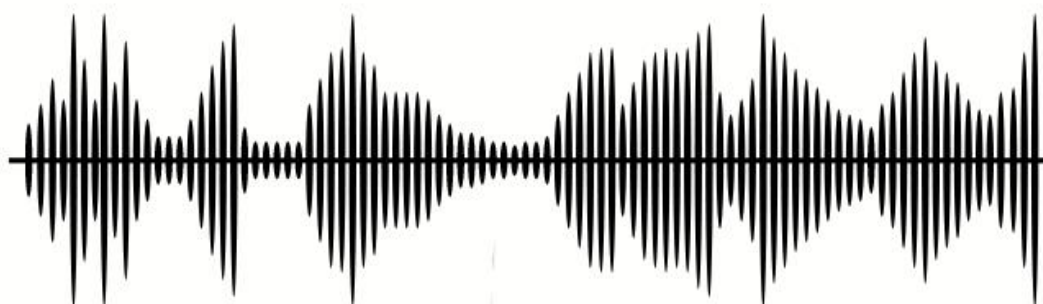




UNIVERSITY OF LEEDS

# For The Record



**Evaluating the Need to Provide Recording  
Equipment in PIP Assessments and Tribunal  
Hearings to  
Facilitate Accessibility in the UK**

**Report by International Disability  
Law Clinic - School of Law**

## **Preface**

The International Disability Law Clinic is based in the School of Law, Leeds University and works in collaboration with the School's Disability Law Hub and the University's Centre of Disability Studies. The clinic comprises undergraduate and postgraduate researchers working with the School's academic team.

In 2018/2019, the Clinic undertook research concerning the legal obligation on states to provide an accessible record of Social Security Tribunal hearings and assessment meetings that applicants for certain disability related benefits attended. This report emerges from this research and focuses on the obligations that arise from Human Rights and Equality Law.

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## Table of Contents

	Page
<b>Key Messages</b>	3
1. Background	4
2. Personal Independence Payments: Medical Assessments	6
3. SSCS Tribunal Hearings	8
4. Domestic Legal Context	11
5. The European Convention on Human Rights	13
6. Convention on the Rights of Persons with Disabilities	15
<b>7. Conclusion</b>	16
<b>Appendices</b>	
Appendix A: Freedom of Information Request Response	18
Appendix B: Personal Independence Payment Responses	32
Appendix C: CRPD Concluding Observations (Article 13) Access to Justice	33
<b>Endnotes</b>	51

## Key Messages

- The current policy of not having audio recording equipment: (1) at every Social Security and Child Support (SSCS) Tribunal hearing; and (2) at every mandatory medical assessment for a Personal Independence Payment (PIP) is unlawful;
- The policy has a disparate and an adverse impact on disabled people, and lacks objective justification;
- The Department of Work and Pensions' (DWP) delay in honouring its commitment to put in place recording equipment at every mandatory medical assessment for a PIP, constitutes a breach of the Government's obligations under the Equality Act 2010, the European Convention on Human Rights Article 6 and the UN Convention on the Rights of Persons with Disabilities Article 13 – as well as its public law obligations;
- The Ministry of Justice's (MoJ) failure to assess (or indeed to acknowledge) the harm that results from the absence of recording equipment at SSCS Tribunal hearings – constitutes a breach of the Government's obligations under the Equality Act 2010, the European Convention on Human Rights Article 6 and the UN Convention on the Rights of Persons with Disabilities Article 13 – as well as its public law obligations;
- These failures by the DWP and the MoJ are causing significant and predictable harm to disabled people and would appear to be actionable by way of a judicial review in the High Court;
- The research underpinning this report includes a Freedom of Information Request to the Ministry of Justice (Appendix A below) which reveals that:
  - there are no SSCS Tribunal venues in London with recording equipment;
  - only 91 (out of 161) hearing centres in England, Wales and Scotland have recording equipment;
  - the cost of installing recording equipment is about £1,000 per venue and that the annual maintenance cost is approximately £15.00.
- The research underpinning this report includes a review of all the 'concluding observations' made by the UN Committee on the Rights of Persons with Disabilities concerning Article 13 (Access to Justice) – see page 15 below.<sup>1</sup>

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<sup>1</sup> Prior to March 2019 (76 reports) – see Appendix C (page 33) below.

## 1. Background

- 1.1 A disproportionate number of disabled people in the UK are unemployed and live in poverty compared to those who do not have an impairment.
- 1.2 A Personal Independence Payment (PIP) is a social security benefit designed to help disabled people with some of the extra costs associated with their ill-health and/or impairment. The amount paid depends on the impact that the disabled person's condition has on their ability to undertake basic daily living activities and / or their mobility. In April 2019 the amount of a PIP payment varied between £23.20 and £148.85 a week.
- 1.3 To be eligible for a PIP a person must complete a two-stage application process.

- 1. The first of these involves completion of a 35 page form which seeks detailed information about the impact of the person's impairment on their: (1) ability to undertake prescribed Daily Living Activities (such as cooking, washing, bathing, dressing, communicating and so on); and (2) their ability to be Mobile (including the ability unaided to stand, to move around, to plan and follow the route of a journey and so on).

The responses to these questions are scored by assessors to ascertain whether the claimant has reached the threshold for entitlement to a PIP.

- 2. The second stage of the application process requires most claimants to undergo a mandatory medical assessment. The arrangements for the assessment (i.e. the format, the venue, and the assessor) are determined by the Department for Work and Pensions (DWP), and a failure by a disabled person to comply with such arrangements will result in their PIP claim being automatically rejected. Fulfilling both the paper application and medical assessment can however lead to a successful award of a PIP – if the scoring system is satisfied and the medical assessor's report is satisfactory. Claimants are entitled to seek a 'mandatory reconsideration' in cases where their claim is unsuccessful or where they wish to challenge the weekly rate at which a PIP award was made.

- 1.4 PIPs were introduced in 2013. By January 2019, 4.2 million individuals had applied for the benefit and 2.2 million had been successful in obtaining it.<sup>1</sup> Of these 4.2 million, almost 1.2 million claimants requested a mandatory reconsideration,<sup>2</sup> of which over a million resulted in a new decision including 227,000 where the actual amount of the award was changed.<sup>3</sup> In the last three years it appears that requests for mandatory reconsiderations have been filed at the rate of approximately 25,000 per month.<sup>4</sup>
- 1.5 Claimants dissatisfied with the outcome of a mandatory review are entitled to take their appeal to the Social Security and Child Support (SSCS) Tribunal.
- 1.6 There is widespread and well-documented evidence of dissatisfaction with the assessment process (discussed below). Although there are a number of opportunities for claimants to challenge the decision making process (both at the assessment and Tribunal stages), where the challenge concerns

procedural irregularities; it is generally vital that the claimant be able to advance accurate recorded evidence to substantiate the claim. Many claimants however, due to the nature of their impairment, are unable to compile a contemporaneous written transcript of what occurs at an assessment meeting or at a hearing. This problem is entirely predictable, and without compensatory measures by the state (such as installing recording equipment) the claimant's right to 'justice' in the determination of their claim for entitlement to a social security benefit is undermined.

## 2. Personal Independence Payments: Medical Assessments

- 2.1 PIP assessments were introduced in 8 April 2013 with the aim of replacing the then equivalent benefit 'Disabled Living Allowance' (DLA). The DLA eligibility process lacked systematic checks on the medical condition of those claiming the benefit. The new system was intended to tackle this and to cut costs by 20 per cent.<sup>5</sup> The DWP contracted out the PIP medical assessment process to two private 'for profit' organisations – Capita and Atos. Their role was to provide assessments to gauge eligibility for obtaining the benefit. From the outset, there were reports of widespread dissatisfaction with the medical assessment process – with many serious allegations being made concerning the mishandling of assessments and a lack of competence of some of the assessors.<sup>6</sup> Evidence has since emerged detailing poor practice of this kind and a lack of transparency by the DWP contractors – including a policy of prohibiting the audio recording of the PIP assessments.<sup>7</sup>
- 2.2 In response to initial reservations about the absence of an independent record of the assessment process, the DWP stated that it would not require these to be recorded as there was insufficient evidence to suggest that this would improve decisions or the claimant experience.<sup>8</sup> In the face of increasing concern about the way assessments were being conducted and information recorded, in 2018 Capita announced that it would permit the recording of assessments but only if claimants used their own self-funded recording equipment – and the equipment was capable of producing two identical copies of the recording (one of which was to be provided to the assessor).<sup>9</sup>
- 2.3 The failure of the DWP to implement a policy of allowing claimants (who lacked expensive recording equipment of the kind<sup>10</sup>) to independently record assessments, led to instances of disabled people using their own recording equipment secretly to record their assessment.<sup>11</sup> In a number of cases, on appeal to a SSCS Tribunal, it appears that claimants have been able to use such secretly recorded evidence to prove that the medical assessor failed to properly record the relevant evidence.<sup>12</sup>
- 2.4 The dissatisfaction of disabled people undergoing these assessments has been reported extensively on Disabled People's Organisation's (DPOs) web forums and even on the DWP's own web forum. Many of these accounts describe the failure of assessors as an abuse of the system and call for the DWP to provide recording equipment so there are 'no questions of truth and lies being distorted'.<sup>13</sup>
- 2.5 In 2018, claimants' experiences of the lack of recording equipment in the PIP process was noted by the House of Commons Work and Pensions Committee,<sup>14</sup> which heard evidence that time pressures on assessors had led to inaccurate assessments and ultimately the denial of claimants' right to a 'fair benefits decision'.<sup>15</sup> The failure to provide suitable recording equipment (and its discriminatory impact) has also been highlighted by various Disabled People's and Older People's Organisations<sup>16</sup> as well as by MPs and the Committee. The Committee, in its report, concluded there was a 'pervasive culture of mistrust' concerning the PIP assessment processes that:

culminates in fear of the face-to-face assessments. This has implications far beyond the minority of claimants who directly experience poor decision making. It can add to claimant anxiety even among those for whom the process works fairly. While that culture prevails, assessors risk being viewed as, at best lacking in competence and at worst, actively deceitful. Addressing this is a vital step in restoring confidence in PIP .... The case for improving trust through implementing default audio recording of assessments has been strongly made. We recommend the Department implement this measure ... without delay. In the longer term, the Department should look to provide video recording for all assessments.<sup>17</sup>

- 2.6 It is important to stress here that the Committee focused on the implementation of audio recordings ‘without delay’: finding not only that justice was not being done in many cases, but also that it was not being ‘seen to be done’<sup>18</sup> and that – in essence - justice delayed is justice denied’. In response to the Committee’s formal recommendation that the DWP implement default audio recording ‘without delay’<sup>19</sup> in April 2018 the Department responded. It accepted that although ‘in theory’ claimants could record their assessments:<sup>20</sup>

in practice the complexity and potential costs to claimants means that very few take up this option. We agree that this does not go far enough to help build trust in the system and therefore we intend to make recording the PIP assessment a standard part of the process. We are currently exploring potential options to test the recording of assessments, including video recording.

- 2.7 Despite this undertaking, the recording of each PIP assessment is still not part of the process. The current regime is clearly inappropriate and ineffective: requiring disabled persons to fund their own equipment is impractical and unaffordable for many claimants.



### 3. Social Security and Child Support (SSCS) Tribunal Hearings

- 3.1 For many disabled people, social security benefits are vital to enable them to live with a degree of independence. As noted above, in cases where PIP applications are refused, claimants have the option to seek a mandatory reconsideration and if dissatisfied with the outcome of that reconsideration, they can appeal to the Social Security and Child Support (SSCS) Tribunal Service.
- 3.2 In the four years following the introduction of PIP (until December 2017) there were 170,000 appeals made to SSCS Tribunals of which over 60 per cent were successful (108,000 cases).<sup>21</sup> The most recent data (March 2019) indicates that the success rate for claimants now stands at over 70 percent.<sup>22</sup> If claimants are dissatisfied with the outcome of their SSCS Tribunal hearing they can seek a review of the decision by way of an application to the Upper Tribunal. The Upper Tribunal only hears cases where there is an arguable case that the SSCS Tribunal made a material 'error of law' when reaching its decisions. This would include situations in which a Tribunal applied the law incorrectly or situations in which it did not conduct the hearing properly.
- 3.3 As with the PIP assessment process, many claimants, due to the nature of their impairment, are unable to compile a contemporaneous written transcript of what occurs at a Tribunal hearing.<sup>23</sup>
- 3.4 This problem is entirely predictable, and without compensatory measures by the state (such as installing recording equipment), the claimant's right to 'justice' in the determination of their claim for entitlement to a social security benefit is undermined.
- 3.5 There is no requirement that tribunal hearings be recorded.
- 3.6 As part of the research underpinning this report, a Freedom of Information (Fol) request was submitted to the Ministry of Justice in November 2018 seeking details:
  - of the SSCS Tribunal venues that had recording equipment;
  - the average cost of purchasing, installing and maintaining recording equipment; and
  - of any impact assessment (under the Equality Act 2010 s 149) the Government had undertaken concerning the provision of recording equipment at Tribunal venues.
- 3.7 The Ministry of Justice response to the FOI request, dated 30<sup>th</sup> November 2018 is at Annex A to this report and includes the full text of the questions posed. The response reveals that of the 161 SSCS Tribunal venues in the UK, only 91 had installed recording equipment. The response details the position at each centre and shows that in the London Region (for example) none of the tribunal venues had recording equipment.
- 3.8 The absence of recording equipment at tribunal venues is highly problematic for disabled people, whose impairment restricts their ability to compile a contemporaneous written record. This problem is compounded

by a general tribunal policy, that claimants can only record their hearing if the Tribunal Judge gives permission and if the claimant uses equipment that produces two identical copies of the recording, of which one is provided to the Tribunal.

