

## Ensuring equal access to justice (target 16.3)

This section reflects on the achievement of target 16.3 by, for and with persons with disabilities, in line with the Convention on the Rights of Persons with Disabilities (CRPD). This target calls for ensuring equal access to justice for all. Article 13 of the CRPD requires States Parties to 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 all legal proceedings; and calls for the promotion of appropriate training for those working in the administration of justice. Article 12 of the CRPD reaffirms that persons with disabilities have the right of recognition everywhere as persons before the law, guarantees the right to legal capacity for persons with disabilities, and requires States Parties to take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity. The principles enshrined in Articles 12 and 13 of the CRPD, as interpreted by the Committee of the CRPD in its concluding observations, have been developed into an international set of principles and standards by the Special Rapporteur on the rights of persons with disabilities in 2020.<sup>526</sup>

This section will address access to justice as it relates to persons with disabilities. It will give an overview of the current situation and progress thus far, highlight good practices and end with recommendations to ensure access to justice for all persons with disabilities.

## Current situation and progress so far

Many barriers persist for persons with disabilities to access justice. One of these barriers is the persistence of guardianships and substituted decision-making in many countries, instead of supported decision-making (Box 9). With guardianships and substituted decision-making, the legal capacity of persons with disabilities is not recognized and another person is allowed to have the legal authority to make decisions on their behalf. Those most affected are persons with intellectual or psychosocial disabilities, persons who are deaf or blind, persons with hearing impairments, persons with autism, persons with dementia, women and girls with disabilities and older persons with disabilities.<sup>527</sup>

These practices are increasingly being abolished, with promising developments in recent years across a swathe of countries moving towards supported decision-making schemes and programmes (Table 6) – supported decision-making is an integral component of safeguarding the legal capacity of persons with disabilities. For instance, pioneering legislation in Austria, Colombia, Costa Rica, Peru and Spain, abolishes all forms of guardianship laws and substituted decision-making regimes. Parallel to this, a number of countries – for example, Argentina, Australia, Brazil, Bulgaria, Canada, Czechia, Hungary, India, Ireland, Israel, Kenya, Latvia, Sweden, United Kingdom, United Republic of Tanzania and the United States – have implemented pilot projects for instituting some form of supported decision-making or have introduced supported decision-making while retaining also substituted decision-making. These developments have also influenced mental health legislation, policy and practice to reflect the new

paradigm set by the standards of the CRPD.<sup>528</sup> In Peru for example, mental health legislation has been adopted to recognize and allow for some form of supported decision-making procedures in relation to mental health, a significant development given that mental health legislation and practice particularly affect persons with psychosocial or intellectual disabilities.<sup>529</sup>

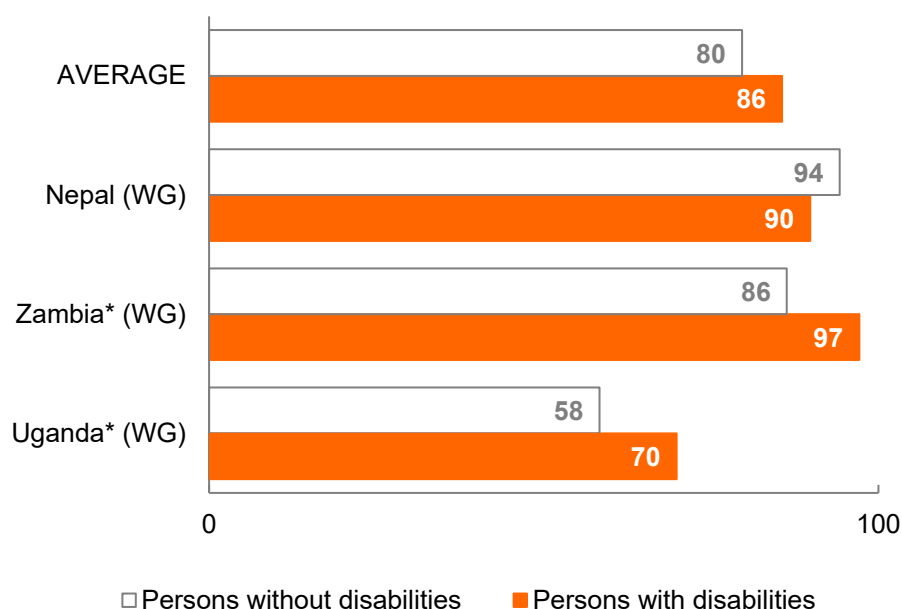
But even in countries in which supported decision-making is implemented, these regimes do not always adequately respond to the diversity, multiplicity and complexity of the needs of persons with disabilities in their access to justice.<sup>530</sup> Persons with disabilities may face barriers to access supported decision-making due to age and gender, particularly in the context of countries where supported decision-making schemes are largely implemented by informal family and community networks and where socio-cultural beliefs prescribe respect for elders and males. For instance, in supported decision-making schemes piloted in India, Kenya and Lebanon, it was found that young women in particular had limited access to such schemes and were more likely to have their legal capacity denied, particularly with respect to financial and property decisions.<sup>531</sup> Furthermore, restrictions to legal capacity may still persist under supported decision-making, especially if the same institutions of previous guardianship laws remain in place.<sup>532</sup>

