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ARTICLE

WHAT DOES ACCESS TO JUSTICE REQUIRE? — OVERCOMING BARRIERS TO INVOKE THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

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Abstract Persons with disabilities have a right to effective access to justice under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). This article provides insights on the parameters of that right, including a close examination of the history and text of Article 13, which directly addresses access to justice and other relevant UNCRPD provisions. In addition to the UNCRPD, this article discusses implementation guidance from the Committee on the Rights of Persons with Disabilities, including its guidelines for State Party reports and jurisprudence. The initial reports by eleven States Parties — Argentina, Azerbaijan, China, Costa Rica, Croatia, Dominican Republic, Ecuador, Hungary, Mexico, Peru and Turkmenistan — are also considered. The Committee's feedback regarding implementation of Article 13 by these eleven States parties is critiqued for being limited and inconsistent. This article then attempts to clarify what effective access to justice actually requires. It does so by focusing on the insights that can be drawn from implementation of Article 13 since the UNCRPD was adopted as well as implementation guidance from the Conference of States Parties, the International Disability Alliance, the World Network of Users and Survivors of Psychiatry and the National Center for Access to Justice. This article concludes with recommendations on how the Committee can improve its guidance on access to justice to help ensure that equal rights will not be illusory for persons with disabilities.

Keywords access to justice, Convention on the Rights of Persons with Disabilities, right to counsel, Committee on the Rights of Persons with Disabilities

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INTRODUCTION

The purpose of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)[1] "is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity."[2] However, without access to justice, persons with disabilities are not able to realize these rights and freedoms. Without access to justice, it is also very difficult for persons with disabilities to invoke the UNCRPD in their own countries.

Article 13 of the UNCRPD directly addresses access to justice. As one prominent commentator has written, equal rights will be illusory for persons with disabilities unless they have effective access to justice on an equal basis with others:

> *The extent to which [Article 13] is honored by signatory nations will have a major impact on the extent to which this entire Convention "matters" to persons with [] disabilities. It is still a very open question as to whether or not these rights will actually be given life, or whether they will remain little more than "paper victories."*[3]

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[1] G. A. Res. 61/106, United Nations Convention on the Rights of Persons with Disabilities (Dec. 13, 2006) [hereinafter UNCRPD].

[2] Id. Art. 1.

[3] Michael L. Perlin, "*Through the Wild Cathedral Evening": Barriers, Attitudes, Participatory Democracy, Professor tenBroek, and the Rights of Persons with Mental Disabilities*, 13 Texas Journal on Civil Liberties & Civil Right 413, 418–419 (2008).

Although access to justice is critically important, Article 13 is brief and does not provide many details about how states parties can ensure effective access to justice. The Committee on the Rights of Persons with Disabilities is charged with providing guidelines for state party reports. Unfortunately, the Committee's guidance regarding Article 13 is also very limited.

In their initial reports to the Committee, states parties have generally not provided detailed information regarding their efforts to implement Article 13. States parties often fail to provide even the limited information requested in the Committee's guidelines. Despite these deficiencies, the Committee's feedback regarding implementation of Article 13 has also been limited and inconsistent. For example, the Committee has not yet given clear guidance to states parties about one of the central questions regarding Article 13: Does effective access to justice require a right to counsel?

This article attempts to provide insights on the parameters of the right that persons with disabilities have effective access to justice on an equal basis with others. Part I examines the concept of access to justice in the UNCRPD. It focuses first on Article 13. Part I then discusses the other UNCRPD articles that provide the context for a more complete understanding of Article 13. Part II examines implementation of access to justice. It does so first by reviewing the guidance that the Committee offers states parties about the steps they should take to achieve access to justice. Part II then discusses the initial reports by eleven countries on their efforts to implement access to justice. The eleven countries are Argentina, Azerbaijan, China, Costa Rica, Croatia, Dominican Republic, Ecuador, Hungary, Mexico, Peru and Turkmenistan. Part II also discusses the feedback that the Committee has offered regarding the state party reports. Part III attempts to clarify what effective access to justice actually requires. This part first focuses on the insights that can be drawn from states parties' implementation of Article 13. It then describes access to justice implementation guidance from other sources, including reports from the Conference of States Parties to the Convention on the Rights of Persons with Disabilities (Conference of States Parties) and implementation guidance offered by prominent Non-Governmental Organizations (NGOs). The article concludes with recommendations on how the Committee can improve the guidance and feedback that it offers states parties to ensure that the rights set forth in the UNCRPD will be more than "paper victories."

I. ACCESS TO JUSTICE IN THE CONVENTION

The UNCRPD was adopted on December 13, 2006, during the sixty-first session of the United Nations (UN) General Assembly.[4] Pursuant to Article 42, the UNCRPD and its Optional Protocol were opened for signature as of March 30, 2007.[5] 133 states have

[4] See UNCRPD, available at http://www.un.org/disabilities/default.asp?navid=14&pid=150 (last visited Nov. 30, 2015).

[5] See fn. 1 Art. 42.

signed and ratified the UNCRPD, and an additional twenty-seven states have directly ratified the UNCRPD without first signing it through a process called accession.[6] Another twenty-seven states, including the US, have signed but not ratified the UNCRPD.[7]

This Part focuses first on Article 13 of the UNCRPD, which directly addresses access to justice. It then discusses other UNCRPD articles that are relevant to access to justice.

A. Article 13: Access to Justice

During the drafting process, Article 13 grew out of what was originally draft Article 9, equal recognition as a person before the law.[8] During the fourth session of the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities (Ad Hoc Committee), several states submitted proposals to strengthen the access to justice provision.[9] Chile, for example, argued that "it is vital to stress the issue of 'access to courts,' a broad concept which covers various substantive and procedural aspects. Such access constitutes one of the main pillars of the exercise of citizenship rights…"[10] Costa Rica proposed a new, separate article on access to justice:

> *States Parties to this convention shall recognize that the full and effective enjoyment by persons with disabilities of equality before the law shall require the modification, adjustment and flexible application of legal procedures, practice and rules, including rules of evidence. The States Parties [sh]all take immediate and effective measures to provide such accommodation which shall include:*
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> *1) provision of information in plain language and other formats accessible to persons with disabilities;*

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[6] See United Nations, Convention and Optional Protocol Signatures and Ratifications, available at http://www.un.org/disabilities/countries.asp?navid=12&pid=166 (last visited Nov. 30, 2015).

[7] Id.

[8] See *e.g.* Rep. of the Third Session of the Ad Hoc Comm. on a Comprehensive and Integral Int'l Convention on the Prot. and Promotion of the Rights and Dignity of Persons with Disabilities, U.N. Doc. A/AC.265/2004/5, at 23 (Jun. 9, 2004) (noting that Japan proposed the following addition to Art. 9: "Take appropriate and effective measures to eliminate physical…and communication barriers and to reduce understanding difficulty of persons with disabilities in order to exercise all rights in judicial procedure which are provided in the international Covenant on Civil and Political Rights."); Rep. of the Ad Hoc Comm. on a Comprehensive and Integral Int'l Convention on the Prot. and Promotion of the Rights and Dignity of Persons with Disabilities on Its Fifth Session, U.N. Doc. A/AC.265/2005/2, at 8 (Feb. 23, 2005) [hereinafter Fifth Session Rep.] ("During the discussion of draft article 9, considerable support was expressed for the inclusion in the convention of language that would guarantee persons with disabilities access to justice.").

[9] See Fourth Session of the Ad Hoc Comm. on a Comprehensive and Integral Int'l Convention on the Prot. and Promotion of the Rights and Dignity of Persons with Disabilities, Article 13 — Access to justice: Comments, proposals and amendments submitted electronically, available at http://www.un.org/esa/socdev/enable/rights/ahcstata13fscomments.htm (last visited Nov. 30, 2015).

[10] Id.

2) provision of personal assistance to understand legal procedures, practices and rules;

3) recognizing and facilitating access to alternative modes of communication and communication technology, including sign language and Braille;

4) tak[ing] all necessary measures to ensure [that] everyone whose rights and freedoms as recognized in this convention are violated shall have an effective remedy before a national authority, notwithstanding that the violation has been committed in an official capacity.[11]

During the fifth session of the Ad Hoc Committee, Costa Rica reiterated its call for a separate article on access to justice, noting that the focus of draft Article 9 was on legal capacity.[12] Several other countries, including Australia and the US, argued that the proposed language regarding access to justice should remain in draft Article 9.[13] There was also debate about the scope of the access to justice provision. A group of NGOs and states, including Australia, Bosnia and Herzegovina, Canada, Chile, Costa Rica, Mexico and Russia, came to the conclusion that the access to justice provision should be "a broad and general statement, adaptable to different legal systems and without specific lists or guidelines…"[14] At the end of the fifth session, the access to justice provision was still part of draft Article 9, and it read in full as follows: "States parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, facilitating their effective role as direct and indirect participants in all legal proceedings, including the investigative and other preliminary stages."[15]

During the seventh session of the Ad Hoc Committee, the access to justice provision was moved to Article 13, and it evolved considerably. Israel proposed additional language requiring states parties to make procedural accommodations to their justice systems, and Chile suggested incorporating training for court officials, police, and prison officials.[16]

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[11] See Fourth Session of the Ad Hoc Comm. on a Comprehensive and Integral Int'l Convention on the Prot. and Promotion of the Rights and Dignity of Persons with Disabilities, Daily summary of discussions related to Article 9: Equal Recognition as a Person Before the Law, vol. 5, no. 4 (Aug. 26, 2004), available at http://www.un.org/esa/socdev/enable/rights/ahc4sumart09.htm (last visited Nov. 30, 2015).

[12] See UN Convention on the Human Rights of People with Disabilities, Ad Hoc Committee, Daily summary of discussion at the fifth session, vol. 6, no. 3 (Jan. 26, 2005), available at http://www.un.org/esa/socdev/enable/rights/ahc5sum26jan.htm (last visited Nov. 30, 2015).

[13] Id.

[14] UN Convention on the Human Rights of People with Disabilities, Ad Hoc Committee, Daily summary of discussion at the fifth session, vol. 6, no. 5 (Jan. 28, 2005), available at http://www.un.org/esa/socdev/enable/rights/ahc5sum28jan.htm (last visited Nov. 30, 2015).

[15] See Fifth Session Rep., fn. 8 at 8 & 26.

[16] See UN Convention on the Human Rights of People with Disabilities, Ad Hoc Committee, Daily summary of discussion at the seventh session, vol. 8, no. 3 (Jan. 18, 2006), available at http://www.un.org/esa/socdev/enable/rights/ahc7sum18jan.htm (last visited Nov. 30, 2015) [hereinafter Jan. 18, 2006 Daily Summary].

The debate continued over the appropriate level of detail. Yemen, for example, expressed concern "that a detailed article would lead to endless enumeration of the issues and aspects related to access to justice."[17] The Chair summarized the discussion by concluding that it "should be possible to bridge the desire to elaborate with the need to be succinct in an amended text, with elaboration on such essential issues such as training of justice personnel and accommodation or adjustment in process terms."[18]

Although it grew substantially during the drafting process, the access to justice article is still comparatively brief. With only ninety words, Article 13 is among the shortest of the UNCRPD's thirty-three substantive articles (See Fig. 1).[19] It is, for example, much less specific than Article 24, which uses almost 500 words to detail the requirements regarding education.[20]

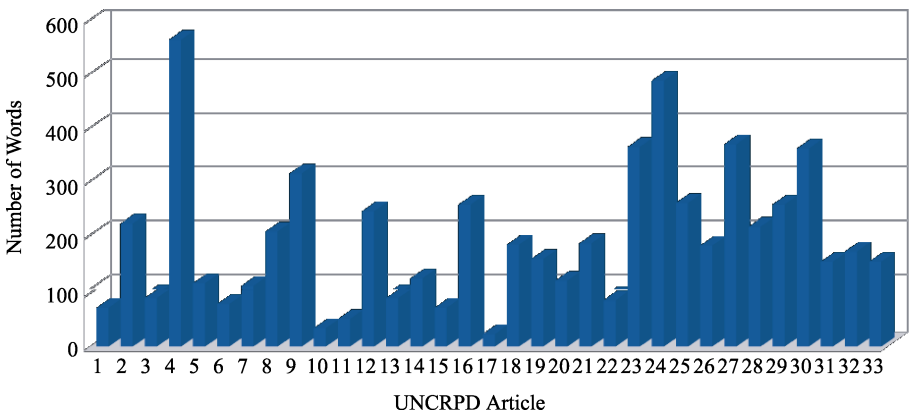

Fig. 1 Number of Words in Each Substantive Article of the UNCRPD

The final text of Article 13 reads in full as follows:

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

[17] Id.

[18] Id.

