



Women and girls with disabilities, who make up almost one-fifth of the world's population of women,<sup>1</sup> face significant barriers to accessing justice, due to discrimination on the basis of both gender and disability, accessibility barriers to the justice system, and lack of reasonable accommodations throughout judicial proceedings.<sup>2</sup> Compared to both men with disabilities and women without disabilities, women with disabilities are disproportionately excluded from legal protection<sup>3</sup> and are more likely to have their credibility questioned,<sup>4</sup> owing to harmful gender and disability stereotypes. Women with disabilities also encounter barriers to attaining positions as lawyers, judges, and other officials in the justice system, and may be excluded from serving on juries. Such barriers not only limit the ability of women with disabilities to use the justice system, but also limit their ability to contribute to the administration of justice to society as a whole.

Access to justice is interdependent with a number of fundamental rights. Effective access to justice is essential for challenging human rights violations, such as discrimination in employment or deprivation of parental rights. Lack of access to justice can reinforce vulnerability to rights violations, particularly where perpetrators may feel emboldened when they know the justice system is unlikely to respond to complaints by women with disabilities. Access to justice also depends on the fulfilment of other rights—realization of the right to accessibility, for instance, will often determine whether women with disabilities have effective access to the justice system.

## Violations of the Right to Access Justice for Women and Girls with Disabilities

### What is Access to Justice?

“Access to Justice” is a broad concept, encompassing peoples’ effective access to the systems, procedures, information, and locations used in the administration of justice,<sup>5</sup> including all judicial and quasi-judicial settings, religious, community, and/or customary legal systems, and law enforcement.<sup>6</sup> In this context, access refers to both direct or indirect participation in these systems, including as complainants, defendants, witnesses, and prisoners.<sup>7</sup>

### Legal systems explicitly and implicitly exclude women with disabilities

- National laws, policies, and plans may not reflect specific rights violations that women with disabilities experience, leaving them without legal recourse. For example, forced sterilization of women with disabilities is legally permitted in a number of States and laws on domestic violence may not address the types of violence that women with disabilities disproportionately experience.
- Laws that strip women with disabilities—particularly women with intellectual and psychosocial disabilities—of legal capacity may prevent them from initiating legal proceedings or testifying in court.

### Physical, informational, and financial barriers

- Courthouses, witness boxes, police departments, legal aid offices, and transportation services are often physically inaccessible, preventing women with disabilities from availing themselves of these services and venues.<sup>8</sup>
- Women with disabilities often lack knowledge about their rights and the justice system due to such information not being made available in alternative formats (e.g., Braille, large print, plain language, text-to-speech, or Easy Read).
- Lack of sign language interpretation or other communication aids throughout the justice system can prevent women with disabilities from moving a complaint through the justice system.
- Women with disabilities are more likely to live in poverty than are men with disabilities or non-disabled women, and consequently face greater barriers to affording the costs associated with access to justice.

## Barriers due to harmful gender- and disability-based stereotypes

- Gender bias and stereotypes play a significant role in limiting access to justice for all women. Gender biases can affect the weight given to women's testimony and the impartiality of justice system actors. For women with disabilities, additional disability-based stereotypes further compound barriers to accessing justice.<sup>9</sup>
- Police, the judiciary, and the public may perceive women with disabilities, particularly women with intellectual or psychosocial disabilities, as being less credible witnesses. This can pose an insurmountable barrier to accessing justice in situations where the only evidence of abuse or another crime is the testimony of a woman with a disability, as is often the case with gender-based or sexual violence crimes.<sup>10</sup>
- Women with disabilities are more likely to face adverse outcomes in child custody and divorce proceedings, particularly where courts may enforce a discriminatory stereotype that women with disabilities are not competent to parent.<sup>11</sup> As a result, women with disabilities may fear losing custody of their children if they file complaints. These concerns can compel women with disabilities to remain in abusive relationships when there is a child involved.<sup>12</sup>
- Women with disabilities may also fear institutionalization if they file complaints, due to harmful gender- and disability-based stereotypes.

## Gatekeepers to the justice system

- Caregivers can act as gatekeepers to women with disabilities' access to justice. For example, in cases where their legal capacity is not recognized, women with disabilities may be dependent on their legal guardians to initiate judicial proceedings.
- Women with disabilities may fear reporting abuses committed by their caregivers because of emotional, financial, or physical dependence.
- In caregiving settings such as in institutions, women with disabilities often have no legal recourse to challenge the decision about their institutionalization.

