



IN BRIEF

CLOSING THE JUSTICE GAP FOR WOMEN WITH INTELLECTUAL AND/ OR PSYCHOSOCIAL DISABILITIES IN ASIA AND THE PACIFIC

LEGAL NEEDS SURVEY: SUMMARY OF FINDINGS AND RECOMMENDATIONS FOR THE PHILIPPINES

This document summarizes the results of a legal needs survey of women with intellectual and/or psychosocial disabilities in the Philippines, and provides recommendations on how to improve the justice journeys of these women.

OVERVIEW

Women with intellectual and/or psychosocial disabilities face a justice gap, globally. Despite guarantees in domestic laws and the obligations contained within the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), women with intellectual and/or psychosocial disabilities still encounter significant barriers when seeking justice.

Women with intellectual and/or psychosocial disabilities often see their rights to equal recognition before the law and their legal capacity denied or restricted, and face a lack of accommodations throughout judicial proceedings. They are disproportionately excluded from legal protections, are more likely to have their credibility questioned by justice actors and encounter economic barriers. These are often insurmountable obstacles to engaging with the justice system and obtaining fair outcomes.

To gather evidence to inform recommendations on how States in Asia and the Pacific can close this justice gap, a legal needs survey of women with intellectual and/or psychosocial disabilities was undertaken in Fiji, Indonesia, Nepal, and the Philippines. The survey used the Organisation for Economic Co-operation and Development (OECD) legal

needs survey methodology to better understand the legal needs, experiences and barriers faced by these women in accessing justice.¹

For the legal needs survey, the following definitions were used:

- **Psychosocial disability:** Umbrella term denoting the experience of mental health problems, mental distress or trauma that in combination with various barriers hinders the full and effective participation in society on an equal basis with others. This category may include persons whom have been traditionally labelled/diagnosed with mental ‘disorders’ affecting their mood, perception, or ability to regulate emotions and behaviour.² Examples include bipolar disorder, schizophrenia, and depression.
- **Intellectual disability:** Used to describe a person who has certain limitations in cognitive functioning or skills. A type of developmental delay which manifests in childhood, in combination with various barriers, it may result in difficulties with communication, social skills, or daily living activities and fully participating in society on an equal basis with others.³
- **Human rights model of disability:** Theoretical framework that values the inherent dignity and diversity of persons with disabilities as rights holders. It goes beyond anti-discrimination law to encompass economic, social and cultural rights. Emphasizing impairment as a form of natural human variation, this model requires disability to be considered in conjunction with other intersectional identities, such as gender.⁴

SUMMARY OF FINDINGS

The legal needs survey asked women with intellectual and/or psychosocial disabilities about everyday legal problems they may be facing and how they resolved these problems – including whether their legal decisions are respected by legal professionals and other actors in their lives, such as family and community members.

In total, 46 responses were received from the Philippines: 35 respondents identified as having a psychosocial disability, five respondents identified as having an intellectual disability, one respondent identified as having both an intellectual and psychosocial disability, and one respondent identified as having another or different type of disability.

Respondents in the Philippines predominantly identified legal problems relating to Health (14 per cent), Education (11 per cent), and Violence (11 per cent). Examples of the problems faced include being unable to afford medication, delays in receiving medical care, being unable to achieve the desired level of education, bullying, and violence inside the home.

How Respondents Resolved Problems

Only 29 per cent of problems identified by respondents were resolved. In other words, **71 per cent of problems remained unresolved** at the time of consultation.

In attempting to resolve the problem, respondents sought assistance from their personal social networks: 49 per cent of respondents shared the problem with someone, with most (57 per cent) choosing to share the problem with a household member or other friend or family member. Some 83 per cent of problems were managed by informal means, either by giving-up on resolving the problem, ignoring the problem, moving beyond its reach, or communicating with another party involved. The formal justice system was rarely used – **only one respondent indicated that their problem was ultimately resolved by a court or tribunal.**

It is important to note that despite having legal needs, many respondents indicated that they did not seek legal assistance, with a significant proportion of respondents believing that they did not have a legal problem or thought the other party may be right (13 per cent), or that the process would be too stressful (11 per cent).

How the Survey Results Relate to Current Law and Policy in the Philippines

The survey results demonstrate that women with intellectual and/or psychosocial disabilities in the Philippines encounter significant barriers that prevent them from accessing justice when dealing with a range of legal issues.

Viewed as a group, women with intellectual and/or psychosocial disabilities in the Philippines do not focus on legal needs and access to justice, as they tend to be primarily concerned with securing the adequate financial resources to meet basic needs. The economic empowerment of women with intellectual and/or psychosocial disabilities in the Philippines is essential to realizing all rights, including access to justice under the CRPD and domestic law.

To overcome this, policymakers, justice actors and relevant government entities should take steps towards amending current legislation in line with the CRPD, as well as making and implementing laws that are more operational, and ensuring adequate gender-responsive budgeting and evaluation. Government departments must be empowered with adequate financial and human resources to work collaboratively to protect and advance the rights of women with intellectual and/or psychosocial disabilities across all departments and responsibilities.

