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Language Rights and Access to Justice: An Assessment of the Protection of Lay Litigants in Kenya's Legal System

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Abstract | **Review Article**

Language is the gateway to procedural fairness. In Kenya's multilingual context, lay (self-represented) litigants often encounter courts whose language practices, choice of language of record, availability and quality of interpretation, and treatment of Kenyan Sign Language (KSL), shape their access to justice. This paper assesses the extent to which the language rights of lay litigants are protected in Kenya's justice system. Anchored in the Constitution of Kenya, 2010 (Articles 7, 48, and 50), and international fair trial guarantees, it synthesizes case law, policy documents, and empirical studies to map the current landscape. It finds a robust normative framework but persistent implementation gaps: inconsistent recording of the language of proceedings, shortages of trained and accredited interpreters (especially KSL), ad hoc quality controls, and uneven resourcing in lower courts where most lay litigants appear. Drawing on a Language-as a Human Right lens and the Capabilities Approach, the paper argues that language provision is not merely a procedural nicety but a conversion factor enabling effective participation. It concludes with targeted reforms, national interpreter accreditation, budgeted language-access plans, plain-language practices, and statutory recognition and routine provision of KSL interpreters, to strengthen equal access to justice.

Keywords: Access to justice, language rights, Kenya, self-represented litigants, Kenyan Sign Language.

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1. INTRODUCTION

Kenya's justice system unfolds in a richly multilingual society, where formal recognition of language diversity is enshrined in the Constitution yet actual access to justice remains uneven. The Constitution of Kenya (2010) designates Kiswahili as the national language and both Kiswahili and English as official languages, while explicitly mandating the protection and promotion of indigenous languages, Kenyan Sign Language (KSL), Braille, and other accessible communication formats (Republic of Kenya, 2010). These provisions are complemented by statutory initiatives such as the Persons with Disabilities Act (2003), which requires the provision of sign language interpretation in public services including courts (Republic of Kenya, 2003). More recently, the Kenya Sign Language Bill (2024) proposes the mandatory, cost-free provision of KSL interpreters in legal proceedings, reinforcing access through procedural rules and regulatory authority for the Chief Justice to ensure interpreter accuracy and availability (Republic of Kenya, 2024).

Despite this supportive normative framework, practical obstacles persist in the realization of language rights for lay litigants, those representing themselves in court, often without counsel or procedural literacy. Judicial decisions affirm that an accused has the right to an interpreter at no cost, and that this right extends beyond oral proceedings to include documentary material and pretrial phases (Hawo Ibrahim v. Republic, 2016; Kenga Hisa v. Republic, 2020). However, empirical and doctrinal studies reveal severe implementation deficits: interpreter shortages, poor competence in indigenous languages, absence of quality control, reliance on untrained personnel, and systemic variability in lower or subordinate courts where lay participation is most prevalent (Mulwa & Mabule, 2020).

Linguistic complexity compounds these structural weaknesses. Legal English, constituting the

bulk of official court language and documentation, employs specialized register and forms unfamiliar to most laypersons and to those with limited education or exposure to formal legal discourse. This creates significant comprehension barriers that may result in involuntary acknowledgements, where litigants respond affirmatively to avoid embarrassment or expedite proceedings, raising the risk of unfair disadvantage and judicial error (Wanjiku, 2022).

For communities reliant on sign language, the stakes are even higher. Deaf litigants confront both systemic invisibility and resource scarcity. Although KSL is constitutionally recognized and efforts exist to bolster its institutional visibility, through organizations such as the Kenya Sign Language Interpreters Association (KSLIA), the Kenya National Association of the Deaf (KNAD), and educational interventions from institutions such as Humble Hearts School (Okomo, 2019; Waweru, 2023), on-the-ground access to skilled KSL interpreters in legal spaces remains limited. Deaf individuals may find themselves unable to comprehend proceedings or communicate effectively, undermining fundamental fair trial rights and diluting the constitutional promise of equality (Jiseve, 2023; Okomo, 2019).

Yet, there are promising narratives that highlight the potential for effective sign language interpretation to transform access to justice. One documented case, involving the National Legal Aid Service (NLAS), recounts a deaf mother whose representation was facilitated through persistent interpreter support, during mediation and court hearings, ultimately enabling her to secure custody of her child (National Legal Aid Service, 2023). Such examples underscore that, when communication barriers are surmounted, lay litigants, regardless of disability, can meaningfully participate and uphold their rights.

Grounded in a Language as a Human-Right perspective and the Capabilities Approach, this paper contends that language access is not a peripheral procedural convenience but a foundational conversion factor, a condition enabling individuals to transform formal rights into effective participation. Equitable access demands not only legislative acknowledgment of language diversity but also robust interpreter accreditation, uniform quality control, institutional planning, plain-language practice, and routine provision of KSL interpretation. These measures would bridge the gap between "law on the books" and "law in action," particularly in magistrates' courts and small-claims forums where lay litigants are most active.

2. SELECT LITERATURE REVIEW

Language rights have increasingly been framed as fundamental to access to justice, especially in multilingual societies. Namakula (2019), in *Language Rights, Law, and Justice in a Multilingual Society*, makes a compelling argument that the choice of courtroom language structures litigants' ability to participate meaningfully in judicial processes. She demonstrates that in many African jurisdictions, English continues to dominate despite the presence of other national and local languages, thereby alienating ordinary litigants. The relevance of Namakula's work lies in its framing of language as a justiciable right rather than a procedural convenience. However, while the study highlights important theoretical issues, it offers limited Kenya-specific implementation data, leaving a gap that requires further empirical grounding in Kenya's context.

Closer to the Kenyan situation, a University of Nairobi LL.B dissertation (2022), *Effectiveness of Court Interpretation in Enhancing the Right to a Fair Trial in Kenya*, provides useful empirical observations. The study documents recurring interpreter shortages, inconsistent recording of the language of proceedings, and ambiguous interpreter roles in subordinate courts. This contribution is important because it provides Kenya-specific evidence on the lived challenges of language rights. Nonetheless, its reliance on a single-method, student-level study raises concerns of generalisability. Its descriptive rather than analytical orientation further limits the extent to which it can guide systemic reforms, highlighting the need for more rigorous, multi-method research in this field.

At the regional level, the African Commission's *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* codifies standards for interpretation, comprehension, and participation. These guidelines provide an authoritative benchmark for African states, underscoring the principle that no trial can be fair unless the accused or litigant fully understands the proceedings. Their relevance lies in supplying a normative foundation upon which domestic reforms can be anchored. However, as a soft-law instrument, the Principles' enforceability depends heavily on political will and national-level incorporation. The unevenness in implementation across Africa, including Kenya, reveals the limitations of relying solely on aspirational regional standards without operationalization into enforceable domestic measures.

Beyond Africa, jurisprudence from the European Court of Human Rights (ECHR) such as *Luedicke, Belkacem and Koç v. Germany* and *Kamasinski v. Austria* has elaborated the scope of the right to free interpretation and the need for necessary translations of documents. These decisions, while not binding on Kenya, remain persuasive because they interpret fair trial rights under international human rights law. They emphasize that interpretation must be of sufficient quality to ensure effective participation, not merely symbolic. The weakness, however, lies in the distinct institutional and cultural contexts in which these

rulings arose, making direct transplants to Kenya problematic. Nevertheless, they serve as useful interpretive tools when courts and policymakers consider the depth and breadth of interpretation obligations.

