



United Nations

Division for Social Policy Development (DSPD)  
Department of Economic and Social Affairs (DESA)



Toolkit on  
**DISABILITY** for **AFRICA**

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**LEGISLATING FOR DISABILITY RIGHTS**





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## Toolkit on disability for AFRICA



### **LEGISLATING FOR DISABILITY RIGHTS**

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## List of acronyms

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<b>AT</b>	Assistive Technology
<b>CEDAW</b>	Committee on the Elimination of Discrimination against Women
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>CESCR</b>	Committee on Economic, Social and Cultural Rights
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities
<b>CRPD</b>	Committee on the Rights of Persons with Disabilities
<b>CRC</b>	Committee on the Rights of the Child
<b>CRC</b>	Convention on the Rights of the Child
<b>CRC</b>	Convention on the Rights of the Child
<b>DFIs</b>	Development Financing Institutions
<b>DPOs</b>	Disabled Persons Organizations
<b>DSPD</b>	Division for Social Policy and Development/UNDESA
<b>EC</b>	European Commission
<b>G3ICT</b>	Global Initiative for Inclusive ICTs
<b>HIV/AIDS</b>	Human Immunodeficiency virus / Acquired Immunodeficiency Syndrome
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic and Cultural Rights
<b>ICF</b>	International Classification of Function, The World Health Organization
<b>ICT</b>	Information and Communication Technology
<b>ILO</b>	International Labour Organization
<b>ITCILO</b>	International Training Centre of the ILO
<b>IPU</b>	Inter-Parliamentary Union
<b>ITC</b>	Information and Communication Technology
<b>ITU</b>	International Telecommunication Union
<b>MDGs</b>	Millennium Development Goals
<b>MFI</b>	Microfinance institutions
<b>MSPs</b>	Multi-stakeholder Partnerships
<b>NAPs</b>	National Action Plans
<b>NGO</b>	Non-Governmental Organization
<b>NVDA</b>	Non Visual Desktop Access
<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>OSISA</b>	Open Society Initiative for Southern Africa

<b>PCM</b>	Project Cycle Management
<b>PRP</b>	Protracted Relief Programme
<b>SABE</b>	Self-Advocates Becoming Empowered
<b>SDGs</b>	Sustainable Development Goals
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations
<b>UN DESA</b>	United Nations Department of Economic and Social Affairs
<b>UNAIDS</b>	Joint United Nations Programme on HIV/AIDS
<b>UNDP</b>	United Nations Development Fund
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organization
<b>UNICEF</b>	United Nations Children's Fund
<b>USAID</b>	United States Agency for International Development
<b>VOCA</b>	Voice Output Communication Aids
<b>WHO</b>	World Health Organization





# 1. OVERVIEW

## Module objectives

- ▶ To review approaches to harmonizing domestic laws with the Convention on the Rights of Persons with Disabilities (CRPD).

## Who is this module for?

This Module is relevant to everyone who has an interest in disability or a responsibility for addressing issues of disability - including through legislative reform - because of the nature of their work, including persons with or without disabilities in civil society, civil and public service, national human rights institutions, parliaments, development agencies, universities and the private sector.

## What is this module about?

The content of this module:

- ▶ outlines the important role of legislation in implementing the Convention on the Rights of Persons with Disabilities (CRPD);
- ▶ reviews the obligations of State parties under the CRPD in relation to law reform;
- ▶ sets out key considerations in legislating for disability rights and inclusion;
- ▶ explains strategies to ensure that legislative reform and development are consistent with the CRPD;
- ▶ highlights the participatory nature of law reform required by the CRPD;
- ▶ includes learning exercises to accompany the material; and
- ▶ lists key resources for additional reference.

