



# Devolution and the promise of democracy and the inclusion of persons with disability in Kenya: An evaluation of the first decade of county governments

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## Introduction

The clamour for decentralisation and inclusion won a major battlefront when the Constitution of Kenya, 2010 (2010 Constitution), which entrenched devolution as one of its overarching principles, was promulgated. The 2010 Constitution associates devolution with democratic and accountable exercise of power; national unity; self-governance; public participation; social and economic development; provision of proximate services; equitable sharing of national and local resources; the rights and interests of minorities and marginalised communities; decentralisation; and separation of powers.<sup>1</sup> Kenya's devolution promises democracy and accountability, and equality and inclusivity, ideals that are critical for the rights of persons with disability (PWDs). But has devolution delivered on these fronts? This Policy Brief explores this question after a decade of its career. It evaluates the objectives of devolution both to democratise governance

and to include. More specifically, the Policy Brief reviews the extent to which the first decade of devolution, 2013-2022, realised democratic inclusion for PWDs.<sup>2</sup> It does so by responding to three main questions, whether: i) the institutions of county governance incorporated PWDs; ii) the counties enacted laws and policies that are responsive to the rights and welfare of PWDs; and iii) the counties initiated projects that resonate with the needs of PWDs.

It is difficult to conduct research on PWDs and their inclusion in decentralised governance because little disaggregated data exists on their representation in political and public life generally and county governance specifically. Even institutions that should have such information readily such as the Council of Governors (COG), the counties, the Independent Electoral and Boundaries Commission (IEBC), the Kenya National Bureau of Statistics (KNBS),

1 Constitution of Kenya (2010), Article 174; Article 10 also introduces the values of human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised as national values and principles that undergird the Constitution.

2 While Article 100 includes ethnic communities and marginalised communities among the groups in need of legislation to address their inclusion, diversities in definition of ethnic minorities and variances in ethnic composition within counties makes it difficult to evaluate their representation at the national level and also across counties.

the National Council for Persons with Disabilities and the universities have not done much in securing such information. The result has been less public discourse on the subject and therefore little progress in the quest to include PWDs in government.

To prevent such scenarios, the United Nations Convention on the Rights of Persons with Disabilities<sup>3</sup> requires states to collect appropriate information relating to PWDs in a participatory manner, to disaggregate such information systematically, and to disseminate it through accessible mediums.<sup>4</sup> The rationale for this is to help states and other actors to identify and address the barriers that the PWDs face;<sup>5</sup> data collection and analysis being essential measures in monitoring anti-discrimination policies and laws.<sup>6</sup> This normative framework should form the basis for collecting information on questions such as how many PWDs vie for political office, how many actually win and for what reasons, and in what areas they are likely to succeed and why. Already, there are indications that the performance of PWDs in electoral processes might be dependent on their type of disability, gender, age, cultural background or whether they are part of a marginalised population. All such information should be collected, disaggregated and disseminated if appropriate interventions are to be made.

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3 Kenya ratified the United Nations Convention on the Rights of Persons with Disabilities on 19 May 2008.

4 United Nations Convention on the Rights of Persons with Disabilities, Article 31. See also para 71, General Comment no 6 (2018) on equality and non-discrimination, Committee on the Rights of Persons with Disabilities. CRPD/C/GC/6; also; para 95, General Comment No 5 (2017) on living independently and being included in the community, CRPD/C/GC/5.

5 United Nations Convention on the Rights of Persons with Disabilities, Article 31.

6 General Comment No 6 (2018) on equality and non-discrimination, Committee on the Rights of Persons with Disabilities, CRPD/C/GC/6, para 71.

Some data on the participation of PWDs exists, although disparately, not systematically, and not across electoral cycles, making analysis based on trends and patterns arduous but possible. A number of useful deductions can be made from the limited information available. One, the first decade of devolution brought about noticeable progress but did not achieve the optimal representation of PWDs in national and county institutions as envisioned by the 2010 Constitution. Two, even in their marginalisation, men with disabilities outwitted their female counterparts, which brings about questions of intersectionality. Three, persons with physical disabilities did better than persons with other disabilities such as intellectual and mental both at the ballot and the nomination processes, which might be an indication of hierarchies even within PWDs. Therefore, care has to be taken to avoid homogenisation of disability since in many cases, due to intersecting discrimination, PWDs are made of multiple subgroups with varying inclusion needs. Various, the inclusion of PWDs has been taken to mean inclusion of persons with physical disabilities, thus creating double invisibility for persons with other categories of disability.<sup>7</sup> Four, despite carrying significant promise, the nomination path did not realise its full potential partly due to the failure of political parties and the IEBC to adhere to the law. Lastly, the impact of PWDs had yet to be

