

CHAPTER 12: ACCESS TO JUSTICE

UN Convention on the Rights of Persons with Disabilities

Article 13, Access to Justice:

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

OBJECTIVES

The exercises and background information contained in this chapter will enable participants to work towards the following objectives:

- Define the right to access to justice
- Explain the importance of equal access to justice for people with disabilities
- Understand the interrelation between access to justice and other human rights
- Identify ways in which the rights of people with disabilities to access justice have been promoted or denied
- Understand the provisions on access to justice in the UN **Convention on the Rights of Persons with Disabilities** (CRPD).

GETTING STARTED: THINKING ABOUT ACCESS TO JUSTICE

“Access to justice” is a broad concept, encompassing people’s effective access to the systems, procedures, information, and locations used in the administration of justice. People who feel wronged or mistreated in some way usually turn to their country’s justice system. In addition, people may be called upon to participate in the justice system, for example, as witnesses or as jurors in a trial. Unfortunately people with disabilities have often been denied fair and equal treatment before courts, tribunals, and other bodies that make up the justice system in their country because they have faced barriers to their access. Such barriers not only limit the ability of people with disabilities to use the justice system, but also limit their contributions to the administration of justice.

The ability to access justice is of critical importance in the enjoyment of all other human rights. For example, a person with a disability who feels that she or he has been denied the right to work may wish to turn to the justice system to seek a remedy. However, if the justice system fails to accommodate their physical, communication, or other disability-related needs, and/or expressly discriminates against her or him, then clearly denial of access to the justice system also results in denial of protection of the right to work. Similarly, a person with a disability who

has been the victim of a crime may wish to report the crime to the police and press charges against the offender. However, if he or she is denied physical access to the police station, clear communication with the police, or access to information that is understandable, then that person may not be able fully to exercise her or his rights as a victim. These examples demonstrate that human rights are **indivisible, interdependent, and interconnected**.

The enjoyment of other human rights can also positively or negatively impact the ability of people with disabilities to enjoy access to justice. For example, the accessibility of transportation may determine whether or not a person with a disability is able to travel to a police station, courthouse, or other place where justice is administered. Similarly, a person with a disability who has had access to a quality education will be better able to understand and use the justice system, but if she or he has been denied the right to education, then participation in the justice system may be difficult or impossible.

To be fully included in society, people with disabilities need access to justice. As long as they face barriers to their participation in the justice system, they will be unable to assume their full responsibilities as members of society or their rights. For this reason it is important that barriers be removed so that people with disabilities can enjoy the equal opportunity to perform their duties as witnesses, jurors, lawyers, judges, arbitrators, and other participants in the administration of justice.

EXERCISE 12.1: Turning to the Justice System

Objective: To recognize the complexity of the justice system and how people use it

Time: 30 minutes

Materials: Chart paper and markers or blackboard and chalk

1. Brainstorm:

Ask participants to name some typical reasons that people in their community turn to the justice system. List as many of these as you can on a chart like that below. Include issues related to property, family matters, violent crimes, or instances where one person has hurt another but it is not considered a crime (e.g., making false spoken or written statements about a person). For each reason given, ask what institutions people turn to for justice in each situation (e.g., police, council of elders, religious authorities, magistrates, courts). List these on the chart.

2. List:

Ask what are the various roles individuals play in these institutions of the justice system mentioned in Step 1 (e.g., victim, perpetrator, witness, police, elder, lawyer, judge, specialized expert, juror, prison official) and list these on the chart.

- Do people with disabilities usually play any of these roles in your community? Check those that apply.

3. Discuss:

Consider those roles that people with disabilities do *not* play:

- What happens when people with disabilities are excluded from these roles and thus from full participation in the justice system? To the person with disabilities? To the justice system?
- Why do you think people with disabilities are excluded from these roles?



- What can be done to increase the participation of people with disabilities in the justice system?

Reason for Turning to the Justice System	Institution Turned To	Roles in This Institution

Examples of Barriers to Access to Justice

- Physical barriers to police stations, courthouses, jails, prisons, and other public buildings;
- Lack of accessible transportation to police stations, courthouses, and other public buildings;
- Legislation, regulations, policies, or practices expressly barring people with disabilities from being witnesses, jurors, judges, or lawyers;
- Lack of accessible information about how the justice system works and what a disabled person’s rights and responsibilities are within the justice system;
- Lack of accommodations to facilitate communication by people with disabilities, especially blind, deaf and deafblind people, people with intellectual disabilities, and people with learning disabilities;
- Attitudes about the ability of people with disabilities to participate meaningfully in the administration of justice, for example the belief that people with psycho-social disabilities cannot be reliable witnesses;
- Lack of training for police and other officials to understand the specific needs of people with disabilities in accessing justice and how to provide necessary accommodations.