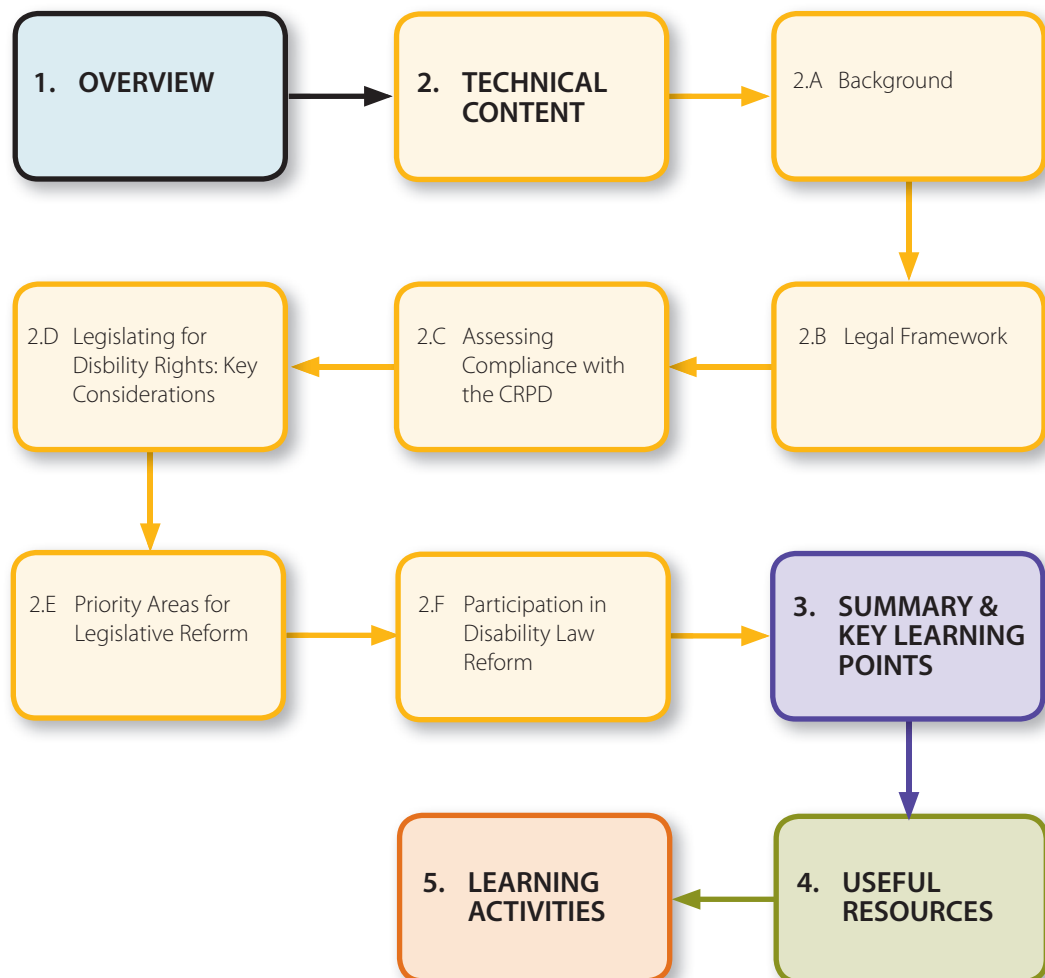


## Learning objectives

On completion of this module, participants will have:

1. outlined the important role of legislation in implementing the Convention on the Rights of Persons with Disabilities (CRPD);
2. reviewed the obligations of State parties in the CRPD in relation to law reform;
3. discussed how to assess the compliance of existing legislation with the CRPD;
4. discussed core components and principles of disability law reform;
5. explored strategies for ensuring that legislative reform and development are consistent with the CRPD;
6. reflected on how to ensure that there is full and effective participation of persons with disabilities and their representative organizations in law reform.

## Module map







## 2. TECHNICAL CONTENT

### 2.A Background

In African countries, as in many countries around the world, legal and policy frameworks often provide insufficient protection or inadequately address the rights and inclusion of persons with disabilities in society and development. In some cases laws may actually perpetuate discrimination against or otherwise harm the interests of persons with disabilities. The present module provides guidance on how to bring national legislation into line with the requirements of the Convention on the Rights of Persons with Disabilities (CRPD), which represents the international standard on the rights of persons with disabilities, as well as their inclusion in development.

### 2.B Legal Framework

The Convention on the Rights of Persons with Disabilities sets out the legal obligations of State parties to promote and protect the rights of persons with disabilities. For the Convention to make a difference in the lives of persons with disabilities and their families, care-givers and communities, State parties must implement it. A key requirement in this regard, as set out in Article 4, General Obligations, is for State parties to harmonize domestic law with the Convention.

The responsibilities of State parties under Article 4 include:

- ▶ adopting all appropriate legislation, administrative and other measures for the implementation of the rights recognized in the Convention;
- ▶ taking all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
- ▶ take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise.