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7 Double invisibility has been used by disability rights advocates to highlight the fact that certain categories of persons with disabilities such as women and children with disabilities are seen as less worthy of social investment (e.g., through education) which results in their making less progress than other persons with disabilities. See Gerard Quinn and Theresia Degener, 'Human rights and disability: The current use and future potential of United Nations human rights instruments in the context of disability', United Nations, 2002, 23; See also Lucianna Thuo, 'Implementation of political participation standards for persons with intellectual disabilities in Kenya', 2 *Strathmore Law Journal* (2016) 97, 125.

felt at the levels of County Executive Committee Member (CECM) and at the leadership of county assembly committees.

The research leading to this Policy Brief deployed a number of research methodologies. First, we reviewed literature on the subjects of devolution and inclusion in Kenya. Second, we selected five county government case studies – Garissa, Kakamega, Mombasa, Nakuru and Narok – to enable an in-depth analysis of the specific counties, and to provide diverse contexts for the research as the cases selected have an urban<sup>8</sup> and rural<sup>9</sup> feel, a nomadic<sup>10</sup> and sedentary<sup>11</sup> context, and African,<sup>12</sup> Christian<sup>13</sup> and Islamic<sup>14</sup> religious backgrounds. Third, using very loose questionnaires, we interviewed knowledgeable persons in the study counties in the quest for answers to questions i), ii), and iii) above. Fourth, we presented our research findings before the Kabarak University Annual Law Conference, held on 15 and 16 June 2022, at Kabarak University, where representatives of the study counties and various marginalised groups and other participants validated our research findings. Finally, we analysed the findings of the field research and reduced them into the following exposition; organised thematically along the lines of the research questions.

### Whether the institutions of county government incorporated PWDs

Going by available information, the representation of PWDs in both the national and county institutions remains low, generally. Additionally, men with physical disabilities dominate the list of

the few elected PWDs. At the national level, only six PWDs were elected to the National Assembly by ballot (2.1%),<sup>15</sup> and only one to the Senate (2.1%) in 2013 as shown in Table 1.<sup>16</sup> This dismal performance plummeted in 2017 when only three PWDs were elected to the National Assembly (1.03%) and none to the Senate (0%). All the nine MPs elected in the two elections had physical disabilities, and only one, Rose Museu, was a woman – elected to a seat reserved for women as the Women Representative for Makueni County. At the MCA level, only nine PWDs were elected to the county assemblies nationally in 2013, representing 0.6% of the elected members.<sup>17</sup> All of them were men with physical disabilities. Even worse, none of the study counties elected a PWD in 2013. However, in 2017, matters improved in Kakamega, Mombasa and Nakuru slightly with the election of one PWD in each of the county assemblies. At the close of the devolution decade, only three PWDs had entered the combined five study assemblies through ballot, all of them men with physical disabilities, and only nine had graced Parliament, eight of whom were men with physical disabilities.

**Table 1: Persons with disabilities elected to Parliament 2013-2022**

Year/ Position	National Assembly		Senate		Total	
	No	%	No	%	No	%
2013	6 out of 290	2.1%	1 out of 47	2.1%	7 out of 337	2.4%
2017	3 out of 290	1.03%	0 out 47	0%	2 out of 337	1.5%

These statistics display dismal representation of PWDs going by the 2019 census report and the

8 Mombasa and Nakuru.

9 Garissa, Kakamega and Narok.

10 Garissa and Narok.

11 Kakamega, Mombasa and Nakuru.

12 Narok.

13 Kakamega and Nakuru.

14 Garissa and Mombasa.

15 Handicap International, 'Baseline survey report on participation of persons with disabilities in the electoral and political processes in Kenya', July 2017, 119.