## The Right to Access to Justice

A range of fundamental rights protected in a number of international and regional human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), underpin the right of women with disabilities to access justice. These include the rights to:

- **Equal recognition before the law and access to justice**<sup>13</sup>
- **Equality and non-discrimination**<sup>14</sup>
- **Accessibility**<sup>15</sup>
- **Effective remedy**<sup>16</sup>
- **Fair trial**<sup>17</sup>
- **Legal assistance**<sup>18</sup>
- **Effective participation in all legal proceedings** through the provision of procedural, age-appropriate, and disability-related **accommodations**<sup>19</sup>

## Access to Justice and Legal Capacity

The recognition of the right to legal capacity is essential for access to justice for women with disabilities. States must ensure that women with disabilities:

- Are recognized as persons before the law with equal standing in courts and tribunals.
- Have access to legal representation on an equal basis with others.
- Are guaranteed legal capacity to testify on an equal basis with others.
- Are provided with appropriate supports to facilitate their participation in the justice system, including, e.g., court recognition of diverse communication methods, allowing video testimony as appropriate, procedural accommodation, the provision of professional sign language interpretation and other assistive methods.<sup>20</sup>

In addition, all justice system personnel must be trained to recognize gender and disability stereotypes that may affect their impartiality and to give the same weight to complaints and statements from women with disabilities as they would to nondisabled persons and men with disabilities.

## Government Obligations with Respect to Access to Justice

Governments have specific obligations under international law to respect, protect, and fulfil the right of women with disabilities to access to justice.

### Governments must:

- Respect:** This obligation requires States—including any state actors—to refrain from impeding access to justice. The State must enact laws and regulations to safeguard effective access to justice, for instance by ensuring that everyone enjoys full legal capacity.
- Protect:** This obligation requires States to protect the access to justice of women with disabilities from interference by private actors, for instance by ensuring they can safely report violence against them without intervention or risk of retaliation by legal guardians.
- Fulfil:** This obligation requires States to take necessary measures to ensure that women with disabilities can be equal and active participants in the justice system, including, for example, by ensuring that women with disabilities can testify in courts with appropriate support as needed.

The Committee on the Elimination of Discrimination against Women (CEDAW Committee) has further identified six interrelated, essential components of the state obligation to ensure access to justice.

### To ensure that it is both gender- and disability-responsive, the justice system must be:<sup>21</sup>

- Justiciable:** This requires States to ensure that justice systems are gender- and disability- responsive to promote effective access to justice for women with disabilities in both law and practice. This includes ensuring that the rights of women with disabilities and correlative legal protections are recognized and incorporated into the law. This also requires States to dismantle barriers to participation for women with disabilities within all bodies and levels of judicial systems, including in professions as lawyers, judges, and other judicial system actors.
- Available:** This requires States to establish justice entities—as well as related emergency and support services such as legal aid, shelters, hotlines and counselling—and to ensure that they are maintained, funded, and available to women with disabilities, including in rural areas. There must be legal mechanisms available to women with disabilities in institutional settings or who have had their legal capacity removed to reexamine these restrictions on their liberty.
- Accessible:** This requires that justice systems—and the information necessary to navigate the justice system—can be accessed by women across a range of disabilities. This includes physical accessibility (including accessible transportation), economic accessibility (affordability), information accessibility, and communication accessibility. Examples of steps taken to ensure accessibility include provision of legal aid, professional translation and interpretation services, information and materials in various accessible formats and other reasonable accommodations.
- Good Quality:** This requires States to effectively address discriminatory legal or social norms to ensure that women with disabilities have access, in a timely fashion, to appropriate, effective, and impartial remedies. It also requires that judicial procedures are not influenced by harmful gender or disability stereotypes. Women with disabilities must not fear institutionalization or loss of custody of their children when seeking justice.
- Remedial:** This requires States to ensure that available remedies are timely, effective, and holistic, for example by including both financial compensation and provision of medical, rehabilitative, and social services for women with disabilities who have experienced rights violations.
- Accountable:** This requires States to develop effective and independent mechanisms to observe and monitor the justice system. This might include creating accessible mechanisms to complain about justice professionals and ensuring that cases of identified discriminatory practices and acts by justice professionals are effectively addressed through disciplinary and other measures.

## Realizing Access to Justice for Women and Girls with Disabilities

- Women and girls with disabilities must be recognized as equal rights holders before the law and enjoy equal recognition of their legal capacity and their credibility.
- Women with disabilities must have access to information on their legal rights and the justice system, as well as necessary support services and accommodations to navigate and participate in the judicial process, including legal aid. Information must be available in alternative formats to ensure accessibility.
- Law enforcement, the judiciary, and other actors involved in the administration of justice must be trained to handle cases concerning women with disabilities and to dismantle harmful stereotypes about credibility or capacity.
- Lawyers must be trained to provide women with disabilities with effective legal representation, for instance by developing law school clinics that work with clients with disabilities and by including women's rights and disability rights in, e.g., law school curricula and continuing legal education programs.
- Women with disabilities must not be subjected to forced institutionalization, and there must be effective legal channels for those who are institutionalized to challenge their institutionalization and to report human rights violations committed against them within institutions.