EXERCISE 12.2: Barriers to the Justice System

- Objective:** To identify barriers to participation in the justice system faced by people with disabilities
- Time:** 30 minutes
- Materials:** List of roles generated in Exercise 12.1

1. Analyze:

Using the list of people and institutions involved when people turn to the justice system generated in Exercise 12.1, ask each participant (or pair of participants) to choose one role and to evaluate the barriers a person with a disability might face in fulfilling this role.

2. Role Play:

Ask each participant or pair to report on their analysis and to role play at least one of the barriers a person with a disability would face in fulfilling this role.

3. Discuss:

- What are the consequences when people with disabilities are excluded from full participation in the justice system? To the person with a disability? To the justice system? To society as a whole?
- Which barriers have the greatest effect on people with disabilities? On the justice system? On society as a whole?
- What can be done to eliminate these most significant barriers to full participation? List these and save the list for reuse in Exercise 12.3.

Support Services for Victims with Disabilities

In the absence of formal support services for people with disabilities who are the victims of crime, some advocacy groups are working to provide in-person support services. These services include such activities as:

- Accompanying the victim to the police station.
- Talking with the police to help them understand the nature of the victim's disability.
- Making suggestions for modifications that could be made to the usual procedures in order to help the investigation.
- If desired by the victim, being present with him or her during police questioning.
- Accompanying the victim to the courthouse prior to any official meetings there, in order to prepare them for the courtroom environment.
- Helping the victim understand what procedures will occur and easing their concerns about these procedures.
- Accompanying the victim during court proceedings, in order to help calm and support them if requested by the victim.
- Where appropriate, and with the victim's permission, asking the court to make modifications to the testimony procedures. For example, moving proceedings to the judge's chambers or other environment less intimidating than the courtroom, or bringing in an expert to help court officials understand the victim's disability and its possible impact on the testimony.¹

WHAT DOES HUMAN RIGHTS LAW SAY ABOUT ACCESS TO JUSTICE?

The right to access to justice has its foundation in provisions in international law that address the equality of people before the law, their right to equal protection under the law, and their right to be treated fairly by a tribunal or court. These rights are addressed in Articles 6 through 11 in the **Universal Declaration of Human Rights** (UDHR)² and are addressed in more detail in Articles 14 – 16 of the **International Covenant on Civil and Political Rights** (ICCPR).³

1 *Israeli Human Rights Center for People with Disabilities*. <http://www.bizchut.org.il/eng>

2 See <http://www.un.org/Overview/rights.html>

3 See http://www.unhchr.ch/html/menu3/b/a_opt.htm



Other treaties address the need to ensure that specific groups are able to enjoy these rights on an equal basis with others. The **International Convention on the Elimination of All Forms of Racial Discrimination** (CERD)⁴ and the **Convention on the Elimination of All Forms of Discrimination Against Women** (CEDAW)⁵ are particularly relevant for people with disabilities who may be subject to multiple discrimination, such as women with disabilities and ethnic minorities with disabilities. For example, Article 5(a) of CERD requires that States “eliminate racial discrimination in all its forms,” and guarantee the right of everyone “to equal treatment before the tribunals and all other organs administering justice.” Article 15 of CEDAW addresses these issues as they relate to women, and requires that States treat women “equally in all stages of procedure in courts and tribunals.”

Although the 1993 **UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities** (Standard Rules) does not expressly address the issue of access to justice, it does address a number of issues that can impact the enjoyment of access to justice by people with disabilities:

- Awareness-raising of the rights, needs, potential and contributions of people with disabilities in society (Rule 1)
- Support services to promote independence and facilitate the exercise of rights by people with disabilities (Rule 4)
- Physical, informational and communication accessibility (Rule 5)
- Education (Rule 6)
- Personnel training (Rule 19).⁶

The Convention on the Rights of Persons with Disabilities (CRPD) expands upon the issues addressed in earlier human rights documents and helps to clarify how States can *respect*, *protect*, and *fulfill* the enjoyment of access to justice by people with disabilities. CRPD Article 13 guarantees the right of people with disabilities:

- to effective access to justice on an equal basis with others;
- to effective access to justice at all phases of the administration of justice, including at preliminary stages, such as initial investigations;
- to be both direct and indirect participants, including being witnesses;
- to receive procedural and age-appropriate accommodations to facilitate their access to justice.

Article 13 also requires States to provide training to those working in the administration of justice in order to help ensure effective access to justice by people with disabilities.

