

Article

Leveraging Continental Norms and Mechanisms to Enhance Barrier-Free Access for Pedestrians with Disabilities in Kenya

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Abstract: When it is realised meaningfully, barrier-free access enables pedestrians with disabilities to use streets without being impeded by non-existent or poorly maintained sidewalks, inaccessible overpasses or underpasses, crowded sidewalks, lack of traffic controls, lack of aids at street crossings, unsafe motorist behaviour, and poor signage and lighting. While Kenya has laws in place that are intended to facilitate barrier-free access, in reality, these laws are not implemented, resulting in the violations of rights of pedestrians in general, and pedestrians with disabilities in particular. Using the lived experiences of pedestrians with disabilities, this article reflects on the policy, legislative, and practical contexts which undermine access. It shows that despite the range of policy and legal instruments which Kenya has adopted or enacted to ensure the public in general can access streets, pedestrians with disabilities enjoy arising benefits only marginally. The article's thesis is that continental policy and normative instruments and institutions may impel Kenya towards ensuring that pedestrians with disabilities have meaningful barrier-free access.

Keywords: pedestrians; accessibility; persons with disabilities



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1. Introduction

Meaningful realisation of barrier-free access for persons with disabilities happens when there is continuity in the 'travel chain', which is constituted of all the elements that make up a journey, including pedestrian access, vehicles, and transfer points ([World Health Organisation and World Bank 2011](#), p. 179). This article focuses principally on the pedestrian component of the travel chain in Kenya, while also reflecting on vehicles and transfer points. When realised meaningfully, barrier-free access enables pedestrians with disabilities to use streets without being impeded by non-existent or poorly maintained sidewalks, inaccessible overpasses or underpasses, crowded sidewalks, lack of traffic controls, lack of aids at street crossings, unsafe motorist behaviour, and poor signage and lighting ([World Health Organisation and World Bank 2011](#), p. 179).

The premise of this article is that pedestrians with disabilities in Kenya do not have meaningful barrier-free access to streets, manifest through the implementation of relevant policies, laws, and regulations. The article reflects on the policy, legislative, and practical contexts which undermine access. It shows that despite the range of policy and legal instruments which Kenya has adopted or enacted to ensure the public generally can access streets, pedestrians with disabilities enjoy arising benefits only marginally. The article's thesis is that continental policy and normative instruments and institutions may impel Kenya towards ensuring that pedestrians with disabilities have meaningful barrier-free access. While continental instruments and institutions to ensure barrier-free access are themselves not well-developed, a symbiotic relationship between individual states and continental frameworks can raise the level of meaningful exercise of barrier-free access for pedestrians with disabilities. To this end, the article also reflects on the advocacy and other roles which Kenyan organisations of persons with disabilities (OPDs) and other African stakeholders may play to enhance the policy and normative frameworks for and practices that relate to barrier-free access on the continent.

The findings used in this article are drawn from research undertaken by the Inclusive Public Space Project, a five-country investigation involving India, Kenya, Netherlands, United Kingdom, and United States, on how and why streets exclude some pedestrians, including those with disabilities, and how greater inclusion may be achieved. In Kenya, the project was undertaken collaboratively by the University of Leeds and the Disability Rights Project of the Faculty of Law of the University of Nairobi, with funding from the European Research Council under the European Union Horizon 2020 Research and Innovation Programme (Grant Agreement No. 787258). While the Inclusive Public Space Project also focused on barrier-free access for older persons and other users of public spaces, the scope of this article is limited to persons with disabilities.

The contexts provided are informed both by primary and secondary sources. The authors undertook a desk review of Kenya's legal and policy framework on barrier-free access. The desk review assessed the extent to which law and policy promotes barrier free access. The article draws on stakeholder interviews undertaken as part of the project's empirical research. The empirical data for the project was collected in 2022 using qualitative methods. A total of twenty-five participants were interviewed using online focus group discussions. Of these, seven were legal experts; ten were activists; and eight were involved in policy formulation and implementation. Interviews with pedestrians were also conducted, with participants selected from Nairobi and Mombasa, which are the two major cities in Kenya. A total of fifty-three pedestrians, selected purposively through networks of OPDs, and who consented to participate in the study, were interviewed. Thirty-four pedestrians were interviewed in Nairobi, while nineteen were interviewed in Mombasa. Ninety per cent of these interviewees identified as having a disability, while eight per cent were over the age of sixty-five or were parents of young children. The research respondents were anonymised in line with the Data Protection Act ([Republic of Kenya 2019](#); [United Kingdom 2018](#)), and a pseudonym was assigned to each respondent. This article refers to the research respondents by their assigned pseudonyms.

The empirical data collection process followed the ethical procedures established by the National Commission for Science, Technology and Innovation (NACOSTI). Ethics approval was obtained from the AMREF Ethics and Scientific Review Committee, and thereafter, a research permit was obtained from NACOSTI (License No. NACOSTI/P/22/21124).

