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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Human rights in the administration of justice

Report of the Secretary-General**

Summary

The present report, submitted pursuant to General Assembly resolution [73/177](#), is focused on the situation of persons with disabilities in the administration of justice. It provides details on the principles of non-discrimination, equality, participation and accessibility, which should guide any effort to improve access to justice for persons with disabilities, highlighting the need for the provision of procedural, gender and age-appropriate accommodations, when necessary. In the report, the rights of persons with disabilities who are deprived of liberty are examined, in particular with regard to the reasonable accommodations that should be provided to them to ensure that they can participate in all aspects of daily life while in confinement. Concerning persons with disabilities placed for long periods in specialized institutions, States are encouraged to develop deinstitutionalization strategies that provide community-based services. The type of training needed for professionals working in the area of administration of justice is also highlighted. The recommendations contained in the report include a call on States not to impose capital punishment on persons with psychosocial or intellectual disabilities.

* [A/75/150](#).

** The present report was submitted after the deadline in order to reflect recent developments.



I. Introduction

1. The present report is submitted pursuant to General Assembly resolution 73/177, in which the Assembly requested the Secretary-General to submit to it at its seventy-fifth session a report on the latest developments, challenges and good practices in human rights in the administration of justice, including on the situation of persons with disabilities in the administration of justice, and on the activities undertaken by the United Nations system as a whole.

2. On 23 March 2020, a note verbale was sent to States and international organizations requesting contributions to the present report. The examples outlined in the report are based on the information provided by 28 States and four organizations.

II. Legal framework

3. The most comprehensive international legal instrument on the rights of persons with disabilities is the Convention on the Rights of Persons with Disabilities, which was adopted by the General Assembly in 2006 (resolution 61/106, annex I). The implementation of the Convention, which has so far been ratified by 181 States and, for the first time, by a regional organization (the European Union), is monitored by the Committee on the Rights of Persons with Disabilities.¹ The rights of persons with disabilities are also enshrined in other instruments, notably the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child.² Goal 16 of the 2030 Agenda for Sustainable Development is also relevant when considering access to justice for persons with disabilities.

4. In the preamble to the Convention on the Rights of Persons with Disabilities, it is recognized that disability is an evolving concept that results from 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. According to article 1 of the Convention, persons with disabilities include all 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. Those provisions reflect a shift in the understanding of disability from the medical and charity models that focused on personal impairments as the cause of social exclusion to a new human rights-oriented approach that views disability as a social construct. According to that approach, persons with disabilities are excluded by societal barriers that can be removed, rather than on the basis of personal impairments.³

¹ At the regional level, the Organization of American States adopted the Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities in 1999 and, in 2018, the African Union adopted the Protocol to the African Charter on Human and People's Rights on the Rights of Persons with Disabilities in Africa. Neither treaty has yet entered into force.

² The African Charter on Human and People's Rights, the African Charter on the Rights and Welfare of the Child, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter, and the Inter-American Convention on Human Rights are also relevant.

³ See Committee on the Rights of Persons with Disabilities, general comment No. 6 (2018) on equality and non-discrimination, para. 9; and [A/HRC/43/41](#), para. 39.

III. Access to justice for persons with disabilities

5. Article 13 (1) of the Convention requires States Parties to ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations to ensure equal participation by persons with disabilities in all stages of legal proceedings.⁴

6. However, persons with disabilities face significant obstacles to accessing justice, including denial of legal standing, in particular in relation to persons with intellectual or psychosocial disabilities; lack of full and equal participation in judicial proceedings; lack of accessibility to facilities, information and communications; lack of access to legal aid; lack of appropriate accommodations; and restrictions to access to effective remedy and full reparation. The Committee on the Rights of Persons with Disabilities, the Special Rapporteur on the rights of persons with disabilities and the Office of the United Nations High Commissioner for Human Rights (OHCHR) have highlighted many of the obstacles⁵ that have been exacerbated by the coronavirus disease (COVID-19) crisis owing to restrictions on freedom of movement and the closure of courts and tribunals.

A. General principles

Non-discrimination and equality

7. Article 13 (1) should be read in conjunction with other provisions of the Convention, including article 3, which sets out the general principles of the Convention, including non-discrimination, and article 4, in which States parties undertake to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities. Equality and non-discrimination are also at the core of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.⁶ The Committee on the Rights of Persons with Disabilities, referring to article 4 of the Convention, stated that States were under an obligation to promote effective access to justice for all persons with disabilities without discrimination of any kind.⁷ Both the Committee on the Rights of Persons with Disabilities and the Committee on the Elimination of Discrimination against Women⁸ have underscored intersecting discriminating factors, including disability, that impede women's access to justice. The Committee on the Rights of Persons with Disabilities stressed the barriers faced by women with disabilities, including harmful stereotypes, discrimination and lack of accommodations, which can discourage them from pursuing justice.⁹ It recommended that the rights of women with disabilities be mainstreamed in national action plans, strategies and policies related to access to justice.¹⁰

⁴ Access to justice for persons with disabilities was briefly covered in the previous report on human rights in the administration of justice (A/73/210, paras. 19–21).

⁵ Committee on the Rights of Persons with Disabilities, general comment No. 1 (2014) on equal recognition before the law, para. 38, and general comment No. 6, para. 16; A/HRC/37/56, paras. 21 and 42; and A/HRC/37/25, paras. 4, 16 and 40.

⁶ International Covenant on Civil and Political Rights, arts. 2 (1), 14 and 26; International Covenant on Economic, Social and Cultural Rights, arts. 2–3; and Committee on the Rights of Persons with Disabilities, general comment No. 6, para. 5.

⁷ CRPD/C/20/D/38/2016, (*Munir Al Adam v. Saudi Arabia*).

⁸ Committee on the Elimination of Discrimination against Women, general recommendation No. 33 (2015) on women's access to justice, para. 8.

⁹ Committee on the Rights of Persons with Disabilities, general comment No. 3 (2016) on women and girls with disabilities, para. 52; and CRPD/C/IND/CO/1, para. 28 (c).

¹⁰ Committee on the Rights of Persons with Disabilities, general comment No. 3, para. 27.

