

## Preconditions to Inclusion Issues Paper:

# Non-Discrimination

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### What is non-discrimination in the Pacific?

Non-discrimination is a precondition because it overcomes the huge barriers created by discrimination, which exclude persons with disabilities from participating in day-to-day life on an equal basis with others. Discrimination can be directly based on a person's disability, such as laws or practices that take away people's right to make decisions about their own lives<sup>1</sup> or live independently in the community due to their disability (particularly if they have an intellectual or psychosocial disability). Discrimination can also be indirect – that is, where a practice, policy or law disadvantages persons with disabilities disproportionately more than people without disability. For example, where public education or health services do not comply with accessibility standards, they indirectly discriminate against the persons with disabilities who cannot access them. Another form of indirect discrimination is denying or failing to provide reasonable accommodation.<sup>2</sup> Inter-sectional discrimination may occur where people who belong to more than one marginal identity may encounter unique forms of discriminations. For example, across the Pacific indigenous women with disabilities may not be able to take up leadership roles in their village as these are normally held by men, or by people of a specific cultural group, and also due to their disability.

Discrimination is driven by systemic norms in society such as prejudicial and negative stereotypes of persons with disabilities, and the medical model of disabilities that regards disability as an individual deficit or problem (as opposed to a rights-based model which frames disability as a natural part of human diversity, with persons with disabilities entitled to equal rights, and efforts to ensure this being the responsibility of society in general). Non-discrimination is realised when all persons with disabilities meaningfully enjoy the same rights and opportunities as others, including having all laws treat, benefit and protect them equally without discrimination.

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<sup>1</sup> This is the right to equality before the law, or legal capacity (Art 12 of the CRPD), and includes the right to make medical decisions and refuse medical treatment, which is often denied to people with psychosocial disabilities by discriminatory mental health laws. It also includes the right to vote, testify in court and manage money and other affairs, which are also often denied due to direct discrimination on the basis of disability.

<sup>2</sup> 'Reasonable accommodation' refers to necessary and appropriate modifications and adjustments not imposing an undue burden, where needed in a particular case, to ensure persons with disabilities can enjoy or exercise their rights on an equal basis with others.

## Role of non-discrimination as a precondition in the Pacific

To ensure that non-discrimination applies in society, there are two main strategies that can be implemented. Firstly, law and policy reforms are essential to ensure that the laws and policies of a country are aligned and compliant with the UN Convention on the Rights of Persons with disabilities (CRPD) and that they prevent discrimination from occurring. In the Pacific this is often referred to as the process of ‘legal harmonisation’, and involves both ensuring that existing laws comply with the CRPD and, where necessary, that disability-specific laws and policies are enacted to ensure disability rights are protected and discrimination is addressed. This includes justice systems that allow for avenues of redress for persons with disabilities when situations of discrimination occur. Where such laws and policies do not exist, this work involves advocacy by Organisations of Persons with Disabilities (OPDs) to the state to ensure that persons with disabilities are protected through the provision of reasonable accommodation and budget allocations; the abolition of laws that preclude the legal capacity of persons with disabilities; and ensuring that laws exist which provide legal pathways for those experiencing discrimination, and accessible justice and support systems.

Furthermore, awareness-raising is also crucial in progressing non-discrimination. It is crucial that persons with disabilities and their representative organisations are aware of their rights under the CRPD. This empowers them to be better equipped to identify existing policy gaps that are discriminating against persons with disabilities and to advocate for equality and non-discrimination to relevant ministries and authorities. At the same time, advocacy and awareness-raising should also be done at mainstream level to duty-bearers, members of the community and their leaders, and faith leaders, to address the prejudicial attitudes and negative social norms that drive discrimination against persons with disabilities. Doing so will increase non-discrimination practices and approaches throughout communities, policies and programs, meaning that these all become more inclusive and accessible.

## Non-discrimination under the CRPD

Under the CRPD, non-discrimination is a cross-cutting principle under Article 3 and addressed in the general obligations under Article 4. Article 5 further provides the right to equality and non-discrimination, which outlines that all people are equal before and under the law, and entitled without discrimination to the equal protection and equal benefit of the law. States must prohibit all discrimination and guarantee persons with disabilities equal and effective legal protection against discrimination.

## Current status of non-discrimination in the Pacific

### Legal harmonisation work

As of 2024, in terms of legal harmonisation efforts to progress non-discrimination, 13 countries in the region have made the initial step of ratifying the CRPD: Cook Islands, Fiji, Federated States of Micronesia, Kiribati, Nauru, Niue, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tuvalu, and Vanuatu.<sup>3</sup> There are a total of 11

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<sup>3</sup> Information can be accessed on the [UN Treaty Body Database](#).

countries that have made some progress in reviewing and bench-marking their national legislations and or national disability policies against the CRPD: Marshall Islands, Nauru, Samoa, Vanuatu, Fiji, Kiribati, Papua New Guinea, Palau, Solomon Islands, Tonga, and Tuvalu.

