The Rights of Persons with Disabilities in Kenya: Research Directions and Policy Concerns[1]

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Abstract

For centuries, persons with disabilities (PWDs) around the world were largely viewed as objects of charity requiring medical intervention (the medical/charity model). However, the United Nations Convention on the Rights of Persons with Disabilities (CRPD) was a landmark in the contemporary shift towards the conception of PWDs as bearers of rights (the social model). Article 1 of the CRPD states that 'Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.' The present article interrogates the research directions and policy concerns engendered by the transition from the medical model to the social model of conceptualising disability, with special reference to the Kenyan context.

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Introduction

The discourse on the rights of persons with disabilities (PWDs) has shifted from the medical model which viewed them as objects of charity to the social model which views them as holders of rights. According to Article 1 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD), 'Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.'[2] Among the rights that the CRPD addresses are equality and non-discrimination, access to physical, social and digital spaces, access to justice, independent living and inclusion, respect for privacy, education, and health. The transition from the medical model to the social model of conceptualising disability implies a wide range of research questions and policy concerns, and it is these that I interrogate in the present article, in the hope that scholars and policy-makers will take them up for further action.

I have divided the article into three main sections. In the first which follows this introductory one, for the benefit of those unfamiliar with contemporary disability rights discourse, I present the bare facts about disability-conceptualisations (medical versus social model), categories of disability, obstacles to the full inclusion of PWDs into society, aspirations of PWDs, and disability in the laws of Kenya. In the second section, I examine the research directions implied by the facts about disability in the Kenyan context and illustrate that most, if not all, of the disciplines in the humanities and social sciences can contribute to the existing body of knowledge on this important issue. In the third section, I make some observations about the policy concerns around the rights of PWDs in Kenya. Finally, I make some concluding remarks.

In what follows, I write both from the perspective of a socio-political theorist, and that of a disability rights activist who took part, alongside other members of the Kenyan disability rights movement, in drafting those articles of the Constitution

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[2] United Nations, 2006, Convention on the Rights of Persons with Disabilities, Art. 1. http://www.un.org/disabilities/convention/conventionfull.shtml

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of Kenya 2010 that address the rights of PWDs. As a member of the Caucus on Disability Rights Advocacy (CDRA), I have also taken part in auditing various bills for their level of disability inclusiveness.

Basic Facts about Persons with Disabilities

It is important to emphasise that the right term is 'persons with disabilities' (PWDs), not 'persons living with disabilities,' because disability is not their housemate or spouse, neither is it a virus or bacterium. Besides, it is becoming conventional to speak about 'persons with disabilities (plural)' to highlight the fact that there is a variety of conditions that fall under the category of 'disability'. Indeed, we have already noted that the CRPD lists physical, mental, intellectual and sensory impairments under this category.

The Two Main Models of Conceptualising Disability

There have been various ways of conceptualising disability, with the two main ones being the medical model and the social model.[3] Below I turn to these, explaining their viewpoints and drawing the key implications arising from them.

The Medical Model

As earlier indicated, the Medical Model views disability as a sickness to be treated. It is therefore associated with the charity approach to intervention.[4] This is to say that according to this model, persons with disabilities are recipients of kindness. Upon reflection, it becomes clear that the charity approach places persons with disabilities at the mercy of society: society can help them at its convenience, and according to how sharp its conscience is. There are at least four problems with a charity approach to a disability or any other vulnerability-causing factor.

First, a charity approach glosses over the systemic injustices that cause disability and/or contribute to the violation of the rights of PWDs. What Samir Amin

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[3]Vic Finkelstein, 2001, The Social Model of Disability Repossessed. Disability Studies Archive. UK. University of Leeds. In this work, Finkelstein correctly cautions against conflating interpretations, models and theories, but that discussion is beyond the scope of this article. Here I use the term "model" to simply refer to 'conceptualisation'.

[4]L. Crow, 1996, Including All of our Lives: Renewing the Social Model of Disability. In Barnes, C. and G. Mercer eds. Exploring the Divide: Illness and Disability. Leeds: Disability Press.

correctly observes about the need to reduce or eradicate poverty can be applied to my present point: 'A discourse on poverty and the necessity of reducing its magnitude, if not eradicating it, has become fashionable today. It is a discourse of charity, in the nineteenth-century style, which does not seek to understand the economic and social mechanisms that generate poverty, although the scientific and technological means to eradicate it are now available.'[5]

Second, as Graham Hancock[6] memorably illustrated, while by 1994 60 Billion Dollars was spent annually on 'foreign aid' with the stated aim of assisting communities suffering due to natural disasters such as earthquakes, drought and disease, and alleviating long-term hunger and poverty, only a small portion of this stupendous sum was ever translated into direct assistance to the target groups. Hancock shows that bureaucratic inefficiency, misguided policies, large executive salaries, political corruption, and the self-perpetuating 'overheads' of the administrative agencies result in very little tangible action towards the stated goal for which the taxpayers in the wealthy North gave the finances. Indeed, the financial and social status of several individuals in the North and South sky-rocketed because of jobs in non-governmental organisations (NGOs) involved in the global 'charity business', as they enjoyed lavish salaries and allowances, and joined the 'jet-set club', all in the name of working towards the alleviation of poverty. We have witnessed this same trend in NGOs purportedly set up to address the plight of PWDs.

Third, a charity approach to addressing social concerns is, more often than not, minimalist, as clearly illustrated by the UN's Millennium Development Goals[7] (scheduled to run from 2000 to 2015) and the UN Sustainable Development Goals[8] (scheduled to run from 2015 to 2030). Thus, Oduro observed that given

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[5] Samir Amin, 2011, World poverty, Pauperization and Capital Accumulation, Lauer, Helen and Kofi Anyidoho eds. Reclaiming the Human Sciences and Humanities through African Perspectives Vol. I. Accra: Sub-Saharan Publishers, p. 331.

[6] Graham Hancock, 1994, The Lords of Poverty: The Power, Prestige, and Corruption of the International Aid Business. N.P.: Atlantic Monthly Press.

