

Kathmandu Declaration on Access to Justice for Persons with Disabilities 2024



This declaration builds on the discussions that took place at the Asia Regional Workshop on Access to Justice for Persons with Disabilities, held in Kathmandu, Nepal, on 11 and 12 May 2024.

We are grateful to everyone who participated in the regional workshop and actively contributed to the discussions that led to the creation of the declaration.

Organisers



Kathmandu Declaration on Access to Justice for Persons with Disabilities

We, participants of the Asia regional workshop on “Access to Justice for Persons with Disabilities, held on 11 and 12 May 2024 in Kathmandu”, bringing together persons with disabilities, legal experts and justice actors from 13 different countries¹ in the region, **recall** the international law and standards, primarily grounded in the Convention on the Rights of Persons with Disabilities (CRPD) and the jurisprudence of the CRPD Committee, which are aimed at ensuring the equal enjoyment of human rights by all persons with disabilities.

We **draw** attention to the following rights protected under the Convention and international law: the rights to non-discrimination; accessibility; equal recognition before the law; access to justice; liberty and security, freedom from torture or cruel, inhuman or degrading treatment or punishment, freedom from exploitation, violence and abuse and living independently and being included in the community. States have an obligation to respect, protect and fulfill the rights of persons with disabilities and business enterprises have parallel responsibilities to do so.

We **affirm** the importance of guidelines developed by the Committee on the Rights of Persons with Disabilities² and the UN Special Rapporteur on the Rights of Persons with Disabilities,³ including in respect of deprivation of liberty, deinstitutionalization and access to justice.

We **acknowledge** also, the important commitments made by the Economic and Social Commission for Asia and the Pacific in the Jakarta Declaration on the Asian and Pacific Decade of Persons

with Disabilities (2023–2032),⁴ in which States from the region commit themselves “to harmonize national legislation with the Convention on the Rights of Persons with Disabilities”. They also commit to conduct “comprehensive and regular reviews of national and local legislation as appropriate” and provide “guidance on the implementation of the Convention by line ministries and governments at all levels, training all personnel involved in law enforcement, integrating the provision of reasonable accommodation in national policies, programmes and budgets, and developing and strengthening frameworks, as appropriate, to promote, protect and monitor the implementation of the Convention”.

We **emphasize** and affirm the importance of the accelerated implementation of the CRPD, including through the development of time bound plans to action the CRPD Committee’s recommendations to our countries following its assessment of State performance of their CRPD obligations upon periodic review.⁵

We **encourage** States that have not yet reported or completed their CRPD reporting obligations to endeavor to do so expeditiously and be guided by the CRPD Committee’s recommendations which follow.⁶

A. Systemic Failures

During our workshop, we identified common legal and practical barriers that impede effective access to justice for persons with disabilities and exchanged information on the best practices. These failures

are often present to such a degree that **they represent systemic failures to ensure access to justice** for persons with disabilities.

We denounce the continued prevalence of medical or welfare/charity models and approaches to disability. Laws, legal systems and justice actors continue to inappropriately understand disability from a medicalized perspective focused on impairment, treating disability as a defect or disease, locating issues within individuals with disabilities, and considering persons with disabilities to be passive recipients of care.

We deplore ongoing stigma and widespread discrimination against persons with disabilities, and failure to provide for equal protection rights, which remains commonplace against all persons with disabilities, including in their interactions with justice systems. Such attitudes are humiliating and exclusionary. They hinder the full and effective participation of persons with disabilities on an equal basis with others. Some persons with disabilities still face burdensome or even insurmountable challenges in being recognized as persons within legal systems. Laws, administrative rules, regulations and policies continue to reflect derogatory and discriminatory language against persons with intellectual and/or psychosocial disabilities such as “insane”, “unsound mind”, “mentally retarded”, a clear embodiment of such stigma.

We decry the failure of States to recognize fully the legal capacity of persons with disabilities. This problem is particularly severe in respect of persons with intellectual and/or psychosocial disabilities. The denial of legal capacity, commonly required by laws that continue to be applied and enforced by

justice actors, impedes the enjoyment of autonomy, participation in legal processes and procedures and the enjoyment of human rights. It is common for “guardians” or other individuals to be permitted to make decisions on behalf of persons with disabilities entrenching forms of “substituted decision-making” instead of providing decision-making support so that individuals can express their own will and preferences on an equal basis.