- 3.9 The House of Commons Work and Pensions Committee have noted (in relation to the non-recording of PIP assessments) that if claimants disagree with statements contained in their assessment:

they have little evidential basis from which to challenge these. Even if they come to their assessment accompanied, disputing the report will be a case of their word against the assessor's. We heard overwhelmingly that providing audio recording as default would go a long way to improving trust in face-to-face assessments, providing claimants were able to opt out if they would prefer not to be recorded.<sup>24</sup>

- 3.10 The same argument must apply with equal (if not greater) force in relation to SSCS tribunal hearings. Claimants who need to have their appeal recorded will presumably be unaware of the absence of recording equipment until they arrive at the venue. In such cases they will be in the invidious position of having to seek an adjournment or to continue with a hearing that may put them at a significant disadvantage. Even if a claimant is aware in advance of the hearing of the absence of recording equipment, he or she must either pay for the appropriate recording equipment themselves, or pay the cost of travelling to a tribunal venue that has installed recording equipment (if one exists). In addition to the expense and inconvenience, travelling to an alternative location can be a stressful process for claimants – exemplified in this statement:

(Teresa) 'My appeal was in Truro (I live in St Ives [25 miles away]), which, for me, is an incredibly gruelling journey. I had a panic attack on the train. Making that journey took me out of action for the following week. The whole process was traumatic and soul-destroying from start to finish and bound to exacerbate conditions like anxiety and depression (my anxiety levels went through the roof and my depression flared up frequently).'<sup>25</sup>

- 3.11 This demonstrates that, if a claimant's local tribunal lacks recording equipment and this is a problem for the claimant – then alternative options may not be either financially, physically or emotionally feasible.
- 3.12 Furthermore, in cases where no recording has taken place, Upper Tribunal Courts do not have solid proof of what actually occurred during (a) the initial PIP assessment; and (b) the subsequent appeal to tribunal for reconsideration. The issue of no recording equipment in tribunals has been advocated by disability activists through the DWP committee's oral evidence report:

(Tony Lea) 'It removes the, "He said, she said" scenario. In the tribunal service in Cornwall they have just brought it out. From 1 February, all tribunals in Cornwall are now to be recorded to stop complaints against the tribunal staff, the judges; the lot. That would help at mandatory

reconsideration. If it were recorded a mandatory reconsideration were required, you would have a recording of that assessment, which someone could then transcribe and say, "They did say this and it was omitted from the report". It is all about transparency.'<sup>26</sup>

- 3.13 The Ministry of Justice in its FoI response (at Annex A below) stated that the cost of installing recording equipment at each tribunal venue was estimated at £1,000 – with an average annual operating cost of approximately £15.
- 3.14 Putting aside the demands of the law (considered below), there must be a good argument that the installation of recording equipment would have a positive cost benefit for the Ministry of Justice in terms of avoiding / reducing (to quote the extract above) the 'he said, she said' arguments as well as 'complaints against the tribunal staff, the judges; the lot'.
- 3.15 The impact of the failure to provide recording equipment (equipment with an average annual operating cost of approximately £15) is uncertain (as the Ministry of Justice has not undertaken such an assessment – see para 4.7 below) but it must be appreciable: it appears that SCS Tribunals hear about 100,000 PIP appeals each year.<sup>27</sup>

## 4. Domestic Legal Context

- 4.1 The Equality Act 2010 provides disabled people with legal protection from discrimination in many contexts and settings, enshrining several of the principles established in the UN Convention on the Rights of Persons with Disabilities (CRPD). It additionally places a general obligation on public and private bodies to make reasonable adjustments to (among other things) practices that put disabled people at a substantial disadvantage (section 20), and in this regard echoes the specific obligation in CRPD Article 13 to make these ‘accommodations’ to ensure that disabled people have ‘effective access to justice’.
- 4.2 Section 19 of the 2010 Act establishes the statutory definition of indirect discrimination. In the context of disabled people, indirect discrimination arises where a provision, criterion, or practice applies equally to non-disabled people, but it puts people with the impairment in question at a particular disadvantage.<sup>28</sup> The practice of not recording PIP assessments and SSCS tribunal hearings affect all people being assessed / attending hearings, but it places at a particular disadvantage people who cannot compile contemporaneous records (for example because their impairment restricts their ability to write), as well as those with a cognitive impairment who are unable to retain or indeed fully comprehend what is said during the assessment or hearing.
- 4.3 Indirect discrimination is capable of being justified, but the onus rests with the organisation propounding the practice – in this case the Ministry of Justice (MoJ) and the DWP. To do this they would be required to demonstrate that the practice is ‘a proportionate means of achieving a legitimate aim’.<sup>29</sup> Although containing the operating costs of the assessment and tribunal service would constitute ‘a legitimate aim’<sup>30</sup> the MoJ / DWP would be required to show that they had undertaken a cost benefit analysis to ascertain whether there would be an additional cost to the public purse of installing and maintaining recording equipment at assessment centres and / or tribunal venues, and if so, what that cost would be. As noted above, there is clear evidence that the costs of installing and operating recording equipment are modest and also that the availability of verbatim records could reduce time spent by the assessment and tribunal services in considering complaints and arguments as to what was actually said at an assessment / hearing.
- 4.4 Even if the MoJ / DWP have undertaken cost-benefit analyses and even if these suggest that there would be an additional net cost to the public purse of installing and maintaining recording equipment at assessment centres and / or tribunal venues, they would then have to show that it would be unreasonable (i.e. ‘disproportionate’) to incur this additional cost. Such a ‘proportionality review’ would need to contain many of the considerations required by the Equality Impact Review (section 149 of the 2010 Act – considered below). Since it appears that the MoJ at least has not undertaken such review, it is difficult to envisage how it would be able to resist a legal challenge on this ground.
- 4.5 The actions of the DWP would also appear to be open to challenge under this ground. Although it has accepted in December 2017 that assessments

should be recorded – it has not implemented this decision: assessments are still not recorded. The duty to create a ‘just’ social care and legal system is not ‘aspirational’ – it is immediate. Delay is one of the most corrosive and insidious components of injustice. The DWP would need in any challenge under the 2010 Act to establish that its failure to act (its delay in installing recording equipment) was ‘a proportionate means of achieving a legitimate aim’<sup>31</sup> and there is little evidence to suggest that this is the case.

- 4.6 The duty to make reasonable adjustments under section 20 of the 2010 Act engages many of the principles considered in the above ‘indirect discrimination’ analysis – being a duty ‘to take such steps as it is reasonable to have to take to avoid the disadvantage’. In this context, what is ‘reasonable’ is almost certainly going to be what ‘is proportionate’, and ascertaining what this may be will inevitably require the MoJ / DWP to have undertaken the cost-benefit analyses discussed above. In a series of judgments it has been held that the duty to make reasonable adjustments applies to the courts and tribunals<sup>32</sup> – as well as to the DWP.<sup>33</sup>
- 4.7 Section 149 of the Equality Act imposes a Public Sector Equality Duty on public authorities to consider any potential impact on equality when exercising their functions. In order to ensure that this duty is being carried out, many public authorities carry out Equality Impact Assessments (EIA). As part of the Fol request, the MoJ was asked to provide a copy of every EIA made since 2012 concerning the provision of audio recording equipment in SSCS Tribunal venues. In response to this, the MoJ stated that it does not hold such information, suggesting that it has not carried out any EIA. If this interpretation is correct, then the Government does not appear to be in a position to advance any justification for the discrimination / failure to make reasonable adjustments / failure to comply with its obligations under s149 of the 2010 Act. It appears, in effect, to be arguing that there should be ‘tolerance of the discrimination while it sorts out how to deal with it’<sup>34</sup> and as Lord Kerr has observed, ‘that cannot be characterised as a legitimate aim’.<sup>35</sup>

## 5. The European Convention on Human Rights

- 5.1 Article 6(1) of the European Convention on Human Rights (ECHR) requires that in the determination of a person's civil rights they are entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal. Article 1 of the first Protocol to the ECHR further provides that every natural or legal person is entitled to the peaceful enjoyment of his possession<sup>36</sup>. In *Salesi v Italy*<sup>37</sup> the European Court of Human Rights confirmed that Article 6(1) is applicable to issues concerning social security benefits, even those on a non-contributory basis, and in *Stec and others v United Kingdom*<sup>38</sup> the Strasbourg Court came to the same decision concerning the applicability of Article 1 of Protocol 1.
- 5.2 In the current context, the key consideration in Article 6 concerns the meaning ascribed by the Strasbourg Court to the notion of a 'fair hearing'. The Court has held that this includes the requirement that there be an 'equality of arms' between the parties to a hearing, especially in terms of participation. Challenging a refusal of social security benefits is a 'civil right' for the purposes of Article 6 and there is an obligation on the government to ensure that hearings are fair for all people including disabled people.
- 5.3 The Court has previously held that proper participation of the appellant party in the proceedings requires that the Court, of its own motion, must communicate the documents at its disposal. In *Kerojärvi v Finland*<sup>39</sup> the Court held that all documents on file must be communicated to the appellant, even if they may have mere potential relevance to the outcome of the case<sup>40</sup>. The Court stated that the notion of a fair hearing under Article 6 'required that the applicant himself should have been given the opportunity to assess the document relevance and weight and to formulate any such comments as he deemed appropriate'. The Court concluded that the denial of such an opportunity would not allow them to participate properly in the proceedings and accordingly violate Article 6(1).<sup>41</sup> The principle was further confirmed in *H.A.L v Finland*, where the Court stated that the appellant has to be allowed to consult the relevant reports and submit their views on them.<sup>42</sup>
- 5.4 The principle is not simply about participation – it concerns equal participation. In *Pullicino v Malta*<sup>43</sup> the Strasbourg Court held that equal participation in proceedings included the right to compile notes of the hearing. In a similar vein, the court has also interpreted Article 6 as including considerations of the vulnerabilities and capacities of appellants.<sup>44</sup>
- 5.5 It follows that any tribunal proceedings determining an applicant's eligibility to enjoy a non-contributory social security benefit, must comply with the above procedural safeguards derived from Article 6. In *Micallef v Malta*<sup>45</sup> the Court formulated a test determining when an interim proceeding falls within the scope of Article 6. An interim proceeding:
- must have commenced for the purposes of determining a civil right or obligation and;
  - the nature, purpose and effects of the measure must be scrutinised.<sup>46</sup>

- 5.6 PIP assessors play a mandatory role of fundamental importance in the 'determination' process – of gathering evidence upon which the social security decision is made by the assessor or by the Tribunal. This process could be viewed as an interim stage in the proceeding of a quasi-legal nature or as a key element of the overall determination. In either context it must objectively and subjectively be seen to be fair for the purposes of Article 6.
- 5.7 The non-availability of recordings of assessments and hearings objectively puts certain categories of disabled people at a disadvantage. This unfairness is capable of being articulated as a substantive breach of Article 6 or as discrimination in relation to the Article 6 right contrary to Article 14. In either case, the onus would rest with the State to advance cogent evidence to justify the difference in treatment. For the reasons stated above (not least the relatively small cost of installing / operating the recording equipment and the DWP acceptance that recording equipment should be provided), it is difficult to envisage how such a justification could be successfully advanced.



## 6. Convention on the Rights of Persons with Disabilities

- 6.1 The Convention on the Rights of Persons with Disabilities (CRPD) entered into force in 2008. It was ratified by the UK in 2009.
- 6.2 CRPD Article 13 (access to justice) requires that states ensure 'effective access to justice for persons with disabilities on an equal basis with others'. This should be facilitated through the 'provision of procedural and age-appropriate accommodations'<sup>47</sup> for both 'direct and indirect participants'<sup>48</sup> in all stages of legal proceedings. Article 13(2) refers to the promotion of training for individuals 'working in the field of administration of justice'<sup>49</sup> in order to further ensure access to justice. Article 13 is therefore materially wider in its scope than ECHR Article 6(1) – which is limited to processes that actually result in the 'determination' of civil rights / criminal charges.
- 6.3 Although the CRPD has not been directly incorporated into UK law, it can be used as an interpretive tool to help clarify domestic law. In *Burnip v Birmingham City Council*,<sup>50</sup> the Court of Appeal expressed a readiness to consider the requirements of the CRPD (where domestic law was elusive or uncertain), as it had the 'potential to illuminate our approach to both discrimination and justification'. In *Mathieson* the Supreme Court came to the same conclusion, noting that it could, for example, 'harmonise'<sup>51</sup> with a finding of a violation in domestic law.
- 6.4 A 2018 report by the Office of the United Nations High Commissioner for Human Rights on access to justice, stated that 'persons with disabilities are frequently hindered in enjoying equality of arms due to inaccessible documentation or procedures'.<sup>52</sup>
- 6.5 The UN Committee on the Rights of Persons with Disabilities has repeatedly recommended that States that have ratified the CRPD implement 'procedural accommodations' (i.e. make 'reasonable adjustments').<sup>53</sup> Of the 76 concluding observations issued by the Committee (as at March 2019), 63 observations recommend that States make 'procedural accommodations'<sup>54</sup> to enable persons with disabilities to obtain access to justice, based on their 'free choice and preference'.<sup>55</sup> Extracts from the Committee's Article 13 observations are contained in Appendix C to this report.
- 6.6 The Committee has reiterated that access to information must be available in 'all formats'.<sup>56</sup> In addition to the use of sign language, Braille and Easy Read,<sup>57</sup> all other 'accessible means, modes and formats of communication'<sup>58</sup> must be used, including 'augmentative and alternative'<sup>59</sup> communication. It has been established that communication encompasses the provision of documents in accessible 'electronic format'<sup>60</sup>, the provision of personal and intermediary assistance<sup>61</sup> and 'accessibility aids'.<sup>62</sup> Of utmost importance, is the recognition that access to 'assistive technologies'<sup>63</sup> must be made available.
- 6.7 The Committee have also established that such 'procedural accommodations'<sup>64</sup> must be available at 'all stages'<sup>65</sup> of investigations and court proceedings. This includes in 'criminal, civil, labour, administrative procedures'<sup>66</sup> and tribunals.<sup>67</sup>



## 7. Conclusions

- 7.1 Access to justice is a fundamental requirement of a functioning civil society. In the language of human rights law it is a civil and political right. A State's duty to make it a reality is 'not aspirational' – it is immediate. It is a duty owed to everyone within the state's jurisdiction.
- 7.2 There is clear evidence that a failure by the UK to record SSCS tribunal hearings and mandatory PIP medical assessments significantly disadvantages some disabled people – for example – those unable to compile contemporaneous written records due a physical, cognitive or intellectual inability to write.
- 7.3 This problem is well documented and although it has been known for a considerable period of time, it has still not been addressed.
- 7.4 Legally the failure can be expressed in many ways. At its most straight forward, it is unjustified discrimination contrary to natural justice: contrary to our common law.
- 7.5 In relation to the duties imposed by the Equality Act 2010, it is a policy that indirectly discriminates against disabled people and one that calls for the State to make a reasonable adjustment (i.e. the installation and operation of audio recording equipment). In relation to the indirect discriminatory effect of the policy, it is open to the Government to seek to justify the policy and / or to argue that its response has been proportionate. It is also open to the Government to seek to argue that the action it has taken constitutes a reasonable adjustment. In neither case has it sought to make these arguments. In relation to SSCS tribunal hearings it has simply remained silent and in relation to mandatory PIP medical assessments it has undertaken to take action – but over a year has passed without any practical action. As this paper states – delay is one of the most corrosive and insidious components of injustice. It is particularly so when it has the potential to deny social security benefits to a financially disadvantaged group. Delay in this case constitutes an officially sanctioned policy and one for which no explanation (let alone justification) has been advanced.
- 7.6 In preparing this report, the authors have been unable to identify any evidence that the Government has sought to assess the impact of these policies – either generally or in compliance with the obligations laid upon it by the Equality Act 2010 s149. The MoJ in its response to the FoI request (Annex A below) provides no information to contradict this impression.
- 7.7 As this paper explains, the obligation on the Government to provide 'access justice for all' is reinforced by key provisions of the ECHR and the CRPD. These obligations<sup>68</sup> would permit – to a limited degree – a state policy that provided for less favourable treatment of disabled people, provided it had a legitimate purpose and it was 'proportionate'. In this context, therefore the assessment is (essentially) one of reasonableness – for which the onus is on the State to advance cogent reasons underpinned by relevant evidence that it has applied its mind to this balancing exercise (ie between the legitimate interests of the state and claimants). As with the discussion above (concerning the requirements of the Equality Act 2010) there is no evidence that the Government has attempted to discharge this 'onus'.

