

Post legislative scrutiny (PLS) inquiry on the political parties' act, 2011 with the Kenya Disability Parliamentary Association (KEDIPA)

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List of acronyms

AEMO	African Elected Members Organisation
CSOs	Civil Society organisations
EAC	East African Community
EACPPWD	East African Community Policy on Persons with Disabilities
FORD	Forum for the Restoration and Democracy
FORD ASILI	Forum for the Restoration and Democracy – Asili
FORD Kenya	Forum for the Restoration and Democracy – Kenya
IEBC	Independent Electoral and Boundaries Commission
IDRMs	Internal Disputes Resolutions Mechanisms
KADU	Kenya African Democratic Union
KANU	Kenya African National Union
KCA	Kikuyu Central Association
KEDIPA	Kenya Disability Parliamentary Association
KPU	Kenya People’s Union
LEGCO	Legislative Council
NDC	National Delegates Conference
NGC	National Governing Council
NGEC	National Gender and Equality Commission
NDI	National Democratic Institute
NIMD	Netherlands Institute for Multiparty Democracy
NCPWD	National Council for Persons with Disabilities
MP	Member of Parliament
OPDs	Organisations of Persons with Disabilities
ORPP	The Office of the Registrar of Political Parties
PLS	Post Legislative Scrutiny
PWDs	Persons with Disabilities
PPF	Political Parties Fund
PPLC	Political Parties Liaison Committee

PPDT	Political Parties Dispute Tribunal
SIGs	Special Interest Groups
TI K	Transparency International Kenya
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
YKA	Young Kavirondo Association
WFD	Westminster Foundation for Democracy

Foreword

This report is the result of a partnership between the Kenya Disability Parliamentary Association (KEDIPA) and Westminster Foundation for Democracy (WFD). For a long time, legislative development was deemed significantly as the introduction of a Bill in parliament, debate on the Bill, and presidential assent. In essence, presidential assent of the Bill was the end of the lawmaking process. Of late, the formalistic or routine enactment of a Bill is in no circumstances a yardstick for measuring legislative accomplishment, nor the end of the parliamentary process. Ordinarily, once a Bill is enacted into law, it is required to demonstrate that it is achieving its originally intended objectives. Accordingly, identifying whether the law has accomplished its anticipated objectives requires a systematic assessment by the legislature called Post Legislative Scrutiny (PLS).

Post Legislative Scrutiny is generally a function of assessing the implementation status of the law. Whereas it is generally understood that the legislature as a whole should provide leadership in conducting follow-ups in the implementation of policies and laws as an oversight mandate, this has not been done to the threshold expected by the Constitution of Kenya hence the numerous challenges faced by Persons with disabilities in governance processes in Kenya. As a result, KEDIPA, a caucus of Kenyan legislators with disabilities, guided by the national values and principles of governance under Article 10 (2) of the Constitution of Kenya and Article 3 of the Constitution of Kenya which provides that every person has an obligation to respect, uphold and defend the implementation of the Kenyan Constitution, prioritized and commissioned PLS of the Political Parties Act, 2011 with the aim of utilizing the outcome of the PLS to continue promoting the socioeconomic, cultural, and political rights of persons with disabilities (PWDs) in the governance processes in Kenya.

Consequently, KEDIPA, in the context of any person under Articles 3 and 10 (2) of the Constitution as defined under Article 260 of the Constitution of Kenya is obligated to review the Political Parties Act, 2011 to determine the extent to which its implementation is promoting the interest of PWDs in governance. With the support of WFD, the caucus engaged a technical expert to support in conducting the PLS on the Political Parties Act, 2011. The caucus organised pre-planning and assessment meetings with the expert to discuss and agree on the scope and approved binding requirements for PLS on Political Parties Act, 2011. The PLS report for this Act is critical in providing recommendations to the legislature towards initiating an initial series of amendments to the Act and making it work for persons with disabilities. This PLS report presents findings on the status of implementation of the Political Parties Act, 2011. The assessment reviewed the implementation of the Act by various state agencies and constitutional commissions charged with the responsibility to implement the law. The assessment also included political parties and organisation of persons with disabilities (OPDs).

The report provides insightful findings, which stakeholders can use to improve the promotion of the socioeconomic, cultural, and political rights of persons with disabilities in Kenya. I call upon all stakeholders to consider the findings of this scrutiny and to put in place mechanisms for implementing the recommendations to further promote PWDs voices in decision making. KEDIPA

intends to follow up on the recommendations in this report. KEPIDA will be tracking the status of the implementation of the recommendations on a six-monthly basis.

I also take this opportunity to express special gratitude to Westminster Foundation for Democracy, for collaborating with KEDIPA in conducting maiden PLS for the Political Parties Act, 2011 in Kenya. The Caucus also wishes to thank the office of the Speaker and the Clerk of both houses for the support accorded during the scrutiny process.

Hon. Tim Wanyonyi, MP Westlands
Chairman – KEDIPA

Executive summary

This PLS inquiry of the Political Parties Act, 2011 was undertaken by the Kenya Disability Parliamentarian Association (KEDIPA) with technical support from Westminster Foundation for Democracy (WFD). The inquiry sought to unravel the effectiveness of the Act, particularly in responding to the special needs of persons with disabilities (PWDs) after twelve years of the law's implementation.

The Constitution of Kenya, 2010 declares Kenya a multi-party democratic state. It guarantees political rights under Article 38, where every citizen is free to make political choices, including the right to form or participate in forming a political party. Further, every citizen has the right to free, fair and regular elections based on universal suffrage and the free expression of the will of the electors. The Political Parties Act, 2011 was enacted pursuant to provisions of Article 92 of the constitution regarding management of political parties and to ensure that parties subscribe to the basic requirements under Article 91. These requirements include but are not limited to having a national character, abiding by the democratic principles of good governance and promoting democracy through regular, free and fair elections and respecting the rights of all persons to participate in electoral and political processes.

This PLS report therefore presents findings on the status of implementation of the Political Parties Act, 2011. The assessment reviewed the implementation of the Act by various state agencies and constitutional commissions charged with the responsibility to implement the law. The assessment also included political parties and organisation of persons with disabilities (OPDs).

Key findings from this PLS inquiry:

Political and electoral rights of the special interest groups are robustly supported by the constitutional and existing political parties' legal regime. This notwithstanding, the PWDs inclusion in political party affairs including representation is still a challenge in Political Parties. PWDs wings or leagues in political parties are only activated in the run-up to general elections and muted immediately after election by political parties.

The perception of the society on PWD has contributed to the exclusion of the PWD in political participation and specifically their participation in the formation and running of the government as in most instances they are not even given a chance to participate in elections.

Essentially, the social and access barriers hinder effective participation by PWD in the electoral and political process.

The possession and utilization of excessive campaign financing by some candidates acts as a conduit for bribery and other corrupt practices leading to tensions and/or violence. This not only undermines democracy but also creates insurmountable impediments for PWDs.

Most political parties are yet to ensure that PWDs are identified, recruited, and supported in order to effectively participate in internal party processes.