[19] The longest substantive article is Art. 4, General obligations, with 562 words. The shortest is Art. 17, Protecting the integrity of the person, with twenty-three words. Only nine of thirty-three substantive articles have less than 100 words.

[20] Id.

administration of justice, including police and prison staff.[21]

Paragraph one clearly states the general principle that states parties have to ensure access to justice. It then sets forth a non-exclusive list of examples of what a State must do in order to ensure access to justice. Paragraph two focuses on training.

Paragraph one of Article 13 has three main elements. First, this article does not simply mandate "access to justice," it mandates "effective access to justice."[22] The word "effective" is an important one, and it appears frequently — including three times in Article 13 alone — in the UNCRPD.[23] To understand what the word "effective" means in this context, it is helpful to examine the use of that word in the context of the Americans with Disabilities Act of 1990 (ADA).

Title II of the ADA prohibits discrimination by public entities, including state and local governments, their respective departments, agencies and other instrumentalities.[24] Under the ADA, federal regulations impose specific requirements upon courts and other public entities regarding communications with individuals with disabilities. Courts, as public entities, are required to "take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others."[25] Federal guidance explains:

> *What does it mean for communication to be "effective"? Simply put, "effective communication" means that whatever is written or spoken must be as clear and understandable to people with disabilities as it is for people who do not have disabilities. This is important because some people have disabilities that affect how they communicate.*[26]

"Effective access to justice" means access to police, prisons, courts, tribunals, and other instruments of justice that is as attainable to people who have disabilities as it is for people who do not have disabilities.

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[21] See fn. 1 Art. 13. For brief discussions of the history of the debate over the access to justice provision in the UNCRPD, see Esmé Grant & Rhonda Neuhaus, *Liberty And Justice For All: The Convention on the Rights of Persons with Disabilities*, 19 ILSA Journal of International & Comparative Law 347, 354 (2013); Eilionóir Flynn, *Making Human Rights Meaningful for People with Disabilities: Recognising a Right to Advocacy in International Human Rights Law*, 15 Centre for Disability Law and Policy Working Paper Series, 2011), available at http://ssrn.com/abstract=1924375 (last visited Nov. 30, 2015); Frances Gibson, *Article 13 of the Convention on the Rights of Persons with Disabilities — A Right to Legal Aid?*, 15 Australian Journal of Human Rights 123, 125–126 (2010).

[22] See fn. 1 Art. 13 (emphasis added).

[23] The word "effective" appears twenty-seven times in the UNCRPD and "effectively" appears an additional five times.

[24] See 42 U.S.C. §§ 12131–34.

[25] See 28 C.F.R. § 35.160(a)(1) (emphasis added).

[26] ADA Best Practices Tool Kit for State and Local Governments, Chapter 3: General Effective Communication Requirements under Title II of the ADA, available at http://www.ada.gov/pcatoolkit/chap3toolkit.htm (last visited Nov. 30, 2015) (emphasis in the original).

Second, paragraph one of Article 13 emphasizes that access to justice for persons with disabilities must be "on an equal basis with others." The UNCRPD's use of the term "effective" to modify "access to justice" is amplified by the use, in the same sentence, of the phrase: "on an equal basis with others…" The phrase "equal basis" is a common one in the UNCRPD — it appears thirty-five times in total.

The UNCRPD describes the term "disability" itself as the result of "the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others."[27] The UNCRPD's purpose is to eliminate those barriers so that persons with disabilities can fully and effectively participate in society on an equal basis with others.[28] In Article 13, as in other places, the use of the term "equal basis with others" emphasizes the standard that the UNCRPD sets forth — full and actual equal access to justice.

Third, paragraph one of Article 13 illustrates some of the things that a state must do to ensure effective access to justice. This list, which is not exhaustive, focuses on the need to make "procedural and age-appropriate accommodations."[29] The purpose of the required accommodations is to ensure participation by persons with disabilities at all stages of legal proceedings.

Article 13 is the only place in the UNCRPD where the word "accommodation" is not limited by the term "reasonable."[30] The UNCRPD defines a "reasonable accommodation" as "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."[31] The omission of the word "reasonable" in Article 13 is significant. During negotiations over this provision, "Israel clarified that 'accommodation' does not refer to 'reasonable accommodation' in this context but rather to needed adjustments and modifications to the systems and processes…"[32] Based on the absence of the term "reasonable," it appears that, in the context of access to justice, a

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[27] See fn. 1 Preamble(e) (emphasis added) and Art. 1 ("Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.").

[28] Id. Art. 1 ("The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.").

[29] Id. Art. 13.

[30] The term "reasonable accommodation" appears seven times in the UNCRPD.

[31] Id.

[32] See Jan. 18, 2006 Daily Summary, fn. 16; see also Israel Position Paper for the 7th Ad Hoc Comm. — First week (Jan. 12, 2006), available at http://www.un.org/esa/socdev/enable/rights/ahc7israel.htm (last visited Nov. 30, 2015) ("The main barrier preventing access to the justice system, which should be addressed by the Convention, is not necessarily a physical one, but first and foremost lack of accommodations at the process level.").

request for an accommodation should be granted even if it imposed a disproportionate or undue burden. The omission of the word "reasonable" also seems to at least implicitly recognize that "procedural and age-appropriate accommodations" are unlikely to impose a disproportionate or undue burden.

Paragraph two of Article 13 focuses on the importance of training. It requires States to "promote appropriate training" for people who work in the justice system. This provision emphasizes that, in order to help ensure effective access to justice for persons with disabilities, police and prison staff, among others, should be trained.

B. Other Articles That Are Relevant to Access to Justice

There are other UNCRPD provisions that are relevant to ensuring access to justice for persons with disabilities. Among these provisions are the Preamble and Articles 1, 2, 3, 4, 5, 9, 12, 14, 15, and 21.

The right to participation is paramount in the UNCRPD. In describing the term "disability," the Preamble highlights the importance of "full and effective participation."[33] This is just one of the four times in the Preamble alone that the UNCRPD emphasizes the importance of "participation."[34] One of the "general principles" set forth in Article 3 is "[f]ull and effective participation and inclusion in society."[35] Two other general principles — "[a]ccessibility" and "[n]on-discrimination" — are also essential to allow persons with disabilities to participate in the justice system.[36]

Article 1, which sets forth the purpose of the UNCRPD, focuses on the importance of ensuring that persons with disabilities have "full and equal enjoyment of all human rights and fundamental freedoms."[37] One key human right is access to justice.

Article 2 defines "discrimination" broadly to include "any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all

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[33] See fn. 1 Preamble(e) and Art. 1 ("Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.").

[34] Id. Preamble(e), (k) ("…persons with disabilities continue to face barriers in their participation as equal members of society and violations of their human rights in all parts of the world"), (m) ("…the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms and of full participation by persons with disabilities will result in their enhanced sense of belonging and in significant advances in the human, social and economic development of society and the eradication of poverty"), and (y) ("…a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities will make a significant contribution to redressing the profound social disadvantage of persons with disabilities and promote their participation in the civil, political, economic, social and cultural spheres…"). The term "participation" or "participate" appears a total of twenty-five times within the UNCRPD.

[35] Id. Art. 3.

[36] Id.

[37] Id. Art. 1.

human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."[38] The UNCRPD specifically states that the denial of a request for a reasonable accommodation constitutes discrimination.[39] If persons with disabilities are excluded from participating in the justice system, it clearly constitutes discrimination. Moreover, to combat discrimination, persons with disabilities must have access to justice.

Similarly, Article 5, equality and non-discrimination, focus, in large part, on the legal protections that are essential to ensure access to justice. The first paragraph of Article 5 emphasizes that "all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law."[40] The second paragraph requires states parties to "guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds."[41]

Article 9, accessibility, is also key to ensuring access to justice. Access to justice is unattainable without equal access to "to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public…"[42] Article 9 specifies the communication accessibility that is required in courthouses and other aspects of the justice system, including: "public signage in Braille and in easy to read and understand forms" and "live assistance and intermediaries, including guides, readers and professional sign language interpreters…"[43] Accessible information is also the subject of Article 21, which requires states parties to provide information in accessible formats and to "accept[] and facilitat[e] the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions."[44]

Article 12, equal recognition before the law, is central to ensuring access to justice. As discussed above in Part I.A, both Article 12 and Article 13 grew out of draft Article 9. Although the UNCRPD's provisions on legal capacity and access to justice now reside in different articles, they are still intertwined. Legal capacity is a necessary, but not a sufficient, precondition for access to justice. Article 12 requires that states parties recognize that "persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life."[45] It also requires states parties to provide persons with disabilities

[38] Id. Art. 2.

[39] Id.

[40] Id. Art. 5 (emphasis added).

[41] Id. (emphasis added).

[42] Id. Art. 9(1).

[43] Id. Art. 9(2)(d)–(e).

[44] Id. Art. 21.

[45] Id. Art. 12(2).

with the assistance that they might need in order to exercise their legal capacity.[46] The centrality of legal capacity has been examined at length by other commentators.[47]

Article 14 of the UNCRPD requires states parties to "ensure that persons with disabilities, on an equal basis with others[,] [e]njoy the right to liberty and security of person."[48] States parties must also ensure that persons with disabilities "[a]re not deprived of their liberty unlawfully or arbitrarily…and that the existence of a disability shall in no case justify a deprivation of liberty."[49] Article 14 requires that any deprivation of liberty is "in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation."[50] These provisions require a justice system that treats persons with disabilities fairly.

Article 15 prohibits "torture or [] cruel, inhuman or degrading treatment or punishment."[51] States parties are required to "take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities [] from being subjected to torture or cruel, inhuman or degrading treatment or punishment."[52] A state cannot fulfill the mandate of Article 15 without having a justice system that is accessible to persons with disabilities.

The UNCRPD was adopted by the UN General Assembly more than eight years ago. The next Part will examine reports by eleven countries on their efforts to implement effective access to justice for persons with disabilities. It will also examine the guidance that the UNCRPD has offered states parties about the steps they should take to achieve access to justice.

II. IMPLEMENTATION OF ACCESS TO JUSTICE

A state party must submit a report to the Committee on the Rights of Persons with Disabilities (the "Committee") within two years of the entry into force of the UNCRPD for the state party.[53] So far, eighty-four states parties have submitted reports to the Committee.[54] The Committee is charged with considering these reports and making

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[46] Id. Art. 12(3).

[47] See generally, *e.g.* Robert D. Dinerstein, *Implementing Legal Capacity Under Article 12 of the UN Convention on the Rights of Persons with Disabilities: The Difficult Road from Guardianship to Supported Decision-Making*, 19 Human Rights Brief 8 (2012); Kristin Booth Glen, *Changing Paradigms: Mental Capacity, Legal Capacity, Guardianship, and Beyond*, 44 Columbia Human Rights Law Review 93, (2012).

[48] See fn. 1 Art. 14(1).

[49] Id.

[50] Id. Art. 14(2).

[51] Id. Art. 15(1).

[52] Id. Art. 15(2).

[53] Id. Art. 35.

[54] Search of United Nations Human Rights, Office of the High Commissioner for Human Rights, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=4&DocTypeID=29 (last visited Nov. 30, 2015).

"suggestions and general recommendations on the reports[s]."[55] So far, the Committee has responded with lists of issues for thirty-nine of the state party reports.[56] States parties may respond to these lists of issues,[57] and, so far, thirty-three states parties have done so.[58] The Committee has thus far issued thirty-three concluding observations.[59]

States parties can look to several official sources for implementation guidance regarding access to justice. Subpart A discusses the Committee's guidelines for state party reports and the Committee's UNCRPD jurisprudence. States parties can also look for guidance on access to justice in the reports submitted by other countries and the responses those reports have elicited from the Committee. Subpart B focuses on the state party reports, lists of issues, replies to lists of issues, and concluding observations for eleven countries: Argentina, Azerbaijan, China, Costa Rica, Croatia, Dominican Republic, Ecuador, Hungary, Mexico, Peru and Turkmenistan.[60]

A. The Committee's Implementation Guidance for States Parties

Article 34 establishes the Committee. The Committee includes eighteen experts who serve in their personal capacities.[61] The Committee is charged with "decid[ing] any guidelines applicable to the content of the [state party] reports."[62] The Committee's role "in articulating and applying a coherent methodology is crucial to dismantling denial of access to justice for persons with disabilities."[63]

1. The Committee's Guidelines for State Party Reports. — The Committee has issued guidelines for the reports that states parties have to submit.[64] The purpose of these guidelines is "to advise States Parties on the form and content of their reports, so as to facilitate the preparation of reports and ensure that these are comprehensive and presented in a uniform manner by States Parties."[65]

Regarding Article 13, the guidelines specifically ask states parties to report on:

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[55] See fn. 1 Art. 36(1).

[56] See fn. 54.

[57] See fn. 1 Art. 36(1).

[58] See fn. 54.

[59] Id.

