

Access to Justice for Persons with Disabilities in Kenya: Progress and Challenges

Summary
July 2025



Composed of up to 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists (ICJ) promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952 and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

Access to Justice for Persons with Disabilities in Kenya: Progress and Challenges

Summary

© Copyright International Commission of Jurists

Published in July 2025

The International Commission of Jurists (ICJ) permits free reproduction of extracts from any of its publications provided that due acknowledgment is given and a copy of the publication carrying the extract is sent to its headquarters at the following address:

International Commission of Jurists
Rue des Buis 3 P.O. Box 1740
1211 Geneva 1
Switzerland
t: +41 22 979 38 00
www.icj.org

Access to Justice for Persons with Disabilities in Kenya: Progress and Challenges

Summary
July 2025

Acknowledgements

The report upon which this summary is based was researched and written by Marishet Mohammed Hamza, Legal Consultant at the ICJ. Timothy Fish Hodgson, Senior Legal Advisor, and Wilson Macharia, Legal Advisor, both with the ICJ, provided research support and contributed with reviews of the report at various stages of the drafting process. Valentin Büchi, Legal Intern at the ICJ, contributed to the review process.

An external review of the report was conducted by Paul Ochieng Juma (PhD), commissioned by the ICJ.

Legal and policy review of the report was undertaken by Livio Zilli, Deputy Program Director, Law and Policy, ICJ.

The ICJ acknowledges the judges, magistrates, and members of organizations of persons with disabilities who were interviewed for the study. Their insights and contributions informed the background and context of the report.

Summary

The report upon which this summary is based,¹ examines Kenya's legal and institutional landscape regarding the protection and enforcement of the right to access to justice for persons with disabilities. The report assesses Kenya's compliance with its obligations in terms of the right to access to justice for persons with disabilities under the United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD), and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (ADP). Kenya ratified the CRPD in 2008 and the ADP in 2021.

The report highlights both progress and persistent gaps in the country's legal and institutional frameworks, with a focus on the role of key actors — particularly the courts — in addressing challenges to access to justice for persons with disabilities. It is based on comprehensive desktop research, including the analysis of Kenyan laws, government guidance and policy documents, Kenyan court decisions, and key publications. The research also involved interviews with judges and disability rights experts.

The Constitution of Kenya (2010) includes a standalone provision on the rights of persons with disabilities, and, in addition, prohibits discrimination on the basis of disability. The recent enactment of the Persons with Disabilities Act (2025) — which features key provisions on equality and non-discrimination, legal capacity and access to justice — marks a significant step forward in the legal recognition and guarantee the right of persons with disabilities to access justice in Kenya. Despite these positive developments, however, deficiencies and inconsistencies in other key legislation continue to hinder access to justice for persons with disabilities.

- The Legal Aid Act (2016), for example, does not explicitly include persons with disabilities in the list of persons eligible to receive legal aid services.²
- The Mental Health (Amendment) Act (2022) retains provisions that allow for substituted decision-making and involuntary detention, practices that are inconsistent with the rights guaranteed to persons with disabilities under the CRPD and the ADP.
- Kenya's Penal Code Act (Cap.63) and the Criminal Procedure Code (CPC) Act (Cap.75) substantially restrict access to justice for persons with intellectual and/or psychosocial disabilities by depriving such persons of their right to legal capacity, legal standing and of their fair trial rights. The Penal Code allows the designation of an accused person with disability as being of "unsound mind". As a result of this designation, they are stripped of their right to legal capacity and denied the right to defend themselves. Similarly, Sections 162–167 of the Criminal Procedure Code contain discriminatory provisions against accused persons with intellectual and/or psychosocial disabilities, leading to their being declared unfit to stand trial, or their being found incapable to present a defence, or to verdicts of "guilty but insane".

These provisions violate international human rights law and standards, including, in particular, the rights of persons with disabilities guaranteed under the CRPD and the ADP, both of which enshrine the right of persons with disabilities to legal capacity and unequivocally prohibit deprivation of liberty based on disability. In addition, they severely undermine the rights of persons with disabilities to due process and equal treatment before the law. Rulings pursuant to Sections 162–167 of the Criminal Procedure Code, in particular, may lead to indefinite detention "at the President's pleasure", often without judicial review or oversight, with some individuals held in mental health institutions for over a decade.

