

April 2024

# Legal Harmonisation

## Guidance for organisations of persons with disabilities

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Part 2: Reform of domestic laws to align with the Convention on the Rights of Persons with Disabilities (CRPD)



**Note:** This document is Part 2 of a series of three guides to help clarify the relationship between the Convention on the Rights of Persons with Disabilities (CRPD), and domestic laws. Part 1 introduced the relationship of CRPD to domestic law, and Part 3 relates to monitoring and reporting under CRPD.

Parts 1, 2 and 3 should be read together.

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All links were correct at the time of publication.

# Introduction

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## Summary

The Convention on the Rights of Persons with Disabilities ('CRPD'), as the international law on the rights of persons with disabilities, sets out the obligations of States (i.e., Countries) to promote and protect the rights of persons with disabilities. This includes appropriate steps to ensure that the CRPD is incorporated into domestic law and that domestic laws are aligned to the CRPD.

To do this, States must conduct reviews of their domestic laws to identify gaps, discriminatory provisions or areas for reform. Legal review then informs what laws need to be changed.

Persons with disabilities and Organisations of Persons with Disabilities (OPDs) play a key role in legal review and law reform processes. Their participation is essential to ensuring that laws and policies are inclusive, responsive to the needs of persons with disabilities, and reflect the diverse perspectives of the disability community.



## Purpose

The purpose of this guidance is to help OPDs understand key legal concepts and processes such as 'legal harmonisation', 'legislative review' and 'law reform' as they relate to the CRPD, and the role they can play in each of these processes. It is supported by a glossary of key terms, as well as a list of resources and technical guidance available for further information.

# Legal Harmonisation, Legislative Review and Law Reform

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## What is 'legal harmonisation' and why is it important?

- Legal harmonisation is the process of ensuring that domestic laws at all levels (e.g., national laws, provincial laws, local laws) are consistent with and comply with the CRPD.
- Legal harmonisation with the CRPD is important because, in many countries, legal and policy frameworks often provide insufficient protection or inadequately address the rights and inclusion of persons with disabilities in society.
- In some countries, laws discriminate against, create barriers for, or otherwise harm, persons with disabilities. For example, laws may create barriers to access to justice, or the right to vote for persons with intellectual and psychosocial disabilities.

## What do we mean by 'legislative review'?

- This is the process by which States review their domestic laws to identify any laws that discriminate against persons with disabilities, that are inconsistent with the CRPD, and that do not uphold the rights specifically outlined within the CRPD.
- Legislative review results in identifying areas where new laws will be necessary, or where old laws need to be modified or abolished.

## Which laws are included in a legislative review?

Examples of laws that are likely to be reviewed can include:

- **Disability-specific laws** – such as a national law on disability or comprehensive disability rights legislation, disability-specific anti-discrimination legislation, laws relating to persons with specific disabilities, or a sector-specific law, such as education, that applies specifically to persons with disabilities.
- **Laws that contain specific references to persons with disabilities** – such as general anti-discrimination legislation, human rights acts, electoral laws, child protection laws, guardianship laws.
- Laws which do not refer to disability or persons with disabilities, but which are **relevant to persons with disabilities** – such as laws related to contracts, family issues, civil society and non-profit organisations, employment, and land laws relating to ownership, construction and infrastructure.
- **Regulations** are lower-level laws, which relate to an overarching 'parent law'. If a parent law is amended, it may have implications for regulations.

## What is the connection between laws, regulations, policies and procedures?

- **Laws (including regulations)** provide the legally enforceable framework governing behaviour and actions.
- **Policies** are guiding principles or strategies to help implement obligations under law.
- **Procedures** are operational measures to put policies into action.

Together, these 'measures' make up the regulatory framework. A comprehensive review process would examine all measures within the regulatory framework.

CRPD (Article 4) requires States to adopt legislative administrative and other measures to implement the obligations of the Convention.