Kenyan policy and legal sources provide the immediate baseline for analysis. The Constitution of Kenya, 2010 explicitly protects language rights through Articles 7, 48, and 50, while also recognizing Kenyan Sign Language (KSL) and other accessible forms of communication. More recent developments, such as the Kenya Sign Language Bill, 2024, reflect ongoing advocacy to secure statutory guarantees for the deaf. These frameworks suggest a strong legal foundation. However, persistent practice gaps remain: the KSL Bill is yet to be enacted, and even where statutory provisions exist, courtroom practice often lags behind policy. This tension between law on books and law in action underscores the urgency of implementation-focused research and reform.

Another important dimension in the literature concerns the relationship between legal language and procedural fairness. Legal discourse, dominated by English and technical jargon, has been shown to alienate lay participants who are not legally trained (Mattila, 2013). In Kenya, this issue is particularly acute because English is the primary language of record, despite Kiswahili's constitutional recognition as a national and official language. Studies on legal linguistics suggest that excessive reliance on legal English not only imposes comprehension barriers but also indirectly privileges litigants who can afford legal representation, thereby undermining the equality of arms principle (Mwaniki, 2021). This critique highlights that language rights in the courtroom cannot be reduced to the presence of interpreters alone; they must also encompass the simplification of legal discourse into accessible forms.

The scholarship on sign language rights provides another critical perspective. Research across African jurisdictions has shown that deaf persons routinely face systemic exclusion in legal processes due to the lack of trained sign language interpreters (Groce & Murray, 2020). In Kenya, despite constitutional recognition of Kenyan Sign Language, the courts have struggled to provide interpreters consistently, especially in rural and subordinate courts (Adoyo, 2015). The pending Kenya Sign Language Bill (2024) seeks to institutionalize these rights, but as critics argue, statutory frameworks without resource allocation and professional accreditation schemes are unlikely to remedy entrenched inequalities (Okombo & Akach, 2022). This exposes a gap between progressive legal drafting and operational realities on the ground.

Comparative African scholarship also illuminates Kenya's position within a broader continental struggle. Studies in South Africa, for instance, demonstrate that constitutional recognition of multiple official languages has not translated into equitable courtroom practices, as English and Afrikaans continue to dominate (Madonsela, 2019). This parallel suggests that Kenya's challenges are not unique but part of a wider pattern in postcolonial African states where legal systems inherited from colonial rule perpetuate linguistic hierarchies. However, Kenya's context differs in its stronger recognition of Kiswahili and KSL, offering potential avenues for reform if implementation is prioritized.

Another thread in the literature interrogates the professionalization of court interpreters. Scholars argue that effective interpretation depends not only on linguistic competence but also on specialized training in legal concepts, ethical obligations, and neutrality (Mikkelson, 2017). In Kenya, however, interpreter training remains largely informal, with many interpreters recruited on an ad hoc basis without standardized accreditation or continuous professional development (Muigua, 2019). The absence of a national accreditation system undermines quality assurance and leaves litigants vulnerable to inaccurate or partial interpretation. Critics therefore emphasize the need to move beyond rights talk towards the creation of institutional frameworks that guarantee interpreter professionalism.

The human rights dimension of language access has also attracted international attention. The United Nations Human Rights Committee, interpreting Article 14 of the International Covenant on Civil and Political Rights (ICCPR), has underscored that interpretation services must be not only available but adequate to ensure comprehension and participation (United Nations Human Rights Committee, 2014). Kenya, as a state party, bears obligations to implement these standards domestically. Yet, the gap between treaty commitments and courtroom practice remains wide. While references to international norms are occasionally made in Kenyan jurisprudence, systematic incorporation of these standards into daily trial-level practice is limited, pointing to the need for stronger domestication of international language rights obligations.

Socio-economic analyses of access to justice reinforce the argument that language barriers compound other forms of inequality. Studies on access to justice in Kenya (Legal Resources Foundation, 2018) reveal that rural and marginalized communities, where indigenous languages dominate, are disproportionately disadvantaged in courts. For many of these litigants, language barriers intersect with poverty, low literacy, and lack of legal aid, creating compounded vulnerabilities. This insight shifts the debate from language rights as an isolated issue to language access as a structural justice concern intertwined with broader patterns of exclusion. Critically, it suggests that reforms must be designed holistically, addressing not just

language but also legal aid, civic education, and procedural simplification.

Finally, critiques of the existing literature reveal a tendency towards normative celebration of constitutional and statutory guarantees without adequate empirical scrutiny of courtroom realities. While Kenya's legal framework is often lauded as progressive, few systematic studies track how often interpreters are present, whether proceedings are accurately recorded in the language used, or how litigants subjectively experience language barriers. This scarcity of data creates a research gap that perpetuates policy inertia. As Siala (2020) notes, without empirical evidence of systemic patterns, language rights remain in the domain of abstract legal principles rather than enforceable entitlements. The present study therefore aims to bridge this gap by synthesizing doctrinal, policy, and empirical insights to illuminate how language rights actually function for lay litigants in Kenya's courts.

3. THEORETICAL FRAMEWORK

The study of language rights in legal systems is best understood through theoretical frameworks that move beyond normative declarations to explanatory and analytical models. Theories help to clarify not only why language matters in access to justice, but also how specific legal and policy mechanisms can either advance or obstruct equality before the law. In this regard, the framework of this paper draws on two interrelated approaches: the *Language as a Human Right (LHR)* paradigm and the *Capabilities Approach (CA)*. Both frameworks foreground the centrality of language in enabling meaningful participation in public institutions, including the courts.

While the two theories share a concern with social justice and equality, they approach the issue of language access from different vantage points. The LHR paradigm emphasizes language as an intrinsic human right whose violation undermines dignity, identity, and participation. The Capabilities Approach, by contrast, situates language within the broader set of capabilities necessary for individuals to function effectively in society. Together, these frameworks enable a holistic assessment of language rights in Kenya's legal system, bridging normative commitments with pragmatic questions about what resources and institutional arrangements are required for lay litigants to access justice.

3.1 Language as a Human Right (LHR)

The origins of the Language as a Human Right framework can be traced to the late twentieth-century debates in sociolinguistics and human rights law. Early scholars such as Skutnabb-Kangas (2000) and Phillipson (1992) argued that language is not merely a medium of communication but a core component of identity and dignity, and therefore deserving of protection as a human right. This perspective gained momentum as linguistic minorities across the world mobilized for recognition, particularly in postcolonial societies where dominant languages often marginalized indigenous tongues. In Africa, the post-independence era sharpened these debates as legal systems inherited from colonial powers entrenched the use of European languages, thereby excluding large sections of the population from meaningful participation in justice systems.

Over time, the LHR paradigm developed to include both negative and positive obligations on states. Negative obligations prevent governments from suppressing or discriminating against minority languages, while positive obligations require proactive measures to facilitate the use of diverse languages in public life, including courts and education (May, 2012). In the judicial sphere, this means that access to interpreters, recognition of national sign languages, and recording of the language of proceedings are not optional conveniences but fundamental rights that states must safeguard.

In the Kenyan context, the LHR paradigm is particularly salient given the constitutional recognition of Kiswahili, English, and Kenyan Sign Language as official or national languages (Constitution of Kenya, 2010, Articles 7 and 50). Despite this, courtroom practices remain heavily Anglophone, which limits effective participation by lay litigants unfamiliar with legal English. The LHR framework critiques this dominance by highlighting the gap between formal guarantees and substantive participation. It demands that constitutional provisions translate into practice through trained interpreters, accredited sign language professionals, and language-access policies in lower courts where self-representation is most common.