16 Handicap International, 'Baseline survey report', 119.

17 Handicap International, 'Baseline survey report', 119-120.

2010 Constitution. According to the 2019 census report, PWDs comprise up to 0.9 million people, about 1.9% of Kenya’s population, and are a significant part of the study counties specifically – being 0.6%, 5.2%, 1.6%, 3.7%, and 1.0% of the populations of the counties of Garissa, Kakamega, Mombasa, Nakuru, and Narok, respectively, as Table 2 shows.<sup>18</sup> Moreover, PWDs are poorly represented on the basis of gender since women comprise 57.1% of the total population of PWDs.<sup>19</sup> Additionally, persons with physical disabilities are more visible, while persons with other disabilities such as intellectual and mental are relegated. PWDs are even more unrepresented going by the constitutional threshold, which mandates that they shall comprise at least 5% of the elective and appointive positions in the State and public services.<sup>20</sup> The above poor record of the PWDs nationally and in all the study counties calls for some reflection regarding their levels of activity in the electoral processes. Harder questions require to be asked regarding matters such as the measures, which the State, political parties and other agencies have taken to enhance PWDs’ participation in electoral processes to match their population and meet the constitutional requirements.

**Table 2: The population of PWDs in the study counties<sup>21</sup>**

County	Disability			
	Total	Male	Female	%
Garissa	5187	2870	2316	0.6
Kakamega	47,778	20,300	27,475	5.2
Mombasa	14,226	6376	7849	1.6
Nakuru	33,899	14,480	19,412	3.7
Narok	9029	4272	4757	1.0
<b>Total in Kenya</b>	<b>916, 692</b>	<b>393,451</b>	<b>523,184</b>	<b>1.9</b>

18 Kenya National Bureau of Statistics, ‘2019 Kenya population and housing census: Analytical report on disability Volume XV’, April 2022, 31.

19 KNBS, ‘2019 Kenya population and housing census’, 25.

20 Constitution of Kenya (2010), Article 54(2).

21 KNBS, ‘2019 Kenya population and housing census’, 31.

**Table 3: Persons with disability in the National Assembly in 2013-2017**

Name	Gender	Disability	Position	Party
Hon Mohamed Shidiye	M	Physical	Elected Member of Parliament for Lagdera Constituency	TNA
Hon Timothy Wanyonyi	M	Physical	Elected Member of Parliament for Westlands Constituency	ODM
Hon Hassan Yusuf	M	Physical	Elected Member of Parliament, Kamukunji Constituency	TNA
Hon Rose Museo	F	Physical	Elected Women Representative, Makeni County	WIPER
Hon Jared Opiyo	M	Physical	Elected Member of Parliament, Awendo Constituency	Ford-K
Hon Kubai Iringo	M	Physical	Elected Member of Parliament, Igembe Central Constituency	ODM
Hon Bishop Robert Mutemi	M	Physical	Nominated Member of Parliament	WIPER
Hon Janet Teiyan	F	Physical	Nominated Member of Parliament	TNA
Hon Isaac Mwaura	M	Albinism	Nominated Member of Parliament	ODM

Source: Handicap International, ‘Baseline Survey Report on Participation of Persons with Disabilities in the Electoral and Political Processes in Kenya’ 2017.

**Table 4: Persons with disability in the Senate 2013-2017**

Name	Gender	Disability	Position	Party
Senator Sammy Leshore	M	Physical	Samburu County	TNA
Senator Harold Kipchumba	M	Physical	Nominated Senator	ODM
Senator Linet Kemunto	F	Physical	Representing PWDs	TNA

Source: Handicap International, ‘Baseline Survey Report on Participation of Persons with Disabilities in the Electoral and Political Processes in Kenya’ 2017).

**Table 5: Persons with disabilities elected to county assemblies, 2013-2017**

County	Number Elected	Gender	Disability
Kilifi	1	Male	Physical
Kisii	1	Male	Physical
Lamu	1	Male	Physical
Migori	3	Male	Physical
Nairobi	1	Male	Physical
Siaya	1	Male	Physical
Vihiga	1	Male	Physical

**Table 6: Persons with disabilities in the study county assemblies (2013)**

County	Elected		Nominated		Total in assembly	
	No	%	No	%	No	%
Mombasa	0	0%	1 out of 15	7%	1 out of 30	3.3%
Garissa	0	0%	2 out of 18	11%	2 out of 36	5.6%
Nakuru	0	0%	2 out of 19	11%	2 out of 38	5.3%
Narok	0	0%	1 out of 17	6%	1 out of 34	2.9%
Kakamega	0	0%	1 out of 26	4%	1 out of 52	1.9%