Recommendations to various actors

The executive

- The executive should emphasize promotion of PWD rights to political participation at all levels. They should exercise fidelity in the implementation of existing policy commitments like the *Convention on the Rights of Persons with Disability (2006)* whose purpose is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.
- The Office of the Attorney General should liaise with ORPP and IEBC to put the suspended legislation of electoral campaign financing into force. This will have frameworks for effective means of monitoring candidates' financing levels. Hence reducing the prevailing spiraling cost of politics in Kenya which has been a significant hinderance to PWDs participation in politics.
- The executive should consider providing incentives for political parties to promote PWDs participation through provision of resources and increased training opportunities.
- Strengthen ORPP by providing it with extra resources to effectively and proactively monitor the activities and party nominations regarding inclusivity and conduct capacity building and awareness programs to enhance the participation and election of PWDs.
- The executive may consider selecting a PWD as one of its Cabinet Ministers, in this way strengthening visibility for PWDs.

The political parties

- To address biases that may be held by party leaders who engage in the resolution of disputes, there is a need for an independent body to conduct political parties' primaries as a way of enhancing a free and fair nomination. This approach could enhance the transparency and objectivity of the party nominations and encourage more PWDs to participate in and be elected to political positions.
- Political parties need to institutionalize and strengthen the Disability Leagues. This should be done through holding in-house training to empower PWDs to seek elective positions. The training could be held within the five years leading to elections so that by the time elections come, they are sufficiently prepared.
- Training in nomination processes for PWDs members is also crucial, and parties need to conduct continuous and inclusive political party PWDs membership drives.
- Political parties, whose membership is part of parliament should support legislative review and amendments on inclusion and thereafter, implement the laws on inclusivity.
- Political parties' leadership need to deal with cases of corruption and bribery in exchange for party tickets that has largely contributed to lack of participation and election of PWDs because of low economic capacity or power by PWDs.

- Political parties should leverage on emerging principles of negotiated democracies in several counties to ring-fence certain positions for PWDs.
- Strictly adopt internal democratic structure design, either through their party constitutions or their manifestos. Besides relying on using the parameters provided in the *Political Parties Act* under section 7(2), political parties ought to ensure that they apply other incentives like financial support to persons with disabilities to occupy critical political party positions.
- Kenya being a majority electoral system, political parties should adopt voluntary quotas enforced by a government body such as IEBC or ORRP, to ensure a specific number of PWDs are elected in various positions. Strengthen PWDs leagues to operate full time not only in preparation for elections.
- Political parties to continuously mobilize PWDs as active members, volunteers, and party aspirants. Earmark specific party funds and resources to support PWDs membership drives and party candidates.
- Political parties should work closely with NCPWD and OPDs before political party nominations, or party list nomination. This is in the spirit of consultation and participation and on the suitability of the PWDs nominees.

The Office of the Registrar of Political Parties (ORPP)

- The ORPP should demand greater accountability in the application of the Political Parties Fund by political parties. The ORPP should enact a disability-specific regulations on receipts by political parties from the fund. The ORPP should sanction political parties which do not apply monies from the fund as required under the Political Parties Act.
- To lead stakeholders in ensuring fidelity in the implementation of section 26 (1)(a) of the Political Parties Act 2011, that requires that political parties utilize the political parties fund to promote the representation of PWDs.
- Implement fully the mandate to monitor, regulate, and enforce compliance with the Political Parties Act, especially as it relates to parties' responsibilities and requirements to promote and ensure PWDs participation.
- Implement regular audits of political parties to assess compliance with the Political Parties Act, including specifically provisions on PWD's political participation.

The parliament

- The Justice and Legal Affairs Committee of Parliament to review the Political Parties Act in line with Article 100 of the constitution to distinguish PWDs from SIGs for deliberate representation and funding. This should also include amending the Act to have at least 30% of the 30% SIG political parties funding allocation committed to PWD activities.
- There is a need for full implementation of Articles 81 and 100 of the constitution to provide guiding principles to the electoral process and, to mandate parliament to enact legislation to promote the representation in parliament of marginalized groups as an urgent action. Parliament should prioritize the debate and passage of the Representation of Special

Interest Groups Laws (Amendment) Bill and the Political Primaries Bill. The Persons with Disabilities (Amendment) Bill should also be prioritized for passage as it provides enabling platforms for the political rights of PWDs.

- On the process of party nominations, it is recommended that section 38 (g) of the Political Parties Act on the conduct of indirect nominations be amended to prescribe that principles of inclusion and equity shall guide such process, and that parties shall prioritize the interests of PWDs and other SIGs in indirect nomination.
- On the finding that party constitutions and internal rules have provisions on inclusion which are not implemented, it is recommended that there is a need to strengthen checks and balances for inclusivity. Political parties to consider reviewing progress on the level of inclusivity on annual basis and make the result of the review public. Also enforce Section 24 (1b) of the Political Parties Act, 2011 supporting political parties to have other sources of funds which can be relied on to address PWDs.
- To support strengthening of ORPP so that it can effectively monitor the activities of political parties regarding inclusivity. Additionally, the ORPP requires extra resources geared towards monitoring compliance with PWDs inclusivity in party nominations and to conduct capacity building and awareness programs to enhance the participation and election of PWDs.
- The amendments of the Elections Act at section 34 to be amended to provide more elaborate guidelines and stipulations on the process and of development of political party lists to ensure more equitable representation of PWDs. This would also reduce the number of contests and reduce the discretion that IEBC enjoys in determining the allocations to political parties after an election.

This assessment largely depended on both implementation accounts by relevant government agencies and stakeholders such as political parties and independent reviews. The assessment equally relied on reports from key executive agencies charged with the responsibilities of implementing the Political Parties Act 2011. Apart from implementation reports, the assessment also relied on key informant interviews in the sector and practitioners drawn from different institutions. The other documents reviewed included WFD developed set of parliamentary and legislative indicators on effective PLS and analysis of the provisions of Political Parties Act, 2011, related legislations/regulations with a view to understanding the adequacy of the Act, its implementation, compliance and enforcement, its broader impacts, and cross-cutting issues.

1.0. Introduction

Lawmaking is one of the three critical functions of the legislature, together with representation and oversight. While these core functions of legislature are functionally distinct, the lawmaking mandate remains a necessary characteristic of the doctrine of separation of powers. Ordinarily, after lawmaking making, evaluation of the implementation of the enacted laws by the legislature remains an oversight mandate by the legislature and all persons charged with the responsibility of oversight under the Constitution of Kenya. However, oversight in the implementation of laws enacted has been missing in the part of the legislature and other stakeholders in Kenya. It is only recently that legislatures have begun to consider evaluating whether enacted laws subsequently meet the intended objectives set at the time of enactment.

In the Kenya legislature, post legislative scrutiny (PLS) has been conducted in various forms as it is one of the tasks of standing committees under the Senate Standing Orders 218 (3). In the National Assembly, routine follow up on implementation of laws is conducted by the committee on implementation under Standing Orders 209. As provided in the Standing Orders of both houses in Kenya, the committees are expected to follow up and assess whether laws enacted are meeting their intended objectives.

This is however not the case as indicated by several legislative committee reports. While PLS is an emerging oversight technique or tool applied by legislatures to scrutinize implementation and impact of specific laws,¹ the tool is yet to be institutionalized as a practice within Kenyan Parliament, leave alone other stakeholders in Kenya. PLS comprises assessing the practical results of policies and laws, identifying unintentional outcomes, and evaluating their link with societal needs.² Notwithstanding the significance of PLS, it is often neglected by many legislatures and stakeholders. The speedy lawmaking, without sufficient planning, has over time led to unplanned outcomes, habitually with negative social and budgetary consequences. Increasingly, there is an appreciation of the regular need to uphold the practice of regularly subjecting enacted laws to scrutiny to assess their utility.