For many persons with disabilities, access to legal services remains a challenge. In three countries, on average, among persons with disabilities who needed legal advice, 86 per cent were not able to receive it (Figure 208). This unmet need for legal advice among persons with disabilities is very high in all three countries, ranging from 70 per cent in Uganda to 97 per cent in Zambia. Many persons with disabilities lack access to education (see the chapter on Goal 4) and, without education, they may lack the skills to seek legal advice. Persons with disabilities also tend to have fewer financial resources (see the chapter on Goal 1) to meet the costs of legal services. Those who are able to overcome these obstacles and seek legal advice may face further barriers. Lack of disability awareness among legal officers, lack of accessibility features and lack of reasonable accommodation in legal services are ongoing obstacles for persons with disabilities to enjoy equal access to justice.

#### **Box 9. Supported decision-making versus guardianships and substitute decision-making**

*Guardianships and substituted decision-making* are used to allow another person to have the legal authority to make decisions on behalf of a person with disabilities. With *supported decision-making*, persons with disabilities enjoy full recognition and equality under the law, exercise their legal capacity to make decisions and receive support from a trusted individual, network of individuals or entity in making these decisions. According to General Comment No. 1 of the United Nations Committee on the Rights of Persons with Disabilities, governments are required to move away from *guardianships and substituted decision-making* in favour of *supported decision-making*.

**Figure 208. Percentage of persons who needed but were not able to receive legal advice, by disability status, in 3 countries, in 2018 or latest year available.**



*Source: UNDESA (on the basis of data from SINTEF<sup>9</sup>).*

Indicator 16.3.1 monitors the proportion of victims of violence in the previous 12 months who reported their victimization to competent authorities or other officially recognized conflict resolution mechanisms. In the European Union, persons with disabilities report violence to the police more often than persons without disabilities: in 2019, 51 per cent of persons with severe disabilities reported the most recent incident of violence to the police, compared to 40 per cent of persons without severe disabilities and 29 per cent of persons without disabilities.<sup>533</sup>

Indicator 16.3.3 monitors the proportion of the population who have experienced a dispute in the past two years and who accessed a formal or informal dispute resolution mechanism. Persons with disabilities also face barriers to accessing formal and informal dispute resolution mechanisms. In Gambia, for example, 47 per cent of persons without disabilities but only 1 per cent of persons with disabilities experiencing a dispute have access to such mechanisms (Figure 209).