In addition to the general provisions contained under Article 4, the Convention in some cases also provides instructions for legislative measures that State parties are to take in relation to specific rights. For example, it requires State parties to take appropriate measures, including legislative measures, to prevent persons with disabilities from being subjected to torture or cruel, inhuman or degrading treatment or punishment (art. 15) and to protect persons with disabilities from all forms of exploitation, violence and abuse (art. 16).

Legislation plays an important role in CRPD implementation in all countries, but its role varies depending on the legal context in each country, viz.:

- ▶ in some countries, new legislation is needed to write the provisions of an international convention into the laws of the land;
- ▶ in other countries, an approved international treaty is automatically accepted as part of the law, and can, for example, be directly enforceable by courts;
- ▶ in some cases a mixture of both approaches might be needed – that is, parts of a convention might automatically become law, but some parts might need new legislation to bring the provisions into law.

## 2.C Assessing Compliance with the CRPD

One of the most important steps that a State can take towards implementation of the CRPD is to undertake a comprehensive ‘scoping’ – or review – to examine and assess existing laws to identify any areas of non-compliance, for example in the case of discriminatory laws, or gaps, where new legislative measures will be necessary. Even in instances where international conventions are automatically incorporated into national law, a review will be necessary to ensure the consistency of all legislation, including in the constitution itself, as well as in sector-specific areas such as health, employment and education, among others.




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### See Learning Activity 2.C. titled *Gaps in Legislation*

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States may take a number of different approaches to conducting such a review. In some cases an existing body, such as an equality commission or national human rights or disability commission may be tasked with overseeing the review. In other cases the government may form a special independent body to conduct the task, or Parliament may establish a committee or assign the task to an existing body. Regardless of the particular approach, persons with disabilities and their representative organizations should participate actively in the process, both as members of the body overseeing the process and as contributors of inputs to that work.<sup>1</sup>

The rights of persons with disabilities are impacted upon by a wide range of laws. Therefore, to fully assess compliance with CRPD obligations, a comprehensive scoping exercise must review many types of legislation, including laws that:

- ▶ relate specifically to persons with disabilities – for example, a comprehensive national law on disability itself, or an education law that applies specifically to persons with disabilities;
- ▶ relate to a range of people but include specific references to persons with disabilities – for example, anti-discrimination, social security or guardianship laws, criminal or electoral codes; and
- ▶ do not specifically mention persons with disabilities but which are relevant to persons with disabilities – for example, construction laws, family laws, intellectual property laws, contract laws.<sup>2</sup>

<sup>1</sup> UNDESA, OHCHR & International Parliamentary Union, *From Exclusion to Equality: Realizing the Rights of Persons with Disabilities: Handbook for Parliamentarians* (2007)

<sup>2</sup> For example, family law is important given that in many instances, persons with disabilities have been subject to discriminatory laws relating to marriage and parenting children. Similarly, contract law is highly relevant for persons with disabilities who may be denied rights to own a bank account based on discriminatory exclusions in contract or banking law or in financial practices (for example, denial of a bank account to a blind person).



### Areas of Law for Review in Disability Rights Scoping Exercises

- Constitution
- Anti-discrimination legislation (general and disability-specific)
- Comprehensive disability rights legislation
- Human rights acts
- Social assistance, social services and social protection laws
- Laws relating to persons with specific disabilities
- Child protection laws
- Juvenile justice laws
- Electoral code
- Family law
- Guardianship laws
- Criminal law
- Labour law
- Occupational health and safety law
- Vocational training law
- Health insurance law
- Mental health law
- Education law
- Construction law
- Social housing law
- Taxation law
- Immigration law
- Civil society and non-profit organizations law

In addition to identifying gaps in the law, scoping exercises can also help identify other areas for policy development. They also help co-ordinate the work of government agencies, and promote co-operation between government agencies, disabled persons organizations (DPOs) and national human rights institutions. The findings of a scoping exercise can also support the drafting a national disability strategy or development of a national human rights plan. Scoping exercises can also be useful when developing plans for specific topics – for example, a national plan for education or a national health strategy. It is important to remember, however, that the success of a scoping exercise depends on involvement of and consultation with persons with disabilities and other stakeholders.

