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# ACCESSIBILITY AND STIGMA: PLIGHT OF PERSONS WITH DISABILITY



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## Introduction

Global statistics from the World Health Organization indicate that approximately 1.3 billion people have disabilities.<sup>1</sup> At the national level, the Status Report on Disability Inclusion in Kenya provides that nearly one million people in Kenya live with some form of disability.<sup>2</sup> The increasing vulnerabilities faced by persons with disability in Kenya stem from a complex interplay of economic, societal and environmental factors. Disability worsens the poverty level and inequality gap in communities. The promulgation of the 2010 constitution of Kenya set an entry point for the elimination of all forms of discrimination against all, including based on disability. As a result, in 2018 the government of Kenya committed to tackling stigma and discrimination, inclusion and economic empowerment for persons with disability.<sup>3</sup> Kenya has made great strides to achieve this vision, through the establishment of special needs schools and accommodations for persons with disability.<sup>4</sup> While the progress is commendable, PWDs continue to suffer unique vulnerabilities that hinder their inclusion in society. This paper will, therefore, evaluate critical factors worsening the lives of persons with disability in Kenya.

### Legal and policy framework regulating disability in Kenya

Kenya is among the African Countries which has made significant strides in providing legal and policy frameworks for persons with disability. This section provides these frameworks.

#### The Constitution of Kenya 2010

The Constitution of Kenya is the supreme law of the land. Article 54 of the Kenyan Constitution guarantees the right of persons with disability to education, employment, health care and social services.<sup>5</sup> The constitution further provides that persons with disability should be treated with dignity,<sup>6</sup> have access to quality education with compatible facilities,<sup>7</sup> and have access to public transport and information,<sup>8</sup> and five per cent of people elected to public service boards are persons with disability.<sup>9</sup> The Constitution of Kenya provides for a robust legal framework which insulates the vulnerability of persons with disability. Article 27(4) of the Constitution provides that no one shall be discriminated against either directly or indirectly on grounds of disability.

<sup>1</sup> World Health Organisation (WHO) <https://www.who.int/news-room/fact-sheets/detail/disability-and-health#:~:text=It%20results%20from%20the%20interaction,experience%20a%20significant%20disability%20today>. (accessed on 2 September 2024).

<sup>2</sup> Status Report on Disability inclusion in Kenya <https://www.socialprotection.go.ke/sites/default/files/Downloads/STATUS-REPORT-ON-DISABILITY-INCLUSION-IN-KENYA-2021.pdf> (accessed 2 September 2024).

<sup>3</sup> As above.

<sup>4</sup> <https://geuzawazofoundation.org/top-12-special-schools-in-nairobi/> (accessed on 2 September 2024).

<sup>5</sup> Article 53 Constitution of Kenya 2010.

<sup>6</sup> Article 54(1)(a) Constitution.

<sup>7</sup> Article 54(1)(b) Constitution.

<sup>8</sup> Article 54(1)(c) Constitution.

<sup>9</sup> Article 54(2) Constitution.

### Persons with Disability Act 2003

The consequential Act provides for the rights and rehabilitation of persons with disabilities in achieving equalisation of opportunities for persons with disabilities; to establish the National Council for Persons with Disabilities.<sup>10</sup> For greater protection of rights with disability in Kenya, the Act provides for the creation of the National Council for Persons with Disability.<sup>11</sup> The mandate of the Council is to design measures for achieving equal opportunities for disabled persons,<sup>12</sup> to ensure accurate official figures of disabled persons,<sup>13</sup> and measures to prevent discrimination,<sup>14</sup> rehabilitation and employment of disabled persons,<sup>15</sup> just to mention but a few. The milestone of the Act provides a comprehensive definition of disability and requires private and public institutions to create disability-friendly infrastructure for accessibility.

### Kenya Vision 2030.

Kenya Vision 2030 is the long-term development blueprint that was launched by former Kenyan President Mwai Kibaki in 2010 to create a middle-income economy by 2030.<sup>16</sup> This national development blueprint prioritises the inclusion of persons with disability.

### United Nations Convention on Rights for Persons with Disability 2006

Kenya ratified the Convention on Rights for Persons with Disability in May 2008.<sup>17</sup> As a state party to the Convention Kenya is obliged to collect statistics for disabled persons,<sup>18</sup> provide adequate standard living and social protection,<sup>19</sup> ensure access to work and employment,<sup>20</sup> habitation and rehabilitation,<sup>21</sup> education<sup>22</sup>, and health<sup>23</sup> of all disabled persons. The doctrine of *Pacta sunt servanda*<sup>24</sup> obliges Kenya to take all measures to give effect to the object, tenor and spirit of the Convention.