Accessibility for persons with disabilities is not in place throughout the justice system, including in police premises, courtrooms, legal documents and court decisions. In four developing countries, on average, 34 per cent of persons with disabilities indicate that the police stations are not accessible; and 36 per cent indicate that the courts are not accessible (Figure 210). About 25 per cent of persons with disabilities in Malawi and about 40 per cent of persons with disabilities in Nepal experience that lack of accessibility. Crowdsourced data on courts and police stations worldwide, mostly in developing countries, found that as of 2022, 59 per cent were accessible for wheelchair users, 19 per cent were partially accessible and 22

per cent were not accessible (Figure 211). There has been slight progress from 2018 to 2022 from 54 per cent to 59 per cent.

**Figure 209. Percentage of persons who have experienced a dispute in the past two years who accessed a formal or informal dispute resolution mechanism, by disability status, in Gambia, in 2021 (indicator 16.3.3).**



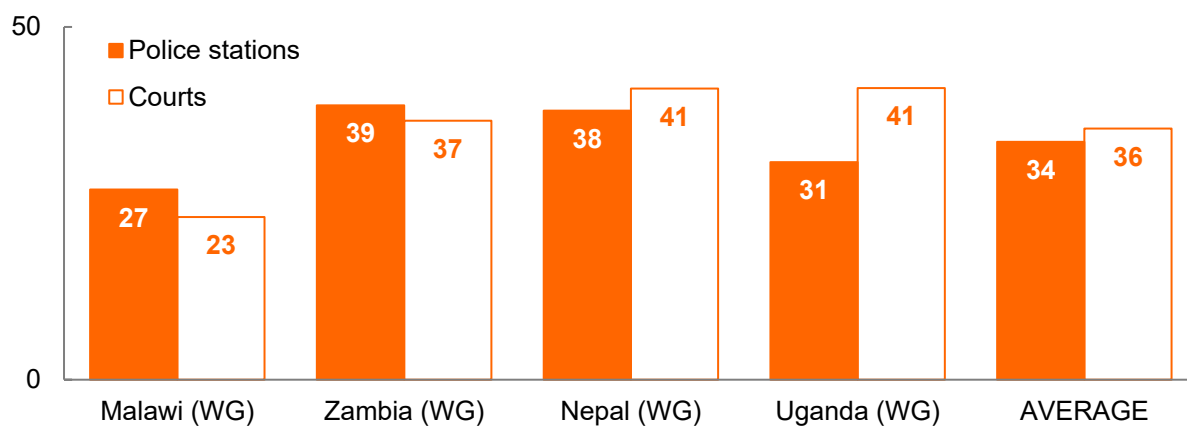
*Source: United Nations SDG Indicators Database (2023).<sup>285</sup>*

The lack of legal documents in formats that are accessible for persons with disabilities also remains a major barrier. For example, among 10-13 countries or areas in Asia and the Pacific, court judgements are typically not available in accessible formats: only 10 per cent of countries make all court judgements available in Braille and ePub, only 20 per cent in easy-to-read, only 30 per cent in accessible text in webpages and only 50 per cent in accessible doc/pdf (Figure 212). National laws tend to be more available in accessible formats but they are still largely not accessible, with only 20 per cent to 30 per cent of countries making all national laws available in easy-to-read, ePub and Braille. Accessible online text and accessible doc/pdf are more common, with 60 per cent of countries making all national laws available in these formats. Comparatively, constitutions are the legal documents most available in accessible formats, with about 80 per cent of these countries making their constitutions available in accessible text online and in accessible doc/pdf, but they are still seldom available in other accessible formats: less than 50 per cent of countries make these available in easy-to-read, ePub and Braille.

Reasonable accommodations for persons with disabilities are generally lacking throughout the justice system and vary by regions of the world.

