 

**Final Report**

Access to Justice of Persons with Disabilities

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# Executive summary

Access to justice is an issue of critical importance for the enjoyment and fulfilment of all human rights. The UN Convention on the Rights of Persons with Disabilities (CRPD) has innovated by recognizing access to justice as a stand-alone right for the first time in international human rights law (Article 13). However, as identified by the Special Rapporteur on the Rights of Persons with Disabilities, the UN Committee on the Rights of Persons with Disabilities and the Office of the High Commissioner for Human Rights, states around the world are struggling to implement this right in practice. State parties to the United Nations have agreed to the Sustainable Development Goal (16.3) to “promote the rule of law at the national and international levels and ensure equal access to justice for all”. In its recent concluding observations the Committee on the Rights of Persons with Disabilities links the Sustainable Development Goals (SDGs) to its recommendations for improving access to justice. The SDGs provide a new perspective for State parties to reflect on their obligations in this context and how to remove obstacles that hinder access to justice for persons with disabilities. For the purpose of this report, access to justice will be defined broadly, to include “effective access to the systems, procedures, information, and locations used in the administration of justice” (Lord et al, 2012).

This report aims to explain the framework of the right to access justice for persons with disabilities contained in article 13 of the UNCRPD. Furthermore, it maps existing law, policy and practice around the world as identified in the literature review and through key stakeholder feedback. A key finding that must be highlighted at the outset is the issue of non-recognition of legal capacity leading to restrictive practices on rules of legal standing and opportunities to participate in proceedings through which access to justice is delivered. Law and practice associated with conflating mental capacity and the right to hold and exercise legal capacity are a threshold barrier to effective access to justice. State parties must recognise the negative impact, inequality and discrimination faced by persons with disabilities, which are associated with the disproportionate application of practices assessing mental capacity and resorting to medical evidence to support deprivation of legal capacity. The rights discussed in this report on access to justice for persons with disabilities will never become a reality until this threshold issue is recognised and laws repealed and replaced in line with articles 12 and 13 of the CRPD. A summary of the findings is provided here following the structure of the six categories selected for thematic analysis.

Category one notes an often-cited reason for the lack of litigation on issues of disability rights is a lack of awareness on the part of persons with disabilities and their supporters of the relevant legal rights and obligations which apply to their circumstances. Therefore, serious attention must be given to this element of the process, not only regarding the contents of information, but also its formats and channels of access. The channels of access to information is particularly important for those who are isolated in institutions, homes or other living arrangements where they may find themselves dependent on others.

Findings in category two provide an overview of the current situation regarding access to legal advice and representation for persons with disabilities. It shows an increasing awareness in State parties of the right to support persons with disabilities but also the gaps within state law, policy and practice around accessing representation and information on rights and how to claim rights in the first instance, particularly for persons living in settings that increase their dependency on others. Furthermore, the general legal aid rules show a strong focus on criminal law, potentially leaving persons with disabilities with civil claims without a real opportunity to claim their rights and seek remedies according to the CRPD.

There is a certain amount of overlap in terms of barriers to making complaints about rights-violations in the civil context and those which prevent people from reporting crime. The literature noted in category three shows that the criminal aspect has been more widely documented, indicating a gap in research and data collection approaches regarding civil complaints. Data collection in this area could further highlight the barriers and solutions for people with disabilities being prevented from making complaints due to gaps in monitoring these situations. Complaints mechanisms must be available, accessible and confidential, particularly for those in institutional settings. The literature indicates that formal or informal supports, such as peer advocacy or state appointed advocacy, among others, could improve access to complaints systems.

Category four identifies that in order to realise effective participation in the adjudicative process States must recognise the obligation to respect the legal capacity of persons with disabilities, including legal agency and standing. It discusses the negative impact of denial of legal capacity in this context and highlights that legislation alone will not be enough to overcome barriers referred to in this section. Particular notice is given to attitudinal barriers and professional practices based on the outdated medical model of disability, which remain pervasive across many State parties. The section identifies the potential of intermediaries used as a form of accommodation to avoid the negative impact of a denial of litigation capacity. Such supports can further the development of supported decision-making in the context of State parties meeting obligations that arise from articles 12 and 13 of the CRPD.

Category five emphasises the importance of availability and accessibility of individualised legal remedies across various contexts for persons with disabilities. The section highlights practice examples and excerpts from literature indicating that the focus has to lie on individualized, effective remedies, while keeping in mind stereotypes and group-discrimination, such remedies should not only compensate for the damages incurred but also provide a solution for the future. While there is no comprehensive list of what remedies must be provided, the literature indicates that adjudicatory remedies and alternative forms of dispute settlement can offer choice for persons with disabilities, to choose the form that gives them the fullest remedy.

Category six notes that impartiality of the courts in an element of fair procedures and the training element of access to justice places a focus on impartiality issues, which may be affected by lack of knowledge or misunderstanding about disability rights. As noted under category one of this report lack of knowledge across the justice sector, and negative attitudinal practices related to misunderstandings of disability is a key barrier to effective access to justice. This section notes the diverse training topics suggested by the Committee as their top priorities for access to justice, and also examples of training initiatives and guidelines from States.

Finally, the section on key factors outlines factors conductive to improving access to justice for persons with disabilities. It provides a summary/systematisation of all the different elements that would make a system CRPD-compliant and disability-inclusive.

# Methodology

The research team applied a socio-legal methodology to review the barriers, opportunities and examples of promising practices in securing effective access to justice for persons with disabilities in both the civil and criminal justice systems, drawing from examples all around the globe. In order to conduct a systematic review of academic and grey literature at all three stages of the review (International, Regional and National) the research team searched the following legal databases – HeinOnline, WestLaw, Justis, LexisNexis and vLex, using a variety of search terms intended to capture the wide scope of this research project. The team also reviewed significant grey literature published outside of the traditional academic / journal contexts concerning access to justice for persons with disabilities, including government reports, policy statements, issue papers, DPO and CSO reports, and relevant media coverage.

The search terms used include subject (access to justice) terms (e.g. disability, disabled, legal aid, legal representation, police questioning, effective remedies, complaints mechanisms) and population-specific terms (to capture specific impairment sub-groups including persons with intellectual and psychosocial disabilities) about whom the research has been conducted. In order to capture scholarly literature on access to justice issues which has not been published in legal journals, academic databases such as Scopus (Web of Science), SocINDEX, Google Scholar and ASSIA were also included. Subject specific databases of relevance to this research topic, such as the National Criminal Justice Reference Service Abstracts Database (a US-based database which includes international materials) will also be used. Also included in the literature review are United Nations source materials.[[1]](#footnote-1)

This review included the identification of, and consultation with, a number of key stakeholders who were invited to participate in a research advisory capacity. Two advisory groups were established. The first group offered their expertise in a virtual meeting to share examples, drawn from their own networks, of challenges and promising practices across the six categories of access to justice discussed in the thematic analysis section. The second group offered their expertise by reading the draft report and providing comments and feedback to progress that report to this final draft of the report. The membership of these groups were reflective of the diversity of the global disabled people’s movement and include those who have knowledge of the barriers and opportunities to accessing justice facing specific groups including people who are blind/visually impaired, d/Deaf/hard of hearing people, people with physical disabilities, people with intellectual disabilities, people with psychosocial disabilities, and autistic/neurodiverse people.

# Introduction and overview of literature review

The aim of this report is to produce a systematic literature review providing an overview of existing principles, interventions and strategies to ensure effective access to justice for persons with disabilities on an equal basis with others. The review includes:

* Consultation with key stakeholders during the study;
* The identification and selection of good practices at international, regional and national level;
* An analysis of the questionnaires on good practices provided by the Special Rapporteur on the rights of persons with disabilities;
* A summary and thematic analysis of the results of the literature review;
* The identification of key factors that are conductive to improve the access to justice of persons with disabilities; and
* Draft principles and guidelines on access to justice of persons with disabilities.

In compiling and analysing the results of the literature review the research team sorted the material into six different categories based on a typology of phases of access to justice. In the thematic analysis section this report highlights the challenges and barriers hindering access to justice for persons with disabilities and provides examples of potential measures to overcome these barriers. These six categories are as follows:

1. Accurate and accessible information on the rights of persons with disabilities (necessary to exercise rights and secure access to justice).
2. Access to legal advice and representation (ideally free or affordable for persons with disabilities). This must include the availability of lawyers who come from the disability community as well as lawyers who are trained on disability rights and communication with victims of trauma.
3. Accessible civil and criminal complaints mechanisms including reporting to police, civil/administrative authorities and monitoring bodies providing a wide range of methods of redress.
4. Equal participation in adjudicative process (including rights to be heard and rights to fair procedures). This will include as a precondition the right to legal capacity to ensure that persons with disabilities can take legal action to access justice in their own right.
5. Right to an effective remedy and enforceability of such remedies. This must include not only financial remedies but broader concepts of reparation and guarantees of non-repetition.
6. At all of the above five stages the relevant stakeholders must be trained in how to communicate with persons with disabilities (including those who are victims of trauma).

This report examines article 13 on access to justice of the UN Convention on the Rights of Persons with Disabilities (UNCRPD), the first treaty to specifically enumerate such a right, and its interpretation by the UN Committee on the Rights of Persons with Disabilities in Concluding Observations delivered to date, as well as in the General Comments in so far as these can be applied to the right to access justice in article 13. Since the purpose of article 13 is to ‘ensure effective access to justice for persons with disabilities on an equal basis with others’ this clearly resonates with the principle of non-discrimination. To effectively achieve access to justice, article 13 must be read and applied together with other articles of the UNCRPD, especially those on equality and non-discrimination, equal recognition before the law, and accessibility.[[2]](#footnote-2) These three elements are indispensable to persons with disabilities in effectively accessing justice, as they ensure their equality and participation in every stage of legal proceedings.[[3]](#footnote-3)

### International literature review

The Concluding Observations examined in this research include the UNCRPD Committee’s Concluding Observations Reports for 91 States Parties, published from 2011 to October 2019, providing recommendations on implementation of the right to access to justice guaranteed by the UNCRPD. In addition to reviewing 34 responses (13 States Parties, 10 NHRIs and 14 CSOs/Individuals) to the thematic study on the Article 13 of the CRPD requested by the Office of the United Nations High Commissioner for Human Rights in response to Resolution 31/6 of the Human Rights Council. It also incorporates an analysis of 52 responses to the questionnaire on "good practices to ensure effective access to justice for persons with disabilities" requested by the Special Rapporteur on the rights of persons with disabilities, Ms. Catalina Devandas-Aguilar. In addition 20 shadow reports have been reviewed, these were selected based on the most recent Concluding Observations that have made recommendations on article 13.

### Regional literature review

A number of regional systems were examined – including the treaties, regulations and policies of the Council of Europe, the European Union, the Organisation of American States and the African Union. The European Union Fundamental Rights Agency has dedicated considerable attention to identifying relevant principles and key factors that can ensure effective access to justice for all, and this body of research also formed part of the review. As the Arab states and Asia-Pacific Region do not currently have any regional structures with the remit to adopt policy on access to justice these were excluded from the regional review but individual countries from these regions are included in the domestic review. This stage of the review includes research on the jurisprudence of regional courts and treaty bodies, regional-level initiatives including policy guidelines related to access to justice, and commentary from scholars and disabled people’s organisations on same.

### National literature review

This final part of the literature review consists of a collection of national good practices regarding access to justice. Resources used for this research stage are more limited, as academic literature focuses most on a critical stance towards the national progress to implement the right to access to justice and official national reports tend to paint an overly positive picture of the current situation. Since this research is entirely desk-based it therefore focused on the most reliable, detailed information available. Most of the literature is therefore either from national NGOs and DPOs, or national reports as part of international or regional funding (for instance Handicap International’s Making It Work). Finally, several legal resources have been used to cross-check reports and have been quoted as the primary source of information. In terms of terminology this section differentiates between civil and criminal procedures. Civil covers everything that is not criminal, where civil law countries use a different distinction, references are made to administrative or private law. This overview of national examples will show that in most countries projects and resources focus on criminal procedures, also within legal aid services a lack of resources often leads to having to prioritize certain areas of law, based on a lack of resources.[[4]](#footnote-4)

# Thematic analysis of literature review and questionnaires

This section summarises and provides a thematic analysis of the desk review and the contributions to the questionnaires on good practices on access to justice of persons with disabilities issued by the Special Rapporteur on the rights of person with disabilities.

In compiling and analysing the results of the literature review and other source material the research team sorted the material into six different categories based on a typology of phases of access to justice. In the inception report it was noted that the researchers would review the Concluding Observations to find examples of laws, policies and practices in need of reform to meet the UNCRPD article 13 requirements, in addition to those which may serve as promising practices for future development. In its Concluding Observations the Committee identify types of measures (e.g. legislative or policy) that would be a key factor for State parties to meet their obligations under article 13 however, the observations will not always specify the law and policy or practice within the State which they are referring to in the context of barriers or good practices. Therefore where they have noted specific law, policy or practices these have been highlighted below under the relevant category. As noted above States have committed to the SDGs and the Committee links them in its recommendations for improving access to justice. For example in Algeria, like other State parties, the Committee recommends that taking into account article 13 of the Convention and target 16.3 of the Sustainable Development Goals states must repeal laws that discriminate against persons with disabilities in the legal professions, eliminate physical barriers, facilitate access to information in all formats, provide training to members of the judiciary, law practitioners and law enforcement.[[5]](#footnote-5)

## Accessibility and accurate and accessible information on the rights of persons with disabilities

### Access to physical infrastructure

First, at the most basic level of access, physical access[[6]](#footnote-6) to buildings, including courts, police stations, and legal services, continues to be an issue in many countries for people with disabilities. This is so despite the emergence of legal obligations particularly on courts, as public buildings, to increase their accessibility to people with disabilities, generally under anti-discrimination legislation. The most obvious barriers to access are the architectural features (e.g. steps instead of ramps) which prevent people with disabilities from accessing and using legal services in the same way as others in a variety of roles which they may play in the justice system (e.g. lawyer, juror, witness, victim, defendant, judge).

The Committee has issued a number of recommendations for State parties to remove physical barriers to gaining access to justice,[[7]](#footnote-7) including to allocate resources and develop plans to ensure accessibility.[[8]](#footnote-8) Despite the existence of minimum accessibility standards in many states, there are varying degrees of successful compliance regarding the physical accessibility of courts.[[9]](#footnote-9) Litigation has been required in some jurisdictions to achieve accessibility requirements.[[10]](#footnote-10) Small regions of California, USA[[11]](#footnote-11) have been reported by civil society groups as having high standards but it remains a work in progress in Cyprus[[12]](#footnote-12) and Ireland[[13]](#footnote-13). There are also differences in bodies tasked with addressing the accessibility issues which may be the police force or the courts services and no uniform system for consulting with DPO’s.[[14]](#footnote-14) However, accessibility requirements are often confined to new buildings[[15]](#footnote-15) or for visitor or public spaces with few references to accessible detention facilities or accessibility for staff members[[16]](#footnote-16) such as police officers, members of the judiciary or lawyers. Governmental policy is another mechanism which states use to promote and protect accessibility standards, often with a retrospective design plan to update physical layout[[17]](#footnote-17) and technology.[[18]](#footnote-18) Recognition of geographical barriers to access to courts has also been remedied through mobile court sittings in some African states.[[19]](#footnote-19)

### Access to information for persons with disabilities

While physical access to buildings is an important factor, access to information and communication is extremely crucial from the initial stages of accessing the justice system. It would be meaningless if persons with disabilities could physically access the courtroom, but could not understand or communicate during the proceedings due to the lack of appropriate information and accommodations.[[20]](#footnote-20) Therefore, it is a duty of States Parties to ensure accessibility of information and communication[[21]](#footnote-21) that facilitates effective participation of persons with disabilities for whatever roles they take in the justice system and in all legal proceedings.[[22]](#footnote-22) An often cited reason for the lack of litigation on issues of disability rights is a lack of awareness on the part of persons with disabilities and their supporters of the relevant legal rights and obligations which apply to their circumstances.[[23]](#footnote-23) Therefore, serious attention must be given to this element of the process, not only regarding the contents of information, but also its formats and channels of access.

Accessibility of information is not limited to legal knowledge or information on legal proceedings in the context of access to justice, although this is an advantage.[[24]](#footnote-24) It includes all other information, such as contact details of lawyers with the required level of expertise in disability issues,[[25]](#footnote-25) and existing supports for persons with disabilities who seek justice, provided by public, private or non-profit organisations.

The Committee has provided guidance on this issue and continually notes that persons with disabilities should have access to information on the justice system and in its proceedings and be able to obtain information in accessible formats, particularly providing such information to blind and visually impaired persons (Braille and audio),[[26]](#footnote-26) deaf persons (sign language interpretation) and persons with psychosocial or intellectual disabilities (Easy Read),[[27]](#footnote-27) or video guides.[[28]](#footnote-28) States have an obligation to budget these services and making them available. Positive examples of extending these accessibility initiatives beyond the immediate courtroom to the administrative functions of courts has been found in USA[[29]](#footnote-29) and Germany.[[30]](#footnote-30)

Litigation has guaranteed the right to legal information to persons with disabilities in Latin American countries.[[31]](#footnote-31) In England and Wales, people who are deprived of their liberty in institutions have a legal right to be told about their rights, and there is provision of independent advocacy to help support them in understanding and exercising those rights. These provisions exist under the Mental Health Act 1983 and the Mental Capacity Act 2005.[[32]](#footnote-32) In addition, the literature shows the diversity of methods in realising accessible information is demonstrated by the use of a dedicated phone line[[33]](#footnote-33) and websites which are run by both government bodies and non-governmental organisations.[[34]](#footnote-34) This extends to using web-based modules to prepare people attending court in any capacity about court proceedings[[35]](#footnote-35) as well to perform administrative tasks online.[[36]](#footnote-36)

In addition to accessing information some people with disabilities may require communication accessibility to communicate with personnel in the justice system, both within and outside the hearing process. Some examples of communication accessibility are a ‘cognitive interpreter’, who assists in ‘translating complicated language and circumstances’;[[37]](#footnote-37) an ‘independent non-legal advocate’, who is normally appointed by State under the law to support a person communicating his/her views and asserting his/her rights;[[38]](#footnote-38) ‘facilitated communication’, a technique of communication for a person who uses communication board or keyboard with a support of a facilitator who provides either physical assistance or emotional support, or both;[[39]](#footnote-39) ‘alternative and augmented communication’ (AAC), a collective term of alternative methods of communication to speech, which includes various methods of communication such as ‘gestures, forms of sign [(not sign-language)], communication boards, voice output communication aids, and … web-based application’ enabling communication.[[40]](#footnote-40) These various communication supports are also discussed below in the context of accommodating participation in proceedings.

Useful proactive approaches to ascertaining accessibility needs in advance of arriving at court can be realised by including notification of the rights of persons with disabilities in all notices to court proceedings.[[41]](#footnote-41) Advanced notification for reasonable accommodations are common across numerous States and are especially important in relation to Deaf or Hearing impaired people for whom remote sign language interpretation can be provided.[[42]](#footnote-42)

### Access to information and knowledge of disability issues among professionals

A key barrier related to the lack of access to the judicial system at the initial stage is due to lack of knowledge of disability issues in the justice sector and law enforcement sectors.[[43]](#footnote-43) To overcome lack of knowledge on disability issues, this category is interlinked with category six on training of stakeholders, but it is important to note at this stage that the Committee has consistently recommended “continuous training for those working in the justice and law and order sector on the rights of persons with disabilities, taking into account the diversity of persons with disabilities in judicial proceedings as witnesses, victims or perpetrators”,[[44]](#footnote-44) and that such training would be based on the “human rights-based approach to disability”.[[45]](#footnote-45)

## Access to legal advice and representation (ideally free or affordable for persons with disabilities).

The right to legal assistance or representation is not explicitly articulated in the UNCRPD. If we however understand the right to access to justice as a right of ‘meaningful access’ held and enforceable by individuals, then legal representation is necessary to fulfil this right in settings of formal justice systems, which are hard to navigate.[[46]](#footnote-46) The right to equality before the law and a fair and public hearing is well established in human rights law and it includes the right to legal representation.[[47]](#footnote-47) Building on the general framework of the UNCRPD to ensure for non-discrimination and equality by providing accommodations, the right to legal representation is clearly included under article 13,[[48]](#footnote-48) and it includes the right to access free legal aid.[[49]](#footnote-49)

Similarly, the Committee in its interpretation of the UNCRPD notes that persons with disabilities must ‘have access to legal representation on an equal basis with others’.[[50]](#footnote-50) Under the UNCRPD, providing disability-specific legal aid would also be permitted as a specific measure ‘necessary to accelerate or achieve de facto equality of persons with disabilities’.[[51]](#footnote-51) The Committee also views the right to legal aid as essential to enabling persons with disabilities to participate in legal proceedings and to achieve effective access to justice.[[52]](#footnote-52) In its General Comments the Committee has only suggested that legal aid and appropriate legal advice be provided in cases where persons with disabilities ‘seek to enforce their rights to live independently in the community’,[[53]](#footnote-53) and where they need to challenge an interference of their right to legal capacity.[[54]](#footnote-54) However, the list of cases where legal aid is required seems gradually extended through recommendations concerning implementation of article 13 in the Concluding Observations. The Committee has repeatedly suggested to States parties to ensure persons with disabilities have access to free legal aid or assistance[[55]](#footnote-55) or accessible and affordable legal aid,[[56]](#footnote-56) and especially for those who live in residential institutions.[[57]](#footnote-57)

In a recent Concluding Observation on Norway the Committee seem to have moved away from the notion of free legal aid only in the context of institutions to ‘ensuring the provision of free legal aid for persons with disabilities, including for those still living in institutions’.[[58]](#footnote-58) In Malta, the Committee suggest that the State ‘provide free or affordable legal aid for persons with disabilities in all areas of law and ensure the necessary budgetary allocations to the institution or institutions mandated with this task.’[[59]](#footnote-59) The Committee specifically recommended that China and Turkey allocate the necessary human and financial resources to provide persons with disabilities with legal aid,[[60]](#footnote-60) and requested that the United Kingdom removes court and employment tribunal fees for persons with disabilities to ensure their effective access to justice.[[61]](#footnote-61) Aside from financial restrictions, another challenge identified in accessing legal aid is due to bureaucratic restrictions under the law. In its comments to the Former Yugoslav Republic of Macedonia, the Committee recommends that the State ‘ensure that access to free legal aid for persons with disabilities is not restricted in the new draft law on free legal aid.’[[62]](#footnote-62)

Therefore, the main barriers highlighted consistently in the literature under this category include the lack of free legal aid[[63]](#footnote-63) and the quality of representation.[[64]](#footnote-64) The British Deaf Association for instance notes that the Deaf community is highly reliant on a number of specific solicitors and barristers to provide services that are accessible to Deaf sign language users.[[65]](#footnote-65) The European Union’s Fundamental Rights Agency (FRA) highlights that the right of access to a court needs to be effective, regardless of member states financial means. States therefore have to take active measures to ensure equal access to justice systems by setting up legal aid schemes amongst other steps.[[66]](#footnote-66) The FRA report furthermore elaborate on the ‘interests of justice test’ and states that ‘the accused or suspected person’s personal circumstances are important. The interests of justice test indicates that free legal assistance may be required for persons considered vulnerable, such as children, persons with mental health problems and refugees. Where the proceedings were clearly fraught with consequences for the applicant and the case is complex, legal aid should be granted.’[[67]](#footnote-67) This rule does however apply only for legal aid in criminal cases.[[68]](#footnote-68) It’s importance in the criminal context is repeatedly noted in literature and legal documents pointing to its potential to reduce the length of time suspects are held in detention, prevention of crime by raising awareness and ensuring fairness of the justice system. As a consequence, it has to be regulated and provided at all stages of the criminal justice process.[[69]](#footnote-69)

In civil and administrative matters access to legal aid is more restrictive. In many cases the applicant has to pass what is called a means and a merits test (referring to the requirement of a case having reasonable grounds) if there is free legal aid at all.[[70]](#footnote-70) The Special Rapporteur on Adequate Housing has pointed out that such a lack of legal aid in civil matters impacts women disproportionately, as the focus on criminal law leads for instance to a neglect of family law matters, which systematically disadvantages women.[[71]](#footnote-71) Women with disabilities can be expected to be affected by this even more, facing in addition the obstacles of persons with disabilities accessing the justice system, as highlighted in this report. Another point to be made in analogy in this context is that questions such as benefits or non-discrimination in access to employment and education are also part of civil law and affect persons with disabilities disproportionally. Gibson argues in this context that if ‘Art 13 of the CRPD is to have any meaning, then it follows that — in the absence of forums which are simple enough in both procedure and substantive law to allow disabled citizens to have a fair hearing without the assistance of a lawyer — the convention requires states to provide legal aid to people with disabilities who cannot access private legal assistance and that, at a minimum, legal aid should be available for cases involving breaches of the human rights referred to in the treaty.’[[72]](#footnote-72) Bamberger argues along similar lines when he states that courts should decline to appoint legal aid, when ‘(a) the unrepresented litigant can fairly and ably present and defend his or her case on relatively equal footing with the opposing side, and (b) the court can effectively discharge its duty to ensure that justice can be done in the matter before it.’[[73]](#footnote-73)

Partly as a response to barriers in obtaining legal advice, a number of free legal advice clinics have emerged in recent decades, focusing solely on disability rights issues. Some prominent examples include the Disability Law Service in the UK,[[74]](#footnote-74) ARCH Disability Law Centre in Canada,[[75]](#footnote-75) the Disability Discrimination Legal Service in Australia,[[76]](#footnote-76) and the National Disability Rights Network in the United States.[[77]](#footnote-77) The provision of free or affordable legal assistance or legal representation through legal aid schemes is a good practice. However, the issues remain that often they are only available in specific areas of law for example in criminal cases or in relation to deprivation or liberty under mental health legislation, and that overall the process is under resourced.[[78]](#footnote-78) Furthermore it has been argued that the mere existence of such specialized support services is proof that general legal aid services are inaccessible for persons with disabilities and also takes pressure of the governments to make these services open up to persons with disabilities, especially where funding is received from other sources.[[79]](#footnote-79) It is clear that persons with disabilities require assistance to claim rights and therefore State parties to the CRPD should ensure legal assistance is free, accessible and available in their countries and that recipients are aware of these services.

