

The International Disability Alliance (IDA) welcomes the opportunity to provide input to the Bureau of the United Nations (UN) General Assembly Open-Ended Working Group for the Purpose of Strengthening the Protection of the Human Rights of Older Persons on **the normative the right to access to justice, examined at its eleventh session, in response to [Guiding Question 4](#)**.

IDA brings together over 1,100 organizations of persons with disabilities and their families from across eight global and six regional networks. The cornerstone of its work is the [UN Convention on the Rights of Persons with Disabilities](#) (the CRPD).

The CRPD represents a paradigm shift for persons with disabilities. It uses a social definition of disability, recognizing that disability “is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.”¹

Older persons with disabilities are often viewed as having deficits inherent to old age, rather than situating their disabilities within the context of society’s barriers to their full and effective participation. This social construction of older age can obscure an older person’s disability, leading to “a less extensive application of the CRPD in practice to older persons.”² The reverse may also be found. In many countries, more than half of all persons with disabilities are older.³ The perception of being older can therefore be associated with the perception of disability. This may result in disability discrimination based on the perception of disability.⁴

This input highlights intersectionality between older persons and persons with disabilities on the right to access to justice. It outlines legal norms of the CRPD for persons with disabilities on access to justice (Article 13), emphasizing accessibility (Article 9). There are many other rights that interact with these rights..

IDA recommends reaffirming these norms set out in the CRPD, elaborated by the Committee on the Rights of Persons with Disabilities (the Committee).

Access to justice is both a human right and a means to realize other human rights. It is a prerequisite to challenging discriminatory or unfair laws and actions within the formal justice system States Parties to the CRPD commit to effective access to justice for persons with disabilities, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants in all legal proceedings.⁵

Older persons with disabilities face barriers to their right to legal capacity, creating barriers to their effective access to justice. The Committee writes that “perceived or actual deficits in mental capacity must not be used as justification for denying legal capacity.”⁶

¹ CRPD, Preambular paragraph (e). <https://tinyurl.com/2ajeazfy>

² OHCHR, *Update to the 2012 Analytical Outcome Study on the normative standards in international human rights law in relation to older persons*, para 99 (2021). <https://tinyurl.com/msce7ixa>

³ *Promoting Inclusion through Social Protection: Report on the World Social Situation 2018* p. 63 <https://tinyurl.com/2p8zpedb>

⁴ Committee on the Rights of Persons with Disabilities’ Concluding Observations for Peru, CRPD/C/PER/CO/1 (2012), paras 28 and 29.

⁵ CRPD, Article 13.1, <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#13>

⁶ Committee on the Rights of Persons with Disabilities, General comment No. 1 (2014), para 13, <https://tinyurl.com/5bxx3cd>

For older persons with disabilities, in particular those with dementia, the threats to exercising legal capacity may come from laws regarding guardianship, conservatorship, and laws permitting forced treatment. Such laws prevent older persons with disabilities from effectively accessing justice systems.

For older persons with disabilities, including dementia, accommodations to access justice may include support persons of their choosing to help others understand their communications, or to explain proceedings in a way that they understand.

Accessibility of spaces, information and communications are fundamental to access to justice. The Committee has made the point that “There can be no effective access to justice if the buildings in which law-enforcement agencies and the judiciary are located are not physically accessible, or if the services, information and communication they provide are not accessible to persons with disabilities.”⁷

Lastly, the right to live independently and be included in the community is a right that frequently goes unrecognized for older persons with disabilities. In many places, older persons with disabilities face barriers to accessing services and supports to live independently and be included in the community. This can result in disproportionate risk of institutionalization, seclusion, forced treatment, and other violations of their rights. Such situations create barriers to accessing justice at precisely a time when their rights may be most at risk.

The CRPD requires States Parties to commit to promote appropriate training for those in the field of administration of justice, including police and prison staff.⁸ This will help to ensure that contact with the justice system by older persons who are still institutionalized, such as a call to a police department, will be met with a response on an equal basis with others.

⁷ Committee on the Rights of Persons with Disabilities, General Comment 2, para 37

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/2&Lang=en

⁸CRPD, Article 13.2, <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#13>