

# **From Exclusion to Equality: Advancing Access to Justice for Persons with Disabilities in Lesotho**

*Executive Summary*

September 2025

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### **An Opportune Moment: Realizing the Rights of Persons with Disabilities in Africa**

ICJ's study of nine sub-Saharan African States' implementation of the Convention of Persons with Disabilities

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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](http://www.icj.org)

**From Exclusion to Equality:  
Advancing Access to Justice  
for Persons with Disabilities  
in Lesotho**

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## Summary

The report<sup>1</sup> upon which this summary is based examines Lesotho's recent legal reforms concerning ensuring access to justice for persons with disabilities. It assesses Lesotho's compliance with its obligations under the United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD), which Lesotho ratified in 2008. Importantly, the reforms in Lesotho were advanced through a consultative process and reflect the outcome of sustained advocacy by organizations of persons with disabilities. As other African States seek to meet their obligations under the CRPD and ADP, lawmakers and policymakers can draw valuable lessons from Lesotho's experience.

In Lesotho, persons with disabilities have historically encountered significant discrimination in accessing justice. Discriminatory laws, policies and practices serve to deny them legal capacity, necessary accommodations and supports. Weaknesses in the country's statutory laws and the absence of procedural rules to guide justice actors are further drivers of discrimination. While these impediments to securing rights and accessing justice for persons with disabilities persist, there have been some positive indicators of serious moves on the part of State legislative and judicial authorities to address the situation.

A turning point came from the High Court in its 2019 *Koali Moshoeshoe* judgment,<sup>2</sup> with the Court striking down restrictions on the testimonial competence of persons with intellectual and/psychosocial disabilities. The broader effect was the court's more general affirmation of the inherent legal capacity of persons with disabilities. This landmark case results from persistent and deliberative advocacy strategies developed and implemented by organizations of persons with disabilities, which included employing strategic litigation as one of the key tools to push for legal reform. As a result of such advocacy, and building on the High Court's judgment, Lesotho's parliament enacted the Disability Equity Act<sup>3</sup> in 2021, following which the Chief Justice issued the Disability and Equity (Procedure) Rules<sup>4</sup> in 2023.

Taken together, these measures have been hailed as a historic moment by disability advocacy groups, as they establish a robust domestic legal framework to make real the provisions of the UN Convention on the Rights of Persons with Disabilities (CRPD) for persons with disabilities. While these reforms are incomplete, other countries in the African region and beyond would do well to look to this model of good practices for other African jurisdictions.

Nonetheless, challenges remain within the Lesotho legal framework that require ongoing reform, as well as in the practical implementation of the legal frameworks.

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<sup>1</sup> The full report is available at: <https://www.icj.org/resource/from-exclusion-to-equality-advancing-access-to-justice-for-persons-with-disabilities-in-lesotho/>

<sup>2</sup> *Koali Moshoeshoe and Others vs DPP and Others*, in the High Court of Lesotho, Constitutional Case 14/2017, judgement of 16 May 2019.

<sup>3</sup> Persons with Disability Equity Act No.2 of 2021.

<sup>4</sup> Chief Justice of Lesotho, Disability and Equity (Procedure) Rules (Procedure Rules), 2023, Legal Notice No.55 of 2023.

This report examines the processes behind the legal reforms in Lesotho, highlighting the role of sustained advocacy by civil society, particularly disability groups, human rights defenders, and the legal profession and the ongoing challenges to ensure effective access to justice for persons with disabilities.

Prior to the enactment of the Disability Equity Act in 2021, Lesotho's Constitutional, statutory and administrative legal framework did not specifically recognize and incorporate the right of persons with disabilities to access to justice or provide for tailored accommodations and supports to facilitate the effective exercise of that right.