Once people with disabilities have overcome the barriers to accessing legal advice, they may face additional barriers in terms of the recognition of their ‘litigation capacity’ - an aspect of legal capacity needed to instruct counsel which significantly impacts on ability to access legal representation, and to challenge perceived rights-violations in court. Most legal systems recognise certain individuals as being incapable of litigating – often based on a standard of ‘mental capacity’ or decision-making ability, which deems the person not to have legal standing to litigate in court on their own behalf, or not to have capacity to instruct a lawyer, or both. Issues related to the impact that denial of legal capacity has in terms of participating in proceedings will be discussed below under category four. At this point it is important to note the barriers related to accessing legal representation in the first instance.[[80]](#footnote-80)

The reasons why lawyers may refuse to directly represent a client with perceived impaired capacity due to misconceptions of cognitive or mental disability may vary in different jurisdictions. For example, in the United States lawyers have certain responsibilities if they represent a client with ‘mental or physical condition’ that causes such a client inability to make a decision on his/her own behalf.[[81]](#footnote-81) In addition, legal professional codes of conducts provide inadequate guidance on what lawyers could do to represent such a client through relevant accommodations.[[82]](#footnote-82) However, more recently the ABA has published a Lawyers Guide to Working with Special Needs Clients, which describes how attorneys can connect with and work with clients.[[83]](#footnote-83) In England and Wales, lawyers may be found negligent when taking instruction directly from persons with disabilities themselves, and instead the practice is to arrange for the appointment of a litigation guardian who can assist and protect the person with disabilities in legal proceedings and settlements.[[84]](#footnote-84) This practice is viewed domestically as a safeguard and a means to secure (not hinder) access to justice. However, this practice is not in line with the CRPD and the concept of will and preferences, as typically the litigation guardian’s mandate is one of best interests.

There are examples of the use of ‘third-party support and assistance’ that can eliminate any perceived difficulty in communication between lawyers and clients with disabilities from an early stage.[[85]](#footnote-85) This support assists in clarifying the wishes of persons with disabilities and giving them emotional support, as well as giving practical guidance to the lawyer.[[86]](#footnote-86) This may include support from a family member or a close friend who is familiar with the person with disabilities, or an advocacy service, either provided by State (such as the National Advocacy Service for People with Disabilities in Ireland),[[87]](#footnote-87) or by peer support group (such as BIZEPS in Austria[[88]](#footnote-88)).[[89]](#footnote-89) In this respect, the advocacy service provides both communication assistance for persons with disabilities and support in exercising their legal capacity to instruct a lawyer, which represents their will and preferences.[[90]](#footnote-90)

Many people with disabilities also live in environments where accessing independent legal information, advice and representation is particularly difficult – especially for those living in institutions. In some cases information on their rights might not even reach persons with disabilities living in institutions, but even if they have the necessary information they might lack access to public services to make a complaint or seek independent legal advice; this could be because of transport not being accessible, the director of the institution being a guardian or continued supervision and control by staff that would hinder privacy in seeking advice. Segregation in institutions is not the only place such barriers exist, community- or family-based living arrangements might in some cases also include barriers to access legal advice and representation, for instance when disputes arise within those settings.[[91]](#footnote-91) Independent, non-legal support persons are increasingly involved in every stage of accessing the justice system. They achieve positive results both in facilitating a better understanding for legal personnel of the person’s wishes and of the person with a disability feeling involved in and being able to follow the proceedings.[[92]](#footnote-92) Independent advocacy services with a role to visit places of segregation can play an important function in providing information and linking people with relevant legal advice and representation.

This overview of the current situation regarding access to legal advice and representation for persons with disabilities shows an increasing awareness in State parties of the right to support persons with disabilities but also the gaps within state law, policy and practice around accessing representation and information on rights and how to claim rights in the first instance, particularly for persons living in settings that increase their dependency on others. Furthermore, the general legal aid rules show a strong focus on criminal law, potentially leaving persons with disabilities with civil claims at risk of increased poverty without a real opportunity to claim their rights under the CRPD. Particularly at risk are specific groups of persons with disabilities, such as linguistic minorities or migrants with disabilities, which face the additional barrier of information and legal advice not being available in their own language, especially when they live dependent on others or are looking for qualified sign-language interpreters in their own language.

Access to free or affordable legal advice and representation is a feature of equality of arms and equal access to a fair trial and therefore must be legislated for in a comprehensive legal aid scheme, giving the individual an enforceable right to access legal representation as part of anti-discrimination legislation.

## Accessible civil and criminal complaints mechanisms including reporting to police, civil/administrative authorities and monitoring bodies providing a wide range of methods of redress.

This aspect of access to law regards the process of making a civil or criminal complaint about an alleged violation of rights for people with disabilities. There is a certain amount of overlap in terms of barriers to making complaints about rights-violations in the civil context and those which prevent people from reporting crime. The literature indicates that criminal aspect has been more widely documented highlighting the challenges which people with disabilities face in reporting crime, being questioned by the police, and in the initial stages of criminal investigation.[[93]](#footnote-93)

Similar to the right to a remedy, article 13 does not explicitly emphasise the rights in this category, but there is evidence that the UNCRPD guarantees these rights, through a number of recommendations, in both its General Comments and Concluding Observations. The Committee refer to the right to complain in both civil and criminal contexts, including discrimination,[[94]](#footnote-94) deprivation of liberty,[[95]](#footnote-95) torture and ill-treatment,[[96]](#footnote-96) education,[[97]](#footnote-97) and abuse or violence.[[98]](#footnote-98) The specific dimensions of these individual rights and complaining about violations of these specific rights are outside scope of this research. However, the Committee repeatedly emphasises the availability and accessibility of independent formal complaint mechanisms, which States parties can strengthen within existing national mechanisms (e.g. human rights bodies, equality tribunals, or the Ombudsman) or by establishing a new mechanism, in order to receive, investigate and remedy complaints for violations of the rights of persons with disabilities.[[99]](#footnote-99) The Committee recognised in their Concluding Observations the need for anonymity and confidentiality for persons with disabilities making complaints to these bodies where there is a risk to the individual, such as concerning violence or the right to life.[[100]](#footnote-100)

For example, the Committee observations regarding complaints mechanisms and methods of redress are found worryingly under the right to life (art. 10) due to reported deaths of persons with psychosocial disabilities from restraint and medical treatment in hospitals, and violence against women with psychosocial disabilities from an intimate partner.[[101]](#footnote-101) The recommendations are to “take all appropriate measures to address gender-based violence against women with psychosocial disabilities and to prevent, investigate and provide redress for violations of their human rights, and prosecute those who are responsible”, and ensure “reporting and complaint mechanisms, for persons experiencing violence in the public or private spheres are accessible to persons with disabilities, include a gender and a child rights perspective and are confidential.”[[102]](#footnote-102) The Committee has repeatedly focused on these issues in the context of women, girls and children with disabilities, who are victims of age and gender-based violence and abuse, are in institutions and have psychosocial or intellectual disabilities.[[103]](#footnote-103)

Protection for persons with disabilities who are making complaints is necessary to ensure their safety and to encourage them to participate in the justice system. The Committee suggest some measures which should be introduced to reinforce complaints mechanisms. These include protection from reprisals after making complaints,[[104]](#footnote-104) which should be embedded in national legislation,[[105]](#footnote-105) and the accessibility of information, communication and support services, including hotlines, shelters, victim support services and counselling, and how to access these mechanisms and seek assistance.[[106]](#footnote-106) These mechanisms should be applicable to any setting where violence or abuse has occurred and should recognise the increased vulnerability of some populations, such as older women with disabilities. Practical redress mechanisms should take the form of compensation which is proportionate to the gravity of the violation,[[107]](#footnote-107) and sanctions being imposed on perpetrators.[[108]](#footnote-108) Having accessible methods to make complaints such as phonelines and e-services have also been praised by the Committee.[[109]](#footnote-109)

Complaints mechanisms must also be available at a local level, particularly in rural areas and ensure accessibility for people living in institutions. Again, visiting independent advocates or intermediaries, similar to that noted in police reporting below, could support access to complaints systems. All services which are available to the public should be utilized to receive complaints from persons with disabilities, and staff should be trained to support complaints and respect confidentiality, this includes staff in local police stations and administrative offices, medical care centres and NHRIs.

*Accommodations for police reporting and investigations*

Internationally, there are some positive examples of supports which can be provided to people with disabilities in their interactions with police to ensure more effective access to justice. As with all aspects of the justice system, accessibility of law enforcement materials (including reporting forms, witness statements), procedures (ensuring the person understands the reporting, questioning or investigation process, and is informed of the next steps, and has a contact person to follow up with) and reasonable accommodation of individuals’ needs (including access to sign language, or an advocate) is crucial to ensure equal access to justice for people with disabilities. Informal supports can address these needs, such as volunteer supports who are notified to attend a police station when a person with an intellectual, psycho-social or other cognitive disability presents with a complaint.[[110]](#footnote-110) This does not replace legal representation but offers support to communicate and to reduce distress to the individual with a disability in a new environment. Alternatively, there can be formal mechanisms for support such as psychologists, social workers or criminologists who are trained in disability accessibility and adapting criminal procedure to enable full participation in the justice system.[[111]](#footnote-111)

Amendments to existing criminal laws within the last decade recognize the need for diverse methods of providing statements and participating in investigations and court proceedings such as language and understanding interpretation.[[112]](#footnote-112) Reasonable accommodations such as restricting the permissible times for interrogation by police for persons with disabilities and minors have also been uncovered.[[113]](#footnote-113) These can be supported by non-government organisations letting people know about reasonable accommodations available.[[114]](#footnote-114) Where technology is being used to assist in raising awareness about reasonable accommodations there are positive examples of remote sign language interpretation being provided through video messaging by organisations focused on gender based violence against persons with disabilities.[[115]](#footnote-115) Support is also provided to law enforcement officers about how to interact with victims or suspects with disabilities and to ensure the appropriate paperwork is completed.[[116]](#footnote-116) Capitalizing on early stage law students is also an effective way of expanding the pool of resources with paralegal programmes offering peer support for persons with disabilities when reporting violations[[117]](#footnote-117) as well as dedicated thematic programmes by disability service funding bodies.[[118]](#footnote-118)

## Equal participation in adjudicative process (including rights to be heard and rights to fair procedures).

The right to effective participation of persons with disabilities in all legal proceedings recognised in article 13 is directly relevant to the personal presence element of the right to a fair hearing in international human rights law, whereby persons directly affected by legal proceedings have the right to attend a hearing concerning their interests.[[119]](#footnote-119) The provisions of accessibility, procedural accommodation, and reasonable accommodation play an important role to accommodate the presence of persons with disabilities in proceedings.[[120]](#footnote-120) The latter CRPD provisions correct the ‘fairness’ issues related to the right to attend a hearing and to do so according to the equality of arms principle which is a component of the right to a fair trial. Equality of arms is a principle that to-date has not been effectively considered under pre-CRPD international human rights law for persons with disabilities, particularly to ensure access to the same procedural rights, information and opportunities as others so they may provide and challenge evidence.[[121]](#footnote-121) This is the case despite this issue been recognised at regional level, for example, the European Union Fundamental Rights Agency stating that positive measures might be required from states as part of their duty to ensure equal access and non-discrimination.[[122]](#footnote-122)

Article 13 in conjunction with article 12 also affirms legal capacity of persons with disabilities, especially those with intellectual and psychosocial disabilities, to be claimant or defendant, or witnesses and to not have their testimony discredited on discriminatory grounds,[[123]](#footnote-123) as well as guaranteeing supportive measures for exercising the right to be heard and the right to fair procedures.[[124]](#footnote-124) However, a key barrier to implementation of article 13 in the context of rights and procedural safeguards during pretrial and trial phases is the deprivation of legal capacity leading to denial of a right to litigate or stand as a witness before courts.[[125]](#footnote-125) Law and practice associated with conflating mental capacity and the right to hold and exercise legal capacity are a threshold barrier to effective access to justice. State parties must recognise the negative impact, inequality and discrimination faced by persons with disabilities, which are associated with the disproportionate application of practices assessing mental capacity and resorting to medical evidence to support deprivation of legal capacity. The rights discussed in this report on access to justice for persons with disabilities will never become a reality until this threshold issue is recognised and laws repealed in line with articles 12 and 13 of the CRPD. The non-recognition of legal capacity as a barrier is often discussed under the terms ‘fitness to plead’ or ‘fitness to stand trial’.

Concerns raised about restrictions on the effective participation of persons with disabilities in the trial process, as noted above, are mainly due to denial of legal capacity, which negatively impacts their due process rights. Tests assessing capacity or fitness to plead or fitness to stand trial are discriminatory and the CRPD Committee have called for the removal of such laws and practices. Unfitness to stand trial is measured in Australia by what is called the ‘Presser test’ and it considers the person’s ability to:

*• “*plead to the charge and exercise the right of challenge;

• understand the nature of the proceedings;

• follow the course of the proceedings;

• understand the substantial effect of any evidence that may be given

in support of the prosecution; and

* make a defence or answer the charge.”[[126]](#footnote-126)

As a consequence of failing the test the person does not have access to the full range of defences, less opportunity of challenging the prosecution’s case, and often leading to indeterminate detention.[[127]](#footnote-127) Furthermore it has been shown that indigenous persons with disabilities are disproportionally affected by unfitness to stand trial under the Presser test.[[128]](#footnote-128)

Several jurisdictions have started to use accommodations to overcome this approach of testing a person’s fitness to plead. In Israel the Law provides for several adjustments of the court procedures, which can be recommended by an “expert witness” who gives a statement to the court about the witness’s disability and its potential implications on testimony. Examples include waiving the duty to caution the witness, testimony behind a partition, testimony outside the courtroom and/or without formal attire, use of Alternative Augmentative Communication (AAC) or a special advisor on how to question the witness.[[129]](#footnote-129) However, a third party making an assessment of the disability of the witness has the potential to lead to unwanted consequences and raises issues similar to capacity assessments which are not CRPD-compliant. This will require clear mandates for third parties in their role, function and priority to provide support following the rights, will and preferences of the witness. The Supreme Court of Canada held in R v DAI[[130]](#footnote-130) that it would be sufficient for an individual with an intellectual disability to “promise to tell the truth” when testifying in court.[[131]](#footnote-131)

Other States have changed their laws moving towards recognition of legal capacity and supported decision-making frameworks. The recent law reform in relation to legal capacity in Colombia provides for a presumption of legal capacity for all adults with disabilities, support to exercise legal capacity and prioritises the will and preferences of an individual using support. Similar law reform in Peru on legal capacity is an example of good practice in this area.[[132]](#footnote-132) Peruvian Law No. 30823 provides that everyone has the legal capacity to hold and exercise their rights. In addition, it is important to note that children with disabilities have a right to the same supports for decision-making as adults in areas where they are typically granted legal capacity.[[133]](#footnote-133) While these practices, laws and court rulings seem promising, their impact on (other) cases of persons with disabilities testifying in court would have to be evaluated to see how comprehensive these approaches are.

### Procedural and age appropriate accommodations.

Procedural accommodations are not concerned with the outcome of proceedings; their aim is to remove barriers and guarantee equality. Thus, procedural accommodations do not represent an ‘extra privilege’ to parties. It is important to note that the obligation to provide procedural accommodations is one of immediate realisation.[[134]](#footnote-134) Consequently, failure to provide procedural accommodation is a form of discrimination on the basis of disability. Further, the obligation to provide such accommodations in the context of access to justice ‘cannot be mitigated by arguments about reasonableness and the extent of the burden they would place on the duty-bearer’[[135]](#footnote-135) since the providers of such accommodations will inevitably be the State or public officials involved in the administration of justice.

Procedural accommodations must be ‘age-appropriate’ and therefore it is clear that article 13 applies to children with disabilities. Children may require adjustments to procedures, practice, and the environment, in addition to age-appropriate assistance. States should increase their efforts to guarantee the right of access to justice to children with disabilities.

The Committee repeatedly notes the barriers in this category of access to justice as ‘including physical and legislative ones, that prevent the effective participation of all persons with disabilities, especially women and children, persons with psychosocial or intellectual disabilities, and deafblind persons, in accessing the justice system due to lack of procedural accommodations’.[[136]](#footnote-136) Ensuring equal access to justice for persons with disabilities requires States Parties to understand the barriers that exist and the shortcomings within their domestic structures. The CRPD necessitates the removal of such barriers through repeal or amendment of laws and policies that are incompatible with article 13.

The Committee notes the need to adopt specific measures to comply with article 13 obligations in its observations to Cuba, including an ‘action plan on access to justice for persons with disabilities, as well as the necessary legal, administrative and judicial measures to eliminate all restrictions on the effective participation of persons with disabilities in all stages of the judicial process’.[[137]](#footnote-137) In addition, the Committee notes some examples of procedural adjustments to ensure effective access to court proceedings, including ‘the provision of individualized assistance, to ensure that persons with disabilities can effectively participate in the various aspects of legal proceedings’ and to ‘step up efforts to ensure that qualified sign language interpreters are present during all court processes and judicial proceedings’,[[138]](#footnote-138) and ensure the availability of Braille, accessible digital formats, Easy Read and all other accessible means, modes and formats of communication in legal proceedings,[[139]](#footnote-139) in addition to guaranteeing persons with intellectual and/or psychosocial disabilities equal and supported access to all judicial processes.[[140]](#footnote-140) An example in Victoria of using plain language summaries at the end of each day can help participants keep an overview of the proceedings and thus effectively participate in the process.[[141]](#footnote-141) A similar practice is evident in the United Kingdom with judges writing ‘easy read judgments’ for claimants with learning disability.[[142]](#footnote-142)

*Communication accommodations*

The question of accommodating alternative means of communication so that persons with disabilities can effectively participate and communicate with the court, court officers or third parties, and follow court procedures has received increased attention all over the world over the last few decades and has led to questions of adaptions of rules of evidence and procedure.[[143]](#footnote-143) Communication can be facilitated through the use of third parties (e.g. sign-language interpreters or intermediaries) or through technological aids, or a combination of both. In the absence of a General Comment on article 13 or further guidance from the Committee, it is difficult to identify concrete examples of procedural accommodations that might be expected of States in the context of access to justice. However, some State parties have good examples of providing procedural accommodations in the law of evidence and procedure, these include support and alternative means of communication for testifying for persons with disabilities, which can be found in the Bangladesh Evidence Act,[[144]](#footnote-144) the Kenyan Evidence Act,[[145]](#footnote-145) and the Israel Act 2005.[[146]](#footnote-146)

Additionally, the provision of an independent statutory advocate could also fall within the obligations to make procedural accommodations for effective access to justice as outlined in article 13.[[147]](#footnote-147) An independent statutory non-legal advocate could be a means to support communication during different phases of court and with court personnel. State-operated advocacy includes systems such as the Independent Mental Capacity Advocate introduced in England and Wales under the Mental Capacity Act 2005, the Office of the Public Advocate in Victoria, Australia and the National Advocacy Service in Ireland. Independent advocates could be appointed in the court process to support the exercise of legal capacity and a move away from guardianship systems that operate under the substitute decision-making model. Independent advocacy should also be developed in the context of children and access to justice. Law in England and Wales provides independent mental health advocates for children detained under mental health legislation. In South Africa children, including children with disabilities, who are in conflict with the law are represented by curator ad litem to ensure their right to be heard and represented in court. Similar provisions exist in Europe[[148]](#footnote-148) to support participation in the court process for children. However, conflicts arise between the issues of best interests according to the representative, and the child’s wishes, will and preferences, which remains an obstacle to effective participation for children and this must be considered by State parties to the CRPD.

“Intermediaries” is a term used in the literature to describe third parties, such as an independent advocate, that can facilitate communication, support understanding of procedures, and support the defence of rights claims. Intermediaries are described as in the Kenyan Bench Book as “a medium through which the accused person or complainant communicates to the court” and it lists (non-exhaustively) potential intermediaries, such as parents, psychologists, and social workers.[[149]](#footnote-149) In the United Kingdom, Intermediaries for Justice work in the criminal courts and the family law courts. Vulnerable witnesses, including children and people with disabilities, have a statutory right to an intermediary following the Youth Justice Criminal Act 1999 and vulnerable defendants may have an intermediary at the discretion of the court.[[150]](#footnote-150) Intermediaries come from a range of professional backgrounds including speech and language therapists, clinical psychologists, and those from the special educational needs or mental health fields.[[151]](#footnote-151) Other approaches include the Austrian option of having a psychosocial support being provided to provide emotional support during the proceedings and to assist in preparing for them. Recently this service has been extended to private claims which are a result of a criminal case.[[152]](#footnote-152) These examples highlight the potential of intermediaries to be used as a form of accommodation to avoid the negative impact of a denial of litigation capacity. Such supports noted above can further the development of supported decision-making in the context of State parties meeting obligations that arise from articles 12 and 13 of the CRPD.

