



HARMONIZATION OF NATIONAL LAWS WITH THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

**OVERVIEW OF TRENDS IN
ASIA AND THE PACIFIC**

HARMONIZATION OF NATIONAL LAWS WITH THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES



*The shaded areas of the map indicate ESCAP members and associate members.**

The Economic and Social Commission for Asia and the Pacific (ESCAP) is the most inclusive intergovernmental platform in the Asia-Pacific region. The Commission promotes cooperation among its 53 member States and 9 associate members in pursuit of solutions to sustainable development challenges. ESCAP is one of the five regional commissions of the United Nations.

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OVERVIEW OF TRENDS IN ASIA AND THE PACIFIC



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Cover design: Blended watercolour shapes are given form by concentric circles, symbolizing the coming together of diverse principles, values and approaches into a balanced, equitably supportive and harmonious structure.

FOREWORD

The Convention on the Rights of Persons with Disabilities, a landmark human rights instrument, was adopted in 2006 by the United Nations General Assembly. Negotiations on the draft Convention were completed within the shortest duration for any human rights treaty. It entered into force in 2008.

The Convention process united persons with disabilities around the world, including across the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) region.

The China Disabled Persons' Federation hosted the World NGO Summit on Disability in Beijing in 2000 (10-12 March). Participants included leaders of Disabled Peoples' International, Inclusion International, Rehabilitation International, the World Blind Union and the World Federation of the Deaf, as well as national civil society organizations of and for persons with disabilities from ESCAP members and associate members. The theme of the Summit was "The Strategy of the World Disability Movement Towards the New Century." Deng Pufang, Chairperson of the China Disabled Persons' Federation, highlighted the need to adopt a binding international convention on the rights of people with disabilities. In doing so, he urged all socially responsible persons and entities to immediately initiate the process for such an international convention. The Summit adopted the Beijing Declaration on the Rights of People with Disabilities in the New Century.

Following that initiative, ESCAP organized the Regional Workshop Towards a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities in Bangkok in 2003 (14-17 October). The outcome document of the substantive and participatory workshop contained essential elements for a comprehensive and integral international convention on the protection and promotion of the rights and dignity of persons with disabilities, originally drafted by Professor Andrew Byrnes and subsequently referred to as the Bangkok Draft. The Bangkok Draft was highly regarded by the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities that convened annually between 2002 and 2006 at United Nations headquarters in New York.

The idea of a convention first emerged in the ESCAP region. ESCAP attached utmost importance to its germination – throughout the drafting process to its ratification and its implementation. ESCAP played a strong technical assistance role in the drafting of the Beijing Declaration, contributed the Bangkok Draft, which served as the foundation for drafting the Convention on the Rights of Persons with Disabilities, and attended annual sessions of the Ad Hoc Committee.

The Convention represents a departure from the entrenched medical model of disability that views "the disabled" in terms of their medical condition. Instead, the Convention focuses on social parameters and the dignity of the person. It is the first international human rights salvo fired against ableism, the root of discrimination. It seeks to liberate persons with diverse disabilities from the stigma of being disabled. It unites all persons with disabilities regardless of type of disability, background and location. It represents the historic convergence of the hopes, determination and persistent efforts of all peoples committed to the human rights of persons with disabilities. Negotiations in the Ad Hoc Committee were invariably charged with passion and a sense of urgency.

Significantly, the Convention highlights, for the first time, that the absence of action constitutes discrimination and introduces the concept of reasonable accommodation as an important means of tackling disability-related inequitable conditions. This is bold. It is cutting-edge for social transformation.

The real work starts after a State party ratifies the Convention. It begins with the harmonization of domestic legislation with the Convention. An important obligation regarding State party engagement is the timely preparation and submission of reports to the Committee on the Rights of Persons with Disabilities, with provision for parallel reports by non-state actors.

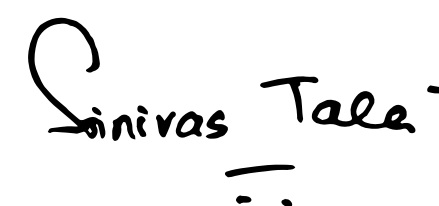
Goal 9 of the Incheon Strategy to "Make the Right Real" for Persons with Disabilities in Asia and the Pacific, which is the guiding document for the Asian and Pacific Decade of Persons with Disabilities, 2013-2022, promotes the speedy ratification of the Convention and effective harmonization of domestic legislation with the Convention.

The ESCAP region faces three "lacks": lack of action to harmonize domestic legislation with the Convention; lack of understanding of the Convention and its concepts; and lack of indigenous knowledge products based on home-grown research on Convention-related matters, particularly on the harmonization of domestic legislation with the Convention.

Against this background, in 2021, ESCAP initiated a research project that has yielded six volumes of analysis. The preparation of the publications involved persons with disabilities and allies from the disability community as researchers, peer reviewers, technical support team members and interns. ESCAP is grateful to the Government of China for its funding contribution to the preparation of this important knowledge product.

The research outcomes offer governments and civil society communities across the region a substantive Asian and Pacific foundation for moving forward on realizing the rights of persons with disabilities. The series is a treasure trove of rich lessons that provide insights into the scope for building, reinforcing and expanding Asian and Pacific harmonization expertise and experiences in the coming years.

It is my hope that actors in all sectors of society – particularly policymakers, organizations of persons with disabilities, other civil society entities, the private sector and the United Nations family active in Asia and the Pacific – will find these six volumes useful and motivating for accelerating endeavours to "Make the Right Real" for persons with diverse disabilities in Asia and the Pacific.



Srinivas Tata

Director, Social Development Division
United Nations Economic and Social Commission
for Asia and the Pacific

MESSAGE FROM GERARD QUINN, UNITED NATIONS SPECIAL RAPPORTEUR ON THE RIGHTS OF PERSONS WITH DISABILITIES

I am delighted for the opportunity to provide words of introduction to the series of six publications resulting from the project *Harmonization of National Laws with the Convention on the Rights of Persons with Disabilities*. The project was initiated by ESCAP as part of its assessing progress in the implementation of the Incheon Strategy to “Make the Right Real” for Persons with Disabilities in Asia and the Pacific.

These publications show that the Convention on the Rights of Persons with Disabilities has stimulated significant changes around the world, including in the States of the ESCAP region, to bring national laws, policies and practices into better alignment with its provisions and thus to bring us closer to the realization of the rights that the treaty guarantees for all persons with disabilities.

I am especially delighted to acknowledge and honour regional actions to advance the Convention. ESCAP has long been to the fore in assisting its member States in implementing the Convention. Its work on disability is a model and an inspiration for other regional groupings around the world.

Treaties are never self-executing. To be effective, they must be owned and internalized. The national case studies and the overview of major developments that emanate from this project demonstrate how the Convention is now central to national disability law and policy in the region.

It is certainly fair to say that ratification of the Convention has had a catalytic effect in most Asian and Pacific States. The national case studies reflect the critical role of a strong civil society, especially organizations of persons with disabilities, and the importance of ensuring that they participate actively and meaningfully in the development of policies of all types, including those of particular relevance to the advancement and participation of persons with disabilities in mainstream society. This strongly validates the vision in the Convention of the co-production of policy between governments and civil society. Indeed, the checking role envisioned by the Convention and played by national human rights institutions in many States in monitoring and providing remedies for violations of the rights of persons with disabilities should be recognized. Together, power, voice and ideas can make a real difference.

Despite the many advances in the Asian and Pacific region and around the world, we remain far from full implementation of the Convention’s guarantees. The full inclusion of persons with disabilities and recognition of their personhood and citizenship are still to be achieved in all our societies – the Convention provides a framework to do so and a call to action to us all to continue our efforts to reach the goals it has set.

Congratulations to ESCAP for bringing these publications to fruition: They provide a wealth of information on the effective steps that States have taken to give effect to the Convention. This information may provide ideas for other States while being frank about the shortfalls and challenges that remain to be overcome.



Gerard Quinn
United Nations Human Rights Council Special Rapporteur
on the rights of persons with disabilities



MESSAGE FROM ROSEMARY KAYESS, CHAIRPERSON OF THE COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES

It gives me great pleasure to introduce this series of six publications on the implementation of the Convention on the Rights of Persons with Disabilities in the ESCAP region. The national case studies and the overview analysis provide an illuminating and encouraging review of the impact that the Convention has had in many Asian and Pacific States. At the same time, they identify some major challenges that remain.

The national case studies and overview provide insights into the way that the States parties in Asia and the Pacific have engaged with the Committee on the Rights of Persons with Disabilities, which is the independent expert body established by the Convention to monitor its implementation through a reporting procedure, and through the individual communication and inquiry procedure. The membership of the Committee has included several experts from Asian and Pacific countries.¹

The material included in these publications shows that ratification of the Convention and the reporting procedure, which involves the Committee providing detailed recommendations to States parties, have stimulated or added momentum to changes to legislation in many fields by which States have sought to bring their national laws into alignment with the Convention obligations. The national case studies highlight the way in which governments, courts and civil society organizations (in particular organizations of persons with disabilities) have engaged constructively with the Concluding observations, General comments and other work of the Committee to achieve the goals of the Convention.

The national case studies and the overview also identify areas where harmonization of national laws still has some way to go, both in terms of amending or reforming laws or in ensuring that legal guarantees bring practical results for persons with disabilities in their everyday lives. I encourage States, civil society organizations and national human rights institutions to continue to review existing laws in all areas to ensure that they are fully compatible with the Convention.

¹ Lists of current and former members of the Committee may be found at <https://www.ohchr.org/en/treaty-bodies/crpd/membership>.

I congratulate ESCAP for initiating this project and commend everyone involved for carrying it through. These publications will provide an extremely useful resource for people in the countries discussed and in other countries who may be looking for innovative ways to ensure that persons with disabilities more fully enjoy their human rights and fundamental freedoms.



Rosemary Kayess
Chairperson of the United Nations Committee on
the Rights of Persons with Disabilities



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LEAD AUTHOR

We deeply appreciate the outstanding and exemplary contributions of Professor Byrnes to this publication and the other five in the series.

Andrew Byrnes is Emeritus Professor of International Law and Human Rights at the University of New South Wales (UNSW), Sydney, Australia; an associate of the Australian Human Rights Institute and the Ageing Futures Institute at UNSW and a Fellow of the Academy of Social Sciences in Australia and of the Australian Academy of Law. Professor Byrnes’s publications address women’s human rights, the human rights of older persons, gender and human rights, disability rights, national human rights institutions, economic and social rights, peoples’ tribunals and the incorporation of human rights into domestic law.

Professor Byrnes has served as President of the Australian and New Zealand Society of International Law and as a Vice-President of the Asian Society of International Law, as also as external legal adviser to the Australian Parliamentary Joint Committee on Human Rights. He was involved in the drafting of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination

against Women and of the Convention on the Rights of Persons with Disabilities, and has acted as pro bono adviser to the Asia Pacific Forum of National Human Rights Institutions during the drafting of the Convention on the Rights of Persons with Disabilities and in the context of the United Nations General Assembly Open-ended Working Group on Ageing. He has served on the Asian Development Bank Expert Forum on Gender and Development and acted as a consultant to the United Nations on human rights, most recently as a consultant in the preparation of two studies by the Office of the United Nations High Commissioner for Human Rights on older persons and the international human rights framework.

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Case study drafters:

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The publication was edited by Karen Emmons and designed by Marie Ange Sylvain-Holmgren.

NOTE ON TERMINOLOGY

Language both reflects and contributes to the way in which disability and persons with disabilities are viewed in our societies. In most societies, the terms historically used to describe persons with disabilities set them apart, devalue them as human beings and insult and degrade them, contributing to prejudice, stereotypes and fear of persons with disabilities. They reinforce the marginalization and exclusion of persons with disabilities from full participation in society as equal citizens and members of their communities. These terms reflect “ableist” perspectives that involve the “othering” of persons with disabilities, “ideas, practices, institutions and social relations that presume able-bodiedness.” By so doing, they construct persons with disabilities as marginalized . . . and largely invisible “others.”² “Ableism against persons with disabilities reflects a preference for species-typical normative abilities, leading to the discrimination against them as ‘less able’ and/or as ‘impaired’ disabled people”; it is “supported by the medical, deficiency, impairment categorization of disabled people (medical model)” and “rejects the ‘variation of being,’ biodiversity notion and categorization of disabled people (social model).”³

There is increasing awareness of the important impact of language. Thus, persons with disabilities and others have seen changes to the way in which we speak about disability as an essential part of the struggle to bring about equality. Changes in terminology often reflect changes in the underlying concepts that have been used to describe and explain impairment and disability, often in derogatory terms.

A fundamental starting principle is that, when we choose how to speak about disability, we must all listen to those of us who live with disability and how we speak about ourselves and the terminology we prefer be used. Given that language is culturally embedded and the same term can have different connotations, even among different groups who speak the same language, there will not necessarily be one term that is preferred in all contexts.

The 2022 United Nations *Disability-Inclusive Communications Guidelines* provides guidance on appropriate ways to speak and write about persons with disabilities and disability issues as well as to ensure accessibility of communications in different media.⁴

Different terms are used in different countries and even in the same country to describe the same thing. For example, although “persons with disabilities” is used in the Convention on the Rights of Persons with Disabilities and in the United Nations context, in some countries, the term “disabled persons” or “disabled people” is preferred by persons with disabilities. Likewise, while the phrases “disabled peoples’ organizations” (DPOs) and “persons with disabilities and their representative organizations” (the latter taken from the Convention) have often been used and continue to be used in many countries, the phrase “organizations of persons with disabilities” (OPDs) has been embraced by many organizations of persons with disabilities and by the United Nations. The term emphasizes that the relevant organizations to be consulted by government and to take part in co-design of policy and in all policy-related matters are organizations whose members are persons with disabilities and that are led by persons with disabilities.

In the case studies that form this publication series, the authors use the terminology favoured by the United Nations and by persons with disabilities and organizations of persons with disabilities in those countries. Because national laws and policies sometimes retain outmoded and derogatory language, that terminology is referred to when discussing the continued operation of those laws and their consistency with the Convention. In some cases and in some countries, descriptions such as “differently abled persons”, which are intended to valorize the abilities of persons with disabilities, are used.

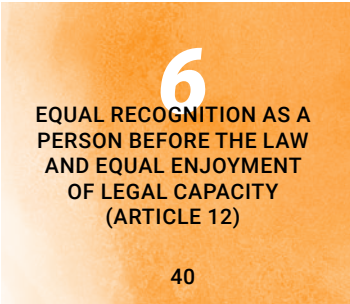
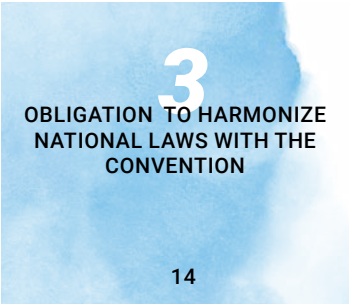
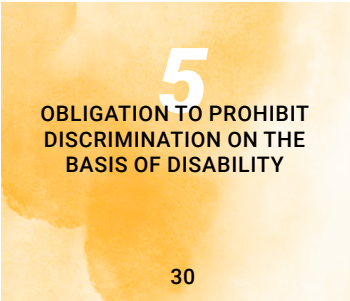
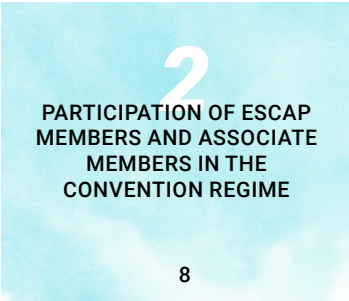
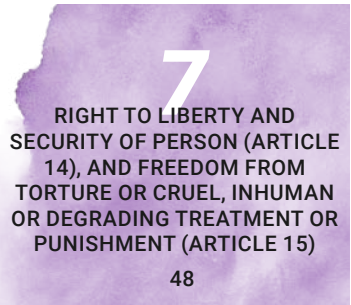
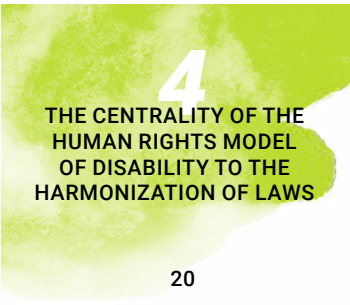
² Chouinard, 1997, pp. 15, 379, 380.

³ Wolbring, 2008, pp. 51, 252, 253. See also Campbell, 2001, pp. 42, 44.

⁴ United Nations, 2022a.

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1

INTRODUCTION⁵

A. Convention on the Rights of Persons with Disabilities

The adoption in 2006 by the United Nations General Assembly of the Convention on the Rights of Persons with Disabilities (the Convention)⁶ and the Optional Protocol to the Convention (the Optional Protocol)⁷ was a milestone in the protection of the human rights of persons with disabilities. It represented the embodiment in an international, legally binding instrument of what is often referred to as a “paradigm shift”, by which a deficit-based, medical model of disability was replaced by a social or human rights model. It recognizes persons with disabilities as rights-holders who are entitled to participate fully in and contribute to society, rather than being seen as the marginalized objects of pity or charity, recipients of social welfare or persons for whom others make every-day and major life decisions as a matter of course.

The Convention sets out a comprehensive legal and policy framework in relation to the rights of persons with disabilities and the processes needed to ensure that they actually enjoy these rights at the national level.⁸ Like the other core United Nations human rights treaties, the Convention also establishes a monitoring framework by providing for an international supervisory body – the Committee on the Rights of Persons with Disabilities (the Committee). This body is composed of 18 independent experts from all regions of the world who are nominated and elected by States parties; the members serve in their personal capacity for four-year terms and may be re-elected. Annex 1 contains a list of the experts from Asia and the Pacific who have been elected to serve as members of the Committee.

States parties commit to report regularly to the Committee on the steps they have taken to implement the Convention. Under the Optional Protocol, a State party

⁶ United Nations General Assembly resolution 61/106, annex I (13 December 2006); United Nations, *Treaty Series*, vol. 2515, p. 3. The leading English-language commentaries on the Convention are Bantekas, I., M.A. Stein and D. Anastasiou, 2018; and Della Fina, V., R. Cera and G. Palmisano eds., 2017.

⁷ United Nations General Assembly resolution 61/106, annex II (13 December 2006), United Nations, *Treaty Series*, vol. 2518, p. 283.

⁸ The Convention on the Rights of the Child also contains explicit protection in Article 23 for children with disabilities. United Nations, *Treaty Series*, vol. 1577, p. 3. The Convention on the Rights of the Child applies to all but one of the member States of ESCAP (the United States is the exception) and to all the associate members other than American Samoa, Guam and the Northern Mariana Islands.

⁵ Highlights of the research findings and analyses included in this publication were first presented as an ESCAP secretariat report prepared for the seventh session of the Working Group on the Asian and Pacific Decade of Persons with Disabilities, 2013–2022: ESCAP, 2021c. Andrew Byrnes was the ESCAP consultant who prepared the report submitted to the Working Group.

may also accept the competence of the Committee to: (a) receive and consider complaints by individuals who claim to be victims of a violation by that State party of the provisions of the Convention; (b) conduct inquiries into the situation in a State party where “the Committee receives reliable information indicating grave or systematic violations” by that State party of rights set forth in the Convention.⁹

The progress represented by the Convention has occurred in parallel with the adoption of other frameworks and plans that focus on the human rights of persons with disabilities, such as the unique regional initiative of three consecutive Asian and Pacific Decades of Persons with Disabilities, and the associated policy frameworks, the most recent being the Incheon Strategy to “Make the Right Real” for Persons with Disabilities in Asia and the Pacific. The Incheon Strategy was adopted by the High-level Intergovernmental Meeting on the Final Review of the Implementation of the Asian and Pacific Decade of Disabled Persons, 2003-2012 to “chart the course of the new Asian and Pacific Decade of Persons with Disabilities” from 2013 to 2022. The Incheon Strategy is aligned with the principles and objectives of the Convention. The Beijing Declaration, including the Action Plan to Accelerate the Implementation of the Incheon Strategy was adopted by the High-level Intergovernmental Meeting on the Midpoint Review of the Asian and Pacific Decade of Persons with Disabilities, 2013-2022. It provides a set of policy actions to accelerate the implementation of the Incheon Strategy. The 2030 Agenda for Sustainable Development and the Sustainable Development Goals also provide a framework within which the rights of person with disabilities can be better realized.

B. The Convention on the Rights of Persons with Disabilities and the Asian and Pacific region

Since its adoption, the Convention has been a catalyst and provided a framework for action by many ESCAP member States and associate members.¹⁰ States in the Asian and Pacific region have embraced the policy objectives of the Convention and the other international and regional initiatives to improve the enjoyment by persons with disabilities of their human rights and to promote their full inclusion in society and in development processes. The Convention and these other policy frameworks have stimulated significant initiatives across the region that have led to the adoption of new laws, policies and programmes that have responded to the changes in thinking about disability and to the advocacy of persons with disabilities and their representative organizations.

⁹ Optional Protocol to the Convention on the Rights of Persons with Disabilities, article 6.

¹⁰ Throughout this study, in addition to using the terms “ESCAP member States” and “ESCAP associate members,” reference is also made to “Asian and Pacific States,” which is intended for the purpose of the discussion to include both member States located in the Asian and Pacific region and associate members (all of which are located in the region).

The overwhelming majority of ESCAP member States have engaged actively with the Convention: the region has seen widespread though not yet universal ratification of the treaty, as well as revision of legislation, the adoption of national plans on disability, national plans on human rights and development that aim to be inclusive of persons with disabilities and increased opportunities for participation by persons with disabilities and their representative organizations in the making of decisions that affect their lives.

Much has been achieved. However, as the monitoring that has been undertaken at international, regional and national levels reveals, there is still an enormous amount to be done across the region, in particular to make legal and policy commitments that translate into real impact on the lives of persons with disabilities, which is the goal of the Incheon Strategy.

C. ESCAP’s project on harmonization of national legislation with the Convention and national case studies

The regional overview analysis within this report is part of a research project that ESCAP initiated to explore the extent to which Asian and Pacific States have harmonized their national laws with the Convention on the Rights of Persons with Disabilities. The project involved preparation of detailed national case studies by expert authors in five countries in the region on the impact of the Convention and on the consistency of national laws and practices in several areas.¹¹ The countries chosen have all submitted at least one report to the United Nations on their implementation of the treaty and have had at least one report reviewed by the Committee on the Rights of Persons with Disabilities.

This overview examines the extent to which reporting obligations have been fulfilled in a timely and substantive manner and the ways in which national human rights institutions and civil society organizations, in particular organizations of persons with disabilities, sometimes also known as “disabled peoples’ organizations”, have been involved in that process – an assessment based on the nature and number of submissions by such organizations under the reporting procedure.

The overview then examines in further depth issues that have commonly arisen in relation to the implementation of the Convention across the Asian and Pacific region, drawing especially on information available under the reporting procedure but also on other sources. The examination focuses on legal harmonization, that is, the principal legislative changes the Convention requires of States parties. It does not, however, purport to be a comprehensive or exhaustive examination of practices in the region.

¹¹ The country case studies deal with Australia, China, India, Republic of Korea and Thailand.

The five case studies go into considerable depth and give a rounded and holistic picture of the implementation of the Convention in those countries. They include but go beyond the major legal issues considered in this overview, and each case study has its own emphases. The country case studies provide insights into the effective implementation of the Convention in those countries and the challenges and barriers that exist; the experiences and insights they contain should also be of relevance to readers interested in the implementation of the Convention generally, not just in the context of a particular country.

This overview supplements the national analyses by identifying some of the common patterns and issues across the region that emerged in examination by the Committee on the Rights of Persons with Disabilities of the reports submitted by Asian and Pacific States under the treaty. This examination is based primarily on analysis of the concluding observations adopted by the Committee following its consideration of States parties' reports as part of its constructive dialogue with States. It also takes into account other documentation produced by the Committee, States parties, national human rights institutions and civil society groups, as well as academic and other relevant material. The analysis identifies good practices, including measures that have been evaluated positively by the Committee, and changes that the Committee has noted are still required and the means for achieving them. It also looks at priority issues for further harmonization across the region.

D. Harmonization of national legislation with the Convention

A fundamental obligation of States parties to the Convention is to harmonize their domestic laws with the provisions of the treaty. This involves the repeal of laws that are inconsistent with the Convention and their replacement by laws that guarantee the enjoyment of the rights guaranteed. It also involves removal of laws that restrict or limit the enjoyment by persons with disabilities of their human rights equally with others. And, it requires the introduction or strengthening of laws that mandate positive measures and provide active support to remove the economic, social and other barriers faced by persons with disabilities.

This overview focuses on the types of legal measures that Asian and Pacific States have taken in their efforts to harmonize national legislation with the principles and obligations of the Convention. Legal changes are of course only part of the transformational actions that States need to take to implement the treaty; the practical implementation, monitoring and enforcement of laws are also necessary but often difficult to achieve and measure. Within the area of legal reforms, the overview does not cover all substantive areas of law but emphasizes the importance and scope of the process of legislative review that is required and identifies priority areas where the Convention requires changes to existing laws in many countries.

Chapter 2 of this overview outlines the extent of engagement by ESCAP members and associate members with the Convention and its Optional Protocol. This includes details of the number of ratifications of and accessions to both treaties and the fulfilment by States of their reporting obligations under the Convention.

Chapter 3 outlines the nature and extent of the obligation of States parties to harmonize their domestic law with the Convention, how States have gone about doing so and the lessons that can be drawn from their experience.

Chapter 4 reviews the centrality of the human rights model of disability to the implementation of the Convention and provides an overview of the progress and challenges in the experience of Asian and Pacific States, thus far, in translating the Convention's human rights model into domestic law.

Chapter 5 focuses on the obligations under the Convention to prohibit all forms of discrimination based on disability and identifies some of the measures taken, thus far, by States and the challenges that have arisen.

Chapters 6 and 7 analyse several other fundamental guarantees of legal equality and non-discrimination, including the guarantee of legal capacity in article 12, the right to liberty of the person in article 14 and the right not to be subjected to torture or cruel, inhuman or degrading treatment in article 15.

Chapter 8 engages with the right to accessibility and Chapter 9 with the right to work.

Chapter 10 covers a case study of positive affirmation of rights: legal recognition of sign language.

Chapter 11 discusses national policies and plans of action on disability.

Chapter 12 examines the procedural and institutional obligations accepted by States parties to the Convention to establish internal government arrangements and independent external monitoring arrangements, as well as to facilitate the participation of persons with disabilities and their representative organizations in the implementation of the Convention and other relevant policymaking.

This publication concludes, in Chapter 13, by emphasizing areas where there are opportunities for Asian and Pacific States to build on the progress already made to more fully implement the Convention and brings together a summary of recommendations to States and to ESCAP, most of which have been proposed in the course of the discussion.

E. Methodology and sources

This overview of significant trends in the practice of Asian and Pacific States to which the Convention applies is not exhaustive analysis of what States have done but provides examples of initiatives that States have taken to implement the Convention while also identifying some of the challenges and difficulties that have emerged. The research on which this report is based includes reports and other documents submitted by States to the Committee under the Convention, the views expressed by the Committee in its engagement with States parties, including its concluding observations on individual countries¹² and also the General comments it has adopted. The report also draws on original texts (or reliable translations) of relevant legislation, reports of other international bodies or mechanisms, reports by national human rights institutions, scholarly studies and reliable reports by civil society entities, as well as selected materials produced by States and others for the purpose of the reporting procedure under the Convention on the Rights of the Child (to which all member States are party with one exception).

¹² While the Convention applies to 47 ESCAP members and five associate members, as of 30 May 2022, the Committee on the Rights of Persons with Disabilities had reviewed the reports on the implementation of the Convention and adopted concluding observations in relation to only 15 ESCAP member States and five associate members.

2

PARTICIPATION OF ESCAP MEMBERS AND ASSOCIATE MEMBERS IN THE CONVENTION REGIME

A. Ratification of or accession to the Convention

The Convention on the Rights of Persons with Disabilities was opened for signature on 30 March 2007 and, as of 21 June 2022, 184 States and the European Union had signed and ratified or acceded to it; another eight States had signed but not yet ratified the Convention.¹³ On that date, there were 100 States parties to the Optional Protocol, and 26 others had signed but not yet ratified that instrument.¹⁴

As of 30 June 2022, 47 of the 53 ESCAP member States had ratified or acceded to the Convention.¹⁵ Five other ESCAP member States had signed but not yet ratified the Convention,¹⁶ while one ESCAP member State (Timor-Leste) was neither a signatory nor a party to the Convention. Thus, approximately 90 per cent of ESCAP member States are party to the Convention, which is comparable with the overall ratifica-

tion rate at the universal level (approximately 93 per cent).¹⁷

Fourteen member States have also become parties to the Optional Protocol,¹⁸ while five others have signed but not yet ratified it.¹⁹ This means that 34 of the 53 ESCAP member States are neither signatory nor party to the Optional Protocol. Thus, approximately 26 per cent of ESCAP member States are party to the Optional Protocol, compared with an overall ratification rate at the universal level of approximately 50 per cent.²⁰ The Committee on the Rights of Persons with Disabilities has consistently recommended that, where they have not already done so, States parties to the Convention ratify or accede to the Optional Protocol.²¹

Of the nine associate members of ESCAP, the Convention applies to Cook Islands (which acceded to the Convention on its own account), as well as to Hong Kong, China, and Macao,

¹³ Details of signature, ratification and accession and the text of reservations, declarations and objections can be found at United Nations, 2022b.

¹⁴ United Nations, 2022b.

¹⁵ The 53 States include France, the Netherlands, the United Kingdom and the United States of America. If these States are not included in the count, there are 44 ratifications of the 49 ESCAP member States located in the Asian and Pacific region.

¹⁶ Bhutan, Solomon Islands, Tajikistan, Tonga and the United States.