- **Constitution:** The Constitution of Lesotho does not explicitly guarantee access to justice for persons with disabilities. It also does not list disability as a prohibited ground of discrimination. Moreover, certain provisions of the Constitution restrict the legal capacity of persons with intellectual and/or psychosocial disabilities.
- **Penal Code:** The Penal Code of 2010 empowers courts to declare accused persons deemed to be of "unsound mind" as "insane," resulting in the loss of their legal capacity for purposes of criminal responsibility.
- **Criminal Procedure and Evidence Act (CPEA):** The CPEA imposed restrictions on the testimonial competence of persons with disabilities, excluding those with intellectual and/or psychosocial disabilities from giving evidence before courts. The Act also allows for the special verdict of "guilty but insane," which results in the deprivation of legal capacity of persons with intellectual and psychosocial disabilities to stand trial and to defend themselves against criminal charges.
- **Sexual Offences Act:** Prohibits consensual sexual activity involving persons with disabilities, denying the rights to sexual autonomy and legal capacity.

While human rights advocates, particularly organizations of persons with disabilities, had been pressing for legal reform and the enactment of a disability-specific law since Lesotho acceded to the CRPD in 2008, OPDs specifically identify the judgment in *Koali Moshoeshoe* as a significant milestone in Lesotho's legal reform process.

By declaring Section 219 of the CPEA unconstitutional, the High Court, sitting as the Constitutional Court, struck down a long-standing provision that denied persons with intellectual and/or psychosocial disabilities the legal capacity to testify in court. Notwithstanding this important and necessary step, the direct effect of judgment is limited, partly because the Court opted not to address the broader issues of legal capacity, access to justice, or the need for accommodation and support. It also failed to expressly direct the legislature to reform the law. However, the judgment's far-reaching impact is manifest, for example, in the shifting attitudes of justice actors within the justice system, prompting the recognition of the rights and capacities of persons with disabilities. Building on this momentum, organizations of persons with disabilities intensified advocacy efforts, which ultimately led to the enactment of the Disability Equity Act in 2021.

The Disability Equity Act represents another landmark development in Lesotho, recognizing and incorporating into operative law the rights of persons with disabilities.

The Act includes a provision on access to justice and more generally marks a shift from a charity-based or medicalized approach to disability towards a human rights-based approach to disability. It also contains a specific provision legislating for the testimonial competence of persons with disabilities in line with the decision in *Kaoli*.

The Act was elaborated with the participation, through a consultative process, with organizations of persons with disabilities. Nevertheless, the final Act only partly reflects the feedback of OPDs and leaves out essential elements in its provisions. Notably, for example, the Act contains no provision on legal capacity, despite its provision in the CRPD as a core and indispensable right. This omission limits the Act's potential to transform the legal landscape regarding restrictions on the participation of persons with intellectual and/or psychosocial disabilities in legal proceedings.

Despite this shortcoming, the Act introduced an innovative approach, under Section 32(1), by mandating the Chief Justice to issue court rules to ensure accommodation and support for persons with disabilities. These rules should provide an important instrumentality to bolster the access to justice for persons with disabilities and provide an avenue for OPDs to continue their advocacy towards ensuring access to justice. Crucially, this approach moves beyond merely placing obligations in primary legislation and embeds specific accommodations and support into enforceable court rules that justice actors are required to apply. This brings the legal guarantees in the Act a step closer to realizing equal access to justice in practice.

In fulfillment of his mandate under Section 32(1) of the Persons with Disability Equity Act, Chief Justice Sakoane Sakoane took proactive leadership in the development of the Disability and Equity (Procedure) Rules, adopted in 2023. The process was highly participatory, including sustained consultations with organizations of persons with disabilities. These included, among others, the Lesotho National Federation of Organizations of the Disabled (LNFOD) and the ICJ. The process reflected a largely collaborative approach, thereby enhancing prospects for the practical implementation of the rules and notably improving the content of the Procedure Rules.

