

From Nondiscrimination to Full Inclusion

Guaranteeing the Equal Rights of People with Disabilities

In 2007, Mariana Díaz Figueroa, a law student, came across a posting on her university's job board. A large hotel chain in Mexico was seeking a paralegal. The ad specified that applicants for the position should have experience in corporate law.

It also stated that they could not have a disability.

Díaz Figueroa's diagnosis with cerebral palsy in childhood had not deterred her from pursuing two master's degrees and a law degree.¹ Nevertheless, a potential employer had opted to outright exclude her from consideration, and Díaz Figueroa decided to take action against the hotel's flagrant discrimination. In 2009, Díaz Figueroa initiated a civil suit with the Superior Tribunal of Justice, arguing that she was not given the chance to prove she could do the job.

The court, however, dismissed Díaz Figueroa's claim. In the following years, she appealed three times; each time, the courts found for the hotel. Finally, the case reached the Supreme Court of Justice, Mexico's highest court, which ruled in 2014 that the job posting had violated two constitutional rights: the right to equal protection before the law, regardless of disability, and the right to work. Díaz Figueroa was entitled to damages, as the Court ruled that the post's publication was in itself discriminatory and harmful.²

Further, the Court clarified that in cases of disability discrimination, the burden falls to the party charged with discrimination—in this case, the hotel—to

prove that its contested action was “objective” and “reasonable.”³ Because Díaz Figueroa’s disability was irrelevant to her ability to fulfill the duties of the paralegal position, the hotel was unable to do so. Through this standard, the Supreme Court overturned the lower courts’ ruling that it was up to the petitioner to show she was qualified for the position despite her disability.⁴ Additionally, the decision affirmed that the equality provision of Mexico’s constitution applied against private employers. The ruling was a landmark for employment discrimination in Mexico, and one of the first cases on disability rights heard by the Supreme Court.⁵

The decision also illustrated how a series of constitutional reforms articulating stronger rights for people with disabilities had laid the foundations for Díaz Figueroa’s successful challenge. First, in 2001, Mexico amended its constitution to broadly prohibit discrimination on the ground of disability. In the following years, 12 of Mexico’s 31 states adopted similar amendments to their state constitutions.⁶ Second, in 2011, a constitutional amendment proclaimed that all human rights treaties that Mexico ratified would become immediately enforceable in court—including the U.N. Convention on the Rights of Persons with Disabilities (CRPD).⁷

Ending obstacles to employment for people with disabilities will require action on many fronts, including strong legislation guaranteeing reasonable accommodations in the workplace. Yet constitutional rights on the basis of disability can provide critical foundations for shifting norms, providing recourse against discrimination, and creating more inclusive economies.

FROM OVERT DISCRIMINATION TO IMPLICIT BIAS

As Díaz Figueroa’s experience demonstrates, blatant forms of explicit discrimination against people with disabilities persist in some countries. Job ads tell people with disabilities not to bother applying. Individual schools, as well as school systems, exclude children with a wide range of disabilities.

Meanwhile, implicit bias is so widespread as to have equally large, if not larger, impacts. People with movement disorders, often presumed to be cognitively impaired, face discrimination when applying for jobs that utilize intellectual skills and training and impose no physical requirements they cannot meet. People in wheelchairs are presumed to be less able to compete in courtrooms and corporations, though their wheelchairs are irrelevant to their job roles. Even without written prohibitions on their candidacy, people with disabilities who show up for interviews often face immediate discrimination. Likewise, people with intellectual disabilities are often not even considered for job roles they could successfully fulfill.

One study of more than two million tests found that rates of implicit bias were highest against persons with a disability, among all the categories tested.⁸ For people with disabilities, stigma and implicit bias have been linked to reduced employment opportunities, housing, and access to healthcare, as well as increased involvement with the criminal justice system.⁹ The Americans with Disabilities

Act (ADA), a landmark U.S. law, even acknowledges implicit bias by prohibiting discrimination against people “regarded as” disabled; claims based on this provision account for a significant share of ADA filings with the Equal Employment Opportunities Commission.¹⁰

Biased institutional rules and practices have further consequences. Discrimination against people with mental health problems provides one example of many. Mental health conditions have long received a fraction of the healthcare coverage offered for physical conditions, and medical care systems often refuse to cover mental health treatment. Treating mental health with the same consideration and urgency as physical health can transform the lives of hundreds of millions.

This bias and discrimination compounds the needless barriers that societies erect to full participation, and the obstacles societies could address simply but often fail to remove. When a school, workplace, or community center entrance has only stairs, it bars access by wheelchair users. When an employer or public institution makes documents available only as hard-copy written texts inaccessible to screen readers, it excludes people with visual impairments from full access and engagement.

Removing obstacles is fundamental to equality and inclusion. Further, doing so benefits not only people with disabilities but also a wide range of others, a principle central to the concept of “universal design.” Sidewalk curb cuts provide a common example: conceived as a way to make sidewalks accessible to wheelchair users, they also improve accessibility for parents with strollers and people making deliveries using carts.¹¹ Similarly, text-to-speech software ensures full access for people with visual impairments or language-based learning differences, and for adults whose lack of access to formal education in childhood limited their extent and pace of text reading. Put simply, universal design aims to ensure that products and environments are accessible and useable by all people without modification.¹²

THE LARGEST GROUP LEFT BEHIND

The combined effects of overt discrimination, implicit bias, and failure to take the simple steps that would ensure equal opportunities have made people with disabilities the most disadvantaged minority group around the world. In nearly all countries, adults and children with disabilities have among the lowest access to education, quality work, and incomes.

Education

Equal access to education for children with disabilities is critical to providing a foundation for full participation later in life. Many children with disabilities are excluded from schools entirely or put in separate schools.¹³ In low- and middle-income countries (LMICs), enrollment rates for children with disabilities are commonly 30–50 percentage points lower than for their counterparts, while children

with disabilities who enroll often face discrimination or poor-quality education.¹⁴ Even in high-income countries, students with disabilities are less likely to complete primary school and on average receive fewer years of basic education than other students.¹⁵ Across the European Union, 31.5% of young adults with disabilities did not complete secondary school, compared to 12.3% of those without disabilities.¹⁶

Employment

Similar patterns play out in the workplace. A study of 27 OECD countries found that the employment rate of working-age people with disabilities was just 44%, far below that of working-age people without disabilities (75%).¹⁷ Across 18 countries included in the World Health Survey, the employment ratio of people with disabilities compared to the overall population ranged from 30% in South Africa and 33% in Poland to 92% in Malawi; across all countries studied, people with disabilities were significantly less likely to be employed than people without disabilities.¹⁸

Income

Exclusion from employment opportunities puts people with disabilities at a disadvantage with respect to income, which is further compounded by discrimination within the workplace after jobs are attained. In the United Kingdom, for instance, a 2017 study found that the average hourly earnings of men with disabilities were 13% below those of their peers without disabilities, while for women the disparity was 7%. For certain types of conditions, the “disability pay gap” grew even wider: men with epilepsy, for example, earned around 40% less than their peers. The gaps also widened further for racial minorities.¹⁹ Consequently, poverty rates are higher. In Australia, Ireland, and South Korea, for example, working-age people with disabilities are more than twice as likely to be in poverty as working-age people without disabilities.²⁰ Poverty can in turn reduce the odds of accessing care or living in safe, healthy conditions.

WHY CONSTITUTIONAL RIGHTS ON THE BASIS OF DISABILITY MATTER

Discrimination against people with disabilities is one of the few types of discrimination that is widespread, while addressing it remains normatively contested. Governments are known to target education for children with disabilities for the first cuts when budgets are tight.²¹ Employers admit to passing over qualified job applicants with disabilities because they expect accommodations will be costly, when in fact such costs are typically minimal. Moreover, efforts to ensure full inclusion are too often framed as elective, rather than integral to fundamental rights and equality. Meanwhile, explicit discrimination, as in this chapter’s opening example, remains commonplace.