We condemn the continued exclusion of persons with disabilities from full and effective participation in legal processes and procedures. Many legal processes and procedures remain exclusionary to persons with disabilities due, in part, to a general failure to provide support and accommodations required to facilitate their full and equal participation. Laws which determine “fitness to plead” and “fitness to stand trial” are commonly applied in the administration of justice, sometimes conflating legal capacity with mental capacity, excluding persons with intellectual and/or psychosocial disabilities or other underrepresented groups such as persons with multiple disabilities and those who are deaf-blind from participating in legal processes and procedures on a discriminatory basis.

We denounce the persistent application of discriminatory mental health laws. Such laws, while purporting to protect the rights of persons with disabilities, continue to be grounded in a medicalized approach which strips persons with intellectual and/or psychosocial disabilities of decision-making autonomy and allow for forced medical treatment and institutionalization, without their will and free and informed consent. They also establish mental health institutions grounded in the same medicalized approach that ultimately serves to harm instead of supporting persons with disabilities.

We also denounce the failure of States to take substantial steps towards deinstitutionalization of persons with disabilities. States have failed to take measures to develop plans towards deinstitutionalization and institutionalization continues to be a prevalent practice. Institutions such as care homes, welfare houses and hostels are often presented by the government to persons with disabilities as better alternatives to prison facilities, “mental asylum centers” and “mental hospitals”. Disability based institutionalization cannot be justified by laws and policies which claim to be protecting such persons or society at large from “dangerous persons”. Such laws and policies are discriminatory and undermining of the human rights of persons with disabilities.

We denounce the typically abysmal conditions in “mental health” institutions in which large numbers of persons with disabilities remain in forcible institutionalization for long, often indefinite, periods of time in extremely poor conditions. The maintenance of such conditions violates the prohibition against torture and other cruel, inhuman or degrading treatment. Conditions common in institutions also include lack of control over their daily routines and decisions; absence of choices in terms of food, with whom to live, and when to sleep and eat; instances of exploitation and violence; physical and sexual abuse; forced treatments; forced sterilization; inaccessible or lack of physical infrastructure, including toilets; and overcrowding in the institutions. In some countries torturous practices such as shackling, electroconvulsive therapy and forced medication are still practiced.

We call attention to the frequent failure of justice actors to take adequate interventions to ensure access to justice for persons with disabilities. Judiciaries have taken only limited and inconsistent

steps to ensure accessibility of court processes. Where such interventions have been made, they often are limited, for example, to building of ramps, ensuring physical access to courtrooms or provision of sign language interpretation in courts, or provision of access to braille versions of the court documents upon request. Accommodations are, however, much less likely to be provided for persons with psychosocial and/or intellectual disabilities who are typically wrongly considered to be incapable of equal participation. Moreover, the barriers faced by persons with disabilities begin at an earlier stage of legal processes and forms of accommodation that may be available in courts are often not available in police stations or from police and other court officials.

We acknowledge the reluctance of persons with disabilities to take legal action to secure their rights.

There are a variety of reasons why persons with disabilities are reluctant to take legal action and why they are often discouraged to do so. First, in many cultures or subcultures, the importance of upholding “family honour” remains and contributes to a desire to resolve issues within a family or community that might engage civil or even criminal law. In this context, persons with or without disabilities often do not think of legal recourse as the first solution for any conflict and may also experience social pressure to avoid exposing their familial matters by taking legal action in public avenues such as courts. Second, many persons with disabilities have a low level of knowledge about legal processes and such processes are often not accessible to and/or understandable for the general public, including persons with disabilities. Third, access to legal services is typically low and legal procedures and lawyers are unaffordable for and inaccessible to many if not most persons with disabilities. Fourth, some persons with disabilities are aware of the inaccessibility of legal processes for them and the likelihood of stigmatization and

discrimination in such processes, including by justice actors such as lawyers, judges and police officers.

We denounce the overcriminalization of persons with disabilities, by which such persons, and in particular persons with intellectual and/or psychosocial disabilities, are targeted by the police using laws providing for criminal liability for their mere presence in public places and laws criminalizing their efforts to make a living or inhabiting public spaces.

B. RECOMMENDATIONS

Grounding our consideration in a resolute commitment to fully realize all the rights of persons with disabilities as provided for particularly in the CRPD, we have identified key legal and policy reforms required for enhancing access to justice for persons with disabilities in Asia. We call on States to take all measures necessary to comply with their obligations to respect and ensure the rights of person with disabilities, including under the CRPD by:

- 1. Acting to make the CRPD Convention optimally effective.** This includes:
 - a. Withdrawing reservations entered upon ratification of or accession to the CRPD;⁷
 - b. Becoming party to the Optional Protocol to the CRPD Convention;⁸
 - c. Reporting timeously and periodically to the CRPD Committee;
 - d. Implementing recommendations made by the CRPD Committee;

- e. Adopting measures recommended in guidelines issued by the CRPD Committee and the UN Special Rapporteur on the Rights of Persons with Disabilities; and
- f. Where opportune, requesting and accepting international cooperation and assistance to facilitate compliance with CRPD obligations.

