



# Rapid Assessment SURVEY REPORT

## Barriers to Participation of PWDs in Kenya's 2022 General Elections

A Case of Baringo, Nakuru and Narok Counties



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Developed and Supported by:



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# Abbreviations

CRPD	-	Convention on the Rights of Persons with Disabilities
CEDAW	-	Convention on the Elimination of All Forms of Discrimination against Women
ELOG	-	Election Observation Group
EIWEN	-	Endorois Indigenous Women Empowerment Network
ICCPR	-	International Covenant on Civil and Political Rights
ICESCR	-	International Covenant on Economic Social and Cultural Rights
IEBC	-	Independent Electoral and Boundaries Commission
KNHRC	-	Kenya National Human Rights Commission
NCPWD	-	National Council for Persons with Disability
NGEC	-	National Gender and Equality Commission
PWDs	-	Persons with Disability
UDHR	-	Universal Declaration on Human Rights

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Ms. Christine Kandie,  
Executive Director,

**Endorois Indigenous Women Empowerment Network (EIWEN)**

## Executive Summary

Persons with Disability make up about 2% of Kenya's population as per the 2019 Kenya Population and Housing Census. Over and above their ever increasing numbers, PWDs have unique needs and unique reasons for improving public services, especially in social sectors. As such their representation is not just a matter of law but also of necessity for inclusive and sustainable development. Informed by global human rights instruments, the Constitution of Kenya and subsequent legislations provide an elaborate framework for inclusion and participation of PWDs in the electoral process.

With a view of promoting this cause, Endorois Indigenous Women Network (EIWEN) in partnership with Minority Rights Group International (MRG) is implementing a project titled, *'Monitoring the extent of inclusion of PWDs from marginalized ethnic minorities into Kenya's leadership and political Space'*. EIWEN commissioned a rapid assessment on the progress

### PWD CANDIDATES

6

Number of PWDs registered as candidates in 2022 General Elections in the 3 target

achieved towards inclusion of Persons with Disabilities from Marginalized & Indigenous Ethnic Minorities in Baringo, Narok and Nakuru Counties as part of project implementation. The assessment found that participation of PWDs in the electoral process remains low. Across the target counties, not a single PWD was elected to office for any of the five positions contested at ward, constituency and the county level.

Only 6 PWDs were registered as candidates in the general election in 2022 as the majority of PWDs who aspired for elective positions were eliminated at the level party nominations. Pertaining voter registration, only 0.65% of registered voters in the 2022 general election were persons with disabilities. Low access to information among PWDs, weak internal democracy in political parties, non-consideration of the unique of PWDs by IEBC, financing challenges, stigmatization, propaganda and violence are among the key barriers for participation of PWDs in 2022 elections.

Even with the aforementioned challenges, there are emerging opportunities to bolster participation of PWD in the electoral processes. These include open election processes, progressiveness in political parties, opportunity to vie on independent tickets and advocacy for PWD inclusion by CSOs.

This report thus recommends sustained civic and political education targeting PWDs and the general public. IEBC should create mechanisms to facilitate PWDs in critical electoral processes



such as voter registration and elections. It should also make voter registration centers and polling stations PWD-friendly and progressively consider having sign language interpreters, ballot papers printed in braille among other unique needs for PWDs.

On the other hand, political parties should adhere to the principle of inclusivity and adopt progressive policies and practices that promote participation of PWDs. On their part, PWDs should participate actively in constituting and managing the affairs of the political parties with a view to influence internal policies, regulations and practices in their favor. Based on the lessons learnt so far, Parliament should review existing electoral laws to further promote representation of PWDs in the elective bodies.

## Introduction

According to the Kenya Population and Housing census report conducted in 2019, there are an estimated 9 million Kenyans who are Persons with Disabilities (PWDs). There are more male PWDs than female ones. The Constitution of Kenya and a host of other supporting legislations and international instruments that Kenya has ratified seek to advance the rights of PWDs, including the right to participate in governance processes. Despite this, these rights are yet to become reality for the majority of PWDs. Having conducted the third general election under the constitution of Kenya 2010 in 2022, the question on how well PWDs engaged with the election process as candidates and voters have emerged.

It is for this reason that the Endorois Indigenous Women Empowerment Network (EIWEN), an indigenous local CBO conducted a rapid assessment survey on inclusion and participation of PWDs in the 2022 general election. As a women-led organization, its mandate is to advocate for the rights of women, persons with disabilities and girls in the Endorois Community. EIWEN was founded in 2016 and registered legally in 2019 by local Endorois women who were committed to improving the living standards. The Endorois are an indigenous minority community that lives in Baringo, Nakuru and Laikipia Counties in Kenya. The community has had a long struggle for recognition and compensation for land that was forcefully taken away by the Government of Kenya in 1974. The Endorois community has a strong affiliation to its culture. It is also a highly patriarchal community.

These aspects infringe the rights of women, girls and persons with disabilities, and hinder them from achieving social, economic and political development. EIWEN works to improve the quality of life for these groups by empowering them economically, socially and politically. In response to these functions, EIWEN has undertaken a desktop review to find out leadership barriers amongst Persons with Disabilities (PWDs) seeking leadership positions, data for the 6 counties, include percentages of those who vied and those successful.

Therefore this project focuses on the inclusion and involvement of Persons with Disabilities (PWDs) from marginalized ethnic minorities in Kenya in leadership and political spaces. The project aims to monitor the extent of involvement and inclusion of PWDs in leadership and political spaces and to analyze the 2022 general election data for PWDs elected. It also addresses the issues of leadership barriers for PWDs, the abuse of their rights, the implementation of legal and policy frameworks, and the challenges faced by PWDs seeking elective positions. The way forward for ensuring the rights and inclusion of PWDs in Kenya is also a key focus of the project.

## Background

When it comes to participation in social, political, and economic affairs, persons with disabilities have remained at the periphery despite their rising population. According to the 2019 Kenya Population and Housing Census Report<sup>1</sup>, 918,270 people out of 41,235,190 persons aged 5 years and above are Persons with Disability (PWDs). This represents 2% of Kenya's population. Statistics further show that Kenya has a higher population of female PWDs, totaling 523,883 compared to male PWDs whose number stands at 394,330. The number of PWDs is believed to be relatively high among indigenous communities due to the structural and historical marginalization of these communities.

