



**Submission to the Special Rapporteur on the Rights of Persons with Disabilities:  
Good Practices for Increasing Effective Access to Justice for  
Women and Girls with Disabilities**

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## **I. Introduction**

[Women Enabled International](#) (WEI) appreciates the opportunity to respond to the Special Rapporteur on the Rights of Persons with Disabilities' call for submissions regarding good practices for ensuring effective access to justice for persons with disabilities. 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 and regional 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.

This submission addresses global good practices for ensuring effective access to justice for women and girls with disabilities. The submission first provides an overview of the barriers to access to justice faced uniquely and disproportionately by women and girls with disabilities. It then offers a brief summary of relevant human rights standards, focusing particularly on standards relating to states' obligations to ensure a gender- and disability-responsive justice system. The submission then identifies global good practices for ensuring effective access to justice for women with disabilities, informed by these human rights standards. The submission concludes with recommendations that we hope will help inform the Special Rapporteur's forthcoming report.

## **II. Barriers to Accessing Justice for Women and Girls with Disabilities**

Women<sup>1</sup> and girls with disabilities, who make up almost one-fifth of the world's population of women,<sup>2</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>3</sup> Compared to both men with disabilities and women without disabilities, women with disabilities are disproportionately excluded from legal protection<sup>4</sup> and are more likely to have their credibility questioned,<sup>5</sup> owing to harmful gender and disability stereotypes.<sup>6</sup>

As the former UN Special Rapporteur on Violence against Women, Rashida Manjoo, recognized, this perception about credibility—as well as the “infantilisation” of and stereotypes

about many women with disabilities—leads to a “systematic failure of the court system to acknowledge them as competent witnesses.”<sup>7</sup> This discrimination is particularly pronounced towards women with disabilities who are members of minority groups, who “are subject to multiple forms of discrimination . . . because of their race/ethnicity, gender and disability status combined.”<sup>8</sup> Women with disabilities also encounter barriers to attaining positions as lawyers, judges, and other officials in the justice system,<sup>9</sup> and may be excluded from serving on juries.<sup>10</sup> Although gender bias and stereotypes play a significant role in limiting access to justice for all women, including by affecting 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>11</sup>

Further, 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.<sup>12</sup> Women with disabilities also face physical, informational and financial barriers to accessing justice. 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>13</sup> In addition, the lack of communication aids and accessible information in alternative formats, such as Braille, large print, plain language, Easy Read, or text-to-speech, serves as a serious impediment for women with disabilities to knowing their rights, understanding the justice system and moving a complaint through the system.<sup>14</sup>

Women with disabilities are also more likely to live in poverty than are non-disabled women or even men with disabilities.<sup>15</sup> Yet, states often do not undertake gender- and disability-sensitive government budgeting to assist women with disabilities who are unable to afford legal representation, public transportation, or other fees associated with access to justice.<sup>16</sup> Further, even where women with disabilities are able to obtain legal assistance, lawyers are often not trained to work with clients with disabilities—“few law schools require or provide training in working with clients with disabilities.”<sup>17</sup> Communication barriers are common and “many lawyers will have little practical or academic experience that furthers their client’s interests, needs and challenges.”<sup>18</sup> 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.<sup>19</sup>

These barriers to accessing justice have significant consequences for women and girls with disabilities.<sup>20</sup> Access to justice is interdependent with a number of fundamental rights.<sup>21</sup> Effective access to justice is essential for challenging human rights violations,<sup>22</sup> such as discrimination in employment or deprivation of parental rights. Lack of access to justice can also reinforce vulnerability to rights violations, including violations of bodily integrity and the right to be free from violence, particularly where perpetrators may feel emboldened when they know the justice system is unlikely to respond to complaints by women with disabilities.<sup>23</sup> In addition, an unresponsive justice system, which fails to take women with disabilities’ complaints seriously, creates an environment in which women with disabilities “are less likely to come forward to report abuse.”<sup>24</sup>

### III. Key International Human Rights Standards on Effective Access to Justice for Women and Girls with Disabilities

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), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the African Charter on Human and People’s Rights, and the American Convention on Human Rights, 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>25</sup> equality and non-discrimination;<sup>26</sup> accessibility;<sup>27</sup> effective remedy;<sup>28</sup> fair trial;<sup>29</sup> legal assistance;<sup>30</sup> and to effective participation in all legal proceedings through the provision of procedural, age-appropriate, and disability-related accommodations.<sup>31</sup>

