GENERAL DISCUSSION ON WOMEN AND GIRLS WITH DISABILITIES

UNITED NATIONS COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES
SUBSECRETARÍA
SECRETARÍA GENERAL TÉCNICA
VICESecretaría General Técnica
Área de Documentación y Publicaciones

September 2014
Depósito Legal: M-28893-2014
N.I.P.O. 501-14-015-6

Cover design: www.nolsom.com
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Acknowledgements

The United Nations Committee on the Rights of Persons with Disabilities expresses its most sincere appreciation to the Spanish National Organisation of the Blind (ONCE) for compiling and translating to Spanish and English this publication on the General Discussion on Women and Girls with Disabilities.

The Committee is also grateful to the Ministry of Foreign Affairs and Cooperation of Spain for editing and publishing this book, including in accessible electronic formats.
Preface

María Soledad Cisternas Reyes, Chairwoman, CRPD Committee.

Gender Profiles.

The full implementation of international standards in the 21st century requires recognition of the diversity of gender profiles that co-exist in society, as well as gaining a deeper understanding of these profiles. This is where the ‘finer points in human rights’ lie within the gender perspective.

A gender profile is the sum of the marginalisation faced by women and girls, and the specific situations they experience for a variety of reasons, such as having a disability, belonging to an indigenous community, being migrants or older women, or as a result of a combination of these factors, among others.

Gender equality in the deepest sense therefore, is not met by merely considering a standard model of woman versus a standard model of man. Gender equality is like a ladder, where a new step is added for each cause of discrimination being faced by women and girls due to their condition and personal circumstances. These additional steps increase the gap between the bottom and the top of the ladder, which represents the ultimate goal of gender equality: the achievement of the conditions of the standard model of man.

With regard to the enforceability of rights on an individual bases, there is a need for women to gain a deeper awareness of their legal status, and to take the lead in exercising and demanding their rights. Public administrations are responsible for developing the philosophical and legal frameworks that imply the enjoyment of human rights and fundamental freedoms by all people, while also taking the gender perspective into account within their different profiles. This evolutionary process should lead to the adoption of specific legislative measures, as well as public or other kinds of policies.

Nevertheless, a profound change must take place within social systems, based on the firm belief that gender equality is essential to achieve a healthy co-existence in the community. Thus, strengthening civil society and guaranteeing its full and
effective participation will be positive catalysts in this process, particularly when securing the engagement of marginalised women and girls.

A further catalyst for this change will be the carrying out of actions by the global women’s movement, in order to make these issues on gender profiles visible. The way the latter are perceived and incorporated into different legislations, public policies and other measures will be instrumental in bringing about the full enjoyment of human rights and fundamental freedoms. By incorporating the gender perspective into its several profiles, this enjoyment will contribute to the strengthening of democracy’s core values, and to the consolidation of the indicators that will verify it is being exercised.

**Human Rights of Women and Girls with Disabilities: current state of play.**

From a quantitative point of view, it has been pointed out that women with disabilities outnumber men with disabilities. Women with disabilities are victims of exclusion in a variety of areas, due to social barriers linked to gender and disability, and which give way to “pity”, hostility and isolation. As a result, women and girls with disabilities may experience situations of double and/or multiple discrimination, which are often also associated with conditions of poverty.

While the rights of people with disabilities in general, and those of women and girls with disabilities in particular are firmly entrenched within the global human rights framework, it is also true that these rights have not yet been fully enjoyed by its beneficiaries. As a result, we can say that thanks to the Convention on the Rights of Persons with Disabilities (CRPD), we have entered a cultural era which categorically highlights the “relevance of diversity”, while giving way also to positive developments in the socio-cultural, legal and political arenas.

The universal, indivisible, interdependent and interrelated nature of human rights is manifested through the achievements of the various international human rights treaties. We are then able to apply and invoke each and every one of those

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achievements through the support provided by the interpretive clauses of the various Conventions.

So, dealing as we are with women and girls with disabilities, there is an evident need to interpret and implement human rights treaties such as the Convention on the Rights of Persons with Disabilities, and the Convention on the Elimination of All Forms of Discrimination against Women in a co-ordinated and systematic fashion, in order to apply the rules that are most favourable to right-holders.

According to this, CEDAW states that nothing in the Convention shall affect any provisions that are conducive to the achievement of equality between men and women, and which may be contained in the legislation of a State Party or in any other international Convention, treaty or agreement in force within that state.

In line with this, the CRPD establishes that nothing in the Convention shall affect any provisions which may facilitate the greater exercise of the rights of people with disabilities, and which may be contained in the legislation of a State Party or international law in force for that state. There shall be no restriction upon or derogation of any of the human rights and fundamental freedoms recognised within or existing in any state Party by the Convention, in compliance with the Law, the Conventions, the regulations or customs under the pretext that the Convention does not recognise such rights or freedoms, or that it recognises them to a lesser extent.

Some of the key achievements were the inclusion within the CRPD principles of “equality between men and women” and of a specific Article addressing women with disabilities. In addition, it is also very significant the cross-cutting approach applied to other provisions of the Convention, such as Awareness-Raising; Freedom from Exploitation, Violence and Abuse; Respect for Home and the Family; Health; Adequate Standard of Living and Social Protection, as well as the provisions governing the Committee on the Rights of Persons with Disabilities.

It is important to highlight that a combined reading of the CRPD and CEDAW, along with the application of both treaties’ interpretative rules, will lead us to a proper implementation of those provisions which, while not addressing the issue of gender, should be understood from this perspective in key areas such as the exercise of legal capacity, and the participation in political and public lives.
United Nations Committee on the Rights of Persons with Disabilities.

Within the report review process, the CRPD Committee has constantly issued recommendations to States Parties regarding women and girls with disabilities. Therefore, the Committee’s concluding observations have included references to this issue across specific areas, such as autonomy; data and statistics; discrimination (multiple/multidimensional); family; forced sterilisation; participation; positive action measures; violence against women/gender violence; stereotypes; prejudices and harmful practises, and the application of a cross-cutting approach to gender and equality between men and women.

For these reasons, the Committee decided to hold a Half Day of General Discussion on Women and Girls with Disabilities in April 2013, with a particular focus on the Intersectionality of Gender and Disability, Violence against Women and Girls with Disabilities, and the Sexual and Reproductive Rights of Women and Girls with Disabilities. Moreover, presentations were given from the perspective of indigenous women with disabilities, and the discussions benefited from the invaluable input provided by civil society organizations.

Many important decisions were taken by the Committee based on the discussions, including the decision to elaborate this publication, and to set up a working group to prepare a General Comment on these issues. We value the dedicated work of the expert, Ana Peláez Narváez, who was the focal point for the Half Day of General Discussion, as well as in the coordination of the working group, which is performing the arduous task of carrying out its legal interpretation through its General Comment.2

Without a doubt, all this work being carried out by the CRPD Committee marks a historic watershed in making the human rights and fundamental freedoms of women and girls with disabilities more visible, while at the same time contributing significantly to the improvement of the social, legal and political conditions that will help to develop, advance and empower this population sector.

María Soledad Cisternas Reyes

Chair

United Nations Committee on the Rights of Persons with Disabilities

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2 Article 6 Working Group: Ana Peláez, Silvia Quan, Diane Mulligan, Theresia Degener, Safak Pavey and María Soledad Cisternas.
Why hold a General Discussion on Women and Girls with Disabilities?
Chapter 1

Ana Peláez Narváez, member, CRPD Committee: why hold a General Discussion on Women and Girls with Disabilities?

Following the adoption of the Convention on the Rights of Persons with Disabilities by the United Nations General Assembly on December 13th 2006, and its subsequent entry into force on May 3rd 2008, the committee to monitor implementation of the convention by States Parties was set up in 2009 in accordance with Article 34. Among other functions, it is the committee's duty to consider reports submitted regularly by States Parties on the implementation of the rights enshrined in the convention, formulate recommendations for the State Party under consideration, and look into individual complaints on alleged violations of the rights set out in the convention.

Since beginning its work and having considered the first initial reports from States Parties and the limited information on the situation of women and girls with disabilities, the CRPD Committee expressed its concern regarding the multiple forms of discrimination faced by women and girls with disabilities, preventing them from exercising effective participation in all areas of life on an equal footing with others.

Furthermore, the Committee also voiced its concern about the violence and maltreatment to which women and girls were subject and the restrictions placed on their sexual and reproductive rights and rights related to motherhood. Finally, the Committee took note of the fact that on the whole gender was not included as a cross-cutting issue in national disability plans and gender policies did not generally incorporate the disability perspective.

As the Committee performs its functions in line with initiatives undertaken by other United Nations human rights mechanisms, it is worth highlighting that in Resolution 17/11, the Human Rights Council called on the Office of the High Commissioner for Human Rights to draw up a study on the causes and manifestations of violence against women and girls with disabilities. The study was submitted to the Council at its 20th session in March 2012. In addition, Human Rights Council Resolution 14/12 calls on States Parties to make available to women and girls with disabilities services enabling them to avoid and escape situations of violence and prevent its recurrence.

As a result of all of the above, at its 7th session in April 2012 the Committee decided
to devote a half day of general discussion in 2013 to addressing the rights of women and girls with disabilities in order to gain a deeper understanding of the invisible and hidden reality they experience. Through a declaration adopted by the Committee at the following period of sessions, civil society – and in particular organisations of persons with disabilities – was invited to submit written contributions to enrich discussions. The invitation was welcomed and taken up by 35 NGOs, among them national human rights institutions, organisations of women with disabilities and organisations of persons with disabilities.

Today, during the 9th session of the CRPD Committee, we are finally holding this half day of general discussion on women and girls with disabilities. We shall address key issues such as the intersection of gender and disability, violence against women and girls with disabilities, and their sexual and reproductive rights. We shall enjoy contributions from some of the states Parties present here, from United Nations specialised agencies such as UN Women, UNICEF and the WHO, from the Office of the High Commissioner for Human Rights, as well as from members of the CRPD Committee and members of other treaty bodies who have joined us today. In this respect, it is important to mention that all the submissions for this half day of general discussion on women and girls with disabilities shall be compiled by the Committee in a publication which will be made available on its web site.

We are convinced all these contributions amply justify the need for the UNCRPD Committee to publish a general comment regarding Article 6 on women and girls with disabilities to act as a guide for more effective implementation by States Parties and with a view to promoting, protecting and ensuring the full and equal enjoyment of all human rights and fundamental freedoms by women and girls with disabilities while, at the same time, enhancing respect for their inherent dignity.
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Intersectionality of Gender and Disability
I welcome you all to the session on the intersectionality of gender and disability. Let me begin my introduction by asking: what is intersectionality? If you look at the vast amount of literature on this topic, you might wonder if it is perhaps another term for discrimination, a theory, an analytical concept or a methodology.

The term was first coined in the 1980s by Law Professor Kimberley Crenshaw from the U.S, who used it in her critique on the analysis of racism and sexism when they are only based on white women’s and black men’s perspectives. Intersectionality thus emerged as a component of Critical Race Theory, which was being developed by feminist scholars.

The concept of intersectionality means that several forms of discrimination, which are based on a number of identity layers, may intersect and produce new forms of discrimination that are unique, and which cannot be correctly understood if they are considered as double or triple discrimination. Subsequently, intersectionality is a term that relates to multiple discrimination.

It has helped to identify human rights violations that were not detected in the past, as discrimination was examined from a single perspective, such as ethnicity; skin colour; gender; disability; sexual orientation or age.

Most non-discrimination laws and policies have this one-dimensional approach. In fact, many human rights treaties, such as the Convention on the Elimination of all Forms of Racial Discrimination, and the Convention on the Elimination of All Forms of Discrimination against Women, have this one dimensional approach. However, we are not just men, women or intersexual individuals. We all come from certain ethnic, cultural and religious backgrounds. We might or might not have an impairment, and we all have other identity layers.

Research has shown that most cases of discrimination affect more than one identity layer, which signifies that the majority of human rights violations in this field is intersectional. However, when did intersectionality enter the international human rights debate? Several UN human rights bodies working on women issues, such as the Division for the Advancement of Women and the CEDAW Committee, were the first to address this issue in expert workshops and General Comments.
A real breakthrough came with the Durban World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001. As former UN High Commissioner for Human Rights, Mary Robinson said, “Durban has put the gender aspects of racism on the agenda”. The Durban Declaration and its action programme recognise that victims often suffer from multiple or aggravated forms of discrimination.

Since then, all treaty bodies dealing with discrimination have adopted General Comments that also take into account intersectional discrimination. Nevertheless, the majority of these comments refer to the intersection of gender and ethnic backgrounds only, whereas other identity layers such as disability are ignored. In this regard, it is time to look at the intersection of gender and disability in human rights violations.

The CRPD has been praised for its innovative components with regard to Human Rights Law. In many ways, the CRPD is the HR treaty which gives way to the further development of international Human Rights Law. This is also true in relation to intersectionality. The CRPD is the first and only HR treaty with an explicit reference to multiple discrimination. Art. 6 reads: “States Parties recognise that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.”

Similarly, the gender and age dimensions of discrimination are also recognised in many other articles of the CRPD. Thus, it can be expected that the CRPD will help to further develop Human Rights Law and human rights policy regarding intersectional discrimination. The many submissions we received for this Half Day of General Discussion on Women and Girls with Disabilities will help us carry out this mandate. Having said all this, I now welcome the speakers for this session, who have 5 minutes for their respective interventions.
Chapter 3
UN Women: Dagmar Schumacher, Director, UN Women Brussels Office.


Ms. Theresia Degener, Chairperson and Member of the CRPD Committee. Ladies and gentlemen, colleagues... Thank you very much for this kind invitation to join the session on “Intersectionality of Gender and Disability”. On behalf of UN Women, I would also like to commend OHCHR, and particularly the Committee on the Rights of Persons with Disabilities, for convening this important Half Day discussion on “Women and Girls with Disabilities”.

A Few General Remarks:

- While all human rights and development rules and standards apply to women and girls with disabilities, women and girls with disabilities have not enjoyed those rights on an equal bases in comparison to others.
- For too long, women with disabilities have been invisible both to women’s rights and disability rights advocates, a fact that has increased their vulnerability.
- Women with disabilities experience multiple discrimination based both on their gender and their disability, often facing as a result additional disadvantages in comparison to men with disabilities.  
- A cross-cutting disability approach to gender-related work is not enough. It is also necessary to mainstream a gender perspective into disability work. All disability work should incorporate a gender perspective, and special attention

3 Background Paper for Informal Session on Women with Disabilities, Note by the Secretariat, Fifth Session of the Conference of States Parties to the Convention on the Rights of Persons with Disabilities (New York, 12-14 September 2012), cites: In his 2006 In-Depth Study on All Forms of Violence against Women, the Secretary-General observed that surveys conducted in Europe, North America and Australia have shown that over half of women with disabilities have experienced physical abuse, compared to one third of non-disabled women. A/61/122/Add.1, para. 152, Citing to Human Rights Watch, “Women and girls with disabilities”, available at: http://hrw.org/women/disabled.html.
should be given in order to include women and girls with disabilities within the implementation, monitoring and evaluation of the Convention on the Rights of Persons with Disabilities. There are several examples of recent initiatives that include gender equality perspectives in disability work, such as the General Law for People with Disabilities in Bolivia, which incorporates gender equality

Now, I would like to refer to two recent events which constitute important steps towards the goal of addressing the intersectionality of gender and disability:

First:

- As you know, the 57th Session of the Commission on the Status of Women concluded only last month, and conclusions were agreed on the priority theme of ending violence against women. The document highlights the need to pay particular attention to older women; women living with HIV; women who are human rights advocates; women with disabilities; indigenous women, and other groups with a high risk of experiencing violence. The emphasis on women with disabilities is particularly important, as we are all too familiar with the alarming statistics on violence against women and girls around the world. However, it is even more disturbing to consider the fact that women and girls with disabilities are three times as likely to experience physical and sexual abuse. They also have less access to social services and support systems (this will be addressed in much greater depth in session 2, just after lunch).

- The conclusions agreed upon at the CSW make a number of references to the actions to be taken. Let me just quote one here, “Take all appropriate legislative, administrative, social, educational and other measures to protect and promote the rights of women and girls with disabilities, as they are more vulnerable to all forms of exploitation, violence and abuse, including in the workplace, educational institutions, the home and other settings.”

Second:

UNICEF and UN Women were hosting the Global Thematic Consultation on Addressing Inequalities in the context of the ongoing post2015 framework discussions. As part of that consultation, a global e-discussion on how to address the inequalities being faced by people with disabilities in the post2015 development agenda was organised, in collaboration with the International Disability Alliance. Nearly 1,700 people joined the forum from all over the world. The discussion synopsis is now available from the online platform ‘The World We Want 2015’.
In this regard, I would like to share with you some of its main recommendations:

- The new framework must be based on a human rights approach, in compliance with the Convention on the Rights of Persons with disabilities.
- Disability-related disaggregated statistics are required to establish targets and indicators regarding people with disabilities in all areas, and the inclusion of people with disabilities in the presentation and follow up of reports.

Next Steps… Some Suggestions:

- We must continue to demonstrate that everyone is of value; that all people count, not only in terms of education, but in terms of economic empowerment too.
- In this area, information is power. So, UN Women encourages national policymakers to collect data that is disaggregated on the basis of gender and disability across all sectors.
- This information about the number and location of women and girls with disabilities will encourage governments to consult with these individuals when formulating laws and policies, and when allocating disability-specific budgets and resources.
- Women with disabilities need access to justice for rights violations, and to health care that is sensitive to both gender and disability. For example, AusAID, which works with Cambodian partners, recently studied the prevalence and experience of violence against women with disabilities, and the programmes and policies in place to address it. Sierra Leone’s 2012 Sexual Offences Bill covers sexual offences against women with mental disabilities.
- The Committee on the Elimination of Discrimination against Women (CEDAW) and the Committee on the Rights of Persons with Disabilities (CRPD) have addressed the concerns of women with disabilities in their recommendations. Key concerns are reproductive rights and the right to sexual reproductive health, which are rights that belong to all women, and which are stipulated in the Convention on the Rights of Persons with Disabilities. UN Women encourages both Committees to continue exploring the intersections of gender and disability, and to engage governments to be proactive concerning the laws, policies and practices to protect the rights of people with disabilities.
- As for UN Women, we pledge to work together with other UN agencies to become a more active participant within the Inter-Agency Support Group in mainstreaming issues and solutions related to gender and disability within
the UN system. This implies an improvement when highlighting the intersection of gender and disability in policies, within countries and on the ground.

- Nevertheless, we must be mindful that all decisions on policies and legislation are to be made with the meaningful participation of women with disabilities themselves.
- Last but not least, let me highlight again the importance of mainstreaming a gender perspective into disability work.

Thank you very much for your attention. I now look forward to listening to the other panellists and to participating later in questions & answers.
Distinguished delegates...my fellow panellists...Thank you for the opportunity to speak here today on an issue of critical importance to UNICEF.

As one of the most marginalised and excluded groups around the world, children with disabilities are a critical part of UNICEF’s mission. Estimates suggest that there are between 90 to 150 million children with disabilities in the world, who face discrimination in almost every aspect of their lives. At UNICEF we believe that such discrimination arises not from the intrinsic nature of their disability, but rather from entrenched social exclusion resulting from rejection of difference, poverty, social isolation, prejudice, ignorance and lack of services and support.

The effects of such exclusion are profound. This exclusion is even more acute for girls. Not only are they marginalised by their disability, but their status as girls compounds the discrimination they encounter, commonly leading to even greater violation of their rights, including disproportionate vulnerability to violence and abuse, as well as fewer opportunities for participation, education, play, or health care.

Discrimination on the basis of both disability and gender makes girls with disabilities less likely to obtain health care; to get an education; to receive vocational training; to find employment or to benefit from full inclusion in their families’ social, political or economic lives.

Girls and young women with disabilities are more likely to be institutionalised. They are at an increased risk of forced marriage, forced sterilisations and forced...
abortions, and are more likely to experience physical and sexual violence both within and beyond the household.

Although girls with disabilities are less likely to marry, a growing body of data shows that the majority of disabled girls will have children of their own. Despite this, little is done to prepare them for relationships, provide them with family planning information so they can make their own decisions about when and with whom they have a family, and they often also receive little information on how to take care of their own children.

The Convention on the Rights of Persons with Disabilities recognises that the barriers faced by children, including girls with disabilities, are often more disabling than any impairment itself. Girls with disabilities need to be included. They need to have a voice that can inform public policy, challenge rights violations, and hold states accountable. This is not only their fundamental human right, but a means for realising other rights.

Protecting and promoting the rights of children with disabilities is not a new theme for UNICEF. It has been an integral part of our work since the adoption of the Convention on the Rights of the Child, which constitutes the first international treaty to explicitly recognise the rights of children with disabilities. However, thanks to the Convention on the Rights of Persons with Disabilities, our disability work has gained momentum.

We are gratified to have played a role in ensuring that children would be prioritised within this widely ratified Convention. The momentum has continued with UNICEF’s intensified focus on equity, which seeks to identify and address the root causes of inequality so that all children, – particularly those who face the worst deprivations in society – can realize their rights. The equity-based approach is one of the foundations of our disability agenda.

Together with the CRC and the CEDAW, the CRPD guides UNICEF’s work in nearly 140 countries. In keeping with the human rights based approach, our work on child’s rights goes hand in hand with gender and disability rights.
A Few Words About the Progress Made in 2012.

At the country level, 85 UNICEF Country Offices reported having worked with counterparts and partners on disability in 2012. The nature of our work has fundamentally transformed away from a traditional project-based approach to a systemic approach, focussing on policy, advocacy, supporting legal reform, capacity development and wide ranging partnerships reaching out to all key stakeholders in society. In this manner, our approach supports the achievement of results for children and contributes to the realization of all rights for all children.

At the international level, UNICEF launched the Global Partnership on Children with Disabilities. This is a network of more than 150 organizations which aims to advance the rights of children with disabilities at the global, regional and country level. It includes NGOs; Disabled People’s Organizations; Governments; UN agencies, Academia and the private sector.

Other recent initiatives included, for instance, the first All-Staff Orientation on Disability, which aimed at building staff’s capacity to mainstream disability and produce a Position Paper on Inclusive Education; Disability data collection disaggregated by gender; Studies on HIV, adolescents and young women with disabilities in the context of mother-to-child transmission, and a Discussion paper on Synergies among the CRC, the CEDAW and the CRPD. A factsheet on children with disabilities, including gender, as well as guidance on participation will soon be released. All these and other resources can be found at www.unicef.org/disabilities.

UNICEF is currently chairing the UN Partnership for promoting the rights of people with disabilities, which has been established to generate and manage resources towards mainstreaming the rights of people with disabilities. This partnership supports coalition-building and capacity-development at the country level, in order to facilitate the full implementation of the Convention on the Rights of Persons with Disabilities. And, as a reflection of UNICEF’s commitment, this year the focus of our flagship publication, State of the World’s Children, is on children with disabilities.

Gender, as a normative principle, continues to remain a fundamental component within all these actions I have outlined. We are heartened to witness the timely ratification of the CRPD by many countries. UNICEF remains actively engaged in
promoting its ratification, but we recognise that this is only the first step towards realizing the rights of children with disabilities.

Translating the tenets of the Convention into reality will take time, commitment and resources. Moreover, it will require close collaboration between different stakeholders and sectors – including governments, civil society, private sector, UN agencies and, most importantly, the disability community.

At UNICEF, we believe that realizing the rights of children with disabilities is both an investment in the future and a requirement for development. We remain committed to building partnerships; forging new models of cooperation, and working with governments, civil society, the private sector and, most importantly, Disabled People’s Organizations to ensure that the road to realizing the CRPD is inclusive of children, including girls with disabilities. We look forward to continuing to work with all of you on improving the lives of children all over the world.

Thank you.
Chapter 5

International Disability Alliance: Victoria Lee, International Disability Alliance.

Intersections of Discrimination.

With global and regional members across the world, the International Disability Alliance (IDA) is acutely aware of the multiple layers of identity of women and girls with disabilities, which are composed of factors such as age; gender; type of disability; ethnicity; indigenous or social origin; religion, sexual orientation and language, and most certainly poverty, given that, in developing countries, women constitute up to three quarters of all people with disabilities.

Women and girls with disabilities are more often subject to multiple discrimination or differential treatment on account of their gender and their disability, which is frequently compounded by discrimination on the basis of other parts of their identity. Whilst discrimination on more than one ground may operate separately in different circumstances, intersectional discrimination refers to situations where it is one’s multiple layers of identity which inextricably interact, resulting in unique disadvantages.

For example, when a blind woman is denied access to information on the Ministry of Health’s website due to outright inaccessibility, this results in discrimination on the bases of her disability only and not her gender, as the site would be equally inaccessible for blind men. In contrast to this, when a blind woman, who is being denied access to family planning services, is subjected to differential treatment based on both her gender and her disability, – and if she is actually an adolescent girl living in a remote indigenous community, clearly then the intersections of multiple aspects of her identity operate to exacerbate the disadvantages she faces when enjoying and exercising her rights.

All around the world, women and girls with disabilities are more likely to be subjected to violence. Girls with disabilities face intersectional discrimination on account of their age, gender and disability when being subjected to sexual assault. The perpetrator may target the disabled girl for any of the following, and most likely, due to a combination of them; because she is perceived to be innocent, weak, passive,
unable or unlikely to speak out, or unlikely to be believed by others to be the object of a sexual assault.

These acts give way to cases of multiple violations of rights, including non-discrimination; freedom from torture and ill-treatment; protection from violence; abuse and exploitation; protection of personal integrity, right to health, and access to justice.

The intersections of multiple discrimination have been recognised as a significant barrier to the enjoyment and exercise of rights by UN treaty bodies. In addition to the concern shown by your own Committee, intersectional and multiple discrimination, including discrimination on the basis of gender and disability, has been the subject of Concluding Observations and General Recommendations and Comments by the CEDAW and the CRC Committees.

I am very pleased to share this panel with Mme Schulz, who has been a great support for IDA and for national DPOs in ensuring that the rights of disabled women and girls are systematically kept on the agenda during the CEDAW Committee’s reviews, most recently at their last session regarding Austria, Cyprus, Hungary and FYROM.

While it is an encouraging sign that treaty bodies are calling on States to take notice of and address intersectional and multiple discrimination, there is a need for further specific guidance. This is due to the fact that a disconnection between the law and the lived experiences of women and girls with disabilities is still present, leading to their marginalisation in society.

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4 CRPD Committee Concluding Observations on Argentina, CRPD/C/ARG/CO/1, 2012, para 50; Hungary, CRPD/C/HUN/CO/1, 2012, para 20; Peru, CRPD/C/PER/CO/1, 2012, paras 12, 13, 14;  
Most equality and anti-discrimination laws do not recognise multiple and intersectional discrimination, categorising identity and requiring each protected characteristic to be dealt with in isolation. Such an approach is divorced from human experience. It also necessarily falls short of reflecting peoples’ sense of self, thus failing to protect their human dignity.

In some jurisdictions, victims of discrimination can only make a complaint on one ground. Even where a remedy can be sought and obtained, this fails to recognise the heightened disadvantage experienced by victims and the corresponding harm caused, providing neither adequate redress nor restoring one's individual dignity. However, when intersectional discrimination is recognised in the law and infuses the determination of liability, it is more likely that it will also develop effective remedies in order to provide or, attempt to provide, restoration from the full scope of injury and disadvantage caused by this form of discrimination.

The recognition of intersectional and multiple discrimination has significant implications for policymakers. Clearly, the role of data collection and consultation is critical to ensure that all components of one's identity are recognised and captured, particularly concerning those subgroups which remain largely invisible. Only then can laws and policies be better informed and better formulated to meet one's specific needs, and to uphold one's rights in the context of one's diverse lived experiences.

To conclude, IDA very much welcomes this thematic discussion, and it encourages the Committee to adopt a General Comment which could propose badly needed guidance for States and other stakeholders on how to ensure that policies and programmes respect, promote and fulfil the rights of disabled women and girls.

We would also urge the Committee to consult and exchange views on this theme not only with DPOs and civil society, but also with other UN treaty bodies, such as the CESC Committee, which is currently working on a GC on the right to sexual and reproductive health. Other consultations could include the CEDAW & the CRC Committees, all of which address the rights of women and/or girls with disabilities, as they relate to non-discrimination, violence and sexual and reproductive rights, among others.

There is an evident need for greater consultation and exchange with them, given the intersecting mandates, and to ensure the mainstreaming and reinforcement of CRPD standards, as well as to uphold the coherence of messages being issued to States for increasing compliance. Perhaps a joint General Comment could even be
envisioned with the CEDAW Committee and others, following the model of the first ever joint GC currently being prepared between the CEDAW & CRC Committees on harmful practices.

Finally, I would just like to remind you of the lunchtime side event co-hosted by IDA and DRAF on indigenous women and girls with disabilities, which will further explore the theme of this session.

For further information please contact: vlee@ida-secretariat.org, www.internationaldisabilityalliance.org.
Chapter 6
CEDAW Committee: Patricia Schulz, member, CEDAW Committee.

Intersectionality of Gender and Disability.

A. Introduction.

The CEDAW Convention mentions sex, men and women. It does not mention intersectionality, gender or disability and yet, the Committee's work has to do constantly with the latter three. The Convention deals with gender implicitly, such as in its Article 5 on stereotypes and traditional roles for men and women. Disability is implicitly included in all articles, since the Convention aims at protecting all women against all forms of discrimination, whether specifically named in the Convention or not.

The Convention is not limited to comparing the situation of women with that of men, but discrimination must also be fought when certain (groups of) women are discriminated against in comparison with other (groups of) women. The Convention mentions certain groups of women who may face a higher risk of being discriminated against, such as rural or pregnant women.

The Committee has tackled the situation of many other groups of women belonging to ethnic, racial, religious or sexual minorities, as well as migrant women, older women, girls, women with disabilities, poor women, etc. It is keenly aware of the interaction of different situations of discrimination based on various grounds, and of their particularly negative dynamics. Therefore, it uses the concept of intersectionality in its analyses.

B. General Recommendations.

In 1991, the Committee adopted General Recommendation 18 (=General Comment) on women with disabilities. It regrets the lack of information provided by State
parties in their reports, and it expresses its concern about the “double discrimination” linked to their special living conditions. Thus:

It recommends that States Parties provide information on disabled women in their periodic reports, and on measures taken to deal with their particular situation, including special measures to ensure that they have equal access to education and employment, health services and social security, and to ensure that they can participate in all areas of social and cultural life.

Although the Convention does not specifically deal with domestic violence against women, the Committee elaborated a pioneering General Recommendation (GR 19) on violence against women in 1992, with detailed guidance on what States should do. The text applies also to girls and women with disabilities, referring to contexts such as family life, marriage, and sexual and reproductive health and rights.

In its General Recommendation 24 on Women and health of 1999, the Committee addressed women with disabilities in 3 paragraphs. Paragraph 25 states:

Women with disabilities, of all ages, often have difficulty with physical access to health services. Women with mental disabilities are particularly vulnerable, while there is limited understanding, in general, of the broad range of risks to mental health to which women are disproportionately susceptible as a result of gender discrimination, violence, poverty, armed conflict, dislocation and other forms of social deprivation. States Parties should take appropriate measures to ensure that health services are sensitive to the needs of women with disabilities and are respectful of their human rights and dignity.

The Committee has recognised many groups of women facing discrimination that is linked to other grounds, in combination with sex, and in its General Recommendation 28 of 2010, it has requested that, “State parties must legally recognise and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned.”

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6 The terminology has evolved and the Committee would now use ‘intersectional’ instead of ‘double’ since it has deepened its analysis of discrimination deriving from various grounds. The same goes for the terms disabled women, now replaced by women with disabilities.
C. Concluding Observations, Recommendations and Women with Disabilities.

On the basis of the Convention and its interpretation, the Committee has proceeded in its Concluding Observations and Recommendations to State parties to address the issue of intersectional discrimination in a variety of situations, including that of women with disabilities.

Very often, women with disabilities are included in recommendations dealing with the situation of vulnerable groups, such as that of older women; indigenous women, women belonging to ethnic, religious or sexual minorities and so on. Women with disabilities are named within a list of vulnerable categories. The Committee is aware of the problems that may arise, especially that of the inclusiveness or lack of inclusiveness of such lists.

D. Examples of Concluding Observations and Recommendations Addressed to State Parties.

Recommendations addressed to State parties after the dialog with their delegations are sometimes detailed, addressing specific issue such as education, health or employment. Sometimes, they are sweeping (Finland), addressing a whole tangle of issues in a few short sentences.

For instance, the Committee recommended to Finland in 2008:

> to intensify its efforts to eliminate discrimination against women with disabilities, to combat violence against them and to recognise them as a particular group with particular needs. The Committee calls upon the State Party to take effective measures to integrate them into the Finnish labour market and to conduct regular and comprehensive studies on discrimination against them, collect statistics on their situation in employment, education and health and on all forms of violence that they may experience and submit such information in its next periodic report.

At least 6 articles are concerned here. The Committee addresses structural issues, such as the mechanisms fighting against discrimination, or the need for data. In 2011, it recommended South Africa (based on Art. 3) that:

> the State Party expeditiously strengthen its national gender machinery, in particular the ministry for women, children and people
with disabilities, in order to ensure a strong institutional mechanism for the promotion of gender equality”. It also asked Djibouti to overcome “the lack of disaggregated data on the situation of women who typically face multiple forms of discrimination, such as older women, orphaned and vulnerable girls, women with disabilities and refugee and migrant women.

The Committee very often recommends to State parties to take temporary special measures. For instance in 2011, it recommended Costa Rica to:

adopt, wherever necessary, temporary special measures, in accordance with Article 4, paragraph 1, of the Convention and the Committee’s general recommendation no. 25 (2004), in order to accelerate women’s full and equal participation in public and political life, in particular with respect to disadvantaged groups of women, such as women with disabilities, indigenous women and women of African descent.

Stereotypes and traditional roles for men and women, addressed in Article 5, are one of the main obstacles on the way to formal and substantive gender equality. The Committee recognises that they are compounded for women with disabilities. In 2010, it asked Uganda to “pay special attention to the precarious situation of older women and women with disabilities and to take all necessary measures to combat stigma and discrimination against them, both by private actors and in government programmes.”

Violence against women is a constant preoccupation, and it is addressed by the Committee at multiple levels, such as action plans and legislation, prosecution and punishment. For instance, the Committee recommended New Zealand in 2007 to:

consistently implement and enforce the Programme of Action on Violence within Families, and to revise its Domestic Violence Act of 1995 in order to protect all women victims of violence, including Maori, Pacific, Asian, immigrant, migrant and refugee women, and women with disabilities. It calls upon the State Party to ensure that all violence against women is effectively prosecuted and adequately punished in line with the Committee’s general recommendation 19. The Committee recommends that training be enhanced for the judiciary, public officials, law enforcement personnel and health-service providers in order to ensure that they can adequately respond to it.

The Committee recommended Germany to:
take the necessary measures to ensure greater cooperation between the federal government, the länder and the municipalities to monitor the provision of social services with a view to ensuring the availability of a sufficient number of shelters equipped to accommodate women with special needs, such as women with disabilities, throughout the territory of the State Party and making sure that such shelters are adequately financed and open for all, regardless of the victim's financial resources.

In the field of education (Art. 10), the Committee criticised the situation of Fiji in 2010, marked by “the gender segregation reflected in students’ choice of the field of education, and regrets the insufficient training programmes and educational opportunities for women and girls with disabilities.”

Employment (Art. 11) constitutes a big concern for the Committee, as expressed in the Concluding Observations for France in 2008, where it asked the State Party to “undertake special measures to assist women with disabilities to enter into the labour market.”

Health issues are extremely important, and the Committee considers them systematically including sexual and reproductive health and rights. For instance, the Committee recommended Belarus in 2011:

   to ensure that all women, including women with disabilities, women living with HIV/aids and migrant and refugee women, as well as girls have free and adequate access to contraceptives and sexual and reproductive health services, including in rural areas, and to information in accessible formats.

The Committee thus requests information adapted to the situation, especially for women with mental disabilities. The need for full and informed consent is recognised, regarding sterilization in particular, such as in the case of Australia in 2010. The Committee requested the State Party “To enact national legislation prohibiting, except where there is a serious threat to life or health, the use of sterilization of girls, regardless of whether they have a disability, and of adult women with disabilities in the absence of their fully informed and free consent.”

E. Summary.

The Committee refers regularly to the CRPD to state the necessity to ratify it or implement it. In summary, the Committee makes very clear in its Concluding
Observations and Recommendations its concern that women with disabilities belong to groups of women especially exposed to various forms of discrimination, and that the State parties have a special responsibility. One could conclude that the greater the risk of intersectional discrimination, the greater the responsibility of the State parties and of the Human Rights Committees dealing with these issues to fight discrimination.
Half Day of General Discussion on Women and Girls with Disabilities.
Geneva, Switzerland.
17th of April, 2013.

Thank you madam Chairwoman.

I would like to begin by congratulating you on your appointment, and by offering the support of my delegation in order to work together with the Committee on the Rights of Persons with Disabilities, which you chair. I would also like to express my gratitude to the Committee for inviting me to take part in this Half Day of general discussion.

In the context of States Parties, implementing the Convention on the Rights of Persons with Disabilities in an inclusive manner that does not discriminate on the bases of gender, should be part of a comprehensive policy to promote human rights. This Convention establishes obligations for States to remove the barriers that prevent people with disabilities from equal enjoyment of their rights. It does not, however, set out new rights.

Protecting people with disabilities is part of the current international legal framework, and it is necessary to strike a balance. On the one hand, we need to avoid a proliferation of legislation that divides the rights of vulnerable groups while, on the other, we need to ensure that people who are subject to multiple forms of discrimination, such as women with disabilities, are protected by a legal framework.

In relation to Mexico, the adoption of measures that address women with disabilities is both part of an overall goal - to fight discrimination on whatever ground - and a specific need - to meet the particular needs of women with disabilities. For this reason, we promote the mainstreaming of gender into public policies, in order to avoid a segmented approach.

To secure inclusion and development for 10 million Mexicans with disabilities poses a challenge. We have identified the need to harmonise our national and state legislation in line with the Convention, and to enact a general Law for the Inclusion of Persons with Disabilities. This will mean setting up mechanisms for supervision, transparency, sanctions and regulation.
In the face of these challenges, Mexico has built up a wide-ranging legal framework that emphasises the principles of equality and non-discrimination. The following are among the key measures adopted:

- Law for the Inclusion of Persons with Disabilities.
- Law for the Protection of the Rights of girls, boys and young people.

Furthermore, Mexico has also put in place an official mechanism to protect the rights of people with disabilities and to ensure non-discrimination. First of all, we have the National Council for the Development and Inclusion of Persons with Disabilities. CONADIS was set up as a decentralised public body in 2011. It enjoys legal status and it is independent from a technical and management viewpoint. The goal of the council is to set public policy aimed at people with disabilities.

Secondly, the National Council for the Prevention of Discrimination (CONAPRED) was created in June 2003 as a sectoral and decentralised body within the Interior Ministry. CONAPRED has its own legal personality and public assets, and the aim of the council is to set public policies to counter discrimination on any grounds.

Madam Chairwoman, looking beyond these measures, the next step for us is to make these laws and institutions a reality in public policies. The Convention is a platform for implementing programmes for further development based on a human rights approach.

Mexico is promoting the integration of women and girls with disabilities through social policies, based on the principles of equity, social justice and equal opportunities. Just recently, we held the Special Consultation Forum on Persons with Disabilities. This encounter is part of the dialogue with civil society, and of the exchange of proposals we are undertaking in order to draw up our National Development Plan 2013-2017.

These activities are part of Mexico’s commitment to promote and protect human rights, including those of people with disabilities. We are convinced the work of this Committee will contribute to these efforts to eliminate barriers and allow women with disabilities to enjoy equal rights.
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Violence Against Women and Girls with Disabilities
Chapter 8

CRPD Committee: María Soledad Cisternas Reyes, Chairwoman, CRPD Committee.

Introduction to the Panel on “Violence Against Women and Girls with Disabilities”.

María Soledad Cisternas Reyes, President of the CRPD Committee.

Opening Remarks.

In this session we shall address the issue of violence against women and girls with disabilities. In this regard, I would like to begin by recalling the words of Ban Ki-Moon, Secretary General of the United Nations, who stated that: “We must break the silence. When you witness violence against women and girls, do not sit back. Act!”

Similarly, Michelle Bachelet, former Executive Director of UN Women, has called for “zero tolerance for violence against women and girls.”

Key Facts and Figures.

Research by Rehabilitation International shows that women with disabilities are subject to multiple disadvantages and are victims of exclusion due to their gender and their disability. A Canadian study carried out by DAWN (DisAbled Women's Network) on suicide and sexual abuse, and involving 381 women with disabilities, reached the following conclusions:

- 58.7% had considered committing suicide;
- 51.1% had fallen victim to sexual abuse;
- 66.3% had suffered emotional abuse;
- 43.1% had felt despondent or depressed;
- 34.8% had suffered neglect;
- 28.7% had been victims of economic abuse.
A study from the United States, which was based on police reports, found that 67% of all women victims of assault had a disability of one type or another. According to a survey carried out in Orissa (India), practically every woman and girl with disabilities experienced domestic violence; 25% of all women with intellectual disabilities had been raped, and 6% of all women with disabilities had been subjected to forced sterilisation.

**Opening Reflections.**

This is why we are using this forum to make this situation, which has hitherto been shrouded in secrecy, more visible, that is: violence against women and girls with disabilities. Even mainstream women's movements have failed to fully embrace this key area, where rights are being violated, with gender and disability perspectives. We must bear in mind that women and girls with disabilities often experience extreme vulnerability.

This morning we discussed intersection and how this entails a combination of sociological and legal factors involving various human rights instruments, and in particular the CRPD and the CEDAW. This leads us to a clear understanding that women and girls with disabilities are victims of serious violations of human rights and fundamental freedoms. By this we mean serious consequences for their physical and psychological integrity, and we also refer to structural abuse.

In terms of physical and psychological violence, women and girls with disabilities are victims of exploitation, violence and abuse (Article 16 of the CRPD). They are also subject to forms which are aggravated, leading us to classify them as cruel, inhuman or degrading treatment (Article 15 of the CRPD).

We must not forget structural abuse where, for example, a woman with a physical disability who is a wheelchair user comes up against obstacles when she wants to visit the gynaecologist, or when she needs a mammography; or when a woman with a hearing disability faces serious difficulties in reporting infringements of her human rights to the police due to communication barriers; or when women with a visual impairment find it impossible to enter police stations or courtrooms; or when the testimonies given by women with psychosocial disabilities are simply disregarded or not taken seriously enough.

We must consider that there have been paradigm cases of bad practice in this field. For example, a woman with a psychosocial disabilities, who was in jail, and suffered serious and systematic violations of her human rights, leading eventually to her
death. Her case was then brought before international bodies such as the Inter-American Commission on Human Rights.

This preliminary analysis leads us to examine a society in which existing barriers and obstacles, make it possible for violence and abuse against women and girls with disabilities to take place. This violence and abuse may even be tantamount to cruel, inhuman or degrading treatment, as I mentioned previously, for instance, in cases of forced sterilisation or sterilisation without the direct consent of the woman involved; involuntary abortion; forced institutionalisation, and invasive and irreversible surgical practises without consent.