### PWD POPULATION

**2%**

Proportion of Kenya's  
population that constitutes  
PWDs

In Kenya, PWDs are viewed as people that need assistance as opposed to active players in key decision-making processes, a perception that has contributed to their low participation in social, political, and economic affairs over the years. Social factors such as patriarchy that are strongly embedded in cultural norms and beliefs aggravate the situation for PWDs in indigenous communities. After decades of marginalization, Kenya's legal framework has changed progressively in favor of inclusivity and

participation of traditionally marginalized groups in key governance and development processes. This change has resulted from sustained advocacy for inclusivity anchored on global and regional human rights instruments highlighted in section 2 of this report.

Today, Kenya's Constitution provides a strong anchorage for mainstreaming rights of persons with disability in the socio-economic and political spheres by explicitly protecting their freedoms and rights and providing for affirmative action. Additionally, inclusivity, human dignity, equity, social justice, equality, human rights, non-discrimination and protection of the marginalized are embedded in the national values and principles of governance. These values and guiding principles are applicable in all governance and development processes, effectively binding all state organs, state officers and public officers to ensure that PWDs engage actively in decision making processes.

Beyond the human rights that apply to all persons, Article 54 of Kenya's Constitution guarantees PWDs their rights to dignity and access to basic services, information, and public transport in all places. The Constitution further obligates the state to take progressive measures to ensure that *'at least five percent of the members of the public in elective and appointive bodies are persons with disabilities.'*

A key hallmark of the Constitution of Kenya is the devolved system of governance. Notably, representation and participation of marginalized and minority groups in governance and development processes is among the objects of devolution. The constitution seeks to enhance inclusion of PWDs through special seats in the County Assembly, reserving 5% of County leadership<sup>2</sup> for PWDs and promoting gender responsive County policies and budgets among others. Further, the Persons with Disability Act, 2003 seeks to operationalize access to rights and privileges of PWDs in Employment, Education, Health, Accessibility, Leadership and Mobility among others.

## The Problem

In living up to its democratic tenets, Kenya conducts elections every five years. But despite having elaborate and progressive legal provisions to enhance PWD participation in elections, the PWD constituent still lags behind when it comes to representation and participating in elections as candidates. Election observation reports<sup>3</sup> show that the majority of PWDs do not register as voters nor turn up to vote. When they offer themselves as candidates in elections, PWDs are often disadvantaged due to cultural and structural barriers. Persons with disabilities from indigenous communities suffer double marginalization as leadership is viewed as a preserve of men and able-bodied individuals by their communities.

This calls for deliberate efforts to enhance inclusion and participation of persons with disabilities in elections including analyzing the problem, its manifestations and the contributing factors. To this end, EIWEN conducted a rapid assessment survey on participation of PWDs in the 2022 general elections. The study focused in 3 Counties namely Baringo, Narok and Nakuru, where majority of the members of the Endorois community reside. The survey was part of the project dubbed, *'Monitoring the extent of inclusion of PWDs from marginalized ethnic minorities into Kenya's leadership and political Space'*. The overall objective of this project is to monitor the extent of involvement and inclusion of PWDs from Marginalized ethnic minorities in Kenya in Leadership and Political spaces. This report presents the experiences and analysis of the outcome of Kenya's 2022 general elections with regard to participation and inclusion of PWDs.

<sup>2</sup> County Executive Committee Members, Chief officers etc.

<sup>3</sup> [https://elog.or.ke/election\\_reports/the-unaccounted-voice/](https://elog.or.ke/election_reports/the-unaccounted-voice/)

# Methodology

The rapid assessment survey on inclusion and participation of PWDs from indigenous and minority groups in Kenya's elections was conducted in three counties – Baringo, Nakuru and Narok.

## Sampling Procedure

Purposive sampling was used to select respondents of the rapid assessment survey. Respondents were PWDs who participated in the 2022 general elections either as candidates or individuals who sought party nominations to represent PWDs in county assemblies.

## Data Collection and Analysis

Primary and secondary data was collected to inform the findings of this rapid assessment survey. Two data collection methods were used to collect data:

1. *Interviews:* Primary data was collected through focus group discussions with PWDs who participated in the 2022 general elections. A data collection tool with guiding questions was developed and used to guide discussions during the FGD. Participants for the FGD included PWDs who vied on independent tickets, individuals who participated in party primaries and those that applied for nomination to county assembly.
2. *Desktop Review:* Secondary data was collected using a desk review of Kenya's Constitution, legislations and international instruments that outline and protect the rights of PWDs and minority groups to participate in governance processes, including leadership. The desk review also involved reviewing reports by national and international agencies, including the IEBC, ELOG and KNHRC on participation of PWDs in elections.

Analysis of the data collected through interviews and desktop reviews was undertaken to identify the main barriers to participation and inclusion of PWDs from indigenous and minority groups in electoral processes in Kenya. The data was analyzed using the inductive method where thematic analysis was used to establish common patterns and narrative analysis was used to make sense of the responses provided by respondents.

## Ethical Considerations

The survey was conducted in compliance to the following ethical considerations:

1. *Informed Consent*: Respondents were informed about the survey to enable them make an informed decision on whether to participate in it or not. They were informed about the purpose of the survey and how the findings will be used.
2. *Voluntary Participation*: Respondents will not be coerced to participate in the survey – their participation was purely voluntary.
3. *Confidentiality*: Information that can lead to identification of informants was not made accessible to third parties, other than EIWEN's officers and partner, Minority Rights Group. Identification information has not been included in this report and the wording of this report does not, in any way, allow for identification of respondents even without the mention of names.
4. *Do No Harm*: The survey was conducted in a manner that did not harm respondents either by causing them stress, anxiety, or pain. Interviews were conducted in a way that does not invade the privacy of informants or diminish their self-esteem.

