



**THE ROLE OF THE INTERNATIONAL COMMUNITY IN THE
ATTAINMENT OF POLITICAL RIGHTS FOR PERSONS WITH
DISABILITIES IN KENYA: ASSESSING THE PROGRESS OF THE
IMPLEMENTATION OF THE UNCRPD**

DAVID MWENDWA MUTHENGI

ADM NO: R50/6426/2010

**A RESEARCH PROJECT SUBMITTED IN PARTIAL FULFILLMENT FOR
THE AWARD OF DEGREE OF MASTER OF ARTS IN INTERNATIONAL
STUDIES AT THE UNIVERSITY OF NAIROBI**

NOVEMBER 2018

**INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES
UNIVERSITY OF NAIROBI
OCTOBER 2018**

DECLARATION

This project proposal is my original work and has not been presented for a degree award or any other award to any other University.

Signature----- Date.

David Mwendwa Muthengi

This research proposal has been presented for examination with my approval as the student's supervisor.

Signature..... Date

MR. FELIX ODIMMASI

Institute of Diplomacy and International Studies - University of Nairobi

DEDICATION

I dedicate this work to all Persons with Disabilities in Kenya for their strong determination to succeed in life despite the numerous challenges they often face.

ACKNOWLEDGMENT

I would like to thank Mr. Odimmasi Felix for his support and supervision in the preparation of this project. I would also like to appreciate the people who willingly contributed in giving information special appreciation to Dr. Elizabeth of KNHCR and Hon. David Ole Sankok - MP. Special thanks go to Hon. Martin Pepela Wanyonyi – MCA Ndivisi Ward for invaluable insights into the political arena for PWDs.

I wish to thank the Institute of Diplomacy and international studies university of Nairobi staff for their unwavering support and encouragement.

Finally I wish to recognize all who contributed directly or in directly in the success this project.

ABBREVIATIONS AND ACRONYMS

AU	African Union
CWDs	Children with Disabilities
DPO	Disabled Persons Organization
EAC	East African Community
IEBC	Independent Electoral and Boundaries Commission
IFES	International Foundation for Electoral Systems
IGOs	Intergovernmental Organizations
IPG	Institute of Political Governance
KNCHR	Kenya National Commission on Human Rights
KNSPWD	Kenya National Survey for Persons with Disabilities
MDGs	Millennium Development Goals
MP	Member of Parliament
NCPWD	National Council for Persons with Disabilities
NGO	Non-Governmental Organization
PWD	Person with Disabilities
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
WHO	World Health Organization
UN-CRPD	United Nations Convention on the Rights of Persons with Disability
UDPK	United Disabled Persons of Kenya
NDI	National Democratic Institute
NCPWD	National Council for Persons with Disabilities

TABLE OF CONTENTS

DECLARATION	ii
DEDICATION	iii
ACKNOWLEDGEMENT	iv
ABBREVIATIONS AND ACRONYMS	v
TABLE OF CONTENTS.....	vi
CHAPTER ONE	
1.0 Introduction to the Study.....	1
1.1 Background	1
1.2 Problem Statement.....	4
1.3 Main Objectives of the study.....	5
1.4 Hypotheses.....	5
1.5 Justification.....	5
1.6 Limitation of the study.....	6
1.7 Literature Review.....	6
1.8 Theoretical and Conceptual framework.....	26

1.9	Research Methodology.....	30
-----	---------------------------	----

CHAPTER TWO

2.0	Introduction.....	33
2.1	Overview of Disability Rights Regime in Kenya.....	33
2.2	Available Platforms for Participation of PWDs in Kenya.....	35
2.3	The legal Framework for Disability in Kenya.....	37
2.4	The Institution Framework for Disability in Kenya.....	44
2.5	The Policy Framework for Disability in Kenya.....	49
2.6	Shortcomings of the existing Legal, institution and policy frameworks on disability.....	50
2.7	Conclusion.....	51

CHAPTER THREE.....53

3.0	Introduction.....	53
3.1	Overview of efforts by International community in advocating for good governance.....	53
3.2	International legal regimes on Disability and Political Participation.....	58
3.3	International institution framework on Disability.....	64
3.4	African/Regional legal framework on Disability rights.....	66

3.5	Institutional framework on Disability Rights in Africa.....	71
-----	---	----

CHAPTER FOUR: Key Findings on the Current Status of Political Participation of PWDs in Kenya’s Sociopolitical Arena

4.1	Introduction.....	76
4.2	Role of the Background of the Individual PWD in politics.....	76
4.3	Academic and Professional Capacity.....	79
4.4	Experience of Disability-Related Engagements	81
4.5	Typical Processes for Nomination and Election into Political Office	83
4.6	PWD Perceptions on Levels of Participation	84
4.7	Challenges and Opportunities	86
4.8	Perceptions on the Role of the International Community	88
4.8.1	Positive Contributions of the International Community	89
4.9	Perceptions on the Status of the Implementation of the UNCRPD	90

CHAPTER 5: Summary, Conclusions and Recommendations

5.1	Introduction	91
5.2	Summary of Findings	91
5.3	Conclusions	92
5.4	Recommendations	93

CHAPTER ONE: INTRODUCTION

1.0 Introduction to the Study

This study is an academic effort to investigate the role the international community has played in Kenya, in facilitating the attainment of the rights of persons with disabilities to participate in electoral politics. Being part of the world community, there are many treaties that have been signed and ratified by Kenya that govern the rights of PWDs, among these the United Nations (UN) Charter, the African Union (AU) Charter, the Standard Rules on the Equalization of Opportunities for Persons with Disabilities and the UN Convention on the Rights of Persons with Disabilities (UNCRPD). The study seeks to understand Kenya's current position in the upholding of political rights for PWDs, as provided by the UNCRPD, to which Kenya is a signatory.

The study will therefore examine the steps that Kenya has taken in domesticating and promoting political rights for PWD's with regards to the provisions of the UNCRPD. In the process it will find out of the gaps and challenges. It will thus examine the legislations and the implementation mechanisms put in place to facilitate equal rights for PWD's. The role of the state in streamlining disability issues and the level of participation among PWD's in various political processes such as the electoral process, representation in government and in political parties among others will be examined.

1.1 Background

Since the onset of the Human Rights movement, its evolution has had key dates worth noting. First, there was the formulation of the UN Charter of 1945, which emphasizes the observance of the Human Rights of various persons and their fundamental freedoms are respected. (Article 55).

In 1948 the Universal declaration of Human Rights (UDHR) was adopted by member states of the UN. In 1966, the UN adopted the Covenant on Economic and Social Rights and the Covenant on Civil and Political Rights. Moreover, there have been human rights covenants formulated, signed and ratified at the continental level by the concerned states parties. These include the European convention on human rights (1950), the American Convention on Human Rights (1969) and the African Charter on Human and People's Rights (1981)

Although these were major milestones in the progress and the promotion of human rights, PWD's felt that these conventions did not address key issues with regards to disability rights. Consequently, the United Nations Organisation undertook several measures to address these concerns. First, it pronounced 1981-92 as the decade of the disabled. As an outcome of the decade, the UN General Assembly adopted the Standard Rules on the Equalization of Opportunities of Persons with Disabilities on 20th December 1993. The rules are a policy making and cooperation guide. Secondly, the UN brought into force the UNCPRD on the 3rd may 2008. This law was intended to safeguard the dignity and rights of PWD'S. The convention has pushed the world to see PWDs not as beneficiaries of welfare but as partners in development. With regards to political rights for PWD's, Article 29 of the UNCPRD states:

“States parties have

- a) To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected”.*

On the local arena, Kenya has taken steps to promote Human Rights by domesticating some of the provisions of international covenants as well as establishing organs that would protect these

rights and promote them. First, there was the establishment of the Kenya National Commission on Human Rights by parliament in 2002. This semi-autonomous public institution was given the mandate to safeguard and enhance Kenyans' rights and educate the public on their rights.

There was also the enactment of the Disability Act of 2003 which provided for rehabilitation and guarantee rights of PWD's to facilitate equal opportunities for them. In line with this Act, the Kenyan government established in 2004 the National Council for Persons with Disabilities (NCPWD), a public funded semi-autonomous entity to promote the cause of PWD's in Kenya and mainstream the disability agenda into national development.

In 2010, a new constitution was promulgated in Kenya. This constitution contained clauses that bore similarity with those of the UNCRPD with regards to political rights of PWD's. For instance, part 2 of Article 54 states:

“the state shall ensure the progressive implementation of the principle that at least 5 percent of the members of the public in elective and appointive bodies are persons with disabilities”.

This paper seeks to investigate the extent to which the international community has worked with the relevant institutions in Kenya to implement the various clauses of the UNCRPD which make provisions as to the rights of PWD's to participate in Kenya's political life.

1.2 Problem Statement

While the UNCRPD calls for full inclusion and meaningful participation of PWDs in politics, the Kenyan society in general has not provided for the equalizing environment to encourage the participation of this marginalized group. In nominations of parties, majority of PWDs

contestants are unfairly lodged out to favour the abled. Those who may make it through nominations, do not in most cases have the financial ability to run campaigns which are largely characterized by money. When it comes to appointive government positions, these are largely done out of political patronage. This has seen many PWDs constantly locked out of appointive positions as they do not possess much patronage to offer in terms of a political base/support to the government of the day, or the money to finance the agenda of their political elites' parties (Muite 2007).

This prevailing constant situation has forced attention to be shifted to the actors working towards the enhancement of the political rights of PWDs. The International Community have over time proved to have more influence over local governments especially in Africa, hence much focus over the political plight of PWDs has been cast on them. Why have the tools (specifically the UNCRPD) intended to address these rights not been as fruitful in this country? What efforts has Kenya made to domesticate the UNCRPD. Likewise, which challenges have marred the enjoyment of political rights for PWDs. Why is the status quo still existent?

This study will hence study the role the international community has played in the attainment of political rights for PWDs. This will be through a focus on the UNCRPD and the efforts of Kenya to implement it.

1.3 Main Objective of the Study

The general objective of this study is to examine the role of the international community in the attainment of political rights of PWDs by assessing the implementation of the UNCRPD

1.3.1 Specific Objectives

- 1 To examine the steps taken by the Kenyan government in implementing political rights of PWD's in conformity with the UNCRPD.
- 2 To establish the interventions of the international community in enhancing the political participation of PWDs in Kenyan politics.
- 3 To determine the actual levels and achievements of PWDs' participation in the country's politics.

1.4 Hypotheses

This study is informed by the hypotheses here-below indicated:

- 1 The Kenyan government has not done much to facilitate the enhancement of equity in opportunities for PWDs
- 2 The measures put in place by select international actors have not adequately addressed the participation of PWDs in Kenyan politics
- 3 There is minimal participation and achievements of PWDs in Kenya's political scene today.

1.5 Justification

The findings of this study will provide information to plug the gaps in knowledge in the application of International Human Rights. It will therefore enable future researchers to build on as they do further research.

Secondly, the findings of this study will assist policy makers on the extent of domestication of the UNCRPD. This will in turn enable them formulate policies that address the gaps and challenges addressed by this study.

Thirdly, this study will enable legislators enact laws that reinforce political rights for PWD's.

Finally, the study will highlight the gaps in coordination between legislation and

implementation of political rights for PWD's. This will enable the government to come up with mechanisms to close the gaps.

1.6 Limitations of the Study

Though there have been multiple international treaties on Human Rights, the study shall mainly focus on the UNCRPD. The scope of this study will only be limited to the equalization of opportunities in the political front in Kenya. The study will be limited to the role of the government and in facilitating the equalization of political rights for PWDs.

1.7 Literature Review

This section reviews literature and previous works done around international actors and political empowerment of PWDs. Specifically, it reviews the literature on: the international regime on rights of PWDs; International actors and the global push for political empowerment of PWDs; the current situation of PWDs in select African states; Sustainability of the PWDs empowerment in Africa; Situation of PWDs political participation in Kenya; Legal framework for PWDs in Kenya; Institutional structures supporting PWDs in Kenya; and finally Sustainability of PWDs empowerment in Kenya.

1.7.1 International Regime on Rights of PWDs

Internationally, according to the UN, there exists a well-defined legal and institutional framework, under the UDHR, that sets down the basic principles that promote guide, protect and recognize human rights generally, which rights include those of persons with disabilities. This

framework describes in detail the obligations for States and governments in terms of “respect, fulfillment and protection of the rights of PWDs.” The obligation to respect requires that governments do not interrupt or prevent PWDs from enjoying their rights that also include political participation, whereas the obligation to protect is benchmarked on the need for the State to ensure that PWDs are not abused. The obligations map out the things a state should do to create a good environment for the enjoyment of PWDs basic rights.

These international legal instruments guide member States and governments in formulating minimum domestic legal standards that define the welfare of PWDs including their participation in governance and inclusive politics. For instance, the UDHR makes provisions for the right of every human to air their opinion freely including the right to hold opinions void of any discrimination on grounds of language, race, religion, colour, political, sex, political or otherwise opinion, place of birth, social status etc. In the same spirit, UHDR also allows every society member to be given security and participate in governance of his/her country.

1.7.2 International Actors and the global push for political empowerment of PWDs

In respect of the European Union (EU) White Paper (2006), governance is the process by which decisions are made and implemented (or not implemented). The Paper points out that good governance and inclusive politics are consensus oriented, participatory in nature, equitable in distribution, efficient, effective and follow the rule of law by ensuring that graft is dealt with, the views of the minority and vulnerable groups are listened to and considered in decision-making. In general, the Paper observes that present and future needs of society must be receptive to good governance and inclusive politics (EU White Paper 2006). With regard to this,

several international actors have been on the forefront in the push for good governance and inclusive politics in the world but very few, like the National Democratic Institute of International Affairs (NDI), rope in PWDs into their interventions in advancing good governance and inclusive political practices.

The UN, as the largest global international actor, has been in the forefront in pushing for good governance and inclusive politics across the world. The UN considers governance good depending on how a state's institutions (parliament, government departments etc.) and processes (legal procedures, elections) are transparent. The UN shows immense respect for states that have had success in the achievement of these standards and uses them as role models for others (UNDP 2015).

In advocating for inclusive political participation, Krasner (1983) states that the UN advocates for total political participation of all people in society in determining the form of representative governments that they want through free, frequent and fair elections. And Strange (1996) further alludes that the UN uses many avenues available to it to promote inclusive participation and good governance. Through the UNDP, the UN supports programs leading to democratic transitions. In this capacity, it provides technical support and policy advice while strengthening institutions. It engages in communications and advocacy throughout the world. Through the International Monetary Fund (IMF), the UN advocates for good governance from its programmes of technical aid and lending. In combating corruption, it enforces measures, which strengthen checks, and balances across the world especially in developing countries. The IMF also extends policy advice on including all society members in decision-making.