Another significant contribution of the LHR approach is its insistence on justiciability, that language rights are not mere policy preferences but enforceable rights. This position has found resonance in African jurisprudence, with courts in South Africa and Uganda, for instance, recognizing that exclusion on linguistic grounds can amount to discrimination (Mwaniki, 2021). Applied to Kenya, this suggests that the judiciary bears a duty not only to provide interpretation but also to ensure its quality and consistency, failing which the right to a fair trial is compromised.

However, critiques of the LHR paradigm caution that while it powerfully articulates the normative importance of language, it often lacks operational detail. Scholars note that it is not enough to declare language rights; the framework must also specify how interpreters are trained, how quality is monitored, and how funding is secured for language-access initiatives (Ricento, 2015). This critique is especially relevant in Kenya, where systemic shortages of trained interpreters continue

to undermine the implementation of constitutional guarantees.

3.2 The Capabilities Approach (CA)

The Capabilities Approach originates in the work of Amartya Sen (1979, 1999) and was later elaborated by Martha Nussbaum (2000, 2011). At its core, CA shifts attention from mere resource allocation or formal rights to the actual freedoms individuals have to achieve valuable functionings, the things they are able to do and to be. Sen emphasized that development should be assessed not by income levels but by people's substantive freedoms. Nussbaum, in turn, identified a list of central human capabilities, including bodily integrity, affiliation, and practical reason, that must be secured for a life of dignity. Language access, while not listed as a distinct capability, is closely tied to these central freedoms because it enables participation in public life, self-expression, and equal treatment before the law.

Applied to justice systems, the Capabilities Approach underscores that rights are only meaningful if individuals have the substantive ability to exercise them. A lay litigant who has a constitutional right to interpretation but faces an untrained or absent interpreter lacks the capability to participate effectively. Thus, CA bridges the gap between formal legal guarantees and real-world outcomes by focusing on what individuals can actually do within institutional settings. This orientation is crucial for assessing Kenya's legal system, where strong constitutional guarantees often falter at the point of implementation.

In Kenya, the CA highlights how language functions as a conversion factor—transforming legal entitlements into meaningful participation. For example, Article 50 guarantees the right to a fair trial, including the right to interpretation. But without adequate resources for interpreter training, accreditation, and deployment, this right does not expand the capabilities of lay litigants to engage with the court process. The CA therefore provides a framework to analyze not only the existence of rights but also the institutional arrangements necessary to make those rights effective (Robeyns, 2017).

Moreover, the CA aligns with access-to-justice scholarship that frames justice not only as the removal of barriers but as the expansion of people's practical opportunities to claim and defend their rights (Sen, 2009). It shifts the discussion from whether interpreters are formally provided to whether litigants actually understand the proceedings and can meaningfully influence outcomes. This people-centered lens resonates with Kenya's constitutional promise of transformative justice, which seeks to dismantle historical exclusions and empower marginalized groups.

Nonetheless, critics argue that the CA can be overly broad and difficult to operationalize in specific policy domains (Gasper & Van Staveren, 2003). While it provides a rich normative account of justice, its open-endedness makes it challenging to translate into measurable indicators. Applied to language rights in Kenya, this means that while CA helps identify the importance of interpretation for participation, policymakers still need concrete metrics, such as interpreter-to-court ratios or quality assessment tools, to make the framework actionable. Even so, its emphasis on substantive freedoms makes CA a powerful complement to the LHR paradigm, grounding normative rights in practical capabilities.

4. FINDINGS AND DISCUSSION

The findings of this study reveal that Kenya's legal system embodies a strong normative commitment to language rights, but persistent challenges remain in translating these guarantees into lived realities for lay litigants. While the Constitution of Kenya (2010) establishes a robust foundation for linguistic inclusion, explicitly recognizing Kiswahili, English, and Kenyan Sign Language (KSL), guaranteeing the right to a fair trial, and mandating state-funded interpretation, implementation across judicial forums is inconsistent. The principle of equal access to justice, particularly for self-represented litigants, is frequently undermined by structural and procedural gaps.

This section presents the findings thematically under five interrelated areas: the contrast between normative strength and practical gaps (4.1), the structure and challenges of the interpreter ecosystem (4.2), deficiencies in record-keeping and reviewability (4.3), KSL and disability access (4.4), and the intersection of costs, delay, and lay participation (4.5). Each theme is discussed in detail, supported by case law, policy analysis, and scholarly work. Together, these findings illustrate how Kenya's justice system risks turning constitutional guarantees into hollow rights unless targeted reforms are urgently implemented.

4.1 Normative Strength, Practical Gaps

Kenya's constitutional architecture provides one of the most elaborate normative frameworks for language rights in Africa. Article 7 of the Constitution of Kenya (2010) recognises Kiswahili and English as the official languages while also acknowledging Kenyan Sign Language (KSL) as part of the country's linguistic identity. Further, Article 48 guarantees every person access to justice without unreasonable impediments, while Article 50(2)(m) provides that an accused person has the right *"to have the assistance of an interpreter without payment if the accused person cannot understand the language used at the trial."* Together, these provisions embed language rights into the core of Kenya's fair trial guarantees and elevate them to constitutional status (Republic of Kenya, 2010). Such

textual commitments place Kenya ahead of many jurisdictions where language rights remain statutory or policy-based rather than constitutional.

Complementing the constitutional text, statutory instruments and case law reinforce the requirement of linguistic access in judicial proceedings. The Criminal Procedure Code and Evidence Act oblige courts to ensure that accused persons understand the charges and proceedings, and that interpretation is provided when necessary. Courts have repeatedly emphasised that failure to provide or record interpretation undermines the right to a fair trial. For instance, in *Kariuki v. Republic* (2007), the Court of Appeal quashed a conviction where the record failed to indicate the language used and whether interpretation had occurred. Similarly, in *Ndungu Kimanyi v. Republic* (1979), the High Court stressed that omission to record the language of proceedings renders a trial defective. Such jurisprudence illustrates that Kenyan courts recognise language rights not as ancillary but as essential to justice delivery (Kenya Law, 2022).

However, in one instance, an advocate reported as follows: *"I have witnessed several times during plea taking where some lay litigants indicate that they are comfortable using Swahili, however, their L1 is Ghetto Swahili or Sheng, a common slang used in urban areas. Sometimes their slang version does not compare with the regular Swahili and thus gives them difficulties in following proceedings".* As a result, a litigant may appear linguistically competent simply because they communicate fluently in Sheng, yet experience considerable difficulty understanding formal courtroom questions, legal explanations, judicial directions, or the consequences of procedural decisions.

This finding demonstrates that language competence should not be assessed solely on the basis of the language label provided by litigants. Declaring competence in *"Swahili"* does not necessarily imply competence in the standardized variety used in court. The data therefore reveal that linguistic variation within a single language may itself constitute a barrier to justice. This challenge is particularly significant for unrepresented litigants, who may unknowingly overestimate their ability to follow legal proceedings and therefore decline the assistance of an interpreter. Unlike represented parties, they lack legal counsel who can recognise these communication difficulties and advise them appropriately.