[7] United nations General Assembly, 2000, 'United Nations Millennium Declaration.' General Assembly resolution 55/2 of 8 September 2000
https://www.ohchr.org/EN/ProfessionalInterest/Pages/Millennium.aspx

[8] United Nations, 2015, 'Transforming our World: The 2030 Agenda for Sustainable Development.'

the role of the MDGs as defining the minimum standards needed for progress towards poverty reduction and development, they could not be the sole parameters to inform the design of programmes and to assess performance, or else the objective of a reduction in poverty and an improvement in the well-being of the vast majority of the population would not be achieved.[9] Oduro also correctly observed that the MDGs did not have indicators or targets to draw attention to some of the needs of the elderly and persons with disabilities.[10] Actually, disability was not even mentioned in the eight MDGs themselves.[11]

Furthermore, the needs of PWDs do not feature prominently in the UN's Sustainable Development Goals (SDGs) scheduled to run from 2015 to 2030. This is particularly surprising because the UN drafted and adopted the SDGs almost ten years after it had adopted the CRPD, and after hearing the complaints of the community of persons with disabilities regarding how they were totally ignored in the framing of the MDGs. In its introduction, the SDG document states: 'The Goals and targets are the result of over two years of intensive public consultation and engagement with civil society and other stakeholders around the world, which paid particular attention to the voices of the poorest and most vulnerable.'[12] The Introduction to the document later states: 'We emphasize the responsibilities of all States, in conformity with the Charter of the United Nations, to respect, protect and promote human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth, disability or other status,'[13] and a few

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https://www.unfpa.org/resources/transforming-our-world-2030-agenda-sustainable-development

[9] See Abena D. Oduro, 2011. 'How adequate are the MDGS for the achievement of poverty reduction and development in Ghana?' Lauer, Helen and Kofi Anyidoho eds. *Reclaiming the Human Sciences and Humanities through African Perspectives Vol. I*. Accra: Sub-Saharan Publishers, pp. 383, 387.
[10] Ibid. p. 386.
[11] See United nations General Assembly, 2000, 'United Nations Millennium Declaration.' General Assembly resolution 55/2 of 8 September 2000.
https://www.ohchr.org/EN/ProfessionalInterest/Pages/Millennium.aspx
[12] United Nations, 2015, Sustainable Development Goals. https://www.undp.org/sustainable-development-goals?utm_source=EN&utm_medium=GSR&utm_content=US_UNDP_PaidSearch_Brand_English&utm_campaign=CENTRAL&c_src=CENTRAL&c_src2=GSR
[13]Ibid. par. 19.

paragraphs later it states: 'People who are vulnerable must be empowered. Those whose needs are reflected in the Agenda include all children, youth, and persons with disabilities (of whom more than 80 percent live in poverty)....'[14]

Yet, although disability and its correlates are mentioned in a total of eleven places in the SDGs document, none of the actual goals mention the rights of persons with disabilities. This is in sharp contrast to the important issue of gender equality which is highlighted in Goal 5.[15] Thus, while the Danish Institute for Human Rights has attempted to specifically relate the SDG targets to the various articles of the UN Convention on the Rights of Persons with Disabilities,[16] it is clear that the attempt seeks to ameliorate a blatant lacuna in the SDGs.

Fourth, a charity approach exposes the recipient of the charity to manipulation because the financier, often referred to as 'the donor', decides where, when and how to give. As such, the financier can set 'donor conditionalities,' many of which have absolutely nothing to do with the issue at hand, but instead, promote the interests of the financier rather than those of the recipient. Almost thirty years ago, an Israeli gentleman told me that the Jewish people say: 'He who has the wallet has the agenda.'

The Social Model

In sharp contrast to the medical/charity model, the Social model views disability as the result of social, physical and digital environments that are not conducive to the circumstances of persons with impairments.[17] This is to say that according to this model, disability is not the physical condition of a person, but rather the fact that society plans its environment without considering the needs of persons with certain impairments, thereby disempowering them. Thus the UK-based Union of the Physically Impairedagainst Segregation (UPIAS) and the Disability Alliance (DA) memorably declared: '... it is society which disables physically impaired

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[14]Ibid. Par. 23.
[15]Ibid. Goal No. 5.
[16]The Danish Institute for Human Rights, 2018, The Rights of Persons with Disabilities and the Sustainable Development Goals. Copenhagen: The Danish Institute for Human Rights.
[17]B. Hughes and K. Paterson, 1997, The social model of disability and the disappearing body: Towards a sociology of impairment. *Disability & Society*, Vol. 12 No. 3, pp. 325-340.

people. Disability is something imposed on top of our impairments ....'[18] Thus, members of the disability movement often illustrate this point by citing several examples-that of a storeyed building with a staircase and no ramp, which is disabling to a person on a wheelchair; a lift without voice prompts is disabling to one with visual disability; a room with a doorbell that does not include light signals is disabling to the deaf. Thus Thomas *et. al.* (2004) appropriately titled their edited volume *Disabling Barriers, Enabling Environments*, by which they intended to pass the message that it is the barriers in the environment, rather than various impairments that some people have, that disable persons with impairments.[19]

Finkelstein, a member of the Union of the Physically Impairedagainst Segregation (UPIAS), succinctly explains the animating idea that gave rise to the social model in the early 1970s:

> At an early stage in re-thinking the meaning of disability, when members of UPIAS began debating our socially inferior situation and asking why we found ourselves in this situation,we confronted a crude, but fundamental choice:
> - Either our tragedy is that the impairments we possess make us incapable of socialfunctioning, or,
> - our society is constructed *by* people with capabilities *for* people with capabilities and it is this that makes people with impairments incapable of functioning.
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> The agreed UPIAS interpretation was that, although it may be a *tragedy* to have an impairment, it is *oppression* that characterises the way our society is organised so that we are prevented from functioning.[20]

Upon reflection, it becomes clear that the social model highlights the fact that disability is relative: no human being has absolute soundness/ability. Instead, persons described as having disabilities are those who find themselves in a social environment in which they cannot function to their full potential simply because the environment was not planned with them in mind. Indeed, there are environments in which persons considered to have disabilities are evidently at an

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[18]UPIAS (The Union of the Physically Impaired against Segregation) and DA (The Disability Alliance), 1975, Fundamental Principles of Disability. https://disability-studies.leeds.ac.uk/wp-content/uploads/sites/40/library/UPIAS-fundamental-principles.pdf

[19]See Carol Thomas, John Swain, Sally French and Colin Barnes eds., 2004, *Disabling Barriers, Enabling Environments*, 3rd ed. London: Sage.

