



## 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 NEPAL

This document summarizes the results of a legal needs survey of women with intellectual and/or psychosocial disabilities in Nepal, 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.<sup>1</sup>

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.<sup>2</sup> 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.<sup>3</sup>
- **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.<sup>4</sup>

## 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, 57 responses were received from Nepal: 31 respondents identified as having a psychosocial disability, 25 respondents identified as having an intellectual disability, and one respondent identified as having both an intellectual and psychosocial disability.

Respondents in Nepal predominately identified legal problems relating to: Government Payments (29 per cent), Housing (22 per cent) and Consumer Rights (21 per cent). Examples of problems mentioned include being denied a disability identity card, enduring a forced living situation with abusive relatives, property damage due to natural disaster, being defrauded during purchases, and being denied a fair price for goods sold at market. Many of the women indicated that they were struggling to meet basic needs, including extra costs related to their disability, due to a lack of financial resources.

### How Respondents Resolved Problems

Only 10 per cent of problems identified by respondents were resolved. In other words, **90 per cent of problems remained unresolved** at the time of consultation.

In attempting to resolve the problem, respondents made use of both the formal justice system and personal social networks. 91 per cent shared details of the problem with someone, 70 per cent obtained assistance from an individual or organization, and 37 per cent sought to resolve an issue by speaking to the person they had the problem with.

The **formal justice system was used by 19 per cent of respondents** to resolve their problems.

It is important to note that despite having legal needs, many respondents indicated that they did not seek legal assistance because they worried it would be too stressful (16 per cent), they were scared to take action/get advice (16 per cent), or were concerned about the financial cost involved (10 per cent). The majority of the women indicated experiencing stress and ill-health due to their problems.

## How the Survey Results Relate to Current Law and Policy in Nepal

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

One key barrier is that the rights protected under domestic disability and human rights law are not realized in the everyday lives of women with disabilities. The intersection of disability and gender is felt acutely by women with disabilities in Nepal, who experience discrimination on the basis of caste, class, ethnicity, gender, and geographic location.

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)<sup>5</sup> when reviewing laws to comply with the rights of persons with disabilities. 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.

Gender equality experts and representatives of OPDs must be considered for membership of State committees to guide and oversee the implementation process. They must be viewed as key actors in the implementation process, as per the disability community's principle 'Nothing about us without us'. They must be equipped with additional resources to hire personnel (including gender and disability-rights specialists), provide training, and develop the infrastructure needed to work with and on behalf of the State, for the benefit of persons with disabilities at community level. This can be achieved through provision of grants and funding streams for projects and pilot programmes to strengthen and expand existing efforts towards peer advocacy and access to justice.

There must be a paradigm shift that embraces the human rights model of disability and addresses stigma and stereotypes towards women with disabilities that exists

in Nepal, including women with disabilities from lower castes. The survey results indicate that many respondents experienced an informal denial of their legal decision-making rights by their family, friends, and support persons. In other words, despite having the legal authority to make decisions, women with disabilities were not allowed to make their own decisions in practice due to the actions or decisions of their family or other members of their support system.

The following recommendations provide a road map for dismantling barriers faced by women with intellectual and/or psychosocial disabilities when accessing justice in Nepal.

## 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 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.
- **Consider the implications of existing provisions of domestic law in light of the human rights model and the adjustments which must be made accordingly.** Outline the consequences for community integration and local development under Article 19 of the CRPD. Establish what these consequences would look like in practice, including by outlining a plan for resource allocation (by using, for example, Section 30 of the Disability Act 2074 (2017) relating to the establishment of rehabilitation centres as a form of housing).
- **Establish a supported decision-making paradigm** that is compliant with the obligations under Article 12 (Equal recognition before the law) of the CRPD. The ‘best interest’ approach (meaning when decisions are made by other people, on behalf of the person with a disability, based on what is perceived to be in their best interest) should be discarded in favour of a gender-responsive and person-centred approach, aligned with will and preference. Any reform should take place only after extensive consultation with women with disabilities and OPDs, to establish a system of supported decision-making that is effective within Nepal’s unique cultural context and promotes and

protects the rights of women with disabilities. International best practice examples offer a useful guide in this regard:

- Distinguish the concepts of ‘legal capacity’ (as personal agency) and ‘mental capacity’ (as decision-making skills). Recognize that all citizens may require additional support at some stage. Emphasize that mental capacity can fluctuate and supports may be subject to change over time.
- The rights-holder, namely the woman with a disability, must be able to appoint their chosen supporter to help them make their own decisions i.e. a trusted individual who will uphold their human rights. Where no one is willing or able to take on this role, there should be an option to appoint an external advisor. No one should be forced to accept “support” from those who have previously tried to control/harm them.
- Address inherent power imbalances through trust and self-determination: allow the affected woman to make use of optional, tiered, self-directed support across different areas of their lives (i.e. different decision-making assistants for health care, finance). This will help the woman with a disability to develop wider circles of support, utilizing targeted assistance only where necessary. This approach will also prevent one single person from exercising unchecked control over every aspect of the affected person’s life.