When working to close the justice gap, the State should engage and consult with women with disabilities and organizations of persons with disabilities (OPDs) to inform their work. Women with disabilities and OPDs should be acknowledged as experts, their lived experience should be utilized as a valuable and unique source of evidence for policy reform, and they should be adequately remunerated for their contributions.

There must also be a paradigm shift that embraces the human rights model of disability and changes the negative attitudes towards women with disabilities that exist in the Philippines, which are driven by intersecting forms of discrimination on the basis of gender and disability.

The following recommendations provide a road map for dismantling barriers faced by women with intellectual and/or psychosocial disabilities when accessing justice in the Philippines, and raising awareness of the human rights of persons with disabilities broadly.

RECOMMENDATIONS

Remove Legal and Policy Barriers

Meaningful Implementation and Compliance with International Human Rights Treaties

- **Comprehensively review and reform the national legal framework to ensure compliance with the CEDAW and the CRPD.** To ensure the effective implementation of the CRPD and the promotion and protection of the rights of women and girls with disabilities, it is essential to make these rights enforceable at the domestic level. This requires a cross-sectoral review of legislation to identify laws, including gender-neutral laws, that may disproportionately affect women with intellectual and/or psychosocial disabilities. For example, Rule 101 of the Rules of Court (Civil Procedure) provides for the commitment to hospital of 'insane' persons, and Section 13 of the Mental Health Act includes a definition of supported decision-making that is incompatible with the human rights model of disability and permits exceptions to informed consent.
- **Meaningfully implement the right to equal recognition before the law and equal recognition of legal capacity,** codified in Article 12 (Equal recognition before the law) of the CRPD. This is particularly important for women with intellectual and/or psychosocial disabilities as gender stereotypes (including the misconception that women with disabilities are vulnerable and need to be protected) are commonly used to justify denial of personhood, autonomy, and legal capacity through restrictions on reproductive choices, higher rates of substitute decision-making, and unique experiences with forced treatment.⁵ This requires a shift from formal substitute decision-making (i.e. guardianship) to supported decision-making, where persons with disabilities are empowered and supported to make decisions in accordance with their will and preferences. Communities should be empowered to support women with intellectual and/or psychosocial disabilities to fully express themselves and become powerful self-advocates. Domestic law must move away from conflating legal capacity (the recognition of being a rights holder and a legal decision maker) and mental capacity (having adequate decision-making skills, which can naturally vary and require varying level of support).⁶ Therefore, any legislative provisions that permit guardianship or other forms of legal capacity denial must be repealed, including Articles 37-39 of the Civil Code (substitute decision-making), as well as Articles 798-800 (power to make wills), and Section 92 of the Family Code (guardianship).

Reform of Domestic Law and Policy

- **Amend Republic Act 7277 (Magna Carta for Disabled Persons) to embrace the human rights model of disability** and remove provisions which are incompatible with the CRPD and CEDAW. Proclaim the right to equal recognition before the law and the right to access justice for persons with disabilities, with measures to respond to the additional barriers women with disabilities face when seeking justice. Establish accessible, effective and gender-responsive redress mechanisms.
- **Implement *Batas Pambansa Bilang 344 (Accessibility Law)* to foster a barrier-free environment in both public and private buildings,** including all justice buildings. Expand this law to also address digital accessibility for information available online regarding access to justice, as 39 per cent of respondents received information from a website or 'app' to better understand the problem.
- **Enforce Section 11 of the 1987 Constitution of the Republic of the Philippines as part of the right to legal aid,** as it provides for free access to the courts for persons experiencing poverty – the survey results found financial issues and the inability to meet basic needs to be pervasive among women respondents with intellectual and/or psychosocial disabilities.
- **Advance the right to work under Article 27 (Work and employment) of the CRPD** by establishing a programme for inclusive employment and targeted training for women with disabilities, including women with intellectual and/or psychosocial disabilities, such as through opportunities for paid work experience or internships. Create a strategy to raise awareness of women with disabilities as active and valuable members of the workforce. Provide targeted information for relevant persons: employers, employees, families, educators. Provide specialist support to help women with disabilities in recognizing, seeking out and taking up opportunities that arise (e.g. via career guidance in schools, grants for tertiary education, upskilling, access to dedicated recruitment professionals, mentors, peer supporters who can oversee each stage of the process). Provide access to funds for assistive technology and personal assistance to help women with disabilities achieve maximum productivity.
- **Fulfil the obligations in Chapter VII of the Magna Carta for Disabled Persons to provide adequate financial assistance to empower and financially support OPDs at all levels of government** (federal, autonomous region, provincial, municipal/city, and barangay) to monitor implementation of existing laws and provide community services, including

awareness-raising on the rights of women with disabilities and intersectional discrimination, peer support, workshops to navigate government payments, and any other needs that arise. Local government units have a particularly important role to play in promoting local OPDs, which is recognized in Section 40 of the Magna Carta for Disabled Persons, and should actively support the inclusion and participation of women and underrepresented disability groups, such as women with intellectual disabilities.