## What do we mean by 'law reform' and how does it occur?

This is the process by which States review their domestic laws to identify any laws that discriminate against persons with disabilities, that are inconsistent with the CRPD, and that do not uphold the rights specifically outlined within the CRPD.

Legislative review results in identifying areas where new laws will be necessary, or where old laws need to be modified or abolished.

- Changes to the national Constitution.
- Development or amendment laws specifically on the rights of persons with disabilities.
- Development and/or amendment of a broad range of laws related to persons with disabilities, including general or sector-specific anti-discrimination laws.

## What should be prioritised for law reform under the CRPD?

Key considerations under the CRPD include:

- **Ensuring that the purpose of the CRPD (as in Article 1)** is reflected as a central purpose in domestic law and policy development. This can be done by specifically quoting Article 1 within a country's domestic implementing legislation, for example, in a national disability law.
- **Ensuring that national legislation aligns with the social (identification of barriers) and human rights models of disability** (ensuring human rights of persons with disabilities are respected, protected and fulfilled) reflected in the CRPD (Article 1(2)).
- **Ensuring that the guiding principles of the CRPD (Article 3) also apply to the development and reform of national laws.**
- **Ensuring specific attention is given to equality and non-discrimination** including prohibiting discrimination on the grounds of disability.
- **Ensuring the diversity of rights<sup>1</sup> articulated in the CRPD are covered in domestic laws.** For example:
  - Ensure equal recognition before the law, this includes ensuring rights to legal capacity and prohibiting any denial of legal capacity (Article 12).
  - Ensure access to justice or redress for persons with disabilities who have experienced violation of their human rights (Article 14).
  - Ensure full and equal access to health care without discrimination, including provision of reasonable accommodation in the context of health care services (Article 25).
  - Ensure the right to liberty and security of the person (Article 15) and the right to be free from torture, exploitation, violence and abuse within and outside the home (Article 16).
- **Ensuring that adequate consideration is given to age and gender and their intersection with disability**, in line with provisions on the rights of women (Article 6) and children with disabilities (Article 7).
- **Specifically identifying duty bearers responsible for guaranteeing the rights of persons with disabilities** (such as authorities at different levels of government and private sector actors).

## What is the role of OPDs in legal harmonisation, legislative review and law reform processes?

- **Full and effective participation** and inclusion of persons with disabilities and their representative organisations is essential to ensuring:
  - A greater understanding of the lived experience of disability.
  - Opportunities for persons with disabilities to shape the laws that affect them.
  - That laws and policies are inclusive, responsive to the needs of persons with disabilities, and reflect the diverse perspectives of the disability community.
- The CRPD says that:
  - **Lawmakers are required to closely consult and actively involve** persons with disabilities and their representative organisations and to take active steps to ensure their full and effective participation in the development and implementation of legislation and policies that affect persons with disabilities (Article 4(3)).
  - 'Full and effective participation and inclusion in society' is also a general principle of the CRPD (Article 3).
  - The right of persons with disabilities and their representative organisations to **participate in political and public life is also recognised** (Article 29).
- **Entry points and opportunities** for participation and inclusion by persons with disabilities and OPDs exist at various points within the legal reform processes. For example:
  - When the Constitution is being drafted or being revised, OPDs can help to ensure that provision of rights of persons with disabilities are clearly expressed for in the highest domestic law of the country.
  - **OPDs can work with legal experts or monitoring bodies** either as part of the review team or as informants/contributors to legislative review processes.
  - **OPDs can help to identify gaps and inconsistencies between national laws and the CRPD**, to identify laws that discriminate against persons with disabilities, and to support with ideas and strategies on adjustments which are needed to ensure consistency with the CRPD.
  - OPDs can advocate for government ministries and agencies have **in-house disability expertise** and a designated contact person or focal point for disability matters.
  - **OPDs can provide training** on disability inclusion to stakeholders in the law reform process.
  - **OPDs can act as informants** in all national human rights treaty reporting processes including, but not limited to, the CRPD.

