

# Inclusion of persons with disabilities: access to justice

The Commonwealth People's Forum (CPF) is a biennial event held prior to the Commonwealth Heads of Government Meeting. CPF 2018 took place on 16-18 April in London and was jointly organised by the Government of the United Kingdom and the Commonwealth Foundation. CPF 2018 critically explored policy based actions under the theme of 'Inclusive Governance: The Challenge for a Contemporary Commonwealth'. It provided an innovative opportunity for civil society organisations to share knowledge and learn from each other as well as to interact with governance institutions on key policy issues. The CPF 2018 series elaborates on the issues covered in the London Declaration on Inclusive Governance for a Renewed Commonwealth.

## Introduction

Across the Commonwealth, persons with disabilities (PwDs) face institutional, social, legal, and physical barriers to justice. Addressing this challenge requires looking beyond the rights of individuals to the justice system as a whole to understand how PwDs can fully participate at every level of society.

**'Governments need to ensure the right to a fair trial for persons with disabilities by removing barriers to justice.'**

*Inclusion of persons with disabilities: access to justice* was one of several sessions that explored the theme of exclusion at CPF 2018. Participants discussed the measures needed to ensure PwDs are able to access legal services in civil and criminal matters. This included access to recourse for human rights violations as enshrined in the United Nations Convention on the Rights of Persons

with Disabilities (UNCRPD) and national constitutions, and strengthening the commitment of States to the rule of law so that PwDs can gain equal access to justice for all as set out in the Sustainable Development Goals (SDGs), in particular SDG 16.

Participants concluded that access to justice is a fundamental aspect of inclusive governance and the exercise of citizenship. Several policy recommendations to achieve equal access to justice and more sustainable outcomes for PwDs across the Commonwealth were identified.

## Issues and strategies

### Obstacles to accessing justice

There is inadequate information available to PwDs on how to access justice and it is challenging to find lawyers and other legal practitioners who understand the rights of PwDs. Lawyers are often unfamiliar with these cases and reluctant to take them on

even where legal frameworks exist; as there are few cases filed, there is a scarcity of legal precedents.

When PwDs do take matters to court, they frequently face unfair treatment and discriminatory attitudes from personnel within the court system, such as translators, court attendants, and lawyers. Physical access and a lack of appropriate facilities present additional barriers that exclude PwDs. Limited access to financial support, legal aid and affordable transport to enable PwDs to meet lawyers and attend court prevent them from seeking needed legal assistance and redress.

Evidence from the United Kingdom provides an example of how the absence of legal aid disproportionately affects PwDs; cuts in legal aid have led to a sharp decline in PwDs contesting employment discrimination and the unlawful withdrawal of welfare payments (Equality and Human Rights Commission 2018, page 41).

### **Shifting societal perceptions**

Shifting social perceptions of PwDs and promoting a stronger sense of social justice presents a significant challenge. Discriminatory treatment of PwDs is still tolerated because it is not yet acknowledged as a denial of their human rights. In some countries birth certificates are not issued for children born with disabilities, effectively denying their existence to both the state and society. Where medical records are not kept, information on mortality rates, birth defects and other data is not stored and cannot be analysed to address causes and provide medical care.

During the session, several country case studies were discussed. For example, in a few regions of Ghana, cultural practices encourage infanticide for children born with disabilities. By working with local communities and engaging with traditional leaders and authorities, progress is being made to end such practices. In Bangladesh, civil and judicial service recruitment rules

discriminate against and deny eligibility for PwDs. One participant, now a rights advocate, described how they were prohibited from applying for the civil service despite having all the relevant qualifications. Caribbean delegates pointed out that while there is no active legal discrimination against PwDs in Caribbean countries, they are still referred to in derogatory terms that lead to abuse and stigma.

### **Building on existing initiatives to progress inclusive governance**

Participants emphasised that there are examples of good practice across the Commonwealth and collecting and sharing these can help inform policy and practice.

