



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 FIJI

This document summarizes the results of a legal needs survey of women with intellectual and/or psychosocial disabilities in Fiji, 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, 34 responses were received from Fiji: 24 respondents identified as having a psychosocial disability and 10 identified as having an intellectual disability.

Respondents in Fiji predominantly identified legal problems relating to: Health (17 per cent), Violence (14 per cent), Housing (13 per cent) and Education (13 per cent). Examples of problems faced include denial of health care, verbal and physical abuse by siblings, violation of parental rights, denial of the right to attend school, and problems purchasing property.

How Respondents Resolved Problems

Only 17 per cent of problems identified by respondents were resolved. In other words, **83 per cent of problems remained unresolved** at the time of consultation.

In attempting to resolve problems, respondents sought assistance from their personal social networks: 35 per cent of respondents shared the details of the problem with someone, with most (54 per cent) choosing to share the problem with a family member, household member or friend. Some 92 per cent of problems were addressed informally by respondents, including by communicating with another party involved, giving up on resolving the issue, ignoring it, or moving beyond its reach.

The formal justice system was rarely used – **only two respondents indicated that the problem was ultimately resolved by a court or tribunal judgment.**

It is important to note that despite having legal needs, many respondents expressed that they did not seek legal assistance, thinking it would be too stressful (cited as the reason for not seeking assistance by 29 per cent of respondents) or being too scared to take action/obtain advice (cited by 15 per cent of respondents). Women indicated being harassed, threatened, or assaulted because of the problem they faced. This low level of legal redress may be attributable to a broader sociocultural context where, in many cases, legal assistance tends not to be sought, particularly in cases of gender-based violence.⁵

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

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

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. These actors 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 Fiji, 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 Fiji.

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 CRPD.** To ensure the effective implementation of the CRPD and the protection of the rights of women and girls with disabilities (Article 6 of the CRPD), 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, certain Fijian laws reference ‘psychological capacity’, ‘unsound mind’, or ‘mental impairment’ as grounds for restricting the rights of women with intellectual and/or psychosocial disabilities. This can include restrictions on who can be an approved adoptive parent (Section 10, Adoption Act 2020), who is deemed competent as a witness in civil proceedings (Section 7, Civil Evidence Act 2002), who

can apply for an order under the Domestic Violence Act (Section 19), who is eligible to vote (Section 3(2) of the Electoral (Registration of Voters) Act 2012), and who can administer their own financial affairs (Section 2, 20 of the Fiji Public Trustee Corporation Act 2006).

- **Encourage courts, tribunals, and statutory bodies to utilize their power to apply international law under Section 7(b) of the Constitution of the Republic of Fiji**, including the CRPD and CEDAW, to advance the rights of women with intellectual and/or psychosocial disabilities in common law.
- **Meaningfully implement the right to equal recognition before the law**, in line with Article 12 (Equal recognition before the law) of the CRPD, by establishing a system of supported decision-making. 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.⁶ 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 levels of support).⁷ Enable women with disabilities to make use of tailored, flexible support from a trusted individual or organization. Provide training to decision-making assistants to ensure that they are operating under the human rights model, guided by the will and preference of the rights-holder, namely the woman with a disability. Normalize the provision of support in local, non-medical, non-legal settings of the person's choosing. Recognize that decision-making skills can vary by topic (e.g. health care, finances), with each woman having a different threshold for support, dependent upon their unique circumstances.
- **Advance the right to education and the right to employment** under Article 24 and Article 27 of the CRPD respectively, to enable women with intellectual and/or psychosocial disabilities to participate equally in society alongside women who do not have disabilities, and to achieve their full potential. Enforce these rights and the obligation to provide reasonable accommodation through Sections 43 and 45 of the Rights of Persons with Disabilities Act and Section 19 of the Human Rights and Anti-Discrimination Commission Act 2009. Provide financial supports to businesses to incentivize the hiring of persons with disabilities, including women with intellectual and/or psychosocial disabilities.