**Table 7: Persons with disabilities in the study county assemblies (2017)**

County	Elected		Nominated		Total in assembly	
	NO.	%	NO.	%	NO.	%
Mombasa	1 out of 30	3.3%	1 out of 12	8%	2 out of 42	4.8%
Garissa	1 out of 60	1.7%	2 out of 20	10%	3 out of 80	3.8%
Nakuru	1 out of 55	2%	0 out of 23	0%	1 out of 88	1%
Narok	0 out of 30	0%	0 out of 17	0%	0 out of 47	0%
Kakamega	0 out of 30	0%	2 out of 29	13.8%	2 out of 59	3.9%

As is already clear, the ballot has not secured sufficient representation of PWDs. No President, Deputy President, Governor or Deputy Governor with disability was elected in the first decade of devolution; some county assemblies completed entire electoral cycles without an elected PWD; so did Senate, which, between 2017 and 2022, had no elected member with disability. However,

both the National Assembly and Senate had two persons nominated each in 2017 in line with the Constitution.<sup>22</sup>

The question is, did the affirmative action measure, which the 2010 Constitution articulates at Article 177(1)(c), lead to any significant progress for PWDs in the case of county assemblies? The answer is yes. 62 PWDs were nominated to county assemblies in 2013, which figure dropped to 42 in 2017.<sup>23</sup> However, women PWDs fared better in 2017, accounting for 57% of the nominees up from 48.4% as shown in figures 2 and 3.

The case studies for this research show that there is promise in the constitutional requirement for affirmative action with respect to PWDs. Going by law, affirmative action guarantees that at least PWDs will have two representatives per county assembly. In 2017, most of the counties had at least 2 nominees in the assembly.<sup>24</sup> However, 17 counties did not comply with this requirement as no PWDs were nominated.<sup>25</sup> Although the practice fell short of the constitutional and statutory requirements sometimes, the nomination process proved to be the avenue for significant representation of PWDs.

22 Constitution of Kenya (2010), Articles 97(1)(c) and 98(1)(d). David Ole Sankok and Denitah Ghati were nominated to the National Assembly while Isaac Mwaura and Gertrude Musuruve Inimah were nominated to the Senate. See, United Disabled Persons of Kenya, 'Post-audit survey level of inclusivity in the 2017 general elections', 2018, 30.

23 Westminster Foundation for Democracy, 'The state of political inclusion of persons with disability (PWDs) within political parties in Kenya', 2020, 15; UDPK, 'Post-audit survey level of inclusivity in the 2017 general elections', 27.

24 Mandera and Migori had three each. UDPK, 'Post-Audit survey level of inclusivity in the 2017 general elections', 27.

25 Baringo, Bungoma, Busia, Kericho, Kilifi, Kisii, Kwale, Laikipia, Makeni, Muranga, Nairobi, Nakuru, Narok, Nyeri, Taita Taveta, Turkana and West Pokot. See UDPK, 'Post-audit survey level of inclusivity in the 2017 general elections', 27.

In 2013, Kakamega, Mombasa and Narok each had one PWD nominated, while Garissa and Nakuru had two each. In 2017, Mombasa had one, Garissa and Kakamega had two each, while Nakuru and Narok had none. Through the ballot, three PWDs entered the combined five study assemblies in a decade; through affirmative action, PWDs occupied 12 seats in the five county assemblies during the same period.

Notwithstanding its huge promise, our case studies reveal a number of challenges in operationalising affirmative action measures. To begin with, as the case of Narok signals, there could be an understanding that just any person can represent the interests of PWDs - not necessarily PWDs themselves. On this basis, a person without disability was nominated to Narok County Assembly to represent PWDs. The opportunity to scrutinise Narok County's nomination process judicially presented itself in *Moses Kinyamal Kipinter v Jubilee Party*<sup>26</sup> but the petition was dismissed on the basis that the petitioner could not demonstrate that the nomination process was flawed or that there was interference with the list for Narok County.

Second, and as was the case with the election of PWDs through ballot, the issue of nomination of PWDs is also gendered. For instance, no woman with disability was nominated to represent the interests of PWDs in Garissa County Assembly for the first two electoral cycles. The one woman with disability who sat in the County Assembly was nominated to represent gender and ethnic minorities not PWDs.