Constitutions are norm-setting documents. In addition to providing tools to challenge discrimination in court, constitutions express values on behalf of the government, which in turn helps shape societal values. Moreover, constitutions can help advance an understanding of equality that goes beyond nondiscrimination, and is truly rooted in enabling all people to fully participate in society. On average, one in six citizens of a given country have some form of disability. Clearly establishing the rights of persons with disabilities is fundamental to ensuring constitutions protect all people's rights.

GLOBAL FOUNDATIONS FOR EQUALITY AND INCLUSION

To determine how best to protect the rights of people with disabilities, constitution drafters need not start from scratch.

The U.N. Convention on the Rights of Persons with Disabilities

The CRPD, adopted in 2006 and drafted with deep engagement of disabled persons' organizations (DPOs), embodies a comprehensive set of commitments to equal rights and full inclusion in areas including education, healthcare, civil and political life, family life, and work, effectively laying out a framework for structuring societies to facilitate the full inclusion and equal opportunities of people with disabilities. The CRPD made history as the treaty with the largest number of signatory countries (82) on its opening day, and became one of the most quickly ratified treaties ever adopted.²² Further, the CRPD's legally binding nature distinguished it from previous decades' declarations and awareness-building efforts on disability rights. The treaty had, and continues to have, tremendous potential to influence domestic laws and policies around disability, particularly since many countries simply had not enacted any relevant laws before the CRPD's adoption. According to Kanter, "[o]nly 40 of the 191 countries that [were] members of the UN ha[d] enacted domestic disability laws" as of 2003.²³

The CRPD begins by acknowledging that how societies are constructed shapes whether a given condition is disabling: "[D]isability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others." In the 50 articles that follow, the CRPD thoroughly addresses inclusive education, the right to work, the right to liberty, access to justice, social protection, and a wide range of other fundamental rights and freedoms. For example, its education provision requires countries to ensure that "[p]ersons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live."²⁴ Similarly, the employment article obliges countries to "[e]nsure that reasonable

accommodation is provided to persons with disabilities in the workplace.”²⁵ As we will explore, these provisions have set important standards for national-level approaches to disability.

The Sustainable Development Goals and “Leave No One Behind”

In 2015, the U.N. General Assembly unanimously adopted the Sustainable Development Goals (SDGs), 17 “Global Goals” and 169 targets in a wide range of areas designed to advance human health, equity, and development by 2030. The SDGs built on the commitments of the Millennium Development Goals (MDGs), which helped accelerate change on health and extreme poverty in 2000–2015. Importantly, the SDGs explicitly addressed the rights and needs of people with disabilities—an area where the MDGs had been silent.

Commitments to advance inclusion are found throughout the Goals.²⁶ For example, SDG 4 calls on countries to “ensure equal access to all levels of education and vocational training” for persons with disabilities. Likewise, SDG 8 establishes a commitment to “full and productive employment and decent work for all women and men, including for persons with disabilities,” while SDG 10 broadly calls for reducing inequality within countries and “promoting the social, economic and political inclusion of all, including persons with disabilities.” Additionally, the SDGs urge countries to ensure environments are inclusive and accessible. Specifically, SDG 11 calls on governments to provide “access to safe, affordable, accessible and sustainable transport systems for all . . . with special attention to the needs of those in vulnerable situations, such as persons with disabilities.”

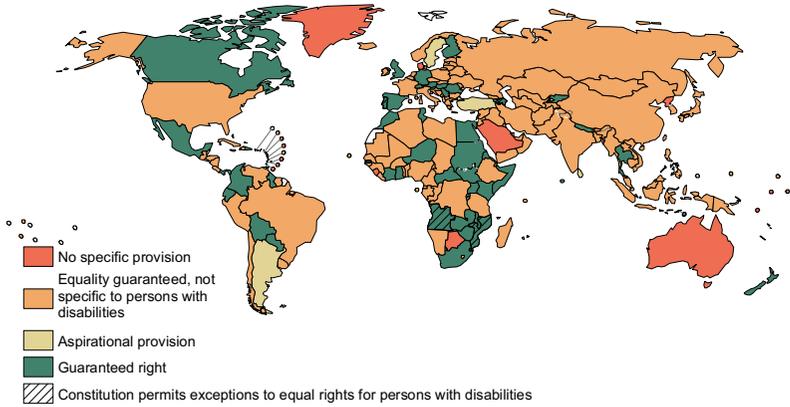
Translating International Commitments into Domestic Law

As for the other groups included in this book, an overall constitutional guarantee of nondiscrimination is essential to realizing the rights of people with disabilities. Yet given that people with disabilities remain widely excluded from jobs, education, and opportunities to fully participate in public and private life, specifically addressing each of these aspects is also vital to advancing equality and establishing new baselines of inclusion. To assess the status of rights in 193 countries, we examined the extent to which constitutions guaranteed overall equal rights, equal access to education, equal opportunities at work, and equal access to healthcare to people with disabilities.

EQUAL RIGHTS FOR PEOPLE WITH DISABILITIES IN
ALL THE WORLD’S CONSTITUTIONS

An Overall Guarantee of Nondiscrimination

Around the world, a growing number of constitutions include disability in their overall equality provisions (Map 20). For example, the Maldives’s 2008 constitution provides: “Everyone is entitled to the rights and freedoms included in this Chapter without discrimination of any kind, including . . . mental or physical disability.”²⁷



MAP 20. Does the constitution explicitly guarantee equality or nondiscrimination for persons with disabilities?

However, these protections lag far behind those afforded to other groups. Globally, just 27% of constitutions explicitly prohibit discrimination or guarantee equal rights on the basis of disability.

The Right to Education

Designed to ensure children have opportunities to learn and fulfill their potential, the right to education can promote equality far more effectively when combined with a comprehensive commitment to nondiscrimination, which is fundamental to ensuring *all* children can learn. In the case of children with disabilities, constitutions can powerfully advance equal rights by not only explicitly protecting the right to education, but also ensuring that schools and classrooms are inclusive and equipped to accommodate all needs. Inclusive and integrated settings can both strengthen learning outcomes and increase students' exposure to peers with other backgrounds, life experiences, and capabilities.

The Importance of Inclusion—Not Mandatory Segregation

Evidence shows that both children with and without disabilities learn well in inclusive classrooms.²⁸ Moreover, inclusive classrooms enable interaction between students with and without disabilities and reduce bias.²⁹ Inclusive education reflects a principle applicable across groups: equality is not achieved with segregation. As for achieving equality across religions or racial/ethnic groups, integration and representation are fundamental for achieving equality for people with disabilities. This begins with children and full inclusion in schools. While government-sanctioned racial/ethnic, religious, and gender segregation in education has declined, segregation of children with disabilities remains too common. Although there may be a case for providing an option for children with disabilities to attend specialized

schools, there is no more case for requiring children with disabilities or differences to attend separate schools than there was for segregating racial/ethnic groups.

