

In Brief



WOMEN
ENABLED
INTERNATIONAL



ACCESS TO JUSTICE

FOR WOMEN WITH INTELLECTUAL AND PSYCHOSOCIAL
DISABILITIES IN ASIA AND THE PACIFIC



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INTRODUCTION

Women with intellectual and psychosocial disabilities in Asia and the Pacific face a complex set of barriers to accessing justice. Compared to both men with disabilities, and women without disabilities, women with disabilities are disproportionately excluded from legal protection.¹

Women with intellectual and psychosocial disabilities² often see their rights to equal recognition before the law and their legal capacity restricted, and face a lack of accommodations throughout judicial proceedings. They encounter significant economic barriers and, critically, are more likely to have their credibility questioned by justice actors, often creating insurmountable obstacles to engaging with the justice system.

The UN Special Rapporteur on Violence Against Women has recognized that perceptions about credibility — including the infantilisation of women with disabilities can lead to a “systematic failure of the court system to acknowledge them as competent witnesses.”³ This discrimination is particularly pronounced towards women with disabilities who are members of minority groups. These women are often subject to multiple and intersecting forms of discrimination because of their race or ethnicity, gender, and disability status combined.

In addition, women with intellectual and psychosocial disabilities are likely to encounter barriers in attaining positions as lawyers, judges, and other officials in the justice system, or serving on juries, thereby preventing their contribution to the administration of justice to society as a whole and limiting their potential to change the justice system from the inside.

“Access to Justice” is a broad concept, encompassing peoples’ effective access to the systems, procedures, information, and locations used in the administration of justice, including all judicial and quasi-judicial settings, religious, community, and/or customary legal systems, and law enforcement. In this context, access refers to both direct or indirect participation in these systems, including as complainants, defendants, witnesses, and prisoners.

CEDAW/C/GC/33 (2015)⁴

Women with intellectual and psychosocial disabilities are among the most marginalized of the estimated 690 million persons with disabilities living in Asia and the Pacific.⁵ They face numerous barriers to full and equal participation in society; in some countries, they cannot own property, open a bank account, or participate in elections either as voters or candidates.⁶ This marginalization has given rise to additional legal problems, which could have been prevented through inclusion and non-discrimination.

BARRIERS TO JUSTICE

Gender biases and stereotypes play a significant role in limiting access to justice for all women. They can affect the weight given to women’s testimony and the impartiality of justice system actors. For women with intellectual and psychosocial disabilities, additional disability-based stereotypes and stigma compound barriers. These barriers can include attitudinal, environmental and institutional barriers and include the following:

Legal capacity

Legal systems directly and indirectly exclude women with intellectual and psychosocial disabilities through restrictions on the exercise of their legal capacity. Guardianship procedures and other substitute decision-making regimes remove or limit legal standing, which often results in women with intellectual and psychosocial disabilities not being able to initiate legal proceedings. Such laws also limit legal agency, which can make the choices of the individual legally unenforceable, as well as prohibit the individual from contracting and instructing a legal representative. In addition, practices that assess competence to participate in proceedings can have a similar effect and are often discriminatorily applied to people with intellectual and psychosocial disabilities. The result of these denials of legal capacity is that women with intellectual and psychosocial disabilities often have significantly poorer justice outcomes. For example, laws that allow for an individual to be found ‘unfit to plead’ are often disproportionately applied to people with

intellectual and psychosocial disabilities and they can result in the individual being held indefinitely without a trial or being held significantly longer in state custody than if they were convicted. Recognising the right to legal capacity on an equal basis with others is key in order for women with intellectual and psychosocial disabilities to have equal access to justice forums, and ensuring that the choices of women are respected in the justice system. These elements are the foundations of realising the right to access to justice for women with intellectual and psychosocial disabilities.

“Legal capacity” is the capacity to be both a holder of rights and an actor under the law. Legal capacity to be a holder of rights entitles persons to full protection of their rights by the legal system. Legal capacity to act under the law recognizes that person as an agent with the power to engage in transactions and create, modify or end legal relationships.

Committee on the Rights of Persons with Disabilities, general comment No. 1 (2014) on equal recognition before the law, para. 12.