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<sup>10</sup> Preamble, Persons with disability Act 2003

<sup>11</sup> Section 3 Persons with Disability Act 2003.

<sup>12</sup> Section 7(b)(i) Persons with Disability Act.

<sup>13</sup> Section 7(b)(ii) Persons with Disability Act.

<sup>14</sup> Section 7(b)(iv) Persons with Disability Act.

<sup>15</sup> Section 7(b)(vii) Persons with Disability Act.

<sup>16</sup> The National Treasury and Economic Planning, State Department for Economic Planning <https://www.planning.go.ke/kenya-vision-2030/> (accessed on 9 September 2024).

<sup>17</sup> United Nations Treaty Collections [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-15&chapter=4&-clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-15&chapter=4&-clang=en) (accessed on 9 September 2024).

<sup>18</sup> Article 31 United Nations Convention on Rights for Persons with Disability 2006.

<sup>19</sup> Article 28 CRPD.

<sup>20</sup> Article 27 CRPD.

<sup>21</sup> Article 26 CRPD

<sup>22</sup> Article 24 CRPD.

<sup>23</sup> Article 25 CRPD.

<sup>24</sup> *Pacta sunt servanda* is a principle of law which holds that treaties or contracts are binding upon the parties that entered into the treaty or contract. <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/abs/pacta-sunt-servanda/E8967A236B1141934DD8D1495FEA2BFA> (accessed on 9 September 2024).

## **Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disability in Africa 2018.**

Kenya is a state party to the African Disability Protocol which came into force in June 2024. The Protocol guarantees right to education,<sup>25</sup> right to health,<sup>26</sup> habilitation and rehabilitation,<sup>27</sup> right to work<sup>28</sup> and the right to adequate standard of living.<sup>29</sup> The mischief which the African Disability Protocol wanted to cure was to provide special legal protection to disabled persons in Africa who incessantly face discrimination. The Protocol is a significant milestone in Africa's human rights systems because it helps to understand disability from an African perspective. It is alive to the exigencies and history of Africa and provides possible solutions to insulate persons with disability from discrimination while upholding international human rights laws and standards.

### **Challenges faced by Persons with Disability in Kenya**

#### **Stigma and discrimination**

Although Kenya has made significant strides to calibrate the legal and policy framework regulating disability, persons with disability continue to face stigmatisation and discrimination. The Universal Periodic Review of Kenya in 2010 revealed that over 80% of persons with disability in Kenya reported being treated unfairly on grounds of their disability.<sup>30</sup> The research further showed that persons with disability at work are being given lower salaries as compared to their able-bodied workmates.<sup>31</sup> In most communities, boys and girls with disability are not going to school.<sup>32</sup> Due to stigma and discrimination, they are kept in houses so that they don't play with others. Discrimination of persons with disability is against the objects and tenor of the African Charter, the Constitution and the United Nations Convention on Rights of Persons with Disability.

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<sup>25</sup> Article 16 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disability in Africa 2018.

<sup>26</sup> Article 17 African Disability Protocol.

<sup>27</sup> Article 18 African Disability Protocol.

<sup>28</sup> Article 19 African Disability Protocol.

<sup>29</sup> Article 20 African Disability Protocol.

<sup>30</sup> Universal Periodic Review Of Kenya [https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session8/KE/DRPI\\_KP\\_UPR\\_KEN\\_S08\\_2010\\_DisabilityRightsPromotionIntKenyaProj\\_1.pdf](https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session8/KE/DRPI_KP_UPR_KEN_S08_2010_DisabilityRightsPromotionIntKenyaProj_1.pdf) (accessed on 9 September 2024).

<sup>31</sup> As above.

<sup>32</sup> As above.

## Lack of accessibility

Despite being one of the fastest-growing economies in Sub-Saharan Africa, and Kenya there are physical barriers which make it difficult for persons with disability. Kenya has good public transport network which consists of *Matatus*<sup>33</sup>, *Boda boda*<sup>34</sup> and *Tuk Tuks*.<sup>35</sup> However majority of these forms of transport are not user-friendly to persons with disability. Article 9 of the CRPD obliges Kenya to develop to take appropriate action and measures to ensure that persons with disability have access to public infrastructure. Section 23 of Kenya's Disability Act of 2003 provides that addresses the issue of public transport operators. It provides that public transport operators should adopt measures to make transport operators such as *Matatus* disability user-friendly. The Disability Act further gives power to the National Council of Persons with Disability to order service providers to make infrastructure that is accessible to persons with disability. The law allows the NCPWD to order owners or service providers to make infrastructural arrangements friendly to persons with disability at their own expense. The 2018-2022 Kenya's National Disability Mainstream Strategy held that inaccessible transport infrastructure is negatively affecting the participation of persons with disability.<sup>36</sup> However, despite all these legal provisions to protect persons with disability, the reality on the ground shows that Kenya's public transport infrastructure is not disability-user friendly.

