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Irish Human Rights and Equality Commission

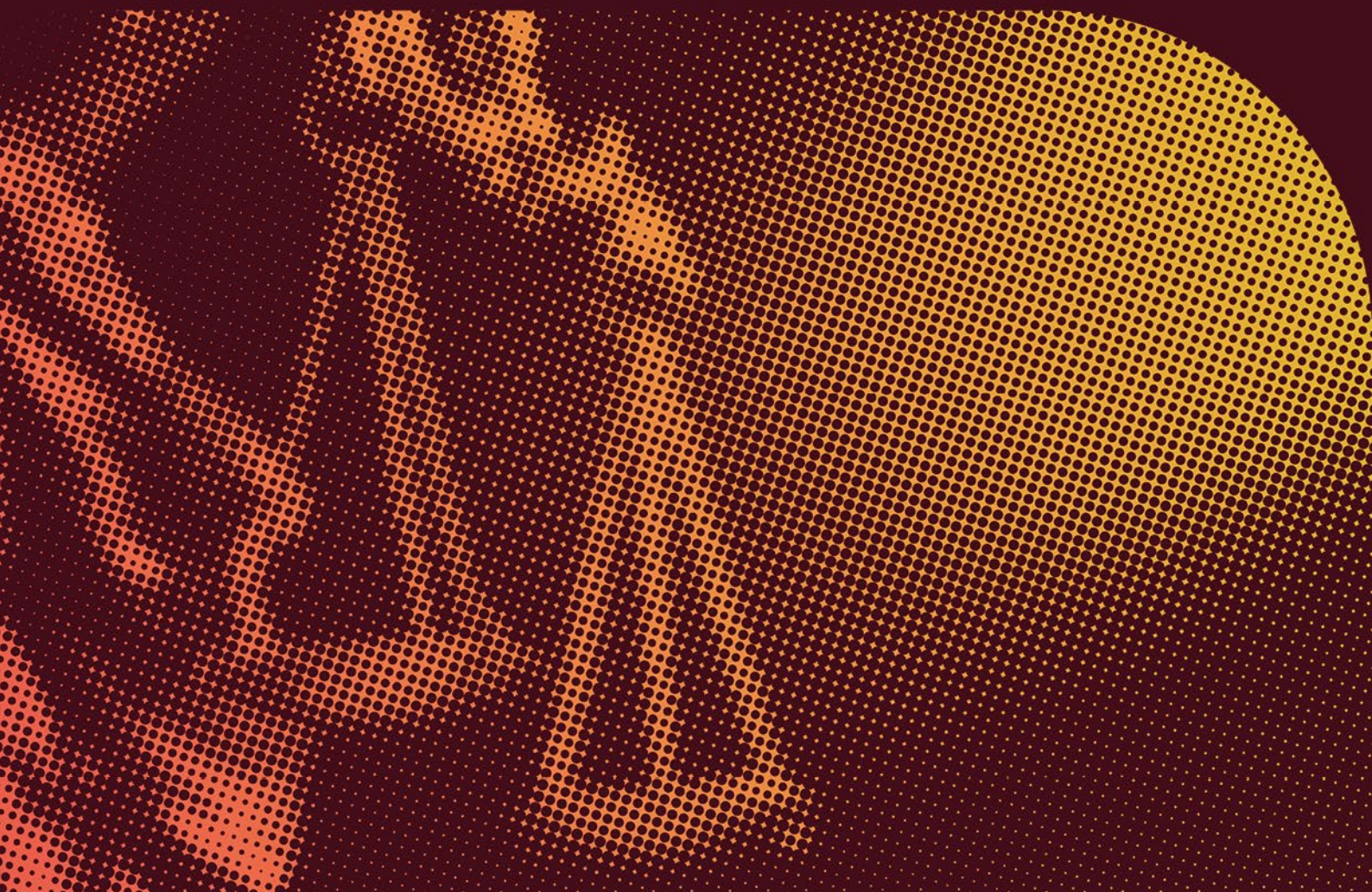


IHREC
Monitoring Mechanism
Independent Monitoring Mechanism
under the United Nations Convention on
the Rights of Persons with Disabilities

Access to Justice: Implementation of Article 13 of the UN Convention on the Rights of Persons with Disabilities

Irish Human Rights and Equality Commission

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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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Summary of recommendations

To address the unmet legal needs of disabled people, the Commission recommends that:

- › the civil legal aid scheme be expanded to include structurally vulnerable groups including disabled people, and the Civil Legal Aid Review should incorporate a dedicated work-stream to consider this matter comprehensively and provide recommendations to the Legal Aid Board. It should encompass legal representation that is accessible and adequate; and provision of legal representation where its absence is a barrier in pursuing discrimination cases, including to disabled people who are involuntarily detained.
- › the Civil Legal Aid Scheme is expanded to include a wider range of areas including, at a minimum, employment and equality cases before the Workplace Relations Commission.
- › the Government provide adequate funding for independent advocacy services to address current limitations and clear waiting lists, as a matter of priority.
- › the Government consider introducing a statutory right to independent advocacy, designed to ensure accessibility, and complemented with training for legal professionals, to ensure consistent and tailored support for all disabled adults and children. This includes independent advocacy to access legal advice and representation.

To address deprivation of liberty and denial of justice, the Commission recommends that:

- › the Government reforms legislation to protect the rights of persons deprived of their liberty, including the advancement of the Department of Health's Protection of Liberty Safeguards Bill and Mental Health Bill 2024 and the Department of Justice's Inspection of Places of Detention Bill. Reformed legislation must comply with the UNCRPD as a matter of urgency. Further, standards and guidelines to ensure implementation must be introduced, including provisions to prevent unwarranted restrictions on personal autonomy and intimate relationships, in line with Articles 13, 14 and 23 of the CRPD.
- › the Government ensures that the Department of Justice's Inspection of Places of Detention Bill mandates OPCAT 'National Preventive Mechanisms' to monitor places to de facto detention, including relevant services for disabled people.

- › the Legal Aid Board ensures that people living in residential disability (including mental health) services are prioritised, provided with outreach legal services and have access to legal representation (including by providing legal services in places where disabled people are residing).
- › the Government ensures that this group also have access to independent advocacy, including by allocating adequate resources to advocacy services.
- › the Government adopts measures to tackle the non-prosecution of offences involving victims who have intellectual disabilities, supported by enhanced training for relevant professionals/agencies on effective communication.

To address accessibility of the justice system, the Commission recommends that:

- › the Government strengthen laws on procedural and reasonable accommodation, including by reforming the Disability Act 2005, the Equal Status Acts 2000-2018, and the Employment Equality Acts 1998-2015, in compliance with Article 9 of the UNCRPD and General Comment No 2. Legislative reform should be accompanied by policies and procedures, and by providing comprehensive training for legal professionals, service providers, and personnel across the criminal justice system to provide for reasonable and procedural accommodations.
- › agencies of the justice, health, education and social care systems, including regulatory and oversight bodies including but not limited to the Garda Ombudsman/ Fiosrú, Policing Authority and Garda Inspectorate / Policing and Community Safety Authority, Inspector of Prisons / Inspector of Places of Detention, Health Information and Quality Authority, Mental Health Commission review the availability and accessibility of complaints handling to ensure they are universally accessible and rights-based.
- › the Department of Justice and its agencies, including but not limited to An Garda Síochána, the Courts Service, the Probation Service, the Irish Prison Service, the Legal Aid Board, and the Judicial Council take action to enhance responsiveness to requests for reasonable accommodations and to ensure procedural accommodations.

These actions should :

- › simplify, adapt and strengthen policies and procedures;
- › provide infrastructure that is reflective of the diversity of impairment types, circumstances and intersecting needs of disabled people;
- › be informed by an end to end accessibility audit; and
- › be implemented with a publicly reported, timetabled and resourced plan.

- › the Workplace Relations Commission takes action to enhance responsiveness to requests for reasonable accommodations and to ensure procedural accommodations.

These actions should :

- › simplify, adapt and strengthen policies and procedures;
- › provide infrastructure that is reflective of the diversity of impairment types, circumstances and intersecting needs of disabled people;
- › be informed by an end to end accessibility audit; and
- › be implemented with a publicly reported, timetabled and resourced plan.

To address legislative and policy gaps that are required to address all of the issues above, the Commission recommends that:

- › the Government completes the process to accede to the Optional Protocol to the UNCRPD expeditiously and ensure disabled people, including through their representative organisations, are facilitated to access the UN system, including through provision of necessary information and resources.
- › the Government conducts a comprehensive review of existing legislation and public policy, with a focus on consolidating and aligning the fragmented legal frameworks with international standards, particularly the UNCRPD, with the active participation of disabled people. Priority consideration should be given to the Mental Health Act 2001 and Mental Health Bill 2024, the Criminal Law (Insanity) Act 2006 and the Disability Act 2005.
- › all public bodies involved in the provision of legal services adhere to their obligations under the Public Sector Equality and Human Rights Duty.

The Commission notes that addressing knowledge, awareness and capacity barriers is a cross-cutting need which is integral to the implementation of the recommendations above.

To this end, the Commission recommends that:

- › the Government, and in particular the Department of Children, Equality, Disability, Integration and Youth (as the focal point for implementing the UNCRPD), the Department of Justice, and the Department of Health develop and deliver UNCRPD Article 8 compliant comprehensive education and awareness programmes, to bridge gaps in knowledge and promote effective implementation of disability rights.
- › these programmes are targeted at disabled people, the broader population, key stakeholders in the administration of justice, the legal community, and intermediary organisations.
- › educational and regulatory bodies in the justice sector, including the Bar of Ireland, the Law Society, Kings Inns, the Court Service, the Workplace Relations Commission, the

Judicial Council, the Irish Prison Service and An Garda Síochána, provide education and training initiatives for staff in the justice system on the realisation of UNCRPD rights.

- › the Legal Services Regulatory Authority, the Bar of Ireland, the Law Society, Kings Inns and Department of Justice take steps to increase diversity within the legal professions and judiciary by implementing support schemes that offer financial assistance and mentorship to disabled legal professionals, address workforce culture and make visible the diversity profile of the profession.

The Commission notes that addressing gaps in data and information is a cross-cutting need, which is integral to the implementation of the recommendations above.

To this end, the Commission recommends that:

- › the National Equality Data Strategy is implemented to deliver comprehensive, accessible and accurate data collection on disabled people's access to and employment within the justice system. The data must be disaggregated by impairment type and in formats that enables intersectional analysis, and is made publicly available in accessible formats in line with Article 31 of the UNCRPD.
- › the Department of Justice and its agencies develop a comprehensive disaggregated data system to record and report unmet legal needs in compliance with Article 31 of the UNCRPD.
- › the Government ensure the provision of adequate resources to enable IHREC, in its mandate as the Independent Monitoring Mechanism for the UNCRPD, to fulfil its obligations to monitor, promote and protect CRPD rights, in accordance with treaty obligations and guidance, and that all relevant justice, health, education and social care sector bodies fully cooperate and engage with the Independent Monitoring Mechanism and engage with research and data collection carried out by IHREC when requested.

