



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 INDONESIA

This document summarizes the results of a legal needs survey of women with intellectual and/or psychosocial disabilities in Indonesia, 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, 95 responses were received from Indonesia: 72 respondents identified as having a psychosocial disability, and 20 respondents identified as having an intellectual disability. Three respondents identified as having both a psychosocial disability and an intellectual disability.

Respondents in Indonesia predominantly identified legal problems relating to: Violence (20 per cent), Education (13 per cent) and Family (9 per cent). Examples of problems faced include domestic violence, forced psychiatric treatment by family members, custody battles, being locked in a room by family members, and being unable to attend school or achieve the desired level of education.

How Respondents Resolved Problems

Only 35 per cent of problems identified by respondents were resolved. In other words, **65 per cent of problems remained unresolved** at the time of consultation.

In attempting to resolve the problems, respondents made use of both the formal justice system and personal social networks. 87 per cent shared details of the problem with someone they knew, and 64 per cent obtained assistance from an individual or organization. The **formal justice system was used by only 21 per cent of respondents** to resolve their problems.

Among the women consulted, the most common informal strategy for seeking to resolve an issue was by speaking to the person they had the problem with (39 per cent). This was followed by moving beyond the reach of the problem (22 per cent), and giving up on resolving the problem (8 per cent).

It is important to note that despite having legal needs, many respondents indicated that they did not seek legal assistance, because they believed that they did not need advice (14 per cent) or were concerned about the financial cost involved (11 per cent) or the time the process would take (10 per cent).

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

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

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 Indonesia, which are driven by intersecting forms of discrimination on the basis of gender and disability. The survey results bear witness to this, with many respondents indicating being subjected to de facto denial of their legal decision-making by family, friends, and support persons.

The following recommendations provide a road map for dismantling barriers faced by women with intellectual and/or psychosocial disabilities when accessing justice in Indonesia. They should be considered when making policy decisions regarding the access to justice pillar of the parliamentary *Rencana Induk Penyandang Disabilitas* (Master Plan for Persons with Disabilities), which aims to achieve consistency across all levels of government in implementing the rights of persons with disabilities.⁵ Moreover, the Committee on the Rights of Persons with Disabilities has identified implementing the right of access to justice in its recommendations to Indonesia (2022)⁶ as an urgent measure, including the elimination of all barriers experienced by persons with disabilities and provision of training to law enforcement officials.

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, this would require amendment of the Mental Health Act 2014, as it allows for persons with psychosocial disabilities to be detained in a mental health facility without judicial review and permits families to send family members with psychosocial disabilities to undergo rehabilitation – a type of substitute decision-making.⁷
- **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.⁸ 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. In doing so, the Civil Code and the Mental Health Act should be amended to abolish formal guardianship for adults on the basis of disability. To accomplish this, the Ministry of Law and Human Rights should support a process of legislative reform in collaboration with women with disabilities and OPDs.
- **Ratify and implement the Optional Protocol to the Convention against Torture and Other Forms of Cruel, Inhuman, and Degrading Treatment or Punishment,** which provides for the establishment of a national preventative

mechanism to visit places where people are deprived of their liberty (e.g. prisons, institutions), to prevent torture and other forms of ill-treatment. Many persons with disabilities experience ill-treatment in institutions, including arbitrary deprivation of liberty, involuntary treatment, restraint, shackling (pasung), and violence. For women with disabilities, such ill-treatment is often gendered in nature.⁹

Reform of Domestic Law and Policy

- **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. consumer protection 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).
- **Expand Government Regulation No. 39 on Reasonable Accommodation (2020) in the Judicial Process for Persons with Disabilities to apply to both the criminal and civil justice systems.**¹⁰ At present, it only applies to the criminal justice system and excludes the guarantees to reasonable accommodation, expert testimony, and legal aid for persons with disabilities.¹¹ It is paramount that this regulation be expanded as it is currently not applicable to the review of guardianship in the civil system – where women with intellectual and/or psychosocial disabilities are disproportionately affected.
- **Ensure that the Law on Sexual Violence Crimes (2022) is fully implemented** in a disability-inclusive manner, including the entitlement to personal assistance for witnesses, accessibility in courts, equality of witness testimony of women with and without disabilities, and training for law enforcement officials on sexual and gender-based violence and knowledge necessary for a human rights and gender perspective.
- **Uphold the right to legal aid under Article 56 of the Criminal Procedure Code** and support non-government legal aid offices to provide women with disabilities access legal aid.¹² Expand the right to legal aid to also include civil courts, as they are responsible for overseeing guardianship – but also for matters such as custody of children, disability

discrimination in employment or education, and consumer credit proceedings.¹³ Ensure that information regarding legal aid and legal aid offices are accessible and available in diverse and accessible formats.

- **Fulfil the obligation to provide procedural accommodation when accessing justice**, including by ensuring that 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.¹⁴
- **Recognize institutionalization as a form of violence against women with disabilities and realize deinstitutionalization for all persons with disabilities through the closure of all residential settings.** Recognize that persons with disabilities cannot choose to remain in these institutions. Support residents to take an active role in the transition process – facilitating their decision-making process on where they would like to live, and with whom. Provide deinstitutionalized persons with the support needed to exercise their rights under Article 19 (Living independently and being included in the community) of the CRPD (e.g. personal assistance and/or social protection). Acknowledge the lasting harms caused by State and non-state actors in perpetuating decades of institutionalization. Establish a redress scheme for affected individuals and their families, having regard to the gendered nature of ill-treatment and violations.
- **Consult with OPDs to establish ways of supporting existing efforts (e.g. peer support, self-advocacy networks).** Discuss how these initiatives can be scaled up to reach target audiences (women with disabilities and their families) or adapted for the general population (e.g. through human rights education at community level, media campaigns to target common misconceptions or everyday discrimination). Discuss how these existing efforts can advance the rights of women with intellectual and/or psychosocial disabilities, such as via supported decision-making through peer support.
- **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.
- **Enforce Law No. 52 (2019) on Social Welfare of Persons with Disabilities¹⁵** to promote the rights of women 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 (school, workplace, family, town). Equip persons with disabilities, including women with intellectual and/or psychosocial disabilities, with the knowledge and skills to promote and protect their rights as citizens with disabilities, through peer support and community engagement, and to recognize and report rights violations.
- **Address social stigma and misconceptions about women with disabilities**, which have allowed inappropriate traditional practices (e.g. shackling) to continue, particularly in rural and remote areas. This should include eliminating the use of devaluing and stigmatizing language in relation to women with disabilities in law and policy, including the term '*penyandang cacat*' ('people with defects'), by repealing or amending any legislation that uses such terms (such as, in the case of '*penyandang cacat*', Law No.11/2009 on Social Welfare and the Law No.11/2020 on Job Creation). Societal stigma must be addressed to combat paternalistic attitudes towards women with disabilities, which perceive women with disabilities as less than human, and which consequently serve as a justification for the informal denial of rights of women with intellectual and/or psychosocial disabilities, including the informal denial of legal capacity.

CONCLUSION

The above recommendations for Indonesia largely relate to changing negative perceptions currently held about women with intellectual and/or psychosocial disabilities. 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. 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. Women with intellectual and/or psychosocial disabilities must be recognized as rights holders and as legal decision makers in line with Article 12 (Equal recognition before the law) of the CRPD, and be empowered to make their own decisions in their community. 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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