## Case study: OPDs participating in legal harmonisation

Fiji is a Pacific-Island country with a population of 2 million people. Significant gains have been made over recent years in relation to the rights of persons with disabilities. Fiji ratified the Convention on the Rights of Persons with Disabilities (CRPD) in 2017. Soon after, the Rights of Persons with Disabilities Act 2018 came into force following advocacy from the disability movement. In 2024, the Psychiatric Survivors Association (PSA), the organisation representing people with psychosocial disabilities in Fiji, was asked to participate in review of the Fiji Mental Health Act 2016.

- PSA asked its non-government development partner to support them in this review. **They were able to get a legal specialist who could review the laws and explain if/how the mental health act preserved the rights of people with disabilities** as set out in the CRPD.
- The legal specialist then ran a training session for the Board of PSA to help them understand the laws so they could empower their members with information and participate meaningfully in the review.
- PSA decided that the Act needed to be repealed or significantly revised to be in alignment with the CRPD.
- PSA now plans to document the experiences of its members in relation to the Mental Health Act to help provide evidence for their recommendations for changes to the Act.



# Glossary of Key Terms

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- **Convention on the Rights of Persons with Disabilities or 'CRPD':** An international human rights treaty adopted by the United Nations in 2006, aiming to protect and promote the rights and dignity of persons with disabilities while ensuring their full and equal participation in society.
- **Duty bearers:** Individuals, groups, or institutions that are responsible for upholding and fulfilling specific rights or obligations under national or international law.
- **Law:** A system of rules and regulations to maintain order, regulate behaviour, resolve disputes, and enforce standards within a country. Laws are binding in a Court of law, on individuals and entities (public and private sector organisations, Governments at national and sub-national levels, and Non-Governmental organisations, including OPDs).
- **Law reform:** The process of making changes to existing laws or creating new ones to address emerging social, economic, or political issues and improve legal systems.
- **Legal harmonisation:** The process of aligning or reconciling conflicting laws and regulations across different jurisdictions (such as between international and domestic) to create consistency and coherence.
- **Legislative measures:** Actions taken by legislative bodies, such as passing laws, regulations, or resolutions, to address specific issues or achieve policy objectives.
- **Legislative review:** The examination and assessment of existing laws and policies by legislative bodies to determine their effectiveness, relevance, and potential need for modification.
- **Organisations of Persons with Disabilities or 'OPDs':** Groups or associations formed by individuals with disabilities to advocate for their rights, interests, and inclusion in society.
- **Policy:** A set of principles or strategies to guide implementation of a law. While laws are legally enforceable, policies are only guiding principles or strategies used to help implement laws.
- **Procedures:** Are the operational guides that specifically state how policies, and therefore laws (including regulations) should be implemented.
- **Reasonable Accommodation:** 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 (as per CRPD, Article 2)
- **Regulations:** Are lower level laws that elaborate on a 'parent law'. Regulations are 'laws' and are binding in a Court of law. Regulations can generally be amended more easily than parent laws.
- **Regulatory framework:** Is the combination of laws, regulations, policies and procedures that must be followed.

# Key technical advice resources

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## National Legislation

- UNDESA. (2023). [Disability Laws and Acts by Country / Area](#)
- W3C. (2023). [Web Accessibility Laws and Policies by country](#)

## UN Reports

- [UNECOSOC. \(2021\). Harmonization of National Laws with the Convention on the Rights of Persons with Disabilities: Asia-Pacific trends in selected topics in the ESCAP region](#)
- [UNESCAP. \(2022\). Harmonization of National Laws with the Convention on the Rights of Persons with Disabilities: Overview of trends in Asia and the Pacific](#)
- [UNESCAP. \(2021\). Inequality, Discrimination and Exclusion: Assessing CRPD Compliance in Pacific Island Legislation](#)
- [UNOHCHR. \(2009\). Key legal measures for the ratification and implementation of the Convention on the Rights of Persons with Disabilities \(26 January 2009\)](#)
- [UNOHCHR. \(2009\). Thematic Study by the Office of the United Nations High Commissioner for Human Rights on enhancing awareness and understanding of the Convention on the Rights of Persons with Disabilities \(2009\)](#)