The KEDIPA in partnership with WFD conducted a PLS pilot inquiry on the Political Parties Act, 2011. The PLS report is expected to provide KEDIPA with viable lessons and recommendations on the improvement of PWDs engagement in decision making. This inquiry will expose KEDIPA and other stakeholders to the relevant procedures of executing PLS in a structured manner. The inquiry is coming at a very important time because there have been numerous challenges by PWDs in the whole governance process. The Political Parties Act, 2011 was enacted as a fundamental piece of legislation that aims to regulate and guide Political Parties in Kenya. The enactment of the law represents a comprehensive effort to address various challenges by political parties and in it are also provisions critical to the representation of persons with disabilities.

¹ House of Lords Constitution Committee, "Post-Legislative Scrutiny: An Occasional Series," 2018.

² Joint Committee on Human Rights, "Post-legislative scrutiny: An inquiry into the effectiveness of legislation," 2010.

For many years, there was no specific law governing political parties in Kenya. Political parties were registered by the Registrar of Societies under the Societies Act (Cap.108), a framework which governed the registration of all associations including self-help groups, youth groups and football clubs. The democratic space of 1991 and the agitations of multi-party democracy resulted in the proliferation of many political parties, which were hitherto weak and poorly institutionalized. As a result, political parties were personal outfits without legal personality and perpetual succession. Thus, there was no legal framework for promoting democratic inclusion of the people in government, persons with disabilities were extremely affected. The enactment of the Constitution of Kenya, 2010 introduced a new paradigm for management and administration of political parties by recognizing political parties as important institutions in the promotion of democracy. The Constitution of Kenya 2010 guarantees the right to freedom of association of every person and the right to freely make political choices including the right to form and participate in the activities of a political party.

Articles 3 and 10 (2) of the Constitution as defined under Article 260 of the Constitution of Kenya, obligates KEDIPA, as any other stakeholder within the scope of this provision to review the Political Parties Act, 2011 and to determine the extent to which its implementation is promoting the interest of persons with disabilities in governance. This assessment largely depended on both implementation accounts by relevant government agencies and stakeholders such as political parties and independent reviews. The assessment relied on reports from key executive agencies charged with the responsibilities of implementing the Political Parties Act 2011. Apart from implementation reports, the assessment also relied on key informant interviews in the sector and practitioners drawn from different institutions. The other documents reviewed included WFD developed set of parliamentary and legislative indicators on effective PLS and analysis of the provisions of Political Parties Act, 2011, related legislations/regulations with a view to understanding the adequacy of the Act, its implementation, compliance and enforcement, its broader impacts, and cross-cutting issues.

2.0. Historical background

Repressive imperialist and post-imperialist governments in Kenya necessitated the formation of political parties. Even though political parties activities were all the time met with strong opposition and brutal retaliations from both imperialist and post-imperialist state. The emergence of political parties was largely restricted, and their leadership arrested and detained. In Kenya, the imperialists initiated and enforced very harsh and discriminatory policies that were hostile to Kenyans like deprivation of representation and enslavement and alienation of land among other things. In response to these discriminatory policies, Kenyans started to raise their concerns through political alliances like the Young Kavirondo Association (YKA) and Kikuyu Central Association (KCA). These political alliances advocated for direct representation of Kenyans in the then Legislative Council (LEGCO). On that account, the colonialist gave in to the representation pleas by Kenyans in 1944 and appointed the first Kenyan to the LEGCO. Despite the positive traction by the political

groupings, their initiatives were short of a national image and as a result could not essentially marshal Kenyans from other regions to rise against the ensuing colonial repression, consequently leading to the establishment of Kenya African Union (KCA), that later transitioned to Kenya African National Union (KANU).

As a result of imperialist rigidity to Kenyans advocacy pleas, Kenyans switched strategy from diplomacy to armed struggle which was done throughout 1952 through Mau Mau uprising. The Imperialist responded swiftly and brutally to the armed struggle and declared a state of emergency banning nation-wide political activities and detained all the leaders of the political alliances. Despite banning nation-wide political activities, the colonialists failed to ban political activities at district level except in the highlands of Central Kenya where they battled Mau Mau. What followed was the rise of district-based political groups, like Baringo District Independence Party, Nakuru African Progressive Party, Nandi District Independence Party, and the Taita African Democratic Union in the mid-1950s.

The Mau Mau revolt and the unceasing demands by Kenyans for political freedom compelled the colonial state to initiate a framework for independence, provided for in the Lyttleton Constitution of 1954. This resulted in the 1957 elections which saw eight Kenyans elected to LEGCO, comprising Jaramogi Oginga Odinga and Daniel Arap Moi among others. In an attempt to foster unity in the quest for Kenyans, the eight African LEGCO members established an African Elected Members' Organisation (AEMO) in 1959. The AEMO later disintegrated as a result of the domination of larger tribes being the Luo and the Kikuyu and two main political parties KANU and KADU were formed in 1960 where KANU, composed of majority of Kenyan communities, and KADU, comprised minority communities in Kenya. After Lancaster Conference independence negotiations in 1962, general elections were held in 1963 and KANU won a majority of political seats. Consequently, the country attained independence in 1963, and later became a republic in 1964.

At this point, KADU dissolved, and a good number of its members joined the then Cabinet as a way of reducing the political party strengths in Kenya. This made competitive political party politics in Kenya short-lived immediately after independence. Despite this, Kenya People's Union (KPU) was formed in 1966 because of ideological differences within KANU. To manage KPU, KANU sponsored a constitutional review that required that members who defected from the political party on whose ticket they were elected to seek a fresh mandate from the electorate. This amendment affected up to 29 nine legislators who aligned with KPU. After the by-election, only nine KPU aligned legislators were re-elected, including their leader Jaramogi Oginga Odinga. The KANU onslaught on opposition parties led to the banning of KPU in 1969. The ban of KPU in 1969 meant that Kenya became a de facto single-party state up to 1982 when Kenya formally became a de jure one party state.

In 1982, Jaramogi Oginga Odinga and George Anyona Moseki unsuccessfully attempted to register a socialist party to re-introduce multi-party politics. This was later met with amendment to the constitution and introduced section 2A, which made Kenya a de jure single party state. The KANU government was repressive and intolerant to dissent, within and outside the political party structures. Further, the KANU government-imposed limitations on the role of interest groups and civil society, subordinating political parties to the state. Political party was also elevated above the

legislature, such that legislature's decisions were neutered by the political party which clipped the rise and growth of political parties in Kenya.

In 1991, section 2A of the Kenyan constitution was repealed making Kenya a multi-party state. This led to the emergence of many political parties seeking to remove KANU from power. This notwithstanding, many of these political parties were built on regional or ethnic considerations. The only political party that started as a mass movement, drawing support from most ethnic groups in Kenya was The Forum of Restoration of Democracy (FORD). However, leadership wrangles led to the split of FORD's national appeal into two parties-FORD-Asili and FORD-Kenya, before the 1992 general elections. FORD-Asili drew most of its political support from central Kenya dominated by the Kikuyu tribe whilst most supporters of FORD-K were from the Luo and Luhya communities from the Western Kenya. Political Party stalwarts were rewarded with cabinet positions after the first multiparty elections in 1992, a tradition rife to date. Political party patronage became the primary currency in intra-party politics.