Introduction

The Irish Human Rights and Equality Commission ('the Commission') is both the national human rights institution and the national equality body for Ireland, established under the Irish Human Rights and Equality Commission Act 2014 (the '2014 Act'). In accordance with our founding legislation, we are mandated to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and equality and to examine any legislative proposal and report our views on any implications for human rights or equality.¹ Since its establishment a decade ago, the Commission has prioritised promotion of access to justice, protection of the rule of law and addressing societal and institutional ableism.²

We are Ireland's 'Independent Monitoring Mechanism' for the UN Convention on the Rights of People with Disabilities ('UNCRPD'), as provided for under Article 33 UNCRPD, and brought into effect by the Assisted Decision-Making (Capacity)(Amendment) Act 2022, which established the mandate and provided for the appointment of a statutory Advisory Committee (the 'Disability Advisory Committee'). In our role as the Independent Monitoring Mechanism, we undertake work to promote, protect and monitor the implementation of the Convention. This includes promoting awareness of, and strengthening the capacity to implement, UNCRPD obligations; considering and responding to individual and collective complaints of alleged breaches of Convention rights; and monitoring and reporting on the impact of legislation and policies as it relates to the rights of disabled people.

In line with our mandate, in 2023 we commissioned a study to assess the effectiveness of current Irish legislation, policy, provision and data in realising Article 13 of the UNCRPD which provides for "effective access to justice for persons with disabilities on an equal basis with

¹ Section 10(2)(c) of the Irish Human Rights and Equality Commission Act 2014.

² For example, see Irish Human Rights and Equality Commission, Strategy Statement 2022-2024, (2022).

others”.³ We intended to produce a baseline status of rights holders’ enjoyment of this right, and to establish priorities for change to realise UNCRPD Article 13.

The evidence gathered by the research report included testimonies of disabled people that have experience of the justice system, people employed or working in the justice system, and representatives of advocacy and support services, as well as a review of available literature and data. The research findings are stark and point to a system which is failing to vindicate the rights enshrined by Article 13 of the UNCRPD. These are presented in a [comprehensive research report](#) prepared by Dr Charles O’ Mahony, University of Galway School of Law.⁴ The report provides a comprehensive list of actionable recommendations, providing a path forward for relevant actors in the judicial system and related public bodies to fulfil their obligations and provide for equal, meaningful and responsive access to justice for disabled people in Ireland, in line with the States’ Article 13 obligations. The findings and recommendations detailed in this policy paper address the evidence presented in Dr O’ Mahony’s report, unless otherwise stated, and we are grateful for his comprehensive work.

The findings relate to the rights of disabled people that are victims of crimes and discrimination, disabled people involved in care and family proceedings, and disabled people accused or convicted of crime. They relate also to disabled people that work in the justice system. The barriers encountered by disabled people can begin when they seek to report a crime or access legal advice/information, and can continue throughout their journey through the system. The recommendations in this report are applicable to the agencies that people engage with throughout this process, including but not limited to An Garda Síochána, the Director of Public Prosecutions, the Courts Service, the Workplace Relations Commission, the Probation Service, the Irish Prison Service, Legal Aid Board, and the Judicial Council, the

³ [UNCRPD Article 13 \(Access to Justice\)](#) states that: “1. States Parties shall 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, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages. 2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.”

⁴ Charles O’ Mahony, [Access to Justice: A Baseline Study of Article 13 of the UN Convention on the Rights of Persons with Disabilities](#), 2024.

bodies that train and regulate legal professionals,⁵ the government department with responsibility to legislate and develop policy in this area: the Department of Justice, and the actors that work in the justice system, including but not limited to judges, WRC adjudicators, solicitors, barristers, Gardaí, DPP personnel, Legal Aid Board staff, probation officers, prison officers, health and social care staff and personnel in relevant public bodies.⁶

Access to Justice for Disabled People in Ireland

Access to justice is a foundational component of the rule of law and a fundamental right, essential for safeguarding other human rights.⁷ The UNCRPD was the first international human rights instrument to include an explicit right to access to justice.⁸ In recognition of the challenges that many States are grappling with in implementing measures to give effect to Article 13,⁹ the '[International Principles and Guidelines on Access to Justice for Persons with Disabilities](#),' initiated by the Special Rapporteur on the rights of persons with disabilities, were published in 2020 to provide a practical tool to assist States in designing and providing equitable access to justice.¹⁰ The principles are regarded as international best practice in

⁵ This includes, but is not limited to, the Bar of Ireland, the Law Society, Kings Inns, the Court Service, the Workplace Relations Commission, the Judicial Council, the Irish Prison Service and An Garda Síochána.

⁶ The recommendations are applicable also to agencies of the justice, health and social care systems, including regulatory and oversight bodies including but not limited to the Garda Ombudsman/ Fiosrú, Policing Authority and Garda Inspectorate / Policing and Community Safety Authority, Inspector of Prisons / Inspector of Places of Detention, Health Information and Quality Authority, Mental Health Commission.

⁷ This includes "fair trial rights, including equitable access to and equality before the courts, as well as the pursuit and attainment of just and timely remedies for violations of rights... access to justice holds critical importance for democratic governance, the rule of law, and the battle against social and economic marginalisation." Charles O' Mahony, *Access to Justice: A Baseline Study of Article 13 of the UN Convention on the Rights of Persons with Disabilities*, 2024, p. 27; Office of the United Nations High Commissioner for Human Rights, "Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities, Report of the Office of the United Nations High Commissioner for Human Rights," A/HRC/37/25, 27 December 2017. Article 13 also complements other rights in the UNCRPD, including Article 9 (general right of access), Article 29 (participation in political and public life), and Article 30 (participation in cultural life, recreation, leisure and sport).

⁸ Charles O' Mahony, *Access to Justice: A Baseline Study of Article 13 of the UN Convention on the Rights of Persons with Disabilities*, 2024, p. 27.

⁹ See Eliona Gjeczaj, Anna Lawson, Rannveig Traustadóttir, and James Gordon Rice, 'We Got Lucky with the Judge': Access to Justice for Disabled Women in Iceland (2023) *Laws* 12, 21.

¹⁰ United Nations Human Rights Special Procedures, 'International Principles and Guidelines on Access to Justice for Persons with Disabilities' (Geneva, August 2020).

understanding State compliance with Article 13 of the UNCRPD.¹¹ The recommendations provided in this policy statement are intended to bring Ireland's implementation of Article 13 of the UNCRPD in line with these principles, and therefore, its international legal obligations. The Access to Justice research considered Ireland's compliance with these principles to establish a baseline for Article 13 implementation in Ireland, and found significant shortfalls.¹² Despite the introduction of legislation and policy aimed at improving access to justice for disabled people,¹³ significant challenges persist. Disabled people who encounter the justice system (civil and criminal) in Ireland are met with multifaceted challenges and barriers, despite often having some of the greatest legal needs.

Principle 1 - Legal capacity

Ireland has provided for greater recognition of legal capacity with the introduction of the Assisted Decision-Making (Capacity) Act 2015 ('ADMCA'), but significant concerns remain, as the Act still maintains provisions for substitute decision-making, which does not comply with Article 12 of the UNCRPD.

¹¹ The principles and guidelines align with international human rights standards, in particular Article 13 of the UNCRPD, and provide stakeholders with a comprehensive framework to fulfil their international obligations in this regard. Charles O' Mahony, Access to Justice: A Baseline Study of Article 13 of the UN Convention on the Rights of Persons with Disabilities, 2024. Pp 30-32.

¹² For an expanded analysis, see Charles O' Mahony, Access to Justice: A Baseline Study of Article 13 of the UN Convention on the Rights of Persons with Disabilities, 2024, pp 217-220.

¹³ The Assisted Decision Making (Capacity) Act 2015 and the Assisted Decision-Making (Capacity) (Amendment) Act 2022.

Principle 2 – Universally accessible facilities and services

Steps have been taken to address accessibility and inclusivity for disabled people within the justice system, but significant challenges and inconsistencies remain and legislation and policy to ensure accessibility is inadequate and in need of review.

Principle 3 - appropriate procedural accommodations

There are procedural accommodations for access to justice for disabled people, including children, but significant disparities and challenges exist, in particular for disabled children. There is limited support, inconsistent judicial training, and inadequate data collection. Legislative change is required to align legislation with children's evolving capacity, promote mandatory consultation, and ensure independent advocacy.

Principle 4 – timely access to legal notices and information

While public policy underpinned by legislation seeks to facilitate access in a timely manner, there are significant and persistent problems with physical access to court buildings and the lack of accessible information and communication.

Principle 5 - substantive and procedural safeguards & accommodations to guarantee due process

The lack of accommodation for disabled people in the justice system poses a significant barrier in accessing justice, and the responsiveness of court and tribunal offices to requests for accommodations has been inadequate.

Principle 6 - right to free or affordable legal assistance

Limited access to legal aid poses a major obstacle, with delays, and financial constraints further impeding justice.

Principle 7 - right to participate in the administration of justice

Unmet legal need, lack of awareness of rights, inadequate advocacy services and deficiencies with the legal aid scheme often prevent disabled people exercising the right to participate in the administration of justice on an equal basis with others.

Principle 8 - right to report complaints, initiate legal proceedings, and to effective remedies.

Despite the introduction of the ADMCA, barriers still remain regarding reporting complaints and initiating legal proceedings concerning human rights violations and crimes, having complaints investigated and obtaining effective remedies. Particular barriers affect people in residential disability services, mental health services and prisons, and in relation to children. These barriers are further compounded by inadequate complaints mechanisms for people subject to mental health legislation and people in prisons (including those remanded in custody).

Principle 9 - effective and robust monitoring mechanisms

Monitoring mechanisms to ensure access to justice for children and adults with disabilities in Ireland are insufficient, with a lack of comprehensive data collection regarding the experiences of disabled people within the Irish justice system. This deficiency inhibits the ability to understand the full scope of challenges and hinders evidence-based policymaking, and the removal of barriers.

Principle 10 - awareness-raising and training programmes for people who work in the justice system

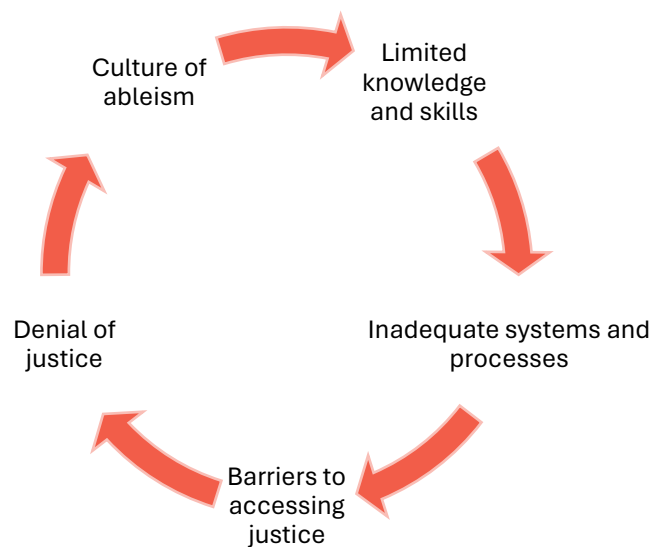
While some relevant training is being delivered, there is limited information available regarding the nature of the training, its content, who delivers it, who exactly it is delivered to and how often. The involvement of disabled people in the design and delivery remains unclear. There was a strong view amongst research participants that the training that is being delivered is wholly inadequate.