Reform of Domestic Law and Policy

- **Remove the limitation on the rights of persons with disabilities under Section 42(3) of the Constitution of the Republic of Fiji**, including those hampering accessibility, access to different communication materials, and the right to vote (Section 55(2)-(3)), as well as restrictions on personal liberty (Section 9(1)(h)).
- **Fully implement the Rights of Persons with Disabilities Act by developing a gender-responsive implementation plan for the Act.** In doing so, government departments must be empowered with adequate financial and human resources to work collaboratively to protect and advance the rights of persons with disabilities across all government departments and responsibilities in a gender-responsive manner. Engage with and fund women with disabilities and OPDs to assist in implementation.
- **Address the rural-urban divide in accessing justice.** Enable a dialogue with women with intellectual and/or psychosocial disabilities, village heads and members of the local community to reflect upon how justice processes could be improved to meet the specific needs of those women with disabilities living in rural and remote island areas. This may include support for making community-based justice mechanisms, operating in line with the CEDAW, accessible to women with disabilities.
- **Ensure that existing justice systems are accessible to women with disabilities.** This should include addressing the additional barriers faced by women with intellectual and/or psychosocial disabilities when seeking redress for violations, such as reporting to the police, attending a court/tribunal, or filing a case with a designated formal agency (e.g. Ombudsman) or enforcement authority (e.g. Fijian Competition and Consumer Commission). Develop new schemes to bring problem resolution a step closer for those who face obstacles, such as unreliable public transport or difficulty in taking time off work to attend faraway proceedings (e.g. mobile courts).
- **Fulfil the obligation to provide procedural accommodation under Section 33 of the Rights of Persons with Disabilities Act and Article 13 (Access to justice) of the CRPD** when accessing justice, including for example, 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.⁸ This can be done

in part by implementing the Constitutional guarantee to accessibility in Section 42 of the Constitution of the Republic of Fiji.

- **Fully implement the National Action Plan to Prevent Violence Against Women and Girls.** Ensure that associated policies and programs respond to the specific violence faced by women with disabilities, including women with intellectual and/or psychosocial disabilities. Recognize that women with intellectual and/or psychosocial disabilities have specific justice needs that must be included in the ‘whole-of-government’ and ‘whole-of-community’ approach underpinned by the Action Plan, as women with disabilities experience higher rates and more serious forms of violence.⁹
- **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).

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.
 - **Address embedded gender and disability stigma and stereotypes that enable impunity for human rights violations** against women with intellectual and/or psychosocial disabilities. Address the legacy of reporting sexual violence as ‘shameful’ and ‘taboo’ by providing education. Target the root of such stigmatization, including patriarchal attitudes, and meaningfully implement measures to further gender equality. Take an inclusive approach to education, conducting awareness campaigns to reiterate the positive role that men and boys can play in sustaining a feminist movement that is disability inclusive. Education on gender equality and disability inclusion should begin in primary school, paired
- with a larger public outreach campaign. Information should be disseminated online and in print, particularly in leaflets, books, and self-help guides, as 27 per cent of survey respondents sought advice from these sources.
- **Train law enforcement to take all reports of gender-based violence seriously,** which entails knowledge and recognition of the rights of women with intellectual and/or psychosocial disabilities, including to equal recognition before the law and to legal capacity. Enforce the Fijian Police ‘No-Drop Policy’ and the provisions of the Domestic Violence Act 2009, enabling police to apprehend alleged perpetrators, conduct thorough investigations, and provide assistance to survivors. Sensitize law enforcement and justice actors on the causes and effects of gender-based violence. Refrain from referring gender-based violence cases to ‘informal reconciliation procedures’, and instead (if done with the consent of the victim) seek justice formally through the criminal justice system (pressing charges).
 - **Raise awareness of the rights of women with disabilities** in accordance with Article 8 (Awareness-raising) of the CRPD. Promote disability as a natural part of human diversity. Reiterate that women with disabilities make meaningful 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. Address the impact of intersecting identities and the multiple forms of discrimination that women with disabilities may experience. Tackle prevailing misconceptions concerning the role of women with intellectual and/or psychosocial disabilities within society and the family, and promote their rights to sexual and reproductive health and autonomy, and the freedom to marry, and to have children.
 - **Discourage and prevent informal denial of legal capacity,** where persons make decisions on behalf of a woman with an intellectual and/or psychosocial disability without any legal authorization or safeguards for doing so. This can be done by raising awareness of the right to legal capacity, and maintaining a robust system of supported decision-making endorsed by the community. Ultimately, women with intellectual and/or psychosocial disabilities should be recognized as autonomous rights holders and have their rights respected by all State actors (e.g. government, village heads) and non-state actors (e.g. religious officials, family members, friends).

CONCLUSION

The above recommendations relate largely to the need for Fiji to fully embrace the human rights model of disability, which promotes and protects the rights of women with disabilities, encapsulated by the CRPD. 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. The Rights of Persons with Disabilities Act is a positive step forward, and must now be fully implemented if it is to be effective and have a meaningful impact on the rights of women with intellectual and/or psychosocial disabilities. Raising awareness of the rights of women with disabilities will play a role in ending the stigmatization and stereotyping that women with intellectual and/or psychosocial disabilities face. 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 the 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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