¹⁷ Including 193 United Nations Member States, two non-Member Observer States and other non-Member States eligible to become party to the treaty.

¹⁸ Including France and the United Kingdom.

¹⁹ Armenia, Cambodia, Fiji, Kazakhstan and Solomon Islands.

²⁰ Including 193 United Nations Member States, two non-Member Observer States and other non-Member States eligible to become party to the treaty.

²¹ See, for example, Committee on the Rights of Persons with Disabilities, 2017b, CRPD/C/IRN/CO/1, para. 7(d) (Iran (Islamic Republic of)) ("take measures to sign and ratify the Optional Protocol"); Committee on the Rights of Persons with Disabilities, 2019h, CRPD/C/MMR/CO/1, para. 10 (Myanmar); Committee on the Rights of Persons with Disabilities, 2014e, CRPD/C/NZL/CO/1, para. 6 (New Zealand); Committee on the Rights of Persons with Disabilities, 2014d, CRPD/C/KOR/CO/1, para. 10 (Republic of Korea).

China, (as the result of application by China)²² and to French Polynesia and New Caledonia (as a result of ratification by France). The Convention does not apply to the other four associate members.²³ Cook Islands has also acceded to the Optional Protocol, which also applies to French Polynesia and New Caledonia, but not to the other six associate members. All those ESCAP member States and associate members to which the Optional Protocol applies have accepted both the individual complaints procedure and the inquiry procedure set out in the Optional Protocol.

B. Reservations and declarations²⁴

When States ratify or accede to the Convention, they may enter reservations to the treaty, provided that the reservations “are not incompatible with the object and purpose of the Convention” (article 46). Some ESCAP member States have entered reservations²⁵ and some have also made “declarations” that may amount to reservations, even though they are not described as such.²⁶

These reservations and declarations include general statements to the effect that the State party does not accept obligations under the Convention generally to the extent that this would conflict with its constitution or other laws,²⁷ as well as statements that the State

party does not accept obligations under specific provisions of the Convention. In other instances, States parties have indicated their understanding in “interpretive declarations” that specific provisions have a particular meaning.²⁸ Some of these declarations and statements may amount to reservations if they purport to exclude or to modify the legal effect of certain provisions of the treaty in relation to the State party in question. Several States parties to the Convention have objected to some of the reservations and declarations made, maintaining that they constitute vague and indeterminate reservations or are impermissibly broad in scope or that they purport to limit the operation of a provision that is critical to the achievement of the object and purpose of the Convention and are, therefore, incompatible with the object and purpose of the treaty and impermissible.²⁹

The Committee on the Rights of Persons with Disabilities (along with some States parties) has also expressed concern about broadly-framed reservations that do not give a specific indication of the particular provisions of the Convention, which may be affected by such reservations. The Committee has urged States parties that have come before it to reconsider the need for declarations that appear to limit their obligations (and thus may amount to reservations) and to withdraw their reservations. Some Asian and Pacific

States have withdrawn their declarations and reservations,³⁰ following objections from other States, a dialogue with the Committee under the reporting procedure or as a result of domestic advocacy by organizations of persons with disabilities (or as the result of a combination of these factors).

C. Engagement with the reporting procedure by ESCAP States parties

Under article 35 of the Convention, States parties accept an obligation to report regularly on the progress they have made in implementing the treaty’s provisions. These reports are considered by the Committee on the Rights of Persons with Disabilities. Article 35.1 provides that each State party must submit an initial “comprehensive report on measures taken to give effect to its obligations” and on the progress made within two years after the entry into force of the Convention for that State party concerned. States parties are required to “submit subsequent reports at least every four years and further whenever the Committee so requests”. The Committee also receives information from civil society organizations, national human rights institutions,³¹ United Nations bodies and other sources.

The Committee meets with representatives of the State party to consider the report in a “constructive dialogue”. Following this, it draws up Concluding Observations that identify the areas where it considers the State has made progress and areas of concern and makes recommendations to the State party regarding steps that it should take to more effectively implement the Convention.

In addition to its Concluding Observations, the Committee has adopted numerous General comments, Statements and Guidelines in which it clarifies its understanding of the meaning of various provisions of the Convention and the steps that it considers States parties should take to implement the treaty fully.³² It has also adopted decisions (known as “views”) in individual cases brought under the Optional Protocol³³ and has released three reports on inquiries conducted under article 6 of the Optional Protocol.³⁴ These documents represent an important reference point for States parties and now constitute a substantial body of guidance that did not exist at the time of the adoption of the Convention. The Committee continues to develop these forms of guidance, and States parties may need to review their existing laws and policies, including those amended after they ratified the Convention, to reflect the relevance of the Committee’s

²² United Nations, 2022b.

²³ Niue, American Samoa, Guam and the Northern Mariana Islands.

²⁴ The text of reservations, declarations and objections can be found at United Nations, 2022b and United Nations, 2022c.

²⁵ These include Iran (Islamic Republic of), Japan, Malaysia, Republic of Korea (article 25.e, now withdrawn), Singapore (articles 12.4, 25.e and 39.4), Thailand (article 18, now withdrawn).

²⁶ Article 2(1)(d) of the Vienna Convention on the Law of Treaties provides a generally accepted definition of “reservation” in the law of treaties: “(d) ‘reservation’ means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.”

²⁷ For example, Brunei Darussalam, which entered a reservation “regarding those provisions of the said Convention that may be contrary to the Constitution of Brunei Darussalam and to the beliefs and principles of Islam, the official religion of Brunei Darussalam”. See United Nations, 2022b.

²⁸ For example, Australia’s “declaration” in relation to article 12. See United Nations, 2022b.

²⁹ For example, the objections made to the reservation by Brunei Darussalam by Austria, Belgium, the Czech Republic, Germany, Hungary, Ireland, the Netherlands, Norway, Peru, Poland, Portugal, Romania, Sweden, Switzerland and the United Kingdom. See United Nations, 2022b. Austria, Belgium, Germany, Hungary, Ireland, the Netherlands, Portugal, the Slovak Republic, Sweden, and Switzerland also objected to the reservation made by Malaysia. See United Nations, 2022b.

³⁰ For example, Thailand withdrew its “interpretive declaration” relating to article 18 (Parental responsibilities and State assistance) on 5 February 2015, while the Republic of Korea withdrew its reservation to article 25.e relating to insurance on 23 December 2021. See United Nations, 2022b, footnotes 13 and 14. The Thai declaration had been subjected to objections from Portugal, Spain, Sweden and the Czech Republic on similar bases. For example, the Czech Republic objected to the Thai declaration, noting that it “left open to what extent the Kingdom of Thailand commits itself to article 18 of the Convention and this calls into question the Kingdom of Thailand’s commitment to the object and purpose of the Convention as regards the rights associated with liberty of movement and nationality.” The Czech Republic concluded that the “declaration was in fact a “reservation” that was incompatible with the object and purpose of the treaty and thus prohibited by article 46.1 of the Convention and customary international law. Portugal and Spain made similar objections. Portugal stated its view that this interpretative declaration “constitutes a reservation that makes the application of article 18 of the Convention subject to conformity with the national laws, regulations and practices. The Kingdom of Thailand has formulated a reservation that makes it unclear to what extent it considers itself bound by the obligations of article 18 of the Convention, and this calls into question the Kingdom of Thailand’s commitment to the object and purpose of the Convention as regards the rights associated with liberty of movement and nationality.” See United Nations, 2022b. Spain objected to the Republic of Korea’s reservation on the basis that it “does not permit clear determination as to the extent to which the Republic of Korea has accepted the obligations under article 25.e of the Convention, which raises doubts as to the commitment of the Republic of Korea to the object and purpose of the Convention in relation to the non-discriminatory, fair and reasonable provision of life insurance.” See United Nations, 2022b.

³¹ See Committee on the Rights of Persons with Disabilities and the Global Alliance of National Human Rights Institutions, 2018.

³² See Committee on the Rights of Persons with Disabilities in United Nations, 2022b and Annex 2.

³³ See Committee on the Rights of Persons with Disabilities in United Nations, 2022b.

³⁴ The inquiries related to Hungary, Spain and the United Kingdom. See www.ohchr.org/en/treaty-bodies/crpd/inquiry-procedure (accessed 24 May 2022).

evolving jurisprudence and practice. A list of the General comments and other relevant guidance adopted by the Committee, as of mid-2022, appears in Annex 2.

D. Timely submission of reports

As is the case under the other United Nations Human rights treaties with reporting obligations, the record of timely submission of reports by States parties under the Convention, generally and in the ESCAP region, is mixed. As of 30 June 2022, the timeliness of the initial reports submitted to the Committee by ESCAP member States was:

DATE OF SUBMISSION	
By deadline	4
Less than 1 year after deadline	8
1 - 2 years late	4
2 - 4 years late	11
More than 4 years late	9
Total	38

However, all these States parties submitted their initial reports, which have been reviewed by the Committee or will be reviewed in the near future.³⁵ As of that same date, nine States parties had not yet submitted their initial reports, and in some cases, these had been overdue for considerable periods of time. Of those reports, four were more than five years overdue.

³⁵ The reports of the following Asian and Pacific States were scheduled to be considered by the Committee at its 27th session (15 August - 9 September 2022): Bangladesh, China (including Hong Kong, China, and Macao, China), Indonesia, Japan, Lao People's Democratic Republic, New Zealand, Republic of Korea and Singapore.

RECOMMENDATIONS

1. To bring about universal ratification of the Convention in the Asian and Pacific region, States should take steps individually and collectively and in meaningful consultation with organizations of persons with disabilities to:

A. Encourage those States that have not yet ratified or acceded to the Convention or that have not yet extended it to those associate members for whose treaty relations they have responsibility, to ratify or accede to the Convention as soon as possible;

B. Encourage those States that have not yet ratified or acceded to the Optional Protocol to the Convention or extended it to those associate members for whose treaty relations they have responsibility to ratify or accede to the Optional Protocol to the Convention as soon as possible, with the goal of achieving ratification or accession by at least 50 per cent of States by 2030.
2. ESCAP should, in collaboration with the Office of the High Commissioner for Human Rights (OHCHR), other members of the United Nations system, and other relevant bodies, provide on request technical assistance to member States to ratify or accede to the Convention and its Optional Protocol and to extend that to the associate members for whose treaty relations they have responsibility.
3. ESCAP member States that have entered reservations or made declarations when ratifying or acceding to the Convention should, in consultation with organizations of persons with disabilities, undertake a review of those reservations and declarations with a view to withdrawing them as soon as possible.

4. ESCAP should, in collaboration with OHCHR, other members of the United Nations system and other relevant bodies, establish and strengthen an Asian and Pacific mechanism, with subregional linkages, for communication with and technical support for ESCAP member States on adherence to reporting procedures and timely submission of reports.

3

OBLIGATION TO HARMONIZE NATIONAL LAWS WITH THE CONVENTION

A. The need for comprehensive legislative reviews

A fundamental obligation of States parties under the Convention is to take legislative, administrative and other measures to give effect to the treaty. At least 31 ESCAP governments in the Asian and Pacific region reviewed their legislation in the lead-up to or following the adoption of the Convention and have subsequently adopted amendments to more closely align their domestic legislation with the principles and provisions of the Convention. At least 10 other ESCAP governments in the Asian and Pacific region have completed reviews and reported that amendments to legislation are pending or planned or have reviews under way. Only a few member States appear not to have yet undertaken a detailed review of laws for consistency with the Convention that has led to proposed or actual legislative changes. In some cases, the States concerned consider that their existing laws are in conformity with the Convention,³⁶ while others have become party to the Convention only recently.³⁷

Some Asian and Pacific States undertook legislative reviews prior to their ratification of or ac-

cession to the Convention,³⁸ while others have done so subsequently. Legislative reforms adopted as a result have included the introduction or revision of laws relating specifically to the rights of persons with disabilities as well as more wide-ranging reviews that have included reviews of criminal codes, guardianship laws, family laws, mental health legislation, labour laws, tax laws and other areas of law. In other cases, although legislative changes were adopted, they contained no substantial shift from older definitions of persons with disabilities; rather, an attempt was made to shoehorn the Convention concepts into the older language.

The types of legislative reform adopted include legislation that provides protection of the rights of persons with disabilities, including a prohibition of discrimination on the basis of disability and measures repealing discriminatory provisions of existing laws as well as positive legislative measures relating to the provision of social support, pensions, affirmative action or quotas, specific measures and other forms of support.

In some member States, legislative initiatives have been taken not only at the central level

³⁶ For example, Singapore. See Disabled People's Association Singapore, 2019, pp. 16 - 17.

³⁷ For example, Kyrgyzstan (2019) and Uzbekistan (2021).

³⁸ For example, to prepare for the ratification of the Convention, Japan amended its Basic Act for Persons with Disabilities and made other legislative changes in an effort to bring its laws into compliance with the Convention: Committee on the Rights of Persons with Disabilities, 2016e, CRPD/C/JPN/1, para. 2. Kazakhstan also introduced amendments to several laws prior to ratification. See United Nations Human Rights Council, Special Rapporteur on the rights of persons with disabilities, 2018, para. 20.

but also at state/provincial/prefectural/district/municipality and even local levels. Sometimes this reflects the division of power and responsibility for the issue under a federal system or devolved system of governance; in other cases, it demonstrates a desire on the part of central, provincial or local bodies to take the initiative of using a Convention-based framework to shape their laws and policies on disability. For example, in Pakistan, in addition to the legislation enacted in relation to its capital territory, two provinces adopted their own laws based closely on the Convention.³⁹

The nature of the legislative changes varies across individual countries, but it is difficult to identify changes or omissions that are specific to particular subregions: each subregion has leaders in the nature and extent of the changes made, while each subregion also has laggards that appear to have taken few significant legislative measures to implement the Convention. The only subregional exception to this trend of significant legislative reform appears to be the small island States of the Pacific. They have undertaken extensive reviews of their legislation to identify inconsistencies with the Convention, yet few of them have undertaken any substantial legislative steps to bring their laws fully in line with the Convention.⁴⁰

B. The need for comprehensive and ongoing review and scrutiny of legislation

The experience of Asian and Pacific States, thus far, indicates that, due to the extent to which discrimination on the basis of disability

has permeated and continues to permeate many social practices that are also embedded in and reproduced by law, a comprehensive review of all forms of legal regulation is required. At best, this includes the constitution, all primary legislation, decrees, regulations and other legal instruments adopted at the national, state/provincial/prefectural/district/county/municipality and local levels. This is a large-scale exercise that requires a significant commitment of time and human resources, as well as the meaningful participation of persons with disabilities and their representative organizations in the process. For example, a review by one member State led to the amendment of 87 laws and nine decrees just to eliminate “derogatory terminology” about persons with disabilities.⁴¹ In external reviews carried out in several member States, hundreds of laws were reviewed and the need for amendments to multiple laws were identified⁴² (in one case, a third of the 160 laws were reviewed).⁴³ These do not appear to be atypical examples and indicate the scale of the challenge in most countries to ensure that all laws and regulations are consistent with the Convention and continue to be so.

The review and monitoring of the Convention compatibility of laws will need to be ongoing and repeated. A one-off, once-and-for-all review will not suffice. This is not only because laws across many areas are likely to require amendment, but also because of the evolving international- and national-level understanding of what the Convention requires (including the developing jurisprudence of the Committee on the Rights of Persons with Disabilities). The ongoing adoption of new laws and regulatory instruments at the national level means

³⁹ Pakistan, Islamabad Capital Territory, 2020; Pakistan, Balochistan, 2017; Pakistan, Sindh, 2018. In Australia, which has a federal system of government with both the central and the state levels enjoying legislative power in relation to disability issues, each state and territory has its own anti-discrimination law, each of which includes a prohibition of disability-based discrimination, in addition to federal law prohibiting discrimination on the basis of disability. See Rees, N, S. Rice and D. Allen, 2018.

⁴⁰ See details of the legislative review undertaken in ESCAP, 2021a. Fiji is one exception, so far as the enactment of a new general law on the rights of persons with disabilities is concerned. See Fiji, 2018.

⁴¹ Committee on the Rights of Persons with Disabilities, 2019e, CRPD/C/TUR/CO/1, para. 4.

⁴² ESCAP, 2021a.

⁴³ ESCAP, 2021a, p. 33 (Nauru).

that these also need to be evaluated for their consistency with the Convention. Some Asian and Pacific member States that amended their laws prior to or shortly after they became a party to the Convention have since further amended those laws to enhance their compatibility with the Convention, in some cases after the Committee reviewed the report of the State concerned and recommended additional legislative amendments.⁴⁴

Asian and Pacific States have entrusted the task of reviewing existing laws to different bodies. For example, some States have entrusted the task to a national human rights institution or to a national law reform commission or institute. Others have entrusted the task to committees of local or external experts or to existing national advisory bodies or other bodies composed of government representatives, experts and persons with disabilities. Whatever the formal composition of such bodies, their process of review should allow for and support the meaningful participation of persons with disabilities and their representative organizations and ensure that their views are given significant weight in deliberations and in the final review outcome.

C. Mechanisms for ensuring regular ongoing review of new legislation

Asian and Pacific States will need to continue to monitor the implementation of existing laws and proposed new legislation for compatibility with the Convention. The monitoring mechanisms envisaged in article 33 of the Convention (discussed in Chapter 7) have a role.

States may want to consider the best way in which individual ministries or law-making bodies can assess their proposed new legal instruments for compatibility with the Convention – before they are presented to ministers or the cabinet and before they are introduced into the legislature and enacted or otherwise promulgated by the executive arm of government.

Parliaments also have a role in this process. Some member States have parliamentary committees that scrutinize all legislation for compatibility with human rights standards (including the Convention),⁴⁵ and many parliaments have substantive portfolio committees, such as justice, human rights or constitutional affairs committees, that can and do examine existing or proposed new laws for human rights compatibility. In some States, the parliament has a supervisory jurisdiction over subordinate or delegated legislation that is authorized to be made by the executive government that permits them to disallow or invalidate such secondary legislation, including on human rights grounds. National, regional and local law-making bodies might want to consider how to use or develop existing procedures to ensure that new legislative and regulatory proposals are examined for consistency with the Convention as a matter of course.

⁴⁴ For example, Georgia and the Republic of Korea. On the latter, see Lim, S. and others, 2022.

⁴⁵ An example is the Australian Parliamentary Joint Committee on Human Rights, which has the power to scrutinize all bills and also all subordinate legislation for their compatibility with a number of United Nations human rights treaties, including the Convention on the Rights of Persons with Disabilities, and to report to the Parliament. See Australia, Parliament, 2022; Australia, 2011.

RECOMMENDATIONS

ESCAP member States should:

1. Ensure that they introduce or strengthen existing procedures within the executive arm of government and the legislature to ensure that proposed and new legislation and other forms of legally binding regulation are reviewed for consistency with the Convention and amended, if found to be inconsistent, before they are enacted and enter into force.

2. Ensure that they have in place procedures for the comprehensive and regular review of the whole body of laws and regulations across all sectors and at all levels of government for consistency with the Convention;

3. Involve existing law reform bodies, national human rights institutions, specially convened expert bodies or public inquiries or ad hoc or standing legislative committees, as appropriate, in conducting such reviews;
4. Ensure that these bodies take into account the evolving jurisprudence of the Committee on the Rights of Persons with Disabilities in its General comments, Guidelines, Concluding observations, decisions and reports under the Optional Protocol and other statements;

5. Ensure that these bodies include persons with disabilities as members and provide a meaningful opportunity for organizations of persons with disabilities to contribute their expertise and experience to such reviews and to have that expertise and experience fully recognized and given significant weight in the making of recommendations for the reform of law and policy.

4

THE CENTRALITY OF THE HUMAN RIGHTS MODEL OF DISABILITY TO THE HARMONIZATION OF LAWS

A. Concept of disability and implementation of the social or human rights model

Fundamental to the implementation of the Convention is the adoption of the conceptual framework underpinning the treaty – the human rights model of disability. Historically in most countries, the laws, policies, practices and social attitudes in relation to disability have been based on different models (primarily the medical model) and social practices of charity and welfarism at best and discrimination and exclusion at worst.

The paradigm shift from a medical model of disability to a social or human rights model has posed challenges for nearly all States in their efforts to implement the Convention. Broadly speaking, the social model of disability sees “disability” as the result of the interaction between an individual with an impairment and their environment – it is the physical, attitudinal and institutional barriers that hinder or prevent the full participation of a person in society on an equal basis with others. Thus, the emphasis is on the social context and its impact on the individual. Disability is also seen as part of human diversity, “a mere difference within the continuum of human variations.”⁴⁶

This is contrasted with the medical model, which focuses on the impairment of the individual – “persons with disabilities are . . . ‘reduced’ to their impairments”⁴⁷ – and sees the impairment as the cause of the “problem” and as a deficit in the individual that “needs to be treated, cured, fixed or at least rehabilitated”.⁴⁸ Thus, the “problem” is located in the individual and takes no account of the role that established attitudes and environments have in bringing about the disability.

The Convention reflects the social model (though it also goes beyond it), as can be seen in the non-exhaustive description of persons with disabilities in article 1.2:

“Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”

The Convention adds a human rights dimension to the social model of disability.⁴⁹ It affirms the human dignity of all persons and

⁴⁶ Degener, T., 2016a, p. 33; Degener, T., 2016b, p. 35. Article 3.d sets out as one of the underlying principles of the Convention: “(d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity.”

⁴⁷ Committee on the Rights of Persons with Disabilities, 2018c, CRPD/C/GC/6, para. 8.

⁴⁸ Degener, T., 2016a, p. 33.

⁴⁹ Lawson and Beckett (2021, p. 368) describe the human rights model of disability as complementary to the social model: The former

that all human beings, including persons with disabilities, are rights-bearers.⁵⁰ Thus, persons with disabilities are entitled to the enjoyment of equal opportunities with others in their societies as a matter of right, not as recipients of charity, welfare or benevolence. The Committee on the Rights of Persons with Disabilities has stated that the “human rights model of disability . . . stresses the human dignity of persons with disabilities and conditions arising from interaction with various barriers that may hinder their full and effective participation in society on an equal basis with others.”⁵¹

B. Ableism and the Convention

The human rights model in the Convention is also the converse of the concept and framework of ableism that contributes to and perpetuates the structures of discrimination against and the exclusion and devaluing of persons with disabilities. The former United Nations Special Rapporteur on the rights of persons with disabilities, Catalina Devandas-Aguilar, described ableism as:

“... a value system that considers certain typical characteristics of body and mind as essential for living a life of value. Based on strict standards of appearance, functioning and behaviour, ableist ways of thinking consider the disability experience as a

misfortune that leads to suffering and disadvantage and invariably devalues human life. As a result, it is generally assumed that the quality of life of persons with disabilities is very low, that they have no future to look forward to and that they will never live happy and fulfilling lives.

*Ableism leads to social prejudice, discrimination against and oppression of persons with disabilities [because] it informs legislation, policies and practices.*⁵²

C. Legislative reforms: incorporating the human rights model of disability

Bringing about the change required by the Convention involves a major rethinking of law, practices and social arrangements. In most cases, this involves more than just minor changes to terminology. It requires a fundamental rethinking of the assumptions on which existing laws are based, for example in the field of guardianship. It is necessary to re-examine and move away from earlier definitions,⁵³ including those adopted pursuant to the then-current international standards, to the adoption of concepts and definitions of disability and persons with

disabilities that draw on the Convention language or are aligned with the treaty.

The practice of many Asian and Pacific States illustrates how this can be done as well as the challenges of doing so in a way that fully reflects the standards of the Convention. Many member States have revised or replaced their general laws on persons with disabilities (often designated as “on the protection of persons with disabilities”) with laws that are explicitly based on the Convention (often referring to “the rights of persons with disabilities”). In some cases, these laws include definitions and the rights set out in the Convention or use similar language. However, not all efforts have hewed closely to the Convention concepts and its human rights model, with the consequence that the legislative changes made fall short of full implementation of the Convention. Some first efforts have been subsequently amended, sometimes after discussions with the Committee on the Rights of Persons with Disabilities.

D. Introduction of new laws or amendment of existing laws to implement the Convention: examples from Asia and the Pacific

Many States parties to the Convention in Asia and the Pacific have introduced or amended laws relating to the rights of persons with disabilities following their ratification of the Convention. One example that seeks to align national law with the Convention is the replace-

ment by India of its earlier medical model-based legislation of 1995⁵⁴ with its Rights of Persons with Disabilities Act, 2016.⁵⁵ The 2016 legislation is based on and explicitly refers to the Convention and its principles, incorporates its definitions of disability, reasonable accommodation and other important terms and seeks to implement the Convention through close adherence to its terms.⁵⁶ The Republic of Korea also undertook extensive legislative reform of its pre-Convention laws in the lead-up to and following its ratification of the Convention; these laws include the amended Act on the Welfare of Persons with Disabilities, the Act on the Prohibition of Discrimination against Persons with Disabilities and Remedy against Infringement of Their Rights and the Korean Sign Language Act.⁵⁷ These also employ the framework of the Convention and draw upon its concepts and definitions.

Another example of comprehensive legislation that closely follows the concepts, language and enumeration of rights in the Convention is Fiji’s Rights of Persons with Disabilities Act, 2018.⁵⁸ This statute uses definitions of disability, reasonable accommodation, universal design and other terms drawn directly from the Convention, provides protection against discrimination in the terms of the Convention and lists the rights guaranteed in the treaty and according to the scheme of the treaty. In Pakistan, a national law applicable to the capital territory and a number of provincial laws (for example, in Sindh and Balochistan provinces) have modelled themselves on the Convention, replacing earlier legislation based on the medical model of disability and a social welfare approach.⁵⁹

involves a “human rights approach to disability policy” that “produces rights-holders” and “sets out standards of behaviour expected of States and institutions to ensure basic social justice for disabled people and it creates and provides guidance on practices and procedures for monitoring progress in rights-implementation.”

⁵⁰ Degener, T., 2016a, pp. 40-41.

⁵¹ Committee on the Rights of Persons with Disabilities, 2018b, CRPD/C/NPL/CO, para. 8 (Nepal). This approach is articulated clearly in the general principles underpinning the Convention and that are set out in article 3.

⁵² United Nations Human Rights Council, Special Rapporteur on the rights of persons with disabilities (2019), paras. 9-10 (footnote omitted). See also Campbell, F., 2001, p. 44 (“Ableism refers to a network of beliefs, processes and practices that produces a particular kind of self and body (the corporeal standard) that is projected as the perfect, species-typical and therefore essential and fully human. Disability then is cast as a diminished state of being human”); Bogart, K.R. and D.S. Dunn, 2019, p. 651; Wolbring, G., 2008, p. 253.

⁵³ A common definition that appeared in pre-Convention legislation addressing the rights of persons with disabilities defined persons with disabilities in terms derived from World Health Organization definitions of the time. See, for example, the comments of the Committee on the Rights of Persons with Disabilities, 2019b, CRPD/C/MNG/CO/1, paras. 5-7 (Mongolia); Committee on the Rights of Persons with Disabilities, 2018b, CRPD/C/NPL/CO/1, paras. 7-8 (Nepal).

⁵⁴ India, 1995.

⁵⁵ India, 2016. See generally Dhariyal, T.D., 2022.

⁵⁶ Nonetheless, in its concluding observations on India’s initial report, the Committee drew attention to other laws, policies and practices that had not yet been revised to incorporate the concepts and standards of the Convention. See Committee on the Rights of Persons with Disabilities, 2019b, CRPD/C/IND/CO/1, paras.6 and 7.

⁵⁷ See Lim, S. and others, 2022.

⁵⁸ Fiji, 2018.

⁵⁹ Pakistan, Islamabad Capital Territory, 2020; Pakistan, Balochistan, 2017; Pakistan, Sindh, 2018. In the Republic of Korea, there are also

The Decree on the Rights of Persons with Disabilities adopted by the Lao People’s Democratic Republic in 2014 also includes definitions of persons with disabilities, discrimination on the basis of disability and reasonable accommodation (among other definitions) as they appear in the Convention.⁶⁰ Another example is the revision by China in 2008 of its 1990 law on the protection of persons with disabilities in an effort to incorporate the concepts and principles of the Convention into the legislation.⁶¹ This included a prohibition of disability discrimination, although it did not include Convention-based definitions of disability or reasonable accommodation and did not explicitly state that denial of reasonable accommodation is disability discrimination.⁶² Subsequent ongoing reform efforts in China have since led to revision of the laws and regulations relating to education, transport,⁶³ accessibility to the built environment and the mental health law in an effort to align them with the Convention.⁶⁴

Another example is the process of legislative review undertaken by Armenia following its ratification of the Convention and its 2017 dialogue with the Committee on the Rights of Persons with Disabilities. The Committee drew

attention to apparent inconsistencies between the Convention and a draft law to amend the country’s 1993 legislation on the protection of persons with disabilities.⁶⁵ The law, finally adopted by the legislature in 2021, incorporated the concept, principles and definitions of the Convention.⁶⁶ Similarly, following its ratification of the Convention, Bangladesh replaced its previous legislation on disability, which was based on the medical model, with a model that is based on the Convention in concept, definitions and coverage of rights.⁶⁷ Indonesia has also moved from a medical model-based law to one that draws on the Convention.⁶⁸ Mongolia also introduced a comprehensive law on the protection of human rights of persons with disabilities in 2016 that is based on the Convention and provides extensive protection of the rights of persons with disabilities.⁶⁹ The Maldives has introduced new legislation that draws on the definitions and concepts of the Convention in 2010, not long after ratifying the Convention (on 5 April) of that year.⁷⁰ Malaysia introduced its Persons with Disabilities Act, 2008 before it ratified the Convention in 2010. The legislation drew on some of the principal concepts and definitions in the treaty and structured its catalogue of rights drawing on many of the rights in the Convention.⁷¹

some provincial or city ordinances that use the Convention as a framework to guide their policy and practice. See “Policymaking” and “Use of the Convention as a framework for policy and practice at city or local level” in Lim, S. and others, 2022.