In 2005, the UN established the UN Democracy Fund (UNDEF) aimed at promotion of civil society activities, which support human rights and advocate for participation of all members in the decision-making processes. The UN Public Administration Network (UNPAN) was designed to set up a network that is internet based, linking regional and national institutions of public administration. It enables information exchange and experience in public sector policy.

The European Union (EU) has also been a fierce agitator of good governance especially in the developing world. Through its various programmes of foreign aid, trade and institutional cooperation, the EU engages with the developing world based on preconditions of good governance, democracy and inclusive politics (Holsti 2005). According to the EU white paper (2006), there are five basic principles that the union employees in articulating for good governance: inclusive participation, openness, coherence and effectiveness, and accountability.

The paper states

“In an increasingly globalized and interdependent world, peace and security hang to a great extent on the political will and ability of governments and institutions to pursue policies geared to the rule of law, the protection of human rights, democratic governance, eradicating poverty, promoting sustainable development and reducing the inequalities that lie at the root of the main challenges facing the world”

Besides international players at the level of the UN and most of the powerful nations in the world, which have also been hailed as models of democracy by the UN, NGOs and Civil Societies have also joined in the global push for good governance and inclusive politics. Naidoo (2008) argues that NGOs are the conscience of humanity. He feels that they are the best tools for promoting good governance and political participation because they relate with the people on the ground. Many NGOs have been acting as lobby groups throughout humanity to voice

concern for human rights and good political leadership. Therefore, NGOs have great legitimacy which at times may even be considered as more than that of states.

Throughout the world today, NGOs are seen as epitomes of democracy and economic growth. They are considered to be the panacea of ills facing society. Ezeoha (2006) opines that most NGOs have reformed themselves to be objects of transparency, efficiency and accountability in the modern world. Many leaders in the developing world look to NGOs for innovative ideas and most politicians feel constant contact with NGOs gives them more credibility in the eyes of the electorate. This is particularly true as NGOs influence the electorate through advocacy, participation in governance, education/training and capacity building in order to strengthen democracy (Paul 2014). As thus, the Civil Society has become a bridge between the masses and the people as it is used to hold the government accountable. Fowler (2000) contends that Civil Society has today become an irreplaceable aspect of democracy, good governance and accountability thus creating a bond between the state and citizens. The Civil Society in the developing world has become a tool that creates an enabling environment used to enhance political participation of all peoples, decision making and safeguard the common good.

1.7.3 Current Situation of PWDs in Select African Countries

In spite of the above international regime, most African countries, including Kenya, are yet to fully put this into absolute universal practice. This is especially the case when it comes to political involvement of PWDs in many African societies as myths abound concerning their impairment. In most quarters, they are viewed as outrightly cursed if not victims of witchcraft. Africa's PWDs have been conspicuously absent from the political scene due to persistent

financial constraints, poor institutional coordination, political violence and inadequacy of human resource. Mitra et al (2011) contends that the current African institutions concern with rights of PWDs are

“systems lacking in coherence, composed of institutions with overlapping and sometimes conflicting mandates and functions”.

The authors note that there is lack of political good will on the part of African leaders to appoint PWDs to appointive offices and the AU has not done much to ensure that this situation changes. Oliver and Barnes (1993) argue that in the midst of other challenges like political instability, limited support to facilities, poor health and corruption, PWDs will most likely be locked out of political participation and receive a limited attention when it comes to appointive positions. They continue to explain that political campaigns in Africa are full of corruption in most countries and the whole electoral process very much physically demanding, meaning that only the fittest of health and those ready to part with bribes can compete in elections; two aspects which most PWDs in Africa lack hence edging them out of the process.

PWDs in Ghana, as Sackey (2014) observes, rarely get positions of political power especially for candidates who seek to contest in political positions. Local politics is largely inaccessible to PWDs in both the parliamentary and presidential elections. The local government system in the country is riddled with obstacles that bar PWDs from meaningful political participation. Even when it comes to voting, the voting rooms are not accessible by PWDs in many cases especially those in wheelchairs and those on crutches. Some of the factors hindering political participation of people with disabilities in Ghana have been largely classified into stigmatization of PWDs, financial weakness of PWDs to meaningfully finance political campaigns, negative societal perceptions of PWDs (as some associate disability with witchcraft), inaccessibility to voting

rooms and lack of sensitization of PWDs. Most PWDs also have limited levels of education hindering any meaningful participation.

Down in South Africa, Article 19 (3) of the South African Constitution states that:

19(3) “Every adult citizen has the right-

(a) to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and

(b) to stand for public office and, if elected, to hold office”.

However, many PWDs in South Africa have been excluded from both the mainstream politics as well as society. They have been denied access to basic services, social protection and political rights. According to the South African Integrated National Disability Strategy, this exclusion is based on:

- a) Weak legislative and institutional frameworks that sanction exclusion practices
- b) Systemic inequalities in the country’s post-apartheid political system
- c) Stereotypes perpetuating social attitudes of PWDs as needy always.

The paper also highlights that PWDs have experienced poverty, social isolation, lack of basic education, lack of social protection and unemployment due to discrimination by potential employers. In Ethiopia, the country’s constitution guarantees the rights of all Ethiopians devoid any discrimination. The constitution also has many provisions that touch on the political participation of PWDs in Ethiopia. With regard to the report forwarded to the UN Committee on the Rights of PWDs by Ethiopian authorities in August 2016, the Ethiopian government has been in the forefront in raising public awareness on the UN Convention on PWDs by providing easier to digest versions of the convention in several languages including Braille.

A representative of the Ethiopian Ombudsman agreed with this government position during the presentation before the committee and added that the last half-a-decade has seen major government effort in reaching out to PWDs and expanding their representation in government. The office of the Ombudsman in Ethiopia has also been in the forefront in advocating for rights of PWDs and receives complaints of mistreatment of the group.

Rwanda, like many other African countries, has strong laws and institutions on the rights of PWDs but implementation is the main problem. And, in the opinion of Charlloner (2012), many Rwandese do not value disabled people. Many PWDs are seen as charity cases. Many parents hide children with disabilities from going to school or playing with other children as they are seen as a shame. Women who are disabled are rarely married while PWDs rarely make it in political competitions or even get consideration. However, the situation is set to change as VSO and other civil society groups in Rwanda have been fiercely campaigning against seclusion of PWDs from political life in Rwanda. Due to pressure from the civil society, the Rwandese parliament has enacted several legislations to protect PWDs and improve their lives.

Much as implementation of the law is slow, the World Health Organization Report (2011) offers that several groups fighting discrimination of PWDs have now formed clearer structures in form of a disability movement made up of civil society (both national and international) to fight for PWDs welfare. Through this, the disability movement has been able to move the disability agenda forward and governments across Africa are now paying much attention to PWDs.

1.7.4 Sustainability of PWDs Empowerment in Africa

Africa has made headway legally when it comes to ensuring there are laws and regulations defending the rights of PWDs in the continent. While it is true to say that the African legal framework on the rights of PWDs is not contained in a single document, the truth is that there are various scattered human rights treaties that cater for this group of African citizens.

For instance, the African Charter on Human and Peoples Rights (1981) is regarded as the primary charter that deals with general human rights of all citizens of the continent.

Article 2 says:

“...the rights and freedoms recognized and guaranteed in the present Charter without distinction of any such kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.”

Although the article did not include the word ‘disability’, its use of term ‘other status’ at the end means the article is objective and hence considered to include the disabled.

Article 16 (4) is however more specific and provides for attainment of universal rights (to the best attainable status) for PWDs.

The African Women’s protocol (2003) was necessitated by what Africa terms as ‘inadequacies’ in the UN’s Convention on the Elimination of all Forms of Violation against Women (CEDAW). The African Women’s Protocol unlike CEDAW refers directly to the rights of women living with disabilities. Article 23 (a) of the protocol calls on African Nations to:

“...ensure the protection of women with disabilities and take specific measures commensurate with their physical, economic and social needs to facilitate their access

to employment, professional and vocational training as well as their participation in decision-making” .

Article 23 (b) calls on states to guarantee women with disabilities safety from violence which would include discrimination due to their disability, sexual abuse and are afforded the right to be treated with dignity.

The African continent has also ensured that the child is also given special attention. The continent realized that majority of children with disabilities are not well catered for and hence provided additional legislation to cater for the rights of disabled and handicapped minors. The African Charter on the Rights and Welfare of the Child (referred to The African Charter on the Child after adoption), is another good example of an African treaty catering for PWDs.

Article 13 of the Charter, calls on states to provide ‘special protection measures’ for children who are physically handicapped and calls for prerequisite measures to ensure that those children are treated with dignity and are allowed to fully participate in the society. The article also calls on member states to ensure handicapped children have accessibility to public places.

The African Youth Charter (2006) is yet another legislative masterpiece that was enacted to ensure youths who are living with disabilities are not neglected. Article 24 (1) of the charter asks that:

“State Parties recognize the right of mentally and physically challenged youth to special care.”

In Article 11 of the Charter, political participation of the youth as well as those with disabilities is provided for and calls on states to ensure all youths are allowed to participate in all spheres of society without hindrance. Article 11 (2a) calls on states to:

“...guarantee the participation of youth in parliament and other decision- making bodies in accordance with the prescribed laws”

Article 24 (2) calls on all state parties to remove all obstacles to the enjoyment of these rights.

In terms of institutions, Africa’s efforts to promote human as well as PWDs rights can be largely divided into two categories; institutions aligned with the African Union and institutions created by various treaties.

The constitutive act of the AU lays the legal foundation for various organs of the Union to advance and advocate for human rights of all people on the continent. Among its founding objectives, the Charter calls on member states to:

“...promote and protect human and people’s rights in accordance with the African Charter on Human and Peoples’ Rights and other relevant instruments.”

Wachira (2008) posits that in its official engagements, the AU has participated in protection of PWDs culminating in the recommendation that proclaimed the first two African decades for PWDs.

Oyaro (2015) also observes that several institutions have been formed in Africa by various treaties to fight for the rights of PWDs. These include: The Committee of Experts on the Rights and Welfare of the Child (The Committee), the African Commission and the African Court of Human Rights. Of the three, Udombana (2000) states that the African Commission has been the most active and confirms this by stating that the Commission spearheaded the development of the first draft on regional disability known as the Draft Protocol on the Rights of Persons with Disabilities in Africa. On its part, the African Court of Human and People’s Rights (The Court)

has been credited for squeezing the noose on African states that were traditionally human rights violators.

1.7.5 Situation of PWDs and political participation in Kenya.

Like many African states, Kenya has been accused of not doing much when it comes to the plight of PWDs in political participation as well as other spheres of their life. Mitra et al (2011) establish that many PWDs do not participate in making major political decisions. Many PWDs lack the facilities to access a polling station. Civic illiteracy is also pervasive among the PWDs. When it comes to vying for elective posts, the World Bank report found that many of them lack the resources to put up a campaign.

Kenya National Survey of People with Disabilities (KNSPWD) Report (2012) noted that many PWDs in Kenya do not have access to specialized support services that help them move and perform other duties due to their conditions. The report took note of the fact that the problem is most severe in slums and rural settings where many PWDs stay. The report found that basic rights of PWDs are rarely observed in Kenya and most of them survive without the most basic of needs. Many others especially in the rural areas depend entirely on third parties to eat, feed or cloth and gaining education for PWDs there is a big nightmare. Many have meager resources and this has hindered their access to education and participation in making political choices. The report further found out that many people have perceived attitudes when dealing with PWDs in Kenya. Most Kenyans especially those in rural areas who are still culturally inclined, tend to avoid PWDs and some see the latter's conditions as results of witchcraft or evil of some sort and this demoralizes PWDs from being socially active.

1.7.6 Legal Framework for PWDs in Kenya

In terms of legislative framework on rights of PWDs, Kenya has enacted some legislation that caters for the rights of PWDs. While the enacted legislation may not be enough, it is a forward-going step. The state has however been criticized for lacking the political punch to enact some of these legal provisions.

1.7.6.1 The Constitution of Kenya (2010)

Kenya's constitution is the Supreme Law of the state and lays a basis for adoption of international legislation as well as enactment of additional bills of parliament. In its preamble, the constitution spells out the desire of the Kenyan people for their government that are based on freedom, equality of all people, the rule of law and social justice.

Article 7 of the constitution recognizes the use of sign language and Braille as used by PWDs to be one of the official languages of Kenya. Article 21 calls on the state organs to ensure the needs of vulnerable groups including PWDs are addressed. Article 54 is specifically meant for the rights of people with disability and recognized their rights to be treated with dignity, receive education, access all public places and use sign language and Braille. Concerning their right to political participation, the article directs that continuous affirmative action principle be upheld to ensure at least 5% of PWDs are in elective and appointive posts.

Article 2 acknowledges all ratified international instruments as part of Kenyan law and to this end; Kenya has ratified the UNCRPD of 2006. The Convention is aimed at promoting and protecting full and equal application of the human rights of PWDs and to ensure they are treated with dignity.

1.7.6.2 Persons with Disabilities Act (2003)

The Persons with Disabilities Act (PWDA) is a parliamentary act that covers the rehabilitation, rights and equal opportunities of PWDs comprehensively. It also created the National Council for Persons with Disabilities (NCPWD).

Article 11 of the PWDA directs the government to take steps within the confines of the available resources in promoting rights of PWDs in Kenya. On Employment, Section 12 prohibits any employer from denying a PWDs access to a job he or she is suited for. It directs that qualified PWDs, who are employed, are to be subjected to the same terms of employment in terms of conditions, privileges, compensation, incentives, fringe benefits and allowances afforded to able-bodied workers in the same category. Section 12(3) exempts income tax accruing from the salary of an employee with a disability. Article 29 (1) protects their right to political participation;

“All persons with disabilities shall be entitled at their request, to be assisted by persons of their choice in voting in presidential, parliamentary and civic elections”.

1.7.6.3 Work Injury Benefits Act

Initially called the Workmen’s Compensation Act, The Work Injury Benefits Act (WIBA) is meant to cater for the compensation of injured workers during the course of their employment. Most injuries lead to disability of some kind in Kenya and hence this act is regarded as fighting for the rights of PWDs. It caters for government employees.

Article 5(1) of WIBA directs that when an employee suffers an injury while working, the employer is entitled to pay compensation. Article 7 (1) directs that if a worker sustains a total incapacity injury, he will be paid compensation equal to a sum of sixty month’s earnings.

1.7.7 Institutional Structures Supporting PWDs in Kenya

The institutional frameworks that propel the needs of PWDs in Kenya include, but not limited to:

1.7.7.1 Free Primary Education (2003)

Initiated under the leadership of retired President Mwai Kibaki, the Free Primary Education (FPE) program was meant to boost attainment of universal primary education to Kenyan children (Murungi 2013). The program dealt away with all fees charged on students which, worked in favor of children from needy backgrounds. Today, the FPE program has been expanded to special schools and institutions for children living with disabilities to ensure they receive education and address their special needs.