### Good Practices for Increasing Access to Justice

- Develop accessible and inclusive Know Your Rights programs for women with disabilities.
- Establish forums designed to increase the availability and accessibility of the justice system, including for women with disabilities in rural or otherwise isolated areas, such as mobile courts or one-stop centers.
- Train social workers and paralegals to help women with disabilities navigate the justice system from reporting abuses through the remedy stages.
- Develop programs to increase comfort of women with disabilities during court proceedings, assist victims/survivors in giving testimony, and address credibility concerns.<sup>22</sup>
- Advocate for government-funded legal services, fee waivers, and cost reductions for women with disabilities who are unable to afford legal representation or other fees associated with access to justice.<sup>23</sup>

<sup>1</sup> WORLD HEALTH ORGANIZATION (WHO) & WORLD BANK, WORLD REPORT ON DISABILITY 28 (2011).

<sup>2</sup> Committee on the Rights of Persons with Disabilities (CRPD Committee), *General Comment No. 3: Article 6 (Women and Girls with Disabilities)*, ¶ 52, U.N. Doc. CRPD/C/GC/3 (2016).

<sup>3</sup> *Id.*, ¶ 32.

<sup>4</sup> *Id.*, ¶ 52.

<sup>5</sup> Stephanie Ortoleva, *Inaccessible Justice: Human Rights, Persons with Disabilities, and the Legal System*, 17:2 ILSA J. of Int. & Comp. Law 281, 284 (2011).

<sup>6</sup> Committee on the Elimination of Discrimination against Women (CEDAW Committee), *General Recommendation No. 33: Women's Access to Justice*, ¶¶ 4-5, 27, U.N. Doc. CEDAW/C/GC/33 (2015).

<sup>7</sup> *Id.*, ¶ 18.

<sup>8</sup> United Nations Division for Social Policy Development (UN DSPD) & United Nations Department of Economic and Social Affairs (UN DESA), *Toolkit on Disability for Africa: Access to Justice for Persons with Disabilities* 16; CEDAW Committee, *General Recommendation No. 33*, ¶¶ 13 & 17(g).

<sup>9</sup> CEDAW Committee, *General Recommendation No. 33*, *supra* note 6, ¶¶ 26-28.

<sup>10</sup> Rashida Manjoo, Report of the Special Rapporteur on violence against women, its causes and consequences: women with disabilities, ¶¶ 42-43, U.N. Doc. A/67/227 (Aug. 3, 2012)

<sup>11</sup> *Id.*, ¶¶ 46-47

<sup>12</sup> *Id.*, ¶ 49

<sup>13</sup> International Covenant on Civil and Political Rights (ICCPR), Arts. 16, 26; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Art. 15; Convention for the Elimination of Racial Discrimination (CERD), Art. 5; Convention on the Rights of Persons with Disabilities (CRPD), Arts. 12, 13; African Charter on Human and People's Rights (Banjul Charter),

Art. 3; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), Art. 8; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (African Disability Protocol), Art. 7; American Convention on Human Rights (American Convention), Art. 3.

<sup>14</sup> ICCPR, Art. 2; International Covenant on Economic, Social and Cultural Rights (ICESCR), Art. 2; CRPD, Arts. 5-7; CEDAW, Arts. 1, 3; Convention on the Rights of the Child (CRC), Arts. 2, 5; Banjul Charter, Arts. 2, 3; Maputo Protocol, Art. 8; African Disability Protocol, Arts. 5, 6; American Convention, Arts. 1, 24; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), Art. 3; European Convention on Human Rights (ECHR), Art. 14; Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), Art. 4.

<sup>15</sup> CRPD, Art. 9; Maputo Protocol, Art. 14; Istanbul Convention, Art. 20; African Disability Protocol, Art. 15.

<sup>16</sup> ICCPR, Art. 2; American Convention, Art. 8; ECHR, Arts. 13, 41.

<sup>17</sup> ICCPR, Art. 14; ECHR, Art. 6; Banjul Charter, Art. 7; American Convention, Art. 8.

<sup>18</sup> ICCPR, Art. 14; ECHR, Art. 6(c); Maputo Protocol, Art. 8; African Disability Protocol, Art. 13.

<sup>19</sup> ICCPR, Art. 14 (2)(f); ECHR, Art. 6(e); CRPD, Art. 13; African Disability Protocol, Art. 13.

<sup>20</sup> CRPD Committee, *General Comment No. 1: Article 12 (Equal Recognition before the Law)*, ¶¶ 38-39, U.N. Doc. CRPD/C/GC/1 (2014).

<sup>21</sup> CEDAW Committee, *General Recommendation No. 33*, *supra* note 6, ¶¶ 13-20.

<sup>22</sup> Sexual Abuse Victim Empowerment [SAVE], Cape Mental Health (2017).

<sup>23</sup> The Advocates for Human Rights & UN Women, *Working with the Justice Sector to End Violence against Women and Girls* 25 (Dec. 2011).

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WEI works at the intersection of women's rights and disability rights to advance the rights of women and girls with disabilities around the world. Through advocacy and education, WEI increases international attention to—and strengthens international human rights standards on—issues such as violence against women, sexual and reproductive health and rights, access to justice, education, legal capacity, and humanitarian emergencies. Working in collaboration with women with disabilities rights organizations and women's rights organizations worldwide, WEI fosters cooperation across movements to improve understanding and develop cross-cutting advocacy strategies to realize the rights of all women and girls.