2. Conceptual and Normative Context

Removing the physical and social barriers which undermine access for individuals with disabilities is an important factor for ensuring barrier-free access in streets for pedestrians with disabilities. However, Kenyan policy and law-making has traditionally not recognised this truism. Historically, Kenyan policy and law-making on disability was anchored on individual models of disability. Colonial and post-independent governments used individual models of disability, including the charity, religious, and medical models ([Cobley 2018](#), chp. 2) to respond to the needs of persons with disabilities ([Berman and Monteleone 2022](#)). Persons with disabilities grew up beholden to religious, charity, and medical paradigms evident in their objectification by various Kenyan languages. Languages such as Kiswahili used derogatory terms to refer to persons with disabilities, for example, by employing the prefix "ki" usually attributed to inanimate things (such as a spoon or chair) to refer to persons with disabilities ([Oduor 2017](#), p. 48). To paraphrase Oduor, by using such language, society mirrored a demeaning picture on persons with disabilities which has caused great damage on persons with disabilities ([Oduor 2017](#), p. 48).

It, therefore, followed that policy, and law-making were configured to fit into the individual models of disability. The Persons with Disabilities Act, which was enacted three years before the adoption of the Convention on the Rights of Persons with Disabilities (CRPD), provided for the rights and rehabilitation of persons with disabilities, and the equalisation of opportunities for persons with disabilities ([Republic of Kenya 2003](#), preamble). Yet, the Act employed anachronistic terms to define disability, locating disability as a pathology of body as distinct from being occasioned by the interaction of environmental

and attitudinal barriers with an individual's impairments. Under Section 1 of the Act, disability is: "... a physical, sensory, mental or other impairment, including any visual, hearing, learning or physical incapability, which impacts adversely on social, economic or environmental participation" (Republic of Kenya 2003).

After Kenya became a party to the CRPD in 2008 and following the replacement of the Independence Constitution (Republic of Kenya [2001] 2008) with the 2010 Constitution (Republic of Kenya 2010), Kenya struggled to move away from individual models of disability. The Constitution and some post-2010 policies and statutes still draw from the letter, or spirit, of the medical model of disability. Article 260 of the Constitution defines disability as including: "... any physical, sensory, mental, psychological or other impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual's ability to carry out ordinary day-to-day activities" (Republic of Kenya 2010, art260). According to this definition, the Constitution locates the "problem" that hinders the individual's ability to undertake day-to-day activities in the person rather than in society (Mute 2020). This is as distinct from the standard established in the CRPD which sees the interaction of environmental and attitudinal barriers with an individual's impairments as the hindrance to effective participation (United Nations 2006). Thus, nearly two decades after the CRPD came into force, policy and law-making is not inured from the influences of individual models of disability (for example, see Aseka and Kanter 2014).

The challenges of shifting from the medical to more amenable models of disability remain apparent. Most recently, this was highlighted in the *Disability Medical Assessment and Categorisation Guidelines* issued by the Ministry of Health for assessing and categorising persons with disabilities for purposes of receiving entitlements such as tax exemptions under the Persons with Disabilities Act. The guidelines state that they adopt the bio-psycho-social model to link both the social and medical models in the framework for determining various forms of disabilities. Despite this rhetoric, the guidelines remain decidedly anchored on the medical model of disability. The assessment and categorisation of disability under the guidelines is still undertaken by medical panels without drawing on expertise to provide social, environmental and personal inputs consonant with the bio-psycho-social model of disability (Ministry of Health 2021).

A key premise of this article is that continental norms and mechanisms can play pivotal roles in ensuring barrier-free access for persons with disabilities. In the past decade, African states, including Kenya, have initiated policy, legislative, regulatory and institutional measures to push forward the agenda of barrier-free access in streets for persons with disabilities. The African Union (AU) has adopted legal instruments establishing normative bases for ensuring accessibility for persons with disabilities. In 2018, the AU adopted a substantive continental disability rights instrument, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (Disability Rights Protocol) (African Union 2018). Although Kenya ratified the protocol in February 2022 following Parliamentary approval in 2021 (see Parliament of Kenya 2021a), the instrument has not achieved the requisite 15 ratifications for it to come into force (African Union 2018, art37). Kenya's Ministry of Foreign Affairs attributes the slow uptake of the African Disability Rights Protocol to the failure of African states to publicise it and what it seeks to offer the people (Parliament of Kenya 2021b). Making the case for ratification, the Minister for Labour explained that the instrument was an appendage to the continental instrument that promotes and protects human rights and basic freedoms, the African Charter on Human and Peoples' Rights. He stated that ratification would complement existing legal and policy efforts and address gaps which would be catered for under normal budgetary lines, thereby improving the services given to affected persons (Parliament of Kenya 2021b).

Once it comes into force, Kenya will be obligated to abide by the provisions on barrier-free access established in the Disability Rights Protocol. In particular, the Protocol obligates states parties to take reasonable and progressive measures to facilitate full enjoyment by persons with disabilities of the right to barrier-free access to the physical environment,

transportation, information, and other services or facilities open or provided to the public (African Union 2018, art15).

While the scope of this article is limited to Kenya's continental commitments, it is significant that the country bears impeccable credentials on its global normative commitments on disability. As already indicated, Kenya is a party to the CRPD, which it signed in May 2007 and ratified in June 2008; and it co-chaired the initial Global Disability Summit in 2018 alongside the United Kingdom and the International Disability Alliance (Global Disability Summit 2018). It has implemented some of the commitments which it made at that Summit, including becoming party to the Disability Rights Protocol and undertaking disability-disaggregated data collection in the 2019 National Population and Housing Census (Ministry of Public Service, Gender, Senior Citizens Affairs and Special Programmes 2021a).