## 2.D Legislating for Disability Rights: Key Considerations

Once a thorough scoping exercise has been completed, State parties can develop a plan for legislative reform. Aligning national law with the CRPD may require constitutional revisions, the development or revision of a national law focused specifically on the rights of persons with disabilities, and very likely also amendments to a broad range of laws, including general and sector-specific anti-discrimination laws. In many cases countries will also need to amend or enact regulatory or secondary legislation to guide and ensure the necessary recourses for implementation of national laws.

### Defining the Purpose of Disability Legislation

The purpose of the CRPD, under Article 1, is to “promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.” The CRPD’s purpose should be considered in the development of domestic law and policy, as it emphasizes that persons with disabilities are entitled to all the same human rights as other human beings, and that these rights are not to be limited or restricted on grounds of disability. Moreover, by referring explicitly to the CRPD, States will make clear the connection between the Convention and national legislation.

### Defining Disability in Legislation

The CRPD clarifies in Article 1(2) the approach to disability known as the social model of disability. Legislation should reflect both the social model of disability, which identifies barriers in society as disabling, as well as the human rights model, which aims to ensure that the human rights of persons with disabilities are respected, protected and fulfilled.

#### CRPD Summary: Who is Covered? 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 following are important factors in defining disability in legislation and are based on the understanding of disability in the CRPD:

- ▶ The Convention does not restrict coverage to particular persons; rather, it identifies persons with long-term physical, mental, intellectual and sensory disabilities as beneficiaries under the Convention. The term “includes” ensures that this need not restrict the application of the Convention – that is, it provides a “floor”, not a “ceiling”, for determining who is included - and that State parties can also ensure protection to others, for example persons with short-term disabilities or who are perceived as part of such groups.<sup>3</sup>
- ▶ Impairments are referred to in Article 1 of the CRPD as “physical, mental, intellectual or sensory”. The CRPD protects the human rights of all persons with disabilities, whatever their impairment. Laws that restrict rights on the basis of the

<sup>3</sup> United Nations Department of Economic and Social Affairs, Frequently Asked Questions regarding the Convention on the Rights of Persons with Disabilities, available at: <http://www.un.org/disabilities/default.asp?id=151>



type of impairment, for instance denying education to persons with intellectual disabilities, violate the CRPD.

Terminology used in national laws regarding disability should also be harmonized with the Convention, and made consistent in national laws. Particular care should be taken to eliminate terminology that reflects outdated perspectives on disability and perpetuates harmful stereotypes.

### Country Checkpoint

The United States Congress voted in December 2012 to remove the word "lunatic" from federal legislation. This was the most recent effort to eliminate language from the U.S. legal code that had become outdated or demeaning. In 2010 the U.S. Congress removed references in federal law to the term "mental retardation". These outdated and offensive terms only served to perpetuate stigma and discrimination.

How is disability defined in legislation in your country? Is there one definition or more than one definition in the legal framework? Is Article 1 of the CRPD reflected in the definition(s) in your country's laws or policies?



## Aligning Domestic Legislation with Disability Rights Principles

The general principles of the CRPD are set out in Article 3 and should be used to develop and reform national legislation. The principles apply across all articles of the CRPD and include:

- ▶ respect for a person's dignity, their freedom to make choices, and their independence;
- ▶ non-discrimination;
- ▶ full and effective participation and inclusion in society;
- ▶ respect for individual differences and acceptance of persons with disabilities as part of human diversity and humanity;
- ▶ equality of opportunity;
- ▶ accessibility;
- ▶ equality between men and women; and
- ▶ respect for the evolving capacities of children with disabilities to exercise their own rights, and respect for the right of children with disabilities to preserve their identities.

## Guaranteeing Equality and Non-Discrimination

With respect to non-discrimination, State parties must prohibit discrimination on the ground of disability in all areas covered by the CRPD, including the denial of reasonable accommodation. This may require revision of existing provisions in the constitution or overarching non-discrimination laws to provide a guarantee of equality to persons with disabilities and to prohibit the use of disability as grounds for discrimination. Moreover sector-specific laws, for example in relation to education, employment or political participation, must also be amended if necessary, so as to include disability as prohibited grounds for discrimination. Anti-discrimination measures must apply to private sector actors as well as to public bodies.

## Types of Equality and Non-Discrimination Legislation

The obligation to prohibit all discrimination on the basis of disability and to guarantee equal and effective protection to persons with disabilities (art. 5) requires both that the prohibition be included in national laws and, preferably, also in national constitutions, and that detailed legislative provisions covering discrimination in all fields of public and private life be adopted. The exact form that these provisions should take will depend on existing laws and the particular legal system of a State party.

