

**Just Access e.V. - Submission to the OHCHR Annual Thematic Study on the
Rights of Persons with Disabilities**

**OHCHR annual thematic study on the rights of persons with disabilities - twentieth
anniversary of the Convention on the Rights of Persons with Disabilities**

Human Rights Council resolution 61/9



Submitting organisation: Just Access e.V.

Just Access e.V. is an independent human rights organisation specialising in public international law and access to justice. We provide *pro bono* legal assistance and representation to victims of human rights violations before international, regional and domestic bodies, and we pursue strategic litigation, legal research and training aimed at securing effective remedies and structural change for people and communities in vulnerable circumstances. Consistent with this mandate, our submission addresses the four questions posed in the call through the lens of access to justice.

Question 1 - Main lessons learned and challenges in the development of human rights standards and norms over the past twenty years

The adoption of the Convention in 2006 effected a paradigm shift from a medical and welfare model of disability to a human rights model in which persons with disabilities are recognised as rights holders on an equal basis with others.¹ Over two decades, the Committee has built a substantial normative architecture around that shift, including its general comments on equal recognition before the law, on accessibility, on equality and non-discrimination, on living independently and being included in the community, and on the right to work, together with the International Principles and Guidelines on Access to Justice for Persons with Disabilities (2020).² The principal lessons of the past twenty years, in our view, concern the gap between this normative development and its enforcement.

Lesson 1 - Norm-setting has outpaced enforcement. Article 13 of the Convention guarantees effective access to justice, including through procedural and age-appropriate accommodations. However, it is among the least implemented provisions of the Convention, and the Committee has not to date adopted a dedicated general comment on Article 13. In practice, persons with disabilities who suffer violations frequently cannot vindicate their rights, so that substantive guarantees remain declaratory.

Lesson 2 - The remedial and reparative dimension is under-developed. The right to an effective remedy and to full reparation for persons with disabilities is insufficiently operationalised at the national level, notwithstanding the authoritative frameworks that already exist: the Basic

¹ Convention on the Rights of Persons with Disabilities (2006), in particular arts. 5, 12, 13, 15, 16, 19, 26, 31 and 33; full text: <https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-crpd>

² Committee on the Rights of Persons with Disabilities, General Comments (incl. No. 1 on equal recognition before the law, No. 2 on accessibility, No. 5 on living independently and being included in the community, No. 6 on equality and non-discrimination, and No. 8 on the right to work), <https://www.ohchr.org/en/treaty-bodies/crpd/general-comments>; International Principles and Guidelines on Access to Justice for Persons with Disabilities (2020), <https://www.ohchr.org/en/special-procedures/sr-disability/international-principles-and-guidelines-access-justice-persons-disabilities>

Principles and Guidelines on the Right to a Remedy and Reparation (2005), which identify the five forms of reparation,³ and the Committee against Torture's general comment No. 3 (2012) on redress for victims of torture and ill-treatment.⁴

Lesson 3 - Binding standards are too often treated as programmatic. A recurring challenge, documented across dualist and decentralised legal systems, is that Convention standards are treated by some domestic authorities and courts as aspirational or “soft law” rather than as directly applicable binding obligations, despite ratification. This is compounded by the limited place of human rights law, including the Convention, in legal education and in the continuing training of the judiciary.⁵

Lesson 4 - An emerging trend of retrogression. Twenty years on, hard-won gains are under pressure from the re-framing of disability rights as a fiscal “cost” or “burden.” This trend engages the principle that retrogressive measures are impermissible unless the State discharges a heavy burden of justification, including proof that it has made full use of its maximum available resources.⁶ The German Institute for Human Rights (the body designated as the independent

³ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, GA resolution 60/147 (16 Dec. 2005), esp. Principle 18 and Section IV, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>

⁴ Committee against Torture, general comment No. 3 (2012) on the implementation of article 14, CAT/C/GC/3, esp. paras. 2, 6 and 17, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/catcgc3-general-comment-no-3-2012-implementation>