States must *respect* the right to access to justice by ensuring that State actors (e.g., police, judges, prison staff) do not interfere with the exercise and enjoyment of access to justice by people with disabilities. States must also *protect* the right by ensuring that non-State actors (e.g., private attorneys, families) do not interfere with the exercise and enjoyment of the right. Furthermore, States have an obligation to *fulfill* the right, by taking action to ensure that people with disabilities are able to exercise the right. The provision of disability-related training to those working in the administration of justice, is just one example of the type of action required of States by Article 13 to *fulfill* the right to access to justice.

4 See <http://www.unhchr.ch/html/menu3/b/9.htm>

5 See <http://www.unhchr.ch/html/menu3/b/e1cedaw.htm>

6 See <http://www.un.org/esa/socdev/enable/dissre00.htm>

International human rights law strongly supports the right of people with disabilities to have meaningful and effective access to justice in all its phases, not only as a right in itself, but also so that people with disabilities may better enjoy their other human rights and fully assume their responsibilities as members of society.

EXERCISE 12.3: What Rights to Access to Justice Does the CRPD Affirm?

Objective: To review and understand the right to access to justice affirmed by the CRPD

Time: 30 minutes

Materials: Chart paper and markers or blackboard and chalk

1. Review:

Divide the participants into small groups. Ask each group to work together to paraphrase Article 13 in common language and give some examples of how that right could be enjoyed and make a difference for people with disabilities in their community.

2. Paraphrase:

Read Article 13 aloud. Pause at each natural section to ask different groups for their paraphrase. Discuss the meaning of the section until everyone can agree on a paraphrase. Write the final paraphrase of Article 13 on chart paper.

3. Give examples:

Ask for examples of how that right could be enjoyed and make a difference for people with disabilities.

4. Discuss:

- How can Article 13 of the CRPD be used to set national disability rights agendas and formulate platforms of action for submission to political parties or government decision-makers?
- How can it be used to engage in dialogues with court administrators and ministries of justice?

EXERCISE 12.4: Making a Commitment to Promote Access to Justice

Emphasize that human rights involve both rights and responsibilities.

- Ask if after learning about the human right of people with disabilities to access justice, the group is ready to think about taking concrete action;
- Acknowledge that although there is still much planning and information gathering to do, commitment to creating change is also very important;
- Explain that you would like to ask each participant to name one individual action, however small, that she or he is willing and able to take in the next month to promote the human right of people with disabilities to exercise their right to access to justice.

To plan advocacy for the human rights of people with disabilities, see Part 3, “Advocacy! Taking Action for the Human Rights of People with Disabilities,” p. 229.



Access to Justice in Action: South African Equality Court Supports Access for People with Disabilities

Esthe Muller is a South African lawyer and also a wheelchair user. When she and other people with disabilities were unable to access her local courthouse because of the presence of steps, she brought a case in 2003 under the “Promotion of Equality and Prevention of Unfair Discrimination Act” of 2000. Her case was supported by the South African Human Rights Commission and was brought against the Justice Department and the Department of Public Works.

Because of the inaccessibility of the courthouses, Ms. Muller had to be carried up the stairs to enter the courthouse. On another occasion the court had to postpone her cases because she could not get into the room. “It’s embarrassing for my client to have his lawyer carried into court. It’s also embarrassing for me,” she said.

In September 2004 the South African Equality Court reached a final settlement in the case. The two government departments admitted that they had failed to provide proper wheelchair access. They also admitted that their failure was a form of unfair discrimination against Ms. Muller and other people with similar accessibility needs, and they apologized for this. The departments committed to a plan to ensure that all court buildings throughout the country will be made accessible within three years. At least one courtroom and one toilet in each building will have to be accessible to people with disabilities. The plan requires specific actions to be taken by specific dates, and the departments will report on their progress to the Equality Court. In the meantime, inaccessible courthouses will need to find other ways to make sure that people with disabilities can access their facilities. For example, some have constructed “makeshift” courtrooms, and in other instances judges and magistrates have moved their proceedings to more accessible spaces.⁷

USEFUL RESOURCES ON ACCESS TO JUSTICE

- Advocacy Incorporated: <http://www.advocacyinc.org/index.cfm>
- Reach Canada Equality and Justice for People with Disabilities: <http://www.reach.ca/>

⁷ “Equality Court Victory for People with Disabilities.” 24 Feb. 2004. *South African Human Rights Commission*. http://www.sahrc.org.za/sahrc/cms/publish/article_150.shtml; Reynolds, Dave. “Government sets date for all courts to be accessible.” 15 September 2005. *Inclusion Daily Express*. <http://www.inclusiondaily.com/archives/04/09/15/091504sacourtaccess.htm>