Driving Progress on Article 13 of the United Nations Convention on the Rights of Persons with Disabilities: *Leveraging Technology for Greater Access to Justice*

In Article 13, the United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD) requires that States Parties ensure effective access to justice for persons with disabilities on an equal basis with others. Meanwhile, courts and justice systems worldwide are undergoing digital transformation. While these technology investments can help courts and justice systems cut costs and increase efficiencies, it is not clear that their technology roadmaps include a commitment to ensuring access to justice by people with disabilities. Without this commitment, justice systems currently risk leaving people with disabilities behind and creating new obstacles to participation. When justice systems invest in digital technologies that are accessible, and leverage new and emerging technology in innovative ways, they can both meet their transformation goals and increase access to justice for all people.

The Legal Imperative

The recently published advanced edited version of the UN Office of the High Commissioner for Human Rights (OHCHR) Report on the Right to Access to Justice under Article 13 of the CRPD clearly lays out the legal basis for access to justice. The report details how persons with disabilities today continue to face significant obstacles to accessing justice and underlines the CRPD principle that "equal and effective participation at all stages of and within every role within the justice system" is core to access to justice.

The CRPD, ratified by over 170 countries, is the first international human rights treaty to make explicit the right to access to justice. It defines what access means for persons with disabilities, including by specifying tools to overcome barriers. It makes clear that the administration of justice is fundamental

both to governance and citizenship. Under the CRPD, persons with disabilities must be able to effectively participate, directly or indirectly, in all legal proceedings, including at the investigative and other preliminary stages, and in all possible roles, for example as a claimant, defendant, witness, qualified expert, juror, judge or lawyer. Article 9 (2) (h) of the CRPD calls on States Parties to promote accessible legal information to persons with disabilities and to society at large by using a full and varied range of formats and modes of communication. It also notes that new technologies can help to achieve that objective.

Persons with disabilities continue to face restrictions to their participation in various capacities in legal proceedings, for example as judges, prosecutors, witnesses or jurors. The OHCHR report states that access to justice is often denied to persons with disabilities due to a lack of accessibility and access to information. This applies to both criminal proceedings and civil matters. These obstacles result in persons with disabilities being denied of their legal standing and due process guarantees. The OHCHR confirms that effective access to information and communication could enable persons with disabilities to both know and defend their rights and, importantly, that accessible Information and Communication Technologies (ICT) can contribute to improving access to justice.

G3ict emphatically agrees with the OHCHR report's assertion that the use of existing accessible ICTs can contribute to improving access to justice worldwide and there is a significant role for new and emerging technologies to act as tools for promoting access to justice for people with disabilities.

A Global Digital Transformation

The majority of court systems worldwide are still paper-based, but that is changing. According to a study by the American Bar Association, 55% of trial lawyers in the United States use technology in the courtroom, including 33% to access evidence and key documents. That is up from 28% in 2014. The same ABA study shows that in the United States. in 2017, 22% of courtrooms provided touch screens, compared to 16% just the previous year. Audio hardware provided or supported in courtrooms also showed an increase.

In Brazil, the State Court of Justice of Sao Paulo, has implemented a comprehensive technology plan to modernize the court and make it more efficient, including by requiring all justice processes be conducted and stored digitally. Citizens can conduct simple court services from their own technology devices and judges and attorneys can access case information remotely. Likewise, before moving to a digital platform in 2017, justice systems in the United Kingdom used to generate a million pages of documents a day or 365 million pages a year. Digitizing its processes using technology and the cloud has allowed for justices to work remotely and staff to manage growing caseloads more efficiently. Mainstream digital transformations of courts and justice systems like this are taking place in many geographies around the world.