8. Moreover, in article 5 of the Convention on the Rights of Persons with Disabilities, the “equality before and under the law” of persons with disabilities is recognized. That right cannot be fully realized if the judiciary and law enforcement officers discriminate against persons with disabilities.¹¹ In article 12 of the Convention, States parties reaffirm the right of persons with disabilities to be recognized as persons before the law. The Committee on the Rights of Persons with Disabilities adds that persons with disabilities must have equal standing in courts and tribunals to enforce their rights.¹² In particular, the Committee considers that the denial of legal capacity through substituted decision-making regimes, such as guardianship, constitutes discrimination on the basis of disability and a barrier for persons with disabilities to exercise their rights and access to justice.¹³

9. The Special Rapporteur on the rights of persons with disabilities highlighted that access to justice is also essential for the protection and restoration of legal capacity.¹⁴ In many countries, such as Argentina, Colombia, Georgia, Kenya, Latvia, Peru and the United States of America, courts have challenged existing legislation that denies persons with disabilities the full recognition of legal capacity by applying the standards of the Convention.¹⁵

10. In November 2018, the Special Rapporteur and OHCHR hosted an expert group meeting to discuss the implementation of the rights to legal capacity and access to justice. Following the meeting, the Special Rapporteur commissioned a study aimed at identifying guiding principles, interventions and strategies to ensure equal and effective access to justice for persons with disabilities. On 21 February 2020, the Special Rapporteur convened an expert group meeting in Geneva to discuss and validate the need for States to adopt the “International principles and guidelines on access to justice of persons with disabilities”.¹⁶

Participation and accessibility

11. Access to justice is closely linked to the principle of full and effective participation and inclusion in society, as outlined in article 3 (c) of the Convention on the Rights of Persons with Disabilities. The Committee on the Rights of Persons with Disabilities considers that the participation of persons with disabilities in the justice system is an expression of the democratic system that contributes to good governance.¹⁷ Article 13 (1) of the Convention highlights the various ways through which persons with disabilities should be able to exercise their right to participate in the justice system, either directly or indirectly. According to the Committee, such participation may take many forms and includes persons with disabilities assuming the roles of claimants, victims, defendants, jurors, judges or lawyers.¹⁸ Employing persons with disabilities in the justice sector is key to building inclusive societies. The Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe reported that persons with disabilities are often

¹¹ Committee on the Rights of Persons with Disabilities, general comment No. 6, para. 14.

¹² Committee on the Rights of Persons with Disabilities, general comment No. 1, para. 38.

¹³ Committee on the Rights of Persons with Disabilities, general comment No. 1, para. 7.

¹⁴ Committee on the Rights of Persons with Disabilities, general comment No. 1, para. 38; and [A/HRC/37/56](#), para. 71.

¹⁵ [A/HRC/37/56](#), para. 73.

¹⁶ See www.ohchr.org/EN/Issues/Disability/SRDisabilities/Pages/GoodPracticesEffectiveAccessJusticePersonsDisabilities.aspx.

¹⁷ See Committee on the Rights of Persons with Disabilities, general comment No. 7 (2018) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention, para. 81.

¹⁸ *Ibid.*

underrepresented in justice sectors in participating States, some of which require medical clearance for individuals seeking employment as a judge or a prosecutor.

12. For the Committee, the principle of full and effective participation and inclusion in society is linked to the principle of accessibility under article 3 (f) of the Convention. The Committee identified some actions that enabled participation throughout all stages of the judicial process, including understandable and accessible information, diverse forms of communication and physical accessibility.¹⁹ Notably, the Committee stated that there could be no effective access to justice for persons with disabilities if law enforcement agencies and judiciary buildings were not physically accessible or if the services, information and communications they provided were not accessible to them.²⁰ Armenia, Denmark, Guatemala, Mauritius, Qatar and Slovenia reported that they had increased efforts and financial resources to improve access to judicial buildings for persons with disabilities. Ecuador reported that the Council of the Judiciary, together with the National Council for Equality of Disabilities, carried out regular on-site inspections of courtrooms to assess their accessibility to persons with disabilities. Physical accessibility also includes geographical accessibility. For example, Azerbaijan mentioned that it had modified its Code of Civil Procedure to allow witnesses with disabilities to testify from their place of residence.

13. The Committee also highlighted that close consultation with persons with disabilities was key for enacting and/or amending laws, regulations, policies and programmes covering their participation in the justice system.²¹ Denmark indicated that its Court Administration consulted with persons with disabilities and organizations representing them to increase the physical accessibility of courtrooms.

B. Right to a fair trial

Procedural and age-appropriate accommodations

14. The “procedural and age-appropriate accommodations” mentioned in article 13 (1) of the Convention are critical for persons with disabilities to attain the right to a fair trial. The provision of such accommodations facilitates the participation of persons with disabilities in the justice system and contributes to “equality of arms”.²²

15. According to the Committee, a “procedural accommodation”, such as using diverse methods of communication, recognizes that persons with disabilities may require accommodations in courts and tribunals to enable their effective participation.²³ Unlike “reasonable accommodations” (see para. 33), procedural accommodations are not subject to the proportionality requirement.²⁴ The Committee provided examples of procedural accommodations, including the provision of sign language interpretation, legal and judicial information in accessible formats for multiple means of communication, easy to read versions of documents, Braille and video link testimony.²⁵ OHCHR recommended that procedural accommodations

¹⁹ Committee on the Rights of Persons with Disabilities, general comment No. 6, para. 52.

²⁰ Committee on the Rights of Persons with Disabilities, general comment No. 2 (2014) on accessibility, para. 37.

²¹ Committee on the Rights of Persons with Disabilities, general comment No. 7, para. 81.

²² [A/HRC/37/25](#), paras. 24–25.

²³ Committee on the Rights of Persons with Disabilities, general comment No. 6, para. 51; and [CRPD/C/20/D/38/2016](#) (*Munir Al Adam v. Saudi Arabia*).

²⁴ CRPD Committee, General Comment No. 6, para. 51.

²⁵ Committee on the Rights of Persons with Disabilities, general comment No. 1, para. 39; [CRPD/C/ARM/CO/1](#), para. 21; [CRPD/C/BIH/CO/1](#), para. 24; [CRPD/C/CAN/CO/1](#), para. 30 (b); and [CRPD/C/CYP/CO/1](#), para. 36.

encompass procedural flexibility to accommodate specific requirements for participation, for example allowing sign language interpretation in proceedings, including in confidential jury debates, and adjusting procedural formalities.²⁶

16. The Committee considers that “age-appropriate accommodations” include disseminating information about available mechanisms to bring complaints forward using age-appropriate and plain language.²⁷ The Committee on the Rights of the Child has specified that such accommodations could consist of modified courtroom procedures and practices, specific settings and age-appropriate assistance, including interdisciplinary support, accessible information and the reading of documents, as well as procedural adjustments for testimony, training for all professionals involved in the administration of child justice and the adoption of regulations and protocols that ensure the fair treatment of children with disabilities.²⁸