The ensuing political party patronage by party leaders led to exclusion of special interest groups such as PWD, youths and women. Most affected by these patronages were the PWD. Despite this exclusion, the participation of PWDs in politics remains a human right as well as an important factor that promotes social inclusive development. Despite the significant numbers of PWDs in Kenya, research suggests that PWDs continue to experience systemic exclusion from mainstream governance and developmental processes. This exclusion has been particularly acute in the areas of political representation in elective and appointed positions, with limited efforts by political parties to provide a conducive environment for PWDs to engage in politics. To address the persistent gap within Kenya's political culture led and perpetuated by political parties, Kenya enacted a Political Parties Act, 2011 with specific provisions meant to cushion PWDs and their participation in the promotion of more inclusive political discourse, political commitments and public policymaking.

3.0. Objectives and aims of the Political Parties Act 2011

- The Political Parties Act is the primary legal reference for the management of political parties in accordance with Articles 91 and 92 of the Constitution of Kenya. The overall objective of the Political Parties Act, 2011 is to provide the institutional, legal and regulatory framework for the registration, regulation and funding of political parties and enhance democratic participation through political mobilization by encouraging the public to participate in elections as candidates and/or electorates.
- Specifically, the Act envisages well-governed political parties that respect internal democracy and their constitutional status in the Kenyan political system; enumerate mechanisms and processes to ensure compliance with the constitutionally mandated participation requirements for special interest groups (SIGs) such as the PWDs, women and youths; establishes mechanisms to protect and advance the rights of youth and creates a limited number of dedicated affirmative-action seats for special interest groups and finally provides the legal

framework for resolution of disputes relating to elections and political parties are provided for in the which, in the first instance, confer jurisdiction for resolving political and election disputes to the political parties by invoking the internal mechanisms provided for in their respective constitutions.

4.0. Legal and institutional framework for the Political Parties Act 2011

The primary laws governing the formation, management and administration of political parties are the Constitution of Kenya, 2010 and the Political Parties Act, 2011. There are, however, other laws that have bearing on the operations of political parties. These are, the Elections Act, 2011, the Election Offences Act, 2016, the Election Campaign Financing Act, 2013, the National Cohesion and Integration Act, 2008 and the Independent Electoral and Boundaries Commission Act, 2011.

The Political Parties Act, 2011 provides the institutional, legal, and regulatory framework for the registration, regulation, and funding of political parties in Kenya. The Act is therefore one of the primary legal references for the management of political parties in accordance with Articles 91 and 92 of the Kenya constitution. To this extent, the constitution envisages well-governed political parties that respect internal democracy and their constitutional status in the Kenyan political system. The constitution further affirms the sovereignty, the right of the people, and recognizes the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice, and rule of law.

Specifically, article 4 of the constitution declares that Kenya is a multi-party democratic state founded on national values and principles of governance. Article 27 requires the state to take measures to ensure that no more than two-thirds of the members of elective or appointive bodies are of the same gender. Article 38 provides for political rights and guarantees every citizen the freedom to make political choices including the right to form, or participate in forming, a political party, to participate in the activities of, or recruit members for a political party and to campaign for a political party or cause.

Article 91 of the Constitution sets out basic requirements for formation of political parties and requires that a political party should not:

- a. Be founded on a religious, linguistic, racial, ethnic, gender or regional basis or seek to engage in advocacy of hatred on any such basis.
- b. engage in or encourage violence by, or intimidation of, its members, supporters, opponents, or any other person.
- c. Establish or maintain a paramilitary force, militia, or similar organisation.
- d. Engage in bribery or other forms of corruption; or
- e. Accept or use public resources to promote its interests or its candidates in elections (except as provided by law).

In addition, article 92 requires the parliament to enact legislation to provide for regulation of election campaigns, regulations, roles and functions of political parties and establishment and management of political parties' funds. All these constitutional requirements have been given effect to varying degrees through the Political Parties Act, 2011, Elections Act, 2011, Election Offences Act, 2016, Election Campaign Financing Act, 2013, Independent Electoral and Boundaries Commission Act, 2011 and Public Finance.

Besides, there are key institutions established by the Political Parties Act which have largely performed their functions satisfactorily.

4.1. The Office of the Registrar of Political Parties

The Office of the Registrar of Political Parties (ORPP) is established under Section 34 of the Act as a State Office within the meaning of Article 260 of the Constitution of Kenya. The core mandate of the office is to register and regulate political parties. More specifically, the ORPP is mandated to register, regulate, monitor, investigate and supervise political parties to ensure compliance with the Act, regulate political party nominations in accordance with the Act, to investigate complaints received as well as to administer the Political Parties Fund (PPF). The mandate thus centres on facilitating institutionalization of political parties as important institutions in the promotion of democracy as recognized under Articles 91 and 92 of the Constitution. The ORPP's mandate is therefore critical to ensuring that the constitutional role of inclusivity placed on political parties is indeed realized. It also has powers to hold political parties accountable through issuing warnings, suspending parties for up to one year, withholding funds and effecting deregistration of errant political parties.

Stemming from Article 91 of the constitution, the Act provides that a political party can only be registered if it meets key requirements such as gender equality and equity, respect for the rights of all persons to participate in political processes and other human rights and fundamental freedoms. This is to ensure that persons with disabilities (PWDs) and all other marginalized groups can participate in politics both as voters and as candidates as set out in the constitution. Political Parties are also required to mobilize citizens to participate in political decisions, a task they should perform with an inclusivity lens. More particularly the Act requires political parties to promote the representation in Parliament and County Assemblies of, PWDs, women, youth, ethnic and other minorities, and marginalized communities.

4.2. Political Parties Liaison Committee

The Political Parties Act establishes the Political Parties Liaison Committee (PPLC) at the national and county level. The purpose of the Committee is to provide a platform for dialogue between the ORPP, the Independent Electoral and Boundaries Commission (IEBC) and political parties. The role of the Committee is further emphasized in the Independent Electoral and Boundaries Commission Act 2011 and the Elections Act, 2011. The Electoral Code of Conduct requires political parties to attend and participate in PPLC meetings.

4.3. Political Parties Dispute Tribunal

In the recent past, disputes within and between political parties in Kenya have often been referred to the courts. This practice in various cases led to acceptable outcomes. However, it also led to a situation where important political issues were decided over not by politicians but by judges. It, moreover, paralyzed political decision making and at times even threatened the independence of the courts. To bring political decisions back to political powers, the Act first calls for political parties to establish in their constitutions their own internal dispute resolution mechanisms. Internal disputes relating to nominations are to be dealt with primarily by parties themselves. Only when all resolution mechanisms within the party have been exhausted and the dispute remains unsolved can members of political parties call upon an external dispute resolution mechanism. The Act therefore establishes the Political Parties Dispute Tribunal (PPDT).

The PPDT is established under section 40 of the Act with the mandate of resolving disputes arising from the activities of political parties in Kenya. Its creation is envisioned in Articles 87 (1) and 169 (1) (d) of the constitution, as a subordinate court. It is among the pre-election disputes resolution bodies created in the aftermath of the 2007/08 general elections upon the realization that election day and post-election violence is a culmination of unresolved tension emanating from seemingly unfair pre-election processes- and therefore the need to have an elaborate mechanism for determining dispute arising from the pre-election process. Apart from the tribunal, other pre-election dispute resolution forums such as the political parties' internal disputes resolutions mechanisms (IDRMs) and the Independent Electoral and Boundaries Commission (IEBC) are also involved.

5.0. The implementation of the Political Parties Act 2011

The Political Parties Act came into effect in November 2011. Since its enactment, the Act has been amended three times vide the following Acts of parliament: the Political Parties (Amendment) Act No. 18 of 2014, the Political Parties (Amendment) Act No. 21 of 2014 and the Political Parties (Amendment) Act No. 14 of 2016.