### Reform of Domestic Law and Policy

- **Provide immediate relief to address deprivation by allocating tax-free financial aid to women with disabilities** who are experiencing poverty, or at risk thereof. Provide medical treatment when requested, as well as temporary housing (separate from emergency shelter). Prioritize essential services for women with disabilities, especially women with intellectual and/or psychosocial disabilities, and their caregivers, including counselling, personal assistance, supports to access education/employment in the community, and subsidized and accessible public transport.
- **Ensure that existing justice systems are accessible for women with disabilities.** Interventions 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. Consumer Protection Council). 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).

- **Uphold the fundamental principles of equality and non-discrimination.** Referring to sexual and gender minorities, Section 42 of the Constitution of Nepal of 2015 makes a derogatory reference to “socially backwards women.” This should be repealed to comply with the international human rights framework.
- **Prohibit substitute decision-making.** Revoke all legislation relating to persons of ‘unsound mind’ which allows for the placement of an adult with a disability under guardianship. This includes Section 17 of the National Penal Code 2017, under which an act for benefit carried out with the consent of a guardian may not be considered an offence. The Disability Act 2074 (2017) similarly allows for persons with psychosocial disabilities to be subject to forced treatment in a community-based hospital or health centre, as chosen by their guardian. Such treatment of women with disabilities is often gendered in nature.
- **Ensure that sexual violence laws apply to all women.** Reform of Section 229 (2) of the National Penal Code 2017 resulted in the extension of the statute of limitations of 1 year or 3 years for special cases (including persons with disabilities and older persons). This provision should be further amended so there is no time limitation, to ensure justice for survivors regardless of circumstances.<sup>6</sup> Similarly, there should be no discrepancy in penalty for rape inside marriage as per Section 219.
- **Accelerate processing of disability legal identity, and amend the Disability Act 2074 (2017) to enable women with disabilities to recognise their rights at the local level.** For example, minimize the administrative burden associated with the application process for receiving a disability legal identity, and expand the criteria for evidence of disability so that the decision is not entirely dependent on the recommendation of the Ward Office, but instead encompasses the perspective of other key personnel who are likely to know someone well over a longer period of time and can make a fair assessment of their needs (e.g. family members, community leaders etc, doctor, teacher, employer). Combined with additional safeguards for appeal, these additional options for supplementary information should ensure that everyone who identifies as having a disability can be recognized as such.

## Remove Social and Attitudinal Barriers

- **Address the knowledge gaps that exist for women with disabilities with regard to their human rights.** To increase rights-awareness, in accordance with Article 8 (Awareness-raising) of the CRPD, consider utilizing existing popular media platforms (e.g. TV and radio platforms) for the targeted groups, including women with intellectual and/or psychosocial and other underrepresented disabilities, rural women, Dalit women, girls with disabilities, indigenous women, those with low literacy, and domestic violence survivors. Develop a strategy to establish good practice for awareness-raising at every level, including through the use of inclusive language and positive imaging.
- **Address social stigma and misconceptions about women with disabilities,** which have allowed harmful traditional practices (e.g. *dhami* and *jhakri*) to continue, particularly in rural and remote areas. This can be achieved through a dual approach, combining awareness-raising on culturally sensitive alternatives for community-based treatment with strict enforcement of the laws safeguarding bodily autonomy and integrity. Discuss how ongoing education initiatives can be adapted to disseminate information to combat stereotypes. Societal stigma must be addressed to combat paternalistic attitudes towards women with disabilities and which consequently serve as a justification for the informal denial rights of women with intellectual and/or psychosocial disabilities, including the informal denial of legal capacity.
- **Provide targeted training for public duty bearers to enhance their practical knowledge and understanding of disability rights and intersectional discrimination,** to dismantle attitudinal and informational barriers facing women with intellectual and/or psychosocial disabilities in Nepal. In particular, members of the judiciary, police, and administrators must be aware of their obligations under the CRPD to respect, protect and fulfil the rights of persons with disabilities through the provision of public services to women with disabilities. Update policies to reflect legislative change, to improve engagement with the justice system (e.g. combatting low reporting of gender-based and sexual violence). All women with disabilities must be assured of being welcomed, safe, and taken seriously when they wish to exercise their rights at municipal level and beyond, and be provided the appropriate information and support to do so.

## CONCLUSION

The recommendations for Nepal relate largely to reducing the stigma, discrimination and violence faced by women with intellectual and/or psychosocial disabilities in the country. The Disability Act 2074 (2017) contains provisions for key areas, many of which reflect the articles of the CRPD, including Article 13 on access to justice. However, there is a need to tackle entrenched patriarchal norms reflected in the language and implementation of legal standards at the national level. If neglected, the existing framework will continue to create and exacerbate legal problems, especially for women with intellectual and/or psychosocial disabilities, who experience multiple and intersectional discrimination. Essential to this transformation is the prohibition of substitute decision-making under Article 12 of the CRPD, and the establishment of a scheme for supported decision-making. Reform will require a concerted effort by State and non-state actors in collaboration with women with disabilities and OPDs. Awareness-raising will ensure that all women with disabilities, including women with intellectual and/or psychosocial disabilities, can access

services safely and with dignity. 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.

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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