**CHAPTER ONE**

**1.0 INTRODUCTION**

Participation is not solely the act of expressing an opinion and having that opinion taken seriously, but of being able to construct that opinion freely through accessing information, meeting and debating with others. it also includes the includes: freedom of speech, assembly and association, ability to take part in conduct of public affairs and the opportunity to register as a candidate, to campaign and be elected at any level of government and political sphere on an inclusive basis.

In Kenya, the obligation of the government to ensure that persons with disability participate at the same level stems from article 27(1) of the *Constitution* which provides that: “every citizen is equal before the law and has the right to equal protection and equal benefit of the law”.[[1]](#footnote-1) Politically, the right to participation is emphasized by article 54 which states that:

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.

In discharging its legal obligation, the state must ensure that all the rights of persons with disability are taken into account. This is because it is the custodian of the people’s rights. In fact, the *Constitution*’s Preamble affirms this by providing that: “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]](#footnote-2)

**CHAPTER 2**

**THE RIGHT TO PARTICIPATION OF PERSONS WITH DISABILITY**

The entrenchment of any right in the *Constitution* or any other law is not a guarantee that it will be implemented. The *Constitution* of Kenya contains the Bill of Rights that domesticates human rights and freedom in the national legal system: for instance, the provision on discrimination.[[3]](#footnote-3) However, the availability gender equality rights and the law does not mean they will be fully implemented. Therefore, the responsibility for ensuring that these rights exist, are functional and accessible falls on the government under the national law and international law.

**Arenas of Participation**

Participation in everyday life is essential for all human existence and for a positive wellbeing of an individual, and to persons with disability participation in a sign of involvement into daily running of the community and country at large.

The concept participation include involvement which can be described in different ways taking part, being included and engage in an arena of life, being accepted and having access to needed resources.[[4]](#footnote-4)

Politically participation involve, voting, party campaigns, forming a political party and be elected/ voted for.[[5]](#footnote-5)

This research paper proposes a number of approaches to be used to elevate the participation of persons with disability to participation in Kenya and they include.

**Sports and Disability**

Most people think that PWD cannot participate in any area of life, what they do not understand is that sports bring people together thereby increasing the level of inclusion. These in turn changes the way the society view or thinks of persons, as they can be seen as any member of society who participate like any other being. Further it help reduce the level of discrimination. The universal popularity of sport, its physical, social and economic development benefits and its proven success as an education and social mobilization platform, make it an ideal tool for reducing the stigma associated with disability. The characteristic also make sport an ideal to for fostering the socialization, independence, employment and full inclusion of person with disability.[[6]](#footnote-6)

**Vocational Training and Employment**

It must be recognise that there are qualifications needed for one to participate in any competitive field .The *Constitution* states that there are social, political and economic rights which persons with disability can participate in an equal basis with other individuals. However, this cannot be done without providing them with opportunities for rehabilitation, specialized vocational guidance, training and retraining and the opportunity for better employment. And to ensure that they participate on a leveled field there should be no discrimination in the king of training offered.

**The Environment and Person with Disability**

Based on disabilities and the kind of challenges on the kind of environment ,the possibility of the right of persons with disability to participate can either be enhanced or reduced by inaccessible kind of environment .For example, a deaf person without sign language interpreter can easily feel and be out of place in case of there being a serious discussion that needs there participation in matters affecting their rights, a wheelchair user in a building without inaccessible bathroom and elevator will not feel comfortable to come meetings and voice his/her concern and a blind person using a computer without screen-reading software the environment maybe changed to improve health conditions.[[7]](#footnote-7)

Therefore, to curb the above inconveniences and limitations to the right to participation, the government and the stakeholders should ensure that they provide the persons with disability with assistive devices for example: tricycle, sticks, walking frame, wheelchair, orthoses and prostheses among others.[[8]](#footnote-8)and to come up with laws that will ensure that atleast all buildings are accessible to PWD.

**Participation and Its Challenges**

* Lack of implementation of the available law
* Disconnect in practice
* Organizational structure and lack of flexibility
* Different analysis and solutions
* Societal and cultural view of persons with disability

**CHAPTER THREE**

**THE LEGAL FRAMEWORK**

**Introduction**

Despite the enactment and ratification of treaties and convention in Kenya, after independence, persons with disability still remained marginalised. Under the old *Constitutional* dispensation there were no particular references to political rights and other civil rights of the marginalised groups.[[9]](#footnote-9) However, several technicalities were embedded in the same *Constitution* which eliminated PWD participation automatically. For instance,