The Act provides for:

- a. Registration process (requirements for provisional and conditions for full registration).
- b. Membership of political parties-restrictions of public officers and disqualification from holding office of political party, resignations.
- c. Corporate status of registered political parties.
- d. Coalitions.
- e. Mergers.
- f. Contents or rules of political parties.
- g. Records of political parties.

- h. Public meetings of political parties.
- i. Deregistration and effect of deregistration.
- j. Political Parties Fund.
- k. Purpose and distribution of the Fund.
- l. Accounting and audit.
- m. Office of the Registrar of Political Parties.
- n. Political Parties Dispute Tribunal.
- o. Winding up of political parties.
- p. Offences and general penalty.
- q. Regulations.

Moreover, the Act is supported by various regulations which form part of the political parties law in Kenya. These include:

- The Political Parties Dispute Tribunal (procedure) Regulations, 2017. The purpose of these regulations is to set out the procedure to facilitate just, expeditious and impartial determination of disputes affecting political parties.
- Political Parties (Funding) Regulations, 2014. The purpose of these regulations is to provide for the administration and management of the political parties Fund.
- The Political Parties (Liaison Committee) Regulations.
- The Political Parties (Registration) Regulations.

Most of the amendments to the Act, as captured above, have been done on an eve to the preceding general elections and too often to address political interests of the ruling and opposition parties. The amendments have quite often not addressed the special interests of the PWDs, and other SIGs as will be discussed in the subsequent sections of this inquiry report.

5.1. Compliance and enforcement of the Political Parties Act 2011

The ORPP utilizes a set of regulations to operationalize the Political Parties Act. The object of these regulations is to set out procedures for registration, regulation, and funding of political parties. The Constitution, Political Parties Act, 2011, Elections Act, 2011, Internal constitution and rules of a political party are the primary laws that govern the conduct and management of political parties. Article 91 of the constitution provides the compliance standards that must always be adhered to by political parties.

In enforcing compliance mechanisms, the ORPP assesses the following compliance parameters.

- Review of political party constitutions and rules.
- Inspection of political party head and county offices.
- Assess membership requirements.
- Review of constitutive statutory documents to guarantee ethnic representation and inclusion of the special interest groups in the governing organs of the political parties.

- Statutory NDC/NGC meetings and party elections.
- Financial reporting
- Conduct regular and impromptu compliance audits to ascertain compliance status and issue advisories on the findings to the political parties on a quarterly basis.
- Oversee process of effecting changes by political parties to ensure that the procedures stipulated in the respective party constitutions and the Political Party Act are adhered to.
- In support for strengthening political parties as institutions of governance and enhancing compliance, the Office carries out capacity building for political parties' members, party organs, election agents and other targeted Special Interest Groups.

The ORPP's mandate is therefore critical to ensuring that the constitutional role of inclusivity placed on political parties is indeed realized. It also has powers to hold political parties accountable through issuing warnings, suspending parties for up to one year, withholding funds and effecting deregistration of errant political parties.

5.2. Broader impact of the Political parties Act 2011

Since the dawn of multiparty democracy in Kenya, elections have been characterized by stiff political competition and high ethnic tensions that at times have led to post election ethnic violence in Kenya. The enactment of the Political Parties Act, 2011 has somehow played a role in facilitating these tensions.

Further, the Political Parties Act, 2011 obliges political parties to firmly comply with the national values and principles of governance under Article 10 of the Constitution. This is a prerequisite also provided for under Article 91 of the Constitution of Kenya, which decrees parties to comply with principles of good governance, regular, fair and free elections, honouring the right of all persons in the party to participate in the political process, including minorities and marginalized groups and respecting and promoting human rights and fundamental freedoms.

By recognizing political party coalitions as coalition political parties in the Act, the law provides for platforms for 'negotiated democracy' which if properly utilized, will increase PWDs representation in political party structures and the legislature. On the flip side, the negotiated democracy concept utilized in some counties only works in favour of candidates with financial resources and political connection, this has for the time now not worked in favour of PWDs. The term 'negotiated democracy' is used in Kenya to refer to the practice of agreeing on how to distribute political positions in advance of an election.

The phrase became popular following the introduction of devolution in 2010, when political and community leaders in some of the forty-seven counties decided to come to pre-election agreements about the distribution of seats between rival ethnic groups and clans. Part of the logic behind these deals was that arranging the outcome of multiparty politics in this way would reduce the stakes of the election and hence the prospects for ethnic violence. However, in some cases, these negotiations themselves proved to be highly controversial, especially after some of the participants claimed that the initial terms of the deals that they had struck had not been honoured.

5.3. Positive outcomes of the Political Parties Act 2011

The following are some of the opportunities by the Political Parties Act, 2011:

The Act provides that a Kenyan citizen who has attained the age of eighteen can become a political party member and has the right to participate in party decision-making and vying for any elective position within a party.

The Act provides that the roles and functions of a political party include recruiting and enlisting members, nominating candidates for elections, promoting representation in Parliament and County Assemblies of marginalized groups and marginalized communities, enhancing national unity, mobilizing citizens into participating in political decisions and shaping and influencing public policy. As a result, PWDs can take advantage of this provision and demand their right to be meaningfully engaged in the decision-making processes of a political party.

The other positive outcome of the Political Parties Act, 2011 is the requirement that political parties establish the Political Party Website. This website is to disseminate political party information, constitution, nomination procedures, the political party ideology and membership list among others. This is a platform for PWDs to access information, for making the right choice on which political party to join.

The Act provides an enhanced criteria for distribution of the Political Parties' Fund. For example, the Act provides that 15% of the fund will be shared proportionately with political parties based on the number of political party candidates from special interest groups elected in the preceding general elections. Further, the Act also provides that no party qualifies for the fund if more than two-thirds of its registered office bearers are of the same gender and if the party does not have representation of special interest groups in its governing body. This is an opportunity for PWDs since it obligates the party to promote the political participation of PWDs in internal processes and political participation.

The Political Parties Act, 2011 has streamlined party nominations. Political party nominations improve after every electioneering period. This is as a result of the law allowing for indirect methods of party nomination processes.

5.4. Unwanted outcomes of the Political Parties Act 2011

Political party primaries for selecting candidates are rife with violence, intimidation, bribery, harassment especially against disenfranchised minorities like PWDs, women and youth. Being alive to this fact, the mechanisms of dispute resolution in the electoral system in Kenya starting within the political party IDRM, IEBC, PPDT and the Court should be strengthened to be more inclusive and to respond to PWDs needs.

The Political Parties Act mandates political parties to promote inclusiveness, democracy, and participation of the people in the formulation of its policies and in the nomination of candidates for elections. A key feature of the 2022 elections was the increased incidence of negotiated democracy, following the introduction of the nomination of candidates by consensus rather than by ballot within a political party.

A key amendment in the 2022 election cycle was the introduction of the indirect party nomination method. Under this method, a political party selects delegates from its list of members, rather than holding an internal voting exercise among its members. Such a list is thereafter submitted to the ORPP seven days prior to the nomination date, on which day interviews of such potential candidates will be undertaken. The procedure of selection in indirect nomination is to be provided for in a party's nomination rules. While indirect nomination has its benefits such as allowing parties to strategically use their limited resources, it is disadvantageous to members of special interest groups including PWDs. This is because there is a bias towards people affiliated with party leaders and persons with wide resources. The process should align to the Political Party Primaries Bill, 2020 which had clear proposals on protecting the interests of PWDs/SIGs, especially during the nomination process.