## Limitations of the Survey

1. The rapid assessment survey only focused on participation and inclusion of PWDs in the 2022 general elections and only covered three counties - Baringo, Nakuru and Narok
2. There were gaps and inconsistencies in data publicly available on PWD participation in the 2022 general elections. For instance, a review of information on voters registered per county published on the IEBC website was not disaggregated by gender and disabilities.
3. The rapid assessment survey relied mainly on publicly available information and insights from PWDs who vied for elective positions and PWDs organizations. No Key Informant Interviews targeting IEBC officials and other key stakeholders in the electoral cycle management were conducted.



## Legal, Policy and Institutional Framework

This section summarizes aspects of the legal, policy and institutional framework that underpins participation and inclusion of persons with disability in governance and political processes. It highlights the international, regional and national legal and policy instruments that protect and promote participation of PWDs in elections. It is worth noting that the Constitution of Kenya, Article 2(5), binds Kenya to all international frameworks which it has ratified. Thus, the following are some of the frameworks relevant to the subject of study:

### Global and Regional Human Rights Instruments

In 1948 the United Nation General Assembly proclaimed a common standard for observance, protection and fulfillment of Human Rights. The Universal Declaration of Human Rights (UDHR) sets out fundamental human rights to be universally protected.

Article 2 of UDHR states that, *'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the*

*country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.'*

Regarding participation in governance, the UDHR guarantees every person the right to take part in the government of his country either directly or indirectly through freely chosen representatives. It further states that, *'The will of the people shall be the basis of the authority of government; this will be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.'*

Essentially, the UDHR guarantees PWDs the right to participate in political processes including voting, and that their vote counts on equal measure. It also guarantees all persons, including PWDs, the right to aspire for elective positions. The UDHR has inspired and paved the way for several other international, regional and national human rights instruments.

In 2006 the UN general assembly adopted the Convention on the Rights of Persons with Disabilities (CRPD) 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.

This was a great turn around among nations from viewing PWDs as people to be assisted to active and able players in all spheres of life, including political processes.

Article 29 states that, *'States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake:*

- a. To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:
  - i. Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;
  - ii. Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to

## PWD POLITICAL RIGHTS

The UDHR guarantees PWDs the right to participate in political processes including voting, and that their vote counts on equal measure.



- effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;
- iii. Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;
- b. 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 affairs, including:
- i. Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;
  - ii. Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.'

Other human rights instruments and the relevant provisions are as summarized in the table below:

*Table 1: List of International Human Rights Instruments with PWD Provisions*

Instrument	Key Provisions on PWD Participation and Representation
International Covenant on Civil and Political Rights 1976	<p>ICCPR enshrines classical political rights, such as the right to freedom of thought (article 18) and freedom of opinion (article 19), the right of peaceful assembly (article 21), the right to take part in the conduct of public affairs (article 25) and equality rights (articles 2, 3 and 26)</p> <p>The right of assembly (article 21) and the right to take part in public affairs (article 25) again raise issues of access to places where political life is played out. The right to vote (article 25), as a classic democratic right, is of central importance to the realization of freedom of thought and expression among PWDs.</p> <p><i>Article 25 states that, 'Every citizen shall have the right and the opportunity... to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors'</i></p>
International Covenant on Economic Social	<p>Under article 2, paragraph 2, of the ICESCR, the States parties: undertake to guarantee that the rights enunciated in the Covenant are exercised without discrimination of any kind as to race, color, sex, language,</p>

and Cultural Rights (ICESCR) 1976	religion, political or other opinion, national or social origin, property, birth or other status
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979	<p>CEDAW is often described as the international bill of rights for women, and is one of the key international agreements that guides the UN member states towards achieving gender equality and empowering all women and girls.</p> <p>Among other provisions, article 7 of the convention requires state parties to take measure measures to eliminate discrimination against women in the political and public life of the and ensure to women, equal right: <i>(a) to vote in all elections and public referenda and to be eligible for election to all publicly elected bodies; and (b) to participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;</i></p> <p>The CEDAW protections cover all women, including women with disabilities, from all forms of discrimination.</p>
African Charter on Human and Peoples' Rights (The Banjul Charter);	<p>Article 2 entitles every individual to the enjoyment of the rights and freedoms recognized and guaranteed in the Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.</p> <p>Every citizen has the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.</p> <p>Article 21 of the Protocol to the African Charter on Human and peoples' Rights on the rights of people with Disabilities in Africa states that, <i>'Every person with disability has the right to participate in political and public life.'</i></p>
The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)	<p>Article 9: States Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that:</p> <ul style="list-style-type: none"> <li>a) women participate without any discrimination in all elections;</li> <li>b) women are represented equally at all levels with men in all electoral processes;</li> <li>c) women are equal partners with men at all levels of development and implementation of State policies and development programmes</li> </ul>

## The Constitution of Kenya, 2010

The mainstay of the Constitution of Kenya is to promote the well-being of all the Kenyan citizens. The Constitution guarantees fundamental rights and freedoms in such a breadth and depth that it has been taunted as among the most progressive constitutions in the world. The Constitution was developed against a backdrop of systemic marginalization of certain communities and groups. The criteria for sharing of resources and opportunities were largely at the whims of individuals in power as opposed to values of participation, equity, non-discrimination and inclusivity.

To redress these issues, the Constitution has expressly provided for national values and principles of governance that bind all persons in the exercise of the powers conferred to them by the constitution. The national values are unbundled, emphasized and enriched in various subsequent articles of the Constitution of Kenya as summarized in table below:

*Table 2: Constitutional Provisions on PWDs*

Relevant Article	Specific Provisions
Article 1	All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution.
Article 10	Among the national values and principles governance are: <i>human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized;</i>
Article 21	Article 21 obligates the state and state organs to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights.
Article 27	Article 27 emphasizes equality before the law for all persons including enjoyment of all rights and fundamental freedoms.  It further provides that, <i>'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.'</i>
Article 28	Every person has inherent dignity and the right to have that dignity respected and protected.