The bulk of Kenya’s current rights of women in politics emerged in 2010, after promulgation of the new *Constitution*. Earlier, there were laws that were used by both public and private bodies for instance, Non-Governmental Organisations, on rights to political opinion. However, there were no specific laws to protect the marginalised right equal participation in politics and other civil right. [[10]](#footnote-10) The reality, however, is that positive achievement of the *constitution* in terms of implementation, realisation and compliance is yet to be observed. This trend points to the inadequacy of current legal enforcement mechanism in addressing this important issue. The author, therefore, examines various available laws that are to be used in achieving the rights provided for under Article 27(1).[[11]](#footnote-11)

**The New Dispensation**

Following the resounding adoption of the new *Constitution,* and the subsequent promulgation of legal reforms under the new *Constitution*, it was inevitable to have new laws introduced to cater for the rights of women both locally and internationally. These reforms are expressly provided for in the *Constitution* under articles 27(1) among other articles. The new *Constitution* also provides for the use of international instruments under article 2(5) and 2(6),as a means to enhance protection of fundamental rights and freedom of the marginalized. However, the question is: will the laws be implemented to ensure that the status of women in politics is elevated? [[12]](#footnote-12)

**The International Laws**

In general, Kenya is one of the nations that have ratified several International Human Rights Instruments.[[13]](#footnote-13) Before the passing of the new *Constitution*, the old dispensation adhered to a dualist legal system.[[14]](#footnote-14) As such the international laws only became part of laws in Kenya Kenyan law after domestication. This created a lot of complications as most instruments couldn’t be passed due to processes of domestication, an example being the 1965 *International Convention on the Elimination of All Forms of Racial Discrimination*, to which Kenya acceded in 2001.[[15]](#footnote-15)The result was that full implementation of a number of treaties was subject to debate. Many reforms were therefore required to bring Kenya’s domestic laws into line with the international obligation.[[16]](#footnote-16) Under the new *Constitution*, international law is now deemed to be part of the Kenyan legal system, though, due to judicial rulings,[[17]](#footnote-17) it is not yet clear, whether there has been a shift from the former dualist approach. Meaning that international laws applicable in relation to participation of persons with disability, in the political, social and cultural arena.[[18]](#footnote-18) The author will therefore analyses the relevant international laws applicable in this study and they include.

1 *Convention on the Rights of Persons with Disability (CRPD)*

2 The *Universal Declaration on Human Rights* (UDHR)

3 The *African Charter on Human and Political Rights*

4 *Conventions on Political Rights of Women* (CPRW)

5 *International Covenants on Civil and Political Rights* (ICCPR)\

***Convention on the Rights of Persons with Disability***

The Convention on the Rights of Persons with Disability was adopted on 13th December,2006 at the UN headquarters. The Convection follows decades of work by the United Nations to change attitudes and approaches to persons with disability. It takes to a new height the movement from viewing persons with disability as “object” of charity, medical treatment and social protection towards viewing them as “subjects” with rights and capable of claiming those rights and making decision for their lives based on their free and informed consent as well as being active members of society.[[19]](#footnote-19)

In its preamble the Convention recognizes that despite having other laws, the rights of persons with disability have not been fully taken care of. It states: **Concerned** that despite these various instrument 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. **Considering** that persons with disabilities should have the opportunity to actively involved in decision making process about policies and programs, including those directly concerning them.[[20]](#footnote-20)

Participation doesn’t mean that only adults are catered for as they are the ones who can vote and be elected. Article 7 caters for the rights of children with disability in relation to their right to participation. It provides that state parties should ensure that children with disabilities have the right to express their views freely on all matters affecting them, their view being given due weight in accordance with their age and maturity, on equal basis with other children and to be provided with other assistive devices.[[21]](#footnote-21)

The right to participation proper has been dealt with under Article 29 and 30 with 29 providing for the right to participate in political and public life and 30 providing for the right to participate in cultural life, recreation, leisure and sports.

**Political Rights of Persons with Disability**

A part form creating rights that Convention has created obligations to be undertaken by the political parties these are:

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

b) ensuring that voting procedures facilitates and material are appropriate accessible and easy to understand and use

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

c) guaranteeing the free expression of the will of persons with disabilities as electors and to this end.

d) to promote actively an environment in which persons with disability can effectively and fully participate in the conduct of public affair without discrimination.

**Participation in Cultural, Recreation, Leisure and Sport**

Under Article 30 of the Convention, the right to participate in outdoor activities has been well elaborated. This has been through creation of obligations these being:

State parties shall recognize the right of persons with disability to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

a) enjoy access to cultural materials in accessible formats

b) enjoy access to television programs, film, theatre and other cultural activities in accessible

c) enjoy access to places for cultural performances or services theatres, mission, cinema ,library and tourism.

2) state parties shall 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.

3) state parties shall take all appropriate steps, in accordance with international law, to ensure that law protecting intellectual property right do not constitute on unreasonable or discriminatory barrier to access by persons with disability to cultural material.

