

## **Agenda Item 4**

# **Harmonization of National Laws with the Convention on the Rights of Persons with Disabilities in the Asia-Pacific region**



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# Harmonization of National Laws with the Convention on the Rights of Persons with Disabilities (CRPD) in the Asia-Pacific region: looking backwards and looking forwards

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# Overview

-  Incheon Strategy and the CRPD: Goal 9 and Targets 9.A and 9.B
-  Engagement with the CRPD by States in the ESCAP region
-  Harmonization – overall progress
-  Procedural dimensions of ensuring harmonization and recommendations for 2023-2030
-  Some challenging issues of harmonization and recommendations for action

See *Harmonization of national laws with the Convention on the Rights of Persons with Disabilities: Asia-Pacific trends in selected topics in the ESCAP region*, [ESCAP/SDD/APDPD \(3\)/WG \(7\)/INF/12](#) (21 November 2021)

# Incheon Strategy -- Goal 9: Accelerate the ratification and implementation of the Convention on the Rights of Persons with Disabilities and the harmonization of national legislation with the Convention

## Target 9.A



By the midpoint of the Decade (2017), **10 more** Asia-Pacific Governments will have ratified or acceded to the Convention on the Rights of Persons with Disabilities



By the end of the Decade (2022) **another 10** Asia-Pacific Governments will have ratified or acceded to the Convention.