In the meantime, the AU's long-term strategic framework, Agenda 2063 (African Union 2015), does not make specific commitments for barrier-free access to streets. Aspiration 2 of the agenda simply makes an overall commitment to put in place the necessary infrastructure for supporting Africa's accelerated integration and growth, technological transformation, trade and development (African Union 2015). Significant underlying challenges, therefore, remain in concluding and deploying continental frameworks for barrier-free access. A further difficulty is how to translate continental policy commitments and legal norms into actual implementation, enforcement and monitoring of barrier-free access at the domestic level.

3. Barrier-Free Access for Pedestrians with Disabilities in Kenya—Policies, Laws, Practice and Gaps

The primary and secondary findings set out in this and the next sections of the article demonstrate that the policy, law-making, and regulatory environment in Kenya does not provide meaningful barrier-free access on streets for pedestrians with disabilities. The lived experiences of persons with disabilities detailed here also show that the gaps in the frameworks for barrier free access impede the full enjoyment of other fundamental rights and freedoms by persons with disabilities. Finally, therefore, as shall be argued in the next section of the article, non-state actors, including OPDs, need to review their strategies for enabling meaningful barrier-free access.

3.1. Constitution as a Basis for Barrier-Free Access

The Constitution makes foundational provisions in relation to barrier-free access. It is the bedrock for the egalitarian principles that underpin the actions of state organs and offices as well as all persons (Republic of Kenya 2010, art10). It obligates state organs and public officers to address the needs of vulnerable persons within society, including those with disabilities (Republic of Kenya 2010, art21). It guarantees equal protection and equal benefit of the law and prohibits discrimination on the basis of disability (Republic of Kenya 2010, art27). It also provides persons with disabilities with specific entitlements, including barrier-free access—what it refers to as “. . . reasonable access to all places, public transport and information” (Republic of Kenya 2010, art54).

Kenya does not have standalone comprehensive legislation to enable the Constitution's provisions on equality and non-discrimination. This situation subsists despite Kenya's pledges before various international human rights mechanisms to adopt a comprehensive anti-discrimination law affording protection to all individuals (Human Rights Council 2015, recommendation 142.41). Consequently, the flagship legislation on disability remains the Persons with Disabilities Act, which was enacted not only before the 2010 Constitution but also before the adoption of the CRPD. Both the National Assembly and the Senate have on numerous occasions failed to enact new omnibus legislation on the rights of persons with disabilities. The most recent such effort is the Persons with Disabilities Bill 2023 (Parliament of Kenya 2023). Hence, the normative and institutional framework for ensuring accessibility for persons with disabilities remains relatively underdeveloped and underused.

The Constitution is significant in another respect in relation to barrier-free access. Its devolution of government to counties holds potential for the adoption or enactment of policies and laws addressing specific accessibility issues of persons with disabilities. The functions of counties under the Constitution include county public works and services; and county transport, including county roads, street lighting, traffic and parking, public road transport, and ferries and harbours ([Republic of Kenya 2010](#), 4th schedule).

This potential has, however, remained largely unrealised on a number of counts. First, county legislation on barrier-free access remains underwhelming. As of 1 March 2021, nine of Kenya's 47 counties had enacted standalone disability legislation: Kiambu; Kisii; Kisumu; Machakos; Makeni; Meru; Nairobi; Nakuru; and Turkana ([Kenya National Commission on Human Rights 2022](#)). Strikingly, however, all these county laws essentially duplicate the national law on disability, the Persons with Disabilities Act, without employing much county-specific innovations or limiting the legislation to the functions assigned to counties under the Constitution ([Kenya National Commission on Human Rights 2022](#)). Consequently, these county laws have innocuous template provisions on barrier-free access for pedestrians with disabilities. In illustration, the Nairobi Persons with Disabilities Act, in language reminiscent of the Persons with Disabilities Act, entitles persons with disabilities a barrier-free and disability-friendly environment to enable them to have access to buildings, roads and other social amenities, and assistive devices and other equipment to promote their mobility. It also requires proprietors of public buildings and public service vehicles to adapt them to suit persons with disabilities as shall be specified ([Nairobi County 2015a](#)).

Second, the direct participation of persons with disabilities in county law-making as members of county assemblies (MCAs) may be waning. In the past decade, the number of county assemblies that include MCAs with disabilities has reduced from 43 of 47 counties in the 2013 general election, to 30 in the 2017 general election, and to 26 in the 2022 general election. If this situation is not stemmed, it is quite likely that a majority of county assemblies will not have MCAs with disabilities after the 2027 general election ([United Disabled Persons of Kenya 2023](#)).