1.7.7.2 Kenya's Vision 2030

This program was aimed at providing a long-term framework for the development of initiatives which would spur Kenya's economy and tackle biting poverty. Upon attainment of the Vision, the country should become a globally competitive state with improved conditions of living. The author argues that one of the blue prints of vision 2030 is the strengthening of vocational rehabilitation centers and opening of new ones to rehabilitate PWDs. The blueprint also contains affirmative action courses in fields of education, employment, political emancipation and vocational training of PWDs (Onyango, 2012).

1.7.7.3 The United Disabled Persons of Kenya (UDPK)

This is an umbrella organization that brings up all bodies dealing with the issues and rights of PWDs in Kenya. It addresses concerns about equality, education and political emancipation of PWDs. This it does through advocacy and pushing parliament to enact more laws for promotion

of the rights of PWDs. It also does civic education to advocate for awareness and the acceptance of PWDs. Under its umbrella more than ten NGOs and organizations dealing with PWDs congregate, share ideas and pull resources together (Gretch 2009).

1.7.7.4 National council for People with Disabilities in Kenya (NCPWD)

It is a partially independent state agency. It is administered by 21 nominees who hail from various organizations that address issues of disabilities including the Attorney General, Federation of Kenyan Employers, government ministries, and the Central Organization of Trade Unions.

Its mandate is to formulate policies, issue orders for adjustment and formulate measures to ensure equal opportunities for PWDs in Kenya. It ensures they obtain education, participate in sports, are employed and are politically considered for appointive government positions. It also advises the cabinet on exact figures and state of PWDs in Kenya while at the same time recommending policies to ensure employment of PWDs in ministries and government departments (WHO report 2011).

1.7.8 Sustainability of PWDs Empowerment in Kenya

There has been some considerable work done in the area of disability in Kenya. These works, mainly reports and articles in journals, newspapers or websites, have explored areas such as education, health care, social inclusion and welfare. There has been considerable work done on the area of political inclusion.

An examination of these studies shows that most of them only focus on participation on the voting process with very few looking at political representation and decision making by PWD's.

Moreover, the mainstream society has largely ignored this area with most of the work left to either PWD's organizations or interest groups.

On the political front, The Federation of Kenya Women Lawyers (FIDA) 2013 report explores the participation of PWD's in the 2013 general elections. There was only 1 woman with disability elected to the national assembly, a man elected to the senate, 5 to the national assembly and 10 to the county assembly. Thanks to nominations, the senate ended up with 3 out of 67 members (which translates to 4.5%), the national assembly had 9 out of 349 members (2.6 percent), and the county assemblies had 71 out of 2222 members (3.2 percent).

Commenting on the general elections of 2017, "The Disabled make strides in Politics" reports that there was a higher number of candidates with disability running for elections with 2 being elected members of parliament, 2 members of the county assembly and 1-woman representative. However, it is clear from both reports that both elections fell short of the 5 percent constitutional requirement. The article "County politics: Advocate for people with disabilities trains her sights on National Assembly Seat", explores the county disability bill initiated in Kisumu county. Even though the bill has undergone adoption by the Kenya disability parliamentary caucus across all counties, only Kisumu County has ratified it. The act calls for the setting up of a county disability board and a county disability development fund.

In a study entitled "Turning politics into action: An evaluation of the implementation of the PWD's act", Sidha Zedekia explores the extent to which the PWD's Act objectives have been realized and the policy instruments used to achieve them. Although there was a marked improvement in the level of access to education, employment and other social amenities for PWD's, most of the policies outlined in the act have remained unfulfilled. For instance, none of

the 8 government ministries which the Act mandates different responsibilities in its implementation process, had employed a disability inspector. The PWD's were lagging behind the rest of the Kenyan population in key development sectors like health, education and employment.

The paper "Kenya: No Easy Path for Disabled Women with Political Dreams" examines the discrimination faced by disabled women in public places such as job interviews. On the political arena, it notes the prevalence in violence meted out to female politicians during elections. It recommends the establishment of a disability committee which will develop a strategy to mainstream disability issues to ensure the PWD's do not face these kinds of discriminations as well as enabling them to access services available to other Kenyans.

The article "Political pluralism and diversity" explores the exclusion of marginalized groups in political governance. The article outlines some of the KHCR strategic plan (2014-2018). The programme endeavors to enhance the inclusion and participation of the marginalized groups in the public sphere, particularly in decision making. This work however focuses on a larger group of marginalized groups encompassing women, the LGBTI (Lesbian, Gay, Bisexual, Transsexual and Inter-sexual) and PWD's.

Concerning the progress in the implementation of the UNCRPD, there have been reports written The UN Committee on the rights of people with disabilities report reviews the measures taken by the Kenyan government since the ratification of the UNCRPD covenant. These include among others, the introduction of an indicator of disability mainstreaming in the performance contracting on public service, the adoption of affirmative action measures in the area of employment for PWD's and the adoption of the national social protection policy with benefits

for PWD's. There is however, no mention made of progress in the area of political inclusivity. The Kenya National Commission on Human Rights did a shadow report on the progress in the implementation of the UN-CRPD. The findings of their survey indicate little or no progress in the areas of awareness, accessibility to public service vehicles and public buildings, access to justice, access to employment and work, access to education and adequate standards of living.

Commenting on awareness, the reports states:

“PWD's continue to face stigmatization in the society mostly due to lack of awareness of their rights despite the government's policy of mainstreaming disability in all government ministries.”

1.8 Theoretical and Conceptual Framework

1.8.0 Theoretical Framework

The study will be based on one theory of international law, namely Critical Disability Theory. The basis for this approach is because the theory sufficiently addresses all aspects of the phenomenon under study.

1.8.1 Critical Disability Theory

Critical Disability Theory (CDT), is a recent development that critiques the traditional approaches, assumptions and definitions of disability, which were tailored in oppression of PWDs and infringed, on their human rights. According to CDT proponents, Prince and Rioux (2002), the theory is rooted on the understanding that disability is not all about a person's health status, nor is it solely about compassion and pity but, it's a wide concept involving power (or the lack of it) and political choices.

Oliver & Barnes (1993) provide that CDT challenges able-bodied politics and politicians and advocates for an end to the restriction of social and economic rights to PWDs. CDT is based on a universalistic definition of disability and hence proposes that every human being can be categorized in a continuum changing status from not disabled to disabled and vice versa as every human being is disabled in some way at some point in their lives. The theory is also built on the three principles of the social model; (1) disability is understood as a social construct and not necessarily as the expected outcomes of impairment, (2) disability is a multifaceted interrelationship between a PWD's social environment, his medical condition and his own response to his/her condition, and (3) the social disadvantages of PWDs are caused by institutional, attitudinal and physical environment which does not meet the needs of people it sees as 'not normal' (W.H.O 2002).

The theory claims that no impairment is completely disabling and that the only disabling factor for PWDs is the failure of their society to accommodate their needs and rights limits them.

The CDT calls for public policy that responds to both social (inclusive of political, environment, economic and religious) and medical aspects of PWDs. It advocates for societal aid in preventing, treating and rehabilitating PWDs. The theory accepts and values all PWDs as equal, integrated members of society and calls for them to be treated as such.

Therefore, the researcher will use the CDT framework to provide answers to the research questions regarding PWDs political participation and enjoyment of rights since it embraces the political as well as legal rights of PWDs as indispensable tools in advancing the rights of the disabled.

This it does by explaining that disability is not entirely disabling hence people with disability can vote, work and vie for political office. It recognizes the valuable input that PWDs bring to their communities because, as Minow (1990) states, it treats all people, including PWDs, as equal and hence all people should be afforded equal rights, which rights, Crenshaw (1999) insists, must be upheld, particularly those of PWDs.

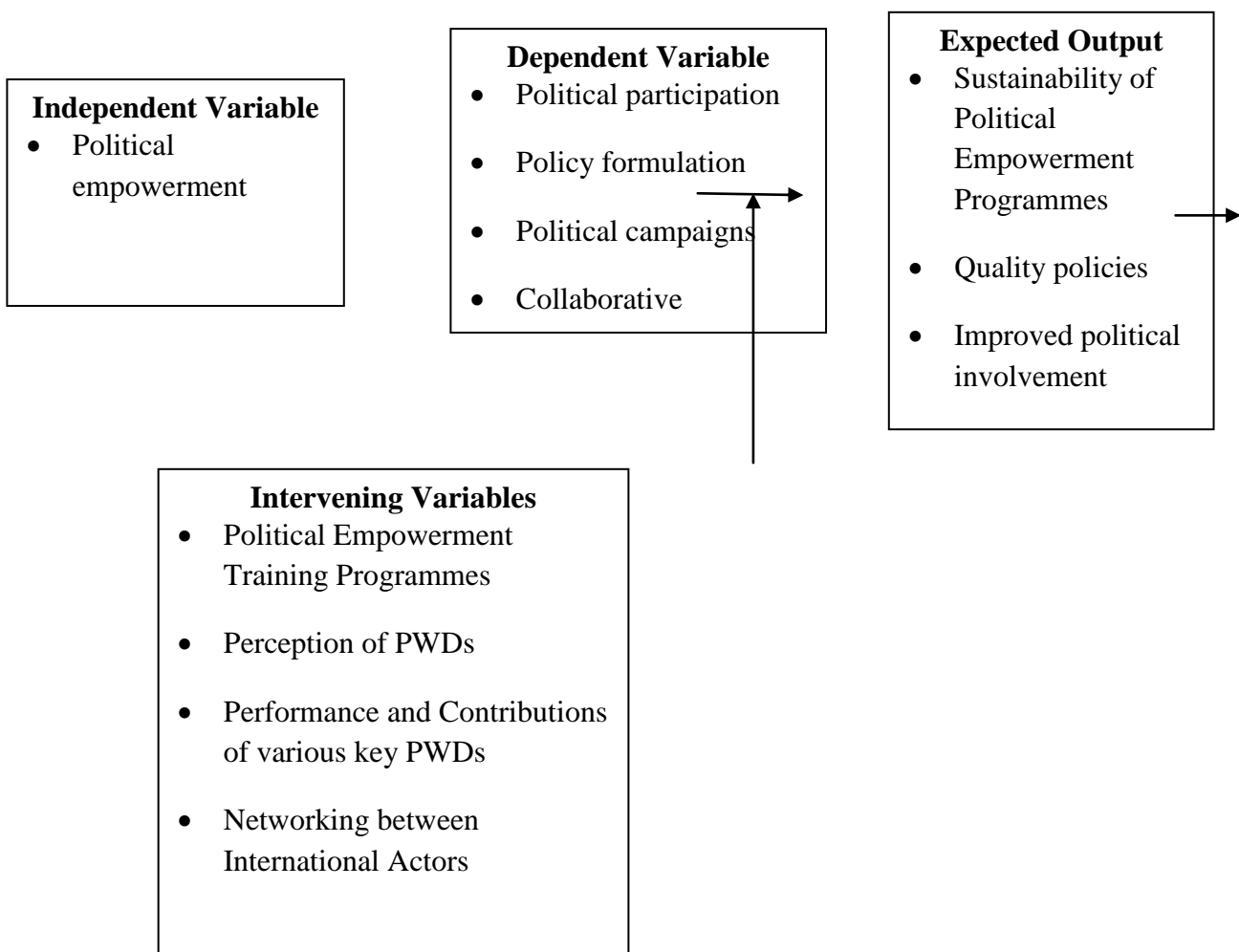
1.8.2 Conceptual Framework

In figure 1.0 below is the conceptual framework of the study. It explains the variables of the study and the relationship between them. It summarizes most of the variables that inform this study, among them political empowerment, a concept that the study will seek to explain further at some point, policy formulation, political campaign strategies, the “net-worth” of strategic networks, visibility, performance and contributions of key PWDs.

It is thus interested in the interplay and interconnections between various concepts that together lead to the enhanced participation of Persons with Disabilities in Kenya’s political spheres, this construct itself having been used broadly to include cases in which persons with disabilities are able to access positions that by description are not “political”, but which still require political goodwill for both appointment and execution of such offices.

In fact, it works on a presumption that there is always “politics” involved in a person with disability ascending to any position of influence in society since there are numerous barriers that can only be overcome by political interventions.

The Figure 1.0 below illustrates the back-forth influence between the two variables brought about by the relationship between them.



Source: Study Literature

1.9 Research Methodology

In this chapter, the research methods that will be used in carrying out the study are analyzed

1.9.1 Research Design

This study will use descriptive research design. This is due to the nature of the research that aims at presenting attitudes, opinions and views of respondents as they give them in the various

data collection tools hence descriptive design will be the most appropriate in reporting these findings. The study will also use purposive sampling. This is due to the nature of the information required. It requires Key Informants who have the relevant information. The study will hence target political leaders and selected organizations of PWDs as well as those working to champion for the rights of PWDs in Kenya.

1.9.2 Study Site:

The study will purposely target Key Informants who are based in Nairobi. This is equally representative because Nairobi being the capital city, has people from all over the country. Most of the target organizations also are headquartered in Nairobi. The target politicians are based in Nairobi too.

1.9.3 Target Population and Sample

In order to get relevant data to answer the research questions under study, this research will purposively target political leaders representing PWDs, those who are disabled, and a number of organizations of PWDs, as well as a number of organizations fighting for the rights of PWDs.

In the sample breakdown, it will target 10 politicians with/representing PWDs and 10 organizations of PWDs as well as those representing/fighting for PWDs rights. For the politicians, they will be individually interviewed while for the organizations, only one representative will be interviewed from each organization.

1.9.4 Data collection tools

In collection data, the study will employ interviews with Key Informants. This will be used to collect data from political class as well as target organizations working with/for the attainment

of rights of PWDs. Two separate interview guides will be prepared; one for the political class and another for the target organizations.

Secondary data will also come in handy especially in Chapters two and three of the study. These data will be collected from past research works, books, publications, and other relevant sources identified to be containing this data.

1.9.5 Data Analysis and Presentation

Data from interviews will be transcribed, collected into sub-themes and then themes. The themes will then be analyzed alongside the analyzed figures from quantitative data to create meaning and the data will be presented in short narrative formats and columns to help in interpretation.

Conclusions will then be drawn from the information and this will be used in coming up with the recommendations.

1.10 Structure of the Paper and Chapter Summary

The first chapter of this paper introduces the topic and examines the preliminary matters with regard to the topic, including the suggested approaches and literature review.

The second Chapter of the research paper shall delve into the details of the steps taken by the Kenyan government in implementing the political rights for PWD's in conformity with the UNCRPD, relying on secondary data.

The Third Chapter shall examine the interventions by the international community in enhancing the political participation of PWDs in Kenyan politics. This chapter will also delve into the

assessment of the extent to which such overtures have been successful by examining some of the available data and rely mostly on secondary sources.

The Fourth Chapter will engage in determining the actual levels of participation by PWDs in the country's politics following the framework in place as shall have been discussed in Chapter Two and Three and delve into an analysis of both primary and secondary information collected using some of the approaches earlier discussed. It will present the findings of KIIs and shall examine the remaining barriers to political participation and discuss the lacuna in the legal and policy environments.

