

Stephanie Ortoleva, **"Inaccessible Justice: Human Rights, Persons with Disabilities and the Legal System,"** 17 ILSA J. Int'l & Comp. L. 281 (Spring 2011).

Abstract:

This paper focuses on the important concept of access to justice and what it means to persons with disabilities. It also addresses how the United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD) provides for awareness of the requirements to provide access to justice for persons with disabilities.

Part II seeks to answer the question of what is access to justice and why it is important for persons with disabilities. "Access to Justice" is a broad concept, encompassing peoples' effective access to the systems, procedures, information, and locations used in the administration of justice. Persons with disabilities have often been denied access to fair and equal treatment before courts, tribunals, law enforcement officials, prison systems, and other bodies that make up the justice system in their country, because they have faced barriers. Additionally, persons with disabilities have been discriminated against in terms of attaining positions as lawyers, judges, and other officials in the justice system. Such barriers not only limit the ability of persons with disabilities to use the justice system, but also limit their ability to contribute to the administration of justice to society and to the community as a whole. This important right is enumerated in Article 13 of the CRPD.

Part III outlines the legal framework in which this right is developed. Subpart A explores the right under the CRPD. Subpart B outlines the comparable right in other international conventions and Subpart C makes a similar analysis under regional treaties. The right of access to justice is intrinsic to all human rights treaties. The citations to specific provisions and the interpretations of these provisions by the various treaty Committees provides guidance on the development of a formulation of this right in Article 13 of the CRPD by the United Nations Committee on the Rights of Persons with Disabilities (CRPD Committee), and other international bodies. The various treaty Committees also provide guidance for States Parties to the CRPD as they implement its provisions.

Part IV highlights specific areas of denials of access to justice for persons with disabilities. Subpart A addresses the denials to persons with disabilities as people who seek to learn about or seek to obtain information about how the justice system works. Subpart B explores denials of justice to Disabled People's Organizations (DPOs) advocating for disability rights. Subpart C addresses the barriers persons with disabilities face as clients generally. Subpart D explores the exclusion of persons with disabilities from positions as lawyers. Subpart E documents the ongoing exclusion of persons with disabilities as jurors. Subpart F explores the barriers to access to the courthouse. Subpart G enumerates the situations persons with disabilities face as criminal defendants and prisoners, and Subpart H outlines the problems confronted by those who are victims of crime.

Part V briefly outlines some common barriers to disability inclusion in rule of law and justice reform programming. Access to justice is often addressed in rule of law and justice reform programming conducted by international donors and implementing partners. Regrettably, many of these programs

ignore the interests of persons with disabilities in designing their programs, despite the mandate to do otherwise, as contained in the CRPD and in the donors' own guidelines.

Part VI outlines effective strategies for achieving inclusion of disabled persons in rule of law and justice reform programming. These suggestions are detailed in several categories: Subpart A discusses legal analysis, research and institution reform; Subpart B emphasizes the role of training judges, lawyers, and other justice professionals; Subpart C describes the methods that might increase the number of judges and lawyers with disabilities; Subpart D relates to the role of Disabled Persons and DPOs in such efforts; Subpart E describes needed reforms in the criminal justice system; Subpart F explores techniques for community education and awareness; and Subpart G outlines reforms in the essential element of physical access to courts and judicial tribunals. Part VII sets forth conclusions and recommendations moving forward, with a focus on the roles of the CRPD committee, States Parties, and disabled persons and DPOs.

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