On a positive note, some counties have included provisions on persons with disabilities in their mainstream policies and laws. The Nairobi City County Non-Motorised Transport Policy ([Nairobi County 2015b](#)) recognises that people with disabilities require larger dimensions to accommodate wheelchairs and crutches as well as continuous sidewalks and wayfinding options for the blind or visually impaired. The policy aims to fully integrate non-motorised transport as part of the Nairobi transport system by creating a safe, cohesive and comfortable network of footpaths, cycling-lanes and tracks, green areas and other support amenities. It also aims to put in place laws and regulations to ensure that non-motorised transport facilities and areas are not encroached by motorised modes and other street users. One of the policy's priorities is to adapt universal design principles for streets, which would require the design or redesign of streets, roads and highways in Nairobi ([Nairobi County 2015b](#)). Nairobi County has also established a legal framework on transport which includes notable measures for enabling barrier-free access for commuters with disabilities. The Nairobi City Transport Act obligates public transport vehicles to designate seats for what it refers to as "passengers with physical disabilities or special needs" ([Nairobi County 2020](#), s31).

3.2. Regulatory Framework for Ensuring Barrier-Free Access for Pedestrians with Disabilities

Barrier-free pedestrian access to streets is anchored on the CRPD, which obligates Kenya to take appropriate measures to ensure to persons with disabilities access on an equal basis with others to the physical environment and to transportation ([United Nations 2006](#), art9). As already stated, the Constitution entitles persons with disabilities to reasonable access to all places, public transport and information ([Republic of Kenya 2010](#), art54). Then, the Persons with Disabilities Act entitles persons with disabilities a barrier-free and disability-friendly environment so that they may have access to buildings, roads and other social amenities, and assistive devices and other equipment to promote their mobility

([Republic of Kenya 2003](#), s21–29). Regulations made under that Act require relevant ministries, departments and local authorities to provide for the installation of auditory signals at red lights in public roads for the benefit of persons who are visually impaired. They also require kerb cuts and slopes to be made in pavements for the easy access of persons using wheelchairs, the engraving of pedestrian crossings and the edges of railway platforms for persons who are visually impaired, the posting of appropriate symbols of disability, and the posting of warning signals and symbols as necessary ([National Council for Persons with Disabilities 2009](#), regulation 14). The Act also requires proprietors of public buildings and operators of public service vehicles to make appropriate adaptations to suit persons with disabilities. It empowers the National Council for Persons with Disabilities to issue adjustment orders in respect of premises, services or amenities that are inaccessible to persons with disabilities on account of structural, physical, administrative, or other impediments to such access ([Republic of Kenya 2003](#), s24). The council has, however, never issued adjustment orders under the Act, apparently deciding that it did not have the necessary mechanisms and resources to enforce them ([Mute 2020](#), 4.1.3). One of the council's dilemmas indeed is the extent to which it should act as an implementation agency as opposed to an agency for providing advice to relevant mainstream state agencies ordinarily tasked with providing public services including accessible infrastructure.

Ensuring meaningful barrier-free access to roads and streets for pedestrians with disabilities is vested in a number of public agencies which bear responsibilities for designing, building and maintaining roads and related infrastructure. The national government constructs and operates national trunk roads and formulates standards for the construction and maintenance of county roads ([Republic of Kenya 2010](#), 4th Schedule). The Kenya Roads Act establishes the Kenya National Highways Authority, the Kenya Urban Roads Authority and the Kenya Rural Roads Authority, with responsibilities for the management, development, rehabilitation, and maintenance of national roads ([Republic of Kenya 2007](#), ss 4, 7, and 10). The specific functions of these authorities include: the construction, upgrading, rehabilitation and maintenance of roads; the control of roads and road reserves and access to roadside developments; and ensuring the quality of road works ([Republic of Kenya 2007](#), ss 4, 7, and 10).

Another relevant agency is the National Transport and Safety Authority (NTSA), established by the National Transport and Safety Authority Act, whose functions include to ensure the provision of safe, reliable and efficient road transport services; and to administer the Traffic Act and any other written law ([Republic of Kenya 2012](#)). The NTSA has established a highway code, which provides guidelines for road users, including pedestrians, cyclists, motorcyclists, children and animals ([National Transport and Safety Authority 2016](#)). The guidelines, however, place the burden of road safety upon road users, in contrast to placing the burden of road safety on policy makers who should ensure that the roads are safe for all users, particularly in the way they are designed and maintained.

Mention should also be made of the National Construction Authority which oversees the construction industry, including by managing implementation of the National Building Code (2022). The Code includes regulations that impact barrier-free access for pedestrians with disabilities. Its purpose is to “promote order and safety in construction works, and the health and safety of persons in or about construction works” ([National Construction Authority 2022](#), s3). The Code provides for how buildings should be designed to facilitate access and facilities by persons with disabilities. It requires a public space to have wayfinding systems with warning cues and auditory signals; for access to at least one entrance with no step or kerb, steep ramp or narrow doorway; for accessible parking; for ramps; for dropped kerbs; lifts; toilets; and handrails, etc. ([National Construction Authority 2022](#), Part XX).

The policy framework for facilitating barrier-free access for pedestrians with disabilities includes fairly specific aims and targets. The Integrated National Transport Policy calls for the provision and maintenance of adequate sidewalks and pavements for pedestrians, separate lanes, parking bays, bridges, footpaths, and other facilities for non-motorised

transport, including ramps for persons with disabilities, (what it refers to as “the physically challenged”). It aims to establish infrastructure, including footpaths, foot bridges and ramps for persons with disabilities in designated roads (Ministry of Transport 2012).