17. The Committee on the Rights of Persons with Disabilities has underscored that accommodations should be provided after giving primary consideration to the request of individuals with disabilities, as they know best what they need.²⁹ The process of request for and provision of accommodations should be carried out free of charge³⁰ and confidentially, in line with article 22 of the Convention on the Rights of Persons with Disabilities on respect for privacy.³¹ Moreover, the Committee has called on States parties to review their legislation in order to explicitly include the duty to provide accommodations in all legal proceedings.³² OHCHR has also recommended that accommodation request processes be documented in order to facilitate accountability and the collection of good practices.³³

18. Several States indicated that they had increased access to information through the provision of procedural accommodations. Czechia reported that the participation of persons with disabilities in proceedings was facilitated by providing the services of an interpreter free of charge and/or simultaneous transcription of communications. Ecuador stated that 54 sign language interpreters had been accredited as experts of the judiciary. In Mauritius, services of trained sign language interpreters are reportedly provided free of charge to persons with disabilities who have a case before the courts. The Philippines reported that access to justice for people who were deaf or hard of hearing had been improved through the use of sign language in all proceedings. Qatar indicated that, when persons with disabilities were involved in criminal proceedings as witnesses, plaintiffs or suspects, they could be assisted by social services and, if needed, by sign language interpreters. Switzerland underlined the fact that procedural accommodations for persons with disabilities in judicial proceedings included interrogations by qualified experts in languages that those concerned understood.

19. Some States have also focused on digital access to information. For example, Canada reported that the Ontario Legal Aid Office provided all information online in alternative formats and trained employees on communicating with people with various types of impairments. Portugal mentioned that the Office of the Prosecutor-

²⁶ [A/HRC/37/25](#), para. 24.

²⁷ Committee on the Rights of Persons with Disabilities, general comment No. 6, para. 51.

²⁸ Committee on the Rights of the Child, general comment No. 24 (2019) on children’s rights in the child justice system, paras. 56, 57 and 60; general comment No. 12 (2009) on the right of the child to be heard, para. 9; and general comment No. 21 (2017) on children in street situations, paras. 2–8.

²⁹ [CRPD/C/ARM/CO/1](#), para. 22; [CRPD/C/BIH/CO/1](#), para. 25; and [CRPD/C/SRB/CO/1](#), para. 24.

³⁰ [CRPD/C/MUS/CO/1](#), para. 24; and [CRPD/C/CAN/CO/1](#), para. 30 (b).

³¹ [CRPD/C/DNK/CO/1](#), para. 51.

³² [CRPD/C/KEN/CO/1](#), para. 26 (b); [CRPD/C/ECU/CO/1](#), para. 27 (c); and [CRPD/C/CHN/CO/1](#), para. 24.

³³ [A/HRC/34/26](#), para. 41; and [A/HRC/37/25](#), para. 28.

General had developed an online tool, “Digital Support for Citizens”, that would enable communications or complaints to be electronically submitted, notably in cases relating to the protection of vulnerable persons.

20. A number of States reported that they had adopted legislation and protocols providing guidance on procedural accommodations, including the protocol for accessing justice by persons with disabilities in Argentina, the Disability Access Bench Book of Australia, the protocols and guidelines for the protection of the rights of people with disabilities in Ecuador, the “justice and exercise of rights” component of the national strategy for disability of Portugal, and the best practices tool kit for state and local governments under the Americans with Disabilities Act of the United States. Argentina indicated that its national assistance programme for persons with disabilities in their relations with the administration of justice had set up a team of experts, including persons with disabilities, that provided advice to persons with disabilities in judicial proceedings and proposed accommodations on a case-by-case basis. Peru reported that a provision ensuring the rights of persons with disabilities to procedural accommodations had been introduced in the Civil Procedural Code.

Opportunity to stand trial

21. The prevention or exclusion of persons with disabilities, in particular persons with intellectual or psychosocial disabilities, from participating in legal proceedings usually occurs through the formal deprivation of legal capacity using guardianship procedures or other substitute decision-making regimes, or as a result of practices that assess their competence to participate in proceedings. The Committee on the Rights of Persons with Disabilities has recommended the removal of the concept of “unfitness to stand trial” from criminal justice systems.³⁴ The Working Group on Arbitrary Detention also considers that persons with psychosocial disabilities should be given the opportunity to stand trial, with support and accommodations, rather than being declared incompetent.³⁵

22. Moreover, the Committee has called on States parties to prohibit practices that deprive defendants with psychosocial and intellectual disabilities of their rights to be heard in person, pursue adversarial proceedings, give evidence and confront witnesses.³⁶ The Committee,³⁷ along with the Special Rapporteur on the rights of persons with disabilities³⁸ and OHCHR,³⁹ expressed concern that, in practice, declarations of unfitness to stand trial and exemptions from criminal responsibility owing to declarations of “insanity” or “unsound mind” often led to the diversion of individuals from judicial proceedings to situations where they were subjected to security measures that sometimes entailed indefinite deprivation of liberty and treatment against their will, thereby denying them the same due process guarantees that others enjoyed.

23. The Committee has called for measures to ensure that the rights contained in the Convention are actionable in domestic courts, to provide access to justice for all persons who have experienced discrimination and to recognize the right of persons with

³⁴ A/72/55, annex, para. 16; CRPD/C/KOR/CO/1, para. 28.

³⁵ A/HRC/30/37, annex, para. 107 (b) (guideline 20).

³⁶ CRPD/C/CAN/CO/1, paras. 31 (b) and 32 (b); CRPD/C/ETH/CO/1, paras. 31–32; CRPD/C/ARE/CO/1, para. 27 (b); CRPD/C/THA/CO/1, paras. 29–30; CRPD/C/QAT/CO/1, para. 27; CRPD/C/DNK/CO/1, para. 34; CRPD/C/KOR/CO/1, paras. 27–28; CRPD/C/ECU/CO/1, paras. 28–29 (b); CRPD/C/ESP/CO/2-3, para. 24; and CRPD/C/18/D/30/2015 (*Boris Makarov v. Lithuania*).

³⁷ CRPD/C/KEN/CO/1, paras. 27 and 28; CRPD/C/ITA/CO/1, para. 35; CRPD/C/ECU/CO/1, paras. 28 and 29 (b); CRPD/C/PRT/CO/1, para. 33 (b); CRPD/C/BRA/CO/1, paras. 30–31 (a); CRPD/C/IND/CO/1, para. 30; and CRPD/C/TUR/CO/1, para. 29.

³⁸ A/HRC/40/54, para. 50.