The final Chapter Five will the give a summary of the findings, the conclusions and attempt recommendations on ways to further enhance the participation of PWDs in Kenya's political scene.

CHAPTER TWO:

**EFFORTS MADE BY THE KENYAN GOVERNMENT IN IMPLEMENTING
POLITICAL RIGHTS OF PWDs IN CONFORMITY WITH THE UNCRPD**

2.0 Introduction

The chapter is a response to the first research objective which was aimed at examining the steps taken by the Kenyan government in implementing political rights of PWD's as contained in the UNCRPD. The chapter will start by examining the disability rights regime in Kenya, then assess the available platforms for the participation of PWDs in the country. This will be followed by an examination and brief analysis of the legal, institutional and policy frameworks on PWDs in Kenya. From this examination, the study will identify the existing gaps in the existing frameworks and then draw a conclusion that answer the research objective. In answering the objective, the study will examine two aspects, i) if Kenya has taken any steps in addressing the rights (political rights) of PWDs and, ii) if the steps taken have led to the realization and attainment of the political rights of PWDs as envisioned in the UNCRPD.

2.1 Overview of Disability Rights Regime in Kenya

The research objective is pegged on the premise that participation (and more so political participation) is not limited to the act of being allowed to express an opinion and have it respected, but extends further to include the ability to construct the opinion itself. This ability is obtained through socialization, comparison and sharing of ideas with others and accessing relevant information. It further covers the freedom to make a speech, to assemble, associate, engage in public issues, register/vie, run and get elected as a political candidate. The government of Kenya by the constitution to guarantee an equal playing field for both able-bodied and PWDs in political processes.

Article 27 Sub-article 1 of the Kenyan Constitution states that;

“every citizen is equal before the law and has the right to equal protection and equal benefit of the law”.

This therefore guarantees that PWDs will not be left out or disfavored when it comes to application of the law in all spheres of societal life. In further guaranteeing their socio-political and economic rights, Article 54 states;

*A person with any disability is entitled-*a) *to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning. b) to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interest of person; c) to reasonable access to all places, public transport and information; d) to use sign language, Braille or other appropriate means of communication; e) to access material and devices to overcome constraints arising from the person’s disability.*

Pursuant to the Kenyan constitution therefore, the state must take into account all the rights of PWDs whenever it is liquidating its legal obligations, being the overall custodian of the rights of all Kenyans. This is laid out in the preamble of the constitution which affirms;

“We, the people of Kenya - recognizing the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law.”

2.2 Available Platforms for Participation of PWDs in Kenya

By the mere fact that a legal provision exists in the country’s supreme law, does not guarantee its implementation and adherence. The Constitution bears various bills of rights which in turn

domesticate various international rights and freedoms of all people into the Kenyan legal regime, such as those outlawing discrimination of any kind. The implementation and adherence of this laws therefore fall squarely on the Kenyan government mandated by both municipal and international law.

In the Kenyan society, participation of all people in daily activities of living is seen as essential part contributing to the overall wellbeing of an all-round person. Active and meaningful participation for PWDs involves integration into society and being accorded the respect they deserve. The more the involvement therefore, the more they feel integrated. According to Kronlof (2007), meaningful participation for PWDs means they take part, they are included and actively engaged, and have meaningful access to the resources they need to realize their rights. In political life, the Constitutions identifies voting, campaigning, formation of political movements and vying as candidates as some of the processes that present meaningful political participation in our given society. The following platforms can therefore be utilized in Kenya to evaluate the extend of participation of PWDs in the societal life.

2.2.1 Sports

According to a joint ILO, WHO and UNESCO report (1997), many Kenyans do not believe that PWDs can participate actively in many areas of life including in sports. However, the report notes that sports bear a great ability to unite people and hence increase levels of inclusion especially for PWDs and other marginalized groups. Participation of PWDs in sports will most likely change the perception of many Kenyans towards disability, from dependents to ‘abled’ people just like the other members of the society. Active engagement of PWDs in sports will also decrease levels of discrimination for PWDs over time according to the report. It goes further to note that the universality of sport, coupled with its socio-economic and physical

developmental benefits as well as its ability to be a tool of education and social mobilization, sets it apart as one of the most effective tools of fostering stigma reduction in the society. It therefore makes sport an effective platform for nurturing independence, meaningful inclusion and socialization of PWDs.

2.2.2 Vocational Training and Employment

Unlike many other platforms available in Kenya, many training institutions have academic and other relevant qualifications that an individual must meet to train in this institution. While some training institutions have different admission criteria for PWDs and those from marginalized groups, a number of others chose to use the same standard criteria as one of the factors of equalization of all people in the society. The Constitution of Kenya too recognizes that there are a number of economic, social and political rights which PWDs can enjoy in an equal footing with all other abled Kenyans. However, it provides a caveat noting that for PWDs to enjoy and equal footing in the enjoyment of these rights, they must be afforded relevant opportunities for training, rehabilitative care, specialized guidance as well as increased opportunities for meaningful employment. To further ensure they are adequately equipped to enjoy these rights, the Constitution notes that the training they receive should not be discriminatory.

2.2.3 The Environment

Based on the different kinds of environment PWDs receive in Kenya coupled with the kind of disability they possess, the probability of enjoyment of the rights of PWDs to participation, will be enhanced or reduced. For instance, a deaf person can feel useless if he/she finds him/herself in a discussion that needs his/her contribution yet s/he is not availed with a sign language interpreter. A building without a ramp or elevator and disability accessible toilets limits the ability of a PWD to come to the building and contribute on a matter that is of his interest to him

being discussed inside. Likewise, a computer without a screen reading application makes it impossible for a blind person to use. In these scenarios therefore, the environment can be either a hinderance or a facilitator to a disabled persons' participation in various aspects of societal life. (WHO 2011).

To address these inconveniences and limiting factors facing the right to participate, the state and relevant stakeholders should be in the forefront of ensuring PWDs have access to assistive devices for example wheelchairs, tricycles, prostheses, walking frames among others. It is also incumbent for them to ensure that legal provisions are put in place to guarantee accessibility of buildings by all persons, disabled or not (WHO, 2015).

2.3 The Legal Framework for Disability in Kenya

PWDs to date remain a marginalized lot in Kenya despite the fact that Kenya has assented to a number of international conventions and treaties. In the former Kenyan constitution, PWDs were not specifically mentioned nor were their political and social rights spelt out anywhere in the document. The constitution them implicitly locked out PWDs from participation. For example, the document did not have any provisions to safeguard the participation of PWDs in political spaces nor facilitative clauses to ensure they were included. A number of non-governmental organizations fighting for the rights of PWDs found it hard to defend the group's right to participate in political spaces without any clauses in the constitution to back them up. The new Constitution of 2010 gave birth to a new era of women in politics as it provided a platform for a number of women to thrust themselves into the political limelight.

Even with the new dispensation, there is still no meaningful participation of PWDs in political spaces taking place yet. This would probably point to the inadequacy of the current dispensation to properly address and empower the issue of disabilities altogether. The study goes down into the existing legal frameworks around disability to examine their suitability to address the rights of PWDs.

2.3.1 The Kenyan 2010 Constitution.

Following the shortcomings of the old constitution, it was imperative for the drafters of the new constitution to incorporate clauses and laws governing and facilitating the attainment of rights for PWDs. The Constitutionally equally considered other marginalized groups which included women and youth. Article 27 of the Constitution explicitly provides for these provisions and legal allocations. It calls for equality of all people before the law including women and PWDS:

“ 1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.

(3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

*(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, color, age, **disability**, religion, conscience, belief, culture, dress, language or birth”.*

The Constitution equally has a whole article which talks about and guarantees various rights of PWDs. Article 54 of the Constitution deals explicitly with PWDs. Sub-Article 1 (a) calls on all Kenyans to treat PWDs with dignity and deserving respect and more importantly, to address them in a manner that does not demean them. 1 (b) talks about their right to access quality

education as well as accessible educational facilities and calls upon the society to integrate them as far as their interests go. 1 (c) talks about their accessibility to all public places, information and transportation means. 1 (d) is about their language and communication. It recognizes braille as one of the languages used by PWDs and provides for other means of communication accessible to them. 1 (e) talks about assistive devices. It calls upon the society and the state to provide PWDs with assistive devices that they may need. Finally, in Article 54 (2), the political participation of PWDs is provided for;

“The State shall ensure the progressive implementation of the principle that at least five percent of the members of the public in elective and appointive bodies are persons with disabilities.”

Perhaps in realization that the clauses contained therein may not be adequate in addressing all needs of PWDs, the Constitution points out to international regimes as complimentary legal provisions that safeguard PWDs and marginalized groups all over Kenya. Articles 2 (5) (6) refer to legal treaties that Kenya has signed dealing with PWDs and other marginalized groups.

“(5) The general rules of international law shall form part of the law of Kenya.

(6) Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.”

In their analysis of the Constitution, Mbondenyi and Ambani (2011), hail the bill of rights represented therein, as an integral facilitator of democracy, inclusion and participation, pointing out that it contains judicial and extra judicial importance. If well applied, the authors say the bill of rights will become the thread that weaves national policies and agenda and will preserve the dignity of all men and women to realize their full potential regardless of their ableism or disability. In comparing the 2010 Constitution to the old one, the authors conclude that the

former is unique in many ways as it bears exhaustive catalogue on various human rights and non-discrimination clauses which will cater for the rights of PWDs as well. Implementation of these provisions is however the challenge as political goodwill is lacking.

2.3.2 The Persons with Disability Act (PWD Act)

This Act was legislated in 2003 by the Kenyan parliament to cater for the rights of PWDs to rehabilitation, and equality in terms of opportunities. The Act established the National Council for People with Disabilities (NCPWD). The spirit behind the passage of the Act was facilitating PWDs to participate at an equal footing with other abled Kenyans. In the Act, the term disability is widely defined to include various types of impairments such as mental, sensory, hearing, sight, physical as well as learning challenges which the Act notes have an effect on the socio-economic and environmental participation of PWDs.

The Act gives authority to the NCPWD to develop and formulate policies that will facilitate equal opportunities for PWDs to education, employment, access, participation etc. To safeguard the interests of the council in working for PWDs, the composition of the NCPWD is composed of at most 8 representatives of various sectors of PWDs from all over Kenya (social services, health, culture, county governments, labor, transport and housing), 3 representatives of PWDs organizations, and a representative of the attorney general.

The Act places responsibility on the state to provide sufficient resources that will enable PWDs attain their rights. Sections 21-22 of the Act calls on all responsible parties to facilitate easy movement of PWDs, being one of the obstacles facing their participation. The Act also provides for their civil rights. It outlines measures to be put in place to ensure PWDs will take part in democratic governance, which include assisting them to vote by ensuring polling stations are

accessible to them. The Act also sets up a fund-National Development Fund for PWDs- to cater for the needs of the group. The money is availed to schools, organizations and projects that cater for the needs of the group. It also aids in purchasing assistive devices as well as pay deserved allowances to various groups of PWDs.

To empower them economically, the Act gives them various incentives which include being excluded from tax payment on their income, as well as tax exemptions on their assistive devices and equipment. Both private and public sectors under the Act are mandated to employ 5% of their labor force from among PWDs covering permanent employees, contractual as well as casuals. It also gives incentives to employers modifying their facilities to enable accessibility of PWDs giving him 50% of the cost incurred in the modifications.

Implementation of various provisions of the Act has been a challenge overtime. Allocation of funds to the kitty established for PWDs has been hampered by low budgets from the national government while the NCPWD has not been able to effectively map out all PWDs in the country to enable them receive requisite help.

2.3.4 The Political Parties Act 2011

This Act was passed in 2011 to streamline the running and conduct of political parties in Kenya.

The Act has provisions that cater for PWDs and the marginalized. Section 7 (2) states;

“Parties shall not be registered if in the selection of the members reflect regional and ethnic diversity, gender imbalance and if in their formation they do not consider the minorities and the marginalized groups.”

This in effect caters for PWDs as they are recognized as a marginalized group in Kenya. In section 7 (2), the Act also calls for regional, gender, diversity as well as marginalized groups

balancing in the composition and membership of the governing entities of all political parties in order to qualify them for registration.

The Act also recognizes women. It directs that not more than two thirds of special seats in the party as well as in the governing body shall belong to the same gender. The first schedule of the Act calls for the respect and consideration of interest of PWDs in the welfare of the party. In the final assessment however the registrar of political parties has been unable to ensure these provisions are adhered to due to too much political interference in the affairs of his/her office.

2.3.5 The Independent Electoral and Boundary commission Act (2011)

This Act was passed in 2011 by the national assembly to govern the conduct of general elections in Kenya. It also caters for nominations in political parties. Part 5 of the IEBC Act calls for the electoral body to ensure that all Kenyans are free to exercise their political rights which include voting, vying, campaigning and getting elected. The IEBC is tasked with ensuring campaigns run smoothly and hence is implicitly the custodian of the safety of PWDs while campaigning and vying for political office.

The IEBC has not been effective in ensuring PWDs are allowed to campaign, vie and get elected in a peaceful environment. This is partly because there has been too much political interference in the running of the body which is constitutionally an independent body. It also lacks prosecutorial powers hence can do little to those who block PWDs from vying or campaigning through violence. It hence remains a dog that cannot bark.

2.4 The Institutional Framework for Disability in Kenya

Every standing house needs strong pillars on which to rest. Likewise, for written laws and regimes to function well, they require stable and effective institutions to support them. A number of factors need to be put in place to ensure the participation of PWDs in society's affairs including: offering them good educational training, carrying out affirmative action and a conducive environment is provided. The institutions must also protect PWDs from violence and demeaning conduct against them especially during and around general elections. To realize these gains, strong institutions must exist and all actors including the civil society and development partners must support them. The foregoing analysis examines the institutions available to fight for the rights of PWDs in Kenya and how they have performed so far.

2.4.1 The Government of Kenya

The government is the largest and most resourced entity that is entrusted with facilitating the achievement and attainment of all rights of all Kenyans. As such, the government is equally the principal actor in the realization of the rights of PWDs to participate in the political scene of the country. All three arms of the government have a role to play when it comes to realization of these rights. While the executive is mandated with enforcing the rights, the legislature is mandated with creating the necessary legal framework and the judiciary is mandated with creating jurisprudence while advocating for cases around disability.

The government is equally mandated to carry out civic education, provide security to PWDs and empower PWDs to participate in political processes. The government should thus develop a database for PWDs and map them out well so as to provide them with the necessary assistance.

In the analysis of available data however, the government has done little to facilitate these rights. While parliament has legislated, it has not followed up to ensure the executive implements these laws. The judiciary has not created much jurisprudence either because most of the aggrieved PWDs are poor and cannot finance cases or lodge cases before the courts hence much of the grievances have not reached the courts.