***Universal Declaration of Human Rights***

Human rights have been accepted as the birth rights of all human beings.[[22]](#footnote-22) *The Universal* *Declaration of Human Rights* was the first solemn declaration to affirm and outline the civil and political rights among member states including Kenya. UDHR was further elaborated by the *Convention on the Civil and Political* *Rights* (CCPR) which guaranteed right of women in the political arena. In its preamble it affirms that international community must 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 or religion among other factors.[[23]](#footnote-23)

The *UDHR* generally, is a non-binding instrument. With its purpose clearly elaborated in its preamble as being: ‘‘a common standard of achievement for all people and all nations”.[[24]](#footnote-24) It remains the key foundation of international human rights standard globally.[[25]](#footnote-25) Article 7of the declaration provides for the protection of all peoples’ rights within the member states.[[26]](#footnote-26) Protection is a relative word. In providing for protection, the states should not violate persons with disability rights. Instead they should use positive measures like affirmative action among other mechanisms.[[27]](#footnote-27) Further, article 21 provides for the equal participation of all the citizens in the running of the government either directly or indirectly through electing the representative using the election processes.[[28]](#footnote-28)

**The Regional Instruments**

The regional instrument that provide for the right of women to equal participation in the political field includes the Banjul charter.

***The Banjul Charter***

The mother treaty of the *African Women’s Rights Protocol, the African Charter on Human and* *Peoples Rights*, was adopted on 27th June 1981 and entered in force on 21st October. The *African Charter* was meant to provide for the fundamental freedoms and the right of the signatories regional countries Kenya being among them. The charter provides for the duties of the citizens and the government at one level in the achievement of the rights of the citizens.

**The National Instruments**

***The 2010 Constitution***

All over the world the *Constitution* is recognized as the supreme law of the land.[[29]](#footnote-29) Its provisions therefore are binding to all the citizens and all the levels of the government and other relevant authorities.

The promulgation of the *Constitution* on 27th august 2010 ushered in a new beginning for Kenya. It secured the right to equal participation of women in democratic governance. *The Constitution* further accords women equal opportunity and equal status as their male counter parts and also addresses affirmative action as a way that will be used to ensure that the provisions are met. According to Ambani:

Under *the 2010 constitution*, the bill of rights is presented as an integral part of Kenya’s democracy and the framework for social, economic and cultural policies it thus has both judicial and extra judicial utility. Applied in the later form, it runs beyond the present of the law and judicial tribunals to be the thread that weaves through national policy and agenda. This is consistent with the purpose of the bill of rights which is to preserve the dignity of individuals and communities and promote social justice and realisation of the potential of all human beings. Compared to the repealed *Constitution*, *the 2010 Constitution* is unique in a number of critical respects it exhibits salient features like it’s exhaustive catalogue of human rights and expansive non-discrimination clause and expresses regard for substantive equality. [[30]](#footnote-30)

*The Constitution* in its article 27(1) provides every person is equal before the law and has equal protection and equally benefit of the law in the *Constitution* and encourages persons with disability to actively participate in all fields and if discriminated, they should claim for legal protection.[[31]](#footnote-31)

Article 2(5) and 2(6) recognise the use of international law, that is, treaties and the general rules of law ratified by Kenya. International law have a wide range of specific provisions on fundamental rights and freedom. For instance, *UNDHR*, which has a provision on the equal participation of women in politics.[[32]](#footnote-32) Despite Kenya being a signatory to international instruments like *UNDHR*, it failed to implement the political rights of persons with disability as per the provisions.

Further article 10(1) (a) of the *Constitution* provides for equal participation of marginalised groups. The provision for the inclusion of all should be based on equality and free from non-discrimination. Under article 38, one of the human rights provided for in the *Constitution* is the right to participate in politics, which includes the right to vote, right to participate in any political party among others.[[33]](#footnote-33)

To ensure that all enjoy their fundamental rights as embodied in the *Constitution*, article 20(2) states that, “Every person shall enjoy the rights and fundamental freedom in the bill of rights to the greatest extent consistent with the nature of the right or the fundamental freedom.” This means the *Constitution* recognises that where the bill of rights has a provision as to equality, it should not be limited pursuant to article 24

Finally, Article 54 has elaborately provided for the rights of persons with disability, it states

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

***Person with Disability Act***

Passed in December 2003, the Act was to ensure that the PWD were provided with the rights to rehabilitation; to achieve equalization of opportunities for PWD. To establish the National Council for PWD.[[34]](#footnote-34) From the above long title, it is clear that in passing of the Act, the drafters wanted to create an environment where PWD could contribute and participate with other members of the community on an equal level .Further, The Act defines disability as ‘a physical, sensory, mental or other impairment, including any visual, hearing, learning or physical incapability, which impacts on social, economic or environmental participation thereby recognizing that the major challenge faced by PWD is the right to participate.[[35]](#footnote-35)