2. Adopting a human rights approach to disability. This includes:

- a. Undertaking a comprehensive review of laws, policies and practices with a view to ensuring that the State's overall approach to persons with disabilities is CRPD compliant;
- b. Undertaking a review and reform of the justice system and applicable laws and policies governing the administration of justice to ensure they are in harmonization with the CRPD;
- c. Adopting laws and policies to domesticate the CRPD or reviewing and amending existing laws and policies purporting to domesticate the CRPD and with a view to ensuring that such laws are CRPD compliant;
- d. Modifying legal definitions of disability in domestic laws to align it with the definition provided for in the CRPD and avoid in such definitions notions of impairment and/or severity or degree of impairment. Such definitions should:
 - i. be consistent with the definition of disability provided by the CRPD;

- ii. be grounded in local context, taking into account and counteracting specific ill-conceived cultural or religious beliefs about disability;
 - iii. specifically include persons with intellectual and/or psychosocial disabilities within their remit;
 - iv. specifically include individuals who have disabilities arising from or impacted by situations of armed conflict and their particular needs within their remit.
- e. Undertaking wide-ranging countrywide awareness campaigns on the rights of persons with disabilities emphasizing a human rights model of disability and dispelling myths about persons with disabilities.

3. Fully recognizing the right to legal capacity of persons with disabilities.

Conduct a comprehensive review of laws, policies and practices and to ensure they protect the right to legal capacity of persons with disabilities. Such review should include, at a minimum, reviewing and amending, and where necessary repealing, the following types of laws to ensure compliance with the CRPD:

- a. Constitutional provisions;
- b. Civil laws, especially those relating to guardianship, but also other civil laws including laws relating to marriage and the management of property and finances;

- c. Mental health laws; and
- d. Criminal codes, criminal procedure codes and laws relating to evidence.

Abolishing and/or amending to bring into CRPD compliance any laws, policies and practices that:

- a. Allow for or require substituted decision making in any context;
 - b. Allow for or require non-individualized assessments of the legal capacity of persons with disabilities;
 - c. Prescribe evaluations determining the legal capacity of persons with disabilities solely on the basis of a determination of their mental capacity; and
 - d. Compel or coerce persons with psychosocial and/or intellectual disabilities to enter or remain in institutions or receive treatments without their free and informed consent.
- 4. Put an end to institutionalization of persons with disabilities, including by taking immediate measures to:**
- a. Recognize institutionalization as a violation of the freedom from torture and other cruel, inhuman or degrading treatment, resulting in multiple violations of rights protected under the CRPD;
 - b. Provide individuals in institutions with opportunities to leave;

- c. Adopt a moratorium on new admissions to institutions on the basis of disability;
 - d. Halt the building of new institutions or expanding the current infrastructure intended for the forced institutionalization of persons with disabilities;
 - e. Develop and implement, in consultation with persons with disabilities, a deinstitutionalization plan which includes short-term, medium term and long-term priorities, coupled with plans to provide community based-support services and strengthening community support systems;
 - f. Design and implement, with the full participation of persons with disabilities, awareness programmes for justice actors, policy makers, medical experts and members of the public on the CRPD and the CRPD Committee's Guidelines on Deinstitutionalization; and
 - g. Provide appropriate mechanisms for access to effective remedies and reparations and other redress measures to survivors of institutionalization.
- 5. Developing and strengthening community-based support systems and support services for persons with disabilities, including by:**
- a. Developing a policy and timebound plan for the provision of a full package of community-based services for persons with disabilities;
 - b. Redirecting, rationalizing or otherwise developing budgets for the resourcing of community-based services and strengthening support systems that will allow persons

with disabilities to be deinstitutionalized and live independently and in their communities. Such resourcing plans should:

- i. consider a full range of financial, human, technological, land and other resources available; and
 - ii. commit States to increasing provision of resources for such services over time.
- c. Aim at ensuring that community support systems⁹ are available and accessible to all persons with disabilities in their communities;
 - d. Make community-based healthcare services accessible to persons with intellectual and/or psychosocial disabilities;
 - e. Aim at ensuring that all other basic services, such as housing, social security, education and work opportunities, are accessible and available to persons with disabilities;
 - f. Provide for specialized services, assistive devices, support persons and support networks available for persons with disabilities;
 - g. Aim at ensuring that all generally available services, such as shelters, counselling services, social workers and conflict mediation services are available and accessible for persons with disabilities; and
 - h. Aim at ensuring that persons with disabilities are involved in the development of such support systems on a community level.