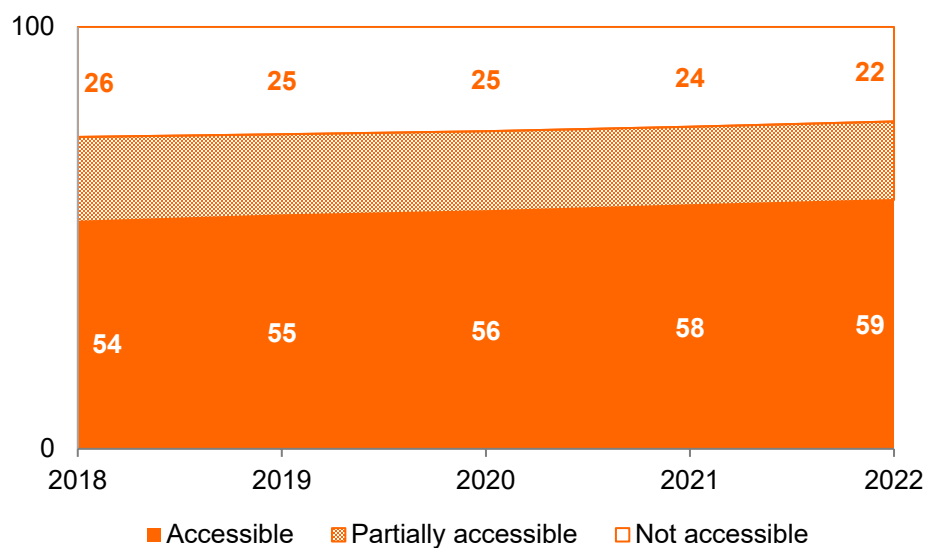
In the European Union, 89 per cent of countries provide procedural accommodations to persons with disabilities and 67 per cent provide adjusted alternative resolution procedures for persons with disabilities (Figure 213). In only 74 per cent of countries, persons with disabilities can be listened to in person and express their will. Accessible features vary: information in accessible formats is provided in 78 per cent of countries; Braille, sign language, easy-to-read and other accessible formats are available upon request in 59 per cent of countries; and accessible digital solutions at first instance courts are available in 56 per cent of countries. Only 9 countries in the European Union provide all these accommodations to make courts more accessible for persons with disabilities.

**Figure 210. Percentage of persons with disabilities who reported that magistrate offices/traditional courts and police stations are not accessible, in 5 countries, in 2015-2018.**



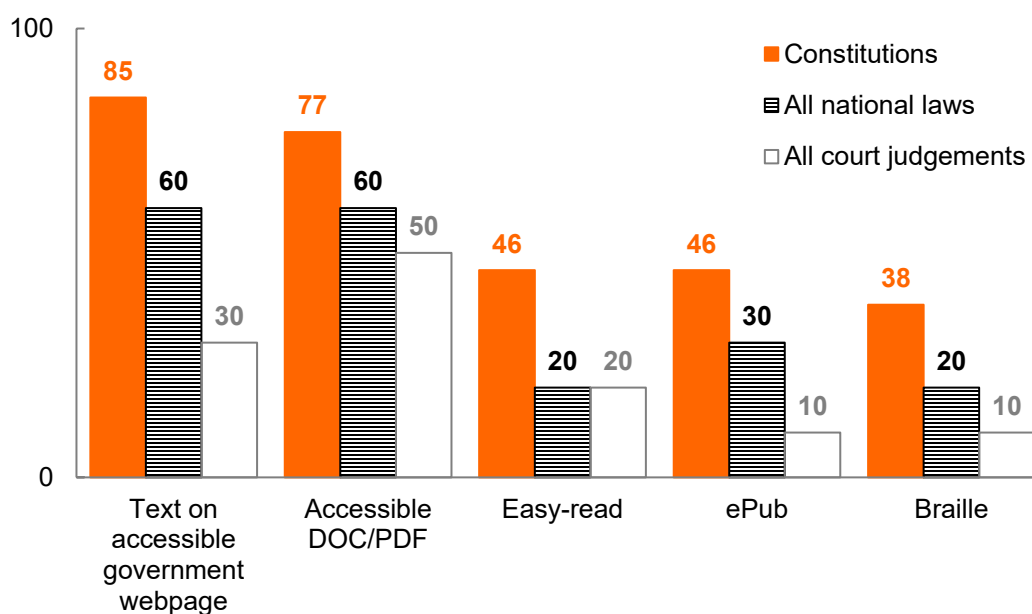
*Note: (WG) identifies data produced using the Washington Group short set of questions on functioning.*  
*Source: UNDESA (on the basis of data from SINTEF<sup>9</sup>).*