³⁹ A/HRC/37/25, para. 36.

disabilities to bring a lawsuit before courts and pursue claims through associations, organizations or other legal entities. The Committee has also urged that specific rules relating to evidence and proof be adopted to ensure that stereotypes about the capacity of persons with disabilities do not impede redress for discrimination.⁴⁰

Legal aid

24. The Committee considers that the provision of legal aid is a prerequisite for the effective enjoyment of the rights to equality and non-discrimination. It has called on States parties to protect against discrimination by establishing an accessible network of high-quality free legal aid that respects the will and preferences of persons with disabilities and protects their procedural rights at the same level as for other types of legal representation.⁴¹ OHCHR has also emphasized the need for access to legal aid, calling on Member States to ensure the availability of services and information using multiple means, modes and formats of communication across their whole territory.⁴² The COVID-19 crisis has made it more difficult for persons with disabilities to access legal aid owing to restricted freedom of movement. Alternative measures to physical courtrooms, such as videoconferencing, do not always guarantee the litigants' right to defence.

25. OHCHR also highlighted the fact that the absence of free legal aid was one of the most common barriers to equal access to justice for persons with disabilities.⁴³ The Committee on the Rights of Persons with Disabilities raised concerns about the lack of available free legal aid for persons with disabilities,⁴⁴ including for those living in institutions⁴⁵ and for women and girls with disabilities facing violence or abuse.⁴⁶ The Committee on the Elimination of Discrimination against Women stressed that legal aid and information about it should be provided to women with disabilities.⁴⁷ The Committee on the Rights of Persons with Disabilities warned about austerity measures that cut free legal aid and exposed persons with disabilities to further marginalization.⁴⁸

26. Several States, such as Denmark and Italy, reported increased efforts to provide equal, accessible and free legal aid to persons with disabilities. Armenia noted that its Government had adopted a national strategy for judicial and legal reforms expanding the range of beneficiaries receiving free legal aid. Romania specified that the forms of legal aid provided for in its legislation were not limited to a lawyer's assistance, but also covered special measures regarding fees for the use of experts, translators or interpreters, and bailiffs. The European Committee on Legal Co-operation of the Council of Europe indicated that it was currently drafting guidelines in the field of legal aid, including for persons with disabilities.

C. Right to an effective remedy

27. The right to an effective remedy for victims of human rights violations is found in various international instruments, in particular article 8 of the Universal Declaration of Human Rights, article 2 of the International Covenant on Civil and

⁴⁰ Committee on the Rights of Persons with Disabilities, general comment No. 6, para. 31.

⁴¹ *Ibid.*, para. 49; and [CRPD/C/18/D/30/2015](#) (*Boris Makarov v. Lithuania*).

⁴² [A/HRC/37/25](#), para. 41.

⁴³ *Ibid.*, para. 40.

⁴⁴ [CRPD/C/ARM/CO/1](#), para. 22; [CRPD/C/SVK/CO/1](#), para. 41; [CRPD/C/UKR/CO/1](#), para. 28; and [CRPD/C/KEN/CO/1](#), paras. 25–26 (a).

⁴⁵ [CRPD/C/MEX/CO/1](#), paras. 25 and 26 (b).

⁴⁶ [CRPD/C/GTM/CO/1](#), para. 38.

⁴⁷ [CEDAW/C/CHL/CO/7](#), para. 15 (b); and [CEDAW/C/QAT/CO/2](#), para. 16 (c).

⁴⁸ [CRPD/C/15/R.2/Rev.1](#).

Political Rights, article 14 of the Convention against Torture and article 39 of the Convention on the Rights of the Child. The Committee on the Elimination of Discrimination against Women and the Committee on Economic, Social and Cultural Rights considered that the general obligations under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women and article 2 (1) of the International Covenant on Economic, Social and Cultural Rights, respectively, require the adoption of measures to ensure access to an effective remedy.⁴⁹ Regarding persons with disabilities, the Special Rapporteur on the rights of persons with disabilities insisted that they should have access to effective judicial or other appropriate remedies when States failed to meet their obligations.⁵⁰ OHCHR recalled that respect for the right to effective remedy required that persons with disabilities had access to available and accessible complaint mechanisms, investigation bodies and institutions, including independent judicial bodies capable of determining the right to reparation and awarding redress; adequate, effective and prompt redress and reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms.⁵¹

Duty to investigate and monitor

28. Article 16 (5) of the Convention on the Rights of Persons with Disabilities stipulates that States parties should put in place effective legislation and policies, including those focusing on women and children, to ensure that exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted. On that basis, the Committee on the Rights of Persons with Disabilities has called on States Parties to investigate cases of death, violence, abuse and exploitation of persons with disabilities placed in institutions and to prosecute perpetrators.⁵²

29. To prevent the occurrence of exploitation, violence and abuse against persons with disabilities, article 16 (3) of the Convention provides that States parties should ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities. More generally, article 33 (2) of the Convention calls on States parties to establish a framework, including one or more independent mechanisms, to promote, protect and monitor the implementation of the rights set out in the Convention. OHCHR has noted that such frameworks can help identify barriers faced by persons with disabilities in accessing justice and make recommendations to address them.⁵³

Redress and reparation

30. The Committee has called on States parties to ensure the availability and accessibility of effective reparations and redress for persons with disabilities who are victims of discrimination.⁵⁴ For example, Italy reported that its legislation provided for a conciliation procedure for persons with disabilities who had been discriminated against in the workplace. In addition to ordering the cessation of the behaviour, judges

⁴⁹ [E/C.12/55/D/2/2014](#), para. 11.3; and Committee on the Elimination of Discrimination against Women, general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, paras. 17, 32, 34 and 36.

⁵⁰ [A/HRC/34/58](#), para. 74.

⁵¹ [A/HRC/37/25](#), para. 43.

⁵² [CRPD/C/LVA/CO/1](#), para. 29 (a); [CRPD/C/ARM/CO/1](#), paras. 27–28; and [CRPD/C/AUS/CO/1](#), para. 38.

⁵³ [A/HRC/37/25](#), para. 46.

⁵⁴ Committee on the Rights of Persons with Disabilities, general comment No. 6; [CRPD/C/DEU/CO/1](#), para. 12 (c); [CRPD/C/TKM/CO/1](#), para. 10; and [CRPD/C/CYP/CO/1](#), para. 14.

can order monetary compensation and recommend any other measure to remove the effects of discrimination.