Article 38	Gives every citizen freedom to make political choices including forming, or participating in forming of political party; to participating in the activities of, or recruiting members for, a political party; and campaigning for a political party or cause.
Article 54	<p>A person with any disability is entitled—</p> <ul style="list-style-type: none"> <li>a) to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning;</li> <li>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;</li> <li>c) to reasonable access to all places, public transport and information;</li> <li>d) to use Sign language, Braille or other appropriate means of communication; and</li> <li>e) to access materials and devices to overcome constraints arising from the person's disability.</li> </ul> <p>(2) 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.</p>
Article 81	One of the principles for electoral system is fair representation of persons with disabilities
Article 97	The National Assembly consists of twelve members nominated by parliamentary political parties according to their proportion of members of the National Assembly in accordance with Article 90, to represent special interests including the youth, persons with disabilities and workers
Article 177	Apart from members elected from County Assembly wards, the County Assembly comprises a number of special seats to meet the two-third gender rule and representation of marginalized groups, including persons with disabilities.
Article 98	The Senate should have at least 2 PWDs, one woman and one man, selected using the party list criteria set out in the article 90 of the Constitution and the Elections Act 2016.
Article 100	Parliament is required to enact legislations to promote representation of persons with Disability in Parliament.

## Persons with Disability Act, 2003

Persons with Disability Act 2003 seeks to operationalize access to the rights and the privileges of persons with disabilities in Employment, Education, Health, Accessibility, leadership and mobility among others.

*Table 3: Summary of PWD Rights Contained in the PWD Act, 2003*

Section	Specific Provision
Section 11	The Government shall take steps to the maximum of its available resources with a view to achieving the full realization of the rights of persons with disabilities set out in this Part
Section 12	<p>(1) No person shall deny a person with a disability access to opportunities for suitable employment.</p> <p>(2) A qualified employee with a disability shall be subject to the same terms and conditions of employment and the same compensation, privileges, benefits, fringe benefits, incentives or allowances as qualified able-bodied employees.</p> <p>(3) An employee with a disability shall be entitled to exemption from tax on all income accruing from his employment.</p>
Section 29	<p>(1) All persons with disabilities shall be entitled at their request, to be assisted by persons of their choice in voting in presidential, parliamentary and civic elections.</p> <p>(2) A person who undertakes to render assistance under subsection (1) shall do so strictly in accordance with the instructions of the voter.</p> <p>(3) A person described in subsection (2) shall bind himself, in the prescribed form, to comply with that subsection.</p> <p>(4) A person who contravenes subsection (2) is guilty of an offense.</p>
Section 30	Polling stations Polling stations shall be made accessible to persons with disabilities during elections, and such persons shall in addition be provided with the necessary devices and assistive devices and services to facilitate the exercise of this right under this section

## Election Related Policies

The electoral process in Kenya is guided by a host of laws and regulations. As illustrated in the table below, each of them lays a specific emphasis on inclusion and participation of persons with disabilities in political and electoral processes.

Table 4: Election-Related Legislations

Statute	Specific Provisions on PWD Participation
Political Parties Act	<p>Under section 4, political parties are required to develop and implement measures, including affirmative actions, for the progressive realization of representation and participation of the special interest groups<sup>[1]</sup> in decision-making organs. One of the conditions for registration of a political parties having representation of special interest groups both in its membership and governing bodies</p> <p>Section 26 (a)(1) requires political parties to use monies allocated them from the Political Party Fund to be used for purposes compatible with democracy including— <i>promoting the representation in Parliament and in the county assemblies of women, persons with disabilities, youth, ethnic and other minorities and marginalized communities</i></p> <p>The formulae for distribution take into account <i>the number of candidates of the party from special interest groups elected in the preceding general election</i>. Section 5 requires everyone to respect the right of all persons to participate in the political process including special interest groups.</p>
Election Offences Act, 2016	<p>Promotes the right of PWDs to participate in elections by protecting them from any form violence and other election offenses.</p>
Elections Act, 2011	<p>Election Act section 16 requires every registered political party referendum committee, candidate and agent <i>to ensure security and full participation of women and persons with disabilities as candidates and voters and ...ensure free access of women and persons with disabilities to all public political meetings, marches, demonstrations, rallies and other public political events</i>.</p> <p>Section 36 allocates PWDs 2 among seats among the 8 members of the party list for County Assembly to fill the two-third gender rule in line article 177 of the Constitution.</p> <p>Section 104 requires the Independent Electoral and Boundaries Commission to put in place infrastructure and officers to facilitate voting by PWDs.</p>
The Independent Electoral and Boundaries Commission Act, 2011	<p>Section 25 outlines the principles that guide IEBC in executing their mandate, including fair representation of PWDs in electoral matters.</p>

Other key electoral-related laws include:

- Code of Conduct for Political Parties, 2016
- Election Campaign Financing Act No. 42 of 2013
- Election Laws Amendment Act 36 of 2016
- Election (Party Primaries and Party Lists) Regulations 2017
- Elections Laws Amendment Act 1 of 2017
- Supreme Court Act (No. 7 of 2011)
- The Elections (Technology) Regulations, 2017
- The Elections (Voter Education) Regulations, 2017
- The Elections Party Primaries and Party (Lists) Regulations, 2017

## Enforcement Institutions and their Mandate

To promote and enforce the values and principles of participation, inclusivity and non-discrimination, the Constitution of Kenya and acts of parliament establish various institutions, including independent offices and commissions, with interrelated functions. Some of these institutions have a direct mandate while others have an indirect mandate to ensure progressive implementation of the commitment to have at least 5 % of appointive and elective bodies being persons with disabilities. The table below identifies enforcement institutions and their mandate in relation to representation of PWDs in elective positions:

*Table 5: Enforcement Institutions and their Mandate*

Institution	PWD Representation Mandate
National Council for Persons with Disability (NCPWD)	To facilitate Disability Mainstreaming Programmes in Public and Private Sector.
National Gender and Equality Commission (NGEC)	To promote gender equality and freedom from all forms of discrimination in Kenya, especially for special interest groups through ensuring compliance with policies, laws and practice
Commission on Administrative Justice (CAJ)	Ensure that all citizens get administrative justice and access to public information