- 7.8 The information provided by the MoJ to the FoI request (Annex A below) suggests that it would be difficult for the Government to argue that 'containing operating costs' is the reason why it has not provided equipment to record mandatory medical assessments and tribunal hearings. The MoJ response indicates that the average cost of purchasing and installing its preferred device at each SSCS tribunal venue amounts to only £1,000 and that the annual operating cost per venue is as little as £15. It is also difficult to see on what other rational basis the MoJ has constructed its tribunal recording policy when (for example) the necessary equipment is found in the majority of venues in the South-West, Scottish and Welsh regions but not in any venue in London.
- 7.9 The only interpretation of the Government's policy in relation to recording is (as noted above) that there should be 'tolerance of the discrimination while it sorts out how to deal with it'.<sup>69</sup>



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[email]

30 November 2018

Dear [name]

### **Freedom of Information Act (FOIA) Request – 181115024**

Thank you for your request dated 15 November 2018, in which you asked for the following information from the Ministry of Justice (MoJ):

- 1. Please list which Social Security and Child Support Tribunal venues in each regional office area have equipment in operation which provides audio recordings of tribunal hearings and which do not?**
- 2. What is the estimated average cost of purchasing and installing suitable audio recording equipment at a venue?**
- 3. In those Tribunal venues that have operational audio recording equipment, what is the average annual operating cost (per venue) for the equipment after installation?**
- 4. Please provide a copy of every impact assessment since 2012 undertaken by (or on behalf of) the Government pursuant to its public-sector duty under the Equality Act 2010 section 149 concerning the provision of audio recording equipment in Social Security and Child Support Tribunal venues.**

Your request has been handled under the FOIA.

For ease I will answer each point of your request separately.

***Please list which Social Security and Child Support Tribunal venues in each regional office area have equipment in operation which provides audio recordings of tribunal hearings and which do not?***

I can confirm that the MoJ holds the information that you have requested and I have provided it attached.

***What is the estimated average cost of purchasing and installing suitable audio recording equipment at a venue?***

The 'Marantz' handheld recorder is the Social Security and Child Support (SSCS) Tribunals preferred recording device. The current estimated average cost of purchasing and installing one of these devices and additional hardware is £1,000.

***In those Tribunal venues that have operational audio recording equipment, what is the average annual operating cost (per venue) for the equipment after installation?***

In Scotland, where there is recording equipment at all the main hearing venues, the average annual operating cost (per venue) for the equipment after installation is approximately £15.

***Please provide a copy of every impact assessment since 2012 undertaken by (or on behalf of) the Government pursuant to its public-sector duty under the Equality Act 2010 section 149 concerning the provision of audio recording equipment in Social Security and Child Support Tribunal venues.***

The MoJ does not hold any information in the scope of your request. This is because there is no legal or business requirement for the MoJ to do so.

The FOIA does not oblige a public authority to create information to answer a request if the requested information is not held. The duty is to only provide the recorded information held

Yours sincerely

[name]

[post]

HM Courts & Tribunals Service, First-tier Tribunal (Immigration & Asylum Chamber) and First-tier Tribunal (Social Security & Child Support).

Region	Does the venue have recording equipment which can be used to record Tribunal hearings?	If yes, is recording equipment available in all rooms?
<b>Scotland:</b>		
Aberdeen (AB1 Building)	Yes	Yes in all SSCS rooms
Ayr (Russell House)	Yes	Yes
Benbecula (Caladh Trust)	No	
Campbeltown Centre (Community and Education Centre)	No	
Dumfries (Cairndale Hotel)	Yes	Yes
Dundee (Caledonian House)	Yes	Yes in all SSCS rooms
Dunfermline (St Leonards Church Hall)	Yes	Yes
Edinburgh (Riverside House)	Yes	Yes
Galashiels (Old Gala House)	Yes	Yes
Glasgow (Atlantic Quay)	Yes	Yes
Greenock (The Tontine Hotel)	Yes	Yes
Hamilton (Block C, Brandon Gate)	Yes	Yes
Inverness (Urquhart House)	Yes	Yes
Kilmarnock (North West Kilmarnock Area Centre)	Yes	Yes
Kirkcaldy (The New Volunteer House),	Yes	Yes
Kirkwall (St Magnus Centre)	No	
Lerwick (Islesburgh Community Centre)	No	
Lewis (The Bayhead Bridge Centre)	No	
Oban (The Corran Halls)	No	
Stirling (Wallace House)	Yes	Yes
Stranraer (The High Kirk)	Yes	Yes
Wick (The Mowatt Room)	No	



Region	Does the venue have recording equipment which can be used to record Tribunal hearings?	If yes, is recording equipment available in all rooms?
<b>North East: Northumbria, Cleveland, Durham, North Yorkshire, South Yorkshire, West Yorkshire, Humber</b>		
Barnsley Law Courts	Yes	No
Bedlington (Magistrates Court)	Yes	Yes
Berwick (The Voluntary Centre)	No	
Bradford (Phoenix House)	No	
Darlington (County Court)	Yes	Yes
Doncaster Justice Centre South	No	
Durham Justice Centre	Yes	Yes
Gateshead Law Courts	Yes	Yes
Grimsby (Magistrates Court)	Yes	No
Huddersfield (County Court)	Yes	Yes
Hull (Wilberforce Court)	no	
Hull (Magistrates Court)	Yes	No
Leeds Magistrates Court	No	No
Leeds (York House)	No	
Teesside Justice Centre	No	
Newcastle (Manorview House)	No	
North Shields (Kings Court)	No	
Scarborough (Justice Centre)	Yes	Yes
Sheffield Castle St (Magistrates Court)	No	
South Tyneside Law Courts	Yes	Yes
Sunderland Courts and Tribunals Centre	Yes	No
Wakefield (Civil Justice Centre)	Yes	Yes
York (County Court)	Yes	Yes
York (Magistrates Court)	No	

Region	Does the venue have recording equipment which can be used to record Tribunal hearings?	If yes, is recording equipment available in all rooms?
<b>North West: Cheshire, Merseyside, Greater Manchester, Cumbria, Lancashire</b>		
Barrow (Barrow Law Courts)	Yes	Yes
Birkenhead (County Court)	Yes	Yes
Blackburn (Soho Foundary)	No	
Blackpool (Prudential House)	No	
Bolton (Bayley House)	No	
Burnley (St James House)	No	
Carlisle (Magistrates Court)	Yes	No
Carlisle Combined Court	Yes	Yes
Chester (Civil Justice Centre)	Yes	Yes
Chester (Magistrates Court)	No	
Lancaster (Magistrates Court)	Yes	Yes
Liverpool (Civil and Family Court) includes 5 Liverpool ET Hearing rooms on the 3rd Floor	No	
Liverpool SSCS (Dale Street)	Yes	No
Manchester (Civil Justice Centre)	Yes	Yes
Manchester (Crown Court)	No	
Manchester IAC (Piccadilly)	No	
Rochdale (Old Post Office, The Esplanade, Rochdale OL16 1AE)	No	
St Helens (Court House)	Yes	No
Stockport (The Courthouse)	No	
Wigan (Court House)	No	
Workington (Magistrates Court)	Yes	No





Region & Venue	Does the venue have recording equipment which can be used to record Tribunal hearings?	If yes, is recording equipment available in all rooms?
<b>South East: Bedfordshire, Cambridgeshire, Hertfordshire, Essex, Norfolk, Suffolk, Kent, Surrey, Sussex, Thames Valley</b>		
Ashford (Ashford House)	No	
Basildon (Combined Court)	Yes	Yes
Bedford Riverside	Yes	Yes
Bedford Riverside	Yes	Yes
Brighton (City Gate House)	No	
Cambridge (Magistrates Court)	Yes	No
Cambridge (Magistrates Court)	No	
Colchester (Norfolk House)	No	
Harlow Magistrates Court	No	
Ipswich (Magistrates Court)	Yes	Yes
Ipswich (Tribunals and Witness Suite)	Yes	Yes
Luton (Disability Resource Centre) - now moved to Luton Magistrates court	No	
High Wycombe	Yes	Yes
Milton Keynes (The Church of Christ)	No	
Norfolk (Kings Lynn Magistrates Court)	Yes	Yes
Norwich (The Old Bakery 115 Queens Road)	No	
Norfolk (Great Yarmouth Magistrates Court)	Yes	
Norfolk (Norwich Magistrates Court)	Yes	
Oxford Combined Court (from end of Nov16)	No	

Peterborough (Magistrates Court)	Yes	No
Peterborough (Magistrates Court)	No	
Reading (30 -31 Friar Street)	No	
Southend (County Court)	Yes	Yes
Staines Combined Court	Yes	Yes
Stevenage (Bayley House)	No	
Watford (Radius House)	No	
Watford (Radius House)	Yes	No

Region	Does the venue have recording equipment which can be used to record Tribunal hearings?	If yes, is recording equipment available in all rooms?
<b>Midlands: Derbyshire, Nottinghamshire, Staffordshire, West Mercia, West Midlands, Warwickshire, East Midlands</b>		
Birmingham (Civil Justice Centre)	Yes	No
Boston (County Court)	Yes	Yes
Chesterfield (Justice Centre)	No	
Coventry (Magistrates Court)	Yes	No
Derby (Magistrates Court)	No	
Hereford (Justice Centre)	Yes	Yes
Kidderminster (Magistrates Court)	No	
Leicester (Kings Court)	Yes	No
Lincoln (County Court)	Yes	No
Northampton (St Katherine's House)	No	
North Staffordshire (Justice Centre)	No	
Nottingham (Justice Centre)	No	
Nuneaton (Warwickshire Justice Court)	Yes	Yes
Telford (Justice Centre)	No	
Shrewsbury Justice Centre	No	
Walsall (County Court)	Yes	Yes
Wellingborough (Magistrates Court)	No	
Wolverhampton SSCS (Waterloo Huse)	No	

Worcester Justice Centre	No	
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Region	Does the venue have recording equipment which can be used to record Tribunal hearings?	If yes, is recording equipment available in all rooms?
<b>London: Inner, West, and East London</b>		
Bexleyheath (40/46 Avenue Road)	No	
Fox Court	No	
Enfield (288 Southbury Road)	No	
Hatton Cross (York House)	No	
London East (Import Building formerly Anchorage House)	No	
Romford (Magistrates Court)	No	
Sutton (Copthall House)	No	

Region	Does the venue have recording equipment which can be used to record Tribunal hearings?	If yes, is recording equipment available in all rooms?
<b>South West: Avon, Somerset, Gloucestershire, Devon, Cornwall, Dorset, Hampshire, Isle of White, Wiltshire</b>		
Aldershot	Yes	Yes
Barnstaple Civic (Court Building)	Yes	Yes
Bodmin Law Courts	Yes	Yes
Bristol (Civil Justice Centre)	Yes	Yes
Bristol Magistrates Tribunal Hearing Centre	Yes	Yes
Exeter (Keble House)	No	
Exeter (Magistrates Court)	No	
Gloucester	Yes	Yes
Havant (Justice Centre)	Yes	No
Newport Court (IOW)	Yes	Yes
Plymouth (Magistrates Court)	Yes	No
Plymouth (St Catherine's House)	No	
Poole (The Law Courts)	Yes	No
Portsmouth Law Courts	Yes	Yes
Salisbury (Court Building)	Yes	Yes
Southampton (Magistrates Court)	No	
Swindon (Magistrates Court)	Yes	Yes
Taunton (Magistrates Court)	Yes	Yes
Truro (Magistrates Court)	Yes	No
Truro (Combined Court)	Yes	Yes
Weymouth and Dorchester (Combined Court Centre)	Yes	Yes
Worle (Magistrates Court)	Yes	Yes

Region	Does the venue have recording equipment which can be used to record Tribunal hearings?	If yes, is recording equipment available in all rooms?
<b>Wales: Swansea and West Wales, Cardiff and South East Wales, North Wales</b>		
Aberystwyth (Justice Centre)	Yes	No
Caernarfon (Criminal Justice Centre)	Yes	Yes
Cardiff (Eastgate House)	No	
Cardiff (Civil Justice Centre)	Yes	Yes
Carmarthen (Justice Centre)	Yes	Yes
Cwmbran MAGS	No	
Haverfordwest (County Court)	Yes	Yes
Langstone (Newport Columbus House)	Yes	No
Llanelli Hearing Centre	Yes	Yes
Llandrindod Wells (Comb Service)	No	
Llandudno (Magistrates Court)	No	
Llangefni Shire Hall (Alternative Provision)	No	
Newport Crown	No	
Port Talbot (Civil Justice Centre)	Yes	Yes
Prestatyn (Court Building)	Yes	Yes
Swansea CJC.	Yes	Yes
Swansea Magistrates Court	Yes	No
Welshpool (Law Courts)	Yes	No
Wrexham County Court	Yes	Yes