2.4.2 Non- Governmental Organisations (NGOs)

Worldwide, NGOs have always taken a frontline role when it comes to advocating for the rights of the marginalized. They get financing from various donors and foundations to take up causes that the said donors and grantors believe in but have not the capacity to champion themselves. One of the issues that has been attracting lots of donor attention is the issue of disability partly due to the spirit behind the UN Sustainable Development Goals (SDGs) of *leaving no one behind*. In Kenya there are a number of NGOs advocating for the rights of PWDs in political participation. These include Caritas, Friedrich Ebert Stiftung (FES), UNDP, Inclusion International, Handicap International and Christian Blind Ministries (CBM) among others

The NGO movement can be greatly credited for the gains that have been made in Kenya's political scene as far as PWDs are concern. They have engaged the government over the years through boardroom meetings, street demonstrations and memoranda to parliament to advocate for the rights of these group. Much can equally be achieved if NGO movements dealing with disabilities can come together and push for recognition of PWDs as one voice.

2.4 3. The National Gender and Equality Commission (NGEC)

The commission was established under the new Constitution under Article 59 sub article 5. It is a government body. The commission is mandated to foster affirmative action which is meant to

ensure equality of all people from both sexes freely participating and given equal opportunities. Equality sought by the commission is equally guaranteed under Article 27(1) of the Constitution.

Broken down, the mandate of the commission involves contribution to the reduction of discrimination and inequality between PWDs and the abled. They equally ensure equality between men and women, the youth, children, minority groups as well as other marginalized people. It is governed by the National Gender and Equality Commission Act of 2011. Section 8 of the Act states;

“...the function of the commission shall be to act as the principal organ of the state in ensuring compliance with all treaties and convention ratified by Kenya relating to issues of equality and freedom from discrimination and relating to special interest groups including minorities and marginalised persons, women with disability”.

Article 250(4) calls on all appointments to independent offices and commissions to be done taking into account the national values contained in Article 10 of the Kenyan Constitution, which talks about democracy and non-discrimination in appointive and elective positions. This in turn caters for the political participation of PWDs.

2.4.4 National Council for Persons with Disability (NCPWD)

This is the chief state organs dealing with the rights and social welfare issues of PWDs across the country. It was established through the PWD Act of 2003. Section 7 of the act calls on the Council to ensure that all structures, services and buildings across the country starting with government ones are accessible to PWDs. The council therefore handles all administrative, structural and physical impediments that deter accessibility for PWDs. This is meant to ensure

PWDs are not impeded from attending a meeting or going to class or even voting because of the nature of the facility in use that does not promote or is not disability user friendly.

The Council is mandated to acquire and distribute assistive devices to PWDs across the country. The Act recognizes the fact that in some areas, discrimination against PWDs has been dealt away with but lack of assistive devices is what hinders PWDs from participation. The fund gets allocation of funds from the government through which it acquires tax free assistive devices and distributes to PWDs across the country. Under the Act, the Council is also tasked with conducting civic education as one way of dealing with discrimination and stigma associated with PWDs.

The functioning of the Council is however, limited by the fact that they depend on other bodies to smoothen their operations. They cannot make far reaching policies and their budgetary allocations from the executive are always minimal. This has affected them especially in mapping out PWDs due to human resource challenges as well as purchasing assistive devices for all PWDs across the state.

2.4.5 Kenya National Commission for Human Rights (KNCHR)

The KNCHR is an autonomous human rights institution created in 2010 by Article 59 of the new Constitutional dispensation and established through an Act of parliament in 2011. It is mandated by law to fight for the upholding of all human rights across the country, check the government on human rights issues, and initiating national debates that move the state towards a human right upholding country.

The Commission monitors the implementation of the UNCRPD and all other international regimes ratified by Kenya on human rights. Recently the Commission set out on a study to

monitor observance of CRPD in the country (2011-2013). The study was done in hospitals, homes of PWDs, Disabled persons' organizations, courts, and other public service points. It covered 12 counties across the country that include Elgeyo Marakwet, Migori, Mombasa, Bungoma, Nyeri, Kilifi, Kisii, Makueni, Kiambu, Machakos, Uasin Gishu, and Busia. The commission was measuring participation of PWDs in employment, social amenities, health access to justice and political participation.

In its findings, some progress has been made in attainment of the rights of PWDs which however, have come in slowly. This has been due to the many challenges facing PWDs and the societies they live in, in Kenya. While some sectors such as education had made strides in facilitating learning for children with disabilities, other sectors such as transport were totally inaccessible to PWDs. Even in sectors doing well such as education, there were still big challenges such as sexual abuse of learners with disabilities together with lacking assistive devices and equipment. With regard to political participation, the study found that PWDs are still locked out of voting due to inaccessible voting stations, while those who vie face discrimination, violence and lack the funds to run Kenya's expensive campaigns. The report concluded that Kenya still lags behind in implementing the UNCRPD especially on political participation of PWDs (KNCHR 2014).

2.5 The Policy Framework for Disability in Kenya

Kenya does not have a definite policy framework for addressing issues of disability. This is one of the biggest gaps that has been noted by scholars that is hindering the attainment of the rights of PWDs in general. In 2006 the Gender and Social Services Department compiled a draft policy

on Disability. Unfortunately, the National Disability Policy remains just that-a draft-till to date. Other include the National Special Needs Policy Framework of 2009, the Social Assistance Policy of 2011 and the Public Service National Disability Code.

2.5.1 Disability Mainstreaming Guideline

This guideline is for the implementation of the performance indicators in the mainstreaming of disability across all sectors in Kenya. It exists to help government entities implement the performance indicators of disability mainstreaming in their performance contracts. Among other things, it provides for

- a) Establishing a mainstream committee comprising 30% of PWDs in cases where there are PWDs employed
- b) Conducting staff trainings on disability
- c) Preparing and submitting reports twice a year to the NCPWD.

2.6 Shortcomings of the existing Legal, Institutional and, Policy Frameworks on disability in Kenya

The current frameworks in the country are a classic case of a toothless dog that cannot bite. They contain glaring shortcomings that make them ineffective in ensuring PWDs access their rights in general and political rights in particular. While the Constitution sets out ambitious provisions guaranteeing inclusion and barring discrimination, a number of loopholes in the same Constitution lead to several interpretation of some of its important clauses. It does not provide a guideline on how these provisions will be implemented. For example, it does not outline how resources will be sourced and allocated to the various organs fighting for PWDs.

The sanctions provided for in various Acts such as that of the Political Parties, and the IEBC are insufficient in deterring breach of the law. The institutions are poorly funded by the government and face too much interference from the political class, to run their affairs independently. That entities such as the NCPWD lack the resources to even effectively map out PWDs across the country and mostly rely on census statistics from Kenya National Bureau of Statistics (KNBS), shows a lack of commitment from the political class. Lack of a policy framework on disability also speaks volumes to the lack of political goodwill to move the process forward.

2.7 Conclusion

It is no doubt that the country has good legislative and institutional frameworks around the issue of disabilities. Regardless of the absence of a national policy framework on disability in the country, there are sufficient laws and institutions that should handle and effectively champion for the rights of PWDs. However, the situation on the ground is very different as brought out in the study by the KNCHR. There is a stark disconnect between the rhetoric on human rights existing in Kenya today and the reality on the ground. Glaring gaps in education, infrastructure and health services, employment as well as political participation still glare at PWDs each day.

There is clearly lacking a clear implementation strategy on how the various laws and institutions will operate making the disability rights regime in Kenya a toothless dog. In the absence of political goodwill to implement the laws, the attainment of political rights for PWDs will remain history in Kenya. It is clear in the foregoing discussion that PWDs in Kenya are yet to realize their political rights or even enjoy their rights in general. While the UNCRPD has been adequately domesticated in terms of laws and institutions set up to champion for the rights of PWDs, the implementation of these laws has been lacking.

CHAPTER THREE

INTERVENTIONS OF THE INTERNATIONAL COMMUNITY IN ENHANCING POLITICAL PARTICIPATION OF PWDs IN KENYA

3.0 Introduction

The chapter is a response to the second research objective which was aimed at establishing the interventions of the international community in enhancing the political participation of PWDs in Kenyan politics. In tackling the research objective, the study will examine various international treaties and conventions applicable to disability and participation. The Chapter will start by giving an overview of efforts of the International Community in issues of inclusion and good governance, then look at the international legal framework around disability and rights. This will be followed by the international institutional framework on disability rights. The chapter will then narrow down to the African/regional legal framework, followed by its institutional framework around disability and rights. It will conclude by looking at the shortcomings of the international framework in general.

3.1 Overview of efforts by International Actors/Community in advocating for good governance & inclusive politics

According to the EU White Paper, governance is the process by which decisions are made and implemented (or not implemented). The EU White Paper points out that good governance and inclusive politics have eight characteristics; they are consensus-oriented, are participatory, are equitable in distribution, efficient and effective and follow the rule of law. They also ensure the views of PWDs and other minorities are listened to, corruption is dealt with, and the views of vulnerable groups are considered in decision-making. In general, good governance and

inclusive politics are receptive to the present and future needs of society (EU White Paper 2006). Several international actors have been at the forefront in the push for good governance and inclusive politics. These include:

3.1.1 The UN and the global push for good governance & inclusive politics

The UN as the largest international actor in the world has been at the forefront in pushing for good governance and inclusive politics across the world. The UN considers governance good to be dependent on how transparent and inclusive a state's institutions (parliament, government departments, etc.) and processes (elections, legal procedures) are. The UN shows immense respect to states that have had success in the achievement of these standards and uses them as role models for others (UNDP 2015).

In advocating for inclusive political participation, the UN advocates for total participation of all people in society, free, frequent and fair elections, and representative governments (Krasner 1983). According to Strange (1996), the UN uses many avenues available to it, to promote inclusive participation and good governance. Through the UNDP, the UN supports states seeking to transition to full democracy. In this capacity, it provides technical support and policy advice while strengthening institutions to cater to the needs of the minority such as PWDs and marginalized communities. It engages in communications and advocacy throughout the world. Through the International Monetary Fund (IMF), the UN advocates for good governance and inclusivity from its programs of technical aid and lending. In combating corruption, it enforces measures, which strengthen checks, and balances across the world, especially in developing countries. The IMF also extends policy advice on including all members of society in decision-making.

In 2005, the UN established the UN Democracy Fund (UNDEF) aimed at the promotion of civil society activities, which support human rights and advocate for the participation of the disabled, marginalized and disadvantaged members of society in the decision-making processes. The UN Public Administration Network (UNPAN) was designed to set up a network that is internet-based, linking regional and national institutions of public administration. It enables information exchange and experience in public sector policy (Strange 1996).

3.1.2 Major world powers and the global push for good governance & inclusive politics

Some developed states of the West have received good UN backing as being models of inclusive societies. They are hence playing a leading role in mentoring other states and champion for inclusion across the world. According to the US State Department, the United States of America (USA) as the world's superpower has been in the forefront in spreading the gospel of democracy, good governance and inclusive politics in the world. The USA insists it is only through good governance and democracy that prosperity, greater peace, and pluralism can be fulfilled in the world (Oran 1997).

Since the end of World War II, the USA has played a key role as the world superpower in spreading good governance, inclusive politics and democracy across Latin America, Asia, and Africa. It has funded civil society groups that fight for democracy and good governance. Lately, several foundations and civil society groups fighting for the rights of PWDs have been attracting large donations from the US government as well as the US society

The European Union (EU) has also been a fierce agitator of good governance, especially in the developing world. Through its various programmes of foreign aid, trade, and institutional cooperation, the EU engages with the developing world based on preconditions of good

governance, democracy and inclusive politics (Holsti 2005). According to the EU white paper (2006), there are five basic principles that the union employees in articulating for good governance: inclusive participation, openness, coherence and effectiveness, and accountability.

The paper states: *“In an increasingly globalized and interdependent world, peace and security hang to a great extent on the political will and ability of governments and institutions to pursue policies geared to the rule of law, the protection of human rights, democratic governance, eradicating poverty, promoting sustainable development and reducing the inequalities that lie at the root of the main challenges facing the world”* (EU white paper 2006)

3.1.3 INGOs & the Civil Society in the global push for good governance & inclusive politics

INGOs are the conscience of humanity according to Naidoo. He feels they are the best tools for promoting good governance and political participation of PWDs and marginalized groups because they relate with the people on the ground. Many INGOs have been acting as lobby groups throughout humanity to voice concern for human rights of marginalized groups in political circles (Naidoo 2008)

Today, INGOs are seen as epitomes of democracy, and champions of PWDs. They are considered to the panacea of ills facing society such as discrimination and exclusion of the disabled. Most INGOs have reformed themselves to be objects of transparency, efficiency and accountability in the modern world (Ezeoha 2006). Many leaders in the developing world look to INGOs for innovative ideas on how to involve the disabled and other marginalized groups in

the political scene, feeling constant contact with NGOs gives them more credibility in the eyes of the electorate. This is particularly true as NGOs influence the electorate through advocacy, participation in governance, education/training and capacity building to strengthen democracy and inclusivity (Paul 2014).

On the other hand, as the mouthpiece of the state, an open forum where people are free to join and air their grievances, has characterized the Civil Society. As thus, the Civil Society has become a bridge between the masses and the people as it is used to hold the government accountable. Fowler (2000) says Civil Society has today become an irreplaceable aspect of democracy, good governance and inclusion thus creating a bond between the state and its citizens. The Civil Society in the developing world has become a tool that creates an enabling environment used to enhance political participation of all peoples, decision making and safeguard the common good.

3.2 International legal regimes on Disability and Political Participation

Some states across the globe have over time ratified several international treaties, conventions, and instruments that touch on disability rights. The subsequent discussion will examine these documents.

3.2.1 The Universal Declaration of Human Rights (UDHR) -1948

This is one of the fairly older documents of human rights. It has been hailed as the birth or firstborn in the fight for universal human rights. It was adopted through Resolution 217 of the UN General Assembly in 1948 in Paris, France. It was one of the foremost reference

instruments that Kenya used to spell out some political and civil rights of its citizenry. In its preamble, it calls on the international community to;

“...ensure that all human rights whether civil, political, social or economic must be enjoyed by all the members of the society without any discrimination based on sex, race disability, or religion among other factors”.

Though it is a non-binding document, its purpose and utility cannot be undermined in the disability rights movement as it is a common standard/indicator of the attainment of rights of all people across the world. Article 1 reiterates the equality of all humans in all aspects of life;

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”.

Article 7 calls for the protection of all citizens and their rights within the territory of a nation-state. Here, protection has been relatively used to imply the state will not participate in violating the rights of the disabled, marginalized or any other citizen within its borders. States are thus implicitly called upon to take corrective measure such as affirmative action to empower marginalized groups and bring them on board to participate in the governance of their country.

The drafters of the UDHR understood perfectly that without participation, people in society are unlikely to benefit from or enjoy their rights, hence Article 21.

“Everyone has the right to take part in the government of his country, directly or through freely chosen representatives”.