In particular, the CRPD Committee has emphasized that legal capacity is essential to access to justice for persons with disabilities, noting that “[p]olice officers, social workers and other first responders must be trained to recognize persons with disabilities as full persons before the law and to give the same weight to complaints and statements from persons with disabilities as they would to nondisabled persons.”<sup>32</sup> To give full effect to this principle of legal capacity, States must provide training and awareness-raising to the police, judiciary, and other professions that may come into contact with victims of violence and abuse with disabilities. The CRPD Committee also explains that States may need to provide support in various forms—“including recognition of diverse communication methods, allowing video testimony in certain situations, procedural accommodation, the provision of professional sign language interpretation and other assistive methods”—in order to ensure that persons with disabilities are able to testify on an equal basis with nondisabled persons.<sup>33</sup>

The CRPD Committee has also underscored that women and girls with disabilities face unique barriers to accessing justice, particularly following violence, exploitation, and abuse, owing to harmful stereotypes, discrimination, and lack of reasonable accommodation.<sup>34</sup> The CEDAW Committee similarly recognizes that women with disabilities may face compounded discrimination and unique barriers to access to justice, and recommends that States pay particular attention to access to justice systems for women with disabilities.<sup>35</sup> In its General Recommendation on Women’s Access to Justice, the CEDAW Committee has further identified “six interrelated and essential components” of the state obligation to ensure access to justice: justiciability, availability, accessibility, good-quality, accountability of justice systems, and the provision of remedies for victims.<sup>36</sup>

To ensure that a justice system is both gender- and disability-responsive, it must, at a minimum, comply with these human rights obligations. For example, *justiciability* requires states to recognize and incorporate the rights of women with disabilities into national legislation and remove all systemic barriers that inhibit women with disabilities’ participation in the judicial system, including by ensuring that everyone enjoys full legal capacity. To ensure *availability*, states must guarantee that justice entities—as well as emergency and supportive services—are maintained, funded, and available to women with disabilities, including in rural areas.

*Accessibility* requires states to ensure 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, information accessibility, and communication accessibility. A *good quality* justice system is one that effectively addresses discriminatory legal or social norms to ensure that women with disabilities have access, in a timely fashion, to appropriate, effective, and impartial remedies. It is also one where harmful gender or disability stereotypes do not influence judicial procedures. Ensuring *accountability* of justice systems requires effective independent mechanisms that observe and monitor the justice system. Finally, the *provision of remedies* must be timely, effective and holistic, including both financial compensation and provision of medical, rehabilitative, and social services for women and girls with disabilities.<sup>37</sup>

#### **IV. Good Practices for Ensuring Effective Access to Justice for Women and Girls with Disabilities**

The following regional- and national-level good practices effectively implement some of the above human rights standards in ensuring access to justice for women and girls with disabilities.

##### *A. Good Practices in Legislation, Policies, and Institutional Measures to Ensure Effective Access to Justice*

Article 13 of the CRPD requires states 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” and to promote “appropriate training for those working in the field of administration of justice.”<sup>38</sup> The following are examples of good practices in this regard:

- The **Colombian** Congress recently (2019) passed a law to protect the legal capacity of adult persons with disabilities. The law aims to establish specific measures to guarantee the full legal capacity of adult persons with disabilities and to provide them with the supports necessary to exercise such legal capacity. The law creates a presumption of legal capacity and details safeguards to ensure that priority is given to the will and preferences of the person who may require support in making legal decisions. Although the law applies primarily to adult persons with disabilities, the law notes that minors with disabilities have a right to the same supports for decision-making in areas where minors typically are granted legal capacity and in conformance with the principle of progressive autonomy. Notably, the law indicates that it should be interpreted in a manner consistent with the CRPD.<sup>39</sup>
- In **India**, the Criminal Law Amendment Act (2013) amended a number of laws related to crimes committed against women. These changes encompassed amendments enabling the participation of women and other persons with disabilities in the criminal justice process, including by codifying: (1) the right to record statements with police in the safety of one’s own home or other place of choice; (2) the right to have statements to police videotaped; (3) the right to assistance by a special educator or interpreter when the complaint is recorded and during trial; and (4) an exemption from having to repeat videotaped statements at trial, subject to cross examination.<sup>40</sup> Moreover, the amendments mandate access to specific accommodations that are procedural and age-appropriate, such as sign-language interpretation, special educators, materials in plain language, and options to file reports in Braille.<sup>41</sup>