At the same time, there is a second type of obstacle: difficulties in accessing justice to be able to report this kind of violation, to proceed through the investigation stage, and to benefit from reparation and protection measures when a restraining order is issued against the offender responsible for the injury or damage. All these forms of violence and abuse, and many others, should be the subject of our discussions.

We should consider the measures taken to ensure effective awareness raising, leading to the elimination of attitudinal barriers, and not just from a diagnosis point of view. Legislation and public policies should be addressed if we are to fully eradicate violence against women and girls with disabilities. This does not imply “overblown rules and policies”, but rather offering fair treatment to address a situation which warrants it.
First of all, I would like to thank the committee members for inviting this mandate to participate in this discussion. I am going to take the opportunity today to introduce briefly the work of the Mandate of Violence Against Women, and then elaborate a bit more on the findings that the mandate has made on the issue of violence against women with disabilities specifically.

The Mandate of Violence Against Women was created almost 20 years ago in 1994, through a resolution of the then Commission of Human Rights, and it is mandated to study the forms, prevalence, causes and consequences of violence against women, and to analyse the legal and institutional developments in the protection of women from violence, as well as to identify the remaining challenges and to provide both States and the International Community with recommendations on how to overcome these remaining challenges.

The mandate analyses violence against women in four spheres:

- violence that takes place in the family.
- violence that happens in the community.
- violence that is perpetrated or condoned by the State, and
- violence in the transnational arena.

Of course, these four broad categories of violence against women are not right and are not mutually exclusive either, as some manifestations of violence might fall within several of those categories. The bottom line is that if an instance of violence is directed towards a woman or towards a group conformed by a majority of women, then that expression of violence constitutes a form of discrimination against women.
The mandate works from a framework of intersectionality and the continuing of violence, that is; whether the violence occurs in times of conflict or within post-conflict situations (or so-called “times of peace”). The various forms and manifestations of violence against women are simultaneously causes and consequences of other forms of discrimination, inequality and oppression that women had already been experiencing beforehand.

The Violence Against Women Mandate works through thematic reports; country missions; communications to governments and urgent appeals, as well as through consultations, experts meetings and other dissemination activities. In 2011, the special rapporteur on Violence Against Women presented a report to the Human Rights Council on multiple and intersecting forms of discrimination that contribute to and exacerbate violence against women. Already in that report, the special rapporteur noticed how factors such as age, ability, access to resources, race, ethnicity and language among others, can exacerbate the violence that women experience.

Then, last year the special rapporteur presented a report to the UN General Assembly, which focused specifically on violence against women with disabilities. The report stated that despite the evolution of the normative frameworks concerning human rights, women’s rights and rights of people with disabilities, the impact of the combined effect of gender and disability has not gained sufficient attention, and that violence against women with disabilities remained largely unaddressed.

The report does recognise, however, that in recent years the experiences of women with disabilities have become somewhat more visible. There has been a thorough analysis of the intersections of the provisions of the CEDAW and the Disability Convention. Various UN resolutions and policy statements have focused on human rights, women’s rights and rights of people with disabilities. There was also, of course, a Human Rights Council resolution that led to the report developed last year, which was presented at the OHCHR on violence against women with disabilities.

So, all these initiatives demonstrate that there are synergies to try to foster change, and to ensure that all the experiences and voices of women with disabilities are included in any of the responses to violence against women.

The report of the special rapporteur begins analysing how multiple forms of discrimination affect women with disabilities specifically. Women with disabilities experience both the stereotypical attitudes that are directed towards women, as well as the stereotypical attitudes that are directed towards people with disabilities. The report shows how women with disabilities are at a greater risk of group or
individual violence due to other conditions such as poverty, race, ethnicity, religion and other identity status factors.

Thus, women with disabilities who belong or who are perceived to belong to a disadvantaged or minority group face a compound of violence based on several factors simultaneously. The special rapporteur says that assessing the recognition of this reality is crucial to undertake any examination of violence against women with disabilities.

The report then focuses on the different forms, causes and consequences of violence against women with disabilities. Although women with disabilities experience many of the forms of violence that all women experience, when gender, disability and other factors intersect, violence takes unique forms, has unique causes and results in unique consequences.

In this context, the forms of violence women with disabilities are subjected to can be of a physical, psychological, sexual or financial nature, and they include neglect, social isolation, entrapment, degradation, detention, denial of health care, forced sterilization and forced psychiatric treatment.

Women with disabilities are at a high risk of violence based on social stereotypes and biases that attempt to dehumanise or infantilise them, exclude or isolate them, becoming then a target for sexual or other forms of violence. Violence has the consequence of contributing also to the incidence of disability among women.

Women with disabilities are twice as likely to experience domestic violence as non-disabled women, and they are likely to experience abuse over a longer period of time, suffering more severe injuries as a result of such violence. Women with disabilities may be subjected to situations of physical discomfort or embarrassment because their right to privacy is undervalued or not valued at all.

In this regard, home assistance, family members or others who provide assistance may inflict violence through purposeful neglect, for instance, leaving a woman who is in bed or who uses a wheelchair without assistance for long periods in order to punish or manipulate her. Others may confine a woman with a disability to her home or isolate her from other human contact.

Furthermore, mobility aids, communication equipment or medications may be withheld, causing physical injury or mental and emotional suffering. In domestic violence situations, women with disabilities may fear reporting or leaving an abuser because of emotional, financial or physical dependence. They may also fear losing custody of their children. In addition, barriers to accessing justice further complicate their ability to seek redress and protection, thereby allowing for the continuation of the abuse.
Also, women with disabilities may experience greater regulation and prejudices by social service agencies. Thus, the child’s best interest may be seen as primary to and at odds with the maternal rights of women with disabilities. Fear of unjustified termination of parental rights may cause women with disabilities to stay in abusive relationships.

In relation to sexual violence, women with disabilities experience rape and sexual abuse at home, at work, at school or on the street. Others experience rape and sexual abuse within both State and non-State institutions. Women with disabilities are often treated as if they had no control or should have no control over their sexual and reproductive rights, as well as their choices. They may be forcibly sterilised or forced to terminate wanted pregnancies under paternalistic eyes who think this is done for their own good. This is done sometimes with a sanction from partners, parents, institutions or guardians.

There is a long social and even legal history of forced and non-consensual sterilization of women with disabilities. Denying access to reproductive health care or forcing women with disabilities to undergo procedures aimed at controlling their reproductive choices is a form of violence against women with disabilities. Women in institutions who need support services are usually more vulnerable. In institutional settings, women with disabilities are subject to numerous forms of violence, including being forced into the taking of psychotropic drugs or other forced psychiatric treatment. In fact, forced institutionalization constitutes in itself a form of violence.

Women with disabilities also face a number of obstacles in the justice system, through the systemic failure of the courts to acknowledge them as competent witnesses. This exclusion is particularly problematic in cases involving sexual assault or other forms of gender violence in which the complaining witness may provide key evidence, necessary for a conviction. This tendency to infantilise women with mental disabilities contributes to the discounting of their testimony.

Law enforcement and legal agencies may dismiss complaints by women with disabilities, since they are seen as women with disabilities who need assistive communication or accommodation, as well as women with psychosocial or intellectual disabilities who are perceived to lack credibility. The institutions, the physical structures and also the legal proceedings may represent substantial barriers for the accessibility and participation of witnesses with disabilities.

In many countries, there is a lack of specific and comprehensive laws, policies and programmes for people with disabilities in general, or for women with disabilities in particular. States that do have a disability law or policy do not address specifically the rights of women with disabilities or violence against women with disabilities.
The special rapporteur finalises her report by stressing that an analysis of violence against women with disabilities must be informed by and reflective of a social model of understanding of disability, in keeping with the Convention on the Rights of Persons with Disabilities. Such a perspective does not deny the reality of impairment or its impact on the individual. It does however challenge the physical and social environments and the legal frameworks that have a negative impact on people with disabilities.

The rapporteur then proceeds to provide a number of recommendations, specific recommendations for the States to address violence against women with disabilities effectively. The report of the special rapporteur is available online, as well as other works that the special rapporteur has undertaken through contributions or thematic research that also cover the issue of violence against women with disabilities, providing specific recommendations.

I thank you very much for your attention.
Chapter 10

OHCHR: Imma Guerras-Delgado, Advisor on Child Rights, OHCHR.

Imma Guerras-Delgado, Adviser on Child Rights, OHCHR.

Dear members of the Committee, dear friends, dear colleagues. It is a big pleasure for me to be with you here today, and to be able to share with all of you some of the findings concerning children with disabilities made by the United Nations study on Violence against Children.

This study is an old study. Maybe some of you will recognise it if you were involved in its production. It was done in 2006 and then presented to the General Assembly. That is why I am saying it is an old study. However, it is the study that we did in more in-depth analysis on the subject of Violence against Children at the UN level, and I believe its findings and recommendations are still useful today.

In this study, we analysed Violence against Children in a number of settings, paying particular attention to violence at home; at school; in care and justice institutions; within the community, and at the work place. I have to be honest about one thing. When the study was conducted, we did have a focus on children with disabilities but the focus was not as strong as the one we have today.

Thus, it is this currently strong momentum that has to be used in order to make this subject move forward. Why am I saying this? Because the data on violence against children with disabilities was difficult to get. It was even more difficult to get data on girls with disabilities in particular. The study was guided by a number of principles, which I believe are interesting when thinking what you will do after this day of general discussion.

Hence, the main guiding principles were “No violence against children is justifiable”, and “All violence against children is preventable. Violence can be prevented.” The study is known through these two main mottos, as we repeat them constantly. The other principles we followed were that States have the primary responsibility to protect children’s rights, and to support families’ capacity to provide children with care in a safe environment. In addition, another principle that guided our work was that some children were more vulnerable to violence than others and, in this
category, we had children with disabilities. Finally, we also followed the principle that all children have the right to express their views.

In this regard, let me go very fast through some of the main findings. At the family level, what we thought was that disability increased the risk of neglect, including failure to meet children’s emotional and physical needs; failure to protect them from danger, or failure to obtain medical or other services when needed. Of course, one of the main recommendations here was the importance of respite care for parents of children with disabilities as a strategy for reducing violence.

At the school level, there were two important aspects; on the one hand bullying, and on the other corporal punishment. Without a doubt, it became clear through this study that children with disabilities and learning difficulties are often targets for exclusion, discrimination and bullying in school, referring in this context to various sets of data related to different countries.

Concerning corporal punishment, I would like to refer to a recent study by the NGO Group Advisory Council for the follow-up of the UN Study on Violence, which did an update afterwards, and that was published last year. This study finds out that the most frequent victims of corporal punishment in school (and this is interesting) are boys and children with disabilities. There is no disaggregation of children with disabilities in the findings. In almost all countries authorising corporal punishment, corporal punishment is used more with boys than with girls.

Let me go back to the issue of bullying, because I think it is important to mention that during the recent launch of a book titled The Boy Who Was Bullied, the Secretary General referred to bullying as “a tragedy” and “a serious public health threat”. This is a very serious aspect that children and, in particular, children with disabilities face.

Concerning institutional violence, one of the findings was that relatively few of the children in institutions are in those institutions because they have no parents. On the contrary, most of them are in care because of disability; family disintegration; violence in the home, as well as social and economic conditions (including poverty). In residential institutions, we also found that children with disabilities were subjected to violence in the guise of treatment.

There are a number of reports that we have continued to receive, which document a wide spread of violence against children with mental disabilities in institutions. Some of the recent reports show sexual violence, neglect causing death, or physical violence leading to death.

Regarding children in the justice system, I have to say that we have produced a report on the prevention of violence in the justice system. Again, to be honest, we
receive very little information on children with disabilities in the justice system. We do have a particular approach on girls at the justice system, but I cannot provide any insight on children with disabilities in this context.

Another interesting aspect of this study was the fact that it looked at violence against children with disabilities but also, at violence causing disability. As you know, some types of violence can be fatal, while other types of violence can be non-fatal but can cause minor or severe injuries.

Very briefly, the recommendations made by the study are simple but very strong recommendations. Of course, they should be read together with the General Comments of the Committee on the Rights of the Child on the right of the child to be free from violence, and the General Comment on children with disabilities. The recommendations are the following:

1. To strengthened the national and local commitment and action.
2. To prohibit all violence against children.
3. To prioritise prevention.
4. To promote non-violent values and awareness-raising.
5. To enhance the capacity of all those who work with children.
6. To provide recovery and social reintegration services.
7. To ensure the participation of all children.
8. To create accessible and child-friendly reporting mechanisms accessible to all children.
9. To ensure accountability and impunity.

To conclude, after this study we established a follow-up mechanism, which is the Special Representative of the Secretary-General on Violence against Children, Marta Santos Pais, whom I believe some of you have already met in New York. Her role is to promote the dissemination of this study. She has a number of priorities, such as the development of a national and comprehensive strategy to prevent and respond to all forms of violence in each State, and the introduction of a specific and explicit legal ban on all forms of violence against children in all settings.

Indeed, this is very important. Why? Well, because when the study finished in 2006 and we made this Recommendation, we had 11 countries which had laws prohibiting violence in all settings and today, we have more than 30, in fact 31, if I am not
mistaken. So, it seems a small step but it constitutes a very big challenge to go from 11 to 31 countries.

The SRSG has had a particular interest in the subject of children with disabilities and, being aware of the problem of finding data, she is advocating jointly with UNICEF for further research on this subject. Hence, she would welcome an ongoing and strengthened cooperation with the Committee in this regard, and she would be happy to meet with you and discuss further such issue.

I am convinced that by using our knowledge and expertise in a cooperative manner, we can transform the lives of children who are vulnerable to violence. They should not be exposed to violence. Children should not be exposed to violence. As I said, violence can never be justified and it is always preventable.

Thank you very much.
4

Sexual and Reproductive Rights and Women and Girls with Disabilities
Chapter 11

CRPD Committee: Silvia Judith Quan-Chang, member, CRPD Committee.

As an introduction to this panel, it is important to be aware of the background work carried out by United Nations in this area, and within International Human Rights Law. The United Nations World Conference on Women held in Beijing in 1995, set out the following conceptual definition for sexual and reproductive rights:

“[Women’s] right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence; the basic right of all [women] to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health.”

One other point linked to the right to family health and reproductive rights is the need to affirm the freedom of each individual to decide whether to have children or not. The Statute governing the International Criminal Court includes forced pregnancy as one of the serious crimes constituting a threat to peace, security and the wellbeing of humanity.

As a component of International Humanitarian Law, the Rome Statute defined and codified, for the first time in International Criminal Law, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity, as crimes against humanity and war crimes.

The Rome Statute states that rape and other reproductive and sexual crimes are comparable to the most atrocious international crimes and, in many cases, they amount to torture and genocide. Furthermore, and for the first time, there is recognition that violations of women’s self-determination on issues related to reproduction - both forced pregnancies and forced sterilisation - constitute very serious crimes according to International Humanitarian Law.

Sexual rights are fundamentally entrenched in the human rights to liberty, dignity, health and equality, in addition to the right to non-discrimination. In this respect, the rights which have been developed are the following:
1 Right to sexual freedom.
2 Right to sexual autonomy, integrity and safety.
3 Right to privacy in sexual issues.
4 Right to sexual equality.
5 Right to sexual pleasure.
6 Right to emotional sexual expression.
7 Right to free association in sexual affairs.
8 Right to take decisions on reproductive issues freely and responsibly.
9 Right to information based on scientific knowledge.
10 Right to comprehensive sexual education.
11 Right to healthcare in sexual health.

I would now like to mention the key areas of concern for the Committee in relation to the Convention:

- Forced abortion and forced sterilisation.
- Lack of access to sexual and reproductive health services, and to family planning information, services and methods.
- Lack of access to HIV services.
- Sexual violence.
- Denial of free and informed consent.
It is a real privilege to be able to speak with all of you today. I am from the Department of Reproductive Health and Research, and I also represent a Consortium of International Reproductive Health Organizations whose Secretariat is based at WHO. I have thus the opportunity to work with quite a number of organizations and to raise the issue of disability across them.

I will just give a brief presentation on the sort of work we are involved in within the department, and also in collaboration with other WHO departments, especially the Department of Disability and Rehabilitation. I am glad we have already heard a little bit about some of the guiding initiatives we are working with and that we base our work on.

The ICPD (International Conference on Population and Development) is certainly something we use as a foundation for the work we are doing. Some of the other things we focus on and that our work is based on are things like the “Health for All by the Year 2000” strategy. I am sure we all remember that and we all remember that by the year 2000 we did not have all the health we needed. That now has been transformed in some way into another mandate, which is to have universal health coverage.

Then, we are really focusing on a few of the Millennium Development Goals - in particular MDG 5b - which is “Universal Access to Reproductive Health”. Within that MDG, we are looking at a subset of the Maternal Health MDG.

Finally, we do of course also base a lot of our work on the UN Convention on the Rights of Persons with Disabilities, and on all the different articles that really apply to reproductive health, such as articles 9, 16, 22, 23 and 25.

I just want to say that I work mostly in the area of reproductive health, and a lot of my background helps me make sure that disability issues are incorporated into the work we do in the department. With regard to all this discussion we have about universal access to reproductive health or universal access to health... Well, for me,
when I heard "universal" I always thought about "disability", and that disability groups were the ones we were talking about and which we would focus on.

Now that I attend many meetings regularly, I recognise that we are talking about marginalised groups such as sex workers, or men (who are often considered marginalised), or youth. It is true that there are special issues that concern these particular groups' reproductive health. However, the bigger issue or rather, the bigger group that is more vulnerable and more marginalised is "disability".

When I bring up this topic, it seems to stay on the table for a very short amount of time, and then leaves the table and one has to keep reminding people to bring it back on. Hence, we have a lot of work to do when we are talking about universal access to reproductive health, in order to get the focus of the work we are doing on reproductive health to really include people with disabilities.

There are some organizations out there in the world that have policies around reproductive health in terms of disability, or even within the development work they are doing, but it is all not very often implemented to the full sixth sense. So, groups like USAID or AUSAID do have mandates to include people with disabilities in their work. Unfortunately, very often the programmes that they are offering in technical assistance and development are overlooking the needs of people with disabilities. There is a strong need for awareness-raising.

Nevertheless, I think things have shifted a bit over the years and now we are no longer getting people that say “We do not have time” or “There are more pressing needs than people with disabilities”. As I say, now they are not saying those things any more. They just say, “Oh, we did not know”, “We do not understand”, “What can we do?”, and “Educate us”.

Thus, we do have a great window of opportunity with the CRPD; with primary health care being renewed; with the profound discussion about social determinants and, of course, with the human rights approaches that everybody seems to be focusing on. So, what are we doing now?

In terms of WHO, you probably know a lot about the World Report on Disability that came out in 2012 (which was a joint publication by WHO and the World Bank). That was something which was requested through the World Health Assembly, and it does set our agenda for disability work with a much broader scope than just reproductive health, much broader than health in general, and it also looks at work and poverty.

This World Report on Disability gave us also the first new prevalence figures since the 1970s. These figures indicate that now, out of 15% of the total population that have a disability (about 1 billion people), between 110 and 190 million people are
estimated to have a significant disability. The main recommendation is about removing barriers to the participation of people with disabilities in mainstream programmes.

I would like now to mention a couple of points about health care and what's the problem in this regard. In general, people with disabilities are showing poor levels of health and part of that issue is because they are more vulnerable to secondary conditions or comorbidities. There is a recognition that people with disabilities have the same needs for general care but have very unequal access, and there are obviously situations where there may be requirements to have a specialist's health care.

Also, there is higher health expenditure and higher risk of catastrophic health care expenditures. Then, of course, health care is not accessible, and what we are finding is that, if there are programmes for insurance in some countries, people with disabilities are not accessing them either because many of the programmes go through employment, and there is a lower population with disabilities in the workforces.

So, the recommendations there are to reform policies and legislation; to begin to focus really on the financing and affordability and on service delivery or human resources, which I will talk about a little bit more in depth, as well as to fill in the gap with data and research. I think we have heard quite a bit about the lack of disaggregated data that exists and the need for more of that type of research.

Another more directed document that we came up with within guidance note, which sort of represented the beginning of an effort to have more success at the inclusion of people with disabilities, and ensuring that people with disabilities and women specially have access to sexual reproductive health care services, is the WHO/UNFPA Guidance Note.

It was basically from what we had seen that this document came about. The reason for this was to be able to offer to reproductive health organizations some information, some basic information on how to adjust their programmes in order to be able to be more inclusive for people with disabilities.

In the context of people who work in the area of reproductive care, if you go to some places, especially developing countries, every time I go to a health centre I ask, "Have you seen a person with a disability?", "Have you seen a woman with a disability?" and usually, I always hear something like "Oh, yes, two years ago, we saw one blind woman who came here because she was having a baby...We might have seen one person here and there."
The issue is not that there are certain types of services that must be offered. There are many different aspects and the accessibility element has to do more with awareness. We have done a lot of work just to make midwives aware of the needs of people with disabilities, and to be able to link women with disabilities in different areas and countries to the different Ministries of Health, in order to enable them to express their needs. This makes a huge difference.

The whole purpose of this Guidance Note was really to be able to inform programmes, to inform reproductive health programmes more so, about how they can adapt what they are doing so that they can be more inclusive of people with disabilities. It is very user-friendly, very easy to follow. It is not a clinical guidance. It is much more about awareness-raising, the key message being that the inclusion of people with disabilities and the partnerships with their organizations, the DPOs, is absolutely essential in order to improve your programmes.

Something that we have been doing recently, and in this regard we had the luxury of having a couple of interns working with us to help us do some of this research, is to look at programmes and services that are out in the field to have a kind of survey of integrated efforts of reproductive health services. We have identified a couple of models that are out there.

However, having a systematic review of the services and programmes that are out there is something which has not happened in the past. We did both an extensive published search and an emporium or snow-balling type effort. We only found one doctoral thesis in terms of the literature, and about 100 programmes that qualified, but we could only include around 27 of them. The idea there is to try and see what kind of programmes already exist and can be used as models to help other programmes to integrate and improve.

Initially, we focused on programmes that were about sexual reproductive health, to start off with, and then shift for the general public, not necessarily uninclusive (sic) but that really make an effort to include people with disabilities; or disability organizations that start having sexual reproductive health programmes; or different protectorate programmes that are not necessarily doing sexual reproductive health plans at all, but which then start to be more inclusive. We are finalising that report. It is quite interesting and it is really helpful when we go to other countries to be able to give some examples of programmes that are out there and which are being more inclusive.

Finally, the last thing I want to mention, and we have heard quite a bit about this in the last session... WHO and a number of organizations are developing a statement on Involuntary Enforced Sterilization. Basically, this was a result of having a need to have something written down and an answer to give to countries.
For instance, countries would call up and say, “What do we do about contraception and a disabled woman?” and what does WHO say about that? And, basically, what WHO says is “You do not coerce anybody. That's a human rights violation”. People would say, “But, it is in their best interest” and “what about if this is a really young person...We do not know what to do and we really think this is the best way to go...And we realise that this is a human rights violation and that yes, people should not be coerced and sterilised”. It was then time to come up with this statement.

Later, during more discussions with people, we realise that it was not just an issue for women and girls with disabilities. It is also an issue for women with HIV, for indigenous and minority women and girls, for transgender groups and intersex people. So, the statement is just about ready. It has been a very collaborative effort and it will come out very soon, addressing all of those different groups.

To conclude, I would like to say that we realise we still have quite a bit of work to do but we are on a path in WHO and in the UN, as well as in a lot of the other organizations. People are open and ready, and I think we need to help and give some guidance back.

Thank you.
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Indigenous Women and Girls with Disabilities
Chapter 13

Aboriginal Council of Winnipeg, Canada: Doreen Demas, indigenous woman with a disability.

I would like to begin by thanking the CRPD Committee members for allowing us to come here and speak to you about indigenous women and girls with disabilities’ issues this afternoon. As a woman with a disability myself, and as a woman who is also indigenous, this is a close and endearing issue to my heart.

I have worked for many years trying to raise this issue both in my country and within my own communities and, more recently, at the international level. I have done so because I feel that the intersectionality of what we as indigenous women with disabilities deal with, does deserve specific and individual attention.

In this context, it was very appropriate for me to hear the presentation about intersectionality earlier this afternoon, as that is what I feel it underpins a lot of the types of barriers and challenges that we, as indigenous women and girls with disabilities from indigenous communities, experience all around the world.

Thus, I am going to talk this afternoon in my allowed time about some of the experiences that indigenous women and girls with disabilities from Canada face, as I have had first-hand experience with that. My two co-presenters will speak more specifically about issues from their territories.

In Canada, indigenous persons generally face many physical and attitudinal barriers, anything from discriminatory policies to programmes and services that do not meet their day to day needs, and they lack the aspiration, the confidence and certainly the empowerment as indigenous people.

Even though we are the original peoples of Canada, we tend to be at the bottom ends and we are marginalised as people within our own country. In particular, I want to talk about how women with disabilities face even much more marginalization, much more discrimination because of gender, because of race and certainly because of disability.

In our country, Canada, we are very complex; a structure of different nations, and that in itself, for those of us living with disabilities, can be a barrier and a challenge. It’s difficult, in the few minutes that I have, to talk about our political reality and how
our nationalities are structured. In other words; we are not a homogenous society in Canada.

As First Nations, Inuit, Métis and autochthon reserve peoples, we face similar barriers but we also have unique issues because of geography, because of our particular Nations and because of the area we live in, whether we live in urban centres, in First Nation communities or in native settlements.

Indigenous women with disabilities, like many other indigenous people, face poverty. Poverty is probably another issue that underpins many of the barriers and challenges that we face. In this sense, women with disabilities more often than not end up having to contend with the kind of service delivery system such as social assistance, access to health programmes and access to training and employment programmes. These are all things that, on the one hand, seem easily obtainable but, on the other, pose problems because of the systemic, physical, and attitudinal barriers that are placed on them.

One case example would be that First Nations women with disabilities, who reside in First Nation communities, face jurisdictional challenges because of where they live. If you live in First Nation communities on reserve, you are entitled to certain programmes and services and, very often, these programmes and services are not designed to meet your needs.

Many First Nations communities are in remote Northern communities within our provinces and many of those communities are only accessible by air. In the winter time, they have winter roads but during certain parts of the year, before our winter starts and as winter is breaking up, sometimes there is virtually no access.

In fact, there is certainly much less access for women with disabilities. If these women with disabilities are facing issues such as violence, or the need for health systems and health care services to be accessible because they are wheelchair users, blind and visually impaired women or deaf and hard of hearing women, then these services virtually become almost impossible to access.

For instance, we have cases of physical violence brought upon by many of our men in many of our communities and, in small communities it is difficult to raise the issues of violence, of the need to have safe homes or the need to have programmes to help women escape from these situations. There are many cases, although we may not have many stats at this time, many anecdotal examples of how women have become disabled because of violence by their partners or husbands or by other people within their communities.

In this regard, we have examples of women who have been raped, who are visually impaired and who cannot report who the rapist is. Even if they did, they would not be
seen as credible witnesses. For me, that is a case example of the marginalization and extreme oppression that indigenous women with disabilities face.

Very often, deaf and hard of hearing women with disabilities in our communities have no access to sign language interpretation. We have examples of young women, teenagers of 13, 14 and 15 years of age, who have never had any access to language, so they have no way to even express themselves and talk about the kinds of violence that have been brought upon them.

So, these are the different issues that we face. At this point in time, even though we live in Canada, many of us live in what I would call “poor and Third-World conditions”. We experience conditions that one would assume never happen in a place with the affluence that Canada has.

When I talk about violence, I want to refer to what I call “economic violence” for aboriginal women and women with disabilities. What I mean by “economic violence” is that due to the fact that we are undereducated and have no access to employment and training, as well as the fact that many jobs are not accessible to us, we have no other resources but to rely on the current social assistance programmes that are available.

Many times, those programmes are oppressive for our people. They demean and treat people as second- or third-class citizens because one has no choice but to be on social assistance. The levels of social assistance are far below what the cost of living might be. For example, in Winnipeg where I live, right now, if a person is on social assistance and if one happens to be a person that has a disability, you are entitled to receive about 285 Canadian dollars for housing.

The thing is, the housing rate for Winnipeg now is much higher. You cannot get an apartment, any kind of affordable and decent apartment for less than 600 dollars. So, what happens is that many families and women with disabilities end up having to use their food money, the money that is supposed to be for other personal needs. In order to feed themselves, they have to use that money to exist.

Very quickly, I just want to touch on another issue: many aboriginal women (we use that term “aboriginal” as well), many of our women who have mental health issues end up encountering the legal system because they can’t afford a lawyer, and have no knowledge of the empowerment to self-advocate, so they will end up going to jail.

These women end up in provincial and federal institutions, where the numbers of aboriginal women are higher than any other racial group in Canada. We as aboriginal women end up staying in jail longer. The resentment of our people is immense and the treatment of women with mental health issues in jail is atrocious, as the people
that run the institutions have not received training to deal with women with mental health issues.

We very often feel that they do not even belong there. If they do leave these institutions there is no follow-up programmes for them so, they will end up homeless on the streets of Winnipeg.

To conclude, my recommendation to the UN CRPD Committee and other UN bodies would be that the unique socio-economic and cultural issues that indigenous women with disabilities have need to be seen, recognised and acknowledged. Different kinds of follow-up programmes should be developed, and they need to adhere to that and be sensitive about those issues.

Thank you.
Chapter 14

Paso a Paso Foundation, Mexico: Olga M. Contreras, indigenous woman with a disability.

Before I begin, I would like to express my gratitude for the space you have provided us, so that we indigenous women with disabilities can specifically give testimony of what we have seen, as well as report on the different work we have carried out. In my case, my remarks will be about the work that the Fundación Paso a Paso has carried out in Mexico in its 21 years of history. The particular topic of my presentation will be women with disabilities’ sexual and reproductive rights.

Generally, indigenous women and girls with disabilities are not perceived either in their indigenous communities or within their families as sexual beings. While the topic of sexual education is in itself a taboo issue, indigenous women with disabilities are not considered nor informed or educated about this topic within their own communities. Moreover, there aren’t any public policies that aspire to change this reality either.

Families use the issue of sexuality as a means of punishment, which in their eyes has been earned through their actions developed in life. That is why indigenous women living with disabilities are not aware of their own bodies, as self-exploration is absolutely forbidden to them because it is considered to be dirty, shameful or malignant. In this regard, religion does have a huge influence and plays a very important role.

At the same time, public health institutions do not provide information through their services in accessible formats. In addition, indigenous women with disabilities that go to these services arrive very often being already at the last stages of their illness. In fact, I can tell you that many times, doctors themselves turn out to be indigenous women with disabilities’ worst enemies. This is perhaps due to their ignorance or to the fact that their logical intuition misleads them.

I am saying this because doctors can accept a request from families for permanent sterilization, or for the application of contraceptive methods without the consent of indigenous women with disabilities. Primarily, this action is taken with regard to indigenous women with intellectual or psychosocial disabilities, although it can be extended to women with other types of disabilities. They may think that an indigenous woman with a disability is not able to look after herself. How then could she look after another human being?
Therefore, the most damaging action within indigenous communities is the consideration of indigenous women with disabilities as people with less personal value. This constitutes a complete oppressive barrier that invites women to accept everything that happens in their lives. All the violence that happens to them does not constitute violence or discrimination as such, but instead it is part of their lives, part of their disability condition, which they have to assume as part of her lives, and this can defeat the best of wills.

In addition to this, we have also violence through sexual assault. This form of violence is usually brought upon people with disabilities by those who are closest to them, and over a period of days or years. Regrettably, if families do want to know about it, they may pretend that it did not happen, as they prefer not to expose the young woman or girl.

They do prefer to keep it quiet and pretend that nothing has happened in that household. If the family is looking for a good amendment, they may accept to present the woman or girl before the local authorities and marry her to her abuser or consolidate a union without their consent because the community judge can think this is a good union to an apparently well-intentioned abuser. Indigenous women with disabilities assume these new responsibilities which, in reality, are part of a very sad life, where their own families are their own executioners in their lives.

Normally, these men have in their own lives other women apart from the woman with a disability, making women with disabilities to be also exposed to sexually transmitted illnesses, mainly HIV and AIDS. Obviously, if a union has been consolidated or the acquirement of new marriage responsibilities has taken place within the community, the abandonment of the woman with a disability is not viewed favourably at all.

In general, indigenous women with disabilities have to assume all this violence; they have to pretend that nothing is happening in their homes. This is due to the fact that they are repressed because of the financial support these men provide them with.

Another act of violence that can be mentioned is the lack of opportunities for indigenous women with disabilities. For example, they cannot be candidates to adopt a child. Obviously, this is an issue that should be looked at and analyzed, as it would be a case of violation of their human right to maternity. However, the fact that women lack the financial solvency needed to cover the adoption expenses should be looked at too.

Finally, I would like to mention a situation that worries me. Due to the lack of training, capacity-building, technology, reasonable accommodation and the approach of medical services to indigenous communities, the screening of women is not been
carried out on time regarding both breast cancer and cervical uterine cancer. As a result, many indigenous women are dying.

Thus, we obviously encourage you to precisely change the destiny of indigenous women with disabilities. We have not chosen where to be born. We have not chosen what family to have. We have not chosen to have a disability. It is now time to choose what path we want to follow.

Thank you.
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Civil Society Submissions
Chapter 15

Netzwerk Artikel 3.

Standard Interpretation of the UN Convention on the Rights of Persons with Disabilities (CRPD) from a Female Perspective.


Prepared by:

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The English translation was provided thanks to the generous support of the filia foundation, Hamburg, Germany.
Preface

This publication is a presentation of the results of a task with which we were commissioned in 2008. It concerns the interpretation of stipulations relating to women and gender as they are specified in the Convention on the Rights of Persons with Disabilities. This position and reference paper's goal is to clarify how the women and gender specifications in the Convention on the Rights of Persons with Disabilities can be interpreted, and to determine the ensuing practical consequences for the States Parties.

The idea of writing an interpretation of the articles relating to women goes back to our own strong commitment to the visibility of women with disabilities in the CRPD during the Convention negotiations. Due to the support of the "filia" foundation (a "daughter of the women's movement"), we have now been able to have the paper translated into English. With this step, we hope to enrich the international discussion concerning the effective implementation of women with disabilities' human rights.

During the translation process, some details from the first German edition were altered. In this paper we dealt exclusively with those passages in the Convention on the Rights of Persons with Disabilities which explicitly refer to women/girls or gender. We are aware of the fact that the Convention includes other clauses that are significant for women and girls with disabilities. For example, this applies to Article 23, from which one might deduce the right to parental assistance.

We hope this paper will be of help to all those who support the protection of disabled women's human rights and the improvement of their living conditions.

Berlin, March 2011

The Authors
References and Abbreviations

The terms "disabled women" and "women with disabilities" are used as synonyms. There are good linguistic and substantive arguments for both terms.

AHC Ad Hoc Committee
CED International Convention for the Protection of All Persons from Enforced Disappearance
CEDAW Convention on the Elimination of All Forms of Discrimination Against Women and Committee on the Elimination of Discrimination against Women
CERD Convention on the Elimination of All Forms of Racial Discrimination
CESCR Covenant on Economic, Cultural and Social Rights
CRC Convention on the Rights of the Child
CRPD Convention on the Rights of Persons with Disabilities
DBR Deutscher Behindertenrat: German Disability Council
ICCPR International Covenant on Civil and Political Rights
ICESCR International Covenant on Economic, Cultural and Social Rights
ICPD International Conference on Population and Development
IDC International Disability Caucus – NGO Coalition during the negotiations
ILO International Labour Organisation
NGO Non-Governmental Organization
UDHR Universal Declaration of Human Rights
UN United Nations
UNESCO United Nations Educational, Scientific and Cultural Organization
WHO World Health Organization
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Retrospectives.

Eva Ullrich: A Retrospective of the Establishment of a Women's/Gender Perspective in the UN Convention from the Perspective of a Member of the German Government Delegation.

Making Women Visible in the Convention.

About Me

My Name is Eva Ullrich. I work in the German Federal Ministry of Labour and Social Affairs in Berlin, where I am a consultant in the area of disability policy. With Resolution 56/168 decreed in December 2001, the UN General Assembly established an Ad Hoc Committee whose task consisted of compiling suggestions for a Comprehensive and Integral International Convention on the Protection of the Rights and Dignity of Persons with Disabilities. I participated in the Ad Hoc Committee's meetings from the beginning of the negotiations in 2002 until the work was finalised in August 2006.


When I travelled to New York in late July 2002 as a representative of the responsible ministry, I was fully informed about modern disability policies. In July 2001, a modern law on rehabilitation and participation services was implemented in Book No. 9 of the German Social Code (SGB IX). This law was aimed at promoting disabled people's independent living and social participation. SGB IX is the first federal law that takes disabled women's double discrimination into account. This law is mindful of women's and men's different living conditions when it comes to granting benefits and services.

This was obviously the only way to ensure disabled women's equal participation opportunities. I would also like to mention the German equal rights law for people with disabilities: When compared on an international scale, this law is very courageous and progressive. So I was extremely well-prepared in terms of the legal situation in Germany. However, this was not the case in the field of human rights. Just like many delegates and also NGO representatives, knowledge about human rights had to be acquired during the course of the negotiations.

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7 www.un.org/disabilities/default.asp?id=70 (March 5, 2011)
8 Book No. 9 of the German Social Code (SGB IX) deals with the rehabilitation and participation of disabled persons.
The Negotiations Begin.

The debate about protecting disabled women and girls from discrimination and their inclusion in the Convention, did not begin right away. In the first two Ad Hoc Committee meetings, States first had to determine how and under which conditions they would be ready to negotiate a human rights convention on the rights of people with disabilities within the framework of an Ad Hoc Committee. They also needed to define their basic principles and core themes. In this early phase, it was important for the states to pronounce themselves in the first place as being in favour of a Convention on the rights of disabled people. Moreover, it was necessary to specify if and how the non-governmental organizations should participate in the negotiations, as this was equally a new territory. For the first time, a human rights Convention with the United Nations was prepared with the continuous participation of non-governmental organizations. For the first time, non-governmental organizations had a truly extensive right to speak. For the first time also, they could really closely observe the arguments of the state representatives.

From today’s perspective, I think that this first decision concerning the non-governmental organizations’ participation had already set the course for the inclusion of women and girls in the Convention. Their representatives were also able to follow the negotiations process, to express their opinion and to claim support for their cause with the state representatives.

Consequently, the questions related to whether or not a women’s/gender perspective was to be integrated into the UN Convention and how this could be done, were addressed at a later phase of the negotiations. The German delegation was also initially unaware of the enormous importance of the inclusion of women and girls in this Convention. We were occupied with contributing to the negotiations process, gaining ground and struggling for as much equal participation as possible for the non-governmental organizations.

It was important to define the parameters: We had to agree upon the topics we unconditionally wanted to be established in the Convention on the Protection of the Rights and Dignity of Persons with Disabilities. When I returned from New York after the first negotiations, it was evident to me that this task was too complex for one single ministry, and that disabled people should collaborate in this process.

In New York, I had heard about Professor Dr. Theresia Degener, a German Human Rights expert and advocate for disabled peoples’ rights. It was necessary to use the potential that was already available in Germany. For this reason, a task force was established comprising the Federal Ministry of Foreign Affairs; the then Federal Ministry of Health and Social Security, which was at the time responsible for disability policy; the Federal Ministry of Family Affairs, Senior Citizens, Women and
Youth; the Federal Commissioner for Matters relating to Disabled Persons and representatives from the Deutscher Behindertenrat (DBR), as well as some experts.

This task force was very helpful for the German delegation to be able to successfully participate in the negotiations. The same applies to the integration of the gender perspective in the Convention.

**Opposition Against Making Disabled Women Visible.**

Within the scope of the applicable human rights Conventions, it was a standard to use gender-neutral language. The Convention on the Rights of the Child (CRC) and the Women’s Rights Convention (CEDAW) were the exceptions to this rule. Some state representatives argued that the term "persons" already included all human beings anyway – women, men, old and young persons, disabled and non-disabled people. Many state representatives feared an extension to other groups which also faced this level of discrimination, and as a consequence thereof, the fragmentation of the Convention’s concerns.

Moreover, the gender perspective’s opponents stated that disabled women were also women, and as a human rights Convention for women already existed, there was no need to include a female perspective into the CRPD. With regard to the CEDAW, they argued that one should lobby for better reporting on the implementation of CEDAW. In this way, the reporting regarding disabled women and girls would be improved, and the inclusion of a gender perspective into the CRPD wouldn't be necessary.

There were many arguments for and against making women and girls visible in the Convention, and all of them had to be considered. Furthermore, it was common practice for the European Union to act with one voice in United Nations negotiations. In other words; during the negotiations, the respective EU Council Presidency would speak in the name of all Member States. However, difficult negotiations were often necessary in order to agree upon what that one voice would be. Once there was an agreement upon something, it could only be changed if all Member States agreed upon that change.

Therefore, it was very difficult to obtain all EU Member States’ consent regarding the gradual process of including women and girls in the Convention, or at least to make sure that the European Union wouldn’t pronounce itself as being against the process. A very controversial debate arose as early as during the Ad Hoc Committee’s third meeting, on the bases of the European Union’s first suggestions.

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9 German Disability Council.
concerning the inclusion of stipulations specifically targeting women into the Preamble.

What was at stake here was "only" the recognition of women and girls' multiple discrimination and their ensuing disadvantages, as well as the acknowledgement of the fact that disabled women are exposed to the risk of suffering violence and abuse. In the end, the participants agreed to address the discrimination of women and girls in the Preamble, but stated that women and girls should, if possible, not be specifically mentioned in individual articles in the Convention.

Also, they stated that there shouldn't be a separate Article on the situation of women. I recall this in order to clarify that each and every word in the current Convention that acknowledges women and girls' specific issues, was won through intense debate – within the scope of the European Union's discussion. It was often incomprehensible to me why European States also closed their minds to the reasonable cause of making women visible in the Convention.

A Tough Struggle.

In November 2004, the then Federal Ministry of Health and Social Security and the Federal Commissioner for Matters relating to Disabled Persons, organised an international expert conference on "Human Rights and Disability". The conference was to try to resolve some important questions and to open up new paths. The gender perspective was also addressed during the debates.

The conference report clearly shows that the participants realised at this point that the gender perspective had not been taken into account in the Convention up to that moment. However, it was necessary to increase awareness regarding the specific forms of discrimination against women with disabilities within the UN Member States and in societies in general, and that state reports addressed their situations. Thus, the inclusion of the gender perspective was absolutely imperative.

In the course of the debate, Theresia Degener said: "I did not think it would be a problem for a UN Convention to acknowledge the gender perspective, and I am really surprised that this is obviously not the case. But I do not think the States’ opposition is very strong. However, non-governmental organizations must exert more pressure, and they too neglected this topic up to the present day. Regarding States, I see many African representatives who want to include the women's issue. Also, some EU Member States, such as Germany and Spain, for example, are strongly supporting

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this issue. This is why I think the odds are good." Indeed, Theresia Degener was only wrong in one respect: It would be a tough struggle for the women’s issue to actually become integrated into the Convention.