Other forms of accommodations such as suitable aids and services where needed, should be provided by States.[[153]](#footnote-153) One such approach in the context of accommodations for access to justice is that of Augmentative and Alternative Communication (AAC), which refers to a ‘structured, tested and accepted form of communication’ which can be validated by an external person as the person’s own thoughts and views. The specific method can vary from using communication tools to using specific gestures etc.[[154]](#footnote-154) In Israel, Bizchut has a Due Process Team which is on call when persons and disabilities need assistance in police stations or courtrooms. As part of their support they have developed an AAC kit, including dolls, emotions cards and symbol sets to use when assisting their clients.[[155]](#footnote-155)

*Sign-language interpretation*

Enabling a defendant, victim, witness or litigant to participate in the court process via sign language interpretation or accessible documents is a good practice identified in numerous State parties.[[156]](#footnote-156) In many countries a witness, victim or defendant who is deaf or has a hearing impairment will be initially required to communicate in writing and only upon failing to communicate in this manner will a sign language interpreter be requested. Therefore, best practice in this regard is for the relevant authorities to ensure interpreters are registered or professionally trained and for the service to be provided free of charge[[157]](#footnote-157) to individuals who require it. Training and evaluation should be carried out in consultation with the Deaf community. Gaps in this area noted from the literature include discussions on access to qualified sign-language interpreter in foreign and minority languages. In this context, as well as others noted in this report, it is clear that there are gaps in the literature concerning intersectionality beyond gender and age.

*Accommodations for personal presence rule*

In addition to physical presence in the proceedings, the UNCRPD further advances the personal presence element found in international human rights law, through the concept of accommodations so that persons with disabilities can give their testimony at their residence or through video link,[[158]](#footnote-158) and by respecting the person’s will and preferences or pursuing the ‘best interpretation of the will and preference’ when the person cannot express them directly.[[159]](#footnote-159) Victims and witnesses are facilitated to provide their testimony remotely or via recording in a number of States Parties.[[160]](#footnote-160)

*Indirect participants*

Persons with disabilities are often excluded from access to the role as a jury member. Removing such barriers means showing that society recognizes persons with disabilities are equal, contributing members of their societies.[[161]](#footnote-161) Initial steps have been taken, for instance via consultation papers, outlining how to make jury services more accessible, by taking steps such as having a Juror Liaison Officer at each court to coordinate reasonable accommodation requests and considering the use of new technology to facilitate the presentation of evidence.[[162]](#footnote-162) These approaches are however in many cases not comprehensive, in Australia for instance, the Committee notes with concern that “only some states and territories have passed legislation to support the equal participation of persons with disabilities in the jury system while the rest and the federal Government have not done so”,[[163]](#footnote-163) and recommends the development of legislation in all states on the equal participation of persons with disabilities in the jury system.[[164]](#footnote-164)

Some countries as a good practice provide for specific accommodations to foster the participation of persons with disabilities (typically psychosocial or intellectual disabilities) as witnesses. For example, persons with special expertise might be involved in interviewing persons with disabilities – see for example the United Kingdom’s program on Intermediaries for Justice described among the good practices. It is important that these methods are offered on a voluntary basis, they are not enforced on persons with disabilities against their will. Otherwise they lead to unnecessary segregation in the proceedings and might undermine rather than foster full and effective participation of persons with disabilities in the proceedings.

In addition to persons with disabilities having access to legal advice and representation, the Committee notes the importance of removing barriers to ensure that persons with disabilities may enter the legal professions.[[165]](#footnote-165) In Turkey, the Committee recommends ‘amending Turkey’s law on judges and prosecutors (Law No. 2802), which prevents the employment of persons with disabilities as judges and prosecutors’.[[166]](#footnote-166) And in Algeria, the ‘Committee is concerned by article 26 of Executive Decree No. 16-159 of 30 May 2016 and article 34 of Act No. 13-17, which establish certain standards of physical and psychological fitness as conditions of access to the professions of judge and lawyer.’[[167]](#footnote-167) They also recommend that states take measures to ensure reasonable accommodation for that purpose.[[168]](#footnote-168) An example of reasonable accommodation is provided in Bangladesh, where persons with disabilities are taking the Bar exam and accommodation in the form of scribes is provided to them.[[169]](#footnote-169)

*Traditional juridical systems*

An issue brought up in several regions of the world and different contexts is that of alternative, traditional, customary juridical systems. In Asia the existence of such systems has been used, under the term of ‘Asian values’, to justify the rejection of the idea to establish a regional human rights tribunal, which is considered as trying to Westernize them.[[170]](#footnote-170) The African Union follows a different approach, trying to reunite the requirements of a universal human rights system with their customary approaches. Article 13(2) of the Disability Protocol to the African Charter requires States to ensure that their customary law processes are inclusive and respect the rights of persons with disabilities. This provision, which cannot be found in the CRPD, applies to the informal justice provision and community dispute resolution, which are still being widely used in rural and poor communities. While there are concerns about their compliance with international law, which Article 13(2) addresses in the context of persons with disabilities, they can also be seen as facilitating equal participation of persons with disabilities in justice proceedings, as these settings are culturally and linguistically centered in their community, which they are familiar with and also do not require them to travel long distances.[[171]](#footnote-171) Finally the OHCHR’s thematic study states on the question of customary justice systems and persons with disabilities that “informal justice institutions can provide better access to justice because they may reduce the need for travel if they are conducted in the local area, may cost less, may be less prone to corruption and discrimination and can be conducted by trusted people in a language that everyone understands and in a culturally accessible manner.”[[172]](#footnote-172)

## Right to an effective remedy and enforceability of such remedies.

Article 13 does not directly mention the right to a remedy. The drafting history of the UNCRPD shows that the wording of “effective remedy” was also proposed,[[173]](#footnote-173) but not adopted due to its composition of both civil and political rights and economic, social and cultural rights.[[174]](#footnote-174) The Committee has documented many examples where State parties need to provide “effective remedies” in order to ensure effective access to justice for persons with disabilities.[[175]](#footnote-175) Therefore, it would be difficult to reject the arguments that ‘an effective remedy is a central component of the right to access to justice’ and that it is a reason why people seek justice.[[176]](#footnote-176) This right refers to any kind of redress and reparation, which can include compensation, restitution, rehabilitation, non-repetition and satisfaction.[[177]](#footnote-177)

Under the Council of Europe, the effectiveness of a remedy is determined based on three factors, namely whether it is

1. Accessible
2. Capable of providing redress in respect of the applicant’s complaint and
3. Offers reasonable prospects of success.[[178]](#footnote-178)

Other requirements include that the remedy is individualized and adjudicatory, so as to provide reasonable accommodation.[[179]](#footnote-179) In this context article 25 of the American Convention is of interest as it includes the requirement of remedies to be enforceable – building on the international experience that judgements are not always respected and implemented by national governments.[[180]](#footnote-180)

The Committee emphasises the importance of availability and accessibility of legal remedies, including providing information on legal remedies,[[181]](#footnote-181) in different contexts including, discrimination cases,[[182]](#footnote-182) deprivation of liberty on the basis of impairment,[[183]](#footnote-183) for persons deprived of their legal capacity,[[184]](#footnote-184) and for persons subjected to forced sterilization.[[185]](#footnote-185) Legal remedies in the latter situations should aim to prevent further discriminatory actions,[[186]](#footnote-186) provide compensation,[[187]](#footnote-187) adopt relevant protocols,[[188]](#footnote-188) provide sanctions for perpetrators.[[189]](#footnote-189) In this regard, category three is interlinked to this category, it is clear that accessible and available complaints mechanisms, investigation and monitoring bodies are crucial to providing effective remedies.

Practices at national level include the Canadian human rights commissions and tribunals, which are statutory administrative bodies with the power to hear complaints from persons with disabilities and to order remedies. Remedies can be both individual (e.g. monetary compensation and orders to implement specific accommodations) and public interest (e.g. human rights training, the development of human rights policies or data collection on how much persons with disabilities are impacted by a specific practice).[[190]](#footnote-190) Examples of legislation include the United States’ Americans with Disabilities Act, which outlines an open-ended list of remedies against discrimination, including relief, auxiliary aids or services, modifications of policies, practices, or procedures or alternative methods, making facilities readily accessible and civil penalties.[[191]](#footnote-191)

In addition to the traditional adjudicatory system of remedies, alternative dispute resolution mechanisms can be set up as an alternative to the judiciary path. Cases from Bangladesh regarding property, alimony and inheritance have illustrated how, with the help of local NGOs and police, mediation had been set up and accepted by both parties, leading to mutual agreements, reconciliation and a beneficial outcome for persons with disabilities, without losing their family and social connections.[[192]](#footnote-192)

Finally, additional approaches towards remedies are needed to cater for the specific cultural contexts of regions or countries. For instance, Disabled Women in Africa (DIWA) worked with communities in Malawi to provide compensation for victims of gender-based violence in addition to the remedies issued by court, based on an understanding of the community supporting the victims and taking responsibility.[[193]](#footnote-193) This approach takes into account the importance of the community, which also might be better informed about the specific circumstances and provides every-day support. Another example from Colombia includes reconciliation as part of the peace process in the country. The guide to care for people with disabilities in access to justice includes specific measures for the victims of the Colombian armed conflict: they receive preferential assistance in land restitution processes, judges must guarantee participation in the processes, it also stresses the state's obligation to guarantee non-repetition in the cases for victims with disability. The guarantee of non-repetition for the victimizing acts of persons with disabilities include the permanent training of the human resources of state entities in respect of respect for Human Rights and International Humanitarian Law, which includes the principles and application of the differential approach. This training should be aimed at law enforcement officials.[[194]](#footnote-194)

Remedies can however also have a group-impact, as the Handbook Concerning Offenses against Persons with Albinism from Malawi has shown. Seeing how attacks against persons with albinism had increased over the last few years, the government of Malawi provides guidelines for the judiciary how to contribute to fighting these crimes, not only by understanding them but also by calling upon them to impose strict sentences to acknowledge the gravity of these crimes and send a strong message that they will not be tolerated. Additionally, it discusses restorative justice and compensation for the victims, however its strongest thrust seems to be preventing future attacks.[[195]](#footnote-195)

These practice examples and excerpts from literature show that the focus has to lie on individualized, effective remedies, while keeping in mind stereotypes and group-discrimination, such remedies should not only compensate for the damages incurred but also provide a solution for the future. While there is no comprehensive list of what remedies must be provided, the literature indicates that adjudicatory remedies and alternative forms of dispute settlement can offer choice for persons with disabilities, to choose the form that gives them the fullest remedy. However, literature is yet to expand on the barriers encountered when accessing these remedies in order to understand if access to all these options is truly effective and inclusive.

## Relevant stakeholders must be trained in how to communicate with persons with disabilities

Independence and impartiality of courts is an element of the right to fair procedures. The UNCRPD seems to focus more on impartiality issues, which may be affected by lack of knowledge or misunderstanding about disability rights. As noted under category one of this report lack of knowledge across the justice sector, and negative attitudinal practices related to misunderstandings of disability is a key barrier to effective access to justice. Accordingly, the UNCRPD emphasises the need for appropriate training for everyone who works in the justice system, as well as to raise awareness throughout society on the rights and dignity of persons with disabilities and ‘to combat stereotypes, prejudices and harmful practices relating to persons with disabilities … in all areas of life’.[[196]](#footnote-196) The CRPD Committee has made some comments on training in relation to article 13 in its General Comments and Concluding Observations. It emphasises the importance of regular training programmes on a compulsory and on-going basis, in urban and rural areas and remote communities.[[197]](#footnote-197) The Committee also urges allocation of sufficient funding and financial resources for these forms of training.[[198]](#footnote-198)

Although the Committee highlights the need for training, awareness raising campaigns, and capacity building programmes for people involved in the legal system, such as judges, legal professionals, notary personnel, social workers, justice and law enforcement officials,[[199]](#footnote-199) it also views training for persons with disabilities to increase their legal awareness as necessary under article 13.[[200]](#footnote-200) Diverse training topics are suggested throughout the Committee’s General Comments and Concluding Observations for effective access to justice. Their top priorities are for access to justice issues include:

* the application of human rights standards specifically for persons with disabilities, including accessibility, procedural and reasonable accommodations,[[201]](#footnote-201) equal participation[[202]](#footnote-202) and the right to a fair trial,[[203]](#footnote-203) and the recognition of diversity among persons with disabilities and their individual requirements for their equal and effective access to justice;[[204]](#footnote-204)
* launch an awareness-raising strategy, that includes training programmes and media campaigns, based on the human rights model of disability, for judges, lawmakers, and law enforcement officials to eliminate prejudice and promote rights recognition.[[205]](#footnote-205)
* the recognition of persons with disabilities as full persons before the law, including giving the same weight to complaints and statements from persons with disabilities as they would to non-disabled persons,[[206]](#footnote-206) facilitating the testimony of persons with psychosocial and/or intellectual disabilities,[[207]](#footnote-207) and combating harmful gender and disability stereotypes;[[208]](#footnote-208)
* the ‘obligation to respect the legal capacity of persons with disabilities, including legal agency and standing’,[[209]](#footnote-209) to build capacity of justice personnel around recognition of legal capacity,[[210]](#footnote-210) and ‘the individual autonomy of persons with disabilities and the importance of legal capacity for all’;[[211]](#footnote-211)
* the application of a human rights-based approach to disability;[[212]](#footnote-212)
* the need and duty to provide access to justice for persons with disabilities on an equal basis with others;[[213]](#footnote-213)
* working with persons with disabilities;[[214]](#footnote-214)
* ‘measures adopted to ensure the effective training’ on the rights of persons with disabilities, for people who work in the justice system including lawyers, and sign-language interpreters;[[215]](#footnote-215)
* ‘[t]he complexities of intersectionality and the fact that persons should not be identified purely on the basis of impairment';[[216]](#footnote-216) and
* ‘[t]he centrality of effective and meaningful communications to successful inclusion’.[[217]](#footnote-217)

### Training Initiatives and Guidelines

Training for the judiciary on the issues faced by individuals with disabilities and how to ensure effective access to justice for persons with disabilities is varied across State parties. There is recognition that there is a pressing need for training initiatives and having clear targets of what groups require training. National protocols and guidelines to assist in the implementation and delivery of training is a good practice identified in some State parties.[[218]](#footnote-218) Toolkits are a popular vehicle for delivering standardised information to a large portion of a particular profession[[219]](#footnote-219) and can contain practical information about accessibility and accommodations.[[220]](#footnote-220) In other countries agreements between government departments are used to hold each other accountable for the police and legal system performance in relation to access to justice for persons with disabilities.[[221]](#footnote-221) National Human Rights Institutions (NHRI) can play an important role in promoting access to justice for persons with disabilities. In this context, the NHRI-DPO collaboration that exists in Kenya on training magistrates/judicial officers on access to justice for persons with disabilities is a promising practice.

Many reports provided by States parties in Europe reference training on the UNCRPD provided by ERA - The Academy of European Law. [[222]](#footnote-222) Other countries invite external experts to address their judiciary, lawyers or trainees. This facilitates exchange of knowledge and best practices among regional actors.[[223]](#footnote-223) In some countries the training focuses on civil servants working within the relevant justice departments[[224]](#footnote-224) and can be delivered by government agencies[[225]](#footnote-225) or NGO staff.[[226]](#footnote-226) Modules delivered online are complimented with in-house training sessions and can be broadly based on accessibility or disability specific.[[227]](#footnote-227) In some areas there are dedicated staff members to consult lawyers and prosecutors regarding disability legal assistance.[[228]](#footnote-228) These positive initiatives have encouraged more professionals to pursue education in accessibility initiatives.[[229]](#footnote-229)

In addition to training justice sector personnel on disability issues, training aimed at disabled persons themselves about how to identify inappropriate and abusive behavior and to make complaints is important.[[230]](#footnote-230) The inclusion of persons with disabilities in training of court and justice system staff is in keeping with the disability movement mantra of nothing about us without us.[[231]](#footnote-231) Proactive initiatives to consult with persons with disabilities about their needs with concrete actions that contribute to address the problems identified are also welcomed[[232]](#footnote-232) as well as extending recipients of disability awareness training to police recruits and trainees within the judicial system[[233]](#footnote-233). This may infer an example of good practice in training that could have the potential to inform guidelines in this area.

Across the studied regions there has been a particular emphasis on training for front-line police officers. This can be conducted both at initial training stages[[234]](#footnote-234) and as continuous professional development.[[235]](#footnote-235) In some states training extends to working with persons who have been deprived of their liberty which recognises the harms this practice imposes on persons with disabilities.[[236]](#footnote-236)

*Other training*

It is not sufficient that sign language interpreters are available during justice proceedings, they must be proficient in legal terminology to ensure full understanding for the sign language user. This can be undertaken in collaboration with Deaf people’s representative organisations or through online translation services.[[237]](#footnote-237) Having legal professionals involved in projects where they can identify themselves potential barriers for persons with intellectual disabilities is also useful[[238]](#footnote-238) and can be complimented by comprehensive guidance on best practices.

*Gender-based disability awareness raising*

Examples of gender-based disability awareness-raising have been found in European[[239]](#footnote-239) and African states.[[240]](#footnote-240) The target audiences are community leaders and self-advocates residing in institutions to increase their capacity to advocate for their peers.[[241]](#footnote-241)

*Other key measures to ensure effective access to justice - data collection*

The Committee has noted the collection of “data disaggregated by disability, age, gender, location and ethnicity at all stages of the criminal justice system, including on the number of persons unfit to plead who are committed to custody in prison and other facilities”,[[242]](#footnote-242) as being a key measure to understanding the gaps and ensuring access to justice for persons with disabilities. NGOs can be a vital source of information regarding their members.

# Key factors

This section will outline the key factors conductive to improving access to justice for persons with disabilities. It provides a summary/systematisation of all the different elements that would make a system CRPD-compliant and disability-inclusive. In its Concluding Observations, the Committee identify types of measures that would be a key factor for State parties to meet their obligations in the context of access to justice and this typically includes reference to legislative or policy measures. However, a key barrier in this area is lack of implementation of legislative measures,[[243]](#footnote-243) which leads to deprivation and denial of rights. Therefore, a key factor for improving access to justice is the implementation of laws that comply with article 13. Access to justice is not only a human right, but it is an empowering and enabling right which supports the exercise of other substantive rights and provides the opportunity to seek a remedy for rights violations. Therefore, State parties must recognise this right in primary sources of domestic law. Access to justice is also intrinsically linked to the right to equality before the law and the right to recognition of legal capacity. It is imperative that governments begin reforming laws according to the obligation ‘to respect the legal capacity of persons with disabilities, including legal agency and standing’. The key factors identified in this review are provided below by following the structure of the six categories selected for thematic analysis.

### Access to physical infrastructure

This element requires State parties to remove physical barriers to gaining access to justice through legislative measures,[[244]](#footnote-244) and importantly they must allocate resources and develop plans to ensure accessibility.[[245]](#footnote-245)

### Access to information on rights of persons with disabilities

There are three important elements in this section regarding access to information, communication, and awareness of disability rights. To comply with CRPD obligations in this category governments must consider how to inform people with disabilities about their rights and how to raise awareness among professionals in the justice sector of the human rights approach to disability.

Findings from the research highlight examples of good practices where various agencies within State parties are taking initiatives to ensure access to accessible information. Key factor here is to uncover who has responsibility to inform and to direct legal obligations and guidelines to support implementation at the relevant body.

Information must be available and in accessible formats. This could be provided for in law. Section 191a of the Courts Constitution Act in Germany is an example noted in the good practices section on this element. However, law should be reflective and inclusive of all disability types, thus providing a non-exhaustive list of formats necessary to ensure access to justice for all, including persons with disabilities:

* particularly providing such information to blind and visually impaired persons (Braille and audio), deaf persons (sign language interpretation) and persons with psychosocial or intellectual disabilities (Easy Read), or video guides.

Formats should not be restricted to documents but include telephone, online and other assistive technology. Various accessible tools to inform persons of their rights is a key element conductive to ensure access to law during the initial phases. In addition to accessing information some people with disabilities may require communication accessibility to communicate with personnel in the justice system. There are a number of relevant examples highlighted in this report under category one. A key factor to ensure third party intermediaries and court personnel communicate effectively with persons with disabilities include an implementation measure such as Bench Books or protocols that are disability-inclusive.

### Access to legal advice and representation (ideally free or affordable for persons with disabilities).

Most legal systems recognise certain individuals as being incapable of litigating – often based on a standard of ‘mental capacity’ or decision-making ability, which deems the person not to have legal standing to litigate in court on their own behalf, or not to have capacity to instruct a lawyer, or both.

The key factors that would support effective access to legal advice and representation on an equal basis with other includes: recognition of legal capacity to instruct a lawyer and legal standing on an equal basis with others; the provision of free or affordable legal aid for persons with disabilities in all areas of law and ensure the necessary budgetary allocations to the institution or institutions mandated with this task; and representation provided by qualified disability law lawyers. Key to this will be to provide a comprehensive legal aid scheme, giving the individual an enforceable right to access legal representation as part of anti-discrimination legislation.

While the means and merit tests for legal aid could apply on the same basis as it applies to others, there is an argument to be made that people with disabilities require access to free legal aid and representation in all areas of law due to the disproportionate impact societal structures and institutions place in many areas of life that denies equal participation of people with disabilities and therefore creates barriers accessing the justice system that does not impact on other groups in the same way.

*Pre-trial communication support*

A key factor to ensure meaningful participation in the justice system will include the use of CRPD-compliant third-party support, when required by persons with disabilities, and relevant technology assistance to eliminate the difficulty in communication between lawyers and clients with disabilities from an early stage in the justice process. This could be achieved by using examples of intermediaries discussed under category two and four and incorporating legal and policy frameworks that provide for effective implementation of various forms of support. Relevant also here are Bench Books, and protocols as developed in Latin American states, as examples of implementation measures.

### Accessible civil and criminal complaints mechanisms including reporting to police, civil/administrative authorities and monitoring bodies

This aspect of access to law regards the process of making a civil or criminal complaint about an alleged violation of rights for people with disabilities. The emphasis here is the availability and accessibility of independent formal complaint mechanisms. This can be achieved by State parties within existing national mechanisms or by establishing a new mechanism, in order to receive, investigate and remedy complaints for violations of the rights of persons with disabilities. The mechanisms should be anonymous or confidential. Access to accessible and inclusive hotlines and e-service complaints mechanisms (e.g. accessible websites and SMS messaging) in the civil and criminal systems would be a key factor to support effective complaints and reporting mechanisms.

Police reporting and investigations require adjustments to ensure effective access to justice. A key factor here would be a change in law to procedures, such as the Israel example of “special investigators” outlined in category two above; and the assistance of an “Independent Third Person” such as those operating in the Australian example noted in the good practices section. Laws enacted to adjust criminal procedural rules should also consider accessibility and inclusion, which would mean flexibility in the places where reporting and questioning are being carried out. There are examples highlighted in this report of reasonable accommodations where persons with disabilities can give police statements in their own homes, by video recording or in another place of choice.

### Equal participation in adjudicative process (including rights to be heard and rights to fair procedures).

The right to effective participation of persons with disabilities in all legal proceedings recognised in article 13 is directly relevant to the personal presence element of the right to a fair hearing in international human rights law, as well as the equality of arms principle.