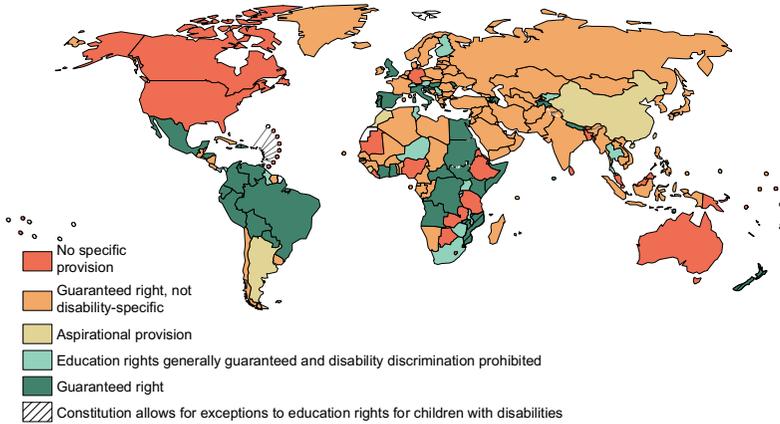
The CRPD Committee makes clear that integration alone, while essential, is not sufficient for inclusive education: “Inclusion involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience. . . . Placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organization, curriculum and teaching and learning strategies, does not constitute inclusion. Furthermore, integration does not automatically guarantee the transition from segregation to inclusion.”³⁰

Beyond providing integrated settings, to be truly inclusive, schools and classrooms must be equipped to meet the needs of students with disabilities and teachers must be adequately trained, which requires investment. All countries can invest, and not all inclusion is costly: many steps toward providing quality, inclusive education involve planning, community mobilization, and political will, rather than funding alone. Successful projects across a range of LMICs, such as Bangladesh, India, Kenya, Laos, South Africa, Tanzania, Uganda, Vietnam, and Zambia, have shown that inclusive education is achievable.³¹ Where costs outstrip resources in low-income settings, international donors can fill gaps to make inclusive education financially feasible.³²

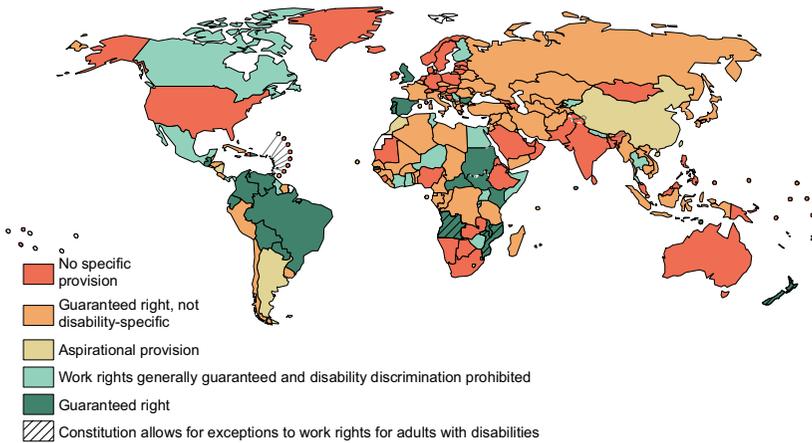
Nondiscrimination and Inclusive Education in Constitutions

Globally, 19% of constitutions explicitly guarantee educational rights for children with disabilities (Map 21). Another 9% protect the right to education generally and broadly prohibit disability discrimination. Fourteen percent of constitutions guarantee specialized education or general educational support to children with disabilities, while 2% specifically require schools to be accessible to children with disabilities. Yet only 4% of constitutions explicitly provide for the integration of children with disabilities within the public school system. For example, Bolivia’s constitution provides: “The State shall promote and guarantee the continuing education of children and adolescents with disabilities . . . under the same structure, principles and values of the educational system, and shall establish a special organization and development curriculum.”³³

While only seven constitutions explicitly address integrated education and not all of these guarantee full inclusion, these provisions have had impact in both public and private schools. Under the Brazilian Constitution, the government commits to implementing the right to education through “special educational assistance for the handicapped, preferably within the regular school system.”³⁴ In 2015, a consortium of Brazilian private schools challenged a law requiring schools to provide inclusive education, claiming it was unconstitutional as applied to private schools.³⁵ Upholding the law, the Court emphasized that inclusion benefits society



MAP 21. Does the constitution explicitly guarantee the right to education for children with disabilities?



MAP 22. Does the constitution explicitly guarantee the right to work for adults with disabilities?

as a whole, and that all schools—public and private alike—had a duty to promote integrated education and advance Brazil’s global commitments.

The Right to Work

Guaranteeing the right to work and preventing workplace discrimination are fundamental to the rights of persons with disabilities, while relationships built at work are fundamental to reducing bias.³⁶ However, just 12% of constitutions explicitly guarantee the right to work for people with disabilities or prohibit disability discrimination in employment (Map 22). Malawi’s constitution, for example, states: “Every person shall be entitled to fair wages and equal remuneration for work of equal value

without distinction or discrimination of any kind, in particular on basis of gender, disability or race,” and states as a “principle of national policy” that people with disabilities should be ensured “fair opportunities in employment” and “the fullest possible participation in all spheres of Malawian society.”³⁷ Further, since it adopted its constitution in 1994, Malawi has enacted a series of laws aimed at strengthening opportunities at work regardless of disability, which may help explain the country’s relatively high employment ratio for people with disabilities (as noted earlier in this chapter).³⁸ An additional 10% of constitutions generally guarantee the right to work or nondiscrimination at work and prohibit disability discrimination broadly.

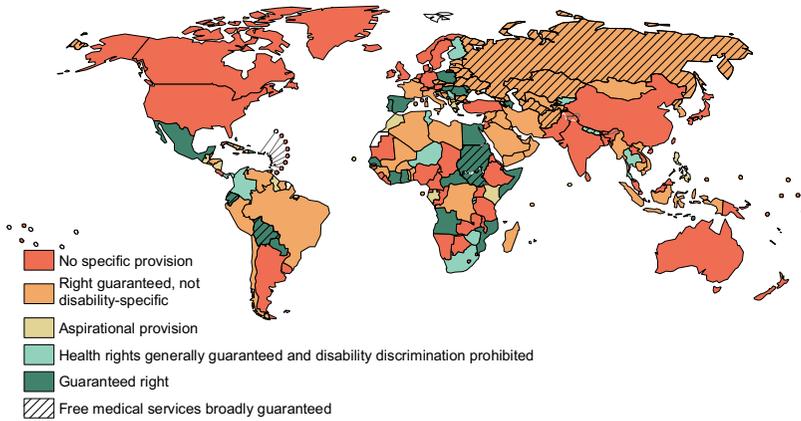
Why Constitutions Should Expand Protections of Reasonable Accommodations

While prohibiting employment discrimination is a crucial start, ensuring that all workplaces also provide reasonable accommodation is essential to equal opportunities. For an employee whose obsessive-compulsive disorder prevents him/her from taking public transportation at its most crowded, accommodations could be as straightforward as providing parking or changing work shifts by an hour. An individual with a visual impairment may succeed at a job when accommodated with a low-cost screen reader and be unable to perform the role without it. Likewise for an individual who is deaf but to whom low-cost automated captioning opens many previously inaccessible positions. Lowering barriers so everyone can perform at their highest level benefits employers and employees alike.

For workplaces, ensuring reasonable accommodations has become the leading legal standard for reducing socially constructed barriers. “Reasonable accommodations” are measures that make employment opportunities equally accessible to individuals with disabilities, such as making workplaces physically accessible, modifying test procedures, and allowing employees to adjust work schedules, without imposing “undue hardship” on employers. Under the CRPD, the right to work “includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities,” and governments are obligated to realize this right through the provision of reasonable accommodations.³⁹

Reasonable accommodation is important in civic spaces as well as workplaces, and failure to provide reasonable accommodations to realize fundamental rights has been rightly interpreted by constitutional courts as disability discrimination. For example, in 2008, Slovenia’s Supreme Court found the Civil Procedure Act to be unconstitutional, as it indirectly discriminated on the basis of disability by failing to ensure access to court documents in Braille.⁴⁰ Because of the ruling, the government now must provide Slovenians with visual impairments with Braille transcripts and other forms of assistance with nonwritten legal documents (such as court sketches).⁴¹

Currently, just two of 193 constitutions address reasonable accommodation directly. Incorporating language articulating this principle in the remaining constitutions would strengthen the fulfillment of equal rights at work for adults with



MAP 23. Does the constitution explicitly guarantee the right to health for persons with disabilities?