This means they have a right to voice their opinion on matters of governance, vie for office, vote, get elected or nominated as well as support those who are elected/nominated. It also means the voice of all marginalized people must be heard and count and that they must never be discriminated against on any grounds including disability, race or color.

3.2.2 International Covenant on Civil and Political Rights (ICCPR)-1966

The covenant was adopted by the UN General Assembly in 1966 and became operational a decade later in 1976. The Covenant spells out and protects a myriad of civil as well as political rights concerning all human beings across the globe. In Article 2, all member countries committed to: “.. *respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion...*”

This clause protects the rights of all people, groups, and communities to freely participate in all political matters about their countries. These rights to political participation are further elaborated in Article 25 of the covenant.

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors”

This Article therefore clearly secures the rights of PWDs when it comes to participation in political activities/life of their countries. It also obligates the state to protect and facilitate their participation in the political affairs of their countries. This would be through affirmative actions, fair nominations, and elections as well as the provision of education and assistive devices. They are equally obligated to ensure polling stations are accessible to PWDs.

3.2.3. Convention on the Rights of Persons with Disability (CRPD)-2006

The Convention has been referred to some scholars as to the bible of disability rights. It has been the guiding light for disability rights advocates across the globe in the 21st Century. The UN General Assembly adopted it in 2006 and subsequently came into force in 2008. It was a culmination of many years of hard work by the UN to overcome discrimination and exclusion of the disabled across the world. It, therefore, aimed to come up with a guiding document that would shape opinions and attitudes disability.

In a departure from other legal instruments before it, the Covenant acknowledges that a number of tools on disability already exist but have failed to bring about the desired effect. This is contained in its preamble.

“Concerned that despite these various instruments and undertaking persons with disability continues to face barriers in their participation as equal members of society and violations of their human rights in all parts of the world”.

The Covenant hence starts from an admission of a shortcoming that needs a stronger legal framework to correct. It recognizes in the preamble too that PWDs are guaranteed their

participation in the decision-making processes of their country's programs, policies, and issues that affect them directly. The covenant covers both adults and children with disabilities. In Article 7, the Covenant talks about children with disabilities vis a vis their right to participation. It calls on states to give children with disabilities a chance to make their voices heard, consider their opinion with due respect to their age and maturity, and, to provide them with necessary assistive devices. The Covenant is quite detailed in matters of participation of PWDs with three articles, 29,30, and 31 guaranteeing the rights to participate in political, public, cultural, and recreational (sports and leisure) life

3.2.3.1 Political rights of PWDs under the CRPD

The CRPD has created rights and obligations concerning the political participation of PWDs. These are contained in Article 29 of the Covenant. Various political parties and governments are tasked to;

a) *“to ensure that all persons with disability can effectively and fully participate in political and public life on an equal basis with others”.*

i) *“ensure that voting procedures facilitate and material are appropriately accessible and easy to understand and use*

ii) *protect the right of persons with disability to vote by selecting ballot in an election and public referendums without intimidation and to stand for election, effectively hold office and perform all functions.”*

The article further calls for the state to guarantee that PWDs will freely express themselves either through voting or vying for political office. The government is to facilitate an enabling ground for them to campaign and vote or be nominated.

3.2.3.2 Participation of PWDs in Cultural Life under the CRPD

For this study, cultural life also encompassed sport and other leisure activities for PWDs guaranteed under the Convention. Article 30 gives PWDs the right to take part in outdoor activities. To ensure this is achieved, the state parties have been tasked to ensure PWDs have access to various cultural materials and sites in formats they can access and understand. Additionally, the state is to ensure PWDs have access to and enjoy TV programmes, theatre, films and other cultural events that will be of value to them. Equally, the state is to ensure they have access to venues where cultural performances are taking place, theatres, libraries as well as tourism sites. The state is also tasked to;

2) *“take appropriate measures to people to enable persons with disabilities to have the opportunities to develop and utilize their creative artist and intellectual potential, not only for their own benefit, but also for the enrichment of society”.*

Issues of intellectual property concerning culture have equally been tackled by the Convention especially on property belonging to PWDs. The state has been tasked to ensure that all laws and regimes operating in its territory in regard to intellectual property rights do not contain clauses that will bar PWDs from accessing cultural sites or materials they may need.

3.3. International institutional framework on Disability

At the International level, actors/the international community have established a number of institutions which, work fully/partially for the realization of the rights of PWDs as well as human rights in general. These include:

3.3.1 Secretariat for the CRPD (UN Enable)

The Secretariat for the CRPD (also known as UN Enable) is the central point in the UN system which coordinates all matters related to disability. UN Enable is located within the Division for Social Policy and Development that is in charge of all policy and development agendas of the UN under the Department of Economic and Social Affairs.

The UN Enable is tasked with implementing and overseeing the performance of the CRPD (2006), the Standard Rules of Equalization of Opportunities for PWDs (1994) and the World Programme of Action Concerning Disabled Persons (1982). It is equally tasked with preparing publications, as well as being a clearinghouse for knowledge on matters disability. It also promotes national, regional and international activities/programs and supports governments as well as NGOs on matters disability. UN Enable has 3 objectives; participation of PWDs in societal development and life; advocate for rights and dignity of PWDs; and, advocate for equal opportunities and access for PWDs.

3.3.2 Office of the UN High Commissioner for Human Rights (OHCHR)

The OHCHR is a department within the UN Secretariat established in 1993 to protect and promote the implementation, realization, and enjoyment of all human rights by all people across the world. It works around the UN Charter and takes on board all other international instruments agreed upon by states that address various human rights. Its mandate covers; prevention of abuse on human rights, promote cooperation globally to protect rights, secure respect of rights, streamline the UN system in the human rights arena, and coordinate human rights activities

globally. Lately, it has also been involved in streamlining the human rights agenda in all major UN activities and programs.

3.3.3 Human Rights International Non-Governmental Organizations Movements (HRINGOs)

World over, the civil society has been described as the ‘conscience of humanity’. Over the years, there has been a growing movement of civil society groups fighting for various rights of various groups throughout the world. From PWDs to marginalized groups, political detainees, victims of torture, etc. the human rights movement has been rapidly growing throughout the 1990s into the 21st Century.

Today, there is an established body of INGOs fighting for human rights across the world. The HRINGOs is a formally registered body with membership across the globe. Its members include; Amnesty International, Human Rights Watch, Asylum Law, The Advocates for Human Rights, Human Rights Without Frontiers (HRWF), etc. These organizations are available to champion the rights of PWDs across the world and a number of them have in the past published reports on the status of PWDs in different parts of the globe. (Cleary 2007).

3.4 African/Regional legal framework on Disability rights

In the African continent, some treaties and resolutions have been made that directly or indirectly promote the participation of PWDs in societal developments. These include;

3.4.1 African Charter on Human and Peoples Rights (ACHPR)-1981

The ACHPR has been hailed as the mother and father of human rights in Africa. The Charter was adopted in June of 1981 in Nairobi Kenya and came into effect in 1986. It guarantees far-reaching rights and freedoms for all Africans. Both the state and citizens have been given due consideration in the enjoyment of rights by all people of Africa in the Charter. It starts by recognizing the equality of all people before the law. Article 2 states;

“Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status”

The clauses ‘fortune’ and ‘other status’ cover all other groups/classes of citizens not mentioned in the listed statuses such as PWDs, marginalized groups, etc. The charter, therefore, recognizes each citizen to be equal when it comes to the enjoyment of rights and freedoms given by his/her state. Article 13 (1) guarantees freedom of participation. It states;

“Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law”

Article 18 (4) talks specifically about PWDs;

“The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.”

Here moral needs encompass a wide range of needs including their desire to participate, be included and respected by the other abled members of the society as well as fellow PWDs.

The ACPHR in its 19th Extraordinary Session adopted a draft protocol (The African Protocol) dealing with the rights of PWDs to complement its charter. The adoption was perhaps a recognition that the Charter instrument did not contain adequate legal provisions to cater to the rights of PWDs especially when it came to participation and involvement. The commission noted that PWDs in Africa still suffer from exclusion and other harmful practices which, mostly affected disabled children, the elderly and women. The adoption was a climax of the AU's long-time focus on the issue of disability in the continent initiated by the declaration of the Decade for Persons with Disabilities in 1999. The declaration led to the creation of a working group that drafted the document that was eventually adopted by the ACHPR. The African Protocol is discussed below.

3.4.2 Protocol to the ACHPR on the Rights of Persons with Disabilities in Africa (The African Protocol)

As outlined above, the African Protocol as adopted in the ACHPR's 19th Extraordinary Session in recognition of the continued plight of PWDs in the continent. The African Protocol is informally known as the regional standard document concerning the protection of PWDs in Africa same as the CRPD in the international arena. Though many of its provisions and clauses borrow heavily from the CRPD, the African protocol has 'Africanized' the rights of PWDs. For instance, it makes mention of customary law, that is distinctively African.

The African Protocol in a likewise fashion introduces additional rights and freedoms that are not enshrined in the CRPD. These include the right of PWDs to represent themselves and rights for older citizens with disabilities. In its preamble, the African Protocol refers to the CRPD thus stating: *“recalling that the rights of persons with disabilities are affirmed in the Convention on the Rights of Persons with Disabilities 13 December 2006.”*

The African Protocol recognizes the equality of all people below the law, stating various aspects under this. They include; equal recognition of legal personality, recognition of legal capacity, right of support in exercising legal capacity, identification and addressing of barriers facing PWDs to legal capacity, and, prevention of abuse from caregivers of PWDs. The African Protocol further notices that many at times in Africa, non-state actors such as family members, deny PWDs the right to legal capacity and calls upon the state to ensure it does not happen or is addressed. In this manner, the African Protocol is cognizant of the fact that abuse or denial of the rights of PWDs is not limited to state entities. In concluding issues of legal capacity, the African Protocol calls on member states to continually address and repeal any laws limiting the right of PWDs to legal capacity.

Concerning the right to political participation, the African Protocol has a whole Article dedicated to various rights and freedoms for PWDs. It reminds states that all PWDs have an equal right like everyone else to participate in the political life of their country. Member states are, therefore, urged to make laws, policies and other additional measures to ensure this right is provided for in various ways. These can be through: comprehensive and systematic civic education to enable PWDs meaningfully participate in politics; inducing PWDs to participate in politics by nominating, electing or letting them hold public office as the national laws may permit; ensure polling stations and booths are accessible as well as their right to secret ballot is

guaranteed; legislating provisions that will facilitate PWDs to vote, vie, and remain in political office; and, increasing the numbers of PWDs in regional, and national legislative assemblies.

3.4.3 Protocol to the ACHPR on the Rights of Persons of Women in Africa (The Maputo Protocol)

The Maputo Protocol was adopted in 2003 by the African Union in its summit in Maputo, Mozambique. This Protocol was a result of the recognition of a long-experienced fact that women were discriminated against and marginalized partly due to strong cultural beliefs and practices in many parts of the continent. The request for a protocol on women originated from women groups in 1995 in the AU session in Togo (Wandia, 2004).

The Maputo Protocol has several clauses that touch on the rights of all women irrespective of their disability, color, race, etc. to exercise inalienable rights and freedoms. Article 9 of the Protocol deals with the participation of all women in political life. Article 9 (1) states;

“States Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that...”

The Maputo Protocol thus recognizes states as the custodians of the rights and freedoms guaranteed to all African women under the Protocol and other continental treaties and documents. To this end, it urges all member states to ensure that all women are free to take part in general and other elections; they equally represented in any level that men are in the political system; and that they are regarded as equal partners while implementing development projects

of the state. Lastly, the Maputo Protocol calls on states to ensure women are effectively present and participating in all major levels of state and regional decision-making forums and organs.

Article 23 of the Maputo Protocol concerns the rights of women with disabilities. It tasks states to

- a) *“ensure the protection of women with disabilities and take specific measures commensurate with their physical, economic and social needs to facilitate their access to employment, professional and vocational training as well as their participation in decision-making”*

The Protocol is, therefore, alive to the fact that women with disabilities stand at a disadvantaged point when it comes to access, participation and enjoyment of various rights and freedoms. It thus tasks the state to ensure these special group enjoys the same rights that abled women enjoy without any discrimination due to their disability.

3.5 Institutional framework on Disability Rights in Africa

At the continental level, the following institutional mechanisms have been laid out to ensure that PWDs enjoy their rights and freedoms:

3.5.1 The African Court on Human and Peoples Rights (the Court)

The Court was set up in 2004 in Addis Ababa, Ethiopia before finally moving to Arusha, Tanzania. It was established by AU member states to ensure the rights and freedoms of all African guaranteed under the charter of the ACPHR, are observed. The court thus reinforces the

work/clauses of the African Commission on Human and Peoples' Rights. The Court exercises jurisdiction over issues submitted to it on the Charter, the Protocol as well as all other human rights legal systems assented to by states concern. It listens to two types of cases; advisory and contentious (Stone 2012).

Eleven judges from various AU member states sit at the Court's bench. These judges are jurists of high integrity, recognized practitioners of the law or legal/human rights academicians. They are first nominated by their respective countries, and then elected in an individual capacity. They serve either a six-year non-renewable term or a four-year term renewable once. The president of the Court chosen from among the 11 judges works full time at the Court while the other 10 judges work part-time.

3.5.2 The African Commission on Human and Peoples' Rights (The Commission)-1987

The Commission was born out of the African Charter. It was established in November of 1987. It is headquartered in the Gambia (Banjul). Member states of the AU nominate human rights experts and forwarded to the AU which elects 11 commissioners to serve in the commission. This takes into consideration geographical and gender balancing. Upon election, the commissioners serve in their individual capacities (and not on behalf of their home states) for a six-year term renewable once. The Chairperson of the Commission is appointed by the AU Chair alongside staff, who support the operations of the office.

The mandate of the Commission is clearly spelt out in Article 45 of the Charter. These are: promoting people's rights through mobilization, seminars, sensitization, missions, etc.;

Protection of peoples' rights through dispute resolution, communication, etc.; and, interpreting the charter for member states, organs, the AU as well as individuals (Center for Human Rights, 2016). Under the Commission is a working group discussed below;

3.5.2.1 Working Group on the Rights of Older Persons and People with Disabilities

The Working Group is a special mechanism of the Commission. Through Resolution 118, the Commission created a Focal Point on the rights of older people in 2007 which transformed into the Working Group in 2009. It is mandated with the provision of legal frameworks/guidelines which guarantee the protection and attainment of older people and PWDs throughout the African Continent.

The Working Group has 4 mandates guiding its operations: draft legal documents which guide member countries on ways of providing and protecting PWDs and older persons; study human rights situations across Africa to inform its policy and mainstreaming of the rights of PWDs and older persons; receiving reports and information from NGOs, states, institutions and individuals on various issues of interest to it around rights of PWDs and older people; and forwarding its annual reports to the Commission detailing its work throughout the year (International Justice Resource Center 2019).