⁶⁰ Lao People’s Democratic Republic, 2014, articles 2 and 3. See also Committee on the Rights of Persons with Disabilities, 2016d, CRPD/C/LAO/1, para. 41.

⁶¹ See generally Zhang, W. and Y. Liu, 2022.

⁶² Committee on the Rights of Persons with Disabilities, 2012a, CRPD/C/CHN/CO/1, paras. 11-12.

⁶³ For example, the Measures for the Administration of Air Transport for Persons with Disabilities issued by the Civil Aviation Administration of China in 2015 explicitly refer to the Convention and international practice as the background to the instrument and adopt the Convention definition of “disability” in article 4. See China, 2015; Zhang, W. and Y. Liu, 2022.

⁶⁴ While the Committee on the Rights of Persons with Disabilities has commended this review process and many of the changes, it also considers that, in a number of important respects, legislation and policy have not been brought into full compliance with the Convention. See Committee on the Rights of Persons with Disabilities, 2012a, CRPD/C/CHN/CO/1.

⁶⁵ Committee on the Rights of Persons with Disabilities, 2017a, CRPD/C/ARM/CO/1, paras. 6 (c) and 8 (a) and (b)

⁶⁶ Armenia, 2021; Chilingaryan, A, 2021.

⁶⁷ Bangladesh, 2013. Nuri, R.P.and others, 2021.

⁶⁸ Indonesia, 2016.

⁶⁹ Mongolia, 2016; Ganbat, 2017, pp. 233-238.

⁷⁰ Committee on the Rights of Persons with Disabilities, 2018f, CRPD/C/MDV/1, paras. 16-17 and 21-28.

⁷¹ Malaysia, 2008. The Malaysian legislation adopts the definition of the Convention for “persons with disabilities” (although omitting the phrase “on an equal basis with others”), “reasonable accommodation,” “communication” and other terms. In the Malaysian legislation, “on an equal basis with persons without disabilities” appears six times: in the preamble and in the interpretation of “reasonable accommodation.” It also appears in the provisions on access to cultural life; access to recreation, leisure and sport; and access to health. However, the Act does not include the definition of discrimination on the basis of disability, nor provide for remedies; in fact, it includes a provision expressly

Other legislative reforms that seek to move-away from the medical model to a social or human rights model have drawn on the concepts and sometimes definitions contained in the Convention but have not necessarily included them in their full amplitude. In some cases, revised legislation has retained language and concepts that appear at odds with the Convention. For example, one State revised its earlier medical model-based law on the protection of persons with disabilities to a law that seeks to orientate itself according to the Convention; however, it covered only some of the areas dealt with in the Convention⁷² and, despite the legislative changes, the medical model is still present throughout the legislation, with emphasis on treating, curing and rehabilitating persons with disabilities.⁷³

Despite these and many other reviews and revisions of existing general laws, there is still a considerable way to go in achieving full implementation of the Convention through general laws on the rights of persons with disabilities. A few States have made no amendments to laws that predate the Convention and have adopted inconsistent medical and welfare models of disability or that do not cover all the areas required by the Convention. And many laws amended following the adoption of the Convention still embody the medical model in some respects.⁷⁴

Some States have recognized that their first efforts at amending older legislation have not gone far enough and have commenced or flagged renewed efforts to ensure that general laws on the protection of the rights of persons with disabilities are in full compliance with the Convention.⁷⁵ The reporting procedure under the Convention and the dialogue with the Committee offers an important opportunity for the independent expert review of laws that may assist States in future legislative amendments. For this reason, timely ongoing reporting by States parties under article 35 of the Convention, which for many ESCAP member States is now entering its second round, is an important opportunity for States to maintain close monitoring of their implementation. Other independent technical support to assist member States in such reviews may also be available.⁷⁶

E. Harmonization of sectoral laws

Many States have introduced legislation specifically on the protection of the rights of persons with disabilities. Some States are revising laws that provide for social or other forms of support for persons with disabilities. However, not all have carried the reform effort into the amendment of sectoral laws that reflect the Convention’s framework and principles. States that have done so⁷⁷ include those that have

excluding the liability of public officials and others for violations of the Act (section 41).

⁷² See United Nations Human Rights Council, Special Rapporteur on the rights of persons with disabilities, 2017, A/HRC/37/56/Add.1, para. 11 (Democratic People’s Republic of Korea).

⁷³ Ibid., para. 39.

⁷⁴ Committee on the Rights of Persons with Disabilities, 2019h, CRPD/C/MMR/CO/1, paras. 5(b) and 6(b) (Myanmar); Committee on the Rights of Persons with Disabilities, 2014c, CRPD/C/AZE/CO/1, paras. 8 and 9 (Azerbaijan); Committee on the Rights of Persons with Disabilities, 2015c, CRPD/C/COK/CO/1, para. 5 (Cook Islands) and Committee on the Rights of Persons with Disabilities, 2011, CRPD/C/COK/1, para. 55; Committee on the Rights of Persons with Disabilities, 2012a, CRPD/C/CHN/CO/1, paras. 53 and 54 (Hong Kong, China); Committee on the Rights of Persons with Disabilities, 2014d, CRPD/C/KOR/CO/1, paras. 6 and 7 (Republic of Korea); Committee on the Rights of Persons with Disabilities, 2018g, CRPD/C/PHI/CO/1, paras. 6(a) and 7(a) (Philippines).

⁷⁵ For example, Committee on the Rights of Persons with Disabilities, 2018d, CRPD/C/GEO/1 (Georgia). India, Republic of Korea and China are other examples. See Dhariyal, T.D., 2022; Lim, S. and others, 2022; and Zhang, W. and Y. Liu, 2022.

⁷⁶ See, for example, United Nations Development Programme (UNDP), 2020. The Federated States of Micronesia has also sought ESCAP assistance to undertake a “comprehensive legislative review in order to identify gaps and align them with the Convention”. See Federated States of Micronesia, 2022, para. 6.

⁷⁷ See, for example, Committee on the Rights of Persons with Disabilities, 2018d, CRPD/C/GEO/1, paras. 13-17 (Georgia). Although the national report recognized that there were areas in which the medical model still prevailed, concepts such as reasonable accommodation and universal design had not been incorporated into domestic law, and there were other inconsistencies. However, the ongoing review of the

extended reform into such areas as social welfare and support,⁷⁸ education,⁷⁹ health law (in particular mental health law and guardianship),⁸⁰ transportation,⁸¹ building regulation,⁸² online broadcasting and media accessibility,⁸³ and civil and criminal codes.⁸⁴

Such large-scale reviews of legislation are often complex and time-consuming exercises. It is also the case that there must be ongoing review – it is not a case of “set and forget.” Nevertheless, full implementation of the Convention requires review and amendment of laws in all sectors where provisions involving discrimination against persons on the ground of disability are found or there is a need to provide protection against discrimination and ensure that reasonable accommodation is provided.

F. The Convention and the language used to refer to disability and persons with disabilities

States parties’ general obligations under article 4 of the Convention and their specific obligations to combat stereotypes, prejudice and harmful practices relating to persons with disabilities under article 8.1.b extend to the avoidance of language that denigrates persons with disabilities. This includes the amendment of existing laws that use outdated terminology to refer to persons with disabilities. In the view of the Committee on the Rights of Persons with Disabilities, the continuing use of such terms, which are often found in legislation enacted many decades ago and seen around the world, contributes to the perpetuation of stereotypes, stigmatization and prejudice against persons with disabilities.⁸⁵ The language also reflects concepts that are at odds with the concepts of respect, personhood, equality, dignity and inclusion that are fundamental to the Convention. For example, the Committee has noted the

need to remove from legislation such derogatory terms as “mentally ill, insane, retarded, criminal lunatic and lunatic.”⁸⁶

Many States have taken steps to remove this sort of terminology from their laws. For example, in its response to a written question about the presence of derogatory language in its legislation from the Committee on the Rights of Persons with Disabilities, the Government of Türkiye stated that it had reviewed its legislation and replaced such derogatory terminology in 87 laws and nine decree laws with the phrase “persons with disabilities.”⁸⁷ Similarly, following the adoption of a new law on the rights of persons with disabilities in 2018 that was based on the Convention, the relevant ministry in Azerbaijan prepared a range of amendments to existing laws that would remove offensive terms from other laws and replace them with more neutral language.⁸⁸ In response to the Committee’s expression of concern about the continuing use of derogatory terms in its legislation, Iran (Islamic Republic of) provided details of specific measures that it had undertaken to work towards removing such terminology and ensuring that any replacements were consistent with the Convention.⁸⁹ Nonetheless, there continues to be instances in which such language is used in statutes dealing with specific areas, for example, mental health, the civil code, criminal law⁹⁰ and marriage law. This underlines the importance of a comprehensive review of all laws, not just the amendment of those general

laws affecting the rights of persons with disabilities or dealing with social welfare, protection and other forms of support for persons with disabilities.

Related to the general obligations of States under article 8 of the Convention to raise awareness, the Committee on the Rights of Person with Disabilities has regularly drawn attention to the need for States parties to take concrete and continuous steps to strengthen awareness-raising and, in particular, “to reinforce the positive image of persons with disabilities as holders of human rights.”⁹¹ These efforts should extend to government officials, members of parliament, the media and the general public (and should include information about the Convention).⁹²

laws was included as a priority objective in the Governmental Action Plan on Human Rights 2016-2017. Similarly, the Russian Federation amended 12 sectoral laws in the lead up to its 2012 ratification of the Convention, to align them more closely with the terms of the treaty. See Committee on the Rights of Persons with Disabilities, 2014f, CRPD/C/RUS/1, para. 5.

⁷⁸ For example, Australia introduced a National Disability Insurance Scheme to provide individualized support for persons with disabilities to promote their inclusion and participation in society. See Australia, 2013.

⁷⁹ See, for example, Thailand, 2008.

⁸⁰ See, for example, the State of Victoria (Australia), which adopted a new Guardianship and Administration Act 2019 (Victoria) designed to bring the law in that jurisdiction into conformity with the Convention. See Australia, Victoria, 2019.

⁸¹ See, for example, the initiatives to increase accessibility in the Republic of Korea in the form of the Act on the Promotion of the Transportation Convenience of Mobility Disadvantaged Persons and the Act on Guarantee of Promotion of Convenience of Persons with Disabilities, the Aged, Pregnant Women, Etc. See “Accessibility” and “Transportation accessibility” in Lim, S. and others, 2022.

⁸² See, for example India, Ministry of Urban Development, 2016: The Harmonised Guidelines and Space Standards for Barrier-Free Built Environment for Persons with Disabilities and Elderly Persons (2016) made pursuant to Rules under the Rights of Persons with Disabilities Act, 2016. See also “Accessibility” and “Steps taken by the Governments and authorities for the creation of barrier-free environments” in Dhariyal, T.D., 2022.

⁸³ For example, Thailand, which adopted several laws to ensure access by persons with disabilities to online public information and services and the digital economy. See Committee on the Rights of Persons with Disabilities, 2012b, CRPD/C/THA/1, paras.29-36; Srisom, S. and others, 2022.

⁸⁴ For example, articles 21 and 22 of the Civil Code of China adopted in 2020 replaced references to “mental patients” in earlier legislation relating to legal capacity in an effort to bring the law into compliance with the Convention. See China, 2020; Zhang, W. and Y. Liu, 2022.

⁸⁵ Examples include Committee on the Rights of Persons with Disabilities, 2017b, CRPD/C/IRN/CO/1, paras. 8(c) and 9(a) (Iran (Islamic Republic of)); Committee on the Rights of Persons with Disabilities, 2014d, CRPD/C/KOR/CO/1, paras. 15 and 16 (Republic of Korea); Committee on the Rights of Persons with Disabilities, 2012a, CRPD/C/CHN/CO/1, paras. 15 and 16 (China); and Committee on the Rights of Persons with Disabilities, 2018g, CRPD/C/PHI/CO/1, paras. 6(c) and 7(a) (Philippines). The United Nations Special Rapporteur on the human rights of persons with disabilities has also commented on the use of such terms. See United Nations Human Rights Council, Special Rapporteur on the rights of persons with disabilities, 2017, A/HRC/37/56/Add.1, para. 26 (Democratic People’s Republic of Korea) (referring to the use, in various pieces of legislation, of such terms as “dumb, incapable, insane, cripples and invalids”). It also noted that the translation of the phrase “persons with disabilities” into Russian as “invalid” “does not reflect the human rights model.” See Committee on the Rights of Persons with Disabilities, 2018i, CRPD/C/CO/RUS, paras. 7-8 (Russian Federation).

⁸⁶ Examples include Committee on the Rights of Person with Disabilities, 2019h, CRPD/C/MMR/CO/1, paras. 5(c) and 6(c) (Myanmar); Committee on the Rights of Persons with Disabilities, 2018b, CRPD/C/TUR/Q/1, para. 2 (Türkiye).

⁸⁷ Committee on the Rights of Persons with Disabilities, 2019a, CRPD/C/TUR//Q/Add.1, para. 3.

⁸⁸ Committee on the Rights of Persons with Disabilities, 2019i, CRPD/C/AZE/2-3, paras. 12 and 24.

⁸⁹ Committee on the Rights of Persons with Disabilities, 2021a, CRPD/C/IRN/FCO/1 (15 September 2021), paras. 2–14.

⁹⁰ For example, the use of the term “unfit to plead” or of “unsound mind” in criminal law, which can lead to indefinite detention of persons with psychosocial disabilities. See Finch, K., 2022.

⁹¹ Committee on the Rights of Persons with Disabilities, 2014d, CRPD/C/KOR/CO/1, para. 16 (Republic of Korea). See also Committee on the Rights of Persons with Disabilities, 2015b, CRPD/C/MNG/CO/1, paras. 20 - 21 (Mongolia); Committee on the Rights of Persons with Disabilities, 2018b, CRPD/C/NPL/CO/1, paras. 15 - 16 (Nepal); Committee on the Rights of Persons with Disabilities, 2015e, CRPD/C/TKM/CO/1, paras. 15 -16 (Turkmenistan); and in relation to a State that is not party to the Convention on the Rights of Persons with Disabilities but is party to the Convention on the Rights of the Child, see Committee on the Rights of the Child, 2017, CRC/C/BTN/CO/3-5, para. 32 (g) (Bhutan should “undertake awareness-raising campaigns aimed at government officials, the public and families to combat the stigmatization of and prejudice against children with disabilities and promote a positive image of such children”).

⁹² Committee on the Rights of Persons with Disabilities, 2014d, CRPD/C/KOR/CO/1, para. 16.

RECOMMENDATIONS

1. ESCAP member States should:
- A. Integrate the human rights model of disability as the foundational principle of disability-specific laws, and other sectoral laws, including criminal laws and civil laws such as family and marriage laws.

B. Review laws that pre-date the Convention and its ratification by the respective State party, to pursue the harmonization of those laws with the Convention.

C. Tackle ableism in its diverse forms as the root of barriers to the meaningful participation of persons with disabilities, including by the following:

(a) Identify terminology that undermines the dignity of persons with disabilities and constitutes enormous hidden but real barriers to their participation in society which are:

(i) Widely used in national and local languages and cultures;

(ii) Laws and policies;

(b) Engage with persons with disabilities and experts in language and culture to develop Convention-compliant terminology in national and local languages;

(c) Engage media practitioners, education authorities, influencers and other key actors in shaping and perpetuating new Convention-compliant national and local terminology and cultural stereotypes.

D. Establish, at central and subnational levels, in parliaments (or equivalent decision-making bodies) appropriate committees, procedures and expert groups to scrutinize legislation and policy for consistency with the Convention, and propose related amendments based on the human rights model of disability.

2. ESCAP should, on request and in collaboration with OHCHR, other members of the United Nations system and other relevant bodies, support member States in undertaking the above actions.
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5

OBLIGATION TO PROHIBIT DISCRIMINATION ON THE BASIS OF DISABILITY

A. Obligation to legislate and the Convention definition of discrimination on the ground of disability

Article 5.2 of the Convention obliges States parties to “prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.” A prohibition of disability discrimination may appear in the constitution of a State in the form of a general guarantee of equality or a specific reference to disability, in a general law on the rights of persons with disabilities or in a specific piece of disability discrimination law, or disability discrimination might be included as part of a general anti-discrimination law or human rights law. In addition, there may be laws relating to particular sectors that provide supplementary protection against discrimination in that area, for example, in employment, education, access to goods, services and facilities or other areas of social life.

B. Constitutional guarantees

The inclusion of a reference to equality and non-discrimination on the ground of disability

in a constitutional document is a symbolic affirmation of the equality, dignity and full inclusion of persons with disabilities in a society. It may also make more rigorous the level of scrutiny applied by courts to legislative and other measures based on disability. The constitutions of most ESCAP member States contain guarantees of equality; they may be general or they may specify particular groups or characteristics that are given protection, for example, sex, ethnicity, religion, property or birth status, among others. These are often supplemented by a general category of “other status.” The constitutions of some ESCAP member States also contain an explicit guarantee of equality or non-discrimination on the ground of disability.⁹³

Many constitutions contain provisions indicating that measures taken to redress the disadvantage faced by “disadvantaged groups” in general or persons with disabilities in particular are not to be considered discrimination. Indeed, some constitutions require that such measures be taken. Many constitutions also include obligations on the State to ensure social support for persons with disabilities who are unable to support themselves. Nevertheless, even where disability is not specifically mentioned as a prohibited ground of discrimination, courts in numerous countries have held that disability falls within general guarantees of

⁹³ Armenia, 2015, article 29; Fiji, 2013, article 26(3)(a); Kyrgyzstan, 2016, article 16(2); Maldives, 2008, article 17(a); Nepal, 2017, article 18(2); and Thailand, 2017, article 27 (3). See “Equality and non-discrimination” in Srisom, S. and others, 2022. In Azerbaijan, amendments were made to the Constitution in a nationwide referendum in September 2016. These added section VI to article 25 of the Constitution: “VI. Persons with disabilities enjoy all rights and bear duties enshrined in this Constitution, except for the rights and duties which are difficult for them to be implemented due to their disabilities.” Azerbaijan, 1995 (amended in 2016), article 25 (VI); Committee on the Rights of Persons with Disabilities, 2019c, CRPD/C/AZE/2-3, para. 22.

equal protection or within open-ended categories, such as “other status.”⁹⁴ Persons with disabilities have also successfully invoked other constitutional rights, for example, the right to vote, in challenging the denial of their rights.⁹⁵

The process of constitutional amendment varies from State to State. In some cases, amendment may be legally and politically less complex than in others. Since the adoption of the Convention, some Asian and Pacific States have amended their constitutions specifically to include disability, either as a specific amendment⁹⁶ or as part of the adoption of a new constitution.⁹⁷ Nonetheless, States should consider the inclusion of disability on the ground of prohibited discrimination in their constitutions when opportunities for constitutional reform present themselves. Courts should be encouraged to interpret general guarantees of equality as extending to equality on the basis of disability where they have not already done so.

Even where constitutional guarantees of equality and non-discrimination on the ground of disability are present and can be of symbolic, political and legal importance, more detailed legislation will be required to make those guarantees and the rights in the Convention enforceable in law and practice at the national level. Accordingly, the enactment of discrimination legislation is required to give effect to the obligations in article 5 and other provisions of the Convention.

C. The scope of the obligation to prohibit discrimination on the basis of disability

“Discrimination on the basis of disability” is defined in article 2 to mean:

“any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation”

The Committee on the Rights of Persons with Disabilities has provided detailed guidance on the extent of obligations of States parties in relation to equality and non-discrimination under the Convention in General comment No. 6 (2018).⁹⁸ The obligation to prohibit disability discrimination requires that the prohibition cover the following:

- Direct and indirect discrimination on the basis of disability;⁹⁹
- Intersectional and multiple forms of discrimination,¹⁰⁰ including on the basis of disability and sex, age, ethnicity, religion, gender identity, sexual orientation, rural or urban residence, and any other status;¹⁰¹
- Denial of reasonable accommodation as a form of discrimination;
- Harassment on the basis of disability;
- Discrimination on the basis of present, past, disposition to disability in the future and imputed disability;¹⁰²
- Discrimination by association;
- Discrimination in all fields of social life and not be limited to fields, such as employment, education, and access to goods, services and facilities;
- Discrimination by public and private actors;
- Provision for available and effective individual and, where appropriate, systemic remedies for discrimination.

Article 5.4 of the Convention provides that specific measures “which are necessary to accelerate or achieve de facto equality of persons with disabilities are not to be considered discrimination.” Indeed, such measures are required as part of the positive obligations of States parties to the Convention and many Asian and Pacific States have adopted such measures. Article 6 recognizes that women and girls with disabilities are subject to multiple or intersectional discrimination and obliges States to take measures to address these forms of discrimination.

D. Efforts to give effect to the Convention obligation to prohibit disability discrimination

Some Asian and Pacific States that are parties to the Convention have not yet adopted legislation prohibiting discrimination on the basis of disability. However, many member States have done so, although inclusion of all the features noted above is not common.¹⁰³ While some of these laws existed prior to the Convention,¹⁰⁴ many are new or substantially so. Older laws have been revised to bring them into line with the Convention.

States have adopted a variety of legislative strategies to embed protection against discrimination on the basis of disability in their legislation, sometimes combining these approaches to ensure effective and comprehensive coverage:

- Inclusion of anti-discrimination guarantees, both general and in relation to specific sectors, in laws protecting the rights of persons with disabilities;
- Adoption of specific disability anti-discrimination laws;
- Inclusion of disability as a prohibited basis for discrimination in general anti-discrimination laws;
- Inclusion of disability, along with other grounds, as prohibited bases for discrimination in sectoral laws, such as labour or employment laws or laws relating to education.

⁹⁴ For example, Committee on the Rights of Persons with Disabilities, 2018d, CRPD/C/GEO/1 (Georgia), CRPD/C/GEO/1, para. 61 (reference by State party to the 2014 decision of the Constitutional Court in *Irakli Kemoklidze and David Kharadze v Parliament of Georgia*); Sri Lanka, Supreme Court of Sri Lanka, 2019 (guarantee of equality that did not specifically list disability as a prohibited ground of discrimination, nonetheless applied to disability). For a wide-ranging discussion of the generous approach of the Indian courts to drawing on constitutional and statutory guarantees and the Convention to protect the rights of persons with disabilities. See “Courts and tribunals” and “Constitutional and legislative protection” in Dhariyal, T.D., 2022.

⁹⁵ See, for example, the decisions of the Tokyo District Court and the Indonesian Constitutional Court referred to in Chapter 6. B. Links between guardianship and mental health legislation and other legislative frameworks.

⁹⁶ For example, Azerbaijan. See Committee on the Rights of Persons with Disabilities, 2019c, CRPD/C/AZE/2-3, para. 22.

⁹⁷ For example, Nepal, 2017.

⁹⁸ Committee on the Rights of Persons with Disabilities, 2018c, CRPD/C/GC/6. See also the report on this subject by the United Nations Office of the High Commissioner for Human Rights (2016). The Committee has also provided specific guidance in relation to discrimination against women and girls with disabilities that reflects the specific gender-based violations that they face. See Committee on the Rights of Persons with Disabilities, General comment No. 3 (2016f), CRPD/C/GC/3.

⁹⁹ See also Committee on the Rights of Persons with Disabilities, General comment No. 3 (2016f), CRPD/C/GC/3, para. 17.

¹⁰⁰ See Committee on the Rights of Persons with Disabilities, General comment No. 3 (2016f), CRPD/C/GC/3, paras. 4 and 16. In comments made in the context of discrimination against women and girls with disabilities but of broader application, the Committee noted: “Multiple discrimination refers to a situation in which a person experiences discrimination on two or more grounds, leading to discrimination that is compounded or aggravated. Intersectional discrimination refers to a situation where several grounds interact with each other at the same time in such a way as to be inseparable. Grounds for discrimination include age, disability, ethnic, indigenous, national or social origin, gender identity, political or other opinion, race, refugee, migrant or asylum seeker status, religion, sex and sexual orientation.” Ibid., para. 4 (c). The list of bases of multiple and intersectional forms of discrimination is not exhaustive.

¹⁰¹ For example, Committee on the Rights of Persons with Disabilities, 2019h, CRPD/C/MMR/CO/1, para. 12(a) (Myanmar); Committee on the Rights of Persons with Disabilities, 2019f, CRPD/C/AUS/CO/2-3, paras. 9-10(a) (Australia) (multiple and intersectional discrimination).

¹⁰² Committee on the Rights of Persons with Disabilities, 2015c, CRPD/C/COK/CO/1, para. 10(b).

¹⁰³ A list of many of the laws prohibiting disability discrimination in employment in force in ESCAP member States as of 2020 appears in table 2 in ESCAP, 2021b, pp. 6-7.

¹⁰⁴ For example, anti-discrimination laws in Australia (Australia, 1992) and Hong Kong, China (Hong Kong, China, 1996) and the Magna Carta of Persons with Disabilities of the Philippines (Philippines, 1992) and the Persons with Disabilities Empowerment Act B.E. 2550 of Thailand. (Thailand, 2013; 2007).

The Committee on the Rights of Persons with Disabilities has recommended that States consider including the article 2 definition of discrimination on the basis of disability in legislation; some States have done this.¹⁰⁵ It is also desirable that there be consistency of definition and approach across different pieces of legislation where States deal with disability discrimination in different overlapping or complementary laws, for example, ensuring that the concept of reasonable accommodation is mentioned specifically where disability is included as a prohibited basis for discrimination in general anti-discrimination laws covering multiple grounds of prohibited discrimination.

Protection against discrimination on the basis of disability appears in most of the recent general laws on the rights of persons with disabilities, including the abovementioned. Other examples of post-Convention disability discrimination laws include the Law on Persons with Disabilities, 2010 of Viet Nam,¹⁰⁶ the Act on the Prohibition of Discrimination against Persons with Disabilities and Remedy against Infringement of Their Rights, 2007 of the Republic of Korea¹⁰⁷ and the Rights of Persons with Disabilities Act, 2018 of Fiji.¹⁰⁸ There are also some disability anti-discrimination laws enacted before the adoption of the Convention that have not been substantially amended to align them more closely with it.¹⁰⁹

Other Asian and Pacific States have included disability as a prohibited ground of discrimina-

tion in general anti-discrimination statutes. For example, in 2014, Georgia adopted a consolidated anti-discrimination law that covered several grounds of discrimination, including disability, which was amended some years later to more closely align it with the Convention.¹¹⁰ In 2020, Armenia adopted the Law on Ensuring Equality before the Law that includes disability as a prohibited basis for discrimination and draws on Convention concepts and definitions.¹¹¹ However, in several other cases, legislation does not include a definition of “discrimination on the basis of disability.”¹¹²

While these laws endeavour to give effect to the Convention’s obligations in relation to prohibition of discrimination, there are some features in them that still do not give full effect to the Convention. For example, few laws explicitly prohibit intersectional forms of discrimination where disability forms part of the discrimination.¹¹³ In addition, while the anti-discrimination laws adopted generally prohibit direct discrimination, they often fail explicitly to cover indirect discrimination. Some laws apply to public authorities but do not explicitly apply to the acts of private or non-State actors or to all the areas covered by the Convention. While “reasonable accommodation” is referred to in many laws and the definition of that term in the Convention is often included in them, laws frequently do not explicitly stipulate that a denial of reasonable accommodation is itself a form of disability discrimination.¹¹⁴

There are States that still have no general legislative protection against discrimination on the basis of disability – not as part of a law on the rights of persons with disabilities, a general anti-discrimination law or a specific disability anti-discrimination law.¹¹⁵ This is inconsistent with the obligations to prohibit disability discrimination under the Convention, notwithstanding the view of some of those States that their laws are consistent with the treaty.¹¹⁶ The area of disability anti-discrimination laws appears to offer opportunities for substantial further progress in harmonizing national laws with the Convention.

E. Non-discrimination guarantees in specific areas

There are many examples of laws that regulate a particular area and guarantee protection against discrimination on specific grounds, once again, not often including disability specifically. For example, the Law on Civil Procedure of the Lao People’s Democratic Republic guarantees equality before the law and before the courts “irrespective of . . . gender, race, ethnicity, socio-economic status, language, educational level, occupation, beliefs or [other] factors.”¹¹⁷ In the Lao People’s Democratic Republic’s Decree on Persons with Disabilities, the grounds of discrimination are extended to include disability: “Disabled persons . . . shall have absolute equality [with] non-disabled persons before the law.” The provision also makes clear the prohibition of intersectional dimensions of discrimination against persons with disabilities by referring to “gender, age, race,

ethnicity, language, beliefs, religion, because of their disability and economic, cultural and social status” (article 9).

F. Reasonable accommodation

The concept of “reasonable accommodation” is central to the concept of equality and non-discrimination under the Convention. The obligation to afford reasonable accommodation is an obligation that applies in all areas covered by the Convention. It is not limited to employment, education or transportation.

Providing reasonable accommodation involves making changes to structures or arrangements to remove the barriers that prevent a particular individual from accessing premises, transport, other facilities, services or other opportunities on an equal basis with others.¹¹⁸ Article 2 of the Convention defines “reasonable accommodation” to mean:

“*necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.*”

¹⁰⁵ Examples include Fiji, 2018 and the Lao People’s Democratic Republic, 2014.

¹⁰⁶ Viet Nam, 2010.

¹⁰⁷ Republic of Korea, 2007. Note: between March 2008 and December 2020, there were 16 amendments to the 2007 Act, including three amendments in 2017.

¹⁰⁸ Fiji, 2018.

¹⁰⁹ Australia, 1992; Hong Kong, China, 1996.

¹¹⁰ See Committee on the Rights of Persons with Disabilities, 2018d, CRPD/C/GEO/1, paras. 32-33.

¹¹¹ Armenia, 2020.