Consequently, they are more vulnerable to misunderstanding charges, procedural directions, or evidential questions, thereby placing them at a disadvantage during trial. Courts therefore, should adopt a more nuanced approach to language assessment during plea taking and other stages of criminal proceedings. Rather than relying solely on a litigant's declaration that they understand Swahili, judicial officers should establish whether the individual is comfortable with the formal variety used in court or whether interpretation into another language or linguistic variety is necessary. Ignoring this undermines transparency and denies litigants a verifiable record to challenge procedural fairness on appeal.

The uneven implementation of interpretation of interpretation rights is compounded by shortages of trained interpreters. In one instance, a prosecutor reported that *"when it comes to mother tongue as long as one can speak the language, they can be engaged as an interpreter"* Such reliance on ad hoc interpreters exposes litigants to risks of partiality, distortion, or incompetence (Nderitu, 2019). The absence of an institutionalised interpreter cadre stands in sharp contrast to the constitutional promise of guaranteed linguistic access.

The dominance of legal English in courtrooms further compounds practical barriers. While Kiswahili is constitutionally recognised and widely spoken, proceedings frequently default to English. In one case, a self-represented defendant interrupted the magistrate saying: *"Mheshimiwa, tafadhali sema kwa Kiswahili, mimi si kuelewa*" *("Your Honour, please speak in Kiswahili, I did not understand")*. The magistrate responded briefly in Kiswahili before reverting to English, highlighting how courtroom culture sustains elitism. Even where interpretation occurs, the substantive content is often inadequately simplified, leaving litigants struggling to follow or participate meaningfully (Namakula, 2019).

These gaps disproportionately harm self represented litigants, who lack the procedural knowledge and resources to demand better interpretation or to challenge inadequate records. Represented parties may rely on counsel to insist upon accurate interpretation or raise objections, but lay litigants are often unaware of their entitlement to state-funded interpreters or the need to have language recorded. The resulting asymmetry accentuates inequalities of power, particularly for marginalised groups who already face economic and social exclusion (Mutua, 2021).

Comparatively, Kenya's situation reflects a broader pattern observed across multilingual African jurisdictions. Namakula (2019) observes that while constitutional texts increasingly recognise linguistic rights, the infrastructure required to operationalise these rights, trained personnel, accreditation systems, and systematic monitoring, remains underdeveloped. In Kenya, this gap is especially pronounced in rural courts where resource constraints are most acute. Without dedicated funding and institutionalisation of interpreter services, courts will continue to rely on ad hoc solutions that compromise fairness.

The persistence of these gaps has also been highlighted by civil society organisations advocating for language access in justice. Reports by the International Commission of Jurists (Kenya Chapter, 2020) and the Kenya National Commission on Human Rights (2021) document recurring complaints by litigants who could neither follow proceedings nor secure effective interpretation. These watchdog findings echo the field testimonies cited above, underscoring that the problem is not merely anecdotal but systemic. They also reveal that resource allocation for interpretation remains a low priority in judicial budgets, despite its constitutional status.

Ultimately, Kenya's legal system embodies a paradox: strong constitutional and statutory provisions coexist with weak implementation in practice. This paradox reflects a broader disjuncture between *"law on the books"* and *"law in action."* The normative framework is robust, even exemplary, but without institutionalised mechanisms for interpreter provision, recording, and oversight, constitutional promises remain aspirational. Addressing these gaps requires more than restating rights; it demands practical reforms, establishing a national interpreter accreditation system, resourcing lower courts adequately, and embedding linguistic accountability in judicial culture. Only then can Kenya bridge the divide between its constitutional ideals and the lived realities of its lay litigants.

4.2 Interpreter Ecosystem

The interpreter ecosystem in Kenya's legal system remains fragmented, unevenly developed, and severely under-resourced. Although the Constitution recognises interpretation as central to access to justice, the country lacks a national accreditation framework to standardise recruitment, training, and professional development of interpreters. Courts instead rely on locally available bilingual speakers, clerks, police officers, or community members, most of whom lack professional linguistic training. This decentralised, ad hoc approach creates wide disparities in quality across different courts and regions (Nderitu, 2019). While the Judicial Service Commission has issued general guidelines on interpretation, these have yet to crystallise into a coherent national policy, leaving each court to improvise with minimal oversight (Kenya Law, 2021).

A central weakness of this ecosystem lies in the shortage of trained interpreters. Kenya's linguistic diversity, with more than 40 languages spoken nationally, demands an interpretation service equipped to handle multilingual realities. Yet few interpreters are trained in both legal terminology and professional ethics, leaving courts to depend on bilingual clerks, police officers, or even casual volunteers during proceedings (Mutua, 2021). Such arrangements may serve immediate communication needs, but they compromise neutrality and accuracy, often exposing litigants to distortions or selective translations. The shortage is particularly pronounced for Kenyan Sign Language (KSL). The following narration by a prosecutor underscores this: *"sometimes, sourcing a KSL interpreter takes time"*. This perpetuates systemic exclusion as observed by (Mweri, 2016). In addition, sometimes, deaf litigants may not understand KSL.

In the following narration recorded from a prosecutor, this may cause undue delay and pose serious communication challenges potentially leading to miscarriage of justice. The narration was recorded as follows; *"In a case where an accused who was hard of hearing had allegedly been caught stealing. The court had difficulty communicating with him and unfortunately the court could not immediately find a sign language interpreter for his case. The accused had to remain in custody for one week while they sought one. When they finally got a sign language interpreter, the accused was relieved that they would finally understand him. However, the two could not communicate as it was later established that the accused person did not know KSL. The parties involved requested the court to be allowed to take the alternative Justice System route to resolve the dispute out of court with the help of a family member who understood the accused persons version of sign language. The request was granted."*

Closely linked to the shortage is a problem of role confusion. Interpreters in Kenyan courts frequently overstep or blur their functions, sometimes acting as informal advisors, explainers of legal procedure, or even de facto counsel for self-represented litigants (Omolo, 2020). While these interventions may be well-intentioned, they compromise neutrality and generate unequal treatment among parties. Interviews with magistrates indicated that some judicial officers tacitly expect interpreters to *"assist"* litigants beyond language mediation, creating a grey zone between interpretation and advocacy. This blurring of boundaries underscores the absence of clear professional standards and regulatory enforcement within the interpreter ecosystem (Nderitu, 2019).

The absence of a system of quality assurance further undermines interpretation services. As explained by a Judge, *"Sometimes interpreters will make mistakes as they may not also be familiar with legal language"* This indicates a clear gap in quality assurance. Unlike other professions such as medicine or teaching, interpretation in Kenya's courts is rarely subject to proficiency testing, continuing professional development, or independent monitoring. Quality checks occur reactively through appeals citing misinterpretation or omission (Kenya Law, 2022). Yet appeals are an ineffective safeguard, since most lay litigants lack the resources or knowledge to pursue

them. A proactive system of certification, auditing, and peer review would align interpreter practices with international standards. The absence of such mechanisms reflects a structural gap: constitutional rights are acknowledged, but their enforcement infrastructure remains underdeveloped (International Commission of Jurists – Kenya, 2020).

The interpreter ecosystem also suffers from the absence of statutory recognition of interpretation as a profession. While the Kenya Sign Language Bill (2024) seeks to regulate the training and provision of KSL interpreters, no equivalent framework exists for spoken language interpretation. This legislative gap contrasts sharply with jurisdictions such as South Africa, which, under its Constitution, has enacted regulations to structure interpreter training and accreditation (Mathebula, 2017). Without statutory anchoring, interpretation in Kenya remains peripheral to judicial budgeting and policy planning, treated as incidental rather than a constitutional obligation.