Some countries have comprehensive, general anti-discrimination laws covering multiple grounds of prohibited discrimination; others have individual laws addressing different forms of discrimination, such as those based on sex, age or marital status, or covering discrimination in specific areas such as in employment.

One option is to enact a disability discrimination law that prohibits discrimination on the grounds of disability in general, but that also provides detailed regulation of specified areas of public and private life.

Another option might be to enact a disability-equality law, similar to the gender-equality laws adopted by some States. Laws of this kind do not limit themselves to prohibiting discrimination but address a wide range of issues relating to persons with disabilities.

Even a wide-ranging disability-equality law may not address every issue relating to equality for persons with disabilities. Given the need for specific treatment of issues such as social security and social support, workers' compensation, transport standards, and building standards among others, it is also important to address these topics in sector-specific laws.

Where legislation prohibiting other forms of discrimination already exists, it might be appropriate to amend the existing legislation to incorporate disability as grounds for prohibited discrimination. At a minimum it is important to ensure that the Convention's understanding of "disability" and definition of "discrimination on the basis of disability" are fully reflected in a general anti-discrimination law. Where existing legislation applies only to some of the areas covered by the Convention, then new legislation will be required to ensure that protection against discrimination on the ground of disability applies to all areas. It might also be appropriate to assign responsibility for monitoring and enforcement of the law under the new legislation to existing institutions, provided that persons with disabilities are or become involved as members of those institutions and that the institutions have sufficient expertise in disability issues.

*Source: UNDESA, OHCHR & International Parliamentary Union, From Exclusion to Equality: Realizing the Rights of Persons with Disabilities: Handbook for Parliamentarians (2007), pp 55-58.*

## Guarantees of Equality and Non-Discrimination for Persons with Disabilities

The 1995 Constitution of Uganda was drawn up with the participation of many different groups in the community, including persons with disabilities. That participation is reflected in a number of constitutional provisions guaranteeing and promoting equality for persons with disabilities.

Article 21 provides that a person "shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion or disability."

Article 32 (1) provides that the State "shall take affirmative action in favour of groups marginalized on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them."

Article 9 of the Constitution of South Africa states that "... to promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken."

*Source: UNDESA, OHCHR & International Parliamentary Union, From Exclusion to Equality: Realizing the Rights of Persons with Disabilities: Handbook for Parliamentarians (2007), pp 53*





### Country Checkpoint

How can the principles of the CRPD be applied in developing laws and policies in your country? What principles would be relevant when drafting:

- An electoral code?
- A child protection statute?
- A construction code?
- A birth registration law?
- A human rights act?

## Specific Disability Rights Standards

All the provisions in the CRPD connect to the general human rights law framework, but they represent a development of that framework and provide more specific guidance to help States understand how human rights obligations connect to the situation of persons with disabilities.

### Human Rights Defined in the CRPD

● Equality before the law without discrimination	(Article 5)
● Right to life	(Article 10)
● Equal recognition before the law and legal capacity	(Article 12)
● Right to liberty and security of the person	(Article 14)
● Freedom from torture	(Article 15)
● Freedom from exploitation, violence and abuse	(Article 16)
● Right to respect physical and mental integrity	(Article 17)
● Freedom of movement and nationality	(Article 18)
● Right to live in the community	(Article 19)
● Freedom of expression and opinion	(Article 21)
● Respect for privacy	(Article 22)
● Respect for home and the family	(Article 23)
● Right to education	(Article 24)
● Right to health	(Article 25)
● Right to work	(Article 27)
● Right to an adequate standard of living	(Article 28)
● Right to participate in political and public life	(Article 29)
● Right to participate in cultural life	(Article 30)

## Gender and Age Considerations

The CRPD contains articles of general application that include measures to guard against multiple discrimination:

- ▶ Article 6 – Women with disabilities
- ▶ Article 7 – Children with disabilities

**Question:**

Women and children with disabilities require specific protection in law and policy to address the possibility of multiple discrimination. Can you think of examples of legislation where issues relating to women or children with disabilities could be more explicitly addressed? How would you ensure specific protection in different types of law, for example, criminal law, family law, education law?