The findings demonstrate that the story of disabled persons' access to justice is not a singular one. The barriers and challenges experienced are varied and nuanced, and a person's own identity/identities and impairment type/types are significant factors in determining the experience they are likely to have in accessing, or attempting to access, justice. Factors that hinder access to justice include a misalignment between Irish law and international human rights standards, particularly the UNCRPD. Additionally, the complex interplay between different legal frameworks within the Irish Justice System contributes to an environment in which relevant stakeholders are sometime not aware of their role (and sometimes of the limitations of their powers) in supporting or engaging with people at various stages of the justice system.¹⁴ 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 and planning for responsive action.

Notwithstanding the data limitations, the research findings do provide evidence of unmet legal need for disabled people, and in many cases, the denial of justice altogether, often

¹⁴ For example, "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." Charles O' Mahony, Access to Justice: A Baseline Study of Article 13 of the UN Convention on the Rights of Persons with Disabilities, 2024, p 8-9.

rationalised by a person’s perceived or actual capacity/incapacity which results in their being excluded as a credible witness, or a failure to accommodate them in the criminal justice system. Inaccessible information, systems, procedures and infrastructure is a significant factor in denial of access to justice. These barriers are underpinned by inadequate knowledge, skills and tools for those that work in the justice system. Indeed, inadequate understanding and skills not only contributes to inadequate systems and processes, but also to a culture of ableism, that itself is a barrier to accessing justice for many, and a barrier to taking the actions requires to fulfil the States Article 13 obligations.



“Clustered injustice reflects the idea that people who are disadvantaged face a multitude of legal challenges that are deeply interconnected and require a more holistic and systemic approach to address effectively.”¹⁵

Charles O’ Mahony

¹⁵ Charles O’ Mahony, Access to Justice: A Baseline Study of Article 13 of the UN Convention on the Rights of Persons with Disabilities, 2024, citing the work of Luke Clements, Clustered Injustice and the Level Green (Legal Action Group 2020).

The experience of disabled people who seek to access justice in Ireland is in line with the experience in other jurisdictions, and progress made to date is acknowledged.

However, as a fundamental right, incremental and progressive implementation of remedial measures is not an option. Continued failure to implement article 13 of the UNCRPD is unacceptable and requires an urgent policy response.

We call upon the State to undertake a concerted effort, together with judicial and legal bodies, and in cooperation with the public bodies that are part of the States' human rights and equality architecture including IHREC, the Office of the Ombudsman and the Ombudsman for Children, to bring its legal and policy frameworks into alignment with UNCRPD and international best practices. This will require the harmonisation of inconsistencies in the legal framework and systemic legal and policy reforms. The realisation of Article 13 of the UNCRPD requires the realisation of other UNCRPD rights informed by their interpretation in General Comments. It will require action to tackle underlying attitudes and increase awareness, knowledge and skills of legal professionals,¹⁶ the diversification of the legal professions,¹⁷ and the provision of appropriate accessible services and supports throughout the justice system.¹⁸ The involvement of disabled people and their representative organisations is central

¹⁶ Article 8 of the UNCRPD requires that States Parties adopt mediate, effective and appropriate measures to raise awareness about disability and foster respect for disability, to combat stereotypes and promote awareness of the capabilities and contributions of persons with disabilities, including through public awareness campaigns, the education system, media and through training programmes. United Nations Convention on the Rights of Persons with Disabilities (CRPD), Article 8 –Awareness Raising.

¹⁷ Article 27 of the UNCRPD regarding work and employment requires that States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to prohibit discrimination and protect disabled people's right to employment, including through access to training and placement programmes, promotion of career opportunities and career advancements, and ensuring reasonable employment is provided. United Nations Convention on the Rights of Persons with Disabilities (CRPD), Article 27- Work and Employment. General Comment No. 8 clarifies the obligations of States parties regarding the right to work and employment as enshrined in article 27 of the Convention, including regarding its role in tackling structural ableism. United Nations Committee on the Right's Persons with Disabilities, [General comment No. 8 on the right of persons with disabilities to work and employment \(2022\)](#), CRPD/C/GC/8.

¹⁸ Article 9 of the UNCRPD obliges States Parties to "take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information

to this process.¹⁹ To ensure continuous improvements in this area, prioritising comprehensive data collection and research efforts is essential.²⁰ Just as the experience of a disabled person is influenced by their intersecting identities and impairments, a robust response to tackling the barriers to access to justice should be designed through the lens of intersectionality, considering the diversity of needs and experiences of all disabled people.²¹ The recommendations provided throughout this document offer a starting point for this process.

and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, ” and to take appropriate measures to monitor, the implementation of standards and guidelines and to train stakeholder on accessible issues. The CRPD Committee’s General Comment No. 2 clarifies the obligations of States Parties regarding accessibility, and the steps that States Parties are required to take to provide it. Committee on the Rights of Persons with Disabilities, [General comment No. 2 \(2014\), Article 9: Accessibility](#), CRPD/C/GC/2, 22 May 2014.

¹⁹ UN Convention on the Rights of Persons with Disabilities, Article 4(3), outlines obligations on government for how they include disabled people in the development, implementation and monitoring of policies and legislation and other decision-making processes. General Comment No. 7 clarifies States parties’ obligations under articles 4 (3) and 33 (3) and their implementation, meaningful consultation with and involvement of persons with disabilities, through their representative organizations, in the development and implementation of policies and programmes. UN Committee on the Rights of Persons with Disabilities, “[General Comment No. 7- Article 4.3 and 33.3: Participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention](#),” (2018) CRPD/C/GC/7

²⁰ [Article 31 of the UNCRPD](#) requires that States Parties to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the Convention, and that this data be appropriately disaggregated and disseminated.

²¹ General Comment No 6 clarifies the obligations under Article 5 of the CRPD (regarding equality and non-discrimination) has noted that discrimination may stem from a single attribute like disability or gender, or it can arise from multiple and intersecting characteristics, and has emphasised that State Parties to the CRPD must recognise and address these complex layers of discrimination, where multiple factors may amplify or intertwine, making them inseparable and leading to distinct disadvantages. United Nations Convention on the Rights of Persons with Disabilities, [General Comment no. 6 on equality and non-discrimination](#) (2018) CRPD/C/GC/6.

Unmet legal needs: Legal aid, legal representation and advocacy

Access to legal aid and legal representation for disabled people is essential for ensuring equal access to justice, including participating in legal proceedings.²² However, the research findings identified significant shortcomings in the availability and adequacy of legal aid services and the unmet legal needs of disabled people in Ireland, a result of multiple factors:

- › Discrimination complaints under the Equality Acts are generally not covered by civil legal aid,²³ leaving disabled people without essential support in navigating complex legal processes. Advocating for oneself in the absence of legal aid and representation, for example in complaints taken to the Workplace Relations Commission (WRC) for which legal aid is not available, presents particular barriers for some disabled people including those with intellectual or learning impairments and impairments that have an impact on communication. There is disparity between civil and criminal legal proceedings in this regard, whereby a person involved in criminal proceedings might be able access the civil legal aid scheme, but a person taking a discrimination case at the WRC would not.
- › At the same time, despite an evident need for independent advocacy services, users encounter long waiting lists and criteria for accepting cases by the National Advocacy Service, which lacks the funding to meet the current demand.²⁴ In the absence of legal aid, independent advocates who sometimes support disabled people sometimes find

²² For example, see Committee on the Rights of Persons with Disabilities, "Concluding Observations on the initial report of the United Kingdom of Great Britain and Northern Ireland," United Nations CRPD/C/GBR/CO/1, 3 October 2017, at pages 6-7, as cited in Charles O' Mahony, Access to Justice: A Baseline Study of Article 13 of the UN Convention on the Rights of Persons with Disabilities, 2024, p 29.

²³ This includes the Equal Status Acts and the Employment Equality Acts.

²⁴ The National Advocacy Service has highlighted the continued growth in demand for its services, which has not been matched by an increase in funding for additional personnel since 2011. For example, in its annual report for 2022, the NAS noted "a continued growing demand for the Patient Advocacy Service with 1,859 contacts, which represents a 54% increase compared to 2021. Also in 2022, the Patient Advocacy Service extended its remit to people living in Private Nursing Homes, providing patient advocacy to patients and residents in all Public Acute Hospitals & Nursing Homes." National Advocacy Service, "[National Advocacy Service for People with Disabilities \(NAS\) and Patient Advocacy Service Annual Report Launch](#), (August 2023)

themselves ill-equipped to advocate when faced with a legal professional on the opposing side.

- › At times, rapid appointment of decision-making representatives does not align with disabled people's will and preferences.
- › The lengthy nature of litigation can have a negative impact on disabled people pursuing justice leading to attrition of cases, with some respondents suggesting that litigation delays have been strategically used against disabled people.
- › Limited procedural accommodations, and challenges in accessing procedural accommodations, combined with limited training and education for justice personnel including in Irish Sign Language,²⁵ make for an inaccessible system for many people. The shortage of solicitors that have experience working with disabled people in vindicating their rights compounds this challenge.
- › The absence of data on disability and access to justice masks the full extent and the dynamics of the problems.

Overall, limited access to civil legal aid was found to be a major obstacle for disabled people in exercising and vindicating their rights, and there were unanimous calls for the expansion of the legal aid scheme to encompass all groups protected under anti-discrimination legislation, with an emphasis on prioritising this expansion for disabled people. Delays in legal proceedings, a shortage of solicitors, and disparities between the criminal and civil justice systems further impede access to justice. These challenges are exacerbated by intersecting barriers, including financial constraints, especially for those reliant on social welfare payments, and the impacts are cyclical: inadequate legal aid can hinder people from pursuing their rights with particular disparities in areas like property, housing, and inheritance.²⁶ The State continues to fail to address the Cost of Disability; this will be addressed in the Commission funded ESRI research report *Adjusting estimates of poverty for the cost of disability* (2024).

²⁵ [Irish Sign Language Act](#), 2017

²⁶ See for example, IHREC, [The Incorporation of Economic, Social and Cultural Rights into the Irish Constitution](#) (2023) p. 16.

Recommendations to address unmet legal needs of disabled people

Comprehensive reforms of the civil legal aid system are required, providing adequate legal aid, procedural accommodations and independent advocacy. This must be complemented with extensive, disability-awareness training for all personnel in the Irish justice system.

Disabled people have a right to free or affordable legal assistance, particularly in matters involving rights violations, personal integrity, property, housing, decision-making autonomy and family integrity. Legal advice should be accessible and procedural accommodation should be made available to lawyers to ensure effective communication with disabled clients or witnesses.²⁷ There is a clear call from across stakeholders for comprehensive reform of the civil legal aid system, including for increased funding and expanding the scope to accommodate the specific support needs of disabled people, encompassing all groups protected under anti-discrimination legislation and including cases brought to the Workplace Relations Commission.²⁸ This recommendation is in line with the recommendation of the United Nations Committee on Economic, Social and Cultural Rights, which, recognising the impact that absence of publicly funded legal aid has on ‘disadvantaged and marginalised individuals,’ and recognised the vital importance of legal aid to access to appropriate redress, notably in the realms of employment, housing, forced evictions, and social welfare benefits, has criticised the inadequacies within the legal aid system, including the absence of accessible publicly funded legal aid services, and called for the provision of publicly funded legal aid services across a wide spectrum of areas, including the expansion of the scope of the Civil Legal Aid Scheme.²⁹ The ongoing Civil Legal Aid Review provides an opportunity to

²⁷ United Nations Human Rights Special Procedures, ‘International Principle and Guidelines on Access to Justice for Persons with Disabilities (Geneva, 2020). See Principle 6.