Independent Electoral and Boundaries Commission (IEBC)	<p>The Commission has the constitutional mandate to conduct and supervise referendums and elections to any elective body or office established by the Constitution, and any other elections as prescribed by an Act of Parliament</p> <p>In carrying out its mandates , the Elections Act requires IEBC to ensure security and full participation of women and persons with disabilities as candidates and voters</p>
Office of the Registrar of Political Parties (ORPP)	To promote democracy, register, regulate and promote political parties.
Political Parties Liaison Committee	To champion and advocate for a free, fair, peaceful and transparent electoral environment and processes in Kenya; To provide a platform for structured multi-party dialogue between Political Parties and the Electoral Management Body on issues relating to the organization and conduct of elections and the electoral environment generally.
Kenya National Commission on Human Rights	The KNCHR is broadly mandated with the promotion and protection of human rights in Kenya. Further, the KNCHR also plays a watchdog role over the Government in the area of human rights and provides a leadership role in moving the country towards a human right respecting state.
National Assembly & Senate	Enact legislations to promote the representation of PWDs
County Assemblies	Protect the interests of persons with disabilities through legislation and representation at the county level.

Considered as the point of last resort, the Judiciary has the mandate of resolving disputes in a just manner with a view to protecting the rights and liberties of all, thereby facilitating the attainment of the ideal rule of law. Court rulings on public participation and inclusivity also form the basis for policy formulation and administrative actions, including affirmative actions for PWDs.

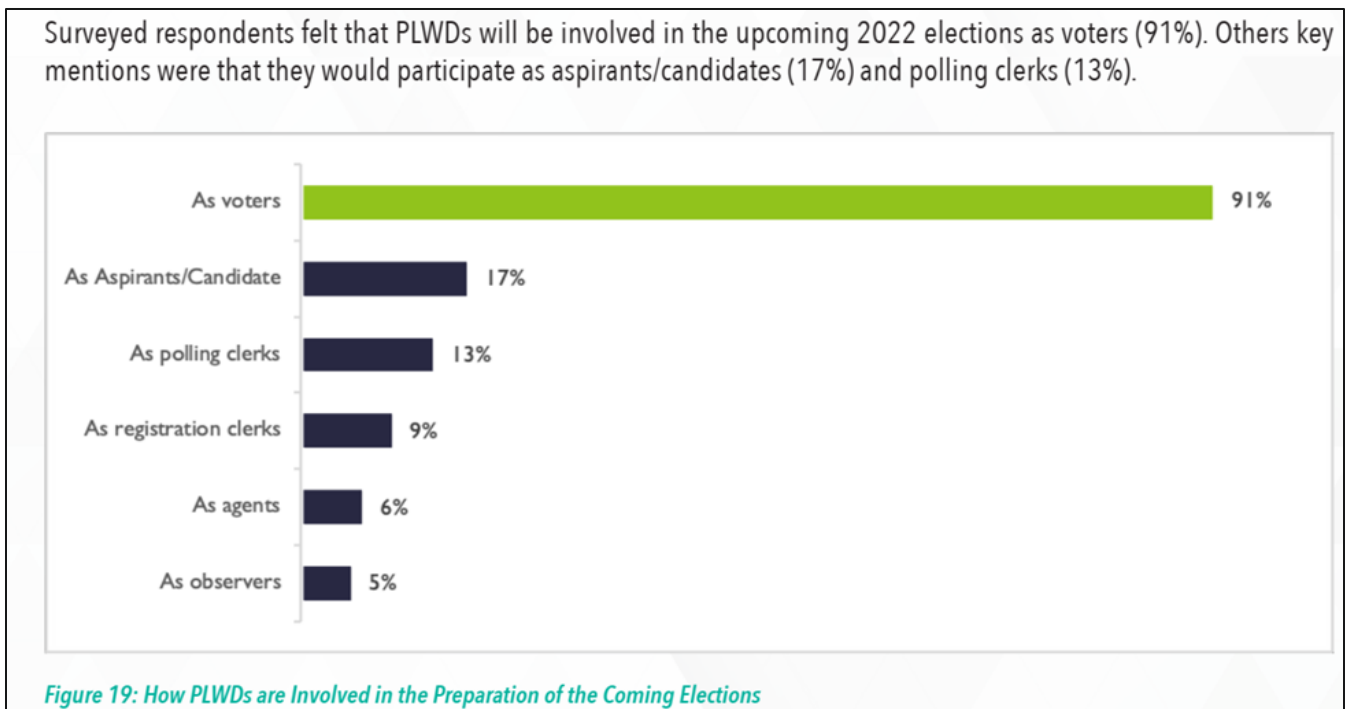
Beyond Kenya's Court Systems, Persons with Disability can seek redress from courts with regional and international jurisdiction if they feel that their rights with regards to participation in political affairs have been violated and that no reprieve is likely to be found within Kenya's legal systems.



## Key Survey Findings

Participation of PWDs in the electoral process is generally low. In a survey<sup>4</sup> conducted by the Election Observation Group in 2022 only 17% of respondents felt that PWDs would be involved as aspirants/ candidates in the 2022 general elections. A majority of 91% felt that PWDs would be involved as voters as shown in the figure below.

*Figure 1: Mode of PWD Participation in 2022 Elections*



These perceptions would later turn into reality in the run up to the 2022 general elections. For instance in Baringo County, about 10 PWDs aspired for the 30 MCA seats and sought nominations by political parties. All these lost in the party primaries except one. In Nakuru County 5 PWDs offered themselves as candidates in the 2022 general elections while none did in Narok County. Consequently, not a single PWD was elected into the respective county assemblies in Baringo, Narok and Nakuru Counties. The study also established that there were no PWD aspirants/candidates vying for the Member of National Assembly, Senate and Governor positions in any of the three target counties.

Voting is the most basic step for exercising one's democratic rights. The Constitution of Kenya provides that citizens may exercise their sovereign power either directly or indirectly through

democratically elected leaders. Therefore, it is through voting that we install a leadership whom we trust will take care of our interest in governance and development process.

In Kenya, citizens must register as voters in order to participate in a general election by voting. IEBC conducts continuous voter registration to mobilize unregistered citizens to register at the Constituency IEBC offices and Huduma Centres. In the run-up to the 2022 general elections, the Commission conducted two week-long Enhanced Voter Registration activities where voter registration was decentralized to the ward level. This was bolstered by mobilization activities supported by civil society organizations, media and other stakeholders.