Countries are obligated to develop national disability policies after ratifying the CRPD. These policies aim to address barriers faced by persons with disabilities and promote inclusive development across various sectors such as education, health, and employment. Countries which have developed national disability policies this far include Cook Islands, Fiji, FSM, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu, while only Fiji, Cook Islands, Marshall Islands, Nauru, and the states of Chuck, Pohnpei and Kosrae of the Federated States of Micronesia (FSM) have adopted disability-specific legislation.

These laws and policies are designed to ensure that persons with disabilities have equal access to opportunities, services, and protections. They also provide frameworks for governments to implement disability-inclusive policies and services, promoting non-discrimination, accessibility, and participation in all aspects of society.<sup>4</sup>

### Discriminatory attitudes and need for disability rights awareness-raising

Discriminatory attitudes and the need for ongoing disability rights awareness-raising are a persistent and pervasive issue across the Pacific. Years of experience have shown that effective strategies to reduce discriminatory attitudes towards persons with disabilities involve engaging partners to work with OPDs to target communities, programs and governments, so that these groups and stakeholders begin to see persons with disabilities as active and capable members of society. Other effective strategies involve portraying persons with disabilities in social and mainstream media, such as the radio, on relevant international days. These portrayals must adopt rights-based approaches that ensure that persons with disabilities get to speak about themselves, their work, and their rights in their own words. Again, this changes discriminatory attitudes because it addresses misconceptions amongst the community that persons with disabilities are inactive and incapable recipients of help, and presents them as empowered and active members of communities who hold rights on an equal basis with others. Through such efforts, progress is occurring in this area, but very slowly, and mainly in urban and semi-rural areas where most of the efforts to raise awareness of rights occur. This leads to unique and intersectional disadvantage of persons with disabilities in remote and isolated areas.

### Key issues for non-discrimination in the Pacific

Progress has been made in the area of non-discrimination in the region, but there is also a vast amount of work still to be done. Key issues that need to be highlighted include the following:

- **CRPD alignment:** There are countries which have ratified the CRPD, but their policies and legislations are not aligned with the CRPD. Thus, the rights and inclusion of persons with disabilities are not fully realised and protected. There is much ongoing

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<sup>4</sup> Information on national legislation and policy benchmarking and review accurate as of 2022.

work that needs to be done to ensure meaningful legal harmonisation of the CRPD across Pacific Island Countries and Territories (PICTs).

- **Coordination and enforcement:** Another challenge is the lack of enforcement mechanisms available in countries to ensure that pieces of legislation that are already in place are enforced appropriately. This is due to a lack of clear demarcation of roles and responsibilities regarding enforcement. For example, in many countries, the government disability focal points do not work closely with OPDs and may not work through a rights-based approach, leading to a disconnect between the disability-focused work implemented by their ministry and that progressed by the OPDs in the country. There may also be a lack of coordination between different government ministries' various work on disability.
- **Realisation of rights:** In most countries, persons with disabilities are not aware of their rights under the CRPD. As a result, they are not able to be aware of when they are experiencing discrimination, and are not empowered to advocate for themselves when they do become aware. It is a key role of OPDs to build the awareness and capacity of persons with disabilities in this regard, but they face substantial challenges in doing so – for example, competing demands on their time: much of OPDs' time is spent engaging in advocacy as well as participating in consultations with mainstream development partners, which puts time pressures on their ability to also undertake this level of capacity-building with their members.
- **Localisation:** The lack of materials in local languages regarding the CRPD, rights to non-discrimination and equality, and national laws regarding disabilities is a real barrier to raising awareness amongst persons with disabilities, their communities, and stakeholders such as governments and programs regarding the right to non-discrimination and the need to comply with this.
- **Education:** Another barrier is the lack of access to education amongst persons with disabilities. Lower levels of literacy and education amongst persons with disabilities due to systemic discrimination mean that they themselves will encounter more barriers in participating in rights-awareness activities even where these do exist and remain less equipped to identify and push back against discriminatory practices or claim their rights to non-discrimination in a vast range of contexts. This has nothing to do with their capability but is due to the barriers they have encountered because of discrimination in their lives.
- In addition, women and girls with disabilities, those with intellectual and psychosocial disabilities, Deaf persons and persons with deafblindness face a lot of additional and unique discrimination in society. This includes increased risk of physical and sexual assault, denial of opportunities for education or livelihood, a presumption that they are unfit to parent on account of their disability, involuntary treatment, institutionalisation, and barriers to accessing justice services. These cause severe marginalisation in society.

### Further resources:

Office of the High Commissioner for Human Rights (OHCHR), n.d., [Article 5: Indicators](#), OHCHR

ESCAP, 2022. [Harmonisation of national laws with the convention on the rights of persons with disabilities: Overview of trends in Asia and the Pacific](#). United Nations Economic and Social Commission for Asia and the Pacific, Thailand.

Committee on the Rights of Persons with Disabilities (CRPD), 2018, [General Comment No. 6: Equality and Non-Discrimination \(Article 5\)](#), United Nations

Committee on the Rights of Persons with Disabilities (CRPD), 2014, [General Comment No. 1: Equal Recognition before the Law \(Article 12\)](#), United Nations

Committee on the Rights of Persons with Disabilities (CRPD), 2017, [General Comment No. 5: Right to Independent Living \(Article 19\)](#), United Nations