3.6 Shortcoming and Conclusion of the International Framework on Disability Rights

From the foregoing analysis, it leaves no doubt that the international community as well as the African continent, has set up a number of legal and institutional frameworks to guarantee the rights of PWDs to participation and attainment of general rights. However, the situation on the

ground is still deplorable. The International Disability Rights Monitor study of 2004 found that 20% of the global population's poorest people have some disability and are the most disadvantaged in their communities. The same report also found that women and girls with disabilities are more disadvantaged compared to men as they are prone to sexual abuse. Forceful sterilization and physical assault. In the same report, only 35% of PWDs of working age are in employment with most saying they would like to work but cannot find work. The report found that only 3% of adults with disabilities are literate globally. (International Disability Rights Monitor, 2004).

As part of monitoring also, the international community has not been very active in demanding compliance/implementation reports from member states. While a number of states have had progressive developments in the implementation of various clauses of human rights, highlighting of these reports has not been properly done to provide learning cases for other countries. Those discriminating PWDs have not been named and shamed. For instance, Kenya has not been on point in submitting reports to the OHCHR which would highlight the various instances of abuse of the rights of PWDs. Additionally, international actors have not done enough to mentor and build the capacity of states in issues of disability. Various entities which, should do the mentoring and capacity building are either under-funded or have not prioritized the capacity building for developing states like Kenya which may require this capacity building.

CHAPTER FOUR:

KEY FINDINGS ON THE CURRENT STATUS OF POLITICAL PARTICIPATION OF PWDs IN KENYA'S SOCIOPOLITICAL ARENA

4.1 Introduction

This chapter delves into an analysis of the qualitative data collected by the researcher on the status of the political participation by PWDs in Kenya, and is mainly based on the data derived from interviews that targeted key informants, these mainly drawn from representation of key state and non-state institutions and agencies that have a mandate to work with and for PWDs in Kenya, as well as politicians with disabilities.

Whereas it was the intention of the researcher to reach as many of these institutions and individuals as possible, this did not happen as many attempts to secure appointments for interviews were unsuccessful and some of the questionnaires emailed out on request of some of the targeted interviewees remain unreturned.

4.2 Role of the Background of the Individual PWD in politics

One of the issues that have come out for PWDs in politics, or indeed anyone else in Kenyan politics, has been the issue of their family and social background. The study sought to establish the backgrounds of the PWDs in Kenyan politics. This was partly premised on the fact that in 2013, one of the prominent complaints against the nomination of PWDs in Kenya was that most of them were very well connected to some powerful individuals or came from prominent families. One of our respondents was brought up in a typical poor Kenyan pastoralist family,

but cut a niche for himself by ascending to student leadership both in high school and university. Most of the others had to find entry points into politics, mostly through CBOs and DPOs in the country, dependent on where they lived or worked. Quite a few respondents confessed to being beneficiaries of the constitutional requirement for affirmative action and inclusion. It must be noted, however, that ALL the respondents had grown up in less privileged surroundings, at least in the initial stages of their lives.

4.3 Academic and Professional Capacity

The respondents in this study range from those holding postgraduate qualifications to those with fairly low academic levels. The access to education has been blamed as one of the reasons undermining access to political office by PWDs in Africa. Most are usually generally put through “alternative education”, which does not expose them to the same opportunities as their non-disabled counterparts.

The respondents indicated that they had pursued various different study disciplines, including law and business-related course, and are thus professionals in their own right. Some had experience working at the helm of NGOs and state agencies, while some had successfully tried their hand at establishing and running business enterprises.

One of the respondents, in fact, advised that PWDs should ideally have something they are good at – a profession – so that it does not appear that their election or appointment is based on the unpopular disability model where it is perceived that one is a recipient of favours purely on the basis of their disability.

4.4 Experience of Disability-Related Engagements

The response indicate that quite a significant number of those interviewed had some experience working for organisations or state departments noted to champion disability issues. One of the respondents served a long stint as the chairman of the apex body that is charged with championing the rights of PWDs in Kenya, The National Council for Persons with Disabilities (NCPWD), before being nominated to parliament. In fact, exhibition of professionalism and the abilities to perform are more likely to earn a PWD that exhibits certain confidence in professionalism is more likely to secure a nominative or elective position than one relying on sympathy or application of the law for the sake of applying it.

Some of the PWDs in notably high political positions were nominated by their respective political parties to fill out the slots secured for them by the constitution, but with the estimation that PWDs comprise at least 4% - 5% of the total population according to WHO estimates, there were definitely many people angling for these said positions. One had to stand out for some reason to justify their being nominated, and to legitimize their being seen as representative of the disability constituency. It is probably more difficult for those who chose to make a stab at campaigning for election since in Kenya, as in most of Africa, political campaigns are an intensive financial investment. In its process to try and reach some of such leaders with disabilities, and indeed one of those interviewed was nominated in 2013, but since the silent rule about nomination is that one can only be nominated once, he had to fight it out with opponents and trounced them in the 2017 general elections. One of those nominated to the senate in 2013 has to settle for what is perceived to be a far smaller position of Member of

County Assembly (MCA) in 2017, and despite the odds of near severe physical disability and being a female candidate, she won the seat. These could be attributed largely to her having been at the helm of an umbrella DPO, the United Disabled Persons of Kenya (UDPK) before her nomination by one of the major political parties into the senate in 2013, and the amount of visible community development effort she put in while she served her five-year term as nominated senator.

It is worth noting, also, that the said leader secured her nomination in 2013 by getting the courts to intervene, as discussed below, since she had been bypassed and a more visible male party activist nominated, but she successfully challenged this on the basis of the gender equation, proving to the tribunal that the party was under obligation to nominate a female representative of PWDs to the Senate.

There are numerous accounts that were gathered during both the primary and secondary data collection processes, but the final one to be mentioned under this section deserves mention due to matters strategy. One of the PWDs – a person with albinism - was nominated by a prominent political party to the National Assembly in 2013 for his extremely active role in the party's campaigns and other events. He is credited, among other merits, for vigorously defending his party despite being from an area traditionally hostile to his party of choice and where his party received almost nil support, but instead posed personal risks to him such as being attacked or evicted, especially since this party was in opposition. In the tenure of his first term as nominated MP, he adopted the strategy of warming up to the ruling political party and defected when the time and law allowed for it. He then unsuccessfully campaigned for an elective MP's seat under

his new party, whose ticket would mostly have been a foregone conclusion that he would obviously be elected, since anyone that secured that party's ticket in the region was almost 100% sure of being voted through. He lost in the party primaries. His strategy, however, paid off as his newly adopted party he could get nominated, this time to the Senate, generally perceived to be the upper house.

4.5 Typical Processes for Election and Nomination into Political Office

Typical elections in Kenya, as elsewhere in Africa, are chaotic to say the least. One has to spend a lot of money, sometimes unjustifiable, since there have been cases where one spends more than 200 million shillings to clinch an elective position whose total remuneration package for the five-year term does not exceed 50 million shillings! This, however, explains that there is more to the power gained by ascending to political office in Kenya than just representing a constituency and earning an honest salary out of your effort. Attempts to legislate on curbing electoral campaign financing has largely been unsuccessful due to numerous loopholes that may not be easy to seal in an economy such as this. Why is this important? Most of the PWDs would not be able to raise such financial resources to invest in campaigns.

Another notable effect of this is that it raises the stakes, and as such, campaigns and elections are often marred with violence. In most cases, those that will succeed in an election will be the ones able to keep on some temporary payroll a mob of goons, who double up as their "security detail" during the campaign, and are quite often used, by way of violence, to intimidate the opponents and create mayhem at political campaign rallies – especially those of the opponents. It therefore means that most campaign rallies are unpredictable, and could turn violent in a

matter of seconds. This is captured in one of the sections below as being one of the major impediments to the full participation of PWDs in elective politics. Securing their safety and security may be a double challenge to a PWD.

Nomination may seem to be the easier path for PWDs. It is, however, not as easy as it may sound, because some of those angling for nomination have complained that their senior party officials sometimes expect that they make huge unaccounted for financial “donations” to the parties to gain the prominence. One of the interviewees mentioned that he had been by-passed in the 2013 nominations by another PWD with visual impairment just like him, but who had the ability to donate huge sums of money to their shared party’s campaign kitty, but who had previously not expressed any interest in political office.

On paper, nomination in Kenya appears pretty straight-forward. The parties are not present to the IEBC a party nomination list, from which the IEBC will then nominate PWDs (like for other secured positions) on the basis of the strengths in numbers of the respective political parties after the elections. The more the elected positions a party gets, the higher the number of nominative positions they are allocated. The trouble is usually the amount of lobbying involved in the competition among the PWDs to get their name to the top of the party list. There is also the requirement for “zebra” lists, where male PWDs have to alternate on the list with their female counterparts, a fact that could see a very prominent PWD lose the position to a less illustrious fellow PWD on the gender rule. One of the problems with this rule is also that it does not expressly cater for the variety of constituencies within the PWD spectrum, and it is thus not

uncommon to find a list that has all the top slots taken by one group, say those with physical disabilities.

4.6 Challenges and Opportunities

These shall be listed in point form since most of them have already been discussed in the pages above.

4.6.1 Challenges

- i. Funding – both for the PWDs who are interested in participating in politics and the organisations working to promote the participation of PWDs.
- ii. Slow implementation of both the UNCRPD and the enabling national laws such as the Disability Act.
- iii. Societal attitudes, especially to some cadres of persons with disabilities – such as the deaf and those with mental disabilities.
- iv. The systems – such as the electoral systems, are not accommodative enough.
- v. Low self-esteem among the PWDs in response to the societal attitudes, but also as a result of their less exposure and generally lower levels of education.
- vi. Lack of support from political parties, a fact which demotivates even the very vibrant politicians with disabilities.
- vii. Wrong perception among some of the PWDs that their disability alone is enough qualification for nomination, appointment or election – some do not try harder to gain professional skills and experience and progress academically.

4.6.2 Opportunities

- i. Progressive legislation that saw the introduction of the Kenya sign Language in all media houses, at all major events and in parliament.
- ii. AGPO - introduction of Access to Government Procurement opportunities for PWDs.
- iii. Tax and duty exemption for PWDs, including importation of duty-free cars.
- iv. Accessibility to buildings and infrastructure – ramps have been made a compulsory feature.
- v. Access to education and prominent employment and political opportunities that has made PWDs self-advocates and role models to the upcoming ones.
- vi. Support in Kenya in access to education by younger PWDs.

4.7 Perceptions on the Role of the International Community

Both the individual respondents and the institutional respondents agreed that the international community has played an invaluable role in the attainment of the current status of PWDs in the participation in the political life in Kenya.

These contributions are both positive and negative, though the only negative pick from most of the respondents was that the international community, despite the fact that this is far from their real objectives, have been thought to indirectly influence the perpetration of the traditional medical models of disability by encouraging a culture of handouts and the involvement of PWDs in livelihood projects that only involve such approaches as making and selling of handicrafts and other small items.

4.7.1 Positive Contributions of the International Community

The United Nations was specifically pointed out as having brought plenty of changes by the promulgation of the UNCRPD. This was made even better through the Universal Periodic Review (UPR) monitoring mechanism that made many countries, but especially Kenya, strive to attain the required milestones every time it came up for review. Kenyan Organisations such as the Kenya Human Rights Commission, the Kenya National Commission on Human Rights among others have received sub-grants from INGOs to implement programmes aimed at enhancing the participation of PWDs in politics. Most notably, though, for many years the National Democratic Institute, using USAID funds, has implemented interventional programmes aimed at enhancing this participation for many years, including sub-granting national organisations, leading advocacy among stakeholders such as IEBC, ORPP and individual political parties.

4.8 Perceptions on the Status of the Implementation of the UNCRPD

Most respondents agreed that though there was still massive ground to be covered, Kenya had made great strides towards the implementation of the UNCRPD. Having signed and ratified the convention, the country had taken steps to harmonize its constitution and the Disability Act with the requirements of the UNCRPD. Kenya had also participated actively in the Universal Periodic Review, making genuine effort within its means to comply with various requirements. The respondents believe that this brought in both international players and invigorated the local push for meaningful participation. Following the 2015 UPR, some of the resultant observations touched on participation of PWDs in political and public life, and pointed out that Kenya should full accessibility for PWD to polling station and electoral information.

CHAPTER 5

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This section shall handle the conclusions and recommendations of this study, the findings most of which have been discussed in the preceding chapters.

5.2 Summary of Findings

Participation of PWDs in Kenya was very strong after the push, bolstered by the international community, and following the 2013 general elections, PWDs secured more than 70 seats countrywide – mostly nominative but quite a few elected both at the national and county levels – The Senate, the National Assembly and the 47 County Assemblies. A lot more went into appointive administrative positions. That's the biggest number that PWD have been able to secure as far as inclusion is concerned, and it put Kenya way ahead of the pack not just in Africa, but the world over.

However, the excitement of the first election having died down, in 2017 the number dropped almost to half: currently the number of MCAs may not even be 30 and both the National Assembly and the Senate have a combined total of less than 5. The large movement pushing for inclusion is no longer strong and most people have moved to other things. And even the ones elected have had to negotiate their way to that position unlike in 2013 when the slots were secured by the movement for PWD.

5.3 Conclusions

Whenever there is a strong civil society movement pushing the state and other stakeholders to ensure the minimum standards for political participation of the PWDs, these gains can only get better. Whenever people slacken in their push for full and meaningful participation, these gains are lost. There is currently no strong movement of / for PWDs such as the pre-2013 Disability Caucus for the Implementation of the Constitution which led in advocacy for many stakeholders

to ensure that the minimum standards for the political parties and election managers were put in place. Some of the leaders in such movements were the beneficiaries of the appointments and elective positions, and some of the respondents felt that they may have moved on, without grooming equally powerful successors to continue pushing on with the reforms.

Renewed further capacity building in the upcoming leadership for inclusion is needed to ensure that with time the minimum of 5% representation is attained.

Most articles of the UNCRPD were borrowed into the Constitution of Kenya 2010. Article 24 is replicated from the UNCRPD. Legislation around electoral process, as far as disability is concerned is borrowed from the UNCRPD. If there was a genuine push for the full implementation of these pieces of legislation, Kenya would retain its position at the forefront.

5.4 Recommendations

- 1) PWDs should be encouraged and supported to engage in elective politics. IEBC together with other stakeholders should provide ongoing and sustainable meaningful civic education and not just haphazard attempts a few weeks to the national elections.
- 2) The IEBC should ensure that PWDs register as voters and that the conditions – physical or otherwise – are made such that voting is accessible to all PWDs.
- 3) Capacity building to ensure revival of the movement to push for full inclusion of PWDs in all sectors of political and social life.
- 4) More affirmative action at all levels – including the abolishing of special schools so that PWDs do not grow up in excluded environments where they feel they are “the others” and find it hard to make meaningful contributions to society even when they get the opportunity to. Inclusion and participation must begin at birth.