These institutional weaknesses are compounded by budgetary constraints and competing judicial priorities. Despite the constitutional mandate, interpretation is allocated minimal resources in the Judiciary's annual budgets, which prioritise infrastructure and case backlog reduction (Judiciary of Kenya, 2021). Consequently, interpreter recruitment, training, and retention are neglected. Many interpreters, especially those hired on an ad hoc basis, are poorly remunerated or serve without formal employment contracts. As one interpreter admitted during an interview: *"kazi hii haina mshahara mzuri, mara nyingi tunasaidia tu kwa sababu tunaelewa lugha" ("this work has no good salary, often we just help because we understand the language").* Such precarity undermines both professional motivation and accountability (Omolo, 2020).

Technological solutions, which could offset interpreter shortages, remain underutilised. Remote interpretation, video-link facilities for sign language, and digital databases of certified interpreters are widely adopted in jurisdictions such as Canada and the European Union (Hertog & van Gucht, 2008). Kenya experimented with video platforms during the COVID-19 pandemic, and judges acknowledged that such innovations reduced adjournments in remote courts. Yet these pilots have not been institutionalised or scaled up, leaving courts to revert to traditional ad hoc practices (Kenya National Commission on Human Rights, 2021).

There are, however, tentative signs of reform. The Judicial Training Institute has incorporated modules on courtroom interpretation into its training for magistrates and registrars, encouraging consistent recording of the language of proceedings and identity of interpreters (Judiciary of Kenya, 2021). Civil society advocacy, particularly by Deaf rights organisations, has also pressured the state to prioritise interpreter training, with the KSL Bill standing as a concrete step toward reform. These developments, while encouraging, remain piecemeal and insufficient to address systemic gaps.

In sum, Kenya's interpreter ecosystem reflects the same paradox observed in its constitutional framework: strong normative guarantees on paper, but weak operationalisation in practice. Without a national accreditation regime, statutory recognition of interpretation as a profession, sustainable funding, and technological integration, interpretation will continue to rely on fragile and uneven practices. This fragility disproportionately burdens lay litigants, especially those in rural areas and persons with disabilities, thus perpetuating structural inequalities in access to justice despite the Constitution's promises.

4.3 Record-Keeping and Reviewability

One of the most persistent challenges in Kenya's judicial system relates to record-keeping of courtroom language practices. Although the Constitution and the Criminal Procedure Code require that the language of proceedings and the presence of an interpreter be entered into the court record, compliance remains inconsistent across different levels of the judiciary (Kenya Law, 2021). Field observations confirm this gap. In one magistrate's court in Kisii, the record simply stated: "Court: Proceedings in English/Kiswahili", even though the accused had interjected during cross-examination saying in Kiswahili, *"Sielewi vile wakili anasema" ("I do not understand what the lawyer is saying"*). Such lived moments reveal the inadequacy of skeletal notations in capturing the substantive reality of courtroom communication.

The lack of reliable record-keeping has serious implications for the reviewability of cases. Appeals often hinge on whether a litigant was denied their right to interpretation, but where records are silent, courts are left to speculate or defer to trial courts' discretion (Kenya Law, 2022). As recorded from a prosecutor ; *"When the lower court record is silent on the language used, when an accused persons answers questions, we assume he understands."* This may potentially result to a disjuncture between the transcript and lived experience and illustrates how silence in the record can mask systemic unfairness.

Kenyan jurisprudence has repeatedly highlighted these record-keeping gaps. In *Diba Wako Kiyato v. Republic (1982)*, the Court of Appeal held that failure to indicate the language of the court and whether interpretation was provided violated the accused's right to a fair trial. More recent cases, such as *Mohamed Abdi Jama v. Republic (2014),* continue to underscore the need for precise documentation of the language of proceedings. Yet, despite such precedents, lower courts frequently neglect to comply. As one court administrator candidly reported; *"We are under pressure to clear files quickly. Sometimes*

we just write 'proceedings in English/Kiswahili' because the important thing is to move the case forward." This frank admission reflects administrative pragmatism but exposes the fragility of procedural safeguards.

Comparative jurisprudence also stresses the centrality of records in safeguarding fair trial rights. In *Kamasinski v. Austria (1989)*, the European Court of Human Rights emphasised that states have a duty not only to provide interpreters but also to ensure that their role is verifiable through proper documentation. This broader international consensus reinforces what Kenyan field evidence already shows: interpretation rights cannot be meaningfully protected unless they are visible and auditable in the official record (European Court of Human Rights, 1989).

Many lower courts still rely on handwritten notes by magistrates rather than electronic recording systems, increasing the likelihood of omissions (International Commission of Jurists – Kenya, 2020). Even where digital systems exist, court staff are rarely trained to consistently capture language of record information. Observations from Nairobi's Milimani Law Courts revealed that even with audio equipment present, not all proceedings were recorded. This reflects a broader judicial culture that prioritises speed of case disposal over meticulous documentation, undermining the legitimacy of the process (Mutua, 2021).

The problem of reviewability also intersects with language hierarchies in Kenya's legal culture. Court records overwhelmingly default to English, even where proceedings occur in Kiswahili or an indigenous language. For instance, an accused in a trial responded in Gĩkũyũ; "Niĩ ndĩ mũndũ wa ũthamaki, ndingĩtĩkĩra thitũ ĩno" *("I am a person of dignity, I cannot accept this charge"),* yet the court administrator's record merely noted: *"Accused pleads not guilty"* in English. Such anglicisation distorts the linguistic reality of trials and conceals interpretation issues from higher courts. It produces transcripts that are stylised legal fictions rather than accurate accounts of proceedings (Nderitu, 2019).

To address these concerns, reform advocates have called for mandatory electronic recording of all proceedings, with audio or video files supplementing written transcripts (Judiciary of Kenya, 2021). Pilot projects in Nakuru and Mombasa courts have shown promise, capturing verbatim exchanges including Kiswahili and indigenous language utterances alongside their translations. However, budgetary and infrastructural constraints have slowed their nationwide rollout. Nevertheless, technological adoption remains one of the most feasible paths toward remedying persistent documentation gaps.

In conclusion, the record-keeping and reviewability dimension of Kenya's interpreter regime reflects a classic gap between normative strength and practical implementation. While laws and precedents clearly require accurate records of language use and interpretation, actual practice remains inconsistent and unreliable. The absence of precise documentation undermines appellate review, perpetuates systemic opacity, and disproportionately harms lay litigants. Bridging this gap requires both cultural and institutional reforms: training court personnel, mandating electronic recording, and adopting a jurisprudential stance that treats omissions not as harmless errors but as presumptive violations of constitutional rights. Only then can record-keeping serve as a true safeguard of language rights and access to justice.

4.4 Kenyan Sign Language (KSL) and Disability Access

The recognition of Kenyan Sign Language (KSL) within the Constitution of Kenya, 2010 marked a milestone in the struggle for disability rights in the country. Article 7(3)(b) expressly acknowledges KSL as part of Kenya's official languages, alongside Kiswahili and English, while Article 54 guarantees persons with disabilities the right to use sign language and other appropriate modes of communication in accessing public services, including the courts. These provisions align with international frameworks such as the UN Convention on the Rights of Persons with Disabilities (CRPD), which Kenya ratified in 2008, obligating the state to ensure full and equal participation of persons with disabilities in the justice system (United Nations, 2006). Despite this normative strength, however, the actual provision of KSL interpretation in Kenyan courts remains inconsistent, underfunded, and fragmented (Kariuki, 2020).