⁵ International Principles and Guidelines on Access to Justice for Persons with Disabilities (2020), <https://www.ohchr.org/en/special-procedures/sr-disability/international-principles-and-guidelines-access-justice-persons-disabilities>

⁶ Committee on the Rights of Persons with Disabilities, general comment No. 8 (2022) on the right to work and employment, CRPD/C/GC/8, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/crpdgc8-general-comment-no-8-2022-right-persons>; Report of the United Nations High Commissioner for Human Rights on the right to work and persons with disabilities, A/HRC/46/47 (2021), para. 75 (g), <https://www.ohchr.org/en/documents/thematic-reports/ahrc4647-report-right-work-and-persons-disabilities>

monitoring mechanism under Article 33(2) of the Convention) has warned that human rights obligations are not a bargaining chip.⁷

Question 2 - How these lessons and challenges have been reflected in legislation, policies and institutional frameworks

The past two decades show genuine but uneven translation of Convention standards into domestic frameworks.

States have adopted anti-discrimination legislation, national action plans, and independent monitoring mechanisms.⁸ In Germany, for example, the German Institute for Human Rights operates the National CRPD Monitoring Mechanism. Reforms of legal capacity and guardianship regimes have been undertaken in a number of States, and the Committee acknowledged Germany's increases in social benefits during its most recent review.⁹ Germany also reformed its social compensation law: since 1 January 2024 the new Fourteenth Book of the Social Code (SGB XIV) for the first time recognises serious psychological violence (such as stalking and sexual abuse) as a compensable harm, replacing a scheme that had required a physical attack.¹⁰

⁷ German Institute for Human Rights, "Menschenrechtliche Verpflichtungen sind keine Verhandlungsmasse", <https://www.institut-fuer-menschenrechte.de/aktuelles/detail/menschenrechtliche-verpflichtungen-sind-keine-verhandlungsmasse>; German Institute for Human Rights, National CRPD Monitoring Mechanism, <https://www.institut-fuer-menschenrechte.de/en/institute/departments/national-crpd-monitoring-mechanism>

⁸ Convention on the Rights of Persons with Disabilities (2006), in particular arts. 5, 12, 13, 15, 16, 19, 26, 31 and 33; full text: <https://social.desa.un.org/issues/disability/crpdc/convention-on-the-rights-of-persons-with-disabilities-crpdc>

⁹ OHCHR, meeting summary, "Experts of the Committee on the Rights of Persons with Disabilities Welcome Germany's Increase in Social Benefits, Raise Questions on the Guardianship Law and Coercion in Psychiatric Facilities" (Aug. 2023), <https://www.ohchr.org/en/meeting-summaries/2023/08/experts-committee-rights-persons-disabilities-welcome-germanys-increase>

¹⁰ German Federal Ministry of Labour and Social Affairs (BMAS), *Soziale Entschädigung*, <https://www.bmas.de/DE/Soziales/Soziale-Entschaedigung/Soziale-Entschaedigung/soziale->

At the same time, these reforms are frequently partial. The SGB XIV recognition of psychological violence, for instance, applies only to acts committed on or after 1 January 2024, so that victims of earlier psychological violence remain excluded from compensation.¹¹ Substituted decision-making and coercive practices persist: in its 2023 concluding observations on Germany the Committee addressed, among other matters, the reform of guardianship law and the use of coercive measures in psychiatric settings.¹² Access to justice guarantees such as procedural accommodations and legal aid are unevenly implemented, and independent monitoring mechanisms are often under-resourced and lack a mandate to receive and pursue individual complaints. National human rights institutions accredited under the Paris Principles frequently cannot adjudicate individual cases.¹³

Question 3 - Impact on the enjoyment of human rights by persons with disabilities

The cumulative impact of these gaps is that, for many persons with disabilities, rights recognised in law are not enjoyed in practice, primarily because the pathways to justice and remedy are obstructed.

entschaedigung.html; BMAS, *Häufig gestellte Fragen zum Sozialen Entschädigungsrecht*, <https://www.bmas.de/DE/Soziales/Soziale-Entschaedigung/Fragen-und-Antworten/faq-ser.html>