REFERENCES

African Charter on Human and Peoples' Rights, June 27, 1981 (2003) available at <http://www.achpr.org/files/instruments/>

African Charter on the Rights and Welfare of the Child, (1993) 1 AFR.Y.B INT'L L. 295, 299 (1993).

Bond, J. (2010). *Gender, Discourse, and Customary Law in Africa*, pp. 539-540. *Contra Biegon*, *supra* note 24.

Deng, F. (1997). *Ethnicity and Disability: An African Predicament*. The Brookings Institute.

Charlotte, D. (2009). "The Technical and Financial Support of Donors for Marginalized Groups", A paper presented at the GTZ Workshop.

Charlloner, S (2012). *Rwanda VSO Disability Programme*. VSO Rwanda

Constitution of Kenya (2010). National Council for Law reporting.

Crenshaw, K. (1999) *De-marginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*. University of Chicago, Legal Forum

Cuppitt, R., Whitlock, R. and Whitlock, L. (1997). *The Immortality of International Governmental Organizations*. Reinner Publishers.

Ebuku, A. (2005). *African People with Disabilities and Participation in Public Life and Governance*. *Verfassung und Retch in ubersee* 38. P. 56.

EU White Paper, (2006). *Governance in the European Consensus on Development: Towards a harmonized approach within the European Union*. China Institute of International Studies.

Ezeoha, A. (2006) *Can NGOs Aid Good Governance and Sustainable Development in Africa? Some Theoretical Insights.* Available at

http://www.jsdafrica.com/Jsda/Fall2006/PDF/Arc_CanNGOs20AidGoodGovernane.pdf

Fowler, A. (1993) *Non-governmental organizations as Agents of Democratization: An African Perspective.* Journal of International Development: Vol.5, No.3.

Gabrielle, L. (2009). *Durable Solutions, Help, or Hindrance? The Failings and Unintended Implications of Relief for Africa's People with Disabilities.* Review of African Political Economy. No. 122 p. 604.

Goodley, D. (1999). *Disability research and the 'researcher template': Reflections on grounded subjectivity in ethnographic research.* *Qualitative Inquiry.* Cambridge: Cambridge University Press.

Grech, S. (2009) 'Disability, Poverty and Development: Critical Reflections on the Majority World Debate', *Disability & Society* Vol. 24(6): pp. 771-784.

Hass, P. (2005), *Regime Theory and International Relations.* Oxford: Clarendon Press.

Holsti, K. (1985). *The Dividing Discipline.* Boston: Unwin Hyman.

KNCHR (2014). *From Norm to Practice: A status Report on Implementation of the Rights of People with disability in Kenya:* A KNCHR Publication.

KNSPWD (2012). *Survey of People with Disabilities 2012.* National Coordinating Agency for Population and Development, Nairobi.

Kothari, C.R. (2004). *Research methodology: methods and techniques.* New Delhi: New Age International (P) Limited, Publishers.

Krasner, S. (1995). *Power, politics, and transnational relations. Bringing Trans-national relations back in, (Ed T. Risse-Kappen).* Cambridge: Cambridge University Press.

- Kurlantzick, J. (2014). [*Southeast Asia: Democracy under Siege*](#). The Diplomat.
- Law, J. & Lodge, T. (1984). *Science for social scientists*. London: Macmillan. pp.22-43.
- [Mashiri, P. \(2000\). *The socio-cultural and linguistic aspects of childhood disability in African culture*. Zimbabwe Journal of Educational Research, vol. 12. p. 170-194.](#)
- Milbrath, L., & Goel, M. (1977). *Political Participation*. Chicago: Rand McNally. 2nd Ed. Pp. 34-45.
- Miller, A., Gurin, P., Gurin, G., & Malanehuk, O. (1981). *Group Consciousness and Political Participation*. American Journal of Political Science. Vol. 25. p 497.
- Minow, M. (1990). *Making All the Difference: Inclusion, Exclusion, and American Law*. Cornell University Press, Ithaca.
- Mitra, S., Posarac, A, Vick, B. (2011). *Disability and Poverty in the Developing Countries: A snapshot from the World Health Survey*, World Bank.
- Murungi, L.N. (2013). *Regional Developments: Disability Rights in sub-regional economic communities during 2011 and 2012*. Published Thesis, African Disability Rights Yearbook.
- Mute, L. (2007). "Law and Disability." Paper presented at workshop on "Disability Rights in Kenya: Networks, Practices, and Resources." organized by Twaweza Communications, Lenana House Conference Center, Nairobi.
- Naidoo, K. (2008) *Challenges and Opportunities for Civil Society Coalition Building in an Era of Globalization*, CIVICUS: World Alliance for Citizen Participation, <http://www.fssethiopia.org.et>
- Oliver, M. & Barnes, C. (1993). *Discrimination, disability and welfare: from needs to rights*. London: Macmillan.

Onyango, G. O. (2012). *A socio-legal critique of the legal framework for the promotion of rights of persons with disabilities in Kenya*. (Published PhD. thesis), International Institute of Social studies, Hague-Netherlands.

Oran, Y (1997). *Global Governance*. Cambridge, MA: MIT Press.

Orodho, J. A. (2008). *Techniques of writing research proposals & reports*. Maseno: Kanezja HP.

Oyaro, L. (2015). *Africa at Crossroads: The United Nations Convention on the Rights of Persons with Disabilities*. American University International Law Review Volume 30 Issue no. 2 Article 8.

Paul, J. Executive Director, Global Policy Forum,
<http://www.globalpolicy.org/component/content/article/177/31611.html>; 8.01.2014

Persons with Disabilities Act, Kenya (2003). Government Press, Nairobi.

Prince, M. & Rioux, M. (2002). *Absent citizens: Disability, politics and policy in Canada*. University of Toronto Press.

Protocol to African Charter on Rights of Women (2003) available at http://www.women-protocol/achpr_instr_proto_women_eng.pdf

Republic of South Africa. *Integrated National Disability Strategy. White Paper*. Independent Living Institute.

Sackey, E (2014). *Disability and Political Participation in Ghana. An Alternative Perspective*. Scandinavian Journal of Disability Research.

South African Journal on Human Rights. (2009). *Deconstructing the definition of 'disability' under the Equity Act*. Vol. 23 pt. 1 pp. 116-156.

Speech by Kofi Annan (2002), accessed from Global Policy Forum,

<http://www.globalpolicy.org/component/content/article/185/40406.html>, 13.01.2014

Strange, S. (1996). *The Retreat of the State*. Cambridge: Cambridge University Press.

Udombana, N. (2000). *Toward the African Court on Human and Peoples' Rights: Better Late Than Never*. Yale Law School Legal Scholarship Repository.

UN Convention on the Rights of Persons with Disabilities. Article 29.

UNDP (Accessed July 18 2015). *Why Good Governance makes for better Development*: available at

<http://www.undp.org/content/undp/en/home/ourperspectivearticles/2011/05/20/why-good-governance-makes-for-better-development>

UNDP (2011) *Support to the Electoral Process in Sierra Leone*. Country Office Contribution.

UN Secretariat for the Convention on the Rights of Persons with Disabilities. (2010). *The Millennium Development Goals and Disability*. Available online at <http://www.un.org/disabilities/default.asp?id=1470>

UN-OHCHR. *Ethiopia's report on the state of the UNCRPD to the Committee on the Rights of Persons with Disabilities*. 17th August 2016, Geneva.

VSO (2012). Available at http://www.vsointernational.org/Images/A_Handbook_on_Mainstreaming_Disability_tcm76-21046.pdf

Wachira, G. (2008). *Minority Rights, the International African Court on Human and Peoples' Rights: Ten Years on and Still No Justice*, available at <http://www.refworld.org/pdfid/48e4763c2.pdf>.

WHO (2001). *International Classification of Functioning, Disability and Health*. Geneva: World Health Organization.

WHO (2002). *Towards a Common Language for Functioning, Disability and Health: ICF The International Classification of Functioning, Disability and Health: Beginner's Guide*. World Health Organization

WHO (2011). Report. http://www.who.int/disabilities/world_report/2011/en/index.html.

Work Injury Benefits Acts (No 13 of 2007) Kenya. National Council for Law Reporting.

World Health Organization. (2012) *World Report on Disability* from <http://www.who.int/disabilities/world-report/2012/en/>

APPENDICES

Appendix 1 – Interview Schedule for PWD Politicians



Interview Schedule for Political Class

Consent Process

A separate consent form will be prepared and given to respondents (or emailed to them) for signing by the target respondents before the start of the interview. The facilitator (researcher) will use the information below in the consent forms.

Thank you for agreeing to participate. I am very interested to hear your opinion on the situation of political rights for PWDs in Kenya and the progress of implementation of the UNCRPD as a way of facilitating the attainment of those rights.

- *The purpose of this study is to broadly study the role the international community has played in attainment of political rights for PWDs in Kenya. The study will specifically focus on the implementation of the CRPD in Kenya and the role it plays in attainment of these rights.*
- *The information you give will be solely used for academic purposes of this study and given the position you occupy in society I seek permission to quote u directly and mention your name in the final report*

- *I would like to tape the interview so that I can make sure to capture the thoughts, opinions, and ideas I hear from you. The tapes will be destroyed as soon as the study is completed/compiled*
- *You may refuse to answer any question or withdraw from the interview at any time.*
- *If you have any questions now or after you have completed the interview, you can always contact me through my email or phone numbers which I will provide.*
- *Please sign at the bottom of this form to show you agree to participate in this interview.*

Introduction:

Good day and welcome to this session. Thanks for taking the time to join me to talk about the role of the international community in the attainment of political rights of PWDs in Kenya in general and the situation of political rights for PWDs in the country in particular. In this study, the research will also focus on the implementation of the CRPD and its role in attaining the political rights of PWDs in Kenya. My name is David Muthengi, a postgraduate student at the University of Nairobi. I am pursuing a Master of Arts in International Studies degree. This study is hence part of the requirements of this course and will inform a research project. My study is titled, *“The Role of the International Community in the Attainment of Political Rights for Persons with Disabilities in Kenya: Assessing the Progress of the Implementation of the UNCRPD”*

In this study, I am interested in understanding where we are as a country in implementing the CRPD, and the challenges we have faced as a nation from your personal experience. You have been selected because of the position you occupy as a current/past politician with/representing

PWDs in Kenya. I will also be recording our interview so as not to miss anything. The discussion will last between 60 mins and 120 mins.

Questions:

1. Take me back through your history in the political arena that brought you to your current position.

What type of professional developments have you previously undergone on disability issues?

What is your background working with/on disability issues in Kenya?

2. Can you walk me through the process you went through to be elected/nominated as a person with/a representative of PWDs?

What are your feelings about the process?

What did you have to do to get elected / nominated?

3. Talk to me about the participation of PWDs in Kenya's political scene;

What are their participation levels currently?

What are the challenges hindering their participation?

What are the gains/progress of their participation in the political arena?

4. What about their nomination/selection to appointive positions?

How is the process?

What do they have to do to get them?

5. The International Community has a role to play in the attainment of political rights for PWDs in Kenya. In your view, how have they contributed so far?

What have they done?

What have they failed to do/not done yet?

Where are the gaps?

6. One of the instruments put in place by the international community to address rights of PWDs is the UNCRPD. Share with me on how you feel it has been implemented and performed in Kenya.

How has it helped shape attainment of rights for PWDs?

Which laws have been put in place to address various aspects of the UNCRPD?

Where are the gaps in implementation of the UNCRPD in Kenya?

7. Any other thoughts you may have for the topic/issue under discussion?

...that concludes our interview. Thank you so much for making time to share with me your thoughts and opinions...

Appendix 2 – Interview Schedule for Institutions with PWD Mandates



Interview Schedule for Organisations working on Issues of PWDs

Consent Process

A separate consent form will be prepared and given to respondents (or emailed to them) for signing by the target respondents before the start of the interview. The facilitator (researcher) will use the information below in the consent forms.

Thank you for agreeing to participate. I am very interested to hear your opinion on the situation of political rights for PWDs in Kenya and the progress of implementation of the UNCRPD as a way of facilitating the attainment of those rights.

- *The purpose of this study is to broadly study the role the international community has played in attainment of political rights for PWDs in Kenya. The study will specifically focus on the implementation of the CRPD in Kenya and the role it plays in attainment of these rights.*
- *The information you give will be solely used for academic purposes of this study and given the position you occupy in society-as a member of an organization concern with disability issues-I seek permission to quote u directly and mention your name (or your position) in the final report*
- *I would like to tape the interview so that I can make sure to capture the thoughts, opinions, and ideas I hear from you. The tapes will be destroyed as soon as the study is completed/compiled*
- *You may refuse to answer any question or withdraw from the interview at any time.*
- *If you have any questions now or after you have completed the interview, you can always contact me through my email or phone numbers which I will provide.*
- *Please sign at the bottom of this form to show you agree to participate in this interview.*

Introduction:

Good day and welcome to this interview. Thanks for taking the time to join me to talk the role of the international community in the attainment of political rights of PWDs in Kenya. In this study, the research will focus on the implementation of the CRPD and its role in attaining the political rights of PWDs in Kenya. My name is David Muthengi, a postgraduate student at the University of Nairobi. I am pursuing a Master of Arts in International Studies degree. This study is hence part of the requirements of this course and will inform a research project. My study is titled, *“The Role of the International Community in the Attainment of Political Rights for Persons with Disabilities in Kenya: Assessing the Progress of the Implementation of the UNCRPD”*

In this study, I will be interested in understanding the steps Kenya has taken in implementing the CRPD, the challenges we have faced as a nation, and from where your organization stands, you feel we are today in the attainment of political rights for PWDs. I will also be recording our discussions so as not to miss anything. The interview will last between 60 mins and 120 mins.

Questions:

8. Take me back through the history of your organization to the current day in as far as rights (political) of PWDs are concern.

What is your background as an organization in working with/on disability issues in Kenya?

What was the situation when you began advocating for the rights of PWDs?

9. Can you walk me through the strides/steps/efforts made by the organization in fighting for the attainment of the political rights of PWDs?

What have you done?

What have you failed to do/not done?

10. Talk to me about the participation of PWDs in Kenya’s political scene;

What are their participation levels currently?

What are the challenges hindering their participation?

What are the gains/progress of their participation in the political arena?

11. What about their nomination/selection to appointive positions?

How is the process?

What do they have to do to get them?

12. The International Community has a role to play in the attainment of political rights for PWDs in Kenya. In your view, how have they contributed so far?

What have they done?

What have they failed to do/not done yet?

Where are the gaps?

13. One of the instruments put in place by the international community to address rights of PWDs is the UNCRPD. Share with me on how you feel it has been implemented and performed in Kenya.

How has it helped shape attainment of rights for PWDs?

Which laws have been put in place to domesticate/address various aspects of the UNCRPD?

Where are the gaps in implementation of the UNCRPD in Kenya?

14. Any other thoughts you may have for the topic/issue under discussion?

...that concludes our interview. Thank you so much for making time to share with me your thoughts and opinions...