**Figure 211. Percentage of courts and police stations that are accessible for wheelchair users, worldwide, from 2018-2022.**



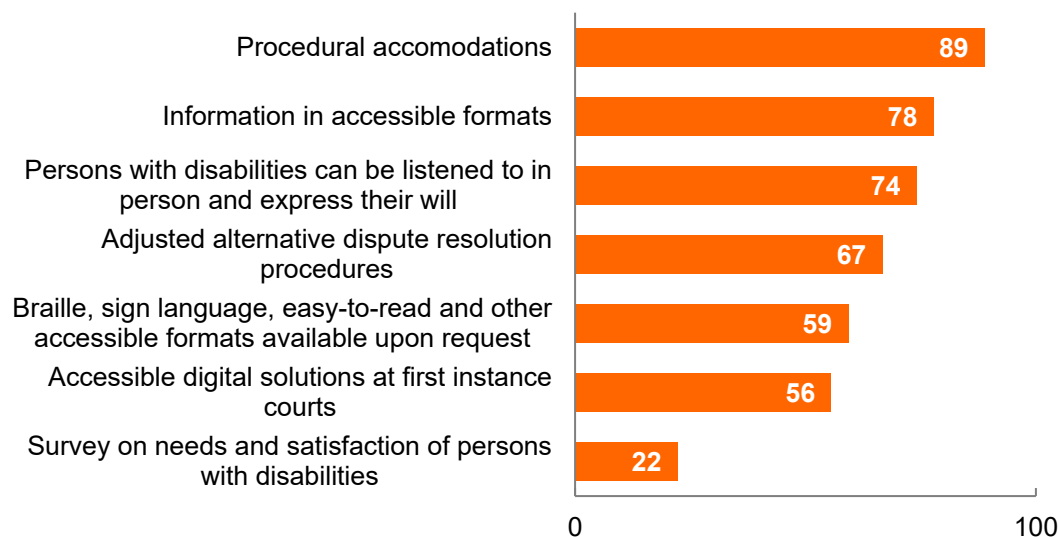
*Source: UNDESA (on the basis of data from Sozialhelden<sup>10</sup>).*

**Figure 212. Percentage of countries or areas with constitutions, all national laws and all court judgements in accessible formats for persons with disabilities, in 10-13 countries or areas in Asia and the Pacific, in 2022 or latest year available.**



Source: ESCAP.<sup>14</sup>

**Figure 213. Percentage of countries with specific arrangements for access to justice for persons with disabilities, in 27 countries in the European Union, in 2021.**



Source: European Commission (2022).<sup>534</sup>

In the United States, although court accommodations are provided under disability legislation and guidelines have been developed for the judiciary in this regard, access to court accommodations by persons with disabilities varies from state to state, particularly in criminal trials.<sup>535</sup> Some states charge defendants fees for accommodations such as Braille, large print documents and the use of a sign language interpreter, and half of states do not provide information on how to request accommodations during the trial.<sup>535</sup>

In African countries, the implementation of court accommodations varies from case to case and often depends on the individual discretion of the judge.<sup>536</sup> Moreover, the range of accommodations which are available cover only a fraction of the need, considering the diversity of persons with disabilities; court accommodations are broadly not suitable for persons with severe communication disabilities or those with multiple disabilities; persons with disabilities still encounter discriminatory practices or harmful attitudes, behaviours and stereotypes in the courtroom; and legislation, legal information and documents are still not always disseminated in an accessible manner.<sup>537</sup>

To overcome these challenges, an increasing number of countries has taken measures to provide accommodations in court (Table 6), including strategies, communication boards, intermediaries, court preparation officers and communication accommodations, as well as physical accommodations, such as wheelchair access and separate testifying rooms.<sup>538</sup>