disabilities and differences.⁴² Although legislation may best detail employers' obligations, constitutional provisions provide a strong foundation for advancing reasonable accommodations as fundamental rather than ancillary to equal rights at work. Fiji's constitution provides an example: "A person with any disability has the right to reasonable adaptation of buildings, infrastructure, vehicles, working arrangements, rules, practices or procedures, to enable their full participation in society and the effective realisation of their rights."⁴³

While the rights-based argument for reasonable accommodations is strong, so is the evidence of their economic feasibility. Employers have reported that accommodation costs are typically low: according to a survey of 2,387 U.S. employers, only 41% had expenditures associated with hiring someone with a disability. The median cost for a one-time accommodation was \$500, compared to around \$200 for an employee without a disability in the same position.⁴⁴ These costs represent just 1.6% of the 2016 individual median personal income.⁴⁵ These are affordable for employers not only in high-income countries but also in LMICs, where wages are generally lower but so too are costs of accommodation. Moreover, at a societal level, growing evidence suggests that such accommodations quickly pay for themselves; creating the conditions for more people with disabilities to access health, education, and jobs leads to higher workforce participation, in turn fueling economic growth.⁴⁶

The Right to Health

Globally, 13% of constitutions explicitly guarantee the health rights of persons with disabilities (Map 23). Spain's constitution, for instance, establishes: "The public authorities shall carry out a policy of preventive care, treatment, rehabilitation and integration of the physically, sensorially and mentally handicapped by giving them the specialized care they require."⁴⁷ An additional 8% guarantee an approach to

health generally and prohibit disability discrimination. Seven percent of countries do not explicitly address health rights for persons with disabilities but broadly guarantee that medical services are free, which can be particularly important for persons with disabilities. Finally, 6% of constitutions allow for positive action on health rights for people with disabilities.

Even broad constitutional guarantees of healthcare can guard against threats to access that emerge amid shifts in government or economic downturns, which may disproportionately affect people with disabilities. For example, in Portugal, home to at least one million people with disabilities, the constitution protects the right to free universal healthcare by requiring the government to enact a national program, which became the National Health Service (NHS).⁴⁸ When the legislature proposed eliminating the NHS in 1984, the Constitutional Court invoked this provision to strike down the reform, explaining: “The constitutional tasks imposed on the State as a guarantee for fundamental rights, consisting in the creation of certain institutions or services, do not only oblige their creation, but also a duty not to abolish them once created.”⁴⁹

Safeguards for Civil and Political Rights

While this book focuses on overall equality and social and economic rights, it is undeniable that civil and political rights are equally critical to ensuring all people can participate in public and private life and influence their governments’ decisions. These decisions in turn shape the scope of equal rights and whose needs are prioritized. For most groups, explicit restrictions on these rights have been largely eliminated. For people with disabilities, however, many explicit restrictions persist, as detailed in the following section. Additionally, many societal barriers—such as inaccessible voting booths—impede the full exercise of these rights. To ensure people with disabilities can fully engage in civic and political life and have protections against arbitrary infringements of their liberties, constitutions need to take additional steps to protect these rights unambiguously.

Protecting the Right to Liberty

The right to liberty is a fundamental right that undergirds all others. Article 14 of the CRPD protects the right to liberty of people with disabilities, and further clarifies that “the existence of a disability shall in no case justify a deprivation of liberty.” Nevertheless, people with disabilities worldwide face heightened risks of involuntary confinement. According to UNICEF, in Central and Eastern Europe, a child with a disability is nearly 17 times as likely to be institutionalized as a child without a disability.⁵⁰ Migrants and refugees with disabilities often encounter unique restrictions and disadvantages, especially within refugee camps.⁵¹

Countries can take an affirmative step toward reducing these abuses by clearly protecting the right to liberty for people with disabilities in their constitutions. One-quarter of constitutions explicitly do so, either by prohibiting disability

discrimination and guaranteeing the right to liberty generally or by explicitly guaranteeing the right to liberty for persons with disabilities. However, as detailed further in the following section, five countries that guarantee the right to liberty for persons with disabilities also have broad provisions that could be used to restrict rights, while nine of the countries also have specific exceptions for mental health conditions. Just 8% of constitutions guarantee access to medical treatment when liberty is infringed.

Facilitating Political Engagement

Finally, in terms of political participation, constitutions can require specific measures to increase inclusion of people with disabilities. Five constitutions include provisions to facilitate voting for persons with disabilities, though some are phrased more expansively than others. Uganda, for example, provides: “Parliament shall make laws to provide for the facilitation of citizens with disabilities to register and vote.”⁵² By contrast, Malta limits its provision to blind voters, providing that if “a person is by reason of blindness unable to mark on his ballot paper, provision may be made by law requiring that . . . adequate and special means are to be provided which will enable that person to mark on his ballot paper independently and without the need of assistance.”⁵³

Six percent of constitutions take broader approaches by aspiring to or guaranteeing the right to accessibility of public places for persons with disabilities. Four constitutions include provisions to ensure accessibility of transportation. Three constitutions guarantee the right to use Braille as an alternative form of communication, and five do so for sign language. An additional 4% of constitutions commit to promoting the use of sign language.

BARRIERS TO EQUALITY WITHIN CONSTITUTIONS: DISCRIMINATORY LANGUAGE AND RESTRICTIONS ON RIGHTS

Despite important advances in prohibiting discrimination and guaranteeing equal rights for persons with disabilities, some constitutions explicitly restrict rights or use vague wording that leaves the door open to discrimination. Meanwhile, other constitutions, particularly older ones, refer to disability using discriminatory or stigmatizing language. While these provisions and language choices may often reflect outdated notions about disability, their retention in constitutional texts poses substantial risks to fundamental rights, and undermines constitutions’ potential to shift norms toward equality. By contrast, strong constitutional protections can do the opposite: in Uganda, for instance, the Centre for Health, Human Rights and Development successfully challenged three laws that referred to people with disabilities as “imbeciles,” “idiots,” and “criminal lunatics,” based on the constitution’s explicit protection of the right to dignity of people with disabilities.⁵⁴

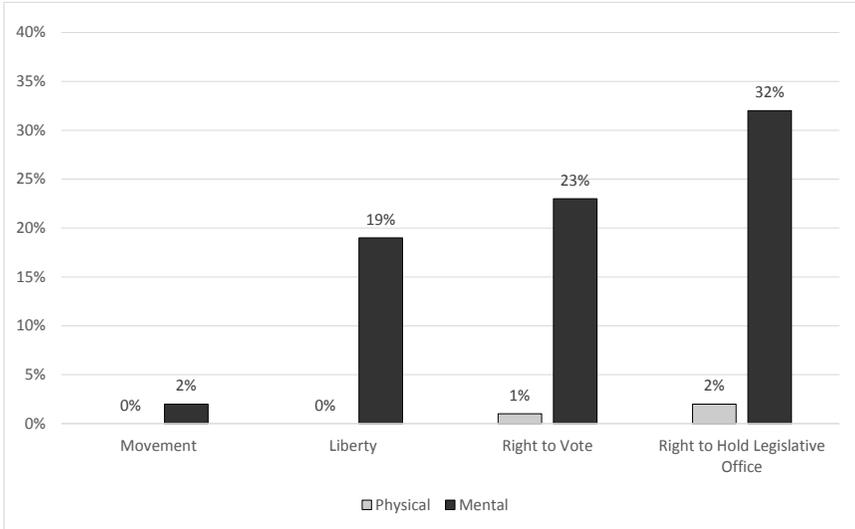


FIGURE 9. Explicit constitutional provisions that allow for civil and political rights to be denied based on health conditions

Disability Definitions and Terminology in Constitutions

Globally, just three constitutions include definitions of disability that reference the impact of social and environmental factors. For example, Zambia’s constitution was amended in 2016 to state: “In this Constitution, unless the context otherwise requires: . . . ‘disability’ means a permanent physical, mental, intellectual or sensory impairment that alone, or in combination with social or environmental barriers, hinders the ability of a person to fully or effectively participate in an activity or perform a function as specified in this Constitution or as prescribed.”