[20]Finkelstein, 2001 op. cit.

advantage over those without disabilities. For example, in a boarding school where the rule is that all lights go out at a certain time, students with total visual disability can still study under their blankets, as they do not need light to read Braille. Similarly, a child with full hearing ability but without proficiency in sign language would be lost in a school for deaf children. In both instances, to use figurative language, the disability boot would be on the other foot. Thus Vic Finkelstein, in an article for a disability journal, wrote about an imaginary village of persons with disabilities, in which so-called able-bodied people became disabled and persons with disabilities were 'normal'.[21] In 1985, he turned this into a TV cartoon titled 'Very Cross Roads.'[22] His thought experiment was similar to H.G. Wells' 'The Country of the Blind' written about seven decades earlier.[23]

The social model of conceptualising disability is often associated with the human rights approach to intervention. This is to say that according to this model, persons with disabilities are bearers of rights - they possess all the entitlements that all other human beings possess by virtue of their humanity, but require extra interventions to ensure that they enjoy those rights. As earlier indicated, this outlook is captured by the United Nations Convention on the Rights of Persons with Disabilities (CRPD) which states that persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.'[24]

Nevertheless, Finkelstein cautions against distorting the original, radical social model associated with the Union of the Physically Impaired against Segregation (UPIAS) as a mere agitation for rights within the capitalist system. For him, '… the radical social model of disability has to do with the creation of a society which

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[21]Vic Finkelstein, 1975, Phase 2: Discovering the person in 'disability' and 'rehabilitation'. The Magic Carpet (New Year), Vol. XXVII No.1, pp.31-38. https://disability-studies.leeds.ac.uk/wp-content/uploads/sites/40/library/finkelstein-finkelstein4.pdf

[22] Finkelstein 2001 op. cit.

[23] H.G. Wells, 1904, 'The Country of the Blind'. https://www.gutenberg.org/files/11870/11870-h/11870-h.htm

[24] United Nations, 2006 op. cit. Art. 1.

enables us to be 'human'- not just access our 'rights' within an existing competitive market society.'[25] He further observes:

> Our society is built on a competitive market foundation and it is this social system that disables us. From this point of view, disabled people are forced to live in a social prison. While no one can object to campaigning for 'rights' so that the prison in which we live is made more humane it is only a political buffoon who believes that exploring prisoner experiences can lead to emancipation! Nothing less than dismantling the prison and replacing it with a non-competitive form of society can break down the doors which bar ouremancipation.
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> …, I believe that we cannot understand or deal with disability without dealingwith the essential nature of society itself. To do this disabled people must find ways of engaging in the class struggle where the historical direction of society is fought, won or lost. It is in this arena that the boundaries of knowledge that have put disabled people aside from the 'normal' can and have to be openly questioned.[26]

Categories of Disability

There is no universally accepted categorisation of disability. However, largely following the CRPD definition of "persons with disabilities" earlier quoted, disability is often categorised as follows:

- Motor, often referred to as "physical": walking and handling.
- Psycho-social: arises when someone with a mental health condition interacts with a social environment that presents barriers to his or her equality with others.
- Intellectual: slow learning due to conditions such as Downs Syndrome, and autism, among others.
- Sensory: hearing and seeing.

Besides the four categories of disability listed by the CRPD, two other categories readily present themselves:

- Physiological: such as albinism, epilepsy and sickle cell anaemia.
- Multiple disabilities, where two or more of the above categories of disabilities are manifest in one person.

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[25]Finkelstein 2001 op. cit.
[26] Ibid.

Obstacles to the Full Inclusion of Persons with Disabilities

For several decades, the disability rights movement in Kenya, of which I have been an active member since 2003, has identified several obstacles to the full inclusion of PWDs into society. Below I briefly highlight these.

First, there have been persistent poor needs assessments of PWDs, resulting in inadequate interventions. For example, as a child with total visual disability at Thika School for the Blind, I recall the school admitting pupils with an extremely wide range of eye problems, from some with total visual disability to others who would have done very well in ordinary schools if only they had been provided with appropriate eyeglasses. The effect of poor needs assessment is the inefficient, even outright wasteful, deployment of scarce resources.

Second, there is the manifest symbiosis of Poverty and disability - poverty causes disability, and disability causes poverty.[27] For example, a family living in abject poverty is more likely to end up with some of its members becoming disabled due to inadequate medical care; and once they become disabled, they are less likely to get adequate social services such as education and health care, and thereby much less able to escape the poverty trap; and their disability drains even more resources from the family as a whole, thereby further frustrating its efforts to get out of poverty.

Third, the number of PWDs with formal education is very low, thereby perpetuating poverty among them, as opportunities to earn decent incomes are almost invariably limited for most people, but even more so for PWDs. Thus, while according to the 2009 Kenya National Housing and Population Census approximately 1,330,312 (3.5%) of the country's population had some form of disability,[28] a survey conducted between September/October 2016 and June 2017 by the Kenya Institute of Special Education (KISE) in collaboration with the Ministry of Education found that only approximately 250,000 Children (3-21

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[27] See L. Graham, Z. Ismail, J. Moodley, E. Munsake and E. Ross, 2014, "National study on poverty and disability: Summary of key findings: Release 2". Centre for Social Development in Africa, University of Johannesburg.
[28] Republic of Kenya. 2010b. *The 2009 Kenya Population and Housing Census*. Nairobi: Kenya National Bureau of Statistics.

years) with disabilities were enrolled in the country's educational institutions. Further, 'The findings revealed that there is no specific policy to guide implementation of inclusive education in Kenya, capitation for children with disabilities is not disaggregated according to the type and severity of disabilities, the curriculum used in schools does not meet needs of learners with disabilities and special needs in education, and there was inadequate staff trained in special needs education in assessment centers and schools.'[29] Furthermore, due to their lived experiences, PWDs equipped with adequate formal education are potentially highly effective advocates for the promotion of their rights and those of their fellow less privileged PWDs, but such potential remains largely untapped in a situation in which most PWDs have not gone to school at all, have dropped out of elementary school or high school, or have diplomas and/or degrees but no jobs.

Fourth, there is widespread ignorance among the general public about the real limitations and abilities of PWDs, resulting in stereotypes, prejudices and demeaning references. The import of all this is that many PWDs not only suffer from poor self-image but also, even when highly qualified in specific professions, find it more difficult than their able-bodied counterparts to get jobs and business opportunities.

Fifth, PWDs confront inaccessible social and physical facilities on a daily basis- traffic control systems, roads, buildings, educational institutions, health services, computer resources, electronic appliances, among others, most of which were designed without due consideration of their needs, thereby lowering the overall quality of their lives in comparison with the lives of their able-bodied counterparts.

Sixth, there is the triple marginalization of girls and women with disabilities – they are marginalised in a male-dominated world in their capacity as women, and they also bear the marginalisation in lieu of their disabilities. What is more, they are also often marginalised by fellow girls and women. This last kind of

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[29] Kenya Institute of Special Education. 2017. National Survey on Children with Disabilities and Special Needs in Education. https://kise.ac.ke/system/files/2020-07/Official%20Research%20Report%20on%20Disability%20Published%20by%20KISE%20(2018).pdf

marginalisation was graphically illustrated during the tenure of the now defunct Yash Pal Ghai-led Constitution of Kenya Review Commission (CKRC): when Salome Muigai, who has a physical disability, was nominated to the commission, the mass media reported how some women demanded a seat to replace the one which she was to occupy on the basis that the said seat allegedly no longer belonged to women because it now purportedly belonged to PWDs. Consciously or otherwise, the women were tragically suggesting that a woman with a disability was no longer a woman, as though PWDs belonged to a third gender which is neither male nor female.