Key factor to the realisation of effective participation in the adjudicative process is recognition of the obligation to respect the legal capacity of persons with disabilities, including legal agency and standing. This requires governments to take all the necessary legal, administrative and judicial measures to eliminate all restrictions on legal capacity. This includes the removal of laws on third party representation, such as guardianship, which follow substitute decision-making frameworks based on best interests. Law reform could follow the approach taken in Peru or Colombia,which provides for a presumption of legal capacity for all adults with disabilities, support to exercise legal capacity and prioritises the will and preferences of an individual using support. Minors with disabilities have a right to the same supports for decision-making as adults in areas where they are typically granted legal capacity.

Legislation alone will not be enough as attitudinal barriers and professional practices based on the outdated medical model of disability are pervasive across many State parties. Key measures for implementing reforms will be action plans with key targets to achieve goals noted under this category in the thematic analysis including: awareness raising for professionals working in this area on the human rights approach to disability, and capacity building on how to develop supported decision-making frameworks.

*Procedural and gender and age appropriate accommodations to ensure right to be heard and to participate*

After adequate response to the issue of legal capacity, there are two key elements necessary to ensure effective participation in the adjudicative process: procedural adjustments and communication accommodations. State parties could follow the law reform in Israel[[246]](#footnote-246) and amend evidence and procedural rules to support participation to give evidence at investigative and testimony stages. These types of accommodations can help to overcome the discriminatory approach of testing a person’s fitness to plead or stand trial. Other adjustments can also facilitate participation in trial or other processes such as, adaptions to venue, speed of proceedings, nature of questioning, and support when being questioned. Measures such as specific protocols,[[247]](#footnote-247) guidance books,[[248]](#footnote-248) and procedural rules[[249]](#footnote-249) for the Judiciary and law enforcement sector would support effective implementation of procedural accommodations for persons with disabilities.

In addition to changing rules of evidence and procedure, accommodating alternative means of communication so that persons with disabilities can effectively participate and communicate with the court, court officers or third parties, and follow court procedures is a key factor to ensure meaningful compliance with article 13 of the CRPD. Communication can be facilitated through the use of third parties (e.g. sign-language interpreters or intermediaries) or through technological aids, or a combination of both. While laws in this area often focus on the criminal justice system, these accommodations must be made available in the same manner in civil proceedings, such as deprivation of liberty proceedings under mental health legislation.

*Universal design of accessible procedures*

Some countries as a good practice provide for adjustments to the proceedings to meet the specific requirements of persons with psycho-social disabilities or intellectual disabilities related to communication difficulties, stress management, etc. For example, they might question witnesses outside of the courtroom in a room designed to reduce stress, and to avoid confrontation with the accused, etc. See in this regard Costa Rica’s protocol for access to justice for people with psychosocial disabilities described among the good practices. These kinds of accommodations should not be specific to persons with disabilities. They reflect on problems not specific to disability, but individual factors such as tolerance for stress in the specific proceedings. Therefore, these kinds of accommodations should be available to everybody who needs them, they should not be a special measure applicable to persons with disabilities, some of whom might not even need them. In this regard, see the good practice of Sweden on establishing a web-based “Court Proceedings Introduction”.[[250]](#footnote-250) It is very helpful for persons with disabilities to make proceedings accessible, but it is available to all persons who might find proceedings confusing and difficult to navigate.

*Indirect participants*

In the context of juror participation a Key factor is the development of legislation in all State parties on the equal participation of persons with disabilities in the jury system. This must be accompanied by the provision of any necessary support, as well as reasonable adjustments for this purpose. Spain’s Organic Law of Jury Court is an example of promising practice noted in this report.

Access to the Legal professions for persons with disabilities is also crucial factor to ensuring equal participation in the administration of justice. This requires removing barriers to ensure that persons with disabilities may enter the legal professions, particularly by removing impairment or capacity barriers. See the good practice section which highlights an example from Chile.

### Right to an effective remedy and enforceability of such remedies

This right refers to any kind of redress and reparation, which can include compensation, restitution, rehabilitation, non-repetition and satisfaction.[[251]](#footnote-251) The key factors conductive to fulfil the right to an effective remedy for persons with disabilities include the availability and accessibility of such legal remedies, including providing information on legal remedies. The remedy must be individualized with a requirement to tailor it to meet the needs of the claimant, and the remedy must be enforceable. While there is no comprehensive list of what remedies must be provided, the literature indicates that adjudicatory remedies and alternative forms of dispute settlement can offer choice for persons with disabilities, to choose the form that gives them the fullest remedy. See the list of remedies in the American with Disabilities Act referred to in the good practices section.

### Relevant stakeholders must be trained in how to communicate with persons with disabilities

A key factor for the realisation of access to justice for persons with disabilities on an equal basis with others is the provision and promotion of regular training programmes on a compulsory and on-going basis, in urban and rural areas and remote communities. Training of professionals and training of persons with disabilities must be according to a human rights model of disability. This will require the allocation of sufficient funding and financial resources for these forms of training.

There are many examples in this report of measures, initiatives and guidelines to ensure such training is effective in achieving the aim of article 13. It is clear that once-off training, while promising, is not enough to achieve the goal of overcoming systemic attitudinal barriers associated with the professions in the administration of justice. Awareness raising on the human rights based approach to disability should be incorporated into educational curriculums in the justice sector professions and training made a mandatory requirement for continual professional development.

Training on an on-going basis could be delivered through NHRIS or DPOs or by other organisations that have developed the training material with the participation of persons with disabilities and/ or with their involvement in the training of legal personnel. In Malta disability sensitivity training has been developed and delivered by persons with disabilities, facilitated by the Commission for the Rights of Persons with Disability.

*Key factor to ensure effective access to justice - data collection*

The Committee has noted the collection of “data disaggregated by disability, age, gender, location and ethnicity at all stages of the criminal justice system, including on the number of persons unfit to plead who are committed to custody in prison and other facilities”,[[252]](#footnote-252) as being a key measure to understanding the gaps and ensuring access to justice for persons with disabilities. Data collection in the civil justice system is equally important and should identify barriers, accommodations and outcomes for persons with disabilities at all stages of the process from access to law and information to enforceability of remedies. Data collection tools should be developed to monitor the gaps across the justice system which hinder effective access to justice for persons with disabilities. Research in this area can support the further identification and development of solutions to the barriers identified in this report.

# Regional Standards on access to justice

At the regional level, in 2018 the **African Union** adopted the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities in Africa, which is overseen by the Working Group on the Rights of Older People and People with Disabilities.[[253]](#footnote-253) Article 13 regulates the right to access to justice in the following ways: a) The Protocol specifically requires States Parties to ensure that customary law processes are inclusive and not used to deny persons with disabilities access to justice; b) The article places an explicit obligation on States to ensure legal assistance, including legal aid to persons with disabilities.

The **Inter-American Convention on the Elimination of all forms of Discrimination** against Persons with Disabilities (1999) ensures the right to access to justice of all persons with disabilities in article III 1.b) and urges states to undertake legislative, social, educational, labor-related, or any other measures needed in order to achieve it. The following three documents can be understood as a continuum with common the objective to promote full access to justice for people in vulnerable conditions:

* The Bill of Rights of Persons before Justice in the Ibero-American Judicial Area (VII Ibero-American Judicial Summit[[254]](#footnote-254), 2002).[[255]](#footnote-255)
* The Brasilia Rules on Access to Justice of Persons in Vulnerability Status (XIV Ibero-American Judicial Summit, 2008).[[256]](#footnote-256) These rules develop the principles contained in The Bill of Rights of Persons before Justice in the Ibero-American Judicial Area. The Brasilia Rules, have been an undeniable contribution in the understanding of the phenomenon of vulnerabilities in the justice sector and have attracted the attention and broad support of justice operators and the academic world must be concretized in instruments of practical application and in guidelines for the design of public policies. In this regard, it should be noted that in later versions of the Ibero-American Judicial Summit, specific Judicial Action Protocols have been created to improve access to justice for persons with disabilities, migrants, children and adolescents, communities and indigenous peoples, and women in cases of gender violence[[257]](#footnote-257).
* The Ibero-American Protocol for Judicial Action to improve access to justice for people and groups in vulnerable conditions, with special emphasis on justice with a gender approach (XVII Ibero-American Judicial Summit, 2014).[[258]](#footnote-258) This protocol is a reference tool and an action guide whose objective is that people and social groups fully know and exercise, before the justice system, the rights recognized by the international legal system.

The **European Union** has ratified the UNCRPD which establishes an obligation to respect and fulfil the right to access to justice for persons with disabilities at both EU level and through Member State compliance.

At the **Council of Europe** system, the CRPD appeared in the jurisprudence of the European Court of Human Rights, first in its decision in Glor v. Switzerland[[259]](#footnote-259) where the CRPD was referred to as providing evidence of “a European and worldwide consensus on the need to protect people with disabilities from discriminatory treatment” as well as finding, for the first time, a violation of Article 14 (Prohibition of Discrimination) of the ECHR based on the applicant’s disability.

# Good practices

This section will provide a selection of good practices on access to justice for persons with disabilities at the international, regional and national level.

## Law

**1. Accessibility and accurate and accessible information on the rights of persons with disabilities**

**European Union** Directive 2012/29/EU establishes minimum standards on the rights, support and protection of victims of crime including access to appropriate information.[[260]](#footnote-260)

**European Union** Directive 2010/64/EU87 deals with the right to interpretation and translation in criminal proceedings with respect to suspected or accused persons who do not speak or understand the language of the proceedings. Article 2(3) states that the right to interpretation includes the provision of appropriate assistance for persons with hearing or speech impediments. Recital 27 refers to people who are in a potentially weak position, in particular because of any physical impairment which affects their ability to communicate effectively.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 in **England and Wales** introduced a mandatory telephone gateway service for legal advice on discrimination, debt and Special Educational Needs (the Civil Legal Advice service). However, the Equality and Human Rights Commission note that access to justice in discrimination cases may be inhibited due to the telephone gateway not operating properly, or not being accessible for some people.[[261]](#footnote-261)

The Constitution of **Kenya** sets out that persons with disabilities need to be given the assistance needed to participate in all spheres of life, which includes the right ‘to reasonable access to all places, public transport and information’[[262]](#footnote-262). These Constitutional rights are outlined in the Kenyan Criminal Procedure Bench Book, to guide the judiciary’s understanding of the rights of persons with disabilities to information and access to justice.[[263]](#footnote-263)

In **Slovenia**, Article 223 of the Court Rules stipulate that the invitation to a court hearing must state that persons with disabilities have a right to equal participation in the procedure. If persons with disabilities wish to invoke this or avail of reasonable accommodations, they must notify the court prior to the hearing so that the court can organise the hearing in a suitable courtroom and/or by installation of special equipment (e.g. IR units for hearing-impaired persons).[[264]](#footnote-264)

Section 191a of the Courts Constitution Act in **Germany** allows persons who are blind or visually impaired to demand court documents in an accessible format if this is necessary in order to safeguard their rights.[[265]](#footnote-265)

Many countries include some requirements for physical accessibility of public buildings such as police stations and court buildings in their legislation.[[266]](#footnote-266) However, this is often confined to new buildings[[267]](#footnote-267) or for visitor or public spaces with few references to accessible detention facilities or accessibility for staff members[[268]](#footnote-268) such as police officers, members of the judiciary or lawyers.

In **South Africa** the case of W B Bosch was ground-breaking in terms of ensuring accessibility of police stations. Mr. Bosch challenged the lack of access to a police station as a wheelchair user. The court ruling required the police station to ensure accessibility and in the meantime move the police officers to the ground floor. As a consequence of this precedent about 150 other police stations underwent reconstruction to ensure accessibility.[[269]](#footnote-269)

**2. Access to legal advice and representation**

Paragraph 4 of Article 13 of the **Disability Protocol to the African Charter** explicitly sets out the states’ duty to provide legal assistance services for persons with disabilities, including legal aid, thereby providing more detail than the CRPD.

In Slovenia, providing defendants in a criminal trial, and in some instances witnesses or litigants in civil matters, with a legal representative due to their status as vulnerable participant in the justice system due to disability, age or economic status is also a common feature.[[270]](#footnote-270) In **Montenegro**, the Criminal Procedure Code (CPC) sets out that an accused person with disability must have a defence attorney during the entire proceedings, if they are facing a charge where a term of imprisonment could be the result.[[271]](#footnote-271) Additionally according to the Law on Legal Aid:

“Legal aid implies the provision of resources for full or partial coverage of costs for legal counselling, preparation of pleadings, representation in proceedings before the court, the State Prosecution and the Constitutional Court of Montenegro and any procedure for out-of-court dispute settlement, as well as exemption from payment of the costs of court proceedings. The exercise and assertion of the right to legal aid pursuant to this Law shall be provided without any discrimination on the grounds of the ethnic origin, race, colour, language, religious or political belief, sex, sexual orientation, medical condition, disability or other personal feature. The person shall have the right to legal aid provided that he is: a beneficiary of family cash benefits or other social security right pursuant to the law governing social and child protection; a child without parental care; a person with special needs; a victim of the crime of family or domestic violence and of human trafficking; and a person of unfavourable financial situation. The authority competent for granting legal aid is the president of the basic court or the judge authorised by him within the territory of whose jurisdiction the Applicant is domiciled or resides. Legal aid may be provided by lawyers according to order from the list of the Bar Association of Montenegro compiled as per territorial jurisdiction of basic courts.”[[272]](#footnote-272)

**3. Accessible civil and criminal complaints mechanisms** including reporting to police, civil/administrative authorities and monitoring bodies providing a wide range of methods of redress.

General Comment Number 4 of the **African Commission on Human and Peoples’ Rights** requires from its State parties that they set up multi-sectoral redress procedures with mechanisms that are accessible for everyone. Special measures have to be taken to ensure access for persons with disabilities.[[273]](#footnote-273)

Up until today the **African Commission on Human and Peoples’ Rights** has only had one communication concerning the rights of persons with disabilities, namely Purohit and Moore v. The Gambia in 2001. The case was brought by mental health advocates on behalf of patients detained in The Gambia’s mental health ward. The Commission declared the case admissible, because local remedies were not open to detained mental health patients and they could therefore not claim their human rights in front of national courts or tribunals. It furthermore decided to accept the patients’ interest in staying anonymous.[[274]](#footnote-274) While the case itself promotes the right to access to justice of the complainant, on a systemic level access to complaint mechanisms for persons with disabilities under the African Union system does not seem to be efficient, seeing how since 2001 no further cases have been brought to the Commission.

Vulnerable victims and witnesses are supported to provide their testimony remotely or via recording in a number of States Parties[[275]](#footnote-275) For example in **Montenegro**, witnesses who cannot appear in court due to their age, illness or disability may be heard in their residence, and in exceptional cases via video or audio transmission to facilitate questioning. The enactment of the Criminal Law Amendment Act (2013) in **India**, allows women and other persons with disabilities who are the victims of crime the right to record statements with police in their own home, by videotape or in another place of choice. The Act also codifies the right to assistance by a special educator or interpreter when the complaint is recorded and during trial. Furthermore, the Act requires the provision of specific procedural and age-appropriate accommodations such as sign-language interpretation, materials in plain language, and options to file reports in Braille.[[276]](#footnote-276)

In **Ukraine** the involvement of a sign language interpreter is mandatory for the translation of explanations, testimonies or documents of the party to the criminal proceedings in a case involving a hearing-impaired person.[[277]](#footnote-277)

In **Serbia** a person with a disability may sign a document by means of a stamp containing personal identity data or by means of a signature name stamp in the proceedings before public administration bodies.

**4. Equal participation in adjudicative process**

Article 13(2) of the **Disability Protocol to the African Charter** requires States to ensure that their customary law processes are inclusive and respect the rights of persons with disabilities. This provision, which cannot be found in the CRPD, applies to the informal justice provision and community dispute resolution, which are still being widely used in rural and poor communities. While there are concerns about the compliance of customary law processes with international law, which Article 13(2) addresses in the context of persons with disabilities, they can also be seen as facilitating equal participation of persons with disabilities in justice proceedings, as these settings are culturally and linguistically centered in their community, which they are familiar with and also do not require them to travel long distances.[[278]](#footnote-278)

In **Belgium** legislation which prohibits the denial of reasonable accommodation in supply of goods and services incorporates access to justice. Under these provisions there is a legal obligation to provide reasonable accommodations for persons with disabilities in their role as witness, juror, complainant or defendant. It should be noted, however, that although the legal framework itself is a good practice, there is no sufficient guarantee of the implementation of the right to reasonable accommodation in judicial proceedings in practice.

In the **United Kingdom**, the BSL (Scotland) Act 2015 requires that national and local ‘BSL plans’ are produced which focus on improving services and access for Deaf BSL users including access to the civil, criminal, and juvenile justice systems. The plans must be produced in direct and continuing consultation with local Deaf communities. Current plans focus on establishing advisory groups, providing training to interpreters to work with the sector, and improved access to emergency services such as fire services, the police force and the ambulance service.

The Supreme Court of **Canada** held in R v DAI[[279]](#footnote-279) that it would be sufficient for an individual with an intellectual disability to “promise to tell the truth” when testifying in court. This decision overruled the trial judges finding that a person testifying must be able to answer a series of abstract questions about truthfulness to demonstrate capacity and the necessary understanding and ensured that a woman with an intellectual disability could testify against her mother’s former partner who she claimed repeatedly sexually assaulted her.[[280]](#footnote-280)

The recent law reform in relation to legal capacity in **Colombia** provides for a presumption of legal capacity for all adults with disabilities, support to exercise legal capacity and prioritises the will and preferences of an individual using support. Minors with disabilities have a right to the same supports for decision-making as adults in areas where they are typically granted legal capacity. [[281]](#footnote-281)

In **Spain**, according to the Organic Law of the Jury Court of December 2017, persons with disabilities can be part of a Jury, they must be provided by the Administration of Justice with the necessary support, as well as make reasonable adjustments.

The **Bangladesh** Evidence Act provides for alternative means of testifying for persons with speech impairments as follows:

‘A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.’[[282]](#footnote-282)

The **Kenyan** Criminal Procedure Bench Book emphasizes the importance of the use of intermediaries in courts where needed. It describes an intermediary as ’a *medium through which the accused person or complainant communicates to the court*’ and lists (non-exhaustively) potential intermediaries, such as parents, psychologists, social workers etc. It furthermore highlights that in accordance with the Evidence Act a person with a disability is generally recognized as a competent witness, as long as they are not prevented from their disability to understand the relevant question put to them and can give rational answers (thereby looking at the specific situation to decide if it can be considered as evidence).[[283]](#footnote-283)

In **Austria** the Criminal Procedure Code provides the option of providing psychosocial support as emotional support during the proceedings and to assist in preparing for them. Recently this service has been extended to private claims which are a result of a criminal case.[[284]](#footnote-284)

The **South African** Child Justice Act states that all children, regardless of their disabilities, should be given the opportunity to participate in proceedings where it is affected by the decisions taken, including during the assessment and preliminary enquiry stages, based on their rights to share their views.[[285]](#footnote-285) The South African Criminal Procedure Act, 1977, sets out a number of “protective” measures for witnesses in a criminal trial. These measures include the witness giving evidence through an intermediary, which may be considered where the witness is “under the biological or mental age” of eighteen.[[286]](#footnote-286)

In **South Africa,** the case of*Esthé Muller v DoJCD and Department of Public Works* (Equality Court, Germiston Magistrates’ Court 01/03) challenged accessibility of courtrooms. The complainant, a South African lawyer who uses a wheelchair, filed a complaint under the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 against the Defendants because of the physical inaccessibility of the courthouses she needed to access in order to perform her job as a lawyer. The only way for her to gain access was to be carried down a flight of stairs. On one occasion, the court had to postpone her case because of courthouse inaccessibility. The Equality Court reached a final settlement according to which the two government departments admitted that they had failed to provide proper wheelchair access and that this constituted unfair discrimination against Ms. Muller and other people with similar accessibility needs.[[287]](#footnote-287)

In **Israel** the Law provides for several adjustments of the court procedures, which can be recommended by an “expert witness” who gives a statement to the court about the witness’s disability and its potential implications for the best manner of obtaining their testimony. Examples include waiving the duty to caution the witness, testimony behind a partition, testimony outside the courtroom and/or without formal attire, use of Alternative Augmentative Communication (AAC) or a special advisor on how to question the witness.[[288]](#footnote-288) Bizchut (Israel’s Human Rights Center for People with Disabilities) furthermore has a Due Process Team which is on call when persons and disabilities need assistance in police stations or courtrooms. As part of their support they have developed an AAC kit, including dolls, emotions cards and symbol sets to use when assisting their clients.[[289]](#footnote-289)

In the **United States**, a witness who was blind testified before the jury in a criminal trial for rape. The court held that the jury could properly rely on the testimony of a witness who was blind.[[290]](#footnote-290) In a different case, a criminal defendant argued that a juror who was deaf in his criminal trial should be disqualified. The court held that a trial court properly denied a criminal defendant’s motion to disqualify a juror who was deaf and that a juror’s inability to hear is not a disqualification in Georgia and there was no other evidence to support disqualification on other grounds.[[291]](#footnote-291) In another case, the court held that the categorical exclusion of a person who was blind from jury service was a violation of federal disability law.[[292]](#footnote-292)

**Chile** has repealed the prohibition against blind and deaf persons being eligible to be magistrates.

**5. Right to an effective remedy and enforceability of such remedies**

General Comment number 4 of the **African Commission on Human and Peoples’ Rights** provides further details on the right to compensation for torture and other inhumane treatment (which includes forced medical interventions), which should cover any economic loss encountered, including, where applicable, reimbursement of medical expenses and provisions of funds for future medical and rehabilitative costs, material and non-material damage resulting from the harm caused and loss of earnings.[[293]](#footnote-293)

In the **United States** the Americans with Disabilities Act outlines an open-ended list of remedies against discrimination, including relief, auxiliary aids or services, modifications of policies, practices, or procedures or alternative methods, making facilities readily accessible, and civil penalties.[[294]](#footnote-294) It goes on to provide a non-exhaustive list of Auxiliary Aids and Services.

The US Supreme Court ruled that a State is not immune from a lawsuit under the Americans with Disabilities Act brought regarding the accessibility of a State courthouse.[[295]](#footnote-295)

**6. Relevant Stakeholders trained in how to communicate with persons with disabilities**

The 2013 Disability Rights Act of **Bangladesh** explicitly requires police, prison and court officials to obtain training on disability rights and issues.[[296]](#footnote-296)

## Policy

The Committee of Ministers adopted the **Council of Europe** Action Plan 2006- 2015 in April 2006.[[297]](#footnote-297) Action 12 within this policy urges Member States to take specific actions, including to ensure people with disabilities have equal access to the judicial system by securing their right to information and communication that are accessible to them.

In **Guatemala**, the Supreme Court of Justice approved the Access to Justice Policy for Persons with Disabilities and its Implementation Plan and Five-Year Plan 2016-2020 called “Access to Justice with Emphasis in Vulnerability Conditions” which includes procedural accommodation taking into account gender and age.

The National Plan of Access to Justice and Legal Protection of People in Disability Status 2015 - 2020 of **Uruguay** stands out in Proposed modifications to procedures (means alternatives to the resolution of conflicts, adjustments in the procedures to facilitate the work of the judge and especially in criminal and deprivation of liberty, major link, jail, public defender-judge).

The Supreme Court of Justice of **Mexico** issued a National protocol of action for those who provide justice in cases involving the rights of persons with disabilities. Judges must carry out procedural adjustments to accommodate persons with disabilities in the courtroom.