**National Level Implementation and Monitoring**

State parties should also make clear the institutional framework that will oversee implementation and monitoring of national laws. Article 33 of the CRPD sets out the responsibilities of State parties in establishing frameworks in this regard. As described in detail in the Module on “Frameworks for Implementing and Monitoring the CRPD” of this Toolkit, Article 33 requires that each State:

- 1) designate one or more dedicated points of contact within government to deal with matters relating to implementing the Convention;
- 2) consider putting a coordinator or dedicated office in place to link with all levels of government across sectors;
- 3) establish an independent process to promote, protect and monitor implementation of the Convention; *and*
- 4) involve civil society in the national monitoring process.

Governments may also wish to establish a means by which to ensure that all new or proposed legislation that may affect the interests of persons with disabilities is reviewed for its consistency with the CRPD.

In addition to such frameworks, national laws should identify duty-bearers - those who are responsible for guaranteeing human rights. This includes different levels of government and other agencies, including those acting at provincial or local levels, as well as private sector actors.

**Country Checkpoint**

- Do you know whether a focal point has been designated within government for CRPD implementation?
- Do you know whether a coordination mechanism has been established to coordinate disability-related action?
- Do you know whether an independent monitoring mechanism has been designated?
- Do you know if civil society is active in monitoring CRPD implementation?



## 2.E Priority Areas for Legislative Reform

The CRPD specifies areas of particular concern that need reform. The level of law reform and development may differ from one country to the next, but many countries find a need for legislative action in several key areas, detailed below. Note, however, that this is not intended to be a full list; there are many additional areas in which legislative action may be needed to give effect to CRPD obligations.

### Equal Recognition before the Law

Equality before the law – that is, that every citizen is treated equally – is a basic general principle of human rights protection and is essential for the exercise of other human rights. Article 12 of the Convention sets out this civil right, focusing on the areas in which it has too often been denied to persons with disabilities.

Article 12 does not provide additional rights for people with disabilities; it simply describes what State parties countries must do to ensure equality before the law for people with disabilities. Article 12 also addresses disabled persons' rights to equal legal capacity, meaning their right to manage their own legal affairs and to make their own decisions about legal matters.

Denial of legal capacity has led to serious violations of the rights of persons with disabilities in all regions of the world. Therefore it should be a matter of priority in any process of law reform. Scoping exercises should identify codes and laws in which legal capacity is limited or denied to persons with disabilities – for example, electoral codes, civil or criminal law, healthcare law, and so on. This is an area in which the majority of States, if not all State parties to the CRPD, will need to undertake legislative reform in order to bring their domestic law into line with the CRPD.

### Ensuring Access to Justice

Legislation should ensure that persons with disabilities who have experienced human rights violations have access to redress, which can include:

- ▶ damages (for example, compensation);
- ▶ an order for reinstatement;
- ▶ an order to stop discriminatory acts and prevent them in the future;
- ▶ a requirement to provide reasonable accommodation;
- ▶ an apology;
- ▶ an order to take wide-ranging remedial measures;
- ▶ other measures.

Complaints procedures should be clear regarding the burden of proof requirements. Under the discrimination laws of a number of countries, the burden of proof at first lies with the complainant – that is, it is up to the person complaining to present a certain amount and certain type of evidence supporting their claim. Once they provide the required amount of evidence, the burden of proof shifts to the defendant. The defendant then has to prove that no discrimination took place or, if it did, that it was within legal exceptions. Given the difficulties frequently faced by complainants in discrimination cases in obtaining and presenting direct evidence of discrimination, it is important that complaints procedures are considered in law reform.

## Health Law and Protections

The law reform processes should include amending any discriminatory laws, policies or practices that prevent full and equal access to health care services for persons with disabilities. The provision of reasonable accommodation in the context of health care services should be part of any non-discrimination legislation.

Other legislative protections may be relevant in this context, for instance ensuring the right to liberty and security of the person and the right to be free from torture, exploitation, violence and abuse within and outside the home. State parties to the CRPD should carefully review legislation in areas such as the deprivation of liberty of persons with disabilities (especially those with intellectual disabilities) in relation to compulsory or forced medical interventions to ensure that these rights are legally guaranteed on the basis of equality with others. State parties should also ensure that laws and policies are in place to monitor the implementation of these laws, to investigate alleged violations and to provide appropriate remedies.