Despite these efforts, the number of PWDs registered as voters remained very low. The number of PWDs registered as voters stood as 143,812, representing 0.65% of the 22,102,532 total registered voters. In a survey<sup>5</sup> conducted by ELOG, respondents cited various reasons for the low level of participation of PWDs in voter registration. Key among these were: *inaccessibility of registration centers, apathy among PWDs, lack of national IDs and lack of trust in the elections.*



## Barriers to PWD Participation in Electoral Processes

The following emerged as key barriers to PWD participation in electoral processes based on experiences shared by PWDs during a Focus Group Discussion:

### 1. The Cost Barrier

Cost is among the major challenges that PWDs seeking political leadership face. Despite having the Political Party Act, the law that allows for financing of political parties, financing rarely trickles down to PWD candidates. The situation is worse for independent candidates due to the fact that they lack political party backing. During the 2022 elections, PWDs experienced challenges financing campaign activities, meeting costs associated with registration of candidates, and raising nomination fees.

Although political parties waived nomination fees for PWDs and IEBC reduced candidates' registration fee by 50%, PWDs that sought to be included in party lists had to pay membership and nomination fees to political parties. For instance, one of the popular parties in Kenya charged PWDs a total of Kshs. 30,000 to include them in party lists i.e. Kshs. 20,000 life membership fee and Kshs. 10,000 nomination fee.

The cost of printing merchandise, posters, banners, movement and holding campaign meetings was extremely high for most PWDs, particularly those seeking elective seats for the first time. These costs forced many to resort to the door-to-door strategy to popularize their candidature. Other hidden costs that candidates had to bear include logistics for collecting supporting signatures and photocopying IDs for independent PWD candidates and hiring agents on Election Day. For instance, there were 26 polling stations in Koibatek ward, Baringo County, where one PWD candidate was seeking an MCA seat. They needed to hire an agent for each polling station, even at a stipend of Ksh. 1,000, the candidate needed Kshs. 26,000, which he couldn't afford.

#### POLITICAL PARTY CHARGES

# KSHS. 30,000

AMOUNT THAT ONE POPULAR  
POLITICAL PARTY REQUIRED  
PWDs TO PAY TO BE  
INCLUDED IN THE PARTY LIST

Inefficiencies within the election management body, IEBC, further increased costs for PWD aspirants. For instance, an independent PWD candidate reported that she had to travel all the way to Nairobi to have her details entered in the IEBC database, a process that only took two-minutes. Demand for bribes by the electorates masqueraded in facilitation, which was also promoted by some candidates, further made the campaigns more expensive.

## 2. Low Awareness on PWD Rights

Although Kenya's constitution and laws provide for a wide range of PWD rights, including the right to participate in elections as candidates and as voters, few PWDs are aware of these rights. A 2014 study conducted by the KNHCR<sup>6</sup> showed that many PWDs were not aware of their rights including, including the various legislations that protect and promote their rights.

### CIVIC EDUCATION

Most PWDs are unaware of their rights including, including the various legislations that protect and promote their rights

### 2014 KNHRC Report

based on sex and age, in all areas of life; and promote awareness of the capabilities and contributions of PWDs.

The low awareness of rights among PWD constituents is largely due to inadequate civic education targeting PWDs. Increased awareness of PWD rights can build PWD confidence to demand for space in the decision making table.

Article 8 of the CRPD requires state parties to adopt immediate, effective and appropriate measures to, among others, raise awareness throughout society regarding PWDs, foster respect for the rights and dignity of PWDs, combat stereotypes, prejudices and harmful practices relating to PWDs, including those

## 3. Unfair Treatment by IEBC

Although IEBC waived 50% of registration for PWD candidates, the election management body applied the same treatment to all candidates for most of the other requirements. For instance, the commission rejected a request by Independent PWD candidates to allow them additional time to collect signatures and ID copies from their supporters due to mobility challenges. Like

every other independent candidate, PWD aspirants were expected to submit their signatures within 2 weeks.

While PWDs have sought legal redress, there have also been technicalities that have denied them justice. For example, the ruling<sup>7</sup> in a case filed by Reuben Kigame, a presidential candidate, required IEBC to waive the requirement of 2,000 signatures in at least 24 counties and reconsider his papers and the signatures. However, IEBC could not implement the ruling citing that the printing of ballot papers for presidential candidates was at an advanced stage. As at the time of conducting this assessment, there were active cases in various courts in Kenya on representation of PWDs in the County Assemblies yet IEBC was fully not constituted.

PWDs engaged in the Focus Group Discussion raised the question, *'Suppose the court ruled in our favor, who is going to gazette PWDs as members of the respective County Assemblies?'*

Further, the lack of statistical data on PWDs at IEBC limits its ability to prepare adequately for their participation in elections. In the absence of disaggregated PWD data such as gender, age and geographical location, the Commission cannot prepare adequately for PWD participation in elections.

#### **4. Mobility and Security Challenges**

PWD aspirants, particularly those from indigenous communities experienced mobility challenges traversing the vast electoral units characterized by poor road network. Lack of mobility aids and good vehicles made it challenging for indigenous PWD aspirants to access and cover the difficult terrain and long distances in counties such as Baringo and Narok.

Other notable mobility issues that PWDs had to contend with include high platforms used during campaigns that were not friendly to PWDs. Some of the meeting venues used for IEBC meetings lacked PWD facilities like ramps. They had staircases and steps that made it challenging for PWD aspirants to access.

## PWD INCLUSION

### FAMILY AND COMMUNITY MEMBERS ARE CENTRAL TO INCLUSION OR NON-INCLUSION OF PWDs

#### *UNHCR REPORT*

Community and family members also contribute to participation or non-participation of PWDs in political activities. A report by UNHCR<sup>8</sup> showed that relatives of PWDs as well as members of the broader community are central to the inclusion or exclusion of PWDs. Some PWDs rely on the support from family and community members for mobility and other forms of support during elections. Where family members give in to society stigma, the risk of PWDs exclusion

increases significantly.