**Costa Rica** adopted a protocol for access to justice for people with psychosocial disabilities. It establishes that the hearings will have to take place in friendly environment to reduce anxiety levels and to avoid confrontation of the victim or witness with the accused, plaintiff or defendant according to the type of process.[[298]](#footnote-298)

**1. Accessibility and accurate and accessible information on the rights of persons with disabilities (necessary to exercise rights and secure access to justice).**

On the regional level, The **African Union’s** Model Law on Access to Information includes a rule that where a person with a disability makes a request for information, the information officer ‘must take all necessary steps to assist the person to make the request in a manner that meets their needs.’ It also includes a rule on that where a person is prevented from reading because of their disability, the information holder must take any reasonable step to make the information available to the person.[[299]](#footnote-299) This rule therefore applies both to visually impaired persons and persons who are illiterate.

The African Commission’s General Comments Number 4 provides examples of special measures states should provide for those, including persons with disabilities, who are often not able to access effective redress, such as clinics with staff trained in trauma counselling, use of legal advice clinics and support or civil society and community based organisations assisting victims.[[300]](#footnote-300)

In **Sweden**, victims of crime and others attending the court can use a web-based “Court Proceedings Introduction”[[301]](#footnote-301) since March 2008 to become familiar with the trial process and formalities before appearing in person.[[302]](#footnote-302) The external website for the courts service in Sweden has been adapted in line with the WAI (Web Accessibility Initiative) guidelines on accessibility.[[303]](#footnote-303) This website includes easy-to-read, general information, as well as a function that facilitates the reading aloud of the information.[[304]](#footnote-304)

**2. Access to legal advice and representation**

A **Council of Europe** toolkit on the ECHR for public officials indicates that a fair trial is fundamental to democratic society and as such is one of the most frequently invoked articles of the Convention[[305]](#footnote-305). In civil proceedings there is a requirement for a public hearing, an independent and impartial tribunal, trial within a reasonable time, a publicly pronounced judgement, physical and procedural access to court, legal representation, effective participation, full and equal consideration of both parties cases, reasoned judgement, execution of civil judgement in a timely manner and legal certainty.[[306]](#footnote-306)

In the **United States**, the American Bar Association published an Equal Access to Courts for Individuals with Disabilities, Into the Jury Box: A Disability Accommodation Guide for State Courts.[[307]](#footnote-307)

**3. Accessible civil and criminal complaints mechanisms** including reporting to police, civil/administrative authorities and monitoring bodies providing a wide range of methods of redress.

A protocol agreed between the **Federation of the Portuguese Associations of Deaf People** and the Ministry of Justice ensures that deaf persons participating in civil proceedings may request a sign language interpreter in all of the services within the Ministry of Justice, e.g. courts, prisons, forensics health care facilities. [[308]](#footnote-308)

In **Slovenia** under the “Effective Justice” project, the Ministry of Justice will equip at least one courtroom in every district court with wireless headphones, to improve access to courtrooms and the court process for persons who do not use sign language and are hard of hearing.[[309]](#footnote-309)

**4. Equal participation in adjudicative process**

The **Australian** Disability Access Bench Book provides a list of adjustments at the judge’s discretion, including slowed language in the courtroom and easy English summaries at the end of each court day.[[310]](#footnote-310)

**5. Right to an effective remedy and enforceability of such remedies**

The **Colombian** guide to care for people with disabilities in access to justice includes specific measures for the victims of the Colombian armed conflict: they receive preferential assistance in land restitution processes, judges must guarantee participation in the processes, stresses the state's obligation to guarantee non-repetition in the specific case of victims of the conflict with disability.

**6.** **Training of relevant stakeholders in how to communicate with persons with disabilities**

The **Argentinian** Protocol for Accessing Justice by Persons with Disabilities includes proposals on the appropriate treatment, which actors of the justice service must provide to people with disabilities.[[311]](#footnote-311) The protocol follows the guidelines established in the Convention on the Rights of Persons with Disabilities and the Brasilia Rules on access to justice for persons in a condition of vulnerability, to break down the socio-cultural barriers that arise in that regard. The objective of this protocol is to provide clear guidelines on the subject, aimed primarily at judges, prosecutors, defenders, other justice operators and auxiliary personnel of the administration of justice. In addition, the protocol will serve as a basis for continuous training and improvement of the judiciary and other related fields.

In **Paraguay,** Decision No. 224/15 of the Ministry of Justice adopted a protocol to facilitate access to justice for persons with psychosocial disabilities. Decision No. 1024/15 of the Supreme Court sets out a policy on access to justice for older persons and persons with disabilities.[[312]](#footnote-312) Also noteworthy is the adoption by the plenary of the Supreme Court of the policy on access to justice for older persons and persons with disabilities at the end of 2015.[[313]](#footnote-313)

The National Plan for Access to Justice and Legal Protection of People with Disabilities 2015 - 2020 of **Uruguay** dedicates several strategic lines to the creation of a plan from the entry of people with disabilities into the prison system until their departure by promoting concrete measures as diagnostic tables, ensure processes and professional qualification for people with disabilities in situations of deprivation of liberty, build accessible spaces and provide technical support.

In **Serbia** the Guidelines for Police Officers include specific points on how police officers should behave toward juveniles and young adults with developmental disabilities whether they are victims or perpetrators.

## Practice

**1. Accessibility and accurate and accessible information on the rights of persons with disabilities**

A number of States Parties to the CRPD provide the option to access some legal information or information about rights and entitlements by phone line. This is provided by Victoria Legal Aid in **Australia** for example under their Mental Health and Disability Law program, by the **Portuguese** Ombudsman as a free-phone service where individuals can also submit complaints,[[314]](#footnote-314) and the primary role of the Rights and Liberties Protection Department in **Thailand** is receive complaints from members of the public and provide ‘law counseling’ on a number of issues. Villamanta, an **Australian** legal aid service based in Victoria, offers a free telephone information, advice and referral service, accessible information on their website and other services to help persons with disabilities, especially with intellectual disabilities to know and protect their rights.[[315]](#footnote-315)

The **German** project Zugang für alle! (Access for all!) produced accessible information about violence against women and girls with disabilities and available supports in different formats, including easy language, audio and German Sign Language.[[316]](#footnote-316) Another project trained female residents of institutions to become “Frauenbeauftragte” (female representatives) for their peers, which included information about the rights of persons with disabilities, different forms of violence and support options.[[317]](#footnote-317)

In **Bangladesh** a District Legal Aid Committee, under the auspices of a judge, took an initiative to raise general awareness amongst the population, explicitly including persons with disabilities, about the justice system and access to legal aid, leading to an increase in legal aid requests from persons with disabilities, who became aware of their rights.[[318]](#footnote-318)

In **Thailand** the Administrative Court provides an audio guide for persons with visual impairments.[[319]](#footnote-319)

**Ukraine** is piloting an e-courts platform where all court documents in relation to a particular case will be available to the participants on an online portal and litigants will be in a position to pay fees, submit forms and file procedural documents.[[320]](#footnote-320)

In **Spain**, Plena inclusion Asturias in conjunction with the family court of Oviedo (Juzgados de familia) developed a project which aimed to make judicial summons and sentences available in easy to read formats.[[321]](#footnote-321) From this the General Council of the Judiciary (CGPJ) signed a collaboration agreement with the Confederation “Plena Inclusión España”, to strengthen the protection of the right of access to justice for people with intellectual disabilities and promoting the adoption of measures necessary to adapt the judicial resolutions to the needs of this group.[[322]](#footnote-322)

The Constitutional Court of **Colombia** (Decision T-573/2016) and the Supreme Court of **Mexico** (Resolución Judicial de la Primera Sala de la Suprema Corte de la Nación en el Amparo en Revisión 159/2013) called for the translation of judgments concerning the rights of persons with disabilities into easy read formats for the benefit of the petitioners and other persons with intellectual disabilities.

The National Council for Disability Equality (CONADIS), the Judiciary Council and the Ministry of Economic and Social Inclusion (MIES) signed a cooperation agreement to improve access for persons with disabilities to the services offered by the administration of justice in **Ecuador**. The incorporation of specialized interpreters in Ecuadorian Sign Language (LSE), recognized in accordance with current regulations, is contemplated. The agreement also seeks that, through the School of Judicial Function, judges, prosecutors and public defenders, receive training on the rights of these people.

In the **United States** persons with intellectual and developmental disabilities receive information and training on how to prevent abuse by creating a personal safety plan which can include whom to talk to if you fear violence from someone, the name of a trusted person that they want to regularly check in on them, contact information for local services and personal rules about how to stay safe.[[323]](#footnote-323)

In the Northern District of California **(United States),** Women Enabled International note that all district courts,[[324]](#footnote-324) wheelchair accessible.[[325]](#footnote-325) Document magnifiers are provided at the intake desks at clerk’s offices to help visitors with visual impairments review documents. Courtrooms are equipped with infrared headsets and Communications Access Realtime Translation (CART) or American Sign Language interpreters are also available upon request. Special amplification devices or closed captioning are available for jurors who require accommodations.[[326]](#footnote-326)

In **Cyprus**, the police force is collaborating with the Cyprus Confederation of Organizations of the Disabled and the Cyprus Paraplegic Organization to make the Lakatamia Detention Center accessible to persons with disabilities.[[327]](#footnote-327)

As part of a project fighting gender-based violence against women and girls with disabilities, the Coalition Against Violence Against Women (COVAW) and the Kenyan Association of the Intellectually Handicapped (KAIH) were raising awareness in **Kenya** of the topic in the communities and with the local leaders to think of the problem in a rights-based way and to refer cases to relevant organizations who can assist in the procedures.[[328]](#footnote-328)

In **Ireland** the Criminal Courts of Justice was given the Accessibility Award 2010 based on the fact that universal design was taken into account at all stages. It is described as ‘The building is easy to read and move around while at the same time taking into account onerous security measures and simplifying the complex circulation routes required for courthouse buildings.’[[329]](#footnote-329) Accessibility features range from the parking space, to surface textures, colour contrasting and lighting.[[330]](#footnote-330)

**2. Access to legal advice and representation**

In **Australia**, Independent Mental Health Advocacy is a non-legal advocacy service operating across the State of Victoria.[[331]](#footnote-331) The advocates aim to support people with psychosocial disabilities to exercise their rights and can represent their views, preferences and concerns to service providers or stakeholders. Advocates also inform individuals about their rights and the mental health legislation and policy in the State. They also provide referrals to the legal aid programme operated by Victoria Legal Aid.

In Victoria (**Australia**), volunteers can also attend police interviews to support persons with disabilities or mental illness as an Independent Third Persons (ITPs). The police must secure an ITP for someone with an ‘impaired mental state or capacity’ or any evidence collected may be rejected in court. ITPs can attend when fingerprints or a body sample is taken or attend a bail hearing. They are trained to facilitate communication, support an individual to contact a lawyer, relative or friend if requested; and may stop an interview if the interviewee becomes distressed, or is otherwise unable to concentrate. The Office of the Public Advocate provides Corrections Independent Support Officers (CISO), volunteer ITPs, who support prisoners with a diagnosed intellectual disability during disciplinary hearings. A CISOs’ role is to facilitate communication throughout the process including explaining a prisoner’s rights; and assessing whether the prisoner understands their rights and can freely exercise them before the hearing can commence.[[332]](#footnote-332)

In **England** the organization Stay Safe East provides advocacy, legal support and specialized support to women and men with disabilities who have experienced violence. Their main focus is to enable the victims of violence to access generic support services and especially the criminal justice system. They give advise about legal rights, assist in the reporting of the crime and in initiating criminal proceedings.[[333]](#footnote-333)

In the **United States** the Protection and Advocacy Network has a federal mandate to represent persons with disabilities in regards to their rights in prison. They can use their organizational standing which means that they do not have to exhaust administrative remedies before accessing the court system, thereby shortening the procedure and providing an effective remedy for persons with disabilities.[[334]](#footnote-334)

In the **United States** a number of legal clinics operate from universities or community based organisations to provide free or low cost legal advice and representation. The American University Washington College of Law runs a Disability Rights Law Clinic[[335]](#footnote-335), in which supervised students provide low-cost legal services to persons with disabilities and their families. The Westchester Family Justice Center, in New York, is a collaboration of women’s centres and disability rights organizations working to ensure women with disabilities have the appropriate information, legal services, and support to safely access the justice system as victims of abuse.[[336]](#footnote-336)

UNAH (National University of **Honduras**) have established a Free Legal Office and the Coordinator of Rehabilitation Institutions and Associations of Honduras (CIARH), which aim of strengthen free access to justice for people with disabilities. They provide virtual offices and telephone assistance which enable persons with disabilities and their families to virtually consult with legal professionals.[[337]](#footnote-337)

In **Bangladesh** legal aid is provided both by a government legal-aid program and by NGOs. Both legal aid services include persons with disabilities in their list of priority groups for legal aid. Furthermore, persons with disabilities taking the Bar exam receive reasonable accommodation, for instance in the form of scribes.[[338]](#footnote-338)

The **Austrian** DPO BIZEPS - which is partially publicly funded - offers peer counseling to persons with disabilities who have been discriminated on the basis of their disability. The DPO assists them in settlement procedures and brings strategic litigation cases to Klagsverband, an umbrella organization fighting discrimination on all grounds, of which BIZEPS is also a founding member.[[339]](#footnote-339)

In **Thailand** the Ministry of Justice offers a legal aid service which also covers court fees and other relevant expenses, not only for civil and criminal but also for administrative cases.[[340]](#footnote-340)

In **South Africa** children, including children with disabilities, who are in conflict with the law are represented by a curator ad litem to ensure their right to be heard and represented whenever their parents cannot or do not agree to them speaking in court. In Children’s Court it is generally at the discretion of the presiding officer to decide if a child needs to be referred to legal aid services when it is in their best interests to be represented because of the seriousness of the issue.[[341]](#footnote-341)

**3. Accessible civil and criminal complaints mechanisms** including reporting to police, civil/administrative authorities and monitoring bodies providing a wide range of methods of redress.

Enabling a defendant, victim, witness or litigant to participate in the court process via **sign language interpretation or accessible documents** is a good practice identified in numerous State parties.[[342]](#footnote-342) However, as mentioned, best practice in this regard is for the authorities to ensure interpreters are registered or professionally trained individuals and for the service to be provided free of charge[[343]](#footnote-343) to individuals who require it, and in consultation with the Deaf community. In many countries a witness, victim or defendant who is deaf or has a hearing impairment will be initially required to communicate in writing and only upon failing to communicate in this manner will a sign language interpreter be requested.

**Chile’s** SENADIS´ Access to Justice Program includes the possibility of hiring sign language interpreters to accompany deaf people who require it, throughout the judicial and extrajudicial process, that is, from the interview with the lawyer, to the reading of the sentence or the signing of agreements.[[344]](#footnote-344) The judiciary has also implemented inclusive signage and accessible self-consultation modules, in court. Inclusive brochures in braille were developed. A video was elaborated referring to the rights and duties of the people in front of the justice with sign language

Complaints mechanisms must also be available at a local level, particularly in rural areas and to ensure accessibility for people living in institutions. In **Thailand**, complaints can be made through a variety of channels such as police stations, homes for persons with disabilities, local administrative offices, hospitals, Provincial Social Development and Human Security offices, disability services centers and the National Human Rights Commission of Thailand. Thailand also has a free sign-language interpretation service that in civil procedures includes applying for legal assistance, attending mediation proceedings and meetings with the lawyer. While there is a high number of registered sign-language interpreters there have been complaints that many of them lack the necessary skills as there is no assessment before registering them.[[345]](#footnote-345)

In **Kenya** the Bench Book points out the unique needs of children, elderly and persons with intellectual disabilities when it comes to the length of court procedures. It calls upon the judiciary to take the duty arising from Article 38(4) of the Persons with Disabilities Act seriously as some of these people might have problems remembering information over long amounts of time or may not be able to endure a lengthy trial.[[346]](#footnote-346) While this is an important factor to consider under the duty to provide reasonable accommodation, the Bench Book failed to include the full suggestions provided by COVAW and partners in their submission to the draft Bench Book, where they outlined that some persons with disabilities would actually need more time between court dates to be able to carry out all tasks required from them.[[347]](#footnote-347)

In **Australia** people can volunteer as Independent Third Persons, which are tasked to accompany persons with disabilities to police interviews and support them. If they are not present, evidence acquired in the meeting can be rejected in court.[[348]](#footnote-348)

The **Norwegian** Universal Design Action Plan includes measures regarding the accessibility of prisons and courts. Universal Design requirements were compiled, which any new building has to comply with. Furthermore a plan to upgrade existing prisons and court rooms was created. Regarding court rooms, specific attention was paid to implementing adaptations for the hearing impaired.[[349]](#footnote-349)

A mobile court system operating in the **Democratic Republic of Congo** ensures justice is delivered in remote or rural areas where no other justice system is available or accessible.[[350]](#footnote-350) This is seen to address some of the transportation-based barriers for women with disabilities or financial burdens that persons with disabilities may face in interacting with larger, urban courts.

In **Uganda**, the National Union of Women with Disabilities’ paralegal program uses well-trained paralegals to increase access to justice for women and young persons with disabilities. Thirty-two women with disabilities were trained about the rights of women and girls with disabilities relating to gender-based violence and sexual and reproductive health and rights.[[351]](#footnote-351)

In the **Democratic Republic of Congo**, mobile courts bring a measure of justice—and dignity—to victims of sexual and gender-based violence who might otherwise be unable to access a courthouse.[[352]](#footnote-352)

The Gender Violence Command Centre project in **South Africa** has an SMS-based contact option for persons with disabilities and a Skype line, “HelpmeGBV,” to increase access to Gender Based Violence services for members of the Deaf community.[[353]](#footnote-353) Deaf persons can communicate with trained social workers using sign language via the Skype line and in emergency situations the Command Centre will refer calls to the police or law enforcement. The Command Centre will also support police responding to emergency situations to ensure law enforcement officers are “able to locate victims, sensitively interact with victims with disabilities, and file comprehensive police reports”.[[354]](#footnote-354)

In **South Africa**, the Afrika Tikkun Empowerment Programme for Families of People with Disabilities (see <https://afrikatikkun.org/>) has ran some projects on access to justice for persons with disabilities. Their experience in Orange Farm, an informal settlement South of Johannesburg, was that police personnel were not comfortable with opening cases of sexual abuse or assault where the complainants had mental impairments. This, despite the fact that this is an area with a very high incidence rate of this type of abuse and the resultant increased vulnerability of these victims. In response, Afrika Tikkun organised a march to the Orange Farm South African Police Service and handed over a memorandum, explaining how people with disabilities have the right to report crimes and to access police services. As a result, there is heightened awareness of this issue and a slight improvement in the response of the South African Police Service when these types of incidents are reported.[[355]](#footnote-355)

In the **United Kingdom**, Intermediaries for Justice support vulnerable witnesses or defendants, including children and people with disabilities, to understand and communicate during the court process.[[356]](#footnote-356) Intermediaries work in the criminal courts and the family law courts. Vulnerable witnesses have a statutory right to an intermediary following the Youth Justice Criminal Act 1999 and vulnerable defendants may have an intermediary at the discretion of the court.[[357]](#footnote-357) Intermediaries come from a range of professional backgrounds including speech and language therapists, clinical psychologists, and those from the special educational needs or mental health fields. Their role can include sitting with a defendant in the dock to explain each aspect of the trial, reviewing questions to ensure they are accessible or sitting with the individual in the witness box to interpret communication.[[358]](#footnote-358)

In **Uganda**, the National Union of Women with Disabilities’[[359]](#footnote-359) paralegal program has provided training on gender-based violence, sexual and reproductive health and rights and the rights of women and girls with disabilities to 32 women with disabilities.[[360]](#footnote-360) These paralegals offer peer support when reporting violations and conduct the necessary follow-up to ensure justice is achieved.[[361]](#footnote-361)

The “Access to Justice for Girls and Women with Disabilities Project”[[362]](#footnote-362) was developed by the Leonard Cheshire Disability Zimbabwe Trust in **Zimbabwe**. This project’s activities include sign language communication training for police officers, logistical and communication support to victims/survivors.[[363]](#footnote-363) The project has also developed community awareness campaigns around access to justice which along with the general population specifically target community leaders, community-based organizations, and women and girls with disabilities and caregivers.

**4. Equal participation in adjudicative process**

In January 2019, the authorities in **Malta** circulated a short survey was to NGOs and DPOs to gather their feedback on the challenges and barriers experienced by people with disability to access the justice system. This survey was accompanied by a meeting in February 2019 chaired by an independent, external lawyer and disability activist, John Horan.

In **Armenia** persons with disabilities and minors can only be interrogated by the police in criminal investigations for a maximum of two hours before they are required to have a one hour break.[[364]](#footnote-364)

In **Ireland** accommodation measures can also include - in addition to some aforementioned measures - live television links or video testimony for witnesses and victims of a crime, the removal of wigs and gowns by the judiciary and restrictions of the admissibility of prior sexual history of a victim.[[365]](#footnote-365)

In **Australia**, courts have repeatedly dealt with the topic of the judges’ duty to assist the parties of a court case especially when they are self-represented. The duty to guide the parties through a case has to be balanced against the duty to remain neutral, which marks the boundary for judicial intervention. Jurisprudence has clearly outlined that this boundary is flexible and depends on the nature of the case and the defendant’s understanding of the case. It includes explaining the procedures and the legal requirements that have to be met to the litigant, encouraging them to make relevant submission and abstain from irrelevant ones as well as to ask questions to ensure that they brought forward all the matters they wanted to rely upon.[[366]](#footnote-366)

In **Germany** there are currently about 70 blind judges, being only prevented from being presiding judge of a criminal tribunal,[[367]](#footnote-367) **Austria** has two blind judges in administrative courts since 2013.[[368]](#footnote-368)

**5. Right to an effective remedy and enforceability of such remedies**

The **Canadian** (provincial and federal) human rights commissions and tribunals are statutory administrative bodies with the power to hear complaints from persons with disabilities and to order remedies. Remedies can be both individual (e.g. monetary compensation and orders to implement specific accommodations) and public interest (e.g. human rights training, the development of human rights policies or data collection on how much persons with disabilities are impacted by a specific practice).[[369]](#footnote-369)

In **Malawi** Disabled Women in Africa (DIWA) worked with the communities to provide compensation in addition to the remedies issued by court, based on an understanding of the community supporting the victims and taking responsibility.[[370]](#footnote-370)

**6.** **Training of relevant stakeholders in how to communicate with persons with disabilities**

Training for the judiciary on the issues faced by individuals with disabilities and how to ensure effective access to justice for persons with disabilities is varied across States Parties. Many reports provided by States Parties in Europe reference training on the UN CRPD provided by ERA - The Academy of European Law. [[371]](#footnote-371) Other countries invite external experts to address their judiciary, lawyers or trainees. For example Malta invited a Mr. John Horan, a disabled barrister and activist at UK and European level to deliver a seminar on “EU Perspectives of the UNCRPD” for lawyers and participate in training for the judiciary on challenges faced by disabled people to access the justice system.[[372]](#footnote-372)

The Judicial Training Centre in **Slovenia** provides continuous professional development and further education to judges, state prosecutors, state attorneys, judicial advisers, judicial assistants, and other personnel employed in courts. The training delivered by NGO staff has aimed to raise awareness of the legal protection mechanisms available to and on the issues faced by persons with disabilities.[[373]](#footnote-373)

The Court Academy in **Sweden** operates an e-learning platform to disseminate “The court is for everyone” module to all court personnel. A more intensive 13 day course is also available to judges which focuses on the challenges individuals face and addressing equality and non-discrimination.