## Recognition of Sign Language

The CRPD imposes obligations on State parties to recognize and promote the use of sign language, which is likely to require legislative measures. Article 30 recognizes the right of persons with disabilities to equal recognition and support of their cultural and language identity. The right to use sign language is a core component of cultural and language identity for persons who are deaf and deaf-blind. These provisions are further supported by Article 5 of the CRPD, which states that persons with disabilities are to be accommodated, and that failure to do so constitutes disability discrimination. It also connects to the accessibility measures State parties must undertake to ensure inclusion and rights protection (Article 9).

Finally, Article 24 (Education) makes explicit reference to sign language, requiring State parties to undertake measures to facilitate “the learning of sign language and the promotion of the linguistic identity of the deaf community” as a component of the right to education. Significantly, Article 24 also requires State parties to take measures to ensure that there are qualified teachers of sign language, including individuals with disabilities, and to train professionals and staff who work at all levels of education.

### Example: The Constitution of Uganda:

The Constitution of Uganda recognizes sign language and the duty of the State to support its development, providing that: “the State shall promote the development of a sign language for the deaf.” (art. 24)

## Juvenile Justice Law Reform

In many African countries ratification of the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child motivated the reform of juvenile justice systems. The rapid ratification of the CRPD across the continent provides the opportunity for relevant ongoing reforms to address properly the rights of children with disabilities. In particular, juvenile justice law reform should include provisions for reasonable accommodation for children with disabilities and should ensure that justice programmes available to the general youth population, such as diversion programmes, are also accessible to offenders with disabilities. It is also important for States to ensure that data is collected on children with disabilities in the justice system.



## 2.F Participation in Disability Law Reform

Too often in decision-making processes the role of persons with disabilities has been devalued or ignored. The CRPD seeks to change this, requiring State parties to ensure that persons with disabilities and their representative organizations take part in law reform and policy development. Article 4(3) requires lawmakers to consult with persons with disabilities and their representative organizations and to take active steps to ensure their full and effective participation.

The importance of including persons with disabilities and their representative organizations in the law-making process is also emphasised in Article 3, which establishes “full and effective participation and inclusion in society” as a general principle of the CRPD. Furthermore Article 29 recognizes the right of persons with disabilities and their representative organizations to participate in political and public life.

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### **See Learning Activity 2.F. titled *Full & Effective Participation & Inclusion in Legal Reform***

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In order to ensure full and effective participation, governments must consider when, how, and with whom such consultation should occur in the legislative process. Governments, national human rights institutions and disabled persons organizations (DPOs) can undertake a variety of measures in this regard. These include:

- ▶ ensuring that persons with disabilities are included when the constitution is being drafted or being revised;
- ▶ including DPOs in all relevant law reform or development processes;
- ▶ ensuring that government ministries and agencies have in-house disability expertise and a designated contact person or focal point for disability matters;
- ▶ involvement of DPOs in training of parliamentary human rights committees; and
- ▶ consultation with with DPOs in all national human rights treaty reporting processes.

In many cases achieving genuine and meaningful participation will mean changing the way things were done in the past. To comply with the provisions of the CRPD, ‘pseudo-participation – that is, in name only – and just ticking of boxes will not do. Ensuring genuine and meaningful participation of persons with disabilities may require DPOs to increase their capacity and undergo training to equip them to participate fully in law review exercises.

The end result is invaluable: the full and effective participation of persons with disabilities and their representative organizations in law reform provides a greater understanding of the reality of living with disability. This understanding allows law reform and policy development processes to address the human rights to which persons with disabilities are entitled. Moreover, participation gives persons with disabilities the opportunity to shape the laws that directly affect them. Where members of a particular community are involved in law reform, they are more likely to become supporters of social change and to promote effective implementation and enforcement of their legal rights.

### **Country Checkpoint**

Do you know of a good example of a participatory law reform effort in which all stakeholders were meaning fully engaged and which resulted in a positive outcome?





### 3. SUMMARY & KEY LEARNING POINTS

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In African countries, as is the case in countries around the world, legal and policy frameworks often provide insufficient protection or inadequately address the rights and inclusion of persons with disabilities in society and development. In some cases laws may actually perpetuate discrimination against or otherwise harm the interests of persons with disabilities.

