**Access to Justice: Closer to Persons with Disabilities**

**Office of the Special Envoy of the Secretary General of the United Nations on Disability and Accessibility**

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1. **Background**

The **Convention on the Rights of Persons with Disabilities**, adopted in 2006 by the United Nations General Assembly (hereinafter CRPD or the Convention), represents a historical milestone, recognizing the human rights model for persons with disabilities, based on the promotion and protection of their human rights and fundamental freedoms, respecting their inherent dignity, leaving behind the charity and medical models.

**Article 13 of the CRPD prescribes that:**

1. States Parties shall ensure that persons with disabilities have access to justice on an equal basis with others, including through 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, State Parties shall promote appropriate training for those involved in the administration of justice, including police and prison staff.

The **United Nations 2030 Agenda**, in its Sustainable Development Goal 16 establishes that States shall **"Promote just, peaceful and inclusive societies".** It aims at promoting peaceful and inclusive societies for Sustainable Development, providing access to justice for all and building effective, responsible and inclusive institutions at all levels. Target 16.3 specifies: “Promote the rule of law at the national and international levels and ensure equal access to justice for all.”

**Access to Justice for Persons with Disabilities is inspired by:**

1. **Human** **Dignity**: It is the quality of the human condition from which fundamental rights emanate and for this reason they are inviolable and inalienable[[1]](#footnote-1).
2. **Equality and non-discrimination**: Every human being must be recognized as a person before the law and enjoy all rights, without any discrimination[[2]](#footnote-2). Arbitrary or unjustified differential treatment is prohibited[[3]](#footnote-3). Discrimination on the basis of disability is any distinction, exclusion or restriction which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, under equal basis, of all human rights and fundamental freedoms by persons with disabilities in the political, economic, social, cultural, civil or any other field. It considers all forms of discrimination, including denial of reasonable accommodation[[4]](#footnote-4).

The application of the gender, childhood and aging approach in conjunction with the human rights model for persons with disabilities will contribute to the achievement of substantive equality.

Similarly, the application of the criterion of intersectionality between disability and other circumstances of the person, such as ethnicity, residence in rural areas or nationality, among others, will contribute to achieving substantive equality, eliminating discriminatory acts or omissions.

1. **Legal Capacity:**: It is the capacity to be the holder of rights and obligations and to exercise those rights and obligations (legitimacy to act). It is a universal attribute inherent to all persons due to their human condition and must be maintained for persons with disabilities on equal terms with others. It is the key to access a real and effective participation in society. Legal capacity is essential for the exercise of civil, political, social, economic and cultural rights. Support[[5]](#footnote-5) in the exercise of legal capacity must respect the rights, will and preferences of persons with disabilities and must never consist of deciding for them. This is the model of will with supports and safeguards[[6]](#footnote-6).
2. **Universal** **accessibility**: It is the set of conditions that must be met by physical spaces, transportation, information and communications, technology, goods and services, processes and procedures so that they can be used by all persons in the safest, most comfortable and efficient way possible. It is based on universal design. It is the pillar and bridge for the exercise of human rights and fundamental freedoms. It is key to independent living and the full and effective participation of persons with disabilities in society.
3. **Procedural** **Accommodations**: These are particular and precise forms of accommodation to facilitate the effective functions of persons with disabilities in all judicial proceedings, including the investigation stage and other preliminary stages. Unlike reasonable accommodation[[7]](#footnote-7), they are not limited by claiming a disproportionate or undue burden. Procedural accommodations can be implemented at three levels: in the procedural legislation, in the internal regulations of the judiciary, and by the judges in a specific case. The role of the judge in particular will be decisive, since s/he must have adaptations that emanate from common sense in the specific cases that s/he is hearing, even when they are not contemplated in the law or in the self-regulations of the judiciary. For this, the requests that emanate from the person with a disability must always be attended to in a process or in consultation with said person beforehand.

The casuistry is usually broad and it may happen that some diversifications are not exhaustively regulated beforehand. This includes diversification of measures for each disability and person, allowing diverse and flexible accommodations, always considering their relevance and pertinence.

1. **Training**: Initial and continuous training must be given to judges, auxiliary officials of the administration of justice, including guards at judicial precincts, so that they learn the human rights model of persons with disabilities, the exercise of their rights and practical knowledge of different disabilities. This training should include modules for direct interaction with persons with disabilities and their representative organizations. It should include training in the correct use of language, the elimination of pejorative language and attitudinal barriers, such as overprotection and infantilized treatment of persons with disabilities. It is important to train judicial personnel in the sign language of the respective country, as well as to be prepared to understand the non-verbal language of persons with disabilities.