Aspirations of Persons with Disabilities

There are at least four sayings regularly used by PWDs in Kenya to encapsulate their aspirations. Below I briefly examine them.

(a) 'We want opportunity, not pity!'

The import of this is that society is very quick at showing pity to PWDs, but lacks the confidence to hire them or to do business with them. As one person with total visual disability told me, '*The same people who are eager to give us seats on buses out of pity are unwilling to hire us when we go looking for work in their offices.*'

(b) 'Nothing for us without us!'

This is a demand that society finds out the real needs of PWDs from PWDs themselves instead of presuming that it knows their needs. It is very much a reminder that it is the wearer of the shoe who knows where it pinches. This partly takes us back to the point about poor needs assessments. It also highlights the fact that PWDs suffer what Miranda Fricker refers to as epistemic injustice - instances in which someone is wronged specifically in his or her capacity as a knower.[30]

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[30] Miranda Fricker, 2009, Epistemic Injustice: Power and the Ethics of Knowing. Oxford: Oxford University Press.

(c) 'We are fully human, so treat us as such!'

Quite often, members of society treat PWDs as though they are incapable of human interaction. For example, many prefer to talk to sign language interpreters instead of talking to persons who are deaf; similarly, many would rather talk to the guides of persons with total disability instead of communicating directly with them. This behaviour is demeaning to PWDs, as it suggests that apart from their disabilities, they lack intelligence, and with it human agency (the ability to act as human beings).

(d) 'We are fully human, so refer to us as such!'

Due to centuries of the marginalisation of PWDs, most languages almost invariably refer to them in demeaning ways. For example, Kiswahili, which is a Bantu language, uses the 'ki' prefix, usually reserved for certain objects, in reference to persons with disabilities. Thus we have *kijiko* (spoon), *kikombe* (cup), *kikapu* (basket) and *kiti* (chair). Yet in reference to PWDs, Kiswahili has words such as *kipofu* (a person with visual disability), *kiwete* (a person using crutches or a wheelchair), or *kiziwi* (a person who is deaf). This is in sharp contrast to most other references to human beings typically characterised by the prefix 'm', which is usually a signification of personhood manifested in terms such as *mtu* (person), *mzazi* (parent), *mgonjwa* (an ill person) or *mpishi* (a cook); and this is true even in reference to social deviants such as *mchawi* (a wizard or witch), *mzinzi* (an adulterer/adulteress), or even *muuaji* (a murderer). Thus through such references, PWDs are implicitly denied their full humanity, while that of social deviants is implicitly affirmed. As Canadian philosopher Charles Taylor (1994) correctly observed, a person or group of people can suffer real damage if the people around them mirror back to them a demeaning picture of themselves, imprisoning them in a false, distorted and reduced mode of being.[31]

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[31] Charles Taylor, 1994, 'The Politics of Recognition.' Taylor, Charles, Kwame Antony Appiah, J. Habermas, S.C. Rockefeller, M. Walzer, and Susan Wolf. Multiculturalism: Examining the Politics of Recognition. Princeton, NJ: Princeton University Press, p. 25.

The rights of Persons with Disabilities in the Laws of Kenya

After forty years of non-recognition in the laws of independent Kenya, the rights of PWDs in the country's statute books underwent drastic changes between 2003 and 2010.

The Persons with Disabilities Act 2003 is the first piece of Kenyan legislation touching on the rights of PWDs. It was a culmination of decades of lobbying by the disability movement in the country. It aims: 'to provide for the rights and rehabilitation of persons with disabilities; to achieve equalisation of opportunities for persons with disabilities; to establish the National Council for Persons with Disabilities; and for connected purposes.'[32] The Act recognises various rights of PWDs, thereby providing them with a basis for litigation whenever their rights are violated. However, the disability rights movement in Kenya has repeatedly criticised it for lacking effective enforcement mechanisms, thereby looking more like an advisory statement than a law. Consequently, the disability rights movement has been championing efforts to amend it for over a decade now.

The UN Convention on the Rights of Persons with Disabilities (CRPD),[33] which I earlier referred to concerning the social model of conceptualising disability, was opened for signatures in December 2006. Kenya signed the convention on 30th March, 2007, thereby being among the first 44 countries to sign it. The country went on to ratify the Convention on 19th May, 2008.[34] The Convention recognises a wide range of rights of PWDs, including education, health, equality and non-discrimination, access to physical, social and digital environments, access to justice, independent living and inclusion, as well as respect for privacy. Besides, the convention makes it clear that its over-arching goal is the removal of physical and social barriers that hinder the full inclusion of PWDs into society. Towards this end, it lays down two principles:

1. 'Reasonable accommodation' - necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where

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[32] Republic of Kenya, 2003, The Persons with Disabilities Act, No. 14. http://www.kenyalaw.org
[33] United Nations, 2006 Op. Cit.
[34] United Nations, n.d., 'Ratifications and Signatures of the CRPD'.
https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en

> needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.

2. 'Universal design' - the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. Nevertheless, the universal design does not exclude assistive devices for particular groups of persons with disabilities where these are needed.[35]

The Constitution of Kenya 2010 has several articles that specifically address the rights of PWDs, among which are Articles 27 against discrimination, 54 specifically addressing disability-related issues, and 90, 97 and 98 on political representation. Below I cite some of the provisions of the Constitution of Kenya 2010 that I consider to be definitive concerning the rights of PWDS:

> The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth. A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause.[36]

> 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 interests of the person; (c) to reasonable access to all places, 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 the person's disability. The State shall ensure the progressive implementation of the principle that at least five percent of the members of the public in elective and appointive bodies are persons with disabilities.[37]

Besides, the Constitution states that all international legal instruments that Kenya has ratified are automatically part of the country's laws.[38] This means, for

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[35]United Nations, 2006 op. cit., Art. 2.
[36]See Republic of Kenya, 2010a, The Constitution of Kenya, Art. 27 (4) & (5). http://kenyalaw.org
[37]Ibid. Art. 54.
[38]Ibid., Art. 2(6).

instance, that based on the UN Convention on the Rights of Persons with Disabilities (CRPD), PWDs can file suits in Kenyan courts alleging the violation of their rights.

