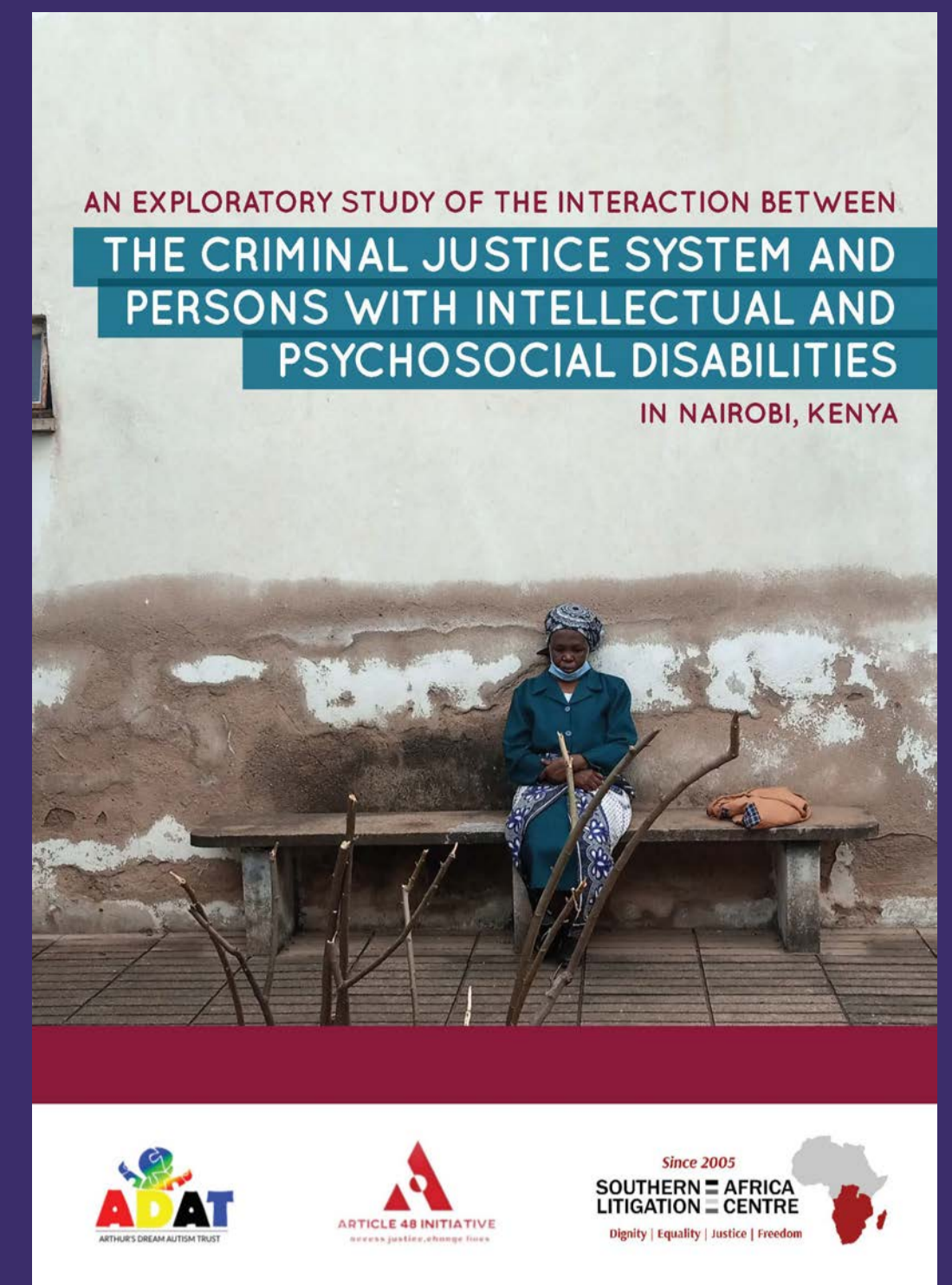


# Excluded from Justice

## Using research to inform litigation and advocacy strategies

### Equal protection before the law

- Persons with intellectual and psychosocial disabilities are often deprived of legal capacity due to a perceived lack of mental capacity.



### Poverty & stigma

- Stigma causes social and cultural exclusion and denial of economic opportunities.
- Two thirds of persons with disabilities in Kenya live below the poverty line
- The criminalisation of poverty disproportionately creates contact with the criminal justice system.

### Petty offences

Offences that are frequently enforced against persons with intellectual and psychosocial disabilities in Kenya include:

- Loitering
- Being a disturbance
- Indecent exposure
- Public nuisance
- Urinating in public



### Caught up in the system



#### OTHER LAWS APPLIED

Mental Health Act gives police powers to detain



#### PROCEDURAL BARRIERS

Mental assessments for capacity to stand trial. No accommodations or supports to stand trial



#### INVISIBILITY

ODPP Guidelines on Decision to Charge does not give guidance for accommodations.



#### INDEFINITE DETENTION

Criminal Procedure Code allows for detention for indefinite periods without trial, usually in institutions

### Strategies

- Research for policy and law reform
- Habeas corpus applications-challenging indefinite detention in a mental hospital
- Engaging policy and lawmakers

- Mental Health Amendment Act of 2022, provides for rights of PWD in line with the CRPD
- Mental Health Action Plan 2021-2025 recommends amendment of the law relating to criminal justice system to ensure people with mental health conditions are not discriminated against
- The ODPP is reviewing laws and policies that affect persons with intellectual disabilities
- Kimaru & 17 others v Attorney General & another; Kenya National Human Rights and Equality Commission (Interested Party) (Petition 226 of 2020) [2022] KEHC 114 (KLR)
- Increased awareness by parents of persons with disability and adult persons with disability of their rights

### Developments