[60] A 2013 article by Esmé Grant and Rhonda Neuhaus focused on the Committee's concluding observations only for China, Israel, India, Brazil, Cambodia, and Australia. See Grant & Neuhaus, fn. 21.

[61] See fn. 1 Art. 34(2)–(3).

[62] Id. Art. 35(3).

[63] Stephanie Ortoleva, *Inaccessible Justice: Human Rights, Persons with Disabilities and the Legal System*, 17 ILSA Journal of International and Comparative Law 281, 317 (2011).

[64] See Committee on the Rights of Persons with Disabilities, Guidelines on treaty-specific document to be submitted by states parties under article 35, para. 1 of the UNCRPD, U.N. Doc.CRPD/C/2/3 (Nov. 18, 2009) [hereinafter Committee Guidelines].

[65] Id. para. 2.

> *• Measures taken to ensure the effective access to justice at all stages of the legal process, including investigative and other preliminary stages, by all persons with disabilities*
>
> *• Measures taken to ensure effective training of personnel in the national justice and prison system, in the respect for the rights of persons with disabilities*
>
> *• The availability of reasonable accommodations, including procedural accommodations that are made in the legal process to ensure effective participation of all types of persons with disabilities in the justice system, whatever the role which they find themselves in (for example as victims, perpetrators, witness or member of jury, etc.)*
>
> *• Age-related accommodations to ensure effective participation of children and young persons with disabilities.*[66]

The guidelines also specify what states parties should report for the other UNCRPD provisions — including Articles 1, 2, 3, 4, 5, 9, 12, 14, 15, and 21 — that are particularly relevant to guaranteeing access to justice for persons with disabilities. For example, a state party should report how it "defines and understands the concept of 'reasonable accommodation,' and the requirement of 'disproportionate and undue burden'…" Regarding Article 5, a state party should report on, inter alia, "[w]hether persons with disabilities are able to use the law to protect or pursue their interests on an equal basis to others…"[67] The guidelines also ask states parties to report on the measures they have taken to ensure that the physical environment, transportation, information and communications, and other facilities and services are accessible to persons with disabilities.[68] Regarding legal capacity, the guidelines ask states parties to report on the measures they have taken "to ensure that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life…"[69] States parties are also supposed to report the measures they have taken, with respect to Article 14, "to ensure that persons with disabilities who have been deprived of their liberty are provided with the required reasonable accommodation, and benefit from the same procedural guarantees as all other persons to enjoy fully their remaining human rights…"[70] The Committee also requests information on the measures that states parties have taken "to ensure that persons with disabilities can use their preferred means of communication in all forms of official interaction and access to information, such as sign language, Braille, augmentative and alternative communication, and all other accessible means."[71]

2. The Committee's Jurisprudence. — The Committee's jurisprudence is another

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[66] Id. at Annex § C.

[67] Id. at Annex § B.

[68] Id. at Annex § C.

[69] Id.

[70] Id.

[71] Id.

potential source of guidance for states parties. Unfortunately, the Committee has issued only eleven decisions.[72] Of these cases, only two have directly involved Article 13.

The first case, *A. M. vs Australia*, involved a complaint about the alleged systemic exclusion of jurors who are deaf.[73] The complainant claimed that "the domestic authorities' refusal to permit Auslan [Australian Sign Language] interpreting of courtroom proceedings and jury deliberations to enable him to participate in jury duty, should he be selected to do so, constitutes a violation of his right to effective access to justice."[74] The complainant, however, had never himself been selected for jury duty or affected by the alleged practice.[75] After finding that he was not a "victim" under the Optional Protocol, the Committee did not address the merits of this allegation.[76]

The second case, *Mr. X vs Argentina*, involved an allegation that the conditions of pretrial detention violated the complainant's rights under, inter alia, Article 13.[77] In particular, the complainant alleged that, "despite his state of health and against the advice of his doctors, he was obliged to travel to the court where the oral proceedings against him were taking place, only to be denied entry to the hearing…."[78] The Committee did not address the merits of this allegation because it found that Mr. X had not exhausted all domestic remedies with respect to this allegation.[79]

The Committee found, however, that Mr. X's complaints under Articles 9, 10, 14, 15, 17, 25, and 26 were admissible.[80] After considering the merits, the Committee held that the accommodations that were made for Mr. X at Ezeiza Prison were "insufficient" and that Argentina failed to meet its obligations under Articles 9, 14, and 17.[81] The Committee provided some useful guidance regarding the scope of the reasonable accommodation requirement in the context of incarceration:

The State party is under an obligation to ensure that prisons afford accessibility to all

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[72] See Committee on the Rights of Persons with Disabilities, Jurisprudence, available at http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Jurisprudence.aspx (last visited Dec. 1, 2015).

[73] See *A. M. vs Australia*, Communication 12/2013, Committee on the Rights of Persons with Disabilities, para. 2.1 (May 29, 2015), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/13/D/12/2013 (last visited Dec. 1, 2015).

[74] Id. para. 3.3.

[75] Id. para. 2.4.

[76] Id. para. 8.8.

[77] See *Mr. X vs Argentina*, Communication 8/2012, Committee on the Rights of Persons with Disabilities, paras. 1.1, 2.1 (Jun. 18, 2014), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/11/D/8/2012 (last visited Dec. 1, 2015).

[78] Id. para. 7.3.

[79] Id.

[80] Id. para. 7.5.

[81] Id. paras. 8.4 ("The accommodations made by the prison authorities are insufficient because the bathroom is too small to enter using a wheelchair, the partially adapted plastic chair in the bathroom does not meet basic safety standards, and he cannot get to the toilet or shower on his own and therefore depends on help from a nurse or other person"), 8.5, & 8.6.

> *persons with disabilities who are deprived of their liberty. Accordingly, States parties must take all relevant measures, including the identification and removal of obstacles and barriers to access, so that persons with disabilities who are deprived of their liberty may live independently and participate fully in all aspects of daily life in their place of detention; such measures include ensuring their access, on an equal basis with others, to the various areas and services, such as bathrooms, yards, libraries, study areas, workshops and medical, psychological, social and legal services.*[82]

Several other Committee decisions provide guidance that is relevant to the implementation of access to justice, even though those decisions do not address Article 13 claims. For example, in *Zsolt Bujdosó and five others vs Hungary*, the Committee found that Hungary had failed to comply with Articles 12 and 29 of the UNCRPD.[83] As an automatic consequence of their guardianships, the complainants had lost their right to vote.[84] The Committee recommended that Hungary "[e]nact[] laws that recognize, without any 'capacity assessment,' the right to vote for all persons with disabilities, including those with more need of support, and that provide for adequate assistance and reasonable accommodation in order for persons with disabilities to be able to exercise their political rights."[85] The same logic would seemingly apply in the context of persons with disabilities exercising their rights to access the justice system as judges, attorneys, jurors, witnesses, and litigants.

In *Ms. Marie-Louise Jungelin vs Sweden*, the Committee considered the scope of the UNCRPD's reasonable accommodation requirement.[86] Although the case involved employment, its implications are relevant to reasonable accommodations involving access to justice.

The complainant, who has a severe sight impairment, had been denied employment even though she was qualified for the job "because the Social Insurance Agency's internal computer systems could not be adapted for her sight impairment."[87] The majority of the Committee held that, in this case, the state party's "Labour Court thoroughly and objectively assessed all the elements submitted by the author and the Social Insurance Agency before reaching the conclusion that the support and adaptation measures recommended by the Ombudsman would constitute an undue burden for the Social Insurance Agency."[88] A minority of the Committee dissented.

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[82] Id. para. 8.5.

[83] See *Zsolt Bujdosó and five others vs Hungary*, Communication 4/2011, Committee on the Rights of Persons with Disabilities, para. 9.5 (Oct. 16, 2013), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/10/D/4/2011 (last visited Dec. 1, 2015).

[84] Id. para. 2.

[85] Id. para. 10(b)(ii).

[86] See *Ms. Marie-Louise Jungelin vs Sweden*, Communication 5/2011, Committee on the Rights of Persons with Disabilities, para. 3.4 (Nov. 14, 2014), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD-C-12-D-5-2011 (last visited Dec. 1, 2015).

[87] Id. para. 2.4.

[88] Id. para. 10.6.

The dissent would have found that the state party violated Articles 5 and 27 because its denial of the reasonable accommodation request in question "reflect[ed] a wide interpretation of the notion of 'undue burden,' severely limiting the possibility for persons with disabilities of being selected for positions requiring the adaptation of the working environment to their needs."[89] The dissent asserted that, in considering whether a reasonable accommodation would be an undue burden, the employer or other entity must also take into account the potential third-party benefits of the reasonable accommodation.[90] Given that reasonable accommodations that promote access to justice have potentially significant third-party benefits, in determining whether a given reasonable accommodation would constitute an undue burden, states parties should carefully consider how to weigh those benefits.[91]

Another potential source of guidance for states parties attempting to ensure equal access to justice are the reports submitted by other states parties and the responses those reports have elicited from the Committee.

B. State Party Reports and Committee Feedback on Access to Justice

This subpart focuses on the state party reports, lists of issues, replies to lists of issues, and concluding observations for eleven countries: Argentina, Azerbaijan, China, Costa Rica, Croatia, Dominican Republic, Ecuador, Hungary, Mexico, Peru and Turkmenistan.[92] These countries were selected because: (1) They had a 2013 gross domestic product per

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[89] Id. para. 6 (Espinosa, Degener, Buntan, Quan-Chang, and Cisternas Reyes, Committee members, dissenting).

[90] Id. para. 5 ("We are therefore of the view that, while reasonable accommodation is in principle an individual measure, the benefit for other employees with disabilities must also be taken into account when assessing reasonableness and proportionality, in compliance with articles 5, 9 and 27 of the Convention.").

[91] Elizabeth F. Emens, *Integrating Accommodation*, 156 University of Pennsylvania Law Review 839, 843–844 (2008).

[92] Where available, information from civil society in these eleven countries that was submitted to the Committee was also reviewed, but that information generally did not focus directly on access to justice. But see *e.g.* Croatian Union of Associations of Persons with Disabilities (SOIH), *Alternative Report on the Implementation of the UN Convention on the Rights of Persons with Disabilities in the Republic of Croatia*, 21, INT_CRPD_ICO_CRO_18347_E (Aug. 2014) (noting, based on collected data, that "[a] great impediment in the realization of the right to effective access to justice is inadequate and almost non-existent accessibility of the courts."); Disability Council International (Disability Council), *Disability Council's Independent Review*, 12, INT_CRPD_NGO_CRI_10_20817_E (Aug. 2013) ("The State party [Costa Rica] is further encouraged to adopt a full fledged, effective, accessible and affordable system of remedies and redress in case of violations of the Convention rights, including the possibility of addressing international human rights institutions such as the CRPD Committee."); Union of Disabled People's Organizations of Azerbaijan (UDPO), *Response to the List of Issues on Azerbaijan*, 3, INT_CRPD_NGO_AZE_16587_E (Feb. 2014) (recommending that Azerbaijan "[t]ake immediate steps with the active participation of DPOs [disabled people's organizations] to conduct training and raise the level of awareness among judges, lawyers, court personnel, employees of law enforcement, police and other government institutions regarding the rights of persons with disabilities in accessing justice[,] including the obligation to provide reasonable accommodation.").

capita of between $5,000 and $15,000 in US dollars[93]; (2) they submitted state party reports prior to 2014; and (3) the Committee responded to their state party reports with both a list of issues and concluding observations.

1. Argentina. — Argentina submitted its initial report to the Committee on October 6, 2010.[94] The portion of the report on Article 13 is brief — seven paragraphs — and focused almost exclusively on one initiative.[95] The initiative is an Access to Justice Centre that "offers free services, including legal advice, referral to other institutions and community mediation."[96] The goal of the program is "to guarantee real and effective access to justice for all, especially the more vulnerable sectors, and to eliminate barriers to the exercise of that right."[97] Unfortunately, the report does not provide any information about how the program helps persons with disabilities overcome the physical and attitudinal barriers that inhibit their access to justice.

In May 2012, the Committee published a list of issues regarding Argentina's initial report.[98] The Committee raised a number of questions that are generally relevant regarding the implementation of the right to access to justice. For example, the Committee asked Argentina to "explain how the concepts of 'reasonable accommodation,' 'communication' and 'universal design' have been incorporated into Argentine law."[99]

The Committee asked for more information directly regarding access to justice for women and children. First, regarding Article 13 itself, the Committee asked Argentina to elaborate only on "what measures have been taken to promote access to justice for women with disabilities."[100] Then, regarding Article 7, the Committee asked Argentina to "specify what support has been provided to guarantee access to justice and ensure the participation of children and adolescents with disabilities on an equal basis with others."[101]

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[93] See The World Bank, *GDP per capita (current US$)* (Table), available at http://data.worldbank.org/indicator/NY.GDP.PCAP.CD (last visited Dec. 1, 2015).