¹¹² For example, Committee on the Rights of Persons with Disabilities, 2017b, CRPD/C/IRN/CO/1, para. 12(a) (Iran (Islamic Republic of)); Malaysia, 2018, section 2.

¹¹³ One exception is the Decree on Persons with Disabilities of the Lao People’s Democratic Republic. This provides that “Disabled persons. . . shall have absolute equality to non-disabled persons before the law” and also includes the prohibition of intersectional dimensions of discrimination against persons with disabilities by referring to “gender, age, race, ethnicity, language, beliefs, religion, because of their disability and economic, cultural and social status” (article 9).

¹¹⁴ For example, Committee on the Rights of Persons with Disabilities, 2018i, CRPD/C/RUS/CO/1, paras.13-14 (Russian Federation).

¹¹⁵ For example, Singapore and Brunei Darussalam.

¹¹⁶ The initial report of Singapore refers to the guarantees of equality under article 12 of its Constitution and notes that “the rights of persons with disabilities are protected under the Constitution as well as in other legislation like the Women’s Charter and the Penal Code,” as well as its Mental Capacity Act, building regulations and other laws and policies. See Committee on the Rights of Persons with Disabilities, 2016a, CRPD/C/SGP/1, paras. 64–101, especially at paras. 64 and 91. Brunei Darussalam has yet to submit its initial report due in 2018.

The United States Department of State noted in its 2021 report on human rights practices that, in Brunei Darussalam, “the law does not prohibit discrimination against persons with disabilities or mandate accessibility or the provision of most public services,” although it was also noted that “all person regardless of disability, however, receive the same legal rights...”. See United States Department of State, 2022.

¹¹⁷ Committee on the Rights of Persons with Disabilities, 2016d, CRPD/C/LAO/1 para. 456. Similar lists of prohibited grounds of discrimination (not including disability) also appear in the Law on the People’s Courts (article 6(1)) and article 6 of the Penal Law. See United States Department of State, 2022.

¹¹⁸ Committee on the Rights of Persons with Disabilities, General comment No. 2 (2014b) CRPD/C/GC/2, para. 25: “accessibility is related to groups, whereas reasonable accommodation is related to individuals.”

The definition of “discrimination on the basis of disability” in article 2 of the Convention states explicitly that such discrimination includes “denial of reasonable accommodation.” Accordingly, legislation and policies that seek to ensure equality and non-discrimination on the basis of disability must include a denial of reasonable accommodation in their definition of discrimination on the basis of disability. The Committee has urged States parties to provide explicitly in their legislation that denial of reasonable accommodation is discrimination¹¹⁹ and has also recommended that detailed guidance on determining what reasonable accommodation requires be included in legislative or non-legislative guidelines.¹²⁰

Many legislative reforms in the Asian and Pacific region have included adoption of the concept of reasonable accommodation. In some cases, the laws have included the definition of discrimination on the basis of disability contained in the Convention but have not explicitly provided that denial of reasonable accommodation is discrimination (although as a matter of interpretation, these laws may be interpreted to achieve that result).¹²¹

In a significant number of cases, legislation has stated explicitly that denial of reasonable accommodation constitutes discrimination on the basis of disability and, in some instances, the legislation has also included the Convention’s definition of reasonable accommodation. For example, section 27 (1) of Fiji’s Rights of Persons with Disabilities Act, 2018 defines “discrimination on the basis of disability” in the terms used in article 2 of the Convention and provides in section 27 (2) that discrimination includes denial of reasonable accommodation,

as defined in the Convention. The law also explicitly applies the concept across several areas, including employment and education. Similarly, India’s Rights of Persons with Disabilities Act, 2016 defines discrimination in terms of the Convention (section 2 (h)), including denial of reasonable accommodation (also defined in the same terms as in the Convention, section 2 (y)). The law imposes a broad obligation on the Government to ensure reasonable accommodation generally for persons with disabilities and explicitly states the obligation applies in the fields of education (section 16 (iii)), employment (section 20 (2)) and accessibility (section 65 (2)(e)).

In many cases, even where reasonable accommodation is referred to, no definition or explanation is included in the legislation or indication of how a person goes about deciding whether a particular accommodation is reasonable, although administrative guidance may be available.¹²² Nonetheless, some laws do provide guidance on how one determines whether a requested accommodation is reasonable. For example, a few laws indicate how one determines whether a requested accommodation would involve a “disproportionate or undue burden”. Section 4 of the Disability Discrimination Ordinance, 1996 of Hong Kong, China, uses the term “unjustifiable hardship” to describe the disproportionate or undue burden included in the Convention’s definition of reasonable accommodation. When assessing whether a requested accommodation would impose such a burden, the law requires that “all relevant circumstances of the particular case are to be taken into account,” including the following:

- Reasonableness of any accommodation to be made available to a person with a disability;
- Nature of the benefit or detriment likely to accrue or be suffered by any persons concerned;
- Effect of the disability of a person concerned;
- Financial circumstances of and the estimated amount of expenditure (including recurrent expenditure) required to be made by the person claiming unjustifiable hardship.¹²³

G. Remedies

The disability-rights or anti-discrimination laws of many States provide for remedies when a complaint of discrimination on the basis of disability or the violations of a person with disabilities is lodged. These may include access to conciliation processes to produce a mediated or conciliation settlement,¹²⁴ binding administrative remedy through such a body as a national human rights commission,¹²⁵ through ombuds procedures or through a specialized body, such as the Office of the Chief Commissioner for Persons with Disabilities or the corresponding State Commissioners in India.¹²⁶ Or they may involve access to the regular or specialized courts and tribunals (such as the labour court) to obtain a binding judicial remedy. In many, though not all, countries with constitutional protection, remedies can also be

sought from the courts to obtain judgements upholding the rights of persons with disabilities and ordering specific remedy.¹²⁷ In other countries where there are constitutional guarantees of the rights of persons with disabilities, the guarantee only becomes legally enforceable when it is translated into legislation.

Legislative schemes that provide for individual remedies and rely on persons with disabilities to report their individual cases have been recognized as inadequate in many situations to achieve remedies for individuals because of the barriers they face in accessing justice and, in particular, to remedy systemic and structural discrimination on the basis of disability. Accordingly, it is important to provide for remedial or regulatory options that will provide support to individuals in the form of easily accessible procedures, financial and other assistance in the preparation of complaints before administrative and judicial bodies (including the power of a body, such as a national human rights institution, to pursue a case on behalf of an aggrieved person or to litigate test cases) as well as to confer power on standing or ad hoc bodies¹²⁸ to undertake public inquiries into systemic and structural discrimination,¹²⁹ on their own initiative, on the basis of complaints received or when a matter is referred to them by the government.

¹²³ The provision derives from section 11 of the Australian Disability Discrimination Act, 1992 (Commonwealth), which also provides that the burden of proving that undue hardship would result from a requested accommodation lies on the person claiming that this would be the case: section 11(2).

¹²⁴ For example, Australia and Hong Kong, China, in several areas covered by the anti-discrimination legislation. In some instances, cases that have not been conciliated may then be taken to court for a hearing.

¹²⁵ See, for example, “Constitutional and legal protections” and “Impact of the laws and available remedies” in Lim, S. and others, 2022.

¹²⁶ See “National human rights institutions and other redress mechanisms” in Dhariyal, T.D., 2022 for a detailed discussion of the work of the Chief Commissioner for Persons with Disabilities and the State Commissioners for Persons with Disabilities in India.

¹²⁷ See Dhariyal, T.D., 2022.

¹²⁸ Examples of a standing body include the Australian Human Rights Commission (<https://humanrights.gov.au/>) and of an ad hoc body the Australian Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (<https://disability.royalcommission.gov.au/about-royal-commission>). See Finch, K., 2022.

¹²⁹ See the discussion of the range of options in the Australian Human Rights Commission, 2021, pp. 143-163. The Office of the Chief Commissioner for Person with Disabilities in India has a wide-ranging power to take up complaints on its own initiative (*suo motu*), and its orders have the same binding legal effect as the orders of a court. See Dhariyal, T.D., 2022. The National Human Rights Commission of the Republic Korea has a broad jurisdiction to receive complaints and undertake inquiries into violations of the rights of persons with disabilities as well as to recommend remedies and has been active in exercising these powers. See “Constitutional and legal protections” and “Impact of the laws and available remedies” in Lim, S. and others, 2022.

¹¹⁹ Committee on the Rights of Persons with Disabilities, 2014e, CRPD/C/NZL/CO/1, paras. 11 and 12 (New Zealand); Committee on the Rights of Persons with Disabilities, 2017a, CRPD/C/ARM/CO/1, paras. 7(b) and 8 (b) (Armenia); Committee on the Rights of Persons with Disabilities, 2012a, CRPD/C/CHN/CO/1, paras. 11 and 12 (China).

¹²⁰ Committee on the Rights of Persons with Disabilities, 2014e, CRPD/C/NZL/CO/1, paras. 11 and 12 (New Zealand).

¹²¹ Committee on the Rights of Persons with Disabilities, 2017a, CRPD/C/ARM/CO/1, para. 7(b) (Armenia). This appears to have been remedied by the adoption of the Law on the Protection of the Rights of Persons with Disabilities in 2021, which includes a definition of reasonable accommodation and stipulates that a failure to provide it is a form of discrimination; these did not appear in earlier drafts of the law. See Armenia, 2021. See also Committee on the Rights of Persons with Disabilities, 2015c, CRPD/C/COK/CO/1, paras. 9 and 10 (Cook Islands).

¹²² See, for example, the guidance provided in New Zealand Ministry for Social Development, 2017.

RECOMMENDATIONS

1. To ensure the harmonization of their national laws with the Convention where they have not already done so, governments in the ESCAP region should ensure that their legislation and other forms of binding legal regulation:
 - A. Prohibit discrimination on the basis of disability using the definition of these terms as the basis for their legislative provisions: disability, discrimination on the basis of disability, and other relevant terms in the Convention;
 - B. Specify explicitly in domestic legislation that denial of reasonable accommodation is in itself a form of discrimination on the basis of disability and draw on the definition of “reasonable accommodation” contained in article 2 of the Convention;
 - C. Extend the prohibition of disability-related discrimination to cover:
 - (a) Multiple and intersecting forms of discrimination, reflecting the intersection of disability with other parameters, including but not limited to age and gender;
 - (b) All areas covered by the Convention;
 - (c) Indirect discrimination.
2. ESCAP members and associate members should ensure that:
 - A. All laws that provide protection against discrimination on the basis of disability explicitly provide for prompt, accessible and effective remedies, including judicial, administrative or other appropriate remedies, available against both public and private bodies and persons;
 - B. National human rights institutions or equivalent bodies have the power to undertake inquiries into systemic and structural discrimination against persons with disabilities by either public bodies or private actors and are empowered to make recommendations and, where appropriate, to impose meaningful regulatory sanctions for such discrimination;
 - C. The rights of persons with disabilities and the barriers they face in accessing justice are included in both basic and ongoing judicial and legal education as well as in the training of all other professions and groups involved in the civil, criminal and administrative justice systems, with the involvement of persons with disabilities as trainers in these education and training activities.¹³⁰
3. ESCAP should, in cooperation with partners, convene subregional and regional judicial colloquia to provide judicial officers with the opportunity to learn more about the Convention on the Rights of Persons with Disabilities and the work of the Committee on the Rights of Persons with Disabilities and to share experiences in relation to the implementation of the Convention and other human rights treaties for application in their national courts.

¹³⁰ See, for example, Committee on the Rights of Persons with Disabilities, 2019f, CRPD/C/AU/CO/2-3, para. 26(f) (Australia).

6

EQUAL RECOGNITION AS A PERSON BEFORE THE LAW AND EQUAL ENJOYMENT OF LEGAL CAPACITY (ARTICLE 12)

A. The standard: moving from substitute decision-making to supported decision-making

One of the most challenging areas for harmonization of national legislation with the Convention is ensuring the recognition of the legal capacity of persons with disabilities and their right to exercise decision-making powers in relation to all aspects of their lives. This requirement is relevant to most articles of the Convention; however, article 12 is its anchor.

Article 12 of the Convention affirms that every person with disabilities is entitled to be recognized as a person before the law and to enjoy legal capacity on an equal basis with others in all areas of life. This is a fundamental provision of the Convention. It is a response to historical and continuing discrimination against persons with disabilities that has, on the basis of their disability, denied them legal capacity and the opportunity to exercise it and has given rise to challenges relating to its scope and implementation.

The Convention seeks to remove such discrimination, which can be seen predominantly in laws that remove legal capacity or the power to exercise it from a person with disability and transfer it to another person who makes decisions on behalf of a person with disability, often by reference to what that decision-making person considers to be “in the best interests”

of the person with disability. This is known as “substitute decision-making”. Such legislative discrimination occurs most often in relation to those who live with cognitive or intellectual impairment or psychosocial disabilities, although such discrimination may also extend to persons with sensory or physical disabilities.¹³¹ These systems of substitute decision-making have a particular impact on women, as the Committee on the Rights of Persons with Disabilities has noted:

“Women with disabilities, more often than men with disabilities and more often than women without disabilities, are denied the right to legal capacity. Their rights to maintain control over their reproductive health, including on the basis of free and informed consent, to found a family, to choose where and with whom to live, to physical and mental integrity, to own and inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit are often violated through patriarchal systems of substituted decision-making.”¹³²

¹³¹ Committee on the Rights of Persons with Disabilities, General comment No. 1 (2014a), CRPD/C/GC/1, para. 9.

¹³² Committee on the Rights of Persons with Disabilities, General comment No. 3 (2016f), CRPD/C/GC/3, para. 51.

Substitute decision-making is based on assumptions and stereotypes about the capacity of persons with disabilities that are reflected in laws relating to guardianship, civil law capacity, the right to marry and have a family, sexual and reproductive rights, the right to liberty, the right to consent to medical treatment and the right to vote and stand for office, among others.¹³³ For example, one national human rights institution noted in a report submitted to the Committee on the Rights of Persons with Disabilities that there were more than 200 laws and regulations in its jurisdiction that denied access to certain qualifications or jobs or limited their continuation in those jobs because persons with disabilities were under the guardianship system.¹³⁴ The situation is similar in many States, where classifications made under one law become a basis for discrimination or ineligibility under many other laws.

The Convention rejects such assumptions and requires States parties to adopt an approach that starts with an assumption of a person's possession of full capacity. It also rejects assumptions that a person's power to exercise that capacity is completely displaced because the person has a particular impairment that may affect the person's ability to exercise that capacity to some extent or for some time. In particular, the Convention requires that States parties move from systems of substitute decision-making to systems of "supported decision-making."

The Committee on the Rights of Persons with Disabilities describes the common features of substitute decision-making frameworks:

*“Substitute decision-making regimes can take many different forms, including plenary guardianship, judicial interdiction and partial guardianship. However, these regimes have certain common characteristics: They can be defined as systems where (i) legal capacity is removed from a person, even if this is in respect of a single decision; (ii) a substitute decision-maker can be appointed by someone other than the person concerned, and this can be done against his or her will; and (iii) any decision made by a substitute decision-maker is based on what is believed to be in the objective “best interests” of the person concerned, as opposed to being based on the person’s own will and preferences.”*¹³⁵

Although there are different views on the outer limits of article 12,¹³⁶ the central obligation is clear – the need to review laws that declare a person “incompetent” and therefore unable to exercise their legal capacity and that provide for the transfer of decision-making power to another person who does so “in the best interests” of the person with disability. These laws need to be replaced by laws and practice that assume capacity and provide a person with support in the exercise of that person's capacity.

The Convention thus requires that States parties move from systems of substitute decision-making to systems of supported decision-making that respect a person's autonomy, will and preferences.¹³⁷ The Committee on the Rights of Persons with Disabilities has provided detailed guidance on the criteria for establishing what it considers to be a Convention-consistent system of supported decision-making.¹³⁸ This support may take many forms but should be directed to ensuring that the “rights, will and preferences” of an individual are respected rather than a paternalistic decision as to the person's best interests. The support should provide protection for all rights, should not overregulate the life of the person needing support, and should accommodate a person's mode of communication even where it is “unconventional or not understood by many people.” Such support must be available to all persons with disabilities.¹³⁹

States must also put in place procedures to facilitate the creation of support and for ensuring that a person's identity as a support person can be verified and related actions challenged, if the provider of support is not acting in accordance with the will and preferences of the person needing support and that such support is available at no or low cost to that person.¹⁴⁰ According to the Committee, in cases in which it is not possible to determine the actual will and preferences of the person needing support, despite efforts to do so, it is necessary to adopt the “best interpretation of will and preferences” rather than reverting to a “best interests” test.¹⁴¹

B. Links between guardianship and mental health legislation and other legislative frameworks

In many States, a person's status under mental health or guardianship laws has operated as a trigger to disqualify the person from eligibility to hold public positions or exercise a range of other rights. The “mental health status” of a person has thus often been used as a crude proxy for the person's capacity to undertake the duties of a position without any inquiry into whether any health condition they live with in fact impedes them from carrying out the duties of that role.¹⁴² Implementation of the Convention requires the identification and removal or amendment of such provisions.

For example, as part of the process leading to ratification of the Convention by New Zealand, its Parliament considered simultaneously draft legislation to amend laws that used the definition of “mental disorder” under mental health legislation to disbar a person from certain offices.¹⁴³ The Parliament's Justice and Electoral Committee commented:

“These enactments use as a proxy or test for a person’s capacity or capability that person’s status as being or having been mentally disordered within the meaning of the Act or its predecessor and/or subject to detention or compulsory treatment orders under

¹³³ Committee on the Rights of Persons with Disabilities, General comment No. 1 (2014a), CRPD/C/GC/1, para. 8.

¹³⁴ Republic of Korea, National Human Rights Commission, 2014, p. 16.

¹³⁵ Committee on the Rights of Persons with Disabilities, General Comment No. 1 (2014a), CRPD/C/GC/1, para. 27.

¹³⁶ This is reflected in the declarations by several States parties, indicating that there may still be a role for substitute decision-making in limited circumstances and with appropriate safeguards. See “Declarations and Reservations” (declarations by Australia, Canada, Egypt, Estonia, Georgia, Ireland, Netherlands, Norway, Singapore and Uzbekistan) in United Nations, 2022b.

¹³⁷ The Committee on the Rights of Persons with Disabilities has stated that “there is a general misunderstanding of the exact scope of the obligations of States parties under article 12 of the Convention. Indeed, there has been a general failure to understand that the human rights-based model of disability implies a shift from the substitute decision-making paradigm to one that is based on supported decision-making.” Committee on the Rights of Persons with Disabilities, General comment No. 1 (2014a), CRPD/C/GC/1, para. 3.

¹³⁸ Committee on the Rights of Persons with Disabilities, General comment No. 1 (2014a), CRPD/C/GC/1, para. 29.

¹³⁹ Ibid., para. 29.

¹⁴⁰ Ibid., para. 29 (d) and (e).

¹⁴¹ Ibid., para. 21.

¹⁴² New Zealand Parliament, House of Representatives, 2008, p. 3.

¹⁴³ Ibid., para. 59.

that Act.” The Committee further noted that the mental health legislation “does not and was never intended to establish a mechanism for determining whether a person has the legal capacity for appointment to office and/or capability to undertake a role or function.”¹⁴⁴

Various amendments were made,¹⁴⁵ including the repeal or amendment of the provisions “so that it is clear the criteria for disqualification from or vacation of office, or disqualification from carrying out an activity or function, are that the person is either not capable or unable to carry out the duties of the office or the activity or function.”¹⁴⁶

In the Republic of Korea, there are some 300 legislative provisions that refer to or use the guardianship status of a person as a basis for limiting or denying that person’s access to particular positions or the exercise of specific rights, including the right to vote.¹⁴⁷ In 2020, the Government announced its proposal to amend 106 of these laws.¹⁴⁸ Similarly in Georgia, the legislature adopted amendments to provisions of the Civil Code and 67 other relevant laws that addressed issues of legal capacity following a decision of the Constitutional Court in 2014 ruling that existing laws were unconstitutional on the basis of disability discrimination.¹⁴⁹

Several Asian and Pacific States, the right to vote and stand for election of persons who live with intellectual or psychosocial disabilities (who are often described in legislation as being “of unsound mind”¹⁵⁰) or who are subject to guardianship orders is abrogated. In some cases, this removal of a citizen’s right to vote due to specific disabilities is included in the Constitution; in other cases, it is provided for in electoral legislation. Thus, where a guardianship framework involves substitute decision-making, the consequential effect of making such an order and effectively removing legal capacity disenfranchises a citizen on the basis of disability and thus is in violation of article 29 of the Convention.¹⁵¹

Some States have amended their laws to remove such discrimination. In others, courts have held that the denial of the right to vote to persons under guardianship, on the assumption that they are not competent to vote, amounts to discrimination on the basis of disability or is an unjustifiable restriction on a constitutionally or situation guaranteed right to vote. For example, in 2013, the Tokyo District Court found that exclusion from the franchise of persons under guardianship provided for by the Election Law was unconstitutional.¹⁵² Following this decision, the legislature amended the offending law within months.¹⁵³ In 2016, the Indonesian Constitutional Court held that the blanket exclusion of persons with psychosocial or intellectual disabilities from voting was a violation of the constitutional right to vote.¹⁵⁴

Such links between statuses, such as guardianship status or mental health status, and eligibility for other positions and the right to enjoy fundamental civil and political rights appear in most cases to raise serious issues of compatibility with the Convention.¹⁵⁵ The number and extent of these links underline the importance of undertaking a comprehensive review of legislation and not limiting the review of laws for Convention-compatibility to major or obvious areas of potential discrimination on the basis of disability.

C. Progress and challenges in the Asian and Pacific region in relation to legal capacity and the Convention

The adoption of the Convention has led to many States in the Asian and Pacific region and more broadly to review and revise their system of legal guardianship. Nonetheless, despite these efforts, the laws in many States have not gone as far as required by the Convention. In most jurisdictions, even under amended laws, the law may still permit or require a court to appoint someone to make decisions in relation to a person with disability where the court determines that the person has limited capacity generally or in relation to specific matters. In such cases, the Convention requires that any person appointed by the court must act to support the person with disability by seeking to determine that person’s will and preferences and ensuring that those are given

effect to, rather than making an independent assessment of that person’s best interests.

In some States, the laws relating to legal capacity of persons with disabilities have been reviewed¹⁵⁶ and subsequently amended. For example, following its ratification of the Convention, the Republic of Korea adopted new legislation, the Adult Guardianship Act, which entered into force in 2013 to replace provisions dating from 1958. Following its review of the initial report of the Republic of Korea, the Committee expressed concerns that the new system still involved substitute decision-making and recommended further amendment.¹⁵⁷ The Government adopted additional amendments to the legislation, which moved the law closer towards the model of supported decision-making embodied in the Convention.¹⁵⁸ There are ongoing reviews in other States; for example, the New Zealand Law Commission initiated, in 2021, a review of its law related to adult-decision-making capacity.¹⁵⁹

More generally, there appears to be a need for ongoing reviews and legislative reforms in this area. In many Asian and Pacific States, the laws relating to guardianship and denial of active legal capacity to certain groups of persons with disabilities have either not been substantively reviewed or amended.¹⁶⁰ Or, they have been amended but not in a manner that brings them into conformity with the Convention. To date, in its reviews of Asian and Pacific State party reports under the Convention, the Committee has raised concerns about the consistency of national legislation (including revised

¹⁴⁴ Ibid., p. 4, para. 60.

¹⁴⁵ New Zealand, 2008.

¹⁴⁶ New Zealand Parliament, House of Representatives, 2008, p. 4, para. 62.

¹⁴⁷ See “Equal recognition before the law” in Lim, S. and others, 2022.

¹⁴⁸ Ibid.

¹⁴⁹ Committee on the Rights of Persons with Disabilities, 2018d, CRPD/C/GEO/1, paras. 61-70 (Georgia).

¹⁵⁰ Australian federal electoral legislation provides that a person is ineligible to vote “by reason of being of unsound mind, is incapable of understanding the nature and significance of enrolment and voting”. See “Constitutional and legal protections” in Finch, K., 2022.

¹⁵¹ See “Participation in political and public life” in Lim, S. and others, 2022.

¹⁵² Nagase, 2013;

¹⁵³ Inclusion International, 2013; Zero Project, 2015.

¹⁵⁴ Indonesia, Constitutional Court of Indonesia, 2016. See also Election Access, 2016; and Anggono, B.D. and others, 2019.

¹⁵⁵ Committee on the Rights of Persons with Disabilities, General comment No. 1 (2014a), CRPD/C/GC/1, paras. 48-49.

¹⁵⁶ For examples of reviews recommending wide-ranging reforms consistent with the Convention, see Australia, Australian Law Reform Commission, 2014. However, the recommendations of the report have yet to be legislatively implemented. To similar effect, Australia, New South Wales Law Reform Commission, 2018.

¹⁵⁷ Committee on the Rights of Persons with Disabilities, 2014, CRPD/C/KOR/CO/1, paras. 21-22. The Australian State of Victoria enacted its Guardianship and Administration Act 2019 to bring its law into line with the Convention, although it has not entirely succeeded in that goal.

¹⁵⁸ Committee on the Rights of Persons with Disabilities, 2019c, CRPD/C/KOR/2-3, para. 63; see “Equal recognition before the law” in Lim, S. and others, 2022.

¹⁵⁹ New Zealand, Law Commission, 2021.

¹⁶⁰ See, for example, Armenia, 1998, article 31; Committee on the Rights of Persons with Disabilities, 2017a, CRPD/C/ARM/CO/1, paras. 19-20.

ones and with few exceptions) in the area of guardianship and other areas where the exercise of legal capacity by some persons with disabilities are subject to restrictions that are not consistent with the Convention.¹⁶¹ Some States have responded by undertaking further reviews and amending laws in response to the Committee’s recommendations and domestic advocacy by persons with disabilities.

RECOMMENDATIONS

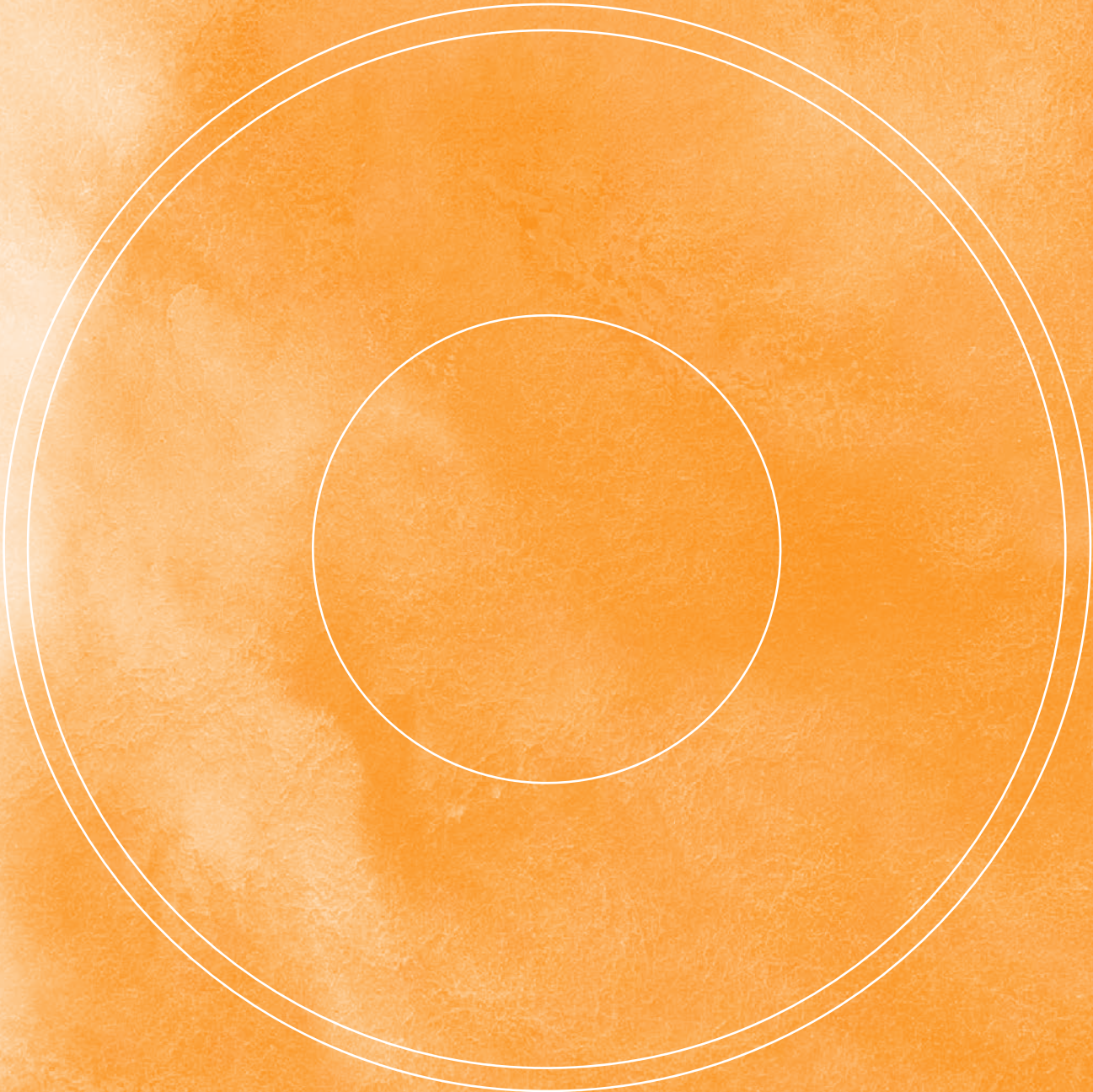
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Where they have not already done so, ESCAP member States should undertake a review of their legislation and regulatory frameworks to identify instances in which a guardianship order or judicial declaration of “incompetence” has the effect of disqualifying a person from holding particular offices or positions or exercising rights, such as the right to vote, and should ensure that such automatic links are repealed and that these primary statutes are amended to be consistent with the Convention.
2.

