THE RIGHT TO POLITICAL PARTICIPATION

Political participation provides the foundation for good governance and strong democracies. It is broadly understood as the way citizens engage with, and are represented by, governments. Essentially, Inclusion International defines political participation or inclusive civic engagement as:

• **being involved in processes and strategies that are related to civic, political and public life.**

For us, political participation is a basic citizenship issue. It established the foundation for inclusion in all aspects of society. While the focus of political participation is often on voting, it also includes being able to stand for public office and being involved in civil society organizations and efforts to hold governments to account on their commitments to the rights of persons with disabilities. These efforts may include:

• Being involved in parallel reports submitted to UN treaty bodies
• Participating in government representation committees
• Engaging in coalitions and efforts to advance the rights of persons with intellectual disabilities
• Engaging with elected officials and government representatives

The right to political participation is secured in Article 25 of the International Covenant on Civil and Political Rights and explicitly reaffirmed for people with disabilities in Article 29 of the United Nations Convention on the Rights of Persons with Disabilities. Despite these assurances, we know there is continued systemic exclusion of people with intellectual disabilities, in particular women with intellectual disabilities, from political participation.

WHY POLITICAL PARTICIPATION MATTERS

Political participation is important because it enables people with intellectual disabilities and their families to:

• Raise issues that are important to them.
• Influence policies and agendas that take into account their interests.
• Play a part in creating a society that is responsive to their needs and interests.

Further, we know political participation is essential to ensure people with intellectual disabilities and their families be recognized as:

• Members of the community and as equal citizens before the law.
• Agents of change in their community and country.

Taking part in political and public life is about being included in society and having the voices of people with intellectual disabilities and their families heard.
CRPD ARTICLE 29 COMPLIANCE IN KENYA

Article 38 of the Constitution of Kenya states that every adult citizen has a right to freely decide on any matters of a political nature. This includes the right to elections which are regular, free and fair; the right to freely express their will, the right to hold an elected position, the right to register as a voter and the right to exercise one’s vote freely and in secret. Similarly, section 29 of the Persons with Disabilities Act 2003 specifically deals with people with disabilities and provides that every person with a disability has a right to vote in elections. The Act also provides that they may have a personal assistant whose duty it is to follow their instructions in voting in civic, parliamentary and presidential elections.

Despite these provisions, the Constitution contains conflicting provisions that would disqualify persons of “unsound mind” from being able to register to vote or stand for election.

- Article 83 (1) (b) of the Constitution states that a voter must not be someone of “unsound mind”.
- The Election Act of 2011 which regulates national elections also states that those of “unsound mind” may not vote.
- The Local Government Act of 2010 which regulates local elections states in Part V, paragraph 53 (C) that a person of “unsound mind” may not vote in local elections.
- Article 99 (2) (e) of the Constitution of Kenya states that a person of “unsound mind” may not be elected as a member of parliament.

The terms “unsound mind”, “mental infirmity”, and “mental incapacity” are not defined anywhere in the law, despite their use in several provisions, and may be used to restrict people with intellectual disabilities from political and civic participation.

These provisions are also used as justification for removing someone from office:

- Article 144 of the Constitution states that if the President becomes mentally or physically “incapacitated”, they may be removed from office.
- The National Land Commission Act 2012 states in section 21 (1) (a) that the Secretary of the Commission may be removed from office if they are unable to perform their duties due to “physical or mental incapacity”.
- The Commission for the Implementation of the Constitution Act 2010 states in section 11 (1) (d) that the chair or a member may be removed from office by the Commission if they have a “physical or mental infirmity”.

Additionally, these provisions exclude persons with intellectual disabilities from being eligible to fill one of the dedicated representative positions for persons with disabilities. Article 54 (2) of the Constitution provides for a 5% quota of elected and appointed public sector positions which should go to people with disabilities. Yet, the “unsound mind” provisions mean that these positions will only be filled by people with other types of disabilities, not by people with intellectual disabilities.