The **Swedish Prosecution Authority** has developed an information page which provides guidance to prosecutors working with people with disabilities. Where the accused is a child, including a child with a disability, the Authority will appoint prosecutors specially trained in the areas of child interrogation, child development, social services and disability.

The Quezon City Prosecutors office in the **Philippines** has a Persons with Disabilities Legal Assistance Desk to provide guidance on disability sensitivity for public attorneys and prosecutors. The authorities in the Philippines have also established an action centre tasked with monitoring prosecutors

**Disabled Women Africa** trained court clerks, prosecutors, magistrates and judges in sign language interpretation and communication.[[374]](#footnote-374) They report that the training has made other judges consider pursuing further long term training on sign language.

In Lesotho, from 1 to 3 October 2015, the ICJ and the Lesotho National Federation of Organizations of the Disabled (Lnfod), an umbrella body of organizations for persons with disabilities, held a judicial training in Lesotho on the rights and access just to persons with disabilities.The workshop was attended by judges, magistrates, disability law and policy experts, Lnfod and ICJ legal advisers and ICJ Commissioner Justice Charles Mkandawire.[[375]](#footnote-375)

*Court staff/civil servants –*

In **Malta** disability sensitivity training has been developed and delivered by persons with disabilities, facilitated by the Commission for the Rights of Persons with Disability. For example, LESA (Local Enforcement System Agency) officers were trained on the 23rd April 2019 and staff if the Civil Protection Department between October and December 2018.

Uppsala University and the Swedish Association of Local Authorities and Regions provide training, via an e-learning platform, on Human Rights, for all public servants in **Sweden**.[[376]](#footnote-376) The chapter on the CRPD was developed by the Swedish Agency for Participation.

*Police –*

In **Malta**, Disability Equality Training is delivered to members of the police force as part of their Continuous Professional Development and to trainees or new recruits as a required module under the Police Academy’s curriculum. Staff of the Corradino Correctional Facility (Malta’s Central Prison) are also scheduled to receive Disability Equality Training delivered by persons with disabilities.[[377]](#footnote-377)

In **Belgium**, “Mieux approcher la surdité” (“How to approach deafness better”) is a guidance document for police officers with advice and tools on communicating with deaf and hard of hearing people. Unia, an interfederal public service specialising in equality andnon-discrimination, collaborates with the Belgian federal police on diversity training and projects to support diversity management, including disability and reasonable accommodation.[[378]](#footnote-378)

In **Germany**, prison officials receive professional training on dealing with persons deprived of their liberty which includes human rights norms and obligations under international conventions such as the CRPD.

In **Malawi** DIWA has signed a Memorandum of Understanding with the police, putting into writing DIWA’s commitment to report cases of violence and to train the police. Magistrates, prosecutors and clerks have also been trained by DIWA on topics of disability.[[379]](#footnote-379)

In **Rwanda**, the National Union of Disabilities’ Organisations of Rwanda (NUDOR) has ran an initiative that touches on access to justice by persons with disabilities. These include the ‘Promotion of anti-discrimination practices for persons with disabilities in Rwanda’ which is targeting among others police as well as judicial officers.[[380]](#footnote-380)

In **England** Stay Safe East provides consultancy and training in disability equality for the police, local authorities and the voluntary sector amongst others.[[381]](#footnote-381) The judiciary furthermore has the Equal Treatment Bench Book for guidance. This Bench Book is not disability specific but gives guidelines for several groups which are more likely to be disadvantaged in a court case. It does however contain chapters dedicated to physical, psychosocial (called mental) and intellectual (called capacity) disabilities respectively and sets out rules on the places of trial, communication and facilities (referring to topics like lighting etc.). It promotes flexibility by the judiciary above all, gives guidance on Ground Rule Hearings and intermediaries amongst other things.[[382]](#footnote-382)

In **Israel,** Bizchut gives training workshops to police officers, state prosecutors, legal aid attorneys, judges and rape crisis centres, providing detailed information on disability in general, persons with disabilities as victims of crime, existing support systems, obstacles of the criminal justice systems and on tools to overcome these obstacles.[[383]](#footnote-383)

In **Kenya**, COVAW and KAIH trained lawyers, prosecutors, police officers and intermediaries on the topic of combating gender-based violence against women and girls with disabilities.[[384]](#footnote-384)

*Lawyers*

In the **United States** an advocacy organisation for people with intellectual and developmental disabilities, The Arc, has published “An Advocate’s Guide on Assisting Victims and Suspects with Intellectual Disabilities”. [[385]](#footnote-385) The booklet aims to equip lawyers and advocates with the knowledge and skills to support persons with disabilities and their families in need of legal assistance. It also provides information on available emergency services and how to access secure and disability-accommodating shelters for clients with disabilities.[[386]](#footnote-386)

In **England and Wales** the Advocate’s Gateway provides free access for practitioners to toolkits on how to work with witnesses and defendants with disabilities, especially on Ground Rule Hearings, which set the framework on how to ensure fair treatment and participation during the remainder of the court proceedings.[[387]](#footnote-387)

The Disability Rights Unit (DRU) at the Centre for Human Rights, University of Pretoria, in collaboration with Zambia’s Ministry of Justice, hosted a two-day training workshop for criminal justice officials. The training workshop focused on ensuring access to justice for persons with disabilities through the provision of accommodations in the criminal justice system and was held in Lusaka from 22 to 23 July 2019.[[388]](#footnote-388)

*Other training*

In **South Africa**, The Hlanganisa Institute for Development in Southern Africa (<http://www.hlanganisa.org.za/>) has a number of initiatives on persons with disabilities and access to justice including ‘Women with Disabilities and GBV’; ‘Amplifying the voices of disabled women’. The Institute has developed a Training Manual on Gender, Gender-Based Violence (GBV) and Disability in South Africa, which includes a module on “Access to Justice for Women and Girls With Disabilities.”[[389]](#footnote-389)

Ensuring sign language interpreters are adequately trained and understand legal terminology is also essential to ensuring effective access to justice for people who are deaf or hearing impaired. For example, in **Portugal**, 20 sign language interpreters were trained in collaboration with the Portuguese Federation of Deaf Persons’ Associations in 2012/2013 to enable them to work with the judiciary and the court service. A Legal Gestuary is available online also which translates legal terminology into Portuguese sign language.

In **Mexico,** a pilot program entitled “Towards an inclusive justice system” aims to implement procedural adjustments to ensure effective access to justice for people with intellectual and/or psychosocial disabilities. The pilot program is led by Documenta, a civil society organization, and includes the training of facilitators to participate in the criminal proceedings of persons with disabilities, whether victims, witnesses or defendants, in order to identify the barriers that limit their participation and propose the appropriate modifications and adaptations to each case.

The Centre for Human Rights, University of Pretoria (**South Africa**), has developed a training curriculum on disability for undergraduate students in African countries, which includes a module on access to Justice. This curriculum is used by law schools across nine African countries.[[390]](#footnote-390)

# Conclusion

In conclusion, it is clear from the literature review highlighted in this report that access to justice is an issue of critical importance for the enjoyment and fulfilment of all human rights. This report maps existing law, policy and practice around the world regarding access to justice for persons with disabilities. However, there is a need to uncover exactly what procedural adjustments, accommodations and remedies are necessary for the effective transformation of the right of access to justice into practice. The development of guidelines that open up and explain the various types of accommodations and how they should be implemented in practice is needed in this area of human rights law. Such guidelines will be beneficial in moving forward with this right so it can have a real impact in the lives of persons with disabilities.