The Procedure Rules apply to all persons with disabilities at all stages and levels of judicial proceedings, including proceedings in customary law courts. Key guarantees provided for by the rules include:

- **Identification and removal of barriers:** Courts are required to proactively identify and remove barriers to access to justice for persons with disabilities;
- **Provision of accommodation and support:** Courts must ensure the undertaking of individualized accommodation and support needs assessments that center on the individual's input rather than solely on medical evidence. Courts must ensure the provision of accommodation and support, including through diverse communication methods such as intermediaries, plain language, Braille, sign language, and assistive technologies;
- **Accessibility of processes:** Court processes should include pre-trial orientation visits and breaks during testimony, which are currently provided for witnesses only, and take various measures to ensure courtroom

accessibility. Court processes should ensure the protection of witnesses with disabilities from harassment and undue embarrassment;

- **Expedited processes:** Court processes should allow for expedited case handling to minimize delays in matters involving persons with disabilities; and
- **Training of justice actors:** Justice actors, including judges, must undertake training and capacity building to ensure they can provide effective access to justice for persons with disabilities.

The mandating of a proactively initiated individualized needs assessment framework is one of the notable strengths of the Procedure Rules. This approach focuses on enabling the participation of persons with disabilities, rather than testing legal capacity in an all-or-nothing medicalized assessment, which serves to exclude a large number of individuals from participation. Instead, it places responsibility on judicial officers to evaluate and determine how to support the participation of persons with disabilities and integrates support provision into the assessment process itself.

Some provisions of the Procedure Rules will need to be construed carefully so as to comply with the CRPD, as well as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (African Disability Protocol or ADP). Examples include extending orientation visits and break beyond just witnesses and ensuring that the use of written statements of victims with disabilities in lieu of examination-in-chief is optional rather than mandatory. It is also critical to ensure that such statements are only used pursuant to the consent of persons with disabilities, and that they are not used as an excuse to avoid providing the necessary accommodation and support to persons with disabilities to participate on an equal basis.

Translating the guarantees in the Procedure Rules into practice will require increased and adequate resourcing, institutional commitment, and targeted capacity building. All efforts to implement the Rules should centre on the experiences of persons with disabilities and involve OPDs and other stakeholders.

Notwithstanding all of the highly consequential projects, the ICJ has found that two years after the enactment of the Procedure Rules, significant barriers continue to hinder their effective application, including:

- **Lack of adequate funding:** The judiciary faces chronic underfunding that has created challenges that affect the administration of justice across the country, and with implications on its ability to provide accommodations and support such as intermediaries, sign language interpretation, training for justice personnel, and necessary infrastructure and facilities.
- **Shortage of human resources:** No intermediaries or sign language interpreters have been formally appointed under the Procedure Rules, leaving organizations of persons with disabilities to fill the gap on a voluntary basis.
- **Unavailability of alternative communication methods:** Courts lack the capacity to make available accessible formats such as Braille, screen readers, and video-based communications, as well as protective measures like CCTV or one-way mirrors.



- **Physical inaccessibility of court premises:** Many courts remain physically inaccessible to persons with disabilities due to dysfunctional or absent lifts, and no adaptations have been made to courtrooms.
- **Low awareness and lack of training among justice actors:** Judicial officers, court staff, police, and prosecutors have not received systematic training on the rights of persons with disabilities or the Procedure Rules. Limited awareness-raising efforts and trainings have been led almost entirely by organizations of persons with disabilities.

Without decisive government action and commitment from the judiciary to address these gaps, the procedural guarantees and support measures envisioned in the Procedure Rules risk remaining aspirational, instead of reaching their transformative potential.

## **Conclusion and Recommendations**

Based on the key areas of concern identified in the report, the ICJ draws the following concluding observations and recommendations to the attention of the Lesotho parliament, the Ministry of Justice, the Chief Justice, members of the judiciary, and civil society:

### **a. Denial of legal capacity in the criminal justice system**

#### Key observations:

- Section 19 of the Penal Code (2010) and Section 172 of the CPEA (1981) retain provisions allowing courts to declare persons deemed to be “of unsound mind” as “insane,” impose verdicts of “guilty but insane” or “unfit to stand trial,” and authorize detention “at the King’s pleasure,” effectively removing legal capacity and criminal responsibility.
- The Disability Equity Act, while protecting certain human rights, omits a clear provision affirming the full legal capacity of persons with disabilities in all aspects of life. A provision of this kind is needed to counteract the legal restrictions embedded in the offending sections of the Penal Code and CPEA.
- These provisions and omissions are incompatible with the CRPD and ADP, perpetuate discriminatory treatment, and undermine the dignity and autonomy of persons with disabilities.