Further, the Act recognizes that it will not be easy to implement the persons with disability right to participate without creating a body and giving it function. Under section 7(1)(b)(i) the function of the council is to formulate and develop measures and policies designed to achieve equal opportunities for persons with disability by ensuring maximum extent possible that they obtain education and employment, and to participate fully in sporting, recreation and cultural activities and afforded full access to community and social services.[[36]](#footnote-36)

**Composition of The Council**

To ensure that there is full participation of all the stakeholders that’s the persons with disability included, the membership of the council includes: not more than eight people representing persons with disability; three members from organizations of PWD; eight representing: culture and social services, county government, health, education, housing, transport and Labour.; one member from the AG;[[37]](#footnote-37)

To achieve maximum participation, the act place responsibility on the government to ensure that there are maximum resource to enable persons with disability achieve their rights.

In matters relating to economic participation, the Act for a non- discrimination provision in terms of employment of PWD this include in giving of salaries, allowances or other benefits. To ensure that this is taken into consideration even by a private employer, section 16 provides that a private employer who engages a person with disabilities with required skills or qualifications will be entitled to apply for a deduction from his taxable income equivalent to 25 per cent of the total amount paid as salary and wages to such an employee. [[38]](#footnote-38)

Further, section 21 and 22 provides for all persons responsible to ensure that the is easy mobility for persons with disability as this is one of the major factors leading to lack of participation by person with disability.[[39]](#footnote-39)

On civil rights the Act provides for the steps to be taken to ensure that the persons with disability participate in the democratic governance, and these includes: section 29, providing assistance for PWD to cast their voted according to their instructions,[[40]](#footnote-40) section 30 provides for the accessibility of the polling stations,[[41]](#footnote-41)

Most importantly the Act provides for the National Development Funds for Persons With Disability. This fund is to be given to all organization, schools and to fund projects that enhance the participation of persons with disabilities. Further, the fund is to be used to buy assistive devices and pay allowances to persons with disabilities.[[42]](#footnote-42)

The act provides for wide-ranging benefits and incentives for persons with disabilities, including exclusion from paying tax on income from jobs. Materials, articles and equipment that are modified or designed for their use, are exempted from import duty and value added tax. The law also ensures that both public and private sectors reserve 5 per cent of jobs - casual, emergency and contractual - for disabled persons. The Act ensures that an employer who improves or modifies physical facilities for the benefit of employees with disabilities will be entitled to an additional deduction from his net taxable income.[[43]](#footnote-43) This deduction will be equivalent to 50 per cent of the direct costs of improvements, modifications or special services.[[44]](#footnote-44)

If the above are well implemented according to the spirit of the Act then the right to participation will no longer be an issue to be fought for but to be maintained.

***The Political Parties Act* *No 9* *of 2011***.

The *Political Parties Act* was passed in 2011 under the *Constitutional* provisions to help in formation and running of the political parties. Section 7(2) (b) of the Act provides for the registration of the political parties and it states that, “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 marginalised groups.[[45]](#footnote-45)” Further, Section 7(2)(c) states that the composition of its governing body reflects regional and ethnic diversity, gender balance and representation of marginalized groups. for the purpose of article 177(1)(b) of the *Constitution*, the commission shall draw from the list under subsection (1)(e) ,such number of special seats members in the order given by the party, necessary to ensure that no more than two thirds of the membership of the assembly are of the same gender.

Parties rely on the funding of the government and other donors. However, under the Act parties will not be provided for with any funds, in situations where there are more than two third gender representation in the positions of the registered office bearers.[[46]](#footnote-46) This rule will remain to be effective if it is properly implemented. If seriously implemented, it will enhance the women right to equal participation in the political arena. Under the first schedule of the Act, the right of persons with disability should be respected and their fundamental freedom brought into consideration. And to respect the right of women their rights of participation should be respected and upheld in a way that will promote human dignity, social justice and non-discrimination.[[47]](#footnote-47)

Worth noting, this Act stems from the *Constitution’s* provisions. This is a very serious challenge that if not critically and carefully checked can blow out of proportion and end up becoming a claw back that will defeat the affirmative action.

**The *Independent Electoral and Boundary Commission* *Act* *(IEBC) No 24 of 2011***

The *Independent* *Electoral and Boundaries Commission Act*, an Act passed, to help running of general elections and parties’ nomination. The Act, in the guiding of the election and enhancing the political rights of persons with disabilities and to align with the *Constitution* in its part five provides that, “In fulfilling its mandate the commission formed under the Act in the running shall with the *Constitution* observes the freedom of citizens to exercise their political rights.

**Policy Framework**

The State through the Department of Gender and Social Services compiled the National Disability Policy 2006 which still remains to be a draft. Other policies include: The National Special Needs Education Policy Framework (2009) which provides guideline on quality and services to be provided to learners with disabilities, the Social Assistance Policy 2011 and the Public Service National Disability mainstreaming code.