- In the **United States**, the Americans With Disabilities Act (ADA) (1990) protects persons with disabilities from discrimination in state and local government services and programs, including in law enforcement agencies, justice system entities, and correctional facilities.<sup>42</sup> The ADA prohibits criminal justice entities—including attorneys, courts, jails, juvenile justice entities, police, prosecutors, prisons, and public defenders—from discriminating against persons with disabilities.<sup>43</sup> Entities must ensure that persons with disabilities are treated equally in the criminal justice system and that they have equal opportunities to benefit from safe and inclusive communities.<sup>44</sup> The ADA’s nondiscrimination requirements include an obligation to provide reasonable modifications to policies, practices, and procedures and the obligation to take appropriate steps to communicate effectively with people with disabilities.<sup>45</sup>
  - Some district courts in the **United States** have been exemplary in working to provide reasonable accommodations to persons with disabilities. For instance, California district courts in San Francisco, Oakland, San Jose, and Eureka-Mckinleyville are all wheelchair accessible.<sup>46</sup> Public bathrooms in these courts are also wheelchair accessible, and each building has numerous elevators.<sup>47</sup> Intake desks at all clerks’ office locations provide document magnifiers to help visitors with visual impairments review documents.<sup>48</sup> Additionally, all courtrooms are equipped with infrared headsets, which can provide listeners with amplification of the proceedings; Communications Access Realtime Translation (CART) or American Sign Language interpreters are also available upon request.<sup>49</sup> Moreover, special amplification devices or closed captioning are available for jurors who require accommodations.<sup>50</sup> Finally, all of these courts also provide private spaces to accommodate visitors’ location-related needs (such as receiving medical treatment or lactation-related needs).<sup>51</sup>

*B. Good Practices, Including Strategies and Guidelines, to Facilitate Participation in Judicial and Other Legal Proceedings*

The following guidelines and strategies are good practice examples of regional- and national-level facilitation of the participation of women and girls with disabilities in the justice system:

*Regional Good Practices*

- The **Brasilia Regulations Regarding Access to Justice for Vulnerable People**, produced by the XIV Ibero-American Judicial Summit, provides guidance on how to improve access to justice for persons with disabilities and other intersectional vulnerabilities, such as women and indigenous communities. The document provides guiding rules and mechanisms for increasing the effectiveness of access to justice rules and regulations. Sample regulations address access to information, understanding judicial processes, appearing in court, and protection of privacy. For example, one sample regulation says: “All necessary measures will be adopted to reduce any difficulties in communication that affect the understanding of the judicial proceeding in which a vulnerable person is taking part, guaranteeing that they can understand its scope and significance.”<sup>52</sup> The Brasilia Regulations also call for states to provide persons with disabilities with accessible means of intervening in court proceedings, including by

ensuring that buildings themselves are physically accessible, “making it easier to access and to be present in the judicial premises.”<sup>53</sup>

- In Resolution 1663 (2009) on Women in Prison, the **Parliamentary Assembly of the Council of Europe** calls on States to “ensure that women in prison with disabilities and chronic illnesses are provided the essential aid and assistance (such as sign language interpreters, Braille documents, medical care, etc.) that they may require because of their disability during the pre-trial, trial and sentence period; and ensure that they are not segregated from other prisoners in social and educational activities that take place in prison by arranging appropriate programmes and services for them.”<sup>54</sup> A subsequent 2018 report by the **Parliamentary Assembly to the Council of Europe’s Committee on Equality and Non-discrimination** further guides states in their protection of the rights of detained persons with disabilities. Specifically, the report: (1) recognizes the particular vulnerability of women with disabilities in detention settings; (2) highlights the rights of women and girls with disabilities as safeguarded in international human rights mechanisms such as the CRPD and the CEDAW; (3) calls on European states to take into account the rights of women and girls with disabilities in all policies concerning detention; (4) emphasizes that actions to alleviate harm to women with disabilities in detention settings and ensure their access to justice include collaboration from policymakers, human rights entities, and advocates.<sup>55</sup>

#### *National-Level Good Practices*

- In the **Democratic Republic of Congo**, mobile courts bring a measure of justice—and dignity—to disabled victims of sexual and gender-based violence who might otherwise be unable to access a courthouse.<sup>56</sup> These mobile courts work with the state’s justice systems to bring justice to remote or rural areas where no other justice system is available or accessible.<sup>57</sup> Accordingly, the mobile courts mitigate some physical and transportation-based barriers to accessibility for women with disabilities, as well as financial burdens that persons with disabilities face in interacting with larger, urban court systems.<sup>58</sup>
- In **Ireland**, the National University of Ireland (NUI) Galway offers an LL.M. degree in International and Comparative Disability Law and Policy through its Centre for Disability Law & Policy. Moreover, NUI Galway also offers a summer program on international disability law for law students around the world in collaboration with local disability rights organizations and research institutes.<sup>59</sup> These programs provide students with innovative opportunities to engage with international standards on disability rights and enhance legal support to persons with disabilities in their communities.<sup>60</sup> For instance, through its summer program, the Centre equips law students—including visiting law students from law schools around the world—with the insights and skills necessary to translate the generalities of the UN Convention on the Rights of Persons with Disabilities into tangible reform for persons with disabilities.<sup>61</sup>
- The Hlanganisa Institute for Development in Southern Africa<sup>62</sup> has developed a *Training Manual on Gender, Gender-Based Violence (GBV) and Disability in South Africa*, which includes a module on “Access to Justice for Women and Girls With Disabilities.”<sup>63</sup> The module trains practitioners in the gender, GBV and disability sectors, women and girls with disabilities, and communities, on how to: respond to GBV survivors with disabilities; understand and deal with the challenges associated with disclosing abuse and

complaints relating to medical and legal services; identify the justice journey in terms of access to legal services (prosecution, victims support and counseling); and provide support and redress to women and girls with disabilities who are survivors of GBV.<sup>64</sup>