In December 2022, as part of operationalising this Policy, the Ministry of Roads and Transport launched the *Street Design Manual for Urban Areas in Kenya* (Ministry of Roads and Transport 2022). The manual, which provides guidance on the geometric design of urban streets, is extremely significant, since other relevant design manuals are relatively dated. To illustrate, the *Road Design Manual Part I: Geometric Design of Rural Roads* was adopted in 1979, while the *Road Design Manual Part III: Materials and Pavement Design for new Roads* was adopted in 1987 (Ministry of Roads and Transport 2022).

The street design manual identifies complete road design principles, including the principle of universal access, i.e., the concept of designing transport services and environments that as many people as possible can use, regardless of age or ability (Ministry of Roads and Transport 2022). The manual recognises the need to ensure that persons with disabilities can make complete journeys through the accommodation of their needs in each step of the transport chain, from origin to destination. It requires that streets should be designed according to universal access principles to accommodate assistive devices for particular groups of persons with disabilities. They should be accessible—with ample, well connected pedestrian facilities with unobstructed space for movement, consistent pavement surfaces, appropriately sloped ramps, and safe pedestrian crossings (Ministry of Roads and Transport 2022).

To the above ends, it is significant that relevant guidelines for designing streets may sometimes be in place, but their implementation is lacking. Indeed, the manual provides design criteria on a range of issues. For example, first, footpaths should be divided into three main zones: the frontage zone, the pedestrian zone and the furniture zone. The pedestrian zone should provide continuous space for walking and should be clear of any obstructions. Second, crossings should be located wherever there is concentrated need for people to cross streets. At-grade crossings are superior to pedestrian foot overbridges or tunnels, and they should have traffic calming (table-top crossing or speed humps) or signal control. The manual also provides design criteria for greenways, terminuses for public transport vehicles, bus rapid transit, carriageways, street landscaping, street vending, street furniture, street parking, street lighting, storm water drainage, and placement of utilities (such as electricity cables, water pipes and sewer lines) (Ministry of Roads and Transport 2022).

3.3. Inadequacies of Implementation

From the foregoing, we argue that while improvements are still needed, Kenya has a reasonable policy, legislative and regulatory basis for beginning to provide meaningful barrier-free access for persons with disabilities. The institutions mandated to implement laws on barrier-free access, however, implement them poorly or not at all. Illustratively, the vision of the National Council for Persons with Disabilities, established under the Persons with Disabilities Act as the principal state institution on disability, is, “A barrier-free society for persons with disabilities” (National Council for Persons with Disabilities 2023). Yet, the Council has not flourished in working towards barrier-free access. The council has not used its legislative and regulatory powers to ensure barrier-free access. It is indeed illuminating that key statutory reports of the council no longer even assess its function of issuing adjustment orders under Section 24 of the Act (National Council for Persons with Disabilities 2023).

In its initial report to the Committee on the Rights of Persons with Disabilities, Kenya explained that roads within cities generally do not have pedestrian-friendly walkways, that vehicles even drive on pedestrian walkways to avoid traffic jams, and that traffic lights are often broken, thereby putting pedestrians at grave risk (Republic of Kenya 2011). In a similar vein, the Nairobi City County Non-Motorised Transport Policy notes that “people with disabilities are not easily able to negotiate the infrastructure: traffic signals for the blind are not provided; and ramps are far too steep for the disabled” (Nairobi County 2015b).

A study which used a web app to map the accessibility of buildings and streets in Nairobi found that of 58 mapped streets, there was only one sonic light; that only one street light was configured to allow pedestrians to cross safely; and that there were only two allotted parking slots for persons with disabilities (Asige and Kawai 2019). Another survey, which assessed the accessibility of a number of public institutions in Nairobi, found that where they were provided at all, ramps were steep and slippery; that more often than not, persons with mobility impairments were expected to use back rather than front entrances; that pathways invariably did not have appropriate ramps to enable users to move safely onto and from roadways; and that pavements were narrow and cracked, and hence, a hazard for persons using assistive devices (Mathare Social Justice Centre 2020). Participants in another study noted that it would be difficult for pedestrians with visual impairments to use guide-dogs in Kenya due to the chaotic state of the road environment (GDI Hub 2022).

The political will to avail and direct resources is quite germane to barrier-free access for persons with disabilities. Illustratively, the national government has spent billions of shillings to develop its road and other infrastructure; yet guideways remain inaccessible to persons with disabilities, even in newly developed infrastructure (Ressa 2022). Ressa cites Thika superhighway which lacks curb cuts; does not have enough accessible bus stops; has many bridges with flights of stairs; lacks ramps in many strategic places; and has ramps insufficiently finished (with sharp inclinations and rugged landings). He argues that the absence of a universally-designed transport system diminishes the citizenship of Kenyans with disabilities through their exclusion from the mainstream society and denial of opportunities to contribute to development (Ressa 2022).