**Disability Mainstreaming Guideline**

The guideline for implementing the performance indicator on mainstreaming disability.it is designed to enable all government institutions to implement the disability mainstreaming performance indicate in the performance contract.

a) Carrying out a baseline survey on

b) Setting up of disability mainstreaming committee atleast 30% representation by persons with disability if there are persons with disabilities employed in the organization or in the regional, provincial and district level.

C) Training of all staff in disability awareness and provision of services to persons with disability

d) Submission of a biannual report to National Council for Persons with Disability.

**Other Laws and Policies that have since been passed by Kenya**

* *The National Strategy for Development, Vision 2030*
* *The National Children’s policy of 2007*
* *National Policy on Special Needs Education of 2007*
* *The National Policy on Ageing and Older Persons of 2007*
* *National Policy on Persons with Disabilities.*
* *National Social Protection Policy*
* *National Development Fund for the Person with Disability*
* *The Persons with Disability (Amendment) Act 2015*

**The Constraints of the Legal System**

The current *Constitution* sets the rights of legal framework for instance, the right of persons with disability to equal participation under article 27(1). However, there are several loopholes in the same legal system, that has led to several interpretation There is needs for rules and guidelines on how these rights will be implemented. In relation to implementation, through the use of established policies and programs under article 56(1)(a).[[48]](#footnote-48)It is evident that there are no *Constitutional* provisions as to how finances and other logistics will be given as a major incentive. In addition, sanctions provided for under the *Political Parties Act* are not sufficient to deter the breach of the gender rule. For instance, the *Political Parties Act* requires that such parties to be denied financial support from the government.[[49]](#footnote-49) It has to be borne in mind that some parties will not require financial support from the government. In fact, some might be very stable that they will mind being given support. Therefore, such sanctions do not make sense to economically stable parties. Serious sanctions should be put in place to deter such retrogressive actions of any party to defeat the rights of persons with disability to participation.

**Conclusion**

Having laws in place without clear implementation in place is like having a toothless backing dog. If laws are not adequately implemented, they will remain to be history. Therefore, provision of laws without proper implementation will create great voids and obstacles to the implementation of the PWD rights. From the Kenyan context, PWD are still far from realizing their political and civil rights. However, with the help on NGO’s, government and other institutions,[[50]](#footnote-50) PWD rights might be realized immediately.

**CHAPTER THREE**

**INSTITUTIONAL FRAMEWORK**

For every standing house, there is a pillar on which it leans. Therefore, the availability of written laws without institutions to implement them is ineffective: their impact cannot be felt. The right persons with disability to participation will be improved by the use of affirmative action ass highlighted: serious implementation of the law, vocational training, creating the right environment and protecting then against violence and abuse by society However, one should have in mind that for this to be realised effectively there has to be the use of the institutions, that’s both Non-Governmental Organisation and government Agencies. And the first institution to be analysed and a major one thereto is the:

**The Government**

Despite the separation of power as regard the arms of government. Kenya relies on judicial precedence, and so is the functioning of the legislature. The judiciary therefore, shouldn’t be seen as passing laws that work against the spirit of participation of PWD

The government can also enhance the participation of PWD through media campaigns and seminars to motivate them to be more involved in matters affecting their rights. They can also develop persons with disability database, directorate and advancement in the key ministries and PWD units in the county and districts within government structure.

**Non- Governmental Organisations**

NGO’s have always taken an active role when it comes to the fight for the rights of marginalised groups. In relation to the rights of PWD to participation, some of the NGO’s that have been taken an active role include:

**The National Gender Commission**

The National Gender Commission is an organisation established under the *Constitution*.[[51]](#footnote-51) Making it a government established body. The mandate of the commission shall as per the *Constitutional* provision on PWD. The main function of the commission is to enhance affirmative action. It also ensures that there is equality as provided under article 27(1) of the *Constitution*.

The over-arching goal for NGEC is to contribute to the reduction of PWD inequalities and discrimination against all women, men, persons with disability the youth, children, minorities and marginalised communities.[[52]](#footnote-52) The commission mandate and function are anchored under the National Gender and Equality Commission Act, 2011, under section 8 of the Act as : 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.

To ensure that during employment the persons with disability also participate in employment or are employed to participate in the work of the commission, section 11 of the Act provides that: whenever there is a vacancy in the Commission, the president shall within fourteen days of the occurrence of the vacancy, convene a selection panel for the purpose of selection suitable candidates for appointment as the chairperson or member of the commission.

**Composition of Membership**

Under section 9 of the Act the member shall be the chairman and four other members appointed according to the constitution. Article 250 of the constitution provides for the composition, appointment and termination of office. To be specific on the rights of PWD to participation, Article 250(4) provides that: appointments to the commission and independent offices shall take into account the national values referred to in Article 10. Article 10(a) provides for values like democracy and participation of the people and further 10(b) is more elaborate on the protection of human rights , non-discrimination and protection of the marginalised persons in the society.