²⁸ IHREC has previously recommended that the Civil Legal Aid Scheme is expanded to include a wider range of areas including, at a minimum, employment and equality cases before the Workplace Relations Commission. IHREC, [Submission on the Review of the Equality Acts](#) (2023), p.39.

Charles O’ Mahony, Access to Justice: A Baseline Study of Article 13 of the UN Convention on the Rights of Persons with Disabilities, 2024, p 128-133.

²⁹ Committee on Economic, Social and Cultural Rights, "Concluding observations on the third periodic report of Ireland," E/C.12/IRL/CO/3 (2015), at para 8. Charles O’ Mahony, Access to Justice: A Baseline Study of Article 13 of the UN Convention on the Rights of Persons with Disabilities, 2024, p 59.

correct some of the barriers that exist with regard to provision of legal aid for civil cases, and given the scale of unmet legal need identified in this research, the ongoing review should incorporate a dedicated work-stream to consider this matter comprehensively.

The Commission recommends that the civil legal aid scheme be expanded to include structurally vulnerable groups including disabled people, and the Civil Legal Aid Review should incorporate a dedicated work-stream to consider this matter comprehensively and provide recommendations to the Legal Aid Board. It should encompass legal representation that is accessible and adequate;³⁰ and provision of legal representation where its absence is a barrier in pursuing discrimination cases,³¹ including to disabled people who are involuntarily detained.

The Commission recommends that the Civil Legal Aid Scheme is expanded to include a wider range of areas including, at a minimum, employment and equality cases before the Workplace Relations Commission.³²

There were calls too for a fully independent, resourced, trained and equipped advocacy service, accessible to children as well as adults and to people deprived of their liberty.³³ Advocates are essential in facilitating active involvement in legal proceedings and supporting some disabled people with their comprehension of their rights and access to vital services and support. Increased funding is required to ensure that advocacy services reach everyone requiring them, and to provide appropriate training to advocates, ultimately enhancing their

³⁰ The Commission has previously recommended that the State conduct a review into the barriers which may impede the accessibility of the Scheme for structurally vulnerable groups, and has recommended that “the Legal Aid Board review how it provides the entirety of its services to ensure they are fully accessible to disabled people and compliant with the UN Convention on the Rights of Persons with Disabilities Article 13.” IHREC, [Submission to the Civil Legal Aid Review](#) (2023) p 51, 58.

³¹ IHREC has previously recommended that “that measures are taken to professionalise the interpretation and reasonable accommodation service provision in the WRC.” IHREC, [Submission to the Equality Acts Review](#) (2021) p.48.

³² IHREC, [Submission on the Review of the Equality Acts](#) (2023), p. 39.

³³ Advocates should be independent and are to be distinguished from health and social care professionals, disability service providers or family members that otherwise have a role to support or provide services or care to disabled people. IHREC has in the past commented on the lack of clarity regarding the role of intermediaries where persons with disabilities are seeking to access justice. See IHREC, *Observations on the Criminal Justice (Victims of Crime) Bill 2016* (2017), p 10.

capacity to support disabled people effectively. Access to independent advocacy should include supporting disabled people seeking and accessing legal advice and representation, and should not be limited in scope (for example, limited to advocacy to participate in service complaints mechanisms only). Considerations should be given in any design of a service to professional standards and complaints handling mechanisms. Many of the participants suggested the introduction of a statutory right to independent advocacy. It was suggested that such a legislative provision would guarantee access to advocacy services for all disabled people.

The Commission recommends that the Government provide adequate funding for independent advocacy services to address current limitations and clear waiting lists, as a matter of priority.³⁴

The Commission recommends that the Government consider introducing a statutory right to independent advocacy, designed to ensure accessibility, and complemented with training for legal professionals, to ensure consistent and tailored support for all disabled adults and children.³⁵ This includes independent advocacy to access legal advice and representation.

The challenges in accessing legal aid and representation are compounded for people with less visible disabilities, such as neurodiversity and mild intellectual disabilities, particularly in care proceedings and the criminal justice system where supports and accommodations are often lacking. The lack of procedural accommodations in the justice system was identified as a significant barrier. Strengthening laws and policies on accommodation and improving

³⁴ IHREC has previously recommended that “the Equality Acts include clear provision for the recognition of the standing of trade unions and non-governmental organisations and allow for representative actions on behalf of named complainants, as well as in an organisation’s own name.” IHREC, [Submission to the Equality Acts Review](#) (2021) p.12.

³⁵ The Commission has previously for the provision of independent advocacy services, for example in relation to survivors of institutional abuse. “The Commission recommends that provision should be made in the legislation to require that survivors be provided with independent, tailored, trauma-informed advocacy support, including literacy and digital supports, to facilitate access to the supports available under the legislation.” IHREC, Correspondence to Minister for Education Re: Supports for Survivors of Residential Institutional Abuse 27 May 2024. We note that in introducing a statutory right, consideration would have to be given as to qualifying criteria for accessing it, and consideration regarding the definition of disability, if required.

training for justice system stakeholders is urgently needed. There is a need to invest in raising awareness and understanding of less visible disabilities, including neurodiversity, intellectual disabilities, and other less visible disabilities among legal professionals, service providers, and personnel across the criminal justice system. The provision of reasonable and procedural accommodations are inherent in provision of access to justice on an equal basis with others.³⁶ To mitigate the impact of lengthy litigation processes on disabled people, a system to expedite and fast-track disability-related cases should be introduced, and it should be accompanied by awareness-raising about available supports and resources and/or the provision of mental health supports. Data on, and tracking of, provision of legal services to high-need areas like residential disability (including mental health) services is also required, along with the need for accessible legal representation and resources, particularly in discrimination cases. Where data indicates unmet need, an appropriate response should follow including the direction of legal services to high need areas such as residential disability (including mental health) services.

The Commission recommends that the Government strengthen laws on procedural and reasonable accommodation, including by reforming the Disability Act 2005, the Equal Status Acts 2000-2018, and the Employment Equality Acts 1998-2015, in compliance with Article 9 of the UNCPRD and General Comment No 2. Legislative reform should be accompanied by policies and procedures, and by providing comprehensive training for legal professionals, service providers, and personnel across the criminal justice system to provide for reasonable and procedural accommodations.³⁷

³⁶ IHREC, [Observation on the General Scheme of the Garda Síochána \(Powers\) Bill](#) (2022), p 33. For example, the Commission has previously recommended that the Garda Síochána Powers include an “express obligation for Gardaí to exercise their powers in a manner that takes account of the rights and inherent dignity of all persons with disabilities. There should be an obligation on the Gardaí to take all reasonable steps needed to protect the rights of a person with a disability.” Ibid, p. 41.

³⁷ The Commission has previously recommended, for example, that time periods for making a complaint with the Police Ombudsman directly reference reasonable accommodation for disabled people. IHREC, [Submission on the Policing, Security and Community Safety Bill](#) (2023), p 60.

The Commission recommends that the Department of Justice and its agencies develop a comprehensive disaggregated data system to record and report unmet legal needs in compliance with Article 31 of the UNCPRD.

Deprivation of liberty and legal capacity

Denial of legal capacity, particularly for those in residential settings, and the importance of legal capacity as a ‘gatekeeper’ right, were among some of the starkest findings of the research. Factors such as rights being misunderstood or misinterpreted, inadequately prepared legal professionals and restrictive practices contribute to inaccessibility and even the denial of justice for some rights holders.

- The complexity of the different sources of law undermines understanding and realising of rights for disabled people. The transition from the Ward of Court system to the Assisted Decision-Making (Capacity) Act 2015 was highlighted in this regard, as was the Mental Health Act 2001. In addition, there are concerns about the disconnect between civil and criminal mental health law.
- There are calls for reforms and better protection under mental health legislation, including the establishment of an independent complaints mechanism and greater advocate involvement in tribunal hearings under the Mental Health Act 2001. In some cases, discriminatory use of mental health history in legal proceedings reflects systemic biases in the justice system. The research also documents challenges in accessing personal information and the absence of an independent complaints mechanism.
- Despite the commencement of the ADMCA, anecdotal evidence suggests continued failure to recognise the capacity of disabled people, and denial of legal capacity, particularly affecting people in vulnerable situations, such as people in residential disability (including mental health) services, nursing homes or acute hospital wards. There is concern about the expansive application of powers granted in the Act, for example broad powers being granted to decision-making representatives beyond what was intended in the Act, amounting to a violation of people’s rights without a legislative basis. This is compounded by limits in accessing independent advocacy and legal aid and/or adequately trained and equipped solicitors, as described in section 2 above.
- The lack of data on the ADMCA, with no mechanism to monitor and publicly report on practice and procedure in the Circuit Court, means that access to justice and human rights issues arising in the cases lack visibility and scrutiny. Furthermore, while legislation

has evolved, the knowledge and skills of practitioners to support disabled clients, especially those with intellectual disability, has not.

- Denial of legal capacity also arises by virtue of limitations in accessing legal services.
- There is a broad lack of legal services for people living in residential disability services, nursing homes and hospitals, with some people experiencing restricted access to the community and subject to restrictive practices in services where they live, which impact on and are compounded by their limited access to legal services. Participants spoke of feeling watched, controlled, but unable, or afraid, to speak up, fearing negative repercussions if they challenge decisions being made for them.
- Intersecting identities and circumstances create particular structural vulnerabilities for some disabled people. For example, disabled people from marginalised communities, including migrants and members of the Traveller community, face exacerbated barriers to accessing justice and essential services.
- Denial of justice disproportionately affects people with intellectual disabilities, including the non-prosecution of offences, particularly violence and sexual violence, due to perceived vulnerabilities and credibility issues. Patronising attitudes during legal proceedings and restrictions imposed by some disability service providers were also highlighted as significant concerns.

These factors have led to the denial of legal capacity, particularly for those in residential disability (including mental health) services, nursing homes, or hospitals, which in turn impacts their ability to access justice and advocate for their rights. The recognition of legal capacity is a fundamental "gatekeeper" right essential for ensuring access to justice, but is being prevented due to factors including lack of awareness about the roles of advocates and principles of the UNCRPD, and in the case of residential disability services and other institutional settings, there is concern that the individuals will and preference is not given due weight. The restrictions in residential disability services which limit access to adequate legal representation or independent advocacy are particularly worrying, given that access to justice may be required to challenge these rights restrictions.

Despite these challenges, there have been instances where personnel in the justice system have shown sensitivity and support, and anecdotal evidence of increasing willingness by the Office of the Director of Public Prosecutions to prosecute in cases involving victims with intellectual disabilities.

Recommendations to address deprivation of liberty and denial of justice

The recommendations call for recognition of the role of independent advocacy in ensuring that an individual's legal capacity is both recognised and vindicated, as well as the importance of adequate publicly funded legal aid for people subject to proceedings under the ADMCA. There is a need for a cultural shift in attitudes to people subject to mental health legislation, and a need for an independent complaints mechanism for people receiving mental health services. Recommendations were made for better training for solicitors and the establishment of more robust independent advocacy to support people whose capacity might be questioned.