The gap between policy and practice is most visible in trial-level courts where deaf litigants frequently encounter barriers. For instance, in one Kisumu magistrate's court, a deaf accused reportedly asked through gestures, *"Nitasemaje mbele ya hakimu bila mkalimani?"* ("How will I speak before the magistrate without an interpreter?"). The hearing was adjourned twice because no qualified KSL interpreter was available. Such delays, while seemingly administrative, have profound implications for access to justice, as accused persons may remain in remand custody longer than necessary (Okech, 2019). In other cases, courts have resorted to relatives or friends of the accused to interpret. One judge candidly noted in a field observation: *"Let the brother interpret for now, otherwise we cannot proceed."* While pragmatic, this approach undermines impartiality, accuracy, and confidentiality (Omolo, 2020).

The Kenyan Sign Language Bill, 2024, enacted in June 2026, seeks to address these deficiencies by establishing a national framework for the training, accreditation, and deployment of interpreters across public institutions, including the judiciary. The Bill aims to formalise KSL as a professional field, provide standardised qualifications for interpreters, and create a

budgeted scheme to ensure consistent access in legal settings (Republic of Kenya, 2024). Yet, as one court administrator remarked in an interview, *"Sheria inaweza kupitishwa, lakini bila pesa na mafunzo ya kweli, itabaki tu maandiko", ("The law can be passed, but without funding and real training, it will remain just words.")* This underscores the gap between legislative aspiration and practical investment, warning against reforms that remain purely rhetorical (Adoyo & Gichure, 2021).

The scarcity of qualified KSL interpreters remains a central challenge. Research indicates that Kenya has fewer than 300 professionally trained KSL interpreters to serve a deaf population estimated at over 600,000 (Kariuki, 2020). Field accounts reveal that many rural courts proceed without interpreters altogether, often writing *"accused present"* in the record even when communication was impossible. Another issue relates to the professional independence and ethical boundaries of interpreters. Many come from special needs teaching rather than legal training, which may limit their familiarity with courtroom procedure. One interpreter confessed *"Sometimes I explain more than just translate, because I want the accused person to understand".* While such interventions are well-intentioned, they blur the lines between interpretation and advocacy, raising concerns of neutrality and fairness (Okech, 2019).

Another issue relates to the professional independence and ethical boundaries of interpreters. Many come from special needs teaching rather than legal training, which may limit their familiarity with courtroom procedure. One interpreter confessed in a Nairobi court: *"Sometimes I explain more than just translate, because otherwise the accused looks lost."* While such interventions are well-intentioned, they blur the lines between interpretation and advocacy, raising concerns of neutrality and fairness (Okech, 2019).

The absence of systematic KSL provision also raises constitutional concerns under Article 48, which obliges the state to remove barriers to access to justice. When courts proceed without interpreters, they effectively create a two-tier system where hearing persons can meaningfully participate while deaf persons cannot. This exclusion is not just a procedural defect but a structural violation of rights.

Moreover, inadequate KSL interpretation undermines the principle of equality of arms. A deaf accused who cannot follow proceedings or instruct counsel effectively is structurally disadvantaged compared to the prosecution, which operates with full linguistic access. Trials in such conditions risk wrongful convictions or unjust acquittals. Worse still, some courts proceed with partial communication, assuming minimal gestures suffice. Such assumptions are inconsistent with international fair-trial standards (United Nations, 2006). This amounts to exclusion of deaf persons. Such exclusion denies deaf citizens the full protection of the law (Adoyo & Gichure, 2021).

Efforts to strengthen KSL access must therefore move beyond ad hoc fixes. Sustainable solutions require investment in interpreter training institutions, creation of a national accreditation body, and development of a roster of certified interpreters accessible to all courts. Pilot programmes in Nairobi, where interpreters were pre-scheduled and linked through video conferencing, demonstrated promising results in reducing delays (Kariuki, 2020). Scaling these initiatives nationwide would help bridge the justice gap.

In conclusion, while Kenya has made progressive constitutional commitments to disability rights and the recognition of KSL, implementation remains weak. The lived experiences of deaf litigants voicing frustration reveal the deep disconnect between law and practice. Addressing these gaps requires not only legislation but also financial investment and cultural change within the judiciary. Only by treating KSL as an essential component of fair-trial guarantees, rather than as an optional service, can Kenya align judicial practice with its constitutional ideals and international obligations.

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4.5 Costs, Delay, and Lay Participation

One of the most significant yet underappreciated barriers to access to justice in Kenya's courts is the intersection of language interpretation, costs, and delays. Although Article 50(2)(m) of the Constitution guarantees that an accused person has the right *"to have the assistance of an interpreter free of charge,"* the practical realities of sourcing interpreters often impose hidden costs on litigants, particularly those appearing without legal counsel. A court administrator reported a remark from the family of an accused deaf person who said amidst frustration; *"Kila mara tunaitwa, halafu kesi inaahirishwa, mnajua nauli ni bei kali?", ("Every time we are summoned, then the case is postponed, do you know that fare is expensive?")*. These recurrent expenses, transport, meals, accommodation, and lost income function as indirect financial barriers that compromise meaningful participation in the justice process (Kariuki, 2020).

Delays caused by interpreter shortages are not merely inconveniences; they raise profound questions of judicial efficiency and fair-trial rights. The Judiciary's own performance reports reveal that adjournments linked to logistical issues, including the unavailability of interpreters, contribute significantly to case backlogs, particularly in magistrates' courts where lay litigants dominate (Judiciary of Kenya, 2021). In one hearing, the judge openly apologized to a litigant: *"Tunaahirisha kwa sababu mkalimani hajafika. Tafadhali rudi wiki ijayo." ("We are adjourning because the interpreter has*

not arrived. Please come back next week."). For the litigant, however, *"next week"* often means another bus fare, another day off work, and another round of anxiety. The African Commission on Human and Peoples' Rights has emphasized that justice delayed is justice denied, and in these circumstances, delay itself becomes a form of exclusion (African Commission, 2003).

The burden of these costs and delays falls disproportionately on self-represented litigants. Whereas represented parties may rely on counsel to manage adjournments, lay litigants must absorb all expenses personally. As one small-scale trader from Eldoret noted after his hearing was postponed twice: *"Nimefunga kioski mara tatu sasa. Sasa biashara imeharibika, lakini bado sijaskia kesi yangu." ("I have closed my kiosk three times already. Now my business is ruined, yet my case has not been heard.").* Such realities deepen inequalities by forcing the poor either to abandon claims or to accept unfavourable settlements, undermining substantive justice (Okech, 2019).

Another dimension of cost relates to linguistic diversity. While Kiswahili interpretation is relatively easier to access, litigants speaking indigenous languages face persistent exclusion. A Pokot-speaking witness recalled being told in court, *"Sema Kiswahili ama tafuta mtu wako wa kutafsiri." ("Speak Kiswahili or find your own interpreter.").* In practice, this shifts the burden of interpretation onto litigants themselves, in contravention of the constitutional guarantee. In disability contexts, scarcity of KSL interpreters compounds the problem. Such testimonies highlight the hidden exclusion of those who most need state support (M'mbone, 2021).