- The **United States** Department of Justice, Civil Rights Division has issued guidance to support criminal justice entities in their compliance with Title II of the Americans with Disabilities Act (ADA), which protect individuals with psychosocial disabilities from discrimination within the justice system.<sup>65</sup> The guidance highlights opportunities to increase ADA compliance and positive community outcomes through improved policies, effective training, use of data, resource allocation, and collaboration between criminal justice entities and disability service programs.<sup>66</sup>
- **United States** law schools have incorporated disability rights in curricula and continuing legal education programs.<sup>67</sup> For instance, American University’s Washington College of Law (WCL) hosts a Disability and Human Rights Program that seeks to educate law students on the rights of persons with disabilities and engage students to advance disability rights and access to justice for persons with disabilities.<sup>68</sup> Through its Disability Rights Law Clinic, supervised WCL students provide low-cost legal services to persons with disabilities and their families, increasing access to justice for persons with disabilities and exposing law students to intersecting disability issues early on in their careers.<sup>69</sup>
- Civil society actors in the **United States** have also developed strategies and guidelines for facilitating the participation of women with disabilities in legal proceedings. For example:
  - The Arc, a Washington, D.C.-based advocacy organization for people with intellectual and developmental disabilities, has published *An Advocate’s Guide on Assisting Victims and Suspects with Intellectual Disabilities* to guide justice actors and legal advocates to sensitively interact with persons with disabilities in need of legal assistance.<sup>70</sup> The guide includes information for advocates regarding the special needs of women with disabilities who have experienced sexual and gender-based violence.<sup>71</sup> This information aids legal advocates in providing information to clients about available emergency services and how to access secure and disability-accommodating shelters.<sup>72</sup>
  - The Illinois Imagines Project, a statewide project to improve services to women with disabilities who have been victims of sexual violence, published *Our Rights, Right Now: Women with Disabilities and Sexual Violence Education Guide*. The guide offers a basic overview of sexual violence and rights related to sexuality with respect to women with disabilities.<sup>73</sup> It also provides guidance, information, and handouts for facilitating education sessions for women with disabilities on healthy relationships, healthy sexuality, sexual violence risk reduction, and how to obtain legal help.<sup>74</sup>

### C. Good Practices in Jurisprudence Related to Effective Access to Justice

The following are examples of jurisprudence that advances effective access to justice for persons with disabilities:

- In *Esthe Muller v. DoJCD and Department of Public Works*,<sup>75</sup> South African lawyer Esthe Muller filed a complaint with the Equality Court of **South Africa**, alleging disability discrimination in access to the courts. As a practicing attorney who used a wheelchair, she was unable to physically access the courts without having to be carried down a flight of stairs. The parties ultimately reached a settlement agreement, which was certified by the court, “according to which the two government departments admitted that they had failed to provide proper wheelchair access and that this constituted unfair discrimination against Ms. Muller and other people with similar accessibility needs.”<sup>76</sup> Under the agreement, “the courts in which the applicant primarily practices would be made accessible to people with disabilities. . . . [and t]he respondents agreed that there would be full compliance for access to courts for disabled people, within five years of the date of settlement.”<sup>77</sup>
- In the **United Kingdom**, the case of *Howard League for Penal Reform v. Lord Chancellor*<sup>78</sup> found that changes to criminal legal aid for prison law (which effectively restricted legal aid for prisoners) violated the fundamental rights of prisoners with disabilities.<sup>79</sup> The court reasoned that such restriction would undoubtedly result in inherent and systematic unfairness, disproportionately harming persons with disabilities.<sup>80</sup> The court noted that persons with disabilities already face discrimination and ill-treatment in prison and that for a prisoner with a learning disability, making complaints about such treatment posed numerous challenges.<sup>81</sup> Accordingly, where penal reform restricts access to legal aid, prisoners with disabilities are unlikely to feel confident challenging arbitrary detention or unfair treatment they experience while detained.<sup>82</sup>
- In *Tennessee v. Lane*,<sup>83</sup> the **United States** Supreme Court upheld a provision of the Americans with Disabilities Act allowing individuals to seek monetary damages from states for a failure to comply with the federal laws governing access to courts for people with disabilities. The plaintiff, George Lane, used a wheelchair as a result of paraplegia. He had “crawled up two flights of stairs to get to the courtroom” (the courthouse had no elevator access to the upper floors of the courthouse) in Tennessee for a criminal trial in which he was the defendant.<sup>84</sup> The U.S. Supreme Court held that a state was not immune from damage actions, explaining that “affirmative obligations” stemmed from the fact that access to courts was a fundamental constitutional value.<sup>85</sup> In describing accessibility issues, the Court “[recognized] that failure to accommodate persons with disabilities will often have the same practical effect as outright exclusion.”<sup>86</sup> Additionally, the U.S. Supreme Court held that included in states’ duty to accommodate persons with disabilities, is the obligation to “‘...afford to all individuals a meaningful opportunity to be heard’ in its courts.”<sup>87</sup>
- In *Seremeth v. Board of County Com’rs Federick County*,<sup>88</sup> the **United States** Court of Appeals for the Fourth Circuit held that the Americans with Disabilities Act (ADA) applies to police investigations.<sup>89</sup> Thus, police cannot discriminate against persons with disabilities while conducting interviews and investigations<sup>90</sup> and a police officer must use reasonable accommodations to effectively communicate with persons with disabilities. The court further explained that whether accommodations are reasonable depends on the totality of the circumstances.<sup>91</sup> Accordingly, law enforcement should, to the best of their ability, provide interpretation services or incorporate other accessibility mechanisms to ensure sensitive communication with persons with disabilities; however, police are not