Finally, the case studies give the impression that even the limited presence of nominated PWDs in the county assemblies was through half-hearted implementation of the law rather than the acceptance of the principle of their inclusion.

All the study county assemblies failed to meet the constitutional muster invariably. For most part, less than two MCAs with disability were nominated. Where the legal expectation was met in one cycle, the county assembly fell short in the next as Garissa and Nakuru show. When no PWD was elected through ballot to Nakuru County Assembly in 2013, two PWDs were nominated. The fact that the relevant actors did not nominate a PWD in 2017 after one was elected at the ballot is a plausible illustration for the assertion that the affirmative action principle was yet to be internalised.

The case of *National Gender and Equality Commission & others (NGEC) v IEBC & others*,<sup>27</sup> where the exclusion of the youth, women, ethnic minorities and PWDs from party lists for Parliament and county assemblies in 2013 was challenged demonstrated further that the constitutional dictates of non-discrimination and inclusion had not permeated the politics that characterise the nomination processes in Kenya, and additionally that the IEBC had failed to carry out its supervisory role over how political parties carry out party list nominations. In this case, the High Court directed that the party list nomination process to be repeated in respect of county assemblies but found that the same could not be done for parliamentary seats since the nominees had already been gazetted and declared elected at the time of the judgement, and could only be removed through an election petition.

The case not only clarified the supervisory role of the IEBC in ensuring that the party list nomination process meets the constitutional muster but also formed the basis for the adoption of the Elections (Party Primaries and Party Lists) Regulations 2017 that were meant to guide

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26 Political Parties Disputes Tribunal at Nairobi, Complaint No 452 of 2017.

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27 *National Gender and Equality Commission v IEBC and another*, Petition 147 of 2013, Judgement of the High Court, 15 April 2013, eKLR.

political parties in the preparation of party lists for both the national and county legislative assemblies. The NGEC filed a similar case in 2017, *National Gender and Equality Commission (NGEC) v IEBC & 3 Others*,<sup>28</sup> although, again, the High Court could not give a remedy. This was because during the pendency of the petition, the list of nominees was gazetted, thus transmuted the dispute into an election petition, which could only be determined by an election court gazetted by the Chief Justice.<sup>29</sup> The High Court therefore lacked jurisdiction under Article 165(3) of the 2010 Constitution.

A major challenge with party list nominations remains that they are used to reward party cronies who fail to secure election in first-past-the-post elections, thus denying representation

to marginalised groups.<sup>30</sup> Without taking measures to comply with the law, political parties will continue to marginalise PWDs in the allocation of nomination slots, which, as seen above, is the marginalised group's main avenue for accessing representation. While more work will have to be done at the ballot as gains made on the nomination side are enhanced, a lot more sensitisation is needed on the importance of affirmative action measures for PWDs just as civic and judicial vigilance to ensure political parties and the IEBC safeguard the few positions that the 2010 Constitution reserves for the marginalised group.

It can be generalised, and correctly so, that PWDs fared badly with regard to participation in the county executive committees (CECs), for they were not represented in the CECs of the study counties. Yet the attempt by the Northern Nomadic Disabled Persons' Organisation (NONDO) to enforce Article 54(2) of the 2010 Constitution<sup>31</sup> against Garissa County through litigation<sup>32</sup> failed as the High Court declined to nullify the exclusive appointments to the CEC arguing that the litigants did not demonstrate that PWDs applied for the positions and were excluded. The practice was unsatisfactory enough, clearly. But the litigation geared towards addressing the problem worsened matters as a result of the retrogressive jurisprudence that shifted the burden of demonstrating effort to the members of the marginalised group themselves.

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28 *National Gender and Equality Commission v Independent Electoral and Boundaries Commission & another*, Petition 409 of 2017, Judgment of the High Court, 4 May 2018 eKLR.

29 The Supreme Court had ruled in the case of *Moses Mwicigi and 14 Others v IEBC and 5 Others*, Petition 1 of 2015, Judgment of the Supreme Court, 26 April 2016 eKLR (para 105) that: 'it is plain to us that the Constitution and the electoral law envisage the entire process of nomination for the special seats, including the act of gazettelement of the nominees' names by the IEBC, as an integral part of the election process. (106) The Gazette Notice in this case, signifies the completion of the "election through nomination," and finalizes the process of constituting the Assembly in question. On the other hand, an "election by registered voters", as was held in the Joho Case, is in principle, completed by the issuance of Form 38, which terminates the returning officer's mandate, and shifts any issue as to the validity of results from the IEBC to the Election Court. (107) It is therefore clear that the publication of the Gazette Notice marks the end of the mandate of IEBC, regarding the nomination of party representatives, and shifts any consequential dispute to the Election Courts. The Gazette Notice also serves to notify the public of those who have been "elected" to serve as nominated members of a County Assembly.'