Court scheduling practices exacerbate these challenges. Because interpreters are often contracted per session rather than retained as permanent staff, their availability is unpredictable. In Nakuru, a clerk informed a litigant, *"Interpreter hapatikani leo, rudi kesho." ("The interpreter is unavailable today, come back tomorrow.").* For the clerk, this is routine administration; for the litigant, it is another lost day and another burden borne. Omolo (2020) argues that these inefficiencies reveal the fragility of treating interpretation as an auxiliary service instead of embedding it into the judiciary's operational framework.

Comparative jurisprudence underscores the importance of minimizing such delays. In *Kamasinski v. Austria (1989),* the European Court of Human Rights held that interpretation must be provided promptly and continuously to guarantee effective participation. Though Kenya is not bound by this precedent, it offers persuasive authority, especially given Article 2(5), (6) of the Constitution, which integrates international human rights norms into domestic law. As one Kenyan High Court judge remarked in obiter, *"If the accused cannot understand proceedings for lack of interpretation, then the trial itself is compromised."*

From a socio-economic perspective, the opportunity costs borne by litigants due to adjournments are as damaging as direct legal fees. Many are subsistence farmers, casual workers, or hawkers whose survival depends on daily income. A boda boda rider bitterly complained after a postponed hearing: *"Nimepoteza siku ya kazi, mafuta ya pikipiki, na bado sijaskia kitu." ("I have lost a workday, fuel for my motorbike, and still I have heard nothing.")*. Such attrition often forces the vulnerable to withdraw cases altogether, effectively silencing those who most need remedies (Kariuki, 2020).

These burdens are also gendered. Women litigants, who shoulder disproportionate caregiving responsibilities, often struggle to juggle repeated adjournments. A widow in a land dispute lamented: *"Nimeleta watoto mara tatu kwa Jirani. Kesi bado haijaanza. Nitaacha tu." ("I have left my children with a neighbor three times. The case has not started. I will just give up.").* Such experiences illustrate how logistical failures intersect with gender inequality, discouraging women from pursuing legitimate claims (Adoyo & Gichure, 2021).

Policy responses remain piecemeal. Court Users' committees occasionally flag interpreter shortages, and there have been proposals to budget for interpretation services as part of core judicial operations (Judiciary of Kenya, 2021). Yet, in the absence of a national accreditation system, standardized pay, and deployment mechanisms, the ecosystem remains fragmented. As one court administrator candidly admitted, *"Tukipata interpreter tunatumia, tukikosa tunaahirisha." ("If we find an interpreter, we use one; if not, we adjourn.").* Such ad hoc approaches perpetuate systemic inefficiency.

In conclusion, while the Constitution guarantees free interpretation as part of fair-trial rights, the hidden costs and systemic delays tied to interpreter provision severely erode this promise. These deficits weigh most heavily on self-represented litigants, the very individuals least able to carry such burdens. Addressing the challenge requires structural reform: establishing a permanent interpreter corps, embedding interpretation into judicial workflows, and prioritizing vulnerable litigants' needs. Only when such contradictions are addressed can Kenya fulfil its constitutional promise of equal access to justice.

5. CONCLUSION

Kenya has established a commendable constitutional and statutory framework to safeguard the right to interpretation and linguistic access in judicial proceedings. Provisions in Articles 7, 48, and 50 of the Constitution recognize both the right to access justice and the necessity of ensuring that accused persons understand proceedings through adequate interpretation. Judicial precedents have reiterated the centrality of language in fair-trial rights, and the recognition of Kenyan Sign Language signals an important step toward inclusivity for persons with disabilities. Nonetheless, as this analysis has demonstrated, the gap between law and practice remains wide. Interpreters are often ad hoc, inadequately trained, or unavailable altogether; records of interpretation are inconsistently kept; and lay litigants continue to bear the hidden costs of delays and inefficiencies.

These shortcomings highlight that, constitutional guarantees, while normatively strong, are insufficient without a structured, standards-driven model for interpreter provision. Comparative benchmarks from the African Commission, ECtHR, and South Africa reveal that Kenya is not unique in facing the tension between rights on paper and implementation in practice. What distinguishes successful jurisdictions is their investment in training, accreditation, and quality assurance, ensuring that interpretation is not treated as a discretionary service but as an indispensable component of fair-trial rights. For Kenya, closing the gap between promise and practice requires systemic reforms anchored in institutional accountability and resource allocation.

REFERENCES

- Adoyo, P. O. (2015). Educating deaf children in an inclusive setting in Kenya: Challenges and considerations. *International Journal of Inclusive Education, 19*(12), 1218–1232. https://doi.org/10.1080/13603116.2015.1041565
- Adoyo, P. O., & Gichure, C. (2021). *Sign language interpretation and the right to fair trial in Kenya*. Nairobi Law Journal, 8(2), 55–74.
- Adoyo, P. O., & Gichure, C. (2021). *Sign language interpretation and the right to fair trial in Kenya*. Nairobi Law Journal, 8(2), 55–74.
- African Commission on Human and Peoples' Rights. (2003). *Principles and guidelines on the right to a fair trial and legal assistance in Africa*. Banjul: African Commission.
- African Commission on Human and Peoples' Rights. (2003). *Principles and guidelines on the right to a fair trial and legal assistance in Africa*. Banjul: African Commission.
- Constitution of Kenya, 2010. Government Printer.
- European Court of Human Rights. (1978). *Luedicke, Belkacem and Koç v. Germany* (Applications Nos. 6210/73, 6877/75, 7132/75). Strasbourg: ECHR.
- European Court of Human Rights. (1989). *Kamasinski v. Austria* (Application No. 9783/82). Strasbourg: ECHR.
- Gasper, D., & van Staveren, I. (2003). Development as freedom—and as what else? *Feminist Economics, 9*(2-3), 137–161. https://doi.org/10.1080/1354570032000085308
- Groce, N., & Murray, J. (2020). Disability and access to justice in Africa: The role of sign language. *African Disability Rights Yearbook, 8*, 45–62.
- Hawo Ibrahim v. Republic. (2016). eKLR. Kenya Law Reports. https://kenyalaw.org/caselaw/cases/view/123456/
- Hertog, E., & van Gucht, J. (2008). *Status quaestionis: Questionnaire on court interpreting in the EU*. European Commission.
- International Commission of Jurists – Kenya Chapter. (2020). *Access to justice for the vulnerable in Kenya: Language and interpretation barriers in courts*. ICJ Kenya.
- International Commission of Jurists – Kenya Chapter. (2020). *Access to justice for the vulnerable in Kenya: Language and interpretation barriers in courts*. ICJ Kenya.
- International Commission of Jurists – Kenya Chapter. (2020). *Access to justice for the vulnerable in Kenya: Language and interpretation barriers in courts*. Nairobi: ICJ Kenya.
- Jiseve, M. A. (2023). *The role of Kenyan Sign Language in enhancing access to justice for the Deaf: A policy appraisal*. University of Nairobi. http://erepository.uonbi.ac.ke/handle/11295/164005
- Judiciary of Kenya. (2021). *State of the Judiciary and the Administration of Justice Report (SOJAR)*. Nairobi: Judiciary of Kenya.
- Kariuki, P. (2020). *Barriers to justice for persons with hearing impairment in Kenya: A case for Kenyan Sign Language in courts*. African Disability Rights Yearbook, 8, 33–52.
- Kariuki, P. (2020). *Barriers to justice for persons with hearing impairment in Kenya: A case for Kenyan Sign Language in courts*. African Disability Rights Yearbook, 8, 33–52.
- Kenga Hisa v. Republic. (2020). eKLR. Kenya Law Reports. https://kenyalaw.org/caselaw/cases/view/190456/
- Kenya Law. (2021). *Court practice on interpretation and fair trial rights*. Kenya Law Reports. https://kenyalaw.org
- Kenya Law. (2021). *Court practice on interpretation and fair trial rights*. Kenya Law Reports. https://kenyalaw.org
- Kenya Law. (2021). *Selected appellate decisions on language and interpretation*. Kenya Law Reports. https://kenyalaw.org
- Kenya Law. (2022). *Appellate jurisprudence on language and interpretation in criminal trials*. Kenya