required to provide every possible accommodation in emergency or exigent circumstances.<sup>92</sup>

- In *Williams v City of New York*,<sup>93</sup> the **United States** District Court (SDNY) held that an on-the-street interaction between police and a qualified woman with a disability is categorically included under the ADA.<sup>94</sup> Thus, where police do not reasonably accommodate a woman with a disability in an on-the-street interaction, thereby causing her to suffer greater injury or indignity in the arrest process than other arrestees, the law enforcement officer violates the ADA.<sup>95</sup> Again, reasonableness depends on the totality of the circumstances.<sup>96</sup>

#### *D. Innovative Initiatives to Promote and Ensure Effective Access to Justice*

The following innovative initiatives are all examples of state- or civil-society-led practices that have effectively increased access to justice for women with disabilities:

- In **South Africa**, the Sexual Abuse Victim Empowerment (SAVE) program at Cape Mental Health empowers victims of sexual abuse with psychosocial disabilities, and provides them with access to justice.<sup>97</sup> SAVE involves: (1) a psychological assessment; (2) court preparation; (3) comprehensive sexuality education; (4) counselling and support for the victim/survivor and her family; (5) a cache of expert witnesses; (6) a referral network within the justice and police departments; (7) training and awareness-raising among the police and prosecutors; and (8) training and ongoing support for other stakeholders.<sup>98</sup>
- The Gender Violence Command Centre project in **South Africa** is a national command center that focuses on gender-based violence prevention. The Command Centre has launched a number of initiatives to increase access to justice and other emergency services for women with disabilities.<sup>99</sup> For instance, the Centre has developed an SMS-based line for persons with disabilities and operates a Skype line, “HelpmeGBV,” to increase access to GBV services for members of the deaf community.<sup>100</sup> The Skype line allows deaf persons to communicate with trained social workers using sign language. Moreover, the Centre refers emergency calls to law enforcement and works closely with police responding to emergency situations to ensure police are able to locate victims, sensitively interact with victims with disabilities, and file comprehensive police reports.<sup>101</sup>
- In **Uganda**, the National Union of Women with Disabilities’ paralegal program uses well-trained paralegals to increase access to justice for women and young persons with disabilities. Thirty-two women with disabilities were trained about the rights of women and girls with disabilities relating to gender-based violence and sexual and reproductive health and rights.<sup>102</sup> These paralegals became community role models, offering peer-to-peer support in reporting violations and conducting the necessary follow-up to ensure justice was achieved, and advocating for systemic change.<sup>103</sup>
- In the **United States**, The Arc’s National Center on Criminal Justice and Disability offers “Pathways to Justice,” a comprehensive community-based program to improve access to justice for people with disabilities. Pathways to Justice “brings together key stakeholders from both the disability and criminal justice communities. The team works together to identify barriers to justice and serves as the go-to resource on criminal justice and

disability in their community.”<sup>104</sup> They also “provide a full-day, in-person training for law enforcement, victim services providers, and legal professionals covering key topics such as how to identify, interact with, and accommodate persons with I/DD and other disabilities.”<sup>105</sup>