Disability also exposes PWD candidates/aspirants to unique security challenges that disadvantage them in their pursuit of elective seats. Unlike able-bodied candidates, PWD aspirants could not campaign after dark as this exposed them to security threats due to mobility challenges. There were also reports where able-bodied candidates targeted PWD family members, especially children, with threats in a bid to frustrate them and force them out of the elective race.

### 5. Social and Cultural Stigma

Deep rooted cultural attitudes and beliefs subjected PWD aspirants in all target counties to social stigma and political and verbal violence. In minority communities such as the Endorois, community perception of who PWDs was distorted, with many community members holding the belief that PWD aspirants that are self-sufficient and owning property are not PWDs in real sense.

Community members had a preference for able-bodied candidates than PWD aspirants as they perceived the latter to be weak and incapable of leading them. To a large extent,



**'You have to use a lot of energy and funds to counter the negative perceptions against PWD aspirants and explain that leadership is not about body ability,'**

*PWD Candidate*

PWDs face stigmatization due to low awareness of their rights among the public.

Additionally, government officials in election bodies, particularly the IEBC had little appreciation of inclusivity. Able-bodied aspirants leveraged on community cultural norms and beliefs to attack and troll PWD aspirants, advising citizens not to elect them as they are incapable of working for them. This narrative was extremely difficult for PWD aspirants to challenge.

*'Wewe wacha wanaume  
wapambane, we kuja nikupeleke  
kwa wakubwa wakupange,'*

*2022 PWD Candidate on competitor  
persuading her to quit the race*

The situation was worse for women PWDs to the extent of being persuaded by members of their communities and their competitors to abandon the race and instead 'give priority' to family care.

As communities deliberate on who to elect, other 'unnecessary' considerations seem to come up for PWDs aspirants such as marital status, family progress etc.


## **6. Lack of PWD Friendly Facilities**

Besides inaccessibility of meeting venues, polling stations and registration centers, essential PWD friendly facilities like ramps and sanitation facilities were missing. IEBC<sup>9</sup> did not print braille ballot papers for use by voters with visual impairment claiming that they had not been budgeted for. This meant that individuals with visual disability had to be assisted during voting.

As a result, there were reports of manipulation, with some assisted voters being misdirected to vote for candidates that they didn't want. Further, IEBC meetings, including civic education sessions did not have sign language interpreters and IEC materials disseminated during civic education activities were not available in braille. These issues may have contributed to low registration of PWDs as voters and hindered participation of registered PWD voters in the 2022 general elections.

## 7. Profiling, Propaganda and Verbal Violence

As an affirmative to promote inclusivity, the constitution of Kenya and subsequent legislations have reserved some seats for PWDs. While this should be seen as a gain, some members of the community believe that PWDs should not vie for elective positions but instead wait to be nominated into the special seats.



**'Msimchague huyo, si mnajua atanominatiwa (don't elect a PWD, you know she will be nominated)'**

*2022 PWD Aspirant citing one of the Opponents*

Some able-bodied candidates have used this as a propaganda to discourage the community from electing a person with disability.

The community perception of who is a person with disability is also distorted - For example among the indigenous communities, and largely due to high level of poverty, if a PWD is self-dependent (owns property), they are told not to consider themselves as a PWD.

## 8. Access to Information Challenges

Access to information on the electoral process is critical for PWDs that seek elective positions. In an election year, IEBC often has a tight calendar of events leading up to the Election Day, particularly those relating to registration of candidates. For PWDs, election management bodies and political parties should take deliberate actions to enable them to adhere to the election calendar times. However, this was not the case during the 2022 general elections.

During party primaries, political parties published nomination guidelines and requirements. Although the parties conducted training and briefing sessions to sensitize their members about the nomination process, there were minimal efforts to reach the PWD constituents with this information. Most PWD aspirants, particularly those that vied as independent candidates reported that they were not aware of what was expected of them as independent candidates. Information on simple processes such as filing a letter of application to the commission to participate as independent candidates was not availed, an oversight that ended up costing them valuable time and resources.



## 9. Low PWD Representation in Political Party Structures

Political parties play a critical role in elections. Aspirants who want to vie for elective positions seek political party tickets and backing through party primaries. Political parties also prepare party lists with individuals to be nominated for gender top up and to fill special seats. The Political Party Act requires political parties to submit the party lists to the IEBC by June 25.

While political parties have clear leadership structures that include executive structure, elections board, and dispute resolution tribunals, PWDs rarely have representation in these structures due to internal competition and influence of 'party owners'. In some instances, well connected PWDs do not stand in solidarity with their fellow PWDs to increase their participation in political party activities for enhanced visibility. Instead, they work hard to block them from accessing party leaders.

The low representation in political party structures makes it hard for PWDs to advocate for their issues to be addressed by political parties and makes it difficult for them to demand for equity and merit in nomination through party lists. Consequently, the caliber of individuals that get party nomination to represent persons with disability over the years has been wanting. For instance, no PWD was nominated to the Baringo County Assembly after the 2022 general elections. In Nakuru County, there are allegations that the individual nominated to represent PWDs is short sighted, not visually disabled.

## 10. Unfairness and Corruption in Political Parties

Lack of internal democracy within political parties in Kenya put PWDs at a point of disadvantage. While most political parties are increasingly adopting universal suffrage as the method of nominating candidates for elective positions, they lack the capacity to do this in a free, fair, inclusive and peaceful manner.

Consequently party nominations are marred with high incidences of voter bribery, violence and allegations of rigging. There are also intra-party alliances in political parties, which are mostly founded on 'bigmanship' and mainly, the resource capacity to steer joint campaigns. PWDs hardly make it into these alliances.

Even for special seats reserved for special interest groups, it is largely believed that one has to catch the eye of the party leadership. The back and forth between political parties and IEBC<sup>10</sup> made it difficult for PWDs to monitor implementation of the regulations for party lists. The

Focus Group Participants stated that they did not have confidence in their PWDs representative in the county assemblies, national assembly and senate.