Restricting Rights on the Basis of Mental and Physical Health Conditions

While discriminatory language can be ambiguous, explicit limitations on rights are not. Globally, a significant portion of constitutions, including many of those using discriminatory language, allow for restrictions on the rights of people with disabilities. These restrictions are especially common with respect to certain civil rights and liberties. Twenty-two percent of constitutions specify that persons with mental health conditions can be denied the right to vote, as do 33% for the right to hold legislative office.

Constitutions also commonly restrict the rights to liberty and movement on the basis of mental health (see Figure 9). Specifically, 19% of constitutions specify that the right to liberty can be denied to people with mental health conditions. Of

the 36 constitutions that explicitly allow infringement of the right to liberty for persons with disabilities, 29 require that it be for the protection of the community and treatment of the individual, and three require it to be for the protection of the individual and community. However, three countries place no requirements, and one country protects only the community and not the individual. Finally, four constitutions state that freedom of movement can be denied to “persons of unsound mind.” According to the U.N. Human Rights Committee, while the rights to liberty and movement are linked, deprivations of liberty, which include everything from police custody to involuntary hospitalization, “involv[e] more severe restriction of motion within a narrower space than mere interference with liberty of movement.”⁵⁵

Some constitutions also open the door to limiting rights on the basis of physical health conditions: three constitutions allow for restrictions on the right to vote, as do four for the right to hold legislative office. Namibia’s constitution allows Parliament to restrict individuals’ right to vote and hold office on “grounds of infirmity.”⁵⁶ Uruguay’s constitution states that “[c]itizenship is suspended: 1) By physical or mental ineptitude which prevents free and reflective action,”⁵⁷ and is silent regarding how physical disabilities would prevent reflective action. Zambia’s constitution does not limit the right to vote, but does provide that “[a] person is disqualified from being elected as a Member of Parliament if that person . . . has a mental or physical disability that would make the person incapable of performing the legislative function.”⁵⁸ Beyond these three, others use troubling exclusionary language in describing civil and political rights; Serbia’s constitution, for example, limits the right to vote to those of “working ability.”⁵⁹ In addition to opening the door for discrimination against those not working, this language lays a foundation for discriminatory assumptions about “working ability” to determine both who can vote and who can work; for example, as detailed in this chapter, discrimination that includes presumptions of incapacity and lack of reasonable accommodations—rather than lack of “working ability”—often limits full participation in employment by persons with disabilities.

Historic examples of disenfranchisement reveal that restrictions are often imposed as pretexts for discrimination. Literacy tests and poll taxes, for example, were instituted to limit voting by poor and minority voters, rather than out of genuine concern for the integrity of elections. As observed by Fiala-Butora, Stein and Lord,⁶⁰ “[N]early every state has at some time in its history restricted the basic human right of voting for women, ethnic and racial minorities, immigrants, persons with low literacy levels, and/or persons with disabilities. Common to these exclusions are justifications that are grounded in deeply embedded but empirically unfounded social constructs as to the lesser ability of the given category of individuals.”⁶¹

A health history including episodes of depression or anxiety, for example, has nothing to do with voting capacity. According to the World Health Organization

(WHO), around one in four people globally have a history of a mental or emotional health problem,⁶² including 300 million who suffer from depression, which WHO ranks as “the single largest contributor to global disability.”⁶³ Broad mental health-based voting restrictions open the door to abuse and over-exclusion, especially since these assessments may be informed by stigma rather than science, and begin from the assumption of incapacity. In Hungary, for example, voting restrictions resulted in the disenfranchisement of over 70,000 individuals, even as only 8,000–12,000 Hungarians were considered to have “severe” or “profound” disabilities that could plausibly impair voting capacity.⁶⁴

Similarly, there is no case for basing restrictions on freedom of movement or liberty on a specific condition or category of people instead of actual risk. Some countries’ courts have adopted standards for evaluating whether individuals pose imminent threats to themselves or others. Although individual assessments in these cases will likely never be fully accurate evaluations of risk, and some potential for abuse persists, this approach is far more narrowly tailored to the issue of personal and public safety than an exception applying to an entire group based on disability status. Basic due process rights, including the right to a fair hearing and the right to appeal, are essential additional measures to protect against abuse.

It is critical that countries’ foundational texts do not carve out exceptions to fundamental rights for people with disabilities, especially given the long histories of involuntary institutionalization and disenfranchisement experienced by this group, which is not fully behind us: people with disabilities continue to face high rates of institutionalization, often without fair and transparent processes to protect against arbitrary confinement or inhumane conditions. Altogether, these denials and exceptions embody presumptions about all people with disabilities or certain types of disabilities that obscure the diversity of circumstances and experiences, and create significant risks for the protection of individual rights.

*Restricting Rights on the Basis of Ability, Capability, or
Being “Able-Bodied”*

Finally, constitutional provisions that use language about “able-bodied” people create the potential for employment discrimination against adults with physical disabilities. Two constitutions limit the right to work to “able-bodied” citizens. Denmark’s constitution states: “In order to advance the public weal efforts should be made to afford work to every able-bodied citizen on terms that will secure his existence.”⁶⁵ Similarly, Saudi Arabia’s constitution provides: “The State shall provide job opportunities to all able-bodied people and shall enact laws to protect both the employee and the employer.”⁶⁶

Provisions that limit rights based on abilities also have discriminatory potential. Four countries have provisions broadly guaranteeing equal opportunities in education on the basis of ability. One country guarantees the right to secondary education on the basis of intellectual ability; an additional two guarantee on the basis of merit or in “deserving” cases. While these provisions may or may not

be used to discriminate against people with disabilities in practice, their wording undercuts the idea that education is a universal right and may pose risks for children whose abilities are undervalued because of discrimination and bias.

Similarly, even provisions that broadly support equal rights for persons with disabilities may leave room for limitations of those rights. Five countries have provisions guaranteeing equal rights to persons with disabilities, but only to the extent they are able to enjoy them. For example, Timor-Leste's constitution states: "A disabled citizen shall enjoy the same rights and shall be subject to the same duties as all other citizens, except for the rights and duties which he or she is unable to exercise or fulfil due to his or her disability."⁶⁷ While these provisions may be intended to recognize constraints faced by persons with disabilities, they also leave room to potentially limit rights for persons with disabilities rather than removing social and environmental barriers to full inclusion.

THE CLEAR NEED TO STRENGTHEN CONSTITUTIONAL APPROACHES TO DISABILITY— AND FURTHER STRATEGIES TO ADVANCE EQUALITY

As the preceding sections illustrated, the world's constitutions have far to go on protecting equal rights on the basis of disability. While the increasing share of constitutions that include disability-specific equal rights provisions is encouraging, far too many embed language or restrictions on rights that reflect a historically stigmatizing understanding of disabilities. Failure to accelerate progress on strengthening protections can have profound consequences for the millions of people whose rights remain in limbo.

Advancing Equality with General Equality Clauses

While constitutions that specifically prohibit disability discrimination likely provide the most powerful guarantees for equal rights, broad constitutional equality guarantees have also provided effective tools for advancing the equal rights of people with disabilities in domestic courts. Although persistent efforts to establish explicit constitutional protections of equality on the basis of disability are critical for ensuring consistent, human rights-based rulings, in the meantime, this strategy may serve as an important approach for accelerating change globally. As in other areas, however, while general equality clauses can facilitate important advances, they often do not provide protections as strong as specific bans on disability discrimination.