Notable in the appointment of the membership of the Commission, the right of the PWD with disability and participation must take into consideration.

**National Council for Persons with Disability**

The National Council for persons with disability is a State Corporation established by an Act of parliament , PWD Act No.14 of 2003 section 3.to ensure that the work of the council are performed the act goes ahead under section 7 to provide for the function under 7 being a) to issue adjustment orders under section 24 which are to ensure that premises, services or amenities are not inaccessible to PWD by reason of any structural, physical, administrative or other impediments to such access.it is clear that in any instance the PWD cannot attend their meeting due to the location of the meeting therefore to curb such kind of barriers, the council is to ensure that henceforth further the buildings take care of the PWD.

However, the institutions should be given the chance to formulate their own laws to regulate how the operate to enable them have equal opportunity in all the activities conducted in daily basis to ensure that there is no discrimination and ensure that other laws are created to curb discrimination in relation to participation where there has been an oversight.

Further, there instances where discrimination in relation to participation has been done away with but the PWD cannot still participate; the council will ensure that there are assistive devices.

To ensure that the PWD participate fully in relation to the above function, the council has created funds to ensure that whenever the persons with disabilities want to perform the underline functions they do not lack funds. To ensure also that they are not left out in any project that participation is needed the council like other bodies ensure that they register the PWD to ensure that there is an accountability, further, the council is to conduct public awareness to shun the kind of ideas and cultural discrimination that the society/ community has on any marginalized members of the society including the PWD. To add in the council ensure that they provide assistive devices for the PWD to ensure that they make life, interaction and movement easier.

**Composition of the Council**

In appointment of the members who are to be appointed by the cabinet secretary [[53]](#footnote-53)shall compose of :

a) Not more than eight persons nominated in a manner approved by the cabinet secretary, by organization representing persons with categories disability

b) Three members appointed from a panel of names submitted to the minister, by organizations of PWD.

c) Eight members representing the ministries responsible for the following

i) Culture

ii) County government

iii) Education

iv) Economic planning

v) Housing

vi) Transport

**Kenya National Commission for Human Rights**

The Kenya National Commission on Human Rights as an independent monitoring body on the implementation of the Convention on Rights of PWD (2011-2013) embarked on a counties monitoring exercise to assess the status of rights of PWD in Kenya. This report details the findings of the monitoring surveys conducted between November 2011 and December 2013. The survey targeted learning institutions, hospitals, law courts, local authorities, Disabled Persons Organizations (DPO’s), homesteads of PWD and offices where public services are offered.

**Other Institutions**

* Northern Nomadic Disable Organization
* Cerebral palsy Society of Kenya
* Kenya Association for the Intellectual Handicapped
* Albinism Foundation of East Africa
* Deaf Ability Initiative

**CHAPTER 4**

**CONCLUSION AND RECOMMENDATIONS**

**4.1 Conclusion**

Despite the enactment of the law and the available knowledge on disability in the country more so on the bill of rights, the marginalization of the PWD in development and participation is still a challenge to be reckoned with in Kenya and other developing nations. The perception of the society on PWD has contributed to the exclusion of the PWD in participation in the daily running of the society and more so that participation in the formation and running of the government as in most instances they are not even given a chance to participate in elections. Lack of effective and supportive public policies and programs, have rendered the participation of PWD in public life minimal. The social and access barriers hinder effective participation by PWD in the electoral and political process. Achieving equal rights and full participation for all is essential, not just for the promotion of social justice but also for personal development. Investing in equal participation for PWD in all spheres such as education, employment, democratic governance and family life is central to sustainable livelihood and management of socio-economic resources.

International human rights laws, obligates the government to take legislative and administrative measures to ensure that PWD not only participate in matters affecting them in life at an equal level, but also their rights are protected. The existing laws should be amended to recognise the right of PWD to equal participation and more importantly, to give effect to Kenya’s obligation under international human rights law. The responsibility of ensuring that these mechanisms exist, and are functional, accessible, transparent and promote the rights of PWD fall squarely on the government under international law and regional laws.

**Recommendations**

Advancing persons with disability rights to participation in developing nations like Kenya requires determined efforts not only by them but also by the government, the international community and the civil society. Therefore, the following steps will have to be taken to achieve the right to participation of PWD:

**The Government**

The Kenyan government should do more to actively promote PWD rights to participation. For instance, implementing the existing in policy commitment such as *Convention on the Rights of Persons with Disability.*

* The government should provide incentives for the political parties to promote the participation of persons more so in matters affecting them either directly or indirectly, for instance, by providing i resources, training and increased access to broadcast.