ESCAP members and associate members should review and reform laws that are inconsistent with the right to equal recognition as a person before the law and of the enjoyment of legal capacity on the basis of equality with others guaranteed by article 12 of the Convention, in particular those that provide for guardianship or other arrangements that embody substitute decision-making, which should be replaced by laws that guarantee supported decision-making where that is required. In undertaking such reviews, States should consider General comment No. 1 and General comment No. 3 of the Committee on the Rights of Persons with Disabilities.¹⁶²

¹⁶¹ Examples of concluding observations where the Committee expressed concern about the persistence of substitute decision-making frameworks are: Committee on the Rights of Persons with Disabilities, 2012a, CRPD/C/CHN/CO/1, paras. 21-22 (China); Committee on the Rights of Persons with Disabilities, 2014, CRPD/C/AZE/CO/1, paras. 26-27 (Azerbaijan); Committee on the Rights of Persons with Disabilities, 2015b, CRPD/C/MNG/CO/1, paras. 20-21 (Mongolia); Committee on the Rights of Persons with Disabilities, 2017a, CRPD/C/ARMCO/1, paras. 19-20 (Armenia); Committee on the Rights of Persons with Disabilities, 2017b, CRPD/C/IRN/CO/1, paras. 26-27 (Iran (Islamic Republic of)); Committee on the Rights of Persons with Disabilities, 2018b, CRPD/C/NPL/CO/1, paras. 21-22 (Nepal); Committee on the Rights of Persons with Disabilities, 2018g, CRPD/C/PHI/CO/1, paras.24-25 (Philippines); Committee on the Rights of Persons with Disabilities, 2019f CRPD/C/AUS/CO/2-3, paras. 23-24 (Australia); Committee on the Rights of Persons with Disabilities, 2019b, CRPD/C/IND/CO/1, paras. 26-27 (India); Committee on the Rights of Persons with Disabilities, 2019h, CRPD/C/MMR/CO/1, paras. 23-24 (Myanmar); Committee on the Rights of Persons with Disabilities, 2019e, CRPD/C/TUR/CO/1, paras. 25-26 (Türkiye); Committee on the Rights of Persons with Disabilities, 2019d, CRPD/C/VUT/CO/1, paras. 22-23 (Vanuatu).

¹⁶² Committee on the Rights of Persons with Disabilities, General comment No. 1 (2014a), CRPD/C/GC/1 and General comment No. 3 (2016f), CRPD/C/GC/3.



7

RIGHT TO LIBERTY AND SECURITY OF PERSON (ARTICLE 14), AND FREEDOM FROM TORTURE OR CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (ARTICLE 15)

Another important guarantee that has posed implementation challenges is the right to liberty and security of the person in article 14, which provides that right on an equal basis with others and that no one will be deprived of liberty arbitrarily or unlawfully. Article 14.1.b also provides that “the existence of a disability shall in no case justify a deprivation of liberty.” Article 14.2 provides that persons with disabilities who are deprived of their liberty are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation.

Article 14 is also closely linked with article 19, which guarantees the right to live independently and be included in the community and has implications for the acceptability of continued institutionalization of persons with disabilities who are offered no other practical options.

Article 14 applies to various contexts. The Committee on the Rights of Persons with Disabilities has provided some guidance on its interpretation in its General comment No. 1 on equal recognition before the law,¹⁶³ General comment No. 3 on women and girls with disabilities¹⁶⁴ and in its Guidelines on the Right to Liberty and Security of Persons with Disabilities (article 14).¹⁶⁵ The Committee has stated that the article affords protection against:

- Detention on the basis of impairment;
- Involuntary or non-consensual commitment to mental health institutions;
- Non-consensual health or medical treatment during deprivation of liberty;
- Protection of persons with disabilities who are deprived of their liberty from violence, abuse and ill treatment (including the use of physical, chemical and mechanical restraints);
- Deprivation of liberty on the basis of perceived danger allegedly posed by persons with disabilities, alleged need for care or treatment, or any other reasons;
- Detention of persons who are declared “unfit” to stand trial in criminal justice systems or incapable of criminal liability.¹⁶⁶

¹⁶³ Committee on the Rights of Persons with Disabilities, General comment No. 1 (2014a), CRPD/C/GC/1, paras. 40-42.

¹⁶⁴ Committee on the Rights of Persons with Disabilities, General comment No. 3 (2016f), CRPD/C/GC/3, paras. 44-45 and 53-54.

¹⁶⁵ A/72/55, Annex (2015).

¹⁶⁶ See also the series of cases brought against Australia under the Optional Protocol to the Convention in which the Committee found violations of the Convention: see “Individual communications against Australia under the Optional Protocol” and “Unfit to plead” provisions” in Finch, K., 2022.

While there is some debate about the scope of application of article 14, the breadth of the laws and lack of safeguards that exist in many States indicate that there is considerable progress to be made in this area to ensure better harmonization of national laws with the Convention. In many countries, there are laws that permit the abovementioned practices to be carried out, while in other cases, laws fail to provide adequate protection and remedies when such actions occur. In its review of Asian and Pacific States (and other States parties), the Committee has regularly identified ways in which national law and practice fall short of the guarantees provided by article 14.¹⁶⁷

Related concerns have also arisen in relation to article 15 (the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment or to medical experimentation without free and informed consent), article 16 (freedom from exploitation, violence and abuse), article 17 (protecting the integrity of persons) and article 25 (right to health).¹⁶⁸

Among the issues of concern are legislative provisions that provide for forced sterilization, forced abortions or forced contraception for women and girls with disabilities without their free and informed consent and for sexual and reproductive health care and rights more generally. The Committee has noted that such laws continue to appear in the legislation of many States and raise significant issues of compatibility with the Convention. This is another area where further legislative review and reform are needed.¹⁶⁹

Violence, neglect, exploitation and abuse of persons with disabilities

Persons with disabilities face violence, neglect, exploitation and abuse in a variety of contexts, including treatment directed against them because of their disability. One of the challenges in addressing these violations is the lack of comprehensive and reliable data on the nature and full extent of such violence.¹⁷⁰ Women and girls with disabilities are at higher risk of violence, including sexual violence, than women

and girls without disabilities in general and men and boys with disabilities.¹⁷¹ Women and girls with cognitive, psychosocial and communication disabilities are particularly at risk,¹⁷² although there is need for comprehensive data. While many States have adopted national plans to eliminate violence against women and girls, women and girls with disabilities and the specific violations they face (including forced sterilization) tend not to be explicitly addressed. Similarly, in Australia’s 2019 National Plan to Respond to the Abuse of Older Australians (Elder Abuse), no specific reference was made to older persons with disabilities or the specific forms of violence that they face.¹⁷³

RECOMMENDATION

ESCAP members and associate members should review and reform laws that provide for compulsory or involuntary treatment that is inconsistent with articles 14, 15, 16, 17 and 25 of the Convention, as well as laws that need to be strengthened to adequately protect and uphold freedom from exploitation, violence and abuse (article 16).

¹⁶⁷ Examples of concluding observations where the Committee on the Rights of Persons with Disabilities expressed concern about the inconsistency of domestic law with Article 14: Committee on the Rights of Persons with Disabilities, 2012a, CRPD/C/CHN/CO/1, paras. 26-27 (China); Committee on the Rights of Persons with Disabilities, 2014c, CRPD/C/AZE/CO/1, paras. 28-29 (Azerbaijan); Committee on the Rights of Persons with Disabilities, 2015b, CRPD/C/MNG/CO/1, paras. 24-25 (Mongolia) (concern regarding insufficient legal safeguards to protect persons with intellectual and psychosocial disabilities from forced hospitalization and institutionalization); Committee on the Rights of Persons with Disabilities, 2017a, CRPD/C/ARM/CO/1, paras. 23-24 (Armenia); Committee on the Rights of Persons with Disabilities, 2017b, CRPD/C/IRN/CO/1, paras. 30-31 (Iran (Islamic Republic of)); Committee on the Rights of Persons with Disabilities, 2018b, CRPD/C/NPL/CO/1, paras. 25-26 (Nepal); Committee on the Rights of Persons with Disabilities, 2018g, CRPD/C/PHI/CO/1, paras. 28-29 (Philippines); Committee on the Rights of Persons with Disabilities, 2019f, CRPD/C/AUS/CO/2-3, paras. 27-28 (Australia); Committee on the Rights of Persons with Disabilities, 2019g, CRPD/C/IND/CO/1, paras. 30-31 (India); Committee on the Rights of Persons with Disabilities, 2019h, CRPD/C/MMR/CO/1, paras. 27-28 (Myanmar); Committee on the Rights of Persons with Disabilities, 2019e, CRPD/C/TUR/CO/1, paras. 29-30 (Türkiye); Committee on the Rights of Persons with Disabilities, 2019d, CRPD/C/VUT/CO/1, paras. 26-27 (Vanuatu).

¹⁶⁸ Committee on the Rights of Persons with Disabilities, General comment No. 1 (2014a), CRPD/C/GC/1, para. 42 and Committee on the Rights of Persons with Disabilities, General comment No. 3 (2016f), CRPD/C/GC/3, paras. 53-54.

¹⁶⁹ Examples of concluding observations where the Committee on the Rights of Persons with Disabilities expressed concern about inconsistencies with articles 15 or 17 or inadequate protection under national law include: Committee on the Rights of Persons with Disabilities, 2012a, CRPD/C/CHN/CO/1, paras. 27-28 (China) (“correctional therapy” of involuntarily committed persons with actual or perceived intellectual or psychosocial impairments); Committee on the Rights of Persons with Disabilities, 2014c, CRPD/C/AZE/CO/1, paras. 28-29 (Azerbaijan) (involuntary hospitalization and forced institutionalization of children and adults in intellectual and/or psychosocial disabilities); Committee on the Rights of Persons with Disabilities, 2015b, CRPD/C/MNG/CO/1, paras. 20-21, 28-29 (Mongolia) (Law on Health allowing for eugenic sterilization of persons with disabilities); Committee on the Rights of Persons with Disabilities, 2015c, CRPD/C/COK/CO/1, paras. 10, 35 and 36(a) (Cook Islands); Committee on the Rights of Persons with Disabilities, 2017b, CRPD/C/IRN/CO/1, paras. 36-37 (Iran (Islamic Republic of)) (forced sterilization); Committee on the Rights of Persons with Disabilities, 2018g, CRPD/C/PHI/CO/1, paras. 32-33 (Philippines) (forced sterilization); Committee on the Rights of Persons with Disabilities, 2019f, CRPD/C/AUS/CO/2-3, paras. 29(a) and 30(a) (use of “restraints” and restrictive practices), paras. 33-34 (forced sterilization, forced abortion) (Australia); Committee on the Rights of Persons with Disabilities, 2019h, CRPD/C/MMR/CO/1, paras. 33-34 (Myanmar); Committee on the Rights of Persons with Disabilities, 2019e, CRPD/C/TUR/CO/1, paras. 36-37 (Türkiye); Committee on the Rights of Persons with Disabilities, 2019d, CRPD/C/VUT/CO/1, paras. 30-31 (Vanuatu).

¹⁷⁰ See the work of the Australian Royal Commission into Violence, Neglect and Abuse of People with Disability, discussed in Finch, K., 2022. See also “Integrity of the person” and “Exploitation, violence and abuse of persons with disabilities” in Dhariyal, T.D., 2022.

¹⁷¹ Committee on the Rights of Persons with Disabilities, General comment No. 3 (2016f), CRPD/C/GC/3, paras. 29-37.

¹⁷² See “Particular risks and experiences of violence for women and girls with disabilities” in Finch, K., 2022.

¹⁷³ See “National Plan to address violence against persons with disabilities” in Finch, K., 2022.

8

ACCESSIBILITY
(ARTICLE 9)

The guarantee of the right to accessibility is fundamental to the realization of the overall goals of the Convention, in particular its objectives of ensuring the full and equal inclusion and participation by persons with disabilities in all aspects of society. In its General comment No. 2, the Committee on the Rights of Persons with Disabilities has provided detailed guidance on the meaning of this concept and the obligations of States parties to ensure accessibility.¹⁷⁴

Nearly all Asian and Pacific States have adopted legislative or regulatory measures or adopted policies and programmes to increase the accessibility of the physical and other environments for persons with disabilities. The Constitution of Fiji is particularly noteworthy in providing a general guarantee against discrimination on the basis of disability and also in its specific guarantees of accessibility; the right to use sign language, Braille or other appropriate means of communication; the right of reasonable access to materials, substances and devices relating to a person's disability; and the right to reasonable adaptation of buildings, infrastructure, working arrangements, rules, practices or procedures to enable a person's full participation in society and the effective realization of the person's rights.¹⁷⁵

Many other States provide such guarantees in ordinary laws or regulatory instruments. These

may form part of general anti-discrimination laws, laws on the rights of persons with disabilities and/or laws or regulations for particular areas, such as building codes or road and air transport regulations. In relation to information and communication technology (ICT), many States have made provision for accessible government websites, the provision of sign language and closed captioning on television broadcasts.

In the area of ensuring accessibility for persons with disabilities, most Asian and Pacific States have adopted legislative or policy measures to increase the accessibility of the built environment and transportation services. However, implementation of these laws and policies often falls short of the standards that they have set. In some cases, sustained and high-profile advocacy campaigns have been undertaken: An example of this is provided in the country case study on Thailand, which traces a long-running campaign of advocacy and activism as well as litigation, from 1995 to 2022, to ensure that Bangkok's mass transit train system (the Skytrain) is accessible for persons with disabilities.¹⁷⁶ In Australia, a former federal Disability Discrimination Commissioner, who is blind, lodged multiple complaints while still in office against the local train operator for failure to regularly provide audible announcements of the next stop on the train he took to get to work.¹⁷⁷

¹⁷⁴ Committee on the Rights of Persons with Disabilities, General comment No. 2 (2014b), CRPD/C/GC/2.

¹⁷⁵ Fiji, 2013, article 42.

¹⁷⁶ See "Accessibility" and "Accessible public transport" in Srisom, S. and others, 2022.

¹⁷⁷ See "Accessibility" and "Steps to ensure accessibility in the community" in Finch, K., 2022.

The country case studies prepared for the Convention-harmonization project reveal the complex process that promoting the goal of accessibility in practice involves. For example, in Thailand, specific laws and regulations were adopted prescribing accessibility requirements and standards in relation to buildings, accessibility of ICT services, assistive technology and the media and provision of equipment, facilities and services in buildings. Even then, the progress has been slow in achieving these goals.¹⁷⁸

In China, regulations were adopted in 2012 that prescribe the construction of accessible facilities, information technology and community services (replaced by a new accessibility code that took effect on 1 April 2022), as well as adopting policies in these areas and in relation to improving accessibility of public transportation.¹⁷⁹ These have also been supplemented by technical standards to ensure information accessibility, with significant progress made in bringing about accessible government websites.¹⁸⁰

In India, the Government promulgated a range of legislative and regulatory requirements to ensure accessibility in the built environment, on public transport and in relation to ICT. These regulatory initiatives have been backed by strong policy frameworks and funding to facilitate the practical achievement of the goals. While much progress has been made, there is a long way to go to achieve the targets that have been set.¹⁸¹

In relation to the built environment, generally, accessibility requirements apply to most new buildings that are public or open to members of the public. However, in relation to older buildings, sometimes governments may not be prepared to impose accessibility requirements that are as stringent as those that apply to

newly constructed buildings due to the difficulties and cost of retrofitting older buildings.

To enhance barrier-free environments, the legislative and regulatory frameworks must cover both public and private buildings, especially those open to and used by the public. When this is not done, the rate of voluntary compliance with such standards is likely to be low.

In some cases, the law or regulations do not apply or are not as rigorously enforced in relation to private buildings. For example, in the Republic of Korea, the relevant legislative accessibility standards do not apply to private buildings and, as a consequence, they are not subject to the requirement to obtain barrier-free certification under the Barrier-Free Certification System. The authors of the country case study for the Republic of Korea noted that the level of certification obtained by private buildings from 2015 to 2020 was 4.5 per cent, compared with 95.5 per cent in the case of public buildings to which the following applied: legislative standards, the requirement to obtain certification and a system of onsite inspections to confirm compliance.¹⁸²

At the same time, ensuring accessible and barrier-free design in new public or private housing developments (not only buildings open to the public) is also critical to ensure that all persons with disabilities are able to live in housing of their choosing that is adapted to their needs. Regarding the accessibility of online services and facilities, whether government or private, it will be necessary to make existing inaccessible services accessible for persons with disabilities. The end goal, however, must be to make sure that websites and other forms of electronic service delivery are made accessible

at the initial design stage. In this area, there is also need for detailed regulatory standards in addition to any general guarantees of access under a law relating to the rights of persons with disabilities.

Overall, the challenge has tended to be one of implementation rather than of specifying or legally mandating the goal of accessibility. The challenges in relation to the physical and built environment include the large-scale undertaking that is involved, especially in relation to buildings that are sometimes difficult to reverse-engineer to make them accessible, as well as the financial resources that are frequently needed for certain types of changes to ensure accessibility.

It seems clear that the most effective laws and policies for bringing about real improvements in accessibility for persons with disabilities involve a clear statement of the legal obligation of government at all levels and the private sector; sector-specific legislation that sets out applicable standards, targets and timelines for individual sectors in the regulatory framework applicable to that sector; the specific and sufficient allocation of resources to achieve the goal set out; and effective monitoring and enforcement procedures – and the active participation of and advocacy by persons with disabilities and organizations of persons with disabilities, both in the co-design of the laws and policies and in their implementation, monitoring and enforcement.

RECOMMENDATIONS

ESCAP members and associate members should strengthen legislative and regulatory measures for accessibility, including by engaging persons with disabilities and their representative organizations, to ensure the following:

1. Promotion of understanding that the absence of accessibility in all dimensions is a violation of the rights of persons with disabilities;
2. Coverage of all dimensions of accessibility, including the built environment, facilities, street environment, transportation, digitalization, economic activities and related services, with adequate budgetary allocations, high priority attention, awareness-raising and training, using international technical standards, toolkits and good practices;
3. Promotion of understanding of technical standards regarding accessibility (including but not limited to the built environment, facilities, street environment, transportation, digitalization and related services);
4. Adherence to technical standards by and in the public and private sectors and regular monitoring of adherence, with implementing rules and regulations, enforcement procedures, redressal mechanisms, budgetary allocations, and transparent action by the respective responsible parties in each sector, and continuous training, research and awareness raising directed at every cohort of policymakers and implementing parties;
5. Initiation and reinforcement of disability-inclusive digitalization at all levels and in all sectors, including related services (such as eGovernment, eHealth and eBanking), emphasizing compliance with the latest version of the Web Content Accessibility Guidelines, as well as use of guidelines and good practices emanating from the implementation of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled;
6. Strengthening in a systematic manner the accessibility of existing infrastructure and related services.

¹⁷⁸ See "Accessibility" in Srisorn, S. and others, 2022.

¹⁷⁹ See "Accessibility" in Zhang, W. and Y. Liu, 2022.

¹⁸⁰ Ibid.

¹⁸¹ See "Accessibility" in Dhariyal, T.D., 2022.

¹⁸² See "Accessibility" in Lim, S. and others, 2022.

9

RIGHT TO WORK (ARTICLE 27)

The rate of employment of persons with disabilities tends to be much lower than for persons who do not live with disability, and the level of employment of women with disabilities is persistently lower. The Convention recognizes the importance of removing barriers to gainful economic activity by persons with disabilities, whether that be employment in the formal labour market, the informal economy or as independent entrepreneurs. Article 27 of the Convention guarantees the right of persons with disabilities to work on an equal basis with others and obliges States parties to take “appropriate measures, including legislation” to ensure the enjoyment of this right.¹⁸³ Specific obligations of a State party include duties to:

- “Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment ...” (article 27.1.a);
- “Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances” (article 27.1.b);
- “Ensure that persons with disabilities are able to exercise their labour and trade

union rights on an equal basis with others” (article 27.1.c);

- “Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training” (article 27.1.d);
- “Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment” (article 27.1.e);
- “Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one’s own business” (article 27.1.f);
- “Employ persons with disabilities in the public sector” (article 27.1.g);
- “Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures” (article 27.1.h);
- “Ensure that reasonable accommodation is provided to persons with disabilities in the workplace” (article 27.1.i);
- “Promote the acquisition by persons with disabilities of work experience in the open labour market” (article 27.1.j);

¹⁸³ See Bantekas, I., F. Pennilas, and S. Trömel, 2018. As of mid-2022, the Committee on the Rights of Persons with Disabilities was preparing a General comment on the right to work and employment, which was expected to be adopted at the Committee’s session in August-September 2022. For details and submissions, see <https://www.ohchr.org/en/calls-for-input/2021/call-submissions-draft-general-comment-article-27-right-persons-disabilities> (accessed 26 July 2022).

- “Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities” (article 27.1.k).

Enjoyment of the right to work facilitates the exercise of many other rights and is, in turn, dependent on the enjoyment of other rights guaranteed in the Convention for its full enjoyment. For example:

- Awareness-raising (article 8), which covers the obligation to raise awareness and to foster respect, to combat stereotypes, prejudices and harmful practices relating to persons with disabilities; and to promote awareness of the capabilities and contributions of persons with disabilities;¹⁸⁴
- The right to inclusive education (article 24);
- Accessibility (article 9), including access to premises and facilities, information and communications and access to transportation.

States have adopted a range of legislative and policy approaches to try to remove barriers to participation by persons with disabilities in gainful employment. These have included the enactment of laws prohibiting discrimination on the ground of disability in relation to employment, access to various forms of economic activity and legislative quotas requiring the appointment of a certain percentage of persons with disabilities to positions in public bodies and, in some cases, to positions in private enterprises.

Other forms of support include skills training for persons with disabilities to be better equipped to take their place in the open labour market; subsidies or tax concessions to employers who hire workers with disabilities; and public procurement policies that give prefer-

ence to enterprises that meet certain targets in the employment of persons with disabilities or buy products and/or services that are produced or owned by persons with disabilities or that employ a significant number of persons with disabilities.

Legislative provisions prohibiting discrimination on the basis of disability in relation to employment are found in employment laws, general anti-discrimination statutes, specific disability statutes and in some constitutional guarantees. In some cases, there may be guarantees in numerous legislative instruments, giving rise in some cases to inconsistencies in approach. Many States have legislation that provides protection against discrimination in employment on the basis of disability, including an increasing number of States that have incorporated Convention concepts and definitions into their provisions.¹⁸⁵ However, in some States, there is as yet no legislation that prohibits discrimination on the basis of disability in relation to employment, whether as part of an anti-discrimination law, the labour law or a specific law relating to persons with disabilities.

Even where legislation addresses discrimination in employment on the basis of disability, there are examples that lack incorporation of the Convention’s definition or concept of disability. Other laws do not include a wide-ranging definition of disability discrimination: This should encompass direct and indirect discrimination on the basis of disability, imputed or assumed disability, multiple and intersectional discrimination, harassment, discrimination by association and denial of reasonable accommodation as a form of disability discrimination. Some laws do not provide a definition of reasonable nor an explicit definition of “reasonable accommodation” or indicate how it is to

be assessed.¹⁸⁶ Other laws have been criticized because they do not adequately provide for available, accessible and effective remedies or redress.

Article 27 requires States parties to take steps to ensure the employment of persons with disabilities in public service. Article 27.1.b conveys the expectation that States will want to adopt specific measures to redress disadvantage and the additional barriers that persons with disabilities may face in obtaining work. Many States in the Asian and Pacific region have adopted legislation that mandates quotas for employment in the public sector, as well as encourages and sometimes mandates them in the private sector, particularly for large enterprises.¹⁸⁷ In some cases, in particular in relation to private employers, legislation provides that if an employer does not satisfy the quota obligations that employer will be obliged to pay a levy to the government. In some cases, there may be quota provisions for lower-level jobs, but with minimal promotion prospects for persons appointed to those jobs.

Requirements that employers fill quotas appear to have had some success in helping to increase the number of employees with disabilities, although in some cases employers have to be pushed by government agencies through administrative complaints or via litigation to appoint qualified individuals to fill a quota or to take steps to remedy a broader failure to meet quota stipulations.¹⁸⁸

The Committee on the Rights of Persons with Disabilities has welcomed the adoption of quotas in public and private sector employment and encouraged their adoption by States parties. However, it has also noted that there has been a disappointing take-up in some countries¹⁸⁹ and that, in some cases, levies or fines are paid by employers instead of employing persons with disabilities. It has also noted that there is often a concentration of employment of persons with disabilities at lower levels, with quotas often in practice not being applied to higher-level positions and there being few prospects of career advancement for persons with disabilities employed in lower-level positions. Some States have responded to this situation. For example, the Supreme Court of India recognized the obligation to ensure that persons with disabilities have career advancement opportunities and quotas should also apply to permit progression to higher-level positions. In response, the Government issued appropriate instructions so that quotas applied to a number of higher-level civil service positions.¹⁹⁰

While some States parties have adopted incentives for employers to take on persons with disabilities, in other cases the Committee has noted that States could do more to provide adequate positive support and incentives to employers to employ workers with disabilities.

The existence of and support for segregated workplaces in which persons with disabilities are employed (historically known in some places as “sheltered workshops”) has given rise to contention about whether they are con-

¹⁸⁶ See the previous discussion under “Reasonable accommodation.”

¹⁸⁷ See “Work and employment” in Srisom, S. and others, 2022; see “Work and employment” and “Government policies and programmes to promote the employment of persons with disabilities” in Lim, S. and others, 2022; see “Work and employment” and “Measures to promote employment” in Zhang, W. and Y. Liu, 2022; see “Work and employment” and “Reservation in Government and equal opportunity policy in the private sector” in Dhariyal, T.D., 2022.

¹⁸⁸ See “Annex 4: Success stories of the Chief Commissioner for Persons with Disabilities, Government of India 2015–2018” in Dhariyal, T.D., 2022 (including references to cases in which the Chief Commissioner has ensured that State bodies comply with quota requirements and appoint qualified persons who fall within relevant quotas).

¹⁸⁹ Committee on the Rights of Persons with Disabilities, 2019e, CRPD/C/TUR/CO/1, paras. 52 (c) and 53 (c) (Türkiye); Committee on the Rights of Persons with Disabilities, 2014d, CRPD/C/KOR/CO/1, paras. 51 and 52 (Republic of Korea); Committee on the Rights of Persons with Disabilities, 2018b, CRPD/C/NPL/CO/1, paras. 39 and 40 (Nepal); Committee on the Rights of Persons with Disabilities, 2016c, CRPD/C/THA/CO/1, para. 53 (Thailand); Committee on the Rights of Persons with Disabilities, 2018g, CRPD/C/PHI/CO/1, paras. 46 (b) and 47 (a) (Philippines).

¹⁹⁰ See “Constitutional and legislative protection” and “Affirmative measures” in Dhariyal, T.D., 2022.

¹⁸⁴ On awareness-raising obligations and the intersection of stereotypes about disability and women and their impact on women and girls with disabilities, see Committee on the Rights of Persons with Disabilities, General comment No. 3 (2016f), CRPD/C/GC/3, paras. 7, 17(e), 30, 37-40 and 47.

¹⁸⁵ For a list, see table 2 in ESCAP, 2021b.

sistent with the Convention, with its rejection of segregation and calls for full inclusion of persons with disabilities in society, including in regular economic activities. The Committee on the Rights of Persons with Disabilities has expressed its concern about the continued acceptance of and policy and legislative support in some States for “sheltered employment” that is not designed as a transition to (supported) employment in the open market. A related issue is the setting of wages in a discriminatory manner or excluding persons with disabilities from minimum wage provisions in the sheltered employment context or more generally.¹⁹¹

RECOMMENDATIONS

1. Where they do not already have such laws in place, ESCAP members and associate members should introduce or amend laws so that their legal systems provide effective protection against discrimination on the basis of disability in their laws relating to work that:

Embody a broad definition of discrimination on the basis of disability that is in line with the Convention and that includes an explicit duty of employers to provide persons with disabilities reasonable accommodation:

- A. In all stages of recruitment and hiring;
- B. In the workplace;
- C. That covers direct and indirect discrimination and multiple and intersecting forms of discrimination elaborated in General comment No. 3 and General comment No. 6 by the Committee on the Rights of Persons with Disabilities¹⁹² and in the Committee’s General comment on the right of persons with disabilities to work and employment.¹⁹³

2. Ensure that these laws are comprehensive in scope and cover applications for work, the applicant screening process; terms and conditions of work (including fair and equal remuneration for their work); access to training and career advancement opportunities; guarantees against discriminatory termination of employment and prompt, accessible and effective remedies for unlawful discrimination.

3. Where they have not already done so, ESCAP members and associate members should explore and adopt measures to require and to encourage public and private employers to employ workers with disabilities, including workers with diverse disabilities. These measures should include quotas, including quotas for advancing to more senior positions, financial support to employers to assist in the provision of reasonable accommodation, other subsidies including appropriate taxation benefits, public procurement policies and requirements that public and private boards include members with disabilities, as well as disability equality training for management and all employees.

¹⁹¹ See, for example, “Work and Employment” in Finch, K., 2021.
¹⁹² Committee on the Rights of Persons with Disabilities, General comment No. 3 (2016f), CRPD/C/GC/3 and General comment No. 6 (2018c), CRPD/C/GC/6.
¹⁹³ This General comment was expected to be adopted at the Committee’s session in August–September 2022.

10

POSITIVE AFFIRMATION OF RIGHTS: CASE STUDY OF LEGAL RECOGNITION OF SIGN LANGUAGE

There are many other areas in which policies adopted by States to implement the Convention have involved the introduction of new laws that give positive affirmation to the rights guaranteed by the Convention or the repeal of inconsistent laws.