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30 Kennedy Kimanthi, 'IEBC audit report reveals big flaws in nominated MCAs list' *The Daily Nation*, 22 October 2018. Antony Gitonga, 'IEBC rejects nomination lists from all 79 parties' *The Standard*, August 2020.

31 Article 54(2) requires that at least 5% of all elective and appointive positions be reserved for PWDs.

32 *Northern Nomadic Disabled Persons Organization (NONDO) v Governor County Government of Garissa & another*, Constitutional Petition No 4 of 2013, Judgment of the High Court, 16 December 2013 eKLR.

The first decade of devolution rendered 15 slots for PWDs in all the study county assemblies. However, their influence in terms of the leadership of the committees of the county assemblies was insignificant, which might be illustrative of the performance of the marginalised group generally. With the exception of Garissa County, where a PWD chaired the Water Committee in 2013, no other PWD was elected to chair any committee of the study county assemblies. Only one PWD rose to the rank of Vice-Chair – as Vice-Chair, Finance Committee, Nakuru County. While many PWDs were members of county assembly committees, their absence at the helm reveals that a lot more work is needed before more substantive inclusion can be achieved.

**Table 8: Representatives of PWDs in the study county assemblies and their membership in county assembly committees 2013**

County	Representatives name	Committees	Position
Mombasa	Hudson Karuma	N/A <sup>33</sup>	N/A
Nakuru	Anne Wanjiru Maina	N/A	N/A
	Joshua Wilson Murithi	N/A	N/A
Kakamega	Roselyn Akoyi	Justice and Legal Affairs Committee	Member
Garissa	Gedi Adou Abdi	Social Services and Sports Agriculture and Livestock	Member
	Abass Abdirahmann	N/A	N/A
Narok	Violet Sikawa	N/A	N/A

33 These persons did not chair any committee, neither did they serve as members.

**Table 9: Representatives of PWDs in the study county assemblies and their membership in county assembly committees 2017**

County	Representatives name	Committee(s)	Position
Mombasa	Ramla Said Omar	County Business Committee	Member
Nakuru	Philip Kipngetch Rotich	Finance Committee	Vice Chair
Kakamega	Roselyne Akoyi	Justice and Legal Affairs Committee	Member
	Timothy Aseka	N/A	N/A

### Whether counties enacted laws and policies that are responsive to the rights and welfare of PWDs

While the approaches differed from county to county, our case studies demonstrate that county laws favourable to PWDs tended to focus on the following main objectives: accommodating PWDs in the various county institutions including through special quotas; establishing special funds to support their economic welfare; incorporating affirmative action measures in county procurement procedures; and taking special measures to accommodate PWDs.

These similarities accentuate not only that the challenges are common, but also that a general consensus on the solutions is emerging. To the common problem of the absence of PWDs in institutions of governance, the emerging consensus is to secure their inclusion through special seats. To the common problem of the economic subordination of PWDs, the general solution appears to be initiatives such as special measures in the award of county government tenders. To the common challenges PWDs face in accessing certain places and information, the response of the counties was to facilitate special accommodation.

## Whether counties initiated projects that resonate with the needs of PWDs

County programmes aimed at ameliorating the situation of PWDs tended to fall into four broad categories, mainly; business and investment, education and vocational training, sports, and health and general welfare.

Under business and investment, the idea was to empower unemployed women, youth and PWDs mainly through establishing special funds, imparting the skills in various trades and entrepreneurship, providing the requisite material assistance, and adopting affirmative action economic policies. Our study shows that Narok County operationalised the Access to Government Procurement Opportunities (AGPO) programme to facilitate women, youth and PWDs to access County Government contracts, and started entrepreneurship programmes to impart business skills to members of these marginalised groups running small and medium-sized enterprises.<sup>34</sup> Besides training over 1000 PWDs on AGPO and awarding value tenders to PWDs in 2020/2021 under the foregoing programme,<sup>35</sup> Nakuru County established the Ward Disability Fund to cater for PWDs and waived the payment of business permits for the special category.<sup>36</sup> For the study counties, business and self-employment through trades were part of the overall strategy for empowerment and inclusion.