**The Political Parties**

Political parties are among the most important institutions affecting persons with disabilities political participation. In most countries, parties determine which candidates are nominated and elected in any elective seats. The role of PWD in political parties cannot be underestimated as political parties are the key determinants of their prospect in politics.

* The parties should adopt internal democratic structure, either through their manifestos or their *Constitutions*. Apart from using the guidelines provided for in the *Political Parties Act* under article 7(2)(a), parties should ensure that they use other incentiveslike, providing financial support to ensure that persons with disabilities occupy sensitive political positions.
* Kenya being a majority electoral system, parties should adopt voluntary quotas, to ensure a specific number of PWD manage to be elected in any given position. However, this should not to be left at the discretion of the parties.
* The civil society should provide training and other incentives for instance, financial support for PWD candidates. Enlightened persons with disability will be a great force to reckon with in politics, as she has knowledge of her rights and is well educated on laws applicable in the society, therefore, is well positioned in the field of decision making.
* They should lobby for legislative changes to advance PWD empowerment.

**The International Actors**

Though a silent actor in the political arena and other arena where participation is involved, the International community, acts as a force for the implementation of the laws within the country. In most instances, they are the source of funds channeled to the developing nations. Therefore, threats of withdrawal of financial support are highly considered when it comes to the implementation of laws.

* The international actors should therefore monitor their member states through reports submitted to them annually on implementation of rights of persons with disability, as provided for under international conventions or treaties, for instance CRPD to ensure that the international laws passed to enhance persons with disability rights to participation are taken into account. They should also provide advice on legislation and best practices suitable for Kenya that will likely enhance persons with disability participation.

**The Courts and Tribunals**

For the laws to have a force in a common law country, the judgment given by the courts matter a lot.

**Other Steps**

Other steps to be taken to enhance the right to participate of the persons with disability include:

1) Distribution of relevant information including programs to the persons with disabilities

2) Initiating campaigns for the elevation of the rights of persons with disability to the state through education conducted in the public institution..

3) Portrayal of PWD in a positive way

4) Encourage the inclusion of enterprises in the private sector to include disability issue in all aspects of their activities.

5) Raising awareness in all aspects of their activities.

1. *The New Constitution, article 27(1).* [↑](#footnote-ref-1)
2. *The New Constitution, preamble* [↑](#footnote-ref-2)
3. *The New Constitution, article 27(3).* [↑](#footnote-ref-3)
4. Greta Haggblom Kronlof, ‘*Participation in Everyday Life’,(2007)*