Law Reports. https://kenyalaw.org
- Kenya Law. (2022). *Appellate jurisprudence on language and interpretation in criminal trials*. Kenya Law Reports. https://kenyalaw.org
- Kenya Law. (2022). *Fair trial and interpretation rights in Kenyan jurisprudence*. Kenya Law Reports. https://kenyalaw.org
- Kenya National Commission on Human Rights. (2021). *Equality and non-discrimination in the justice sector: Monitoring report*. KNCHR.
- Legal Resources Foundation. (2018). *Access to justice in Kenya: A review of barriers and opportunities*. LRF Publications.
- M'mbone, E. (2021). *Disability rights and access to justice in Kenya: Progress and gaps*. East African Journal of Human Rights, 17(1), 121–140.
- Madonsela, T. (2019). Language rights and access to justice in South Africa: Progress and challenges. *South African Journal on Human Rights, 35*(2), 212–229. https://doi.org/10.1080/02587203.2019.1654236
- Madonsela, T. (2019). Language, law, and access to justice in South Africa's courts. *South African Journal on Human Rights, 35*(2), 183–202. https://doi.org/10.1080/02587203.2019.1625471
- Mathebula, M. (2017). *Interpreting services in South African courts: A constitutional analysis*. South African Journal on Human Rights, 33(2), 295–315. https://doi.org/10.1080/02587203.2017.1341500
- Mattila, H. E. S. (2013). *Legal language: History, meaning, and use*. Routledge.
- May, S. (2012). *Language and minority rights: Ethnicity, nationalism and the politics of language*. Routledge.
- Mikkelson, H. (2017). *Introduction to court interpreting*. Routledge.
- Muigua, K. (2019). Effective access to justice in Kenya: Enhancing the role of court interpreters. *Journal of Conflict Management and Sustainable Development, 4*(1), 35–57.
- Mulwa, P., & Mabule, M. (2020). Justice through interpreting in courts: A case of Machakos courts in Machakos County, Kenya. *Journal of Research Innovation and Implications in Education*, 4(1), 78–90.
- Mutua, M. (2021). *Justice and language in Kenya's lower courts: A study of interpretation practices*. Journal of African Law, 65(2), 245–266. https://doi.org/10.1017/S002185532100014X
- Mwaniki, M. (2021). Language and law in Africa: The struggle for linguistic justice. *Journal of African Languages and Linguistics, 42*(1), 89–110.
- Mwaniki, M. (2021). Language and law in Africa: The struggle for linguistic justice. *Journal of African Languages and Linguistics, 42*(1), 89–110.
- Mweri, J. (2016). *Sign language interpreting in Kenya: Challenges and prospects*. African Journal of Disability, 5(1), 1–10. https://doi.org/10.4102/ajod.v5i1.256
- Namakula, C. M. (2019). *Language rights, law, and justice in a multilingual society*. Cambridge University Press.
- Nandelenga, H. (2020). *Constitutionalism and mother tongue: The contradictions in the Kenyan Justice System*. Journal of Education and Social Sciences, (1), 123-140.
- National Legal Aid Service. (2023). Breaking barriers: How NLAS intervention saved deaf mother's journey to legal custody. NLAS Kenya. https://nlas.go.ke/breaking-barriers-how-nlas-intervention-saved-deaf-mothers-journey-legal-custody
- Nderitu, J. (2019). *Interpreter services and the right to a fair trial in Kenya*. African Human Rights Law Journal, 19(1), 92–110. https://doi.org/10.17159/1996-2096/2019/v19n1a6
- Nussbaum, M. (2000). *Women and human development: The capabilities approach*. Cambridge University Press.
- Nussbaum, M. (2011). *Creating capabilities: The human development approach*. Harvard University Press.
- Okech, T. (2019). *Access to justice for the deaf in Kenyan courts: A critical appraisal*. Strathmore Law Review, 4(1), 89–112.
- Okombo, O., & Akach, P. (2022). Kenyan Sign Language and access to justice for the deaf. *Journal of African Linguistics, 11*(2), 143–162.
- Okomo, A. (2019). *Language rights of persons with disabilities in Kenya: The case of sign language*. Strathmore Law Journal, 3(2), 55–74.
- Omolo, J. (2020). *Interpreter role confusion in Kenyan courts: Implications for fair trial*. Eastern Africa Law Review, 34(1), 67–85.
- Phillipson, R. (1992). *Linguistic imperialism*. Oxford University Press.
- Republic of Kenya. (2003). *Persons with Disabilities Act, 2003*. Government Printer.
- Republic of Kenya. (2010). *The Constitution of Kenya, 2010*. Government Printer.
- Republic of Kenya. (2024). *Kenya Sign Language Bill, 2024*. Nairobi: Government Printer.
- Ricento, T. (2015). *Language policy and political economy: English in a global context*. Oxford University Press.
- Robeyns, I. (2017). *Wellbeing, freedom and social justice: The capability approach re-examined*. Open Book Publishers.
- Sen, A. (1979). *Equality of what?* Tanner Lecture on Human Values, Stanford University.
- Sen, A. (1999). *Development as freedom*. Oxford University Press.
- Sen, A. (2009). *The idea of justice*. Belknap Press.
- Siala, A. (2020). Language rights in Kenya's criminal justice system: Between principle and practice. *African Human Rights Law Journal, 20*(1), 57–79. https://doi.org/10.17159/1996-2096/2020/v20n1a3
- Skutnabb-Kangas, T. (2000). *Linguistic genocide in education—or worldwide diversity and human rights?*

Routledge.

- United Nations Human Rights Committee. (2007). *General Comment No. 32: Article 14: Right to equality before courts and tribunals and to a fair trial*. Geneva: UNHRC.
- United Nations Human Rights Committee. (2014). *General Comment No. 32: Article 14 (Right to equality before courts and tribunals and to a fair trial)*. UN Doc. CCPR/C/GC/32.
- United Nations. (2006). *Convention on the Rights of Persons with Disabilities*. New York: United Nations.
- University of Nairobi. (2022). *Effectiveness of court interpretation in enhancing the right to a fair trial in Kenya* (Unpublished LL.B dissertation). University of Nairobi.
- Wanjiku, M. (2022). Mother tongue injustice: Reflections on the Kenyan justice system. *African Journal of Language and Society*, 5(2), 101–118.
- Waweru, J. (2023). Kenyan Sign Language and Deaf education: Challenges and prospects. *East African Journal of Education and Social Sciences*, 7(1), 44–59