



Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas
Irish Human Rights and Equality Commission



IHREC
Monitoring Mechanism
Independent Monitoring Mechanism
under the United Nations Convention on
the Rights of Persons with Disabilities

Access to Justice: A Baseline Study of Article 13 of the UN Convention on the Rights of Persons with Disabilities

Research Brief

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The Irish Human Rights and Equality Commission was established under statute on 1 November 2014 to protect and promote human rights and equality in Ireland, to promote a culture of respect for human rights, equality and intercultural understanding, to promote understanding and awareness of the importance of human rights and equality, and to work towards the elimination of human rights abuses and discrimination.

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Introduction

This study sets out to probe the effectiveness of current Irish legislation, policy, provision, and data in realising UN Convention of Rights of Persons with Disabilities Article 13 Access to Justice, the baseline status of rights holders' enjoyment of this right, and priorities for change.

The study has been commissioned by the Irish Human Rights and Equality Commission, in the context of strategic priorities of justice, and respect the recognition, and having regard to IHREC's role as the Independent Monitoring Mechanism (IMM) for CRPD,¹ and the Public Sector Equality and Human Rights Duty.² The study is also prepared in the context of the ongoing review of the civil legal aid in Ireland.³

The research methodology includes a detailed literature review alongside substantive disability-inclusive qualitative research. The qualitative research includes interviews with key stakeholders in the administration of justice, including Disabled Persons Organisations (DPOs), and disabled people with lived experience of the justice system. The findings were tested against the "International Principles and Guidelines on Access to Justice for Persons with Disabilities" 2020 developed by the UN Special Rapporteur on Disability, in order to determine compliance with Article 13 of the CRPD.

¹ IHREC is Ireland's Independent Monitoring Mechanism designate under Article 33 of the UN Convention on the Rights of Persons with Disabilities. See: <https://www.ihrec.ie/new-departure-on-rights-of-persons-with-disabilities-as-formal-committee-begins-work-in-monitoring-irelands-obligations/>

² All public bodies in Ireland have responsibility to promote equality, prevent discrimination and protect the human rights of their employees, customers, service users and everyone affected by their policies and plans. This is a legal obligation, called the Public Sector Equality and Human Rights Duty, and it originated in Section 42 of the Irish Human Rights and Equality Act 2014. See: <https://www.ihrec.ie/our-work/public-sector-duty/>

³ In June 2022, the Minister for Justice Helen McEntee established the Civil Legal Aid Review Group to review the current operation of the Civil Legal Aid Scheme and make recommendations for its future. See: <https://www.gov.ie/en/consultation/79e1d-public-consultation-on-the-review-of-the-civil-legal-aid-scheme/>

Methodology and Inclusive Research Design

The research methodology for this baseline analysis study is twofold. First, a literature review provides an overview of the relevant sources of law, policy and research relating to access to justice in Ireland and internationally. Second, qualitative research with key stakeholders was undertaken to assess their perceptions and experiences of access to justice for disabled people in Ireland. The researcher obtained ethical approval for this research project, overseen by the University of Galway's Research Ethics Committee. The Committee requires researchers to design research projects to comprehensively assess the ethical implications inherent in the research. The research was conducted in line with the University's policies and procedures.

The literature review on access to justice seeks to provide a comprehensive review of the existing law, policy, research and data. Gaps in the existing knowledge were identified and informed the approach taken in the qualitative part of this study. The literature involved doctrinal analysis of law and policy relating to access to justice.

It was essential that the views of disabled people who have lived experience as participants in the justice system (or persons seeking to access the justice system) were included in this study in line with General Comment No 7 of the Committee on the Rights of Persons with Disabilities.⁴ Qualitative research with key stakeholders in the administration of justice was carried out, taking a purposive sampling approach. The data collected as part of the qualitative part of this study was gathered through semi-structured interviews involving 27 participants. Of the 27 participants, 12 identified as having a disability. Among them, 8 contributed insights from their personal lived experiences, while 4 participated by sharing perspectives based on their professional experience.