NETZWERK ARTIKEL 3 e.V.\(^{11}\) and the Sozialverband Deutschland (SoVD)\(^{12}\) became the spearhead of a movement in Germany that called for an amendment to the Convention’s draft, in order to implement the principles of gender mainstreaming. They presented specific suggestions that were subsequently debated. Due to their suggestions and their loud request that these must be included in the Convention, the German delegation was able to attain a considerably stronger position during the negotiation process.

It was a positive development when disabled women and girls also organised themselves on an international scale, demanding that women and girls had to be mentioned in Articles dealing with issues that particularly affected women and girls. At the same time, they campaigned for a separate women’s article.

These were individuals who were influential and who would be heard were won to speak at side events, that is, events alongside the negotiations with the aim of contributing to the realization of women’s demands. For example, Sheikha Hessa Al-Thani, the United Nations Special Rapporteur on Disability from the Commission for Social Development, was frequently present at the side events.

**An Important Background Document.**

In my opinion, a major breakthrough was achieved when the Ad Hoc Committee's chairperson appointed Theresia Degener to be the facilitator to deal with the suggestions on making women and girls visible in the Convention. With the approval of the German Disability Council, Theresia Degener was a member of the German delegation. This meant that there was an official platform where States could voice their views, where intense discussions took place and where opinions often clashed.

In December 2005, a week before Christmas, a task force meeting took place in Berlin. With the support of the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, and with the participation of the then Federal Ministry of Health and Social Security and some committed women and one man, this task force met to discuss and finalize an important document for the upcoming negotiations in New York.

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\(^{11}\) Netzwerk Artikel 3: A German nationwide network of equality initiatives devoted to a human rights oriented vision of issues concerning disabled people. The activities of NETZWERK were shaped by DPI-Germany (Interessenvertretung Selbstbestimmt Leben in Deutschland). See [www.nw3.de](http://www.nw3.de).

\(^{12}\) German social association; nationwide organization representing the interests of pensioners, people with disabilities, patients as well as long term care patients and their relatives. See [www.sovd.de](http://www.sovd.de)
It was obvious: Time was running out, and the next round of negotiations simply had to be the breakthrough moment in order to make women visible in the Convention. This meant that both the German delegation and non-governmental organizations had to be well prepared. The background document prepared by this task force ‘Legal background paper: Gendering the Draft. A Comprehensive and Integral Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities’, was an important document.

This document facilitated the process, served as groundwork for the debate within non-governmental organizations and was also of considerable use to the German delegation. It was handed over to state representatives and channelled the debate in the right direction. It contributed to today’s Convention on the Rights of Persons with Disabilities and specifically to the fact that there is a separate Article on women with disabilities and that several articles that are of particular relevance to women also explicitly refer to women.

Needless to say, we all hugged each other when the Convention was approved by the State representatives. We were very proud – we had done a good job and had succeeded in making women visible in the Convention.

Interview with Theresia Degener, a Jurist and Woman with a Disability and Member of the German Government Delegation.

The Key to our Success: There Were Many of Us, and We Were Everywhere.

What was your function in New York during the CRPD negotiations?

I was on the Ad Hoc Committee primarily as an expert member of the German government delegation. I was the only German representative in the Ad Hoc Committee’s task force, which was responsible for the first draft of the Convention’s text in January 2004. In August 2005, during the Sixth Session of the Ad Hoc Committee, I was appointed as a facilitator for the women’s issues article. I held this position until the end of the Seventh Session of the Ad Hoc Committee.

14 The Ad Hoc Committee’s chairperson appointed so-called “facilitators” if the government delegations were unable to reach an agreement about an Article during the plenary discussions. The facilitators’ task consisted in developing a joined governments’ position with delegations who wanted to participate.
Why was the gender aspect missing in the CRPD draft?

I am afraid that it was simply "forgotten" in the beginning. I have to emphasize here that the first draft was prepared under extremely unfavourable conditions. We only had two weeks and needed to consult a large number of drafts and documents.

The task force members’ level of knowledge about the UN, the human rights treaties and their emergence varied to a huge extent. There were New York diplomats and UN experts who were very skilled in the negotiation process, but who had hardly taken a look at the issue of disability. There were government representatives who came from state capitals and who were experts in their national disability policies, but they did not really know how to navigate the international political circles.

Furthermore, there were the representatives from civil society, that is, from disabled persons’ organizations, who knew a lot about disability policies as emancipatory policies, but who were very unfamiliar with international human rights policies, the UN system and diplomacy. In between these two, there were some specialists in the field of the UN human rights system and national human rights institutions, who were equipped with yet another form of expertise.

All of these different actors now had to collaborate and merge into a functioning team. We all needed to get to know each other. That was very interesting, but we only really succeeded in doing so when the four-year-long negotiation process was reaching its completion.

During the two weeks in January 2004, I still remember that the temperature in New York had reached minus 15 degrees Celsius! We worked, debated and wrote from 7 a.m. to 1 or 2 a.m. We often did not even know where our heads were. One of the key issues was the topic of institutionalization, and the legal capacity and agency of persons with intellectual impairments. It was often difficult to keep in mind that we were also dealing with other human rights and other groups of disabled people.

I also still remember how I realised all of a sudden, around midnight on the second-last day, that our draft included an article on children, but not on women. We were sitting in the New Zealand embassy; the staff there was kind enough to let us use their premises after the UN headquarters had closed for the night. Around 40 or 50 people were in the room. All of us were extremely exhausted, and we were on the verge of agreeing on a compromise that was to be presented as the first draft the next morning.

I briefly considered bringing up the women’s issue, but then refrained from doing so, because I thought it would be easy to include that aspect later. The UN had signed
CEDAW, and women's issues are well-established within the UN human rights system.

**What alternatives were discussed in order to make women visible? What were the arguments?**

During the third meeting of the Ad Hoc Committee, the Republic of Korea presented a draft for an Article dealing specifically with women's issues that we called "article 15 bis" at the time. A large number of countries and groups, for example the EU, immediately declared themselves as being against it. They were afraid that this Article would lead to further articles for disabled people living in developing countries, or for disabled members of religious minorities, claiming that, "If we accept a separate Article on women's issues, we'll be approached by gays and lesbians, religious minorities, senior citizens and so on. It will be endless."

Another objection was regarding the experiences that had been carried out with the separate Article on disabled children in the Convention on the Rights of the Child. These experiences suggested that isolated approaches are not always favourable.

Indeed, The experience carried out with Article 23 of the CRC demonstrates that a separate Article can also lead to limitations, since most Member States think that all rights regarding disabled children are then listed in that one article. However, Article 23 only looks into the need for advancement, while other rights, such as the entitlement to protection from violence and exploitation, are dealt with in other articles.

Korea's Article 15 bis was met with the counterproposal to make specific mention to disabled women and girls – and other groups – in the Preamble. This suggestion was justified with the particular interpretative function that preambles have: Preambles are often used to interpret individual articles. However, some parties argued that a preamble is not legally binding.

The third suggestion pointed to gender mainstreaming. This means that disabled women and girls are explicitly mentioned in important articles in the Convention, and that the Convention clearly states their multidimensional discrimination. In this way, the advocates hoped to counter the experiences made with the CRC. Instead of mentioning disabled women and girls only once – and in so doing, also only within one single governmental department – they should be kept in mind throughout the text.

Finally, some NGO women proposed the so-called “twin-track approach”. Disabled women were to be taken into consideration in a separate article, and also to be specifically mentioned in as many other Convention articles as possible. In addition
to the arguments that had been exchanged up to that point, the "twin-track approach" drew upon the argument that disabled women and girls are not mentioned in the CEDAW.

**How did you become a facilitator?**

The Ad Hoc Committee's office approached me and asked me if I would be willing to accept this responsibility. During that period, a lot of facilitators were appointed. This was the case for practically each and every Article for which the plenary discussion couldn't reach a consensus.

**What were your responsibilities as a facilitator?**

My job was to prepare a compromise that would be accepted by the plenary. In order to do so, I had to talk to the state representatives who were particularly committed to the question of women, and I also had to encourage conflicting parties to debate with each other. I wrote several different drafts and summoned additional meetings outside the plenary where these drafts were discussed. The number of participants ranged from 50 to 100 people.

Unlike other facilitators, I collaborated with second facilitator, Josephine Sinyo from Kenya, as mandated by Don MacKay, the chairperson. Josephine Sinyo was in charge of the Article dealing specifically with children's issues. This happened because one could assume that both articles would encounter the same difficulties during the negotiation process. That is to say that, in the meantime, some states had come up with the demand to erase the children's Article from the first draft, and to mention all "subgroups" either in the Preamble, in a special Article or at different points in the Convention.

This meant that Josephine and I had to present collective suggestions and organise joint meetings with the negotiation parties. This complicated the process even more, but the assignment was actually really clever and did promote women's interests; The Article on children was met with a lot of support in the plenary, while the women's issue was scrutinised rather critically.

**Are you satisfied with the outcome?**

Yes. Generally speaking, I am satisfied, since we implemented the most comprehensive approach, that being; the twin-track approach. Disabled women and girls have a separate Article (Art. 6 of the CRPD), they are explicitly mentioned at different points within the CRPD, and they are included in the Preamble.

Since the twin-track approach was not presented by government representatives but by NGOs, we can consider it to be a small miracle that this proposal gained
acceptance. Particular support came from African states, who were willing to accept this suggestion and to put their own proposals aside. But also, some EU states – primarily Germany and Austria – helped in the twin-track approach’s breakthrough.

**What would you do differently if you had the same task today?**

I would make sure that women’s issues are included right from the start, in the first draft.

**Were there particularly illuminating experiences during this process?**

A particularly illuminating experience for me was seeing the role of the NGOs. In the beginning, they were quite helpless because most of them were not skilled with regard to navigating the sphere of international human rights. Moreover, they did not succeed very well in coordinating their work. But they turned into experts within no time, and when they established their umbrella organization, the International Disability Caucus (IDC), they were equipped with a very powerful committee.

Since the Ad Hoc Committee’s chairperson, New Zealand ambassador Don MacKay, was very open-minded towards disabled people’ organizations and was willing to lend them his voice even against the UN proceedings and rules, they became enormously influential. To my knowledge, there had been no human rights Convention up to this moment that had born such equally strong hallmarks of the movement. And the social movement was present in the entirety of its wide range, with all disabled people’s organizations and from all regions.

No one can say that it was only the disabled people’s groups from the global North (that is, from the industrialised countries), or only the physically disabled, who shaped the Convention. Another "aha" moment for me was that disabled people were members of all groups: they were government representatives, NGO representatives, members of UN organizations such as the World Bank, or the Office of the United Nations High Commissioner for Human Rights (UNHCHR), as well as representatives from national human rights institutions.

I think that this was the key to our success: There were many of us, and we were everywhere.
Dr. Theresia Degener and Josephine Sinyo, the AHC’s facilitators for the articles on women’s and children’s issues.

Dr. Sigrid Arnade: The CRPD Negotiations from an NGO Representative’s Perspective.  


I actually only realised in February 2004 that a UN Convention on the Rights of Persons with Disabilities was in the process of being negotiated. At that time, the organization that I work with, the German Disability Council, received the first draft that had been prepared by a Working Group in January 2004.

When I noticed that references to women and gender were almost completely absent from this draft, I was outraged, and I immediately wrote an email to all those I considered to be important actors concerning this issue. Some responses

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15 Dr. Sigrid Arnade represents Weibernetz e.v., a German network advocating on disabled women and girls’ behalf, in the German Disability Council. She primarily contributed to the UN Convention in her function as NETZWERK ARTIKEL 3’s chairwoman.
encouraged me to continue my commitment to women's issues, others replied that there was nothing much to do about it.

At the same time, the German Disability Council prepared a policy brief to the draft's text. It was supplemented by a 4-page paper on political issues relating to women and added by Sabine Haefner, who was an attorney and then became Social Policy Officer for women's issues at the Sozialverband Deutschland (SoVD).

**The Night in Winnipeg.**

In September 2004, thanks to Weibernetz e.V., I had the opportunity to participate in the Disabled Persons' International (DPI) summit in Winnipeg, Canada. The agenda included a discussion with CRPD ambassadors from New York, and I brought the German Disability Council's policy brief along. During the debate in Winnipeg, I raised my hand and highlighted the insufficient acknowledgement of disabled women's living conditions.

The New York ambassadors did not agree, as they argued that in that case, any group of disabled people might claim particular acknowledgement. I tried to point out that women with disabilities are not a group, but instead they make up at least 50% of the people targeted by the Convention. Fortunately, my position was backed by many women from all over the world. In the end, the ambassadors promised to include our arguments into the negotiations process. They received copies of the German Disability Council's policy brief and left the summit.

Afterwards, I talked to a Canadian woman who had supported me during the debate. We agreed upon the fact that the ambassadors' promises were insufficient, and that we ourselves would have to start an initiative for a women-friendly Convention. In the evening, I had a glass of wine in the hotel room with my life partner who had accompanied me as my assistant. It was around midnight when I came up with the idea that we should start a campaign for making disabled women visible in the Convention.

**The Twin-Track Approach Is Born.**

Upon my return to Germany, I called Sabine Haefner to tell her what I had experienced in Winnipeg, and that I had come up with a plan. She was immediately enthusiastic, and so NETZWERK ARTIKEL 3 and the Sozialverband Deutschland (SoVD) brought to life the campaign, "Towards Visibility of Disabled Women in the UN

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16 German Network by and for Women Lesbians and Girls with disabilities. See [www.weibernetz.de](http://www.weibernetz.de).
We set up a trilingual homepage (German/English/Spanish)\textsuperscript{17}, collected signatures for our cause and published them on the website.

The campaign was immediately supported by some 500 individuals and almost 100 organizations from around 30 countries. All German Disability Council associations had signed, and the European Women’s Lobby (the European women's organizations’ umbrella organization) as well as the Deutscher Frauenrat\textsuperscript{18} supported our concerns. Moreover, we prepared suggestions for an endorsement to the Convention, and worked on public relations.

The Bundesministerium für Familie, Senioren, Frauen und Jugend (BMFSFJ)\textsuperscript{19} supported our position and provided us with financial aid in order to help us expand our network. In spring 2005, Disabled Persons’ International commissioned me with the task of preparing a paper on the inclusion of women into the UN Convention. Sabine Haefner and I worked on this together and wrote a paper consisting of three parts entitled \textit{Towards visibility of women with disabilities in the UN Convention}’’.\textsuperscript{20}

First of all, we looked at the situation of women with disabilities throughout the world. Secondly, we assessed existing UN documents with regard to their relevance to disabled women. Thirdly, we presented proposed additions, for which we drew upon other states’ proposals, and also came up with new ways of phrasing them. In the paper’s summary, we recommended the “twin-track approach”, which was implemented in the end. It was published in July 2005.

\textbf{A Stroke of Luck and Exhausting Negotiations.}

In spring 2005 we learned that the inclusion of disabled women into the Convention’s text was to be negotiated during the sixth meeting of the Ad Hoc Committee (from the 1\textsuperscript{st} to the 12\textsuperscript{th} of August, 2005). Thanks to funding provided by the then Federal Ministry of Health and Social Security, I had the opportunity to travel to New York with my assistant.

For financial reasons, my life partner/assistant and I had to fly into New York on Friday, even though the negotiations were only to begin on Monday. This proved to be a stroke of luck. The Republic of Korea’s government delegation had suggested a separate Article dealing specifically with women’s issues as early as during the third meeting of the Ad Hoc Committee in May 2004. Then, upon the Koreans’ initiative, NGOs met on Saturday to discuss the issue.

\textsuperscript{17} www.netzwerk-artikel-3.de/un-konv/00Be.php (March 5, 2011)
\textsuperscript{18} German Women's Council (www.frauenrat.de).
\textsuperscript{19} German Federal Ministry of Family Affairs, Senior Citizens, Women and Youth.
\textsuperscript{20} www.netzwerk-artikel-3.org/un-konv/doku/draftend.pdf (March 5, 2011)
During the CRPD negotiations, the NGOs’ position was respected and taken very seriously, based on the premise that the NGOs agreed upon shared positions. Consequently, that Saturday before the negotiations was all about finding an agreement upon the inclusion of women in the CRPD. The Koreans were well-prepared, and they argued in favour of the separate Article specifically dealing with women’s issues.

Another Swedish NGO representative had prepared a paper that presented the gender mainstreaming strategy as ineffective. I opposed this position, made a plea for gender mainstreaming and brought the “twin-track approach” into play. In the end, we were unable to reach an agreement, but the Korean position was not declared to be the NGO position. We agreed however to continue the debate from Sunday on.

In this regard, I was backed mainly by other German NGO women and by Lydia la Rivière-Zijdel from the Netherlands. We had a lot of debates about the advantages and disadvantages of a separate Article and the strategy of gender mainstreaming. However, I understood the advocates of a separate Article better as time passed by. They insisted upon a separate Article dealing specifically with women’s issues because they had experienced that gender mainstreaming is an ineffective strategy in the Republic of Korea, but also in various other Asian and African states.

Another argument for a separate Article dealing specifically with women’s issues was the Koreans’ position that would force states to involve ministries of women’s affairs into the process of implementing and monitoring the Convention.

On the 2nd of August 2005, the inclusion of women/gender references in the CRPD was discussed in the UN plenary.21 In the debate’s last phase, I and seven NGO representatives got a chance to speak. All of us emphasised the great importance of appropriately considering women with disabilities in the CRPD. Four of us, including me, spoke in favour of the “twin-track approach”. When the debate came to its end, the Ad Hoc Committee’s chairperson announced the appointment of a facilitator to resolve this issue. This person’s responsibility would consist in preparing shared positions for the government delegations.

In the following days, we struggled to find shared NGO positions, wrote comments on the facilitator’s suggestions and tried to convince government delegations. When I returned to Germany after that week, I was very exhausted – and very happy at the same time. I felt we had come closer to a good solution concerning issues related to women with disabilities. Merry Christmas!

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21 The government delegations’ positions will be outlined in the Background chapter and are therefore not specified at this point.
However, many other resistances needed to be overcome. This was why representatives from German ministries stated that a legal background paper should be prepared. In November 2005, they asked me and Sabine Haefner, if we would take on this task. So we got started. I was very excited when we were supposed to present our results to experts on a workshop taking place just before Christmas. There was an International Law Professor from Australia who had made the long trip specifically for this conference.

Sadly, Sabine Haefner couldn’t participate on the first day. The experts praised our preliminary work, but also argued for substantial changes. We looked into different aspects in separate working groups, and in the end, Sabine Haefner and I received some documents to include in our work, besides the suggestions made in the workshop.

Happy Christmas holidays! The paper was to be completed by the seventh meeting of the Ad Hoc Committee (January the 16 – February the 3rd, 2006). We managed somehow, and this time both of us travelled to New York thanks to the BMFSFJ’s funding; Sabine Haefner stayed for three weeks, and I and my assistant for two weeks.

Inscrutable Diplomacy.

In New York, Sabine Haefner and I presented our background paper at a so-called side event, a meeting which took place during the lunch break.22 At this stage of the negotiations, it was not only important to continue finding unanimous NGO positions, but also to communicate with government delegations and to convince them of our positions.

We experienced both success and failure. All in all, I had the impression that people did not always form their opinions based on rational criteria. For example, one government representative turned out to be extremely critical towards the inclusion of women at a meeting with the facilitator. Therefore, Lydia la Rivière-Zijdel and I set up an appointment with him at the UN headquarters’ restaurant. He made mincemeat of each of our suggestions and arguments, and afterwards I thought I had failed terribly and had done harm to the common cause. I felt awful.

During the next meeting hosted by the facilitator, I hardly believed my own ears. That same man who had torn our suggestions to pieces now pronounced himself in favour of an extensive acknowledgement of women with disabilities in several of the Convention's articles. At this point it became truly clear to me that I just do not get

diplomacy. This was not our only success. During the discussion at the UN plenum, many delegations spoke out in favour of the "twin-track approach".23

The Convention was discussed in the plenum, Article by article. As a group of women with and without disabilities, we came up with positions on the important points, explaining why each reference to women should be inserted. When the individual articles were debated in the plenum and the NGOs had the chance to deliver their opinions, Lydia la Rivière-Zijdel succeeded over and over again in clarifying women's NGO's positions.

A Great Success!

I did not even want to travel to the eight and last meeting of the Ad Hoc Committee (from the 14th to the 25th of August, 2006) because the days in New York were always very exhausting. I knew that Sabine Haefner would be in New York for the entire time. That would be enough, I thought. Less than a week before the negotiations started, Sabine Haefner called me and told me I absolutely had to come to New York, since the inclusion of women into the Convention's text was threatened.

I did not quite understand why I was the person who could save the day, but I nevertheless travelled to New York for a few days with my assistant. Similarly to the previous round of negotiations, we talked to government representatives and tried at the same time to establish common NGO positions with all disabled women. These were formulated and copied, and served as our basis for further lobbying. Fortunately, we did not perceive any danger of the rejection of an extensive acknowledgement of women in the Convention's text as we had feared.

During the debate at the plenum, almost all speakers declared themselves in favour of the "twin-track approach". Nevertheless, we had to come up with the ideal phrasing for the Article dealing specifically with women's issues, and to embed women and gender references in other articles. Regarding the latter, we did not live up to our own expectations. For instance, the articles on education, on work and employment, and on statistics and data collection lack the appropriate specifications.

All the same, I think that women with disabilities are very widely acknowledged in the CRPD. Many actors contributed to this success. I would like to emphasize the credit owed to the Korean government's delegation. It was thanks to their suggestion about an Article dealing specifically with women's issues during the third round of negotiations, that the inclusion of women became an issue in the meetings

23 See Background.
to begin with. Also, the German government’s delegation and the facilitator, Prof. Dr. Theresia Degener, contributed largely to the positive results.

Last but not least, we have to thank a large number of women with and without disabilities from all over the world for relentlessly committing themselves to making women visible in the CRPD, as well as ensuring that they are endowed with a broad range of rights.
Background.

The Convention’s Origins.

In the following pages, we will outline the process that led to the UN Convention on the Rights of Persons with Disabilities (CRPD). At this point, we will leave the establishment of women-related specifications in the Convention aside, as we will examine this topic in section 5.

1.2.0.1. History.²⁴

In most states, the predominant perspective on disability has been, and still is, the medical one. According to this view, the emphasis is placed on the individual’s impairment. Consequently, the topic of disability is primarily addressed in terms of social and health codes, instead of being regarded as a human rights issue. The key aspects include prevention, rehabilitation and social security. Thus, it is not surprising that the United Nations likewise approached the issue of disability within the context of the UN Social Development Commission and the World Health Organization, and not as a human rights issue.

At the same time, it is a well-known fact that disabled people face severe human rights violations throughout the world. In 1993, the UN published a report on disabled persons’ human rights prepared by the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities Leandro Despouys.²⁵

The author lists a wide range of human rights violations that are part of disabled peoples’ daily experience all over the world. Among other things, he identifies the prohibition of marriage and of the founding of a family; forced sterilization; sexual violence; being forced to live in institutions; the prohibition to vote; forced special needs schooling, and non-accessible public transport and housing.

Nonetheless, there was a long way to go before the CRPD would begin to be negotiated. In 1987, an Italian draft was discussed in the UN committees for the first time, only to be discarded later on. In 1989, Sweden failed in a renewed attempt. By way of substitute, the United Nations adopted the "UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities" in 1993.

²⁴ Unless otherwise noted, the information provided in this section is taken from Theresia Degener’s article: “Eine UN-Menschenrechtskonvention für Behinderte als Beitrag zur ethischen Globalisierung.” In: Politik und Zeitgeschichte B 08/2003.

In March 2000, the Beijing Declaration\textsuperscript{26} gave fresh impetus to the debate. Five organizations – Disabled Persons International; Inclusion International; Rehabilitation International; World Blind Union, and World Federation of the Deaf – called for a legally binding international convention on the rights of all disabled people. These organizations committed to campaign for such a convention.

In April 2000, the then United Nations High Commissioner for Human Rights, Mary Robinson, was asked in a resolution of the Human Rights Commission\textsuperscript{27} to examine measures leading to an improvement of disabled people’s human rights situations. She commissioned the ‘Human Rights and Disability’ study.\textsuperscript{28} This survey analyzed the human rights treaties that had been established up until that time, along with their impacts and applications with regard to people with disabilities. In the last chapter, the survey’s authors pronounce themselves explicitly in favour of the establishment of a UN human rights convention on the issue of disability.

\textbf{1.2.0.2. The CRPD Negotiations.}\textsuperscript{29}

On Mexico’s initiative, the UN General Assembly adopted Resolution 56/168\textsuperscript{30} on December 19, 2001. This included the establishment of the so-called Ad Hoc Committee. According to the resolution, the Committee’s initial task consisted solely in looking into suggestions for a comprehensive and integral Convention on the protection and promotion of disabled persons’ rights and dignity. The work was based on the UN’s holistic approach in the fields of social development, human rights and non-discrimination. The Committee was also required to take into consideration the Human Rights and Social Development Commissions’ recommendations.

Furthermore, the resolution said that states, relevant bodies, organizations from the UN system such as regional commissions, and the UN Special Rapporteur on Disability of the Commission for Social Development as well as interested non-governmental organizations (NGOs) were invited to contribute to the Ad Hoc Committee’s work.

The Ad Hoc Committee’s first meeting took place from July 29 to August 9, 2002 in the UN headquarters in New York. While preparing the second meeting, the Ad Hoc

\textsuperscript{26} Beijing Declaration on the Rights of Persons with Disabilities in the new century.
\textsuperscript{29} Unless otherwise noted, the information provided in this section is taken from the website: \url{www.un.org/esa/socdev/enable/rights/adhoccom.htm} (March 5, 2011)
\textsuperscript{30} Comprehensive and integral international Convention to promote and protect the rights and the dignity of people with disabilities, A/RES/56/168, \url{www.un.org/disabilities/default.asp?id=70} (March 5, 2011).
Committee decided to collect positions and suggestions for a Convention from states as well as from all relevant international, regional and national organizations.

During its second meeting between June 16 and June 27, 2003, the Ad Hoc Committee decided to appoint a Working Group whose task consisted in preparing a draft for a Convention. This draft was to serve as a basis for the member states’ negotiations. The Working Group was to consider any input that had been made available to the Ad Hoc Committee. It was composed of government representatives, NGOs and national human rights institutions. They held a meeting between January 5 and January 16, 2004, and prepared a Convention draft with the title, "Draft Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities".

In December 2003, the UN General Assembly adopted Resolution 58/246. While the Ad Hoc Committee’s task had consisted in merely looking into suggestions, it was now stated that the Committee should begin negotiations about a Convention during its third meeting. Furthermore, the resolution placed great emphasis on the inclusion of NGOs, and governments were required to incorporate people with disabilities in their delegations. The German government acted in accordance with this request by appointing Prof. Dr. Theresia Degener as a member of the official government delegation by holding regular meetings with representatives from the German Disability Council and by supporting German NGO representatives’ participation in the negotiations in New York.

In compliance with Resolution 58/246, the negotiations for the draft commenced at the third meeting of the Ad Hoc Committee (May the 24th – June the 4th, 2004). During the third, the fourth (August the 23rd – September the 9th, 2004), the fifth (January 24th – February 4th, 2005) and the sixth (August the 1st – August the 12th, 2005) meetings, the Ad Hoc Committee completed two readings of the draft text.

At its seventh meeting (January 16 – February 3, 2006), the Ad Hoc Committee’s chairperson, Don MacKay from New Zealand, presented his own draft as a result of the work that had been accomplished up to that point in time. This draft was negotiated during the seventh and eighth meetings (August 14 – August 25, 2006). Upon the closing of the Ad Hoc Committee’s eighth meeting, the Convention’s text being negotiated, as well as its Optional Protocol (regulating the operating principles for the Committee on the Rights of Persons with Disabilities) was adopted.

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This went along with the appointment of an editing committee which was to carry out a linguistic review of the draft and to conform it to common UN language. The editing committee finalised their work on the 5th of December, 2006. The reviewed versions of the Convention and its Optional Protocol were handed to the General Assembly for adoption.


The Convention's General Significance (Sans' Consideration of the Specifications Relevant to Women).

‘Convention with Three Superlatives’ was the title of an interview33 published by the German-language disabled people’s news service, Kobinet, on December the 13th, 2006 – the day the UN General Assembly adopted the Convention. These three superlatives are: “This is the first major human rights document of the 21st Century.,” “no Convention was ever negotiated in so little time as this one.,” while the third one is attributed to the unprecedented inclusion of disabled people and their organizations at all levels and during all stages of the negotiation process.34 The phrase, "Nothing about us without us" was the guiding principle of the entire consultation process.35

This Convention represents the first international document that systematically looks at disability policies from a human rights perspective. In the past, United Nations documents on disability issues were primarily shaped by the notion of public welfare.36 As stated above (see B 1.1.), the predominant perspective on disability was a medical one, which regards disability as an individual deficiency that is responsible for the lack of participation in all fields of society.

33 Interview with Dr. Sigrid Arnade, conducted by kobinet journalist Ottmar Miles-Paul (www.kobinet-nachrichten.org/cipp/kobinet/custom/pub/content.lang,1/oid,13630/ticket.g_a_s_t) (March 5, 2011)
According to the human rights-oriented social model of disability, disability emerges as a consequence of social barriers, such as non-accessible public transport; a lack of sign language interpretation; forced special needs schooling, or websites that cannot be used by blind people. "People aren't disabled, they are being disabled", was the slogan employed during the late 1990s in Aktion Grundgesetz (a campaign by the German organization Aktion Mensch, then Aktion Sorgenkind, with the objective of including a clause on non-discrimination into the German constitution), which summed up the social concept of disability.

Within the new CRPD, people with all forms of disabilities are regarded as holders of inalienable human rights. This means that disabled life is affirmed as a normal element of human life and society.\(^{37}\) At the same time, the problems disabled people are facing are named, not denied. All existing human rights are considered from a social perspective on disability and are specified and tailored with regard to disabled women and men's living conditions.

The States that ratify the Convention put themselves under the following obligations:

- To ensure the human rights of people with disabilities.
- To prevent the discrimination of people with disabilities.
- To adjust their own legislation so that the Convention's stipulations are implemented.\(^{38}\)

In the light of the UN Convention, all existing fields of disability policies and legislation will have to be renegotiated. We list six of these fields here:

- **The term 'disability':** The Convention does not include a fixed definition of disability. However, its Preamble stipulates a social perspective on disability, and Article 1 roughly defines "people with disabilities". Both phrasings go beyond the common definitions of disability used in German Law.

- **Accessibility:** Accessibility is addressed as early as in Article 3 (General
principles), and for the first time ever in a binding human rights document. Subsequently, Article 9 lists the different fields in which accessibility shall be achieved. This exceeds the stipulations decreed in the German equal rights law (Bundesgleichstellungsgesetz, BGG) for people with disabilities. For instance, private service companies shall also be obliged to ensure accessibility. Furthermore, the Convention includes a specification calling for plain language, which is an essential aid for people with intellectual disabilities.

- **Disability Mainstreaming**: As early as in its Preamble, the Convention emphasizes the importance of mainstreaming disability issues as an integral part of all relevant strategies of sustainable development. In Article 4 (General obligations), the States Parties commit themselves "to take into account the protection and promotion of the human rights of people with disabilities in all policies and programmes."

- **Equal Recognition Before the Law**: Article 12, addressing issues such as legal capacity, guardianship and the like, caused a great deal of controversy during the Convention's preparation. In the end, the parties agreed to reject any form of disenfranchisement. On the contrary, States Parties shall give the necessary support to disabled people so that the latter can enjoy their rights.

- **Living Independently**: Disabled people's right to an independent life is emphasised above all in Article 19. According to the Convention's text, this also includes "the opportunity to choose their place of residence and where and with whom they live". Disabled people must not be obliged to live in a particular living arrangement.

- **Education**: States Parties must ensure that all children can participate in an inclusive education system (Article 24). Exceptions are possible when it comes to learning Braille or sign language.

The English PowerPoint presentation, ‘Convention in Brief’ provides a summary of the CRPD’s key aspects.

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40 l.c.
42 See the link at the bottom of the page www.un.org/disabilities (March 5, 2011)
Multiple Discrimination of Disabled Women.

Around 650 million people are living with a disability in the world. In most OECD states, women are more often disabled than men, and the simple fact of being a woman represents a higher risk of having a disability. Therefore, one can assume that there are at least 325 million women with disabilities. Disabled women face multiple discrimination: They are discriminated against due to their disability, their gender and often, their poverty.

The social sex (gender) is one of the most important markers of difference in social systems. Differences based on gender are also reflected on disabled women’s and men’s experiences in their life. In some areas, the forms of discrimination faced by women with disabilities are particularly conspicuous, those being: education; work and employment; family rights; health, violence and abuse.

- **Education**: UNESCO and other international organizations estimate that, globally speaking, disabled women’s literacy rate is at 1%, while the overall literacy rate among disabled people is at 3%. Statistics show that less women with disabilities complete vocational training programmes than men with disabilities. For example, research in Switzerland demonstrates that more resources are invested in men’s vocational rehabilitation than in women’s. In countries such as Jordan, India and Russia, reports indicate that if disabled women complete any kind of vocational training at all, they complete job training programmes that lead to jobs that are less well-paid than those jobs for which disabled men are being trained.

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44 l.c.
47 Rehabilitation International (RI): Fact sheet: Women and Disability. RI 2007
• **Work and Employment**: On a world-wide scale, women with disabilities are excluded from the paid labour market in 75% of cases, and up to 100% in developing countries, even though the majority of them perform household work such as cooking, washing and taking care of children and relatives.\textsuperscript{53} Disabled men's chances in the labour market are twice as high as disabled women's chances.\textsuperscript{54} According to a Spanish study, 35% of disabled men in the European Union are employed, compared to only 25% of disabled women.\textsuperscript{55} As a result, the large majority of women with disabilities are living in poverty. According to a U.S. survey carried out in 2003, 25% of all disabled women in the U.S. are living below the poverty line.\textsuperscript{56} In rural regions within developing countries, 80% of disabled women are entirely dependent on others.\textsuperscript{57} In the U.S., women with physical disabilities earn an average of $3,000/year less than women without disabilities, and $7,000 less than men with physical disabilities.\textsuperscript{58}

• **Family Rights**: In both industrialised and developing countries, neither partnership nor motherhood are realistic perspectives in disabled women's lives, since society does not think that they are capable of fulfilling these roles so, it does not allow so.\textsuperscript{59} Moreover, due to the fear that disabled women pass their disability on to their children, women with disabilities are exposed to the risk of being sterilised on the governments' or their relatives' initiative.\textsuperscript{60} Furthermore, it is difficult for disabled women to find suitable accommodation and services. The percentage of disabled women living in institutions is higher than among disabled men.\textsuperscript{61}

• **Health**: Disabled women from all age groups face difficulties when it comes to physically accessing health services.\textsuperscript{62} Women with disabilities are exposed to a


\textsuperscript{56} Rehabilitation International (RI): Fact sheet: Women and Disability. RI 2007

\textsuperscript{57} l.c.

\textsuperscript{58} Center for Research on Women with Disabilities: Characteristics of the U.S. Population of Women with Disabilities (\url{www.bcm.edu/crowd/?PMID=1330}) – (March 5, 2011).


\textsuperscript{60} Rehabilitation International (RI): Fact sheet: Women and Disability. RI 2007

\textsuperscript{61} Womenwatch: Women with disabilities Fact Sheet, \url{www.un.org/womenwatch/enable/index.html#factsheet} – (March 5, 2011).

\textsuperscript{62} l.c.
higher risk of being infected with HIV or other sexually transmitted diseases. This is partly due to the lack of sex education, as they are viewed as "sexless". Furthermore, a widespread belief exists in some of the world's regions that AIDS can be cured if the infected man performs sexual intercourse with a disabled woman.63 The percentage of women and girls affected by depression is twice as high as the percentage among boys and men.64

- **Violence and Abuse:** According to the United Nations, women and girls with disabilities suffer from sexual violence twice as often as girls and women without disabilities.65 According to the EU, women with disabilities’ risk of experiencing sexual violence is as much as three times higher than the risk faced by women without disabilities.66 The danger is particularly high among girls and women who are living in institutions.67 In particular, this applies to women with learning difficulties and mental disabilities. At the same time, the problem is aggravated by the fact that many counselling centres and women's shelters cause accessibility problems for disabled women, both in terms of transportation to the facilities and the use of the actual premises.68

According to a small survey in Orissa, India, almost all girls and women with disabilities were beaten at home; 25% of women with so-called mental disabilities had been raped, and 6% of disabled women had undergone forced sterilization.69

**The Consideration of Women With Disabilities in International Documents (Preceding the CRPD).**

Over the course of the past 25 years, a change of perspective occurred with regard to the treatment of disabled people. Step by step, the welfare perspective was replaced by a human rights perspective.70 This means that people with disabilities

63 Rehabilitation International (RI): Fact sheet: Women and Disability. RI 2007
are not being looked at as objects any more, but as subjects. Disabled people are not regarded as "problematic cases" any more, but as rights holders.

At the same time, disabled people have become more visible in the United Nations' human rights documents. While people with disabilities were not mentioned in the 1948 Universal Declaration of Human Rights, the General Assembly has adopted a number of documents which address the rights of disabled people since the 1970s. Nevertheless, women with disabilities remained almost invisible in UN human rights policies until the 1980s.

1.2.3.1. Documents Referring to Disabled People.

1971 Declaration on the Rights of Mentally Retarded Persons

Women with disabilities are not mentioned in particular and, therefore, they remain invisible.

1975 Declaration on the Rights of Disabled Persons

It only mentions women indirectly, since discrimination based on a person's gender is prohibited.

1982 World Programme of Action Concerning Disabled Persons (WPA)

Disabled women count among the "special groups of disabled persons":

The consequences of deficiencies and disablement are particularly serious for women. There are a great many countries where women are subjected to social, cultural and economic disadvantages which impede their access to, for example, health care, education, vocational training and employment. If, in addition, they are physically or mentally disabled, their chances of overcoming their disablement are diminished, which makes it all the more difficult for them to take part in community life. In families, the responsibility for caring for a disabled parent often lies with women, which considerably limits their freedom and their possibilities of taking part in other activities.

Moreover, women are mentioned in the context of the prevention of disabled life.

1982  ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention 159

The International Labour Organisation (ILO) is a specialised institution with the United Nations. It authors international Conventions aimed at enhancing working conditions, promoting social improvements and ameliorating the standard of living. Convention 159 was adopted by the General Assembly in 1983, and came into effect in 1985. It is the only legally binding international pre-CRPD document that mentions women with disabilities. Article 4 states that “equality of opportunity and treatment for disabled men and women workers shall be respected.”

1993  United Nations Standard Rules for the Equalization of Opportunities for Persons with Disabilities

Women with disabilities are mentioned twice in the second chapter entitled, ‘Target Areas for Equal Participation’, firstly, in Rule 6 (Education), and secondly, in Rule 9 (Family Life and Personal Integrity).

Hence, Rule 6 (Education) says that:

In States where education is compulsory it should be provided to girls and boys with all kinds and all levels of disabilities, including the most severe. Special attention should be given in the following areas: a) Very young children with disabilities, b) Pre-school children with disabilities, c) Adults with disabilities, particularly women.

Accordingly, Rule 9 (Family Life and Personal Integrity) says that: “States should promote measures to change negative attitudes towards marriage, sexuality and parenthood of people with disabilities, especially of girls and women with disabilities, which still prevail in society.”

2002  Special Rapporteur on Disability, Third Final Report

In 1994, the UN appointed Bengt Lindqvist (Sweden) as Special Rapporteur responsible for monitoring the Standard Rules’ implementation. In his third final report, covering the years 2000-2002, the report mentions gaps that must be closed, and specifically names the dimension of gender.

76 Author’s emphasis (Dr. Sigrid Arnade).
Hissa Al-Thani was appointed as Special Rapporteur on Disability for the fourth time (2003-2005). One of her key focuses is gender issues.

1.2.3.2. Documents and Conferences Dealing with Women.

1975 First World Conference on Women in Mexico City.79
There was no mention at all of women with disabilities at this conference.

This Convention was adopted by the UN General Assembly in 1979, and came into effect in 1981. It does not contain any explicit reference to women with disabilities.

1979 Second World Conference on Women in Copenhagen.81
At this conference, governments were asked to direct special attention towards the needs of older women, single women and disabled women.

1984 Third World Conference on Women in Nairobi.82
The World Conference report on the UN decade for women, "Equality, Development and Peace" contains a paragraph dealing with women with physical and intellectual disabilities.

1990 UN Seminar of Disabled Women in Vienna.83
For the first time, the United Nations convened a meeting to examine the issue of women with disabilities. A list of recommendations was adopted at this meeting.

1990 CEDAW General Recommendation No. 18.84

This recommendation urgently asks the States Parties to provide information on disabled women in their periodic CEDAW reports:

"[...] and on measures taken to deal with their particular situation, including special measures to ensure that they have equal access to education and employment, health services and social security, and to ensure that they can participate in all areas of social and cultural life."

Since recommendations are not legally binding, the CEDAW States Parties are not obliged to report on disabled women's living conditions.

1995 Fourth World Conference on Women in Beijing.85

The Beijing Declaration and the Platform for Action were adopted at this conference. The Platform for Action consists of 361 articles. Women and girls with disabilities are explicitly mentioned in 38 of these articles, such as in the sections covering the issues of education and vocational training, health, violence against women, economy and girls.

1997/98 UN Resolution 52/100.86

With regard to the Fourth World Conference in Beijing and the Platform for Action, the General Assembly adopted resolution 52/100:

*The General Assembly [...]*

4. [...] calls once again upon States, the United Nations system and all other actors to implement the Platform for Action, in particular by promoting an active and visible policy of mainstreaming a gender perspective at all levels, including in the design, monitoring and evaluation of all policies and programmes to ensure effective implementation of all critical areas of concern in the Platform for Action.

With this resolution, all United Nations members committed themselves to the principles of gender mainstreaming.


Strong emphasis was placed on the Beijing Declaration and the Platform for Action at both conferences, and more declarations were passed. Women with disabilities and their concerns were acknowledged in this context.

1.2.3.3. Other Human Rights Documents.

1965 International Convention on the Elimination of All Forms of Racial Discrimination (CERD).\(^88\)

In 1965, the UN General Assembly adopted the CERD. It came into effect in 1969. The Convention includes neither a disability perspective nor a gender perspective. In 2000, the General Recommendation XXV was passed, acknowledging the twofold discrimination on the basis of race and gender.\(^89\)

1989 Convention on the Rights of the Child (CRC).\(^90\)

In 1989, the UN General Assembly adopted the CRC, which came into effect in 1990. Article 23 explicitly refers to children with disabilities, which constitutes an unusual approach in human rights treaties. However, the gender perspective is lacking: No differentiation is made between the concerns of girls and boys with disabilities.

When looking at the CRC, it becomes clear why it is problematic to insert a separate Article on the issue of disability, instead of mainstreaming disability issues in all relevant articles. In this manner, States Parties tend to report on children with disabilities by exclusively drawing upon this specific article, and thus ignore the fact that the entirety of the Convention's articles also refer to children with disabilities.\(^91\)

1.2.3.4. Conclusion.

Disabled women remained invisible in United Nations human rights documents for a long time. For instance, they are not mentioned in the Convention on the Elimination of All Forms of Discrimination Against Women, CEDAW, which was adopted in 1979.