### Personal Independence Payment Responses

#### Work and Pensions Committee Web Forum on PIP/ESA inquiry

##### Jennifer SL Fletcher says (October 18, 2017 at 03:29 PM) -

*'...(My) Recommendations.*

- 1. All claimants to be positively informed that they should be accompanied if possible in the assessment room.*
- 2. All assessments to be routinely recorded and a copy of the recording given to the claimant on conclusion of the assessment. If the DWP provided equipment is not working, claimants should be able to use a mobile phone to record...*
- 6. The DWP must compare the report with the recording and ensure that the two are the same, with no omissions on either side...'*

##### Donna says (October 18, 2017 at 03:29 PM) -

- '...1. had assessment from CAPITA (for husband) awarded 0 points.*
- 2. accidentally recorded assessment (long story) - assessor lied loads of times!!!*
  - 3. MR request still 0 - DWP refused to allow recording as not by the rules.*
  - 4. took to tribunal - disgrace still awarded 0 points. Tribunal judge known to disability service who helped me.*
  - 5. Appealed to UT. First tribunal cancelled second tribunal scored standard on both.*
  - 6. after first tribunal re-applied - first time (did not require assessment) scored 31 points enhanced on both....'*

##### Stephanie Miller says (October 18, 2017 at 03:25 PM) -

*'...I also think that as with ESA, everyone should have the right to have their assessment recorded using the company's own recording equipment. I know you can record it yourself under their instructions, but some people cannot afford to buy the equipment themselves...'*

##### Carole says (October 18, 2017 at 02:55 PM) -

*'During the assessment the assessor failed to record my breathlessness, using my inhalers, she lied regarding my peak flow reading, she failed to record my 4 inhalers and breathing tablet, which were on the table in front of her, She also failed to record that I told her I was breathless when walking a short distance...*

*The assessment should be recorded by the assessor. A copy given to the patient and a copy for DWP. There can be no question of lies and the truth being distorted...'*

### CRPD Committee Concluding Observations on Article 13 – Access to Justice

#### Former Yugoslav Republic of Macedonia – 26th October 2018

23. The Committee is concerned at:

(b) The lack of access to the judicial system due to the lack of knowledge of disability issues within the judicial sector, and the **lack of adequate procedural accommodations**, information in accessible formats and accessibility to judicial premises;

24. The Committee recommends that the State party:

(a) **Take measures to align the laws requiring courts to facilitate trial procedures and procedural accommodation for persons with disabilities** and extend such measures to the police and prosecution services; and effectively implement the principle of procedural accommodation under article 27 on the Law on the Rights of Persons with Disabilities (2016);

(c) **Adopt measures to ensure that all persons with disabilities, especially persons with psychosocial or intellectual disabilities, persons who are deaf or hard of hearing, blind persons and deafblind persons, have access to justice, and that information and communications are available in accessible formats such as Braille, accessible electronic formats, tactile, Easy Read and sign language;**

#### South Africa – 23<sup>rd</sup> October 2018

24. The Committee is concerned about:

(a) The barriers, including physical and legislative ones, that prevent the effective participation of all persons with disabilities, especially women and children, persons with psychosocial or intellectual disabilities, and deafblind persons, in accessing the justice system due to **lack of procedural accommodations**, including accessibility, in the judicial system;

(b) The absence of information about the justice system and its proceedings in **accessible formats provided to blind and visually impaired persons (Braille and audio)**, deaf persons (sign language interpretation) and persons with psychosocial or intellectual disabilities (Easy Read);

(c) The limited knowledge about the human rights of persons with disabilities within the judicial system and the inadequate number of trained professional and certified sign language interpreters, Braille transcribers and Easy Read producers to convey judicial information to persons with disabilities that require it.

25. **The Committee recommends that the State party, taking into account article 13 of the Convention and target 16.3 of the Sustainable Development Goals:**

(a) **Establish legal safeguards to ensure the participation of persons with disabilities in all legal proceedings on an equal basis with others and ensure that procedural, gender and age-appropriate accommodations based on free choice are provided for persons with disabilities in all judicial settings, police stations and places of detention, including prisons;**

(b) **Adopt measures to ensure that all persons with disabilities have access to justice and information and communication in accessible formats**, such as Braille, tactile, Easy Read and sign language;

(c) **Ensure a systematic training programme for judicial and law enforcement officials, including police and prison officials, on the right of all persons with disabilities to justice, including involving persons with disabilities as judicial officials.**

## Algeria – 21<sup>st</sup> October 2018

26. ...It is also concerned about existing barriers to access courts and tribunals, including physical barriers and **barriers to obtain information in accessible formats** such as Braille, Easy Read and sign language. The Committee is also concerned by the absence of systematic training for members of the judiciary, law practitioners and law enforcement officials on the concept of **procedural accommodation and/or age-appropriate accommodation** for persons with disabilities.

**27. The Committee recommends that the State party, taking into account article 13 of the Convention and target 16.3 of the Sustainable Development Goals:**

- (a) **Repeal any laws and policies which discriminate against persons with disabilities in the legal profession;**
- (b) **Eliminate all physical barriers which prevent persons with disabilities from accessing the entire justice system on an equal basis with others;**
- (c) **Facilitate access to information in all formats to persons with disabilities, including Easy-Read, Braille, accessible digital formats, and sign language;**
- (d) **Provide systematic and on-going training to members of the judiciary, law practitioners and law enforcement officials on the Convention and the obligation to ensure physical access and accessible legal services.**

## Poland -- 21<sup>st</sup> October 2018

### Access to justice (art. 13)

- 1. The Committee is concerned that persons with psychosocial and/or intellectual disability deprived of their legal capacity are denied the right to take part in a litigation and to stand as witnesses in procedures before civil courts. Furthermore, it is also concerned about the barriers which persons with disabilities in general face in accessing justice due to lack of:
  - (a) **Procedural accommodation, as well as the use of sign language, Braille, accessible digital formats, Easy Read and all other accessible means, modes and formats of communication in all legal proceedings;**
  - (d) **Legal assistance for persons with disabilities, including legal assistance and procedural accommodation for persons with psychosocial disabilities;**
- 2. **The Committee recommends that the State party guarantee equal and supported access to all judicial processes for persons with intellectual and/or psychosocial disabilities deprived of their legal capacity. It further recommends to ensure that persons with disabilities have access to justice in practice, and in particular to:**
  - (a) **Ensure procedural accommodation, as well as the use of sign language, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication in all legal proceedings;**
  - (g) **Be guided by article 13 of the Convention in the implementation of target 16.3 of the Sustainable Development Goals.**

## Bulgaria – 19<sup>th</sup> October 2018

31. The Committee notes with concern the shortage of trained sign language interpreters for deaf persons in judicial proceedings, and the **lack of documents in accessible formats** for blind persons and for persons with intellectual or psychosocial disabilities in different proceedings.

**32. The Committee recommends that the State party ensure the availability of sign language interpreters and documents in accessible formats, such as Braille, electronic format and Easy Read, to all persons with disabilities in all judicial and administrative proceedings.**

## Malta – 17<sup>th</sup> October 2018

21. The Committee is concerned about the lack of information on specific measures and protocols to implement article 3A (4) of the Equal Opportunities (Persons with Disability) Act and to provide

procedural and gender- and age-appropriate accommodation in judicial proceedings for persons with disabilities, in addition to selected measures aimed at facilitating communication (article 593 of the Code of Organization and Civil Procedure and articles 451 and 640 of the Criminal Code (chap. 9)). The Committee is also **concerned by the lack of documents in accessible formats** for blind and deafblind persons and persons with intellectual or psychosocial disabilities in various proceedings and the absence of policies to empower persons with disabilities to participate in the justice system as direct or indirect participants, such as lawyers, court officers or law enforcement officials. It is further concerned about the lack of systematic and continuous training for members of the judiciary, members of the legal profession, prosecutors and prison officers with regard to the equal rights of persons with disabilities and human rights in general.

22. The Committee recommends that the State party:

(a) **Ensure the implementation of its legislation to guarantee the provision of procedural and gender- and age-appropriate accommodations based on the free choice and preferences of persons with disabilities, and establish related safeguards to enable the participation of persons with disabilities in all legal proceedings on an equal basis with others, including through the provision of documents in accessible formats;**

(c) **Increase its efforts to empower persons with disabilities to participate in the justice system as direct or indirect participants, such as lawyers, court officers or law enforcement officials**

(e) **Be guided by article 13 of the Convention in its implementation of target 16.3 of the Sustainable Development Goals.**

#### **Philippines – 16<sup>th</sup> October 2018**

26. The Committee is concerned about the barriers that persons with disabilities face in access to justice, including attitudinal barriers and the prejudices of court personnel, as well as securing the services of well-trained sign language interpreters to assist throughout the proceedings. It is also concerned about the lack of implementation of Executive Order No. 709 establishing the Subcommittee on Access to Justice and Anti-Discrimination.

27. **The Committee recommends that the State party adopt measures to provide age-appropriate or procedural accommodations, including physical access to courtrooms, accessible legal services, qualified sign language and tactile sign interpreters in courtrooms and police stations, and legal and procedural information in Easy Read. It also recommends that the State party conduct capacity-building programmes for the legal profession, and police and prison officers concerning the rights enshrined in the Convention.**

#### **Oman -17<sup>th</sup> April 2018**

27. The Committee is concerned about:

(a) The impediments that hinder access to justice by persons with disabilities, owing to insufficient knowledge of disability issues within the judicial and law enforcement sectors and a **lack of substantive procedural accommodations**, including a **lack of accessibility within the justice system;**

(b) The inadequate number of trained professional and certified sign language interpreters who are able to translate administrative and judicial proceedings for deaf persons and the **unavailability of documents in accessible formats** to enable blind persons and persons with intellectual and/or psychosocial disabilities to participate in proceedings.

28. **The Committee recommends that, taking into account article 13 of the Convention and target 16.3 of the Sustainable Development Goals, the State party:**

(a) **Ensure that procedural accommodations are provided for persons with disabilities in all court buildings, tribunals, police stations, prisons and all places of detention;**

(b) **Ensure the availability of professional and certified sign language interpreters and documents in accessible formats such as Braille, tactile, and Easy Read, for all persons with disabilities in order to ensure their full participation in all judicial and administrative proceedings;**

(c) Conduct training programmes and awareness-raising and information campaigns for court staff, judges, prosecutors and law enforcement officials, including police and prison officials, on the need to provide access to justice for persons with disabilities;

(d) Adopt measures to support and empower persons with disabilities to work in the justice system as judges, prosecutors, lawyers or court staff, providing all necessary support to ensure greater access to justice by persons with disabilities

#### **Slovenia – 16<sup>th</sup> April 2018**

20. The Committee is concerned about:

(a) The lack of information on **specific procedural, gender- and age-appropriate accommodation** for persons with disabilities in judicial proceedings, in particular for deaf-blind persons;

(d) The fact that the State party has not formulated policies to empower persons with disabilities to be part of the justice system as direct or indirect participants, such as lawyers, court officers or law enforcement officials.

21. The Committee recommends that the State party ensure full access to the judicial system for persons with disabilities by, inter alia:

(a) Enacting appropriate legislation and implementing a strategy to ensure the removal of all barriers to access to justice by persons with disabilities and developing guidelines and protocols to provide **procedural, gender- and age-appropriate accommodations** based on the free choice and preference of persons with disabilities, including the **provision of information and communications in accessible formats**;

(c) **Implementing procedural accommodations and alternative formats of communication**, paying due attention to the situation of deaf-blind persons and persons with psychosocial and/or intellectual disabilities, including those living in institutions, and increasing their legal awareness;

(d) **Stepping up its efforts to empower persons with disabilities to be part of the justice system as direct and indirect participants, such as lawyers, court officials or law enforcement officials**;

(e) Being guided by article 13 of the Convention in the implementation of target 16.3 of the Sustainable Development Goals.

#### **Seychelles - 16<sup>th</sup> April 2018**

26. The Committee notes with concern:

(b) The difficulties that persons with disabilities face in their access to justice, such as the inadequate provision of legal aid, sign language interpretation and **procedural accommodation**;

27. Paying attention to article 13 of the Convention in the implementation of target 16.3 of the Sustainable Development Goals, the Committee recommends that the State party:

(b) Ensure that persons with disabilities can have effective access to justice on an equal basis with others, including through the provision of free legal aid and **procedural accommodation**, including by means of the Easy Read format, professional sign language interpretation and the use of Braille, and establish related safeguards to enable the participation of persons with disabilities in all legal proceedings on an equal basis with others;

#### **Haiti - 13<sup>th</sup> April 2018**

24. The Committee is concerned about:

(a) Obstacles to the effective participation of persons with disabilities in the justice system, including the **lack of procedural accommodation** and legal aid;

(b) The serious problems in the judicial system that are exacerbated for persons with disabilities, including, inter alia, discrimination, barriers to the accessibility of police premises, courts and places of detention and **inaccessibility of information**;

25. The Committee recommends that the State party:

(a) **Enact appropriate legislation to ensure the removal of obstacles to access to justice and to guarantee the provision of procedural, gender- and age-appropriate accommodations based on the free choice and preference of persons with disabilities**, and establish related safeguards to enable their participation in all legal proceedings on an equal basis with others;

(b) **Ensure that all persons with disabilities, especially those with intellectual or psychosocial disabilities, and persons who are deaf or hard of hearing, can obtain access to justice and to information and communications in accessible formats**, including Braille, tactile media, plain language, Easy Read and sign language;

### **Nepal – 13<sup>th</sup> April 2018**

23. While noting the efforts made by the State party to ensure access to justice for persons with disabilities, the Committee remains concerned about the lack of explicit provisions to provide, when necessary, **procedural accommodation** for persons with disabilities that is appropriate to their age and type of disability, in order to guarantee their access to justice. It is also concerned about reports of the insufficient use of sign language, Braille and Easy Read formats, and the lack of appropriate training for judicial, legal and law enforcement professionals.

24. **The Committee recommends that the State party take appropriate measures to ensure physical access, accessible legal services and the presence of qualified sign language and tactile sign interpreters in courtrooms and police stations. The measures should include ensuring that persons with disabilities are not discriminated against on account of their disability when sign language, Braille or Easy Read formats are required, or due to the lack of appropriate training of legal professionals, police or prison officers**

### **Sudan - 10<sup>th</sup> April 2018**

25. The Committee regrets the lack of information regarding access to justice for persons with disabilities. It is particularly concerned about the lack of accessibility of the judicial system, owing to insufficient knowledge about disability issues within the judicial and law enforcement sectors; **the lack of adequate procedural accommodations; the lack of judicial information in accessible formats**; and the lack of accessibility to police and judicial premises.