Legislative reform is required to provide for an independent complaints mechanism and greater advocate involvement in tribunal hearings under the Mental Health Act 2001. These reforms should prioritise transitioning away from the medical model, and ensure better access to information. Measures should be taken to eliminate the discriminatory use of mental health history as a credibility factor in legal proceedings, addressing systemic biases within the justice system. The delays to reform of the Mental Health Act 2001 and advancement of the Protection of Liberty Safeguards Bill is an unacceptable failure of the State and is of serious concern to the Commission. We reiterate that the UNCRPD right to access to justice is a fundamental right that must be immediately realised.

The Commission recommends that the Government reforms legislation to protect the rights of persons deprived of their liberty, including the advancement of the Department of Health's Protection of Liberty Safeguards Bill and Mental Health Bill 2024 and the Department of Justice's Inspection of Places of Detention Bill. Reformed legislation must comply with the UNCRPD as a matter of urgency. Further, standards and guidelines to ensure implementation

must be introduced, including provisions to prevent unwarranted restrictions on personal autonomy and intimate relationships, in line with Articles 13, 14 and 23 of the CRPD.³⁸

The Commission recommends that the Government ensures that the Department of Justice's Inspection of Places of Detention Bill mandates OPCAT 'National Preventive Mechanisms' to monitor places to de facto detention, including relevant services for disabled people.³⁹

Independent advocacy services to support legal capacity should be established, access to legal services improved, enhanced training for solicitors and barristers provided, and adequate support and resources for people with intellectual disabilities seeking legal services should be provided.⁴⁰

To combat the denial of legal capacity, particularly for people in residential disability (including mental health) services, recognition of legal capacity should be acknowledged and reinforced. This requires public and stakeholder education about the role of advocates and UNCRPD principles, establishing independent advocacy services, and enhancing the accessibility of legal services. As noted in section 2, the adequate funding for independent advocacy services is required as a matter of priority. This should be designed to ensure accessibility, and complemented with training for legal professionals.

³⁸ IHREC is the designate coordinating body for the National Preventive Mechanisms (NPM), and the Commission has expressed concern over the delay in progressing the Inspection of Places of Detention Bill/Protection of Liberty Safeguards Bill, and its narrow view of detention which excludes many persons with disabilities, including in residential and hospital settings (see section 5 for further information on this). The Commission has recommended that the State put in place robust independent inspection mechanisms that are human-rights based and that incorporate all public, voluntary and private health and social care providers. To this end, the Commission has recommended that the Inspection of Places of Detention Bill should be expanded to include places of de facto detention where deprivation of liberty may occur and that the State should create an inventory of all such places, including in the care sector. IHREC, [Ireland and the International Covenant on Civil and Political Rights: Submission to the Human Rights Committee on Ireland's fifth periodic report](#) (June 2022) p. 55; IHREC, [Policy Statement on Care](#) (July 2023) pp. 37–38

³⁹ IHREC, [Submission on the General Scheme of the Inspection of Places of Detention Bill](#) (2022), p. 6.

⁴⁰ IHREC has previously asserted that to support persons with disabilities in exercising their legal capacity, states must take appropriate measures to provide access to supports they may require. IHREC, [Submission on the General Scheme of the Mental Health \(Amendment\) Bill](#) (2022) p 4. IHREC has also recommended that "limitations are placed on the circumstances in which persons with certain disabilities may be questioned prior the provision of legal advice, or without the presence of a legal representative. IHREC, [Observation on the General Scheme of the Garda Síochána \(Powers\) Bill](#) (2022), p 42.

Urgent action is needed to address barriers to accessing justice for people living in residential disability (including mental health) services, including the provision of legal services, independent advocacy, and adequate legal representation. Clear guidelines should be established to prevent unwarranted restrictions on personal autonomy and intimate relationships. Review mechanisms should be put in place for rights restrictions. The issue of deprivation of liberty should be closely examined, and priority given to the introduction of Protection of Liberty Safeguards.⁴¹

To tackle intersectional challenges, a holistic approach is needed that considers the compounded barriers faced by disabled people with intersecting identities, such as migrants, members of the Traveller community, and other protected groups.

The Commission recommends that the Legal Aid Board ensures that people living in residential disability (including mental health) services are prioritised, provided with outreach legal services and have access to legal representation (including by providing legal services in places where disabled people are residing).

The Commission recommends that the Government ensures that this group also have access to independent advocacy, including by allocating adequate resources to advocacy services.

All disabled people who are victims of crimes have an equal access to justice and legal remedy, regardless of whether the alleged crime was perpetrated by another individual

⁴¹ The Commission has previously recommended the provisions of the Inspection of Places of Detention Bill (now renamed Protection of Liberty Safeguards Bill) be CRPD compliant. IHREC, Ireland and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (2024), p. 42. In April 2024, the Law Reform Commission ('LRC') published the Adult Safeguarding Bill 2024 which aims to introduce a statutory safeguarding framework for at-risk adults in Ireland. As highlighted by the LRC, there is a limited amount of legislation in Ireland that is relevant to adult safeguarding, with significant gaps remaining across a range of services and settings, including hospitals, MHEs, residential centres for older people, residential centres for adults with disabilities, residential centres for international protection, etc. The proposed Adult Safeguarding Bill 2024 should align with forthcoming legislation on the protection of liberty safeguards and mental health reform. See Law Reform Commission, Report: a regulatory framework for adult safeguarding: Executive Summary (2024), para. 84. The Commission has repeatedly called for the State to address deinstitutionalisation, and has expressed "grave concerns about the significant levels of institutionalisation in Ireland". IHREC, Ireland and the International Covenant on Economic, Social and Cultural Rights (2024) pp. 120-121. The discussion on access to justice for people living in institutions cannot be divorced from the wider context, which is a historical backdrop of institutionalisation, particularly for disabled people.

(disabled or not disabled) and whether a public body was involved or implicated in any way, or not.

There is an urgent need to tackle the non-prosecution of offences involving people with intellectual disabilities, particularly focusing on the credibility issues faced by women and the exploitation of disabled people through online fraud. This can be supported through the provision of enhanced training for bodies under the aegis of the Department of Justice, including an Garda Síochána and the DPP, and for legal professionals on effective communication with disabled people, and the use of intermediaries to facilitate better understanding and participation.⁴² The Commission considers that the long delays in reaching justice for egregious cases of abuse against disabled people, which were extensively reported on publicly, could have a chilling effect, potentially deterring other people from reporting crimes or suspected crimes and from seeking justice.⁴³

The Commission recommends that the Government adopts measures to tackle the non-prosecution of offences involving victims who have intellectual disabilities, supported by enhanced training for relevant professionals/agencies on effective communication.

Access to data regarding implementation of the ADMCA is required, along with a better understanding of the Act's principles and values among service providers. Data collection should encompass intersecting identities and factors like race, gender, and socioeconomic

⁴² IHREC has also previously recommended that the State consider the need for coordination where multiple support services are involved and that oversight of service delivery ensures consistency in quality. IHREC, [Observations on the Criminal Justice \(Victims of Crime\) Bill 2016](#) (2017) p. 11.

⁴³ For instance, the final report into the case of a woman known as 'Grace', concerning serious allegations of sexual and physical abuse over a 10-year period has been repeatedly delayed. The Farrelly Commission of Investigation was established in 2017 to examine the culture and treatment of individuals with intellectual disabilities in a foster care setting in the South East. It was due to submit its final report by May 2018 but there have been ongoing delays and most recently it has been granted an extension until September 2024. IHREC has recommended that the State "overhaul the approach to investigating historical human rights abuses to ensure that all allegations are afforded timely, independent, transparent, thorough and effective victim-centred investigations, in line with international human rights standards. Investigations should adopt an intersectional approach and adequately address issues relating to ableism and racism in institutional settings" and recommended that "identified perpetrators should be prosecuted and punished with penalties proportionate to the gravity of the offence." IHREC, [Ireland and the International Covenant on Civil and Political Rights](#) (2022) pp 15-16.

status to better identify and address barriers within the justice system and in settings like direct provision centres.

Accessibility of the justice system

Article 13 of the UNCRPD provides for an obligation to offer procedural accommodations, which is not subject to ‘progressive realisation.’⁴⁴ The research findings demonstrated that public bodies within the Irish justice system inadequately accommodate the needs of disabled people in their strategic plans and in their practices, often failing to reflect clear legal obligations designed to facilitate accessibility and prevent discrimination. Multiple significant barriers prevent disabled peoples’ access to justice.

- Communication barriers pose significant obstacles, particularly affecting non-verbal people and children with intellectual impairments.
- Failure to implement the Irish Sign Language Act, 2017,⁴⁵ including failure to provide interpretation for Deaf legal professionals and individuals accessing the justice system, inadequate considerations given to the needs of Deaf people in hybrid proceedings, low levels of awareness regarding the rights of deaf people to access the justice system or to be accommodated in it.
- There is a noted inconsistency in providing accessible information, impacting people with intellectual disabilities' understanding and engagement in legal proceedings. This includes access to information on reporting crimes and seeking justice, availability of information in accessible formats, and deficits in legal professionals' communication

⁴⁴ Charles O’ Mahony, Access to Justice: A Baseline Study of Article 13 of the UN Convention on the Rights of Persons with Disabilities, 2024, p 27. The OHCHR has provided useful clarifications on obligations to offer procedural accommodations in the justice system, noting that it is not subject to ‘progressive realisation,’ and that the deliberate exclusion of the word ‘reasonable’ in the Convention means that procedural accommodations do not need to undergo a proportionality test. Therefore, failing to provide procedural accommodation when required by a disabled people constitutes a form of discrimination based on disability in relation to the right to access to justice. Office of the United Nations High Commissioner for Human Rights, "Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities, Report of the Office of the United Nations High Commissioner for Human Rights," A/HRC/37/25, 27 December 201, p 7.

⁴⁵ [Irish Sign Language Act](#), 2017. Section 4 of the act provides for the use of ISL in court and for the duty of Courts to accommodate ISL.

skills which further exacerbate these issues, especially for non-verbal people and children with intellectual disabilities).⁴⁶

- Physical access to court buildings is often absent or limited, with older court buildings in particular often presenting accessibility challenges.
- Procedural challenges were also described, including limitation in access to interpreters,⁴⁸ assistive technology, intermediaries, and facilitators.

Recommendations to address accessibility barriers

Anecdotal evidence points to compounding impact of intersecting factors in accessing justice, but the lack of data means it is not currently quantifiable. Practical steps, including the provision of supports and processes, are required to ensure accessibility. Their development should include consideration for the diversity of disabled people and should be informed by disabled people through their representative organisations.

Legislative change to strengthen accommodations and remove access barriers is required, including by revising the Disability Act 2005 to remove physical and informational barriers within the justice system, and by introducing measures to ensure that people with

⁴⁶ The Commission has previously recommended that “comprehensive, accessible and reliable information is available to all sections of the public on legal rights, as well as on access to civil legal aid and advice, with targeted measures to ensure that information on the Scheme reaches structurally vulnerable groups, and that such information be available in a range of formats and languages including Irish Sign Language, and should be accessible on and offline.” The Commission has also recommended that “resources and training on literacy and Plain English standards be rolled out to staff employed by the Legal Aid Board” and that “the main client-facing documents be revised to meet Plain English standards to improve client access” as well as in Irish Sign Language. IHREC, [Submission to the Civil Legal Aid Review](#) (2023) p 51, 55, 56.