- 6. Reforming healthcare systems:** States should review and reform their healthcare systems with a view to ensuring that:
- a. Mental health laws and policies are reviewed and amended to bring them into CRPD compliance or repealed, in full consultation with persons with disabilities, including persons with psychosocial disabilities;
 - b. Accurate understandings of psychosocial disability and mental health inform their health systems and decisions taken by health workers and professionals;
 - c. A wide range of community-based health services are available, understood by health professionals, and explained to users of the healthcare system providing full and correct information;
 - d. Informed consent, providing choices, respecting the will and preferences of an individual with an intellectual and/or psychosocial disability, is understood to be at the core of all decisions about that individual's health care and that supported-decision making replaces substituted decision-making;
 - e. Measures should be taken to actively counteract and discontinue practices of forced or coerced sterilization or contraception being administered or recommended by health professionals;
 - f. Specialized health and other professionals trained in understanding psychosocial disability and the rights of persons with psychosocial disabilities are available in each community; and

- g. The same health services, facilities and products generally available to other persons are also available to persons with disabilities.

7. Removing barriers to access justice, including through the provision of procedural accommodations aimed at:

- a. Ensuring the individual identification of disability at the outset of an individual's interaction with the justice system. Such identification should be conducted with the input of the individual concerned;
- b. Ensuring access to free and effective legal assistance to persons with disabilities at all stages of all justice processes;
- c. Adoption by all justice actors of an overall approach which prohibits and disavows substituted decision-making and endorses and embodies supported decision-making, including through the provision of resources to ensure access to support persons such as justice intermediaries, facilitators and interpreters;
- d. Establishing, in consultation with persons with disabilities, a fully resourced system for the determination and provision of procedural accommodations to persons with disabilities during legal processes;
- e. Ensuring that all documentation provided to participants in legal proceedings is made available and accessible to all persons with disabilities;

- f. Ensuring, in particular, that processes relating to the reporting of sexual and gender-based violence against persons with disabilities are fully accessible to persons with disabilities;
- g. Establishing a fully accessible complaints mechanism to allow persons with disabilities denied procedural accommodations to complain and receive effective remedies for failures to provide such accommodations.
- h. Providing ongoing training for all justice actors to sensitize them to disability issues and familiarize them with domestic and international human rights standards relating to access to justice for persons with disabilities and the right to procedural accommodations.

In order to ensure the removal of barriers to access to justice for persons with disabilities, **judicial authorities in particular should take all necessary measures, including:**

- a. Developing, adopting and implementing, in consultation with persons with disabilities, judicial rules and guidelines on access to justice for persons with disabilities with a particular focus on ensuring the provision of procedural accommodations, and enhancing supported decision making;
- b. Auditing the physical accessibility of all courtrooms and the buildings and rooms necessary to be accessed in justice processes, including police stations, and taking time bound measures to eliminate barriers to physical access for persons with disabilities

- c. Evaluating, and, where necessary, amending or flexibly applying rules relating to statute of limitations to ensure that persons with disabilities are not unfairly denied their rights to take legal action;
- d. Equipping judicial officers to take an active role in securing the rights of persons with disabilities, including in respect of their effective and full participation in all court proceedings with the necessary procedural accommodations;
- e. Adopting procedures that allow for the fast-tracking and prioritizing of cases involving persons with disabilities and/or pertaining to disability rights;
- f. Establishing in each court a help desk that can provide information to persons with disabilities on accommodations available to them in court processes;
- g. Providing ongoing training for judges to sensitize them on disability issues and familiarize them with domestic and international human rights law and standards relating to access to justice for persons with disabilities and the right to procedural accommodations; and
- h. Developing and/or amending existing judicial bench books relating to, for example, civil and criminal procedure, in consultation with persons with disabilities, so that they adequately cover and explain the rights of persons with disabilities in terms of the CRPD.