- Family justice centers operate in many U.S. states as multicultural walk-in facilities that convene professionals from multiple social and legal services agencies to help survivors of various crimes—like intimate partner abuse and sexual violence.<sup>106</sup> In New York, for instance, the Westchester Family Justice Center is a collaboration of women’s centers and disability rights organizations working to ensure women with disabilities have the appropriate information, legal services, and support to safely access the justice system as victims of abuse.<sup>107</sup>
- In **Zimbabwe**, the Leonard Cheshire Disability Zimbabwe Trust has developed the “Access to Justice for Girls and Women with Disabilities Project.” After identifying significant gaps in reporting among girls and women with disabilities who were victims/survivors of sexual violence, Leonard Cheshire developed this project to help girls and women with disabilities realize full enjoyment of their rights and to stop violence against women. The project was successful in enhancing access to post-violence justice and related services for women and girls with disabilities, empowering them to access justice and other services, and increasing attention to their concerns. Among other activities, this project trained police on sign language communication, provided logistical and communication support to victims/survivors to access justice and other necessary post-violence services, and developed community awareness campaigns around access to justice, targeting community leaders, community-based organizations, women and girls with disabilities, caregivers and the general community.<sup>108</sup>

## **V. Conclusion and Recommendations**

As part of her report on access to justice, we hope that the Special Rapporteur on the Rights of Persons with Disabilities acknowledges the unique and significant barriers to accessing justice faced by women and girls with disabilities and recommends that states take the following actions to ensure their effective access to justice:

- Recognize women and girls with disabilities as equal rights holders before the law and ensure equal recognition of their legal capacity and their credibility. In particular, ensure that women with disabilities have access to legal representation on an equal basis with others, are guaranteed legal capacity to testify on an equal basis with others, and are provided with appropriate supports to facilitate their participation in the justice system—including, for example, 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>109</sup>
- Ensure that women with disabilities 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.
- Ensure close consultation with women and girls with disabilities through their representative organizations “in all processes to enact and/or amend laws, regulations,

policies and programmes addressing the participation of such persons in the justice system.”<sup>110</sup>

- Train law enforcement, the judiciary, and other actors involved in the administration of justice to handle cases concerning women with disabilities and to dismantle harmful stereotypes about credibility or capacity.
- Train lawyers 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 law school curricula and continuing legal education programs.
- Ensure that women with disabilities are not subjected to forced institutionalization, and that there are effective legal channels for those who are institutionalized to challenge their institutionalization and to report human rights violations committed against them within institutions.

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Thank you for your time and attention to this submission. Please do not hesitate to contact us at [president@womenenabled.org](mailto:president@womenenabled.org) or [a.bjerregaard@womenenabled.org](mailto:a.bjerregaard@womenenabled.org) if you have any questions or require additional information on any of the good practices mentioned in this submission.

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<sup>1</sup> Throughout this submission, the term “women” refers to women and girls throughout the life cycle, unless otherwise noted.

<sup>2</sup> WORLD HEALTH ORGANIZATION (WHO) & WORLD BANK, WORLD REPORT ON DISABILITY 28 (2011).

<sup>3</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). See also UN Special Rapporteur on Violence against Women, *Report of the Special Rapporteur on violence against women, its causes and consequences*, U.N. Doc. A/67/227 (2012) [hereinafter SRVAW, *Report on women with disabilities*].

<sup>4</sup> Committee on the Rights of Persons with Disabilities (CRPD Committee), *General Comment No. 3: Article 6 (Women and Girls with Disabilities)*, ¶ 32, U.N. Doc. CRPD/C/GC/3 (2016).

<sup>5</sup> *Id.*, ¶ 52.

<sup>6</sup> SRVAW, *Report on women with disabilities*, *supra* note 3, ¶¶ 41-42.

<sup>7</sup> *Id.* at ¶ 41.

<sup>8</sup> *Id.* at ¶ 24.

<sup>9</sup> Stephanie Ortoleva, *Inaccessible Justice: Human Rights, Persons with Disabilities, and the Legal System*, ILSA 17:2 ILSA J. Int'l & Comp. L. 281, 282 (Spring 2011).

<sup>10</sup> *Id.* at 304; Natasha Azava, *Disability-Based Peremptory Challenge: Need for Elimination*, 4 CARDOZO PUB. L. POL'Y & ETHICS J. 121, 121 (2006) (citing Mary A. Lynch, *The Application of Equal Protection to Prospective Jurors with Disabilities: Will Batson Cover Disability-Based Strikes?*, 57 ALB. L. REV. 289, 298 (1993)).

<sup>11</sup> Committee on the Elimination of Discrimination against Women (CEDAW Committee), *General Recommendation No. 33: Women's Access to Justice*, ¶¶ 26-28, U.N. Doc. CEDAW/C/GC/33 (2015).

<sup>12</sup> Committee on the Rights of Persons with Disabilities, *General Comment No. 1: Equal Recognition before the Law*, ¶¶ 38-39, 2 U.N. Doc. CRPD/C/GC/1 (2014).