26. The Committee recommends that the State party:

(b) **Adopt measures to ensure that all persons with disabilities, in particular persons with psychosocial and/or intellectual disabilities and persons who are deaf or hard of hearing, have access to justice and to information and communication in accessible formats**, such as Braille, tactile, Easy Read and sign language;

### **Russian Federation – 9<sup>th</sup> April 2018**

28. The Committee notes with concern the shortage of trained sign language interpreters for deaf persons in judicial and administrative proceedings, and the **lack of documents in accessible formats** for blind persons and persons with intellectual and/or psychosocial disabilities in various proceedings.

29. **The Committee recommends that the State party ensure that a sufficient number of sign language interpreters and documents in accessible formats, including Easy Read, Braille and other accessible formats, modes and means, are available to all persons with disabilities in all judicial and administrative proceedings.**

### **Latvia – 10<sup>th</sup> October 2017**

22. The Committee is concerned about the:



(a) Non-systematic provision of accommodation in judicial proceedings for persons with intellectual and/or psychosocial disabilities, including the absence of guaranteed legal assistance in all judicial proceedings;

23. The Committee recommends that the State party:

(a) **Ensure the provision of judicial procedural accommodation**, including by means of the Easy Read format, professional sign language interpretation and the use of Braille easy-read format, for all persons with disabilities and establish related safeguards to enable the participation of persons with disabilities in all legal proceedings on an equal basis with others;

(d) **Be guided by article 13 of the Convention in the implementation of target 16.3 of the Sustainable Development Goals.**

#### **Luxembourg – 10<sup>th</sup> October 2017**

26. The Committee is concerned about the lack of information on specific measures and protocols to remove barriers to access to justice and to **provide procedural and gender- and age-appropriate accommodation** in judicial proceedings for persons with disabilities, including written information and communications that consider the multilingual reality of the State party. It is also concerned about the lack of sufficient systematic and continuous training to members of the judiciary, members of the legal profession, prosecutors and prison officers with regard to the equal rights of persons with disabilities and human rights in general.

27. **The Committee recommends that the State party take into account the multilingual reality of the State party and:**

(a) **Enact appropriate legislation to ensure the removal of barriers to access to justice and to guarantee the provision of procedural and gender- and age-appropriate accommodations based on the free choice and preference of persons with disabilities, and establish related safeguards to enable the participation of persons with disabilities in all legal proceedings on an equal basis with others;**

(e) **Be guided by article 13 of the Convention in its implementation of target 16.3 of the Sustainable Development Goals.**

#### **United Kingdom and Northern Ireland – 3<sup>rd</sup> October 2017**

32. The Committee is concerned about:

(d) The fact that the regulations exclude persons with hearing impairments from participation in jury proceedings, and that personal assistants/interpreters are not deemed to constitute **procedural accommodation**.

33. **The Committee recommends that the State party, in close collaboration with organizations of persons with disabilities:**

(a) **Develop and implement capacity-building programmes among the judiciary and law enforcement personnel, including judges, prosecutors, police officers and prison staff, about the rights of persons with disabilities;**

(b) **Design and implement a decision-making regime with guidelines and appropriate resources, focusing on respecting the will and preferences of persons with disabilities, particularly persons with intellectual and/or psychosocial disabilities, in court proceedings;**

(d) **Ensure that all persons with disabilities enjoy the right and are provided with **adequate procedural accommodation** within the justice system, and enable in particular deaf persons through the use of sign language interpreters, to fully and equally participate as jurors in court proceedings;**

#### **Panama – 29<sup>th</sup> September 2017**

32. The Committee is concerned that **no procedural accommodations** have yet been made to ensure effective access to justice for all persons with disabilities. It is also concerned about the

barriers, especially of a legal nature, that prevent persons whose legal capacity has been revoked or who live in institutions from effectively participating in legal proceedings.

33. The Committee recommends that the State party:

(a) **Adopt, in line with the Convention, the action plan on access to justice for persons with disabilities, as well as the necessary legal, administrative and judicial measures to eliminate all restrictions on the effective participation of persons with disabilities in all stages of the judicial process;**

(c) **Make procedural adjustments, including the provision of personal or intermediary assistance, to ensure that persons with disabilities can effectively participate in the various aspects of legal proceedings;**

(d) **Step up efforts to ensure that sign language interpreters are present during judicial proceedings;**

(g) **Take into account article 13 of the Convention in its implementation of target 16.3 of the Sustainable Development Goals.**

#### **Morocco – 25<sup>th</sup> September 2017**

28. The Committee is concerned about:

(a) The barriers militating against the effective participation of persons with disabilities in the judicial system, owing to a lack of knowledge about disability issues within the judicial sector, **the absence of substantive procedural accommodations**, the lack of legal aid for persons with disabilities and the lack of accessibility to all judicial premises, including court buildings and places of detention;

(b) The non-availability of judicial information in **accessible formats** for persons with disabilities, such as Braille, Easy Read and sign language.

29. The Committee recommends that the State party:

(a) **Adopt measures to ensure that all persons with disabilities, in particular persons with psychosocial and/or intellectual disabilities and deaf and hard-of-hearing persons, have access to justice and information and communication in accessible formats, such as Braille, tactile formats, Easy Read and sign language;**

(b) **Provide, within the judicial sector, effective procedural accommodations for persons with disabilities, according to gender and age;**

#### **Montenegro – 22<sup>nd</sup> September 2017**

26. The Committee is concerned that most court buildings in the country remain inaccessible for persons with physical impairments, and that:

(a) Persons working in the administration of justice are not sufficiently trained in the rights of persons with disabilities, **including on procedural accessibility, particularly with regard to access to assistive technologies;**

(b) Legal aid, registered and qualified sign-language interpretation and Braille service, **as well as alternative modes of communication and other measures** to provide persons with intellectual and psychosocial disabilities with access to judicial and administrative proceedings are insufficiently available.

27. **The Committee recommends that the State party provide for barrier-free and non-discriminatory access to justice based on the free choice and preference of persons with disabilities, and for disability-related and age-appropriate accommodations in all legal proceedings. It recommends that the State party strengthen its efforts to ensure that:**

(a) **Accessibility measures, such as Braille, the provision of sign language interpretation, alternative modes of communication and Easy Read formats are available in a non-discriminatory manner at all stages of judicial and administrative proceedings;**

(b) **Judicial, law enforcement and notary personnel are properly trained in the application of a human rights approach to disability.**



#### Republic of Moldova – 18<sup>th</sup> May 2017

26. The Committee is concerned about the lack of information on specific measures and protocols to provide **procedural, gender and age-appropriate accommodation in judicial proceedings for persons with disabilities**, including the provision of sign-language interpretation for deaf persons and accessible formats for communication for deaf-blind persons and persons with psychosocial and/or intellectual disabilities. It notes with concern:

(a) The prejudices against persons with disabilities, particularly those with psychosocial and/or intellectual disabilities;

**27. The Committee recommends that the State party:**

(a) **Ensure the provision of procedural, gender and age-appropriate accommodations based on the free choice and preference of persons with disabilities and establish related safeguards to enable the participation of persons with disabilities in all legal proceedings on an equal basis with others;**

(d) **Be guided by article 13 of the Convention in the implementation of target 16.3 of the Sustainable Development Goals.**

#### Jordan – 15<sup>th</sup> May 2017

27. The Committee notes with concern that article 3 of the Code of Criminal Procedure (Law No. 9 of 1961) restricts persons with intellectual and/or psychosocial disabilities from filing a complaint directly before the judiciary. The Committee is concerned about the shortage of trained professional and certified sign language interpreters to translate administrative and judicial proceedings for deaf persons and the unavailability of **documents in accessible formats** to enable blind persons and persons with intellectual and/or psychosocial disabilities to participate in proceedings.

**28. The Committee recommends that the State party, taking into account article 13 of the Convention and target 16.3 of the Sustainable Development Goals:**

(b) **Ensure the availability of professional and certified sign language interpreters and documents in accessible formats for all persons with disabilities in order to ensure their full participation in all judicial and administrative proceedings**

#### Iran (Islamic Republic of) – 10<sup>th</sup> May 2017

28. ...However, the Committee is concerned about:

(b) The **absence of procedural and age-appropriate accommodations** that allow persons with disabilities themselves to exercise an active role as direct and indirect participants in all legal procedures, including through accessible information;

**29. The Committee recommends that the State party:**

(a) **Review its legislation with the aim of enabling persons with disabilities to participate effectively in any type of legal proceedings, including exercising their roles as victims, defendants and witnesses;**

(b) **Develop protocols for the judiciary aimed at identifying procedural, gender-sensitive and age-appropriate accommodations for persons with disabilities, including provision of documents of legislation and court proceedings through sign language interpretation, braille, easy-read and other accessible formats, modes and means of communication;**

#### Canada – 8<sup>th</sup> May 2017

However, the Committee is concerned about:

(b) The absence of information about **procedural and age-appropriate accommodation** available for women and children with disabilities, including indigenous women, at all levels of the justice system;

**30. The Committee recommends that the State party:**

(b) Introduce additional criteria to the **provision of accessibility in the justice sector**, ensuring that the options available comprise Braille, sign language interpretation, **alternative modes of communication** and easy-read versions of documents, free of charge for all persons with disabilities, in particular persons with psychosocial and/or intellectual disabilities;

(c) Set up progress indicators for and periodic **assessments of the measures to provide age-appropriate and gender-sensitive accommodation for persons with disabilities** at the federal, provincial and territorial levels, and ensure that lawyer associations, civil society organizations working on human rights and representative organizations of persons with disabilities are entitled to provide input on such accommodation;

#### Armenia – 8<sup>th</sup> May 2017

21. The Committee is concerned about the very limited accessibility of most of the State party's courts, and administrative and notary buildings. It is also concerned about the lack of legal safeguards to ensure the right to a fair trial, due process and the **safe and full participation of persons with disabilities**, especially persons with psychosocial and/or intellectual disabilities, in all judicial proceedings, including through **the provision of procedural and gender- and age-appropriate accommodation**, in particular sign language interpretation for persons with hearing impairment and **accessible formats of legal and judicial information and communication** for persons with visual impairment. It is further concerned about the insufficient availability of accessible and affordable legal services for persons with disabilities.

22. The Committee recommends that the State party ensure the provision of **procedural and gender- and age-appropriate accommodation** on the **basis of the free choice** and preference of persons with disabilities, and establish related safeguards to **enable the participation of persons with disabilities in all legal proceedings on an equal basis with others**. It also recommends that the State party take measures to increase training and capacity-building programmes on the Convention for law enforcement personnel, and for persons with disabilities to increase their legal awareness, and that it ensure that persons with disabilities have access to free legal aid. The Committee recommends that the State party be guided by article 13 of the Convention in its implementation of target 16.3 of the Sustainable Development Goals

#### Cyprus – 8<sup>th</sup> May 2017

35. The Committee notes with concern that the justice system is largely inaccessible and that personnel in the judicial and law enforcement sectors are not adequately trained on the Convention.

36. The Committee recommends that the State party take immediate steps to ensure **accessibility and procedural accommodation**, including high quality sign language interpretation and information in easy-to-read and Braille formats in line with the Sustainable Development Goals, especially target 16.3.

#### Honduras – 4<sup>th</sup> May 2017

The Committee is concerned that no procedural accommodations have been made to ensure **access to justice for all persons with disabilities**. It is also concerned about the barriers, especially of a legal nature, as well as the lack of sign-language interpretation, that prevent persons whose legal capacity has been revoked or who live in institutions from effectively participating in legal proceedings.

32. ... It also recommends that the State party make **procedural adjustments, including the provision of personal assistance and intermediaries**, to ensure that persons with disabilities can effectively participate, in various capacities, in legal proceedings...

33. The Committee is concerned about the limited access to justice enjoyed by persons with disabilities, especially those living in rural areas and in indigenous and Afro-Honduran communities, **the various barriers to accessibility and the lack of procedural accommodations provided for them...**

34. The Committee recommends that the State party take all necessary measures to combat the discrimination faced by persons with disabilities in respect of access to justice, **ensure that the legal system is fully accessible and provide comprehensive procedural accommodations**. The Committee also recommends that the State party step up its efforts to provide training on the Convention for justice officials, especially in rural areas and remote communities.

#### **Bosnia and Herzegovina - 2nd May 2017**

24. The Committee is concerned that there is a lack of information on specific and available measures, as well as transparent protocols to **provide procedural and age-appropriate accommodation in judicial proceedings**, including the notary-related services.

25. The Committee recommends that the State party ensure transparent, barrier-free and non-discriminatory access to justice based on the free choice and preference of persons with disabilities. It also recommends that the State party strengthen efforts to provide adequate training on the rights of persons with disabilities to judicial and law enforcement personnel. **The Committee further recommends that the State party ensure availability of non-discriminatory access to assistive technologies and ensure registered and qualified sign language interpreters, and the provision of Braille and other alternative formats, in judicial proceedings.**

#### **Bolivia (Plurinational State of) – 4<sup>th</sup> November 2016**

31. The Committee is concerned that judicial bodies do not make **procedural adjustments** when persons with disabilities are involved in proceedings. It is also concerned that they do not have sign language interpreters or use Braille transcription or **other accessible formats and modes of information and communication**.

32. The Committee recommends that the State party take steps to put in place the support necessary to ensure access to justice for persons with disabilities, **notably by implementing procedural adjustments and measures to ensure the accessibility of facilities, information and communication.**

#### **Ethiopia – 3<sup>rd</sup> November 2016**

29. The Committee is concerned that the training of justice staff, lawyers, court staff and the police on the rights of persons with disabilities is neither compulsory nor carried out regularly. **It is also concerned that procedural accommodation is not effectively available, in law and in practice.**

30. The Committee recommends that the State party ensure compulsory and regular training of justice and police staff on the rights of persons with disabilities. **It also recommends that procedural accommodation be effectively available at all stages of investigations and court proceedings.** It further recommends that the State party take into account article 13 of the Convention, while implementing target 16.3 of the Sustainable Development Goals.

#### **Italy – 5<sup>th</sup> October 2016**

31. The Committee is concerned at the **inaccessibility of the justice system with regard to information and communications**.