\(^{88}\) [http://www2.ohchr.org/english/law/cerd.htm](http://www2.ohchr.org/english/law/cerd.htm) (April 27, 2011)


\(^{90}\) [http://www2.ohchr.org/english/law/crc.htm](http://www2.ohchr.org/english/law/crc.htm) (April 27, 2011)

Since the 1980s, they have become a bit more visible. However, documents concerning the issue of disability still contain few references to women.

Disabled women's issues became slightly more visible in documents relating specifically to women's issues. However, of all the documents mentioning disabled women, not a single one is legally binding. 1983 ILO Convention No. 159 represents the only exception to this rule. It was therefore a consequential step to make women with disabilities visible in the UN Convention on the Rights of Persons with Disabilities, and to address their living conditions with legally binding stipulations.

The Evolution of Women and Gender Specifications in the CRPD.

Women and gender references were almost entirely absent from the first Convention's draft, 'Draft Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities', prepared by the Working Group in January 2004 (see above).

During the third meeting of the Ad Hoc Committee (May the 24th – June the 4th, 2004), the negotiations for the Convention's text began. It was during this session that the Republic of Korea's government delegation suggested a separate Article dealing specifically with women's issues on May 27, 2004. The draft already included Article 16, referring to children with disabilities. Therefore, the Republic of Korea suggested placing the Article dealing specifically with women's issues between Articles 15 and 16, and called it "Article 15 bis". This Article proposed by the Republic of Korea addresses several issues relating to disabled women's lives, such as motherhood and work, as well as violence.

It would be only during the sixth session of the Ad Hoc Committee (1-12 of August, 2005) that the plenum discussed again the inclusion of women with disabilities within the Convention's text on the 2nd of August, 2005. Two main groups emerged on this occasion: Those who supported the Republic of Korea and their proposed separate Article dealing specifically with women's issues, and those in favour of the EU standpoint.

Korea's position was primarily backed up by some African, South American and Asian states. In contrast to this, the EU suggested mentioning disabled women's multiple discrimination in the Preamble and including a reference to equality between women and men in Article 4 (General Obligations). This was to apply and be implemented

92 www.un.org/esa/socdev/enable/rights/ahcstata6tscomments.htm#chile (March 6, 2011)
93 "Bis" is Latin for "twofold" or "twice".
94 The debate can be accessed at: www.un.org/esa/socdev/enable/rights/ahc6sum2aug.htm (March 6, 2011)
horizontally with regard to all of the other articles in the Convention. This position was shared by New Zealand, Australia, Japan and European non-EU states.

Costa Rica and Canada pronounced themselves in favour of a third method: They maintained that disabled women's justifiable claims should be considered throughout the entire Convention for the purposes of gender mainstreaming.

Some of the NGOs who had a say on each of the articles at the end of the debates came up with the so-called twin-track approach. In this way, both approaches should be implemented: A separate Article dealing specifically with women's issues was to be included and, for the purposes of gender mainstreaming, other important Convention articles were to be expanded to include women or gender references.

During the closing of the sixth meeting, the Ad Hoc Committee's chairperson, New Zealand's ambassador Don MacKay, resumed the debate. He stated that there was a strong agreement among the negotiating states concerning the claim that women with disabilities should be considered in the Convention for reasons of their multiple discrimination. Differences of opinion existed only when it came to choosing the best strategy. Consequently, he announced that he would appoint a facilitator for this issue.

Hence, Prof. Dr. Theresia Degener, an attorney, disabled woman and member of the German government delegation, was appointed as facilitator. During the Ad Hoc Committee's sixth and seventh meetings, she prepared proposals for compromise, discussed them repeatedly with government delegations and modified her suggestions in accordance with how the debate was developing. In the course of these debates, the twin-track approach found more and more supporters. In cooperation with the facilitator for the issue of children, Theresia Degener delivered the results of her work on the 28th of January, 2006.

On the 1st and the 2nd of February, 2006, the inclusion of women with disabilities in the Convention was discussed once more in the plenum. At that time, many government delegations already supported both a separate Article dealing specifically with women's issues and further references in other Convention articles, that is; they suggested the twin-track approach.

During the eighth meeting of the Ad Hoc Committee (14-25 of August, 2006), the issue of “women with disabilities” was once more debated in the plenum on the 16th

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96 The Ad Hoc Committee's 7th session: January 16 – February 3, 2006.

97 www.un.org/esa/socdev/enable/rights/ahc7docs/ahc7fachwo1.doc (March 6, 2011)

98 The debate can be accessed at www.un.org/esa/socdev/enable/rights/ahc7sum01feb.htm (March 6, 2011) and www.un.org/esa/socdev/enable/rights/ahc7sum02feb.htm (March 6, 2011)
of August. At this point, the chairperson stated as early as at the opening of the discussion that there was an agreement on the twin-track approach. In fact, almost all government delegations voted for this approach, including the Republic of Korea and the EU.\textsuperscript{99}

To that effect, the CRPD contains Article 6, which deals specifically with women's issues. Moreover, women and gender references are included in the Preamble in Article 3 (General Principles); Article 8 (Awareness-Raising); Article 16 (Freedom from Exploitation, Violence and Abuse); Article 25 (Health); Article 28 (Adequate Standard of Living and Social Protection), and in Article 34 (Committee on the Rights of Persons with Disabilities).

\textsuperscript{99} Author's notes (Dr. Sigrid Arnade).
Comprehensive regulations relevant to Gender Equality or Women's Rights.

Equal Opportunities Regulations in the Preamble.
Preambles are introductory explanations preceding legal documents, such as international law treaties and constitutions, and sometimes other legal documents. While the Convention is a multilateral treaty with immediate legal relevance, the Preamble is not legally binding. However, the political goals, the references to other international law treaties and the programme objectives included in the Preamble, do explain the Convention's aim. The Preamble is therefore of great importance when it comes to interpreting the Convention's text.\textsuperscript{100}

1.3.0.1. "Gender" as Grounds of Discrimination in the Preamble, Paragraph p).

1.3.0.1.1. The Convention's Text.
Preamble. Paragraph p):

Concerned about the difficult conditions faced by people with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex\textsuperscript{101}, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status.

1.3.0.1.2. Legal Significance.
The Preamble's paragraph p) represents a so-called list of grounds of discrimination: Different possible grounds of discrimination are listed one by one. Other lists of grounds of discrimination can be found, for example, in Article 2, paragraph 2 of the Covenant on Economic, Cultural and Social Rights (CESCR); Article 2, paragraph 1 of the Covenant on Civil and Political Rights (CCPR); Article 2, paragraph 2 of the Child Rights Convention (CRC); Article E of the (revised) European Social Charter, or in Article 13, paragraph 1 of the EC Treaty\textsuperscript{102}.

The Preamble refers to the Universal Declaration of Human Rights (UDHR) and the United Nations' key human rights treaties, and thus makes clear that the CRPD can be considered to be in line with this tradition. The Convention does not grant any new human rights to people with disabilities, but is instead primarily aimed at

\textsuperscript{100} Creifeld: Rechtswörterbuch, 13\textsuperscript{th} edition, Munich 1995.
\textsuperscript{101} Author's emphasis (Sabine Haefner).
\textsuperscript{102} Formerly Article 13 TEC, now Article 19 TFEU (Treaty on the Functioning of the European Union)
supplementing and specifying the existing human rights standards, so that they also have practical effects for people with disabilities.\textsuperscript{103}

Against this backdrop, one of the Convention’s key principles is the principle of non-discrimination, as it is explicitly established in Article 3, para. (b) and in Article 5 CRPD: “All human rights and fundamental freedoms shall be granted to people with disabilities, without any discrimination on grounds of their disability.”

However, Article 5, paragraph 3 CRPD also emphasizes that disabled persons shall not only be protected from discrimination on the grounds of disability, but also from discrimination on other grounds. Nevertheless, the CRPD does not include a list of possible grounds of discrimination in the Convention’s text itself.

During the discussion, it became obvious that the acknowledgement of grounds of discrimination depends on an individual society’s experiences and values. For example, the European Union advocated for the inclusion of “sexual orientation” as ground of discrimination in accordance with Article 13 TEC (EC Treaty).\textsuperscript{104} However, this was rejected by other states.\textsuperscript{105} Finally, the delegations agreed to include the list of grounds of discrimination in the Preamble. Since the list does not only refer to defined grounds but also to an “other status”, this list is a so-called “open list of grounds of discrimination” that can be interpreted with regard to regional standards in different branches of the law and with different value concepts.

The inclusion of “sex” as grounds of discrimination was never a subject for controversial debates. It was already included in the 1966 Covenant on Civil and Political Rights. However, when there was still no agreement during the negotiations on whether and how the gender perspective was to be acknowledged in the Convention, some actors argued that it would be sufficient to include the discrimination grounds of “sex” in the Preamble to protect women with disabilities from multiple discrimination.

Since the Preamble is not legally binding, however, this argument did not win out over other suggestions. Preamble paragraph p) asserts that the Convention was prepared with an awareness of the fact that people with disabilities are exposed to multiple discrimination based on one of the listed grounds of discrimination, in a way that can further aggravate their difficult living conditions.


\textsuperscript{104} Ex-article 13 TEC: now Article 19 TFEU (Treaty on the Functioning of the European Union)

On this note, when implementing measures, the States Parties are requested to acknowledge at least those other possible grounds of discrimination as defined in Article 5, paragraph 2 CRPD.

1.3.0.2. Gender Mainstreaming in the Preamble, Paragraph s).

1.3.0.2.1. The Convention's Text.
Preamble.
Paragraph s):

“(s) Emphasizing the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by people with disabilities.”

1.3.0.2.2. Legal Significance.
For the first time ever, the principle of “gender mainstreaming” is specifically mentioned in a United Nations human rights Convention. International human rights treaties include the principle of equality between men and women. According to the interpretation provided by the responsible human rights treaty bodies, the gender equality principle requires the application of “gender mainstreaming” in order to achieve substantial gender equality (see next chapter).

However, the fact that “gender mainstreaming” is explicitly established in the Preamble, emphasizes that the international community now recognises this principle (that was comprehensively defined at the 4th World Conference on Women in 1995 for the first time) as a programmed objective that makes a considerable contribution to making human rights a reality for both men and women.


1.3.1.1. The Convention's Text.
General Principles:

The principles of the present Convention shall be:

(a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;

(b) Non-discrimination;

(c) Full and effective participation and inclusion in society;

(d) Respect for difference and acceptance of people with disabilities as part of human diversity and humanity;
(e) Equality of opportunity;

(f) Accessibility;

(g) Equality between men and women\textsuperscript{106};

(h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

1.3.1.2. Legal Significance of General Principles.

The general principles outlined in Article 3 represent the framework of the entire Convention. Disabled people's rights and freedoms included in the Convention, and the States Parties' obligations both derive from these principles. They are, therefore, an aid for interpreting and implementing the Convention. Although other UN human rights Conventions do not normally summarise their fundamental principles in a separate article, as is the case with the CRPD, the general principles listed in Article 3 are guidelines that also shape many other UN human rights treaties and instruments, being included in their preambles and in the treaties' texts.

These principles can be found in the Universal Declaration of Human Rights, as well as in the six most important UN human rights treaties.\textsuperscript{107} For example, the Committee on the Rights of the Child defined four main principles in their analysis of four of the Convention's articles. Governments, parliaments and jurisdiction shall realize the advancement of children's rights in light of these principles.\textsuperscript{108}

The guidelines specified in Article 3 of the CRPD are also included in other international documents on disabled people's human rights, such as in the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993); the ILO (International Labour Organisation) Vocational Rehabilitation and Employment (Disabled Persons) Convention (1983), or Article 15 of the (revised) European Social Charter.\textsuperscript{109}

\textsuperscript{106} Author's emphasis (Sabine Haefner).


The CRPD’s approach of listing the general principles as a separate Article immediately after outlining the Convention’s purpose (Article 1) and definitions (Article 2), aims to ensure that there will be no uncertainties concerning its fundamental principles.\textsuperscript{110} The Ad Hoc Committee’s Working Group’s draft already included a separate Article on general principles that was to be applicable to the Convention in its entirety.\textsuperscript{111}

In light of the fact that the United Nations and their Member States’ disability policies were shaped by a welfare notion for decades, the emphasis placed on the general principles unmistakably underscores the paradigm shift represented by the CRPD, that is; the shift from the welfare concept and a medical approach towards a human rights approach with a social perspective.\textsuperscript{112} Environmental protection treaties displayed a similar strategy, such as, for example, the UN Convention to Combat Desertification (1994), or the UN Framework Convention on Climate Change (1992).\textsuperscript{113}

\textbf{1.3.1.3. The Principle of Gender Equality In Article 3, Paragraph g).}

Article 3, paragraph (g) defines equality between men and women as a general principle of the CRPD. The Universal Declaration of Human Rights (1948) and the United Nations Charter (1945) confirmed the peoples’ faith in the equality between men and women in their preambles.\textsuperscript{114} Consequently, in the key international human rights treaties, the States Parties put themselves under the obligation to ensure equality between men and women in their enjoyment of all economic, social, cultural, civil and political rights.\textsuperscript{115}

The 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is entirely based on this obligation.\textsuperscript{116} The 1989 Convention on the


\textsuperscript{112} See also chapter B.1.1.


\textsuperscript{116} See CEDAW preamble.
Rights of the Child also professes its commitment to this principle: The educational goals for children include teaching them gender equality. In the Ad Hoc Committee Working Group's early draft for Article 3 (formerly Article 2) of the CRPD, the gender equality principle was not yet included.

However, as early as during the third meeting of the Ad Hoc Committee (May the 24th – June the 4th, 2004), Canada, Mexico, Costa Rica and Norway suggested including this principle, and many other delegations supported this proposal. For this reason, the gender equality principle was also an element of the draft version that the Ad Hoc Committee's chairperson handed over to all delegations in October 2005, as a revised "working text". Finally, during the Ad Hoc Committee's seventh and eighth sessions in January and August 2006, the principle of gender equality was affirmed in Article 3.

1.3.1.4. Legal Significance of the Gender Equality Principle.

Women and girls are often impeded from enjoying their rights, due to the social status that is ascribed to them for cultural, traditional or religious reasons, or because of open or covert discrimination. Additionally, many women are confronted by the fact that they are not only facing discrimination because of their gender, but also for other reasons, such as their skin colour, their religion, their origins, their age, their marital status, because they are refugees or migrants, or because they have a disability.

For instance, women with disabilities experience multiple discrimination with regard to their reproductive rights, their right to be protected from violence, their right to education, to health services or to work and employment. The risk of a woman being discriminated against in one of these fields is multiplied by the risk of being impeded in the enjoyment of one's human rights as a disabled person.

1.3.1.4.1. Legal Significance in Other Non Gender-Specific Human Rights Conventions.

1.3.1.4.1.1. Sources.

120 CCPR, General Comment No. 28, Rz. 5., http://www2.ohchr.org/english/bodies/hrc/comments.htm (April 27, 2011)
121 CESCR, General Comment No. 16 (2005), Rz. 5; on the situation of women with disabilities, see also chapter B.3., http://www2.ohchr.org/english/bodies/cescr/comments.htm (April 27, 2011)
In order to understand the importance of the gender equality principles for the CRPD, it is helpful to take a look at the interpretation and implementation of the gender equality principle in other, non gender-specific Conventions. Several treaty bodies that are responsible for monitoring the UN human rights Conventions’ implementation, published so-called “General Comments” on States Parties' obligations based on the gender equality principle.

General Comments or Recommendations issued by treaty bodies serve as international “soft law” sources, and provide orientation for the implementation of human rights. They are a value standard for assessing states’ progress when it comes to the implementation process. They express the current interpretation of human rights norms, and therefore have political and legal weight.122

The Human Rights Committee, which is responsible for monitoring the International Covenant on Civil and Political Rights (ICCPR), published a first General Comment on the gender equality principle established in Article 3 ICCPR as early as in 1981.123 This comment was completely reviewed in 2000 and was replaced by a comprehensive new General Comment that same year.124 Likewise, the Committee on Economic, Social and Cultural Rights published an extensive General Comment in 2005, addressing men and women’s equal right to the enjoyment of all economic, social and cultural rights.125

Ensuring men and women’s equal right to participate in all economic, social and cultural rights is a mandatory and immediate obligation of the States Parties.126 The General Comments on two of the key human rights treaties (ICCPR and ICESCR) make it clear that the principle of gender equality is not a mere declaration. Instead, it implies comprehensive obligations for States Parties to combat discrimination and to ensure the equal exercising of human rights.

Therefore, the gender equality principle, as established in both the ICCPR’s and ICESCR’s Article 3, cannot be considered separately. Instead, it must be considered in the context of all rights included in the ICCPR and the ICESCR. It is a cross-cutting

122 Deutsches Institut für Menschenrechte (German Institute for Human Rights), "Was sind Allgemeine Bemerkungen?" (What are General Comments?), http://www.institut-fuer-menschenrechte.de/de/themen/entwicklungszusammenarbeit/oft-gestellte-fragen/frage-7-was-sind-allgemeine-bemerkungen.html (March 12, 2011)
123 CCPR, General Comment No. 4: Equality between the sexes (Art. 3), http://www2.ohchr.org/english/bodies/hrc/comments.htm (April 27, 2011)
124 CCPR, General Comment No. 28, http://www2.ohchr.org/english/bodies/hrc/comments.htm (April 27, 2011)
125 CESCR, General Comment No. 16 (2005), http://www2.ohchr.org/english/bodies/cescr/comments.htm (April 27, 2011)
126 CESCR, General Comment No. 16 (2005), paragraph 16, http://www2.ohchr.org/english/bodies/cescr/comments.htm (April 27, 2011)
obligation. This means that women and men must be equally able to enjoy, de jure and de facto, all outlined political, civil, social and cultural rights.

At the same time, according to the CESCR a de facto equality cannot only be accomplished through gender-neutral legislation and policies (de jure equality). Instead, there is a risk that inequalities will even be reinforced if existing economic, social and cultural inequalities that concern women in particular are not acknowledged in policies and legislation. De facto gender equality thus requires the evaluation of the impacts of political, legislative and administrative activities. Existing forms of discrimination must not continue and must, on the contrary, be diminished.

The gender equality principle must be respected in and before the law. The legislator must ensure that legislation promotes men’s and women’s equal recourse to all rights. And the States Parties must ensure that the administration, courts and other judicial institutions apply rights equally for both men and women and without discriminating against either of them.

The principle of gender equality also demands that discrimination on the basis of a person’s gender or any other grounds of discrimination is prohibited. This applies both to the public and private sector. Insofar as the principles of gender equality and non-discrimination might be insufficient, other temporary special provisions might be necessary in order to balance out any inequalities between people or groups who are discriminated against.

Likewise, temporary special provisions are not only targeted towards formal (de jure) equality, but also towards factual (de facto) equality between men and women. This can also denote the necessity of provisions to the benefit of women, aimed at changing conditions that perpetuate discrimination against women.

1.3.1.4.1.2. Measures Within the Gender Equality Principle’s Scope.
As in the case of all human rights, the gender equality principle involves three types of obligations to States Parties: respect, protect and fulfil human rights. Respecting the gender equality principle can mean that States Parties do not act in any discriminating way, that they do not pass any laws which do not comply with the

127 CCPR, General Comment No. 28, paragraph 6; CESC, General Comment No. 16 (2005), paragraphs 2 and 22, http://www2.ohchr.org/english/bodies/hrc/comments.htm (April 27, 2011)
128 CESC, General Comment No. 16, paragraph 6-9, http://www2.ohchr.org/english/bodies/cescr/comments.htm (April 27, 2011)
129 CESC, General Comment No. 16, paragraph 9, http://www2.ohchr.org/english/bodies/cescr/comments.htm (April 27, 2011)
130 CESC, General Comment No. 16, paragraph 10; CCPR, General Comment No. 28 (2000), paragraph 4, http://www2.ohchr.org/english/bodies/csrc/comments.htm (April 27, 2011)
gender equality principle, or that they assess seemingly gender-neutral laws and programmes with regard to their possibly discriminating effects.\textsuperscript{131}

**Protecting** the gender equality principle can, for example, include combating prejudices, or overcoming cultural, traditional, religious and other practices that perpetuate discrimination or stereotypes, or which serve as a justification of human rights violations.\textsuperscript{132} Other ways of protecting the gender equality principle include the establishment of norms with regard to the gender equality principle within or outside constitutional law, antidiscrimination legislation, and measures in administration and other social fields aimed at protecting women from discrimination.\textsuperscript{133}

Human rights are being fulfilled when all people are able to enjoy them equally. Possible measures include, for example, providing effective legal instruments; establishing courts and a monitoring system; developing programmes with long-term effects; temporary special provisions to accelerate women's equal participation in all areas and to enable their empowerment; support through financial means, human rights education, etc.\textsuperscript{134}

**1.3.1.4.2. Legal Significance of the Gender Equality Principle for the CRPD.**

As it has already been stated, both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Cultural and Social Rights (1966), compel States Parties to undertake extensive measures in all legal fields by means of the established gender equality principle. In their reports to the responsible treaty bodies, the States Parties are requested to state if the entirety of rights can be enjoyed equally by both men and women; what conditions prevent equal recourse to rights, and which measures are being undertaken in order to ensure an equal enjoyment of human rights and fundamental freedoms.

In their General Comments, the responsible treaty bodies provide indications as to which relevant aspects must be considered with regard to individual rights. Likewise, for the CRPD this means:

- The gender equality principle is relevant to the Convention in its entirety;

- Men and women with disabilities must be equally able to de facto realize and enjoy all human rights and fundamental freedoms that are established in the

\textsuperscript{131} CESC\textsuperscript{R}, General Comment No. 16, paragraph 18, \texttt{http://www2.ohchr.org/english/bodies/cescr/comments.htm} (April 27, 2011)
\textsuperscript{132} CESC\textsuperscript{R}, General Comment No. 28, paragraph 5, \texttt{http://www2.ohchr.org/english/bodies/cescr/comments.htm} (April 27, 2011)
\textsuperscript{133} CESC\textsuperscript{R}, General Comment No. 16, paragraph 19; CCPR, General Comment No. 28, paragraph 4, \texttt{http://www2.ohchr.org/english/bodies/ccpr/comments.htm} (April 27, 2011)
\textsuperscript{134} CESC\textsuperscript{R}, General Comment No. 16, paragraph 21; CCPR, General Comment No. 28, paragraph 3, \texttt{http://www2.ohchr.org/english/bodies/cescr/comments.htm} (April 27, 2011)
Convention;

- The States Parties are compelled to respect, protect and realize this requirement by drawing upon suitable provisions (see above);

- The States Parties are also compelled to provide the appropriate explanations in their reports, as specified in Article 35.

1.3.1.5. Conclusion.

The general principles in Article 3 of the CRPD are helpful when it comes to interpreting and implementing the Convention. Thanks to their explicit nature, they emphasize the CRPD’s paradigmatic shift from the welfare concept to a human rights approach. The implementation of the gender equality principle, as mentioned in Article 3 of the CRPD, is a mandatory and direct cross-cutting obligation for the States Parties. It is required that all men and women must be able to enjoy, de facto and de jure, all so-called political, civil, economic, social and cultural rights.

Accordingly, this requires the following:

- To respect the gender equality principle by refraining from discrimination, analyzing all legislation, policies and programmes with regard to discriminating effects that they might have on women or men, and ensuring that discrimination is not continued, but instead reduced (gender mainstreaming).

- To protect the gender equality principle by combating prejudices, overcoming cultural, traditional, religious and other customs that aggravate gender inequalities, establishing norms with regard to the gender equality principle within or outside constitutional law, prohibiting discrimination on the grounds of a person’s gender in both the public and private sector.

- To fulfil the gender equality principle by providing effective legal instruments; establishing courts and a monitoring system; developing programmes with long-term effects and temporary special provisions to accelerate women’s equal participation in all fields, and to enable their empowerment, providing support through financial means, human rights education etc.

With regard to the CRPD, this means:

- The gender equality principle is relevant to the Convention in its entirety.

- Men and women with disabilities must be equally able to de facto realize and enjoy all human rights and fundamental freedoms that are established in the Convention.
• The States Parties are required to respect, protect and fulfil this target by drawing upon suitable provisions.

• The States Parties are also required to provide the appropriate explanations in their reports, as specified in Article 35 of the CRPD.

**Article 6: Women with Disabilities.**

1.3.2.1. The Convention’s Text.

Article 6.

**Women with disabilities:**

1. States Parties recognise that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of ensuring them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

1.3.2.2. The CRPD’s Article 6 as a Reinforcement of the Gender Equality Principle.

The gender equality principle requires States Parties to combat discriminatory treatment and undertake measures for the establishment of gender equality within the framework of the Convention’s implementation. This principle is further concretised by Article 6, paragraph 1: With Article 6, the States Parties unequivocally acknowledge the multiple discrimination of women and girls with disabilities. Consequently, since the acknowledged forms of discrimination entail a mandatory and immediate obligation to act upon them, Article 6, paragraph 1 also includes an immediate obligation to undertake antidiscrimination measures, aimed at enabling women and girls with disabilities to equally enjoy human rights and fundamental freedoms.

Likewise, Article 6, paragraph 2 represents a specification and further development of the operational guidelines that go along with the gender equality principle. One such guideline consists of the demand to provide special measures for the advancement of women (or men) if they are necessary, in order to ensure their equal participation in human rights and fundamental freedoms. Nevertheless, while States Parties do still give a certain degree of discretion with regard to the implementation of special measures aimed at realizing the gender equality principle, discretion was reset to zero regarding the measures to promote women with disabilities, as stated by Article 6, paragraph 2.
Considering that women with disabilities face multiple discrimination, States Parties are obliged to carry out special measures: They must contribute with all appropriate measures to ensuring "the full development, advancement and empowerment of women", so that the latter can exercise and enjoy the human rights and fundamental freedoms set out in the Convention.

1.3.2.3. Article 6 in Detail.

1.3.2.3.1. Article 6, Paragraph 1, First Half of the Sentence:
"1. States Parties recognise that women and girls with disabilities are subject to multiple discrimination [...]."

1.3.2.3.1.1. Text Development.
At a rather early stage of the negotiations, the delegations agreed on the fact that women and girls with disabilities are confronted with multiple discrimination and are therefore facing specific disadvantages. However, the question of whether this insight would be acknowledged in the Convention and what effects this acknowledgement would have, provoked controversy until the very end of the negotiations.

The insight that women and girls with disabilities are facing multiple discrimination was initially acknowledged in the European Union's suggestion, in the Preamble's subparagraph n bis). When the plenum discussed the separate Article 15 bis (Women with Disabilities), which was proposed by the Republic of Korea during the Ad Hoc Committee's sixth session (1st-12th of August, 2005), the Republic of Kenya and the International Disability Caucus pronounced themselves in favour of explicitly recognizing the multiple discrimination of women and girls with disabilities in a separate Article within the Convention.

In the end, the recognition of multiple discrimination was included in the proposal for Article 6, paragraph 1, as suggested by Theresia Degener, who was at that time the appointed facilitator for specifications regarding women's issues in the CRPD.


\[137\] Revisions and amendments at the Seventh session, Joint Facilitators' proposal on Women and Children, January 28, 2006: "States Parties recognise that women and girls with disabilities are subject to multiple discrimination and that focused, empowerment and gender sensitive measures are necessary to ensure the full and equal enjoyment by women and girls with disabilities of all human
1.3.2.3.1.2. Legal Significance.

The recognition of the multiple discrimination of women and girls with disabilities is of relevance to the further resulting obligations for the States Parties. States Parties do not only recognise that women and girls with disabilities can be victims of multiple discrimination. Furthermore, they recognise multiple discrimination as an invariable fact.

In this way, the Convention's text itself represents a basis for the States Parties' mandatory and immediate obligation to undertake measures that ensure all human rights and fundamental freedoms for women and girls with disabilities.

Discrimination must always result in counteracting measures by states with the objective to combat discrimination, to protect affected groups and to establish de facto equality. 138 It is a case of discrimination whenever people are withheld from an equal enjoyment of their human rights and fundamental freedoms, and that requires mandatory and immediate action by the respective States Parties. 139

This can also be derived from Article 5 of the CRPD. Article 5, paragraph 2 not only requires States Parties to prohibit any kind of discrimination on the grounds of disability, but it also compels States Parties to protect disabled people from discrimination on other grounds, such as forms of discrimination on the grounds of their gender.

In order to promote equality and to eliminate discrimination, the States Parties must undertake all necessary steps to ensure this (Article 5, paragraph 3). Special provisions aimed at accelerating or establishing de facto equality for disabled persons must not be considered discrimination (Article 5, paragraph 4).

1.3.2.3.2. Article 6, Paragraph 1, Second Half of the Sentence.

"[...] and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms."

1.3.2.3.2.1. Text Development.

The proposal made by Theresia Degener, who was the facilitator in charge during the seventh negotiations round of the Ad Hoc Committee (January 16 – February 3, 2006), included another concretization of the measures that must be undertaken. According to this proposal, these measures must be focused, provide

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138 See the explanations about the significance of the gender equality principle.
139 CESCR; General Comment No. 16, para. 16, http://www2.ohchr.org/english/bodies/cescr/comments.htm (April 27, 2011)
empowerment, and be gender sensitive. However, these adjuncts were removed from the text in the course of the ongoing negotiations during the eighth meeting (August 2006).

In view of the government delegations’ suggestions during the eighth meeting, it became apparent that some Member States preferred the common wording “all appropriate measures”. The goal of empowering women was finally embedded in Article 6, paragraph 2. Among other things, this was probably also caused by the fact that Article 1 recognises the multiple discrimination against women and girls with disabilities.

Some states expressed their fear that state-induced measures to the benefit of women and girls might possibly exceed the aims of the Child's Rights Convention, specifically, Article 5 CRC. This Article protects the parents’ right to “provide [...] appropriate direction and guidance in the exercise by the child of the rights recognised in the [...] Convention”.

At the closing of the eighth and final round of negotiations, all that remained were the sole “measures” that must be undertaken with regard to the multiple discrimination of women and girls with disabilities, so that they can fully and equally enjoy all human rights and fundamental freedoms.

1.3.2.3.2.2. **Legal Significance.**

There are different types of obligations in human rights treaties. Firstly, they can include obligations to use specific instruments and means, or specific activities in order to achieve a defined goal. Secondly, there are obligations to achieve defined goals, but the States Parties are free to choose the appropriate means. In this regard, Article 6, paragraph 1, includes this second type of obligation. The goal is precisely defined: the full and equal enjoyment of all human rights and fundamental freedoms by women and girls with disabilities.

Hence, the States Parties have an obligation they must immediately fulfil. The question of "if" measures must be undertaken is not left to their discretion.

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140 Revisions and amendments at the Seventh session, Joint Facilitators’ proposal on Women and Children, January 28, 2006: “States Parties recognise that women and girls with disabilities are subject to multiple discrimination and that focused, empowerment and gender sensitive measures are necessary to ensure the full and equal enjoyment by women and girls with disabilities of all human rights and fundamental freedoms”, [www.un.org/esa/socdev/enable/rights/ahc7facilitator.htm](http://www.un.org/esa/socdev/enable/rights/ahc7facilitator.htm) (April 27, 2011)

141 For example, Egypt, Morocco, Sudan, Syria, Qatar, Saudi Arabia, the European Union, El Salvador, Venezuela, Guatemala, Mexico, Chile, Colombia, Argentina, Costa Rica, Dominican Republic, Panama, Cuba, Trinidad and Tobago and Jamaica; Proposed Modification of Governments at the Eighth session, Article 6, [www.un.org/esa/socdev/enable/rights/ahc8gpcart6.htm](http://www.un.org/esa/socdev/enable/rights/ahc8gpcart6.htm) (April 27, 2011)

142 Author’s recollections (Sabine Haefner) from the AHC’s eighth negotiations round, August 2008

143 Hanna Beate Schöpp-Schilling, The circle of empowerment: twenty-five years of the UN Committee on Elimination of Discrimination against Women, New York, 2007, p. 20, with further references.
Nevertheless, the States Parties are conceded a restricted discretion regarding the choice of measures. It is restricted since the measures must be undertaken with regard to the multiple discrimination of women and girls with disabilities, that is: states must establish a comprehensive **safeguard that protects women with disabilities from discrimination, and whose ultimate aim is equality**.

This does not only concern possible discrimination in comparison to disabled or non-disabled men, but also discrimination in comparison to non-disabled women. Moreover, and also within a framework of measures aimed at protecting other vulnerable groups from discrimination, disabled women's and girls' particular vulnerability to discrimination must be acknowledged, due to the possibility of multiple discrimination. For example, this applies to disabled women with a migratory background, to elderly women with disabilities and so on.

**Guidelines for Protection Against Discrimination.**

The 1948 Universal Declaration of Human Rights already included a **prohibition of discrimination** based on the insight that all human beings have equal rights and dignity. Ever since then, the prohibition of discrimination has been an element of all key documents in the context of the international human rights system.\(^\text{144}\)

The German Institute for Human Rights [Deutsches Institut für Menschenrechte] identified four current key trends concerning protection from discrimination: (a) an expansion of the recognised grounds of discrimination; (b) the goal of de facto equality, linked to an increasing awareness of indirect and structural forms of discrimination; (c) the states are accepting responsibility for protecting individuals from discrimination by actors from the private sector, and (d) the implementation of protection from discrimination is supported by institutions such as antidiscrimination offices, which provide aid to affected individuals and monitor the implementation of protection from discrimination.\(^\text{145}\)

(a) Measures undertaken on the basis of Article 6, paragraph 1 must consider the fact that Article 1 acknowledges the **multiple discrimination** of women and girls with disabilities. This means: Measures that are undertaken to counteract the

\(^{144}\) Articles 2 and 7, Universal Declaration of Human Rights; Article 2 paragraph 2, International Covenant on Economic, Cultural and Social Rights; Article 1, paragraph 2 and Article 26, International Covenant on Civil and Political Rights; Article 1 paragraph 2, UN Convention on the Elimination of All Forms of Racial Discrimination (CERD); Article 1, UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); Article 2, UN Convention on the Rights of the Child; Article 14, European Convention on Human Rights (ECHR) and additional protocol No. 12; Article 1 paragraph 2, American Convention on Human Rights; Article 2, African Charter on Human and Persons' Rights

discrimination of disabled women and girls cannot only address disability or gender as grounds of discrimination. Article 5, paragraph 2 of the CRPD also states that all other possible reasons for additional discrimination of disabled women and girls must be considered.

Article 5, paragraph 2 does not include a complete list of grounds of discrimination and is therefore open to further development. Among other things, one can say that lists of grounds of discrimination also reflect the state of an educational process within a society, measured by the degree of awareness of current forms of discrimination.146

However, during the negotiations for the CRPD, the member states represented in the AHC agreed to embed an open and more detailed list of grounds of discrimination in the Preamble. Paragraph (p) now reads as follows: “(p) Concerned about the difficult conditions faced by people with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status.”147

(b) As it is stated above in the context of the gender equality principle, protection from discrimination is not only aimed at establishing de jure equality, but also at leading to de facto equality:

- Gender or disability neutral policies, legislation and administrative activities must therefore be assessed with regard to discriminating effects on women and girls in accordance with Article 6, paragraph 1 of the CRPD.

- Administrations, courts and other law users must apply the law for women and girls with disabilities in an equal and non-discriminatory way.

- The discrimination of women and girls with disabilities must be prohibited with due regard to their multiple discrimination in both public and private sectors. If the goal consists in ensuring equal opportunities in the de facto enjoyment of human rights, all forms of discrimination – direct, indirect and structural discrimination as well as the denial of appropriate measures – must be considered (see Art. 2 of the CRPD).

Rigid structures or a lack of appropriate measures entail a particularly high risk of discrimination against women and girls with disabilities. For example, balancing family and work is especially difficult for mothers with disabilities because of insufficient accessibility. For instance, finding an accessible gynaecological

146 l.c.
147 See chapter C.1.1.
practice in German rural areas is becoming increasingly difficult, due to the growing shortage of doctors. The consolidation of the low-pay sector, notably consisting of female employees who do not enjoy sufficient financial and social security, puts disabled women at an even greater disadvantage, if their additional financial needs stemming from their disability are not compensated by other sources.

- In particular, overcoming structural forms of discrimination might demand temporary special measures. Looking at the examples mentioned above, these could include: the systematic establishment of accessibility in public space and in childcare facilities, as well as the accessibility of all medical practices, including gynaecological practices.

It further includes the provision of vocational training and further education to raise doctors’ awareness about disabled people’s needs, and financially rewarding the treatment of people with disabilities in the framework of the medical compensation system, if the treatment entails additional effort, as well as establishing employment promotion measures in order to counteract low-pay sector jobs.

(c) Protection from discrimination must not exclude actors from the private sector. The State is the addressee of human rights obligations. Nevertheless, in the context of its obligation to provide protection (respecting, protecting and fulfilling), States Parties must provide protection from discrimination by private actors and provide a legal framework that supports people when they defend themselves against discrimination.

In the CRPD, this obligation of the state to protect and fulfil, is explicitly explained in Article 4 (General Obligations). According to this, the States Parties must take all appropriate measures to eliminate discrimination on the grounds of disability by any person, organization or private enterprise (Art. 4, para. 1 (e) of the CRPD).

In the context of Art. 6, para. 1, one example could be a private Media corporation that would represent women with disabilities in a marginalizing way. States Parties must at least “encourage” Media institutions to represent women with disabilities in a way that prevents stereotypes, prejudices and harmful practices (this also derives from Art. 8).

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148 Deutsches Institut für Menschenrechte, Diskriminierungsschutz in der politischen Diskussion, l.c., p. 7.
149 See chapter C.1.4.1.2.
150 Deutsches Institut für Menschenrechte, Diskriminierungsschutz in der politischen Diskussion, l.c., p. 8.
(d) Furthermore, based on international standards for protection from discrimination, one would expect the establishment of an institutional framework. Antidiscrimination institutions shall counsel and assist affected people; provide help in finding effective legal protection against discrimination; analyze discrimination cases; issue recommendations to the political sphere and, overall, promote a communal life without any forms of discrimination. They shall perform their tasks independently.

In the context of the obligations deriving from the CRPD, the specific legal basis for the establishment of such an institutional framework can be found in Art. 33 para. 2, CRPD. The States Parties are obliged to establish structures at a national level, in order to monitor the Convention's implementation. This also includes independent mechanisms "where applicable."

However, the question of whether protection from discrimination as defined in the CRPD requires the establishment of new structures, or if the existing structures are sufficient, must be individually assessed in every state. With regard to Art. 6, para. 1 of the CRPD, independent institutions must prove that they are sufficiently competent when it comes to dealing with cases of multiple discrimination of disabled women and girls.

1.3.2.3.3. Article 6, paragraph 2 of the CRPD.

"States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of ensuring them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention."

1.3.2.3.3.1. Text Development.

The proposal made by the facilitator, Theresia Degener, during the seventh meeting of the AHC, did not yet include the goal to ensure the full development, advancement and empowerment of women with disabilities. However, in the course of the further negotiations in the plenum, the goals of women's full development and empowerment were included into the text, following the example of Article 3 of the CEDAW.

At the beginning of the eighth round of negotiations, some states suggested to subsume the two paragraphs in the draft for Article 6. However, these proposals...
would have entailed a weakening of the states’ obligations. In the end, it was only the goal of empowerment that was added to paragraph 2, which had initially been included in the draft for the first paragraph.

1.3.2.3.3.2. Legal Significance.
Paragraph 2 addresses the development, advancement and empowerment of women. It assumes that women can be ensured the rights designated in the Convention, if the States Parties strive to achieve and promote these goals with appropriate means and in all of the fields addressed by the Convention. The States Parties enjoy a certain degree of discretion when it comes to choosing appropriate means.

The German Federal Constitutional Court considers a means to be appropriate, as defined in constitutional law, if it contributes to promoting the desired success. However, the legislator is allocated a certain freedom of legal arrangement – with due regard to the relevant field’s standards, when it comes to making decisions about how legislative institutions want to implement the protection they are required to provide.

Article 3 of the CEDAW exhibits a similar wording. Its interpretation provides some clues as to what are appropriate measures in the context of Article 6, paragraph 2 of the CRPD:

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of ensuring them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

The CEDAW treaty body identifies the following essential obligations derived from this wording: a national institution must see to women’s human rights; it must be allocated a clear mandate, appropriate resources and authority. Moreover, gender mainstreaming and gender budgeting shall be implemented.

Like Article 3 of the CEDAW, Article 6 of the CRPD cannot be considered to be a stand-alone article. Instead, it is a cross-cutting obligation that must be taken into consideration in the context of the interpretation and implementation of each and

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154 BVerfGE 33, 171 (187).
155 BVerfGE 107, 205-218; BVerfGE 103, 293 <307>.
any of the Convention's articles. This requires an analysis of the state of disabled women's exercise of the rights designated in the CRPD. If a need for action emerges, it is necessary to implement advancement measures to promote disabled women's participation in accordance with the specific field.

With regard to the guidelines developed by the CEDAW treaty body, this implies: (a) a national implementation system; (b) gender and disability mainstreaming; (c) gender and disability budgeting, and (d) the implementation of advancement measures.

**National implementation system**

First of all, national institutions must be commissioned with the unequivocal task of seeing to the development, advancement and empowerment of women with disabilities, in order to ensure their human rights. These can be government institutions; however a national human rights institution complying with the "Paris Principles" can also assume responsibilities. It is of essential importance that these national institutions are allocated appropriate organizational, financial and human resources, including the corresponding authorization.

In the case of Germany, according to the federal system, these responsibilities could be assumed by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth as well as the responsible federated states ministries. However, one must emphasize here that advancement measures according to Article 6, paragraph 2, aim to ensure disabled women's participation in all of the human rights and fundamental freedoms designated in the CRPD.

It is necessary to award the responsibility of implementing or initiating advancement measures for the benefit of disabled women at institutions that are competent in all fields. Thus, it might be an additional necessity for the corresponding specialist state institutions to also participate in appropriate measures.

**Implementing gender and disability mainstreaming**

In addition to implementing advancement measures, it is necessary to identify all possible negative effects of current and future laws, policies and programmes. This means assuring that Article 6 is not only based on women's disadvantages in comparison to men's. It must also address the multiple discrimination of disabled women and girls, which derives mostly from the intersection of gender and disability as grounds of discrimination.

Therefore, an analysis of current and future laws, programmes and policies must:

- consider men and women's different living conditions stemming from their biological differences and their social roles, especially in the field of disability-

related measures (gender mainstreaming).

- likewise, consider disabled and non-disabled women's different living conditions stemming from their different social participation opportunities on the basis of their disability, especially in the context of laws, programmes and policies that target women and their empowerment (disability mainstreaming).\footnote{The obligation of disability mainstreaming is also derived from Article 4, paragraph 1 (c) CRPD.}

In the course of the implementation of gender and disability mainstreaming, it is necessary to provide corresponding training for government employees and other people in charge. The particular government or human rights institutions must have the necessary competence in relation to gender and disability issues in order to be able to monitor the analysis' implementation.