⁴ See "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" Committee on the Rights of Persons with Disabilities, CRPD/C/GC/7, 9 November 2018

Limitations of the Research

A limitation of this project on access to justice for disabled people was the challenge of obtaining participation from some key stakeholders. The absence of input from certain stakeholders may lead to gaps in our understanding of the challenges and barriers faced by disabled people in accessing justice or indeed in initiatives and training to remove barriers. It also highlights the difficulty in engaging all relevant parties, which is not uncommon in research of this nature. Despite this limitation, the insights gathered from willing participants contributes valuable information to the study.

The Literature

A review of the literature identifies the complexity of various legal sources as a potential barrier to understanding and effectively realising rights for disabled people in Ireland, as well as an ongoing disconnect between civil and criminal mental health law. Public bodies within the Irish Justice System have been found to inadequately address the needs of disabled people in their strategic plans often failing to reflect clear legal obligations designed to facilitate accessibility and prevent discrimination. The literature reveals significant gaps in the availability of training related to disability law and policy for personnel involved in administering justice. Furthermore, there is a marked deficiency in legal aid and legal representation of disabled people, which negatively affects equal access to justice. The literature advocates for comprehensive reforms to the civil legal aid system and emphasises the need for extensive, disability-awareness training for all personnel in the Irish justice system.

A critical ongoing challenge identified in the literature is the lack comprehensive data collection, despite numerous calls for enhanced data on the experiences of disabled people within the justice system. The role of equality data is vital to understanding and addressing discrimination against disabled people in Ireland, advocating for the implementation of robust data collection and monitoring mechanisms to support evidence based policy-making and uphold the rights of disabled people. Additionally, there is a need for a more comprehensive, cross-cutting approach to research and policy development to address the existing data and research gaps, unify perspectives, and reconcile inconsistencies within the Irish legal framework. This approach would significantly enhance compliance with Article 13 of the CRPD and better identify and remove the range of barriers that disabled people encounter in accessing justice in Ireland.

Findings from the Qualitative Interviews

The semi-structured qualitative interviews with stakeholders provided valuable insights from a range of stakeholder the work in and/or have extensive experience of the justice system, including disabled people and Disabled Persons Organisations. The various reflections speak to the multifaceted challenges and barriers that disabled people encounter in accessing the Irish justice system (civil and criminal). These interviews shaped five cross-cutting and overarching themes that are as follows:

Understanding Access to Justice, International Human Rights Law and Inadequate Training within the Justice System

In Ireland, awareness and understanding of the CRPD, particularly Article 13 concerning access to justice, varies considerably across different groups. Disabled persons' organisations and activists have a relatively high awareness, whereas the broader population and key legal stakeholders often lack detailed knowledge of the CRPD's provisions and implications. This knowledge gap significantly hinders the effective implementation of disability rights, as noted in various contexts such as discrimination, rights violations, and the need for procedural accommodations. There is a consensus among participants, including legal professionals and advocates, on the urgent need for enhanced education and targeted training initiatives. These efforts should aim to address the lack of understanding within the legal community and the public. Despite some existing training initiatives, there is a clear need for more comprehensive, specialised training in human rights and disability awareness for all actors in the justice system. Involving disabled people in the design and delivery of these programmes is crucial for their effectiveness. It was also noted that failure to ratify the optional protocol may restrict access to justice.

"Within the criminal justice system, I believe we need to incorporate training on diversity and human rights into the standard legal education. This training should be a fundamental part of the curriculum at both the Law Society and the King's Inns.... It's too common for legal professionals to be set in their own perspectives, often overlooking the diversity of individuals they might encounter in their roles as solicitors or barristers. As for judicial training, it would be fantastic if it included similar content. Awareness among judges of the different needs and backgrounds of people appearing before them would significantly influence the justice system. If we start embedding this understanding at the foundational level of legal training, it will eventually percolate through..."

Researcher, Expert on Access to Justice, Expert by Experience 1

Disability, Unmet Legal Need, Inadequate Legal Aid and Advocacy

The interviews underscore the unmet legal needs of disabled people in Ireland. Participants highlighted the absence of data on disability and access to justice. The importance of measuring and redirecting legal services to high-need areas like residential disability services was also noted, along with the need for accessible legal representation and resources, particularly in discrimination cases. Participants also discussed the lengthy nature of litigation and its negative impact on disabled people pursuing justice, noting that litigation delays can be strategically used against them. Furthermore, the challenges faced by people with less visible disabilities, such as neurodiversity and mild intellectual disabilities, were emphasised, particularly in care proceedings and the criminal justice system where supports and accommodations are often lacking. The lack of accommodations in the justice system was identified as a significant barrier, with concerns about the responsiveness of courts to such requests. Strengthening laws and policies on accommodation and improving training for justice system stakeholders is urgently needed. Limited access to legal aid was highlighted as a major obstacle, with calls for its expansion to cover all groups protected under anti-discrimination legislation, especially prioritising disabled people. A shortage of solicitors experienced in working with disabled people, and disparities between the criminal and civil

justice systems further hinder access to justice, underscoring the need for more robust legal aid provisions to support disabled people in vindicating their rights.