Perceived credibility

Justice actors can perceive women with intellectual and psychosocial disabilities as being less credible witnesses and prior mental health treatment may be used to discredit testimony, deterring them from filing complaints, giving evidence, or testifying in court. In instances of sexual and gender-based violence, women are often the only witnesses besides the perpetrator. This can put women with disabilities at even greater risk of violence as perpetrators know that their complaints are likely to be taken less seriously. If previous complaints have been dismissed, they may be less likely to report abuse in the future.

Institutionalization

National laws may be not in line with or implemented according to human rights instruments, such as the Convention on the Rights of Persons with Disabilities (CRPD), and permit violations of the rights of women with intellectual and psychosocial disabilities, such as forced sterilization and institutionalization. Women are at greater risk of institutionalization and isolation from the rest of the community. Institutionalized women and girls with disabilities are further susceptible to gender-based violence, including forced sterilization, sexual and physical abuse, emotional abuse and further isolation. They also face increased barriers to reporting such violence.

Often, women have no legal recourse to challenge decisions, especially in institutions which generally lack independent complaints mechanisms for individuals, and adequate information channels regarding their rights.⁷

Forced sterilization

There is both a legislative framework and a social norm of disempowerment resulting in women with intellectual and psychosocial disabilities being at risk of sterilization and other forms of forced contraception without an individual's free and informed consent. Many laws restrict legal capacity and reproductive choice of these women and enable their family or others to make decisions about fertility—doctors, psychiatrists, prosecutors, even municipal officials can be designated to make decisions on people's behalf and without their consent.

Awareness of rights and accessibility

Women with intellectual and psychosocial disabilities often lack awareness of their rights, including their right to access justice, especially those who have experienced a lifetime of mistreatment, isolation, and/or marginalization. Lack of awareness of rights is also in part due to information not being made available in accessible formats. Accessibility of information is not limited to legal knowledge or information on legal proceedings. It also includes all other information, such as contact details of lawyers with the required level of expertise in disability issues, and existing supports for persons with disabilities who seek justice, provided by public, private or non-profit organizations.

Support

A lack of legal assistance, representation, and judicial support to assist women with intellectual and psychosocial disabilities to navigate the justice system, results in a disproportionate number of cases being withdrawn before the conclusion of proceedings. A key barrier to the judicial system at the initial stage is the lack of knowledge of disability issues in the justice and law-enforcement sectors. For example, even where women are able to obtain legal assistance, lawyers are often not trained to work with clients with disabilities and few law schools provide such training.

Economic barriers

Women with intellectual and psychosocial disabilities face greater economic barriers⁸ associated with accessing justice as they are also more likely to live in poverty than women without disabilities or men with disabilities. Yet, there is often a lack of gender- and disability-sensitive government budgeting to assist women with disabilities who are unable to afford legal representation, public transportation, or other costs associated with access to justice.

THE HUMAN RIGHTS FRAMEWORK

The right of women with disabilities to access justice is underpinned by international human rights treaties, including the International Covenant on Civil and Political Rights, the CRPD, and the Convention on the Elimination of All Forms of Discrimination against Women. Enshrined in these are the rights to: equal recognition before the law and access to justice; equality and non-discrimination; accessibility; legal assistance, fair trial, and effective remedy; and effective participation in all legal proceedings through the provision of procedural, age-appropriate, and disability-related accommodations.

The International Principles and Guidelines on Access to Justice for Persons with Disabilities support states in designing and implementing justice systems that provide equal access to justice for persons with disabilities in line with international human rights standards. Released in 2020, they were developed in collaboration with disability rights experts, organizations of persons with disabilities, states, academics, and other practitioners.

Despite the strong legal framework and additional guidance provided through various sources, the implementation of the CRPD and other Conventions, and harmonization with domestic legislation is lacking. Without the laws in place to respect, protect and fulfil the rights of women with intellectual and psychosocial disabilities the practice and approach of society remains out of sync with their rights and the paradigm shift promised by the CRPD.