Another key amendment in the 2022 election cycle was the introduction of coalition political parties, which are considered political parties. Two or more political parties may form a coalition or a coalition political party before or after an election and shall deposit the coalition agreement with the ORPP. The coalition agreement is to be deposited with the ORPP and should have the following contents: the parties which are members of the coalition, the policies and objectives of the coalition, the overall structure of the coalition, the criteria or formula for sharing of positions in the coalition structure, roles and responsibilities within the coalition, the coalition election rules, and the coalition nomination rules, as well as the dispute resolution mechanisms and procedures. Negotiation of coalition agreements is shrouded in high secrecy, a private affair of a few party leaders. This in essence leads to disenfranchisement of the majority of the party members – more so- the PWDs and other SIGs.

Section 38 (1) (a) of the Political Parties Act requires every political party to establish mechanisms for the resolution of disputes arising out of the nominations. Most of the political parties have established internal dispute resolution processes. Under section 38 of the Act, a party must resolve any dispute arising out of nomination within 30 days of the date of nomination. For those not satisfied with IDR, there is an avenue for appeal before the IEBC and/or court. However, not all disputants follow the appellate process. Some defect from their parties and decide to go it alone as independent candidates or join other parties. Others, for fear of being maligned by their parties or for strategic reasons of maintaining good relations to land government appointments, abandon the cases altogether.

5.5. Implications of the implementation of the Political parties Act 2011 to persons with disabilities

The rights of persons with disabilities are asserted in the UN Convention on the Rights of Persons with Disabilities, 2006 (UNCRPD), whose purpose is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all Persons With Disabilities, and to promote respect for their inherent dignity. State parties are obligated to guarantee persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others. They also undertake to promote actively an environment in which persons with disabilities can

effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public and political affairs.

In the East African Community (EAC), the East African Community Policy on Persons with Disabilities (EACPPWD) provides that member states shall be gender responsive and shall include disability interests through establishing mechanisms that promote equal access to resources and benefits to both men and women; and through encouraging active involvement and participation of PWDs in leadership and decision-making processes about policies and programs that affect their daily lives.

There are global prerequisites that govern the process of inclusion in politics. First is the existence of robust legal and regulatory frameworks with provisions that recognize and protect the rights of and provide mechanisms for marginalized groups to participate in political processes on an equal footing with other members of society. The second issue is the existence of mechanisms for affirmative action, recognizing that past discrimination and unequal and unfair treatment have prevented marginalized groups from being included in politics. This requires special measures that provide positive impartiality to these groups to enable them to catch up with and gain an equal footing in politics.

The third imperative is the existence of democratic institutions, particularly election management bodies and political parties, and their adherence to inclusivity principles. The extent to which these institutions are aware of and seek to enforce requirements for inclusivity determines the levels of inclusive politics. The electoral system design plays a critical role in facilitating or inhibiting inclusive politics. The existence of well-designed rules and institutions must be accompanied by a comprehensive dispute resolution mechanism. This is out of the recognition that there will be many instances where the rules are either ignored or applied unfairly to the detriment of marginalized groups requiring recourse to dispute resolution mechanisms. A robust, impartial, and credible body is therefore imperative to inclusivity. Lastly, the levels of awareness and appreciation amongst the populace of the need for inclusivity will help to ensure that the society is an inclusive one and that marginalized groups get support and the opportunity to both participate and be elected in political spaces.

In the 2022 general election, a record number of more than 600 candidates with disabilities sought election, across national and county positions. Out of this number, 7 were successful, accounting for a 1% success rate. Despite the above progress, gaps remain. For instance, about 45% of counties assemblies in Kenya lack representation of PWDs, (21 out of 47 counties) up from 39% (17) in the 2017 general elections.

Persons with disabilities have faced dire marginalization in Kenya. Often regarded as causing shame, PWDs have limited access to education, health, employment, and access to basic social services. This includes challenges relating to physical access. They are excluded politically as they have measured access to participation in political processes, and equality of opportunity.

The inclusion of PWDs within political parties remains inadequate with significant legal gaps existing and lack of PWDs Leagues amongst most parties in the country. The National Gender and Equality Commission (NGEC) has observed that Special Interest Groups have historically been

limited to addressing their specific issues. For instance, PWDs have not been put at the same level as other members and they are mostly required to speak about disability issues. The same would apply to women and the youth. This minimizes their chances of moving the masses on other topical issues hence lowering their chances of election through popular contests.

Other challenges with inclusivity in political parties includes the inaccessibility of political party offices by persons with disabilities. The offices and officials of parties are often not accessible because there are no set channels of communication. One needs to be well-connected to get access to a political party leader – especially for the dominant parties.

Code of Conduct for Political Parties is provided in Schedule I of the Act to regulate the behaviour of members and office holders of political parties, aspiring candidates, candidates and their supporters, to promote good governance and eradicate political malpractices such as violence, intimidation or bribery. It mandates that each political party shall respect the right of all persons to participate in the political process including special interest groups, respect and promote gender equity and equality, human rights and fundamental freedoms; and be tolerant and inclusive in all their political activities. However, the implementation of the Code of Conduct is wanting in most instances.

The Act establishes the Political Parties Fund which is to be administered by the ORPP. In this fund, 15% is to be distributed proportionately to political parties based on the number of candidates of the political party from special interest groups elected in the preceding general election. Based on this guaranteed allocation, the youth, women and PWD leagues within the parties should demand the 15% allocated to them and prepare five-year work plans in order to access the funds.

5.6. Lessons for the future from the implementation of the Political Parties Act 2011

In the 2013 and 2017 election cycles, the PPDT was only based in Nairobi. In 2013, the PPDT adjudicated over 33 cases which in 2017 shot up to over 500 cases. In the lead up to the 2022 election cycle, the Chief Justice decentralized the PPDT and established regional offices in Nairobi, Meru, Mombasa, Kisumu, Kakamega, Nyeri and Eldoret. This was not only in anticipation of a high case load but also to improve access to justice for all litigants. In 2022, the PPDT heard and determined 314 pre-election disputes within the stipulated timelines. Further decentralization of the PPDT is therefore required to promote access to justice, especially for the PWDs and other SIGs at the county level.

Another gap is that more than a decade since the Constitution's promulgation, Article 100 of the Constitution on the enactment of legislation promoting the representation of marginalized groups is yet to be legislated and implemented. A Bill on the same is currently pending before Parliament – The Representation of Special Interest Groups Bill. Consequently, participation of PWDs in public office is yet to meet the five percent threshold required by the Constitution. It would be critical for such a law to provide disaggregated targets for the inclusion of PWDs in political positions, the lack of which has been a challenge to promoting the inclusion of PWDs.

It has been noted that the legal framework is blind to the intersectionality within Special Interest Groups, including the PWDs. While the law recognizes the inequalities faced by PWDs, women, youth and members of marginalized groups, it fails to consider that a person's identity may cut across these categories of SIGs. For instance, while there is a provision to nominate 16 women to the Senate, the law is silent on the inclusion of women who are persons with disability and youth in this category. This aspect of intersectionality could be utilized to ensure that inclusivity goals are attained. Political Parties should be sensitized to nominate persons that cut across the SIGs categories and to position them strategically in their party lists.