**Table 6. Examples of good practices to ensure access to justice for persons with disabilities.**

Type of good practice	Examples of countries where this practice has been implemented
Abolishing guardianship and establishing supported decision-making (laws, partial implementation or pilot projects)	Argentina, <sup>539</sup> Australia, <sup>539</sup> Austria, <sup>540</sup> Brazil, <sup>541</sup> Bulgaria, <sup>539</sup> Canada, <sup>539</sup> Colombia, <sup>539,542</sup> Costa Rica, <sup>543</sup> Czechia, <sup>539</sup> Hungary, <sup>539</sup> India, <sup>539,544</sup> Ireland, <sup>539</sup> Israel, <sup>539</sup> Kenya, <sup>539</sup> Latvia, <sup>539</sup> Peru, <sup>539,545,546</sup> Spain, <sup>547</sup> Sweden, <sup>539</sup> United Kingdom, <sup>539</sup> Tanzania, <sup>539</sup> United States <sup>539</sup>
Providing reasonable accommodation in courts	Argentina, <sup>548</sup> Australia, <sup>548</sup> Azerbaijan, <sup>548</sup> Canada, <sup>548</sup> China, <sup>548</sup> Costa Rica, <sup>548</sup> Dominican Republic, <sup>548</sup> Ecuador, <sup>548</sup> European Union, <sup>549</sup> India, <sup>548</sup> Indonesia, <sup>548</sup> Israel, <sup>548</sup> Malawi, <sup>548</sup> Mexico, <sup>548</sup> New Zealand, <sup>548</sup> Peru, <sup>548</sup> South Africa, <sup>548</sup> Turkmenistan, <sup>548</sup> United States, <sup>548</sup> United Kingdom, <sup>548</sup> Zimbabwe <sup>548</sup>
Awareness-raising and training on disability inclusion for justice systems officials, including police, the judiciary, attorneys, representatives of the legal system and investigators	Argentina, <sup>550</sup> Costa Rica, <sup>551</sup> Israel, <sup>552,553</sup> Mexico, <sup>554</sup> United Kingdom <sup>555</sup>
Free legal assistance for persons with disabilities	Honduras <sup>556</sup>
Partnerships between persons with disabilities and the justice system	United States <sup>557</sup>

Over 180 countries have ratified the CRPD, which typically entails the adoption of laws at the national level to ensure access to justice for persons with disabilities. At the regional level, there have been notable developments in standards setting, such as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa, adopted in 2018, which expressly includes provisions on legal capacity and access to justice;<sup>558</sup> and the resolution by the Council of Europe on the treatment of detainees with disabilities, also adopted in 2018, which sets out the rights and standards for the treatment of persons with disabilities under detention.<sup>559</sup>

But many existing laws and policies on disability lack an intersectional lens and do not adequately account for the diversity of persons with disabilities and do not address barriers to access to justice. For example, Indigenous persons with disabilities require services which are culturally capable in order to ensure equal access to justice.<sup>560</sup> Women and girls with disabilities are at high risk of gender-based violence, particularly those with intellectual or psychosocial disabilities, yet many countries' criminal justice systems do not provide reporting mechanisms that are appropriate for women and girls with disabilities, nor specialized services that are sensitive to gender.<sup>561</sup>

A recent positive development is the implementation of surveys by the justice system to seek feedback from users with disabilities on their experience in the justice system, including the courts and legal aid programmes. For instance, in the European Union, 22 per cent of countries conduct these surveys (Figure 213). Awareness-raising, training and guidelines on disability inclusion for officials in the justice system have also been promoted in many countries, including national protocols addressed to the police and the judiciary on the treatment of persons with disabilities (Table 6).

## Summary of findings and the way forward

Target 16.3 calls for equal access to justice for all. Achieving this target for persons with disabilities, in line with articles 12 and 13 of the CRPD, requires protecting their right to legal capacity and providing the support they may require in exercising this right. Although progress has been made in the realization of target 16.3 for persons with disabilities, obstacles to accessing justice remain. The persistence of these obstacles is especially concerning given that persons with disabilities – and especially children and women with disabilities and persons with psychosocial disabilities – are two to six times more likely than others to be victims of violence, abuse, exploitation and human trafficking (see the chapter on targets 16.1 and 16.2).