The laws of Kenya have also addressed the need to provide a conducive environment for PWDs to engage in entrepreneurship. The Public Procurement and Disposal Act No. 3 of 2005[39] laid the legal basis for the Access to Government Procurement Opportunities (AGPO) programme for women, youth and PWDs. This led to the gazetting of the Public Procurement and Disposal (Preference and Reservations) Regulations 2011 vide Legal Notice No. 58 dated 8th June, 2011.[40] In 2013, the Cabinet Secretary, National Treasury, published the Public Procurement and Disposal (Preference and Reservations) Amendment Regulations 2013. Regulation 31 (1) provided that a procuring entity shall allocate at least thirty percent of its procurement spending to procure goods, works and services from micro and small enterprises owned by youth, women and PWDs.[41]

In 2015, Kenya passed a new Public Procurement and Asset Disposal Act[42] which addresses the implementation of the Preference and Reservation Scheme. Kiriti-Nganga lists some of the issues it addresses as follows:

    (i)   The application of the scheme;

    (ii)   The roles and responsibilities of key players in the sector (the National Treasury, the Public Procurement and Regulatory Authority (PPRA) and the Public Procurement Administrative Review Board (PPARB);

    (iii)   Gives immense powers to the Public Procurement Regulatory Authority to enforce implementation, and provides sanctions for non-compliance.[43]

As Kiriti-Nganga explains, the law provides a major shift from the past situation where the Preference and Reservations Scheme 2011 existed, but

[39] Republic of Kenya, 2005, PUBLIC PROCUREMENT AND DISPOSAL ACT No.3, 2005. https://library.pppknowledgelab.org/documents/1453/download

[40] Kiriti-Nganga, Tabitha. 2020. Access to Government Public Procurement Opportunities to Vulnerable: Women, Youth and Persons with Disability in Kenya. Sabroken: LAMBERT Academic Publishing, p. 13.

[41] Ibid.

[42] Republic of Kenya, 2015, Public Procurement and Asset Disposal Act No.33. http://www.kenyalaw.org/lex/actview.xql?actid=No.%2033%20of%202015

[43] Kiriti-Nganga, 2020 op. cit., pp. 13-14.

implementation was through regulations and periodic circulars issued by the Finance Cabinet Secretary: the Preference and Reservations Scheme is now anchored in an Act of Parliament which does not allow room for non-compliance.[44] According to Kenya's Treasury, AGPO is founded on the Constitution of Kenya 2010 Article 227 on the fair, equitable, transparent and cost-effective public procurement of goods and services, Article 55 on affirmative action, and the Public Procurement and Asset Disposal Act of 2015.[45]

However, Information on the effectiveness of the AGPO programme, including statistics on the uptake and level of awareness of AGPO program by members of its target groups, is scarce.[46] Nevertheless, a rapid assessment study on AGPO was commissioned by the United Nations Women (UN Women) Kenya Country Office in 2016 in five target counties of Turkana, Uasin Gishu, Kilifi, Kiambu and Kisumu. It found that although the government has put structures in place and established Trust Funds for the AGPO target groups, the uptake of the 30% of the procurement business opportunities reserved for them was slow due to the inability of the majority of people in the groups to meet the requirements of business registration processes, complex bid documents, and bottlenecks in securing loans to participate.[47]

Research Directions on the Rights of Persons with Disabilities in Kenya

The foregoing facts about disability point to numerous research directions from a variety of disciplinary and interdisciplinary viewpoints. Below I highlight a number of them.

First, there is the need to research on disability in various local contexts in Kenya: how do the various peoples of Kenya perceive disability? Is it true that the stories among them are all doom and gloom? How could the communalistic outlooks of these peoples, overshadowed in scholarship and politics by the almost hegemonic

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[44] Ibid., p. 14.
[45] National Treasury, 2022, 'Access to Government Procurement Opportunities'. https://agpo.go.ke/pages/about-agpo
[46] Kiriti-Nganga, 2020 op. cit., p. 14.
[47] Ibid.

Western liberalism, contribute to the promotion of the rights of PWDs in the country and beyond? Must human rights generally, and the rights of PWDs in particular, always be conceptualised in individualist terms along the lines of Western liberalism, or could they be more meaningful to the peoples of Africa if they were conceptualised in communalist terms?[48]

Shaun Grech and Karen Soldatic's illuminating edited volume, *Disability in the Global South* (2016), points scholars to a wide variety of research directions. For example, in that volume, Aramayo *et*. *Al*. affirm the value of the social model as a tool for understanding the nature of disability, the realities of life as experienced by PWDs, and what needs to be done to improve the situation. However, they also hold that ideological, theoretical and institutional reforms can be hard to understand, and that enthusiasm for the positive elements of the social model can obscure others of its elements that are less helpful:

> The British social model, …, is ambiguously located within, and also in opposition to, aspects of the modern paradigm of social administration, and within that, it is contextualised in the specific social reality of the western European post-war welfare settlement. It may therefore be interesting to see what happens when the approach is transported to a different context, in the global South (some decades later), in critical dialogue with disabled people and their allies…[49]

Second, while many disability rights scholars and activists have now taken the medical and social model dichotomy of conceptualising disability for granted, there is need to revisit it. This is because certain types of disability, such as sickle cell anaemia and epilepsy, require regular medical attention. This fact should cool down the rancour of those disability scholars and activists like myself who vigorously objected to the definition of "disability" in the Constitution of Kenya 2010 as including 'any physical, sensory, mental, psychological or other

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[48]See Reginald M.J. Oduor, 2016/2017, Western Liberalism, African Communalism, and the Quest for an Adequate Ideological Foundation for the Recognition and Protection of the Rights of Persons with Disabilities in Kenya. East African Law Journal, Special Issue on Disability Rights, pp.29-49.
http://rodra.co.za/images/countries/kenya/research/East%20African%20Law%20Journal%20-%20Special%20issue%20on%20disability%20rights%202017-2017.pdf
[49] Manuel Aramayo, Mark H. Burton and Carolyn Kagan, 2016, "Revising and Using the Social Model in the Global South: A Venezuelan Exploration". Grech, Shaun and Karen Soldatic eds. Disability in the Global South: The Critical Handbook. N.P.: Springer International Publishing Switzerland, pp.517-530.

impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual's ability to carry out ordinary day-to-day activities.'[50] As such, researchers should seek to work out new conceptualisations of disability that go beyond this binary.[51]

Third, there is need to further develop the jurisprudence (philosophy of law) on disability in Kenya. What are the deficiencies of the Persons with Disabilities Act 2003? What are the shortcomings of the Convention on the Rights of Persons with Disabilities (CRPD) within the Kenyan context? Are the rights of PWDs adequately entrenched in the Constitution of Kenya 2010? For example, while the definition of disability in Article 260 of the Constitution quoted in the previous paragraph may not be justifiably faulted for including illness in it, it introduces an extremely subjective criterion for determining the presence of disability through the phrase 'or is perceived by significant sectors of the community to have, …', thereby partly entrusting the 'community', which, as I earlier pointed out, is largely ignorant about the nature of disability, with the task of determining who has a disability.