Article 81 (b) and (c) on principles for electoral systems in Kenya provides for gender balance and fair representation of persons with disabilities respectively. Article 137 however on qualification and disqualification of a person for election as president has blanket provisions that do not consider special interest groups. One of the qualifications as outlined under Article 237(d) mandates a person to be nominated by not fewer than two thousand voters from each of the majority of counties i.e. 24 counties.

With respect to party nomination rules, a gap that cuts across the political parties is the failure to stipulate how the process of indirect nomination is to be undertaken. Such rules should first indicate that this process is bound by the constitutional principles of inclusion and equity.

They could indicate a weighted system against which a candidate could be selected such as merit, popularity, etc. This would ensure that the process of selection is transparent and inclusive. The failure to elect PWDs in 21 County Assemblies alludes to a failure in the law to ensure the inclusion of PWDs as well as to the lack of will among political parties to prioritize PWDs in ranking in party lists.

Despite the Elections Campaign Financing Act being established in 2013, the Act has never been implemented. While IEBC duly made Election Campaign Financing Rules under Section 5 in both 2016 and 2021, the rules were not approved by Parliament and are thus not implemented. In their Observers Report of the 2022 Elections, the National Democratic Institute (NDI) posited that in the absence of campaign finance regulations, an uneven playing field for electoral contestants prevailed which was to the disadvantage of marginalized groups, including PWDs, women, and youth, who lack the same access to financial capital and networks of donors as male candidates from the major parties. In their Report on misuse of state resources across seven counties, Transparency International Kenya (TI-Kenya) noted that common offenses related to misuse of state resources in campaigns included the use of state facilities, followed by the unveiling of government projects during campaign events, and the use of state funds, such as the National Government Constituencies Development Fund (NG-CDF).

The most recurring problem for special interest groups is the challenge of resource mobilization. In its 2020 report on the state of political inclusion of persons with disabilities in Kenyan politics, WFD noted that the inability to mobilize resources and the hidden costs of entering politics are among the major bottlenecks for PWDs. Political party nominations are a reward system for party loyalists and those who offer financial support. The PWDs, youth, and women who do not have the financial wherewithal and those who do not have political patrons have very slim chances of participating substantively in the affairs of a political party. Another study by WFD and Netherlands Institute for

Multiparty Democracy (NIMD) found that the more a candidate spends, the higher their chance of winning. The report found that the cost of contesting a Senate seat costs about KShs. 35.5 million, a Women Representative seat cost, Kshs. 22.8 million, members of National Assembly averagely spend Kshs. 18.2 million, while the Member of County Assembly seat was the least expensive at Kshs. 3.1 million. These costs tend to be raised from a candidate's personal savings as well as with support from family and friends.

There is a lack of accurate and verifiable data on PWDs representation in the party membership register. There is a need for political parties to work closely with the NCPWD system for purposes of accurate status and details of political party PWD members. There is a low number of PWDs candidates nominated by political parties. Political parties should work with organisations for persons with disabilities (OPDs) and NCPWD on legal reforms for purposes of increasing PWD representation in political parties.

Lack of inclusion in the party list nomination is another challenge. PWDs receive less priority during nomination in party lists, especially for seats in the County Assemblies. Twenty-one (21), seventeen (17) and four (4) Counties were missing PWDs for the special seats during the 2022, 2017 and 2013 General Elections respectively. Frequent change to the party lists after submission by political parties is a big challenge. Another challenge is submission of different sets of party lists by members of the same party, and lack of a standardized format of presentation of the party lists by political parties. Necessary laws should be reviewed to compel County Assembly party list nomination to prioritize PWDs. Political parties should also work with NCPWD before party election, nomination or party list nomination in the spirit of consultation, participation and on the suitability of the nominees.

6.0. Conclusions and recommendations

6.1. Conclusion

Political and electoral rights of SIGs are solidly supported by the political legal framework, which is based on Kenya's 2010 constitution and related election legislation. However, the PWDs inclusion and campaign finance regulations, which have the potential to increase electoral inclusion and transparency, are yet to be effectively operationalized.

While the constitution has provided for inclusion of PWDs, women, and the youth in the political sphere, parliament failed to legislate the two thirds gender rule and an act to include special interest groups. As a result, the constitutional thresholds for the gender quota in the National Assembly, and five percent representation of PWDs in elective and appointive bodies is yet to be achieved. During the last elections and for the first time, the IEBC required disability status certification from the NCPWD prior to nomination. Furthermore, most of the political parties have not yet been able to ensure that PWDs are identified, recruited, and supported in order to effectively participate in internal party processes.

6.2 Recommendations

This PLS inquiry recommends the following steps to achieve the right to participation of PWDs the various actors:

6.2.1. The executive

- The executive should emphasize promotion of PWD rights to political participation at all levels. They should ensure implementation of existing policy commitments like the *Convention on the Rights of Persons with Disability*.
- The Office of the Attorney General should liaise with ORPP and IEBC to put the suspended legislation of electoral campaign financing into force. This will have frameworks for effective means of monitoring candidates' financing levels.
- The executive should consider providing incentives for political parties to promote PWDs participation through provision of resources and increased training.
- Strengthen ORPP by providing it with extra resources to effectively monitor the activities and party nominations regarding inclusivity and conduct capacity building and awareness programs to enhance the participation and election of PWDs.

6.2.2. The political parties

- To address biases that may be held by party leaders who engage in the resolution of disputes, there is a need for an independent body to conduct political parties' primaries as a way of enhancing a free and fair nomination. This approach could enhance the transparency and objectivity of the party nominations and encourage more PWDs to participate in and be elected to political positions.
- Political parties need to institutionalize and strengthen the Disability Leagues. This should be done through holding in-house trainings to empower PWDs to seek elective positions. The training could be held within the five years leading to elections so that by the time elections come, they are sufficiently prepared.
- Training in nomination processes for PWDs members is also crucial, and parties need to conduct continuous and inclusive political party PWDs membership drives.
- Political parties, whose membership is part of parliament should support legislative review and amendments on inclusion and thereafter, implement the laws on inclusivity.
- Political parties need to deal with the issues of corruption, bribery and negotiated democracy to provide an equal platform for everyone to seek elective positions.
- Strictly adopt internal democratic structure design, either through their party constitutions or their manifestos. Besides relying on using the parameters provided in the *Political Parties Act* under section 7(2), political parties ought to ensure that they apply other incentives like financial support to persons with disabilities to occupy critical political party positions.
- Kenya being a majority electoral system, political parties should adopt voluntary quotas enforced by a government body such as IEBC or ORRP, to ensure a specific number of PWDs are elected in various positions. Strengthen PWDs leagues to operate full time not only in preparation for elections.
- Reform the culture and practices that perpetuate non-PWDs dominated political party structures to attract and mobilize PWDs as active members, volunteers, and party aspirants.
- Earmark specific party funds and resources to support PWDs membership drives and party candidates.
- Political parties should work closely with NCPWD and OPDs before political party nominations, or party list nomination. This is in the spirit of consultation and participation and on the suitability of the nominees.

6.2.3. The Office of the Registrar of Political Parties (ORPP)

- The ORPP should demand greater accountability in the application of the Political Parties Fund by political parties. Each party should detail disability-specific applications of receipts from the fund. The ORPP should sanction political parties which do not apply monies from the fund as required under the Political Parties Act.