**Gender and Disability Budgeting.**

The analysis of laws and programmes should be supplemented by an analysis of public budgets, following the concept of gender budgeting. Internationally, the notion of gender budgeting denotes the gender-sensitive analysis of public budgets. Within the gender mainstreaming strategy's framework, gender budgeting comprises a set of instruments to assess budgets with regard to their effects on equality between genders.\footnote{Bundesministerium für Familie, Senioren, Frauen und Jugend, Gender Mainstreaming, Das Konzept Gender Budgeting, see: www.gender-mainstreaming.net/bmfsfj/generator/gm/Wissensnetz/instrumente-und-arbeitshilfen,did=16688.html (March 21, 2008).}

With regard to Article 6, paragraph 2 of the CRPD, a budget analysis requires:

- a gender-differentiated analysis of all budget means for people with disabilities.
- a disability-specific analysis of all budget means for the advancement of women.
- and the analysis and allocation of budget means for specific and appropriate measures targeting the promotion of the development, expression and empowerment of women with disabilities.

**Advancement Measures.**

Article 6 paragraph 2 of the CRPD includes a cross-cutting obligation. Appropriate measures for the promotion of women's development, expression and empowerment must pursue the target that women with disabilities have the ability to exercise all of the human rights mentioned in the Convention. Therefore, if the analysis indicates that women with disabilities are discriminated against when it
comes to exercising any of the rights designated in the Convention, Article 6, paragraph 2 requires specific special provisions for the advancement of women.

1.3.2.4. Article 6 – Conclusion.

Through Article 6, the States Parties recognise the fact that women and girls with disabilities constantly face multiple discrimination. Taking this fact into account, Article 6 specifies and expands the States Parties’ responsibilities in relation to the equality principle, and it requires antidiscrimination measures as well as specific advancement measures for the benefit of women with disabilities. Article 6 should be taken as a general model for the obligations established in the Convention that need to be mainstreamed into all implementation fields.

Measures as defined in Article 6, paragraph 1 are:

- Obligatory and direct measures which counteract the multiple discrimination of women and girls with disability.
- Protection against discrimination which counteracts discrimination based on gender as well as discrimination based on disability
- In light of Article 5, paragraph 2 of the CRPD, the consideration of all other possible reasons for any additional discrimination experienced by women and girls with disabilities.
- The evaluation of current and prospective laws, policies and programmes in terms of any possible discriminatory effect, as well as their non-discriminatory application.
- A ban on discrimination with due regard to the fact that disabled women and girls experience multiple discriminatory effects through direct, indirect and structural disadvantages, including the denial of appropriate provisions.
- Temporary special measures, where required.
- Protection against discrimination, also from private actors.
- An institutional framework, for example, antidiscrimination offices which serve to advise and support affected women and girls; to be helpful at providing effective legal protection; to analyze cases of discrimination, and to devise recommendations for further action.

Appropriate measures as defined in Article 6, paragraph 2 are:

- The commissioning of (a) national institution(s) which ensure(s) the
implementation and monitoring of the rights established for women with disabilities in the Convention.

- Providing the appropriate organizational, financial and human resources infrastructure for the relevant institution(s).

- An analysis of to what extent the human rights and fundamental freedoms established in the Convention can be invoked equally before the law in the case of women with disabilities.

- Gender and disability mainstreaming, especially in the area of measures specifically referring to policies regarding women and disabled people.

- A gendered budget analysis of all budget resources for people with disabilities, a disability specific budget analysis for the promotion of women as well as the analysis and allocation of budget resources for specific measures to promote the expression, development and strengthening of women with disabilities' autonomy (gender and disability budgeting).

- Specific measures which promote the full development and promotion of women, as well as a strengthening of their autonomy, in all of the areas included in the Convention, so that they will be ensured all human rights and fundamental freedoms named in the Convention.

1.3.2.5. Examples of Implementation of Article 6.

1.3.2.5.1. The Right to Education (Article 24 CRPD).

1.3.2.5.1.1. Content of Article 24 of the CRPD.
Article 24 contains specifications which state that all students with disabilities should be ensured the same right to education. The States Parties are required to ensure that an inclusive educational system will be created at all levels, so that no one will be excluded on grounds of disability. It must also be ensured that people with disabilities can complete a university education or vocational training, and that they have access to adult education and other life-long learning opportunities.

1.3.2.5.1.2. Multiple Discrimination of Women and Girls Concerning their Recourse to an Equal Right to Education.
Access to school education or vocational training for women and girls with disabilities is more difficult than for non-disabled women worldwide, but it is particularly more difficult for women and girls with disabilities than for boys and men with disabilities. 160 There is therefore a very strong possibility that women with

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160 See chapter B.3., The Multiple Discrimination of Disabled Women.
disabilities will lead a life of poverty, without education or vocational training, and will end up being unemployed, which will not allow them to participate in society.\footnote{161}{International Labour Organisation Publication, Integrating Women and Girls with Disabilities into Mainstream Vocational Training, Bangkok, 1999, www.ilo.org/public/english/region/asro/bangkok/ability/wwdtext_01.htm (April 27, 2011)}

There are multiple causes for this: Women and girls with disabilities have to face social prejudices about disability, as all people with disabilities do. In many societies, a disability excludes the ability to earn one's own income and to lead an autonomous life. Moreover, in most states, there are preconceived notions of roles which dictate that the man of the house earns the income and makes the decisions.

Even though these preconceived notions are changing and women around the world are increasingly well-educated and independent, this does not normally apply to women with disabilities. Assuming that marriage, motherhood or a professional life are not possible for them, their families do not invest in their education. The fate of many women is therefore lifelong dependency and poverty, whereby they become the victims of further discrimination.

1.3.2.5.1.3. **Antidiscrimination Measures.**

Possible measures in order to ensure girls and women with disabilities' equal access to an inclusive educational system could be:

- Statutory regulations which prohibit the discrimination of boys and girls with disabilities concerning access to public or private regular schools.
- The guarantee of primary school education free of charge, and the adoption of compulsory education for boys and girls with disabilities as well.
- The combating of social and family prejudices and stereotypes about the assumed roles and abilities of women with disabilities.
- Measures against violence and assaults at schools and at all educational settings.
- The evaluation of education policies and laws in terms of any discriminatory effects for girls and women with disabilities.
- Specific aid programmes, for example, early intervention programmes or specific school and education programmes for girls and women with disabilities.
- The establishment of public offices for the counselling and support of disabled women and girls, as well as their legal guardians, with regard to access to regular schools, for the provision or procurement of legal protection, the collection of cases of discrimination and the preparation of recommended counteractions.
• Increased activity concerning vocational training positions, for example with the objectives of increasing the amount of women; publishing open training positions; having flexible training schedules and entry qualifications; providing support with the application for subsidies and other aids; having further education and awareness training for training staff, and providing an equal opportunities commissioner.

• Requiring employers to provide a portion of their vocational training positions to disabled women.

• Accessibility.

1.3.2.5.1.4. Appropriate Measures as Defined In Article 6, Paragraph 2.

Article 6 paragraph 2 of the CRPD could include the following measures in the implementation of the right to education:

• At the national level, or at the federal states level in a federal state like Germany, there must be institutions which are commissioned to analyze, implement and monitor girls and women with disabilities’ equal access to schools or vocational training programmes. These could be attached to the relevant ministries or education authorities. The task requires an appropriate organizational, financial and human resources infrastructure.

• The entire educational policy, education reports, education statistics, all educational programmes and the education budget must be specifically analyzed along gender and disability lines, or in other words; it must be made clear how equal access will be ensured to disabled women and girls, men and boys (gender and disability mainstreaming and budgeting).

• Additional budget funds are to be allocated for measures which serve the advancement of the development, expression and strengthening of women with disabilities’ autonomy. For example, appropriate measures for this purpose could be self-assertion courses; the strengthening of disabled women's self-confidence concerning their own abilities; professional and educational information centres for disabled women; training assistance, making motherhood and education compatible for disabled women, and ensuring a diversity of educational opportunities.

1.3.2.5.2. Work and Employment (Article 27 of the CRPD).

1.3.2.5.2.1. Content of Article 27 of the CRPD.

Article 27 of the CRPD aims to ensure the equal right of disabled people to work for a salary at a freely chosen place of employment, and it prohibits discrimination on
grounds of disability. The States Parties shall protect disabled people against
discrimination in hiring, career advancement or concerning working conditions.

Similarly, they shall ensure equal opportunities and equal pay as well as a safe and
healthy working environment. Disabled people shall have access to unions,
counselling programmes, job placement services and vocational and further
education opportunities or rehabilitation programmes. And states shall support
occupational independence for disabled people.

1.3.2.5.2.2. Multiple Discrimination of Women and Girls Concerning Their Recourse
to an Equal Right to Work and Employment.

Discrimination in the area of education has direct consequences for the participation
of disabled women in professional life.\textsuperscript{162} For women with disabilities, an occupation
means an escape from poverty, dependence and social isolation. In their professional
lives, women with disabilities are paid less and promoted less often than non-
disabled women.

Furthermore, they have no equal access to professional development measures;
they often have no access to loans or other sources in order to be able to afford a
professional life, and they seldom participate in economic decisions. Even when
states offer aid to disabled people, such as income compensation, social insurance
benefits or occupational rehabilitation, disabled women are discriminated against
because the aid is often attached to a former occupation or training.\textsuperscript{163}

1.3.2.5.2.3. Antidiscrimination Measures.

Possible measures so that disabled women can equally enjoy the right to
employment are:

- The establishment of a legal prohibition of the discrimination against women with
disabilities by public and private employers in hiring, further education and career
advancement opportunities.

- Protection from (sexual) violence or harassment at the workplace, as well as
ensuring the practice of safety precautions in the case of pregnancy or
motherhood.

- The evaluation of existing labour market programmes and laws with regard to
their effect on women with disabilities.

- The gender-specific evaluation of assistance programmes and social services for
people with disabilities.

\textsuperscript{162} See chapter B.3., The Multiple Discrimination of Disabled Women.

\textsuperscript{163} International Labour Organisation (ed.), Arthur O'Reilly, The right to decent work of people with
disabilities, Geneva, 2007, p. 49,
• Occupational advancement programmes for disabled women to compensate for discrimination.

• (Antidiscrimination) offices that advise and support women with disabilities; which are helpful with effective legal protection, collection and analysis of cases of discrimination, and which devise recommendations for further action.

• The promotion of associations and organizations which provide counselling.

1.3.2.5.2.4. Appropriate Measures as Defined In Article 6, Paragraph 2.

Article 6, paragraph 2 of the CRPD could include the following measures in the implementation of the right to work and employment:

• National or regional (for example, European) institutions must be responsible for the implementation and monitoring of the equal recourse to Article 27 by women with disabilities, and must be appropriately equipped in terms of organizational, financial and human resources.

• Gender and disability mainstreaming in relation to existing employment schemes, aid programmes, rehabilitation and placement services, including gender disability budgeting.

• Formulation of a plan of action to improve the participation of disabled women in the labour market.

• The allocation of budgetary funds which are specifically used to promote the development, expression and strengthening of women with disabilities' autonomy, in order to secure their participation in the labour market. For example, appropriate measures in this case could be the development of self-assertion courses; the strengthening of disabled women's self-confidence concerning their own abilities; professional and educational information centres for disabled women; making a work assistant available; making motherhood and occupation compatible for disabled mothers by providing more barrier-free childcare facilities and by improving possibilities for part-time employment or the right to parental assistance; services for the creation of better mobility, as well as more comprehensive accessibility measures.
Interpretation of the Other References to Women/Gender in the Convention.

Article 8: Awareness-Raising.

1.4.0.1. The Convention's Text.

Article 8.

Awareness-Raising:

1. States Parties undertake to adopt immediate, effective and appropriate measures:

(a) To raise awareness throughout society, including at the family level, regarding people with disabilities, and to foster respect for the rights and dignity of people with disabilities;

(b) To combat stereotypes, prejudices and harmful practices relating to people with disabilities, including those based on sex \(^{164}\) and age, in all areas of life;

(c) To promote awareness of the capabilities and contributions of people with disabilities.

2. Measures to this end include:

(a) Initiating and maintaining effective public awareness campaigns:

(i) To nurture receptiveness to the rights of people with disabilities;

(ii) To promote positive perceptions and greater social awareness towards people with disabilities;

(iii) To promote recognition of the skills, merits and abilities of people with disabilities, and of their contributions to the workplace and the labour market;

a. Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of people with disabilities;

b. Encouraging all organs of the Media to portray people with disabilities in a manner consistent with the purpose of the present Convention;

c. Promoting awareness-training programmes regarding people with disabilities and the rights of people with disabilities."

\(^{164}\) Author's emphasis (Dr. Sigrid Arnade).
1.4.0.2. Rationale.

Stereotypes and prejudices exist concerning all disabled people. Women with disabilities are especially affected by this. They are thought to be even less capable of living independently than men with disabilities. Moreover, there are social prejudices concerning the capabilities of disabled women to perform family and child upbringing duties or to fulfil any other social role.

1.4.0.3. References in Other UN Documents.

In the United Nations 1982 ‘World Programme of Action concerning Disabled Persons’ (see above), a seven-paragraph section deals with “Information and Public Action”. The first clause of the 1993 UN ‘Standard Rules on the Equalization of Opportunities for Persons with Disabilities’ deals with raising awareness among the general public. The title of this clause is the same as that of Article 8 of the CRPD, namely, “Awareness-Raising”.

There are congruencies between both of the older UN documents and Article 8 of the Convention. What is missing, however, is the combating of stereotypes and prejudices, and there is no mention of gender either. In this respect, the individual obligation of States Parties to “combat stereotypes, prejudices [...] including those based on sex [...] in all areas of life”, is new in the Convention (Article 8, paragraph 1 (b)).

However, combating prejudices plays a role in other UN Conventions: The States Parties pledge to combat prejudices in Article 7 of the 1965 Convention on the Elimination of All Forms of Racial Discrimination (CERD; in effect since 1969). According to Article 5 in the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW; in effect since 1981), the States Parties shall also undertake all appropriate measures for the elimination of prejudices.

1.4.0.4. Experiences with the Application of other Conventions.

1.4.0.4.1. Convention on the Elimination of All Forms of Racial Discrimination (CERD).

Within Germany’s fifteenth report on the International Convention on the Elimination of all Forms of Racial Discrimination (CERD) from June 2000, eight paragraphs over two pages report on Article 7. They deal above all with the measures aimed at combating prejudices.

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167 www.un.org/esa/socdev/enable/rights/ahcstata8refdispecifi.htm (March 6, 2011)
combating racist prejudices in schools. These parts of the report are not specifically dealt with in the final comments issued by the Committee on the Elimination of Racial Discrimination. Concerning cases of racism in police precincts, it is urged to increase training measures for the corresponding police officers.

Germany's summarised reports 16-18 from October 2006 on the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), deal with this in detail. All the same, twelve pages are dedicated to the combating of prejudices according to Article 7 of the Convention.

1.4.0.4.2.  

**Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).**

In Part 1 of Germany's fifth report, ‘Living Conditions of Women in Germany’, which was completed in August 2002 and concerns the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the living situation of women with disabilities is discussed. The text states: "Women often lament that traditional roles, performance-oriented, competitive ways of thinking, stereotypes and morality concepts affect them two-fold – as disabled persons and as women."

Furthermore, newer laws are elucidated and projects which have been initiated by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth ([Bundesministerium für Familie, Senioren, Frauen und Jugend, BMFSFJ](#)), are detailed. There is no project for the express purpose of altering stereotypes and prejudices.

In the second part of the fifth CEDAW report, there is one chapter that deals with the implementation of Article 5 of the Convention, and which is entitled ‘Elimination of Stereotyped Roles and the Promotion of Men and Women’s Co-responsibility Regarding the Education and Development of Children’. This entails three paragraphs: "Reconciliation of Family and Work", "New Father Image" and "Combating Violence against Women". There is no mention of disabled women in this chapter.

In addition, the fifth CEDAW report contains an extensive list of disabled women's networks, initiatives like photography exhibitions by and about disabled women, and publications regarding this topic. Nevertheless, in the concluding remarks from January 2004, the Committee on the Elimination of Discrimination against Women expressed apprehension "concerning the continuation of the ubiquitous stereotypes and conservative views with regard to the roles and responsibilities of women and men."

It further recommends "an increase in political measures and the implementation of programmes, among others, campaigns aimed at raising awareness and education for women and men […], in order to contribute to the elimination of stereotypes".
concerning the traditional roles in the family and at the workplace, as well as in society as a whole."

Article 5 of the CEDAW was also extensively reported upon in Germany's sixth report on the United Nation's Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which was issued in June 2007. In this case, it concerns parental leave and parental allowance on the one hand, and different forms of violence against women and the measures against such violence on the other. In this context, violence against disabled women is mentioned twice (see the chapter on Article 16 of the CRPD).

Furthermore, the concluding remarks in the Committee on the Elimination of Discrimination against Women (CEDAW) are commented upon. Concerning the combating of stereotypes in education policy, "Girls' Day" and the project "New Paths for Boys" are cited. Disabled girls and women are not named in relation to this, although the Weibernetz, a project promoted by the German Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (BMFSFJ), also frequently calls for disabled girls to be involved in the activities surrounding "Girls' Day".

1.4.0.5. Consequences.

Taking into account the concluding remarks of the Committee on the Elimination of Discrimination against Women (CEDAW) about Germany's fifth CEDAW report, the clause in Art. 8 paragraph 1 (b) of the CRPD is to be interpreted to that effect. Thus, the States Parties are called upon to implement campaigns aimed at raising awareness and education. The goal of these campaigns, with the focus on girls and women with disabilities, is to combat stereotypes, prejudices and harmful practices concerning this group of people in all areas of life.

For example, this could be in the form of poster campaigns which show disabled women in a variety of roles in the workplace or performing family duties. There could also be brochures with portrayals of these women. Another idea would be a corresponding film project.

The emanating effects from Article 8 on all areas of life also become clear through the choice of words in this article. The "working world", "job market", "education system" and "Media institutions" are explicitly mentioned. In this respect, the States Parties are obliged to assess the need for awareness-raising measures concerning all of the other articles in the Convention.

168 Bundestagsdrucksache 16/5807 (www.bmfsfj.de/bmfsfj/generator/Politikbereiche/gleichstellung,did=99414.html – March 6, 2011)
169 www.weibernetz.de/maedchen.html (March 6, 2011)
Preamble, Paragraph q) and Article 16. Freedom from Exploitation, Violence and Abuse.

1.4.1.1. The Convention’s Text.

Preamble:

"The States Parties to the present Convention -

[...]

(q) Recognizing that women and girls with disabilities are often at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation"

Article 16.

Freedom from Exploitation, Violence and Abuse.

"1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect people with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for people with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognise and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.

3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve people with disabilities are effectively monitored by independent authorities.

4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of people with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.

5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of

170 Author’s emphasis (Dr. Sigrid Arnade).
exploitation, violence and abuse against people with disabilities are identified, investigated and, where appropriate, prosecuted."

1.4.1.2. Violence against Women in International Human Rights.171

Violence against women was not understood as a serious human rights issue until the mid-1980s. Accordingly, the term "violence" does not appear in the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). It is largely thanks to the efforts of the Committee on the Elimination of Discrimination against Women (CEDAW) at the United Nations that violence against women was recognised as a violation of human rights during the ensuing period.

Therefore, in January 1992, the Committee on the Elimination of Discrimination against Women (CEDAW) adopted the General Recommendation No. 19 (Violence against Women). Within this text, gender-based violence is defined as acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty, for example violence and abuse in the family; forced marriage; female genital mutilation of girls and women; trafficking in women; exploitation of female prostitution; sexual harassment at the workplace, etc. Moreover, the States Parties are required to implement the Convention on the Elimination of All Forms of Discrimination Against Women by using targeted measures, in order to eliminate all forms of violence against women.

The definition of violence against women was certified in the 1993 UN General Assembly's Declaration on the Elimination of Violence against Women.172 With these two documents, the international community of states made it unmistakably clear that every form of violence against women shall be seen as discrimination against women, as defined in Article 1 of the CEDAW, and that the States Parties will try to eliminate by all appropriate means.

1.4.1.3. Legal Significance of the Preamble, Paragraph q).

It is already recognised in the Preamble of the CRPD that women and girls with disabilities are in particular danger of exploitation, violence and abuse of all forms. This assertion is also to be found in similar form in other international documents:

- It is asserted in the preamble of the 1993 UN General Assembly's Declaration on the Elimination of Violence against Women173, that women with disabilities and women in institutions are in particular danger of experiencing violence.

171 Unless otherwise noted, the information provided in this section is taken from Heisoo Shin: CEDAW and violence against women: Providing the "Missing Link", in: Hanna Schöpp-Schilling (ed.): The circle of empowerment: twenty-five years of the UN Committee on the Elimination of Discrimination against Women. The Feminist Press, New York 2007.
172 www.un.org/documents/ga/res/48/a48r104.htm (March 6, 2011)
173 l.c.
It is specified in Articles 1 and 2 of this declaration that the term violence encompasses all forms of physical, sexual and psychological violence which occur in the family or in public life, and which are exerted or tolerated by the state. In this context, rape inside and outside of marriage; sexual abuse of girls; violence related to dowries; female genital mutilation; sexual harassment at the workplace, in educational institutions or elsewhere, as well as trafficking in women and forced prostitution, among others, are listed.

- In the Platform for Action which was approved at the 1995 World Conference on Women in Beijing, it was established in point 116 that disabled women and women living in institutions are especially vulnerable to violence.\(^\text{174}\)

- It was established in a United Nations document from 1998 that disabled women are victims of sexualised violence twice as often as non-disabled women.\(^\text{175}\)

- According to a 2007 European Parliament resolution, the risk for women with disabilities of becoming victims of sexual violence is actually three times higher than for women without disabilities.\(^\text{176}\)

The realization that women and girls with disabilities are particularly endangered by all forms of violence is therefore not a new one. In human rights treaties, preambles serve as an interpretation aid for the subsequent provisions. It may therefore be deduced from the preamble's paragraph (q) together with Article 6 and Article 16 of the Convention that States Parties have a special obligation to protect girls and women with disabilities from all forms of violence, and to offer them all appropriate and necessary support if they become victims of violence.

1.4.1.4. Legal Significance of Article 16, Paragraph 1.

This paragraph of the Convention deals with States Parties' measures for protection from all forms of exploitation, violence and abuse. The paragraph states that gender-specific aspects should also be considered. In this context, the following are to be considered gender-specific aspects:

- the particular endangerment of girls and women with disabilities (see above);

- all forms of violence by which women are particularly affected and which are named in the 1992 General Recommendation No. 19 of the Committee on the Elimination of Discrimination against Women (CEDAW), and in the 1993 UN


General Assembly’s Declaration on the Elimination of Violence against Women\textsuperscript{177} (see above).

In order to be able to effectively protect individuals from all forms of violence, the degree of violence must first be known. To this end, all inquiries and studies on violence against disabled people must undergo a gender-based analysis. At the same time, the characteristic of disability is to be taken into particular account in all inquiries and studies on violence against women.

The preamble also contains a call for “disability mainstreaming” in paragraph (g):

\[(g) \text{ Emphasizing the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development [...].}\]

In Germany for example, the most recent representative study from 2004 on violence against women did not include a disability mainstreaming perspective. It is indeed established that “people with disabilities” can be affected by violence to a higher degree. It is also stated that it would be useful to perform deeper analyses regarding disabled women. Otherwise however, the situation of women with disabilities is not especially considered in the study. This information gap was recognised by the German government, which has subsequently contracted a scientific study on violence against disabled women.

As discussed above, a state’s responsibility can therefore be deduced from Article 16, paragraph 1 of the CRPD for commissioning or providing:

\begin{itemize}
\item Scientific studies on violence against women with disabilities.
\item Further need for legal action in Germany can be deduced from Art. 16, para. 1 in the following reports:\textsuperscript{178}
\item Extension of the Protection against Violence Law.
\end{itemize}

The specific living situation of disabled girls and women must be taken into greater account than it has been so far. There is a lack of fast, temporary solutions, for example, concerning the possible situation where the assistant or attendant is the person who is inflicting the violence on a woman with assistance needs. In such a case, it must be ensured that the assistance is continued when the perpetrator is forced to leave the place of residence.

\textsuperscript{177} www.un.org/documents/ga/res/48/a48r104.htm (March 6, 2011)

\textsuperscript{178} In the following articles, the proposed measures are mostly related to Germany and the German legal system. This should be regarded as an example of implementing the CRPD regulations within a national framework. We hope that the content of the listed measures is transferable to other states.
Another situation which has not been settled is what happens to the inhabitants of institutions where the individual perpetrating the violence also lives in the institution. She or he cannot then be expelled offhand from the premises.179

- Protection from Sexual Violence.
  Another legal measure discussed in Germany is a supplement in the German social law. It already contains a list of general objectives social benefits shall meet when granted to disabled people. It is now demanded to extent this list by the additional goal of protection from sexual violence.180

- Youth and Social Assistance Authorities as Service Providers for Training programmes to Increase Self-confidence.
  Training to increase self-confidence has proven to be successful in the effective prevention of (sexual) violence. According to German social law181, these are to be provided by rehabilitation organizations. However, a legal loophole exists in that the social and youth assistance authorities are not under any obligation to provide this service.

  This cannot be justified either factually or within the context of the German legal system.182 For this reason, a legal measure would be to concretize the German integration assistance ordinance in particular, that youth and social assistance authorities must provide services according to the social law.183

1.4.1.5. Legal Significance of Article 16, Paragraph 2.

Article 16, para. 2 deals with prophylactic measures designed to prevent all forms of exploitation, violence and abuse. This paragraph is made up of two sentences which each contain a gender reference. In order to pre-empt all forms of exploitation, violence and abuse, the States Parties must adopt gender-sensitive measures with respect to the assistance and support of people with disabilities, their families and their caretakers on the one hand (sentence 1), and with respect to the protection services for the people affected (sentence 2) on the other.

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181 Paragraph 44 section. 1 No. 3 Book 9 German Social Code (Sozialgesetzbuch IX).
For Germany, five obligations can be deduced from the specifications in Art. 16, para. 2 in particular:

- **The Right to Same Gender Care.**
  People with disabilities receive aid and support from family members, friends, neighbours, officially appointed caregivers, outpatient care-taking services or employees at institutions which provide in-patient and day-patient services; or they themselves become employers through hiring an assistant. In order to prevent (sexual) violence, among other reasons, women with disabilities, above all, have been demanding the right to be able to determine who helps them for a long time, especially regarding assistance with intimate care. They want to at least be able to determine if a man or a woman helps them.¹⁸⁴

Indeed, the CRPD contains no express obligation on the part of the States Parties which ensures the right to same gender care. This obligation can however be deduced from Art. 16, para. 2 in connection with Art. 6, para. 2 (Women with disabilities) and Art. 17 (Protecting the integrity of the person).

According to German university professor Gerhard Igl and his colleague Sybille Dünnes, there is already a legal claim to same gender care in home and in-patient care in conformity with the constitutional interpretation of the German social law.

In their legal opinion from 2002, the authors recommend a corresponding clarification in the Book 9 of the German social code (Sozialgesetzbuch XI). Among other reasons, women with disabilities, above all, have been demanding for a long time the right to be able to determine who helps them, especially regarding assistance with intimate care. They want to at least be able to determine if a man or a woman helps them.¹⁸⁵

On the other hand, in 2008 the Book 11 of the German Social Code¹⁸⁶ has been complemented by the general principle "Requests for same gender care by those in need of care shall be duly considered whenever possible." However, the government’s draft expressly stated in the explanatory memorandum that this regulation does not stipulate any right to same gender care.¹⁸⁷

In light of the German Constitution and especially in light of the CRPD, this interpretation of the law is untenable. In fact, it is demanded to establish the

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¹⁸⁶ Book 11 of the German Social Code (SGB XI) contains social benefits for long-term care
right to same gender care as the right to choose in the German Social Code.\(^{188}\) As long as the government delays in making this clarification, the federated states must establish corresponding regulations in their equality laws for disabled people. A first sign of this happening is the "Thuringian law on promoting the equality and integration of people with disabilities" [ThürGIG] from the 16th of December, 2005.\(^{189}\)

In paragraph 8, section 3 of this law, it states: "If possible, at their request, people with disabilities shall be cared for by a person of the same gender." This clause must be rephrased to "Persons with disabilities shall be cared for by a person of the same gender at their request" and should also be adopted as such in the equality rights laws of the other 15 German federated states.

- **Women’s Affairs/Equal Opportunities Commissioners.**
  It can also be deduced from Art. 16, para. 2 of the CRPD that there is an obligation to appoint women’s affairs commissioners and/or equal opportunities commissioners to positions in all institutions providing social assistance. Social services providers and relevant funding bodies are required to prevent intrusions in the (sexual) self-determination of both male and female assistance recipients.\(^{190}\) The employment of female commissioners and/or equal opportunities commissioners can be considered to be an effective preventative measure against (sexual) violence.

In Germany, an obligation to employ women’s affairs commissioners in all institutions providing social assistance could also be inserted in the German Social Code.\(^{191}\)

- **Female Living Groups.**
  In order to prevent all forms of exploitation, violence and abuse as defined in Art. 16, para. 2 as, “all social service providers must arrange to offer female living groups as a quality feature in the service level agreements with social service providers.”\(^{192}\)

- **Education and Counselling.**

\(^{188}\) Sozialgesetzbuch XI is a German law. It is about mandatory long-term care insurance.

\(^{189}\) www.netzwerk-artikel-3.de/dokum/th_rglg.pdf (March 6, 2011)


\(^{191}\) l.c.

The second part of the first sentence of Art. 16 para. 2 states: "[...] including through the provision of information and education on how to avoid, recognise and report instances of exploitation, violence and abuse."

It can be deduced from this specification that all States Parties are obligated to compel all institutions that work with disabled persons to provide gender-sensitive education and counselling. This could include education courses in gender-separated groups in the (still existing) special needs schools and the barrier-free accessibility at women's counselling services locations, as well as the possibility of receiving counselling from a women at disabled people's counselling services locations.

- **Protective Services Training.**
  
  Art. 16, para. 2, sentence 2 requires the States Parties to assure, among other things, that protective services take into account the gender of the affected person. This obligation includes, for example, the relevant training of police forces who deal with violent offences, and in particular with domestic violence. This training must also address women and disability-specific aspects.

**1.4.1.6. Legal Significance of Article 16, Paragraph 4.**

While the first paragraphs of Article 16 deal with measures whose purpose is to prevent all forms of exploitation, violence and abuse, the fourth paragraph is concerned with the social reintegration of people with disabilities who have become victims of a violent act. In sentence 2 of this paragraph, it is stipulated that recovery and social reintegration must take place in an environment that takes gender-specific needs into account.

In the case of Germany, the following obligations can be deduced from Art. 16, para. 4:

- **Accessible Counselling Service Locations.**
  
  Counselling service locations, which counsel women after their experience of violence, must be accessible. Along with being wheelchair accessible, that includes relevant communication assistance: Communication must be mediated by a sign language interpreter as needed. Information pamphlets and brochures must also be provided in formats accessible to blind girls and women, as well as in plain language format for victims of violence with learning difficulties. The counsellors must be trained to competently counsel girls and women with different impairments.

- **Accessible Women's Shelters.**
  
  Accordingly, women's shelters must fulfil all accessibility criteria in order to provide disabled girls and women with a safe space as well. The providers of
these protective institutions are to be adequately financed in order to be able to fulfil this obligation.

- **Social Services Providers’ Obligations.**
  Social services providers must be legally obligated to ensure that disabled women and men who have experienced (sexual) violence are offered comprehensive and adequate assistance (for example, psycho-therapeutic assistance), and that a change of institution or service is made possible as quickly as necessary and that this is financed.\(^{193}\)

### 1.4.1.7. Legal Significance of Article 16, Paragraph 5.

This paragraph deals with the detection, investigation and prosecution of cases of exploitation, violence and abuse. To that effect, the penal law and the code of criminal procedure have been changed since the beginning of this century in Germany, as the concerns of girls and women with disabilities have been dealt with to a greater extent. Some obligations for Germany can nevertheless be deduced from Art. 16, para. 5:

- **Training.**
  All those who have job-related contact with girls and women must be trained so that they detect signs of committed violence and can react appropriately. This concerns, among others, nursing staff, doctors, teachers, employees of vocational training and vocational advancement centres, as well as workshops for disabled people.

  Those who work with victims of violence must be informed and trained on the situation of girls and women with disabilities, ways to make criminal proceedings accessible, and the appropriate handling of injured disabled people. This concerns, among others, law enforcement personnel (see above), doctors, attorneys and judges.\(^{194}\)

- **Reform of Sexual Crime Legislation.**
  The sexual crime legislation should be fundamentally reviewed, and the protection of the sexual self-determination of disabled and non-disabled people


should be given more importance. This requires an increase in the consideration of the victim's perspective.\textsuperscript{195}

As a temporary solution, the following reforms should be sought for in order to improve the protection of those affected and for the implementation of more justice\textsuperscript{196}:

1. In paragraph 174a of the German Criminal Code (\textit{StGB})\textsuperscript{197}, institutions providing day-patient care are expressly to be included, so that the corresponding criminal offences will also be prosecuted in institutions which provide care for people with disabilities, as, for example, in workshops.

2. In para 179 clause 1 and 2 of the German Criminal Code (sexual abuse of mentally incapacitated, persons with reduced consciousness or physically helpless persons), it should be stated that a custodial sentence of at least one year should be stipulated for sexual assault, comparable to the threat of punishment in para 177 clause 1 of the German Criminal Code (sexual assault).

\textbf{1.4.1.8. Summary of the Consequences of Article 16 for Germany.}

As it was made clear in the last section, girls and women with disabilities are significantly affected by (sexual) violence. This is unacceptable. Subsequently, a multitude of obligations to be acted resulted from the stipulations in Article 16 of the CRPD, which, using Germany as an example, will be listed below in a summarised form:

\textbf{1.4.1.8.1. Preventative Measures/Protective Measures.}

Scientific studies on violence against women with disabilities.

- Social services providers’ obligation to provide optimal protection from sexual violence.\textsuperscript{198}

- Youth and social assistance providers should act as service providers for training to increase self-confidence.\textsuperscript{199}


\textsuperscript{197} \textit{Strafgesetzbuch}; German Criminal Code. Paragraph 174a deals with the sexual abuse of people in need of protection.

\textsuperscript{198} demanded: amendment to para. 10 Book No. 1 of the German Social Code (\textit{SGB I})

\textsuperscript{199} demanded: concretization of para. 6 provision for rehabilitation assistance (\textit{EinglHilfeVO})
• Fixation of the right to same gender care as a right to freedom of choice for people with disabilities.\textsuperscript{200}

• Requirement of all social services providers' institutions to employ women's affairs/equal opportunity commissioners.\textsuperscript{201}

• Including the possibility of female living groups by social service providers as an obligatory quality feature in the service level agreements with social service providers.

• Gender-sensitive education and counselling.

• Training of protective service employees.

• Barrier-free counselling service centres.

• Training of all those involved.

• Sexual crime legislation reform.

\textbf{1.4.1.8.2. Measures to Support Girls and Women with Disabilities Who Have Experienced Violence.}

• Amendment to the Protection from Violence Act in order to close up legal loopholes concerning women.

• Barrier-free counselling service centres.

• Barrier-free women's shelters.

• To require the social services provider to provide optimal protection to victims of violence.

The content of these measures is transferable to other states. They should be then implemented according to their respective legal and structural conditions.

\textbf{Article 25: Health.}

\textbf{1.4.2.1. The Convention's Text.}

Article 25.

\textsuperscript{200} demanded: amendment to para. 33 Book No. 1 of the German Social Code (SGB I), para. 2 Book No. 9 of the German Social Code (SGB IX) and the Federated States Equality Acts

\textsuperscript{201} demanded: (amendment to para 17 Book No. 1 of the German Social Code (SGB I)
Health:

States Parties recognise that people with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for people with disabilities to health services that are gender-sensitive\textsuperscript{202}, including health-related rehabilitation.\textsuperscript{203} In particular, States Parties shall:

(a) Provide people with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;

(b) Provide those health services needed by people with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older people;

(c) Provide these health services as close as possible to people's own communities, including in rural areas;

(d) Require health professionals to provide care of the same quality to people with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of people with disabilities through training and the promulgation of ethical standards for public and private health care;

(e) Prohibit discrimination against people with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;

(f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.

\textsuperscript{202} Unlike the legally binding UN original text, the German, Austrian and Swiss version of the CRPD mentions “gender-specific” health services. According to the authors of this standard interpretation, a considerable difference of meaning exists between these two terms. See elaborations in chapter 3.5.1.

\textsuperscript{203} Author's emphasis (Sabine Haefner).
1.4.2.2. Rationale.\textsuperscript{204}

More often than men with disabilities, women with disabilities have a minimal income at their disposal and are dependent on social services or on their families. They are thus less able to pay for quality health care. Even in states with free health services or with social health insurance, one must anticipate additional costs for services and medication which one must pay for oneself. In many states, the access to social health insurance is further dependent on gainful employment or marital status.

Women with disabilities have higher health risks than non-disabled women. For example, physical disabilities can lead to a lack of exercise and therefore to weight problems. The risk of osteoporosis, heart conditions, high blood pressure and diabetes are linked to this as well. The social isolation linked to disability and illness involves the danger of depression as well as emotional, physical and sexual abuse.

In addition, there are social and physical barriers, such as doctor's offices, gynaecological offices or early detection centres (for example mammography centres) which are not barrier-free or adjusted to meet the needs of disabled women. A fundamental problem is also the lack of knowledge that disabled women and their caretakers or families have about essential preventative health care.

In many societies, social limitations or the existence of cultural prejudices lead to disabled women's reproductive rights not being supported, under the assumption that people with disabilities shouldn't have children. In many people's view, women with disabilities are still seen as asexual.

This implies that health services to do with contraception, sexually transmitted diseases, prenatal classes, and birth control or infertility are either not adapted to disabled women's needs or are not taken into consideration in their personal circles. Conversely, disabled girls and women are more often victims of sexualised violence than non-disabled women, or must undergo involuntary sterilization or the termination of a pregnancy.

1.4.2.3. Text Development.

In light of the variety of barriers that affect women with disabilities regarding their health, establishing the corresponding governmental measures aimed at ensuring the right to health was always central to the consideration of women-specific provisions in the Convention's text.

1.4.2.3.1. Gender-sensitive Health and Rehabilitation Services.

This dealt, on the one hand, with ensuring barrier-free health and rehabilitation services which are adjusted to the particular needs of disabled women and girls in terms of expertise, staff and equipment. Text proposals to this end were first introduced at the 3rd AHC meeting (May the 24th – June the 4th, 2004). New Zealand proposed for example, that women with disabilities should be expressly ensured equal access to public health programmes, clean water, sanitary facilities as well as cervical and breast cancer screenings.

Israel made the proposal, among others, of also establishing the specific rehabilitation needs of disabled women and girls. The discussion was continued at the 6th AHC meeting (August the 1st– August the 12th, 2005). Article 25's chapeau took on its present form based on the facilitator Theresia Degener's proposal at the 7th AHC meeting (January the 16th – February the 3rd, 2006).

1.4.2.3.2. The Ensuring of Sexual and Reproductive Health Services.

Establishing explicitly the protection of disabled women's reproductive rights in the Convention was a central concern of disabled women and their organizations during the negotiations. First of all, reproductive rights do not only affect health care. Whether or not a woman can freely practice her right to have or not to have children (Article 16 of the CEDAW), is also dependent on the surrounding conditions of other areas of life.

The UN Women's Rights Convention (CEDAW) therefore mentions reproductive rights in the following areas: Family Education (Article 5 of the CEDAW); Education (Article 10 of the CEDAW); Employment (Article 11 of the CEDAW); Health Care (Article 12 of the CEDAW); Economic and Social Benefits (Article 13 of the CEDAW), or Marriage and Family Life (Article 16 of the CEDAW).

For this reason, disabled women's organizations in the International Disability Caucus (IDC) were campaigning until the 8th and final AHC negotiations for an establishment of the reproductive rights of disabled women in the comprehensive Article 6 of the CRPD. In the end however, disabled people's reproductive rights are only included in Article 23 of the CRPD (Respect for Home and Family) and In Article 25 of the CRPD, without explicitly discussing the specific needs of women with disabilities.

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208 See, for example, IDC comments on Article 6 during the 8th session of the Ad Hoc Committee, www.un.org/esa/socdev/enable/rights/ahc8contngos.htm (April 27, 2011)
The subsection (a) of the Convention’s draft, which was worked on by the AHC Working Group in January 2004, already contained a similar wording. However, instead of the current phrasing in the original text which reads: “health care […] including in the area of sexual and reproductive health”, in the Working Group’s first draft, it reads “health […] services including sexual and reproductive health services”.

This inclusion of sexual and reproductive health services was disputed at the AHC up until the end of the negotiations. Indeed, the right to family planning health services as well as services during pregnancy, childbirth and lactation was included in binding human rights Conventions. Labelling it as sexual and reproductive health care only occurred up until now, however, in non-binding UN programmes and action plans. Some states as well as non-governmental organizations were concerned that the explicit labelling of these health services would create new rights, in particular, that it could contain the right to an abortion. The AHC’s indication that the Convention shouldn’t create any new rights, they said, does not protect it against other interpretations.

The chair of the AHC pointed out several times with regard to this discussion that the Convention is not intended to create new rights or to influence national policies regarding family size, reproduction etc. The Convention does not require the passage of new laws in the area of reproductive health or related areas, but rather that people with disabilities have the same, non-discriminatory access to the corresponding health services. Article 25 (a) is above all an antidiscrimination provision with the effect that States Parties ensure that the health services provided can also be used by people with disabilities without discrimination based on their disability.

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210 See CEDAW Article 12.
211 See below, chapter 5.6.2.
212 See, for example, the discussion during the Ad Hoc Committee’s 6th session, August 8, 2005,
www.un.org/esa/socdev/enable/rights/ahc6sum8aug.htm (April 27, 2011); discussion during the 7th session of the AHC on January 24 and 25, 2006,
www.un.org/esa/socdev/enable/rights/ahc7summary.htm (April 27, 2011);
213 See, for example, comments by the Society of Catholic Social Scientists, Pro-Life/Pro-Family Coalition for the Protection of Persons with Disabilities during the AHC’s 6th meeting,
214 See, for example, report of the AHC’s 6th session, A/60/266, August 17, 2005,
215 Report of the 7th session of the AHC, footnote 4, A/AC.265/2006/2, February 13, 2006,
During the 8th and last meeting, the word "services", as in "health services", was finally taken out of the text.\textsuperscript{216} According to the original English text, the States Parties must provide people with disabilities the same scope of health care as that provided to other people, including in the area of sexual and reproductive health. The States Parties' obligation is made less concrete with this wording (compare below, \textit{Legal Significance of Article 25}).

Many states and organizations' stipulation\textsuperscript{217} that the States Parties be expressly required in Article 25 to protect people with disabilities from a forced abortion or sterilization could not be realised. According to Article 25 (d), the States Parties must however impose the obligation on health care professionals to only provide care to people with disabilities with their informed consent.

\textbf{1.4.2.4. Legal Significance of Article 25.}

The 1948 Universal Declaration of Human Rights (UDHR) already contained the right to a standard of living adequate for health and well-being (UDHR, Art. 25). As the first legally binding Convention, the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) contains the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (ICESCR, Art. 12).