1. Including CRPD Committee General Comments, Individual Complaints, Concluding Observations; CRPD Shadow Reports; and international organisations’ submissions to the OHCHR thematic study/ responses to the Special Rapporteur’s questionnaire. [↑](#footnote-ref-1)
2. UN Convention on the Rights of Persons with Disabilities (UNCRPD), articles 5, 9, 12 and 21. [↑](#footnote-ref-2)
3. Committee ‘General Comment No 2’; Flynn and Lawson; Series, ‘Legal capacity and participation in litigation’. [↑](#footnote-ref-3)
4. See for instance the Kenyan Legal Aid Act 2016 §35 on this. [↑](#footnote-ref-4)
5. CRPD/C/DZA/CO/1, para 27; see also in CRPD/C/SAU/CO/1, para 24; CRPD/C/VUT/CO/1, para 25; CRPD/C/ESP/CO/2-3, para 25; CRPD/C/SEN/CO/1, para 24; CRPD/C/NOR/CO/1, para 22; CRPD/C/NER/CO/1, para 22; CRPD/C/POL/CO/1, para 22; CRPD/C/ZAF/CO/1, para 25. [↑](#footnote-ref-5)
6. Research team added accessibility – physical infrastructure in this category on the basis that it appears in the process of accessing justice as an initial stage, whether to gain access to advice, representation, reporting mechanisms, or court proceedings. [↑](#footnote-ref-6)
7. CRPD/C/DZA/CO/1, para 26; CRPD/C/SEN/CO/1, para 23; CRPD/C/SAU/CO/1, para 23; CRPD/C/VUT/CO/1, para 24; CRPD/C/ESP/CO/2-3, para 24; CRPD/C/RWA/CO/1, para 25; CRPD/C/NER/CO/1, para 21; CRPD/C/POL/CO/1, para 21-22. [↑](#footnote-ref-7)
8. CRPD/C/TUR/CO/1, para 28. [↑](#footnote-ref-8)
9. See for example Ministry of Health and Social Affairs, ‘Sweden – Answer on the questionnaire from OHCHR on article 13, CRPD, Human Rights Council resolution 31/6’ (22 May 2017); Ministry of Social Development and Human Security, Information of the Department of Empowerment of Persons with Disabilities for the Office of the High Commissioner for Human Rights on Article 13 Access to Justice, Convention on the Rights of Persons with Disabilities (04 June 2017); [↑](#footnote-ref-9)
10. In South Africa the case of W B Bosch was groundbreaking in terms of ensuring accessibility of police stations. See Ayesha Roomaney, *Assessing the Right to Physical Access to Justice for Persons with Disabilities* (Master Thesis, November 2017) 46. [↑](#footnote-ref-10)
11. Women Enabled International, Submission to the Special Rapporteur on the Rights of Persons with Disabilities: Good Practices for Increasing Effective Access to Justice for Women and Girls with Disabilities (August 2019). [↑](#footnote-ref-11)
12. Cyprus, Submission to the Office of the High Commissioner for Human Rights on Article 13 Access to Justice, Convention on the Rights of Persons with Disabilities (May 2017). [↑](#footnote-ref-12)
13. Irish Architecture Awards, ‘The Criminal Courts of Justice’, 2010. [↑](#footnote-ref-13)
14. Cyprus, Submission to the Office of the High Commissioner for Human Rights on Article 13 Access to Justice, Convention on the Rights of Persons with Disabilities (May 2017). [↑](#footnote-ref-14)
15. See for example, Provedor de Justica, Response to the Questionnaire for a study on article 13 of the Convention on Rights of Persons with Disabilities from the Office of the High Commissioner of Human Rights (May 2017). [↑](#footnote-ref-15)
16. See for example, Government of Finland, Replies to Questionnaire on the rights of persons with disabilities; Access to justice (May 2017). [↑](#footnote-ref-16)
17. Norwegian Ministry of Children and Equality, ’Action Plan: Norway Universally Designed by 2025: The Norwegian Government’s Action Plan for Universal Design and Increased Accessibility 2009-2013’ 17. [↑](#footnote-ref-17)
18. Slovenia, ‘Reply of the Republic of Slovenia to some of the questions of the Questionnaire regarding the implementation of the Human Rights Council resolution 31/6 on the rights of persons with disabilities’ (May 2017) [↑](#footnote-ref-18)
19. Open Society Justice Initiative, ‘Justice in DRC: Mobile Courts Combat Rape and Impunity in Eastern Congo’ (2013) available at <<https://www.justiceinitiative.org/publications/justice-drc-mobile-courts-combat-rape-and-impunity-eastern-congo>> accessed 08 November 2019 [↑](#footnote-ref-19)
20. Committee ‘General Comment No 2’ (2014) Article 9: Accessibility. [↑](#footnote-ref-20)
21. UNCRPD, arts 9 and 21. [↑](#footnote-ref-21)
22. UNCRPD, art 13. [↑](#footnote-ref-22)
23. See for example J Lord, K N Guernsey, J M Balfe, V L Karr and N Flowers (eds), Human Rights: Yes! Action and Advocacy on the Rights of Persons with Disabilities (Human Rights Resource Center, 2009), ch 12, para 12.1. [↑](#footnote-ref-23)
24. Committee ‘General Comment No 2’ (2014); Frances Gibson, ‘Article 13 of the Convention on the Rights of Persons with Disabilities – a right to legal aid?’ (2010) 15(2) Australian Journal of Human Rights Law 123. [↑](#footnote-ref-24)
25. Herr, S, ‘Disabled Clients, Constituencies, and Counsel: Representing Persons with Developmental Disabilities’ (1989) 67 The Milbank Quarterly 356. [↑](#footnote-ref-25)
26. Thailand the Administrative Court provides an audio guide for persons with visual impairments. See Ministry of Social Development and Human Security, Information of the Department of Empowerment of Persons with Disabilities for the Office of the High Commissioner for Human Rights on Article 13 Access to Justice, Convention on the Rights of Persons with Disabilities (04 June 2017) [↑](#footnote-ref-26)
27. CRPD/C/DZA/CO/1, para 26; CRPD/C/MKD/CO/1, para 23; CRPD/C/ZAF/CO/1, para 24-25. In Peru, the Civil Procedural Code, amended in 2018, Article 847 establishes that sentences concerning supported decision-must be written in an easy-to-read format. In Spain a civil society group has collaborated with the court system to develop Easy to Read judicial summonses and sentences. See Plena inclusion, Response to the Questionnaire for a study on article 13 of the Convention on Rights of Persons with Disabilities from the Office of the High Commissioner of Human Rights (May 2017); Spain, Response to UN Special Rapporteur’s Questionnaire on good practices to ensure effective access to justice for persons with disabilities (August 2019). [↑](#footnote-ref-27)
28. Committee ‘General Comment No 2’. [↑](#footnote-ref-28)
29. In the Northern District of California (USA), document magnifiers are provided at the intake desks at clerk’s offices to help visitors with visual impairments review documents. <https://www.cand.uscourts.gov/access> [↑](#footnote-ref-29)
30. Section 191a of the Courts Constitution Act in Germany allows persons who are blind or visually impaired to demand court documents in an accessible format if this is necessary in order to safeguard their rights. [↑](#footnote-ref-30)
31. The Constitutional Court of Colombia (Decision T-573/2016) and the Supreme Court of Mexico (Resolución Judicial de la Primera Sala de la Suprema Corte de la Nación en el Amparo en Revisión 159/2013) called for the translation of judgments concerning the rights of persons with disabilities into easy read formats for the benefit of the petitioners and other persons with intellectual disabilities. [↑](#footnote-ref-31)
32. While the right to information and independent advocate is a positive aspect of these law, it most be noted that the practice of deprivation of liberty based on the MHA and the MCA are not CRPD compliant. [↑](#footnote-ref-32)
33. This is provided by Victoria Legal Aid in Australia for example under their Mental Health and Disability Law program, by the Portuguese Ombudsman as a free-phone service where individuals can also submit complaints. See Provedor de Justica, Response to the Questionnaire for a study on article 13 of the Convention on Rights of Persons with Disabilities from the Office of the High Commissioner of Human Rights (May 2017). [↑](#footnote-ref-33)
34. Villamanta Disability Rights Legal Service, ’What We do’ (2019) <http://www.villamanta.org.au/what-we-do/> accessed 8 November 2019; Bangladesh Legal Aid and Service Trust (Blast), ’Re: Submission Human Rights Council Resolution 31/6’ (1 May 2017). [↑](#footnote-ref-34)
35. Ministry of Health and Social Affairs, ‘Sweden – Answer on the questionnaire from OHCHR on article 13, CRPD, Human Rights Council resolution 31/6’ (22 May 2017)www.rattegangsskolan.se or www.courtintroduction.se [↑](#footnote-ref-35)
36. Ukraine, Input from Ukrainian Authorities to the questionnaire on *good practices to ensure effective access to justice for persons with disabilities* of the Special Reporter on the rights of persons with disabilities (August 2019); Ukrainian Ombudsman, Response to UN Special Rapporteur’s Questionnaire on good practices to ensure effective access to justice for persons with disabilities (August 2019). [↑](#footnote-ref-36)
37. Washington State Access to Justice Board 16. [↑](#footnote-ref-37)
38. Flynn, Eilionóir, (2015), Disabled Justice?: Access to Justice and the UN Convention on the Rights of Persons with Disabilities. (Routledge, 2015) (hereafter Flynn, (2015), *Disabled Justice?* ) 95. [↑](#footnote-ref-38)
39. ibid 93. [↑](#footnote-ref-39)
40. Flynn, (2015), Disabled Justice?, 92. [↑](#footnote-ref-40)
41. Slovenia, ‘Reply of the Republic of Slovenia to some of the questions of the Questionnaire regarding the implementation of the Human Rights Council resolution 31/6 on the rights of persons with disabilities’ (May 2017) [↑](#footnote-ref-41)
42. Northern California provides real time sign language interpretation and closed captioning devices, <https://www.cand.uscourts.gov/access>) as does Ecuador and the United Kingdom. [↑](#footnote-ref-42)
43. CRPD/C/MKD/CO/1, para 23; CRPD/C/SEN/CO/1, para 23; CRPD/C/VUT/CO/1, para 24; CRPD/C/OMN/CO/1, para 27. [↑](#footnote-ref-43)
44. CRPD/C/RWA/CO/1, para 25-26. [↑](#footnote-ref-44)
45. CRPD/C/MKD/CO/1, para 24; CRPD/C/POL/CO/1, para 21-22. [↑](#footnote-ref-45)
46. James A Bamberger ’Confirming the Constitutional Right of Meaningful Access to the Courts in Non-Criminal Cases in Washington State’ (2005) 4(1) Seattle Journal for Social Justice 383-483. [↑](#footnote-ref-46)
47. International Covenant on Civil and Political Rights, articles 2, 3, 14, 26; see Human Rights Committee, General Comment No 32 (2007) on the right to equality before courts and tribunals and to a fair trial. European Convention on Human Rights, article 6; African Charter on Human and Peoples’ Rights, article 7; American Convention on Human Rights, article 8. [↑](#footnote-ref-47)
48. Human Rights Council, ’Access to Justice in the Promotion and Protection of the Rights of Indigenous Peoples: Restorative Justice, Indigenous Juridical Systems and Access to Justice for Indigenous Women, Children and Youth and Persons with Disabilities: Study by the Expert Mechanism on the Rights of Indigenous Peoples’ (7 August 2014) A/HRC/27/65 para 62. [↑](#footnote-ref-48)
49. Human Rights Council, ‘Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities’ (Report of the Office of the High Commissioner for Human Rights, 2017), para 40. [↑](#footnote-ref-49)
50. Committee ‘General Comment No 1’ para 38. [↑](#footnote-ref-50)
51. UNCRPD, art 5(4). [↑](#footnote-ref-51)
52. Committee ‘General Comment No 5’ para 81; Committee ‘General Comment No 6 para 52. [↑](#footnote-ref-52)
53. Committee ‘General Comment No 5’ para 66. [↑](#footnote-ref-53)
54. Committee ‘General Comment No 1’ para 38. [↑](#footnote-ref-54)
55. CRPD/C/ALB/CO/1, para 25; CRPD/C/SEN/CO/1, para 23-24; CRPD/C/POL/CO/1, para 22. [↑](#footnote-ref-55)
56. Committee ‘General Comment No 6’ paras 31 and 73; CRPD/C/ARM/CO/1, para 22; CRPD/C/COK/CO/1, para 26(b); CRPD/C/SLV/CO/1, para 30(a); CRPD/C/KEN/CO/1, para 26(a); CRPD/C/SVK/CO/1, para 41; CRPD/C/UGA/CO/1, para 25(a); CRPD/C/GBR/CO/1, para 33(c). [↑](#footnote-ref-56)
57. CRPD/C/LVA/CO/1, para 23(c); CRPD/C/MEX/CO/1, para 26(b); CRPD/C/MDA/CO/1, para 27(c); CRPD/C/DZA/CO/1, para 30-31. [↑](#footnote-ref-57)
58. CRPD/C/NOR/CO/1, para 8. [↑](#footnote-ref-58)
59. CRPD/C/MLT/CO/1, para 22. [↑](#footnote-ref-59)
60. CRPD/C/CHN/CO/1, para 23; CRPD/C/TUR/CO/1, para 28. [↑](#footnote-ref-60)
61. CRPD/C/GBR/CO/1, para 33(c). [↑](#footnote-ref-61)
62. CRPD/C/MKD/CO/1, para 23-24. [↑](#footnote-ref-62)
63. CRPD Committee Concluding Observations noted above; see also Human Rights Council, ‘Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities’ (Report of the Office of the High Commissioner for Human Rights, 2017), para 40. [↑](#footnote-ref-63)
64. See Series, ‘Legal Capacity and Participation in Litigation: Recent Developments in the European Court of Human Rights’ in G Quinn, L Waddington and E Flynn (eds), European Yearbook on Disability Law (Volume 5), 103–28; Flynn, E. (2015), Disabled Justice?; CRPD/C/CHN/CO/1, para. 23; CRPD/C/NZL/CO/1, para. 23; CRPD/C/ARE/CO/1, para. 25 (b); and CRPD/C/THA/CO/1, para. 27. [↑](#footnote-ref-64)
65. British Deaf Association, Response to the Questionnaire on good practices to ensure effective access to justice for persons with disabilities for the Special Rapporteur on the Rights of Persons with Disabilities (August 2019). [↑](#footnote-ref-65)
66. European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European Law Relating to Access to Justice* (2016, Luxembourg) 59. [↑](#footnote-ref-66)
67. ibid 70. [↑](#footnote-ref-67)
68. European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European Law Relating to Access to Justice* (2016, Luxembourg) 70. [↑](#footnote-ref-68)
69. United Nations Office on Drugs and Crime ’United Nations Principles and Guidelines on Access to Legal Aid’ (2013, Vienna). [↑](#footnote-ref-69)
70. see for instance Flac, ’FLAC sheet: Civil Legal Aid in Ireland’ (August 2015) <<https://www.flac.ie/assets/files/pdf/civil_legal_aid_guide_final.pdf>> accessed 29 November 2019. [↑](#footnote-ref-70)
71. Report of the General Rapporteur on Extreme Poverty and Human Rights (9 August 2012) A/67/278 para 53. [↑](#footnote-ref-71)
72. Francis Gibson ’Article 13 of the CRPD - a Right to Legal Aid?’ (2010) 15(2) Australian Journal of Human Rights 131. [↑](#footnote-ref-72)
73. James A Bamberger ’Confirming the Constitutional Right of Meaningful Access to the Courts in Non-Criminal Cases in Washington State’ (2005) 4(1) Seattle Journal for Social Justice 383-483 [↑](#footnote-ref-73)
74. See Disability Law Service, Accessing Advice, available at: <https://dls.org.uk/> [↑](#footnote-ref-74)
75. ARCH Disability Law Centre, Services for Individuals, available at: <http://archdisabilitylaw.ca/?q=services-individual> [↑](#footnote-ref-75)
76. Disability Discrimination Legal Service, About Us, available at: <https://www.fclc.org.au/> [↑](#footnote-ref-76)
77. National Disability Rights Network, NDRN Member Agencies, available at: <https://www.ndrn.org/about/ndrn-member-agencies/> [↑](#footnote-ref-77)
78. Victoria Legal Aid, Submission to the Office of the High Commissioner for Human Rights on Article 13 Access to Justice, Convention on the Rights of Persons with Disabilities (10 May 2017); see Human Rights Council, ‘Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities’ (Report of the Office of the High Commissioner for Human Rights, 2017), para 41. [↑](#footnote-ref-78)
79. Flynn, Eilionóir. Disabled Justice?: Access to Justice and the UN Convention on the Rights of Persons with Disabilities. Routledge, 2015 [↑](#footnote-ref-79)
80. Flynn, E. (2015), Disabled Justice?: Access to Justice and the UN Convention on the Rights of Persons with Disabilities. (Routledge), p.60-61; G Ashton, ‘Mental Challenges’ (2012) 162 New Law Journal 7540. [↑](#footnote-ref-80)
81. ABA Model Code of Professional Responsibility (1983), EC 7-12. Interestingly, the American Bar Association has established a Commission on Disability Rights that deals with disability-related public policy, disability law, and the professional needs of lawyers and law students with disabilities, see: <https://www.americanbar.org/groups/diversity/disabilityrights/about_us/>. [↑](#footnote-ref-81)
82. Herr S, ‘Disabled Clients, Constituencies, and Counsel: Representing Persons with Developmental Disabilities’ (1989) 67 The Milbank Quarterly 352. [↑](#footnote-ref-82)
83. American Bar Association (2019), ‘A Lawyer’s Guide to Working with Special Needs Clients’ available at: <https://www.americanbar.org/groups/senior_lawyers/publications/voice_of_experience/2019/august-2019/lawyers-guide-to-working-with-special-needs-clients/> [↑](#footnote-ref-83)
84. Series, ‘Legal capacity and participation in litigation’ [↑](#footnote-ref-84)
85. Herr, ‘Disabled Clients, Constituencies, and Counsel: Representing Persons with Developmental Disabilities’ (1989) 67 The Milbank Quarterly 359. [↑](#footnote-ref-85)
86. ibid. [↑](#footnote-ref-86)
87. Citizens Information Board, ‘National Advocacy Service for People with Disabilities’ <www.citizensinformationboard.ie/en/services/advocacy/> accessed 21 May 2018. [↑](#footnote-ref-87)
88. for further information see BIZEPS <<https://www.bizeps.or.at>> accessed 7 November 2019 [↑](#footnote-ref-88)
89. Herr, ‘Disabled Clients, Constituencies, and Counsel: Representing Persons with Developmental Disabilities’ (1989) 67 The Milbank Quarterly 367. [↑](#footnote-ref-89)
90. UNCRPD, art 12(3)-(4). [↑](#footnote-ref-90)
91. Flynn, (2015), Disabled Justice?. [↑](#footnote-ref-91)
92. Flynn, (2015), Disabled Justice?:. [↑](#footnote-ref-92)
93. See for example S J Modell and M Suzanna, ‘A Preliminary Assessment of Police Officers’ Knowledge and Perceptions of Persons with Disabilities’ (2008) 46(3) Intellectual and Developmental Disabilities 183; J R Petersilia, ‘Crime Victims with Developmental Disabilities A Review Essay’ (2001) 28(6) Criminal Justice and Behaviour 655; J McBrien and G Murphy, ‘Police and Carers’ Views on Reporting Alleged Offences by People with Intellectual Disabilities’ (2006) 12(2) Psychology, Crime & Law 127. [↑](#footnote-ref-93)
94. Committee ‘General Comment No 3’ para 18; Committee ‘General Comment No 6’ para 73(i); CRPD/C/BEL/CO/1, para 12; CRPD/C/BOL/CO/1, para 12; CRPD/C/COL/CO/1, para 15(c); CRPD/C/COK/CO/1, para 18(a); CRPD/C/DNK/CO/1, paras 15 and 17; CRPD/C/HTI/CO/1, para 9(c); CRPD/C/HND/CO/1, para 14; CRPD/C/JOR/CO/1, para 14(a); CRPD/C/LUX/CO/1, para 13(b); CRPD/C/MNE/CO/1, para 11; CRPD/C/NZL/CO/1, para 10; CRPD/C/THA/CO/1, para 14. [↑](#footnote-ref-94)
95. CRPD/C/BIH/CO/1, para 31; CRPD/C/CZE/CO/1, para 33; CRPD/C/LTU/CO/1, para 33(b). [↑](#footnote-ref-95)
96. CRPD/C/RUS/CO/1, para 35. [↑](#footnote-ref-96)
97. Committee ‘General Comment No 4’, para 65; CRPD/C/DNK/CO/1, para 55; CRPD/C/TKM/CO/1, para 4(d). [↑](#footnote-ref-97)
98. CRPD/C/SLV/CO/2-3, para 33; CRPD/C/BRA/CO/1, para 33; CRPD/C/CHN/CO/1, para 91; CRPD/C/DOM/CO/1, para 33(b); CRPD/C/GAB/CO/1, para 39; CRPD/C/DEU/CO/1, para 36; CRPD/C/HTI/CO/1, para 31(b); CRPD/C/ITA/CO/1, para 44; CRPD/C/LUX/CO/1, para 33(f); CRPD/C/MNE/CO/1, para 33; CRPD/C/SVK/CO/1, para 48; CRPD/C/TKM/CO/1, para 30(a); CRPD/C/UGA/CO/1, para 31(a). [↑](#footnote-ref-98)
99. Committee ‘General Comment No 4’ para 65; Committee ‘General Comment No 6’ para 73(h); CRPD/C/DZA/CO/1, para 30-31; CRPD/C/BEL/CO/1, para 29; CRPD/C/BOL/CO/1, para 12; CRPD/C/BIH/CO/1, para31; CRPD/C/BRA/CO/1, para 33; CRPD/C/CHN/CO/1, para 91; CRPD/C/COK/CO/1, para 18(a); CRPD/C/CYP/CO/1, para 40; CRPD/C/CZE/CO/1, para 33; CRPD/C/DNK/CO/1, paras 15, 41 and 55; CRPD/C/ECU/CO/1, paras 15 and 37(c); CRPD/C/ETH/CO/1, para 36(b); CRPD/C/EU/CO/1, para 29; CRPD/C/GAB/CO/1, para 39; CRPD/C/DEU/CO/1, para 36; CRPD/C/GTM/CO/1, para 46; CRPD/C/HTI/CO/1, paras 9(c) and 31(b); CRPD/C/JOR/CO/1, paras 14(a-b) and 32(b); CRPD/C/LTU/CO/1, paras 33(b) and 35; CRPD/C/LUX/CO/1, para 11; CRPD/C/MEX/CO/1, para 20(b); CRPD/C/MNE/CO/1, paras 21(a) and 33(a); CRPD/C/MAR/CO/1, para 35(a); CRPD/C/OMN/CO/1, paras 32(b) and 60(c); CRPD/C/PRT/CO/1, para 23; CRPD/C/RUS/CO/1, para 35; CRPD/C/THA/CO/1, para 14; CRPD/C/TUN/CO/1, para 17(b); CRPD/C/TKM/CO/1, para 30(a); CRPD/C/UGA/CO/1, para 31(a); CRPD/C/ARE/CO/1, para 32(e). [↑](#footnote-ref-99)
100. CRPD/C/CYP/CO/1, para 40; CRPD/C/MNE/CO/1, paras 21 and 33(a). [↑](#footnote-ref-100)
101. CRPD/C/ESP/CO/2-3, para 18. [↑](#footnote-ref-101)
102. CRPD/C/ESP/CO/2-3, para 19. [↑](#footnote-ref-102)
103. CRPD/C/NER/CO/1, para 28; CRPD/C/POL/CO/1, para 22; CRPD/C/VUT/CO/1, para 29; CRPD/C/SAU/CO/1, para 30; CRPD/C/DZA/CO/1, para 30-31; CRPD/C/ZAF/CO/1, para 28; CRPD/C/BGR/CO/1, para 36; CRPD/C/OMN/CO/1, para 31-32. [↑](#footnote-ref-103)
104. CRPD/C/SLV/CO/2-3, para 33. [↑](#footnote-ref-104)
105. Committee ‘General Comment No 6’ paras 31(c) and 73(i). [↑](#footnote-ref-105)
106. Committee ‘General Comment No 5’ para 85; Committee ‘General Comment No 6’ para 51; CRPD/C/NER/CO/1, para 28; CRPD/C/VUT/CO/1, para 29; CRPD/C/CHN/CO/1, para 91; CRPD/C/ETH/CO/1, para 12; CRPD/C/ITA/CO/1, para 12; CRPD/C/LUX/CO/1, para 13(c); CRPD/C/MNE/CO/1, para 11(a); CRPD/C/MAR/CO/1, para 35(a); CRPD/C/OMN/CO/1, para 32(b); CRPD/C/UGA/CO/1, para 31(a); CRPD/C/ARE/CO/1, para 32(e). [↑](#footnote-ref-106)
107. Office of the High Commissioner for Human Rights Report on Article 13 Access to Justice, Convention on the Rights of Persons with Disabilities (2017), para 50. [↑](#footnote-ref-107)
108. CRPD/C/RWA/CO/1, para 29-30. [↑](#footnote-ref-108)
109. CRPD/C/OMN/CO/1, para 31-32; CRPD/C/SAU/CO/1, para 30. [↑](#footnote-ref-109)
110. Julinda Beqiraj, Lawrence McNamara, Victoria Wicks, ’Access to Justice for Persons with Disabilities: From International Principles to Practice’ (2017, International Bar Association) 30. [↑](#footnote-ref-110)
111. Sharon Primor, Na’ama Lerner, ’The Right of Persons with Intellectual, Psychosocial and Communication Disabilities to Access to Justice Accommodations in the Criminal Process’ (Bizchut). [↑](#footnote-ref-111)
112. Women Enabled International, Submission to the Special Rapporteur on the Rights of Persons with Disabilities: Good Practices for Increasing Effective Access to Justice for Women and Girls with Disabilities (August 2019); see for example, Israel Investigation and Testimony Procedures Act 2005. [↑](#footnote-ref-112)
113. Submission from the NHRI in Armenia in response to the Special Rapporteur on the rights of persons with disabilities on on good practices to ensure effective access to justice for persons with disabilities (August 2019) [↑](#footnote-ref-113)
114. In England the organization Stay Safe East provides advocacy, legal support and specialized support to women and men with disabilities who have experienced violence. They give advice about legal rights, assist in the reporting of the crime and in initiating criminal proceedings. See also, Hrafnhildur Snaefridar Gunnarsdóttir, Rannveig Traunstadóttir, *Access to Specialized Victim Support Services for Women with Disabilities who have Experienced Violence: Good Practice Examples and Recommendations: Comparative Report* (2011, Daphne Project) JUST/2011/DAP/AG/3293 6. [↑](#footnote-ref-114)
115. [https://pmg.org.za/committee-meeting/24666/] [↑](#footnote-ref-115)
116. Women Enabled International, Submission to the Special Rapporteur on the Rights of Persons with Disabilities: Good Practices for Increasing Effective Access to Justice for Women and Girls with Disabilities (August 2019). [↑](#footnote-ref-116)
117. National Union of Women in Uganda, available at <<https://nuwoduganda.org>> (accessed 08 November 2019). [↑](#footnote-ref-117)
118. In Zimbabwe, the Leonard Cheshire Disability Zimbabwe Trust has initiatives on access to justice for persons with disabilities (<http://www.leonardcheshire.org.zw/>) and <http://www.leonardcheshire.org.zw/2017/06/06/child-protection-access-justice-programme/>> [↑](#footnote-ref-118)
119. Sangeeta Shah, ‘Detention and Trial’ in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law* (2nd edn, OUP 2014) 259. [↑](#footnote-ref-119)
120. UNCRPD, arts 5, 9 and 13. [↑](#footnote-ref-120)
121. OHCHR thematic report on article 13, para 24. [↑](#footnote-ref-121)
122. European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European Law Relating to Access to Justice* (2016, Luxembourg) 154. [↑](#footnote-ref-122)
123. OHCHR thematic report on article 13, para 56. [↑](#footnote-ref-123)
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125. CRPD/C/POL/CO/1, para 21; CRPD/C/SAU/CO/1, para 23; [↑](#footnote-ref-125)
126. Piers Gooding, Anna Arstein-Kerslake, Sarah Mercer, Bernadette McSherry, ’Supporting Accused Persons with Cognitive Disabilities to Participate in Criminal Proceedings in Australia: Avoiding the Pitfalls of Unfitness to Stand Trial Laws’ (2017) 35(2) Law in Context 67. [↑](#footnote-ref-126)
127. ibid. [↑](#footnote-ref-127)
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129. Sharon Primor, Na’ama Lerner, ’The Right of Persons with Intellectual, Psychosocial and Communication Disabilities to Access to Justice Accommodations in the Criminal Process’ (Bizchut) 15. [↑](#footnote-ref-129)
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131. Arch Disability Law Centre & Council of Canadians with Disabilities, Access to Justice for Persons with Disabilities in Canada, Submission to: Office of the High Commissioner for Human Rights. For its thematic study on access to justice for persons with disabilities, under article 13 of the *Convention on the Rights of Persons with Disabilities* (15 May 2017). [↑](#footnote-ref-131)
132. LEGISLATIVE DECREE RECOGNIZING AND REGULATING THE LEGAL CAPACITY OF PERSONS WITH DISABILITIES IN EQUAL CONDITIONS (Law No. 30823) [↑](#footnote-ref-132)
133. Women Enabled International, Submission to the Special Rapporteur on the Rights of Persons with Disabilities: Good Practices for Increasing Effective Access to Justice for Women and Girls with Disabilities (August 2019). [↑](#footnote-ref-133)
134. Human Rights Council, ‘Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities’ (Report of the Office of the High Commissioner for Human Rights, 2017), para 25. [↑](#footnote-ref-134)
135. Lawson and E Flynn, ‘Disability and Access to Justice in the European Union: Implications of the UN Convention on the Rights of Persons with Disabilities’ (2013) 4 European Yearbook of Disability Law 7 at 25. [↑](#footnote-ref-135)
136. CRPD/C/ZAF/CO/1, para 24; CRPD/C/MLT/CO/1, para 21; CRPD/C/ESP/CO/2-3, para 24; CRPD/C/CUB/CO/1, para 27; CRPD/C/SAU/CO/1, para 23. [↑](#footnote-ref-136)
137. CRPD/C/CUB/CO/1, para 28. [↑](#footnote-ref-137)
138. CRPD/C/CUB/CO/1, para 28. [↑](#footnote-ref-138)
139. CRPD/C/POL/CO/1, para 21-22; CRPD/C/ALB/CO/1, para 26; CRPD/C/SLV/CO/2-3, para 27; CRPD/C/VUT/CO/1, para 25; CRPD/C/ESP/CO/2-3, para 25; CRPD/C/SEN/CO/1, para 24; CRPD/C/NER/CO/1, para 21-22; CRPD/C/OMN/CO/1, para 27-28; CRPD/C/SAU/CO/1, para 24. [↑](#footnote-ref-139)
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142. [*Jack (A Child : care and placement orders)*[2018] EWFC B12](https://www.bailii.org/ew/cases/EWFC/OJ/2018/B12.html); [*Dorset Council v A (Residential Placement: Lack of Resources)*[2019] EWFC 62 (10 October 2019)](https://www.bailii.org/ew/cases/EWFC/HCJ/2019/62.html) [↑](#footnote-ref-142)
143. Flynn, Eilionóir. *Disabled Justice?: Access to Justice and the UN Convention on the Rights of Persons with Disabilities.* Routledge, 2015, (hereafter Flynn, (2015) *Disabled Justice?*). [↑](#footnote-ref-143)
144. Section 19 Evidence Act 1872: “A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written, and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.” [↑](#footnote-ref-144)
145. Section 126(1) Evidence Act. [↑](#footnote-ref-145)
146. Investigation and Testimony Procedures Act 2005, which provides accommodations in communication between the court and witness, the court will accept expert testimony on the influence of disability on testimony and hear testimony with assistance. See Ziv, ‘Witnesses with Mental Disabilities: Accommodations and the Search for Truth – The Israeli Case’ (2007) 27(4) Disability Studies Quarterly 51. [↑](#footnote-ref-146)
147. Flynn, (2015) *Disabled Justice?*), 37. [↑](#footnote-ref-147)
148. In Ireland, guardian ad litem under Child Care Act 1991; in the United Kingdom, children’s guardian under Children’s Act 1989. [↑](#footnote-ref-148)
149. Republic of Kenya: The Judiciary, Criminal Procedure Bench Book (February 2018) paras 99ff, 97 [↑](#footnote-ref-149)
