

Access to Justice & Article 13 of the CRPD

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The legal context

- Article 13 CRPD builds on established provisions in international human rights law supporting access to justice - such as the right to an effective remedy, to fair procedures and the right to be heard in proceedings affecting the person (Articles 6-11 UDHR and 14-16 of the ICCPR).
- The UN Standard Rules on the equalisation of opportunities for persons with disabilities (1993) addresses - in a non-binding capacity - a number of issues affecting access to justice (Rules 1, 4, 5, 6 & 19, respectively).
- Article 13 CRPD explicitly addresses access to justice in the context of disability as a human right and imposes concrete and binding obligations on State Parties.

The extent of the 'problem'

- Consider the various reasons why we might use the justice system.
- Identify the institutions people turn to for justice in these situations (the 'Justice Sector').
- Consider the various roles that people play within the Justice Sector and identify those roles regularly performed by disabled people.
- Where disabled people are excluded from these roles or encounter significant barriers in performing them they are effectively precluded from fully participating in the justice system. Consider the effects on (a) the person? (b) the justice system? (c) society as whole?

Key types of barriers

- Physical access barriers
- Information barriers
- Attitudinal barriers
- Communication barriers
- Barriers accessing legal advice
- Regulatory and procedural barriers

Article 13: the right

- 'effective' access to justice.
- on an 'equal basis' with others.
- as 'direct' and 'indirect' participants.
- in *all* legal proceedings (including investigative & other proceedings).

Article 13: the obligation

- State Parties must not interfere with the exercise and enjoyment of the right protected by Article 13.
- State Parties must ensure that non-State actors (eg. families and private lawyers) do not interfere with the right protected by Article 13.
- State Parties must take action to ensure 'effective access' on an 'equal basis with others' (including, 'procedural and age appropriate accommodations' and the promotion of 'appropriate training' within the Justice Sector).
- Articles 4, 33 and 40 CRPD and the EU overlap.

Necessary & effective State action

- Raise national awareness of the CRPD and the rights that it protects (as required by Articles 33 & 49 CRPD).
- Encourage the recognition that unequal access to justice is essentially a denial of an effective remedy before the law and a breach of a fundamental civil & political right.
- Adopt accessibility standards for all components of the justice sector and improve the sector's operational coherence and support facilities in full consultation with disabled people.

Necessary & effective State action (cont.)

- Encourage and fund 'accessibility audits'.
- Ensure that information about the Justice Sector is fully accessible both in terms of its individual components and the various journeys that an individual may take through the sector as a whole.
- Provide adequate training on disability equality within the Justice Sector recognising the full range of access barriers and the effects of multiple discrimination.

Necessary & effective State action (cont.)

- Conduct a review of legal, procedural and information type barriers by field of legislation.
- Encourage and fund a significant increase in legal expertise on disability and human rights.
- Encourage and fund adequate advocacy support for disabled people.
- Provide incentives to private lawyers to accept clients with disabilities.