¹¹ BMAS, *Häufig gestellte Fragen zum Sozialen Entschädigungsrecht*, <https://www.bmas.de/DE/Soziales/Soziale-Entschaedigung/Fragen-und-Antworten/faq-ser.html>

¹² Committee on the Rights of Persons with Disabilities, Concluding observations on the combined second and third periodic reports of Germany, CRPD/C/DEU/CO/2-3 (3 Oct. 2023), <https://www.ohchr.org/en/documents/concluding-observations/crpdcdcdeuco2-3-concluding-observations-combined-second-and-third>; OHCHR, meeting summary, “Experts of the Committee on the Rights of Persons with Disabilities Welcome Germany’s Increase in Social Benefits, Raise Questions on the Guardianship Law and Coercion in Psychiatric Facilities” (Aug. 2023), <https://www.ohchr.org/en/meeting-summaries/2023/08/experts-committee-rights-persons-disabilities-welcome-germanys-increase>

¹³ German Institute for Human Rights, National CRPD Monitoring Mechanism (independent mechanism under art. 33(2) CRPD), <https://www.institut-fuer-menschenrechte.de/en/institute/departments/national-crpd-monitoring-mechanism>

Access to justice (Article 13). Financial barriers include the cost of legal representation, court fees, the cost of expert opinions and the risk of bearing one's own and adverse costs, which deter meritorious claims.¹⁴ Procedural inaccessibility, the absence of procedural and age-appropriate accommodations, short limitation periods, and a lack of judicial training on the Convention compound the problem. The outcome of administrative and social-court proceedings frequently turns on expert assessments. Where court-appointed experts lack disability-competent and trauma-informed expertise, trauma-related and other non-visible disabilities go unrecognised and applicants may be exposed to renewed harm. Further, where administrative or social courts can review the legality of a decision but cannot award reparation, even a successful challenge does not deliver redress. The result is a de facto denial of remedy, a situation the Committee against Torture has expressly identified, in the cognate context of Article 14 of the Convention against Torture, as itself a violation.¹⁵

Freedom from violence, exploitation and ill-treatment (Articles 15 and 16). Persons with disabilities remain exposed to abuse of power by public authorities and by actors in institutional, forensic and psychiatric settings, where dependency and the deprivation of legal capacity heighten vulnerability. Frameworks for protection from violence are, moreover, often confined to residential or institutional settings and do not reach abuses of power in administrative and welfare proceedings or in community settings, leaving persons with disabilities who live in the community without effective safeguards.¹⁶ The Special Rapporteur on torture has recognised that purely psychological violence and coercive control can inflict severe suffering and, in appropriate circumstances, amount to torture or ill-treatment, and that powerlessness produced by

¹⁴ International Principles and Guidelines on Access to Justice for Persons with Disabilities (2020), <https://www.ohchr.org/en/special-procedures/sr-disability/international-principles-and-guidelines-access-justice-persons-disabilities>

¹⁵ Committee against Torture, general comment No. 3 (2012) on the implementation of article 14, CAT/C/GC/3, esp. paras. 2, 6 and 17, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/catcg3-general-comment-no-3-2012-implementation>

¹⁶ Convention on the Rights of Persons with Disabilities (2006), article 16; full text: <https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-crpd>

incapacitating measures or the removal of legal capacity is a constitutive element.¹⁷ Where such abuses are not investigated, impunity follows, and the harm (including re-traumatisation) is compounded by the very procedures meant to provide justice.

Retrogression and resources. The framing of disability support as unaffordable has a direct rights impact: reductions in community-based support can push persons with disabilities toward dependency and institutionalisation, and cuts imposed without first exhausting available resources breach the prohibition on retrogression and the maximum available resources obligation.¹⁸

Responsibility for these impacts cannot be discharged by delegating tasks to sub-national units without the corresponding funding, nor by outsourcing services to private providers. The State remains bound to respect, protect and fulfil Convention rights across all levels of government and in relation to private actors.¹⁹

Question 4 - Good practices, challenges and lessons learned

The International Principles and Guidelines on Access to Justice for Persons with Disabilities (2020) provide a ready template for reform, setting out principles on legal capacity in justice systems, procedural and age-appropriate accommodations, accessibility, free legal assistance, and