On positive affirmation, the Convention, in its article 2, defines language as including “spoken and signed languages and other forms of non spoken languages.” Given the historical context and disregard of Deaf persons’ preference for their sign languages as their communication mode, that inclusion was revolutionary. It generated an empowering effect on Deaf communities worldwide.

In addition, in the following four articles, the Convention promotes the use of sign language:

- Article 9.2.e on Accessibility;
- Article 21.b and 21.e on Freedom of expression and opinion, and access to information;
- Article 24.3.b and 24.3.c on Education;
- Article 30.4 on Participation in cultural life, recreation, leisure and sport.

This Chapter covers legislation relating to recognition of national sign language as a national language. It also covers legislation providing persons who use sign language the

legal right to have access to information in that language and to communicate with public officials by signing and with interpretation, as required.

For example, in 2016, the Republic of Korea enacted the Korean Sign Language Act, which recognizes Korean Sign Language as a national language of equivalent standing to the spoken Korean language.¹⁹⁴ It guarantees a range of rights to Korean Sign Language users and imposes obligations on the Government to provide Korean Sign Language interpretation in the justice system, in public broadcasting and in other contexts. In the Republic of Korea, as in many other countries, the COVID-19 pandemic exposed the limitations of government communication, with public safety and health announcements not always accompanied by Korean Sign Language interpretation.

In many other States, the status of a national sign language is evolving. For example, in China, although citizens who use Chinese Sign Language are entitled to use it in their interactions with government officials (there are two action plans jointly developed by the China Disabled Persons’ Federation and many government entities),¹⁹⁵ the national sign language does not as yet have the legal status of a national language, with work towards legal recognition under way since 2021.

¹⁹⁴ See “Accessibility” and “Korean Sign Language” in Lim, S. and others, 2022.

¹⁹⁵ National Sign Language and Braille Standardization Action Plan (2015-2020): jointly formulated by the China Disabled Persons’ Federation; the Ministry of Education; the State Language Commission; and the State Administration of Press, Publication, Radio, Film and Television; and the National Sign Language and Braille Standardization Action Plan (2021-2025) jointly formulated by the China Disabled Persons’ Federation; the Publicity Department of the Central Committee of the Communist Party of China; the Ministry of Education; the State Language Commission; the Ministry of Science and Technology; the Ministry of Industry and Information Technology; the Ministry of Culture and Tourism; and the National Radio and Television Administration. Source: China Disabled Persons’ Federation, 21 July 2022.

Even for those States committed to ensuring that sign language communication becomes an everyday matter, an ongoing challenge is to ensure that there are enough qualified sign language interpreters to meet the demand for interpretation.¹⁹⁶ In 2011, an Indian High Court granted a petition brought against the Government seeking an order that it take steps to ensure that an adequate number of sign language interpreters be trained and their services made available so that persons who use sign language could access the full range of government services. The action was based on the constitutional right to life, and the court referred to article 9 of the Convention.¹⁹⁷ In a subsequent case, the same High Court rejected a claim seeking an order that Indian Sign Language be recognized as one of the country's national languages.¹⁹⁸

RECOMMENDATIONS

1. ESCAP member States should enact national sign language acts that provide for, inter alia,:

A. Legal recognition of national sign languages as valid official languages with equal status as spoken languages;

B. Teaching and use of national sign languages at all levels of the national education systems from pre-school upwards;

C. Research, documentation and teaching in national sign languages;

D. Certification training of national sign language interpreters using ICT and social media, to expand service availability;
- E. Continuous national sign language awareness-raising targeted at diverse groups to build acceptance and popularize the learning and use of national sign languages.

2. ESCAP should provide technical assistance to member States in creating conditions for the enactment of national sign language legislation.

¹⁹⁶ See “Accessibility” and “National sign language” in Finch, 2021.
¹⁹⁷ See “Courts and tribunals” in Dhariyal, T., 2021.
¹⁹⁸ See “Accessibility” and “Indian national sign language and its use” in Dhariyal, T., 2021.

11

NATIONAL POLICIES AND PLANS

States that are party to the Convention are obliged to work on the harmonization of domestic legislation with the Convention. In addition, States are also obliged take administrative and other measures to give effect to its provisions.

Among the measures adopted by Asian and Pacific States parties are comprehensive national policies or plans for persons with disabilities¹⁹⁹ as well as the adoption of sectoral plans in such areas as education, employment and accessibility of the built environment, transport, ICT, along with state or local plans of action.

The Committee on the Rights of Persons with Disabilities has emphasized the importance of such plans and of ensuring the involvement of persons with disabilities in their preparation, implementation and monitoring. It has also underscored the necessity of establishing a time

frame, specific indicators and benchmarks; and the need for allocating sufficient resources for their implementation.²⁰⁰ The Committee commended one State party on aligning its national disability policy with the concept of disability in the Convention as well as its disability-inclusive development policy and national inclusive education strategy.²⁰¹ It commended another State on the development of a policy framework to implement the Convention, including measures to encourage entrepreneurship, equal pay for women with disabilities and a plan of action on the rights of children with disabilities.²⁰² Another State was commended for its initiation of programmes on the rights of persons with disabilities, including a programme on deinstitutionalization and on inclusive education.²⁰³ There are many other examples in which the Committee has commended States parties for such national plans and policies.²⁰⁴

¹⁹⁹ In Timor-Leste, which has not yet become party to the Convention, the Convention has been used as a standard for evaluation and framework for action. This work, undertaken under the Advocacy for Change project, involved the development of a national action plan on disability and other activities that drew closely on the Convention's provisions and used those standards in conjunction with constitutional and legislative guarantees to identify shortfalls in the protection of the rights of person with disabilities in Timor-Leste. Handicap International Indonesia and Timor-Leste Programme, 2018.

²⁰⁰ See Committee on the Rights of Persons with Disabilities, 2019g, CRPD/C/IND/CO/1, paras. 8 and 9 (India); Committee on the Rights of Persons with Disabilities, 2012a, CRPD/C/CHN/CO/1, para. 10 (China); Committee on the Rights of Persons with Disabilities, 2018g, CRPD/C/PHI/CO/1 CO, para. 7(e) (Philippines).

²⁰¹ Committee on the Rights of Persons with Disabilities, 2015c, CRPD/C/COK/CO/1, para. 4 (Cook Islands) and see the detailed description of the concept of disability applied in the question asked by the Committee: "2. The Cook Islands National Disability Policy defines disability as an evolving concept, with focus on the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full, equal and effective participation in society. This definition emphasises the impact of environmental barriers and attitudes within communities that may limit access and mobility of persons with disabilities, including hindering their ability to carry out certain activities within the workplace and the community in general. This definition reflects the shift in our understanding of disability, from something that is attributed entirely to the individual, to highlighting the onus on society to eliminate barriers that may limit the full participation of all people in everyday life. Definitions often determine the way we address the issues. By shifting the emphasis away from the individual, we are highlighting the important role that all members of society have a part to play in ensuring that rights are protected for all..." Committee on the Rights of Persons with Disabilities, 2015a, CRPD/C/COK/Q/1/Add.1, para. 2.

²⁰² Committee on the Rights of Persons with Disabilities, 2017b, CRPD/C/IRN/CO/1, para. 5 (Iran (Islamic Republic of)).

²⁰³ Committee on the Rights of Persons with Disabilities, 2014c, CRPD/C/AZE/CO/1, para. 5 (Azerbaijan).

²⁰⁴ See, for example, Committee on the Rights of Persons with Disabilities, 2019i, CRPD/C/MMR/CO/1 CO, para. 4 (Myanmar); Committee on the Rights of Persons with Disabilities, 2018b, CRPD/C/NPL/CO/1, para. 5 (Nepal); Committee on the Rights of Persons with Disabilities, 2014e, CRPD/C/NZL/CO/1, para. 4 (New Zealand); Committee on the Rights of Persons with Disabilities, 2014d, CRPD/C/KOR/CO/1, para. 4 (Republic of Korea).

However, such plans need to reflect fully the concept of disability and underlying principles set out in the Convention. For example, while the Committee commended one State on its adoption of a comprehensive national plan on the social inclusion of persons with disabilities,²⁰⁵ it also noted that the policy used the concepts of prevention and treatment of disability in its plan (and revised Constitution) and urged that State party to review the policy for its alignment “with the human rights-based model of disability.”²⁰⁶ In another case, the Committee noted that the State party “tends to adhere to the World Health Organization definition of disability, which has a focus on conditions arising from inherent personal or medical limitations, thereby overlooking conditions that arise from interaction and that the use of this classification excludes certain groups of persons with disabilities who do not fall into any of its categories, such as those who are hard of hearing.”²⁰⁷

RECOMMENDATIONS

ESCAP member States should:

1. Formulate policies and strategies for implementation at all levels that reflect the definition of disability, concepts, content, as well as the spirit and intent of the Convention on the Rights of Persons with Disabilities.

2. Develop action plans, reinforced by adequate budgetary, human and institutional resources, at central, state/provincial/prefectural/district/municipality and local levels that specify targeted time-bound action, duty-bearers, indicators and results as well as monitoring and evaluation mechanisms.
3. Ensure the meaningful engagement of persons with disabilities from the outset of planning and through all stages of formulation, implementation, monitoring and evaluation of policies, strategies and action plans.

4. Strengthen significantly the authority and resources of the disability focal point department at central, state/provincial/prefectural/district/municipality and local levels to enable coordination across government ministries and departments as well as across sectors and with the convening of meetings at decision-making levels, to catalyse implementation, monitoring and evaluation of policies, strategies and action plans.

²⁰⁵ Committee on the Rights of Persons with Disabilities, 2017a, CRPD/C/ARM/CO/1, paras. 4(c), 5(b) and 6(b) (Armenia).

²⁰⁶ Committee on the Rights of Persons with Disabilities, 2017a, CRPD/C/ARM/CO/1, para. 5(c) (Armenia).

²⁰⁷ Committee on the Rights of Persons with Disabilities, 2018b, CRPD/C/NPL/CO/1, para. 7 (Nepal).

12

IMPLEMENTATION OF THE CONVENTION: INSTITUTIONAL ARRANGEMENTS, AND THE PARTICIPATION OF PERSONS WITH DISABILITIES

A. General aspects of implementation of the Convention and articles 4.3 and 33

The full harmonization of national laws with the Convention depends in large part on the procedures by which the operation of existing laws and the content of proposed laws are monitored for consistency. This requires not only the establishment of clear procedures, but also a supportive culture of interest in gaining an understanding of the principles and standards of the Convention. All persons involved in the development, interpretation and application of laws must be aware of those principles and standards and have access to expert advice and learning resources when needed. This includes civil servants, as well as ministers, members of the legislature, judges, lawyers, persons with disabilities and allies, among other groups.

An essential component of the procedures for giving effect to the Convention is the meaningful participation of persons with disabilities and organizations of persons with disabilities

in these processes. Meaningful participation would enrich the deliberations with lived experience, expertise and solutions to law-making and policy development. Another important component is independent review of implementation at the national level by a body, such as a national human rights institution. The real hope for the removal of barriers to rights will be born when case law comes alive through the domestic application of the Convention and a body of legal precedents is gradually built up.

Article 33 of the Convention sets out institutional and procedural requirements for States parties to ensure that there is effective implementation and monitoring. It provides for the establishment of bodies and mechanisms within the executive government to implement and monitor the Convention, requires that States parties establish or designate an independent monitoring mechanism to carry out a monitoring role and requires States parties to ensure that persons with disabilities are “involved and participate fully in the monitoring process”. The last requirement is in addition to the explicit requirement that persons with disabilities are meaningfully involved in policymaking (article 4.3).

B. Article 33.1: government focal points and coordination mechanisms

Article 33.1 of the Convention indicates how States should ensure that the treaty's provisions are embedded in government and that implementation is coordinated across government as a whole. It provides:

“33.1. States parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.”

These arrangements are to be contrasted with the external independent public monitoring bodies referred to in article 33.2, such as a human rights commission or disability rights commission (discussed below). Article 33.1 also identifies two separate functions – having focal points in each ministry or department and having a mechanism to coordinate government policy on disability issues and the implementation of the Convention.

Governments in the Asian and Pacific region have adopted a range of mechanisms to give effect to article 33.1. In some cases, a

high-level minister-led body has been established to provide policy coordination and to promote implementation and monitoring of the Convention. These will generally involve representatives of various government ministries or departments. Sometimes, interdepartmental coordination bodies headed by a senior civil servant in the lead ministry (often social affairs) is the chosen model. These bodies may also have representatives of persons with disabilities and their representative organizations on them.

One example is the establishment by Viet Nam in 2015 of the Viet Nam National Committee on Disability, “a national agency responsible for the coordination enforcement and monitoring of the Convention.”²⁰⁸ The role of the National Committee is to assist the Prime Minister in the direction and coordination of government agencies. It has 18 members and is made up of 12 vice-ministers and six representatives of persons with disabilities and chaired by the Labour Minister. The National Committee led the development of the National Plan on Implementation of the Convention, which underscores the role performed by such bodies in the development of national plans on disability. The Committee also developed a tool to monitor implementation of the Convention.

There are many similar bodies in the Asian and Pacific region, such as in Fiji,²⁰⁹ India,²¹⁰ Malaysia,²¹¹ Philippines²¹² and Thailand.²¹³ The presence of high-level political and civil service representatives can bring impetus and institutional weight to the process of giving effect to the Convention. At the same time, according to some disability rights advocates, such bodies have not always met on a sufficiently frequent

basis to drive policy. In some instances, organizations of persons with disabilities have found that such bodies tend to meet infrequently.

Another issue that has been raised is that, as with other consultative bodies, persons with intellectual disabilities or with psychosocial disabilities tend to be underrepresented.

C. Articles 4.3 and 33.3: the role of persons with disabilities and their representative organizations in the implementation and monitoring of the Convention

The Convention envisages a significant role for persons with disabilities and their representative organizations in the implementation of its provisions and in monitoring progress in achieving its objectives. Article 3 states that one of the general principles of the Convention is the “full and effective participation and inclusion in society” of persons with disabilities, while article 4.3 of the Convention provides:

“In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.”

Article 33.3 (on national implementation and monitoring) provides:

“Civil society, in particular, persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.”²¹⁴

The Committee on the Rights of Persons with Disabilities has drawn attention to the different types of organizations that are involved in advocating for the human rights of persons with disabilities and related issues and has underlined the importance of ensuring that representative organizations – run by and for persons with disabilities – should have priority in consultation and participation in policymaking on issues relating to persons with disabilities.²¹⁵

Giving effect to article 4.3 involves setting up standing or ad hoc consultation procedures to consult closely with and actively involve persons with disabilities through their representative organizations in the development of laws, regulations and policies across all areas and at all levels of government. The Committee has suggested such consultation might reasonably be made mandatory before the adoption of general or disability-specific laws, policies and programmes. Consultation should include a range of representative organizations representing the diverse groups of persons with disabilities, including children with disabilities.

Persons with intellectual or psychosocial disabilities do not always enjoy the same access to consultation processes as other persons with disabilities and the government must ensure that there is broad cross-disability

²⁰⁸ Committee on the Rights of Persons with Disabilities, 2018a, CRPD/C/VNM/1, para. 209 (Viet Nam).

²⁰⁹ Established under the Rights of Persons with Disabilities Act 2018, Part 2.

²¹⁰ Established under the Persons with Disabilities Act, 2016, Chapter XI.

²¹¹ Established under the Persons with Disabilities Act 2008, Part II.

²¹² Established under Presidential Executive Order 709 (2008).

²¹³ Established under the Empowerment of Persons with Disabilities Act, B.E. 2550 (2007).

²¹⁴ See generally Committee on the Rights of Persons with Disabilities, General comment No. 7 (2018e), CRPD/C/GC/7, paras. 37-41 (2018).

²¹⁵ Ibid., paras. 10-13.

representation and, where necessary, supported decision-making arrangements. States parties also need to invoke positive measures to ensure access, including by providing financial assistance and support and access to all relevant documentation in a timely manner and in accessible formats.

The participation must be meaningful, which means that:

The views of persons with disabilities, through their representative organizations, should be given due weight. States parties should guarantee that they are not only heard as a mere formality or as a tokenistic approach to consultation. States parties should take into account the results of such consultations and reflect them in the decisions adopted by duly informing participants of the outcome of the process.

Article 4.3 requires participation in processes to implement the Convention and “in other decision-making processes concerning issues relating to persons with disabilities.” The phrase “issues relating to persons with disabilities” is not to be read narrowly. It “covers the full range of legislative, administrative and other measures that may directly or indirectly impact the rights of persons with disabilities.”²¹⁷ It is not confined only to those issues that specifically address disability issues. Other general laws, financial decisions or policies may have a direct or indirect impact on the lives of persons with disabilities. Persons with disabilities should also be appointed to other bodies that

do not have specific or direct responsibility for disability issues.²¹⁸

D. Measures taken by Asian and Pacific States to ensure the meaningful participation of persons with disabilities and their representative organizations

Asian and Pacific States have taken a variety of legislative, administrative and practical steps to carry out these obligations, which cannot be implemented on a one-off basis but which need to be supported by continuous engagement between government and representative organizations of persons with disabilities. One commonly seen approach, as previously noted, has been to ensure that representatives of persons with disabilities are formally members of national, regional or local advisory councils on matters relating to disability issues.

Many governments have consulted with organizations of persons with disabilities in the preparation of their reports under the Convention and, in some cases, have provided financial support for representatives of persons with disabilities to travel to Geneva to participate in the hearings of the Committee. Some governments also provide funding to organizations to support advocacy, education, networking and meet other needs. In some member States, organizations of persons with disabilities have stated that such support is critical to ensure meaningful participation and have called on governments to provide it where it has not already been done.

The Committee has commended States for setting up coordination mechanisms and

working with civil society, including a broad range of groups from the disability sector, such as organizations of women with disabilities and children with disabilities.²¹⁹ For example, it commended one State party for establishing a working group with both government and civil society representatives and with the mandate of coordinating the implementation of the Convention. The Committee considered this such a useful arrangement that it recommended that the State party retain it for the purpose of the ongoing review of progress.²²⁰ It has urged other States to take further steps to ensure that persons with disabilities and their representative organizations are fully involved in and consulted on policy decisions that affect them and that their views are prioritized and reflected in the results of these processes.²²¹

E. Article 33.2: external independent monitoring of progress

In addition to providing for governmental focal points and coordination mechanisms and requiring the meaningful participation of persons with disabilities in monitoring the implementation of the Convention, article 33.2 also stipulates the need for a “framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation” of the Convention. Article 33.2 requires that when designating or establishing

such a mechanism, States parties must take into account the principles relating to the status and functioning of national institutions for the protection and promotion of human rights. This last phrase refers to the Paris Principles relating to the status of national institutions that were adopted in 1991 and endorsed by the United Nations General Assembly in 1993 and that cover the international standards for the operation of national human rights institutions.²²² The Committee on the Rights of Persons with Disabilities has adopted guidelines for independent monitoring frameworks and their participation in the work of the Committee.²²³

One way of carrying out the article 33.2 obligation is for States parties to establish an independent national human rights institution (where it does not already exist) to perform this function. Or a government could assign the task to a national human rights institution. The majority of States in the Asian and Pacific region have established one or more national institutions for the protection of human rights.²²⁴ These include, for example, national human rights commissions and ombuds institutions whose mandate includes human rights issues or specialized disability rights bodies.

Many of these institutions are accredited as “A” status institutions by the Global Alliance of National Human Rights Institutions,²²⁵ indicating that they are in substantial compliance

²¹⁶ Ibid., para. 48.

²¹⁷ Ibid., para. 18.

²¹⁸ Ibid., paras. 18-20.

²¹⁹ Committee on the Rights of Persons with Disabilities, 2012a, CRPD/C/CHN/CO/1, paras. 9 and 10 (China).

²²⁰ Committee on the Rights of Persons with Disabilities, 2014c, CRPD/C/AZE/CO/1, para. 6 (Azerbaijan).

²²¹ Committee on the Rights of Persons with Disabilities, 2019g, CRPD/C/IND/CO/1, paras.10 and 11 (India); Committee on the Rights of Persons with Disabilities, 2017a, CRPD/C/ARM/CO/1, paras. 5(a) and 6(a) (Armenia) (“State party should also provide appropriate support and reasonable accommodation to ensure the participation of representatives of all persons with disabilities, including women, children, refugees and asylum seekers, lesbian, gay, bisexual and transgender persons, persons with psychosocial and intellectual disabilities, persons with hearing and visual impairments, persons living with HIV/AIDS, persons living in rural areas and persons in need of a high level of support, in consultation processes”).

²²² United Nations General Assembly, 1993.

²²³ Committee on the Rights of Persons with Disabilities, 2016b.

²²⁴ Exceptions include China and Japan. Most of the national bodies with a general human rights mandate are members of the Asia Pacific Forum of National Human Rights Institutions (www.asiapacificforum.net/members/) (17 full members with “A” status and eight associate members with “B” status) or the European Network of National Human Rights Institutions(<https://ennhri.org/our-members/>) (includes national institutions from Armenia, Georgia and the Russian Federation as “A” status members, with Azerbaijan a “B” status member and Türkiye an associate member applying for accreditation as of June 2022).

²²⁵ See <https://ganhri.org>.

with the minimum international standards set out in the Paris Principles. Others may not have that status (although they may enjoy “B” status or associate status). This might be due to limitations in the mandate or independence or because they are state or provincial bodies or because only one such institution can be accredited for each State.

The critical aspect of article 33.2 is that the monitoring body be independent of the executive government; it is to be distinguished from internal government structures that would also be monitoring progress in implementation of the Convention. The placement of such a body effectively under a ministry has given rise to concerns about whether the necessary formal independence is present.

Article 33.2 also reflects the fact that in countries with a federal system of government or a system of devolved responsibilities, it may be more appropriate to designate or establish independent institutions at the state/provincial/prefectural/district/county/municipality level, as well as at the central level.²²⁶

Asian and Pacific States have approached the implementation of article 33.2 in a number of ways. In some States, national human rights institutions (such as national human rights institutions with general mandates or ombuds mechanisms with human rights mandates) perform the role of the independent monitoring body. In other cases, the task is assigned to an independent body with a specific disability mandate.

Although many of these bodies have a complaint resolution function and may be a forum

for obtaining remedies for alleged violations of rights, their role under article 33 goes beyond this to include general monitoring of the implementation of the Convention. Many such institutions perform this role through the use of broader inquiry powers and regular reports on the rights of persons with disabilities. Many national human rights institutions have provided independent reports to the Committee under the reporting procedure on progress made and difficulties faced in their respective countries in the implementation of the Convention. The Committee has welcomed the contributions of national human rights institutions and similar bodies.²²⁷

Some Asian and Pacific States have not yet established an independent national institutions designed within the framework of the Paris Principles, either with a general human rights mandate or in relation to disability issues.²²⁸ The Committee and other United Nations human rights treaty bodies have consistently recommended that these States do so.²²⁹

In some States, there are multiple independent bodies that may have powers to monitor the implementation of the Convention and also provide remedies for violations of the rights of persons with disabilities. In other States, a general human rights institution and a dedicated disability rights institution both exist, and both may have a role in monitoring the implementation of the Convention.

There are also other models. For example, in 2010, New Zealand established an independent monitoring mechanism to fulfil the State’s obligations under article 33.2. It includes two independent human rights agencies, the Human Rights Commission and the Office of the Om-

budsman, as well as the Disabled People’s Organisations Coalition.²³⁰

In several member States with federal or devolved systems of government, human rights or anti-discrimination bodies exist at the state or provincial level, with mandates that extend to monitoring certain aspects of the rights of persons with disabilities. This mandate may be derived from national legislation or state or provincial legislation.

RECOMMENDATIONS

1.

ESCAP members and associate members should review the composition and operation of advisory bodies that are intended to ensure the substantive input of and meaningful participation by organizations of persons with disabilities in government policymaking at all levels to ensure gender-balanced, cross-disability representation and meaningful participation.
2.

Where they have not already done so, ESCAP member States should establish a national institution for the promotion and protection of human rights that comply with the Paris Principles and that have an explicit mandate in relation to the Convention and the rights of persons with disabilities, as well as independent bodies with an explicit mandate in relation to persons with disabilities, as appropriate within the national structure and subnational linkages. States should also establish similar bodies at the provincial and local levels according to the distribution of powers within the constitutional structure of the State.

²²⁶ Examples include Australia, Canada and India.

²²⁷ Committee on the Rights of Persons with Disabilities, 2016b, CRPD/C/1/Rev.1, annex, paras. 1-23.

²²⁸ Examples include China and Japan.

²²⁹ For example, Committee on the Rights of Persons with Disabilities, 2017b, CRPD/C/IRN/CO/1, paras. 62 and 63(b). (Iran (Islamic Republic of)).

²³⁰ New Zealand, Human Rights Commission, 2022.

13

RECOMMENDATIONS AND CONCLUSION

This overview has discussed multiple procedural and substantive issues that are central to the implementation of the Convention through the process of harmonization of national laws with its provisions. The overview has shown active engagement by Asian and Pacific States with the Convention and that legislative reviews have been undertaken in most countries and have led to major legislative reforms in many cases.

Many of these changes have been justified by reference to the Convention and draw directly and indirectly on its language and concepts. Many States have also recognized that the process of legislative review is an ongoing one and that there is need to continue to review current laws and also to have in place procedures to ensure that future laws are compliant with the Convention.

Although progress has been made in aligning many laws with the Convention, in a significant number of cases, revised legislation has imperfectly implemented its provisions. In some cases, legislation has retained concepts and language that are inconsistent with the Convention's underlying principles and conceptual framework. This has been seen, in particular, in the adherence to medical model definitions of disability. In addition, in important areas such as prohibiting discrimination on the ground of disability, recognizing the legal capacity of persons with disabilities, upholding their rights to liberty and security of person and guaranteeing freedom from torture or cruel, inhuman or degrading treatment or punishment, greater efforts are required to ensure that laws, policies and programmes are in line with the principles and concepts of the Convention.

There is a pressing need for further legislative reform and opportunities to build on what has already been achieved in harmonizing the laws of countries and territories in the Asian and Pacific region. The following recommendations may help to contribute to that work and towards achieving the goals set out in the Convention.

A. Recommendations for consideration by ESCAP member States

The centrality of the human rights model of disability to the harmonization of laws

1. ESCAP member States should:
 - A. Integrate the human rights model of disability as the foundational principle of disability-specific laws, and other sectoral laws, including criminal laws and civil laws such as family and marriage laws.
 - B. Review laws that pre-date the Convention and its ratification by the respective State party, to pursue the harmonization of those laws with the Convention.
 - C. Tackle ableism in its diverse forms as the root of barriers to the meaningful participation of persons with disabilities, including by the following:
 - (a) Identify terminology that undermines the dignity of persons with disabilities and constitutes enormous hidden but real barriers to their participation in society which are:
 - (i) Widely used in national and local languages and cultures;
 - (ii) Laws and policies;
 - (b) Engage with persons with disabilities and experts in language and culture to develop Convention-compliant terminology in national and local languages;
 - (c) Engage media practitioners, education authorities, influencers and other key actors in shaping and perpetuating new Convention-compliant national and local terminology and cultural stereotypes.
 - D. Establish, at central and subnational levels, in parliaments (or equivalent decision-making bodies) appropriate committees, procedures and expert groups to scrutinize legislation and policy for consistency with the Convention, and propose related amendments based on the human rights model of disability.
2. ESCAP should, on request and in collaboration with OHCHR, other members of the United Nations system and other relevant bodies, support member States in undertaking the above actions.

Ratification of the Convention and its Optional Protocol

1. To bring about universal ratification of the Convention in the Asian and Pacific region, member States should, individually and collectively and in meaningful consultation with organizations of person with disabilities, undertake the following:
 - A. Those States that have not yet ratified or acceded to the Convention or extended it to those associate members for whose treaty relations they have responsibility should ratify or accede to the Convention as soon as possible.
 - B. Those States that have not yet ratified or acceded to the Optional Protocol to the Convention or extended it to those associate members for whose treaty relations they have responsibility should ratify or accede to the Optional Protocol to the Convention as soon as possible, with the goal of achieving ratification or accession by at least 50 per cent of States by 2030.
2. ESCAP should, in collaboration with OHCHR and other relevant bodies, provide on request technical assistance to member States to ratify or accede to the Convention and its Optional Protocol and extend that to the associate members for whose treaty relations they have responsibility.

Reservations and declarations

ESCAP member States that have entered reservations or made declarations when ratifying or acceding to the Convention should, in consultation with organizations of persons with disabilities, undertake a review of those reservations and declarations with a view to withdrawing them as soon as possible.

Procedures to ensure Convention-compatibility of existing and new laws and regulatory frameworks

ESCAP member States should:

1. Introduce or strengthen existing procedures within the executive arm of government and legislature to ensure that proposed and new legislation and other forms of legally-binding regulation are reviewed for consistency with the Convention and amended, if found to be inconsistent with the Convention, before they are enacted and enter into force.
2. Ensure that they have in place procedures for the comprehensive and regular review of the whole body of existing laws and regulations across all sectors and at all levels of government for consistency with the Convention.
3. Make use of existing law reform bodies, national human rights institutions, specially convened expert bodies and public inquiries or ad hoc and standing legislative committees, as appropriate, to carry out such reviews.

4. Ensure that these bodies take into account the evolving jurisprudence of the Committee on the Rights of Persons with Disabilities in its General comments, Guidelines, Concluding observations, decisions and reports under the Optional Protocol and other statements.
5. Ensure that these bodies include as members persons with disabilities who have actively contributed to the disability community and provide a meaningful opportunity for organizations of persons with disabilities to contribute their expertise and experience to the reviews and to have that expertise and experience fully recognized and given significant weight in the making of recommendations for the reform of laws and policies.

Priority areas for legislative reform

Where they have not already done so, ESCAP member States should include the following matters as priorities in their continuing efforts to ensure the harmonization of national laws with the Convention.