[94] See Committee on the Rights of Persons with Disabilities, Implementation of the Convention on the Rights of Persons with Disabilities, Initial reports submitted by States parties under article 35 of the Convention: Argentina, U.N. Doc. CRPD/C/ARG/1 (Jun. 28, 2011) [hereinafter Argentina Report].

[95] Id. paras. 192–198.

[96] Id. para. 195.

[97] Id. para. 198.

[98] See Committee on the Rights of Persons with Disabilities, List of issues to be taken up in connection with the consideration of the initial report of Argentina (CRPD/C/ARG/1) concerning articles 1 to 33 of the Convention, U.N. Doc. CRPD/C/ARG/Q/1 (May 16, 2012) [hereinafter Argentina Issues].

[99] Id. para. 3.

[100] Id. para. 10.

[101] Id. para. 29.

In September 2012, Argentina replied to the Committee's list of issues.[102] Argentina's reply discussed extensively the Brasilia Regulations regarding Access to Justice for Vulnerable People.[103] These regulations state that "[e]very attempt will be made to establish the necessary conditions to guarantee the accessibility of disabled persons to the justice system, including measures aimed at using all required judicial systems and having all resources that guarantee for them safety, mobility, comfort, understanding, privacy and communication."[104] The regulations also state that "every effort will be made" to help persons with disabilities "overcome architectural barriers…" [105] Argentina's reply noted that it has created the National Programme of Assistance for Persons with Disabilities in their Relations with the Administration of Justice.[106] The National Programme is charged with developing projects to facilitate access to justice for persons with disabilities on an equal basis with others.[107]

The Committee issued its concluding observations in October 2012.[108] Although the Committee included a number of areas of concern and recommendations, none directly addressed Article 13. Some of the recommendations were, however, generally relevant to access to justice. For example, the Committee recommended that Argentina "take steps to simplify existing judicial and administrative remedies in order to enable persons with disabilities to report acts of discrimination to which they have been subjected."[109] The Committee also expressed "deep[] concern[]" that Argentina's guardianship laws violate Article 12 because they are based on a model of substitute decision-making.[110] The Committee urged Argentina to adopt laws and policies that embrace "a supported decision-making model that upholds the autonomy, wishes and preferences" of persons with disabilities.[111]

2. Azerbaijan. — Azerbaijan submitted its initial report to the Committee on February 16, 2011.[112] Azerbaijan noted that it was undergoing a World Bank project to modernize

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[102] See Committee on the Rights of Persons with Disabilities, Responses of Argentina to the list of issues, U.N. Doc. CRPD/C/ARG/Q/1/Add.1 (Sep. 5, 2012) [hereinafter Argentina Responses].

[103] Id. paras. 80–82.

[104] Id. para. 82.

[105] Ibero-American Judicial Summit, Brasilia Regulations regarding Access to Justice for Vulnerable People, para. 77, available at http://www.osce.org/odihr/68082 (last visited Dec. 1, 2015) [hereinafter Brasilia Regulations].

[106] See Argentina Responses, fn. 102 para. 83.

[107] Id.

[108] See Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Argentina as approved by the Committee at its eighth session, U.N. Doc. CRPD/C/ARG/CO/1 (Oct. 8, 2012) [hereinafter Argentina Concluding Observations].

[109] Id. para. 12.

[110] Id. para. 19.

[111] Id. para. 20.

[112] See Committee on the Rights of Persons with Disabilities, Implementation of the Convention on the Rights of Persons with Disabilities, Initial reports submitted by States parties under article 35 of the Convention: Azerbaijan, U.N. Doc. CRPD/C/AZE/1 (Feb. 7, 2013) [hereinafter Azerbaijan Report].

its judicial system and that the project included efforts to improve access to justice for persons with disabilities.[113] Most of Azerbaijan's report on access to justice focused on its Criminal Procedure Code and the accommodations that are provided for suspects who have disabilities.[114] Potential accommodations include "participation of defense counsel" and sign language interpretation.[115]

In September 2013, the Committee published a list of issues regarding Azerbaijan's initial report.[116] The Committee asked two questions directly about Azerbaijan's implementation of Article 13: (1) "Can persons with disabilities factually and legally appear and act in courts in Azerbaijan?" and (2) "Is there training for judges, lawyers and court staff, and police on the rights of persons with disabilities in accessing justice, including the obligation to provide reasonable accommodation?"[117] The Committee also questioned whether Azerbaijan "has adopted measures to move away from the substituted decision-making model and towards a supported decision-making model regarding the legal capacity of persons with disabilities."[118]

In February 2014, Azerbaijan replied to the Committee's list of issues.[119] Azerbaijan's reply discussed the portions of its Civil Procedural Code that give "all physical persons…the right of appeal to court for protection of their rights and freedoms…"[120] In its reply, Azerbaijan described one procedural accommodation that courts are required to make: "in cases where a witness is unable to appear before court due to health conditions, age, or disability, such witness shall be interrogated by the court at his/her place of residence."[121] Azerbaijan also described the elements of accessibility that it has incorporated in its new courthouses.[122] Azerbaijan did not, however, provide any response to the Committee's question regarding substitute decision-making.

The Committee issued its concluding observations in May 2014.[123] Although the Committee included a number of areas of concern and recommendations, none directly addressed Article 13. The Committee recommended that Azerbaijan "amend [its] Civil

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[113] Id. para. 97.

[114] Id. paras. 98–100.

[115] Id.

[116] See Committee on the Rights of Persons with Disabilities, List of issues in relation to the initial report of Azerbaijan, adopted by the Committee at its tenth session (Sep. 2–13, 2013), U.N. Doc. CRPD/C/AZE/Q/1 (Sep. 30, 2013).

[117] Id. para. 14.

[118] Id. para. 13.

[119] See Committee on the Rights of Persons with Disabilities, Replies of Azerbaijan to the list of issues, U.N. Doc. CRPD/C/AZE/Q/1/Add.1 (Feb. 27, 2014).

[120] Id. para. 74.

[121] Id.

[122] Id. para. 75.

[123] See Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Azerbaijan, U.N. Doc. CRPD/C/AZE/CO/1 (May 12, 2014).

Code with a view to replacing substituted decision-making with supported decision-making for persons with disabilities…"[124]

3. China. — China submitted its initial report to the Committee on August 30, 2010.[125] Regarding Article 13, China described some of the procedural accommodations that are available for persons with disabilities.[126] The Criminal Procedure Law requires, for example, that sign language be used when a suspect who is deaf is being questioned.[127] China also addressed the use of alternative formats — such as issuing verdicts in Braille or large print — to promote access to justice.[128] China's initial report described its "legal aid and rescue-and-assistance system" and stated that "[fifty-six] legal aid work stations for persons with disabilities have been set up nationwide."[129] More generally, China's initial report stated that "[p]ersons with disabilities enjoy equal and non-discriminative judicial protection and legal assistance with other citizens."[130]

In May 2012, the Committee published a list of issues regarding China's initial report.[131] Although the Committee did not ask for any more information regarding implementation of Article 13, it did raise a number of questions that are generally relevant regarding the implementation of the right to access to justice. For example, regarding Article 5, the Committee asked for more information "on the definition of discrimination…and whether it covers denial of reasonable accommodation."[132] The Committee also raised several questions about the steps that China is taking to implement Article 12.[133] Regarding access to information, the Committee asked "whether deaf persons are supported in the use [of] Chinese sign language in all legal proceedings with public authorities."[134]

In September 2012, China replied to the Committee's list of issues.[135] China's reply

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[124] Id. para. 27.

[125] See Committee on the Rights of Persons with Disabilities, Implementation of the Convention on the Rights of Persons with Disabilities, Initial reports submitted by States parties under article 35 of the Convention: China, U.N. Doc. CRPD/C/CHN/1 (Aug. 30, 2010) [hereinafter China Report].

[126] Id. para. 54.

[127] Id.

[128] Id.

[129] Id. para. 55.

[130] Id. para. 48.

[131] See Committee on the Rights of Persons with Disabilities, List of issues to be taken up in connection with the consideration of the initial report of China (CRPD/C/CHN/1), Hong Kong of China (CRPD/C/CHN-HKG/1), and Macao of China (CRPD/C/CHN-MAC/1) concerning articles 1 to 33 of the Convention, U.N. Doc. CRPD/C/CHN/Q/1 (May 16, 2012).

[132] Id. para. 4.

[133] Id. para. 12.

[134] Id. para. 20.

[135] See Committee on the Rights of Persons with Disabilities, Replies submitted by the Government of China, Hong Kong and Macao of China to the list of issues (CRPD/C/CHN/Q/1), U.N. Doc. CRPD/C/CHN/Q/1/Add.1 (Sep. 10, 2012).

discussed the reasonable accommodation provisions in various areas of law, including education and employment.[136] It also included an extensive discussion of China's laws regarding legal capacity and guardianship.[137] Regarding access to information, China's reply stated that "[t]he judicial organs provide the deaf with sign language interpretation services, not only in Chinese, but also in minority languages or foreign languages, so as to effectively protect the litigation rights and interests of the deaf."[138]

The Committee issued its concluding observations in October 2012.[139] Regarding Article 13, the Committee questioned whether China's legal aid service centers for persons with disabilities have "the necessary resources" and "operate on an independent basis."[140] The Committee also expressed concern that China's civil and criminal procedural laws are not "accessible for the use of persons with disabilities on an equal basis with others and, instead, patronizing measures are put into place, such as the designation of public defenders that treat the person concerned as if they lacked legal capacity."[141] Among other things, the Committee suggested that China "make mandatory the necessity to establish procedural accommodation for those persons with disabilities who intervene in the judicial system…"[142]

More generally, the Committee expressed concern that China "does not consistently apply the concept of reasonable accommodation in relation to the principle of non-discrimination."[143] The Committee recommended that China "ensure that the law explicitly recognizes the refusal of reasonable accommodation constitutes disability-based discrimination."[144] Similarly, the Committee made several recommendations to ensure that China is in compliance with Article 12.[145]

4. Costa Rica. — Costa Rica submitted its initial report to the Committee on March 23, 2011.[146] Costa Rica's report focused on two elements of access to justice — training and accessibility.[147] Costa Rica has focused on improving "access to physical spaces and

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[136] Id. para. 12.

[137] Id. paras. 25–39.

[138] Id. para. 59.

[139] See Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of China, adopted by the Committee at its eighth session (Sep. 17–28, 2012), U.N. Doc. CRPD/C/CHN/CO/1 (Oct. 15, 2012) [hereinafter China Concluding Observations].

[140] Id. para. 23.

[141] Id.

[142] Id. para. 24.

[143] Id. para. 11.

[144] Id. para. 12.

[145] Id. para. 22.

[146] See Committee on the Rights of Persons with Disabilities, Implementation of the Convention on the Rights of Persons with Disabilities, Initial reports submitted by States parties under article 35 of the Convention: Costa Rica, U.N. Doc. CRPD/C/CRI/1 (Feb. 18, 2013).

[147] Id. paras. 21–24.

access to communication and information through acquisition of technologies."[148] The report described construction projects that remodeled bathrooms and added ramps and lifts in courthouses.[149] It also described in detail some of the technology the judiciary has incorporated to improve information accessibility.[150] Costa Rica reported other efforts to "facilitate access to court services for persons with disabilities," including: "installation of carpets with identifiable textures for blind users and users with visual impairments, [photo luminescent] signage and sound signals in places such as emergency exits, offices that serve the public, priority [access ways], stairs, and lifts."[151]

Costa Rica's report detailed additional steps that it is taking to improve access to justice for persons with disabilities. For example, Costa Rica is seeking the Supreme Court's approval of regulations regarding Costa Rican Sign Language interpreters.[152] Costa Rica also reported that it is taking steps to adapt or purchase police vehicles that are accessible for persons with disabilities.[153]

Costa Rica acknowledged that it has room for improvement. The report emphasized that it consulted with civil society regarding access to justice, and that participants pointed out that most of the country's efforts have focused on physical accessibility, "leaving aside many other aspects that are very important to real and effective access to justice and the institutions active in that area, such as considerations relating to access to information in various formats, whether physical or digital, and the use of technological tools providing access to it."[154]

In September 2013, the Committee published a list of issues regarding Costa Rica's initial report.[155] The Committee specifically asked Costa Rica whether "the steps [it has] taken to comply with Article 13 of the Convention include amending judicial procedures, consistent with the principle of equal opportunities, in order to ensure that persons with disabilities have full access to justice."[156] The Committee asked a number of more general questions that are relevant to access to justice, including how "the concepts of 'reasonable accommodation,' 'universal design' and 'communication' have been incorporated into national law and public policies."[157] The Committee also questioned whether "legislation includes denial of reasonable accommodation as one form of

[148] Id. para. 22.