The CRPD sets out the measures that State parties are to take to promote and protect the rights of persons with disabilities. These include, as set out in Article 4, General Obligations, the harmonization of domestic law with the Convention. The present module has explored approaches to complying with this commitment.





## 4. USEFUL RESOURCES

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-  UNDESA, OHCHR & International Parliamentarian Union, From Exclusion to Equality: Realizing the Rights of Persons with Disabilities: Handbook for Parliamentarians (2007)
-  General Comment 1 of the CRPD Committee on the Rights of Persons with Disabilities <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/GC.aspx>
-  Gerard Quinn & Oddný Mjöll Arnardóttir eds., The UN Convention on the Rights of Person with Disabilities: European and Scandinavian Perspectives (2009).
-  Rosemary Kayess & Phillip French, “Out of darkness into light? Introducing the Convention on the Rights of Persons with Disabilities,” 8 Human Rights Law, 2008.
-  Study of the High Commissioner for Human Rights on key legal measures for the ratification and implementation of the Convention on the Rights of Persons with Disabilities (A/HR/10/48).



## 5. LEARNING ACTIVITIES

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### **Session Sheet for the Trainer – Legislating for Disability Rights, Session 1**

Technical Content 2.C.: Assessing Compliance with the CRPD

Learning Activity 2.C.: Gaps in Legislation

Handout: Copies of the CRPD

(<http://www.un.org/disabilities/convention/conventionfull.shtml>)

Handout: Copies of summaries of National Legislations Affecting People with Disabilities  
(See Notes for a Training Team).







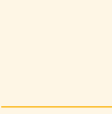

### **Session Sheet for the Trainer – Legislating for Disability Rights, Session 2**

Technical Content 2.F: Participation in Disability Law Reform

Learning Activity 2.F.: Full & Effective Participation & Inclusion in Legal Reform

Handout: Gantt Chart Template









## Session Sheet for the Trainer - Legislating for Disability Rights, Session 1

	<b>Key Messages</b>	See the summary and key learning points.
	<b>Objectives</b>	See the summary and key learning points.
	<b>Room Arrangement</b>	Cabaret style table for small group work.
	<b>Activity</b>	10 mins – The principles of legal reform 35 mins – Group work around Learning Activity 2.C. 40 mins – Step 3 of LA 2.B. 5 mins – Plenary feedback and summary
	<b>Duration</b>	90 minutes
	<b>Notes for a Training Team</b>	Group work to review the legislation against the CRPD and discuss where changes would need to be made, followed by feedback in plenary and summary discussion. If the group are all from one country, use different pieces of legislation for the exercise in order to compare their ideas. If there is one piece of legislation designed to address the issues of people with disabilities, give each group a different part.
	<b>Task Sheets</b>	Learning Activity 2.C.: Gaps in Legislation
	<b>Handouts</b>	Handout: Copies of the CRPD ( <a href="http://www.un.org/disabilities/convention/conventionfull.shtml">http://www.un.org/disabilities/convention/conventionfull.shtml</a> ) Handout: Copies of summaries of National Legislation affecting people with disabilities (See Notes for a Training Team).





## Session Sheet for the Trainer – Legislating for Disability Rights, Session 2

	<b>Key Messages</b>	See the summary and key learning points.
	<b>Objectives</b>	By the end of this session, participants will have reflected on how to ensure there is full and effective participation of persons with disabilities and their representative organizations in law reform.
	<b>Room Arrangement</b>	Cabaret style table for small group work.
	<b>Activity</b>	1 hour – Small group work around Learning Activity 2.F 30 mins – Plenary feedback and discussion
	<b>Duration</b>	90 minutes
	<b>Notes for a Training Team</b>	Small group work to prepare a plan for the full and effective participation of people with disabilities in the development of law followed by plenary presentations.  If you have a real example of a country going through the process of developing a new law, you can draw from that to make this exercise more realistic and give more data, but don't overload the participants – discussion of what could be achieved is more important than the data provided.
	<b>Task Sheets</b>	Learning Activity 2.F: Full & Effective Participation & Inclusion in Legal Reform
	<b>Handouts</b>	Handout: Gantt Chart Template





# Project Planner

Period Highlight 1



ACTIVITY	PLAN START	PLAN DURATION	ACTUAL START	ACTUAL DURATION	PERCENT COMPLETE
<b>Activity: 01</b>	1	5	1	4	85%
<b>Activity: 02</b>	10	4	11	6	90%