3.4. The Question of Data

Accurate disability-disaggregated data and statistics facilitates targeted policymaking and implementation; and Kenya recognises this truism. This is reflected in the conflicts between rhetoric and practice in relation to the move from segregated education, sheltered workshops and institutionalised rehabilitation in favour of disability inclusion, for example, made manifest through inclusive education (see Ministry of Public Service, Gender, Senior Citizens Affairs and Special Programmes 2021b). The country's experience of collecting and using disability-disaggregated data has, however, been uncertain. According to the 2019 Kenya Population and Housing Census (KPHC), the national prevalence of disability is at 2.2 per cent (Kenya National Bureau of Statistics 2019). This figure is highly contested and, indeed if correct, would be a sharp drop from the 2009 Kenya Housing and Population Census which found that 3.5 per cent of the population had a disability (Kenya National Bureau of Statistics 2009), and the Kenya National Survey of Persons with Disabilities of 2008 which found that 4.6 per cent of Kenyans had a disability (National Coordinating Agency for Population and Development and Kenya National Bureau of Statistics 2008).

Despite these teething problems, the data-collection approach used in the 2019 KPHC bears great potential for more effective planning for barrier-free access. The KNBS, working with disability stakeholders (Development Initiatives 2020), used the Washington Group Short Set of questions (WGSS), adapted from the World Health Organisation's International Classification of Functioning, Disability and Health (ICF), which focuses on functioning in basic universal activities, unlike approaches based on the medical model of disability which focus on impairments to bodily functions and structures. Data was collected on whether an individual had difficulty seeing even when wearing glasses; hearing even when using a hearing aid; walking or climbing steps; remembering or concentrating; undertaking self-care such as washing or dressing; or communicating, understanding or being understood (Kenya National Bureau of Statistics 2019).

Over and above the pressing need for disability-specific data, Kenya still needs to recognise that policy and law-making for persons with disabilities is not an exclusivist venture; it in fact benefits the whole population, from children to older members of society to women, etc. Ensuring the rights of persons with disabilities and other minorities indeed resonates with the egalitarian posture of the Constitution whose principles of full

(substantive) equality are an undergird for all Kenyans, despite their numbers. A concern for barrier-free access, therefore, is whether and the extent to which Kenya is infusing the principle of universal design in its policies, laws and regulations.

4. The Impacts of Inadequate Implementation of Barrier-Free Access for Pedestrians with Disabilities

4.1. Factors Contributing to Inadequate Implementation

The findings collected from interviews with pedestrians with disabilities and focus group discussions with policy makers and implementers corroborate secondary sources in the conclusion that streets remain largely inaccessible to pedestrians with disabilities. Accessibility of streets is not only affected by barriers that stop or limit pedestrians with disabilities from moving from one point to another, but it is also affected by hazards such as uneven surfaces which predispose pedestrians with disabilities to otherwise avoidable accidents.

Participants in the study identified a number of factors as contributing to limited or lack of implementation of frameworks on barrier-free access.

First, is the lack of investment in pedestrian paths as compared to roads for use by motorists. In general, the government gives priority to motorised transport as compared to other forms of transport. This is how Adimu, a civil engineer, put it:

“Most of our infrastructure is focused on motorised transport. I don’t know whether it’s a culture that we have, but our reality is that we focus a lot on moving cars and the solution that we have for traffic congestion is expanding roads rather than promoting alternative means of transport. We do this while not realising that private cars only constitute 13% of the road share. If you look at the number of people who walk and the number of people who rely on public transport, then you will notice they are the majority. Forty per cent walk, thirty-one per cent rely on public transport.”

Second, is what is perceived as the competing interests of other road users and the rights of persons with disabilities. The common perception is that implementing measures that promote barrier-free access might negatively affect the interests of other road users. This is how Nolan, a parliamentarian, put it:

“I remember once I was trying to negotiate for the construction of a footbridge and speed bumps to limit the speed at which motorists drove and make it safer for pedestrians with disabilities to cross the road. The engineers said that if we have bumps, there will be snarl up of traffic and that will delay people going to work. So, the bumps will limit the efficiency of traffic flow and the goal of dealing with traffic snarl ups in the city.”

Third, is limited awareness of disability rights issues by policy makers and other key actors in the design of public spaces. This means that when policy formulation on inclusive public spaces occurs, it is often through the lenses of able-bodied, youthful, and male individuals. Enya, a project coordinator for a road safety program, stated as follows:

“Most policy makers do not design streets through the lens of the ‘other’ user. So, streets are designed as if everybody is abled and everybody is an adult and young and male: someone who is strong and can run across the street or can jump over an open drain; someone who doesn’t have to carry luggage. Definitely not someone pushing a baby stroller or using a wheelchair. You will also see in terms of prioritisation. Like for the crossings. You will see governments actually investing heavily on foot bridges, and if you are old, that is very inconveniencing because you don’t want to go up the stairs, it takes longer.”

While inaccessibility of streets is problematic in and of itself, inaccessible public spaces also affect other areas of life for persons with disabilities and limit the extent to which they are able to enjoy other fundamental human rights, as outlined below.

4.2. Impact of Inaccessible Pedestrian Access on the Exercise of the Right to Work and the Right to Political Participation

Key to inclusive work and employment is how persons with disabilities arrive at the workplace. Inaccessible public streets make it difficult for persons with disabilities to move from home to work in a number of regards.

First, pedestrians with disabilities are more likely to spend more time commuting between places. This reduces the amount of time that they spend at their place of employment or at their business, and this ultimately has an impact on their income. Brigitta, an activist on the rights of women and girls with disabilities, stated thus:

“You find that coming to the office sometimes is a barrier to work because you need to move to where to pick the bus and if you cannot get to the office, then you can’t work. . . . In Kenya, we concentrate a lot on making workplaces accessible and the office itself might be accessible, you know, with ramps or lifts, but getting to the office is where the challenge is and where there are many barriers which make getting to the office inaccessible.”