[149] Id.

[150] Id. para. 23.

[151] Id. para. 24.

[152] Id. para. 28.

[153] Id.

[154] Id. para. 31.

[155] See Committee on the Rights of Persons with Disabilities, List of issues in relation to the initial report of Costa Rica, adopted by the Committee at its tenth session (Sep. 2–13, 2013), U.N. Doc. CRPD/C/CRI/Q/1 (Sep. 30, 2013).

[156] Id. para. 16.

[157] Id. para. 3.

discrimination."[158]

In April 2014, Costa Rica replied to the Committee's list of issues.[159] Costa Rica's reply noted that several policies have been adopted to ensure that persons with disabilities have access to justice.[160]

The Committee issued its concluding observations in May 2014.[161] Regarding Article 13, the Committee expressed concern that "measures on access to justice have been confined to physical accessibility…and that training for persons involved in the administration of justice has been inadequate…"[162] The Committee recommended that Costa Rica review and adapt its judicial rules and procedures to ensure "access to justice for persons with disabilities, including the guarantee of interpretation in Costa Rican sign language, the use of augmentative and alternative modes of communication and full accessibility to the physical environment, transport and communication."[163] More generally, the Committee urged Costa Rica "to take the legislative and administrative measures necessary to prohibit discrimination on the basis of disability, and to explicitly include denial of reasonable accommodation as a form of discrimination on the basis of disability."[164] The Committee also recommended that, pursuant to Article 12, Costa Rica "develop a model for support in the decision-making process…"[165]

5. Croatia. — Croatia submitted its initial report to the Committee on October 27, 2011.[166] The portion of the report on Article 13 is brief — only four paragraphs — and focused on the role of the Ombudsman for Persons with Disabilities.[167] Croatia also noted that persons with disabilities can access full or partial coverage of the expenses of legal assistance under the Law on Free Legal Assistance.[168] Croatia reported that "care is taken to ensure [] accessibility" when new court houses are built or old ones are renovated.[169]

In October 2014, the Committee published a list of issues regarding Croatia's initial

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[158] Id. para. 7.

[159] See Committee on the Rights of Persons with Disabilities, Responses of Costa Rica to the list of issues, U.N. Doc. CRPD/C/CRI/Q/1/Add.1 (Apr. 10, 2014).

[160] Id. paras. 94–96.

[161] See Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Costa Rica, U.N. Doc. CRPD/C/CRI/CO/1 (May 11, 2014).

[162] Id. para. 25.

[163] Id. para. 26.

[164] Id. para. 12.

[165] Id. para. 22.

[166] See Committee on the Rights of Persons with Disabilities, Consideration of reports submitted by States parties under article 35 of the Convention, Initial reports of States parties: Croatia, U.N. Doc. CRPD/C/HRV/1 (May 7, 2013) [hereinafter Croatia Report].

[167] Id. paras. 68–71.

[168] Id. para. 70.

[169] Id. para. 74.

report.[170] Regarding Article 13, the Committee requested more information on whether persons with disabilities who are charged with misdemeanors "are given reasonable accommodation, including appropriate interpreter assistance in court."[171] The Committee also inquired about the training that judges and other judicial officials are provided on the UNCRPD.[172]

Unfortunately, Croatia's reply to the Committee's list of issues is not available online.

The Committee issued its concluding observations on April 17, 2015.[173] The Committee's observations do not include any feedback regarding Article 13. More generally, the Committee commended Croatia "for its legislative measures to abolish plenary guardianship and enable persons with disabilities to be recognized as persons before the law on an equal basis with others…"[174] Regarding Article 21, the Committee recommended that Croatia ensure that persons with disabilities have "access to information on equal basis with others by promoting and facilitating the use of easy to read, Braille and audio formats and other augmentative and alternative communication in official interactions, and by making public websites accessible."[175] The Committee specifically noted the importance of ensuring that deaf people "are provided with sign language interpretation in all judicial procedures."[176]

6. Dominican Republic. — The Dominican Republic submitted its initial report to the Committee on December 5, 2011.[177] Interestingly, the report addressed Articles 12 and 13 together.[178] The report noted that, under Article 39 of the Constitution, "all persons are born free and equal before the law…and shall enjoy the same rights, freedoms and opportunities, without discrimination" based on, inter alia, disability.[179] However, the Dominican Republic reported that, under the Civil Code, "a person with an intellectual or mental disability may not exercise the right to legal capacity on an equal basis with others in all aspects of life…"[180]

In October 2014, the Committee published a list of issues regarding the Dominican

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[170] See Committee on the Rights of Persons with Disabilities, List of issues in relation to the initial report of Croatia, U.N. Doc. CRPD/C/HRV/Q/1 (Oct. 30, 2014).

[171] Id. para. 14.

[172] Id. para. 15.

[173] See Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Croatia, U.N. Doc. CRPD/C/HRV/CO/1 (May 15, 2015).

[174] Id. para. 4.

[175] Id. para. 32.

[176] Id.

[177] See Committee on the Rights of Persons with Disabilities, Implementation of the Convention on the Rights of Persons with Disabilities, Initial reports submitted by States parties in accordance with article 35 of the Convention: Dominican Republic, U.N. Doc. CRPD/C/DOM/1 (Jul. 4, 2013).

[178] Id. paras. 65–70.

[179] Id. para. 66.

[180] Id. para. 67.

Republic's initial report.[181] Regarding Article 13, the Committee asked the Dominican Republic to "explain what measures have been implemented in the justice system to ensure that persons with disabilities have full and effective access to actions, functions or stages of the process."[182] The Committee requested more information about "capacity-building programmes for the judiciary on the rights of persons with disabilities, reasonable accommodations and adaptation of the judicial process."[183] The Committee also inquired about how the Dominican Republic ensures access to justice for children with disabilities.[184] More generally, the Committee asked the Dominican Republic to "explain how the provision of reasonable accommodation is regulated and in what areas."[185]

In February 2015, the Dominican Republic replied to the Committee's list of issues.[186] The Dominican Republic's reply noted that, like Argentina, it has adopted the Brasilia Regulations regarding Access to Justice for Vulnerable People and taken actions to improve both physical accessibility and communication access.[187] Regarding Article 13, the Dominican Republic described some of the steps it has taken to improve the accessibility of the justice system: "Suitable signage, as well as access ramps, comfortable waiting areas, accessible toilets, wide corridors and lifts are being installed."[188]

The Committee issued its concluding observations in April 2015.[189] Regarding Article 13, the Committee recommended that the Dominican Republic review its legislation and procedures to ensure that persons with disabilities have access to buildings, information, and communications.[190] The Committee also recommended that the Dominican Republic create a permanent training program for judges, prosecutors, and other officials on disability rights.[191] More generally, the Committee expressed concern that the denial of a reasonable accommodation is not considered to be a form of discrimination.[192]

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[181] See Committee on the Rights of Persons with Disabilities, List of issues in relation to the initial report of the Dominican Republic, U.N. Doc. CRPD/C/DOM/Q/1 (Oct. 28, 2014).

[182] Id. para. 15.

[183] Id.

[184] Id. para. 7.

[185] Id. para. 5.

[186] See Committee on the Rights of Persons with Disabilities, Replies of the Dominican Republic to the list of issues, U.N. Doc. CRPD/C/DOM/Q/1/Add.1 (Feb. 18, 2015).

[187] Id. paras. 33 & 65.

[188] Id. para. 64.

[189] See Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of the Dominican Republic, U.N. Doc. CRPD/C/ARG/CO/1 (May 8, 2015).

[190] Id. para. 25.

[191] Id.

[192] Id. para. 8.

7. Ecuador. — Ecuador submitted its initial report to the Committee on September 8, 2011.[193] Ecuador's report focused on domestic anti-discrimination law and a study of persons with disabilities in social rehabilitation centers.[194] Ecuador also described its interpretation system for people who are deaf or have hearing disabilities.[195]

In May 2014, the Committee published a list of issues regarding Ecuador's initial report.[196] Regarding Article 5, the Committee asked whether the denial of a request for a reasonable accommodation constitutes discrimination.[197] The Committee raised only one concern directly regarding access to justice in Ecuador: "Please indicate whether the civil, criminal and labour codes of procedure and other administrative ordinances establish the obligation for judges and other authorities to make procedural accommodations to ensure the participation of persons with disabilities."[198] Regarding Article 14, the Committee inquired about "the kind of personal assistance available to persons with disabilities deprived of their liberty and, where applicable, who is responsible for providing it."[199]

In July 2014, Ecuador replied to the Committee's list of issues.[200] Ecuador's reply discussed the National Agenda on Disability Equality 2013–2017, which addresses access to justice: "Under the heading Legislation and Justice, it advocates a policy of effective access to justice, without discrimination and on equal terms with other people, which argues that persons with disabilities should have access to justice through appropriate affirmative action."[201] Ecuador explained that it has taken a number of steps to identify and address the barriers to justice faced by persons with disabilities, including initiating a nationwide study of courthouses.[202] Ecuador also is developing a training manual for judges on disability.[203] In response to the Committee's question about procedural accommodations, Ecuador explained that its civil and criminal laws provide for "reasonable accommodations in the different procedures to ensure the full participation of persons with disabilities and to guarantee their rights."[204] Ecuador also noted that it is undertaking various projects to train judges and other law enforcement officials on

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[193] See Committee on the Rights of Persons with Disabilities, Implementation of the Convention on the Rights of Persons with Disabilities, Initial reports submitted by States parties under article 35 of the Convention: Ecuador, U.N. Doc. CRPD/C/ECU/1 (Jun. 5, 2013).

[194] Id. paras. 121–129.

[195] Id. para. 130.

[196] See Committee on the Rights of Persons with Disabilities, List of issues in relation to the initial report of Ecuador, U.N. Doc. CRPD/C/ECU/Q/1 (May 12, 2014).

[197] Id. para. 5.

[198] Id. para. 15.

[199] Id. para. 17.

[200] See Committee on the Rights of Persons with Disabilities, Responses of Ecuador to the list of issues, U.N. Doc. CRPD/C/ECU/Q/1/Add.1 (Jul. 21, 2014).

[201] Id. para. 6.8.

[202] Id. paras. 15.1–3.

[203] Id. para. 15.4.

[204] Id. para. 15.11.

disability.[205]

The Committee issued its concluding observations in October 2014.[206] The Committee voiced a number of concerns about Ecuador's implementation of Article 5, including that "Ecuadorian legislation does not contain a definition of reasonable accommodation and that the denial of such accommodation is not considered a form of discrimination."[207] The Committee recommended that Ecuador amend its domestic legislation to include "the express requirement to make reasonable accommodation where necessary in a particular case and establish that the denial of such accommodation constitutes a form of discrimination on grounds of disability."[208]

The Committee also recommended three ways that Ecuador can improve its implementation of Article 13. First, the Committee asked Ecuador to make sure that training programs for judges cover the rights of persons with disabilities.[209] Second, the Committee recommended that Ecuador implement a national plan to eliminate architectural and communication barriers to judicial facilities.[210] Third, the Committee requested that Ecuador reform its legislation "so that the national criminal, civil, labour and administrative procedures include the requirement to make procedural accommodations for persons with disabilities, thereby enabling their access to justice on an equal basis with others."[211]

8. Hungary. — Hungary submitted its initial report to the Committee on October 14, 2010.[212] The portion of the report on Article 13 is brief — seven paragraphs — and focused exclusively on criminal law.[213] Hungary provides for the appointment of a "legal assistant" or a "patron lawyer" for persons with disabilities in some cases.[214] Similarly, Hungary reported that sign language interpretation is provided in some cases.[215]

In May 2012, the Committee published a list of issues regarding Hungary's initial report.[216] Although Hungary provided minimal information regarding access to justice in

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[205] Id.

[206] See Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Ecuador, U.N. Doc. CRPD/C/ECU/CO/1 (Oct. 27, 2014).

[207] Id. para. 14.

[208] Id. para. 15.

[209] Id. para. 27.

[210] Id.

[211] Id.

[212] See Committee on the Rights of Persons with Disabilities, Implementation of the Convention on the Rights of Persons with Disabilities, Initial reports submitted by States parties under article 35 of the Convention: Hungary, U.N. Doc. CRPD/C/HUN (Jun. 8, 2011) [hereinafter Hungary Report].

[213] Id. paras. 79–85.

[214] Id. para. 80.

[215] Id. paras. 82 & 84.