32. The Committee recommends that the State party **ensure the provision of full procedural accommodations**, including professional sign language interpretation, and information in easy-to-read and Braille formats. It also recommends that the State party take into account article 13 of the Convention while implementing target 16.3 of the Sustainable Development Goals

#### **United Arab Emirates – 2<sup>nd</sup> October 2016**

25. The Committee is concerned:

(b) At the **lack of accessibility within the justice system, including** in respect of legal aid and assistance, sign language interpreters in court rooms and **procedural accommodations**, despite the issuance of Ministerial Decree No. 619 of 2015;

**26. The Committee recommends that the State party:**

(b) **Take measures to ensure in practice the physical and information- and communication-related accessibility to all judicial facilities, for example through the provision of professional sign language interpreters and the use of Braille, among other procedural accommodations;**

(e) **Be guided by article 13 of the Convention in the implementation of target 16.3 of the Sustainable Development Goals.**

#### **Uruguay – 30<sup>th</sup> September 2016**

29. The Committee is concerned that **no procedural adjustments** have been made to ensure access to justice for all persons with disabilities. It is also concerned about the barriers, especially of a legal nature, that prevent persons whose legal capacity has been revoked or who live in institutions from effectively participating in legal proceedings.

30. **It also recommends that the State party make procedural adjustments, including the provision of live assistance and intermediaries, particularly sign language interpreters, to ensure that persons with disabilities can effectively participate, in various capacities, in legal proceedings. The Committee recommends that the State party bear in mind the linkages between article 13 of the Convention and target 16.3 of the Sustainable Development Goals, with respect to ensuring equal access to justice for all.**

#### **Colombia – 29<sup>th</sup> Sept 2016**

##### **Access to justice (art. 13)**

34. The Committee is concerned that the State party's General Code of Procedure bars persons with disabilities from appearing as witnesses, **that procedural accommodations for persons with disabilities involved in judicial proceedings are not provided**, and that **accessibility aids**, such as the use of Braille, sign language, or easy-to-read materials, are not available.

**35. The Committee recommends that the State party:**

(b) **Adopt procedural accommodations to facilitate the participation of persons with disabilities in any role and stage in judicial proceedings;**

(c) **Ensure the accessibility of physical facilities, materials, information and communications throughout the justice system, including the availability of guide-interpreters, sign-language interpreters, and materials in easy-to-read and electronic format;**

(e) **Be guided by article 13 of the Convention in pursuing target 16.3 of the Sustainable Development Goals.**

#### **Guatemala – 29<sup>th</sup> September 2016**

35. The Committee is concerned about the limited access to justice enjoyed by persons with disabilities, particularly those living in rural areas and indigenous communities, the various **barriers to accessibility and the lack of procedural accommodations provided for them**. It is also concerned that justice officials are not sufficiently familiar with the Convention and therefore do not act in accordance with it.

36. **The Committee recommends that the State party adopt all necessary measures to combat the discrimination faced by persons with disabilities with respect to access to justice, ensure that the legal system is fully accessible and provide comprehensive reasonable and procedural accommodations. The Committee also recommends that the State party step up its efforts to provide training on the Convention for justice officials, especially in rural areas and remote communities. The Committee recommends that the State party be guided by article 13 of the Convention in its implementation of target 16.3 of the Sustainable Development Goals.**

### Serbia – 23<sup>rd</sup> May 2016

23. The Committee is concerned about the lack of information on specific measures and protocols to provide **procedural, gender and age-appropriate accommodation** in judicial proceedings, including the provision of sign-language interpretation for deaf persons and **accessible formats** for communication for deaf-blind persons, persons with intellectual disabilities and persons with psychosocial disabilities, particularly in civil cases. The Committee is also concerned that women with disabilities are not protected against sexual violence on an equal basis with others under articles 178 and 179 of the Criminal Code.

24. **The Committee recommends that the State party take further steps to ensure barrier-free and non-discriminatory access to justice through the provision of procedural and age-appropriate accommodation based on the free choice and preference of persons with disabilities and establish related safeguards. The Committee recommends that the State party adopt measures to provide deaf persons with access to civil proceedings on an equal basis with others.**

### Portugal – 19<sup>th</sup> May 2016

30. The Committee is concerned about the limited access to justice for persons with disabilities and the **lack of procedural accommodation** for them in the State party.

31. **The Committee recommends that the State party take all necessary measures to combat the discrimination faced by persons with disabilities in accessing justice by ensuring the provision of full procedural accommodation and of funding for training judicial personnel on the Convention.**

### Slovakia – 13<sup>th</sup> May 2013

40. The Committee is concerned about the **lack of procedural accommodation** and reasonable accommodation in the justice and law enforcement sector, especially with regard to persons with intellectual disabilities.

41. **The Committee recommends that the State party amend procedural rules to ensure that persons with intellectual disabilities are provided with procedural accommodation from the outset. It also recommends that the State party make legal aid available to persons with disabilities so that they have access to justice on an equal basis with others.**

42. **The Committee further recommends that the State party provide mandatory training to all personnel in the justice, administration and law enforcement sectors on:**

- (a) **The rights enshrined in the Convention, including participation on an equal basis with others regardless of legal capacity status;**
- (b) **Procedural accommodation in the legal process;**
- (c) **Reasonable accommodation;**
- (d) **The combating of harmful gender and disability stereotypes.**

### Uganda – 12<sup>th</sup> May 2016

24. The Committee is concerned about barriers faced by persons with disabilities in the judicial system as a result of **lack of reasonable accommodation** and accessibility to court buildings, and prejudices, poverty and lack of general knowledge about disability in the justice sector.

25. **The Committee recommends that the State party:**

- (a) **Adopt measures to ensure that all persons with disabilities have access to justice, including by establishing free legal aid for persons with disabilities who claim their rights, and information and communication in accessible formats, including in Braille, tactile, augmentative and alternative formats, and Ugandan Sign Language;**

(b) Ensure that the judiciary provides **procedural accommodation** according to gender and age for persons with disabilities;

#### Thailand – 12<sup>th</sup> May 2016

27. The Committee is concerned at the **lack of accessibility** to the justice system, including physical access, legal aid, sign language interpreters in the courtroom, and **procedural accommodation**, particularly in rural areas. The Committee is also concerned that section 95 of the Civil Procedure Code can limit persons with disabilities from having their testimony accepted on an equal basis with others.

28. **The Committee recommends that the State party implement physical, informational and communicational accessibility, including through the provision of professional sign language interpreters, the use of Braille and other procedural accommodation...**

#### Chile - 12<sup>th</sup> May 2016

27. The Committee is concerned that **no procedural accommodations** have been made to ensure access to justice for all persons with disabilities. It is also concerned about the barriers, especially of a legal nature, that prevent persons whose legal capacity has been revoked or who live in institutions from effectively participating in legal proceedings.

28. **The Committee urges the State party to adopt the necessary legislative, administrative and judicial measures to eliminate all restrictions on the ability of persons with disabilities to participate effectively in proceedings of any kind. It also recommends that the State party make **reasonable procedural accommodations**, including the provision of personal or intermediary assistance, to ensure that persons with disabilities can effectively participate, in various capacities, in legal proceedings.**

#### Lithuania – 10<sup>th</sup> May 2016

28. The Committee recommends that the State party, in close collaboration with organizations of persons with disabilities, develop and implement a national plan of action to build the capacity of judicial and law enforcement personnel, including judges, prosecutors, police officers and prison staff, to enhance their knowledge of the rights of persons with disabilities and **to ensure the provision of procedural and age-appropriate accommodation in all legal procedures** and of reasonable accommodation in prisons.

#### Ukraine – 2<sup>nd</sup> October 2015

28. ...It is also concerned that persons working in the administration of justice are not trained on the rights of persons with disabilities, **including on reasonable accommodation and procedural accessibility**. The Committee regrets the lack of information on availability of legal aid, sign-language interpretation and other measures to provide persons with intellectual and psychosocial disabilities with access to judicial and administrative proceedings.

29. **The Committee urges the State party to ensure equal access to judicial and administrative proceedings for all persons with disabilities, including access to court buildings for persons with physical impairments and **access to documents in accessible formats**. It also recommends that the State party train judges, the police, penitentiary system officials and other personnel in the justice system on the rights enshrined in the Convention on the Rights of Persons with Disabilities.**

#### Qatar - 2nd October 2015

25. ...The Committee is also concerned at the lack of accessibility to the justice system, including legal aid and assistance, sign language interpreters in courtrooms and **procedural accommodations**

26. ...It also recommends that the State party implement measures to ensure **physical, informational and communicational accessibility of all judicial facilities**, such as the



provision of professional sign language interpreters, Braille and other procedural accommodations.

#### European Union - 2<sup>nd</sup> October 2015

38. The Committee is concerned about discrimination faced by persons with disabilities in accessing justice, owing to the lack of procedural accommodation in European Union member States.

39. The Committee recommends that the European Union take appropriate action to combat discrimination faced by persons with disabilities in accessing justice by ensuring that full procedural accommodation and funding for training justice personnel on the Convention are provided in its member States.

#### Gabon – 2<sup>nd</sup> October 2015

30. The Committee is concerned at the lack of accessibility to the justice system, including physical access, legal aid and sign language interpreters in courtrooms, and procedural accommodation.

31. The Committee recommends that the State party implement physical, informational and communicational accessibility, such as the provision of professional sign language interpreters, Braille and other procedural accommodation...

#### Kenya – 30 September 2015

25. The Committee is concerned about the barriers that prevent persons with disabilities from gaining access to justice, in particular owing to the absence of reasonable accommodations throughout court proceedings that particularly affect women with disabilities, the lack of information available in accessible formats, additional costs to access sign language interpretation services, and the lack of free legal aid.

26. The Committee recommends that the State party:

(a) Adopt measures to ensure that all persons with disabilities have access to justice, including by establishing free legal aid for persons with disabilities who claim their rights, and by providing information and communications technology in accessible formats, including the Kenyan sign language;

(b) Define explicitly in legal instruments the duty of the judiciary to provide procedural accommodations for persons with disabilities in accordance with article 13 of the Convention;

#### Mauritius – 30<sup>th</sup> September 2015

24. The Committee recommends that the State party provide for disability-related and age-appropriate accommodations in all legal proceedings. The State party should ensure that accessibility measures, such as braille, the provision of sign language interpretation, alternative modes of communication, easy-to-read format and enforcement measures, are available and free of charge in all courts and that personnel in the justice and prison system are properly trained on the application of human rights standards specifically for persons with disabilities.

#### Brazil – 29<sup>th</sup> September 2015

26. The Committee is concerned at the inaccessibility of judicial facilities, and at the lack of measures to ensure procedural gender-sensitive and age-appropriate accommodations related to persons with disabilities.

27. The Committee recommends that the State party introduce a national plan to ensure accessibility of judicial facilities. It also recommends that it take measures to ensure that legal proceedings include gender-sensitive and age-appropriate accommodations for persons with disabilities...

### Czech Republic – 18<sup>th</sup> May 2015

25. The Committee urges the State party to ensure the **availability of documents in formats accessible** to all persons with disabilities who need them.

### Cook Islands – 15<sup>th</sup> May 2015

26. The Committee recommends that the State party:

(b) Provide **accessible information and communications**, including sign language interpreters, legal aid, physical access to the courts, and **other procedural accommodations**;

### Croatia – 15<sup>th</sup> May 2015

No mention of art. 13 access of justice

### Germany – 13<sup>th</sup> May 2015

27. The Committee is concerned about: (a) the **lack of structures and procedural accommodation** within the justice sector specifically designed to provide assistance for persons with disabilities, particularly girls who are victims of violence and abuse; (b) the inaccessibility of judicial facilities and lack of understanding of legal professionals with regard to access to justice; and (c) the lack of implementation and enforcement by the judiciary of the standards of the Convention in the national legal system and within court rulings.

28. The Committee recommends that the State party:

(a) Introduce targeted measures to improve the physical **and communicative accessibility of courts**, judicial authorities and other bodies involved in administering the law;

(b) Introduce legislative reforms so that the national **criminal, civil, labour and administrative procedures** include the requirement to ensure **procedural accommodations** for persons with disabilities, taking into particular account persons with intellectual or psychosocial disabilities, deaf-blind persons and children with disabilities;

### Mongolia – 13<sup>th</sup> May 2015

22. The Committee is concerned about the lack of explicit provisions ensuring **procedural accommodation** in situations necessary for guaranteeing access to justice for persons with disabilities. This includes the insufficiency of sign language, Braille and appropriate training for judicial, legal and law enforcement professionals.

23. The Committee recommends that the State party adopt legal measures to implement the principle of **procedural accommodation**, including measures to ensure that persons with disabilities are discriminated on account of physical status or language (when sign language or Braille is required), or owing to the lack of appropriate training of legal profession, police and prison officers, with special attention to women with disabilities.

### Turkmenistan – 13<sup>th</sup> May 2015

23. The Committee expresses its concern about the lack of information on specific measures and protocols, other than those included in the Code of Criminal Procedure, to provide **reasonable accommodation** in judicial proceedings for persons with disabilities, including the provision of sign-language interpretation for deaf or “mute” persons and **accessible formats for communication** for deaf-blind persons, persons with intellectual disabilities and persons with psychosocial disabilities, among others, **particularly in civil cases**.

24. The Committee recommends that the State party facilitate full barrier-free and non-discriminatory access to the justice system for persons with disabilities by providing **reasonable accommodation** with safeguards. The State party should also review



accordingly the value of the testimony of persons with disabilities, including deaf persons, deaf-blind persons and persons with intellectual or psychosocial disabilities.

#### **Dominican Republic – 8<sup>th</sup> May 2015**

24. The Committee is concerned that there is no requirement under the State party's administrative procedures for judicial authorities to make **procedural accommodations**, such as providing sign language interpretation, when persons with disabilities take part in proceedings. It also notes with concern the shortage of training courses for judicial personnel on the content and approach of the Convention.

25. The Committee recommends that the State party review its administrative and judicial rules and procedures with a view to adapting them and ensuring access to justice for persons with disabilities, including the guarantee of interpretation in Dominican Sign Language, **the use of augmentative and alternative modes of communication** and full accessibility to the physical environment, information and communication...

#### **New Zealand – 30<sup>th</sup> October 2014**

No mention of procedural/reasonable accommodations or accessible formats

#### **Denmark - 29<sup>th</sup> October 2014 –**

No mention of art. 13 access of justice

#### **Republic of Korea – 28th October 2014**

24. ... It further recommends that standard modules on working with persons with disabilities, on the provision of **reasonable accommodation, in particular procedural and age-appropriate, as well as gender-sensitive, accommodations**, and on the guarantee of access to justice be incorporated into training programmes for police officers, prison staff, lawyers, the judiciary and court personnel.