As in the CRPD, the right to health was also included for the respective individuals in the Convention on the Rights of the Child (CRC, Art. 24), the Women's Rights Convention (CEDAW, Art. 12) and the Anti-Racism Convention (CERD, Art. 5). The right to health has also been established in regionally binding human rights Conventions, such as the 1961 Council of Europe's European Social Charter.

\textbf{1.4.2.4.1. Normative Content of the Right to Health.}

In the General Comment No. 14 from the 11\textsuperscript{th} of August, 2000, the Committee on Economic, Social and Cultural Rights (CESCR), who is responsible for monitoring the ICESCR, gave a final and comprehensive description of the normative meaning of the right to health; the governmental obligations and incompatibilities; the practical implementation at a national level, as well as the obligation of non-governmental actors.\textsuperscript{218}

The right to health includes the following freedoms and entitlements:


• The right to have control over one's own health and body without anyone interfering, including sexual and reproductive freedom and the right to be free from non-consensual medical treatment and experimentation.

• The right to a system of health protection that provides equality of opportunity for people to enjoy the highest attainable standard of health.

• Access to institutions, products and services that are necessary for the achievement of the highest attainable standard of health.

• The highest attainable standard of health includes both the individual biological requirements and the socioeconomic and financial conditions in a state.

• The right to health is an inclusive right, that is dependent upon the implementation of other rights and conditions, such as access to safe and potable water and adequate sanitation; healthy nutrition; housing; healthy environmental conditions; health education; including on sexual and reproductive health, as well as the involvement of the public in decisions specific to health-related issues.

The right to health requires:

• Availability of: (Public) health care facilities (sanitation facilities, clinics, hospitals, doctors' practices); products indispensable for a good health (safe and potable water, essential medicines as defined by the WHO), and adequate health services (trained medical personnel), which can depend on a country's stage of development.

• Accessibility: Non-discriminatory physical accessibility (wide scope provision of health services, also in rural areas, barrier-free); economic accessibility (affordable health care services for all); access to health care information.

• Acceptability: Respect for medical ethics and privacy; respect for each individual's culture, minorities; sensibility for gender-specific needs or requirements specific to particular living conditions.

• Quality: Scientific, medically appropriate, quality health services; trained personnel; scientifically researched medicines; clean drinking water; and appropriate sanitation.

1.4.2.4.2. Progressive and Immediate State Obligations.

The Social Committee's (CESCR) pointed out that the standard of health care services is also dependent on the socio-economic and financial development of a State Party. This is based on Art. 2, para. 1 of the ICESCR, according to which each
state is required to use all means available to gradually fully implement economic, social and cultural rights. This gradual obligation is also included in Art. 4, para. 2 of the CRPD in the context of economic, social and cultural rights:

*With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving gradually the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.*

Referring to Art. 2, para. 1 of the ICESCR, the Social Committee (CESCR) differentiated between gradual and immediate states obligations. The immediate obligations hereafter include, in particular, the non-discriminatory provision of economic, social and cultural rights. Each economic, social and cultural right contains core obligations which are to be implemented immediately. Concerning the right to health, these are:

- To ensure the right to access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalised groups.

- To ensure access to the minimum essential food which is nutritionally adequate and safe, in order to ensure freedom from hunger for everyone.

- To ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water.

- To provide essential drugs, as defined by the WHO.

- To ensure equitable distribution of all health facilities, goods and services.

- To adopt and implement a national public health strategy and plan of action.

Even though Art. 25 of the CRPD is henceforth only to be gradually implemented, the States Parties must be responsible for immediately assuring, at a minimum, that people with disabilities have non-discriminatory access to their state’s health care.

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and that the core obligations for persons with and without disabilities are equally ensured.

1.4.2.5. Legal Significance of Article 25, Paragraph 1, sentence 2 (chapeau). Gender-sensitive Health and Rehabilitation Services.

1.4.2.5.1. Translation Problem in Germany.
In the original legally binding English text, Article 25, para. 1, sentence 2 states: "States Parties shall take all appropriate measures to ensure access for people with disabilities to health services that are gender-sensitive, including health-related rehabilitation."

Although "gender-sensitive" was translated as “geschlechtersensibel” in the first draft of the German translation, the term was changed in the translation coordinated by Germany, Liechtenstein, Austria and Switzerland to “geschlechtsspezifisch” (gender-specific).

Considering the fact that both the term "gender-specific" (Art. 16, para. 4 of the CRPD), and "gender-sensitive" (Art. 16, para. 2; Art. 25 of the CRPD) were used in the original English text, the interpretation of the terminology must also be differentiated.

Health services which are gender-sensitive are those services which take into consideration the fact that men and women have different needs.

Access to gender-specific health care services means making services available which first and foremost meet the health care needs of men or women respectively, as in, for example, gynaecological health care services for women. While such gender-specific health care services can certainly be a part of gender-sensitive health care, conversely, the limitation of such health care services in Article 25 chapeau cannot have been intended in the CRPD. The chapeau makes a general stipulation requiring the States Parties to ensure access to health care services for disabled people, before further individual aspects are detailed in subparagraphs (a) to (f).

1.4.2.5.2. Requirement of Gender-sensitive Health Care Services in other Human Rights Documents.
The CRPD is the first legally binding Convention in which the term gender-sensitivity is expressly stated. However, no new entitlements are created hereby for people with disabilities. That is rather the result of many years of development in the area of human rights instruments interpretation, in particular the equality principle between genders, in which the recognition of the fact that men and women are exposed to different conditions in the exercise of their human rights is becoming increasingly important.
For example, in the area of health rights, the 1995 4th Conference on Women in Beijing emphasised the need for gender-sensitive policies and programmes at all levels.221 Their Platform for Action recommended creating and implementing gender-sensitive health care programmes (including decentralised health care services) that would meet women's needs throughout their life span, and which would account for their diverse roles and responsibilities. The specific needs of women in rural areas, disabled women and other disadvantaged groups should also be accounted for in the programme.222

The 1999 Women's Rights Committee (CEDAW) explained in its General Recommendation No. 24 how equal access to the right to health for women and men is to be ensured.223 The following recommendations, among others, are included in the document:

- Integration of a gender perspective in all areas, policies and programmes which could affect the health of women and the incorporation of women into the planning, implementation and monitoring.224
- Gender-sensitive training for health care personnel, in order to be able to diagnose and treat the health consequences of gender-specific violence.225
- Ensuring appropriate guidelines for health care services that consider the needs of women with disabilities, and which respect their human rights and dignity.226

The Social Committee (CESCR) also elaborated upon the gender perspective of the right to health in its comprehensive General Comment No. 14. It recommends that the States Parties of the Social Covenant (ICESCR) integrate a gender perspective and the promotion of women's health into their health-related policies, plans, programmes, and research. That includes:

- The recognition that biological and sociocultural factors play a significant role in influencing the health of men and women.
- The disaggregation of health and socioeconomic data according to gender is essential for identifying and remedying inequalities in health.

224 CEDAW, General Recommendation No. 24, para. 31.
225 CEDAW, General Recommendation No. 24, para. 15 (b).
226 CEDAW, General Recommendation No. 24, para. 25.
• The combating of discrimination against women with regard to access to health care services, as well as the availability of health education and information, including concerning sexual and reproductive health.

• The protection of women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights.227

The World Health Organization (WHO) and its Gender, Women and Health department, provide extensive information concerning gender-specific requirements in health care.228

1.4.2.5.3. Guidelines for the Creation of Gender-Sensitive Health and Rehabilitation Services.

Using the already defined health risks which are specific to women with disabilities, and the normative meaning of the right to health care services as a backdrop, the following measures for ensuring gender-sensitive health care services as defined in Article 25, sentence 2 of the CRPD could be applicable:229

Gender-sensitive Availability and Accessibility.

• All health care services and early detection programmes shall be offered to women and men with disabilities as well as to those without.

• Accessible counselling.

• Medical competence centres in which women with disabilities can receive comprehensive, primary and specialised health care in one visit.

• Mobile health care services for disabled women in rural areas or for homeless persons, as well as the development of diagnostic technologies, as in for example, internet consultations.

• Transport services for disabled people; parking for disabled people; barrier-free hallways waiting and examination rooms, toilets, elevators and ramps.

• Making gender-sensitive information available in accessible formats concerning topics relating to health care.

227 CESCR, The right to the highest attainable standard of health, General Comment No. 14 (2000), para. 20, 21
• Providing health care education in a form which can be understood by both disabled women and men, as well as by those in their personal sphere.

• Accessible shelters (for example women’s shelters), where disabled women can find refuge from domestic violence.

Gender-Sensitive Quality and Acceptability.

• Adjustable treatment tables and chairs.

• Mammography machines which can also be used by women in wheelchairs.

• Sufficient personnel so that women with disabilities can be assisted during medical examinations in a way which respects their dignity and takes their comfort into consideration.

• The training of all medical personnel regarding the specific needs of women and men with disabilities.

• Raising the medical personnel’s awareness concerning the fact that women with disabilities have a sexual life, use contraception or have children, and also that they can suffer from sexually transmitted diseases.

• Regular examination of women with disabilities with regard to sexual, physical or emotional abuse.

• Promoting research which could improve the health-related situation of women and men with disabilities, including gender-differentiated statistics.

1.4.2.6. Legal Significance of Article 25, Paragraph a).

Ensuring Health Care Services in the Area of Sexual and Reproductive Health.

1.4.2.6.1. Translation Problem in Germany
As discussed in the Background section, the exact text of Article 25 (a) has long been controversial concerning its treatment of sexual and reproductive health. Although expressly mentioned in action programmes, resolutions and in the General Comments of human rights committees, the CRPD is the first document where the term "sexual and reproductive health" is used in a legally binding human rights instrument.

Some states and also NGOs were concerned that a right to abortion would be stipulated due to this fact for the first time. In order to be able to reach a compromise, the word "services" as in "health care services“ was taken out of the
text during the 8th AHC round of negotiations. The first working draft, translated into German by the Federal Ministry of Labour and Social Affairs [Bundesministeriums für Arbeit und Soziales], was a literal translation of the original English text.

Thus, the translation read as follows: “The States Parties shall provide [...] people with disabilities [...] with health care as provided to other persons, including in the area of sexual and reproductive health [...].” In the meantime, Germany, Liechtenstein, Austria and Switzerland agreed on a translation in January 2008 which states: “In particular, the States Parties provide people with disabilities [...] with health care as provided to other persons, including sexual and reproductive health services [...].”

If the discussion was to be held in the German-speaking areas regarding the extent to which the inclusion of reproductive health care services necessarily implies a right to abortion, which would supersede any state’s legal scope (not taking into account here the question of whether such an interpretation is justified), one should draw upon the legally binding original UN text’s compromise.

1.4.2.6.2. A New Human Right?

The right to sexual and reproductive health is based on the fundamental right of all couples and individuals to found a family freely and responsibly (Art. 23, para. 2 ICCPR) and on the right of man and woman to have the same rights to decide on the number and spacing of their children (Art. 16, para. 1 (e). This right is also expressly confirmed for people with disabilities in the CRPD (Art. 23, para. 1 (a) and (b)). In order to avail oneself of this right, the corresponding information and means (including the highest attainable standard of sexual and reproductive health) are required.

The right to sexual and reproductive health is, on the one hand, derived from the right to found a family and, on the other, from the right to the highest available standard of health. It has been recognised and described according to these definitions in many international documents:

- In September 1994, 179 states agreed upon the Action Programme of the International Conference on Population and Development (ICPD). The Action Programme signified the beginning of a new era. The aims of the agreement were the establishment of an improved quality of life; an increase of life expectancy,

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230 See chapter 5.3.1.
and the promotion of population development through fighting poverty; sustainable economic development; education (in particular for girls); gender equality; a decrease in the infant, child and maternal mortality rates; universal access to reproductive health, including family planning methods and sexual health, as well as food safety, among other things.

In Chapter 7, the Action Programme comprehensively describes reproductive rights and reproductive health. The Action Programme defines **reproductive health** as a state of complete physical, mental and social well-being in all matters relating to the reproductive system and to its functions and processes.

Reproductive health implies that people are in the position to lead a satisfying and safe sexual life, and that they are able to propagate and to freely make their own decisions concerning this issue. This includes the right of women and men to be informed about family planning methods, to have access to safe, effective, affordable and acceptable methods of family planning according to their choice, as well as to have access to other methods of regulating their fertility, as long as these are not illegal.

Appropriate health care shall help women to get through pregnancy and birth safely, and support couples and individuals in having a healthy child. **Reproductive health care** shall be defined as a combination of methods, techniques and services which contribute to reproductive health and well-being through corresponding prevention and treatment in this area. It also includes the preservation of sexual health, also expressly for the purposes of the enrichment of one’s life and of personal relationships, and not only in connection with reproduction or sexually transmitted diseases.

The ICPD recognised that abortions are performed in about 90 percent of countries, but found particular fault with the significant number of unsafe abortions, which lead to health problems or the death of women. The ICPD clarified that **abortions** shall in no way be promoted as a method of family planning, but rather that the highest priority shall be given to avoiding unwanted pregnancies.

- An Ad Hoc Committee was assembled in 1999 in order to monitor the implementation of the 1994 Programme for Action of the International Conference on Population and Development. The final report comprehensively details which problems exist in the practice of rights to sexual and reproductive health, and it demonstrates what governments should do in order to ensure

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234 ICPD report, para. 8.19.
235 I.c., para. 8.25.
these rights.236

- The 4th World Conference on Women used the ICPD as a guide for their definition of reproductive health and of reproductive health care.237

With regard to abortion, the 4th World Conference on Women explained how unsafe abortions endanger the lives of a large amount of women. They present a serious health problem in many states, since it is often the poorest and the youngest who take this risk. Fatalities, health problems and injuries could be avoided if women had access to appropriate health care services; safe and effective family planning methods; emergency obstetric care, as well as sufficient relevant information.

- In their General Recommendation No. 24 from 1999, the Women's Rights Committee (CEDAW) affirmed that access to health care, including reproductive health, is a fundamental right of the Women's Rights Convention.238

Measures aimed at the combating of discrimination in this area must, for example, stipulate legal guidelines so that certain reproductive health care services are made available to women. If a doctor, for instance, refuses to perform a particular (legal) service based on a conscientious objection, it must be ensured that another doctor is available to women. States Parties shall ensure that young women and men are educated in the areas of sexual and reproductive health.

- In 2000, the Social Committee (CESCR) also highlighted the right to health in its General Comment No. 14, according to Article 12 of the ICESCR, that non-discriminatory health care for women shall include health services in the area of sexual and reproductive health. Any constraints to the full enjoyment of this right must be overcome. This includes traditional cultural practices and norms which endanger health, or which deny women their full reproductive rights.239

These examples demonstrate that there is an overwhelming international consensus about the fact that the right to sexual and reproductive health is a fundamental element of human rights. It therefore seems to be a natural

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consequence that the CRPD took up this development and named this right explicitly.

Also, by looking at the documents named above, it cannot be assumed that abortions are an inherent part of reproductive health care services, and that the Convention is now stipulating the entitlement to abortion. However, in states where abortions are performed legally, it must be ensured that these are conducted safely and that all women, including women with disabilities, have equal access.

1.4.2.6.3. Consequences for the Sexual and Reproductive Health Care of Women with Disabilities.

Article 25 (a) contains no specific services to be instituted for people with disabilities, but is rather above all a non-discriminatory clause: People with disabilities must have access to the same scope, quality and standard free of charge or affordable health care as other people. This also applies to the area of sexual and reproductive health.

Since this is a non-discriminatory clause, it shall be immediately implemented. In the area of sexual and reproductive health, this could entail the following measures which should be publicly promoted and supported:

- People with disabilities, in particular women with disabilities, should receive sexual education just like non-disabled young people, and in a way which is understandable for them. This should include education regarding legal family planning methods and the dangers of sexually transmitted diseases.

- Social, medical or also family prejudices that state that women with disabilities are asexual must be dispelled. Bodily changes during puberty, care during menstruation or first sexual experiences should be openly discussed with young disabled women as well as, if necessary, with families or care takers.

- It is in fact young women with disabilities in particular who should have their self-confidence enhanced so that they feel comfortable with their bodies, and develop an understanding for the fact that they could be capable of having sexual relationships. Since women with disabilities are at a greater risk of becoming victims of sexual abuse, they should be helped to learn how to recognise sexual abuse and to defend themselves against it.

- The independent decision of disabled women to use family planning methods or other legal methods to regulate their fertility should be supported. In the choice of contraception methods, the possible higher risk of disabled women getting thrombosis should be taken into consideration. Sterilization or abortions must only be performed on a consensual basis as defined in Article 25 (d) of the CRPD.

- People with disabilities, in particular women with disabilities, should be informed
concerning all factual possibilities in relation to reproductive health care services in a format adapted to them. Reproductive health care services must also be accessible, affordable and acceptable for people with disabilities.

- Teenage disabled women must also have the possibility of essential gynaecological health care services. A corresponding, sensitive health care is to be ensured.

- Gynaecological examinations should not be referred to specialists in the area of the respective disability, but rather, gynaecological practices should be made accessible.

- Doctors and other medical personnel must be aware that disabled women are not asexual, but that they can have sexually transmitted diseases, unwanted pregnancies, and breast or cervical cancer.

- Early prevention examinations for breast cancer should be conducted more often for disabled women, depending on the extent to which these individuals have paresthesia in their hands due to their disability.

- Since pelvic examinations can be difficult due to physical disabilities, it is important that medical personnel know the possible transfer techniques or alternative examination positions, and that they are able to help the patient to relax.

- For pregnant women with disabilities and their partners, medical counselling during the time of their pregnancy, birth and post-partum stage must be made available. Their decisions regarding prenatal diagnostics must be respected.

**Article 28: Adequate Standard of Living and Social Protection.**

1.4.2.7. The Convention’s Text.

Article 28.
Adequate Standard of Living and Social Protection:

(1) States Parties recognise the right of people with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

(2) States Parties recognise the right of people with disabilities to social protection and to the enjoyment of that right without discrimination on the
basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

(a) To ensure equal access by people with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;

(b) To ensure access by people with disabilities, in particular women and girls with disabilities and older people with disabilities, to social protection programmes and poverty reduction programmes;

(c) To ensure access by people with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;

(d) To ensure access by people with disabilities to public housing programmes;

(e) To ensure equal access by people with disabilities to retirement benefits and programmes."

1.4.2.8. Rationale.

People with disabilities around the globe are often amongst the poorest of the poor, without access to education or gainful employment. This is especially the case for women with disabilities. Even if states offer a social security system, it is most often linked to having an occupation and requires regular contributions. In many states, there is no social assistance which even secures unemployed individuals a minimum income, or it is so closely measured that disability-related costs cannot be covered.

Therefore, the aim of Article 28 is that disabled persons have a standard of living which, at a minimum, makes it possible for them to enjoy healthy nutrition, accessible housing, essential medication and important technical support.

Social protection, which also includes social services that are not dependent on regular contributions, is particularly necessary for those that are ill, unemployed or who have multiple disabilities. Also, those family members who are unable to pursue an occupation due to their caring for a disabled family member need support. The realization of the right to social protection and an adequate standard of living are fundamental for these people, in order to be able to live their lives with dignity.

240 Author’s emphasis (Sabine Haefner).
241 See chapter B.3.
1.4.2.9. **Text Development.**

The right to social security, which includes social insurance, and the right to an adequate living standard, are inherent human rights. For this reason, the AHC Working Group's first draft of the Convention already contained the draft of an Article 23 on the right to social security and an adequate living standard, including the particular mention of women and girls with disabilities in the subparagraph (b).

In the scope of the negotiations, the desire was repeatedly expressed that the term social security should be replaced with a term which is more comprehensive and which integrates all public support. In a letter written before the 7th AHC meeting in October 2005, the chairperson suggested using the term "social protection" instead of the term "social security", since it is very widely applied.

The chairperson referred here to the definition of "social protection" in the UN Secretary-General's report to the Commission for Social Development on the 12th of August, 2000, at their 39th meeting (E/CN.5/2001/2), as well as to Article 23, para. 3 and Art. 25 para. 2 of the Universal Declaration of Human Rights. In the end, the term "social protection" replaced "social security including social insurance".

The particular mention of women and girls with disabilities in para. 2b) was occasionally criticised during the AHC negotiations, on the grounds that the gender-specific particularities would be ensured through a general obligation at the beginning of the Convention's text. However, along with Article 6 of the CRPD, Article 28 remained the only Article in the Convention in which women and girls with disabilities were expressly mentioned.

1.4.2.10. **Legal Significance of Article 28.**

1.4.2.10.1. **Article 28, Paragraph 1 – The Right to an Adequate Standard of Living.**

The right to an adequate standard of living is established in the following United Nations human rights instruments: Art. 25 para. 1 UDHR, Art. 23 para. 2 ICESCR, Art. 27 CRC. At the EU level, the right to an adequate standard of living is embedded in the (revised) European Social Charter. The right to an adequate standard of living is

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242 See Article 25 UDHR, Article 9 and 11 paragraph 1 ICESCR, Article 5 (e) (iv) and (j) CERD, Article 14, paragraph 2 (c), Article 27, paragraphs 1-3 CRC.


246 See, for example, the discussion in the AHC on January 26, 2006, [www.un.org/esa/socdev/enable/rights/ahc7sum26jan.htm](http://www.un.org/esa/socdev/enable/rights/ahc7sum26jan.htm) (April 27, 2011)
part of economic, social and cultural rights, and therefore represents a gradual obligation for the States Parties.247

However, the States Parties are compelled to grant this right to disabled people without discrimination on the grounds of disability (Art. 4 para. 1 of the CRPD). As soon as disabled people face any discrimination when exercising this right, immediate measures must be undertaken in order to eliminate such discrimination.248 Likewise, it is the States Parties’ immediate duty to ensure disabled men’s and women’s equal access to services providing them with an adequate standard of living (Art. 3 (g) of the CRPD).

Any form of discrimination against women and girls with disabilities in the exercising of this right must be eliminated, and disabled women must receive support (Art. 6 of the CRPD). In its General Comment No. 5 (1995), the Social Committee (CESCR) referred to the issue of ensuring an adequate standard of living for people with disabilities, and explained that in addition to access to adequate food and other material needs, support services and resources must be made available to disabled people in order to increase their level of independence.

For people with disabilities, the right to adequate housing means the right to an accessible residence outside an institution. Also, for them the right to adequate clothing means that they must have clothes that fit their particular needs and enable them to participate fully in society. Wherever possible, personal assistance should be provided so that these rights can be exercised.249

The Social Committee published additional specific General Comments on States Parties’ obligations to ensure adequate housing250 as well as adequate food251 and drinking water.252 These Comments support States Parties in implementing the right to an adequate standard of living.

1.4.2.10.2. The Right to Social Protection.

247 See chapter D.3.4.2.
250 CESCR General comment No. 7, The right to adequate housing, May 20, 1997; www.unhchr.ch/tbs/doc.nsf/(Symbol)/959f71e476284596802564c3005d8d50?Opendocument (April 27, 2011)
251 CESCR, General Comment No. 12, The right to adequate food (Art.11), E/C.12/1999/5, www.unhchr.ch/tbs/doc.nsf/(Symbol)/3d02758c707031d58025677f003b73b9?Opendocument (April 27, 2011)
The right to social protection and social security is mentioned in the following United Nations human rights instruments: Art. 23 para. 3 and 25 UDHR, Art. 9 ICESCR, Art. 5 (e) (iv) CERD, Art. 11 (e) and 23 (c) of the CEDAW. With regard to social security benefits, the Social Committee (CESCR) set forth the States’ parties obligations in its General Comment No. 19 (February the 2nd, 2008). At the EU level, this right is embedded in the (revised) European Social Charter (Art. 12) and in the Charter of Fundamental Rights of the European Union (2010/C 83/02) (Title IV, Art. 33, 34).

The CRPD is the first legally binding Convention that uses the notion of “social protection” instead of “social security”. During the negotiations, some participants referred to a more comprehensive definition of this term that includes social assistance to groups who are in need of protection, or who are facing unemployment, additionally accommodating states in which social security systems are practically non-existent.

Against the backdrop of a changing world and the process of globalization, the Secretary-General of the United Nations presented a comprehensive explanation and provided guidance on the notion of "social protection" in his report to the Social Development Commission, dated December the 12th, 2000, concerning their 39th session (E/CN.5/2001/2). This explanation served as a basis for the use of this term in the CRPD.

Hereafter, social protection comprises the following provisions (this list is not conclusive):

- Different public and private policies and programmes for insurance claims in order to balance a loss or decrease in income.

- Benefits for poor people and people in need of help, as well as for earners in the event of typical life risks (for instance, sickness, old age, incapacitation for work).

- Access to an income, livelihood and aid for families with children.

- Not only financial aid, but also material aids such as employment promotion measures, health care and education services or food and housing.

- In this way, social protection comprises two main categories: the field of social

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support, and the field of social security.

- Social support includes public services for people in need that are not funded via payment of contributions, and which are aimed at ensuring them a minimum adequate standard of living.

- Social security structures offer social security that is primarily financed through payment of contributions and that covers risks.

- Social protection, as described by the UN Secretary-General, is based on the values of solidarity, courtesy, confraternity, but also personal responsibility and self-help.

Similarly, Art. 28 para. 2 of the CRPD places a gradual obligation on the States Parties, as defined in Art. 4 para. 2 of the CRPD. Independently from this however, the States Parties must immediately ensure that people with disabilities can access all existing social benefits, and that disabled women and men can access these benefits equally and without being discriminated against on the grounds of their disability (Art. 4 para. 1 and 3 (g), Art. 6 of the CRPD). \(^{256}\)

Moreover, the States Parties must immediately take action in order to fulfil the obligations defined in Art. 28 para. 2 CRPD to the maximum of available resources (Art. 4 para. 2 CRPD). The right to social protection must be granted the highest priority in law and policy because of its fundamental importance for human dignity. \(^{257}\)

**1.4.2.10.3. Art. 28, Paragraph 2 b). Social Protection and Poverty Reduction Programmes.**

Art. 28 para. 2 (b) emphasizes that access to social protection and poverty reduction programmes must be ensured for women and girls with disabilities and for older people with disabilities in particular. In this respect, States Parties must immediately take appropriate steps that could include the following provisions:

- Evaluation of the existing social security system and of all state benefits, particularly in the fields of employment promotion, health care, education, pension plans, social welfare and all services for disabled people, with regard to possible discriminating effects on individuals and especially women, girls and elderly people with disabilities.

- Supporting access to social security systems based on employment and payment of contributions, with the help of specific programmes for the

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\(^{256}\) See also CESCR, General Comment No. 19, The right to social security, paras 32 and 40.

\(^{257}\) l.c., para. 40 et seq.
promotion of vocational training and further education, as well as of employment or freelance work that include a special consideration of disabled women's and girls' needs.

- Supporting disabled women in the balancing of their professional lives and their family lives, for example, through domestic assistance, parental assistance, personal assistance, accessible schools and kindergartens and technical aids.

- Ensuring health services independently from health insurance, in particular for women with disabilities during their pregnancy as well as during and after childbirth.

- Social welfare to ensure the livelihood of non-working men and women with disabilities and, in particular, for single mothers with disabilities in order to make it possible for them to live independently without being dependent on their families.

- Ensuring financial services during maternity leave also for disabled women in atypical working conditions, and for an adequate period of parental leave both for men and women with disabilities.

1.4.2.11. Conclusion.

The realization of the right to an adequate standard of living and social protection is of fundamental importance for people with disabilities. As a social, economic and cultural right, it places States Parties under a gradual obligation. Existing benefits aimed at ensuring this right must however be immediately ensured for disabled people on a non-discriminatory basis. States Parties where this right is not ensured must take immediate action to the maximum of their available resources, in order for disabled people to enjoy an adequate standard of living and a basic level of social security.

For people with disabilities and their families, an adequate standard of living means that the inevitably accrued costs related to their disability are covered (for example, specific clothes, technical aids, medication, accessible housing), and that relatives who perform care work are likewise insured. The right to social protection includes non-discriminatory access to an existing social security system or to corresponding private insurance, as well as to other social aids that must at least include education, health care and insurance against unemployment and old age.

In many states, women and girls with disabilities are denied access to vocational training and employment for traditional or cultural reasons. Subsequently, they remain dependent on their family of origin over the course of their entire lives, or they must live in an institution. States Parties must therefore provide special advancement measures to women and girls in order to ensure them an independent life to a large extent.
1.4.3.1. The Convention’s Text.

Article 34: Committee on the Rights of Persons with Disabilities:

1. There shall be established a Committee on the Rights of Persons with Disabilities (hereafter referred to as "the Committee"), which shall carry out the functions hereinafter provided.

2. The Committee shall consist, at the time of entry into force of the present Convention, of twelve experts. After an additional sixty ratifications or accessions to the Convention, the membership of the Committee shall increase by six members, attaining a maximum number of eighteen members.

3. The members of the Committee shall serve in their personal capacity and shall be of high moral standing and recognised competence and experience in the field covered by the present Convention. When nominating their candidates, States Parties are invited to give due consideration to the provision set out in Article 4.3 of the present Convention.

4. The members of the Committee shall be elected by States Parties, consideration being given to equitable geographical distribution, representation of the different forms of civilization and of the principal legal systems, balanced gender representation and participation of experts with disabilities.

5. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties from among their nationals at meetings of the Conference of States Parties. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The initial election shall be held no later than six months after the date of entry into force of the present Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit the nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating the State parties.

258 Author's emphasis (Dr. Sigrid Arnade).
which have nominated them, and shall submit it to the States Parties to the present Convention.

7. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. However, the term of six of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these six members shall be chosen by lot by the chairperson of the meeting referred to in paragraph 5 of this article.

8. The election of the six additional members of the Committee shall be held on the occasion of regular elections, in accordance with the relevant provisions of this article.

9. If a member of the Committee dies or resigns or declares that for any other cause she or he can no longer perform her or his duties, the State Party which nominated the member shall appoint another expert possessing the qualifications and meeting the requirements set out in the relevant provisions of this article, to serve for the remainder of the term.

10. The Committee shall establish its own rules of procedure.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention, and shall convene its initial meeting.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

13. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

1.4.3.2. Rationale.
The process of implementing and monitoring treaties, measures and programmes is not gender-neutral. Publications suggest that this awareness has permeated the UN system's organizations since the 1990s. For example, the International Labour
Organisation (ILO) and Womenwatch\textsuperscript{259} prepared and published checklists for gender-sensitive monitoring.\textsuperscript{260}

Furthermore, UN institutions and their associated institutions have prepared numerous recommendations and guidelines since the 1990s, which deal with the gender-sensitive implementation and monitoring of measures and programmes.\textsuperscript{261}

The balanced composition of the Committee on the Rights of Persons with Disabilities with both women and men represents one of the consequences which resulted from these checklists, recommendations and guidelines. In the CRPD negotiations process, such a composition was recommended as early as during the sixth meeting of the Ad Hoc Committee in August 2005, in a paper prepared by national human rights institutes.\textsuperscript{262}

1.4.3.3. Specifications in Other UN Conventions.

The CRPD is the first UN Convention to urgently stipulate that the monitoring committee must be equally composed of men and women. In the conventions that were adopted earlier, some importance was attached to an equitable geographic distribution, to a representation of different cultures and of the principal legal systems, but the gender perspective was non-existent. Even the 1989 Child Rights Convention (CRC) and the 1990 Migrant Workers Convention (CRMW) do not include any specifications with regard to the gender balance in their commissions.

Only the International Convention for the Protection of All Persons from Enforced Disappearance (CED), which was adopted shortly after the CRPD on the 20\textsuperscript{th} of December, 2006, includes the same stipulation as the CRPD for a balanced gender representation in the commission.\textsuperscript{263}

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\textsuperscript{259} Womenwatch is a project in the UN periphery that was founded in 1997 in order to promote the implementation of the 1995 Beijing Platform for Action.


\textsuperscript{263} In Art. 26 para. 1 CED, the wording corresponds exactly to Art. 34 CRPD.
Article 36 of the Rome Statute of the International Criminal Court, issued on the 17th of July, 1998, served as another model for the CRPD. According to this article, the States Parties shall, in the selection of judges, take into account the need, within the membership of the Court, for the fair representation of female and male judges (Art. 36 para. 8 (a) Rome Statute).

1.4.3.4. The Composition of Other Committees.

When this document was written in 2008, the Human Rights Council's president and his four deputies were men. On the relevant websites, the other members are only listed by nationality, not by name. One cannot, therefore, draw any conclusions as far as the gender balance in the committee's composition is concerned. The following chart provides an overview of the gender balance in the composition of other committees that are responsible for monitoring other human rights Conventions.

<table>
<thead>
<tr>
<th>Convention monitored by committee</th>
<th>Number of committee members</th>
<th>Women</th>
<th>Men</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil Rights Covenant (ICCPR)</td>
<td>18</td>
<td>5</td>
<td>13</td>
</tr>
<tr>
<td>Social Rights Covenant (ICESCR)</td>
<td>18</td>
<td>4</td>
<td>14</td>
</tr>
<tr>
<td>Anti-Racism Convention (CERD)</td>
<td>18</td>
<td>1</td>
<td>17</td>
</tr>
<tr>
<td>Women's Rights Convention (CEDAW)</td>
<td>22</td>
<td>21</td>
<td>1</td>
</tr>
<tr>
<td>Anti-Torture Convention (CAT)</td>
<td>10</td>
<td>3</td>
<td>7</td>
</tr>
<tr>
<td>Child Rights Convention (CRC)</td>
<td>18</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>Migrant Workers' Convention (CRMW)</td>
<td>10</td>
<td>3</td>
<td>7</td>
</tr>
</tbody>
</table>

This chart (dated from 2008) clearly demonstrates that the Committee on the Elimination of Discrimination against Women (CEDAW) is the only committee in which women outnumber men. The only committee with an equitable composition is the CRC committee. For the remainder, women represent a minority in all committees.

1.4.3.5. Legal Significance of the Gender Reference In Article 34.

The CRPD is the first convention to introduce an equitable gender representation in its committee. This development is irreversible, as it is proven with the case of the CED (Enforced Disappearance Convention). The CED includes this same stipulation (see above). This means that the CRPD established a new standard regarding the composition of the committee.
This stipulation is aimed at embedding both genders' perspectives in the CRPD monitoring process. In order to achieve this goal, the States Parties are encouraged to make further efforts in addition to the equitable composition of the commission. These include, for example, the following measures:264

- For the purpose of gender equality monitoring, any data collection must be gender-differentiated.

- Data must be supplemented by gender-sensitive indicators.

- The quantitative analysis must be accompanied by a qualitative analysis.

- Women with disabilities and their organizations must not only be considered during the implementation of the Convention, but also (in compliance with Art. 34, para. 3 and Art. 4, para. 3 of the CRPD) during all stages of national and international monitoring, as well as in their roles as experts in the Disability Rights Committee.

- Regarding their obligations deriving from Art. 6, States Parties are asked to ensure that the experts they nominate are equipped with specific professional expertise concerning the multiple discrimination of women.

E. Outlook.

Through its inclusion of the gender perspective, the CRPD is setting new standards in the field of human rights treaties. Article 6 in particular compels the States Parties to undertake comprehensive measures aimed at improving the situation of women and girls with disabilities.

In a next step, disabled women and girls all over the world must be enabled to benefit from this Convention as soon as possible. In order to achieve this goal, the authors of this standard interpretation make the following recommendations.

Information.

The CRPD should promptly be further translated into all languages and accessible formats, and should be made available to women, men and children with disabilities, for example in schools, at events and seminars, in newspaper articles and on the internet. Women with disabilities and their organizations should be provided with information about those aspects of the Convention that is of particular relevance to them. For instance, the translation and publication of this standard interpretation into other languages and formats might contribute to achieving this goal.

264 See footnotes on these checklists, recommendations and guidelines mentioned in chapter 5.2.
In compliance with Art. 4, para. 3 of the CRPD, disabled women and men along with their organizations should be consulted and involved with regard to the preparation of national translations and information.

Ratification.
The ratification process should be expedited efficiently.

Plan for Action.
The ministries and authorities that are responsible for the implementation of the CRPD should prepare a plan for action, in cooperation with the institutions responsible for equal opportunities policies and policies regarding women, national human rights institutions and in close consultation with women and men with disabilities and their representative organizations (Art. 33, para. 2 of the CRPD).

This plan for action should specify:

- Which national institutions are responsible for implementing the stipulations included in the Convention and for coordinating its implementation (Art. 33, para. 1 of the CRPD).

- With regard to national human rights institutions, which institutions are to ensure the independent promotion, protection and monitoring the implementation of the Convention (Art. 33, para. 2 of the CRPD).

- That these implementation and monitoring institutions assume the special responsibility of monitoring the Convention's stipulations regarding disabled women and girls.

In compliance with the category of each individual obligation included in the Convention, the plan for action should define which goals shall be achieved immediately, in the medium term and in the long term for all fields mentioned in the Convention.

Measures of the most specific nature possible should be stipulated in all fields, for example, measures aimed at situation analysis, necessary legislation changes and amendments or at the implementation of advancement programmes. The plan for action must clearly determine those measures aimed at implementing the Convention's stipulations for disabled women and girls.

In the context of the special obligations deriving from Article 6 of the CRPD, the question of whether a separate plan for action for disabled women and girls is necessary must be discussed. The plan for action must be published and made
known to disabled people, as well as deputies, ministries, courts and the administration.
The Authors.

Dr. Sigrid Arnade works as a journalist, event facilitator and project manager. Her core issues are "disabled women", "equality before the law" and "accessible nature excursions". Alongside her professional activities, she is one of four members on the speakers' board of the German Disability Council, and is a member of the management boards of the Disabled Women's Network Berlin e.V. [Netzwerk behinderter Frauen Berlin e.V.], NETZWERK ARTIKEL 3 e.V. and the LEBENSNERV foundation. In chapter A, "Retrospectives", she writes about her personal connection with the issue of the CRPD.

Sabine Haefner is a lawyer. Up until April 2008, she worked as social policy officer and attorney at the German Social Association (SoVD). During the CRPD negotiation process, she particularly supported the inclusion of the gender and women provisions. As of May 2008, Sabine has held the position of legal advisor in the department for patients' participation at the German Federal Joint Committee (Gemeinsamer Bundesausschuss), a paramount decision-making body in the German health care system. Alongside her professional activities, she is involved in NETZWERK ARTIKEL.

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Summary:
Girls with disabilities are at particular risk of corporal punishment. Enormous numbers of them experience painful and humiliating punitive violence by family members, teachers, carers and others in states in all regions. Despite the consensus in international human rights law that girls with disabilities, like all other children, have a right to protection in law and practice, this violation of their rights to human dignity and physical integrity remains lawful in the majority of states worldwide.

No consideration of the rights of girls with disabilities is complete if it does not acknowledge the huge scale and legality of punitive violence against them, and calls for its prohibition and elimination.

The Global Initiative therefore hopes that the Committee on the Rights of Persons with Disabilities will explicitly include the issue of violent punishment in its Half Day of general discussion on women and girls with disabilities, and that any document arising from the discussion will reflect the obligation under international law to prohibit and eliminate all corporal punishment.

Violent Punishment of Girls with Disabilities.

The enormous scale of the problem of violence against children is increasingly recognised.265 Violent punishment by parents, teachers and others is the most common form of violence against children. Research shows that in many states, a large majority of children experience corporal punishment.266

This punishment often takes the form of hitting children with hands or implements such as belts and sticks, but can also involve a wide range of other painful and degrading treatment, for example kicking, shaking, pinching or biting children and

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forcing them to maintain uncomfortable positions.\textsuperscript{267} As well as violating children’s right to physical integrity, corporal punishment can also violate their rights to health, education and participation.

Girls with disabilities are at a greater risk than other children due to the double discrimination they experience based on their disability and their gender. Acceptance of corporal punishment arises from the low social status of children. For children with disabilities the problem is compounded by the low worth ascribed to them, and by the discrimination they face on the grounds of their disability.

Research has shown that children with disabilities are nearly four times more likely to experience physical violence, including corporal punishment, than children without disabilities.\textsuperscript{268} The punishments they experience may be more severe: a UNICEF study found that in seven countries, children with disabilities were more likely than children without disabilities to be hit or slapped on the face, head or ears or be hit over and over with an implement in the home.\textsuperscript{269} Children with disabilities are also at a greater risk in school\textsuperscript{270} and in institutional settings.\textsuperscript{271}

International law recognises that violence against women has a gender dimension. Similarly, girls’ experience of violent punishment is gendered. Girls may experience different types of punishment from boys and may be punished for different behaviours. Corporal punishment is used to control and regulate girls’ behaviour, including their social and sexual behaviour,\textsuperscript{272} and to encourage deference. Violence against girls has been shown to cause “submission” and “timidity”.\textsuperscript{273}

Corporal punishment is closely linked to domestic violence against women: the perpetrators may be the same and tolerance of corporal punishment increases acceptance of other kinds of violence in family relationships. For too many girls, with and without disabilities, childhood experience of corporal punishment is the

\textsuperscript{267} Committee on the Rights of the Child (2006), \textit{General Comment No. 8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2, and 37, inter alia) (CRC/C/GC/8)}


\textsuperscript{269} UNICEF & University of Wisconsin (2008), \textit{Monitoring Child Disability in Developing Countries: Results from the Multiple Indicator Cluster Surveys}

\textsuperscript{270} Human Rights Watch & American Civil Liberties Union (2009), \textit{Impairing Education: Corporal Punishment of Students with Disabilities in U.S. Public Schools}, NY: Human Rights Watch


\textsuperscript{273} Ministère de la Famille et de la Solidarité National (2009), \textit{Les Violences Faites aux Femmes au Bénin}, Observatoire de la Famille, de la Femme et de L’Enfant
beginning of a life of violent victimisation by authority figures and family members. Corporal punishment of girls is a form of gender-based violence.

The Importance of Explicitly Addressing the Corporal Punishment of Girls with Disabilities.

The reality of the corporal punishment of girls with disabilities is shocking, and its widespread legality compounds the outrage. Corporal punishment is an assault which, if perpetrated on an adult, would be unlawful. However, violent punishment remains lawful in some or all settings of children's lives in the majority of states worldwide. Girls and boys, including those with disabilities, can legally be hurt by family members, teachers, carers and others.

Despite the consensus in international human rights law around children's right to protection (see below), and the accelerating progress towards prohibition globally, some governments continue to ignore their obligations, and a small minority even openly defend the legality and use of corporal punishment. No state can claim to be fulfilling their human rights obligations towards girls or towards children with disabilities while allowing this form of violence, to which the latter are particularly vulnerable, to remain lawful.

The links between corporal punishment and other forms of violence mean that prohibiting corporal punishment of children is also important when ensuring respect for the rights of other groups to freedom from violence. As the Committee on the Rights of the Child has emphasised, addressing corporal punishment is “a key strategy for reducing and preventing all forms of violence in societies”.275

Far from distracting from violations of other rights, addressing corporal punishment complements, reinforces and strengthens other human rights work. Prohibiting corporal punishment helps societies move away from the view that it is acceptable to use violence to control and punish others, including family members.

No consideration of the rights of girls with disabilities is complete if it does not acknowledge the huge scale and legality of punitive violence against them, and calls for an end to it. The widespread legal and social acceptance of corporal punishment means that it is commonly not understood as “violence.” This needs explicit reference to it.