⁴⁷ The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) have also noted that most police stations in Ireland are inaccessible for people with physical impairments and has criticised the inaccessibility of reporting of crimes committed against disabled women in this regard, and, more generally, reports indicate that accessing complaint mechanisms are particularly arduous for women with disabilities living in institutional settings. Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), [GREVIO’s \(Baseline\) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence \(Istanbul Convention\) IRELAND](#) (2023), para 248.

⁴⁸. Section 4 of the [Irish Sign Language Act](#) (2017) provides for the use of ISL in court and for the duty of Courts to accommodate ISL.

psychosocial disabilities have accessible avenues to enforce their rights, reduce litigation stress, and mitigate risks associated with legal proceedings.⁴⁹

The Commission recommends that the Government strengthen laws on procedural and reasonable accommodation, including by reforming the Disability Act 2005, the Equal Status Acts 2000-2018, and the Employment Equality Acts 1998-2015, in compliance with Article 9 of the UNCPRD and General Comment No 2.

The research highlighted several gaps in provision of funding and/or resources to ensure accessibility in the justice system. Key areas to be addressed include the need for funding for initiatives aimed at making the justice system more accessible to people with low literacy, especially those with intellectual disabilities; accessibility to and within historic court buildings, providing consistent and accessible information, including providing information in multiple formats, languages, and through videos;⁵⁰ and access to Irish Sign Language interpreters,⁵¹ as well as enhancing awareness about remote hearings, and providing comprehensive training for legal professionals to effectively serve the needs of the Deaf community. Specific support and accessible resources should be made available for children with intellectual disabilities. Further, the invisibility and lack of accommodations in family courts should be addressed, and dedicated advocacy services for children should be established.⁵² Finally, within the prison system, there is a need for awareness-raising, improved accessibility, and enhanced support for disabled people in prison.

⁴⁹ IHREC notes the provisions of the EU Victims Directive, which provide legal rights to victims of crime, brought into effect in Ireland by the Criminal Justice (Victims of Crime) Act 2017. See for information Irish Council for Civil Liberties, [Guide for Lawyers to the Victims Directive & the Criminal Justice \(Victims of Crime\) Act 2017](#) (2018). IHREC notes the commitments made in the Victims Charter to take into account requirements of disabled people who encounter the justice system, and reiterates that procedural accommodations are not subject to progressive realisation and must be provided for. See Department of Justice, [Victims Charter](#) (2024).

⁵⁰ IHREC, [Submission to the Minister for Justice on the General Scheme of the Garda Síochána \(Digital Recording\) Bill](#) (2022), p. 32.

⁵¹ See, for example, IHREC, [Observation on the General Scheme of the Garda Síochána \(Powers\) Bill](#) (2022), p. 67; IHREC, [Submission on the General Scheme of the Family Court Bill 2020](#) (2020), p. 8.

⁵² IHREC has previously recommended an explicit legislative provision that includes as a guiding principle the recognition of the rights of persons with disabilities, including access to justice and accessibility, in establishment family court proceedings. IHREC, [Submission on the General Scheme of the Family Court Bill 2020](#) (2021), p. 15.

In addition to measures to provide access, the disability awareness of legal professionals must be addressed, including through disability awareness training. Training should include a module on effective communication techniques, especially for interacting with non-verbal clients.

The Commission recommends that the Department of Justice and its agencies, including but not limited to An Garda Síochána, the Courts Service, the Probation Service, the Irish Prison Service, the Legal Aid Board, and the Judicial Council take action to enhance responsiveness to requests for reasonable accommodations and to ensure procedural accommodations.

The Commission recommends that these actions should :

- › simplify, adapt and strengthen policies and procedures;
- › provide infrastructure that is reflective of the diversity of impairment types, circumstances and intersecting needs of disabled people;
- › be informed by an end to end accessibility audit; and
- › be implemented with a publicly reported, timetabled and resourced plan.

The Commission recommends that the Workplace Relations Commission takes action to enhance responsiveness to requests for reasonable accommodations and to ensure procedural accommodations.

The Commission recommends that these actions should :

- › simplify, adapt and strengthen policies and procedures;
- › provide infrastructure that is reflective of the diversity of impairment types, circumstances and intersecting needs of disabled people;
- › be informed by an end to end accessibility audit; and
- › be implemented with a publicly reported, timetabled and resourced plan.

The Commission recommends that educational and regulatory bodies in the justice sector, including the Bar of Ireland, the Law Society, Kings Inns, the Court Service, the Workplace Relations Commission, the Judicial Council, the Irish Prison Service and An Garda Síochána, provide education and training initiatives for staff in the justice system on the realisation of UNCRPD rights.

Access to justice for disabled people should be continuously monitored and publicly reported in the justice, health, education⁵³ and social care systems, and steps taken to address the inadequacy of data on access to justice for disabled people, including by expediting the implementation of the National Equality Data Strategy announced in 2022, and considering data on access to justice during the implementation phase. Complaints handling mechanisms within the justice system should take account of reasonable accommodations for disabled people,⁵⁴ and an accessible and independent complaints mechanism should be developed within the prison system.

The Commission recommends that agencies of the justice, health, education and social care systems, including regulatory and oversight bodies including but not limited to the Garda Ombudsman/ Fiosrú, Policing Authority and Garda Inspectorate / Policing and Community Safety Authority, Inspector of Prisons / Inspector of Places of Detention, Health Information and Quality Authority, Mental Health Commission review the availability and accessibility of complaints handling to ensure they are universally accessible and rights-based.

⁵³ IHREC has called upon to the Department of Education to publish its long-awaited guidelines on the prevention and management of challenging behaviours in schools and has called for the right to access independent appeals and complaints mechanisms and the provision of legal remedies in a revised 'Education for Persons with Special Educational Needs (EPSEN) Act 2004.' IHREC, [Submission on the Review of the Education for Persons with Special Educational Needs \('EPSEN'\) Act 2004](#) (2023), pp 54, 67-68, 81-82; IHREC, Correspondence regarding Guidelines re. the use of restraint and seclusion in Irish schools (15 October 2024). IHREC is also aware of reports that children are "inappropriately passed from pillar to post through a Schools Complaints Procedures which has no relevance or place in matters pertaining to child protection, whether a child has a diagnosis of a disability or otherwise." AsIAM, [New survey says 35% of disabled children endure seclusion and 27% suffer restraint at school](#).

⁵⁴ The Commission has previously recommended, for example, that reference be made to the principle of reasonable accommodation in the complaints process for disabled people in the Policing, Security and Community Safety Bill, with reference to the complaints to An Garda Síochána. IHREC, [Submission on the Policing, Security and Community Safety Bill](#) (2023), p 60.

Legislative and policy frameworks

While Ireland ratified the UNCRPD in 2018, it deferred ratification of the Optional Protocol, which thereby prevented disabled people from seeking justice at the CRPD Committee if domestic remedies have been exhausted. We welcome the recent announcement by the Government regarding its plans to accede to the Optional Protocol but much remains to be done by the State towards the full implementation of the CRPD, and in particular to provide for access to justice.

As noted throughout this document, inconsistencies in the legislative and policy framework remain and areas for legislative reform have been proposed above. “The sheer volume and dispersed nature of these legislative provisions render the legal framework complex and difficult to navigate. This complexity... creates an additional barrier to access to justice... [and] can act as a deterrent, inhibiting people from pursuing their legal claims or seeking redress for injustices they have experienced.”⁵⁵

There are discrepancies between Irish law and the UN Convention on the Rights of the Child regarding the rights of disabled children to express their views, and to be facilitated and enabled to do so. While the Disability Act 2005 mandates accessibility in the justice system for disabled people, its effectiveness for children remains uncertain. As noted above, data collection on access to justice is limited, and this includes data regarding the experiences of children with disabilities in the justice system. Further concerns have been raised regarding the proposed amendments to the Mental Health Act 2001, which, “despite aiming to align with the CRC and UNCRPD, may retain a paternalistic approach that undermines children's rights to participate in decisions affecting them.”⁵⁶

The Mental Health Act does not provide for a mechanism to handle individual complaint, and there have been calls to establish an effective complaints mechanism to safeguard persons

⁵⁵ Charles O’ Mahony, Access to Justice: A Baseline Study of Article 13 of the UN Convention on the Rights of Persons with Disabilities, 2024, p 39.

⁵⁶ Charles O’ Mahony, Access to Justice: A Baseline Study of Article 13 of the UN Convention on the Rights of Persons with Disabilities, 2024, 101.

receiving mental health services.⁵⁷ “The ongoing review of the Mental Health Act 2001⁵⁸ and the enactment of the Assisted Decision-Making (Capacity) Act 2015 have generated a substantial body of literature highlighting various deficiencies in the law from a human rights perspective. However, these law reform processes have occurred in isolation, with little effort to address the issues faced by disabled people within the criminal justice system.”⁵⁹

People involuntarily detained pursuant to Section 3(1)(a) of the Mental Health Act, 2001 remain deprived of the rights extended under the assisted decision-making legislation in relation to Advance Healthcare Directives.⁶⁰ We note that the recently published Mental Health Bill 2024 purports to remedy this denial of rights,⁶¹ and we reiterate our calls for urgent reform of the Mental Health Act 2001.⁶² There is limited data to assess current progress on phasing out wardship or any barriers faced by applicants, including awareness of available legal supports and provisions on the recovery of costs.⁶³

⁵⁷ Full report, chapter 3, section 3.7.3 As noted above, in April 2024, the Law Reform Commission (‘LRC’) published the Adult Safeguarding Bill 2024 which aims to introduce a statutory safeguarding framework for at-risk adults in Ireland. As highlighted by the LRC, there is a limited amount of legislation in Ireland that is relevant to adult safeguarding, with significant gaps remaining across a range of services and settings, including hospitals, MHEs, residential centres for older people, residential centres for adults with disabilities, residential centres for international protection, etc. The proposed Adult Safeguarding Bill 2024 should align with forthcoming legislation on the protection of liberty safeguards and mental health reform. See Law Reform Commission, Report: a regulatory framework for adult safeguarding: Executive Summary (2024), para. 84.

⁵⁸ Most recently, the [Mental Health Bill 2024](#) was published on 19 September and is currently before the Houses of the Oireachtas.

⁵⁹ Charles O’Mahony, ‘Responding to Defendants and Offenders with Mental Health Problems in Ireland: The Need for Reform’ (2017) 27 Irish Criminal Law Journal 2; Charles O’ Mahony, Access to Justice: A Baseline Study of Article 13 of the UN Convention on the Rights of Persons with Disabilities, 2024, p 68.

⁶⁰ Civil Liberties Union for Europe, Liberties Rule of Law Report 2024 (2024), p. 378; IHREC, Ireland and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (2024), p. 42

⁶¹ Sections 47 and 49 of the Mental Health Bill 2024.

⁶² IHREC, [Submission on the General Scheme of the Mental Health \(Amendment\) Bill](#) (2022).

⁶³ For more information, see Law Society of Ireland, [Submission to the Civil Legal Aid Review Group](#) (2023), p. 18. We note the ongoing [Wards of Court Research](#), which seeks to evaluate the impact of the cessation of the wardship system in Ireland on people who were made wards of court, their Committees, and the system. IHREC, Ireland and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (2024), p. 42-43. As part of our observations on these legislative proposals, we have also highlighted the need for additional safeguards to ensure the involuntary admissions procedure is in compliance with human rights standards. Such safeguards include legislative clarity on a rights-based threshold for admission; the provision for the delivery of community-based mental health services as an alternative to involuntary detention; further restricting the powers of the police to involuntary detain a person; and the right to initiate a review of

While there are clear legal obligations to promote fairness and prevent discrimination in public bodies (Public Sector Equality and Human Rights Duty), the research found that public bodies within the Irish justice system have inadequately addressed the needs of disabled people in their strategic plans.