The extent of the understanding and practical implementation of these provisions is unclear. Families and persons with intellectual disabilities in Kenya report examples of individuals being able to vote. Regardless, the existence of these laws are in direct conflict with CRPD Article 29 and reflect a capacity-based limitation to a particular group of persons with disabilities. The social implications of the negative message has far reaching implications.
KEY ISSUES IN KENYA
It is important to note that not all restriction from civic and political participation is due to the application of legal provisions. Survey participants revealed the following issues as specific to Kenya:

• **Gender issues.** There are still existing cultural beliefs in Kenya that view women as the lesser sex which should not be involved in civic and political activities. The situation is much worse for women with intellectual disabilities. Legal provisions designed to encourage the participation of women such as the 2/3 gender rule, according to which two out of every three people in government must be female, is still not accessible in practice to women with intellectual disabilities.

• **Identity Cards.** The majority of persons with intellectual disabilities do not have identity cards. Without one, a person cannot vote. Families and communities do not view them as equal citizens and therefore, do not invest the time to help them apply for identity cards.

• **Social/cultural restrictions.** Persons with intellectual disabilities in Kenya are seen as “lesser people” and are not seen as equal citizens or as human beings.

• **Not a priority.** Half of the survey respondents said political participation was not a priority. They gave the following reasons:
  - Poverty within families
  - Illiteracy
  - High burden of care and lack of services
  - Poor leadership and corruption
  - Lack of technical knowledge on how to write petitions and proposals for change
  - Inaccessible voting materials.

RECOMMENDATIONS

• Removal of the terms “unsound mind”, “mental infirmity”, and “mental incapacity” which carry negative legal and social implications and are used to restrict or prevent the participation of people with intellectual disabilities.

• Address the gender imbalance and ensure that women with intellectual disabilities can participate in political and civic activities.

• Ensure that people with intellectual disabilities get identity cards so that they can participate in civic and political activities such as voting.

• Conduct public awareness campaigns about intellectual disability to help address the social/cultural restrictions to participation resulting from misconceptions that people with intellectual disabilities cannot make important decisions.

• Educate families on the importance of civic and political participation for people with intellectual disabilities.

• Ensure that voting materials, facilities and procedures are accessible.

• Ensure that people with intellectual disabilities are properly accounted for in censuses so they can be included in national planning.
GLOBAL REALITY

In 2011, more than 64 countries participated in thematic study by the UN Office for the High Commissioner on Human Rights. The vast majority reported that: persons with psychosocial and intellectual disabilities continue to be deprived of their right to vote and be elected on the basis of constitutional or legal provisions that link their political rights to legal capacity.

A 2014 survey by Inclusion International highlighted that while over 80% of respondents indicated there were mechanisms in place for citizens to have their voices heard by governments, over 70% reported that it’s not common for people with intellectual disabilities to be engaged in political and public life. Further, the study identified that:

- 62% indicate there are social and cultural restrictions that limit political participation
- 52% report that voting facilities, procedures and materials are not accessible
- 48% indicate that efforts related to political participation are not a priority

Even where legal prohibitions restricting voting are not in place, people with intellectual disabilities and their families report low levels of political participation.

CRPD COMPLIANCE ANALYSIS

As part of a project, Accessing the Ballot Box, funded by the UN Democracy Fund, Inclusion International has developed a CRPD Compliance Analysis to help individuals and/or groups determine if their country is in compliance with Article 29 of the CRPD. In assessing CRPD Article 29 compliance, Inclusion International used the following check-list to evaluate a country:

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<th>YES</th>
<th>NO</th>
<th>REFORM NEEDED?</th>
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<td>Are there provisions in the law preventing people with intellectual disabilities from voting in elections?</td>
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<td>Does the law in your country prevent people with intellectual disabilities from standing for or holding public office?</td>
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<td>Are people with intellectual disabilities in your country supported to obtain birth certificates and identity cards to enable them to register to vote in elections?</td>
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<td>Is voting information about the political parties, candidates and polling stations made available to people with intellectual disabilities in accessible formats like plain language?</td>
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<td>Are voting materials, facilities and procedures in your country accessible to people with intellectual disabilities?</td>
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<td>Are people with intellectual disabilities able to vote in secret and if they need assistance, to be assisted by a person of their choice?</td>
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<td>Are people with intellectual disabilities in your country free to participate in civil society organizations which are concerned with public and political life?</td>
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<td>Are people with disabilities in your country free to participate in civil society organizations which deal with the administration of political parties?</td>
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<td>Can people with intellectual disabilities in your country join or form their own organizations which represent people with disabilities at the local, regional, national and international levels?</td>
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