“Surprisingly, disability-related issues aren't prevalent in the queries that the free legal advice centres and community law centres receive... [p]eople facing various forms of disadvantage, and disability can encounter multiple legal problems. They navigate the harsh realities of the law in different aspects of their lives. A significant challenge is that many people do not even realise that their situation has legal implications. It's as if they're dealing with so many issues that they don't consider the law as a potential solution. We need to measure unmet legal needs...”

Barrister, Non-Governmental Organisation, Expert on Access to Justice

Deprivation of Liberty, Denial of Legal Capacity, and Intersectionality

Significant concerns were raised in the qualitative research findings regarding the access to justice for disabled people. Key issues include the denial of legal capacity, particularly for those in residential disability services, nursing homes, or hospitals. This denial impacts their ability to access justice and advocate for their rights, despite recent commencement of the Assisted Decision-Making (Capacity) Acts. Participants stressed the importance of recognising legal capacity as a fundamental "gatekeeper" right essential for ensuring justice access. However, they also pointed out the lack of awareness about the roles of advocates and principles of the CRPD. Suggestions were made for better training for solicitors and the establishment of more robust independent advocacy to support people whose capacity might be questioned. Issues with the implementation of the Assisted Decision-Making (Capacity) Act were discussed, including overgeneralisation and misinterpretation by disability service providers, and instances of rapid appointment of decision-making representatives, which may not align with the persons will and preferences.

Some participants noted a broad lack of legal services for people living in residential disability services, with some people experiencing restricted access to community and subject to

restrictive practices in services where they live. Moreover, the discussions included challenges faced by disabled people from marginalised communities, like migrants and members of the Traveller community, where intersecting identities exacerbate access barriers to justice and essential services. Participants called for reforms and better protection under mental health legislation, stressing the need for an independent complaints mechanism and greater advocate involvement in tribunal hearings under the Mental Health Act 2001. It was suggested that the discriminatory use of mental health history in legal proceedings reflects systemic biases in the justice system.

“I remain critical of lawyers who continue to make applications without ensuring the person's voice is heard in court or facilitating their presence through alternative means. Some courts have been open to hearing from people via video or other methods, which can quickly reveal their ability to communicate and answer questions. This is pivotal, and the state has an obligation to ensure the person's voice is represented separately, especially when the HSE is making an application.”

Solicitor, Expert on Disability and Older People

Inaccessible Justice, Lack of Data, and Complex Legal Frameworks

Participants identified multiple significant barriers for disabled people seeking access to justice, emphasising that communication barriers, particularly, pose significant obstacles. A lack of accessible information on reporting crimes and the deficits in legal professionals' communication skills further exacerbate these issues, especially for non-verbal people and children with intellectual disabilities. Further concerns were raised about physical access to court buildings and the availability of information in accessible formats. Older court buildings often present accessibility challenges, and there is a noted inconsistency in providing accessible information, impacting people with intellectual disabilities' understanding and engagement in legal proceedings.

Participants also highlighted the inadequacy of data on access to justice for disabled people in Ireland. The lack of comprehensive data restricts identification of gaps, informing public policy, and raising awareness about the challenges facing disabled people. Specific gaps noted included the absence of disaggregated data for children with disabilities and disabled parents in child care proceedings. To address these challenges, participants called for a comprehensive review of existing legislation and public policy, emphasising the need for alignment with international standards, such as the CRPD. Recommendations included improving laws, strengthening reasonable accommodation measures, addressing discrimination, and updating the Disability Act 2005. The under-implementation or non-commencement of essential legislation was also identified as a barrier to facilitating access to justice.