[216] See Committee on the Rights of Persons with Disabilities, List of issues to be taken up in connection with the consideration of the initial report of Hungary (CRPD/C/HUN/1), concerning articles 1 to 33 of the Convention, U.N. Doc. CRPD/C/HUN/Q/1 (May 16, 2012) [hereinafter Hungary Issues].

its report, none of the Committee's comments directly addressed Article 13. The Committee did, however, inquire about whether the concept of reasonable accommodations applies in any area other than employment.[217] The Committee also asked for more information about guardianship and supported decision-making.[218]

In July 2012, Hungary replied to the Committee's list of issues.[219] Hungary's reply noted that "almost every State Party is struggling with how to adapt th[e] principle [of reasonable accommodation] in regulations and practice."[220] Hungary specifically complained that the term reasonable accommodation "has not been sufficiently clearly or accurately defined for it to be able to have an impact commensurate to the spirit of [the] CRPD."[221] In response to the Committee's questions about guardianship, Hungary described the reforms that are being considered.[222] Because the Committee's list of issues did not directly address access to justice, Hungary's reply did not directly cover this topic.

The Committee issued its concluding observations in October 2012.[223] The Committee noted that Hungary was one of the first countries to submit its initial report, and praised Hungary for its extensive replies to the Committee's list of issues.[224] The Committee recommended that Hungary "take steps to ensure that its legislation explicitly prescribes that failure to provide reasonable accommodation constitutes a prohibited act of discrimination."[225] The Committee also recommended various guardianship system reforms.[226] Although none of the Committee's concluding observations directly addressed access to justice, the Committee did include judges among those who should receive training "on the recognition of the legal capacity of persons with disabilities and on mechanisms of supported decision-making."[227]

9. Mexico. — Mexico submitted its initial report to the Committee on April 27, 2011.[228] Regarding access to justice, Mexico reported that "[t]he federal judiciary has

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[217] Id. para. 2.

[218] Id. paras. 9–10.

[219] See Committee on the Rights of Persons with Disabilities, Responses of Hungary to the list of issues, U.N. Doc. CRPD/C/HUN/Q/1/Add.1 (Jul. 6, 2012).

[220] Id. para. 6.

[221] Id. para. 7.

[222] See *e.g.* id. para. 46 ("The draft also alludes to the opportunity of supported decision-making. The assisting party may assist in making decisions without having to limit the capacity of the individual concerned.").

[223] See Committee on the Rights of Persons with Disabilities, Concluding observations on the initial periodic report of Hungary, adopted by the Committee at its eighth session (Sep. 17–28, 2012), U.N. Doc. CRPD/C/HUN/CO/1 (Oct. 22, 2012) [hereinafter Hungary Concluding Observations].

[224] Id. para. 2.

[225] Id. para. 16.

[226] Id. para. 26.

[227] Id.

[228] See Committee on the Rights of Persons with Disabilities, Implementation of the Convention on the Rights of Persons with Disabilities, Initial reports submitted by States parties in accordance with article 35 of the Convention: Mexico, U.N. Doc. CRPD/C/MEX/1 (Feb. 7, 2013) [hereinafter Mexico Report].

decided to participate actively in the implementation of the Brasilia Rules on Access to Justice for Persons in Vulnerable Situations…"[229] Under the General Act on the Inclusion of Persons with Disabilities, judicial bodies have available disability specialists, Mexican sign-language interpreters, and support for producing documents in Braille.[230] Mexico also reported that "free legal advocacy services should be offered to persons with physical disabilities and the terminally ill as a priority."[231] The National Council for the Prevention of Discrimination provides training for state and federal judicial officials.[232]

In April 2014, the Committee published a list of issues regarding Mexico's initial report.[233] The Committee asked Mexico whether it "plans to incorporate the denial of reasonable accommodation as a form of discrimination on grounds of disability in its antidiscrimination legislation."[234] Regarding Article 12, the Committee specifically asked Mexico to describe the steps it "has taken to revise and repeal civil legislation declaring persons with disabilities legally incapable, with a view to abolishing guardianship…"[235]

The Committee's comments on access to justice focused on reasonable accommodations. The Committee asked about the "kind of procedural and age-related accommodations [] in place to facilitate access to justice for persons with disabilities."[236] The Committee also provided examples of the types of reasonable accommodations a state party should provide in courthouses to ensure persons with disabilities "access to the judicial and administrative systems": "the use of sign language, pictograms, alternative communication, bimodal systems for blind-deaf persons, guide-interpreters, Braille, hearing loops and radiofrequency systems…"[237] More generally, the Committee inquired about the "measures the Mexican Government has taken to ensure that a human rights-based approach is taken in the administration of justice for persons with disabilities…"[238]

In July 2014, Mexico replied to the Committee's list of issues.[239] In response to the Committee's inquiry about whether a denial of a reasonable accommodation constitutes discrimination, Mexico explained that "The Act on the Inclusion of Persons with Disabilities assimilates all forms of discrimination to 'discrimination on the grounds of

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[229] Id. para. 78.

[230] Id. para. 80.

[231] Id. para. 84.

[232] Id. para. 86.

[233] See Committee on the Rights of Persons with Disabilities, List of issues in relation to the initial report of Mexico, U.N. Doc. CRPD/C/MEX/Q/1 (Apr. 30, 2014).

[234] Id. para. 4.

[235] Id. para. 11.

[236] Id. para. 14.

[237] Id.

[238] Id. para. 15.

[239] See Committee on the Rights of Persons with Disabilities, Replies by Mexico to the list of issues, U.N. Doc. CRPD/C/MEX/Q/1/Add.1 (Jul. 24, 2014).

disability,' including 'the denial of reasonable adjustment.'"[240]

Mexico also provided information about the steps that it is taking to ensure equal access to justice:

> *The Supreme Court has drawn up a Protocol for persons administering justice in cases concerning the rights of persons with disabilities, which proposes guidelines and policies to be followed by federal judges in cases involving persons with disabilities. The Protocol focuses on the right of access to justice, underlining the reforms that are needed, both in culture, attitudes and physical infrastructure and in the content of proceedings and judicial decisions, for justice to be exercised on equal terms with the non-disabled population. It also seeks to make a contribution in the three areas relevant to the right of access to justice: legal, physical and communicational (sign language, Braille, digital formats or easy-read and readily understood texts).*[241]

The Supreme Court has already taken various "measures to eliminate physical, psychological and attitudinal barriers…"[242] Mexico reported, for example, that a recent important decision involving the rights of persons with disabilities "was drafted in an easy-read format, aimed at persons with disabilities and reflecting the guidelines issued by international experts on the topic of disability (clear typography, large print, short paragraphs and unjustified text)."[243]

The Committee issued its concluding observations in October 2014.[244] The Committee praised Mexico's adoption of The Protocol for the Administration of Justice in cases involving persons with disabilities.[245] The Committee voiced concern, however, about "the low number of complaints and rulings regarding cases of discrimination on grounds of disability, the lack of regulations under the Federal Act on the Prevention and Elimination of Discrimination and the dearth of information on its dissemination in accessible formats."[246] Regarding Article 12, the Committee urged Mexico "to take steps to adopt laws and policies that replace the substitute decision-making system with a supported decision-making model that upholds the autonomy and wishes of the persons concerned, regardless of the degree of disability."[247] To facilitate access to justice, the Committee made several recommendations, including that Mexico "[p]rovide[s] legal aid

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[240] Id. para. 21.

[241] Id. para. 99.

[242] Id. para. 65.

[243] Id. para. 76.

[244] See Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Mexico, U.N. Doc. CRPD/C/MEX/CO/1 (Oct. 27, 2014) [hereinafter Mexico Concluding Observations].

[245] Id. para. 4.

[246] Id. para. 11.

[247] Id. para. 24.

to persons with disabilities who live in poverty or in institutions."[248]

10. Peru. — Peru submitted its initial report to the Committee on July 8, 2010.[249] The report did not contain a great deal of information on Peru's efforts to ensure access to justice. It noted, however, that Peru has accessibility regulations and a system of fines to enforce them. Peru reported that "[t]he purpose of these fines is to promote the unhindered physical movement of persons with disabilities who make use of the services of the Peruvian judicial system."[250]

In October 2011, the Committee published a list of issues regarding Peru's initial report.[251] The Committee requested "more information on the legal remedies and actions available to persons with disabilities in cases of disability-based discrimination, including denial of reasonable accommodation…"[252] The Committee also raised a number of questions about how disability discrimination is defined and whether the denial of a reasonable accommodation constitutes discrimination.[253] Similarly, the Committee inquired about the parameters of guardianship in Peru.[254] Although Peru did not provide much information in its report about access to justice, the Committee did not directly inquire about this subject.

In March 2012, Peru replied to the Committee's list of issues.[255] Peru's reply discussed the various laws that have been passed, which provide legal remedies for persons with disabilities to exercise their rights.[256] One law, for example, addresses the rights of people with visual impairments to use guide dogs in public and private places.[257] Peru also reported its intention to further revise its disability rights laws to comply with the UNCRPD.[258] Given that the Committee's list of issues did not directly address access to justice, it is not surprising that Peru's reply also did not directly address this topic.

The Committee issued its concluding observations in May 2012.[259] Again, none of

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[248] Id. para. 26.

[249] See Committee on the Rights of Persons with Disabilities, Implementation of the Convention on the Rights of Persons with Disabilities, Initial reports submitted by States parties under article 35 of the Convention: Peru, U.N. Doc. CRPD/C/ARG/1 (Jan. 12, 2011).

[250] Id. para. 65.

[251] See Committee on the Rights of Persons with Disabilities, List of issues to be taken up in connection with the consideration of the initial report of Peru (CRPD/C/PER/1), concerning articles 1 to 33 of the Convention, U.N. Doc. CRPD/C/ARG/Q/1 (Oct. 10, 2011).

[252] Id. para. 1.

[253] Id. para. 3.

[254] Id. para. 8.

[255] See Committee on the Rights of Persons with Disabilities, Responses of Peru to the list of issues, U.N. Doc. CRPD/C/PER/Q/1/Add.1 (Mar. 14, 2012).

[256] Id. para. 1.

[257] Id.

[258] Id. paras. 8–10.

[259] See Committee on the Rights of Persons with Disabilities, Consideration of reports submitted by States parties under article 35 of the Convention, Concluding observations of the Committee on the Rights of Persons with Disabilities: Peru, U.N. Doc. CRPD/C/PER/CO/1 (May 16, 2012).

the concluding observations directly addressed access to justice. The Committee does, however, recommend that Peru "take action to replace regimes of substitute decision-making by supported decision-making, which respects the person's autonomy, will, and preferences."[260]

11. Turkmenistan. — Turkmenistan submitted its initial report to the Committee on September 19, 2011.[261] The portion of the report on Article 13 is extensive — twenty-five paragraphs — but it focused almost exclusively on criminal law.[262] Part of the access to justice section discussed the limited right to counsel that some persons with disabilities have. For example, "defence counsel is mandatory during initial inquiries, pretrial investigations and court proceedings in cases that involve mute, deaf, blind and other persons who, owing to their physical or mental disabilities, are unable to exercise their right to a defence."[263] In the civil context, Turkmenistan reported that "all persons with mental disabilities have, with regard to the psychiatric care they receive, the right to legal counsel and to be assisted by a legal representative…"[264]

Other sections of the report are also relevant to access of justice. Turkmenistan stated that it "guarantees persons with disabilities equal and effective legal protection against discrimination on any grounds."[265] The report also noted that "[l]egislation does not contain any obstacles preventing persons with disabilities from engaging, on an equal basis with others, in work activities, becoming lawyers or judges, testifying as witnesses or engaging in any other activity not prohibited by law."[266]

In October 2014, the Committee published a list of issues regarding Turkmenistan's initial report.[267] The Committee raised a number of general questions about the provision of reasonable accommodations and the guardianship system.[268] However, the Committee made only the following inquiry directly about access to justice in Turkmenistan: "Please provide information about the system applied to ensure the participation and high quality of sign-language interpreters during judicial proceedings."[269]

In December 2014, Turkmenistan replied to the Committee's list of issues.[270] The

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[260] Id. para. 25.

[261] See Committee on the Rights of Persons with Disabilities, Consideration of reports submitted by States parties under article 35 of the Convention, Initial reports of States parties due in 2011: Turkmenistan, U.N. Doc. CRPD/C/TKM/1 (Jul. 3, 2013).

[262] Id. paras. 78–102.

[263] Id. para. 80.

[264] Id. para. 81.

[265] Id. para. 27.

[266] Id. para. 77.

[267] See Committee on the Rights of Persons with Disabilities, List of issues in relation to the initial report of Turkmenistan, U.N. Doc. CRPD/C/TKM/Q/1 (Oct. 30, 2014).

[268] Id. paras. 4 & 11.

[269] Id. para. 12.