31. The Special Rapporteur on the rights of persons with disabilities specified that States must guarantee that persons with disabilities who have experienced any form of exploitation, violence or abuse as recipients of support, as well as in the context of substituted or supported decision-making regimes, should have access to effective remedies.⁵⁵

32. The Human Rights Committee, the Committee against Torture, and the Committee on the Elimination of Discrimination against Women underscored that measures of reparation to victims of human rights violations may include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.⁵⁶ The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in its resolution [60/147](#) of 16 December 2005, specify the same range of reparations.⁵⁷ Restitution requires a case-by-case analysis to ensure that the decision rendered is specific and that the violation will not be repeated. Compensation should be proportional to the gravity of the violation and the circumstances of each case. Rehabilitative measures should be provided on the basis of the individual's free and informed consent. Satisfaction, for its part, should include thorough investigation, prosecution and the disclosure of the truth of human rights violations while protecting the privacy and safety of witnesses involved in the investigation, as well as effective judicial and administrative sanctions. Guarantees of non-repetition call for systemic change, such as amending laws and policies and taking effective preventive and deterrent measures.⁵⁸

IV. Right to liberty and security of persons with disabilities

33. In line with other international human rights law instruments,⁵⁹ article 14 (1) of the Convention on the Rights of Persons with Disabilities prohibits the unlawful or arbitrary deprivation of liberty of persons with disabilities, as well as the deprivation of liberty on the basis of a disability. When persons with disabilities are deprived of their liberty, article 14 (2) of the Convention provides that they be entitled to the same guarantees under international human rights law as others. In addition, article 14 (2) specifies that persons with disabilities in detention should be provided with reasonable accommodation, which article 2 of the Convention defines 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 of all human rights and fundamental freedoms on an equal basis with others.

34. At its fourteenth session in August 2015, the Committee on the Rights of Persons with Disabilities adopted guidelines on the right to liberty and security of persons with disabilities.⁶⁰ In September 2015, OHCHR organized an expert meeting

⁵⁵ [A/HRC/34/58](#), para. 74; and [A/HRC/37/56](#), para. 72.

⁵⁶ [CCPR/C/158](#), para. 2; and Committee on the Elimination of Discrimination against Women, general recommendation No. 28, para. 32.

⁵⁷ General Assembly resolution [60/147](#), annex, para. 18. See also, Committee against Torture, general comment No. 3 (2012) on the implementation of article 14, para. 6; [A/HRC/34/58](#), para. 74; and [A/HRC/37/56](#), para. 72.

⁵⁸ General Assembly resolution [60/147](#), annex, paras. 19–23; and [A/HRC/37/25](#), paras. 49–53.

⁵⁹ Universal Declaration of Human Rights and International Covenant on Civil and Political Rights, art. 9; African Charter on Human and Peoples' Rights, art. 6; American Convention on Human Rights, art. 7; and European Convention on Human Rights, art. 5.

⁶⁰ [A/72/55](#), annex.

that was focused on the deprivation of liberty of persons with disabilities in order to identify gaps and challenges in the matter, as well as possible future actions to address those gaps, and to explore solutions to the existing disability-specific forms of deprivation of liberty.⁶¹ In 2019, the Special Rapporteur on the rights of persons with disabilities submitted a report to the Human Rights Council addressing the right to liberty and security of persons with disabilities.⁶²

A. Disability and deprivation of liberty

35. Article 14 (1) of the Convention sets up a new standard by which disability shall in no case justify deprivation of liberty. Based on the principle of non-discrimination, the provision is meant to redress historical patterns of exclusion of persons with disabilities, especially persons with intellectual or psychosocial disabilities who have been secluded in institutions on account of impairment.⁶³

36. The Committee and the Special Rapporteur consider that the placement of persons with disabilities into institutions, their involuntary commitment to mental health facilities and their detention resulting from a declaration of unfitness to stand trial or their exemption from criminal responsibility, notably on the basis of non-liability or the insanity defence (see para. 21), constitute deprivation of liberty on the grounds of impairment and, therefore, are arbitrary.⁶⁴

37. The Committee underscored the link existing between the absolute ban of deprivation of liberty on the basis of impairment and the right to equal recognition before the law.⁶⁵ The Committee considered that the denial of legal capacity of persons with disabilities and their subsequent placement in institutions, either without their free and informed consent or with the consent of a substitute decision maker, constituted arbitrary deprivation of liberty.⁶⁶ In addition, the Committee stressed the relationship between article 14 (1) and article 19 of the Convention on the equal right of persons with disabilities to live independently and be included in the community. It has regularly recommended that persons with disabilities be deinstitutionalized and provided with support services in consultation with organizations of persons with disabilities.⁶⁷ The Committee has also called for the allocation of more financial resources to ensure sufficient community-based services.⁶⁸ Similarly, the Human Rights Committee has recommended that adequate community-based services be made available for persons with psychosocial disabilities in order to provide less restrictive alternatives to confinement.⁶⁹

38. The Committee considers any deprivation of liberty of persons with disabilities based on the perceived danger they allegedly pose to themselves or to others to be

⁶¹ See www.ohchr.org/EN/Issues/Disability/Pages/deprivationofliberty.aspx.

⁶² [A/HRC/40/54](#).

⁶³ See travaux préparatoires regarding article 14 of the Convention on the Rights of Persons with Disabilities.

⁶⁴ [A/72/55](#), annex, paras. 10, 15, 16 and 20; Committee on the Rights of Persons with Disabilities, general comment No. 1, paras. 21 and 42; and [A/HRC/40/54](#), para. 46.

⁶⁵ [A/72/55](#), annex, para. 8.

⁶⁶ Committee on the Rights of Persons with Disabilities, general comment No. 1, para. 40.

⁶⁷ [CRPD/C/ESP/CO/1](#), paras. 35–36; [CRPD/C/CHN/CO/1](#) and [CRPD/C/CHN/CO/1/Corr.1](#), paras. 25–26; [CRPD/C/ARG/CO/1](#), paras. 23–24; [CRPD/C/PRY/CO/1](#), paras. 35–36; [CRPD/C/AUT/CO/1](#), paras. 29–30; [CRPD/C/SWE/CO/1](#), paras. 35–36; [CRPD/C/CRI/CO/1](#), paras. 29–30; [CRPD/C/AZE/CO/1](#), paras. 28–29; [CRPD/C/ECU/CO/1](#), paras. 28–29; [CRPD/C/MEX/CO/1](#), paras. 29–30; and [CRPD/C/TKM/CO/1](#), para. 34.

⁶⁸ [CRPD/C/CHN/CO/1](#) and [CRPD/C/CHN/CO/1/Corr.1](#), para. 26; [CRPD/C/AUT/CO/1](#), para. 31; and [CRPD/C/SWE/CO/1](#), para. 36.