#### **Belgium – 27<sup>th</sup> October 2014**

No mention of art. 13 access of justice

#### **Ecuador – 26<sup>th</sup> October 2014**

26. ... The Committee is concerned that there is no requirement under the criminal, civil, labour and administrative procedures in Ecuador for judicial authorities to make **procedural accommodations** when persons with disabilities take part in proceedings.

27. The Committee recommends that the State party:

(b) Ensure that the Council of the Judiciary implement a national adaptation plan so that there is **adequate accessibility to judicial facilities** both in terms of both their architecture and communications and that the plan includes the requirement to provide Ecuadorian sign-language interpreters and easy-read facilities for the participation of deaf persons and persons with intellectual disabilities, respectively;

(c) Ensure that the legislature introduce legislative reforms so that the **national criminal, civil, labour and administrative procedures** include the requirement to make **procedural accommodations** for persons with disabilities, thereby enabling their access to justice on an equal basis with others.

#### **Mexico – 26<sup>th</sup> October 2014**

26. The Committee recommends that the State party:

(c) Ensure that all children with disabilities have access to justice and may express their opinion in the course of the determination of the best interests of the child, through **procedural accommodations** appropriate to their age and specific disability-related needs.

#### El Salvador – 7<sup>th</sup> October 2014

29. The Committee is concerned about the barriers to access to justice encountered by persons with disabilities and **the lack of reasonable accommodation**. The Committee is also concerned at the limited access to justice for women and girls with disabilities who are victims of abuse or neglect owing to the low credibility ascribed to their witness statements.

**30. The Committee calls on the State party to:**

(a) Put in place reasonable procedural accommodation with a gender and age focus to ensure **access to justice for persons with disabilities and to provide free legal assistance, information on each case — as early as the police investigation — in accessible formats, access to judicial buildings and the services of trained Salvadoran sign-language interpreters;**

#### Azerbaijan – 11th May 2014

No mention of art. 13 access of justice

#### Costa Rica - 11<sup>th</sup> May 2014

26. The Committee recommends that the State party review its administrative and judicial rules and procedures with a view to adapting them and ensuring access to justice for persons with disabilities, including the guarantee of interpretation in Costa Rican sign language, **the use of augmentative and alternative modes of communication** and full accessibility to the physical environment, transport and communication.

27. The Committee is concerned that persons with disabilities undergoing criminal proceedings have no guarantees of due process adapted to their disability.

28. The Committee urges the State party to review judicial proceedings in criminal cases to ensure that all proceedings involving persons with disabilities are subject to due process safeguards. The Committee recommends that the State party amend its criminal legislation in order to make penalties applicable to persons with disabilities subject to the same guarantees and conditions as those applicable to any other person who is the subject of criminal proceedings, **making provision as necessary for reasonable accommodation and procedural adjustments.**

#### Sweden – 11th May 2014

No mention of art. 13 access of justice

#### Australia – 24<sup>th</sup> October 2013

27. The Committee is concerned at the lack of training for judicial officers, legal practitioners and court staff on ensuring access to justice for persons with disabilities, as well as the lack of guidance on access to justice for persons with disabilities. The Committee is further concerned that access to sign language interpreters or **the use of Augmentative and Alternative Modes of Communication** is not supported in all Australian states and territories.

28. ... It further recommends that legislation and policy across the states and territories be amended **to ensure access to justice for persons with disabilities**, in line with article 13 of the Convention.

29. The Committee further urges the State party to ensure that persons with psychosocial disabilities are **ensured the same substantive and procedural guarantees as others** in the context of criminal proceedings, and in particular to ensure that no diversion programmes to transfer individuals to mental health commitment regimes or requiring an individual to

participate in mental health services are implemented; rather, such services should be provided on **the basis of the individual's free and informed consent**.

#### **Paraguay – 15<sup>th</sup> May 2013**

32. The Committee recommends that the State party amend its criminal legislation in order to make penalties applicable to persons with psychosocial or intellectual disabilities subject to the same guarantees and conditions as those applicable to any other person who is the subject of criminal proceedings, making provision as necessary for **reasonable accommodation and procedural adjustments**.

#### **Hungary – 22<sup>nd</sup> October 2012**

No mention of art. 13 access of justice

#### **Argentina – 22<sup>nd</sup> October 2012**

No mention of art. 13 access of justice

#### **China – 15<sup>th</sup> October 2012**

24. The Committee suggests that the State party allocate the necessary human and financial resources to the legal aid service centres. It asks the State party to ensure that these centres safeguard the access to justice of persons with disabilities independently and in practice, including below the county level. The Committee suggests that the State party reviews its procedural civil and criminal laws in order to make mandatory the necessity to **establish procedural accommodation** for those persons with disabilities who intervene in the judicial system can do it as subject of rights and not as objects of protection.

#### **Peru – 16<sup>th</sup> May 2012**

No mention of art. 13 access of justice

#### **Spain – 19<sup>th</sup> October 2011**

No mention of art. 13 access of justice

#### **Tunisia – 13<sup>th</sup> May 2011**

No mention of art. 13 access of justice

## Endnotes

<sup>1</sup> Department for Work & Pensions, '*Personal Independence Payment: Official Statistics* (Data to January 2019) (DWP 2019).

<sup>2</sup> Ibid.

<sup>3</sup> Ibid and see also John Pring *One in seven rejected PIP claims is overturned, DWP figures show* in Disability News Service May 2, 2019 at [www.disabilitynewsservice.com/dwp-and-assessors-fail-to-refer-claimants-at-risk-of-harm-to-social-services-research-finds/](http://www.disabilitynewsservice.com/dwp-and-assessors-fail-to-refer-claimants-at-risk-of-harm-to-social-services-research-finds/) accessed 4 May 2019.

<sup>4</sup> Ibid.

<sup>5</sup> Michael Buchanan, 'Pension Stance Creates Budgetary Mayhem' *BBC News* (21 March 2016) <<https://www.bbc.co.uk/news/uk-politics-35864438>> accessed 10 March 2019.

<sup>6</sup> Gus Alexiou, 'Disabled People Trapped in assessment nightmare' *The Independent* (20 April 2014) <<https://www.independent.co.uk/news/uk/home-news/disabled-people-are-trapped-in-assessment-nightmare-by-benefits-regime-says-dr-stephen-duckworth-9272423.html>> accessed 01 December 2018.

<sup>7</sup> Ibid.

<sup>8</sup> Department for Work and Pensions, 'Response to the DBC (Disability Benefits Consortium) report on PIP Assessment Providers' (4 April 2013).

<sup>9</sup> CAPITA, 'Guidelines on Recording Assessments' (*Capita-pip*) <<http://www.capita-pip.co.uk/en/assessment-process.html>> accessed 01 December 2018.

<sup>10</sup> See in this respect House of Commons Work and Pensions Committee *PIP and ESA assessments* Seventh Report of Session 2017–19 HC 829 (2018) para 41.

<sup>11</sup> Jim Reed, 'Why I secretly taped my disability assessment' *BBC News* (London, 16 October 2017) <<https://www.bbc.co.uk/news/health-41581060>> accessed 01 December 2018.

<sup>12</sup> 'I recorded my PIP assessment and the assessor was sacked for gross misconduct' <<https://community.scope.org.uk/discussion/39044/i-recorded-my-pip-assessment-and-the-assessor-was-sacked-for-gross-misconduct>> accessed 01 December 2018 and see also Appendix B to this Report.

<sup>13</sup> Commons select committee, *Web forum: PIP and ESA Assessments* 20 November 2017 <<https://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/pip-esa-assessments-forum-17-19/?page=177>> accessed 01 December 2018 and see also extracts in Appendix B to this report.

<sup>14</sup> House of Commons Work and Pensions Committee *PIP and ESA assessments* Seventh Report of Session 2017–19 HC 829 (2018).

<sup>15</sup> 'I recorded my PIP assessment and the assessor was sacked for gross misconduct' <<https://community.scope.org.uk/discussion/39044/i-recorded-my-pip-assessment-and-the-assessor-was-sacked-for-gross-misconduct>> accessed 01 December 2018.

<sup>16</sup> The Committee published separately a report on claimant experiences (including the stories provided by 4,000 claimants who made written submission to the inquiry) – see House of Commons Work and Pensions Committee *PIP and ESA assessments: claimant experiences* Fourth Report of Session 2017–19 HC 355 (2018).

<sup>17</sup> House of Commons Work and Pensions Committee *PIP and ESA assessments* Seventh Report of Session 2017–19 HC 829 (2018) para 44 (and see also para 42 where it noted 'We heard overwhelmingly that providing audio recording as default would go a long way to improving trust in face-to-face assessments').

<sup>18</sup> Ibid at para 42 where it was noted that 'recording by default would "significantly improve people's trust in the system"'.

<sup>19</sup> House of Commons Work and Pensions Committee *PIP and ESA assessments* Seventh Report of Session 2017–19 HC 829 (2018) recommendation 6.

<sup>20</sup> House of Commons Work and Pensions Committee *PIP and ESA assessments Eighth Special Report* of Session 2017–19 (2018) Appendix: Government Response and see also Commons Select Committee, 'PIP assessments: Capita and Atos on notice to "start delivering, or else" *Parliament* (5 June 2018) <<https://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/news-parliament-2017/pip-it-capacity-chairs-comments-17-19/>> accessed 10 March 2019.

<sup>21</sup> House of Commons Work and Pensions Committee, *PIP and ESA assessments: claimant experiences* (HC 2017-19, 7) para 23.

<sup>22</sup> Ministry of Justice, 'Tribunals and Gender Recognition Statistics Quarterly, October to December 2018 (Provisional)' *Ministry of Justice* (14 March 2019).p.3.<[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/785695/Tribunal\\_and\\_GRC\\_statistics\\_Q3\\_201819.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/785695/Tribunal_and_GRC_statistics_Q3_201819.pdf)> accessed 25 March 2019.

<sup>23</sup> The Spinal Injuries Association has for example pointed out that it is not possible for people with a spinal cord injured people who have little or no hand dexterity to keep written notes and called upon the Ministry of Justice to 'take swift action to remedy this situation' so that 'disabled people are not treated unfavourably because of their impairment' – see Roisin Norris *Benefit appeal recordings not possible at nearly half tribunal venues* AccessAble 23 January 2019 at <<https://www.accessable.co.uk/articles/benefit-appeal-recordings-not-possible-at-nearly-half-tribunal-venues>> accessed 7th May 2019.

<sup>24</sup> House of Commons Work and Pensions Committee *PIP and ESA assessments* Seventh Report of Session 2017–19 HC 829 (2018) para 42.

<sup>25</sup> House of Commons Work and Pensions Committee, *PIP and ESA assessments: claimant experiences* (HC 2017-19, 7) para 23.

<sup>26</sup> Work and Pensions Committee, Oral evidence: Personal Independence Payment (HC 1067) 06 March 2017.

<sup>27</sup> Ministry of Justice, 'Tribunals and Gender Recognition Statistics Quarterly, October to December 2018 (Provisional)' *Ministry of Justice* (14 March 2019)

p.3.<[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/785695/Tribunal\\_and\\_GRC\\_statistics\\_Q3\\_201819.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/785695/Tribunal_and_GRC_statistics_Q3_201819.pdf)> accessed 25 March 2019.

<sup>28</sup> Equality Act 2010, s19(1).

<sup>29</sup> Equality Act 2010, s19(2(d) and see by analogy *R (TP AR & SXC) v. Secretary of State for Work & Pensions* [2019] EWHC 1127 ( § 53) where the court noted that there must be 'a reasonable relationship of proportionality between the aim sought to be achieved, and the means chosen to pursue it' citing *R (JS) v Work and Pensions Secretary* [2015] 1 WLR 1449, per Lord Reed at §64; and *R (Coll) v Secretary of State for Justice* [2017] 1 WLR 2093 per Baroness Hale at §40.

<sup>30</sup> *R (TP AR & SXC) v. Secretary of State for Work & Pensions* [2019] EWHC 1127 § 53.

<sup>31</sup> Equality Act 2010, s19(2(d).

<sup>32</sup> See for example *Rackham v NHS Professionals Ltd* [2015] UKEAT/0110/15 1612; *Galo v Bombardier Aerospace* [2016] NICA 25; and *R v Isleworth Crown Court (ex parte King)* [2001] ACD 289.

<sup>33</sup> See for example *Griffiths v The Secretary of State for Work and Pensions* [2015] EWCA Civ 1265 and *Bracking and Others v Secretary of State for Work and Pensions*: CA 6 Nov 2013 ... References: [2013] EWCA Civ 1345, [2014] Eq LR 60.

<sup>34</sup> Lord Kerr in *R (Steinfeld and Keidan v. Secretary of State for International Development* [2018] UKSC 32 § 42.

<sup>35</sup> *Ibid.*

<sup>36</sup> See Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) Art 6 and the Council of Europe, Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, 20 March 1952, ETS 9, Art 1 on the Protection of Property

<sup>37</sup> *Salesi v. Italy* Application no. 13023/87 26 February 1993.

<sup>38</sup> (2006) 43 E.H.R.R. 47 and see also *R (TP AR & SXC) v. Secretary of State for Work & Pensions* [2019] EWHC 1127 § 42.

<sup>39</sup> *Kerojärvi v Finland* App no 17506/90 (ECtHR, 19 July 1995).

<sup>40</sup> *Ibid* § 39.

<sup>41</sup> *Ibid.*

<sup>42</sup> *H.A.L v Finland* App no 38267/97 (ECtHR, 27 January 2004).

<sup>43</sup> *Pullicino v Malta* (dec.) no 45441/99, 15 June 2000.

<sup>44</sup> *V v. the United Kingdom* [GC], no. 24888/94, ECHR 1999-IX. Although *Pullicino v Malta* and *V v UK* were criminal cases of an adversarial nature (and *V v. UK* being a case) there is nothing to suggest that the same standards would not apply in civil cases.

<sup>45</sup> *Micallef v. Malta* [GC], no. 17056/06, ECHR 2009.

<sup>46</sup> *Ibid* § 85.

<sup>47</sup> Convention on the Rights of Persons with Disabilities 2006, Article 13(1).

<sup>48</sup> *Ibid.*

<sup>49</sup> Convention on the Rights of Persons with Disabilities 2006, Article 13(2).