[270] See Committee on the Rights of Persons with Disabilities, Replies of Turkmenistan to the list of issues, U.N. Doc. CRPD/C/TKM/Q/1/Add.1 (Jan. 29, 2015).

access to justice section of Turkmenistan's reply focused exclusively on criminal law. It described how the Criminal Code handles interpretation in general, and noted that the same rules apply for sign language interpreters.[271]

The Committee issued its concluding observations in May 2015.[272] The Committee recommended that Turkmenistan "provide clear legal safeguards and remedies, as well as related procedures, for cases of violations of the rights of persons with disabilities."[273] To ensure equality, the Committee asked Turkmenistan to "review its legislation to incorporate a definition of disability-based discrimination that explicitly addresses all forms of discrimination, including the denial of reasonable accommodation."[274]

The Committee expressed the following concerns directly about access to justice in Turkmenistan:

> *The Committee expresses its concern about the lack of information on specific measures and protocols, other than those included in the Code of Criminal Procedure, to provide reasonable accommodation in judicial proceedings for persons with disabilities, including the provision of sign-language interpretation for deaf or "mute" persons, and accessible formats of communication for deaf-blind persons, persons with intellectual disabilities and persons with psychosocial disabilities, among others, particularly in civil cases.*[275]

In the context of criminal law at least, the Committee also recommended that Turkmenistan provide "the right to defence and to a fair trial."[276]

III. WHAT DOES EFFECTIVE ACCESS TO JUSTICE REQUIRE?

Article 13's ninety words are insufficient to describe what a state party must do to ensure effective access to justice. Reading Article 13 within the context of the entire UNCRPD provides some additional clues but not a clear roadmap for implementation. Unfortunately, the Committee has not provided sufficient guidance or consistent feedback to clarify what effective access to justice requires. It is not surprising, then, that the initial state party reports vary so greatly in their treatment of this important topic.

This Part attempts to clarify what effective access to justice requires. Subpart A focuses on the insights that can be drawn from states parties' implementation of Article 13. Subpart B describes access to justice implementation guidance from other sources, including reports from the Conference of States Parties and implementation guidance

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[271] Id. paras. 92–94.

[272] See Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Turkmenistan, U.N. Doc. CRPD/C/TKM/CO/1 (May 13, 2015).

[273] Id. para. 6.

[274] Id. para. 10.

[275] Id. para. 23.

[276] Id. para. 26.

published by prominent NGOs.

A. Insights from the UNCRPD and Its Implementation

As discussed in Part I.A above, Article 13 can be broken down into essentially two parts — the statement of the principle of access to justice and a list of some of the steps a state party must take to ensure effective access to justice. Article 13 mandates "effective access to justice for persons with disabilities on an equal basis with others." [277] Article 13 then lists two of the steps a state party must take: make "procedural and age-appropriate accommodations" and provide "appropriate training."[278]

As discussed in Part I.B, reading Article 13 within the context of the entire UNCRPD provides states parties with some additional guidance. For example, Article 5 focuses, in large part, on the legal protections that are essential to ensure access to justice.[279] Article 9 specifies the type of communication accessibility that is required in courthouses and other aspects of the justice system.[280] Article 12 is also central to access to justice. States parties have to recognize that persons with disabilities have legal capacity and provide persons with disabilities with the assistance that they might need in order to exercise their legal capacity.[281]

The text of the UNCRPD alone, however, is insufficient to give states parties a clear roadmap to implement Article 13. As discussed in Part II.A, for additional guidance, states parties can look to the Committee's guidelines for state party reports and the Committee's jurisprudence. However, the Committee's guidance regarding Article 13 is limited.

Regarding Article 13, the Committee's guidelines have two parts. First, the Committee asks states parties to report on "[m]easures taken to ensure the effective access to justice at all stages of the legal process…by all persons with disabilities."[282] This broad guidance is helpful because it makes it clear that access to justice requires more than the two steps that Article 13 explicitly requires — accommodations and training. However, this guidance is of limited value because it is vague and essentially tautological; it fails to answer the question of what constitutes a "[m]easure[] taken to ensure the effective access to justice." At the very least, the Committee should give examples of measures that would be relevant to its assessment of the state party's implementation of Article 13.

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[277] See fn. 1 Art. 13(1).

[278] Id. Art. 13(1)–(2).

[279] Id. Art. 5.

[280] Id. Art. 9(2).

[281] Id. Art. 12(2)–(3).

[282] See Committee Guidelines, fn. 64.

Second, the Committee asks states parties to report on the measures they have taken regarding training, reasonable accommodations, and age-related accommodations.[283] This guidance is also of very limited use, because it directly echoes Article 13. For example, regarding training, Article 13 states: "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."[284] The Committee's guidelines essentially repeat the words of Article 13: "[m]easures taken to ensure effective training of personnel in the national justice and prison system, in the respect for the rights of persons with disabilities."[285]

To the extent that the language is different, the Committee's guidelines seem to require less than Article 13. The Committee's guidance refers to personnel in the national justice and prison system, whereas Article 13 refers more broadly to "those working in the field of administration of justice, including police and prison staff."[286]

As described in Part II.B above, some states parties have not provided even the limited information that the Committee's guidelines request. For example, Argentina's initial report provided little information about its implementation of Article 13, focusing almost exclusively on one initiative.[287] Hungary's initial report focused on access to justice only in the criminal law context.[288]

Yet, also as described in Part II.B above, the Committee often failed to note when a state party did not provide it with even the minimal information the Committee's guidelines request regarding Article 13. For example, in the list of issues it had with Argentina's initial report, the Committee asked Argentina only to elaborate on the measures it has taken to promote access to justice for women with disabilities.[289] And none of the Committee's concluding observations for Argentina directly addressed Article 13.[290] The Committee's responses to Hungary's initial report almost completely ignore Article 13; none of the Committee's list of issues or concluding observations directly addressed Article 13.[291]

The Committee has not yet given clear and consistent guidance to states parties about one of the central questions regarding Article 13: Does effective access to justice require a right to counsel? The Committee's guidelines are silent on this issue. As discussed in

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[283] Id.

[284] See fn. 1 Art. 13(2).

[285] See Committee Guidelines, fn. 64.

[286] See fn. 1 Art. 13(2) (emphasis added).

[287] See Argentina Report, fn. 94 paras. 192–198.

[288] See Hungary Report, fn. 212 paras. 79–85.

[289] See Argentina Issues, fn. 98 para. 10.

[290] See Argentina Concluding Observations, fn. 108.

[291] See Hungary Issues, fn. 216; Hungary Concluding Observations, fn. 223.

Part II.B, several state party reports discussed efforts to provide counsel to persons with disabilities. Argentina's initial report discussed its Access to Justice Centre, which offers, among other services, free legal advice.[292] Azerbaijan reported that potential accommodations for persons with disabilities include "participation of defense counsel."[293] China described the dozens of legal aid work stations it has set up for persons with disabilities.[294] Croatia reported that persons with disabilities can access full or partial coverage of the expenses of legal assistance under the Law on Free Legal Assistance.[295] Mexico's initial report noted that "free legal advocacy services should be offered to persons with physical disabilities and the terminally ill as a priority."[296]

Generally, the Committee does not directly address these programs or give clear or consistent guidance about their parameters. For example, in its concluding observations for China, the Committee questioned whether the legal aid service centers for persons with disabilities have "the necessary resources" and "operate on an independent basis."[297] The Committee therefore seemed to be indicating that Article 13 requires at least a limited right to counsel for persons with disabilities. Similarly, in its concluding observations for Mexico, the Committee recommended that Mexico "[p]rovide legal aid to persons with disabilities who live in poverty or in institutions."[298] This recommendation is laudable and would seem to be a necessary step to ensuring effective access to justice. That being said, the Committee failed to explain the bases for any of these recommendations. The Committee also failed to make these recommendations to any of the other nine countries studied in this article. In sum, the Committee has not provided clear and consistent guidance for states parties that are trying to ensure effective access to justice.

B. Access to Justice Implementation Guidance from Other Sources

For more detailed guidance on access to justice, states parties can look to other sources, including reports from the Conference of States Parties and implementation guidance published by prominent NGOs.

Access to justice was the focus of one of the roundtables at the Second Session of the Conference of States Parties. The background document that was circulated for this roundtable notes that physical accessibility and accessible communications "are essential

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[292] See Argentina Report, fn. 94 paras. 192–198.

[293] See Azerbaijan Report, fn. 112 para. 98.

[294] See China Report, fn. 125 para. 55.

[295] See Croatia Report, fn. 166 paras. 34 & 70.

[296] See Mexico Report, fn. 228 para. 84.

[297] See China Concluding Observations, fn. 139 para. 23.

[298] See Mexico Concluding Observations, fn. 244 para. 26.

components of an accessible justice system."[299] However, the document notes that the "unique focus" of Article 13 is on the procedural accommodations that the UNCRPD requires.[300]

This background document then gives nine examples of procedural and age-appropriate accommodations that states parties should implement:

> • *Enabling accompaniment during investigation or testimony by a chosen support person*
>
> • *Utilization of alternative and augmentative communication, such as pictures and communication boards, to enable the person to fully communicate*
>
> • *Investigations performed by those who have experience and expertise in communicating with persons with disabilities, instead of by a standard police investigator*
>
> • *Utilization of experts to remove misinformation regarding the disability that may hinder courts from accepting the testimony, and assist in understanding the witness' way of communication*
>
> • *Assistance in court in formulating questions so they are understood by the witness, and in the case of children — taking into account their evolving capacity*
>
> • *The possibility of testifying without official attire, or in camera (in private) through video links or in the judge's chambers, without detracting from the weight and validity of the testimony*
>
> • *Sufficient time for giving testimony and appropriate breaks during proceedings*
>
> • *Provision of information about the proceedings in plain language and child-friendly formats*
>
> • *Establishing court procedures to enable a process for requesting accommodations.*[301]

The background document also emphasizes that training and education are essential to ensure access to justice. It suggests that states parties should: (1) conduct trainings for police, judges, state attorneys, and prison staff on reasonable accommodations and

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[299] Background document for Interactive Roundtable on Legislative Measures to Implement the UNCRPD with a focus on Access to Justice, (Second Session of Conference of States Parties to the Convention on the Rights of Persons with Disabilities, Sep. 2–4, 2009), available at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB0QFjAAahUKEwj5lcj195rIAhXBcz4KHQHfA8k&url=http%3A%2F%2Fwww.un.org%2Fdisabilities%2Fdocuments%2FCOP%2FDraft%2520IDA%2520Background%2520Note_Roundtable_2_Topic2.doc-draft.doc&usg=AFQjCNEJTmA_bPtphdLz3D4aKOYhg0u_5A&sig2=I-VfCdv3rla1MeXetmk63w&bvm=bv.103388427,d.cWw&cad=rja (last visited Dec. 1, 2015) [hereinafter Background Document].

[300] Id.

[301] Id. (emphasis in the original); see also Tirza Leibowitz, Presentation on Access to Justice, 6–7 (Second Session of Conference of States Parties to the Convention on the Rights of Persons with Disabilities, Sep. 2–4, 2009), available at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=9&cad=rja&uact=8&ved=0CEIQFjAI&url=http%3A%2F%2Fwww.un.org%2Fdisabilities%2Fdocuments%2FCOP%2FTirzaLeibowitz-AccessToJustice-PointsForPresentation.doc&ei=5j9VVfz8Daa1sASM1IHIBQ&usg=AFQjCNHkLwch10TEesuGcbvUzLGUFQJdWA&bvm=bv.93564037,d.cWc (last visited Dec. 1, 2015).

accessibility; and (2) raise awareness among persons with disabilities on their rights to access the justice system.[302]

During this roundtable, one panelist, Tirza Leibowitz, suggests that, in order to implement access to justice, states parties "must pinpoint the specific barriers person with disabilities face, and read [Article 13] with these barriers in mind."[303] Leibowitz highlights how Article 13 and Article 9 intersect to address the physical barriers that persons with disabilities face when they try to access justice.[304] She also highlights the importance of Articles 9, 13, and 21 to address the communication barriers that prevent persons with disabilities from accessing justice.[305] Drawing on the negotiations that led to Article 13 and Israel's law on "Accommodations to the investigative and testimonial processes for persons with intellectual or psychosocial disabilities," Leibowitz provides examples that illustrate the importance of the procedural and age-appropriate accommodations listed above.[306]

Several prominent NGOs provide useful guidance that states parties can look to in their attempts to implement Article 13. The International Disability Alliance (IDA), for example, has prepared guidance on how to prepare parallel reports to the Committee.[307] Although other NGOs are the target audience, the IDA guidance is helpful for states parties to consider in their attempt to implement Article 13. The IDA focuses on two tactics: (1) "abolishing rules that limit or establish as void the capacity of persons with disabilities to testify or otherwise partake in the justice system"; and (2) requiring the justice system to make "procedural and age-appropriate accommodations that will enable persons with disabilities full and equal participation, whether as complainants, defendants or witnesses."[308] In particular, the IDA suggests that states parties should consider 10 questions:

> • *Are there legal barriers that prevent persons with disabilities from being a judge, member of a jury, or witness or that categorize the testimony of persons with disabilities as null or limited?*
>
> • *Can a deaf person who is part [of] a case have access to sign language interpretation as well as linguistic support, if required?*

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[302] See Background Document, fn. 299.