India: Using Overall Equality to Challenge Rules Based on Presumptions of Incapacity

India provides an example of how a broadly worded equal rights guarantee can have impact. In the Delhi High Court, the National Association of the Deaf filed a petition to end the blanket ban on driver's licenses for deaf people, which was based on the presumption that they would endanger the public. The petitioners'

brief noted how deaf drivers were able to obtain licenses in numerous other countries (sometimes with stipulations such as equipping their vehicles with extra-large mirrors).⁶⁸ Under an international convention signed by India, deaf drivers could also obtain international licenses enabling them to legally drive in India. In a landmark ruling citing the constitution's general guarantee of equality, the Court held in 2011 that deaf individuals should be eligible to take a driving test.⁶⁹

Japan: Overall Equal Rights as a Basis for Integrated Education—But Judicial Reasoning That Leaves Full Inclusion in Question

In Japan, the constitution's overall equality clause and protection of the right to education provided the basis for a decision ensuring that a child with a physical disability could enroll in kindergarten at her local public school. The Board of Education had initially denied the girl admission because of her disability, specifically her inability to walk on her own.⁷⁰ However, after the girl's mother sought a court order, citing both the constitution and protections for inclusive education in legislation and the U.N. Convention on the Rights of the Child, the Tokushima District Court ruled that the school had to immediately admit the girl for full-time kindergarten.

Nevertheless, the district court stopped short of mandating fully inclusive education that would accommodate all children's needs. In its reasoning, the court noted that the girl's mother was prepared to accompany her daughter to school every day and attend to her needs in the classroom, ensuring there would be no "undue burden" on the school. However, the principle of inclusive education as defined in the CRPD and elsewhere requires governments to ensure that all children have the support they need to attend and fully participate in school, regardless of disability; fulfillment of this right should not be contingent on parents' availability to provide full-time assistance. Further, Japan's education provision guarantees the right to "an equal education correspondent to [the person's] ability," which could open the door to exclusion. While the Tokushima District Court's ruling yielded a positive outcome, stronger, disability-specific protections in the constitution would provide a sturdier foundation for future cases.

United States: A Mixed History on Disability with Broad Protections for Equality

In the U.S., the Fourteenth Amendment's Equal Protection Clause, which broadly guarantees equality before the law, has provided an important tool for advocates seeking to ensure equal rights regardless of disability. Yet historic examples illustrate the serious risks of failing to protect equal rights explicitly.

In 1972, the Equal Protection Clause provided the basis for a strong decision on children's equal rights in education by the U.S. District Court for the District of Columbia. In *Mills v. Board of Education*, seven low-income black boys, ranging from eight to 16 years old, brought a lawsuit to enforce their right to public education after being excluded from public schools. While some of the boys had

been formally diagnosed with disabilities, including epilepsy and hemiplegia, others had been deemed “exceptional” and excluded from school because of “behavioral problems.” In their court filings, the plaintiffs estimated that within D.C., there were “22,000 retarded, emotionally disturbed, blind, deaf, and speech or learning disabled children, and perhaps as many as 18,000 of these children are not being furnished with programs of specialized education.”⁷¹ A report from the Department of Education further revealed that at least 12,340 children with disabilities were excluded from D.C. schools in the 1971–72 school year. Many were expelled from school without a hearing, and their families were unable to afford private school.

In a comprehensive order, the court found that the D.C. Board of Education was responsible for providing “publicly supported education suited to each child’s needs, including special education and tuition grants, and also, a constitutionally adequate prior hearing and periodic review public education to all students in the District, including children with disabilities.” Citing *Brown* and the Equal Protection Clause, the court reminded the defendants that “the opportunity of an education . . . where the state has undertaken to provide it, is a right which must be made available to all on equal terms.”⁷² Further, the court ordered the school board to produce a list of all other children who had been expelled and why, and to identify and contact all other students in the same position as the plaintiffs. Finally, the court ordered the board to fill all vacant “special education” positions and ensure that the budget allocated for the education of children with disabilities was indeed spent on their education.

Despite being issued by a district-level court, rather than the Supreme Court, *Mills v. Board of Education* had national impacts. Three years after the decision, Congress passed the Education for All Handicapped Children Act, which preceded the Individuals with Disabilities Education Act that remains in place today.⁷³ Guaranteeing children with physical and mental disabilities equal rights to a “free and appropriate public education,” the legislation became one of the most important legal tools for disability advocates in the following decades. Nevertheless, the case also illustrated intersections between disability discrimination and discrimination on the basis of race and socioeconomic status, which persist today. Research suggests that black children in the U.S. are more likely to be misdiagnosed as having intellectual disabilities by school administrators, which some argue is contributing to resegregation, especially in the American South;⁷⁴ additionally, black boys diagnosed with disabilities have the highest rates of corporal punishment in U.S. schools.⁷⁵ This trend parallels Roma students’ overrepresentation in schools for students with disabilities in some European countries (discussed in chapter 2 and later in this chapter), and underscores the importance of examining how different forms of discrimination and exclusion intersect.

Finally, the worst-case scenario when constitutional equality provisions do not address disability explicitly is that courts will simply refuse to recognize discrimination against persons with disabilities as unconstitutional, and sanction

policies and practices that are grave violations of human rights. Like a range of other historically marginalized groups, people with disabilities in many countries have faced compulsory sterilization and other threats to bodily integrity, which have often been upheld in court. The most notorious U.S. case on this topic is *Buck v. Bell*.

The case concerned the constitutionality of a 1924 eugenics law allowing for the compulsory sterilization of anyone in a state institution with “hereditary forms of insanity, imbecility.”⁷⁶ The plaintiff, 18-year-old Carrie Buck, was a mother of a one-year-old and an inmate at the Virginia State Colony for Epileptics and Feeble-minded. The colony’s superintendent, Dr. Albert Priddy, had urged the state legislature to adopt the sterilization law, arguing that the state could not afford to support “defectives.”⁷⁷ After Priddy ordered Buck’s sterilization, she was given a chance to appeal. However, the lawyer she was provided was a former colony director and an old friend of the opposing counsel. At the 1924 trial, eugenicists testified as “experts,” and eight witnesses were called to testify about Buck’s “social inadequacy.”⁷⁸

After the Virginia Supreme Court affirmed the ruling upholding the law, Buck appealed to the U.S. Supreme Court. Supporters of the eugenics law hoped this would be a test case affirming the constitutionality of compulsory sterilization.⁷⁹ And in 1927, with barely a mention of the Equal Protection Clause, their wishes were realized: the Court ruled that Buck’s sterilization was in the state’s best interest, asserting that “society can prevent those who are manifestly unfit from continuing their kind.”⁸⁰

Later investigations indicated that Buck did not actually have an intellectual disability and became pregnant after being raped by a relative, leading her foster family to send her to the colony to preserve their reputation.⁸¹ Meanwhile, as a result of the decision, Virginia sterilized more than 8,300 inmates of similar institutions from 1927 to 1972, and paved the way for laws that permitted tens of thousands more forced sterilizations across the country.⁸² The impacts were not limited to the U.S.; at the Nuremberg Trials, Nazi doctors cited *Buck v. Bell* in their defense.⁸³ While broad equal rights provisions have led to transformative victories for people with disabilities, as *Buck v. Bell* reminds us, their lack of specificity also leaves the door open to devastating rights violations.