These digital transformations can also promote greater inclusion and access to justice for persons with disabilities if investments are made in technologies that are accessible and when technology is used in innovative and inclusive ways. But it is critical that technology investments in justice systems include an explicit focus on accessibility. As early as 2004, Peter Blanck points out in his groundbreaking article, *Disability Civil Rights Law and Policy: Accessible Courtroom Technology*, that while technology can certainly enhance courtroom proceedings, without careful consideration it also can further isolate persons with disabilities from meaningful participation in the justice system. Blanck also makes the important point that investments in accessible and assistive technologies for persons with disabilities, for example real-time captioning for deaf and hard of hearing persons, can also benefit many others in courtroom proceedings.

Technology and Access to Justice

Nicole Bradick, CEO of the legal technology development firm Theory and Principle asserts in an interview with Legal Tech News (February 5, 2018) that technology needs to play a more prominent role in promoting greater access to justice. She states, "The legal community has been at this mission for a while now, and the latest numbers indicate that 86 percent of civil legal issues facing low-income Americans receive no meaningful legal help. And that's just civil issues. Technology has the obvious advantage of scaling knowledge and information to people who need it." G3ict believes persons with disabilities can be among the greatest beneficiaries of the effective and inclusive use of technology in justice systems.

Leaders in the tech industry also see the potential for technology to be leveraged to enable greater access to justice. In 2016 testimony before the New York State Access to Justice Commission, Dave Heiner (a senior executive at Microsoft and the board chair of Pro Bono Net) explained that "useful technologies that could help to reduce the justice gap are available today and ready to be deployed. The challenge is primarily one of funding, and perhaps training. Additional beneficial technologies are still in early stages of development, but it is not too soon for the access to justice community to begin to plan for their deployment."

Some justice systems have started to employ technology to make progress and close access gaps. The state of Alaska in the United States is a leader in using technology to enable remote court appearances via video or by telephone by parties, lawyers, and sometimes the judge. People who are not able to travel to a courthouse due to distance or disability benefit from these options. These same video remote technologies support sign language interpreting services for people who are deaf when a local interpreter is not available.

The UN CRPD Committee, the body of independent experts which monitors implementation of the CRPD, has raised concerns about the lack of free legal aid available to persons with disabilities. Here, technology can be employed to increase access to information and legal services. For example, in the

United States, the Legal Services Corporation, Pro Bono Net, and Microsoft are developing a prototype access to justice portal that will draw on state-of-the-art cloud and Internet technologies. Once fully developed, the portal will enable people to navigate the court system and legal aid resources, learn about their legal rights, and prepare and file critical court documents in a way that is comprehensive, inclusive, and easy to navigate. With advances in machine learning and artificial intelligence, it is possible to imagine systems that allow people to communicate naturally and receive help in a comfortable "chat" format tailored to their specific needs and abilities, including for example, people with visual, intellectual, and developmental disabilities.

Looking forward, it is possible to envision benefits for persons with disabilities using technologies that are just now emerging, like virtual reality (VR). A lawyer might use VR to help a person with autism or anxiety disorders prepare ahead of time to experience a busy courtroom environment or perhaps even provide testimony remotely through an avatar. Mitch Jackson, a senior partner at Jackson & Wilson in California asserts in an article by Bloomberg Law (November 18, 2017), "it's not a matter of if VR will be used in our lives and in the courtrooms, it's a matter of when".

Addressing the Digital Divide

As courts and justice systems move forward with investments in technology they must recognize there is already a significant and persistent digital divide for many persons with disabilities. In the United States, 23% of persons with disabilities never get online. That is nearly three times the rate for the population as a whole, which is just 8%. In their 2006 article, The Washington State Access to Justice Technology Principles: A Perspective for Justice System Professionals, Richard Zorza and Donald J Horowitz make the important point that the delivery of legal information through technology requires a capacity to access the system that some do not have, and when these access limitations, like the current digital divide, outweigh the benefits of technology, it defeats the goal of creating greater access to courts through the use of technology. We know that innovative technology solutions for increasing access to justice for persons with disabilities must be implemented together with public policies and programs (for example digital skills training, broadband deployment, etc.) to close the existing digital divide.