1. Convention-based definition of discrimination on the basis of disability
 - A. Prohibit discrimination on the basis of disability, using the definitions of disability and discrimination, as well as other principles, concepts and terms that are contained in the Convention.
2. Reasonable accommodation as a form of disability discrimination
 - B. Provide explicitly that denial of reasonable accommodation is in itself a form of discrimination on the basis of disability, drawing on the definition of “reasonable accommodation” contained in article 2 of the Convention.
3. Scope of legislation prohibiting disability discrimination
 - C. Ensure that legislation prohibits discrimination on the basis of disability in all areas covered by the Convention and includes both indirect and direct discrimination.
4. Intersectionality
 - D. Ensure that the legislative prohibition of disability discrimination extends to multiple and intersecting forms of discrimination, thus reflecting the intersection of disability with age, gender and other parameters.
5. Individual remedies for discrimination on the basis of disability
 - E. Ensure that all laws that provide protection against discrimination on the basis of disability explicitly provide for prompt, accessible and effective remedies, including judicial, administrative or other appropriate remedies available that pertain to public and private bodies and persons.

6. Availability of remedies of systemic violations of the rights of persons with disabilities
 - F. Ensure that national human rights institutions or equivalent bodies have the power to undertake inquiries into systemic and structural discrimination against persons with disabilities by public bodies and private actors and are empowered to make recommendations and to impose meaningful regulatory sanctions for such discrimination, where appropriate.
7. Access to justice
 - G. Ensure that the right of persons with disabilities and the barriers they face in accessing justice are included in fundamental and ongoing judicial and legal education and continuous awareness-raising, as well as in the training of all other professions and groups involved in the civil, criminal and administrative justice systems, with the involvement of persons with disabilities as trainers in these education and training activities.
8. Repeal of laws that deny equal recognition before the law, and that favour substitute decision-making regimes
 - H. Review and reform laws that are inconsistent with the right to equal recognition as a person before the law and the enjoyment of legal capacity on the basis of equality with others guaranteed by article 12 of the Convention, in particular those that provide for guardianship or other arrangements that embody substitute decision-making, which should be replaced by laws that guarantee supported decision-making where that is required. In undertaking such reviews, States should have considered General comment No. 1 and General comment No. 3 of the Committee on the Rights of Persons with Disabilities.
9. Repeal of laws authorizing compulsory or involuntary treatment incompatible with the Convention
 - I. Review and reform laws that provide for involuntary treatment that is inconsistent with articles 14, 15, 16, 17 and 25 of the Convention.
10. Right to participate in political or public life
 - J. Review and reform laws that deny persons with disabilities, especially those with psychosocial disabilities, the right to vote, to stand for election or to hold public offices or private positions on the basis of equality with others.
 - K. Undertake, where it has not already been done, a review of legislation and regulatory frameworks to identify instances in which a guardianship order or judicial declaration of competence have the effect of disqualifying a person from holding particular offices or positions or exercising rights, such as the right to vote. Ensure that such automatic links are repealed and that these primary statutes are amended to be consistent with the Convention.
11. Accessibility
 - L. Promote understanding that the absence of accessibility in all dimensions is a violation of the rights of persons with disabilities.

- M. Strengthen the enforcement of legislative and regulatory measures for all accessibility dimensions in all sectors and at all levels and encompassing the built environment, facilities, street environment, transportation, economic activities, digitalization and related services, as well as disability-inclusive digitalization and related services, with adequate budgetary allocations, high priority attention, awareness-raising and training, using international technical standards, toolkits and good practices.
- N. Facilitate adherence to technical standards by and in the public and private sectors and regular monitoring of adherence, with implementing rules and regulations, enforcement procedures, redressal mechanisms, budgetary allocations, transparent action by the respective responsible parties in each sector, and continuous training, research and awareness raising directed at every cohort of policymakers and implementing parties.
- O. Initiate and reinforce disability-inclusive digitalization at all levels and in all sectors, including related services (such as eGovernment, eHealth and eBanking), emphasizing compliance with the latest version of the Web Content Accessibility Guidelines, as well as using guidelines and good practices emanating from the implementation of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled.
- P. Strengthen in a systematic manner the accessibility of existing infrastructure and related services.

12. Employment

- Q. Introduce or amend existing laws so that the legal system provides effective protection against discrimination on the basis of disability in the work-related laws that:
 - (a) Embody a broad definition of discrimination on the basis of disability that is based on the Convention and that includes an explicit duty on employers to afford reasonable accommodation in the workplace to persons with disabilities; and that covers direct and indirect discrimination and multiple and intersecting forms of discrimination, as elaborated in General comment No. 3 and General comment No. 6 by the Committee on the Rights of Persons with Disabilities²³¹ and the Committee's forthcoming General comment on the right of persons with disabilities to work and employment;²³²
 - (b) Ensure that these are comprehensive in scope and cover applications for work, the terms and conditions of work (including fair and equal

remuneration for their work), access to training and career advancement opportunities, guarantees against discriminatory termination of employment and prompt, accessible and effective remedies for unlawful discrimination.

- R. Explore and adopt measures to require and to encourage public and private employers to employ workers with disabilities, including workers with diverse disabilities. These measures should include quotas, including quotas for advancing to more senior positions, financial support to employers to assist in the provision of reasonable accommodation, other subsidies such as appropriate taxation benefits, public procurement policies and requirements that public and private boards include members with disabilities.

13. Meaningful participation by organizations of persons with disabilities in policymaking and decisions that affect persons with disabilities

- S. ESCAP members and associate members should review the composition and operation of advisory bodies that are intended to ensure the substantive engagement of organizations of persons with disabilities in government policymaking at all levels to ensure gender-balanced, cross-disability representation and meaningful participation.

14. Rights affirmation: case study of national sign language

- T. Among other matters, the promotion of sign language is highlighted as a human rights issues that takes into consideration the regions' rapidly changing demographic composition and emerging health and wellbeing dimensions of development trends.

- (a) ESCAP member States should enact national sign language acts that provide for, inter alia:
 - (i) Legal recognition of national sign languages as valid official languages with equal status as spoken languages;
 - (ii) Teaching and use of national sign languages at all levels of national education systems from pre-school upwards;
 - (iii) Research, documentation, training and teaching in national sign languages;
 - (iv) Certification training of national sign language interpreters using ICT and social media, to expand service availability;
 - (v) Continuous national sign language awareness-raising targeted at diverse groups to build acceptance and popularize the learning and use of national sign languages.

- (b) ESCAP should provide, on request and in collaboration with Deaf persons' organizations and other concerned entities, technical assistance to members and associate members in creating conditions for the enactment and/or implementation of national sign language legislation.

²³¹ Committee on the Rights of Persons with Disabilities, 2018c, CRPD/C/GC/6.

²³² This General comment was expected to be adopted at the Committee's session in August-September 2022.

15. National policies and plans

u. ESCAP members and associate members should:

- (a) Formulate policies and strategies for implementation at all levels that reflect the definition of disability, concepts and content as well as the spirit and intent of the Convention on the Rights of Persons with Disabilities;
- (b) Develop action plans, reinforced by adequate budgetary, human and institutional resources at the central, as well as state/provincial/prefectural/district/county/municipality and local government levels that specify targeted time-bound action, duty-bearers, indicators and results, as well as monitoring and evaluation mechanisms;
- (c) Ensure the meaningful engagement of persons with disabilities from the outset of planning and through all stages of formulation, implementation, monitoring and evaluation of policies, strategies and action plans;
- (d) Strengthen significantly the authority and resources of the disability focal point department and ministry at the central, as well as state/provincial/prefectural/district/county/municipality and local government levels, to enable coordination across government ministries and departments, as well as across sectors, and convene meetings at decision-making levels to catalyse implementation, monitoring and evaluation of policies, strategies and action plans.

16. National human rights institutions

- v. Where they have not already done so, ESCAP members should establish national institutions with subnational linkages for the promotion and protection of human rights that comply with the Paris Principles and that have an explicit mandate in relation to the Convention and the rights of persons with disabilities as well as independent bodies with an explicit mandate in relation to person with disabilities, as appropriate within the national structure. ESCAP members should also establish similar bodies at the provincial and local levels according to the distribution of powers within the respective constitutional structure.

B. Regional actions to strengthen the implementation of the Convention in Asia and the Pacific

The following regional actions are proposed to strengthen the Asian and Pacific response to and implementation of the Convention on the Rights of Persons with Disabilities. These actions may be pursued, as appropriate, in collaboration with OHCHR and other entities in the United Nations system, subregional entities, civil society, as well as regional and national experts.

1. Leverage ESCAP's multidisciplinary advantage and include in ESCAP's regular meetings an agenda item on the harmonization of national legislation with the Convention to review the status of ongoing harmonization efforts, issues, good practices and lessons learned.
2. Provide technical support, including by facilitating the sharing of government and civil society collaboration and peer experiences, to encourage ESCAP members that have not ratified or acceded to the Convention and/or the Optional Protocol to do so.
3. Prepare a compendium of case law of the Committee on the Rights of Persons with Disabilities under the Optional Protocol for dissemination within the region.
4. Foster communities of good practice. Document and facilitate the sharing of experiences and lessons gained from addressing challenges at all levels (local, district, municipality, county, prefectural, provincial or state, national, subregional, inter-subregional), covering the entire ESCAP region. These efforts should support the effective:
 - A. Initial and ongoing review by law reform bodies, national human rights institutions or disability-specific independent mechanisms of laws and regulations for consistency with the Convention;
 - B. Pre-enactment review of laws and other regulations for consistency with the Convention within the executive government at national, state or provincial and local levels of government;
 - C. Establishment, at central and subnational levels, in parliaments (or equivalent decision-making bodies) of appropriate committees, procedures and expert groups to scrutinize legislation and policy for consistency with the Convention, and proposal of related amendments based on the human rights model of disability.

5. Collaborate with the Inter-Parliamentary Union and OHCHR on these matters and in particular propose the review and update of the Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities,²³³ with particular focus on good practices and coverage of decision-making bodies at the subnational levels (for example, state/provincial/prefectural, municipality, local authorities and at the village, slum and urban community levels) in the Asian and Pacific region.
6. Convene subregional and inter-subregional judicial colloquia to provide judicial officers with the opportunity to learn more about the Convention on the Rights of Persons with Disabilities and the work of the Committee on the Rights of Persons with Disabilities and to share experiences in relation to the implementation of the Convention and other relevant human rights treaties before their national courts.

Conclusion

In the history of human rights treaties, the Convention on the Rights of Persons with Disabilities stands out as a beacon of hope for humanity. The issues faced by persons with disabilities have long been invisible, compared with climate change and other issues that dominate media coverage and research agendas.

When COVID-19 erupted globally, it prompted among others collective realization of the vulnerability of humankind — for the first time, humanity had a taste of many parameters that are common to the everyday experiences of persons with diverse disabilities. That impacted, for example, communication, limited or no access to essential goods and services, and restricted physical mobility. In worst-case scenarios, many individuals, families and communities experienced triage-based decisions that impacted the survival chances of loved ones. The majority experienced what the invisible minority, namely, persons with disabilities, faces on a regular basis.

Learning lessons from our COVID-19 experiences, it is time to accelerate and strengthen action towards practical realization of the Convention at all levels and engaging the whole of government and the whole of society.

It is hoped that this publication will facilitate wider understanding of essential Convention principles and concepts for application in introducing new legislation, refreshing outdated legislation, crafting and enforcing implementing rules and regulations, as well as policies and programmes at all levels — that are Convention-compliant. This requires solidarity in creating strong enforcement and redressal mechanisms, with wide and continuous awareness-raising efforts across all development sectors.

With these efforts, the ESCAP region may witness the participation of persons with diverse disabilities as full members of society, in all development sectors and represented at all levels of decision-making.

²³³ United Nations, and others, 2007.

References

Anggono, B.D., and others (2019). *The Progressive Role of the Constitutional Court in Protecting the Voting Rights of People with Mental Disorders and Its Effect on Increasing Voter Participation in the Elections (The Study of the Constitutional Court’s Verdict Number 135/PUU-XIII/2015)*. Available at https://en.mkri.id/download/research_report/research_report_109_1625437518_3089472f93e8116392c6.pdf

Armenia (1998). *Civil Code 1998*. Available at www.translation-centre.am/pdf/Translat/HH_Codes/CIVIL_CODE_en.pdf

_____ (2015). *Constitution of the Republic of Armenia* (as amended at 6 December 2015). Available at www.president.am/en/constitution-2015

_____ (2020). *Law on Ensuring Equality Before the Law, 2020*. Available at www.osce.org/files/f/documents/d/2/443335.pdf

_____ (2021). *Law on the Protection of the Rights of Persons with Disabilities*. Available at www.parliament.am/drafts.php?sel=showdraft&DraftID=12313&Reading=1 (in Armenian only) and www.globaldisabilityrightsnow.org/sites/default/files/related-files/274/Disability_Law_English.pdf (unofficial English translation).

Australia (1992). *Disability Discrimination Act 1992 (Commonwealth)*. Available at www.legislation.gov.au/Details/C2022C00087

_____ (2011). *Human Rights (Parliamentary Scrutiny) Act 2011 (Commonwealth)*. Available at www.legislation.gov.au/Details/C2016C00195

_____ (2013). *National Disability Insurance Scheme Act 2013 (Commonwealth)*. Available at www.legislation.gov.au/Details/C2022C00157

Australia, Australian Law Reform Commission (2014). *Equality, Capacity and Disability in Commonwealth Laws*. Available at www.alrc.gov.au/publication/equality-capacity-and-disability-in-commonwealth-laws-alrc-report-124/

Australia, New South Wales Law Reform Commission (2018). *Review of the Guardianship Act 1987, Report op145, May 2018*. Available at www.lawreform.justice.nsw.gov.au/Pages/lrc/lrc_current_projects/Guardianship/Report-145.aspx

Australia, Parliament (2022). *“Parliamentary Joint Committee on Human Rights”*. Available at www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights

Australia, Victoria (2019). *Guardianship and Administration Act 2019 (Vic)*. Available at www.legislation.vic.gov.au/as-made/acts/guardianship-and-administration-act-2019

Australian Human Rights Commission (2021). *Free and Equal: A Reform Agenda for Federal Discrimination Laws*. Available at <https://humanrights.gov.au/our-work/rights-and-freedoms/publications/free-and-equal-reform-agenda-federal-discrimination-laws>

Azerbaijan (1995). *Constitution of the Republic of Azerbaijan*. Available at www.unesco.org/education/edurights/media/docs/71c864412f2e9c6b6b46c7acea4dc62b982c4952.pdf

Bangladesh (2013). *Rights and Protection of Persons with Disabilities Act, 2013*. <http://bdlaws.minlaw.gov.bd/act-1126/section-42985.html> (in Bangla only).

Bantekas, I., M.A. Stein, and D. Anastasiou, 2018 eds (2018). *The UN Convention on the Rights of Persons with Disabilities: A Commentary*. Oxford, UK: Oxford University Press.

Bantekas, I., F. Pennilas, and S. Trömel (2018). Article 27: work and employment. In *The UN Convention on the Rights of Persons with Disabilities: A Commentary*, I. Bantekas, M.A. Stein and D. Anastasiou, eds. Oxford, UK: Oxford University Press, pp. 764–800.

Bogart, K.R., and D.S. Dunn (2019). Ableism special issue introduction. *Journal of Social Issues*, vol. 75, No. 3, p. 650.

Byrne, B. (2019). Article 23: children with disabilities. In *The UN Convention on the Rights of the Child: A Commentary*, in J. Tobin, ed. Oxford, UK: Oxford University Press, pp. 856–901.

Campbell, F. (2001). Inciting legal fictions: ‘disability’s’ date with ontology and the ableist body of the law. *Griffith Law Review*, vol. 10, No. 1, p. 42.

Chilingaryan, A. (2021). *Important progress for people with disabilities in Armenia: new law bans discrimination, promotes inclusion*. *Human Rights Watch*, 11 May 2021. Available at www.hrw.org/news/2021/05/11/important-progress-people-disabilities-armenia

China (1990). *Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China*. Available at www.basiclaw.gov.hk/filemanager/content/en/files/basiclawtext/basiclaw_full_text.pdf

_____ (2020). *Civil Code of the People’s Republic of China*. Available at www.npc.gov.cn/englishnpc/c23934/202012/f627aa3a4651475db936899d69419d1e/files/47c16489e186437eab-3244495cb47d66.pdf (official English translation).

China, Civil Aviation Administration of China (2015). *Measures for the Administration of Air Transport for Persons with Disabilities*. Available at www.caac.gov.cn/XXGK/XXGK/ZCFB/201511/t20151104_10954.html (in Chinese only).

Chouinard, V. (1997). Making space for disabling differences: challenging ableist geographies. *Environment and Planning D Abstract*, vol. 15, pp. 379–380.

Committee on the Rights of Persons with Disabilities (2011). *Initial Report of the Cook Islands Submitted Under Article 35 of the Convention* (8 December). CRPD/C/COK/1. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fCOK%2f1&Lang=en

_____ (2012). *Concluding Observations on the Initial Report of China* (15 October). CRPD/C/CHN/CO/1. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fCHN%2fCO%2f1&Lang=en

_____ (2012b). *Initial Report of Thailand Under Article 35 of the Convention* (3 December). CRPD/C/THA/1. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fTHA%2f1&Lang=en

_____ (2014a). *General comment No. 1: Article 1 – Equal Recognition Before the Law* (11 April). CRPD/C/GC/1. Available at www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-1-article-12-equal-recognition-1 and digitallibrary.un.org/record/812024?ln=en

_____ (2014b). *General comment No. 2: Article 9 – Accessibility* (11 April). CRPD/C/GC/2. Available at www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-2-article-9-accessibility-0

_____ (2014c). *Concluding Observations on the Initial Report of Azerbaijan* (12 May). CRPD/C/AZE/CO/1. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fAZE%2fCO%2f1&Lang=en

_____ (2014d). *Concluding Observations on the Initial Report of the Republic of Korea* (28 October). CRPD/C/KOR/CO/1. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fKOR%2fCO%2f1&Lang=en

_____ (2014e). *Concluding Observations on the Initial Report of New Zealand* (31 October). RPD/C/NZL/CO/1. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fNZL%2fCO%2f1&Lang=en

_____ (2014f). *Initial Report of the Russian Federation Submitted Under Article 35 of the Convention* (9 September). CRPD/C/RUS/1. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/049/73/PDF/G1504973.pdf?OpenElement>

_____ (2015a). *List of Issues in Relation to the Initial Report of the Cook Islands: Replies of the Cook Islands to the List of Issues* (4 March). CRPD/C/COK/Q/1/Add.1. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fCOK%2fQ%2f1%2fAdd.1&Lang=en

_____ (2015b). *Concluding Observations on the Initial Report of Mongolia* (13 May). CRPD/C/MNG/CO/1. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fMNG%2fCO%2f1&Lang=en

_____ (2015c). *Concluding Observations on the Initial Report of the Cook Islands* (15 May). CRPD/C/COK/CO/1. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fCOK%2fCO%2f1&Lang=en

_____ (2015d). *Guidelines on the Right to Liberty and Security of Persons with Disabilities (Article 14), September 2015, Report of the Committee on the Rights of Persons with Disabilities on Its Thirteenth, Fourteenth and Fifteenth Sessions. A/72/55* (2017). Annex, pp. 16–21. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/114/97/PDF/G1711497.pdf?OpenElement>

_____ (2015e). *Concluding Observations on the Initial Report of Turkmenistan* (13 May). CRPD/C/TKM/CO/1. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fTKM%2fCO%2f1&Lang=en

_____ (2016a). *Initial Report Submitted by Singapore Under Article 35 of the Convention* (30 June). CRPD/C/SGP/1. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fSGP%2f1&Lang=en

_____ (2016b). *Guidelines on Independent Monitoring Frameworks and Their Participation in the Work of the Committee on the Rights of Persons with Disabilities* in (10 October). CRPD/C/1/Rev.1. Annex, p. 33. Available at www.un.org/en/ga/search/view_doc.asp?symbol=CRPD/C/1/Rev.1

_____ (2016c). *Concluding Observations on the Initial Report of Thailand* (12 May). CRPD/C/THA/CO/1. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fTHA%2fCO%2f1&Lang=en

_____ (2016d). *Initial Report of the Lao People's Democratic Republic Under Article 35 of the CRPD* (25 May). CRPD/C/LAO/1. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fLAO%2f1&Lang=en

_____ (2016e). *Initial Report of Japan Under Article 35 of the Convention* (30 June). CRPD/C/JPN/1. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fJPN%2f1&Lang=en

_____ (2016f). *General comment No. 3: Article 6 – Women and Girls with Disabilities* (25 November). CRPD/C/GC/3. Available at www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no3-article-6-women-and-girls

_____ (2016g). *General comment No. 4 (2016) on the Right to Inclusive Education*. CRPD/C/GC/4. Available at <https://digitallibrary.un.org/record/1313836?ln=en>

_____ (2017a). *Concluding Observations on the Initial Report of Armenia* (8 May). CRPD/C/ARM/CO/1. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fARM%2fCO%2f1&Lang=en

_____ (2017b). *Concluding Observations on the Initial Report of the Islamic Republic of Iran* (10 May). CRPD/C/IRN/CO/1. Available at <https://daccess-ods.un.org/access.nsf/Get?Open&DS=CRPD/C/IRN/CO/1&Lang=E>

_____ (2018a). *Initial report by Viet Nam Submitted Under Article 35 of the Convention* (4 April). CRPD/C/VNM/1. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/061/70/PDF/G1906170.pdf?OpenElement>

_____ (2018b). *Concluding Observations on the Initial Report of Nepal* (16 April). CRPD/C/NPL/CO/1. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fNPL%2fCO%2f1&Lang=en

_____ (2018c). *General comment No. 6 (2018) on Equality and Non-discrimination* (26 April). CRPD/C/GC/6. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/119/05/PDF/G1811905.pdf?OpenElement> and <https://digitallibrary.un.org/record/1626976?ln=en>

_____ (2018d). *Initial report of Georgia Under Article 35 of the Convention* (19 July). CRPD/C/GEO/1. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fGEO%2f1&Lang=en

_____ (2018e). *General comment No. 7: Article 4.3 and 33.3 – Participation of Persons with Disabilities, Including Children with Disabilities, Through Their Representative Organizations, in the Implementation and Monitoring of the Convention* (21 September). CRPD/C/GC/7. Available at www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no7-article-43-and-333-participation

_____ (2018f). *Initial Report Submitted by Maldives Under Article 35 of the Convention* (8 October). Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fMDV%2f1&Lang=en

_____ (2018g). *Concluding Observations on the Initial Report of the Philippines* (16 October). CRPD/C/PHI/CO/1. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fPHL%2fCO%2f1&Lang=en

_____ (2018h). *List of Issues in Relation to the Initial Report of Turkey* (1 October). CRPD/C/TUR//Q/1. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fTUR%2fQ%2f1&Lang=en

_____ (2018i). *Concluding Observations on the Initial Report of the Russian Federation* (9 April). CRPD/C/RUS/CO/1. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/096/88/PDF/G1809688.pdf?OpenElement>

_____ (2019a). *List of Issues in Relation to the Initial Report of Turkey, Addendum: Replies of Turkey to the List of Issues* (14 January). CRPD/C/TUR//Q/Add.1. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fTUR%2fQ%2f1%2fAdd.1&Lang=en

_____ (2019b). *Initial Report Submitted by Mongolia Under Article 35 of the Convention* (7 March). CRPD/C/MDV/1. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fMDV%2f1&Lang=en

_____ (2019c). *Combined Second and Third Periodic Reports Submitted by the Republic of Korea Under Article 35 of the Convention* (8 March). CRPD/C/KOR/2-3. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fKOR%2f2-3&Lang=en

_____ (2019d). *Concluding Observations on the Initial Report of Vanuatu* (13 May). CRPD/C/VUT/CO/1. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fVUT%2fCO%2f1&Lang=en

_____ (2019e). *Concluding Observations on the Initial Report of Turkey* (1 October). CRPD/C/TUR/CO/1. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fTUR%2fCO%2f1&Lang=en

_____ (2019f). *Concluding Observations on the Second and Third Periodic Reports of Australia* (15 October). CRPD/C/AUS/CO/2-3. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fAUS%2fCO%2f2-3&Lang=en

_____ (2019g). *Concluding Observations on the Initial Report of India* (29 October). CRPD/C/IND/CO/1. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fIND%2fCO%2f1&Lang=en

_____ (2019h). *Concluding Observations on the Initial Report of Myanmar* (22 October). CRPD/C/MMR/CO/1. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fMMR%2fCO%2f1&Lang=en

_____ (2019i). *Combined Second and Third Reports Submitted by Azerbaijan Under Article 35 of the Convention Pursuant to the Optional Reporting Procedure* (17 December). CRPD/C/AZE/2-3. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fAZE%2f2-3&Lang=en

_____ (2020). *Replies of Singapore to the List of Issues in Relation to its Initial Report* (29 September). CRPD/C/SIN/RQ/1. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fSGP%2fRQ%2f1&Lang=en

_____ (2021a). *Information Received From the Islamic Republic of Iran on Follow-up to the Concluding Observations on Its Initial Report* (15 September). CRPD/C/IRN/FCO/1. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fIRN%2fFCO%2f1&Lang=en

_____ (2022a). General comments. Available at www.ohchr.org/en/treaty-bodies/crpd/general-comments

_____ (2022b). Latest jurisprudence. Available at <https://juris.ohchr.org/en/search/results?Bodies=4&sortOrder=Date>

Committee on the Rights of Persons with Disabilities and the Global Alliance of National Human Rights Institutions (2018). *Joint Declaration by the Committee on the Rights of Persons with Disabilities and the Global Alliance of National Human Rights Institutions*. Available at www.ohchr.org/sites/default/files/Documents/HRBodies/CRPD/StatementJointDeclaration.docx

Committee on the Rights of the Child (2017). *Concluding Observations on the Combined Third to Fifth Periodic Reports of Bhutan* (5 July). CRC/C/BTN/CO/3-5. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fBTN%2fCO%2f3-5&Lang=en

_____ (2016). *Concluding Comments on the Combined Second and Third Periodic Reports of Brunei Darussalam* (24 February). CRC/C/BRN/CO/2-3. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fBRN%2fCO%2f2-3&Lang=en

Degener, T. (2016a). A human rights model of disability. In *Routledge Handbook of Disability Law and Human Rights*, P. Blanck, and E. Flynn, eds. New York: Routledge, pp. 31–49.

_____ (2016b). Disability in a human rights context, *Laws*, vol. 5, No. 3, p. 35. doi:10.3390/laws5030035. Available at www.mdpi.com/journal/laws Laws, www.mdpi.com/2075-471X/5/3/35#cite

Della Fina, V., R. Cera, and G. Palmisano, eds (2017). *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary*. Springer Nature eBook.

Dhariyal, T.D. (2022). *India Country Case Study*. Bangkok: ESCAP, Project on Harmonization of National Laws with the Convention on the Rights of Persons with Disabilities.

Disabled People's Association (DPA) Singapore (2019). *CRPD Parallel Report to the 12th Pre-sessional Working Group, 23-27 September 2019, Convention on the Rights of Persons with Disabilities*, INT_CRPD_ICO_SGP_35593_E. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fICO%2fSGP%2f35593&Lang=en

Election Access (2016). Constitutional court upholds right to vote of persons with psychosocial or intellectual disabilities in Indonesia, November. Available at www.electionaccess.org/en/media/news/42/

Ersan, P. (2018). Achieving justice to people rights with disabilities. *International Journal for Studies on Children, Women, Elderly and Disabled*, vol. 56. Available at www.ijcwed.com/wp-content/uploads/2018/07/IJCWED5_24.pdf

Economic and Social Commission for Asia and the Pacific (ESCAP) (2021a). *Inequality, Discrimination and Exclusion: Assessing CRPD Compliance in Pacific Island Legislation*. Bangkok. Available at www.unescap.org/sites/default/d8files/knowledge-products/ESCAP-2021-Technical%20Report-CRPD%20Technical%20Review%20Report.pdf

_____ (2021b). *Employment for Persons with Disabilities: Background Paper Prepared for the Sixth Session of the Working Group on the Asian and Pacific Decade of Persons with Disabilities, 2013–2022*. ESCAP/SDD/APDPD (3)/WG (6)/INF/5. Available at www.unescap.org/sites/default/files/Background%20Paper%20%28Employment%20for%20Persons%20with%20Disabilities%29%20.pdf

_____ (2021c). *Harmonization of National Laws with the Convention on the Rights of Persons with Disabilities: Asia-Pacific Trends in Selected Topics in the ESCAP Region: Report Prepared for the Seventh Session of the Working Group on the Asian and Pacific Decade of Persons with Disabilities, 2013–2022*, 8 and 9 December 2021. ESCAP/SDD/APDPD (3)/WG (7)/INF/12. Available at [www.unescap.org/sites/default/d8files/event-documents/Background_Paper_\(Harmonization_of_national_Laws_with_the_CRPD\).pdf](http://www.unescap.org/sites/default/d8files/event-documents/Background_Paper_(Harmonization_of_national_Laws_with_the_CRPD).pdf)

Federated States of Micronesia (2022). *Initial Report by the Federated States of Micronesia Pursuant to Article 35 of the Convention on the Rights of Persons with Disabilities* (28 April). CRPD/C/FSM/1. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CRPD%2fC%2fFSM%2f1&Lang=en

Finch, K. (2022). *Australia: Country Case Study*. Bangkok: ESCAP Project on Harmonization of National Laws with the Convention on the Rights of Persons with Disabilities.