Where corporal punishment is not directly mentioned (for example, where documents refer only to “all forms of violence” or to “abuse”), it inevitably remains

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274 Thirty-three states have prohibited corporal punishment in all settings, including the home, and law reform is under way in many more; for further details see www.endcorporalpunishment.org
275 Committee on the Rights of the Child (2006), General Comment No. 8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia) (CRC/C/GC/8), para. 11
invisible – just as the lack of a gender or a disability perspective makes violations of the rights of women or people with disabilities invisible. Meaningfully addressing corporal punishment requires explicitly calling for its prohibition and elimination.

The Obligation to Prohibit And Eliminate All Corporal Punishment.

Several articles of the Convention on the Rights of Persons with Disabilities are relevant to the obligation to prohibit and eliminate all corporal punishment, including States Parties' obligations:

- to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children (Article 7).
- to ensure the protection of people with disabilities from all forms of exploitation, violence and abuse, within and outside the home (Article 16(1)).
- to put in place child-focused legislation to ensure that instances of violence and abuse against people with disabilities are identified, investigated and, where appropriate, prosecuted (Article 16(5)).
- to ensure the rights of people with disabilities in order to respect their physical and mental integrity on an equal basis with others (Article 17).
- to prevent people with disabilities from being subjected to torture or cruel, inhuman or degrading treatment or punishment (Article 15).
- to ensure the effective enjoyment by people with disabilities of the right to life (Article 10).
- to fulfil the rights of children with disabilities to an education (Article 24).
- to fulfil the rights of people with disabilities to the highest attainable standard of health (Article 25).

The Committee on the Rights of Persons with Disabilities has already raised the issue in its examinations of China276, Paraguay277 and Tunisia278.

The Preamble of the Convention recognises that children with disabilities should enjoy human rights on an equal basis with other children, and recalls the obligations to this end of States Parties to the Convention on the Rights of the Child. The Committee on the Rights of the Child has consistently made it clear that the Convention requires prohibition of all corporal punishment, including in the home.

In its General Comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, the

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276 Committee on the Rights of Persons with Disabilities (2012), List of issues to be taken up in connection with the consideration of the initial report of China (CRPD/C/CHN/Q/1), para. 62
277 Committee on the Rights of Persons with Disabilities (2012), List of issues to be taken up in connection with the consideration of the initial report of Paraguay (CRPD/C/PRY/Q/1), para. 19
278 Committee on the Rights of Persons with Disabilities (2011), Concluding observations on initial report of Tunisia (CRPD/C/TUN/CO/1), paras. 6 and 16
Committee consolidated and confirmed these obligations. General Comment No. 13 (2011) on the right of the child to freedom from all forms of violence also covers corporal punishment, and together with General Comment No. 9 (2006) on the rights of children with disabilities recognise that children with disabilities are particularly vulnerable to violence.

The Committee systematically recommends prohibition in its concluding observations. The monitoring bodies of other international treaties, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women; the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, also recommend prohibition of corporal punishment.

The issue is regularly raised in the Universal Periodic Review of states’ overall human rights records. A 2012 study from the Office of the High Commissioner for Human Rights on violence against women and girls and disability confirms that children with disabilities are more vulnerable to corporal punishment in all settings. It recommends reviewing and/or amending legislation on violence against women to ensure that it expressly prohibits all forms of violence against women and girls with disabilities, in line with international law including the Convention on the Rights of the Child.

The Beijing Declaration and Platform for Action emphasises states’ determination to prevent and eliminate all forms of violence against women and girls. The review of the Platform for Action in 2000 stated that governments should treat all forms of violence against women and girls of all ages as a criminal offence, punishable by law.

About the Global Initiative.

Launched in 2001, the Global Initiative to End All Corporal Punishment of Children aims to act as a catalyst for the prohibition and elimination of corporal punishment

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279 Committee on the Rights of the Child (2006), General Comment No. 8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19, 28, para. 2; and 37, inter alia) (CRC/C/GC/8)
280 Committee on the Rights of the Child (2011), General Comment No. 13: The right of the child to freedom from all forms of violence (CRC/C/GC/13)
283 General Assembly (2000), Further actions and initiatives to implement the Beijing Declaration and Platform for Action (A/RES/S-23/3)
of children across the world. Supporters of its aims include UNICEF; UNESCO; Disabled Peoples' International; Disability Rights International; Inclusion International; International Disability Alliance; Rehabilitation International; the World Network of Users and Survivors of Psychiatry, and many other international and national organisations.

The Global Initiative has been regularly briefing the Committee on the Rights of the Child on this issue since 2002. Since 2004, it has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee and, since 2011, the Committee on the Rights of Persons with Disabilities.

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children: www.endcorporalpunishment.org; info@endcorporalpunishment.org
Chapter 17

Advocacy for Inclusion.

Submission to the CEDAW General Discussion on Access to Justice 2013, and Submission to the CRPD General Discussion on Women and Girls with Disabilities 2013.

Advocacy for Inclusion.
February 2013.

About Advocacy for Inclusion.

Advocacy for Inclusion acknowledges the Ngunnawal people as the traditional owners of the land on which we work. Advocacy for Inclusion provides individual, self and systemic advocacy services for people with disabilities. We provide information, education, and representation to effectively advocate for positive and inclusive outcomes for people with disabilities.

We act with and on behalf of individuals in a supportive manner, or assist individuals to act on their own behalf, in order to obtain a fair and just outcome for the individual concerned. Advocacy for Inclusion works within a human rights framework and acknowledges the United Nations Convention on the Rights of Persons with Disabilities, and the Human Rights Act.

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February 2013

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Executive Summary.

Advocacy for Inclusion is a not-for-profit non-government community organisation in the Australian Capital Territory, Australia. We provide individual and systemic advocacy services to people with disabilities to promote their human rights and inclusion in the community. We work with some of the most vulnerable women in the community, who face multiple disadvantages and various barriers to accessing justice.

Due to their particular position of marginalisation in the Australian community, women with disabilities are often denied their right as per Article 3 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Women with disabilities in Australia are consequently unable to claim their human rights according to the United Nations Convention on the Rights of Persons with Disabilities (CRPD). We are particularly concerned that due to a lack of access to justice, women are unable to claim the following rights:

1. Article 16 of the CRPD: Freedom from Exploitation, Violence and Abuse.

Women with disabilities face higher rates of violence and abuse than the general community and men with disabilities. However, the types of violence experienced by women with disabilities and the contexts of these crimes are not recognised by the wider community as being forms of violence. For example, violence between residents in disability residential care facilities.

Many states and territories in Australia do not have legislative frameworks to recognise and protect women with disabilities from violence, and there is a severe lack of appropriate pathways to safety for women with disabilities experiencing violence or abuse. These factors prevent many women with disabilities from being protected against violence, and they also prevent them from having justice served.

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2. Article 23 of the CRPD: The Right to Parent.

Women with disabilities are generally not regarded by the community as sexual beings with reproductive and parenting rights. Mothers with disabilities are significantly overrepresented in child protection proceedings and, likewise, they are disproportionately subject to the removal of their children by child protection authorities.

This is widely due to prejudice among statutory authorities and in the court system, including the misconception that parents with disabilities cannot learn parenting skills. Mothers with disabilities are not supported appropriately to participate effectively in child protection proceedings. Their children are removed unjustly as a result of this discrimination, and due to a lack of available support for them to parent effectively.

3. Article 12 of the CRPD: Equal Recognition before the Law.

Although women with disabilities experience heightened rates of abuse compared with other women, many are denied justice because they are not viewed as credible or as having legal capacity. This involves the use of guardianship practices, which directly remove the recognition of a person with disability as having legal capacity. It also involves prejudice in judicial systems, which treat women with disabilities as not being credible witnesses or not having a coherent point of view.

Access to Justice for Women with Disabilities Who are Victims of Violence.

The [CEDAW] Committee urges the State Party, in the light of its recent ratification of the Convention on the Rights of Persons with Disabilities, to undertake a comprehensive assessment of the situation of women with disabilities in Australia. The Committee recommends that the State Party addresses, as a matter of priority, the abuse and violence experienced by women with disabilities living in institutions or supported accommodation.285

Advocacy for Inclusion sees violence daily as part of our work, and we are deeply concerned that this recommendation made by the CEDAW Committee in 2010 has not been acted upon by Australian governments. A recent audit of our advocacy

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285 UN Committee on the Elimination of Discrimination Against Women, 30 July 2010, Concluding Observations, p.8
cases showed that 25 per cent relate to violence in residential and institutional care (group homes)\textsuperscript{286} and over 30 per cent relate to sexual violence or exploitation.

This issue faces both men and women with disabilities. However, there is a gendered aspect to it and women with disabilities are especially at risk. In this regard, “Research suggests high rates of violence, abuse and neglect of women and girls with disabilities in institutional settings. Such violence is experienced more often by women and girls with disabilities than by men with disabilities in institutions. In these circumstances, women with disabilities may experience violence for longer periods of time, due to inadequate pathways to safety, and may be afraid to report incidents for fear of reprisal or a lack of confidence in authorities and the justice system.”\textsuperscript{287}

Women with disabilities also experience higher rates of sexual violence.\textsuperscript{288} For women with disabilities, violence may be about disability, or about gender, or both. Furthermore, people with disabilities generally face significant economic disadvantages in Australia, but women with disabilities face even greater economic disadvantages than men with disabilities.\textsuperscript{289}

Women with disabilities therefore face particular vulnerabilities to being dependent on abusive partners, family members or carers for financial stability, particularly when they may rely on such people for essential disability supports. This is a major barrier to these women being able to remove themselves from a violent or abusive situation, or being able to report such incidents to police.

The types of violence experienced by women with disabilities include physical violence; sexual assault; verbal abuse, and living in fear of the threat of harm. Many live with intimidation, financial exploitation, and suffer retribution for decisions, choices or complaints they have made.

Women with disabilities face different forms of violence than women without disabilities. For example, forced sterilisation and abortion;\textsuperscript{290} chemical restraint; withholding of aids and equipment; having services or activities withheld; continual

\textsuperscript{286} The majority of supported accommodation for people with disabilities in the ACT is provided through group homes with between 2 and 6 residents.
\textsuperscript{288} Murray, S., & Powell, A., 2008, Sexual assault and adults with a disability: Enabling recognition, disclosure and a just response, Published by the Australian Institute of Family Studies.
belittling and demeaning treatment based on the disability, and threats to remove children.

Advocacy for Inclusion sees violence in many settings: in group homes, where co-tenants use physical aggression as a form of communication; in public housing complexes, where women with disabilities are pimped or sexually exploited by their neighbours or “friends”; or in privately owned dwellings, where ex-partners stay on as carers and become abusive.

Sadly, many women with disabilities are not even aware that what is happening to them is actually violence or abuse. They have become conditioned to it, or they are unaware of their rights. Many women with disabilities have not received sex education and consequently, do not know how to identify the difference between consensual sex and rape or assault.

Some consumers with Advocacy for Inclusion have disclosed rape or sexual assault for the first time after learning about sexual health and human rights. With education they realised what had happened to them was rape or assault and that it was wrong. Compounding this is the fact that many forms of violence against women with disabilities are not recognised as violence by the general community.

For example, the CEDAW Committee made specific recommendations about forced sterilisation, yet the Australian government does not recognise this as a form of violence, nor is it working to outlaw the practice, despite similar recommendations by the UPR and the CRC.

Contrary to the requirements of Article 19 of the CRPD, many women with disabilities are still living in situations, or with people, not of their choosing. “Many people with disability are effectively forced to live in institutions or residential care facilities, in order to receive social and personal care supports”. This results in conflict between house mates and escalates to violence. Others are unable to get the level of support or care they need and are forced to rely on people who are physically or sexually abusive.

292 Ibid.
294 UN Universal Periodic Review, 5 November 2010, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 Australia
296 UN Convention for the Rights of Persons with Disabilities, 2006, Article 19. “Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement.”
Women living in residential care facilities are at heightened risk of violence and exploitation. Women, who experience communication barriers and subsequent behavioural difficulties, including violence, are congregated together in these facilities creating a recipe for aggression, violence and abuse among the tenants and by support workers. This establishes a “culture of violence” compounded by restrictive practices such as chemical restraint.

Restrictive practices, such as isolating a woman in her room, preventing access to areas of her home, or chemical restraints are often administered to manage these issues of violence, but they would otherwise not be needed if women were not living with individuals they do not want to live with. Advocacy for Inclusion has witnessed cases where a woman’s violence has ceased when she moved away from the co-tenants she was unhappy living with.

Some call this violence a “structurally induced crime”, created by living circumstances over which neither the victim nor the perpetrator have control. Many cases at Advocacy for Inclusion look like this. It is a serious problem with the ACT disability support system. Women with disabilities are afraid to speak up as they fear that they will upset their service provider or their carer. Others have significant communication barriers and violence is overlooked or covered up.

In these facilities, violent behaviour may be dismissed because it is seen to be a symptom of the perpetrator’s disability. Further, disability accommodation providers do not respond to such incidents of violence or sexual assault appropriately. In our experience, service providers seek to remove the victim from their home instead of the perpetrator.

Likewise, a report from the Victorian Ombudsman shows that victims of sexual assault in residential care facilities are often removed from the home instead of the perpetrator. This means that the victim cannot access justice, as they feel punished for the incident when they wanted to remain in that home.

We are shocked by the complacency towards violence in responses of disability service providers when we raise issues of violence in their facilities with them. It

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298 Ibid.
299 Ibid.
seems to be systemically accepted. Disability support staff seem inured to it after years of having no alternative to offer, or perhaps having succumbed to a “culture of violence”.

It seems that workers and managers in the disability service system are also not trained to recognise and respond appropriately to these incidents. This means that women with disabilities can be subjected to violence and abuse in their home for years with no real path to escape.

Despite the heightened vulnerability and incidences of violence experienced by women with disabilities, there is little in the way of legislative protections, programmes and resources to support them to be free from these issues. For example, women’s refuges appropriate to the needs of women with disabilities scarcely exist in Australia. Some women with disabilities have specific and significant support needs that would never be catered for in a women’s domestic violence shelter. Women with disabilities are less likely to receive assistance to be free from violent situations.\(^{304}\)

There is minimal research and no standard national data collection on the type and extent of abuse and violence experienced by women with disabilities. The Australian Bureau of Statistics (ABS) is the major national data collector on the status of people with disabilities. However, it does not collect data on experiences of violence or abuse. The ABS Personal Safety Survey report specifically collects data on experiences of violence in the community, but it does disaggregate this by disability.

The International Violence Against Women Survey (IVAWS) specifically excluded women with an illness or disability from the sample for the survey.\(^{305}\) Some states in Australia, such as New South Wales (NSW), have broader legislative definitions of ‘domestic relationships’, allowing the law to extend to violence in disability supported accommodation. However, in most states and territories including the ACT, legislation does not recognise disability group home residents, due to a narrow definition of ‘domestic relationships’.

Consequently, few disability-specific environments – residential care, institutions, group houses, cluster housing, congregate care, and psychiatric institutions – are recognised under domestic violence laws, and perpetrators specific to these accommodations are not recognised as perpetrators.

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\(^{304}\) Dillon, J., 2010, Violence against People with Cognitive Impairments: Report from the Advocacy/Guardianship Program at the Office of the Public Advocate, Victoria, Office of the Public Advocate


Additionally, the relationships of other women with disabilities who live in the broader community may also not be covered, including those relying on paid or unpaid carers who are not family members, or those living in other group arrangements. While assault laws might cover some of these circumstances, the protections available to assault victims are not as robust as those who have experienced domestic violence.

This means that although they are more vulnerable, women with disabilities are substantially excluded from legislative protection. Women with disabilities are not supported appropriately if at all to have the perpetrator removed or to find alternative accommodation.

It also means that disability services have a great degree of discretion when deciding how to respond to issues of violence, exploitation and abuse of women with disabilities, and whether or not to report it to the police. This is deeply concerning, given the acceptance among service providers of these issues.

Such incidents are often not reported to police and are subsequently not investigated. Incidents do not go beyond the administrative processes of the service provider, stopping women accessing the justice system and subsequently, from claiming their right to be free from abuse and violence.

The Australian NGO CRPD Shadow Report 2012 notes that police often do not regard such matters as a police matter, as they assume that it will be dealt with by the disability service provider, even if the violence or abuse occurs within that facility. This demonstrates the “acceptance” of violence and exploitation of women with disabilities among the community generally, and the urgent need for legislative recognition.

Further, an Australian study on the process of women with intellectual disabilities making statements to police about sexual assault found that police commonly stereotyped women with intellectual disabilities as:

- Being promiscuous, and
- Not having a credible account.

This study also found that police often did not proceed to prosecution because they were concerned that the woman would not be fit to proceed through the court

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309 Ibid.
process, and that it would cause them undue trauma. They commonly felt this way because they had no confidence that the court would deliver an acceptable outcome for the victim.\textsuperscript{311}

**Summary 1.**

Women with disabilities are some of the most vulnerable members of the Australian community to all forms of violence and abuse. However, women with disabilities experience more barriers than the rest of the community to accessing justice. Many are unable to realise their right to be free from violence and exploitation.\textsuperscript{312} The barriers include:

- Inadequate awareness and understanding among the community of the experience of violence against women with disabilities, including a lack of research and data collection.
- Denial among the community that the types of violence experienced by women with disabilities are actually violence.
- Lack of legislative recognition and protections afforded to women with disabilities as victims of violence.
- Lack of appropriate and accessible support, programmes, resources and information for women with disabilities, in order to help them be free from violence.
- Mishandling by disability accommodation providers of incidents of violence against women with disabilities, including lack of training among staff on how to respond to such incidents.
- The particular vulnerability of women with disabilities, including their dependence on abusive care givers or partners; dependence on supports provided within a violent residential care setting; fear of consequences of reporting incidents due to this power differential, and for many a conditioning to violent treatment over a lifetime.

**Access to Justice for Mothers with Disabilities.**

A large portion of our advocacy cases include mothers with disabilities involved in child protection proceedings. They have often had their children removed because of their disability.

\textsuperscript{311} Ibid.

\textsuperscript{312} UN Convention for the Rights of Persons with Disabilities, 2006, Article 16.
The particular economic disadvantages faced by women with disabilities also cause women to face heightened barriers to justice as parents. For example, they are less able to resource appropriate legal representation, and may also remain with abusive partners or carers who provide economic security or essential disability supports.

McConnell and Bjorg Sigurjonsdotter\textsuperscript{313} explain that, often, a primary child protection concern in cases involving mothers with disabilities is the risk of violence or exploitation of the child by the mother’s male partner. For example, a UK study by Booth and Booth\textsuperscript{314} of 30 adults who were raised by parents with intellectual disabilities, found that over 50 per cent reported experiences of physical and sexual abuse, which was mostly perpetrated by their mother’s partner.

Australian research shows that the mother is often blamed in child protection proceedings for failing to protect the child from the perpetrator.\textsuperscript{315} A study by Llewellyn, McConnell and Ferronato\textsuperscript{316} at two Children’s Courts in NSW Australia, revealed that parents with cognitive disabilities were involved in almost one third of child protection cases. Of these cases, one third involved a single mother, whereas less than 1.5 per cent involved a single father. The study found a disproportionate amount of children of parents with intellectual disabilities were placed on wardship orders and outside of the family network.

The researchers concluded that the overrepresentation of parents with disabilities in child protection proceedings relate to apparent discriminatory attitudes towards parents with disabilities in the court system, and among child protection agencies.\textsuperscript{317} McConnell and Llewellyn found that the following barriers to justice are experienced by parents with disabilities:

- The denial of parents’ legal rights.
- The denial of appropriate supports and services to parents before their children are permanently removed.
- In the absence of clear guidelines as to what constitutes adequate care, child protection workers and courts imposing their own biases on proceedings.
- The enormous weight given to the assessment of ‘experts’, particularly when this rests so greatly on IQ tests. This is despite substantial findings which show IQ to be a poor predictor of parenting capacity.


\textsuperscript{314} Booth, T., & Booth, W., 1998, Growing up with parents who have learning difficulties, London: Routledge


• Evidence contrary to parental incompetence being disregarded.
• Inadequate legal representation e.g., court proceedings not clearly explained, legal representatives not having an understanding of the issues faced by people with intellectual disabilities. \(^{318}\)

Our experience correlates with McConnell and Llewellyn's findings. We find child protection authorities and children's courts assume that mothers with disabilities are incompetent parents without first supporting them to develop their parenting skills, as required by Article 23 of the CRPD. While these mothers often need more support to participate in court proceedings, it seems that they are provided less support to be meaningfully engaged and to have their perspective heard.

Shockingly, McConnell et al.\(^{319}\) found that an affidavit or report had been submitted by the parent's legal representative in only one-quarter of all cases, meaning that the perspective of the parents was widely absent across the cases. It seems there is an assumption that mothers with disabilities do not have a worthwhile point of view and so, they are not supported to be represented before the law on an equal basis with other members of the community.

The belief that parents with intellectual disabilities cannot learn to parent well is based on prejudice against people with disabilities, as it is not empirically evidenced and there is a significant amount of refuting empirical research.\(^{320, 321, 322}\) Mothers with disabilities are unjustly having their children removed based on the ill-informed judgement that they cannot learn new skills.

Advocacy for Inclusion finds that child protection services take action and make recommendations based only on perceived risks, rather than on actual instances of abuse or neglect.

The fact is: “If you look at the evidence in all the cases we run before the court, in 50 per cent of them [cases involving a parent with disability] there is evidence there. In 50 per cent there is not . . . we do not have the evidence” (Lawyer representing child protection agency).\(^{323}\)

In 2012, Colleen Pearce, Public Advocate of Victoria, stated:


I am increasingly concerned that children are being removed from parents with a disability based solely on that disability, and not because the cases meet the relevant tests... Very often their child is removed not because the parent has harmed or neglected them, but because the child is seen as being at risk of neglect. The appropriate response to this is to provide support, encouragement, help and education.\textsuperscript{324}

In 2008, Legal Aid Queensland stated that “We are concerned that decisions to remove children from parents with disabilities are made on the basis of the disability, rather than on the parent’s capacity to parent effectively and appropriately.”\textsuperscript{325}

The existing information in Australia and at the international level overwhelmingly indicates that many parents with disabilities lack support to parent.\textsuperscript{326} \textsuperscript{327} \textsuperscript{328} In the Australian court study, the lack of support services available often directly resulted in child removal, due to the fact the parents were not considered competent without them.\textsuperscript{329}

**Summary 2.**

Many mothers with disabilities experience barriers to justice, and are consequently denied their right to be a parent and to access support to parent well.\textsuperscript{330} The barriers include:

- Gender-based violence towards mothers with disabilities, particularly by abusive male partners, which interferes with their parenting rights.
- Prejudice against mothers with disabilities among child protection authorities and in the court, including the misconception that mothers with disabilities cannot learn parenting skills.
- Lack of appropriate supports available to mothers with disabilities to parent well in their own home, and to be free from violence and abuse.
- Lack of recognition of mothers with disabilities as having legal capacity, or as having a worthwhile contribution to the court process.

\textsuperscript{325} Legal Aid Queensland, 2008, Cited in the Commonwealth’s National Disability Strategy, p. 38.
\textsuperscript{326} Booth, T., & Booth, W., 2005, Parents with learning difficulties in the child protection system: Experiences and perspectives, *Journal of intellectual disabilities*, 9(2), 109-129
\textsuperscript{330} UN Convention for the Rights of Persons with Disabilities, 2006, Article 23.
• Reduced access to legal representation due to high rates of economic disadvantage across this population.

• Lack of training among workers in the legal system to understand and support the needs of women with disabilities to participate in judicial processes, including child protection workers, lawyers and judges.

• No “reasonable accommodation” made to support mothers with disabilities, who require extra support to understand and engage in court proceedings due to their disability and also due to a life-time of oppression faced by many mothers, which may make them reluctant to be assertive and to know their rights.

Recognition of Women with Disabilities as Equal Before the Law.

Women with disabilities face difficulty being recognised as having legal capacity, or as having a credible point of view in legal matters. Formal legislative instruments, such as guardianship law, are used to find some people with cognitive disabilities as having no legal capacity. A substitute decision maker is then assigned to assume legal capacity on that person's behalf.

When a woman is under a guardianship order, the recognition of her legal capacity is removed. Without recognition of her legal capacity, she is silenced in judicial processes and she is not supported to exercise her legal capacity, in contravention of Article 12 of the CRPD.

The legal capacity of women with disabilities is also not recognised or supported through less explicit measures in the legal system. For example, when a police officer decides not to proceed to prosecution of rape due to questions about the disabled woman's credibility, or when a lawyer does not bother to submit an affidavit for a mother with disability.

In one case at Advocacy for Inclusion, a child protection worker advised that the mother with a disability should get a guardian if required to go through court proceedings. This woman lived very successfully and independently in the community with minimal disability supports. Yet, because she had an intellectual disability, it was assumed that she could not or should not exercise her legal capacity in a court process.

Women with disabilities involved in court proceedings can also be discarded as “credible witnesses” on the basis of their disability. There is a wide range of characteristics which may lead to a party seeking to impugn a person's competence as a witness including, for instance, age, some forms of physical or sensory
disability, acquired brain injury, mental illness and intellectual or cognitive disability.\textsuperscript{331}

It is not uncommon for a woman with a disability who has been the victim of sexual assault in a residential care facility to be deemed not credible as a witness. Therefore, her perspective cannot be heard or considered. Cases are thrown out of court and perpetrators are never convicted.

In 2012, the Australian Human Rights Commission, Women with Disabilities Australia, and Women with Disabilities Victoria co-hosted a national roundtable on violence against women with disabilities. They noted police are reluctant to pursue a report of violence or abuse against women with disabilities due to the following factors:

- When perpetrators were not caught in the act.
- When there is no conclusive DNA evidence.
- When there is not a witnessed viewed as more ‘credible’ than the victim (woman with a disability).
- A low rate of convictions, including due to the belief of many judges that a woman with a disability is unable to give evidence on her own behalf.
- Inadequate support for women with disabilities seeking to navigate the legal system.\textsuperscript{332}

Unfortunately, the legal system has not developed appropriate supports for women with disabilities who have intellectual or communication barriers, in order for them to participate in the legal system and be recognised before the law. Further, no states in Australia legally recognise alternatives to substitute decision making practices, such as supported decision making, which support women with disabilities to make and articulate their own decisions. In sum, “Reasonable accommodation” is not made to ensure that the most vulnerable members of the community are able to be heard in court and be recognised before the law.

Summary 3.

Women with disabilities are denied justice because they are not viewed as credible or as having legal capacity. The barriers include:

- Guardianship practices which remove the recognition of a woman’s legal capacity before the law.

• Prejudice in the judicial system against women with disabilities as being less credible.
  – A woman’s case may be prevented from reaching the court because her case is not deemed worthwhile.
  – When a woman reaches court her credibility is questioned or denied.
• “Reasonable accommodation” is not made to support women with disabilities to be meaningfully engaged in legal proceedings by using alternate communication mechanisms.

Conclusion.
Women with disabilities face multiple disadvantages and barriers to accessing justice. The intersection of discrimination and prejudice faced by women with disabilities in their daily lives and in judicial processes both as women and as people with disabilities creates extra barriers. Women with disabilities need greater supports to access justice outside of court and throughout court proceedings. This includes:

• Education to recognise and know their rights.
• Information, resources and support to fulfill their rights and responsibilities, such as parenting and finding safety from a violent situation.
• Support and reasonable accommodations throughout legal systems and court proceedings to engage them in the process, and have their perspective promoted and recognised.
These supports are not available to women with disabilities, causing the justice system in Australia to be inaccessible to them, and preventing them from asserting their rights.
Chapter 18
Center for Women Policy Studies, International Network of Women with Disabilities.

BARBARA FAYE WAXMAN FIDUCCIA PAPERS ON WOMEN AND GIRLS WITH DISABILITIES.

CENTER FOR WOMEN POLICY STUDIES.

March 2011.

Violence Against Women with Disabilities by the International Network of Women with Disabilities.

Introduction.

What do we mean when we talk about violence against women with disabilities? How is it different from violence against women in general? How is it the same? How is it different from violence against people with disabilities in general? How can we protect the right of women with disabilities to freedom from violence?

The International Network of Women with Disabilities (INWWD) undertook a discussion of violence against women with disabilities in 2009-2010, to answer some of these questions from the perspectives and experiences of women with disabilities themselves. The resulting document provides the basis of this Paper.

The INWWD was launched in 2008 and is comprised of women from international, regional, national or local organizations, groups or networks of women with disabilities, as well as individual women with disabilities and allied women. The mission of the INWWD is to enable women with disabilities to share their knowledge and experience.

It further aims to enhance their capacity to speak up for their rights; empower themselves to bring about positive change and inclusion in their communities, and promote their involvement in politics at all levels, in order to create a more just and fair world that acknowledges disability and gender, justice, and human rights.

The aims of this Paper are to educate people about the violence experienced by women with disabilities; to make recommendations about what can be done by a

333 To contact INWWD for more information, please send an email to inwwd@yahoo.com.
variety of stakeholders to end violence against women with disabilities; to motivate agencies dealing with violence against women to include prevention of violence against women with disabilities in their work; and to empower women with disabilities to protect themselves against violence.

Violence against women is a crime and a human rights violation that occurs, often repeatedly, in the lives of a great number of women around the world. Although the forms of violence experienced may differ depending on culture or socioeconomic standing, there are aspects of that violence that are universal. Gender-based violence is rooted in the lack of equality between men and women, and such violence frequently takes place at home, within the family circle.

Societal tolerance for gender-based violence, and the privacy of the act of violence when it takes place within the home, can make it invisible or difficult to detect. Although women with disabilities experience the same forms of violence experienced by all other women, some forms of violence against women with disabilities have not been visible as gender-based violence because of heightened discrimination based on disability.

However, the incidence of maltreatment and abuse of women with disabilities far exceed that of women without disabilities. Further, the available data, though scarce, also shows that there is a higher rate of violence against women with disabilities than against men with disabilities. Violence against women and girls with disabilities is not just a subset of gender-based violence: it is an intersectional category dealing with gender-based and disability-based violence. The confluence of these two factors results in an extremely high risk of violence against women with disabilities.


The United Nations Declaration on the Elimination of Violence against Women (December the 20th, 1993) defines violence against women as follows:

\[Article 1: \text{The term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women,}\]


including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Article 2: Violence against women shall be understood to encompass, but not be limited to, the following:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.\(^{337}\)

As seen in the Declaration, gender-based violence includes a wide range of abusive actions, including genital mutilation, physical and emotional abuse, and economic exploitation. According to the World Organisation Against Torture, rape and sexual abuse, genital mutilation, incest, forced abortion, honour killings, dowry-related violence, forced marriages, human trafficking and forced prostitution should all be considered forms of torture.\(^{338}\)

In addition, studies show that people with disabilities are victims of abuse on a far greater scale than persons without disabilities.\(^{339}\) One factor behind the increased incidence of violence against people with disabilities is the stigma associated with disability. Persons with disabilities often are considered by society to be “not completely human and of less value…. The absence of representations of their

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identity favours the perception that one can abuse them without remorse or conscience.\textsuperscript{340}

Some societies may believe that the disability is a punishment from God, or that the disability may be infectious to other people. Other societies may see a person with a disability as an object for charity or pity, rather than as a person deserving equal rights. The medical context is a particular source of abuses practised against people with disabilities.\textsuperscript{341,342} According to the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, one of the purposes of the definition of torture is “for reasons based on discrimination of any kind”, noting that acts of serious discrimination and violence against people with disabilities can be masked by the “good intentions” of medical professionals.

Medical treatments of an intrusive and irreversible nature, enforced or administered without the free and informed consent of the person concerned, and which are aimed at correcting or alleviating a disability or that lack a therapeutic purpose, may constitute torture or ill-treatment of people with disabilities.\textsuperscript{343}

These kinds of actions include: forced abortion and sterilization; forced psychiatric interventions; involuntary commitment to institutions, and forced or “unmodified” electroshock (electro-convulsive therapy or ECT).\textsuperscript{344} Deprivation of the legal capacity to make one’s own decisions facilitates coerced treatments and violence of all kinds, and may constitute torture and ill-treatment in itself, as it can amount to a denial of full personhood.\textsuperscript{345} Such a profound form of discrimination can cause severe suffering.

In a speech given at the United Nations entitled ‘Freedom from Torture or Cruel, Inhuman and Degrading Treatment or Punishment’, Kate Millett (author of \textit{Sexual Politics} and \textit{The Politics of Cruelty}) declared:

\begin{verbatim}
For people with disabilities this means freedom from Forced Treatment and Confinement. Freedom from Force and Coercion. Overwhelming and
\end{verbatim}


\textsuperscript{343} Ibid.

\textsuperscript{344} See also Minkowitz, T. (2007). The UN CRPD and the Right to be free from nonconsensual psychiatric interventions, \textit{Syracuse Journal of International Law and Commerce}, 32(2), 405-428; and related documents and presentations on forced psychiatric interventions as torture available at \texttt{http://www.chrusp.org/home/resources}

gigantic power. The power of an entire civilization massed against one lone individual.

Every phone and lock and guard and drug.

...  

Everything conspires to make you completely alone and terrified. Malleable. These are the conditions of torture. You do not know what’s coming next. You do not know how long this will last. ‘No one will ever know’ – a voice intones. No one will ever believe you.346

The Intersection between Disability and Gender-Based Violence.

In a Canadian study where questionnaires were sent out to 245 women with disabilities, 40 percent of those who responded reported that they had experienced abuse, and 12 percent had been raped. However, less than half of these incidents were reported.347 Another study conducted in the United States on the prevalence of abuse of women with physical disabilities found that 25 of 31 women with disabilities who were interviewed reported abuse of some kind (emotional, sexual or physical).348

Research on domestic violence and women with disabilities also shows that women with disabilities experience a wider range of violence by personal attendants (emotional, physical and sexual abuse), and by health care providers (emotional and sexual abuse), as well as higher rates of emotional abuse both by strangers and other family members. 349, 350, 351

The personal account of a 38-year-old woman with spina bifida who described sexual abuse by her husband that lasted six years, demonstrates one story of the

348 Young et al., op. cit.
349 Ibid.
emotional, sexual and physical abuse that women with disabilities can experience by their own family and caregivers:

My husband would get angry when I refused to have sex and he would continue to yell at me and grab me until I just gave in to shut him up. He would exert control over me by preventing me from leaving rooms, throwing or breaking my crutches. Once he cut my clothes off me while I slept. We sought individual counselling and things are much better now as we both understand the origin of these issues.352

Violence against women with disabilities is part of the larger issue of violence against people with disabilities in general, and includes violence accomplished by physical force, legal compulsion, economic coercion, intimidation, psychological manipulation, deception, and misinformation, and in which the absence of free and informed consent is a key analytical component.

Violence may include omissions, such as deliberate neglect or lack of respect, as well as overt acts that harm a person’s physical or mental integrity. In addition to the overt acts of gender-based violence described above, there are more subtle ones which stem from attitudinal discrimination against people with disabilities.

Indeed, women with disabilities experience forms of abuse that women without disabilities do not.353 Further, the nature and forms of violence against women with disabilities, and particularly against women with psychosocial disabilities and intellectual disabilities, are likely to be ignored in studies of violence against women.

In addition to the forms of violence experienced by women in general, the following actions and attitudes constitute violence against women with disabilities: forced isolation, confinement, and being hidden in the family home; forced and coerced administration of psychotropic drugs or putting drugs in the food; forced and coerced institutionalization; restraint and isolation in institutions; creating pretextual situations to make the woman appear violent or incompetent in order to justify institutionalization and deprivation of legal capacity; labelling anger and self-assertion by women as behavior that is “mentally ill and dangerous” (especially if the woman has been previously institutionalised); denial of necessities and purposeful neglect; withholding mobility aids, communication equipment, or medication that the woman uses voluntarily; threats to neglect or kill support or assistive animals; being left in physical discomfort or in embarrassing situations for long periods of time; threats of abandonment by caregivers; violations of privacy; rape and sexual abuse by staff and other inmates/residents of institutions; restraint, strip searches, and

352 Young, et al., op. cit., p. 34.
353 Nixon, op. cit.
solitary confinement that replicate the trauma of rape; forced abortion; and, forced sterilization.

Some forms of violence against women with disabilities are not immediately visible as violence because they are legal and accepted in society. This is particularly true of forced psychiatric interventions and institutionalization. These acts of violence are done under the legal authority of the state in pursuance of wrong and discriminatory state policy, and there is no possibility of redress, emphasizing the message that all violence conveys to the victim that she is powerless.

In comparison to men with disabilities, women with disabilities often have less access to qualified medical care and rehabilitation; are provided with less expensive medications, assistive devices and other treatments; and, have less access to social supports, higher education and opportunities for employment. A consequence of this inequity is that women with disabilities are deprived of their right to social inclusion and are often forced to live in poverty.

The lack of sensitivity, adequate training of health care personnel or reasonable accommodation in women's health care can lead to serious and fatal results, as demonstrated by the account of a 30 year old woman who could not communicate with her nurses effectively while trying to give birth. She was not aware that she was having twins and stopped pushing after the birth of the first child. She stated that: “[The nurse] was very rude to me, and she did not know sign language. She couldn’t even tell me to push. She wasn’t guiding me. One of my children died.”

Women with disabilities also report experiencing abuse of longer duration, and feeling as though they had fewer alternatives for escaping or ending the abuse. While women with disabilities share the barriers that any other woman has to face to escape or end violence (emotional and financial dependency on the abuser, unwillingness to be stigmatised, worries about being a single parent or fear of losing

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354 “Interim report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment,” op. cit. (See paragraphs 40, 41, 44, 47-50, 61-65).
contact with children, concerns that they will not be believed or helped when they disclose abuse, reluctance to take any action that will escalate the violence), women with disabilities face additional barriers.361

For example, the lack of communication in accessible formats makes it more difficult for women with disabilities to get information about available services, and more difficult to make contact with shelters or other services that may be available to intervene on their behalf. In addition, service personnel do not have the skills or facilities—such as sign language interpreters and materials in Braille to communicate with women with visual and hearing disabilities. Furthermore, the inaccessibility of transportation is an obstacle that prevents women from using services and/or escaping abuse. 362,363,364

Unique Risk Factors for Violence Against Women with Disabilities.

Conditions resulting from the disability itself, coupled with attitudes toward women in patriarchal societies, put women with disabilities at increased risk of violence. Many women with disabilities see themselves as victims of maltreatment and abuse, while society ignores the problem. However, some women with disabilities may not see themselves as victims of violence, as they consider their situations habitual and associated with disability.

In some situations, society refuses to recognise that certain acts constitute violence, and the women who experience them may or may not consider themselves to be victims. This is particularly true with regard to acts authorised under domestic law, such as forced psychiatric interventions with mind-altering drugs; electroshock or psychosurgery; institutionalization; restraints and isolation, which are practised primarily on women with psychosocial disabilities.365,366

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362 Saxton, et. al., op. cit.
363 Young, et. al., op. cit.
Women with disabilities may also have less access to information about how to protect themselves against violence and rape. Women with disabilities are often physically less capable of defending themselves. Perpetrators are more likely to believe that their actions will not be discovered, and women with disabilities are often not perceived to be credible reporters.\footnote{Women with Disabilities Australia (2004), op. cit.}

Women with disabilities often are more dependent on other people for care, physically and/or financially.\footnote{Ibid.} Under such circumstances, women may fear reporting abuse, as it could result in the breaking of bonds and the loss of care they may require. In some circumstances, the lack of accessible forms of communication is an impediment to reporting maltreatment. Women with disabilities often fear being institutionalised if they take any action that may escalate the violence, or if they leave their homes.

Women with disabilities are at greater risk of exposure to violence, as a result of living in institutions, residences and hospitals, and have less credibility when reporting violence occurring in institutions. There is little possibility of effective self-defense when some forms of violence (such as forced institutionalization, solitary confinement and restraint, forced drugging and electroshock, forced abortion and sterilization) are legal in many countries.\footnote{"Interim report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment," op. cit.}

The long-lasting effects of electroshock and some psychiatric drugs can also impair a woman's ability to defend herself against any form of violence and abuse. A woman with a disability may experience lower self-esteem when she is not seen as a woman but only as a person with a disability, or even worse, only as her disability. The lack of opportunities to fill traditional roles usually available to women (such as motherhood) can also contribute to her sense of being devalued by society.

There is an additional threat to her credibility when professionals fail to recognise that women with disabilities have sexual and intimate relationships, or fail to understand and identify a situation as a form of abuse, shifting the focus to the woman's disability and thereby obscuring or even ignoring the fact that the woman was abused.

The denial of a woman's human rights alone results in the experience of powerlessness. In spite of the severity of the discrimination, the strength of the societal prejudice against women with disabilities, and the evidence of their own experiences, violence against women with disabilities is not recognised and several
factors contribute to this invisibility. For example, there is a lack of a broad definition of violence, which embodies all forms of violence against women with disabilities, and some forms of violence against women with disabilities are permitted by law and carried out under the state’s authority. Professionals, relatives, friends, and others are unable to discern circumstances resulting from violence against women with disabilities, due to the misperception that the circumstances are “inherent” to the disability.

In addition, researchers and policy makers rarely identify situations, such as physical abandonment or psychological cruelty, as maltreatment. Further, if an intervention is made in a situation where the violence was perpetrated by a personal assistant, a family member or a friend, the incident is often addressed only by the social service system, and it is rarely considered to be a crime that should be addressed by the police and/or the criminal justice system.

There is a lack of credibility accorded to women who require assistive communication or reasonable accommodation in communication, and to women who have already been labelled with a psychiatric diagnosis or an intellectual disability. Finally, it is difficult for a progressive society to admit that a woman with a disability has been the object of violence or abuse.

When measures are taken to end violence against people with disabilities, targeting “people” with disabilities without recognizing that there are unique issues for women with disabilities, contributes to a gender-neutral concept of disability that ignores women with disabilities, renders their needs invisible, and contributes to their isolation. Given that violence against women with disabilities is hidden and ignored already, this “gender-neutral” approach increases their risk of exposure to violence.

Recommendations.

As documented in the sections above, violence against women with disabilities is a pervasive human rights violation that manifests itself in several different forms, resulting in significant physical and emotional harm. Such violence can be perpetrated intentionally as well as through systemic and societal practices thought to be “well-intentioned.” A broad range of stakeholders have important roles to play in ensuring the rights of women with disabilities to be free from violence.


Girls, older women, and indigenous women with disabilities face additional barriers and violence as a result of even more complex intersectional forms of discrimination that are beyond the scope of this paper.
Among these stakeholders we can include: national and local governments; the United Nations (particularly UN Women and the UN Population Fund); service providers; donors and civil society (including women's organizations, human rights groups, HIV organizations, and disabled persons' organizations).

Given the serious and pervasive nature of violence against women with disabilities, these stakeholders can and should undertake a broad range of actions and initiatives to ensure that women with disabilities do not become victims of violence, and that they are provided with empowering, accessible, and safe means of recourse in the event of violence. This Paper offers important recommendations for a variety of groups of stakeholders.

Some of the recommendations cut across all of the above-mentioned stakeholders and should be incorporated within all actions and measures that seek to protect women against abuse and violence. Some recommendations are primarily directed at governmental bodies and some are intended to inform and guide the actions of advocates.