[303] Leibowitz, fn. 301 at 6–7, 1 (emphasis in the original).

[304] Id. at 2–4.

[305] Id. at 2.

[306] Id. at 6.

[307] Laura Theytaz-Bergman & Stefan Trömel, *Guidance Document: Effective Use of International Human Rights Monitoring Mechanisms to Protect the Rights of Persons with Disabilities*, International Disability Alliance (Geneva), at 26–60 (May 2010), available at http://www.internationaldisabilityalliance.org/sites/disalliance.e-presentaciones.net/files/public/files/CRPD-reporting-guidance-document-English-FINAL-print%5B1%5D.pdf (last visited Dec. 1, 2015).

[308] Id. at 39.

• Can a person with a hearing disability benefit from a hearing loop and other technical equipment required for communication?

• Is a person with an intellectual disability entitled to ask for court orders, judgments or other documents in plain language or at least for an easy to understand explanation of the decisions taken by the court?

• Are there provisions in place which foresee procedural accommodations to allow for the meaningful investigation and testimony by a person with intellectual disability?

• Are alternative and augmentative communication and assistance in formulating questions in a way that is understood by the person and in ensuring the person is understood used in court?

• Are accommodations foreseen for people with psychosocial disabilities that so require?

• Are court rooms accessible to persons with physical disabilities?

• Can a person with visual impairment have access to information in alternative formats?

• Does the above apply

- *to all legal proceedings, including criminal, civil, and administrative*
- *to persons with disabilities as complainants, defendants, witnesses, or third parties*
- *to all stages of the proceedings, including investigative proceedings by the police?*[309]

The World Network of Users and Survivors of Psychiatry has also published an implementation manual that covers, among other topics, access to justice.[310] The implementation manual suggests the types of accommodations that Article 13 requires for people with psychosocial disabilities in investigations and court proceedings.[311] These accommodations include "access to support networks, avoidance of emotional provocation, and acceptance of non-conventional types of communication."[312] The implementation manual also suggests that Article 13 requires states parties to repeal any laws that disqualify people with psychosocial disabilities from filing complaints or acting as witnesses.[313]

The National Center for Access to Justice (NCAJ) has developed a "Justice Index" to

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[309] Id. at 40.

[310] See World Network of Users and Survivors of Psychiatry, *Implementation Manual for the United Nations Convention on the Rights of Persons with Disabilities* (Feb. 2008), available at http://www.un.org/disabilities/documents/COP/WNUSP%20CRPD%20Manual.doc (last visited Dec. 1, 2015).

[311] Id. at 17.

[312] Id.

[313] Id.

provide "a vivid picture of which states are following selected practices and providing necessary resources to make the legal system fairer to everyone."[314] Although the NCAJ focuses primarily on access to justice in the US, the Justice Index provides a helpful guide to the necessary elements of a fair justice system. These elements are: the number of civil legal aid attorneys serving the poor; the assistance available for self-represented litigants; the assistance available for people who have limited proficiency in the main language spoken in the state; and the assistance available for people who have disabilities.[315]

The NCAJ notes that, "[f]or those who cannot see, hear, speak or otherwise navigate a courthouse, or for those with emotional and cognitive challenges that make it difficult for them to participate in their own cases, access to justice depends on support from the justice system."[316] To gauge access to justice for persons with disabilities, the NCAJ examines whether state justice systems have incorporated the following "best practices": free interpretation services for people who are deaf or hard of hearing; certified sign language court interpreters, preferably those who are trained to provide legal interpretation; clear explanations about how to request a reasonable accommodation and how to file a complaint about barriers to accessibility; and allowing the use of service animals when necessary.[317]

Other aspects of the Justice Index are also relevant to implementing access to justice for persons with disabilities. For example, the NCAJ examines whether courts are obligated: "to communicate with people who have little or low literacy…"; to provide documents "in plain English or at a particular reading level"; to provide materials in alternative formats for people with low literacy; and "to use plain English when communicating verbally with unrepresented people."[318] The NCAJ is also working to expand the Justice Index to examine whether states provide a variety of reasonable accommodations for people with psychiatric disabilities.

CONCLUSION

The Committee should take three steps to improve the guidance that it offers states parties to ensure effective access to justice. First, the Committee should update its guidelines to request additional and more specific information about the implementation

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[314] National Center for Access to Justice, The Justice Index, *Our Vision: Why Access to Justice Matters*, available at http://www.justiceindex.org/our-vision/#sthash.hZKtjJ7p.dpuf (last visited Dec. 1, 2015).

[315] Id.

[316] National Center for Access to Justice, The Justice Index, *Disability Assistance: Support for People with Disabilities*, available at http://www.justiceindex.org/findings/disability-assistance/#sthash.E2DCEYjv.dpuf (last visited Dec. 1, 2015).

[317] Id.

[318] National Center for Access to Justice, The Justice Index, *Self-Representation: Support for Self-Represented Litigants*, available at http://www.justiceindex.org/findings/self-represented-litigants/ (last visited Dec. 1, 2015) (question numbers Q7A, Q7B, Q7C, and Q7D).

of Article 13. Second, in providing feedback to states parties, the Committee should explicitly highlight best practices. Third, the Committee should encourage states parties to integrate access to justice for persons with disabilities with efforts to provide effective access to justice for vulnerable people in general.

The Committee should update its guidelines to give states parties better guidance on how to implement Article 13. As discussed in Part III.A, the Committee's guidelines regarding Article 13 are of very limited use. The Committee's guidelines explicitly state that the "guidelines will be updated in future to take into account the evolving practice of the Committee in relation to the application of the Convention, as reflected in its concluding observations, general comments and statements."[319]

The Committee should update its guidelines to provide clearer guidance regarding Article 13. For example, instead of merely asking states parties to report on "[m]easures taken to ensure the effective access to justice at all stages of the legal process,"[320] the Committee should give examples of measures that would be relevant to its assessment of the state party's implementation of Article 13. The Committee's guidance regarding training and accommodations should also do more than simply mirror the text of Article 13. The negotiations over the appropriate level of detail to include in draft Article 9 reflected the expectation that states parties would be provided with other implementation guidance. During the third session of the Ad Hoc Committee, the International Labour Organization suggested that "[t]he Ad Hoc Committee may wish to consider the preparation of guidelines drawn up to accompany the Convention, giving detailed guidance on the implementation not only of this article, but of all articles in the Convention. This would remove the need for such detail in the Convention itself."[321]

As discussed, Article 13 is one of the briefest UNCRPD articles, and the Committee should use its guidelines to provide more detailed guidance regarding this complex subject. For example, like the NGOs discussed in Part III.B, the Committee should adopt a set of questions or detailed inquiries regarding access to justice. Detailed questions, like those provided by IDA, the World Network of Users and Survivors of Psychiatry, and NCAJ would serve at least two important functions. First, they would give states parties more guidance regarding the concrete actions that the Committee considers to be required to ensure effective access to justice. Second, they would force states parties to be more accountable in their reporting on their progress in implementing Article 13.

For example, the Committee should include at least one question on the right to counsel or advocacy. As discussed in Part III.A, the Committee has not yet given clear and consistent guidance to states parties about whether effective access to justice requires a right to counsel or advocacy. Various commentators have discussed this important topic.

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[319] See Committee Guidelines, fn. 64 at Note by the Secretary-General, para. 5.

[320] Id. at Annex § C.

[321] See fn. 8.

Michael L. Perlin, for example, has written that Article 13 and other portions of the UNCRPD "underscore the crucial importance of dedicated counsel and make mandatory the appointment of such counsel."[322] Building on its feedback to Mexico, the Committee should, at the very least, update its guidelines to inquire about whether states parties provide legal aid to persons with disabilities who live in poverty or in institutions.

Whether through updating its guidelines or in feedback to states parties, the Committee should also more explicitly highlight best practices. In its feedback to the eleven states parties discussed in Part II.B, the Committee rarely if ever discusses what steps other states parties are taking to implement access to justice. Instead of simply telling a state party that improvement is necessary, the Committee should, where possible, provide examples of how other states parties are addressing the relevant problem. Admittedly, each country is different, but the Committee's feedback would be more useful if it directed a state party to laws, regulations, procedures, or initiatives that other states parties are effectively using to implement Article 13. There is no need for each state party to figure out in isolation how to overcome the obstacles to effective access to justice for persons with disabilities.

In recommending best practices, the Committee can look to cross-disciplinary research and field studies on access to justice. For example, "[e]mpirical studies demonstrate that litigants in court and agency proceedings have a significantly greater chance of success when they are represented by counsel."[323] By highlighting evidence-based practices, the Committee would be implicitly encouraging more comparative, empirical research on access to justice. There is an acute need for such studies, including, for example, on the impact of different models of training programs on access to justice for persons with disabilities.

The Committee should also encourage states parties to integrate access to justice for persons with disabilities with efforts to provide effective access to justice for vulnerable people in general. Persons with disabilities are not defined by their disabilities alone. And

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[322] Michael L. Perlin, *Promoting Social Change in Asia and the Pacific: The Need for a Disability Rights Tribunal to Give Life to the U.N. Convention on the Rights of Persons with Disabilities*, 44 The George Washington International Law Review 1, 34 (2012). A complete discussion of the right to counsel is beyond the scope of this article. For more detailed discussions of this important topic, see Gibson, fn. 21 at 131 ("If Art. 13 of the [UN]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."). Instead of a right to counsel, at least one commentator has argued that the UNCRPD includes a right to advocacy. See Flynn, fn. 21 at 15 & 16 ("In conclusion, it is submitted that recognition of a right to advocacy is possible if considered contingent upon the rights to equal recognition before the law and effective access to justice for people with disabilities.").

[323] Louis S. Rulli, *On the Road to Civil Gideon: Five Lessons from the Enactment of a Right to Counsel for Indigent Homeowners in Federal Civil Forfeiture Proceedings*, 19 Journal of Law & Policy 683, 743 (2011) (citing various studies).

potential best practices might come from programs that promote access to justice for other marginalized people. Moreover, the exclusion of persons with disabilities from the justice system harms not only persons with disabilities; it harms everyone.[324]

In their initial reports, Argentina, the Dominican Republic and Mexico all noted that they are implementing the Brasilia Regulations Regarding Access to Justice for Vulnerable People.[325] The Brasilia Regulations define "vulnerable people" as "those who, due to reasons of age, gender, physical or mental state, or due to social, economic, ethnic and/or cultural circumstances, find it especially difficult to fully exercise their rights before the justice system as recognised to them by law."[326] The Brasilia Regulations provide some of the clear guidance that is missing from the Committee's guidelines and feedback. For example, the Brasilia Regulations discuss in some detail the need for legal assistance for vulnerable people.[327]

This is a particularly important moment for the Committee to focus on mainstreaming access to justice for persons with disabilities: "Goal 16 of the [UN] Sustainable Development Goals is dedicated to the promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all, and building effective, accountable institutions at all levels."[328] One of the Goal 16 targets is to "[p]romote the rule of law at the national and international levels and ensure equal access to justice for all."[329] Other Goal 16 targets are also relevant to implementation of Article 13 of the UNCRPD.[330] Implementing access to justice for persons with disabilities poses unique challenges, but it is part of the broader movement of access to justice for all.

By taking these three steps to improve its guidance on access to justice, the Committee would be helping to ensure that equal rights for persons with disabilities will not be illusory.

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[324] See *McCray vs New York*, 461 U.S. 961, 968 (1983) (Marshall, J., dissenting) ("The effect of excluding minorities goes beyond the individual defendant, for such exclusion produces injury to the jury system, to the law as an institution, to the community at large, and to the democratic ideal reflected in the processes of our courts.") (internal quotation marks omitted).

[325] See Brasilia Regulations, fn. 105.

[326] Id. at 5.

[327] Id. at 10 ["It is advisable to promote public policy aimed at guaranteeing technical legal assistance to the vulnerable person for the defence of their rights in all jurisdictions; whether through extending the responsibilities of the public defence office, not only in the criminal jurisdiction but also in other jurisdictions; or by creating mechanisms of legal assistance: legal consultancy with the participation of universities, *casas de justicia* (justice centres), intervention of bar associations or societies…"] (emphasis in the original).

[328] United Nations Sustainable Development Summit 2015, *Goal 16: Promote Just, Peaceful and Inclusive Societies*, available at http://www.un.org/sustainabledevelopment/peace-justice/ (last visited Dec. 1, 2015) (emphasis added).

[329] Id.

[330] See *e.g.* id. ("Ensure responsive, inclusive, participatory and representative decision-making at all levels" and "Promote and enforce non-discriminatory laws and policies for sustainable development").