Advancing Equality with the CRPD

A second strategy for advancing equal rights in the absence of a disability-specific constitutional provision is invoking the CRPD. The 1948 Universal Declaration of Human Rights (UDHR) represented a profound step forward for protecting human rights. Yet neither the UDHR nor the two documents that comprise the “International Bill of Human Rights”—the International Covenant on Economic, Social and Cultural Rights (1966) and the International Covenant on Civil and Political Rights (1966)—explicitly protected the rights of people with disabilities, even while

establishing protections based on sex, race, religion, and other characteristics. In the 1980s, the U.N. adopted the World Programme on Action Concerning Disabled Persons, which laid out recommendations focused on prevention, rehabilitation, participation of people with disabilities in decision-making, and equalization of opportunities in all aspects of life.⁸⁴ The following decade, the U.N. adopted the Standard Rules on Equalization of People with Disabilities, which explicitly recognized that “intensified efforts are needed to achieve the full and equal enjoyment of human rights and participation in society by persons with disabilities.”⁸⁵

But it was not until the twenty-first century that these commitments achieved the force of a global convention. With the leadership of DPOs worldwide, in December 2006, the U.N. finally adopted what many in the disability community had urged for decades: a binding human rights treaty specifically articulating states’ obligations 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.”⁸⁶

The CRPD’s passage has helped accelerate countries’ adoption of laws and constitutional amendments to guarantee equal rights. Moreover, for constitutions that directly incorporate international treaties into domestic law, CRPD ratification has demonstrably strengthened courts’ interpretations of equal rights guarantees.

India: Recognizing the Right to Reasonable Accommodations

One important case illustrating the CRPD’s impact comes from India. The petitioner in the case, Ranjit Kumar Rajak, had a renal transplant in 2004. A few years later, Rajak applied for a job as a probationary officer with the State Bank of India. The job posting specifically noted it was open to people with disabilities; however, it also stated that “appointment of selected candidates is subject to his/her being declared medically fit by Medical Officer(s) appointed/approved by the Bank.”⁸⁷

Rajak got the job, but after his required medical examination, the offer was revoked. The bank had determined that, given his medical history, employing Rajak would be too costly, since he would be “in continuous need of quality medical care” and the bank’s rules required the reimbursement of its officers’ medical costs. The bank consequently declared him “unfit” for the job. After being denied the position, however, Rajak secured a job at another bank.

In a powerful order, the Bombay High Court found that the Bank of India’s revocation of Rajak’s job offer violated his constitutional rights to equality and to life, as well as the right to reasonable accommodation under the CRPD. In its first ruling recognizing the reasonable accommodation standard, the Court ruled that the CRPD definition should apply, since domestic laws had not yet provided a definition of the concept.

Applying the “undue burden” test, the Court found no evidence that Rajak’s condition would “cause undue hardship in the content of the size of the organization, the financial implications on the organization and/or on the morale of other

employees.⁸⁸ Consequently, the Court ruled in Rajak's favor, in a landmark ruling incorporating the CRPD's commitments to equal rights in employment and clearly illustrating their resonance with established constitutional rights.⁸⁹

Czech Republic: Leveraging the CRPD to Strengthen Inclusive Education

A second case showing the CRPD's domestic impacts comes from the Czech Republic. As a preschooler, a young boy from Milešovice, a small village, was diagnosed with autism and a "moderate mental disability."⁹⁰ Consequently, he was placed in a "special school" in the city of Brno, though he quickly outpaced his fellow students and was unable to receive a quality education. The Special Educational Centre in Brno recommended that he switch back to a mainstream school, provided he could receive some basic assistance in the classroom.⁹¹

The boy's mother agreed, and in 2012, sought permission to have him admitted to a mainstream school nearby. However, her request was quickly rejected. School administrators contended that they did not have the capacity to educate her son, and noted that parents of existing students had expressed concerns. Undeterred, she reached out to 11 other mainstream schools in the area. All 11 said no.⁹²

As in Hungary, described in chapter 2, in the Czech Republic, discrimination against students with disabilities intersects with discrimination against the Roma, one of Europe's largest, most marginalized ethnic minorities. While the Roma comprise only 3% of the Czech population, one-third of students in the country's so-called "practical schools," or schools designed for children with "mild mental disabilities," are Roma.⁹³ Nationally, only 2% of all students attend practical schools.⁹⁴ Many activists have questioned the validity of the disproportionate number of Romani children diagnosed with "mental disabilities," and decried the limited educational and economic opportunities available to these children after their exclusion from mainstream schools.⁹⁵

Fortunately, the boy was accepted at one mainstream school in a neighboring town, which he began attending in 2012. In 2014, however, his mother initiated an antidiscrimination lawsuit against the first school district, contending that it had violated her child's rights to education and equal treatment under the Charter of Fundamental Rights and Freedoms—the Czech Constitution's bill of rights.

Despite not explicitly guaranteeing equal rights on the basis of disability, the Charter of Fundamental Rights and Freedoms does affirmatively protect the universal right to free education.⁹⁶ Additionally, the constitution provides that treaties ratified by the Czech Republic, including the CRPD, "form a part of the legal order" and take precedence over conflicting statutes.⁹⁷ Citing these provisions, in 2016, the Vyškov District Court handed down a landmark judgment affirming the mother's allegations and ordering the city to apologize and pay damages.⁹⁸ In so doing, the court "confirmed that the child has the right to inclusive education in accordance with Art. 24 of the Convention on the Rights of

Persons with Disabilities and the failure to provide such education can be qualified as discrimination.”⁹⁹

This ruling helped lay the foundation for further action. A few months after the decision, new legislation went into effect strengthening the country’s commitments to inclusive education by increasing funding and urging mainstream inclusion of the students diverted to “practical schools,” with a two-year timeline for implementation.¹⁰⁰ The new law was envisioned as a strategy to both integrate students with disabilities and diminish racial/ethnic segregation in the school system.¹⁰¹

Further, the Vyškov ruling and subsequent developments illustrate how constitutional provisions, alongside complementary global treaties, work together to accelerate change. While an explicit constitutional protection of equal rights on the basis of disability would have provided a stronger legal framework, the broad equal rights clause, in conjunction with the right to education and the constitution’s recognition of international treaties’ domestic applicability, enabled the child’s lawyers to build a compelling case for his right to attend school. The new law makes this legal foundation even stronger.

Advancing Equality with “Leave No One Behind”

Finally, despite carrying less legal weight than a constitutional provision or the CRPD, the SDGs’ overarching principle of “leave no one behind” provides a useful frame for approaching disability rights. While the MDGs helped improve outcomes for many, millions of people who were most marginalized or economically vulnerable experienced no significant changes in their circumstances. With their specific commitments to people with disabilities and guiding value of “leave no one behind,” the SDGs are better positioned to have impact for all. Although the SDGs are not legally binding, countries have committed to providing periodic updates on their progress toward realizing the Goals, and international bodies will monitor progress on a global scale.

Abundant evidence shows that the integration and inclusion of people with disabilities benefit our schools, workplaces, economies, and society as a whole. Yet even if these benefits were not compelling, fundamental rights, such as the rights to nondiscrimination, education, healthcare, and dignity, are nonnegotiable, regardless of the nature or extent of disability. Advancing and protecting the rights of the most vulnerable or marginalized must therefore be core to broader efforts to realize equality.

Case law demonstrates these principles in action. Courts in countries at all income levels have found that equal rights means ensuring access to education for all, irrespective of the nature of disability. For example, in 2010, a consortium of NGOs managing schools for 1,000 children with profound intellectual disabilities in the Western Cape province of South Africa sued the government for providing inadequate subsidy amounts to cover the children’s care and

educational expenses. Additionally, the subsidies provided per child with severe intellectual disabilities were smaller than those provided for children without disabilities, and amounted to less than 20% of those provided for students with mild or moderate disabilities.¹⁰²

The government contended that these funding disparities were justified by limited resources. However, the Western Cape High Court found that the government had failed to explain “why it is reasonable and justifiable that the most vulnerable should pay the price” for the budgetary shortfall, and held that the lack of state support breached the children’s rights to equality, basic education, dignity, and protection from neglect or degradation.¹⁰³ Importantly, the decision focused on the children’s fundamental rights. At the same time, the ruling may yield immediate and long-term economic value by enabling parents and caregivers to work while their children with disabilities are at school.