Since 2016, Kenyan courts have questioned the constitutionality of provisions in the Criminal Procedure Code that mandate the detention of persons with disabilities at the President's pleasure. In *Hassan Hussein Yusuf v. Republic* (2016), for instance, the High Court at Meru (Meru County) held that such detentions amounted to cruel, inhuman and degrading treatment and were, therefore, unconstitutional. This precedent was followed by other High Court decisions, including, *Republic v. SOM* (2018) and *Kimaru & 17 others v. Attorney General & another* (2022), both of which reaffirmed the unconstitutionality of vesting the President with authority to detain at his/her pleasure undermined the principle of judicial independence and violated the rights to dignity, liberty and fair trial of persons with disabilities. The position of the Courts, however, remains unclear, as some decisions — notably those in *Republic v. Edwin Njihia Waweru* (2019) and *Republic v. Ibrahim Kamau Irungu* (2019) — have continued to uphold and apply these same provisions, explicitly rejecting contrary rulings of the Courts.

In addition to these inconsistencies in Kenya's jurisprudence, the courts which have ruled sections 162–167 unconstitutional have often largely focused on the unconstitutionality in respect of vesting the President — an executive authority — with this power, without fully addressing the broader human rights deficits within Sections 162–167 of the Criminal Procedure Code. This is particularly so with regard to the use of "guilty but insane" verdicts and "unfitness to stand trial" findings, which have often resulted in the indefinite detention of persons with intellectual and/or psychosocial disabilities in mental health facilities or prisons. Moreover, while in some of the abovementioned cases the Courts directed the Legislature to amend the impugned provisions

¹ The full report is available at: <https://www.icj.org/wp-content/uploads/2025/07/Access-to-Justice-for-Persons-with-Disabilities-in-Kenya.pdf>

² Section 36 of the Legal Aid Act, 2016, lists citizens of Kenya, children, refugees, victims of human trafficking, internally displaced persons, and stateless persons as persons eligible for legal aid services.

of the Criminal Procedure Code, the Legislature has been very slow to act. It therefore appears that despite several rulings declaring sections 162–167 of the Criminal Procedure Code unconstitutional, they remain in force at the time of writing and continue to be applied.

Apart from Kenya’s criminal justice system, the country’s civil justice framework also denies persons with intellectual and/or psychosocial disabilities the right to legal capacity through applying a regime of substituted decision-making, including through the mandatory involvement of court-appointed guardians. The Civil Procedure Act (Chapter 21) and the Civil Procedure Rules feature provisions under which persons with intellectual and/or psychosocial disabilities may be denied their right to legal capacity, and that authorize such a court-appointed “guardian” or “next friend”³ to substitute for them and purport to act on their behalf in civil proceedings. These provisions strip individuals of their autonomy, thereby undermining their ability to make decisions about their lives and limiting their access to justice.

Addressing these systemic barriers across both the criminal and civil justice systems is essential to fulfilling Kenya’s obligations under the CRPD and ADP. There is an urgent need for comprehensive legal reform in order to ensure the full and equal recognition of persons with disabilities as members of society and recognize their right to legal capacity and to participate in all legal proceedings on an equal basis with others.

Kenya has undertaken some important steps to enhance access to justice for persons with disabilities, including ensuring accessible court infrastructure, providing sign language interpretation, Braille, guide assistance and prioritizing cases involving persons with disabilities. However, implementation of the country’s obligations under the CRPD and ADP remains inadequate. While newly built courts in Kenya include accessibility features such as ramps, lifts and adapted washrooms, most older court buildings remain largely inaccessible. Renovations have been slow and inconsistent, often forcing judges to relocate hearings to ground-floor spaces. Other challenges include:

- shortages of sign language interpreters trained to accommodate diverse local languages;
- minimal procedural accommodations provided for persons with intellectual and/or psychosocial disabilities; and
- the judiciary’s continued reliance on non-governmental organizations or court users’ committees for support.

While such external support can complement State efforts, the provision of procedural accommodations and the obligation to ensure effective supports are available lies with the State itself in terms of the CRPD and ADP.