Recommendations to address legislative and policy gaps

To address these challenges, a comprehensive review of existing legislation and public policy is required, with a view to alignment with international standards, including the UNCRPD. Recommendations include improving laws, strengthening reasonable accommodation measures, addressing discrimination, and updating the Disability Act 2005 and the Mental Health Act 2001.⁶⁴ This recommendation has been echoed by the UN Human Rights Committee, which has recommended that the State should ensure the prompt and full commencement and reform of legislation concerning capacity and psychosocial disabilities, guaranteeing a human rights-based approach that endorses non-discrimination in line with international standards.⁶⁵ The paradigm shift required by Ireland's ratification of the UNCRPD needs to be evident in revised legislation.⁶⁶ The under-implementation or non-commencement of essential legislation must be addressed.

detention in line with ECHR requirements. For further commentary, see IHREC, [Submission on the General Scheme of the Mental Health \(Amendment\) Bill 2021](#) (2022). We have expressed concern regarding the definition of 'voluntary' patient, which does not address whether the individual has consented to admission or whether they have the capacity to consent, heightening the risk for deprivation of liberty in the absence of appropriate safeguards such as an independent review of the detention. There are also significant human rights and equality concerns about the absence of robust procedural safeguards governing the reclassification of patients from voluntary to involuntary status, and the coercive nature of the measures employed. For example, people have been persuaded to remain as a voluntary patient in an approved centre due to fear that statutory powers will be utilised to formally detain them or similar: Dr C. O'Mahony and Dr F. Morrissey, [A Human Rights Analysis of the Draft Heads of a Bill to Amend the Mental Health Act 2001](#) (2021), p. 41.

⁶⁴ Most recently, the [Mental Health Bill 2024](#) was published on 19 September and is currently before the Houses of the Oireachtas.

⁶⁵ ICCPR, [Concluding Observations 2022](#), para. 34.

⁶⁶ IHREC, [Submission on the General Scheme of the Mental Health \(Amendment\) Bill](#) (April 2022) p/ 1.

Priority areas for review include discrepancies with the UN Convention on the Rights of the Child with regard to the rights of disabled children's access to justice;⁶⁷ amending the Mental Health Act 2001, with an emphasis on ensuring close alignment between the relevant mental health legislation, in compliance with the standards of the UNCRPD;⁶⁸ independently reviewing the Criminal Law (Insanity) Act 2006, extending the proposed changes to the Mental Health Act 2001 that enhance human rights protections to people subject to the 2006 Act. As noted above, the Disability Act 2005 should also be amended to improve existing laws, strengthen reasonable accommodation measures in accessing justice, and to ensure accessibility.

At all stages of reviewing, reforming and monitoring compliance with legislation that relates to disability, disabled people and their representatives organisations should be involved, including by providing opportunities to engage in pre-legislative scrutiny and in the development and implementation of the legislation.⁶⁹

The Commission recommends that the Government competes the process to accede to the Optional Protocol to the UNCRPD expeditiously and ensure disabled people, including

⁶⁷ IHREC has previously recommended that "reform of the family law system addresses the disproportionate representation of structurally vulnerable groups in child and family law proceedings, including disabled people, lone parent families and minority ethnic groups." IHREC, [Submission to the Human Rights Committee on Ireland's fifth periodic report](#) (ICCPR) (2022) p. 91.

⁶⁸ IHREC has previously recommended that "the reform of mental health legislation must be accompanied by State measures, including legislation, aimed at ensuring less restrictive forms of treatment in the community are available and the ultimate eradication of coercion in the treatment of persons with psychosocial disabilities. This includes investment in community based support and services for persons with psychosocial disabilities and through assisting persons to utilise the Assisted Decision Making (Capacity) Act 2015 to exercise their capacity." IHREC, [Submission on the General Scheme of the Mental Health \(Amendment\) Bill](#) (2022) p 19-20, 22.

⁶⁹ The Commission notes that during the legislative process in which the Assisted Decision-Making (Capacity) (Amendment) Act 2022 was drafted and finalised, the consultation and engagement with disabled people and DPOs, in line with CRPD, was too limited. Consideration needs to be given to how the CRPD principle on participation is given effect in the monitoring of the implementation of the 2015 Act and in the development of other disability-related legislation, as mandated by Article 4.3, as well as the CRPD Committee's General Comment 7. IHREC letter to Minister Anne Rabbitte re: Assisted Decision-Making (Capacity) (Amendment) Act 2022 (July 2023). Similarly, IHREC has previously recommended that, in relation to the reform of the Mental Health Act, "the meaningful consultation with, and involvement of, persons with psychosocial disabilities, through their representative organisations, including those representing children, in the development, implementation, monitoring and reviewing of the General Scheme and other relevant mental health legislation." IHREC, [Submission on the General Scheme of the Mental Health \(Amendment\) Bill](#) (2022) p 23. IHREC, Opening Statement by Adam Harris to the Joint Committee on Equality, Disability, Integration and Youth on the [Pre-Legislative scrutiny of the General Scheme of the Assisted Decision Making \(Capacity\) \(Amendment\) Bill 2021](#) (2022) p. 2.

through their representative organisations, are facilitated to access the UN system, including through provision of necessary information and resources.⁷⁰

The Commission recommends that the Government conducts a comprehensive review of existing legislation and public policy, with a focus on consolidating and aligning the fragmented legal frameworks with international standards, particularly the UNCRPD, with the active participation of disabled people.⁷¹ Priority consideration should be given to the Mental Health Act 2001 and Mental Health Bill 2024, the Criminal Law (Insanity) Act 2006 and the Disability Act 2005.

The Commission recommends that all public bodies involved in the provision of legal services adhere to their obligations under the Public Sector Equality and Human Rights Duty.⁷²

⁷⁰ IHREC, Submission to the UN Committee against Torture on the List of Issues for the Third Examination of Ireland (2020); IHREC, Ireland and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (2024), p. 53.

⁷¹ The Commission has consistently highlighted delays in the commencement and reform of enacted legislation concerning legal capacity and people with psychosocial disabilities, and delays in publication and enactment of the Inspection of Places of Detention Bill. See ⁷¹ IHREC, Submission on the General Scheme of the Mental Health (Amendment) Bill (2022) pp. 2–3; The Commission has also highlighted that the delay in ratifying the Optional Protocol to the Convention Against Torture impacts on the effective, independent oversight of places of detention and for certain types of *de facto* detention in voluntary settings, such as mental health establishments, and healthcare and residential settings. IHREC, [Submission to the UN Committee against Torture on the List of Issues for the Third Examination of Ireland](#) (2020), pp. 9, 15-16. IHREC, Ireland and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (2024), p. 11.

⁷² Public bodies such as the Irish Prison Service are bound by the Public Sector Duty. An essential component of this Duty is ensuring that prisoners are not subject to discrimination and that public bodies should adopt an intersectional approach when addressing these obligations. Older people and disabled people must also be accommodated in accessible facilities; and such accessibility obligations extend to the wider prison environment, as well as individual cells.

Knowledge, awareness, skills & attitudes

The research found there is a low level awareness of Article 13 of the UNCRPD among those encountering and working in the justice system. Understanding these rights is crucial because it directly influences how rights are implemented and protected. Awareness enables disabled people to seek remedies in instances of injustice or discrimination, and it holds public bodies involved in the administration of justice accountable. Conversely, “the lack of awareness can lead to non-compliance, undermining the intent of the UNCRPD and perpetuating barriers that exclude disabled people from full participation in society.”⁷³ While the research findings include descriptions of sensitive and respectful engagement in some cases, this is not universal. There is consensus among legal professionals and service users on the need for enhanced education and training initiatives, designed by or with disabled people. “Article 13 extends beyond the traditional legal framework and encompasses issues like discrimination, rights violations, and procedural accommodations in various contexts but its scope is not fully understood. This underscores the importance of bridging the knowledge gap to ensure the effective implementation of disability rights in Ireland.”⁷⁴

The inadequacy of training and consequential understanding of key stakeholders was a consistent and significant theme, emerging in relation to many if not all of the issues outlined throughout this brief. The limited knowledge, awareness and training contributes to invisibility of disability, and in particular of less visible impairments/disabilities. This is a barrier to accessing appropriate accommodations and being engaged with in an accessible and appropriate way. In some cases, people with disabilities are met with scepticism regarding their needs. Participants highlighted specific instances where enhanced training could have improved the response of key stakeholders in the justice system to requests for reasonable accommodations. “The lack of adequate training often led to missed opportunities for

⁷³ Charles O’ Mahony, Access to Justice: A Baseline Study of Article 13 of the UN Convention on the Rights of Persons with Disabilities, 2024, p 108.

⁷⁴ Charles O’ Mahony, Access to Justice: A Baseline Study of Article 13 of the UN Convention on the Rights of Persons with Disabilities, 2024, p 112.

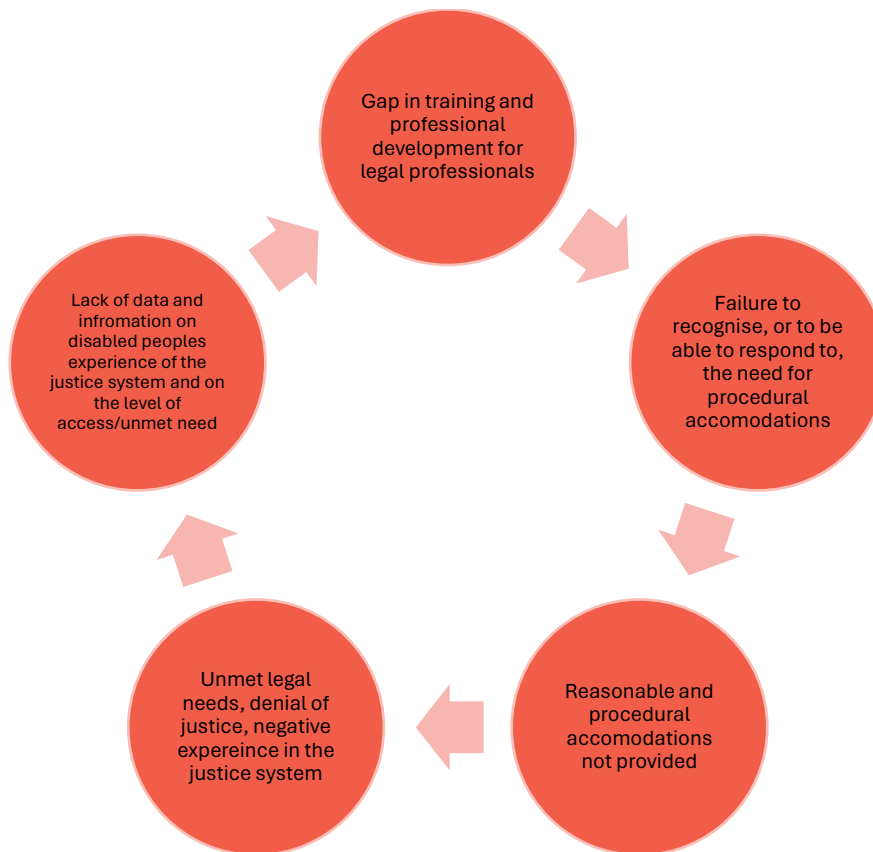
providing necessary accommodations, directly impacting the ability of litigants with disabilities to fully participate.”⁷⁵

Proposing recommendations to address this issue is made more complicated by opaque information on what training is offered to judges, WRC adjudicators, solicitors, and barristers and who is responsible for disability-related training within public bodies such as the An Garda Síochána, Legal Aid Board, the Courts Service, the Workplace Relations Commission and the Office of the Director of Public Prosecutions. There is limited information available regarding the extent and content of training related to disability law and policy for personnel involved in the administration of justice. While some initiatives have been developed, it remains unclear how extensively and effectively disability-related training is integrated into professional legal education. This knowledge gap indicates a potential lack of awareness and preparedness among justice personnel to address the specific needs of disabled people.⁷⁶

The research identified concerns too regarding lack of diversity within the legal professions and judiciary. Diversity would be supported by providing the financial and practical supports that disabled legal professionals would require to effectively discharge their duties.