## 11. Poor/Slow Implementation of Existing PWD Policies

Slow or poor implementation of existing PWD policies hinders the realization of PWD rights, including their right to participate in governance processes. For instance, Article 81 of the Kenya Constitution highlights fair representation of persons with disabilities as one of the principles of the election system. However, implementation of this Article has been slow, with many counties, including Baringo, having no PWD representative in the County Assembly.

Inaccessibility of public spaces, including schools that serve as polling centers during elections, and failure to use appropriate means of communication including sign language and braille when passing election-related information continue to hinder PWD participation in election despite Article 54 laying out explicit provisions pertaining these rights.

Several factors contribute to slow implementation of PWD policies. These include lack of political will - elected leaders, EMBs and political parties are not keen on enhancing PWD representation and participation. Low appreciation of PWD participation in decision making among the political class and unclear provisions on the number of PWDs to be nominated to County and National Assembly also contribute to poor implementation of policies that favor PWD participation in elections.

## Opportunities for PWDs

*Is it all bleak for PWDs? Not really!* Beyond the legal and policy provisions for inclusion of PWDs, there are a number of other low hanging fruits which PWDs can capitalize on to mitigate the challenges discussed above. These include and not limited to:

- **Open Electoral Processes:** In subsequent elections, IEBC has strengthened voter education through training workshops, stakeholder conferences, ward level voter educators, and mass media. IEBC also sensitizes all aspirants/candidates on the electoral calendar, the timelines and the requirements. Through this PWDs can access information and prepare well to participate. In the 2022 general elections, IEBC also charged PWDs a lower rate for candidate registration fee. For PWDs seeking MCA position they were required to pay Kshs. 2500 as compared to Kshs. 5,000 charged on other candidates.
- **Changing community perceptions:** Community perceptions/ beliefs on 'who can be a leader' are progressively changing in favor of PWDs. In the last decade, there are PWDs

who have been elected and have performed well and thus challenging the misconceptions about PWDs leadership.

- *Mentorship*: There are PWDs who have ascended into leadership positions as high as members of the National Assembly and the Senate. These individuals can mentor others on maneuvering the political landscape, campaign strategies and other intrigues of the political spaces.
- *Growth in ICT application*: ICT platforms and tools offer PWDs new and innovative spaces to propel their campaigns at relatively lower cost.
- *Progressive political parties*: The number of political parties in Kenya is ever increasing. Each party is competing to be the most progressive in terms of democratic practices which expands opportunities for inclusion of PWDs. For instance, in the 2022 general elections, most of the parties lowered nomination requirements for PWDs.
- *Independent candidates*: Even with the numerous challenges, aforementioned, faced by independent candidates, PWDs have the option to vie as independent candidates where they feel that political parties are not as democratic or inclusive.
- *Peaceful elections*: While Kenya's elections are characterized by high tensions, the last two general elections were relatively peaceful. This creates an enabling environment for PWDs to sell their candidature.
- *Increasing Civil Society focus on inclusivity*: CSOs are increasingly programming for PWDs empowerment. The 2022 pre-election period saw several training and engagement forums for PWDs candidates, supported by civil society organizations.

## Conclusion and Recommendations

Although Kenya recognizes the importance of PWD inclusion and participation in governance processes as evidenced by the provisions in its laws, PWD participation in elections remains a mirage. Barriers such as financing challenges, societal stigma, low access to information among PWDs, weak internal democracy in political parties, non-consideration of the unique needs of PWDs by IEBC and violence stand in the way of PWDs that seek elective positions, particularly those from indigenous communities.

Despite these barriers, the country has made some gains towards enhancing PWD inclusion and participation in elections. These include open election processes, progressiveness in political parties, opportunity to vie on independent tickets and advocacy for PWD inclusion by CSOs. To ensure full realization of PWDs rights, particularly those relating to inclusion and participation in elections:

1. Civil society organizations should step up advocacy on PWD mainstreaming and inclusion in governance and political processes.
2. There is a need for sustained civic and political education targeting persons with disabilities and the general public. This should cover opportunities for representation and the requirements as well as practical approaches for organizing to tap into the opportunities and build solidarity among PWDs.
3. IEBC should make voter registration centers and polling stations PWD-friendly and progressively consider having sign language interpreters, ballot papers printed in braille among other unique needs for PWDs.
4. PWDs should participate actively in constituting and managing the affairs of the political parties with a view to influence internal policies, regulations and practices in their favor.
5. Political parties should ensure that the PWDs nominees are actually champions of PWD rights through involving PWDs in identifying the nominees.
6. Political parties should target PWDs in their mobilization drives and adopt strategies for incentivizing them to remain in the parties. Such strategies could include discounting life membership fees for PWDs, waiving nomination fees, and developing programs that keep them engaged throughout the electoral cycle, including economic empowerment.
7. As required by the Constitution of Kenya, parliament should enact legislation to promote representation of PWDs. This includes review of the existing electoral laws to further promote representation of PWDs in the elective bodies, based on the lessons learnt so far. Some of the proposed areas for review include:

- a. Review the Political Parties Act requiring the Office of the Registrar of Political Parties (ORPP) to share a certain proportion of the Political Parties Fund to all political parties equally that can be used to fund the programs for SIGs;
  - b. The proportion of special seats allocated to the political parties for the Special Interest Groups should be further clarified on equitable sharing among the SIGs.
  - c. Review the Elections Act (and its respective regulations), Election Campaign Financing Act and other relevant laws and policies to introduce legislative incentives that promote the participation of PWDs in the political processes. Examples would include affirmative actions on (a) lowering educational requirements; (b) significantly lowering the nomination fees and monthly contributions by PWDs; and (c) introducing campaign financing for SIGs such as solidarity fund.
8. There is need for state and non-state actors to strengthen PWDs programming governance and service delivery across all sectors for holistic empowerment.



## **Endorois Indigenous Women Empowerment Network (EIWEN)**

Ramsey Building, Opposite Nabiq Petrol Station

Along Nakuru - Marigat Road

P.O. Box 253 - 30403, Marigat

Tel. No. +254 726 017 464

Email: [endoroiswomenvoice@gmail.com](mailto:endoroiswomenvoice@gmail.com)