Fiji (2013). *Constitution of the Republic of Fiji*. Available at [www.laws.gov.fj/ResourceFile/Get/?fileName=2013%20Constitution%20of%20Fiji%20\(English\).pdf](http://www.laws.gov.fj/ResourceFile/Get/?fileName=2013%20Constitution%20of%20Fiji%20(English).pdf)

_____ (2018). *Rights of Persons with Disabilities Act 2018*. Available at <https://laws.gov.fj/Acts/DisplayAct/2461>

Ganbat, N. (2017). *Transcending Human Rights Instrumentalism*, PhD dissertation. Sydney: Australian National University. Available at https://openresearch-repository.anu.edu.au/bitstream/1885/143570/1/NarantuyaGanbat_Thesis_2017.pdf

Georgia, Constitutional Court (2014). Irakli Kemoklidze and David Kharadze v Parliament of Georgia, case Nos. 2/4/532 and 2/4/533, judgment of 8 August 2014, summarised in Constitutional Court of Georgia. In *20 Years: Landmark Decisions* (2016), pp. 50–53. Available at <https://constcourt.ge/pdf/5f1fff51c4a9a.pdf>

Handicap International Indonesia and Timor-Leste Programme (2018). *Making it Work: Good Practices of Implementation of UNCRPD in Timor-Leste 2015–2017*. Available at www.makingitwork-crpdp.org/index.php/our-work/projects-using-miw/good-practices-implementation-uncrpd-timor-leste-2015-2017

Hong Kong, China (1996). *Disability Discrimination Ordinance 1996 (Cap 487)* (as amended in 2014). Available at www.elegislation.gov.hk/hk/cap487

Inclusion International (2013). Voting rights restored by the revision of election law in Japan, 1 June. Available at <https://inclusion-international.org/voting-rights-restored-by-the-revision-of-election-law-in-japan/>

India (1995). *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995*. Available at <https://legislative.gov.in/actsofparliamentfromtheyear/persons-disabilities-equal-opportunities-protection-rights-and-full>

_____ (2016). *Rights of Persons with Disabilities Act, 2016*. Available at <https://legislative.gov.in/actsofparliamentfromtheyear/rights-persons-disabilities-act-2016>

India, Ministry of Urban Development (2016). *Harmonised Guidelines and Space Standards for Barrier-Free Built Environment for Persons with Disability and Elderly Persons, February 2016., made pursuant to Rules under the Rights of Persons with Disabilities Act, 2016*. Available at <http://tcpo.gov.in/sites/default/files/TCPO/schemes/Harmonisedguidelinesreleasedon23rdMarch2016.pdf>

Indonesia (2016). *Law No. 8 of 2016 on Persons with Disabilities*. Available at https://pug-pupr.pu.go.id/_uploads/PP/UU.%20No.%208%20Th.%202016.pdf (Indonesian only).

Indonesia, Constitutional Court of Indonesia (2016). The Summary of Decision Case number 135/PUU-XIII/2015 Concerning the Right to Vote and the Right to be Registered as Voter in General Election [Perhimpunan Jiwa Sehat, et al (Mental Health Association case)]. Available at <https://en.mkri.id/court/summary?search=135%2FPUU-XIII%2F2015>

Kyrgyzstan (2016). *Constitution of Kyrgyzstan 2010* (as amended up to 2016). Available at www.constituteproject.org/constitution/Kyrgyz_Republic_2016.pdf?lang=en

Lao People's Democratic Republic (2014). *Decree on the Rights of Persons with Disabilities, 2014*. Available at www.ilo.org/dyn/natlex/docs/ELECTRONIC/100544/128493/F-2083748126/LAO100544%20Eng.pdf (unofficial English translation).

Lawson, A., and A.E. Beckett (2021). The social and human rights models of disability: towards a complementarity thesis. *International Journal of Human Rights*, vol 25, No. 2, p. 348. Available at <https://doi.org/10.1080/13642987.2020.1783533>.

Lim, S. and others (2022). *Republic of Korea: Country Case Study*. Bangkok: ESCAP, Project on Harmonization of National Laws with the Convention on the Rights of Persons with Disabilities.

Malaysia (2008). *Persons with Disabilities Act 2008 (Act 685)* (as amended at 1 July 2014). Available at www.ilo.org/dyn/natlex/docs/ELECTRONIC/86297/117930/F139356912/MYS86297.pdf

Maldives (2008). *Constitution of the Maldives*. Available at <https://storage.googleapis.com/presidency.gov.mv/Documents/ConstitutionOfMaldives.pdf>

Mongolia (2016). *Law on the Human Rights of Persons with Disabilities, 2016*. Available at <https://dredf.org/wp-content/uploads/2018/10/The-Law-of-Mongolia-on-Human-Rights-of-Persons-with-Disabilities-02-05-16.pdf>

Nagase, O. (2013). Deprivation of voting rights found unconstitutional in Japan. Inclusion International, 14 March. Available at web.archive.org/web/20170906082812/http://inclusion-international.org/deprivation-of-voting-rights-found-unconstitutional-in-japan

Nepal (2017). *Act Relating to Rights of Persons with Disabilities, 2074 (2017)* (as amended at 17 September 2018). Available at www.lawcommission.gov.np/en/wp-content/uploads/2019/07/The-Act-Relating-to-Rights-of-Persons-with-Disabilities-2074-2017.pdf

New Zealand (2008). *Disability (United Nations Convention on the Rights of Persons with Disabilities) Act 2008 No 64* (as of 1 March 2017). Available at www.legislation.govt.nz/act/public/2008/0064/latest/whole.html#DLM1404012

New Zealand, Human Rights Commission (2022). Independent monitoring mechanism on the disability convention. Available at www.hrc.co.nz/our-work/people-disabilities/making-disability-rights-real/

New Zealand, Law Commission (2021). *Review of Adult Decision-making Capacity Law*. Available at <https://huarahi-whakatau.lawcom.govt.nz/adult-decision-making-capacity/#adc>

New Zealand, Ministry for Social Development (2017). *Reasonable Accommodation: A Guide to Developing Policies and Procedures to Assist Disabled People Through Reasonable Accommodation (Workplace Adjustments)*. Available at www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/lead-programme-work/lead-tool-kit-reasonable-accommodation.pdf

New Zealand Parliament, House of Representatives (2008). *Disability (United Nations Convention on the Rights of Persons with Disabilities) Bill (232–1) and International Treaty Examination of the Convention on the Rights of Persons with Disabilities, Report of the Justice and Electoral Committee*. Available at www.parliament.nz/resource/en-NZ/48DBSCH_SCR4163_1/1d054d8f8af3b4ee15ccc245219a6136406a7118

Nuri, R.P., and others (2021). The Bangladeshi Rights and Protection of Persons with Disability Act of 2013: a policy analysis. *Journal of Disability Policy Studies*, 29 December. Available at <https://journals.sagepub.com/doi/10.1177/10442073211066789>

Pakistan, Balochistan (2017). *Balochistan Persons with Disabilities Act, 2017*. Available at <https://pakistanlaw.pk/statutes/819/balochistan-persons-with-disabilities-act-2017?search=Persons%20with%20disabilities>

Pakistan, Islamabad Capital Territory (2020). *ICT [Islamabad Capital Territory] Rights of Persons with Disability Act, 2020*. Available at https://na.gov.pk/uploads/documents/1578658292_632.pdf

Pakistan, Sindh (2018). *Sindh Empowerment of Persons with Disabilities Act, 2018*. Available at <https://pakistanlaw.pk/statutes/8348/sindh-empowerment-of-persons-with-disabilities-act-2018?search=Persons%20with%20disabilities>

Philippines (1992). *Republic Act 7277: Magna Carta for Disabled Persons, 1992*. Available at <https://pcw.gov.ph/republic-act-7277-magna-carta-for-disabled-persons/>

Republic of Korea (2005). *Act on the Promotion of the Transportation Convenience of Mobility Disadvantaged Persons, 2005* (as amended in 2016). Available at https://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=39774&type=part&key=41 (unofficial English version).

_____ (2007). *Act on the Prohibition of Discrimination against Persons with Disabilities and Remedy against Infringement of Their Rights, 2007* (as amended in December 2020). Available at https://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=55535&type=sogan&key=10 (unofficial English version).

Republic of Korea, National Human Rights Commission (2014). *Opinions on the first National Report of Korea on the Convention on the Rights of Persons with Disabilities*, 28 July. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fIFN%2fKOR%2f18083&Lang=en

Rees, N., S. Rice, and D. Allen (2018). *Australian Anti-discrimination Law*. Canberra: Federation Press, third edition.

Sri Lanka, Supreme Court of Sri Lanka (2019). *Perera v Minister of Social Services and Social Welfare and others: SC FR Application No 273/2018*, 18 April. Available at http://supremecourt.lk/images/documents/sc_fr_273_2018.pdf

Srisom, S., S. Mongkolsawadi, M. Buntan, and R. Kichtham (2022). *Thailand: Country Case Study*. Bangkok: ESCAP, Project on Harmonization of National Laws with the Convention on the Rights of Persons with Disabilities.

Thailand (2007, 2013). *Persons with Disabilities Empowerment Act B.E. 2550 (2007)* (as amended in 2013). Available at web1.dep.go.th/sites/default/files/files/law/EMPOWERMENT%20OF%20PERSONS%20WITH%20DISABILITIES%20ACT%2C%20B.E.%202550%20%282007%29.pdf

_____ (2013). *Education for Persons with Disabilities Act B.E. 2551 (2008), as Amended in B.E. 2556 (2013)*. Available at www.thailandntr.com/en/trade-in-services/laws/organization/download/107?file=Law_TIS_164_EN.pdf (unofficial English translation).

_____ (2017). *Constitution of the Kingdom of Thailand, 2017*. Available at [https://constitutionnet.org/sites/default/files/2017-05/CONSTITUTION+OF+THE+KINGDOM+OF+THAILAND+\(B.E.+2560+\(2017\)\).pdf](https://constitutionnet.org/sites/default/files/2017-05/CONSTITUTION+OF+THE+KINGDOM+OF+THAILAND+(B.E.+2560+(2017)).pdf)

United Nations (1969). Vienna Convention on the Law of Treaties, 23 May. *Treaty Series*, vol. 1155, p. 331. Available at <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/v1155.pdf>

_____ (1989). Convention on the Rights of the Child. *Treaty Series*, vol. 1577, p. 3. Available at <https://treaties.un.org/doc/Publication/UNTS/Volume%201577/v1577.pdf>

_____ (2006a). Convention on the Rights of Persons with Disabilities. *Treaty Series*, vol. 2515, p. 3. Available at <http://treaties.un.org/doc/Publication/UNTS/Volume%202515/v2515.pdf>

_____ (2006b). Optional Protocol to the Convention on the Rights of Persons with Disabilities. *Treaty Series*, vol. 2518, p. 283. Available at <http://treaties.un.org/doc/Publication/UNTS/Volume%202518/v2518.pdf>

_____ (2009). *Multilateral Treaties Deposited with the Secretary-General: Status as at 1 April 2009*. ST/LEG/SER.E/26 (2009). Available at <https://treaties.un.org/doc/source/publications/MTDSG/2009-vol.1-english.pdf>

_____ (2022a). *Disability-inclusive Communications Guidelines*. Available at www.un.org/sites/un2.un.org/files/un_disability-inclusive_communication_guidelines.pdf

_____ (2022b). Status of treaties deposited with the Secretary-General. *United Nations Treaty Collection*, Chap IV.15. Available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en

_____ (2022c). Status of treaties deposited with the Secretary-General. *United Nations Treaty Collection*, Chap IV.15a. Available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15-a&chapter=4&clang=_en

_____ (2022d). Status of treaties deposited with the Secretary-General. *United Nations Treaty Collection*, Chap IV.11. Available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en

United Nations Department of Economic and Social Affairs (DESA) (2022). Disability laws and acts by country/area. Available at www.un.org/development/desa/disabilities/disability-laws-and-acts-by-country-area.html

United Nations Development Programme (UNDP) (2020). *Report on Reviewing Viet Nam’s Law on Persons with Disabilities in comparison with the Convention on the Rights of Persons with Disabilities and International Best Practices*. Available at www.vn.undp.org/content/vietnam/en/home/library/democratic_governance/reviewing-vietnam-law-on-persons-with-disabilities-in-comparison-with-the-convention-on-the-rights-of-persons-with-disabilities-and-international-best-practices.html

United Nations General Assembly (1993). *Principles Relating to the Status of National Institutions (the Paris Principles): General Assembly resolution 48/134* (20 December). Available at www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris

United Nations Human Rights Council Special Rapporteur on the rights of persons with disabilities (2017). *Report of the Special Rapporteur on the rights of persons with disabilities on her visit to the Democratic People’s Republic of Korea* (8 December). A/HRC/37/56/Add.1. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/358/55/PDF/G1735855.pdf?OpenElement>

_____ (2018). *Report of the Special Rapporteur on the rights of persons with disabilities on Her Mission to Kazakhstan* (19 January). A/HRC/37/56/Add.2. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/014/75/PDF/G1801475.pdf?OpenElement>

_____ (2019). *Report of the Special Rapporteur on the rights of persons with disabilities* (19 December). A/HRC/43/41. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/346/54/PDF/G1934654.pdf?OpenElement>

United Nations Office of the High Commissioner for Human Rights (2016). *Equality and Non-discrimination Under Article 5 of the Convention on the Rights of Persons with Disabilities, Report of the Office of the United Nations High Commissioner for Human Rights* (9 December). A/HRC/34/26. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/406/73/PDF/G1640673.pdf?OpenElement>

United Nations, Office of the United Nations High Commissioner for Human Rights and the Inter-Parliamentary Union (2007). *Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities*. Available at www.un.org/development/desa/disabilities/resources/handbook-for-parliamentarians-on-the-convention-on-the-rights-of-persons-with-disabilities.html

United States Department of State (2022). *2021 Country Reports on Human Rights Practices: Brunei*, US Department of State Bureau of Democracy, Human Rights and Labor. Available at www.state.gov/reports/2021-country-reports-on-human-rights-practices/brunei/

Viet Nam (2010). *Law on Persons with Disabilities 2010*. Available at www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2019/11/Viet-Nam_Law-on-Persons-with-Disabilities.pdf

Wolbring, G. (2008). The politics of ableism. *Development*, vol. 51, p. 252. Available at <https://doi-org.wwwproxy1.library.unsw.edu.au/10.1057/dev.2008.17>

Zero Project (2015). *Enfranchising People Under Guardianship*. Available at https://austria.zeroproject.org/wp-content/uploads/2015/01/ZPR2015-INNOVATIVE-POLICY-JAPAN_barrierfree.pdf

Zhang, W. and Y. Liu (2022). *China: Country Case Study*. Bangkok: ESCAP, Project on Harmonization of National Laws with the Convention on the Rights of Persons with Disabilities.

Annex 1

Committee on the Rights of Persons with Disabilities: members from Asia and the Pacific

(including those members elected or re-elected at the June 2022 elections)

NAME	COUNTRY <i>(in alphabetical order)</i>	TERM
Ms Rosemary KAYESS	Australia	2019–2022, 2023–2026
Mr Ronald McCALLUM	Australia	2009–2010, 2011–2014
Mr Monsur Ahmed CHOUDHURI	Bangladesh	2009–2012
Ms Jia YANG	China	2009–2012
Mr Liang YOU	China	2015–2018
Ms Risnawati UTAMI	Indonesia	2019–2022
Mr Jun ISHIKAWA	Japan	2017-2020
Ms Gerel DONDOVDORJ	Mongolia	2021–2024
Sir Robert George MARTIN	New Zealand	2017–2020, 2021–2024
Ms Miyeon KIM	Republic of Korea	2019–2022, 2023–2026
Mr Hyun Sik KIM	Republic of Korea	2011–2014, 2015–2018
Mr Dmitry REBROV	Russian Federation	2019–2020
Mr Valery Nikitich RUKHLEDEV	Russian Federation	2017–2019
Sen. Monthian BUNTAN	Thailand	2013–2016, 2017–2020
Ms Saowalak THONGKUAY	Thailand	2021–2024
Ms Şafak PAVEY	Türkiye	2013–2016

Number of women from Asia and the Pacific who have served as members of the Committee: 7

Number of men from Asia and the Pacific who have served as members of the Committee: 9

Prior to the 15th election of members of the Committee by States parties in June 2022, men from Asian and Pacific countries had been elected or appointed to serve for 50 years on the Committee, while women had been elected or appointed to serve for only 28 years. Four men had been re-elected (one following an initial two-year term), while no women from the Asian and Pacific region had been re-elected. However, during the June 2022 elections, two women from the Asian and Pacific region were re-elected.

Annex 2

Interpretive and guidance documents issued by the United Nations Committee on the Rights of Persons with Disabilities

General comment No. 1, Article 12: Equal recognition before the law, CRPD/C/GC/1 (2014). Available at <https://digitallibrary.un.org/record/812024?ln=en>

General comment No. 2, Article 9: Accessibility, CRPD/C/GC/2 (2014). Available at <https://digitallibrary.un.org/record/812025?ln=en>

General comment No. 3, Article 6: Women and girls with disabilities, CRPD/C/GC/3 (2016). Available at <https://digitallibrary.un.org/record/1314848?ln=en>

General comment No. 4, Article 24: Right to inclusive education, CRPD/C/GC/4 (2016). Available at <https://digitallibrary.un.org/record/1313836?ln=en>

General comment No. 5, Article 19: Right to independent living, CRPD/C/GC/5 (2017). Available at <https://digitallibrary.un.org/record/1311739?ln=en>

General comment No. 6, Article 5: Equality and non-discrimination, CRPD/C/GC/6 (2018). Available at <https://digitallibrary.un.org/record/1626976?ln=en>

General comment No. 7, Articles 4.3 and 33.3: Participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention, CRPD/C/GC/7 (2018). Available at <https://digitallibrary.un.org/record/3899396?ln=en>

General comment No. 8, Article 27: Work and employment, CRPD/C/GC/8 (2022). Available at <https://www.ohchr.org/en/documents/general-comments-and-recommendations/crpdcg8-general-comment-no-8-2022-right-persons>

Guidelines on the right to liberty and security of persons with disabilities, A/72/55, Annex, pp.16-21 (2015). Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=A/72/55&Lang=en

Guidelines on independent monitoring frameworks and their participation in the work of the Committee on the Rights of Persons with Disabilities, CRPD/C/1/Rev.1, Annex, pp.33-43 (2016). Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/1/Rev.1&Lang=en

Guidelines on deinstitutionalization including in emergencies, CRPD/C/27/3 (2022). Available at <https://www.ohchr.org/en/documents/legal-standards-and-guidelines/crpd273-guidelines-deinstitutionalization-including>

Statement by the Committee on the Rights of Persons with Disabilities: Inclusion and full participation of persons with disabilities and their representative organizations in the implementation of the Convention: Promoting inclusive urban development (2018). Available at www.ohchr.org/sites/default/files/Documents/HRBodies/CRPD/StatementInclusionFullParticipation.docx

Statement by the Committee on the Rights of Persons with Disabilities on the International Day of Sign Languages, 19th session (14 February–9 March 2018). Available at www.ohchr.org/sites/default/files/Documents/HRBodies/CRPD/StatementInternationalDaySignLanguages.docx

Statement on COVID-19 and the human rights of persons with disabilities (2020). Available at www.ohchr.org/en/news/2020/06/statement-covid-19-and-human-rights-persons-disabilities?LangID=E&NewsID=25942

Open letter to the Secretary-General of the Council of Europe, the Committee of Ministries of the Council of Europe, the Committee on Bioethics of the Council of Europe, the Steering Committee for Human Rights, the Commissioner of Human Rights, the Parliamentary Assembly of the Council of Europe and other organizations and entities of the Council of Europe (2021). Available at www.ohchr.org/sites/default/files/Documents/HRBodies/CRPD/Open_letter_Add_Prot_Ovi_Conv.docx

Joint statements²³⁴

Addressing disabilities in large-scale movements of refugees and migrants: Joint Statement by the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), and the Committee on the Rights of Persons with Disabilities (2017). Available at www.ohchr.org/sites/default/files/Documents/HRBodies/CRPD/Statements/FINAL1004.docx

Joint Declaration by the Committee on the Rights of Persons with Disabilities and the Global Alliance of National Human Rights Institutions (2018). Available at www.ohchr.org/sites/default/files/2022-03/CRC-CRPD-joint-statement_18March2022.docx

Guaranteeing sexual and reproductive health and rights for all women, in particular women with disabilities: Joint statement by the Committee on the Rights of Persons with Disabilities and the Committee on the Elimination of All Forms of Discrimination against Women (2018). Available at www.ohchr.org/sites/default/files/Documents/HRBodies/CRPD/Statements/GuaranteeingSexualReproductiveHealth.DOCX

Joint Statement: The rights of children with disabilities: Committee on the Rights of the Child and Committee on the Rights of Children with Disabilities (2022). Available at www.ohchr.org/sites/default/files/2022-03/CRC-CRPD-joint-statement_18March2022.docx

Joint statement by UN-Women, the Committee on the Elimination of Discrimination against Women, and the Committee on the Rights of Persons with Disabilities: Ending sexual harassment against women and girls with disabilities (2020). Available at www.ohchr.org/sites/default/files/Documents/HRBodies/CEDAW/Statements/JointStatement_UNW_CEDAW_CRPD.docx

²³⁴ For all statements, declarations and observations of the Committee on the Rights of Persons with Disabilities, see: <https://www.ohchr.org/en/treaty-bodies/crpd/statements-declarations-and-observations>

Annex 3

ESCAP member States: status of signature, ratification and accession to the Convention on the Rights of Persons with Disabilities and the Optional Protocol

(as of 30 June 2022)²³⁵

ESCAP MEMBER STATE	SIGNATURE OF THE CONVENTION	RATIFICATION OF OR ACCESSION TO THE CONVENTION	SIGNATURE OF THE OPTIONAL PROTOCOL	RATIFICATION OF OR ACCESSION TO THE OPTIONAL PROTOCOL
Afghanistan		18 September 2012 accession		18 September 2012 accession
Armenia	30 March 2007	22 September 2010	30 March 2007	
Australia	30 March 2007	17 July 2008		21 August 2009 accession
Azerbaijan	9 January 2008	28 January 2009	9 January 2008	28 January 2009
Bangladesh	9 May 2007	30 November 2007		12 May 2008 accession
Bhutan	21 September 2010			
Brunei Darussalam	18 December 2007	11 April 2016		
Cambodia	1 October 2007	20 December 2012	1 October 2007	
China	30 March 2007	1 August 2008		
Democratic People's Republic of Korea	3 July 2013	6 December 2016		
Fiji	2 June 2010	7 June 2017	2 June 2010	
France	30 March 2007	18 February 2010	23 September 2008	18 February 2010
Georgia	10 July 2009	13 March 2014	10 July 2009	12 April 2021
India	30 March 2007	1 October 2007		
Indonesia	30 March 2007	30 November 2011		
Iran (Islamic Republic of)		23 October 2009 accession		
Japan	28 September 2007	20 January 2014		
Kazakhstan	11 December 2008	21 April 2015	11 December 2008	
Kiribati		27 September 2013 accession		
Kyrgyzstan	21 September 2011	16 May 2019		
Lao People's Democratic Republic	15 January 2008	25 September 2009		
Malaysia	8 April 2008	19 July 2010		
Maldives	2 October 2007	5 April 2010		
Marshall Islands		17 March 2015 accession		
Federated States of Micronesia	23 September 2011	7 December 2016		
Mongolia		13 May 2009 accession		13 May 2009 accession

ESCAP MEMBER STATE	SIGNATURE OF THE CONVENTION	RATIFICATION OF OR ACCESSION TO THE CONVENTION	SIGNATURE OF THE OPTIONAL PROTOCOL	RATIFICATION OF OR ACCESSION TO THE OPTIONAL PROTOCOL
Myanmar		7 December 2011 accession		
Nauru		27 June 2012 accession		
Nepal	3 January 2008	7 May 2010	3 January 2008	7 May 2010
Netherlands	30 March 2007	14 June 2016		
New Zealand	30 March 2007	25 September 2008		4 October 2016 accession
Pakistan	25 September 2008	5 July 2011		
Palau	20 September 2011	11 June 2013		11 June 2013 accession
Papua New Guinea	2 June 2011	26 September 2013		
Philippines	25 September 2007	15 April 2008		
Republic of Korea	30 March 2007	11 December 2008		
Russian Federation	24 September 2008	25 September 2012		
Samoa	24 September 2014	2 December 2016		
Singapore	30 November 2012	18 July 2013		
Solomon Islands	23 September 2008		24 September 2009	
Sri Lanka	30 March 2007	8 February 2016		
Tajikistan	22 March 2018			
Thailand	30 March 2007	29 July 2008		2 September 2016 accession
Timor-Leste				
Tonga	15 November 2007			
Türkiye	30 March 2007	28 September 2009	28 September 2009	26 March 2015
Turkmenistan		4 September 2008 accession		10 November 2010 accession
Tuvalu		18 December 2013 accession		
United Kingdom of Great Britain and Northern Ireland	30 March 2007	8 June 2009	26 February 2009	7 August 2009
United States of America	30 July 2009			
Uzbekistan	27 February 2009	28 June 2021		
Vanuatu	17 May 2007	23 October 2008		
Viet Nam	22 October 2007	5 February 2015		
TOTAL	43	47	11	14

²³⁵ This information is drawn from United Nations, 2022b and 2022c.

Annex 4

ESCAP associate members: application of the Convention on the Rights of Persons with Disabilities and the Optional Protocol²³⁶

(as of 30 June 2022)

ESCAP ASSOCIATE MEMBER	DOES THE CONVENTION APPLY?	DOES THE OPTIONAL PROTOCOL APPLY?
American Samoa	No	No
Cook Islands	Yes ^a	Yes ^a
French Polynesia	Yes ^b	Yes ^b
Guam	No	No
Hong Kong, China	Yes ^c	No
Macao, China	Yes ^c	No
New Caledonia	Yes ^b	Yes ^b
Niue	No	No
Northern Mariana Islands	No	No

Notes:

- ^a The Cook Islands acceded to both the Convention and its Optional Protocol on 8 May 2009.
- ^b As a result of ratification of both the Convention and its Optional Protocol by France on 18 February 2010.
- ^c As a result of the ratification of the Convention by China on 1 August 2008 and its application by China to Hong Kong, China and Macao, China, respectively. See United Nations (2022a), note 2. On its resumption of the exercise of sovereignty over Hong Kong, China and Macao, China in 1997 and 1999, respectively, when ratifying treaties China has notified the depositary whether the treaty will “apply” to these Special Administrative Regions: see United Nations (2009) vol 1, at pp. VI-X, note 2. This practice is in accordance with the principle of “one country, two systems” that underpins the status of these two jurisdictions as Special Administrative Regions jurisdictions as part of China. The Basic Law of each Region provides that, where China is or becomes a party to an international agreement, the Central People’s Government shall decide on the “application” of the agreement to each Special Administrative Region “in accordance with the circumstances and needs of the Region and after seeking the views of the government of the Region.” See, for example, Article 153 of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China: China, 1990, p. 52 at p. 104.

Annex 5

Ratification of or accession to the Convention on the Rights of Persons with Disabilities by ESCAP member States, 2007-2022

(as of 30 June 2022)

DATE	NUMBERS OF RATIFICATION OR ACCESSION IN THE YEAR	CUMULATIVE NUMBERS OF RATIFICATION
31 December 2007	2	2
31 December 2008	8	10
31 December 2009	6	16
31 December 2010	5	21
31 December 2011	3	24
31 December 2012	4	28
31 December 2013	5	33
31 December 2014	2	35
31 December 2015	3	38
31 December 2016	6	44
31 December 2017	1	45
31 December 2018	0	45
31 December 2019	1	46
31 December 2020	0	46
31 December 2021	1	47
30 June 2022	0	47

²³⁶ Analysis by Prof. Andrew Byrnes using data on ratification, status and reservation/declaration information derived from the material on the United Nations Treaty Collection website (*Multilateral treaties deposited with the Secretary-General*, ch IV: Human Rights): <https://treaties.un.org/pages/ParticipationStatus.aspx>; and information about reporting record based on information on OHCHR website https://www.ohchr.org/en/ohchr_homepage selected “Countries”, then under Country “Status and Reporting”/“Reporting”

Annex 6

Ratification of or accession to the Convention on the Rights of Persons with Disabilities by ESCAP member States, by subregion

(as of 30 June 2022)

ESCAP SUBREGION	NUMBER OF MEMBER STATES IN SUBREGION	NUMBER OF MEMBER STATES THAT HAVE RATIFIED OR ACCEDED TO THE CONVENTION
East and North-East Asia	5 ^a	5
North and Central Asia	9	8
Pacific	14 ^b	12
South-East Asia	11	10
South and South-West Asia	10	9
TOTAL^c	49	44

Notes:

- a Not including the two ESCAP associate members in this region, Hong Kong, China and Macao, China, to which the Convention applies by virtue of ratification by China.
- b Not including the seven associate members in the Pacific sub-region (American Samoa, Cook Islands, French Polynesia, Guam, New Caledonia, Niue and Northern Mariana Islands). However, Cook Islands has acceded to the Convention, and the Convention applies to New Caledonia and French Polynesia by virtue of ratification by France.
- c Not including France, the Netherlands, the United Kingdom and the United States of America.

Harmonization of National Laws with the Convention on the Rights of Persons with Disabilities

Overview of Trends in Asia and the Pacific

This publication emanates from an ESCAP research project to study the trends of the Asian and Pacific countries in harmonizing their national laws with the Convention on the Rights of Persons with Disabilities. It examines the extent to which reporting obligations have been fulfilled in a timely and substantive manner and the ways in which national human rights institutions and civil society organizations, in particular organizations of persons with disabilities, have been involved in that process. It further analyses good practices in harmonization, and challenges which have commonly arisen in relation to the implementation of the Convention in the Asian and Pacific region. The analytical regional overview draws from five country case studies prepared under the abovementioned ESCAP project, as well as other credible sources. This publication presents recommendations for the attention of ESCAP member States towards further enhancement of the effective harmonization of national legislation with the Convention and the implementation of the Convention.