⁶⁹ Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 19; and [CCPR/C/LVA/CO/3](#), 2014, para. 16.

arbitrary.⁷⁰ In its guidelines on article 14, the Committee noted that persons with intellectual or psychosocial disabilities were frequently deprived of their liberty on that basis and diverted to a separate track of judicial processes. The Committee considers that such diversion of persons with disabilities, including through mental health laws, implies a lower standard when it comes to procedural safeguards and is incompatible with both articles 13 and 14 of the Convention.⁷¹ Previously, the Human Rights Committee had indicated that persons with disabilities may be deprived of their liberty as a last resort to protect others from serious harm. That deprivation of liberty must be applied for the shortest appropriate period of time and must be accompanied by adequate procedural and substantive safeguards established by law.⁷² Importantly, the procedures should ensure respect for the views and interests of persons with disabilities.⁷³ The Human Rights Committee also specified that the deprivation of liberty of persons with disabilities must be re-evaluated at appropriate intervals to assess its necessity.⁷⁴

39. Recently, the Secretary-General and OHCHR highlighted the increased vulnerability of persons with disabilities in institutions to infection with COVID-19. They called for persons with disabilities to be discharged and released from institutions and provided with support in the community through family and/or informal networks. They also recommended that deinstitutionalization strategies be urgently adopted or accelerated in an effort to create more resilient communities and systems.⁷⁵

B. Rights of persons with disabilities deprived of their liberty

Arrest, pretrial and administrative detention

40. The Convention on the Rights of Persons with Disabilities provides that persons with disabilities deprived of their liberty are entitled to guarantees in accordance with international human rights law. Article 9 of the International Covenant on Civil and Political Rights, which prohibits arbitrary arrest and detention,⁷⁶ details the rights that should be respected during arrest and subsequent pretrial detention, as well as administrative detention, which would include, among other things, deprivation of liberty in institutions, including mental health institutions. In all such cases, individuals being detained must be promptly informed of the reasons for the arrest and detention and any charge against them.⁷⁷ Persons deprived of their liberty should

⁷⁰ A/72/55, annex, para. 14.

⁷¹ Ibid.

⁷² Human Rights Committee, general comment No. 35, para. 19. See also CCPR/C/84/D/1061/2002 (*Bozena Fijalkowska v. Poland*), para. 8.3; CCPR/C/98/D/1629/2007 (*Robert John Fardon v. Australia*), para. 7.3; CCPR/C/RUS/CO/6, para. 19; and CCPR/C/116/D/2044/2011 (*T.V. and A.G. v. Uzbekistan*), para. 7.4.

⁷³ Human Rights Committee, general comment No. 36 (2018) on the right to life, para. 19; CCPR/C/CZE/CO/2, para. 14; and Committee on the Rights of the Child, general comment No. 9 (2006) on the rights of children with disabilities, para. 48.

⁷⁴ CCPR/C/66/D/754/1997 (*A v. New Zealand*), para. 7.2; and Committee on the Rights of the Child, general comment No. 9, para. 50.

⁷⁵ United Nations, “Policy brief: a disability-inclusive response to COVID-19”, May 2020; and Office of the United Nations High Commissioner for Human Rights (OHCHR), “COVID-19 and the rights of persons with disabilities: guidance”, 29 April 2020.

⁷⁶ See also, African Charter on Human and Peoples’ Rights, art. 6; American Convention on Human Rights, art. 7; and European Convention on Human Rights, art. 5.

⁷⁷ International Covenant on Civil and Political Rights, art. 9 (2); American Convention on Human Rights, art. 7 (4); European Convention on Human Rights, art. 5 (2); and African Commission on Human and Peoples’ Rights, *Media Rights Agenda v. Nigeria*, communication No. 224/98, Decision of 6 November 2000; para. 43.

also be promptly brought before a judge or other judicial officer and should be entitled to trial within a reasonable time or released.⁷⁸ They should have the right to defend themselves or to be assisted by counsel as provided for in the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment.⁷⁹

41. Article 9 (4) and (5) of the International Covenant on Civil and Political Rights states that anyone deprived of liberty shall be entitled to take proceedings before a court, which may decide without delay on the lawfulness of the detention.⁸⁰ The Human Rights Committee considers that persons with disabilities deprived of liberty must be assisted in obtaining access to effective remedies for the vindication of their rights, including initial and periodic judicial review of the lawfulness of the detention, and to prevent conditions of detention that are incompatible with the Covenant.⁸¹ For example, in Cyprus, individuals deprived of their liberty can lodge a complaint to challenge their detention or their detention conditions. If the complainant has a visual or an auditory disability, he or she is provided, free of charge, with transcription in Braille format or interpretation in sign language.

42. In accordance with article 9 (4) of the International Covenant on Civil and Political Rights, if arrest and/or detention are found to be unlawful, the person concerned shall be released.⁸² Article 9 (5) of the Covenant also provides for an enforceable right to compensation. In that regard, the Committee on the Rights of Persons with Disabilities recalled that persons with disabilities who were arbitrarily or unlawfully deprived of their liberty were entitled to have access to justice to review the lawfulness of their detention and to obtain appropriate redress and reparation.⁸³ In addition, guideline 20 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, adopted by the Working Group on Arbitrary Detention, states that persons with disabilities are entitled to compensation and other forms of reparations, in the case of arbitrary or unlawful deprivation of liberty. Such compensation should take into account the damage caused by lack of accessibility, denial of reasonable accommodation or lack of health care and rehabilitation that have affected the concerned persons with disabilities.⁸⁴

43. In the context of the COVID-19 crisis, the Secretary-General and OHCHR called for the reduction of pretrial detention, the exploration of early release and probation for persons with disabilities in detention, and the shortening and commuting of sentences.⁸⁵

Protections in confinement

44. While in imprisonment, detention or any form of confinement, persons with disabilities are entitled to the guarantees provided in international human rights law

⁷⁸ See also, American Convention on Human Rights art. 7 (5); European Convention on Human Rights, art. 5 (3), and African Charter on Human and Peoples' Rights, art. 7 (1) (a).

⁷⁹ General Assembly resolution 43/173, annex, principle 11. See also [CCPR/C/50/D/330/1988](#) (*Albert Berry v. Jamaica*), para. 11.1; and [CCPR/C/44/D/289/1988](#) (*Dieter Wolf v. Panama*), para. 6.2.

⁸⁰ See also, American Convention on Human Rights, art. 7 (6); and European Convention on Human Rights, art. 5 (4).

