -----

16. As one of the stakeholders in the department handling matters regarding PWDs , what recommendations would you give to improve their access to justice?

THANK YOU FOR YOUR RESPONSE