



**Benchmark**

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# Guideline Summary: The United Nations Convention on the Rights of Persons

The best practice guidance produced by Benchmark promotes the principles contained within Article 13 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). Article 13 (Access to Justice) refers to a legal system that is designed to be accessible for all and where specifically required, reasonable accommodations are provided to ensure the effective participation of disabled people.

## **Understanding the United Nations Convention on the Rights of Persons with Disabilities**

### ***1. General Overview***

- New Zealand signed and ratified the UNCRPD in 2008, thereby accepting an obligation under international law to implement it.
- Implementation involves taking action to ensure and promote the full realisation of all rights contained in the UNCRPD (Article 4).
- New Zealand acceded to the Optional Protocol to the Convention on the 5th of October 2016. This enables individuals or groups, who claim to have had their rights breached under the Convention, to make a complaint to the United Nations Committee on the Rights of Persons with Disabilities.
- The UNCRPD does not seek to define “disability”, noting that it is “an evolving concept”. However, Article 1 does confirm that the UNCRPD includes “those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.

## **The UNCRPD and its application to the justice system**

### ***2. In terms of a responsive justice system, the following specific obligations are relevant:***

**(a) Universal design (Art 4(f)):** defined as the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design.

**(b) Elimination of discrimination (Art 4(e)):** which includes the denial of **reasonable accommodations** (Art 2), defined as the necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to

ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.

**(c) Article 12:** Equal Recognition before the Law and

**(d) Article 13:** Access to Justice.

### **3. Article 12 - Equal Recognition Before the Law**

- There are no permissible circumstances under international human rights law in which a person may be deprived of the right to recognition as a person before the law, or in which this right may be limited.
- The right to equal recognition before the law implies that legal capacity is a universal attribute inherent in all persons by virtue of their humanity and must be upheld for persons with disabilities on an equal basis with others.
- The UNCRPD's approach stands in contrast with laws that operate on the assumptions that mental capacity is a threshold requirement or necessary precondition of legal capacity.

### **4. Article 13 - Access to Justice**

- **In full:**

**(a)** State Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

**(b)** In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

- *Specific supports identified by the Committee in the exercise of legal capacity to access justice include:* ensuring that persons with disabilities have access to legal representation on an equal basis with others, first responders are trained to recognise persons with disabilities as full persons before the law, the judiciary is being trained and made aware of their obligations to respect and support the exercise of legal capacity of persons with disabilities, and support in the exercise of legal capacity.

For more detailed information refer to the full guideline [[link](#)].