Second, is the need to understand accessibility more broadly. While universal design is being applied to buildings to make them more accessible, the journey one must embark on in order to arrive at those buildings is often not considered. This means that buildings which comply with universal design nonetheless remain inaccessible to a large section of persons with disabilities, because of the inaccessibility of public streets which makes it difficult for persons with disabilities to undertake their journeys to those buildings.

Third, ensuring public spaces are inclusive may result in conflicts with other street users, particularly those who run their enterprises on sidewalks and pavements. Many informal enterprises use the streets as their primary business premises, and they pay for county permits and are, therefore, allowed under county laws to operate their businesses on sidewalks and pavements. These enterprises are a major source of revenue for the counties, and there is, therefore, competition between the right of persons with disabilities to enjoy barrier-free access in public spaces and the right of persons running enterprises to use those same public spaces to make a living. Moving those enterprises from the streets to make them more accessible to pedestrians with disabilities would create a conflict between the different categories of street users. The question becomes, which right is superior? The right of pedestrians, including those with disabilities, to access streets or the right of hawkers to sell their wares on the streets in order to make a living? This matter has even been determined by the courts in the case of *Micro and Small Enterprises Association of Kenya, Mombasa Branch v Mombasa County Government* eKLR [2014]. The petitioners in this case moved to court after the structures they had erected on various streets in Mombasa city for the purpose of hawking were demolished by the county government. They argued that the action of demolishing their structures and evicting them from their usual place of business without offering any other alternative business location amounted to a violation of a number of rights enshrined in the Constitution. The respondents argued that the rights of the hawkers could not surpass the public interest of having streets that are accessible to various users, including pedestrians and emergency services. The court held that the matter raised by the petitioners related to the rights enshrined under Article 43 of the Constitution, which entitles the petitioners to the protection of their opportunity to earn their living through hawking as a means of realising the right to be free from hunger and to social security. The court held that the right to accessible streets ought to be balanced against the right to make a living, and it was the duty of the county government of Mombasa to provide the hawkers with areas where they could carry out their businesses. Following this decision, hawking has been decriminalised in the country. However, most county governments have still not provided for spaces where hawkers can operate from, hence they remain on the streets. Odette, who works for a national OPD, commented:

“Some business establishments have encroached pedestrian streets and used them as part of their premises and so that is one area we have been highlighting that needs to be addressed. But it’s not that the streets are crowded. It’s that they are very narrow; the pathways that have been constructed are very narrow. So, therefore, they tend to be crowded. We have traders selling their wares on the streets as well, like, okay, you can get your oranges on your way home and your tomatoes, but that also means someone has taken up literally a whole street to do their business.”

Dealing with traffic on urban roads has remained a challenge, and often motorists also drive on pedestrian paths so as to avoid traffic, and this creates further competition between different categories of road users. Onne, an independent consultant who has worked on disability rights in Kenya, stated:

“We have a big problem with motorists who overlap—that is motorists who try to avoid traffic by driving on what was supposed to be pedestrian paths. There is nowhere for pedestrians, much less for pedestrians with disabilities, to walk.”

Recent attempts to refurbish pedestrian sidewalks in Nairobi City have seen the installation of new Cabro blocks on the paths. While this has arguably made the sidewalks more even and, therefore, easier for persons with disabilities to use, the paths have been fitted with concrete barriers at various end points to limit motorists driving on the paths. This means that persons using wheelchairs may not be able to navigate through the narrow spaces between the concrete barriers, hence making it difficult for them to use the newly constructed paths.

Physical access to polling centres is difficult for many voters with disabilities. Many experienced challenges travelling to polling centres to vote during the 2022 general election. The barriers that exist in public spaces which make it difficult for pedestrians with disabilities to move from one point to the next limit their right to political participation and make it impossible for them to exercise their right to vote. In addition, physical accessibility of public spaces is important for persons with disabilities who are campaigning for elective office. Thus, inaccessible public spaces make it difficult for persons with disabilities to effectively campaign and compete for elective office. This is perhaps a contributory factor to the low numbers of persons with disabilities in public office. Jolene, an advocate of the high court of Kenya, who also has a disability, stated thus:

“During the 2022 elections, many voters with disabilities experienced a lot of challenges getting to polling centres to vote. The streets are inaccessible, and that makes it difficult for people with mobility and other disabilities to find themselves in political spaces. On election day in 2022, in one polling station, where the terrain was rough, eight voters with disabilities who actually got as far as the polling centre could not vote because they could not get to the polling booths. There could have been others who never made it as far as the polling centre.”