<sup>13</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: Women's Access to Justice*, ¶¶ 13 & 17(g), U.N. Doc. CEDAW/C/GC/33 (2015).

<sup>14</sup> SRVAW, *Report on women with disabilities*, *supra* note 3, ¶ 45.

<sup>15</sup> World Bank Group, *Social Analysis and Disability: A Guidance Note* 9 (2007), available at <http://documents.worldbank.org/curated/en/930491468158381717/pdf/393850WP0Socia00Box374323B00PUBLIC0.pdf>.

<sup>16</sup> See Maria Socorro I. Diokno, *A Rights-Based Approach to Budget Analysis*, 8 (1999), available at <http://www.crin.org/docs/resources/publications/hrbap/RBABudgetAnalysis.pdf>; Fundar-Centro de Análisis e Investigación, International Human Rights Internship Program, International Budget Project, *Dignity Counts: A Guide to Using Budget Analysis to Advance Human Rights*, 1 (2004), available at <http://www.law.washington.edu/wlr/notes/83washlrev449n46b.pdf>.

<sup>17</sup> SRVAW, *Report on women with disabilities*, *supra* note 3, ¶ 63.

<sup>18</sup> *Id.*

<sup>19</sup> CRPD Committee, *General Comment No. 7: Articles 4(3) and 33(3) (Participation of Persons with Disabilities in the Implementation and Monitoring of the Convention)*, ¶ 81, U.N. Doc. CRPD/C/GC/7 (2018). See generally Stephanie Ortoleva, *Inaccessible Justice: Human Rights, Persons with Disabilities, and the Legal System*, ILSA 17:2 ILSA J. Int'l & Comp. L. 301-305 (Spring 2011).

<sup>20</sup> See generally CRPD Committee, *General Comment No. 3: Article 6: Women and girls with disabilities*, ¶ 52, U.N. Doc. CRPD/C/GC/3 (2016).

<sup>21</sup> See United Nations Committee on the Elimination of Discrimination Against Women, *Convention on the Elimination of All Forms of Discrimination against Women General Recommendation No. 33 on Women's Access to Justice* ¶ 1, U.N. Doc. CEDAW/C/GC/33 (2015).

<sup>22</sup> See United Nations, *Access to Justice*, available at <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/> (last visited Aug. 8, 2019).

<sup>23</sup> SRVAW, *Report on women with disabilities*, *supra* note 3, ¶ 43.

<sup>24</sup> *Id.*

<sup>25</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;

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African Charter on Human and Peoples' 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>26</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>27</sup> CRPD, Art. 9; Maputo Protocol, Art. 14; Istanbul Convention, Art. 20; African Disability Protocol, Art. 15.

<sup>28</sup> ICCPR, Art. 2; American Convention, Art. 8; ECHR, Arts. 13, 41.

<sup>29</sup> ICCPR, Art. 14; ECHR, Art. 6; Banjul Charter, Art. 7; American Convention, Art. 8.

<sup>30</sup> ICCPR, Art. 14; ECHR, Art. 6(c); Maputo Protocol, Art. 8; African Disability Protocol, Art. 13.

<sup>31</sup> ICCPR, Art. 14 (2)(f); ECHR, Art. 6(e); CRPD, Art. 13; African Disability Protocol, Art. 13.

<sup>32</sup> CRPD Committee, *General Comment No. 1: Article 12: Equality before the law*, ¶ 39, U.N. Doc. CRPD/C/GC/1 (2014).

<sup>33</sup> *Id.*

<sup>34</sup> CRPD Committee, *General Comment No. 3 (2016) on women and girls with disabilities*, para. 52, U.N. Doc. CRPD/C/GC/3 (2016).

<sup>35</sup> CEDAW Committee, *General Recommendation No. 33 on Women's Access to Justice*, ¶¶ 9, 13, 17(g), U.N. Doc. CEDAW/C/GC/33 (2015).

<sup>36</sup> CEDAW Committee, *General Recommendation No. 33: Women's Access to Justice*, ¶¶ 13-20, 27, U.N. Doc. CEDAW/C/GC/33 (2015).

<sup>37</sup> *Id.*

<sup>38</sup> CRPD, Art. 13.

<sup>39</sup> Texto Conciliado al Proyecto de Ley Número 027 de 2018 Cámara y 236 de 2018 Senado por medio de la cual se establece el régimen para el ejercicio de la capacidad legal de las personas con discapacidad mayores de edad [Reconciled Text for Bill No. 236 of 2019 Senate, 027 of 2017 House by which it establishes a regime for the exercise of legal capacity of adult persons with disabilities], June 7, 2019 (Col.).