- To lead stakeholders in ensuring fidelity in the implementation of section 26 (1)(a) of the Political Parties Act 2011, that requires that political parties utilize the political parties fund to promote the representation of PWDs.
- Implement fully the mandate to monitor, regulate, and enforce compliance with the Political Parties Act, especially as it relates to parties' responsibilities and requirements to promote and ensure PWDs participation.
- Implement regular audits of political parties to assess compliance with the Political Parties Act, including specifically provisions on PWD's political participation.
- Work closely with the IEBC to enhance effective oversight and enforcement of party compliance with constitutional provisions related to PWDs political participation.

6.2.4. The parliament

- Review the Political Parties Act in line with Article 100 of the constitution to distinguish PWDs from SIGs for deliberate representation and funding. This should also include reviewing the Act to have at least 30% of the 30% SIG political parties funding allocation committed to PWD activities.
- There is a need for full implementation of Articles 81 and 100 of the constitution to provide guiding principles to the electoral process and, to mandate parliament to enact legislation to promote the representation in parliament of marginalized groups as an urgent action. Parliament should prioritize the debate and passage of the Representation of Special Interest Groups Laws (Amendment) Bill and the Political Primaries Bill. The Persons with Disabilities (Amendment) Bill should also be prioritised for passage as it provides enabling platforms for the political rights of PWDs.
- On the process of party nominations, it is recommended that section 38 (g) of the Political Parties Act on the conduct of indirect nominations be amended to prescribe specify that principles of inclusion and equity shall guide such process, and that parties shall prioritize the interests of PWDs and other SIGs in indirect nomination.
- On the finding that party constitutions and internal rules have provisions on inclusion which are not implemented, it is recommended that there is a need to strengthen checks and balances for inclusivity. Also enforce Section 24 (1b) of the Political Parties Act, 2011 supporting political parties to have other sources of funds which can be relied on to address PWDs.
- To support strengthening of ORPP so that it can effectively monitor the activities of political parties regarding inclusivity. Additionally, the ORPP requires extra resources geared towards monitoring compliance with PWDs inclusivity in party nominations and to conduct capacity building and awareness programs to enhance the participation and election of PWDs.
- The amendments of the Elections Act at section 34 to be amended to provide more elaborate guidelines and stipulations on the process and of development of political party lists to ensure more equitable representation of PWDs. This would also reduce the number of contests and reduce the discretion that IEBC enjoys in determining the allocations to political parties after an election.

6.2.5. Development partners /International Community

- Monitor their member states on the status of implementation of commitments on the rights of persons with disability, as provided for under the various treaties such as CRPD.
- Provide support to civil society organisations and other implementing agencies and commissions to support the inclusion of PWDs.

6.2.6. Civil society organisations

- Support PWDs to organise themselves better and demand for their political rights.
- Support in capacity building of PWDs to strengthen their negotiation, leadership and campaign management skills.
- Undertake advocacy campaigns that seek reforms to the entire political party legal framework. This would include engagement with legislature to amend laws, seeking judicial opinions on grey areas of the constitutions, overlapping mandates and any other electoral issues identified.

The Political Parties Act, 2011 envisages well-governed political parties that respect internal democracy and their constitutional status in the Kenyan political system; enumerate mechanisms and processes to ensure compliance with the constitutionally mandated participation requirements for special interest groups (SIGs) such as the PWDs, women and youths; establishes mechanisms to protect and advance the rights of youth and creates a limited number of dedicated affirmative-action seats for special interest groups and finally provides the legal framework for resolution of disputes relating to elections and political parties are provided for in the which, in the first instance, confer jurisdiction for resolving political and election disputes to the political parties by invoking the internal mechanisms provided for in their respective constitutions.

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Appendices

Appendix 1: Proposed sections for amendments

Sections of the Political Parties Act, 2011	Issue(s)	Proposed Amendment(s)	Rationale
Section 2	Only defines Special Interest Groups (SIGs) – Women, Youth and PWDs	Amend to be very specific on what political parties should do to address PWDs participation in decision making	PWD issues get lost on Youth and Women consideration in political parties
Section 7 (2b)	Representation of SIGs in party organs as a condition for political party registration	Amend to unbundle SIGs and insert proportional or percentage representation by the SIGs especially PWDs	This amendment will provide proportional representation of PWDs in Political parties and will enhance accountability
Section 9	Contents of constitution or rules of a political party	Amend to include other demographics such as PWDs other than gender	This will make PWDs issue to be on the table as political parties are formed and registered
Section 21 (1g &h)	The act provides for suspension and de-registration of a political party and mentions as one of the blanket conditions, lack of inclusion of SIGs.	Should be amended to be specific on the representation of SIGs.	This will make it easier for political parties to be held accountable on the inclusion of PWDs
Section 26	Amend to provide for specific proportions in the utility of the Political Parties Fund	To be amended to provide for specifics in the utility of the Political Parties Fund	This will save for example PWDs for being que-jumped by political parties in the consideration of the fund

		Amend to provide the withholding of funds by the registrar when a political party fails to comply with the Constitutional provisions for inclusion of special interest groups.	This will enhance discipline in the usage of the fund
Section 38 (f)	This section vest institutional responsibility in the conduct of political party nominations.	Amend to put the party primaries to an independent institution to avert biasness against PWDs	This approach could enhance the transparency and objectivity of the party nominations and encourage more PWDs and other SIGs to participate in and be elected to political positions.
Section 38G	Section 38G of the Political Parties Act on the conduct of indirect nominations	Amended to prescribe that principles of inclusion and equity shall guide such process, and that parties shall prioritize the interests of PWDs in indirect nomination.	
Section 45	Offences and Penalties Offences and penalties for violations of the Political Parties Act	Amend to include lack of compliance during nominations, of members of PWDs	

Appendix 2: Interview guide for key informants

These questions were mainly adopted from WFDs PLS inquiry guidelines and were contextualized to the specific stakeholder/s interview.

1. Information on when and how different provisions of the Act had been brought into operation; information highlighting any provisions which had not been brought into force, or enabling powers not used, and explaining why not.
2. A brief description or list of the associated delegated legislation, guidance documents or other relevant material prepared or issued in connection with the Act; an indication of any specific legal or drafting difficulties which had been matters of public concern (e.g. issues which had been the subject of actual litigation or of comment from parliamentary committees) and had been addressed.
3. A summary of any other known post-legislative reviews or assessments of the Act conducted by the executive side of the government, or other MDAs.
4. A short preliminary assessment of how the Act has worked out in practice, relative to objectives and benchmarks identified at the time of the passage of the Bill.
5. Have the original objectives of the law been achieved in quality, quantity and time, when measured against the base case of what would have happened without the intervention of this law?
6. To what extent has the law brought about the achievement of the objectives or has it induced activity that would not otherwise have occurred?
7. Has implementation been affected, adversely or advantageously, by external factors?
8. Have any significant unexpected side effects resulted?
9. Have all the input required from Government and the private sector been made as planned?
10. Have any of the allocated resources been wasted or misused?
11. Has the law implementation led to any unfairness or disadvantage to any sector of the community?
12. Could a more cost-effective approach have been used?
13. What improvements could be made to the law and its implementation that might make it more effective or cost-efficient?
14. Overall is the law and how it has been applied well suited to meeting the desired objectives?
15. Have assumptions made during the passage of legislation (on costs, or timings, or impact) held true and if not, why not?

Westminster Foundation for Democracy (WFD) is the UK public body dedicated to supporting democracy around the world. Operating internationally, WFD works with parliaments, political parties, and civil society groups as well as on elections to help make political systems fairer, more inclusive and accountable.

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