4.3. Access to Justice

Inaccessible streets may result in direct harm to persons with disabilities due to accidents, and they affect the enjoyment of other fundamental rights. Yet, it remains difficult for these issues to be litigated in court either through direct claims for negligence requiring the payment of damages or through public interest and strategic litigation. Claims for negligence are difficult to institute because they require litigants to pay court fees and to engage lawyers to argue technical issues. Many pedestrians with disabilities are not able to afford this kind of court action. In addition, with negligence, it is very specific to the individual who has been hurt, and remedies for negligence may therefore not result in system-wide change. On the other hand, public interest and strategic litigation is limited by a number of factors, as highlighted by Warrin, a disability rights advocate:

“There has not been much public interest litigation on issues to do with disability for several reasons. First, disability has not been as prominent as other issues

on marginality, such as gender or ethnic inequality. Also, the traditional view or perception is of disability from the charity model, so most organisations that take up disability issues focus on obtaining funding to do social work for persons with disabilities instead of dealing with the issue of promoting disability rights public interest or strategic litigation.”

Access to justice plays a significant role in redressing violations of rights, and it also serves to promote the greater protection of rights by placing the fear of legal sanctions on duty-bearers. Thus, in addition to the failure to redress injury suffered by pedestrians with disabilities occasioned by inaccessible streets, limited access to justice for pedestrians with disabilities means that duty-bearers are not held accountable for their failures, and there is no impetus for them to do better in ensuring barrier-free access.

5. Conclusion: The Case for Stakeholder Engagements with Continental Norms and Mechanisms

The preceding analysis has highlighted the significant policy/implementation gap that exists in the domestic application of barrier-free access for pedestrians with disabilities. As we have shown, pedestrians with disabilities in Kenya do not have meaningful barrier-free access to streets. This section suggests ways in which continental policy and normative instruments and institutions may require or encourage Kenya to ensure that pedestrians with disabilities have meaningful barrier-free access.

Kenyan and other African OPDs should engage proactively with the normative and institutional frameworks of the AU to enhance barrier-free access.

This article has shown that lack of political will impinges on the implementation of barrier-free access for persons with disabilities. OPDs, therefore, should assess how they engage with key offices of the AUC, including the Chairperson of the AUC who holds a number of critical levers that may solidify political willingness of governments on the continent. He is responsible for implementing the African Union Disability Strategic Policy Framework (DPF) which is cognisant of the need to deploy innovative approaches towards ensuring the rights of persons with disabilities. The DPF is: “mindful that there are increasing opportunities for promoting and protecting the rights of persons with disabilities, including through the use of new life-changing technologies for enhancing the accessibility of the physical environment, public transportation, knowledge, information and communication” (African Union 2019). Most recently, the AUC has taken specific measures to include youth with disabilities in its programmes. In 2020, the AUC launched the *AU Disability Inclusion Guideline* towards ensuring no young person was left behind in the creation of direct opportunities for young Africans in education, employment and entrepreneurship (African Union 2020a). The inclusion guideline provides guidance, among others, on the benefits of having disability-inclusive exchange and volunteering programmes (African Union 2020b). OPDs must make the case that initiatives such as this one will be successful only when accompanied by holistic implementation of policies and norms on barrier-free access.

OPDs should lobby the Chairperson to use his good offices to raise the profile of the requirements of persons with disabilities generally and on barrier-free access. The Chairperson could, for example, appoint a special envoy to advocate for the rights of persons with disabilities across the continent.

OPDs should appraise their engagements with continental human rights mechanisms on the premise that accessibility is a prerequisite for the exercise of other rights of persons with disabilities. The African Charter on Human and Peoples’ Rights (African Charter) was among the first binding international human rights instruments to provide explicitly on the rights of persons with disabilities. Subsequently, OPDs engaged with the continent’s human rights mechanisms, leading to the adoption of a more robust continental disability-rights framework in the Disability Rights Protocol, introduced in section two of this article (also see Guematcha 2022, chp. 10). However, as discussed earlier, the minimum requisite number of states have not become party to the protocol, and it has not come into force five

years since its adoption. In comparison, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) came into force only two years after its adoption in 2003. OPDs must lobby for the Disability Rights Protocol to come into effect at the earliest possible time. To this end, it is significant that the AUC has established an advocacy initiative towards the universal ratification or accession of all AU treaties by member states ([African Union 2022](#)).

At the same time, OPDs should craft more sustainable strategies for engaging with human rights mechanisms such as the African Commission on Human and Peoples' Rights (African Commission). Strategic elements for such engagement may include a number of things. OPDs may file triable cases on violation of the rights of persons with disabilities before the African Commission or, subject to jurisdiction, the African Court on Human and Peoples' Rights, and courts of Regional Economic Communities such as the East African Court of Justice and the Court of the Economic Community of West African States. They may participate in the forums that take place within and around public ordinary sessions of the African Commission, including the NGOs Forum, and they may issue statements at the Commission's public sessions. They may submit shadow or alternative reports to the African Commission when it is considering state reports on the extent to which states are implementing the African Charter. They may create more proactive relationships with the Working Group on Older Persons and People with Disabilities, whose terms of reference include the promotion of disability rights on the continent. Finally, they may create working relations with the country rapporteurs designated by the commission to oversee the promotion of human rights in specific states. In this regard, country rapporteurs can play more proactive roles in encouraging governments to implement barrier-free access for pedestrians with disabilities.

In conclusion, and on balance, it may be surmised that Kenya evidently feels impelled to implement the commitments it makes in international forums. It is, therefore, important that activists and allies of persons with disabilities work towards making Kenya to implement its commitments on providing meaningful barrier-free access for pedestrians with disabilities using streets.

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