<sup>40</sup> The Criminal Law (Amendment) Act, 2013 (No. 13 of 2013). *See also* Human Rights Watch, *Invisible Victims of Sexual Violence: Access to Justice for Women and Girls with Disabilities in India* (April 2018), <https://www.hrw.org/report/2018/04/03/invisible-victims-sexual-violence/access-justice-women-and-girls-disabilities>.

<sup>41</sup> *Id.* Although these amendments are a significant step forward, they face serious gaps in implementation. For instance, while the amendments mandate access to accommodations, many police and court personnel do not have the requisite training or the resources to meet these requirements. *Id.* *See also*, Shampa Sengupta, *Criminal justice system & young girls/women with disabilities – My Take*, NEWZ HOOK (July 8, 2019), <https://newzhook.com/story/22762>.

<sup>42</sup> Americans with Disabilities Act of 1990, 42 U.S.C., §§12101-12213 (2000). *See also* United States Department of Justice Civil Rights Division, *Information and Technical Assistance on the Americans with Disabilities Act—Ensuring Equality in the Criminal Justice System*, <https://www.ada.gov/criminaljustice/index.htm>.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> United States District Court Northern District of California, *Visitors with Disabilities & Special Needs*, <https://www.cand.uscourts.gov/access>.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Ibero-American Judicial Summit, *Brasilia Regulations Regarding Access to Justice for Vulnerable People*, (March 2008), available at <http://www.osce.org/odihr/68082?download=true>.

<sup>53</sup> *Id.*

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- <sup>57</sup> See e.g. Cengel, *DRC: Mobile Courts Deliver Justice to Remote Areas*, AL JAZEERA (Sept. 2016), <https://www.aljazeera.com/indepth/features/2016/08/drc-mobile-courts-deliver-justice-remote-areas-160830120805662.html>.
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- <sup>59</sup> National University of Ireland Galway Centre for Disability Law and Policy, *Overview* (2019), available at <https://www.nuigalway.ie/centre-disability-law-policy/trainingandevents/> (last visited Aug. 8, 2019).
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- <sup>62</sup> Hlanganisa Institute for Development in Southern Africa, *About Us*, <http://www.hlanganisa.org.za/about-us/>.
- <sup>63</sup> Hlanganisa Institute for Development in Southern Africa, *Training Manual on Gender, Gender-Based Violence (GBV) and Disability in South Africa, Unit 6: Access to Justice for Women and Girls with Disabilities* (2019) (on file with WEI).
- <sup>64</sup> *Id.* at 4.
- <sup>65</sup> U.S. Department of Justice Civil Rights Division, *Examples and Resources to Support Criminal Justice Entities in Compliance with Title II of the Americans with Disabilities Act*, <https://www.ada.gov/cjta.html>.
- <sup>66</sup> *Id.*
- <sup>67</sup> See SRVAW, *Report on women with disabilities*, *supra* note 3, ¶ 41.
- <sup>68</sup> American University Washington College of Law, *Center for Human Rights and Humanitarian Law: Programs*, <https://www.wcl.american.edu/academics/experientialedu/clinical/theclinics/disability/>.
- <sup>69</sup> *Id.*
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- <sup>88</sup> *Seremeth v. Board of County Com'rs Federick County*, 673 F.3d 333 (4th Cir. 2012).
- <sup>89</sup> *Id.* at 339-340.
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<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Williams v. City of New York*, 121 F.Supp.3d 354 (SDNY 2015).

<sup>94</sup> *Id.* at 369 (SDNY 2015) (citing *Waller*, 556 F.3d at 174).

<sup>95</sup> *Id.* at 369.

<sup>96</sup> *Id.*

<sup>97</sup> Zero Project, *Innovative Practices 2015 on Political Living and Political Participation—Sexual Abuse Victim Empowerment Program* (2015) <https://zeroproject.org/practice/cape-mental-health-south-africa/>.

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<http://www.capementalhealth.co.za/save.html>.

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<sup>105</sup> *Id.*

<sup>106</sup> See Safe Horizons, *Family Justice Centers: One Stop Centers for Victims*, <https://www.safehorizon.org/our-services/legal-and-court-help/family-justice-centers/>.

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<sup>108</sup> Leonard Cheshire Disability Zimbabwe, *Access to Justice for Girls and Women with Disabilities Project* (2016) (on file with the author). For more information on the project, see *Access to Justice for Disabled Women, The Zimbabwean*, May 25, 2015, available at <http://reliefweb.int/report/zimbabwe/access-justicedisabled-women>.

<sup>109</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>110</sup> CRPD Committee, *General Comment No. 7: Articles 4(3) and 33(3) (Participation of Persons with Disabilities in the Implementation and Monitoring of the Convention)*, ¶¶ 81, 94(h)-(i), U.N. Doc. CRPD/C/GC/7 (2018).