   https://gupea.ub.gu.se/bitstream/2077/4439/2/Participation%20in%20everyday%20life.pdf [↑](#footnote-ref-4)
5. The Constitution, Article 86,give an outline of how voting shall be conducted this being: the voting methods to , simple, accurate, verifiable, secure, accountable and transparent. [↑](#footnote-ref-5)
6. ILO/UNESCO/WHO,’ *Sport and Persons with Disability Fostering Inclusion and Well-Being’*, 3rd December, 1997. [↑](#footnote-ref-6)
7. WHO, Understanding Disability Article 1 World Report on Disability,/ 2011< [www.wh.int/disabilities/world-report/2011/chapter](http://www.wh.int/disabilities/world-report/2011/chapter) 1 [↑](#footnote-ref-7)
8. World Health Organization, Personal Mobility: Facilitating Access to Quality Mobility Aids and Devices.(2015) [www.who.int/disabilities/media/new/perrsonal-mobility/en/](http://www.who.int/disabilities/media/new/perrsonal-mobility/en/) [↑](#footnote-ref-8)
9. *The Old Constitution, section 70.* [↑](#footnote-ref-9)
10. *The Old Constitution*, section 70 *and section 91*. [↑](#footnote-ref-10)
11. *The New Constitution article 27(3).* [↑](#footnote-ref-11)
12. *The New Constitution, article 2(5) and article 2(6).*giving the provisions on the use of the international treaties and the general rules of application. [↑](#footnote-ref-12)
13. Supra note 11. [↑](#footnote-ref-13)
14. *The New Constitution, article 2(5) and article 2(6).*giving the provisions on the use of the international treaties and the general rules of application. [↑](#footnote-ref-14)
15. Tom Kabua and J Osogo Ambani, the New Constitution and the Application of International Law Reforms in Kenya: Case of Migration to Monism or Regression to Dualism *(2012).<*law.mu.ac.ke/index.php/research-publication? Show=1> at 20th May 2013. [↑](#footnote-ref-15)
16. Kenya Human Rights Commission, *Toward Equality and Discrimination in Kenya: An Overview of International and Domestic Laws on Anti-Discrimination in Kenya* *(25th January 2010*), <[www.khrc.or.ke/........../4-an-overview-of](http://www.khrc.or.ke/........../4-an-overview-of) -international-domestic law> at 26th March 2013. [↑](#footnote-ref-16)
17. *Beatrice Wanjiru and Another v Attorney General and Another* (2012) eKLR 6 in Majanja J held that: international law can only be used for interpretative purposes and it cannot triumph over local laws. [↑](#footnote-ref-17)
18. Angela Waki and wathingira Gituro, *The New Constitution of Kenya: A General Overview* *(2012),* <[www.coulsonhorney.com/......../the](http://www.coulsonhorney.com/......../the) new -constitution-overview>at 26th January 2013 the author state that unlike the previous constitution, the new *Constitution* expressly recognise the general rules of international laws as forming part of the Kenyan laws and provides that any treaty or convention ratified by Kenya shall form part of the Kenyan laws which effectively converts Kenya from a dualist state to a monist state. [↑](#footnote-ref-18)
19. United Nation, Development and Human Rights for all.<www.un.org/disabilities/defalt.asp?Id=150> [↑](#footnote-ref-19)
20. *Convention on the Rights of Persons with Disability, Preamble.* [↑](#footnote-ref-20)
21. *Convention on the Rights of Persons with Disability, Article 7.* [↑](#footnote-ref-21)
22. The *Universal Declaration of Human Rights*, *article 1* (1948) which states that, “All human beings are born free and equal dignity and rights. They are endowed with reason and conscience and should act toward one another in a spirit of brotherhood.” Article 7 further states that, “ All are equal before the law and are entitled without discrimination to equal protection of the law.” [↑](#footnote-ref-22)
23. The *Universal Declaration of Human Rights*, *article 1* (1948) . [↑](#footnote-ref-23)
24. *The Universal Declaration of Human Right’s, preamble*.(1948) [↑](#footnote-ref-24)
25. United Nation ,*Democracy and the United Nation*, <<http://www.un.org/en/peacekeeping/issues/women>> at 26th March 2013 [↑](#footnote-ref-25)
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27. *The Universal Declaration of Human Rights,* *article 7* (1948) which states that: “all are equal before the law and are entitled without discrimination to equal protection of the law” [↑](#footnote-ref-27)
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29. *The New Constitution, article 2(1*) which provides that the *Constitution* is the supreme law of the republic and binds all persons and all state organs at both levels of government. [↑](#footnote-ref-29)
30. Morris Kiwinda Mbondayi and J Osogo Ambani, *Kenya’s Bill of Rights (2011), <*law.mu.ac.ke/index.php/research-publication? Show=1> at 20th May 2013. [↑](#footnote-ref-30)
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32. *The Convention on the Elimination of All Forms of Discrimination of Women, article 7*.(1979) [↑](#footnote-ref-32)
33. Ibid. [↑](#footnote-ref-33)
34. *The Persons With Disability Act, No 14 of 2003*, *the long title* [↑](#footnote-ref-34)
35. *The Persons With Disability Act, No 14 of 2003,* *section 2* [↑](#footnote-ref-35)
36. *The Persons With Disability Act, No 14 of 2003*, *section 7(1)(b)(i)* [↑](#footnote-ref-36)
37. *The Persons With Disability Act, No 14 of 2003,* *section 4* [↑](#footnote-ref-37)
38. *The Persons With Disability Act, No 14 of 2003, section 16* [↑](#footnote-ref-38)
39. *The Persons With Disability Act, No 14 of 2003*, *section 21 &22* [↑](#footnote-ref-39)
40. *The Persons With Disability Act, No 14 of 2003,* *section 29* [↑](#footnote-ref-40)
41. *The Persons With Disability Act, No 14 of 2003,* *section 30* [↑](#footnote-ref-41)
42. *The Persons With Disability Act, No 14 of 2003*, *section 32* [↑](#footnote-ref-42)
43. *The Persons With Disability Act, No 14 of 2003*, *section 35* [↑](#footnote-ref-43)
44. International Labour Office, ‘ *Employment of People with Disabilities: the Impact of Legislation (East Africa)* March 2004 http://www.ilo.org/wcmsp5/groups/public/---ed\_emp/---ifp\_skills/documents/publication/wcms\_107837.pdf [↑](#footnote-ref-44)
45. *The Political Parties Act, section 7(2)(b).* [↑](#footnote-ref-45)
46. [↑](#footnote-ref-46)
47. *The Political Parties Act, the first schedule.* [↑](#footnote-ref-47)
48. *The Constitution article 56(1)(a).* [↑](#footnote-ref-48)
49. *The Political Parties Act section 25(2)(b).* [↑](#footnote-ref-49)
50. [↑](#footnote-ref-50)
51. *The* *New* *Constitution, article 59(5)* giving parliament power to form other Human Rights Commission not provide for under the *Constitution*. [↑](#footnote-ref-51)
52. www.ngeckenya.org [↑](#footnote-ref-52)
53. *Persons with Disability Act No 3.2003, section 4* [↑](#footnote-ref-53)