8. **Reviewing, repealing and amending criminal law provisions which particularly impair the rights of persons with disabilities**, including:
- a. Laws that restrict persons with disabilities from consenting to sexual intercourse;
 - b. Laws that restrict access to reproductive health services or criminalize attempts to access such services;
 - c. Laws that criminalize begging and other life sustaining activities such as camping, sleeping or erecting shelter, eating, washing or bathing, storing personal effects in a public space, causing noise disturbances or obstructing a road, footpath or entrance to a public or private building;
 - d. Laws that criminalize other petty offenses such as “public nuisance”, “squatting”, “vagrancy”, “idleness”; and
 - e. Laws that criminalize sex work.

C. CALL TO ACTION

We make this declaration **reaffirming our commitment to collective action and solidarity** for enhancing access to justice for persons with disabilities.

We aim to **contribute to the wide implementation of recommendations set out in this Declaration through continued collaboration** in a range of measures including advocacy, training, capacity building and research.

We aspire to **collaborate more widely, especially with persons with disabilities and organizations of persons with disabilities** nationally, regionally and internationally.

We **commit to being guided by the lived experiences of persons with disabilities** and prioritizing the meaningful participation of persons with disabilities and their representative organizations in all our efforts.

We **envision the creation of truly inclusive societies** and environments that are conducive to the facilitation of the full development of all persons with disabilities, in all their diversity.

We **call on States to take note of this Declaration and to steer their legislative and policy frameworks towards full compliance with the CRPD**. All barriers to access to human rights, including barriers to access to justice, and disability-based discrimination must be ended.

¹ Nepal, Bhutan, India, Pakistan, Bangladesh, Sri Lanka, Thailand, South Korea, Malaysia, Indonesia, Taiwan, Philippines, Japan.

² *Guidelines on Deinstitutionalization, including in emergencies (2022)*, available at: <https://www.ohchr.org/en/documents/legal-standards-and-guidelines/crpd5-guidelines-deinstitutionalization-including>; *Guidelines on the right to liberty and security of persons with disabilities (2017)*, available: <https://www.ohchr.org/Documents/HRBodies/CRPD/14thsession/GuidelinesOnArticle14.doc>

³ *Principles and Guidelines on Access to Justice for Persons with Disabilities (2020)*, available https://www.ohchr.org/sites/default/files/Documents/Issues/Disability/SR_Disability/GoodPractices/Access-to-Justice-EN.pdf

⁴ UNESCAP, Jakarta Declaration on the Asian and Pacific Decade of Persons with Disabilities, 2 September 2022, ESCAP/APDDP/2022/L4, available: https://www.unescap.org/sites/default/d8files/event-documents/B2200897_L4_E.pdf

⁵ Thailand (2016): https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FTHA%2FCO%2F1&Lang=en Nepal (2017): https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FNPL%2FCO%2F1&Lang=en; Philippines (2018): https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FPHL%2FCO%2F1&Lang=en; India (2019): https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FIND%2FCO%2F1&Lang=en; Bangladesh (2022): https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FBGD%2FCO%2F1&Lang=en; South Korea (2014): https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FKOR%2FCO%2F1&Lang=en; (2022): https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FKOR%2FCO%2F2-3&Lang=en; Indonesia (2022): https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FIDN%2FCO%2F1&Lang=en; Japan (2022).

⁶ Pakistan (2024): https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=PAK&Lang=EN; Sri Lanka (2024) : https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=LKA&Lang=EN; Malaysia (No report submitted); Flourish Australia, “People share their stories of mental health recovery in work and life, Panorama,” Disability Rights in Taiwan , (January 2023), available at: https://www.flourishaustralia.org.au/sites/default/files/2022-12/panorama_january_2023.pdf

“As Taiwan is not a UN member state it is unable to report to UN treaty monitoring bodies. Instead, the government has established domestic mechanisms to periodically monitor the implementation of UN human rights treaties. This local mechanism gives the public more opportunities to participate in the review process”

⁷ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en.

⁸ Bhutan, Malaysia, India, Indonesia, Pakistan, Philippines, Japan and Sri Lanka have all failed to sign or ratify the Optional Protocol.

⁹ Examples include: such as neighborhood support systems, simple befriending actions, foster support, neighborhood supports for homeless persons with psychosocial disabilities, group support, peer to peer support, conflict reduction supports.



Cultural Performance from the women with disabilities during the opening ceremony



Pre-Recorded Message for the workshop from UN Special Rapporteur on the Rights of Persons with Disabilities, Ms Heba Hagrass



Opening Keynote speech from ICJ Commissioner and Former Chief Justice of Nepal, Hon. Kalyan Shrestha



Judges from different countries in the Asia region during a judicial dialogue