While the Kenyan judiciary has affirmed the duty of courts to implement reasonable accommodation measures in cases involving persons with disabilities — and some courts have indeed recognized this obligation — challenges persist. These include the failure to clearly assign responsibility to the court for providing necessary support, and the apparent assumption that the individuals concerned must arrange such support on their own. Additionally, in judgments where reasonable accommodation has been acknowledged, courts have primarily relied on domestic law, without referencing Kenya’s international obligations under the CRPD and ADP. This omission creates a risk of inconsistency and non-compliance with Kenya’s legal obligations under international human rights law, not least in the conflation between the reasonable accommodation and procedural accommodation standards.

Until the recently enacted Persons with Disabilities Act (2025), which explicitly recognizes the duty to provide procedural and age-appropriate accommodations, Kenya lacked a clear and comprehensive legal framework supporting the provision of procedural accommodation for persons with disabilities in accessing justice. While existing laws, such as the Sexual Offences Act of 2006 and the Prevention of Torture Act of 2017, provided some protections for vulnerable witnesses, including persons with disabilities, these provisions were fragmented and limited in scope to criminal proceedings. Kenya is among the few countries globally with laws recognizing the role of intermediaries in facilitating access to justice for persons with disabilities. The use of intermediaries is guaranteed by the Constitution, the Sexual Offences Act 2006, the Prevention of Torture Act 2017 and court decisions, such as *MM v. Republic (2014)*. Despite this recognition, implementation remains inconsistent due to a lack of standardized procedures, insufficient State-led training and the absence of accreditation frameworks for intermediaries. These shortcomings have limited the practical effectiveness of intermediaries, thus reinforcing the need for reforms so as to ensure that such services be consistently available, whenever necessary to all persons with disabilities, whether in their capacity as witnesses, complainants or accused persons.

The new Persons with Disabilities Act, therefore, marks a significant step forward by guaranteeing the provision of procedural and age-appropriate accommodations across all judicial proceedings involving persons with disabilities. However, the effective implementation of this right now depends on the prompt issuance of rules

³ A “next friend” is a person who files a suit in the name of a person with disability. Under the Civil Procedure Rules, “any person who is of sound mind and has attained [the age of] majority may act as a next friend.” See Civil Procedure Rules, Order 32 - Rules 1, 4, and 15.

by the Chief Justice in terms of section 28(3) of the Act to ensure consistent application of procedural accommodations throughout the justice system.

The timely adoption of these rules is particularly critical due to their potential for clarifying the scope of procedural accommodations and for ensuring their consistent application — including with respect to the use of intermediaries, the provision of reasonable accommodation, and other forms of support. Encouragingly, at the African Regional Conference on Access to Justice for Persons with Disabilities, held in Nairobi in May 2025 — just days after the Persons with Disabilities Act was passed — the Chief Justice of Kenya committed to fast-tracking the adoption of these rules and to enhancing access to justice for persons with disabilities. The Chief Justice’s timely action is essential to address current inconsistencies and to operationalize the commitments made under the new Persons with Disabilities Act, the Constitution, and pursuant to Kenya’s international law obligations, under the CRPD and ADP.

Key Findings and Recommendations

The following are the key areas of concern identified in the report, along with recommended actions to ensure equal access to justice for persons with disabilities:

a. Denial of legal capacity in the criminal justice system

Findings

- The Penal Code and CPC contain discriminatory provisions that deny persons deemed “of unsound mind” or found “guilty but insane” the right to legal capacity and the right to stand criminal trial or participate in criminal proceedings. These laws enable substituted decision-making and allow courts to impose orders of detention “at the President’s pleasure,” which violate the rights of persons with disabilities.
- A number of High Court judgments — declaring sections of the CPC relating to detention “at the President’s pleasure” unconstitutional — represent an important step forward. However, progress has been undermined by inconsistent jurisprudence. Notably, the judgments that have found such sections unconstitutional have only partially addressed the broader human rights concerns they raise. Moreover, despite explicit judicial calls for legislative amendment or repeal, the impugned sections of the CPC remain in force, as Parliament is yet to act on these recommendations

Recommendations

- **Legislature:** urgently amend Sections 162-167 of the CPC and the relevant provisions of the Penal Code to remove discriminatory provisions and align the criminal law and procedure with the Constitution, CRPD and ADP.
- **Judiciary:** Issue practice guidance to courts to support persons with disabilities and to avoid reliance on the provisions of the Criminal Procedure Code found unconstitutional by the High Court.

b. Denial of legal capacity in the civil justice context

Finding

- The Civil Procedure Act (Chapter 21) and the Civil Procedure Rules use derogatory terms to refer to persons with intellectual and/or psychosocial disabilities. These laws also restrict their right to legal capacity through substituted decision-making regimes, such as mandatory court-appointed guardians. These procedures are discriminatory and violate the dignity, autonomy and limit the right to access to justice for persons with disabilities.