## Progress

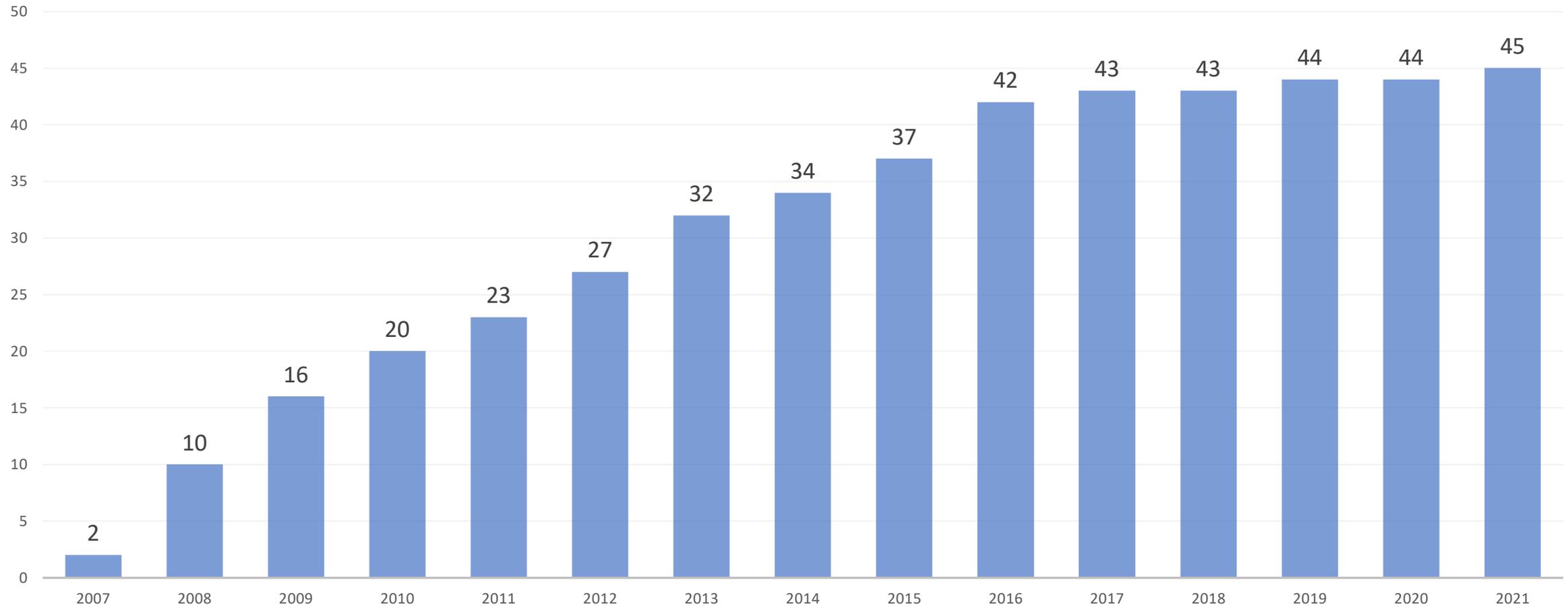


By end of 2017, 16 more Asia-Pacific States had become parties to the CRPD



As of June 2022, 18 ratifications overall achieved (88%) – **2 more required** by end of 2022 to reach target.

# CRPD RATIFICATIONS BY ASIA-PACIFIC STATES 2007-2021





## Updating Goal 9 of the Incheon Strategy: baseline

### ***The Convention***

- The ratification rate of the Convention among Asian and Pacific States is comparable with that of States overall at the universal level (90% vs 93%)
- **6 Asia and Pacific States are yet to ratify the CRPD:** Bhutan, Solomon Islands, Tajikistan, Tonga, and the USA.
- **There are 4 out of 9 Associate Members of ESCAP to which the Convention has not been applied:** Niue, American Samoa, Guam, and the Northern Mariana Islands

### ***The Optional Protocol***

- The ratification rate of the Convention among Asian and Pacific States is roughly **half the ratification rate by all States** (25% vs 54%)
- **34 ESCAP member States are NOT parties to the Optional Protocol to the CRPD**
- There are **6 out of 9** Associate Members of ESCAP to which the Optional Protocol **has not been**



## Updating Target 9A of the Incheon Strategy: suggested targets and actions

### Suggested goals/targets for 2023-2030

- **Achieve universal ratification and application** of the Convention to all Asia Pacific States and all non-sovereign Associate Members of ESCAP
- **Increase ratification of Optional Protocol to at least 50% of Asia and Pacific States**

### Recommended ESCAP initiatives/actions

- In conjunction with OHCHR, UNDESA and regional governmental and civil society experts, initiate workshops or provide technical support
    - to encourage States that have not ratified the Convention to do so -- sharing experience from government peers
    - to encourage States that have not ratified the Optional Protocol to do so
    - In collaboration with OHCHR and other partners to prepare a compendium of the case law of the Committee on the Rights of Persons with Disabilities under the Optional Protocol for dissemination within the region
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# Procedural harmonization issues – comprehensive reviews and ongoing monitoring: **Proposed actions**

ESCAP should continue its work to support States in the Asia Pacific region or Associate Members to which the Convention does not yet apply

- (a) to move towards ratification or application of the Convention; and
- (b) pending ratification or application, to seek to bring their law and policy into alignment with the Convention.

ESCAP should explore the initiation or expansion of cooperation with bodies such as the regional multilateral development banks, the United Nations Partnership on the Rights of Persons with Disabilities and the ASEAN Intergovernmental Commission on Human Rights and its counterparts.



## Reservations and (interpretive) declarations to the Convention = States seeking to limit their acceptance of the full scope of the Convention

### Reservations (available at [UN Treaty Collection](#))

- Purport to limit a State's acceptance of the full range of obligations under the Convention
- Reservations have been made by some Asia and Pacific States, with some being
  - General and unspecific in how they affect particular provisions of the Convention (reference to existing constitution or to religious or customary law in general as a limit to CRPD obligations)
  - Reservations to specific provisions (eg Article 12, 24)
- Declarations which purport to be merely interpretations of provision rather than limits on obligations (eg Australia's declaration in relation to the obligation to ensure inclusive education)
- Committee on the Rights of Persons with Disabilities regularly asks States parties to review reservations and declarations and to withdraw them as soon as possible.
- Some ESCAP members have reviewed and withdrawn their reservations (eg, ROK's reservation in relation to insurance)

**Recommended ESCAP initiatives: to share experience and analysis of reservations and encouraging their review and removal**

# Harmonization – overall progress

## Target 9.B



Enact national laws which include anti-discrimination provisions, technical standards and other measures to uphold and protect the rights of persons with disabilities and amend or nullify national laws that directly or indirectly discriminate against persons with disabilities, with a view to harmonizing national legislation with the Convention.