Fourth, The various entitlements acknowledged in the UN Convention on the Rights of Persons with Disabilities (CRPD) point to research problems from a variety of perspectives - historical, sociological, psychological, political and legal, among others. Think, for example, of the right to political Participation:[52] how does it apply to persons with mental or intellectual disabilities?[53] Indeed, Lawrence Mute plausibly illustrates that the idea of 'sound mind', so pervasive in the law, can never be measured objectively, and, anyway, people deemed to be of 'sound mind' regularly engage in grossly inappropriate behaviour during elections.[54]

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[50] Republic of Kenya, 2010a op. cit., Art. 260.

[51] See G. Mji, S. Gcaza, L. Swartz, M. MacLachlan and B. Hutton, 2011, An African Way of Networking around Disability. *Disability and Society*, *Vol.* 26 No. 3, pp. 365-368. https://doi.org/10.1080/09687599.2011.560419

[52] See United Nations, 2006 op.cit., Art. 29.

[53] Recall the distinction between mental (psycho-social) and intellectual disabilities outlined in the second section of this article.

[54] Mute, Lawrence Murugu, 2010, 'Shattering the Glass Ceiling: Ensuring the Right to Vote for Persons with Intellectual Disabilities In Kenya'. *Thought and Practice: A Journal of the Philosophical Association of Kenya*, New Series, Vol. 2 No. 2, pp. 1-18. https://www.ajol.info/index.php/tp/article/view/64097

Fifth, much productive research can be conducted into disability in the creative works (novels, plays, poems, fables, sagas, myths, songs, paintings, and sculptures, among others): how is disability presented in creative works by the various peoples of Kenya in the past and at present? For example, how often do we find heroes and villains with disabilities in our fireside stories? In one Luo story, a group of girls who accompanied one of their own to visit her suitor, who, unknown to them, was a disguised hyena, were rescued by a girl with a hunchback who they had shunned, and who had only tactfully followed her peers to what would have been a fatal expedition. Do we have anything like this in novels, short stories, poems, plays, songs, fine art or sculpture by current creatives in the country?

Sixth, there are the philosophical questions around the very idea of human rights, anchored on the notion of human dignity and human agency, in relation to PWDs. Although at first, the issues here might seem to be very clear, questions arise about the core of personhood: what makes a human being into a person? Is it his or her individuality as liberalism asserts, or his or her relationship to society as communitarianism avers? Is there a level of disability that robs a human being of human dignity? In some countries, the law allows parents to abort babies with severe disabilities[55]: can this ever be justifiable from a moral point of view? The numerous moral positions that we regularly apply to other issues are yet to be adequately brought to bear on this set of questions within the Kenyan context, and even in contexts in other parts of the continent and the world at large.

Seventh, given the variegated and complex nature of disability, interdisciplinary research projects can yield bountiful harvests. Nevertheless, we live at a time when the distinction between multi-disciplinarity and inter-disciplinarity is under mortal threat. Thus many conferences advertised as 'inter-disciplinary' turn out to be multi-disciplinary, as the various papers presented there show no evidence of collaboration between specialists in two or more disciplines. Furthermore, even where there is genuine inter-disciplinary research, Austin *et*. *Al*. correctly caution

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[55]see for example Billie Shepperdson, 1983, Abortion and Euthanasia of Down's Syndrome Children: The Parents' View. *Journal of Medical Ethics*, Vol. 9 No. 3, pp. 152-157. https://www.jstor.org/stable/27716176

that the challenge of focused inter-disciplinary reciprocity is that such work may alter the foundational assumptions of the fields under consideration; but, they add, even when welcome alterations result in the definition of evolving disciplinary practices, they will not maintain their efficacy without an active dialogue with the historical re-evaluation of the disciplines from which they emerge.[56] They further aver that we would expect interdisciplinary projects to work best when the goals of each discipline are compatible enough to focus research but enough at odds to stimulate new approaches to old problems.[57] It therefore behoves all involved in inter-disciplinary research projects to demonstrate a high level of respect for the perspectives of scholars in disciplines with which they are collaborating, coupled with a critical outlook towards those other disciplines along with openness to receiving criticism from scholars of those other disciplines.

Eighth, in the Kenyan context, there are a number of publications on disability, and these can naturally stir the mind in several other research directions. The following three publications readily come to mind:

- In 2016/2017, the East African Law Journal, domiciled at the University of Nairobi's School of Law, published a Special Issue on Disability to celebrate ten years of the CRPD.[58]

- In 2019, The Disability Rights Project at the School of Law, University of Nairobi, published a Baseline study on the inclusiveness of the University of Nairobi to persons with disabilities.[59]

- In 2020, in celebration of ten years of the Constitution of Kenya 2010, the United Disabled Persons of Kenya commissioned a study to assess the

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[56] Timothy R. Austin, Alan Rauch, Herbert Blau *et. Al*., 1996, 'Defining Interdisciplinarity'. PMLA Vol. 111 No. 2, pp. 271-282. https://www.jstor.org/stable/463106.

[57] Ibid.; see also Reginald M.J. Oduor, 2010, 'Research Methodology in Philosophy within an Interdisciplinary and Commercialised African Context: Guarding against undue Influence from the Social Sciences'. *Thought and Practice: A Journal of the Philosophical Association of Kenya,* New Series, Vol. 2 No. 1, pp. 87-118. http://ajol.info/index.php/tp/index

[58] See East Africa Law Journal Special Issue on Disability 2016/2017.

[59] Lawrence Mute, Agnes Meroka, Michael Okelloh *et. Al*., 2019, *Baseline Study on the Inclusiveness of the University of Nairobi to Persons with Disabilities*. Nairobi: The Disability Rights Project, School of Law, University of Nairobi.

extent to which the Constitution of Kenya had been implemented from the viewpoint of disability rights. [60]

Ninth, the policy concerns that I highlight in the next section are likely to point to further research directions.

I therefore hope that scholars will be inspired to undertake further research on disability in Kenya and beyond, giving rise to dissertations, journal articles and books interrogating various facets of disability within diverse contexts. According to Leslie Swartz, there are five central and interrelated challenges for disability research in Sub-Saharan Africa, namely, experience, expertise, enumeration, evidence and expectations.[61] It will be interesting to see how researchers have related to them in the past, and how they will relate to them going forward.