Moving Forward

Courts and justice systems can and should take advantage of new technologies and plan for, and deploy, accessible and innovative technologies as part of their digital transformations. G3ict believes eight interrelated strategies can help courts and justice systems leverage technology to support greater access to justice for persons with disabilities.

1. **Recognition and Awareness:** Governments should explicitly recognize that implementing technology solutions in courts and justice systems can do more than simply increase efficiencies

and reduce costs. When digital transformations are executed with a specific focus on accessibility, they can also facilitate an increased, direct, and more independent participation of persons with disabilities in courtroom proceedings in all roles (for example parties to a case, lawyers, judges, jurors, etc.). Standards and guidelines for judicial processes and procedures should be expanded and revised to include explicit accessibility requirements.

2. **Procurement of Accessible Technology**: Accessible technologies can be used broadly to advance non-discrimination for persons with disabilities and support their access to justice. Governments can use their "power of the purse" to advance equality through accessible courtroom technology. Requiring accessibility in all calls for tenders for technology products and services can help ensure that the digital transformation of courts and justice systems will narrow the digital divide for persons with disabilities and increase their access to justice.
3. **Mainstream inclusion into legal frameworks:** The CRPD states in its preamble that mainstreaming disability into laws, policies, and regulations is an integral to strategies for sustainable development. As part of their CRPD commitments, governments can identify amendments to existing legal frameworks and opportunities for new legislation and regulation that promote the adoption of accessible technology in courts and justice systems and support broader and deeper access to justice for persons with disabilities.
4. **Identify and Define Good Practices:** We are still in the early stages of a global trend toward the digital transformation of courts and justice systems. This gives governments and the global community, including civil society, international organizations, and industry, an opportunity to better understand how best to leverage technology investments to promote greater digital inclusion for persons with disabilities. Identifying both good practices and challenges can support building roadmaps to increased ICT accessibility and broader access to justice.
5. **Training and Guidance:** Courts and justice systems worldwide need guidance in identifying ICT accessibility gaps and clearly articulating accessibility priorities. Leaders and staff in courts and justice systems would benefit from technical assistance to better design and implement ICT accessibility strategies that support digital inclusion. Training should promote an understanding of how both existing and emerging technologies can be leveraged to promote greater access and involve a broad range of citizens and organizations, including from the disability community.
6. **Support Inclusive Innovation:** Leveraging technology to increase access will require infusing accessibility and inclusive design into the innovation and incubation of new courtroom and legal technology solutions. Governments should commit to supporting the development and deployment of new and emerging technology solutions that both benefit courts and justice systems and that also are inclusive of all persons. This will require government leaders, civil society and technology experts joining together to create conditions for a more citizen-driven and inclusive innovation process.
7. **Commitment to Inclusive Investments:** Multilateral organizations (for example United Nations, World Bank, Inter-American Development Bank, etc.) along with national development agencies

and leading foundations play a significant role in defining and promoting access to justice programs worldwide. Their lending and giving activities support the creation of access to justice policies, programs, standards, and performance metrics. Their investments influence critical technology decisions and investments for courts and justice systems in many countries. To achieve global scale in increasing access to justice, these influential global organizations must ensure that ICT accessibility and digital inclusion are a central part of their agendas.

8. **Involve Persons with Disabilities:** A core principle of the UN CRPD is the active engagement of persons with disabilities in all aspects of developing and implementing public policies and programs related to them. As court and justice systems move forward with digital transformations and consider strategies to improve access to justice, they should proactively involve persons with disabilities at each step in the process.

About G3ict

The Global Initiative for Inclusive Information and Communication Technologies – is an advocacy initiative launched in December 2006 by the United Nations Global Alliance for ICT and Development, in cooperation with the Secretariat for the Convention on the Rights of Persons with Disabilities at UN DESA. Its mission is to facilitate and support the implementation of the dispositions of the Convention on the Rights of Persons with Disabilities (CRPD) promoting digital accessibility and Assistive Technologies.