Guardianship laws are still in place in many countries, depriving persons with disabilities of their legal capacity – persons with intellectual or psychosocial disabilities, persons who are deaf or blind, persons with hearing impairments, persons with autism, persons with dementia, women and girls with disabilities and older persons with disabilities are particularly affected by these discriminatory laws. Moreover, the justice system overall lacks accessibility features and reasonable accommodations for persons with disabilities, including in court rooms, police stations and legal services. In developing countries, about a



third of persons with disabilities indicate that courts and police stations are not accessible to them. National laws and court documents, including court decisions, are also typically not available in formats that are accessible for persons with disabilities. In some developing countries, more than two thirds of persons with disabilities do not have access to legal services when they need them. Many officials throughout the justice system have no training on disability inclusion. Data remains scarce on the barriers persons with disabilities face in accessing justice and their experience in the justice system and research is lacking on the development and implementation of supported decision-making systems, especially in developing countries.

Progress has been made in the last five years, with more countries having moved away from guardianship laws to supported decision-making systems. There has been slow progress in improving the accessibility of courts and police stations to wheelchair users, from 54 per cent of courts and police stations accessible to them in 2018 to 59 per cent in 2022. At this rate of progress, by 2030, it is expected that one in every three courts and police stations will remain not accessible. To achieve universal accessibility for wheelchairs users by 2030, courts and police stations need to become accessible at a rate four times faster than current rates of progress.

To address the barriers that persons with disabilities face in accessing justice, the following measures are recommended:

- 1. Abolish laws and policies that impose substituted decision-making in legal proceedings, against the will of persons with disabilities.** Ensure the meaningful and effective participation of representative organizations of persons with disabilities in all processes and stages of law reform and policy formulation. Promote supported decision-making.
- 2. Empower persons with disabilities to exercise their legal rights and access justice.** Offer training to persons with disabilities on legal information and their legal rights to enhance their ability to exercise their rights – all training should be provided in accessible formats. Provide free legal assistance to persons with disabilities who cannot afford legal services.
- 3. Make the justice system fully accessible and inclusive for persons with disabilities.** Make the constitution, national laws, legal information and court decisions available in accessible formats, including in easy-to-understand communication. Make police stations, court rooms and premises providing legal services accessible to persons with disabilities. Provide reasonable accommodations upon request in courts and throughout the justice system. Mainstream an intersectional approach across the criminal and civil justice system to ensure that services reflect the diversity of persons with disabilities and are gender-sensitive, age appropriate and culturally capable for persons with disabilities. Involve persons with disabilities and their representative organizations in designing policies and practices to make the justice system fully accessible and inclusive.

**4. Train judges and justice officials on disability inclusion and the rights of persons with disabilities.** Focus training on eliminating harmful attitudes, behaviours and stereotypes and promoting practices inclusive of persons with disabilities of all genders, ages and ethnicities. Involve persons with disabilities and their representative organizations in designing and implementing these trainings. Ensure that all training is delivered in formats that are accessible for persons with disabilities.

**5. Improve the availability of data and research on the experience of persons with disabilities in the justice system and the barriers they experience in accessing justice.** Institute data collection systems in the police and in courts for the regular collection of administrative data disaggregated by disability, as well as sex and age, including on cases and outcomes of trials involving persons with disabilities (whether as victims of crime, defendants or claimants). Conduct regular satisfaction surveys among persons with disabilities using the police and the courts, including on the use and effectiveness of court accommodations. Conduct population surveys to collect data on the experience of persons with disabilities in accessing justice and the barriers they face; these surveys should be designed to allow disaggregation by sex, age, ethnicity and urban or rural location. Ensure monitoring and evaluation of supported decision-making systems for persons with disabilities. Involve persons with disabilities and their representative organizations in research as well as in data collection, dissemination and analysis.