<sup>50</sup> *Burnip v Birmingham City Council* [2012] EWCA Civ 629 [22] (Maurice Kay LJ).

<sup>51</sup> *Cameron Mathieson v Secretary of State for Work and Pensions* [2015] UKSC 47 [44] (Lord Wilson JSC).

<sup>52</sup> Report of the 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' (2018), para 24.

<sup>53</sup> Concluding observations on the initial report of the former Yugoslav Republic of Macedonia, CRPD/C/MKD/CO/1, 26 Oct 2018; Concluding observations on the initial report of South Africa, CRPD/C/ZAF/CO/1, 23 Oct 2018; Concluding observations on the initial report of Algeria, 21 October 2018, CRPD/C/DZA/CO/1; Concluding observations on the initial report of Poland, 21 October 2018, CRPD/C/POL/CO/1; Concluding observations on the initial report of Malta, 17 Oct 2018, CRPD/C/MLT/CO/1; Concluding Observations in relation to the initial report of the Philippines, 16 Oct 2018, CRPD/C/PHL/CO/1; Concluding Observations in relation to the initial report of Oman, 17 Apr 2018, CRPD/C/OMN/CO/1; Concluding observations on the initial report of Slovenia, 16 Apr 2018, CRPD/C/SVN/CO/1; Concluding Observations in relation to the initial report of Seychelles, 16 Apr 2018, CRPD/C/SYC/CO/1; Concluding observations on the initial report of Haiti, 13 Apr 2018, CRPD/C/HTI/CO/1; Concluding observations on the initial report of Nepal, 13 Apr 2018, CRPD/C/NPL/CO/1; Concluding observations on the initial report of the Sudan, 10 Apr 2018, CRPD/C/SDN/CO/1; Concluding Observations in relation to the initial report of the Russian Federation, 09 Apr 2018, CRPD/C/RUS/CO/1; Concluding Observations in relation to the initial report of Latvia, 10 Oct 2017, CRPD/C/LVA/CO/1; Concluding observations on the initial report of Luxembourg, 10 Oct 2017, CRPD/C/LUX/CO/1; Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland, 03 Oct 2017, CRPD/C/GBR/CO/1; Concluding observations on the initial report of Panama, 29 Sep 2017, CRPD/C/PAN/CO/1; Concluding observations on the initial report of the Kingdom of Morocco, 25 Sep 2017, CRPD/C/MAR/CO/1; Concluding observations on the initial report of Montenegro, 22 Sep 2017, CRPD/C/MNE/CO/1; Concluding observations on the initial report of the Republic of Moldova, 18 May 2017, CRPD/C/MDA/CO/1; Concluding observations on the initial report of Iran, 10 May 2017, CRPD/C/IRN/CO/1; Concluding observations on the initial report of Canada, 08 May 2017, CRPD/C/CAN/CO/1; Concluding observations on the initial report of Armenia, 08 May 2017, CRPD/C/ARM/CO/1; Concluding observations on the initial report of Cyprus, 08 May 2017, CRPD/C/CYP/CO/1; Concluding observations on the initial report of Honduras, 04 May 2017, CRPD/C/HND/CO/1; Concluding observations on the initial report of Bosnia and Herzegovina, 02 May 2017, CRPD/C/BIH/CO/1; Concluding observations on the initial report of the Plurinational State of Bolivia, 04 Nov 2016, CRPD/C/BOL/CO/1; Concluding observations on the initial report of Ethiopia, 03 Nov 2016, CRPD/C/ETH/CO/1; Concluding observations on the initial report of Italy, 05 Oct 2016, CRPD/C/ITA/CO/1; Concluding Observations in relation to the initial report of United Arab Emirates, 02 Oct 2016, CRPD/C/ARE/CO/1; Observaciones finales sobre el informe inicial del Uruguay, 30 Sept 2016, CRPD/C/URY/CO/1; Observaciones finales sobre el informe inicial de Colombia, 29 Sep 2016, CRPD/C/COL/CO/1; Observaciones finales del Comité sobre los Derechos de las Personas con Discapacidad



sobre el informe inicial de Guatemala, 29 Sep 2016, CRPD/C/GTM/CO/1; Concluding observations on the initial report of Serbia, 23 May 2016, CRPD/C/SRB/CO/1; Concluding observations on the initial report of Portugal-Advance Unedited Version, 19 May 2016, CRPD/C/PRT/CO/1; Concluding observations on the initial report of Slovakia, 13 May 2016, CRPD/C/SVK/CO/1; Concluding observations on the initial report of Uganda, 12 May 2016, CRPD/C/UGA/CO/1; Concluding observations on the initial report of Thailand, 12 May 2016, CRPD/C/THA/CO/1; Concluding observations on the initial report of Chile-Advance Unedited Version, 12 May 2016, CRPD/C/CHL/CO/1; Concluding observations on the initial report of Lithuania, 10 May 2016, CRPD/C/LTU/CO/1; Concluding observations on the initial report of Ukraine, 02 Oct 2015, CRPD/C/UKR/CO/1; Concluding observations on the initial report of Qatar, 02 Oct 2015, CRPD/C/QAT/CO/1; Concluding observations on the initial report of the European Union, 02 Oct 2015, CRPD/C/EU/CO/1; Concluding observations on the initial report of Gabon, 02 Oct 2015, CRPD/C/GAB/CO/1; Concluding observations on the initial report of Kenya, 30 Sep 2015, CRPD/C/KEN/CO/1; Concluding observations on the initial report of Mauritius, 30 Sep 2015, CRPD/C/MUS/CO/1; Concluding observations on the initial report of Brazil, 29 Sep 2015, CRPD/C/BRA/CO/1; Concluding observations on the initial report of Germany, 13 May 2015, CRPD/C/DEU/CO/1; Concluding observations on the initial report of Mongolia, 13 May 2015, CRPD/C/MNG/CO/1; Concluding observations on the initial report of Turkmenistan, 13 May 2015, CRPD/C/TKM/CO/1; Concluding observations on the initial report of the Dominican Republic, 8 May 2015, CRPD/C/DOM/CO/1; Concluding observations on the initial report of Republic of Korea, 28 Oct 2014, CRPD/C/KOR/CO/1; Concluding observations on the initial report of Ecuador, 26 Oct 2014, CRPD/C/ECU/CO/1; Concluding observations on the initial report of Mexico, 26 Oct 2014, CRPD/C/MEX/CO/1; Concluding observations on the initial report of El Salvador, 07 Oct 2014, CRPD/C/SLV/CO/1; Concluding observations-Initial report-Costa Rica-, 11 May 2014, CRPD/C/CRI/CO/1; Concluding observations on the initial report of Australia, 24 Oct 2013, CRPD/C/AUS/CO/1; Concluding observations on the initial report of Paraguay, 15 May 2013, CRPD/C/PRY/CO/1; Concluding observations on the initial report of China, adopted by the Committee at its eighth session (17–28 September 2012), 15 Oct 2012, CRPD/C/CHN/CO/1.

<sup>54</sup> Ibid.

<sup>55</sup> Concluding observations on the initial report of South Africa, CRPD/C/ZAF/CO/1, 23 Oct 2018; Concluding observations on the initial report of Malta, 17 Oct 2018, CRPD/C/MLT/CO/1; Concluding observations on the initial report of Slovenia, 16 Apr 2018, CRPD/C/SVN/CO/1; Concluding observations on the initial report of Haiti, 13 Apr 2018, CRPD/C/HTI/CO/1; Concluding observations on the initial report of Luxembourg, 10 Oct 2017, CRPD/C/LUX/CO/1; Concluding observations on the initial report of Montenegro, 22 Sep 2017, CRPD/C/MNE/CO/1; Concluding observations on the initial report of the Republic of Moldova, 18 May 2017, CRPD/C/MDA/CO/1; Concluding observations on the initial report of Armenia, 08 May 2017, CRPD/C/ARM/CO/1; Concluding observations on the initial report of Bosnia and Herzegovina, 02 May 2017, CRPD/C/BIH/CO/1; Concluding observations on the initial report of Serbia, 23 May 2016, CRPD/C/SRB/CO/1;

<sup>56</sup> Concluding observations on the initial report of Algeria, 21 October 2018, CRPD/C/DZA/CO/1.

<sup>57</sup> Concluding observations on the initial report of Algeria, 21 October 2018, CRPD/C/DZA/CO/1; Concluding observations on the initial report of Poland, 21 October 2018, CRPD/C/POL/CO/1; Concluding observations on the initial report of Bulgaria, 19 Oct 2018, CRPD/C/BGR/CO/1; Concluding Observations in relation to the initial report of the Philippines, 16 Oct 2018, CRPD/C/PHL/CO/1; Concluding Observations in relation to the initial report of Oman, 17 Apr 2018, CRPD/C/OMN/CO/1; Observations in relation to the initial report of Seychelles, 16 Apr 2018, CRPD/C/SYC/CO/1; Concluding observations on the initial report of Haiti, 13 Apr 2018, CRPD/C/HTI/CO/1; Concluding observations on the initial report of Nepal, 13 Apr 2018, CRPD/C/NPL/CO/1; Concluding observations on the initial report of the Sudan, 10 Apr 2018, CRPD/C/SDN/CO/1; Concluding Observations in relation to the initial report of the Russian Federation, 09 Apr 2018, CRPD/C/RUS/CO/1; Concluding Observations in relation to the initial report of Latvia, 10 Oct 2017, CRPD/C/LVA/CO/1; Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland, 03 Oct 2017, CRPD/C/GBR/CO/1; Concluding observations on the initial report of Panama, 29 Sep 2017, CRPD/C/PAN/CO/1; Concluding observations on the initial report of the Kingdom of Morocco, 25 Sep 2017, CRPD/C/MAR/CO/1; Concluding observations on the initial report of Montenegro, 22 Sep 2017, CRPD/C/MNE/CO/1; Concluding observations on the initial report of the Republic of Moldova, 18 May 2017, CRPD/C/MDA/CO/1; Concluding observations on the initial report of Iran, 10 May 2017, CRPD/C/IRN/CO/1; Concluding observations on the initial report of Canada, 08 May 2017, CRPD/C/CAN/CO/1; ; Concluding observations on the initial report of Cyprus, 08 May 2017, CRPD/C/CYP/CO/1; Concluding observations on the initial report of the Plurinational State of Bolivia, 04 Nov 2016, CRPD/C/BOL/CO/1; Concluding observations on the initial report of Italy, 05 Oct 2016, CRPD/C/ITA/CO/1; Concluding Observations in relation to the initial report of United Arab Emirates, 02 Oct 2016, CRPD/C/ARE/CO/1; Observaciones finales sobre el informe inicial de Colombia, 29 Sep 2016, CRPD/C/COL/CO/1; Concluding observations on the initial report of Serbia, 23 May 2016, CRPD/C/SRB/CO/1; Concluding observations on the initial report of Uganda, 12 May 2016, CRPD/C/UGA/CO/1; Concluding observations on the initial report of Thailand, 12 May 2016, CRPD/C/THA/CO/1; Concluding observations on the initial report of Qatar, 02 Oct 2015, CRPD/C/QAT/CO/1; Concluding observations on the initial report of Gabon, 02 Oct 2015, CRPD/C/GAB/CO/1; Concluding observations on the initial report of Mauritius, 30 Sep 2015, CRPD/C/MUS/CO/1; Concluding observations on the initial report of Mongolia, 13 May 2015, CRPD/C/MNG/CO/1; Concluding observations on the initial report of Ecuador, 26 Oct 2014, CRPD/C/ECU/CO/1.

<sup>58</sup> Concluding observations on the initial report of Poland, 21 October 2018, CRPD/C/POL/CO/1.

<sup>59</sup> Concluding observations on the initial report of Poland, 21 October 2018, CRPD/C/POL/CO/1; Concluding observations on the initial report of Uganda, 12 May 2016, CRPD/C/UGA/CO/1; Concluding observations on the initial report of the Dominican Republic, 8 May 2015, CRPD/C/DOM/CO/1; Concluding observations-Initial report-Costa Rica, 11 May 2014, CRPD/C/CRI/CO/1; Concluding observations on the initial report of Australia, 24 Oct 2013, CRPD/C/AUS/ CO/1.

<sup>60</sup> Concluding observations on the initial report of the former Yugoslav Republic of Macedonia, CRPD/C/MKD/CO/1, 26 Oct 2018; Concluding observations on the initial report of Bulgaria, 19 Oct 2018, CRPD/C/BGR/CO/1; Observaciones finales sobre el informe inicial de Colombia, 29 Sep 2016, CRPD/C/COL/CO/1.

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<sup>61</sup> Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland, 03 Oct 2017, CRPD/C/GBR/CO/1; Concluding observations on the initial report of Panama, 29 Sep 2017, CRPD/C/PAN/CO/1; Concluding observations on the initial report of Honduras, 04 May 2017, CRPD/C/HND/CO/1; Concluding observations on the initial report of Chile-Advance Unedited Version, 12 May 2016, CRPD/C/CHL/CO/1.

<sup>62</sup> Observaciones finales sobre el informe inicial de Colombia, 29 Sep 2016, CRPD/C/COL/CO/1.

<sup>63</sup> Concluding observations on the initial report of Montenegro, 22 Sep 2017, CRPD/C/MNE/CO/1; Concluding observations on the initial report of Bosnia and Herzegovina, 02 May 2017, CRPD/C/BIH/CO/1.

<sup>64</sup> Ad Hoc Committee, seventh session, daily summary of discussions, 18 January 2006.

<sup>65</sup> Concluding observations on the initial report of Ethiopia, 03 Nov 2016, CRPD/C/ETH/CO/1; Concluding observations on the initial report of Montenegro, 22 Sep 2017, CRPD/C/MNE/CO/1.

<sup>66</sup> Concluding observations on the initial report of Ecuador, 26 Oct 2014, CRPD/C/ECU/CO/1; Concluding observations on the initial report of Germany, 13 May 2015, CRPD/C/DEU/CO/1.

<sup>67</sup> Concluding observations on the initial report of Algeria, 21 October 2018, CRPD/C/DZA/CO/1; Concluding Observations in relation to the initial report of Oman, 17 Apr 2018, CRPD/C/OMN/CO/1.

<sup>68</sup> Voluntarily adopted by the UK, and the case of the ECHR effectively incorporated into domestic UK law via the Human Rights Act 1998.

<sup>69</sup> Lord Kerr in *R (Steinfeld and Keidan v. Secretary of State for International Development)* [2018] UKSC 32 § 42.