“Believe it or not accessibility is still a major issue. A lot of court buildings are not accessible. Some courts are historic buildings, and this is the justification why the accessibility problems cannot be fixed.”

Researcher, Expert on Access to Justice, Expert by Experience 1

“The data can inform, among other things, guidance and training for professionals. The data tells us the problems the barriers and helps us make better policy. So there definitely is a huge gap there. The lack of data is a big part of the problem.”

Statutory Stakeholder, Expert on Disability 3

Barriers for Certain Groups and Allied Issues

Wide ranging barriers for particular groups of disabled people when accessing justice in Ireland were highlighted in the research. Some participants highlighted the nuanced challenges faced by disabled people, particularly those with mental health issues who may struggle with the legal system due to the stress of litigation, intense cross-examinations, and the costs involved in taking cases. To mitigate these challenges, there was a call for making the enforcement of rights more accessible. Significant obstacles include the inaccessibility of the justice system

for people with low literacy, emphasising the need for initiatives that enable people with intellectual disabilities to effectively participate in legal processes. It was suggested that legal professionals should engage directly with clients who have intellectual disabilities, taking instructions directly rather than through third parties like carers or family members.

Participants identified systemic issues within the criminal justice system that disproportionately affect people with intellectual disabilities. These include the non-prosecution of offences, particularly violence and sexual violence, due to perceived vulnerabilities and credibility issues. Exploitation through online fraud, patronising attitudes during legal proceedings, and restrictions imposed by some disability service providers were also highlighted as significant concerns. The need for enhanced training for legal professionals and Gardaí on effective communication with disabled people was emphasised, alongside the importance of using intermediaries to facilitate better understanding and participation. Despite these challenges, there have been instances where personnel in the justice system have shown sensitivity and support. Some participants suggested an increasing willingness by the Office of the Director of Public Prosecutions to prosecute in cases involving victims with intellectual disabilities.

The participants stressed the importance of systemic reforms, increased disability awareness, and training to ensure equal access and the provision of accommodation within the justice system, highlighting a broad spectrum of interconnected and cross-cutting issues that need addressing to enhance access to justice.

“there's a pressing need for training for both the police and legal professionals on effective communication with people with disabilities. While intermediaries have been developed to support victims and vulnerable witnesses, there's also a requirement for intermediaries to assist disabled individuals who may be accused of offenses but communicate differently.”

Independent Advocate working with Disabled People

“When it comes to accessing justice, a clear example can be seen in our prison population with the overrepresentation of disabled people. This situation tells us how unsuitable the current system is for accommodating their needs, and it reflects the... low level of understanding of human rights.”

Non-Governmental Organisation, Expert on Disability

Recommendations

This baseline study concludes that there is a need for Government to make concerted efforts to bring its legal and policy frameworks into conformity with international best practices as required by the CRPD. The recommendations are presented under the five thematic areas identified through the qualitative interview phase.

Understanding Access to Justice, International Human Rights Law & Inadequate Training within the Justice System

This study proposes a range of detailed recommendations under this theme. These include ongoing and peer inclusive awareness and education initiatives, ratification of the optional protocol, and enhanced funding for diversity initiatives aimed at the legal professions.

Disability, Unmet Legal Need, Inadequate Legal Aid & Advocacy

The study recommends a commitment to improved collection and analysis of data on unmet legal need. It calls for the expedition of disability-related cases in the courts, coupled with relevant supports, accommodations and monitoring mechanisms. The further acknowledges the need for improved training among legal professionals, service providers, and other personnel within the criminal justice system. Also called for is the expansion of legal aid to include all groups protected under anti-discrimination legislation, with a particular focus on disabled people. Noted again is the need for improved funding of services, including advocacy services. It is proposed that a statutory right to independent advocacy should be considered, and that, additionally, tailored services for disabled children should be established.

Deprivation of Liberty, Denial of Legal Capacity, & Intersectionality

This study notes the need to further consider and address the concerns raised about deprivation of liberty, including prioritising legal capacity, particularly for people in residential disability services. It is proposed that this is accompanied by awareness campaigns to educate the public and stakeholders about the CRPD, its underlying principles, and the role of advocates. The study proposes the establishment of independent advocacy services to support legal capacity, improved access to legal services, improved supports for people with intellectual disabilities seeking legal services, and enhanced training for solicitors. The need for improved data collection and reporting mechanisms is also noted.