In Bangladesh, public interest litigation has been used to challenge discriminatory employment laws. Community justice fellowship programmes enabled representatives from disabled people organisations (DPOs) to break into the legal profession. The Commonwealth can help accelerate these processes by encouraging closer country alignment with SDG targets on disability.

Disability rights advocates can take advantage of international treaties, and their reporting processes, as well as the United Nation's (UN) Universal Periodic Review, which is an important mechanism for building solidarity in recognising rights. The 2013 Revised Caribbean Community (CARICOM) Treaty emphasises the importance of building inclusive societies and recognises the importance of the existing and potential contribution of PwDs toward enriching societies. The treaty therefore provides a useful starting point to enhance national policy and practice.

### **Inclusion in decision making**

Participants concluded that access to justice is an essential part of inclusive governance and that citizens have the right to be governed by non-arbitrary laws. Consequently, there is a long way to go to

achieve inclusive governance if an equally accessible legal system and just outcomes for PwDs remains unattained.

Including PwDs in the design of new laws and policies and assessment of the implementation of existing laws is an important first step to make progress. In the words of the DPO movement: 'Nothing about us without us'.

### **Effective and equal access to justice**

Governments need to ensure the right to a fair trial for PwDs by removing barriers to justice. PwDs, and not just governments, need to participate in implementing systems that give them access to their rights and to juries where applicable. Governments need to provide accommodations during procedures, protect the right to effective remedies, ensure training for all judicial actors, and collect and disaggregate data concerning access to justice, based on disability and gender, in accordance with the UNCRPD and SDGs.

### **Legislative reform**

An analysis of how legal systems and laws exclude PwDs should be carried out in each member state so that reform can be targeted and prioritised. In addition to reforming laws, where necessary new laws need to be introduced that facilitate access to justice. Experience from Indonesia (a non-Commonwealth county) was shared, where the law now requires reasonable accommodation to be made available to PwDs in court - reform which has significantly improved access. In Bangladesh, there is now a new law which prohibits persons with disabilities from being excluded from certain professions.

The UNCRPD provides a framework for national laws; recommendations from the UN Commission and others that supplement the treaty and give it substance are instrumental in strengthening legislative reform and access to justice around the world.

### **Training of duty bearers**

Action should not be limited to reforming laws. Often there are good laws already in place which are not being implemented; states need to examine why implementation is weak. One possible solution is training people working in the justice system so that they better understand their responsibilities to PwDs. The Commonwealth Magistrates and Judges Association can help with training in the courts and justice systems of Commonwealth countries. Training of this nature should be conducted with the involvement of PwDs and alliances between disabled people's organisations, the legal profession, legal aid organisations, and the courts should be utilised wherever possible.

### **Availability of financial resources and legal aid**

Legal aid, including alternative dispute resolution, should be available at the point of need for PwDs in any effective and inclusive justice system. Addressing access to justice for persons with disabilities should not be considered as an add-on cost to budgets, but as an integral part of any effective and inclusive justice system.

### **Building rights awareness and supportive partnerships**

Greater education and awareness of the rights of PwDs and legal recourse are required. The role of the media is key, especially if it enables persons with disabilities to speak for themselves. Other solutions include: examining and implementing multiple models of legal aid, undertaking strategic litigation, engaging pro bono lawyers, encouraging and supporting PwDs to become lawyers, facilitating partnerships that can provide legal education, a better understanding of UN systems, using technology to increase accessibility, and cooperative relationships with the private sector to strengthen access to justice.

## References

Equality and Human Rights Commission 2018, *Progress on Disability Rights in the United Kingdom*, accessed 10 October 2018, < [http://www.nihrc.org/uploads/publications/Progress\\_on\\_disability\\_rights\\_in\\_the\\_UK\\_CRPD\\_-\\_Shadow\\_Report\\_2018.pdf](http://www.nihrc.org/uploads/publications/Progress_on_disability_rights_in_the_UK_CRPD_-_Shadow_Report_2018.pdf) >



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