It is relevant to generate clear protocols for treatment, information and communication regarding the relationship between judicial officials and users of the system who present disabilities. Adequate treatment must be given by all officials without being random or voluntary.

Training should also be extended to users with disabilities who approach the judiciary, both regarding their rights, including the right to procedural accommodations, as well as actions and resources for access to justice.

1. **Defense and legal representation:** Defense and free legal representation services must be trained to receive persons with disabilities, taking into account their diversity with the application of the human rights model.

On the other hand, it should be borne in mind that there are practicing lawyers with disabilities who are entitled to all appropriate procedural accommodations to carry out their professional work, at their own request.

The Administration of Justice must recognize the role of self-advocates and consider the figure of support in the defense that a person with a disability can make of their own rights.

1. **Dimensions for the Access to Justice of Persons with Disabilities**

There is a diversity of areas related to access to justice for persons with disabilities:

1. **Dimensions regarding the types of disability**: The Convention conceptualizes persons with disabilities, including those with long-term physical, mental, intellectual or sensory impairments that, by interacting with various barriers, may prevent their full and effective participation in society, on equal terms with others[[8]](#footnote-8). It is an open concept that evolves, allowing the incorporation of new forms of disability.
2. **Dimensions regarding the types of procedure**. Access to justice extends to all procedures contemplated in national legislation: civil, criminal, family, commercial, tax, labor, customs, administrative, arbitration and mediation, among others. Likewise, in various types of courts, starting from the base of the jurisdictional pyramid and reaching the highest courts.
3. **Dimensions regarding procedural roles**. It is necessary to emphasize the guarantee of the broadest participation that a person can develop in a process, whether direct or indirect: plaintiff, defendant, complainant, appellant, appellee, petitioner, appealed, applicant, intervener, third party or witness, among others.
4. **Dimensions regarding the procedural stages**. All the phases of the process are included considering preliminary stages, investigation, and development of the procedure, including the evidentiary term, the sentence and its execution.
5. **Dimensions** **regarding** **accessibility**. This means access to the infrastructure of the administration of justice: tribunals and courts, administration offices, receptions, courtrooms and podiums, sitting rooms, elevators, toilets, among others. It also includes access to information, communication, technology and transportation. The dimension of cognitive accessibility should also be considered.
6. **Dimensions regarding the officials of the administration of justice**. Access to justice involves all operators of the judicial system, that is, court magistracies, court judges, secretaries, officers, process servers, *rapporteurs*, prosecutors, defense lawyers, notaries, auxiliary staff, trial lawyers and other officials of the justice system in general.
7. **Dimensions regarding awareness**. Physical/architectural, transportation, information, communications and technology barriers must be eliminated, as well as cultural, attitudinal and legal barriers, creating affirmative action measures and/or equal opportunity conditions for the effective role of all persons with disabilities in their access to justice.
8. **Practical Recommendations for the Effective Access to Justice of Persons with Disabilities**

Court and tribunal officials shall assume an active role in guaranteeing access to justice for persons with disabilities, for this reason they shall:

* 1. **Respect the Individual Autonomy of persons with disabilities**, including the freedom to make their own decisions.
  2. **Recognize persons with disabilities as subjects of law**.
  3. Eliminate paternalism and welfarist treatment, in order to achieve their full and effective participation and inclusion in society.
  4. **Guarantee universal accessibility to the physical spaces and facilities of the courts of justice.** On the street level of new and old buildings of the courts of justice, accessible rooms for users with disabilities must be considered for their interviews, hearings, and other judicial proceedings. Accessibility shall be included in the signage of the judicial precinct.
  5. **Ensure access to information and communication**, being clear, accurate and timely, using accessible formats such as Braille, audio, macrotypes, color contrasts, texts in simple language and easy reading, among others. It is recommended to have accessible information in waiting rooms, explaining the form of attention and procedures. For example, providing information through videos with sign language interpretation, subtitles and audible descriptions. The choice of formats and media for information and communication should be of free choice for persons with disabilities.
  6. **Promote digital accessibility**, modernizing the technologies available in the courts and tribunals. Some examples are: computer applications adapted to the type of disability, use of Judicial Branch web pages with different accessibility options, use of QR codes for information on the physical space of the judicial precinct, audiovisual guides for orientation of processes and the physical space of the Court, among others.
  7. **Guarantee procedural accommodations agreed with the persons.** Officials must grant persons with disabilities preferential schedules for hearings if requested, as well as the presence of personal support. It is a right for persons with disabilities to attend with people they trust when it is required. For example, emotional support for persons with intellectual disabilities, orientation and mobility in the case of blind persons, breaks for hydration, medication or any other personal need.
  8. **Encourage diversified support**: “Support” is a broad term that encompasses formal and informal arrangements of different types and intensities. The type and intensity of support provided will vary greatly from person to person due to the diversity of persons with disabilities. Support in the exercise of legal capacity shall respect the rights, will and preferences of persons with disabilities and must never consist of deciding for them. The support must not have a conflict of interest with the person with a disability or exert undue influence on the person with a disability. Such support can take various forms, such as the recognition of different methods of communication, allowing the authorization of video testimony in certain situations, the provision of procedural accommodations, the provision of professional sign language interpretation services and other methods.
  9. **Promote direct communication**, practicing active listening to persons with disabilities by officials, addressing them directly and not their companion, even if it is a family member. Each person requires different times to express what is happening to him/her and/or what he/she needs. Listening should include the perception of non-verbal language.
  10. **Promote an atmosphere of trust and a safe environment**, where the person with a disability can express him/herself freely, safeguarding his/her time and forms of interaction, without interrupting or discrediting the credibility of his/her stories. Be careful not to revictimize the person with disability. The person with a disability has the right to request that his/her companion not be present during his/her statement.
  11. **Eliminate prejudices and stereotypes regarding the various types of disability.** Officials should provide reassurance and security to persons with disabilities, protecting and promoting their inherent dignity, human rights and fundamental freedoms.
  12. **Ensure due diligence in the processes, prioritizing the attention, processing, issuance and execution of judicial resolutions involving persons with disabilities**, especially complying with the principles of procedural economy and speed.
  13. **Replace in-person hearings or procedures** with videoconferences, avoiding unnecessary appearances and taking advantage of in-person instances for notifications and resorting to accessible modes when making them. This is not about privileges, but about rights.
  14. **Provide and implement preferential attention modules with accessible information on judicial procedures**, services and orientations in relation to the physical space of the Courts and Tribunals of Justice. It should not be a requirement to prove disability in order to receive preferential attention. Judicial officials should have a technical knowledge of the responses to the needs of persons with disabilities, differentiating those of each group and for each person.
  15. **Guarantee the availability of accessible complaint mechanisms** so that persons with disabilities can complain about specific situations in which they have not had adequate access to justice because their procedural guarantees have not been complied with, so that the Judiciary can take the appropriate measures.
  16. **Encourage the contribution of organizations of Persons with Disabilities to guide the Judiciary on access to justice, procedural accommodations, accessibility and reasonable accommodations for persons with disabilities.**
  17. **Supervise and guarantee adequate access to justice for persons with disabilities**: Each Court must ensure that access to justice for persons with disabilities, their equal treatment and equal opportunities are complied with. To this end, judges may entrust this task to an official of the Court who, during the course of a trial or voluntary judicial proceedings, identifies the barriers faced by the person with a disability and proposes procedural accommodations previously agreed upon with the person with a disability acting in the process.

In this way, each case in which a person with a disability is a party is monitored, supervising compliance with procedural accommodations, the proper functioning of the supports for the exercise of legal capacity and the timeliness of judicial decisions, informing the judge if this does not occur.

**4. Particular Practical Recommendations for officials of the administration of justice in their attention to Persons with Disabilities**

Distinctions have to be made to the most frequent types of disability listed in the Convention, which does not preclude the incorporation of other procedural accommodations according to the diversity of other disabilities:

1. **Person with physical disability**:

If the person is a wheelchair user, do not touch the chair or lean on it without asking permission. Sit in front of the person with a disability so that you both face each other. Sit in front of the person with a disability so that you both face each other. It is important to interact at the same height, especially if you are behind a window or a service desk

Do not move crutches, canes, wheelchairs or other assistive devices without asking permission and make sure that these technical aids are returned if the person has separated from them.

Respect the person’s pace. If the person has a disability in the upper limbs, and cannot sign, ask how he or she can record his or her agreement with his or her statement or performance in the process having the right to request rectifications when necessary.

If the person presents speaking difficulties, and you cannot understand him/her, do not pretend that you do understand him/her. Ask for the communication format that is useful to provide. Ask questions that can be answered with "yes" or "no". Give them as much time as they need to explain what is happening or requested. Keep in mind that they can make written statements.