All the study counties made serious investments in vocational training, mainly targeted at the youth. The investments took the nature of establishing polytechnics and vocational training centres, and funding and subsidising the education with the objective of equipping the learners with skills

in certain trades and entrepreneurship generally. To make this accessible to PWDs, Nakuru County started digital centres that were installed with PWD-friendly programs.<sup>37</sup> In addition, Narok County awarded bursaries for PWDs.<sup>38</sup> Although the bulk of the education and vocational training programmes focused on the youth, they were relevant to PWDs because they also belong to that age category.

To enhance sports for PWDs, the study counties organised and supported the participation of teams in sports tournaments, for instance, Nakuru County's Governor's Cup, Paralympics, and Deaflympics. Additionally, some study counties purchased specialised sports equipment for PWDs.<sup>39</sup>

The study county governments also attended to the health and general welfare of PWDs by taking measures such as drives for wheelchairs and other assistive devices for PWDs.<sup>40</sup>

## Conclusion

At the close of the first decade of county governance, the question whether devolution has delivered for PWDs can now get an answer. It is simple, *yes, certain aspects concerning PWDs have improved under devolution*. Our research accentuated that devolution has brought about noticeable progress but did not achieve the optimal representation of PWDs in national and county institutions as envisioned by the 2010

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34 See, for instance, *Nakuru County annual development plan 2021/2022*, 115.

35 See, also, *Nakuru County annual development plan 2019/2020*, 85.

36 *Nakuru County annual development plan 2016/2017*, 56.

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37 *Nakuru County approved MTEF budget estimates FY 2017-18*, 143.

38 *Narok County integrated development plan for 2018-2023*, 94.

39 See, for instance, the *Kakamega County annual development plan FY 2022/2023*, 134.

40 See, *Garissa County Magazine 2022*, 63; *Kakamega County annual development plan FY 2022/2023*, 99. See, also, *Nakuru County annual development plan 2020-2021*, 127. Also, *Inclusivity Features, 'Kakamega county disability inclusivity tracking'*, 4.

Constitution. Despite the fact that our research had to reckon with absence of desegregated data, there is evidence of inclusion for PWDs at the various county government institutions, enactment of favourable legislations and operationalisation of effective programmes. However, the progress that the 2010 Constitution has brought about appears to favour men with physical disabilities above women with disabilities and persons with other disabilities.

## Recommendations

Going forward, we recommend that the IEBC and political parties should adhere to the 2010 Constitution and other laws during the nomination of candidates to the various political positions. Other possibilities outside the political parties should also be considered to tame the tendency by political parties to deny members of the marginalised groups such as PWDs their constitutionally-guaranteed positions in legislative institutions.

Governors and county assemblies should also follow the 2010 Constitution when appointing CECMs.

Additionally, deliberate measures should be taken to include women with disabilities and persons with mental and intellectual disabilities in the institutions of county governance.

Without accurate data on the performance of PWDs, progress will be difficult to measure and therefore impossible to attain. Institutions like the IEBC, national human rights institutions, political parties, research institutions including

universities should keep accurate statistics on the political participation of PWDs.

Another recommendation is that the innovations in law and programmes, which have emerged at the county levels should be improved upon, shared across board, and where possible adopted at the national level as well.

While more work will have to be done at the ballot as gains made on the nomination side are enhanced, a lot more sensitisation is needed on the importance of affirmative action measures for PWDs just as civic and judicial vigilance to ensure that political parties and the IEBC safeguard the few positions that the 2010 Constitution reserves for the marginalised group.

Since judicial jurisprudence can be both useful and negligent, we urge the courts to continue with some of the innovative interventions discussed in this study as they review the negative jurisprudence that has affected the participation of PWDs negatively.

At the same time, vigilance on the part of the citizens is what constitutional implementation demands. Without it, the same forces that bend towards centralisation and exclusion will reign unchecked to the detriment of the marginalised groups, in this case PWDs.

## Ideas for future research

In addition to monitoring the inclusion of PWDs in county government institutions, and securing reliable data, future researchers may want to trace the levels of PWD's contribution once in the county governance spaces.

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