#### The ICJ makes the following recommendations:

- To the Legislature:
  - Amend the Penal Code and CPEA so as to remove discriminatory provisions and explicitly recognize the full legal capacity of persons with disabilities in all areas of law.
  - Amend the Disability Equity Act to explicitly affirm the full legal capacity of persons with disabilities, so as to align the Act with the CRPD and ADP.

- Undertake a comprehensive review of all pertinent laws, including the Constitution and the Sexual Offences Act (2003), with a view to amending them, where necessary, to ensure consistency with the CRPD and ADP regarding the recognition of the full legal capacity of persons with disabilities.
- Allocate adequate funding and resources to support the process of legal reform, implementation and capacity-building required to realize these commitments.
- To the Judiciary – the Chief Justice:
  - Issue guidance to courts to interpret and construe the provisions of the Penal Code and the CPEA in a manner consistent with Lesotho’s international legal obligations and ensure the provision of accommodations and support as mandated by the Procedure Rules.
  - Provide regular and mandatory training to judges, magistrates, and court staff on the recognition of the legal capacity of persons with disabilities and the application of the CRPD and ADP standards in judicial practices.

## **b. Development of the Disability Equity Act**

### Key observations:

- While the drafting process of the Act was highly participatory, involving OPDs and other stakeholders, not all important contributions - particularly on the right to legal capacity - were incorporated into the final text, as a consequence of which the Act was not wholly compliant with the CRPD and the ADP. This omission limits the Act’s potential to address entrenched legal restrictions on the participation of persons with disabilities in legal proceedings.
- Section 32 of the Act, which addresses “access to justice,” does not explicitly establish the right to access to justice and a general State obligation to guarantee this right and provide effective remedies. Earlier drafts of the Act reportedly contained such a provision, but it was omitted from the final version, potentially serving to limit the scope of the State’s duty.

### The ICJ makes the following recommendations:

- To the Legislature:
  - Amend the Disability Equity Act to include an explicit recognition of the right to access to justice for persons with disabilities and a corresponding obligation on the State to guarantee such access on an equal basis with others.
  - Institutionalize inclusive legislative drafting processes to ensure stakeholder feedback is systematically considered and reflected in final laws.

- To the Judiciary – judges, magistrates and judicial officers:
  - Interpret and apply Section 32 of the Disability Equity Act consistently with the CRPD and ADP, ensuring that persons with disabilities enjoy their right to access to justice on an equal basis with others.

### **c. Development of the Procedure Rules**

#### Key observations:

- The Procedure Rules were developed under the mandate of the Chief Justice, in terms of Section 32 of the Disability Equity Act, who proactively engaged OPDs and other stakeholders.
- This largely inclusive process generally led to strong alignment with international standards.

#### The ICJ makes the following recommendations:

- To the Judiciary – the Chief Justice:
  - Maintain ongoing dialogue with OPDs to address outstanding concerns and incorporate lessons learned from implementation into future revisions of the Rules.
  - Interpret and implement the Procedure Rules consistently with international human rights law, particularly the CRPD and ADP, by extending accommodations currently limited to witnesses to all persons with disabilities in judicial proceedings. Measures such as pre-trial visits, clear communication, breaks, and protections against harassment should apply to other participants, including accused persons or victims with disabilities, to ensure dignity, fairness, and equal access to justice.

### **d. Gaps in implementation**

#### *i. Lack of adequate funding to the judiciary:*

#### Key observations:

- Persistent underfunding of the judiciary in general has been identified by the Chief Justice, judges, magistrates, lawyers, and experts as a major challenge to the effective functioning of courts.
- The judiciary has faced a progressively shrinking budget, limited investment in court infrastructure, delays in judicial appointments, and difficulties in meeting operational expenses. These challenges directly affect its capacity to function efficiently, ensure general access to justice, and provide the accommodations and supports required under the Procedure Rules.