Policy Concerns Regarding Disability Inclusion in Kenya

Perhaps as a result of the Persons with Disabilities Act 2003, the Government of Kenya has prepared several policy documents touching on PWDS. In 2006, it adopted the first National Disability Policy in the country. The policy document indicates that the consultative stages entailed in preparing the policy identified 21 target areas, including, among others, prevention, awareness and public education, early identification and intervention, habilitation and rehabilitation[62], economic empowerment, participation and representation, information and communication, organisations of PWDs, assistive devices and services, education and health. It further stated that the following five principles guided the process of formulating the policy:

    i.   Equalization of opportunities.

    ii.   Human rights approach to the disability agenda.

    iii.   Mainstreaming.

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[60] Lawrence Mute, 2020, From Affirmation to Practice: Assessing a Decade of Implementing CoK. Nairobi: United Disabled Persons of Kenya.
[61] Leslie Swartz, 2014, 'Five Challenges for Disability-Related Research In Sub-Saharan Africa'. *African Journal of Disability,* Vol. 3 No. 2, p. 149. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5442506/
[62] According to Murphy (2022), habilitation refers to a process aimed at helping individuals with disabilities attain, keep, or improve skills and functioning for daily living. On the other hand, rehabilitation refers to the process of helping people to regain skills, abilities, or knowledge that may have been lost or compromised as a result of illness, injury, or acquiring a disability.

> **iv.**   Accessibility in the built environment, information and services.
>
> **v.**   Gender.[63]

Besides, the National Disability Policy document correctly noted that successful implementation and realization of the policy's objectives would require strong administrative structures, adequate resources, review of existing policies and legislations, formulation of new policies, enhanced local and international collaboration, as well as monitoring and evaluation.[64]

In 2009, the government promulgated the Special Needs Education Policy, with the stated goal of enhancing efforts towards achieving the Education for All initiative, the Millennium Development Goals, and Sessional Paper No 1 of 2005 on 'A Policy Framework for Education, Training and Research.'[65] It defined 'special education' as 'education which provides appropriate modification in curriculum delivery methods, educational resources, medium of communication or the learning environment to cater for individual differences in learning.' The framers of the policy claim that it was the result of the active participation of all sector stakeholders in Kenya, and represented a consensus of stakeholders on the provision of Special Needs Education.[66] The policy professed commitment to inclusive education, that is, 'an approach in which learners with disabilities and special needs, regardless of age and disability, are provided with appropriate education within regular schools.'[67] However, the language of the policy document, especially its shifting uses of the phrases 'learners with disabilities and special needs', 'learners with disabilities', 'special education' and 'special needs education', suggests that its framers were not certain about effective strategies for catering for the educational needs of PWDs: at some points, the document suggests that 'special needs education' was geared not only to the needs of PWDs,

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[63] Ministry of Gender, Sports, Culture and Social Services, 2006, National Disability Policy. Nairobi: Government Printer.

[64] Ibid. pp. 27-28.

[65] Ministry of Education, 2005, 'A Policy Framework for Education, Training and Research: Meeting the Challenges of Education, Training and Research in Kenya in the 21st Century'. SESSIONAL PAPER No.1 of 2005. https://www.knqa.go.ke/wp-content/uploads/2018/10/sessional-paper-sept.-2005-final.pdf

[66] Ministry of Education, 2009, The National Special Needs Education Policy Framework. Nairobi: Government Printer, p. 5.

[67] Ibid.

but also to those of other vulnerable groups; at other points, it uses the phrase 'special education' in exclusive reference to PWDs.

In 2018, the government launched the Sector Policy for Learners and Trainees with Disabilities, whose stated goal was to align the provision of education and training to the Constitution of Kenya 2010, the Basic Education Act of 2013, as well as the Sustainable Development Goal No. 4 on Equitable, Inclusive Quality Education and lifelong learning for all. The policy has four specific goals:

    i.   Align education and training services for learners and trainees with disabilities with the relevant national policy frameworks;

    ii.   Develop a clear policy framework for the provision of inclusive education and training;

    iii.   Address the existing policy and implementation gaps in the provision of education and training for learners and trainees with disabilities; and

    iv.   Develop guidelines for the implementation of the policy.[68]

Furthermore, in 2018, the government amended the National Disability Policy of 2006, ostensibly to align it to the Constitution of Kenya 2010, the CRPD, the Persons with Disabilities Act 2003 and Vision 2030. The amended policy document indicates that it benefited from the initiatives of the African Union disability agenda and the East African Community Disability Policy. It further claims to be the result of several years of intense, expansive and exhaustive consultations involving Government departments, PWDs, organizations of PWDs, parents' support groups and other stakeholders.[69] However, although the policy is referred to in the National Disability Mainstreaming Strategy (see the

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[68]See Republic of Kenya 2010; Ministry of Education, 2013, Basic Education Act No. 14 of 2013. https://www.education.go.ke/index.php/downloads/file/96-basic-education-act-no-14-of-2013 ; Ministry of Education, 2018, Sector Policy for Learners and Trainees with Disabilities. Nairobi: Government Printer; United Nations, 2015, Sustainable Development Goals, Goal No. 4 on Equitable, Inclusive Quality Education and lifelong learning for all. https://www.undp.org/sustainable-development-goals?utm_source=EN&utm_medium=GSR&utm_content=US_UNDP_PaidSearch_Brand_English&utm_campaign=CENTRAL&c_src=CENTRAL&c_src2=GSR

[69] Ministry of East African Community, Labour and Social Protection, 2018, National Policy for Persons with Disabilities. Nairobi: Government Printer.

next paragraph), I could not find a copy of the policy online, which is indicative of the government's lack of seriousness in its implementation.

The year 2018 also witnessed the launching of a National Disability Mainstreaming Strategy.[70] It was geared at 'guiding the implementation of the disability policies, legislations and programmes in both the public and private sector in Kenya.'[71] The document further states that it 'provides the framework for implementation of the disability agenda as provided for in the Constitution, the Disability act of 2003, the National Disability Policy, the United Nations Convention on the Rights of Persons with Disabilities and other applicable legislations [*sic*].'[72] According to the Strategy, disability mainstreaming involves the following procedural steps:

> Train/Sensitize institutional staff on disability issues; Constitute Disability Mainstreaming Committee; Develop Disability Mainstreaming policy; Allocate financial resources for implementation of the policy; Develop Disability Mainstreaming implementation work plan and Monitoring & Evaluation Plan; Implement Internal Disability Mainstreaming Measures first; Implement External Disability Mainstreaming Measures; Carry out monitoring and evaluation of the implementation process; and, Report to the NCPWD [National Council for Persons with Disabilities] on progress and worth of mainstreaming process.[73]

Given the bare facts about disability highlighted in the second section of this article, the research directions highlighted in the third, and the various disability Policies outlined in this section, it is clear that there are some policy concerns that Kenya's public institutions ought to take up urgently and seriously. Below I highlight eight of these.