Recommendation

- **Legislature:** Reform the Civil Procedure Act and Rules to recognize the full legal capacity of persons with intellectual and/or psychosocial disabilities. The latter should be allowed to participate in civil justice proceedings through supported decision-making frameworks consistent with the CRPD and ADP.

c. Deficiencies in the legal aid framework

Findings

- The Legal Aid Act does not explicitly recognize persons with disabilities as beneficiaries. It also restricts the scope of legal aid in civil matters primarily to formal court proceedings, excluding legal aid in non-court settings, such as those proceedings concerning individuals institutionalized in mental health facilities or rehabilitation centres.
- Under the Legal Aid Act, eligibility for legal aid is primarily determined based on a means test, except in public interest matters, which fails to reflect international human rights standards.

Recommendations

- **Legislature:** Amend the Legal Aid Act to explicitly recognize persons with disabilities as beneficiary groups. Revise the Legal Aid (General) Regulations to broaden the definition of “civil matters” to include legal aid services in non-court settings, such as proceedings in mental health facilities, rehabilitation centres, and other institutions where persons with disabilities may be held or receive services.
- **The National Legal Aid Service:** Develop alternative eligibility criteria for persons with disabilities that move beyond means testing. The CRPD and ADP obligate State parties to provide accessible legal aid at all levels of the justice system.
- **Judiciary:** Until the necessary legal reforms are enacted, the judiciary should exercise its inherent powers to ensure access to justice and direct the provision of legal aid where needed to uphold the right to a fair trial and equality before the law of persons with disabilities.

d. Physical accessibility, access to services and communications systems

Findings

- While most newly built courts in Kenya include features such as ramps, lifts, accessible washrooms, and reserved parking for persons with physical disabilities, older court buildings remain largely inaccessible. In these courts, judges often have to adapt by relocating hearings to ground-level spaces.
- There is a significant shortage of qualified sign language interpreters in the judiciary. Many interpreters are not trained to accommodate local language variations, forcing courts to rely on NGOs, court users’ committees, or self-arranged interpreters.
- The judiciary’s digitization, through virtual hearings and online case management, has improved physical access and convenience. However, these systems are not yet fully accessible to persons with visual or hearing disabilities.
- Although some court registries provide assistance to persons with disabilities needing help connecting to virtual court sessions or securing interpreters, there are no uniform protocols to ensure this be done consistently.

Recommendations

- **Legislature:** Enact the Kenya Sign Language Bill (2023) to provide statutory guarantees for the availability and quality of sign language interpretation in legal proceedings and to mandate its application in all relevant sectors of the justice system.
- **Executive:**
 - (a) In collaboration with the Judiciary, ensure full accessibility of all court facilities, including the modification of old court buildings to meet accessibility standards.
 - (b) Ensure adequate budgetary allocations and the creation of designated posts to support the provision of accessible services within the justice system, including qualified sign language interpreters, assistive technologies, and necessary infrastructure.
- **Judiciary:**
 - (a) Ensure the availability of Kenyan Sign Language interpreters and other local language variations. Take steps to reduce reliance on NGOs or other *ad hoc* arrangements.

- (b) Develop standard operating procedures for virtual participation of persons with disabilities in court proceedings, ensuring, in particular, prior assessment of support needs and arrangements for real-time interpretation or assistance.
- (c) Improve the accessibility of judicial technology systems for persons with disabilities, including aligning them with international web accessibility standards.

e. Accommodations and support measures

Findings

- Courts in Kenya have occasionally recognized the need for reasonable accommodations; however, these decisions primarily rely on domestic law and often fail to reference Kenya's obligations under the CRPD and ADP, among other international instruments binding on Kenya and other international standards. This risks inconsistent application and limited alignment with international standards.
- Before the recent enactment of the Persons with Disabilities Act 2025, the legal framework supporting procedural accommodations was unclear and limited in scope.
- Kenya's legal framework supports the use of intermediaries; however, implementation is hindered by the absence of standardized procedures, training programs and accreditation systems.