A number of recommendations to improve access to justice for people living in residential disability services are set out, including the need for improved legal services, guidelines to prevent unwarranted restrictions on personal autonomy, and associated review mechanisms. The need to prioritise the introduction of Deprivation of Liberty Safeguards is also noted.

The need for legal reform in the context of mental health legislation is also noted, acknowledging that such reforms should prioritise transitioning away from the medical model and the use of mental health as a credibility factor in legal proceedings. The study calls for increased involvement of people detained, through independent advocacy at tribunal hearings, and the establishment of a complaints mechanism.

The study acknowledges the intersectional challenges faced by disabled people, especially those in marginalised communities such as migrants, Travellers and other protected groups, and calls for a holistic approach to inclusivity and access to justice. The need for improved data collection is again highlighted in this context.

Inaccessible Justice, Lack of Data, & Complex Legal Frameworks

Key recommendations aimed at improving access to justice are set out in this section. The need for improved information and training is reiterated. Ensuring accessibility to court buildings is highlighted.

Noting the findings identify a fragmented legal framework for disabled people, a legislation and policy review is proposed, with a focus on consolidation and alignment, in particular with CRPD. In this context, it is proposed that a review of the Criminal Law (Insanity) Act 2006 should be undertaken, while the proposed changes to the Mental Health Act 2001 that enhance human rights protections should be extended to people subject to the 2006 Act. In addition, a review of the Disability Act 2005 is proposed, with a view to improving existing laws, strengthening reasonable accommodation measures in accessing justice, and ensuring accessibility.

In light of the human rights issues identified in the study, and the need for comprehensive legal reforms to ensure equal access to justice for disabled people, it is recommended that the Attorney General should prioritise this through the reference procedure to the Law Reform Commission under Law Reform Commission Act 1975.

Barriers for Certain Groups and Allied Issues

The study also identifies recommendations to overcome barriers for certain groups. This includes improving information, funding, and enhanced measures to support access to justice for a range of groups, including people with mental health conditions, people with low literacy levels, people with intellectual disabilities, disabled women, disabled children and their families, the Deaf community, disabled people in the prison system, and families of disabled people. The recommendations include legal reforms in relation to access to legal advice, improved training for legal professionals, new and improved complaints mechanisms, access to sign language interpreters, dedicated advocacy services, and access to remote hearings, as appropriate.

Concluding Remarks

This research finds that disabled people often have the greatest legal need; however, they encounter the most significant obstacles when attempting to access the Irish justice system. Despite the introduction of legislation and public policy aimed at improving access to justice for disabled people, significant challenges persist. The research highlights many challenges which includes a critical issue of misalignment between Irish law and international human rights standards, particularly the CRPD. Additionally, the interplay between different legal frameworks within the Irish Justice System was found to be complex. There is fragmented research and a lack of comprehensive data collection on access to justice for disabled people in Ireland and their experiences. This deficiency inhibits understanding the full scope of barriers and hinders evidence-based policymaking.

Addressing these inconsistencies and ensuring a harmonised legal framework that respects the rights and dignity of disabled people is essential. As well as comprehensive training in human rights, disability awareness, equality, diversity, and inclusion, along with the involvement of disabled people and their representative organisations, is urgently needed to bridge this knowledge gap. To ensure continuous improvements in this area, prioritising comprehensive data collection and research efforts is essential. The research identified unmet legal needs, delays in legal proceedings, and access to legal as significant barriers. To overcome these barriers, legal aid must be expanded to include all groups protected under Irish anti-discrimination legislation, with a specific focus on disabled people. To further address these gaps, it is necessary to advocate for increased funding, better training for advocates, and a statutory right to independent advocacy.

In the current landscape, there are many areas for improvement to ensure Ireland complies with its obligations in implementing Article 13, Access to Justice, under the Convention on the Rights of Persons with Disabilities. The findings in this report are crucial for IHREC as it mandates the Public Sector Duty, is the Independent Monitoring Mechanism for the CRPD, and has a strategic priority on Justice, Research and Recognition, including ableism; this report is pivotal for its ongoing work in this area. Furthermore, it is essential policymakers, legal

professionals, and all stakeholders work collaboratively to remove barriers and ensure accessing justice is a reality for disabled people.



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