1. **Person with visual disability**:

Before interacting, introduce yourself. Use guiding words and not gestures. Ask if the person is blind or has low vision. Do not yell or exaggerate your speech. Support his or her movement by asking how he or she wants to move without invading.

Ask if he/she offers you his/her arm or if he/she prefers to be guided by touching your shoulder. Warn them in advance of steps, stairs, and elevators. If the person uses a cane, do not take it off or raise the cane from the arm. Respect the entry of a guide dog if it accompanies the person. Comment on what you are doing, giving references to where you are and the people present and their functions. Tell the person what the judicial action in which he/she will participate consists of. If the person requests to enter with a trusted companion, this must be allowed. Documentation should be read aloud before signing. Say goodbye before leaving.

1. **Person with hearing disability:**

Make sure the person is paying attention to you before addressing them. If he/she is not facing you, you can tap him/her on the shoulder to turn around so you can interact. Do not shout or exaggerate your speech. Look directly at the person and do not cover your mouth so they can see your facial expression. In the case of mandatory use of masks due to the COVID-19 pandemic, it is recommended that the staff member have clear masks to facilitate communication.

Only some deaf persons are lip-readers, but if this is the case, it will be helpful if you can modulate well. If the person comes with his or her own sign language interpreter, remember that the interaction is with the deaf person and you must address that person. Ask them how best to communicate with them. If you do not communicate through sign language, gestural language, visual aids, simple written language, as well as infographics prepared in advance may be useful.

Justice officials should have at least a basic level of sign language for general services. Then, for court proceedings such as a statement or a hearing in the judiciary, professional sign language interpreters from the respective country must be available. The interpreters must be registered as experts by the Judiciary to ensure impartiality. If the person brings an interpreter he/she trusts, the latter should be preferred.

1. **Person with intellectual disability:**

It is considered necessary to establish a relationship of trust with the person before starting the judicial diligence. If the person is of legal age, do not infantilize him/her. Open questions should be asked that are not leading, use simple language, short sentences, and offer breaks as often as the person requests. Explain to the person the subject matter to be reviewed, the roles of the persons present, the stages of the process, the sentence, and consider easy-to-read format if preferred. Do not use acronyms or technical names in explanations.

Ask simple and direct questions. This should be respected by everyone who interacts with the person with an intellectual disability at the hearing or in the courtroom. Ask if there is something he/she did not understand and offer to re-explain. Consider the use of pictograms, pre-visits to the courtroom, maintaining objects of attachment, and relaxing protocols in general. Consider their testimony in its entirety.

1. **Person with psychosocial disability**:

It is important to validate the person's testimony. Be attentive to consider their stories and do not question or minimize what they are saying. Do not assume that you are dealing with a dangerous person as this would be prejudicial.

The recommendations mentioned in this document seek that judges and officials of the administration of justice assume an active role in guaranteeing the right of access to justice, ensuring the full and effective participation of persons with disabilities as procedural subjects and guaranteeing all their human rights and fundamental freedoms.

It is of utmost importance that these practical recommendations pave the way for future regulations or protocols that are mandatory for those working in the Judiciary.

1. Diccionario Panhispánico del español jurídico:

   <https://dpej.rae.es/lema/dignidad-de-la-persona> [↑](#footnote-ref-1)
2. Based on the Universal Declaration of Human Rights 1948, <https://eacnur.org/es/actualidad/noticias/historias-de-vida/derecho-la-igualdad> [↑](#footnote-ref-2)
3. <https://www.corteidh.or.cr/tablas/32092.pdf>, p.75. [↑](#footnote-ref-3)
4. Article 2 CRPD: Reasonable accommodation means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms. [↑](#footnote-ref-4)
5. General Comment No. 1 on equal recognition as a person before the law, CRPD Committee: "Support" is a broad term that encompasses official and informal arrangements of different types and intensities. Persons with disabilities may choose one or more support persons whom they trust to help them exercise their legal capacity with respect to certain types of decisions, or they may use other forms of support, such as peer support, advocacy of their interests (including advocacy support) or assistance in communicating. [↑](#footnote-ref-5)
6. Article 12 paragraph 4 CRPD: Safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person’s circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. [↑](#footnote-ref-6)
7. Article 2 CRPD: “Reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms. [↑](#footnote-ref-7)
8. Article 1 paragraph 2 CRPD. [↑](#footnote-ref-8)