Recommendations

- **Executive:** Ensure adequate funding and institutional support for the operationalization of procedural accommodations and intermediary services in the justice system, including the development of training programs, accreditation frameworks, and the implementation of the Rules that will be enacted under the Persons with Disabilities Act, 2025.
- **Judiciary:**
 - (a) The Chief Justice should, in a timely manner, take all necessary steps to adopt Rules, as mandated under Section 28(3) of the Persons with Disabilities Act, 2025, to operationalize procedural accommodations and intermediary support, ensuring clarity and consistency across the justice system.
 - (b) Ensure the active involvement of persons with disabilities and their representative organizations in the development of the Court Rules.
 - (c) Ensure that the Rules harmonize existing legal frameworks related to reasonable accommodation and procedural accommodation.
 - (d) Ensure that Rules clearly distinguish intermediary support from substituted decision-making and align with international human rights standards.
 - (e) Establish rights-based standards for identifying, training and accrediting qualified intermediaries.

f. Capacity building and awareness-raising

Finding

- Ensuring equal access to justice for persons with disabilities requires more than legislative reforms. It demands a sustained commitment to capacity-building and awareness-raising across the justice system. Judges, court staff, legal practitioners, law enforcement officials and other justice sector actors must be adequately trained to understand disability rights, accommodations and supports, and the principles of supported decision-making as outlined in the CRPD and ADP. Without systematic efforts to build capacity, discriminatory practices may persist despite formal legal guarantees.

Recommendation

- The Kenya Judiciary and the Attorney-General's Office, in consultation with organizations of persons with disabilities, should develop and implement continuous capacity-building programs on the rights of persons with disabilities, targeting all justice sector actors.

Commission Members

January 2025

President:

Prof. Carlos Ayala, Venezuela

Vice-Presidents:

Justice Radmila Dragicevic-Dicic, Serbia

Justice Sir Nicolas Bratza, UK

Executive Committee:

(Chair) Dame Silvia Cartwright, New Zealand

Ms. Nahla Haidar El Addal, Lebanon

Mr. Shawan Jabarin, Palestine

Justice Qinisile Mabuza, Eswatini

Ms. Mikiko Otani, Japan

Prof. Marco Sassoli, Italy/Switzerland

Mr. Wilder Tayler, Uruguay

Other Commission Members:

Justice Azhar Cachalia, Africa

Moses Chinhengo, Africa

Ms Jamesina King, Africa

Justice Charles Mkandawire, Africa

Justice Aruna Narain, Africa

Justice Lillian Tibatemwa-Ekirikubinza, Africa

Justice Sanji Monageng, Africa

Justice Willy Mutunga, Africa

Mr Reed Brody, Americas

Ms Catalina Botero, Americas

Prof José Luis Caballero Ochoa, Americas

Prof Juan Mendez, Americas

Prof Mónica Pinto, Americas

Prof Victor Rodriguez Rescia, Americas

Mr Alejandro Salinas Rivera, Americas

Prof Rodrigo Uprimny Yepes, Americas

Ms Claudia Paz y Paz, Americas

Prof Kyong-Wahn Ahn, Asia

Justice Adolfo Azcuna, Asia

Dr Elizabeth Biok, Asia

Ms Hina Jilani, Asia

Justice Ajit Prakash Shah, Asia

Justice Kalyan Shrestha, Asia

Ms Ambiga Sreenevasan, Asia

Ms Imrana Jalal, Asia

Ms Chinara Aidarbekova, Europe

Justice Martine Comte, Europe

Ms Gulnora Ishankhanova, Europe

Ms Asne Julsrud, Europe

Justice Tamara Morschakova, Europe

Justice Egbert Myjer, Europe

Dr Jarna Petman, Europe

Justice Stefan Trechsel

Prof Fionnuala Ni Aolain

Ms Patricia Schulz, Europe

Ms Hadeel Abdel Aziz, MENA

Mr Marzen Darwish, MENA

Mr Gamal Eid, MENA

Justice Kalthoum Kennou, MENA

Justice Fatsah Ouguerouz, MENA

Mr Michael Sfard, MENA

Justice Marwan Tashani, MENA



International
Commission
of Jurists

Rue des Buis 3 P.O.
Box 1740 1201
Geneva Switzerland
t +41 22 979 38 00
f +41 22 979 38 01
www.icj.org