⁸¹ Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 15, and general comment No. 35, para. 19. See also [CCPR/C/84/D/1061/2002](#) (*Bozena Fijalkowska v. Poland*), paras. 8.3–8.4; and [CCPR/C/66/D/754/1997](#) (*A v. New Zealand*), para. 7.3.

⁸² Human Rights Committee, general comment No. 35, paras. 39–48.

⁸³ [A/72/55](#), annex, para. 24.

⁸⁴ [A/HRC/30/37](#), annex, para. 107.

⁸⁵ United Nations, "Policy brief: a disability-inclusive response to COVID-19"; and OHCHR, "COVID-19 and the rights of persons with disabilities".

instruments. Article 10 of the International Covenant on Civil and Political Rights stipulates that persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person.⁸⁶ Article 17 of the Convention on the Rights of Persons with Disabilities states that persons with disabilities are entitled to have their physical and mental integrity respected on an equal basis with others.⁸⁷ The Committee on the Rights of Persons with Disabilities has expressed its concern about poor living conditions in places of detention, in particular prisons, and has recommended that immediate steps be taken to address them.⁸⁸ The Committee has also systematically recommended that States parties establish legal frameworks for the provision of reasonable accommodation that preserves the dignity of persons with disabilities detained in prisons.⁸⁹ In particular, the Committee has called on States parties to take all relevant measures to ensure that persons with disabilities who are detained can live independently and participate fully in all aspects of daily life in their place of detention, including by 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.⁹⁰

45. Several States reported efforts to improve the living conditions of detainees with disabilities. Armenia indicated that its 2020–2022 action plan of the national strategy for human rights protection foresaw the acquisition of accessible vehicles for the transfer of detainees. Armenia reported that it had engaged in a repair programme of prisons to ensure their accessibility to inmates with disabilities. Cyprus reported that its legislation provided for detention centres to be accommodated to avoid discrimination against people with disabilities. Assistance and services should be easily accessible to them. Detention centres should also offer activities to detainees with disabilities. In Mauritius, the Melrose High Security Prison reportedly has a special unit that caters for the welfare of persons with disabilities and older inmates. Portugal noted that its Directorate General for Rehabilitation and Prison Services had signed a framework agreement with the Portuguese Federation of Associations of the Deaf to provide services to inmates who were deaf and hard of hearing. Portuguese prisoners who are blind or have low vision are accommodated in accessible sections of prisons in order to facilitate their daily lives.

46. In line with article 7 of the International Covenant on Civil and Political Rights and the Convention against Torture, article 15 of the Convention on the Rights of Persons with Disabilities prohibits torture and other cruel, inhuman or degrading treatment or punishment. The prohibition applies, in particular, when persons with disabilities are deprived of their liberty. The Committee on the Rights of Persons with Disabilities has stressed that a lack of accessibility and reasonable accommodation places persons with disabilities in substandard conditions of detention that constitute not only a breach of article 14 (2) of the Convention but also of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.⁹¹ That position has been echoed by the European Court of Human Rights, which stated that

⁸⁶ [CCPR/C/119/D/2146/2012](#) (*Zhaslan Suleimenov v. Kazakhstan*).

⁸⁷ [CRPD/C/11/D/8/2012](#) (*Mr. X v. Argentina*).

⁸⁸ [A/72/55](#), annex, para. 17; and [CRPD/C/HRV/CO/1](#), para. 24.

⁸⁹ [CRPD/C/COK/CO/1](#), para. 28 (b); [CRPD/C/MNG/CO/1](#), para. 25; [CRPD/C/TKM/CO/1](#) para. 26 (b); [CRPD/C/CZE/CO/1](#), para. 28; [CRPD/C/DEU/CO/1](#), para. 32 (c); [CRPD/C/KOR/CO/1](#), para. 29; [CRPD/C/NZL/CO/1](#), para. 34; [CRPD/C/AZE/CO/1](#), para. 31; [CRPD/C/AUS/CO/1](#), para. 32 (b); and [CRPD/C/SVK/CO/1](#), para. 32.

⁹⁰ [A/72/55](#), annex, para. 18.

⁹¹ *Ibid.*

the lack of provision of reasonable accommodation for prisoners with disabilities could amount to inhuman and degrading treatment.⁹²

47. The Committee also found that forced treatment, seclusion and various methods of restraint in medical facilities, including physical, chemical and mechanical restraints, were not consistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment of persons with disabilities.⁹³ The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has also stressed that practices such as psychiatric intervention on the grounds of “medical necessity” or “best interests” almost always inflict severe pain or suffering and may amount to torture.⁹⁴ More generally, the Committee has highlighted that the provision of health services, including mental health services, shall be based on the free and informed consent of the person concerned.⁹⁵

48. Based on article 16 (3) of the Convention on the Rights of Persons with Disabilities, which provides that all facilities and programmes designed to serve persons with disabilities should be monitored by independent authorities, and article 33 (2) and (3) requiring States parties to establish a national independent monitoring mechanism, the Committee considered that the review of detentions must have the purpose of challenging arbitrary detentions and obtaining the immediate release of persons found to have been arbitrarily detained; under no circumstances should it allow for the extension of arbitrary detention.⁹⁶ Argentina stated that its national assistance programme for persons with disabilities in their relations with the administration of justice monitored places of detention to determine whether persons with disabilities were properly accommodated.

V. Other considerations

Training for those working in the field of administration of justice

49. Article 13 (2) of the Convention on the Rights of Persons with Disabilities states that, 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. The Committee on the Rights of Persons with Disabilities recalled that obligation on several occasions.⁹⁷ It specified that appropriate training should include awareness-raising on: (a) the complexities of intersectionality and the fact that persons should not be identified purely on the basis of impairment; (b) the diversity among persons with disabilities and their individual requirements in order to gain effective access to all aspects of the justice system on an equal basis with others; (c) the individual autonomy of persons with disabilities and the right to legal capacity for all; (d) the centrality of effective and meaningful communication to successful inclusion; and (e) measures to adopt to ensure the effective training of personnel, including lawyers, magistrates, judges, prison staff, sign language interpreters and the police and penitentiary system, on the

⁹² European Court of Human Rights, Fourth Section, *D.G. v. Poland*, application No. 45705/07, Judgment, 2 May 2013, paras. 176–177; and European Court of Human Rights, First Section, *Semikhvostov v. Russia*, application No. 2689/12, Judgment, 7 July 2014, paras. 85–86.

⁹³ [A/72/55](#), annex, para. 12; [CPRD/C/PER/CO/1](#), paras. 30–31; [CRPD/C/HRV/CO/1](#), para. 24; [CRPD/C/DOM/CO/1](#), para. 31; [CRPD/C/SVK/CO/1](#), paras. 33–34; [CRPD/C/SWE/CO/1](#), paras. 37–38; [CRPD/C/NZL/1](#), para. 32; and [CRPD/C/AUS/CO/1](#), para. 36.