- **Fulfil the obligation to provide procedural accommodation when accessing justice**, including by ensuring that all courtrooms and justice buildings are physically accessible, permitting video testimony via video or in chambers, allowing personal assistance, providing accessible communication and information, recognizing different communication methods, and providing adequate interpretation (including professional sign language interpretation) and any other assistive methods required.⁷
- **Evaluate existing methods of data collection relating to women with disabilities.** Develop a strategy for gathering disaggregated data that can be used to create an accurate picture of women with disabilities (e.g. by age, gender, type of impairment, living situation, family status) and forecast the need for additional resources and infrastructure in key areas (e.g. health care, education, employment).
- **Evaluate existing access to justice initiatives for women with disabilities**, such as the use of mobile courts to address the urban-rural divide. Accept new proposals for short-term projects, especially those put forward by persons with disabilities and their representative organizations.
- **Oversee the delivery of health care (including mental health care) to ensure alignment with the principles of the CRPD.** Monitor the private health care sector to ensure access to quality services for women with disabilities from low-income households, including upholding a 20 per cent discount for medicines, medical, dental services under the Magna Carta for Disabled Persons.
- **Ensure adequate regional development.** Provide quality accessible infrastructure and services for women in rural and remote areas. Conduct an analysis of the needs of women with disabilities by location (including in emergency situations) and redistribute resources accordingly. Invest in technologies that promote accessibility and limit the carbon footprint (e.g. teleworking, telehealth). Consider the role of decentralization in ensuring improved wealth distribution, employment opportunities and local service provision for women with intellectual and/or psychosocial disabilities.

Remove Social and Attitudinal Barriers

- **Provide targeted and gender-sensitive training for justice actors** (e.g. social workers, public administrators, police, lawyers, judges, court staff) on the rights of women with disabilities in the legal system, including their right to procedural accommodation and to equal recognition before the law. Members of the circles-of-support of women with disabilities (including, but not limited to, parents/guardians, carers, teachers, colleagues, health and welfare professionals, disability service providers, public administrators) must also receive training to uphold the rights of women with disabilities when interacting with the rights holder.
- **Enforce and expand Section 2 of *Batas Pambansa Bilang 344* to promote the rights of persons with disabilities.** Promote disability as a natural part of human diversity. Reiterate that women with disabilities make valuable contributions and play an active role in the community. Equip women with disabilities, including women and girls with intellectual and/or psychosocial disabilities, with the knowledge and skills to promote and protect their rights, through peer support, community engagement and recognizing and reporting rights violations.
- **Apply Sections 9, 10 and 40 of the Magna Carta for Disabled Persons and implement Executive Order No. 417: Directing the Implementation of the Economic Independence Program for Persons with Disabilities to develop training programmes that address the employment gap between persons with disabilities and persons without disabilities.** Establish relationships between local government and OPDs to create programmes that enhance the economic and social well-being of women with disabilities. Programmes should be focused on enhancing economic and educational opportunities for women with intellectual and/or psychosocial disabilities, as the survey found that in the Philippines financial issues and an inability to meet basic needs constitute the most pressing concerns for this group.
- **Strengthen awareness-raising at grassroots level**, especially on informal denial of legal capacity and the need for support for independent living. Disseminate information through existing channels, within public spaces: schools, hospitals, workplaces, and churches. Collaborate with OPDs to provide community outreach and targeted interventions.

CONCLUSION

The recommendations for the Philippines largely relate to the need to embrace the paradigm shift to the human rights model of disability encapsulated by the CRPD. This requires moving away from allowing substitute decision-making to empowering women with disabilities to make decisions in their own community. The fulfilment of all human rights guaranteed under the CRPD, including those of women with intellectual and/or psychosocial disabilities, will help close the justice gap and create a more inclusive and equitable society. Women with intellectual and/or psychosocial disabilities must be provided the opportunities to realize their right to work and education if they are to have an adequate standard of living and meet basic needs, in accordance with Articles 24 (Education) 27 (Work and employment) and 28 (Adequate standard of living and social protection) of the CRPD. Rights holders must be empowered to enforce their rights, and duty bearers must have the appropriate rights knowledge

and gender sensitivity for them to do so. By pairing rights awareness with the ability to exercise legal capacity, significant barriers to accessing justice will be removed, contributing to a sustainable platform for achieving justice goals for women with intellectual and/or psychosocial disabilities.

To deliver justice for all by 2030 in a world where billions of people are not yet able to obtain justice, we must resolve justice problems, prevent injustices from occurring, and use justice systems to create opportunities for people to participate fully. At the core of this approach are efforts to put people at the center of justice systems, co-designing fair, inclusive, relevant and timely solutions for all citizens.

To advance justice for women with intellectual and/or psychosocial disabilities, legislative and institutional measures alone are not enough for long-lasting and meaningful change. We encourage duty bearers and rights holders to collaborate, utilizing their knowledge, skills, and wisdom, and to use innovative approaches in shaping justice solutions together.

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