#### The ICJ makes the following recommendations:

- To the Parliament:
  - Ensure adequate and sustained budgetary allocations to the judiciary in line with the Constitution and the Administration of the

Judiciary Act. This includes providing sufficient funding to implement the Procedure Rules, covering accommodations, assistive technologies, infrastructure improvements, and both the establishment and training of specialized posts such as interpreters and intermediaries.

- To the Judiciary – to the Chief Justice:
  - Strengthen the administration of justice to ensure it is effective, fair, and compliant with constitutional and international legal standards, including the provision of accommodations and supports required under the Procedure Rules.

*ii. Lack of human resources*

Key observations:

- The Procedure Rules introduce, for the first time in Lesotho’s judicial system, the provision of qualified intermediaries for persons with disabilities, a role previously available only in children’s courts under the Children’s Protection and Welfare Act of 2011.
- Even within the children’s court system, intermediary services remain extremely limited, with only a single court-appointed intermediary serving all five district children’s courts.
- No intermediaries have been formally appointed to perform the role envisaged under the Procedure Rules, despite two years having passed since their enactment.
- Courts, therefore, exclusively continue to rely on the voluntary support of organizations of persons with disabilities, particularly LNFOD and the Intellectual Disability Association of Lesotho (IDAL).
- There is a lack of government-appointed sign language interpreters, despite recognition of their importance in the Procedure Rules. This gap is also currently filled by OPDs.

The ICJ makes the following recommendations:

- To the Parliament:
  - Allocate sufficient and sustained budgetary resources to support the recruitment, training, and appointment of qualified intermediaries and sign language interpreters for the courts.
- To the Executive/Ministry of Justice:
  - Develop and implement a sustainable program for the recruitment, training, and appointment of qualified intermediaries and sign language interpreters for the courts, ensuring their availability across all districts.
- To the Judiciary – the Judicial Service Commission:
  - Facilitate the effective deployment of intermediaries and sign language interpreters within courts, coordinating with relevant

government programs and organizations of persons with disabilities.

*iii. Lack of alternative communication methods*

Key observation:

- Courts lack alternative communication methods, including Braille, tactile aids, screen readers, as well as special measures like CCTV or one-way mirrors, unduly limiting the potential for full participation of persons with disabilities.

The ICJ makes the following recommendations:

- To the Parliament:
  - Allocate sufficient budgetary resources to enable the procurement and maintenance of assistive technologies and special measures across the justice system.
- To the Judiciary – the Judicial Administrator:
  - Identify and deploy the necessary communication tools and special measures, and ensure their effective use in court proceedings to facilitate full participation of persons with disabilities.

*iv. Physical inaccessibility of courts*

Key observation and finding:

- Many court buildings remain physically inaccessible, with non-functional or absent elevators and no adaptations to courtrooms or witness stands, limiting the participation of persons with disabilities.

The ICJ makes the following recommendation to the Parliament:

- Allocate adequate budgetary resources to support infrastructure upgrades to ensure all court facilities are fully accessible to persons with disabilities.

*v. Awareness creation and capacity building training*

Key observations:

- Court staff at all levels, judges, magistrates, prosecutors, and law enforcement officials often remain unaware of the content of the Procedure Rules and the rights of persons with disabilities. Although organizations like LNFOD have provided limited capacity-building trainings, there is no formal, judiciary-led training program on the Rules or disability rights more generally.

The ICJ makes the following recommendations:

- To the Parliament:
  - Allocate adequate budgetary resources to support the judiciary to conduct capacity-building trainings effectively.
- To the Judiciary - the Judicial Service Commission:
  - Plan and implement formal, judiciary-led capacity-building programs for judges, magistrates, prosecutors, and law enforcement officials on the Procedure Rules and disability rights.

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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

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