⁹⁴ [A/HRC/43/49](#), para. 37.

⁹⁵ [A/72/55](#), annex, para. 11; Committee on the Rights of Persons with Disabilities, general comment No. 1; [CRPD/C/ECU/CO/1](#), para. 29 (d); [CRPD/C/NZL/CO/1](#), para. 30; and [CRPD/C/SWE/CO/1](#), para. 36.

⁹⁶ [A/72/55](#), annex, para. 19; and [CRPD/C/DEU/CO/1](#), para. 36.

⁹⁷ [A/72/55](#), annex, para. 17; and [CRPD/C/MEX/CO/1](#), para. 28.

rights of persons with disabilities.⁹⁸ The Committee also encouraged States parties to promote the training of professionals in the justice sector to ensure the availability of effective remedies for women with disabilities who have been victims of violence.⁹⁹

50. Several States have reportedly developed training programmes focusing on the situation of persons with disabilities in the administration of justice. Denmark mentioned that its police academy had introduced modules on the rights of persons with disabilities in the training of police officers. Prison officers were also trained, notably by nurses and social workers, to respond to the needs of inmates with disabilities. Guatemala reported that it had set up an online platform for the training of magistrates on the rights and needs of persons with disabilities. The Supreme Court of Mexico launched a course in collaboration with the Special Rapporteur on the rights of persons with disabilities.¹⁰⁰ The Philippines indicated that the Women and Children Protection Centre of its national police was developing a training of trainers manual on access to justice for women and girls with disabilities. Romania noted that its 2020 programme of continuous professional training of magistrates provided workshops on hearing techniques in criminal cases. Slovenia reported that the training centre of the Ministry of Justice provided courses for all judicial personnel, which included modules on the rights of children and persons with disabilities in judicial proceedings. Switzerland underlined that the training of its police officers integrated modules on the needs of persons with disabilities and that relevant skills were tested for the federal police certificate. Argentina indicated that the national assistance programme for persons with disabilities in their relations with the administration of justice provided training courses for magistrates, lawyers and other justice professionals. Guatemala reported that its permanent training programme for magistrates included specific workshops on persons with disabilities. Portugal mentioned that the Directorate General for the Administration of Justice provided regular training for its staff working with people with disabilities. The criminal police of Portugal, through its academy, reportedly provides training on human rights, in particular on the rights of persons with disabilities, in the framework of criminal investigations.

Capital punishment

51. Article 10 of the Convention reaffirms the inherent right to life of every human being, as stated in article 6 of the International Covenant on Civil and Political Rights, without, however, alluding to the issue of capital punishment. While the question of the death penalty is addressed in specific reports to the General Assembly and the Human Rights Council,¹⁰¹ it is worth recalling that the Economic and Social Council, in its resolution 1989/64, the Commission on Human Rights, in its resolution 2005/59, the General Assembly, in its resolution 73/175, and the Human Rights Council, in its resolution 36/17, have all called on States not to impose capital punishment on persons with mental or intellectual disabilities. That prohibition is rooted in the customs and practices of most legal systems.¹⁰² The Human Rights Committee has also recommended that States refrain from imposing the death penalty on individuals who face special barriers in defending themselves on an equal basis with others, such as persons with serious psychosocial or intellectual disabilities.¹⁰³

⁹⁸ Committee on the Rights of Persons with Disabilities, general comment No. 6, para. 55.

⁹⁹ Committee on the Rights of Persons with Disabilities, general comment No. 3, para. 26.

¹⁰⁰ See www.scjn.gob.mx/agenda/nociones-basicas-sobre-el-acceso-la-justicia-de-las-personas-con-discapacidad.

¹⁰¹ See, notably, A/73/260, paras. 36–38; and A/HRC/39/19, paras. 43–45.

¹⁰² A/HRC/36/26, paras. 49–52.

¹⁰³ Human Rights Committee, general comment No. 36, para. 49; CCPR/C/JPN/CO/6, para. 13; and CCPR/C/74/D/684/1996 (*R.S. v. Trinidad and Tobago*), para. 7.2.

VI. Conclusions

52. The participation of persons with disabilities in the administration of justice on an equal basis with others contributes to the building of inclusive societies. The direct participation of persons with disabilities as victims or defendants requires that States ensure that persons with disabilities have access to the same procedural guarantees and safeguards as all other individuals. When necessary, equal access to justice should be ensured for persons with disabilities through the provision of procedural, gender- and age-appropriate accommodations that take into account the will and preferences of those concerned. The provision of legal counselling and, when required, free and accessible legal aid is also key to ensuring the equal access of persons with disabilities to justice.

53. The efforts deployed by many States to ensure the provision of accessible information and communications in an understandable manner and physical accessibility to relevant premises for all persons with disabilities are welcome. States that have not yet done so should deploy similar efforts.

54. In addition, laws imposing ineligibility rules restricting the possibility of persons with disabilities to fulfil various roles in the administration of justice system, whether it be as members of the judiciary, lawyers, court staff or jurors, should be repealed or amended. Furthermore, training should be provided to professionals in the field of administration of justice on adopting a human rights-oriented approach to disability, the importance of the right to legal capacity for all and the need to ensure age-appropriate and procedural accommodations.

55. Instances of exploitation, violence and abuse against persons with disabilities should be identified, investigated and, where appropriate, prosecuted and sanctioned. In that respect, States should ensure the availability and accessibility of effective redress and reparations for all victims.

56. The initiative of the Special Rapporteur on the rights of persons with disabilities regarding the development of international principles and guidelines on access to justice for persons with disabilities is welcome and should be supported.

57. Moreover, States should engage in legal and policy reforms to prevent discriminatory practices against persons with disabilities who are deprived of their liberty. In that regard, States should rely on the guidelines adopted by the Committee on the Rights of Persons with Disabilities to ensure that the specific needs of persons with disabilities are duly taken into account and that their rights are respected. They should provide reasonable accommodations that enable persons with disabilities to participate fully in all aspects of daily life in their place of detention, including by ensuring their equal access to the various areas and available services. In addition, specific attention should be devoted to persons with disabilities placed in specialized institutions for long periods. States should develop deinstitutionalization strategies that provide community-based services.

58. Moreover, States should refrain from imposing the death penalty on individuals who face specific barriers in defending themselves on an equal basis with others and who are more likely to be denied guarantees of fair trial, in particular persons with psychosocial or intellectual disabilities.