## Thematic Studies

- [UNESCAP. \(2020\). Employment for persons with disabilities](#)
- [UNHCHR. \(2017\). Report of the Special Rapporteur on the rights of persons with disabilities, \(2018\). Thematic study on the right of persons with disabilities to equal recognition before the law and legal capacity and supported decision-making](#)
- [UNOHCHR. \(2017\). Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities](#)
- [Report of the Special Rapporteur on the rights of persons with disabilities. \(2016\).](#)
- [UNOHCHR. \(2016\). Equality and non-discrimination under article 5 of the Convention on the Rights of Persons with Disabilities](#)

## UN General Comments and Recommendations

- Committee on the Rights of Persons with Disabilities. (2018). [General Comment No. 7 on the participation of persons with disabilities, inclusion children with disabilities, through their representative organisations, in the implementation and monitoring of the Convention](#)
- Committee on the Rights of Persons with Disabilities. (2018). [General Comment No. 6 on Equality and Non-Discrimination](#)
- Committee on the Rights of Persons with Disabilities. (2017). [General Comment No. 5 on living independently and being included in the community](#)
- Committee on the Rights of Persons with Disabilities. (2016). [General Comment No. 4 on the right to inclusive education](#)
- Committee on the Rights of Persons with Disabilities. (2016). [General Comment No. 3 on Article 6 – Women and Girls with Disabilities](#)
- CEDAW Committee. (2015). [General Recommendation No. 33 on Women’s Access to Justice](#)
- Committee on the Rights of Persons with Disabilities. (2014). [General Comment No 2 on Article 9 – Accessibility \(adopted 11 April 2014\)](#)
- Committee on the Rights of Persons with Disabilities. (2014). [General Comment No. 1 on Article 12 – Equal Recognition Before the Law \(adopted 11 April 2014\)](#)

## UN Other Guidance

- Australian Human Rights Commission. (2021). [Free and Equal: A reform agenda for federal discrimination laws](#)
- European Union Agency of Fundamental Rights. (2015). [Implementing the United Nations Convention on the Rights of Persons with Disabilities: An overview of legal reforms in EU member states](#)
- Australian Law Reform Commission. (2014). [Equality, Capacity and Disability in Commonwealth Laws](#)

## Articles

- Beaupert, F., Steele, L., Gooding, P. (2018). [Introduction to disability, rights and law reform in Australia: Pushing beyond legal futures, Law in Context A Socio-legal Journal, 35\(2\):1-14](#)
- Beqiraj, J., McNamara, L. and Wicks, V. (2017). Access to justice for persons with disabilities: [From international principles to practice, International Bar Association \(Chapter 3 – Legal Barriers \(pages 22 to 26\)](#)
- University of Minnesota Human Rights Center. (2012). [Using Human Rights. Yes! Action and Advocacy on the Rights of Persons with Disabilities \(2nd edition\)](#)
- Ortoleva, S. Inaccessible Justice. (2011). [Human Rights, Persons with Disabilities and the Legal System, 17 ILSA Journal of International and Comparative Law, 281](#)
- Lewis, O. (2010). [The Expressive, Educational and Proactive Role of Human Rights: An Analysis of the UN Convention on the Rights of Persons with Disabilities in Rethinking Rights Based Mental Health Laws](#)
- Lord, J. and Stein, M. (2008). [The Domestic Incorporation of Human Rights Law and the United Nations Convention on the Rights of Persons with Disabilities, \(83 University of Washington Law Review 449-479\)](#)

## Notes

- 1 Other examples of CRPD articles to consider regarding the diversity of rights include: Articles 5, 10, 12, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 27, 28, 29, 30.