GAPS AND POSITIVE DEVELOPMENTS

Globally, women with intellectual and psychosocial disabilities face a multitude of challenges as they seek to engage with the justice system. In relation to a number of countries across Asia and the Pacific, the Committee on the Rights of Persons with Disabilities has expressed concerns related to access to justice for persons with disabilities generally, and has drawn attention to women with intellectual and psychosocial disabilities within their concluding observations.

Examples from concluding observations for some individual countries from Asia and the Pacific, concern has been expressed about:⁹

- “Overall exclusion of women with disabilities, in particular women and girls with intellectual and psychosocial disabilities, as well as those from indigenous peoples and other ethnic and religious minorities, in decision-making processes concerning matters affecting them.”
- “Legislation still denies the legal capacity of persons with disabilities to express their will and preferences concerning all aspects of their lives, establishes guardianships and restricts the capacity of persons with intellectual and psychosocial disabilities to exercise their rights.”
- “Persons with intellectual and/or psychosocial disabilities are allegedly chained or detained in houses, or forcibly placed in psychiatric facilities, and that physical examinations, medical treatments and medication procedures are sometimes carried out without their free consent.”
- “Reported cases of the chaining, torturing and overdosing of persons with intellectual and/or psychosocial disabilities in psychiatric treatment facilities.”
- “Cases of violence against and abuse of persons with disabilities are not properly investigated and the perpetrators are not punished; for example, cases of sexual abuse of women with disabilities, especially women with intellectual and psychosocial disabilities, are dealt with through reconciliation in the women’s villages, whose authorities impose a fine as a sanction for the perpetrator.”

Since the examination of state reports and the issuance of the concluding observations, some countries have taken measures to try and address these concerns. There are also some positive developments in the region that show some progress in improving access to justice for women with intellectual and psychosocial disabilities.

Photo: UN Women/M R Hasan



FOR EXAMPLE:

- **SAMOA** adopted a National Policy for Persons with Disabilities (2021-2031), which relevantly includes improving access to justice services, improving awareness on psychosocial disabilities, and accounting for the experiences of persons with learning (intellectual) disabilities. It further notes that disability inclusion will be mainstreamed throughout the planning and policy initiatives of the law and justice sectors.¹⁰
- **IN INDIA**, the Criminal Law Amendment Act (2013) amended a number of laws related to crimes committed against women and included amendments enabling the participation of women with disabilities in the criminal justice process, including by codifying: (1) the right to record statements with police in the safety of one's own home or other place of choice; (2) the right to have statements to police videotaped; (3) the right to assistance by a special educator or interpreter when the complaint is recorded and during trial; and (4) an exemption from having to repeat videotaped statements at trial, subject to cross-examination. The amendments mandate access to specific accommodations that are procedural and age-appropriate, such as special educators and materials in plain language.¹¹
- **INDONESIA'S** Komnas Perempuan (National Commission on Women, an independent national human rights institution) has become increasingly active on the rights of persons with intellectual and psychosocial disabilities. For example, in 2018 they carried out monitoring of women with psychosocial disabilities in mental-health hospitals and mental-health treatment facilities (rehabilitation centres) and reported their findings about the treatment of the women they observed. Noting that the treatment did not meet human rights standards, including the CRPD and Convention Against Torture, Komnas Perempuan made recommendations for the Indonesian Government.¹²

A man raped a woman with an intellectual disability [...], resulting in pregnancy and incarceration of the woman for having premarital sex with her rapist. A determining factor to incarcerate her, for the justice sector, was when police asked if she liked the man who raped her, she said 'yes'.

A real-life example shared by a disability rights advocate from the Asia Pacific region

HOW CAN WE ENSURE ACCESS TO JUSTICE?

The barriers that prevent access to justice for women with intellectual and psychosocial disabilities in Asia and the Pacific can be dismantled. Actions to ensure that they can engage with the administration of justice on an equal basis with others without discrimination, and secure fair justice outcomes, include the following:

- Understand the differentiated justice problems of women with intellectual and psychosocial disabilities, and the impact of different social and economic environments, including through **LEGAL NEEDS SURVEYS** or other tools. This will provide much-needed data about the evolving legal needs of women with intellectual and psychosocial disabilities and can provide evidence on their experiences with the justice system and actors.
- **PREVENT THE JUSTICE PROBLEMS** that stop women with intellectual and psychosocial disabilities from participating fully, equally and meaningfully in society. This includes tackling stigma and discrimination, recognizing the contribution of women with disabilities, and enabling their inclusion in society on an equal basis with others, including through independent and supported decision-making, de-institutionalization and transition to independent living, providing community support services, and other avenues in line with the CRPD. The Guidelines on Deinstitutionalization, Including in Emergencies¹³ should serve as the basis for planning deinstitutionalization processes and prevention of institutionalization.
- **PUT WOMEN WITH INTELLECTUAL AND PSYCHOSOCIAL DISABILITIES AT THE CENTRE OF JUSTICE SERVICES**, raising their awareness of their rights, and providing the necessary accommodations and support for them to engage in their justice journeys, including through cost-effective mechanisms, independent complaint avenues, information in understandable and accessible formats, independent intermediaries and facilitators, and alternative pathways and remedies that serve their justice needs.
- Recognize women with disabilities as **LEGAL ACTORS**, and ensure that their decisions and choices are listened to and given weight on an equal basis with others. Laws, policies, guidelines and practice must be repealed, amended and changed so they respect and protect the rights to legal capacity and access to justice, and substituted decision making replaced with supported decision making. Longer term legal and policy reform should be complimented by immediate creative solutions taken by individual justice actors to facilitate effective justice outcomes.

- **INCREASE COOPERATION AND DIVERSIFY JUSTICE PARTNERS TO WORK TOWARDS REALIZING ACCESS TO JUSTICE FOR WOMEN WITH INTELLECTUAL AND PSYCHOSOCIAL DISABILITIES.**

Women with intellectual and psychosocial disabilities are best placed to share their experience of justice and their justice needs, they need to be listened to and worked with, as well as their representative organizations, to develop justice solutions. Support should be given to representative organizations of persons with disabilities that include and amplify the voices and views of women with intellectual and psychosocial disabilities in Asia and the Pacific, especially those working on access to justice and can support justice journeys. Innovation should be encouraged, adapting programmes and ideas for what works in each local context.

- Empower women with intellectual and psychosocial disabilities to **CO-DESIGN JUSTICE SERVICES**, taking into account the diversity of persons with disabilities in judicial proceedings as witnesses, victims or perpetrators, and to **LEAD INITIATIVES** for justice actors on the rights of persons with disabilities and the implementation of the International Principles and Guidelines on Access to Justice for Persons with Disabilities. Consulting and providing training for women with intellectual and psychosocial disabilities should be done in a way that allows meaningful and effective participation, allowing adequate time and appropriate support for their engagement.

- **INCLUDE WOMEN WITH DISABILITIES AS ACTORS IN THE JUSTICE SYSTEM** – police, lawyers, judiciary, legal professionals, etc. This will better infuse lived experience of gender and disability issues throughout the justice systems.

Action plans can be a practical tool through which a phased and systematic approach to removing barriers can be taken and measures to ensure disability-inclusive and gender responsive justice can be implemented.

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1. Committee on the Rights of Persons with Disabilities. 2016. [General Comment No.3 on Article 6 – women and girls with disabilities.](#)
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3. UN General Assembly. 2012. [Note by the Secretary-General, Report of the Special Rapporteur on violence against women, its causes and consequences, A/67/227, para. 20.](#)
4. UN Committee on the Elimination of Discrimination Against Women (CEDAW). 2015. [General recommendation No. 33 on women’s access to justice.](#) [CEDAW/C/GC/33.](#)
5. ESCAP. 2021. [Disability at a glance 2021: shaping disability-inclusive employment in Asia-Pacific.](#)
6. International Foundation for Electoral Systems, Asia-Pacific.
7. Committee on the Rights of Persons with Disabilities. 2017. [General comment No.5 on Article 19 - the right to live independently and be included in the community](#)
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10. Samoa National Policy for Persons with Disabilities (2021-2031). See: <https://mwcsd.gov.ws/index.php/publications>
11. Women Enabled International. 2019. [Submission from Women Enabled International to the Special Rapporteur on the Rights of Persons with Disabilities: Good Practices for Increasing Effective Access to Justice for Women and Girls with Disabilities.](#)
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