## Progress



More than 30 Asia-Pacific States have undertaken legislative reviews that have led or will lead to amendments to existing laws



10 others have indicated these are underway or planned.



A few States appear to have taken no substantial harmonization steps.



Legislative reviews do not always cover all the sectors necessary.



In some cases amendments do not fully give effect to CRPD.

# Procedural harmonization issues – comprehensive reviews and ongoing monitoring

- Many States have undertaken initial reviews, some of them across the whole statute book
- Others have amended some areas only, leading to incomplete harmonization and sometimes inconsistency between new rights legislation and legislation in other sectors (education, transport, work, etc)
- Some States have done very little to reform their legislation
- Mixed record on regular and systematic ongoing vetting of existing law and proposed new laws prior to and during the legislative process
- Mixed record of establishing independent monitoring mechanism (NHRI) in accordance with article 33(2) of the Convention and OPD s under article 33(3)

# Procedural harmonization issues – comprehensive reviews and ongoing monitoring: **Proposed actions**

ESCAP could consider convening region-wide discussions of good practices :

- for ensuring the effective initial and ongoing review of laws and regulations for consistency with the CRPD by **law reform bodies, national human rights institutions or disability-specific independent mechanisms**
- for ensuring **effective pre-enactment review** of laws and other regulations for consistency with the CRPD **within the executive government** at national, state or provincial and local levels of government
- In ensuring that **Parliaments** have the **appropriate committees, procedures and expert support** to scrutinise legislation and policy for CRPD-consistency

ESCAP could also consider working with the Inter-Parliamentary Union and OHCHR on these matters and in particular propose the review and update of the [2010 Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities](#)

# Some challenging substantive issues of legal harmonization – incomplete harmonization (1/2)

- Definitions of ‘disability’/’persons with disability’
- Prohibition of disability discrimination – need for broad-ranging definitions aligned to Convention and including intersectional discrimination
- Need to ensure that denial of reasonable accommodation is defined as discrimination and that legislative guidance is provided as to how it is assessed
- Ensuring the availability of clearly stated, prompt and effective remedies under new or existing rights laws, anti-discrimination laws or other relevant laws and regulations.

# Some challenging substantive issues of legal harmonization – incomplete harmonization (2/2)

- Legal capacity and related issues: from substituted decision-making to supported decision-making – still
- Right to liberty and security of the person; freedom from torture and cruel, inhuman or degrading treatment
- Inclusive education
- Participation, implementation and monitoring

# Procedural harmonization issues – comprehensive reviews and ongoing monitoring: **Proposed actions**

Where national legislation and practice are not yet fully compliant with the CRPD States parties in the Asia and Pacific region should, **as a priority**, undertake legislative reform that:

- harmonizes legislative definitions of disability and disability discrimination with the CRPD that a wide-ranging and address intersectional discrimination
- ensures the inclusion of denial of reasonable accommodation as a form of discrimination,
- ensures there are clearly specific, prompt and effective remedies available for violation of the rights of persons with disabilities,
- reforms laws and practices that are inconsistent with Articles 12, 14, 15 and 17 and related laws.

# Other avenues to enhance harmonization: the judiciary

## Situation

- The role of courts: within the region there are some excellent examples of progressive judicial application of national laws on the rights of persons with disabilities, including reference to the Convention
- There are also examples where it is clear that the courts (and the lawyers who appear before them) are not sufficiently familiar with the Convention on its potential relevance to cases that come before them

## Recommendation to ESCAP

Convene regional or sub-regional judicial colloquia to provide judicial officers with the opportunity to learn more about the CRPD, the Committee and to share experiences in relation to the implementation of the CPRD and other human rights treaties before their national courts.



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