150. Intermediaries for Justice, Response to UN Special Rapporteur’s Questionnaire on good practices to ensure effective access to justice for persons with disabilities (August 2019) [↑](#footnote-ref-150)
151. ibid [↑](#footnote-ref-151)
152. §66(2) Austrian Civil Procedure Code; Second Violence Prevention Act. [↑](#footnote-ref-152)
153. Flynn, (2015), *Disabled Justice?.* [↑](#footnote-ref-153)
154. ibid. [↑](#footnote-ref-154)
155. Julinda Beqiraj, Lawrence McNamara, Victoria Wicks, ’Access to Justice for Persons with Disabilities: From International Principles to Practice’ (2017, International Bar Association) 29. [↑](#footnote-ref-155)
156. Ministry of Health and Social Affairs, ‘Sweden – Answer on the questionnaire from OHCHR on article 13, CRPD, Human Rights Council resolution 31/6’ (22 May 2017); Chile, Submission to the Special Rapporteur on the Rights of Persons with Disabilities on Good Practices for Increasing Effective Access to Justice for Persons with Disabilities (August 2019). [↑](#footnote-ref-156)
157. See CRPD/C/MUS/CO/1, para. 24; and CRPD/C/CAN/CO/1, para. 30 (b). [↑](#footnote-ref-157)
158. OHCHR thematic report on article 13, paras 24 and 30. [↑](#footnote-ref-158)
159. Committee ‘General Comment No 1’ paras 20 and 21; OHCHR thematic report on article 13 para 49. [↑](#footnote-ref-159)
160. See for example, Cyprus, Submission to the Office of the High Commissioner for Human Rights on Article 13 Access to Justice, Convention on the Rights of Persons with Disabilities (May 2017). Slovak National Centre for Human Rights, Submission to the Office of the High Commissioner for Human Rights on Article 13 Access to Justice, Convention on the Rights of Persons with Disabilities (May 2017); Claire Edwards, Gillian Harold, Shane Kilcommins, *Access to Justice for People with Disabilities as Victims of Crime in Ireland* (2012) 26 available at <http://nda.ie/Publications/Justice-and-Safeguarding/Access-to-Justice/> accessed 7 November 2019. [↑](#footnote-ref-160)
161. Esmé Grant, Rhonda Neuhaus, ’Liberty and Justice for All: The Convention on the Rights of Persons with Disabilities’ (2013) 19(2) ILSA Journal of International and Comparative Law 347-378. [↑](#footnote-ref-161)
162. Julinda Beqiraj, Lawrence McNamara, Victoria Wicks, ’Access to Justice for Persons with Disabilities: From International Principles to Practice’ (2017, International Bar Association) 28. [↑](#footnote-ref-162)
163. CRPD/C/AUS/CO/2-3, para 25. [↑](#footnote-ref-163)
164. CRPD/C/AUS/CO/2-3, para 26. [↑](#footnote-ref-164)
165. CRPD/C/CUB/CO/1, para 27; CRPD/C/SEN/CO/1, para 24. [↑](#footnote-ref-165)
166. CRPD/C/TUR/CO/1, para 27. [↑](#footnote-ref-166)
167. CRPD/C/DZA/CO/1, para 26. [↑](#footnote-ref-167)
168. CRPD/C/POL/CO/1, para 22. [↑](#footnote-ref-168)
169. Bangladesh Legal Aid and Service Trust (Blast), ‘Re: Submission Human Rights Council Resolution 31/6’ (1 May 2017). [↑](#footnote-ref-169)
170. Michael L. Perlin, ’Human Rights Law for Persons with Disabilities in Asia and the Pacific: The Need for a Disability Rights Tribunal’ 2013 10(2) J*ournal of Policy and Practice in Intellectual Disabilities* 96-98; Michael L. Perlin, ’Promoting Social Change in Asia and the Pacific: The Need for a Disability Rights Tribunal to Give Life to the UN Convention on the Rights of Persons with Disabilities’ (2012) 44 *George Washington Law Review* 1-37. [↑](#footnote-ref-170)
171. United Nations, Division for Social Policy Development, Department of Economic and Social Affairs, *Toolkit on Disability for Africa: Access to Justice for Persons with Disabilities* (2017) 4. [↑](#footnote-ref-171)
172. Human Rights Council, ’Access to Justice in the Promotion and Protection of the Rights of Indigenous Peoples: Restorative Justice, Indigenous Juridical Systems and Access to Justice for Indigenous Women, Children and Youth and Persons with Disabilities: Study by the Expert Mechanism on the Rights of Indigenous Peoples’ (7 August 2014) A/HRC/27/65 para 20. [↑](#footnote-ref-172)
173. Flynn, (2015), *Disabled Justice?* [↑](#footnote-ref-173)
174. CRPD/C/TUR/CO/1, para 53; CRPD/C/ALB/CO/1, para 28; CRPD/C/NOR/CO/1, para 24; CRPD/C/OMN/CO/1, para 32. [↑](#footnote-ref-174)
175. OHCHR thematic report on article 13, para 43. [↑](#footnote-ref-175)
176. OHCHR thematic report on article 13, para 48. [↑](#footnote-ref-176)
177. CRPD/C/NER/CO/1, para 8; CRPD/C/CUB/CO/1, para 32; CRPD/C/SEN/CO/1, para 7; CRPD/C/ZAF/CO/1, para 8-9. [↑](#footnote-ref-177)
178. European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European Law Relating to Access to Justice* (2016, Luxembourg) 95. [↑](#footnote-ref-178)
179. Flynn, (2015), *Disabled Justice?.* [↑](#footnote-ref-179)
180. Flynn, (2015), *Disabled Justice?.* [↑](#footnote-ref-180)
181. CRPD/C/NER/CO/1, para 8; CRPD/C/CUB/CO/1, para 32; CRPD/C/SEN/CO/1, para 7; CRPD/C/ZAF/CO/1, para 8-9; [↑](#footnote-ref-181)
182. CRPD/C/BEL/CO/1, para 12; CRPD/C/TUR/CO/1, para 53; CRPD/C/SEN/CO/1, para 7; CRPD/C/ZAF/CO/1, para 8-9; CRPD/C/BGR/CO/1, para 16. [↑](#footnote-ref-182)
183. CRPD/C/ALB/CO/1, para 28; CRPD/C/NER/CO/1, para 24; CRPD/C/NOR/CO/1, para 24; CRPD/C/OMN/CO/1, para 30. [↑](#footnote-ref-183)
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196. UNCRPD, arts 8 and 13. [↑](#footnote-ref-196)
197. CRPD/C/CYP/CO/1, para 36; CRPD/C/DOM/CO/1, para 25; CRPD/C/SLV/CO/1, para 30(c); CRPD/C/ETH/CO/1, para 30; CRPD/C/GTM/CO/1, para 36; CRPD/C/HTI/CO/1, para 25(c); CRPD/C/HND/CO/1, para 34; CRPD/C/SVK/CO/1, para 42; CRPD/C/UGA/CO/1, para 25(c); CRPD/C/SAU/CO/1, para 24. [↑](#footnote-ref-197)
198. CRPD/C/EU/CO/1, para 39; CRPD/C/PRT/CO/1, para 31; CRPD/C/URY/CO/1, para 30. [↑](#footnote-ref-198)
199. CRPD/C/PHL/CO/1, para 27; CRPD/C/ALB/CO/1, para 26; CRPD/C/SLV/CO/2-3, para 17; CRPD/C/VUT/CO/1, para 25; CRPD/C/ESP/CO/2-3, para 25; CRPD/C/SEN/CO/1, para 24; CRPD/C/NER/CO/1, para 2; CRPD/C/POL/CO/1, para 21-22; CRPD/C/MLT/CO/1, para 21-22; CRPD/C/OMN/CO/1, para 28. [↑](#footnote-ref-199)
200. Committee ‘General Comment No 6’ para 55; CRPD/C/ARM/CO/1, para 22; CRPD/C/HTI/CO/1, para 25(d); CRPD/C/LUX/CO/1, para 27(d); CRPD/C/MDA/CO/1, para 27(b); CRPD/C/ALB/CO/1, para 26; CRPD/C/POL/CO/1, para 8; CRPD/C/VUT/CO/1, para 25. [↑](#footnote-ref-200)
201. CRPD/C/COK/CO/1, para 26(c); CRPD/C/DEU/CO/1, para 28(c); CRPD/C/MUS/CO/1, para 24; CRPD/C/QAT/CO/1, para 26; CRPD/C/KOR/CO/1, para 24; CRPD/C/SVK/CO/1, para 42; CRPD/C/ARE/CO/1, para 26(a). [↑](#footnote-ref-201)
202. CRPD/C/SVK/CO/1, para 42. [↑](#footnote-ref-202)
203. CRPD/C/GAB/CO/1, para 31; CRPD/C/QAT/CO/1, para 26; CRPD/C/THA/CO/1, para 28; CRPD/C/ARE/CO/1, para 26(a). [↑](#footnote-ref-203)
204. Committee ‘General Comment No 6’ para 55. [↑](#footnote-ref-204)
205. CRPD/C/SLV/CO/2-3, para 17. [↑](#footnote-ref-205)
206. Committee ‘General Comment No 1’ para 39. [↑](#footnote-ref-206)
207. CRPD/C/CAN/CO/1, para 30(a). [↑](#footnote-ref-207)
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211. Committee ‘General Comment No 6’ para 55. [↑](#footnote-ref-211)
212. CRPD/C/ARG/CO/1, para 20; CRPD/C/MNE/CO/1, para 27(b); CRPD/C/SDN/CO/1, para 26(c). [↑](#footnote-ref-212)
213. CRPD/C/MAR/CO/1, para 29(c); CRPD/C/OMN/CO/1, para 28(c); CRPD/C/KOR/CO/1, para 24; CRPD/C/UGA/CO/1, para 25(c). [↑](#footnote-ref-213)
214. CRPD/C/AUS/CO/1, para 28; CRPD/C/KOR/CO/1, para 24. [↑](#footnote-ref-214)
215. Committee ‘General Comment No 6’ para 55. [↑](#footnote-ref-215)
216. ibid. [↑](#footnote-ref-216)
217. ibid. [↑](#footnote-ref-217)
218. Paraguay, Decision No. 224/15 of the Ministry of Justice provides for the adoption of a protocol to facilitate access to justice for persons with psychosocial disabilities. [↑](#footnote-ref-218)
219. Julinda Beqiraj, Lawrence McNamara, Victoria Wicks, ’Access to Justice for Persons with Disabilities: From International Principles to Practice’ (2017, International Bar Association) 30. Toolkits have also been utilized for judiciary staff in the USA, The Arc for People with Intellectual and Developmental Disabilities, Justice Advocacy Guide (2006), <http://thearc.org/wp-content/uploads/2019/07/Resource_Justice.pdf> [↑](#footnote-ref-219)
220. Women Enabled International, Submission to the Special Rapporteur on the Rights of Persons with Disabilities: Good Practices for Increasing Effective Access to Justice for Women and Girls with Disabilities (August 2019). [↑](#footnote-ref-220)
221. In Malawi DIWA has signed a Memorandum of Understanding with the police, putting into writing DIWA’s commitment to report cases of violence and to train the police. Magistrates, prosecutors and clerks have also been trained by DIWA on topics of disability. Handicap International, ’Enhancing Access to Justice to Sexual Gender Based Violence Victims/Survivors with Intellectual Challenges Through Integrated Legal and Psychosocial Support Services Provision - Nairobi & Kiambu Counties ’(unpublished, 2017). See also the legislative framework requiring training of law enforcement officials in Bangladesh National Grassroots and Disabilities Organization, National Council for Women with Disabilities, Bangladesh Legal Aid and Services Trust, ’Current Status of Rights of Persons with Disabilities in Bangladesh: Legal and Grassroots Perspectives’ (2015). [↑](#footnote-ref-221)
222. For example in France and Estonia. See Human Rights Council, ‘Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities’ (Report of the Office of the High Commissioner for Human Rights, 2017), para 61. [↑](#footnote-ref-222)
223. For example in Malta a seminar was delivered on “EU Perspectives of the UNCRPD” for lawyers and training for the judiciary on challenges faced by disabled people to access the justice system, Submission to Mrs Catalina Devandas-Aguilar, Special Rapporteur on the rights of persons with disabilities on on "good practices to ensure effective access to justice for persons with disabilities (August 2019). [↑](#footnote-ref-223)
224. Examples are highlighted in the good practices section below. [↑](#footnote-ref-224)
225. In Canada Legal Aid Ontario provided a mandatory mental health training for all of its employees, with presentations from different professions in the field and which also included a resource manual. Julinda Beqiraj, Lawrence McNamara, Victoria Wicks, ’Access to Justice for Persons with Disabilities: From International Principles to Practice’ (2017, International Bar Association) 38. [↑](#footnote-ref-225)
226. Slovenia, ‘Reply of the Republic of Slovenia to some of the questions of the Questionnaire regarding the implementation of the Human Rights Council resolution 31/6 on the rights of persons with disabilities’ (May 2017). See also consultancy firm in England, Stay Safe East, who provide training on how to work with persons with disabilities who are engaging with the justice system. Hrafnhildur Snaefridar Gunnarsdóttir, Rannveig Traunstadóttir, *Access to Specialized Victim Support Services for Women with Disabilities who have Experienced Violence: Good Practice Examples and Recommendations: Comparative Report* (2011, Daphne Project) JUST/2011/DAP/AG/3293 6. [↑](#footnote-ref-226)
227. The Court Academy in Sweden operates an e-learning platform to disseminate “The court is for everyone” module to all court personnel. A more intensive 13 day course is also available to judges which focuses on the challenges individuals face and addressing equality and non-discrimination. See also initiatives in Israel, Sharon Primor, Na’ama Lerner, ’The Right of Persons with Intellectual, Psychosocial and Communication Disabilities to Access to Justice Accommodations in the Criminal Process’ (Bizchut) 13 and Kenya, Handicap International, ’Enhancing Access to Justice to Sexual Gender Based Violence Victims/Survivors with Intellectual Challenges Through Integrated Legal and Psychosocial Support Services Provision - Nairobi & Kiambu Counties ’(unpublished, 2017). [↑](#footnote-ref-227)
228. The Quezon City Prosecutors office in the Philippines has a Persons with Disabilities Legal Assistance Desk to provide guidance on disability sensitivity for public attorneys and prosecutors. The authorities in the Philippines has also established an action centre tasked with monitoring prosecutors [↑](#footnote-ref-228)
229. Disabled Women Africa trained court clerks, prosecutors, magistrates and judges in sign language interpretation and communication. They report that the training has made other judges consider pursuing further long term training on sign language. Malawi, Submission to Mrs Catalina Devandas-Aguilar, Special Rapporteur on the rights of persons with disabilities on on "good practices to ensure effective access to justice for persons with disabilities" (August 2019) [↑](#footnote-ref-229)
230. In the USA there is an emphasis on personal safety and how to report. The Arc, National Center on Criminal Justice and Disability NCCJD, ’Violence, Abuse and Bullying Affecting People with Intellectual/Developmental Disabilities: A Call to Action for the Criminal Justice Community’ (2015) 5. [↑](#footnote-ref-230)
231. In Malta disability sensitivity training has been developed and delivered by persons with disabilities, facilitated by the Commission for the Rights of Persons with Disability [↑](#footnote-ref-231)
232. The Office of the Attorney General in El Salvador has created a space for permanent dialogue with people with disabilities in order to propose, promote and accompany positive actions in compliance with the right to access justice with a human rights approach centered on the person [↑](#footnote-ref-232)
233. The Committee noted in their comments to Malta that they should broaden “the audience of the disability equality training that is currently being provided to the recruits at the Police Academy”, to members of the judiciary and legal profession. CRPD/C/MLT/CO/1, para 21-22. [↑](#footnote-ref-233)
234. In Serbia the Guidelines for Police Officers include specific points on how police officers should behave toward juveniles and young adults with developmental disabilities whether they are victims or perpetrators. [↑](#footnote-ref-234)
235. In Malta, Disability Equality Training is delivered to members of the police force as part of their Continuous Professional Development and to trainees or new recruits as a required module under the Police Academy’s curriculum [↑](#footnote-ref-235)
236. In Germany, prison officials receive professional training on dealing with persons deprived of their liberty which includes human rights norms and obligations under international conventions such as the CRPD [↑](#footnote-ref-236)
237. For example, in Portugal, 20 sign language interpreters were trained in collaboration with Portuguese Federation of Deaf Persons’ Associations in 2012/2013 to enable them to work with the judiciary and the courts service. A Legal Gestuary is available online also which translates legal terminology into Portuguese sign language [↑](#footnote-ref-237)
238. In Mexico, a pilot program entitled “Towards an inclusive justice system” aims to implement procedural adjustments to ensure effective access to justice for people with intellectual and/or psychosocial disabilities. See also, the Protocol for Accessing Justice by Persons with Disabilities of Argentina includes proposals on the appropriate treatment, which actors of the justice service must provide to people with disabilities. <http://www.jusformosa.gov.ar/biblioteca/legislacion/ProtocoloDiscapacidad.pdf> [↑](#footnote-ref-238)
239. Hrafnhildur Snaefridar Gunnarsdóttir, Rannveig Traunstadóttir, *Access to Specialized Victim Support Services for Women with Disabilities who have Experienced Violence: Good Practice Examples and Recommendations: Comparative Report* (2011, Daphne Project) JUST/2011/DAP/AG/3293) 9. [↑](#footnote-ref-239)
240. Handicap International: Making it Work, ‘Annex 1: Good Practice Documentation Summary’ (internal document, 2017). [↑](#footnote-ref-240)
241. ibid 12. [↑](#footnote-ref-241)
242. CRPD/C/AUS/CO/2-3, para 26. [↑](#footnote-ref-242)
243. CRPD/C/PHL/CO/1, para 26. [↑](#footnote-ref-243)
244. CRPD/C/DZA/CO/1, para 26; CRPD/C/SEN/CO/1, para 23; CRPD/C/SAU/CO/1, para 23; CRPD/C/VUT/CO/1, para 24; CRPD/C/ESP/CO/2-3, para 24; CRPD/C/RWA/CO/1, para 25; CRPD/C/NER/CO/1, para 21; CRPD/C/POL/CO/1, para 21-22. [↑](#footnote-ref-244)
245. CRPD/C/TUR/CO/1, para 28. [↑](#footnote-ref-245)
246. Israel Investigation and Testimony Procedures Act 2005. [↑](#footnote-ref-246)
247. **Costa Rica** the protocol for access to justice for people with psychosocial disabilities; Mexico [↑](#footnote-ref-247)
248. Republic of Kenya: The Judiciary, Criminal Procedure Bench Book (February 2018) 17; **Australian** Disability Access Bench Book; [↑](#footnote-ref-248)
249. National Code of Criminal Procedures (**Mexico**, 2014) [↑](#footnote-ref-249)
250. www.rattegangsskolan.se or www.courtintroduction.se [↑](#footnote-ref-250)
251. CRPD/C/NER/CO/1, para 8; CRPD/C/CUB/CO/1, para 32; CRPD/C/SEN/CO/1, para 7; CRPD/C/ZAF/CO/1, para 8-9. [↑](#footnote-ref-251)
252. CRPD/C/AUS/CO/2-3, para 26. [↑](#footnote-ref-252)
253. The Protocol has to date however been ratified by only 6 countries. see African Union’s ‘Status List‘ on <https://au.int/sites/default/files/treaties/36440-sl-PROTOCOL%20TO%20THE%20AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLES’%20RIGHTS%20ON%20THE%20RIGHTS%20OF%20PERSONS%20WITH%20DISABILITIES%20IN%20AFRICA%20%281%29.pdf> accessed 9 November 2019. [↑](#footnote-ref-253)
254. Ibero-American Judicial Summit includes both American countries (Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Puerto Rico, Dominican Republic, Uruguay y Venezuela) and some European Countries (Spain, Portugal and Andorra). [↑](#footnote-ref-254)
255. <http://anterior.cumbrejudicial.org/c/document_library/get_file?folderId=24801&name=DLFE-1012.pdf> [↑](#footnote-ref-255)
256. <https://www.acnur.org/fileadmin/Documentos/BDL/2009/7037.pdf> [↑](#footnote-ref-256)
257. Doren Alarcón, V., Acceso a justicia y grupos vulnerables: Hacia el diseño de políticas públicas desde una perspectiva integral. <http://biblioteca.cejamericas.org/bitstream/handle/2015/5500/PONENCIA.%20AccJ%20y%20GV.%20Vanessa%20Doren.%2023.11.15%20%28final%29.pdf?sequence=1&isAllowed=y> [↑](#footnote-ref-257)
258. <http://migracion.iniciativa2025alc.org/download/19ALCc_Protocolo_Iberoamericano.pdf> [↑](#footnote-ref-258)
259. Glor v. Switzerland (Application No. 13444/04, judgment 30 April 2009). [↑](#footnote-ref-259)
260. Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. Official Journal L 303 , 02/12/2000 P. 0016 - 0022 [↑](#footnote-ref-260)
261. Equality and Human Rights Commission, Response of the Equality and Human Rights Commission to the Consultation to the Questionnaire for a study on article 13 of the Convention on Rights of Persons with Disabilities from the Office of the High Commissioner of Human Rights (28 April 2017). [↑](#footnote-ref-261)
262. Articles 27, 56(a) Constitution of Kenya 2010. [↑](#footnote-ref-262)
263. Republic of Kenya: The Judiciary, Criminal Procedure Bench Book (February 2018) para 74. [↑](#footnote-ref-263)
264. Slovenia, ‘Reply of the Republic of Slovenia to some of the questions of the Questionnaire regarding the implementation of the Human Rights Council resolution 31/6 on the rights of persons with disabilities’ (May 2017) [↑](#footnote-ref-264)
265. Germany, Submission to the Special Rapporteur on the Rights of Persons with Disabilities on good practices to ensure effective access to justice for persons with disabilities (August 2019). [↑](#footnote-ref-265)
266. See for example Ministry of Health and Social Affairs, ‘Sweden – Answer on the questionnaire from OHCHR on article 13, CRPD, Human Rights Council resolution 31/6’ (22 May 2017); Ministry of Social Development and Human Security, Information of the Department of Empowerment of Persons with Disabilities for the Office of the High Commissioner for Human Rights on Article 13 Access to Justice, Convention on the Rights of Persons with Disabilities (04 June 2017); [↑](#footnote-ref-266)
267. See for example, Provedor de Justica, Response to the Questionnaire for a study on article 13 of the Convention on Rights of Persons with Disabilities from the Office of the High Commissioner of Human Rights (May 2017). [↑](#footnote-ref-267)
268. See for example, Government of Finland, Replies to Questionnaire on the rights of persons with disabilities; Access to justice (May 2017). [↑](#footnote-ref-268)
269. Ayesha Roomaney, *Assessing the Right to Physical Access to Justice for Persons with Disabilities* (Master Thesis, November 2017) 46. [↑](#footnote-ref-269)
270. See for example Slovenia, ‘Reply of the Republic of Slovenia to some of the questions of the Questionnaire regarding the implementation of the Human Rights Council resolution 31/6 on the rights of persons with disabilities’ (May 2017) [↑](#footnote-ref-270)
271. It is not clear however what the legal representative’s mandate is in such incidences to represent an the individuals based on their instruction or will and preferences or to represent their best interest. [↑](#footnote-ref-271)
272. Montenegro set out a right to legal aid in their questionnaire to the OHCHR on access to justice. The full questionnaire is available [at this link](https://www.ohchr.org/Documents/Issues/Disability/RightAccessJusticeArticle13/states/Montenegro.doc)  [↑](#footnote-ref-272)
273. General Comment Number 4 of the African Commission on Human and Peoples’ Rights. [↑](#footnote-ref-273)
274. 241/01 Purohit and Moore v. Gambia (The). [↑](#footnote-ref-274)
275. See for example, Cyprus, Submission to the Office of the High Commissioner for Human Rights on Article 13 Access to Justice, Convention on the Rights of Persons with Disabilities (May 2017). Slovak National Centre for Human Rights, Submission to the Office of the High Commissioner for Human Rights on Article 13 Access to Justice, Convention on the Rights of Persons with Disabilities (May 2017). [↑](#footnote-ref-275)
276. Women Enabled International, Submission to the Special Rapporteur on the Rights of Persons with Disabilities: Good Practices for Increasing Effective Access to Justice for Women and Girls with Disabilities (August 2019). [↑](#footnote-ref-276)
277. Article 72 of the of the Commercial Procedure Code of Ukraine, Article 75 of the Civil Procedure Code of Ukraine, Article 71 of the Code of Administrative Procedure of Ukraine, Article 56 of the Criminal Procedure Code of Ukraine Article 68 of the Code of Criminal Procedure of Ukraine. Ukraine, Input from Ukrainian Authorities to the questionnaire on *good practices to ensure effective access to justice for persons with disabilities* of the Special Reporter on the rights of persons with disabilities (August 2019); [↑](#footnote-ref-277)
278. United Nations, Division for Social Policy Developent, Department of Economic and Social Affairs, *Toolkit on Disability for Africa: Access to Justice for Persons with Disabilities* (2017) 4. [↑](#footnote-ref-278)
279. 2012 SCC 5 (CanLII) [↑](#footnote-ref-279)
280. Arch Disability Law Centre & Council of Canadians with Disabilities, Access to Justice for Persons with Disabilities in Canada, Submission to: Office of the High Commissioner for Human Rights. For its thematic study on access to justice for persons with disabilities, under article 13 of the *Convention on the Rights of Persons with Disabilities* (15 May 2017). [↑](#footnote-ref-280)
281. Women Enabled International, Submission to the Special Rapporteur on the Rights of Persons with Disabilities: Good Practices for Increasing Effective Access to Justice for Women and Girls with Disabilities (August 2019). [↑](#footnote-ref-281)
282. Section 19 Evidence Act 1872; an almost identical regulation can be found in the **Kenyan** Evidence Act Section 126(1). [↑](#footnote-ref-282)
283. Republic of Kenya: The Judiciary, Criminal Procedure Bench Book (February 2018) paras 99ff, 97. [↑](#footnote-ref-283)
284. §66(2) Austrian Civil Procedure Code; Second Violence Prevention Act. [↑](#footnote-ref-284)
285. Child Justice Act Section 3(c); Eileen Izette Carter, ’Access to Justice for Children with Disabilities: The South African Context’ (2015, PhD Thesis University of Pretoria) 109. [↑](#footnote-ref-285)
286. For more information on the legal situation including positive examples, see R White & D Msipa ‘Implementing Article 13 of the Convention on the Rights of Persons with Disabilities in South Africa: Reasonable Accommodations for Persons with Communication Disabilities’ (2018) *ADRY* 6 <<http://www.saflii.org/za/journals/ADRY/2018/6.html>> accessed 7 November 2019. [↑](#footnote-ref-286)
287. <<http://www.sahrc.org.za/sahrc_cms/publish/article_150.shtml>> [↑](#footnote-ref-287)
288. Sharon Primor, Na’ama Lerner, ’The Right of Persons with Intellectual, Psychosocial and Communication Disabilities to Access to Justice Accommodations in the Criminal Process’ (Bizchut) 15. [↑](#footnote-ref-288)
289. Julinda Beqiraj, Lawrence McNamara, Victoria Wicks, ’Access to Justice for Persons with Disabilities: From International Principles to Practice’ (2017, International Bar Association) 29. [↑](#footnote-ref-289)
290. Wilson v Georgia, 2004 Ga. App. Lexis 699 (2004) [↑](#footnote-ref-290)
291. Carter v Georgia, 228 Ga. App. 335, 491 S.E.2d 525 (1997) [↑](#footnote-ref-291)
292. Galloway v Superior Court of District of Columbia, 816 F. Supp. 12 (D.C. 1993) [↑](#footnote-ref-292)
293. African Commission on Human and Peoples’ Rights, ’General Comment No. 4 on the African Charter on Human and Peoples’ Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5)’ adopted 21st extra-ordinary session 23 February to 4 March 2017 para 38. [↑](#footnote-ref-293)
294. Americans with Disabilities Act of 1990 As Amended (ADA) Sec. 12187. [↑](#footnote-ref-294)
295. Tennessee v Lane, 541 U.S. 509, 124 S. Ct. 1978 (2004) [↑](#footnote-ref-295)
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298. Protocolo Marco para garantizar el acceso a la Justicia para Personas con Discapacidad, así como para la implementación de la perspectiva de discapacidad en los servicios de Justicia. [↑](#footnote-ref-298)
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301. www.rattegangsskolan.se or www.courtintroduction.se [↑](#footnote-ref-301)
302. Ministry of Health and Social Affairs, ‘Sweden – Answer on the questionnaire from OHCHR on article 13, CRPD, Human Rights Council resolution 31/6’ (22 May 2017) [↑](#footnote-ref-302)
303. Ministry of Health and Social Affairs, ‘Sweden – Answer on the questionnaire from OHCHR on article 13, CRPD, Human Rights Council resolution 31/6’ (22 May 2017) [↑](#footnote-ref-303)
304. CRPD/C/SWE/Q/1/Add.1, 46 § [↑](#footnote-ref-304)
305. Council of Europe, Toolkit to inform public officials about the State’s obligations under the European Convention on Human Rights, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007aedf>(accessed 13th November 2019) [↑](#footnote-ref-305)
306. Council of Europe, Toolkit to inform public officials about the State’s obligations under the European Convention on Human Rights, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007aedf> (accessed 13th November 2019) [↑](#footnote-ref-306)
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324. San Francisco, Oakland, San Jose, and Eureka-Mckinleyville [↑](#footnote-ref-324)
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327. Cyprus, Submission to the Office of the High Commissioner for Human Rights on Article 13 Access to Justice, Convention on the Rights of Persons with Disabilities (May 2017). [↑](#footnote-ref-327)
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331. Victoria Legal Aid, Submission to the Office of the High Commissioner for Human Rights on Article 13 Access to Justice, Convention on the Rights of Persons with Disabilities (10 May 2017). [↑](#footnote-ref-331)
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341. Eileen Izette Carter, ’Access to Justice for Children with Disabilities: The South African Context’ (2015, PhD Thesis University of Pretoria) 102. [↑](#footnote-ref-341)
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