¹⁷ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, “Psychological torture”, A/HRC/43/49 (2020), <https://www.ohchr.org/en/documents/thematic-reports/ahrc4349-report-psychological-torture-and-ill-treatment>

¹⁸ Committee on the Rights of Persons with Disabilities, general comment No. 8 (2022) on the right to work and employment, CRPD/C/GC/8, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/crpdgc8-general-comment-no-8-2022-right-persons>; Report of the United Nations High Commissioner for Human Rights on the right to work and persons with disabilities, A/HRC/46/47 (2021), para. 75 (g), <https://www.ohchr.org/en/documents/thematic-reports/ahrc4647-report-right-work-and-persons-disabilities>

¹⁹ Convention on the Rights of Persons with Disabilities (2006), in particular arts. 5, 12, 13, 15, 16, 19, 26, 31 and 33; full text: <https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-crpd>

the training of justice-sector personnel.²⁰ The establishment of independent monitoring mechanisms under Article 33(2) is a further advance, as is the recognition of psychological violence in compensation schemes such as Germany's SGB XIV.

The recurring challenge is the enforcement and remedy gap. It is aggravated by financial and procedural barriers to justice, by the treatment of the Convention as non-binding, by inadequate institutional accountability (including the absence, in some States, of independent monitoring of the facilities referred to in Article 16(3)), and now by retrogressive fiscal pressure.

Drawing on our mandate, we respectfully suggest that the study highlight the following:

1. States should guarantee an effective remedy and full reparation (restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition) for persons with disabilities, grounded in the Basic Principles and Guidelines and in CAT general comment No. 3, and provided in accessible form and without discrimination of any kind. Such remedies should be effective in practice.
2. States should ensure that assessments determining eligibility for justice, benefits and reparation are carried out by experts with disability-competent and trauma-informed qualifications, given that in many administrative and social-law systems the outcome depends on such evaluations.
3. States should provide free legal assistance where needed, eliminate court fees and adverse-cost risks for victims of human rights violations, ensure procedural and age-appropriate accommodations under Article 13 (including trauma-informed practice in all types of proceedings, not only criminal ones, so that procedures do not themselves inflict further harm), and provide victim and witness support.
4. Statutes of limitation should not bar claims arising from gross violations that constitute crimes under international law, and limitation periods should be suspended or extended

²⁰ International Principles and Guidelines on Access to Justice for Persons with Disabilities (2020), <https://www.ohchr.org/en/special-procedures/sr-disability/international-principles-and-guidelines-access-justice-persons-disabilities>

where institutionalisation, denial of legal capacity, inaccessibility, or the time victims often need to recognise and understand trauma-related harm prevented a timely claim.

5. States should collect data, under Article 31, not only on needs but on violations, harms and remedy outcomes, so that impunity can be measured and eliminated.
6. Judges, prosecutors, civil servants and other actors operating in the justice sector should receive mandatory training on the Convention as directly applicable binding law and on the effects of human rights violations, including trauma.
7. Independent mechanisms under Article 33, and the monitoring envisaged by Article 16(3), should be empowered and resourced to operate effective and accessible complaint mechanisms, to train and oversee regulatory and welfare authorities, and to monitor access to justice and remedy outcomes, so that impunity can be measured and eliminated.
8. States should not reduce protection for persons with disabilities without first mobilising the maximum available resources (including by expanding fiscal space, adopting progressive taxation measures, strengthening tax collection, and combating tax evasion, corruption and other financial abuse) and any deliberately retrogressive measure should be treated as presumptively impermissible, with the burden of justification on the State.
9. States should not be able to avoid their obligations by delegating responsibilities to sub-national authorities without adequate funding, nor by transferring services to private clinics, forensic or care facilities. In all such settings the State remains responsible for ensuring respect for Convention rights and for effective, accessible avenues of redress.

Just Access e.V. thanks OHCHR for the opportunity to contribute to this important study and remains available to provide further legal analysis.