⁷⁵ Charles O’ Mahony, Access to Justice: A Baseline Study of Article 13 of the UN Convention on the Rights of Persons with Disabilities, 2024, p 115.

⁷⁶ Charles O’ Mahony, Access to Justice: A Baseline Study of Article 13 of the UN Convention on the Rights of Persons with Disabilities, 2024, p 100.



Graphic summarising the cyclical nature of gaps in knowledge and training and the impacts on access to justice.

Recommendations to address knowledge, awareness and capacity barriers

There is an urgent need for enhanced education and targeted training initiatives across equality grounds to address the lack of understanding within the legal community and the public, and to promote rights-based attitudes about and behaviour towards disabled people. 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. A programme of training and education should include mandatory, comprehensive training programmes for all key stakeholders within the justice system, including judges, WRC adjudicators, solicitors, barristers, Gardaí, DPP personnel, Legal Aid

Board staff, prison officers, and personnel in relevant public bodies.⁷⁷ Training modules should be tailored to cover a range of topics, including access to different Courts and legal bodies, equality rights, and effective communication. This should not be a ‘once-off’ event, but part of continuous learning. Disabled people and their representative organisations should be centrally involved in the design and development of these modules, and Disabled People’s Organisations should be enabled to participate in this, including through the provision of adequate resources

The Commission recommends that the Government, and in particular the Department of Children, Equality, Disability, Integration and Youth (as the focal point for implementing the UNCRPD), the Department of Justice, and the Department of Health develop and deliver UNCRPD Article 8 compliant comprehensive education and awareness programmes, to bridge gaps in knowledge and promote effective implementation of disability rights.

The Commission recommends that these programmes are targeted at disabled people, the broader population, key stakeholders in the administration of justice, the legal community, and intermediary organisations.⁷⁸

The Disability Act 2005 provides minimum statutory employment targets for disabled people within the public sector; increased through the Assisted Decision-Making (Capacity)

⁷⁷ The Commission has previously recommended that “regular training on disability and reasonable accommodation be rolled out to staff employed by the Legal Aid Board to ensure that staff are suitably trained in the requirements for disabled people.” IHREC, [Submission to the Civil Legal Aid Review](#) (2023) p 58; and has called for legislative provision for “training of Gardaí on how to meet the needs of person with disabilities; that provisions are included to facilitate the appointment of an intermediary or advocate; and that there is a recognition of the State’s obligation to provide reasonable accommodation for persons with a disability in custody.” IHREC, [Observation on the General Scheme of the Garda Síochána \(Powers\) Bill](#) (2022), p 41-42. IHREC has previously recommended a legislative provision for judicial training on areas that include “rights of the child, including listening to children and reading their concerns and wishes in a child appropriate manner; non-discrimination; accessibility and alternative dispute resolution mechanisms,” IHREC, [Submission on the General Scheme of the Family Court Bill 2020](#) (2021), p. 18. See also IHREC [Ireland and the Council of Europe Convention on preventing and combating violence against women and domestic violence 2022](#) (2022), p 105.

⁷⁸ The Commission has previously recommended the establishment of a framework of cooperation, including developing data sharing agreements, with third parties such as civil society organisations to improve the reporting of hate crimes, and note that these exist to collect and report on data on discriminatory crimes across various grounds. IHREC, [Submission on the General Scheme of the Criminal Justice \(Hate Crime\) Bill \(2022\)](#), p. 20. It is our view that comprehensive education and awareness should be extended to these intermediaries too.

(Amendment) Act 2022.⁷⁹ Meaningful inclusion of disabled people in the justice system requires their participation at all levels and across all bodies, including in leadership. The Commission notes the opportunities and requirements for systemic action by the Public Appointment Service and public bodies, which are presented by these increased targets and the establishment of new bodies, such as the [Policing and Community Safety Authority](#) and Cuan, the Domestic, Sexual and Gender Based Violence Agency.⁸⁰

The Commission recommends that the Legal Services Regulatory Authority, the Bar of Ireland, the Law Society, Kings Inns and Department of Justice take steps to increase diversity within the legal professions and judiciary by implementing support schemes that offer financial assistance and mentorship to disabled legal professionals, address workforce culture and make visible the diversity profile of the profession.

⁷⁹ Part 5 of the Disability Act 2005 provided a minimum statutory employment target for persons with disabilities to be employed in the public sector is currently at 3%. This increased to 4.5% by 2024 and will increase to 6% by 2025, in compliance with the Assisted Decision-Making (Capacity) (Amendment) Act 2022. The National Disability Authority, mandated to monitor compliance with Part 5, has consistently reminded public bodies that these targets are minimum compliance targets and that it is “important for them to focus on exceeding this target and progressing towards reaching the new minimum of 6%.” National Disability Authority, *Employment of Persons with Disabilities in the Public Sector*.

⁸⁰ We note the recent commentary by the Legal Services Regulatory Authority, which recommended that the LSRA engage with law firms and professional bodies to ensure a positive workforce culture, to explore innovative solutions including financial supports, and to collect and publish data on the diversity profile of the legal profession. Legal Services Regulatory Authority, “[LSRA reports identify entry and early career barriers and propose reforms to open up access to legal professions and increase diversity](#),” 2024. We note the recent response to this publication by the Minister of Justice. Department of Justice, “[Minister McEntee publishes plan to address barriers to entry to legal professions and early career progression](#),” 2024.

Data and information

Equality data plays a critical role in understanding and addressing discrimination against disabled people, including understanding their experience in the justice system and responding to it. However, there is a dearth of comprehensive data regarding disabled people accessing and working in the justice system, and gaps in existing literature, despite numerous calls for enhanced data on the experiences of disabled people within the justice system, which negatively impacts on public policy, awareness and effective planning among key stakeholders and public bodies. Specific gaps noted included the absence of disaggregated data for children with disabilities and disabled parents in child care proceedings. It was particularly concerning that some public bodies declined to participate in this research undertaken on behalf of IHREC regarding access to justice (either by declining an invitation to participate or by not responding at all). The absence of input can exacerbate the gaps in understanding the challenges and barriers faced by disabled people in accessing justice and initiatives and training to remove barriers. We observe a pattern of non-participation in IHREC-funded research by certain justice bodies. We are concerned that this limits data available to hold the justice system bodies to account for their actions and inactions.

Recommendations to address data gaps

Robust data collection and monitoring mechanisms to support evidence based policy-making and uphold the rights of disabled people are urgently required, and a more comprehensive, cross-cutting approach to research and policy development is required to address the existing data and research gaps, unify perspectives, and reconcile inconsistencies within the Irish legal framework.⁸¹ This approach would significantly enhance compliance with Article 13 and Article 31 of the UNCRPD and better identify (and enable removal of) the range of barriers that disabled people encounter in accessing justice in Ireland. Action to collect and

⁸¹ Charles O' Mahony, Access to Justice: A Baseline Study of Article 13 of the UN Convention on the Rights of Persons with Disabilities, 2024. [page number- chapter 2]

disseminate disaggregated data related to disabled people in the legal system is urgently required.

The Commission recommends that the National Equality Data Strategy is implemented to deliver comprehensive, accessible and accurate data collection on disabled people's access to and employment within the justice system. The data must be disaggregated by impairment type and in formats that enables intersectional analysis, and is made publicly available in accessible formats in line with Article 31 of the UNCRPD.⁸²

The Commission expects that all public bodies would engage with requests from IHREC, Irelands NHRI and NEB, to engage with, and participate in as appropriate, research and data collection regarding equality and human rights issues, noting that this process is essential to holding to holding public bodies to account.

The Commission recommends that the Government ensure the provision of adequate resources to enable IHREC, in its mandate as the Independent Monitoring Mechanism for the UNCRPD, to fulfil its obligations to monitor, promote and protect CRPD rights, in accordance with treaty obligations and guidance, and that all relevant justice, health, education and social care sector bodies fully cooperate and engage with the Independent Monitoring Mechanism and engage with research and data collection carried out by IHREC when requested.

⁸² IHREC has previously called on the Government to consider and implement its obligations with regard to Article 31 of the UNCRPD. "The collection of data relating to people with disabilities is not optional. As a State Party to the CRPD, Ireland must, under Article 31, collect appropriate statistical data relating to people with disabilities. This has been prioritised by the UN, and emphasised in international law as an obligation to collect and maintain disability data and statistics to facilitate CRPD implementation, and its monitoring. It's unusual – and significant – that this obligation is placed in a stand-alone article of international law. Without this data, we are operating in the dark, unable to understand where we are on disability rights, where we are making progress, and where we are regressing. Nor can we see how changes to legislation, policy, practice and procedure are impacting on people's lives." IHREC, "Opening Statement by Chief Commissioner, Sinéad Gibney of the Irish Human Rights and Equality Commission," Delivered at the Oireachtas Joint Committee on Disability Matters, 16th February 2023.

The way forward

It is approaching three decades since the ‘Commission on the Status of People with Disabilities, A Strategy for Equality’ highlighted the need for accessible legal systems and the removal of barriers such as physical barriers, communication barriers, inaccessible information and procedures and practices, as well as training for legal professionals.⁸³ At the time, the Commission on the Status of People with Disabilities highlighted unmet legal need. It was unacceptable then, and it is unacceptable now, 28 years later.

The research findings, informed by the voices of disabled people with experience in the justice system and other key stakeholders, echo these long-standing recommendations, stressing the importance of systemic reforms, increased disability awareness, and training to ensure equal access and the provision of accommodation within the justice system, and highlighting a broad spectrum of interconnected and cross-cutting issues that need addressing to enhance access to justice.

In our role as Independent Monitoring Mechanism for the UNCPRD we will continue to monitor and report progress and any regression in this regard, and will support the efforts of key stakeholders to implement reforms and recommendations.

⁸³ Commission on the Status of People with Disabilities, A Strategy for Equality, 1996, chapter 15; as cited in Charles O’ Mahony, Access to Justice: A Baseline Study of Article 13 of the UN Convention on the Rights of Persons with Disabilities, 2024, p 39-40.



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



IHREC
Monitoring Mechanism
Independent Monitoring Mechanism
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