First, in all policy formulation and implementation, there is need to take into serious consideration the insights of the social model which views persons with

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[70] Ministry of Labour and Social Protection, 2018, National Disability Mainstreaming Strategy (2018-2022). Nairobi: Government Printer. https://www.socialprotection.go.ke/wp-content/uploads/2020/04/Finalized

Disability-Mainstreaming-Strategy-November-2018-BOOKLET-3.pdf
[71]Ibid.
[72]See Republic of Kenya 2010, Arts. 27, 28 & 54; Republic of Kenya 2003; Ministry of Labour and Social Protection 2018; United Nations 2006, among others.
[73] Ministry of Labour and Social Protection, 2018 op. cit.

disabilities as holders of rights, but acknowledges the important place of medical interventions in certain types of disability. In short, there is need to lay aside the binary between the social and medical models of conceptualising disability, and focus on addressing the specific needs of individual PWDs instead.

Second, it is imperative to design programmes to regularly sensitise members of the public on the nature of disability and the legal framework for the protection of the rights of PWDS. Such programmes ought to be designed with the participation of PWDs at their core, because PWDs have the lived experience of disability and the attendant marginalisation, and are therefore best placed to explain it to their compatriots.

Third, the government ought to move with speed to implement the 5% job quotas for PWDs stipulated in the Constitution of Kenya 2010 and the Persons with Disabilities Act 2003.

Fourth, the government is obligated to revitalise the monitoring and evaluation of public institutions for their compliance with constitutional, legal and policy requirements touching on disability inclusion. This had gained considerable momentum during the Grand Coalition Government (2008-2013). Indeed, beginning 2009/2010 financial year, disability mainstreaming was made a key target in performance contracting and in all sector policies and programmes, with all Ministries and State Corporations required to make disability a mainstream issue in their sector plans and programmes. However, with the advent of the Jubilee government in 2013, the enforcement of the requirement seems to have undergone a considerable decline.

Fifth, there is the urgent need to enhance the gathering of accurate statistics about disability through population censuses, and household surveys, among others, and to adequately factor them in planning.[74] PWDs in Kenya have persistently pointed out that the National Population Censuses have not adequately captured the

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[74]See M. Schneider, P. Dasappa, N. Khan and A. Khan, 2009. 'Measuring Disability in Censuses: The Case of South Africa.' *ALTER: European Journal of Disability Research / Revue Européenne de Recherche Sur Le Handicap*, Vol. 3 No. 3, pp. 245-265. http://dx.doi.org/10.1016/j.alter.2009.04.002 ; Madans, J.H., M.E. Loeb and B.M. Altman, 2011. Measuring Disability and Monitoring the UN Convention on the Rights of Persons with Disabilities: The Work of the Washington Group on Disability Statistics. *BMC Public Health* 11(suppl. 4), S4. http://dx.doi.org/10.1186/1471-2458-11-S4-S4

numbers and kinds of disabilities in the country. In 2008, a survey based on household interviews was conducted to gather data on persons with disabilities in the country. The information collected included: an estimation of the number of PWDs; their distribution, demographic, socio-economic and cultural characteristics; the nature, types and causes of disabilities; coping mechanisms; the nature of services available to them.[75] According to the survey, the overall disability rate was 4.6% - a figure vigorously contested by the disability movement based on UN estimates that PWDs represent approximately 15% of the population of any country.[76] Besides, as Owino explains, the Kenya Population and Housing Censuses of 2009 and 2019 present figures that are significantly lower than the UN estimates:

> According to the 2019 census, 2.2% (0.9 million people) of Kenyans live with some form of disability. Direct comparison of disability prevalence in 2009 and 2019 is problematic due to differences in data collection methodologies, ages covered and size of administrative units. The 2019 census appears to show a sharp drop in disability prevalence; the 2009 census states 3.5%, but when looking at the same age threshold (i.e. adults and children above five years of age) the 2009 disability prevalence rate was 3.8%.[77]

Sixth, the government is duty bound to enforce reasonable accommodation in line with the CRPD, that is, to require public institutions to make adjustments at the workplace to ensure PWDs employed there can function to their maximum capacity.

Seventh, the need to enforce universal design in line with the CRPD cannot be over-emphasised: this entails ensuring that the physical environment and ICT platforms are usable by persons with diverse disabilities.

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[75]See National Coordinating Agency for Population and Development, 2008, 'The Kenya National Survey for Persons with Disabilities: Preliminary Report.' https://www.african.org/CBR%20Information/KNSPWD%20Prelim%20Report%20-%20Revised.pdf
[76]See, for example, World Health Organisation, 2011, World Report on Disability. https://www.who.int/teams/noncommunicable-diseases/sensory-functions-disability-and-rehabilitation/world-report-on-disability
[77] Eastone Owino, 2022, 'Status of Disability in Kenya: Statistics from the 2019 census'. Development Initiatives. https://devinit.org/resources/status-disability-kenya-statistics-2019-census/

Eighth, as part of efforts to address the high levels of poverty among PWDs in Kenya, it is urgent that a policy framework be put in place to remove obstacles to their utilisation of the Access to Government Procurement Opportunities (AGPO) programme.

Conclusion

In the foregoing reflections, I have pointed out that there is a need to exploit the vast research potential of disability from a variety of disciplinary and inter-disciplinary perspectives in Kenya in particular and in Africa at large, and suggested a considerably wide range of possible research directions in this regard. I have also highlighted eight measures that ought to be put in place to ensure that public policy formulation and implementation adequately include PWDs.

The celebrated American philosopher, John Rawls, memorably pointed out that a just society prioritises the welfare of its most vulnerable members.[78] For Kenya to achieve justice for all her people, she must create an inclusive society, that is, one structured in such a way that people with different abilities and limitations are all accommodated in it, as illustrated by the ramp versus the staircase example. In sum, it is high time Kenyan society abandoned clichés such as 'disability is not inability', and took decisive legislative and policy action backed up by rigorous research to recognise in practice that PWDs are an integral part of it. This must entail the inclusion of PWDs themselves in the drafting of legislation and the formulation of policy because legislation and policy affect them as much as everyone else, and often much more than everyone else. As I earlier pointed out, one of the rallying calls of PWDs is 'Nothing for us without us'.

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[78] John Rawls, 1971, *A Theory of Justice*. Oxford: Oxford University Press.

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