This decision also aligns with international guidance. In a 2016 General Comment, the Committee on the Rights of Persons with Disabilities clarified that “provisions that limit [children’s] inclusion on the basis of their impairment or its ‘degree,’ such as by conditioning their inclusion ‘to the extent of the potential of the individual’” would violate the right to inclusive education.¹⁰⁴ Likewise, the committee made clear that upholding inclusive education requires that “recognition is given to the capacity of every person to learn.”¹⁰⁵

MOVING FORWARD

As of 2017, over one billion people—around 15% of the global population—had some form of disability.¹⁰⁶ As many as four of five people with disabilities live in low-income countries, in cities and in rural areas,¹⁰⁷ and worldwide, an increasing number of people develop disabilities throughout the life course.

In almost every society, disability is linked with disadvantage. Children with disabilities are less likely to get an education, while girls with disabilities face even greater odds. In Colombia, for example, only 56% of children with disabilities aged 6–11 attend school, compared to 92% of children without disabilities in the same age group.¹⁰⁸ Beyond denying children a fundamental right, these early inequalities contribute to barriers to work later in life.

Around the world, adults with disabilities remain far less likely to have a job, despite a well-documented desire and capacity to contribute to the workforce—and having a disability increases the risk of poverty where work opportunities and social insurance are inadequate.¹⁰⁹ People in poverty often face heightened risks of developing a disability due to insufficient access to healthcare, unsafe living conditions, and lower resources, and poverty can exacerbate existing disabilities because of unmet needs for care, habilitation, and rehabilitation.

Finally, in many countries, this discrimination is buttressed by discriminatory laws. According to a 2015 report by the U.N. Special Rapporteur for Persons with

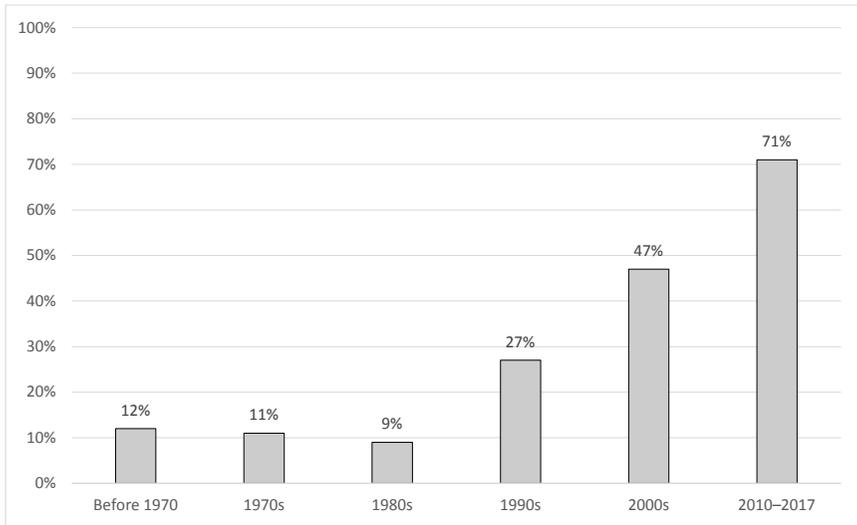


FIGURE 10. Explicit constitutional guarantee of equality or nondiscrimination for persons with disabilities by year of constitutional adoption

Disabilities: “Most legal systems in the world still contain provisions that discriminate against persons with disabilities and violate their human rights, from the denial of legal capacity or the right to vote to education laws that exclude children with disabilities from the general education system. Although efforts have been made to harmonize national legislation with the Convention on the Rights of Persons with Disabilities, much remains to be done.”¹¹⁰

Progress in Constitutions

The persistence of discrimination in laws and practice is not inevitable. The global movement for equal rights for persons with disabilities is the most recent of many equal rights movements, and its success yielded a global treaty that has achieved near-universal ratification. The movement and the CRPD are also leading to powerful changes in national constitutions. Seventy-one percent of constitutions adopted in 2010–17 explicitly guarantee equal rights or nondiscrimination to persons with disabilities, compared to only 11% of constitutions adopted before 1990 (see Figure 10). Likewise, guarantees of equal rights on the basis of disability across health, education, and work have all increased.

The Potential for Impact

These reforms have had practical impacts for both people born with disabilities and the many individuals who develop disabilities later in life. In Bolivia, a man who had suffered from polio in childhood and continued to experience partial paraplegia as an adult brought a claim to the Constitutional Court in 2000 after being fired

from his municipal job following a change in administration.¹¹¹ Citing the constitution's protection of the rights of people with disabilities, alongside an International Labour Organization convention on disabilities and employment, the Court ruled in the man's favor, ordering his reinstatement and payment of damages.¹¹² When Bolivia adopted a new constitution in 2009, the same year it ratified the CRPD,¹¹³ it strengthened its guarantees of equal rights for people with disabilities, including specific commitments to health, education, work, and integration.¹¹⁴

In Canada and Iceland, the top courts ruled in cases in 1997¹¹⁵ and 2015¹¹⁶, respectively, that hospitals should provide interpreters for the deaf. More recently, in 2017, advocates filed a similar petition with the Ugandan Constitutional Court based on the constitution's protection of equal rights for persons with disabilities and the right to health.¹¹⁷ In Hungary, the constitution's prohibition of disability discrimination and protection of the right to work, alongside the CRPD, provided the foundation in 2018 for reforming a law requiring small businesses to use online cash registers that were inaccessible to visually impaired people.¹¹⁸

From Bolivia to Uganda to Hungary and beyond, these cases show that constitutions have the potential to address discrimination, and to help reduce socially constructed barriers to full participation by people with disabilities in both the public and private sectors. Yet despite recent progress and constitutional rights' documented impact, only a minority of national constitutions explicitly prohibit disability discrimination, and a significant minority open the door to discrimination with unexamined historical language, such as provisions limiting rights based on "infirmity" or "unsound mind." What's more, given the high proportion of people globally who have a history of some kind of mental health condition, which often has no bearing on decision-making capacity, these broad limitations create the potential for abuse. Similarly, restrictions based on "infirmity" create an extremely ambiguous and irrational standard for limiting rights.

Successful Approaches

More needs to be done, from strengthening constitutions to increasing the CRPD's incorporation throughout countries' national laws and policies. DPOs' participation in constitution drafting has been one successful path to change. For example, disability rights groups and other civil society organizations played active roles in shaping Egypt's new constitution in 2014. As a result, the adopted draft included a comprehensive article on the "rights of the disabled," while separate articles explicitly outlined the rights of children with disabilities and established the "National Council for Disability Affairs."¹¹⁹ Through these reforms, Egypt joined several other countries in the Middle East and North Africa that have newly enacted constitutional rights for persons with disabilities following the Arab Spring. Similarly, DPOs were involved in the constitutional reform processes of Uganda and South Africa, both of which adopted strong protections for disability rights.¹²⁰

Yet even before achieving constitutional reforms, citizens can continue pressing for change through advocacy and litigation. In countries that have not yet ratified the CRPD, national movements are calling on their governments to take action.¹²¹ In countries that have ratified the CPRD, advocates can pressure their domestic legal systems to interpret existing laws consistently with the convention's principles.¹²² Citizens can also continue leveraging their constitutions' general equality provisions as well as broad rights to education and health in pushing for disability-specific protections. The potential of universal education and health guarantees to advance equality illustrates why social and economic rights, as well as non-discrimination, are critical for creating inclusive societies where everyone has an equal chance to participate, as this book's final chapters discuss in detail.

But enshrining equal rights on the basis of disability in constitutions has both practical and normative value. Around the world, people with disabilities and civil society groups have leveraged these protections to increase the accessibility and inclusiveness of schools, workplaces, legislatures, and public spaces. These tangible impacts flowed from the shift in norms and understanding of disability heralded by the disability rights movement, and the leadership of DPOs. Governments have the opportunity and responsibility to build on this progress by explicitly guaranteeing equality to all people with disabilities within their borders.