Report on the Accessibility of Pubic Transport in Nairobi revealed that public transport operators of the notorious *Matatus*, are not disability friendly.<sup>37</sup> The *Matatus* have no space to accommodate wheelchairs, making such arrangements by the service provider difficult due to the fear that they will be forced to reduce the number of seats thereby affecting the number of passengers they can accommodate.<sup>38</sup> There are no rumps when boarding public transport and all buses have staircases.<sup>39</sup>

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<sup>33</sup> *Matatus* are minivans that serve as a popular mode of public transportation in Kenya. They're a colourful and affordable way to travel between towns and cities, but can be crowded and less comfortable than other options. <https://magicalkenya.com/travel-by-matatu/> (accessed on 16 September 2024).

<sup>34</sup> *Boda boda*, motorcycle taxis commonly found in East Africa, have been providing transportation and delivery services to millions of people. There are 1.2 million *boda bodas* in Kenya working day and night. <https://blog.wakandi.com/blog/community-driven-approach-to-empower-boda-bodas-in-kenya> (accessed on 16 September 2023).

<sup>35</sup> *Tuk tuks* began in the Asian Empire as rickshaw, carts with two or three wheels pulled by one person carrying passengers. <https://www.thelawfordkenya.com/tuk-tuk/#:~:text=Tuk%20tuks%20began%20in%20the,by%20one%20person%20carrying%20passengers.> (accessed on 16 September 2024).

<sup>36</sup> <https://library.fes.de/pdf-files/bueros/kenia/19996.pdf> (accessed on 16 September 2024).

<sup>37</sup> Report on the Accessibility of Pubic Transport in Nairobi (2021) <https://library.fes.de/pdf-files/bueros/kenia/19996.pdf> (accessed on 16 September 2024).

<sup>38</sup> As above.

<sup>39</sup> As above.

## Conclusion and recommendations

- Discrimination and lack of access remain a challenge for persons with disability in Kenya. Whilst Kenya has an elaborate legal framework, challenges to their implementation are apparent, as persons with disability continue to face discrimination. Kenya can draw inspiration from other African countries such as South Africa, Ghana and Rwanda. Although there are challenges in the above-mentioned jurisdictions, they have made significant progress on disability programming. For instance, South Africa has reformed their public transport system to make it suitable for persons with disabilities to access.
- They have taken measures such as increasing the number of low floor buses, designating wheel chair spaces and seats for people with disabilities.<sup>40</sup>

The following are recommendations:

- There is a need to increase the number of low-floor buses which are accessible to wheelchair users.
- Public transport vehicles should have designated wheelchair spaces that are marked and accessible.
- Vehicles should have secure systems which allow wheelchairs to be anchored. Kenya can draw inspiration from South Africa.<sup>41</sup>
- Training of public transport staff on how to assist passengers with disabilities and ensure that they are knowledgeable about accessibility requirements. Kenya can draw inspiration from Ghana's Disability Act which requires the designation of priority seats so that PWDs are assured of a comfortable reserved seat to make it easier to communicate with the bus driver.<sup>42</sup> This is a positive move towards the creation of inclusive public transport infrastructure which is user-friendly to persons with disability.
- Enforce existing accessibility standards and regulations to ensure that public transport facilities and vehicles meet the needs of persons with disabilities.
- Conduct public awareness campaigns to educate the public about the importance of accessibility and to promote inclusive transportation. There is a need for training of public transport operators and other members of the public about the importance of accessibility for persons with disability.
- Review and strengthen existing laws, such as the Persons with Disabilities Act, to ensure that they are effective in preventing and addressing discrimination. Kenya has good legislation on persons with disability, but effective implementation remains a challenge. Therefore there is a need for a robust reporting system to make sure that legal provisions are meant to improve the lives of persons with disability.

<sup>40</sup> <https://journals.co.za/doi/epdf/10.4102/jtscm.v16i0.826> (accessed on 23 October 2024).

<sup>41</sup> As above.

<sup>42</sup> Towards inclusive transport: The responsiveness of intercity bus services to the needs of people with disabilities in Tamale, Ghana <https://rgs-ibg.onlinelibrary.wiley.com/doi/full/10.1002/geo2.131> (accessed on 23 October 2024).



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