**Cross-Cutting Recommendations.**

It is essential for any stakeholders providing programmes and resources for women with disabilities to recognise the heterogeneity of disability, and ensure that women with all types of experiences of disability are included in all measures concerning women with disabilities, and that such measures are of equal value to all women with disabilities. It is critically important that women with disabilities are included in mainstream endeavours initiated by governments, human rights organizations, development partners, and civil society to address violence against all women.

Stakeholders must ensure that women with disabilities can physically access programmes and services, by taking measures to provide access to transportation or support; to provide sign language interpretation, and to take any other necessary actions to ensure that such programmes do not exclude any woman on the basis of her disability (including psychosocial and intellectual disabilities).

Stakeholders at all levels should take measures to fight stigma, discrimination and all forms of violence against women and girls with disabilities, through awareness campaigns and community discussions, for example. It is important for all stakeholders and service providers to be cognizant of the need for multiple formats for communication, and they should disseminate information in formats that are accessible to people with learning and sensory disabilities (through Braille, sign language, and easily understood language, for example).
Recommendations for National and Local Governments.

To adopt laws and policies recognizing that all actions that violate the right to bodily integrity of women with disabilities are illegal, including psychiatric assault and forced institutionalization, and that these should be considered acts of violence.

To actively include diverse women with disabilities in developing and implementing programmes, policies and protocols for service providers, law enforcement officers, and other personnel who work with women with disabilities.

Recommendations for Governmental Bodies, International Donors, and Development Practitioners.

To ensure that all research, actions, and advocacy related to violence against women with disabilities incorporate the forms of violence identified by women with psychosocial disabilities, including psychiatric assault, and to fully investigate their experiences.

To ensure that women with disabilities can retain their legal capacity and freedom.

In partnership with disabled persons’ organizations and other community-based organizations, to educate parents, partners, nurses, caregivers and other health care service providers to deal respectfully with women with disabilities, and to offer quality care when their help is required.

To train communities on how to include and communicate with people with different types of disabilities to avoid isolation of women and girls with disabilities.

Recommendations for Local Authorities, National Human Rights Commissions and Bodies, Humanitarian Aid Workers, UN Bodies, Direct Service Providers, and Non-governmental organizations (NGOs).

To create accessible channels for distributing information, consulting, and reporting about all forms of violence against women and girls with disabilities.

To collect data on the number of women with disabilities who access services and programmes for preventing violence against women, and to serve victims of such violence and to use this data to develop more inclusive initiatives.

To investigate the causes of all forms of violence against women with disabilities and, specifically, the needs of girls, elderly women, single women, indigenous women and women who live in rural areas, with regard to the isolation and victimization that can contribute to violence in such circumstances.

To educate women and girls with disabilities about their human rights.
To provide women and girls with disabilities with information and counselling on sexual and reproductive health issues.

**Recommendations for Disabled Persons’ Organizations, Community-based Organizations and Other Members of civil society.**

To develop advocacy, information, and support services for women and girls with disabilities who are survivors of all forms of violence.

To train women with disabilities to organise and manage support services efficiently, to develop skills and abilities for economic self-sufficiency, and to use technological aids that lead to greater independence.

**Conclusion.**

The extent of discrimination and violence perpetrated against women with disabilities is unacceptable and intolerable. It is incumbent on a progressive society to do everything in its power to put an end to it.
Chapter 19

National Union of Women with Disabilities Uganda.

EXPERIENCES OF GENDER-BASED VIOLENCE AGAINST WOMEN AND GIRLS WITH DISABILITIES: a case study in Uganda.


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1. INTRODUCTION.

1.1. DEMOGRAPHY.

The total population of Uganda is 34.6 million people, according to the household survey of 2007/2008, Out of which 51 percent are female. The total population of people with disabilities, according to the household survey of 2010 is 16%, which is equivalent to 5,440,000. Unfortunately, this is not segregated by gender.

1.2. BACKGROUND TO THE WOMEN WITH DISABILITIES’ MOVEMENT IN UGANDA.

In Uganda, the struggle to uplift the plight of women and girls with disabilities started in 1993 with the establishment of a gender desk within the umbrella organisation of people with disabilities in the country.
In November 1999, women with disabilities formed an umbrella organization known as National Union of Women with Disabilities of Uganda (NUWODU) during the second forum of women with disabilities, which brought together representatives from the then 45 districts of Uganda; women committees of the then 7 single disability organizations (blind; deaf; Psychosocial; epilepsy; deafblind; physical; parents of children with intellectual disabilities), and representatives of the two existing associations of women with disabilities in the country.

The purpose was to have a stronger voice of women with disabilities advocating for their rights and equal opportunities within the disability movement and the other development partners at the national and international levels.

**VISION.**

NUWODU’s vision is to help women and girls with disabilities to live a dignified life.

**MISSION.**

NUWODU’s mission is to promote the political, economic and social cultural advancement of women and girls with disabilities through advocacy, for their effective participation in development.

**PROGRAMMES.**

To achieve its mission, NUWODU implements the following programmes:

A. Advocacy and lobbying in key sectors of girls’ education; economic empowerment of women and girls with disabilities; gender-based violence against women and girls with disabilities, and sexual and reproductive health rights of women and girls with disabilities.

B. Capacity-Building of leaders of women and girls with disabilities at the grassroots.

C. Information collection, documentation and dissemination on the situation of women and girls with disabilities in the country.

D. Institutional development.

**2.0 EXPERIENCES OF GENDER-BASED VIOLENCE AGAINST WOMEN AND GIRLS WITH DISABILITIES IN UGANDA.**

Like many other organizations of people with disabilities in Uganda, NUWODU is implementing a project on prevention of gender-based violence against WOMEN AND GIRLS with disabilities in line with Article 16 of the UN Convention on the Rights
of Persons with Disabilities, which was ratified by the Uganda government in September 2008.

**NUWODU** is also one of the leading disabled people’s organizations compiling the shadow/alternative report on the implementation of the UN CRPD in Uganda by civil society organizations in the country. This has given an opportunity for the organization to collect information on experiences of people with disabilities in general, and on women and girls with disabilities in particular, regarding gender-based violence against them.

The experiences shared in this paper constitute a collection of information from baseline surveys compiled by **NUWODU, Human Rights Watch** and National Union of DISABLED Persons of Uganda (**NUDIPU**). Out of a total population of 2,000 people with disabilities, 75% were women from the four regions of the country; 47.8% had physical disabilities; 14.9% had a visual impairment; 12% had a hearing impairment, and 11.4% had a mental disability.

The key major gender-based violence experiences of women and girls with disabilities were:

- Sexual abuse such as rape and defilement.
- Forced marriage.
- Psychological torture.
- Denial of parental care of children by men.
- Forced family planning.
- Discrimination when accessing justice.
- Physical abuse.
- Denial of property rights/theft of property and money.

The details of these experiences are further described below.

**2.1. SEXUAL ABUSE/EXPLOITATION.**

A significant percentage of the respondents (8%) confessed that they had sexually been abused mainly through rape, resulting in unwanted pregnancies and infections with STIs. The large majority of them were visually impaired women, whom men took advantage of because they knew that visually impaired women would not identify them and would not be able to report the case, due to a lack of evidence.
Most women with visual impairment have also experienced men exploiting them by pretending to be helping but, instead, men end up exploiting them sexually. Hence, there is a great exposure to risk factors of acquisition of sexually transmitted infections and unwanted pregnancies due to their gender and disability.

A case example is the story of Edna, a blind woman from Northern Uganda who was interviewed by Human Rights Watch during their research in 2010. Edna’s two daughters have different fathers. The father of her first child, now six years old, was killed by the Lord’s Resistance Army. The second child’s father, ashamed of being associated with a blind woman, would “just come at night, have sex, and leave in the morning.”

After she became pregnant, he abandoned her. Edna went to police to file a complaint for child neglect, but since she did not know the man’s whereabouts, the police said they could do nothing. When she went to a clinic for prenatal care for her second child, Edna learned that she was HIV-positive. Her six-year-old daughter now regularly leads her to the hospital to collect her antiretroviral drugs.

A second case is that of a parent of a girl with intellectual disabilities who narrates the story of her daughter below:

I struggled to bring up my daughter with learning disabilities. This girl was 14 years and as I left her at home and went to the garden, a man called Isa Kimuli came and raped her and my daughter Nuru Namale became pregnant. We imprisoned him but used the money and he was released and run away. His family refused to give us any support and we have struggled with the child. Now the baby boy is 4 years.

There are also false beliefs among men in Uganda that having sex with a disabled woman can cure one from HIV and AIDS. This makes men living with HIV and aids to have relationships with women with disabilities, either by consent or by force, with the hope of getting cured. This puts women with disabilities at high risk of being infected with HIV and AIDS and other sexually transmitted diseases. The myth is confounded by the belief that disabled women are virgins or asexual.

Furthermore, the question of men raping them and running away without support came up, as expressed by one deaf blind respondent:

Deaf blind women are always stigmatised by the community around us because of our disability, they abuse me and call me “Muzibe/Kasiru”. As someone difficult to communicate to, I got a man who has always pregnant me and neglected me because of the influence of the community. He always comes at night, pregnant me and leaves me with

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372 Muzibe a derogatory word connoting someone who blind and can’t see anything, while Kasiru carries a meaning of someone who is stupid and useless.
the responsibility of feeding my five children his work in to produce(sic) and leave me with the burden without help. (Aisha Masaka)

Another respondent highlighted the challenge which girls and women who are deafblind face, and how they go through a tough and abusive experience, as expressed below:

“I have an experience of a deaf blind girl who is deaf blind and also mentally disabled whom one man tried to steal her to be sacrificed because as a deaf blind he thought she is useless (sic). Later she was raped.” (Juliet Wabukuwo-Kamuli)

Further data showed that deafblind people are also exposed to sexual harassment:

“I know a family in Kyenjojo District where men take advantage of a girl in this situation, and always make her pregnant when family members do not know because she cannot shout for help. One wonders who pregnant her every time and the family takes care of the children (sic). Maybe the person is a family member.” (Agnes)

2.2. FORCED MARRIAGES.

Most women and girls with disabilities are unable to decide whether to marry or have a family, as decisions are made by their family members. For example, in some Ugandan communities, a disabled woman can be given to a man as a second wife when her non-disabled sister is getting married.

The story of one woman with a disability in Kotido reveals how women with disabilities cannot decide on marriage issues, as it is described below:

“After I was defiled, my parents forced me to marry, because they wanted cows from that man. But later the man got another woman who was not lame and he chased me off.” (Abura)

2.3. DENIAL OF JUSTICE.

Paradoxically, while women and girls with disabilities are highly vulnerable to sexually oriented forms of violence and society is aware of the incidents, there is minimal legal assistance redress provided to bring the perpetrators to book. When a woman and/or girl with a disability is abused, in most cases the family can shield the person.

If the person is not related, he can be taken to local council leaders or to the police, who are always very reluctant to imprison the person. They always prefer a reconciliating approach or for someone to be chased away. The police cannot defend the statement given.

Women and girls with disabilities, especially those with visual impairment, are denied
justice by the Evidence Act in Uganda, which only allows evidence by seeing and not hearing or feeling. A case example is that of Emmanuel from Lugazi town in Central Uganda, whom acid was poured on by his friend. When the case was taken to court, Emmanuel requested the magistrate to give her evidence by identifying the accused through feeling and hearing his voice, which was rejected by the magistrate.

The magistrate’s argument was that there was no evidence law which accepted identification of the suspect by hearing or feeling. The suspect was then set free and Emmanuel is blind too date.

Furthermore, women and girls with disabilities find difficulties when accessing justice because of the court premises’ inaccessible physical structures, which cannot allow women with physical disabilities to report cases of gender-based violence at local council courts or at magistrate courts.

There are also communication difficulties between the court officials and deaf women including women and girls with intellectual disabilities. This is because there are no sign language interpreters in courts. An example is that of a deaf woman from Lira district in Northern Uganda, who had gone to the police to report a man who had raped her. Due to communication difficulties, the police did not help her and she went back home disappointed.

2.4. PSYCHOLOGICAL VIOLENCE.

The survey revealed that women and girls with disabilities, who experienced gender-based Violence (GBV) without responses from family, were left in a very miserable state. This was explicitly expressed by respondents, as well as the need to provide psychosocial support to the victims.

Girls and women with disabilities suffer neglect, with women being more discriminated and abandoned by their former husband on the assumption that they are disabled when they get the disability at an adult stage. Children are removed from them and when they try to resist, they are beaten, scorned, denied sex and are psychologically tortured.

A case example is that of a visually impaired lady who lost her sight at an adult stage when she already had six children, her husband divorced her, took away the children from her claiming that she would not be able to take care of them because of her blindness. This lady was psychologically tortured to the extent of wanting to take her life. Fortunately, she was connected to the umbrella organization of people with disabilities in Uganda, and she is now a member of parliament in the Uganda parliament.

2.5. FORCED FAMILY PLANNING.

It was also revealed that women with intellectual disabilities, those with epilepsy and the deafblind are denied the right to produce by using modern contraceptive
methods of family planning without their consent. This was to avoid the burden of children born out of rape or defilement by the parents/relatives of the women and girls with disabilities.

2.6. **DENIAL OF PROPERTY/THEFT OF PROPERTY AND MONEY.**

The survey carried out by NUDIPU revealed that women with disabilities are denied their property by relatives, and are not allowed to inherit property from their family because of their gender and disability. Sometimes women with disabilities, especially those with visual impairment who engage in small businesses, have their items stolen from the shops by their relatives, who pretend to be helping them. In other instances, they are either given less money than the cost of the item bought or given false currencies, taking then advantage of their disability.

In the baseline survey carried out by NUWODU, the respondents with psychosocial disabilities revealed that when they got into depression and were not able to get enough support from the family, their situation became worse, leading to their husbands forcing them to sign documents they did not understand.

They also deny them sex, separating them from their children and eventually forcing them out of the homes they build together. As one woman was quoted:

“My husband annoyed me, he got another wife after struggling with him to build a nice house, after two weeks I got a depression then they took me to Butabika hospital and later after six months, the husband could not cope up, he forced me to sign all agreement of our property when I was not in my senses. This even made me more depressed, later he dumped me at my parent's home, married another woman and I lost all. If it was not the support of my church and the family, I would be on dustbins (sic).” (Anonymous respondent)

2.7. **PHYSICAL ABUSE.**

During a focused group discussion with psycho social disabilities respondents carried out by NUWODU, experiences of physical abuse were witnessed by women with psychosocial disabilities, as parents do not always understand them when in a state of distress. Respondents emphasised that as much as they are affected mentally, they have the consciousness to decide and they feel bad when their freedom is so much affected by tying them and bundling them into care, to end up in traditional witchdoctors who always abused them, impregnated them and some even getting HIV virus infection, as one respondent narrated her experience while sobbing:

"Under crisis we girls our parents tie us in pretext of protecting us and yet when I am in this situation I can have a feel that I am in a dangerous situation and want to go where I can get some support. They do not allow us to make any decision, for example, my mother forced me to a
Another respondent said:

“I have witnessed so much abuse from my parents. They always tie me with ropes and take me to a witch doctor who cut me with razors, abused me and pour bad herbs in my eyes, nose and mouth. Before, they took me, I told them to go to the church to pray for me and buy for me medicine but they refused (sic) and now I am HIV positive. We go through a lot of challenges and struggles. I thank the church and mental health Uganda for supporting me.” (Anonymous)

This woman’s sharing sparked lots of stories being told, where the majority of girls and women with mental and psycho social disabilities expressed dissatisfaction with the way they are handled by family members, who always believe that they will run away when they begin to run “mad.”

3.0. RECOMMENDATIONS FOR MITIGATION OF GENDER-BASED VIOLENCE AGAINST WOMEN AND GIRLS WITH DISABILITIES IN UGANDA.

- Government and other stakeholders should involve people with disabilities in general, and women and girls with disabilities in particular (WWDS), in policy development. This should be done through needs assessment by policy makers, so as to draw priorities when responding to cultural, economic and social-political issues that expose WWDS to GBV.

- To improve awareness about legal rights of WWD, there is a need for civil society organizations and disability organizations to increase the awareness, training and advocacy regarding the rights of people with Disabilities (PWDs) in general.

- There should be training targeting local and religious leaders. Special attention needs to be given to girls and women with disabilities to make sure they know their rights and, more specifically, the laws to protect them, as well as knowing where to go when faced with GBV.

- Special attention should be given to translate the laws into local languages, Braille and large print in order to disseminate them.

- The government should strengthen its infrastructures, especially the police and the judicial system through training in handling cases of GBV involving
WWDs, so that they may be a mechanism which can track cases of injustices committed against WWDs, as well as allowing them to report without fear or favour.

- Outright outlaw and criminalization of promoters of cultural practices such as forced marriages and criminalizing violence in a domestic setting, so as to protect WWDS.

- Government and other disability people's organizations should educate and raise awareness among community members about the rights of WWDS, especially those who experience gender-based violence.

- NGO's, particularly those working in the area of gender-based violence, should improve the dissemination of information regarding gender-based violence, as well as their advocacy for the reproductive health rights of WWDS.

- Since most women and girls with disabilities do not have access to employment opportunities, and economic dependence has been identified as one of the causes for gender-based violence, there is a need to provide training in IGAs for WWDS and/or for their families and households. This will help to increase sustainability and to reduce dependence on male relatives, as well as their begging for survival.

- NGO's should provide legal aid to WWDS, especially in rural areas.

- To campaign against cultural values that create the perception that women and girls with disabilities are agents of reproduction, which therefore perpetuates GBV against them. This is something that should be fought against.

- To lobby Government and other stakeholders on the implementation of policy and laws that protect WWD against GBV in society, and also on those that affect the socio-economic and political development of WWDS.

- There is a need to train both religious and local leaders on issues of gender-based violence, rights and laws, since they are the immediate people whom the victims report to. This will also help to raise awareness among WWDS to always feel free to report cases of abuse.

- On the issues of gender-based violence mainly within the families, there is a need to design programmes which are geared towards raising awareness
among WWDS’ family members and relatives, so that they can respect their rights.

- The Evidence Act should be amended to include giving evidence by hearing or feeling.

4.0 CONCLUSION.

I would like to conclude by saying that the disability fraternity in Uganda in particular, and the world at large in general, need to work towards ensuring that the government honor its promises of implementing the Convention on the Rights of Persons with Disabilities. In particular, Article 16, which stresses the prevention of violence and exploitation against people with disabilities in general, and women and girls with disabilities in particular. The ratification of the CRPD should not be on paper but in practice.

For God and my country.
Chapter 20
Bond for International Development.

Bond Disability and Development Group.
The Case for a Greater Focus on Disabled Women and Girls.

1. SUMMARY OF KEY POINTS.

1.1. Disabled women and girls are twice as likely to experience gender-based violence than non-disabled women and girls. One in seven women and girls are disabled; they are twice as likely to experience sexual abuse, neglect, maltreatment and exploitation than their non-disabled peers. They also face greater obstacles when reporting abuse and accessing support, justice and rehabilitation services.

1.2. Despite this, disabled women and girls are largely invisible in current violence against women and girls (VAWG) analysis and programmes, which often fail to adequately recognise and tackle the multiple intersecting forms of discrimination faced by women, including disability, which intensify vulnerability to gender-based violence (GBV).

1.3. Human Rights instruments, including the UN Convention on the Rights of Persons with Disabilities (UNCRPD) require all States to take action to address VAWG, and to ensure that disabled women and girls are reached and included in such initiatives.

1.4. DFID policy and practice in this area should pay greater attention to the issues faced by disabled women and girls, and take steps to gather evidence and deepen learning, in order to ensure their effective inclusion.

1.5. DFID should take a leadership role in developing campaigns to challenge the social norms underpinning VAWG, which involve the active participation of disabled women and girls, and which highlight unequal power relations between disabled and non-disabled people, as well as between men and women.

1.6. Cross cutting policies on inclusive development need to be introduced within DFID to drive and support a greater focus on disability issues in the context of VAWG and other key areas of development. We
welcome the forthcoming inquiry on disability inclusion as a positive step forward.

2. **BOND DISABILITY AND DEVELOPMENT GROUP (DDG).**

2.1. The member organisations of DDG represent a large body of experience based on direct work with disabled people, their organisations and the disability movement in developing countries, as well as advocacy and policy engagement with service providers and policymakers. As a result DDG is able to draw on a broad and deep understanding of the challenges faced by disabled people, the links between disability and poverty, and the importance of including disability issues within the development process.

3. **VIOLENCE AGAINST DISABLED WOMEN AND GIRLS: THE CURRENT SITUATION.**

3.1. According to the recent WHO Report on Disability (2011), 15 per cent of the world’s population are disabled people, and disability prevalence rates among women are higher than among men. International studies (cited in the 2012 report of the Working Group on Violence Against Women with Disabilities, ‘Forgotten Sisters’) have concluded that women with disabilities suffered an equal, or up to three times greater, risk of rape by a stranger or acquaintance, than their non-disabled peers. The same report states that ‘**Women with disabilities are twice as likely to experience domestic violence and other forms of gender-based and sexual violence as non-disabled women,** and are likely to experience abuse over a longer period of time and to suffer more severe injuries as a result of the violence.’ A small 2004 survey in India found that virtually all women and girls with disabilities were beaten at home, 25 per cent of women with intellectual disabilities had been raped and 6 per cent of disabled women had been forcibly sterilised.

3.2. Disabled women and girls are **disempowered as a result of multiple and intersecting forms of disadvantages.** The UN Declaration on the Elimination of Violence Against Women notes that VAWG is a manifestation of historically unequal power relations between men and women. A similar imbalance of power exists between disabled and non-disabled people and consequently, disabled women and girls are doubly disempowered. Furthermore, disability often interacts with other forms of social disadvantage and discrimination, such as age or ethnicity - in addition to gender which combined, intensify vulnerability to violence.
3.3. Disabled women and girls are **routinely excluded from prevention, information and support services** as a result of their double marginalisation (by gender and disability). This fact leaves them isolated and excluded from participating in various mainstream settings (educational institutions, workplaces, social groups), where information and support services which aim to prevent GBV are channeled.

3.4. **GBV can be a major cause of disability**, or increased disability, among women and girls. Women who are disabled as a result of domestic or GBV are then further marginalised and disadvantaged – factors which can lead to further violence. In South Africa, Rose and her daughter Nokwazi were both blinded as a result of constant physical abuse at the hands of Nokwazi’s father. Rose said ‘I do not think the blindness was caused by one incident…I think slowly I was getting damaged’ and she spoke of her daughter’s reluctance to report the cause of her blindness; it’s because the father said, “if you tell I will kill you.”

3.5. Disabled women and girls are subject to same types of violence as all women. However, there are additional factors relating to the individual’s form of impairment and her social status as a disabled woman/girl, which can give rise to **disability-related abuse** and violence, such as leaving a woman who is not independently mobile without assistance or isolated for long periods to ‘punish’ her. Disabled women and girls do not represent a homogenous group, so the dynamics of abuse depend on the type and extent of impairment, but many of the factors which intensify vulnerability are common to the majority of disabled women, such as economic dependence, low self-esteem and confidence, and social isolation.

3.6. Disabled women and girls may find it **more difficult to escape abuse**. The stigma and social isolation associated with disability means that disabled women and girls may endure violence for longer periods of time than their non-disabled counterparts. Depending on the nature and severity of their impairment, disabled women and girls may be extremely dependent on caregivers and family or community members, thereby creating opportunity for the perpetration of violence and abuse, while simultaneously limiting options for escaping an abusive relationship.

3.7. Disabled women and girls are particularly vulnerable to **sexual violence and abuse** as a result of their extreme marginalisation, social isolation, and dependence. This is compounded by common assumptions such as that they are non-sexual or unable to conceive, which may lead to their exclusion from protection, information and services.
Disabled women are easy prey for sexual exploitation within the family, and disabled women and girls are also vulnerable to rape in contexts where men misguidedly believe that sex with a virgin will cure HIV/AIDS. They are also vulnerable to sexual exploitation or trafficking in situations where families see this as the only economic option, while exploiters see disabled women and girls as less likely to complain or run away. In Thailand, UNICEF has found that brothel owners have specifically sought deaf girls and adolescents for this reason.

3.8. Women with disabilities are particularly vulnerable to forced sterilization, which is carried out on disabled women and girls without their consent for a number of reasons, including preventing pregnancy (including that resulting from sexual abuse); stopping menstruation in order to facilitate personal care; and for birth control where disabled women are deemed to be incapable or unfit mothers. This practice remains widespread, despite being identified as a violation of human rights (UN Human Rights Council and Committee Against Torture), and despite guidelines issued by the International Federation of Gynecology and Obstetrics which define it as an “act of violence.”

3.9. While all women and girls are vulnerable to GBV in situations of conflict and post-conflict, disabled women are particularly vulnerable. At the same time, violence relating to conflict is also a major cause of disability among affected or displaced populations. In a recent report on displaced populations in post-conflict Northern Uganda (Human Rights Watch) a disabled woman describes how “when food is being given, sometimes people with disabilities are given what others leave behind on their plates.” The same report found many disabled women remaining in camps long after others have returned home because they are physically and economically unable to leave as a result of their disability. In this context disabled women are vulnerable to abuse and exploitation in order to secure their basic needs.

4. DISABLED WOMEN AND GIRLS FACE BARRIERS TO ESCAPING VIOLENCE, REPORTING CRIMES AND ACCESSING JUSTICE, CARE AND RECOVERY SERVICES.

Many disabled women and girls do not report violence and abuse. The reasons for this are multiple and complex, including low levels of confidence and self-esteem as a result of their low status and disempowerment; social isolation; fear of abandonment, loss of financial support and care; fear of loss of children where there may be negative assumptions about their ability to care for children; and high levels of dependency on caregivers, who in many cases may also be the perpetrators of the abuse.
4.1. **Information** on women and girls’ rights in relation to GBV, and on support and justice services, often **fails to reach disabled women and girls** as a result of social isolation, low levels of education and communication barriers. This situation is often the result of lack of awareness and training among policymakers and practitioners. Even where organisations believe that they are offering services to all women and girls, few recognise the need to take special measures to ensure equal access, and to develop policies and training to support these measures. A recent study of service providers in South Africa (‘On the Margins’) found that disproportionately few disabled women were included, and that none of these had sensory or intellectual impairments.

4.2. The devaluation of disabled people in general and disabled women and girls in particular, leads to a **lack of support for those who seek justice and support services**. Police stations and health facilities are often physically inaccessible, while many disabled women and girls face financial and communication barriers when accessing these services independently. Police and other professionals often lack the awareness and skills needed to support disabled women and girls reporting abuse, and this is often compounded by an unwillingness to give credence or weight to their testimony (particularly women and girls with learning difficulties). In many cases the testimony of disabled women (particularly those with learning difficulties) is inadmissible within the legal system: For example, a mother in Kenya was told that her 13-year-old daughter, who had been raped, would not be able to pursue the case as “the girl is deaf and disabled and she is not able to give evidence in court.”

5. **INTERNATIONAL FRAMEWORKS RELATING TO VIOLENCE AGAINST WOMEN AND GIRLS.**

5.1. A **human rights approach** requires VAWG programmes to be developed based on the principles of meaningful participation of stakeholders; accountability, non-discrimination and equality of outcomes for different groups of people, regardless of their status or identity. This implies giving priority to those groups of women and girls whose rights are often ignored, and taking specific action to ensure their inclusion.

5.2. The **UN CRPD**, ratified by the UK, notes the multiple forms of discrimination experienced by disabled women and girls, and states’ obligation to take appropriate measures addressing this (Article 6). It also highlights the gender-based aspects of violence and abuse experienced by
disabled people, obliging states to “prevent the occurrence of all forms of exploitation, violence and abuse.”

The Convention on the Elimination of Discrimination Against Women (CEDAW) addresses the concerns of women with disabilities in a number of its recommendations. One of its recommendations (18) focuses specifically on women with disabilities. The Beijing Declaration and Platform for Action - Paragraph 126(d) calls for “special measures to eliminate violence against women, particularly those in vulnerable situations, such as ... women with disabilities”. Other relevant instruments include the Convention on the Rights of the Child (CRC).

5.3. There is a broad consensus that the current Development Goals (MDGs) do not adequately address inequality and marginalisation, and it is likely that the post-2015 international development framework will focus more sharply on equality. If so, it will be necessary to develop thinking, knowledge, skills and resources to include more effectively those who are currently overlooked in all areas of development, such as disabled women and girls.

6. INVISIBILITY OF DISABLED WOMEN AND GIRLS WITHIN VAWG ANALYSIS AND PROGRAMMING.

Despite the significance of disability as a factor that compounds vulnerability to GBV, and the obligation to address this within the human rights framework, there is a prevailing lack of awareness about this issue among policymakers, practitioners and communities. This fact is linked to the social isolation and low status of disabled women and girls, which means that they are less visible at all levels of society.

In the context of VAWG, their invisibility is compounded by the low numbers of disabled women and girls who are able to report their experiences of GBV, and by their absence in justice and support services, which currently fail to reach or include them. Linked to this vicious circle of invisibility and exclusion, there has been limited research into this issue, and much of the research to date has been carried out in a developed country context, with a focus on the problem rather than on solutions.

6.1. As with other areas of development, there have been difficulties in ensuring that multi-disciplinary approaches are developed in VAWG programmes; disability tends to be overlooked in GBV programmes (underpinned by CEDAW), while disability focused work (underpinned by the UNCRPD) tends to overlook GBV.

In her recent report, the UN Special Rapporteur on Violence Against Women With Disabilities notes that “The lack of an intersectional approach can lead to the reinforcing of one form of discrimination in attempts to alleviate another.”
7. HOW CAN VAWG PROGRAMMES BECOME MORE INCLUSIVE OF DISABLED WOMEN AND GIRLS?

7.1. **By developing multisectoral and holistic approaches** through a greater collaboration and coordination between the Disability and Women’s Movements, as well as between organisations and departments working on disability and GBV issues.

7.2. **By paying greater attention in prevention programmes to factors which contribute to violence against disabled women and girls.** Action to challenge and change social norms should focus on those power structures which underpin disability discrimination as well as gender discrimination, including violence-supportive attitudes and behaviours; community norms; institutional practices and systems, as well as laws and policies.

7.3. **By addressing barriers for disabled women and girls when accessing services and support.** This requires active steps to reach disabled women and girls, and to identify and address the barriers which exclude them. Developing inclusive practices and structures needs to be seen as an obligation and not as a choice.

7.4. **By taking action to promote the voices of disabled women and girls in the process of changing social norms.** Channels for empowerment and mobilisation of disabled women and girls within and beyond the Women’s Movement need to be identified and supported. One aspect of this will be to support the participation of disabled women and girls in the VAWG Global Implementation Plan and the Global Advocacy Campaign.

7.5. **By improving understanding on links between disability and VAWG through research and other learning processes.** The disaggregation of data in VAWG programmes (by disability as well as gender, age etc.) would be a key element when gathering evidence and learning.

8. RECOMMENDATIONS TO THE SELECT COMMITTEE.

8.1. **Greater attention should be given to issues affecting disabled women and girls in the context of VAWG in DFID’s analysis, research, policies and guidelines.** This will need to be supported by investment in research and learning in this area, in order to develop effective programme responses. DFID’s How to Note and Practical Guide for programming work on VAWG mentions disability, but the documents do not currently give the issue
sufficient attention to ensure that responses to VAWG are effective when including disabled women and girls, given the fact that the levels of awareness about disability issues across all development sectors tend to be low.

8.2. **There should be a clear requirement for programmes to address disability issues and to include disabled women and girls** in calls for funding proposals, accountability procedures and learning processes. This should be supported by a requirement for data to be disaggregated by disability, drawing on current best practice in this area such as the Washington Group Guidelines. Although the DFID Practice Guidelines encourage disability to be considered, the implication is that disabled women and girls are a “group” that may or may not be targeted. The Guidelines themselves do not include any case studies on disabled women or girls, and neither are they mentioned in any of the examples given. This demonstrates how easy it is for disability issues to be overlooked where there is no requirement to include them.

8.3. **Disabled women and girls should be centrally involved in campaigning to challenge the social norms which underpin VAWG.** We urge DFID to put its weight behind campaigns that expose and challenge the discriminatory attitudes and practices contributing to such high levels of violence and abuse against disabled women and girls.

DFID’s guidelines rightly emphasise the importance of transforming gender power relations, but there is little recognition of the many dimensions of power relations (in addition to gender) and which also impact on the levels of VAWG, such as the fundamental imbalance of power between disabled and non-disabled people. Greater attention needs to be given to channels of empowerment outside the Women’s Movement, such as Disabled People’s Organisations where disabled women, who may feel marginalised within the mainstream women’s movement, are often more likely to build initial confidence and skills.

8.4. **Action to ensure the inclusion of disabled women and girls in VAWG programmes must be supported by a more holistic approach to disability inclusion across all DFID policy areas at all levels.** Practical steps towards this would include: The creation of a policy on inclusive development approaches; a TOC and practice guidelines on disability inclusion, and the appointment of a senior resource person to drive these processes forward. We welcome the forthcoming inquiry on disability issues as a key step in securing progress on this issue.
Chapter 21

WaterAid

Submission by WaterAid to the Committee on the Rights of Persons with Disabilities.

Half Day of General Discussion on Women and Girls with Disabilities.
17th of April, 2013.

WaterAid is an international non-governmental organisation focused on water, sanitation and hygiene. We believe that safe water, improved hygiene and sanitation underpin human development, and form the first step to enable people to overcome poverty. We see poverty, marginalisation and social exclusion as inextricably linked and so, we have adopted equity and inclusion as core principles that are intrinsic to a rights-based approach.

We work to address these issues and realise our vision of a world where everyone has access to safe water and sanitation. We are systematically developing our ability to address the barriers to water, sanitation and hygiene (WASH) faced by disabled people through our programme work, partnerships, research and advocacy.


Having access to safe drinking water and sanitation is central to living life with dignity and upholding human rights. Yet billions of people still do not have access to fundamental WASH facilities. The rights to water and sanitation require that these services should be available, accessible, safe, acceptable and affordable for all without discrimination. These elements are clearly interrelated.

The World Health Organisation's Global Report on Disability (2011) highlights the central role of water and sanitation both in preventing some causes of disability, and as a central issue that affects the quality of life of people who are living with disabilities and their families.

However, people with disabilities face many barriers to water, sanitation and hygiene including physical, institutional and attitudinal barriers, and these are particularly severe amongst the poorest populations in the world’s poorest countries. Training materials developed by the Water, Engineering and Development Centre (WEDC) and WaterAid clearly illustrate some of these barriers and how they can be addressed through policy and programmatic approaches.

Along with the need for safe drinking water and sanitation, disabled women and girls face additional challenges due to their specific sanitation and hygiene needs, such as menstrual hygiene management. The challenges faced by disabled women and girls are outlined in module seven of the manual entitled, *Menstrual Hygiene Matters: A Resource for Improving Menstrual Hygiene Around the World*.  

Menstrual hygiene challenges faced by women and girls with disabilities were illustrated by the issues raised in a focus group discussion held in Tanzania with six women from the Tanzania Federation of Disabled People’s Organisations. The representatives themselves had different disabilities (visual, hearing and physical impairments, albinism). The group discussed the experiences of people with disabilities in managing menstruation, and made recommendations for what could be done to improve the situation:

- Women and girls who cannot stand or see often have to crawl or sit on dirty latrine seats to change their pads or cloths. This not only makes them dirty and soils their clothes but may also put them at a greater risk of infection.
- Taking the bus is particularly problematic for women with a disability. There is a risk that rushing to get the bus will cause a woman’s menstrual cloth can fall out, causing humiliation.
- Women and girls with disabilities often lack adequate information on menstruation. Participants thought this was because people do not generally expect them (as disabled women and girls) to menstruate. When it happens for the first time, many girls do not know what it is or how to deal with it.
- Some ethnic groups in Tanzania have taboos around menstruation. For example, menstruating women, even those who are disabled, have to sleep on the mud floor, which is resurfaced afterwards.
- Carers and additional support are often needed for women and girls with learning difficulties, in order to help them deal with menstruation and observe social norms (such as not removing their used sanitary pad and showing it in public).
- Most women and girls with disabilities are not able to afford mass produced sanitary pads. Locally made pads are cheaper but can be of lower quality.

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377 Case study from *Menstrual Hygiene Matters*, above.
Unless schools have a water supply, girls are not able to wash themselves, their sanitary cloths or latrines properly. They have to carry five litre drinking water bottles with them for this, which is particularly difficult for those with disabilities.

- Women and girls in rural areas face more challenges maintaining menstrual hygiene because the water supply is often a long way from home. This represents a particular problem for those with disabilities.
- Women and girls often have to use dirty cloths because they can't clean them without access to water and soap. Some women share cloths with neighbours in rural areas if they can't afford their own, potentially increasing the risk of infection.

Whilst these issues were identified by a small group of women in one country, our experience of looking at menstrual hygiene issues for women in different contexts, and our growing experience of working with disabled people on access to water, sanitation and hygiene, suggest that disabled women are likely to face similar challenges in many contexts. Due to taboos surrounding both menstruation and disability, it is difficult to research this area and there is very little evidence on this subject, in spite of its impact on millions of women and girls.

In order to ensure disabled women and girls have access to their human right to safe water, sanitation and hygiene, it is essential to address the different barriers they face. This can be done by promoting inclusive policies and programme approaches that ensure all women and girls can manage their menstrual hygiene needs with safety and dignity.

Good practice includes:

- Working in partnership with organisations that specialise in working with people with disabilities.
- Involving women and girls with disabilities in discussions on the challenges they face.
- Suggesting possible solutions and how they would like to be supported.
- Considering the particular abilities and developmental level of girls and women and adapt educational programmes to suit them.
- Ensuring water, sanitation and hygiene facilities are always accessible to people with disabilities, as well as involving people with disabilities in their design.

For further information please contact: louisagosling@wateraid.org.
Chapter 22

World Confederation for Physical Therapy.

Committee on the Rights of Persons with Disabilities: Half Day of General Discussion on Women and Girls with Disabilities.

Submission by the World Confederation for Physical Therapy.

Responding Organisation.

The World Confederation for Physical Therapy (WCPT) is the sole international voice for physical therapy, representing more than 350,000 physical therapists worldwide through its 106 member organisations. The confederation operates as a non-profit organisation, and it is registered as a charity in the UK. WCPT believes that every individual is entitled to the highest possible standard of culturally appropriate healthcare, delivered in an atmosphere of trust and respect for human dignity, and underpinned by sound clinical reasoning and scientific evidence. It is committed to furthering the physical therapy profession and improving global health through:

- Encouraging high standards of physical therapy research, education and practice.
- Supporting the exchange of information between WCPT regions and member organisations.
- Collaborating with national and international organisations.

This submission has been prepared with the support of the International Organization of Physical Therapists in Paediatrics, which is a recognised subgroup of WCPT. The International Organization of Physical Therapists in Paediatrics (IOPTP) is a recognised subgroup of WCPT, and it has the objectives of fostering cooperation between physical therapists practising in paediatrics throughout the world; encouraging improved standards and consistency of practice in paediatrics care by physical therapists, and promoting opportunities for the spread of knowledge of new developments in the field of paediatrics.

Additionally, the mission of the IOPTP is to empower physical therapists with an interest in paediatrics to provide effective physical therapy services for children throughout the world. The understanding of the multiple forms of discrimination experienced by children (and specifically girls) with disabilities, which hinder their
meaningful participation on an equal basis with other individuals in all aspects of life, is important to all physical therapists working with children.

The opportunity to address our concerns about these forms of discrimination is important to both WCPT and IOPTP. Therefore, we would like to highlight examples that support the fact that children with disabilities are affected by discrimination.

1. Violence.

In 2011, the NGO Advisory Council stated that children continue to be humiliated, beaten, burned, and sexually abused by adults in their lives. In some countries, including the United Kingdom and the United States, children are two to three times more likely to be recipients of violent crimes than adults. However, children with disabilities are four to five times more likely to experience violence and sexual abuse than non-disabled children.

The impact of this violence may have traumatic effects on the children. In particular, the young child who is exposed to violence may develop anxiety, depression, aggression, and difficulties with attachment. These psychological problems may interfere with the child's participation in all aspects of the child's later life.

Additionally, the most frequent victims of corporal punishment are boys, children with disabilities, and children with ethnic minority status. In the U.S., children with disabilities make up 19 percent of those who receive corporal punishment, although these children only represent 14 percent of the school student population.

Institutional care presents a well documented problem of abuse and neglect. In many countries, 60 percent or more of children in institutions have disabilities. As stated previously, the WHO found that children with disabilities are four to five times more likely to experience violence than their typically developing peers, regardless of the severity of their disability. Thus, this environment potentially contributes to the lack of participation of the child in life activities outside the institution, as well as to the possibility of violence towards the child.

This violence may take the form of sexual as well as physical abuse, including the use of chemical and physical restraints on the children. This violence may lead to the lack of participation by children with disabilities in all aspects of life both at home and in the community. Physical therapists work to maximise participation of all those we work with and thus, this discrimination of children is a major concern.

2. Education.

UNESCO reports that 90 percent of children with disabilities in developing countries do not attend school. Physical therapists recognise that environment barriers such as buildings without ramps, unpaved roads which hinder mobility, and limited adapted toilet facilities for individuals with disabilities interfere with the child's full
participation in education. Other barriers such as stigma associated with disabilities also interfere with the child being able to participate in school or in the community. We are concerned that even in the OECD countries students with disabilities in higher education remain under-represented. Lower levels of education may impact the lifelong ability of an individual with disabilities to participate in employment and in the community. Education is the key to the acquisition of life experiences and new skills.

3 Environment.

The environmental barriers identified under education also affect all aspects of participation in community and family life for children with disabilities. Often, the child is restricted to the family home due to environmental barriers that prevent him/her from leaving the home. Certainly, these barriers affect women and men as well as children with disabilities.

For example, the individual may have to be carried from an upper floor of a building in order to leave the home, and if the individual is too large or if no other person is available to carry him/her, the person with a disability is confined to the home. Barriers in the community, such as the lack of hard pathways, roads and busses, or trains that do not have provision to transport wheelchairs, prevent the child with a disability who uses a wheelchair from being independent.

These environmental barriers may prevent the child from visiting friends and family or participating in religious activities, leading to social and religious isolation. Environments that are not modified to meet the needs of all citizens contribute to an individual’s disability, and limit the person’s ability to fulfil roles appropriate to his/her age, sex and social and cultural identity.

Physical therapists can assist in identifying the barriers within the external environment and, depending on the degree of modifications, with the use of equipment and assistance being provided. Physical therapists can also assist in the identification of adaptations needed for recreation and leisure activities, for example: pools, playground, hotels, restaurants, city sidewalks, and athletic activities/sports venues.

References.


Women Enabled, Inc., www.WomenEnabled.org, WomenEnabled@gmail.com
Advocating for the Rights of All Women!


To: United Nations Committee on the Rights of Persons with disabilities.

Women Enabled, Inc., writes with respect to the urgent need for the inclusion of issues concerning women and girls with disabilities, and which relate to the urgent issues of violence against women and access to justice, as the Committee on the Rights of Persons with disabilities (CRPD Committee) embarks on a General Discussion on the rights of women and girls with disabilities at its 7th Session in April 2013.

Despite the implications for more than 500 million women with disabilities and their families, issues concerning women with disabilities receive only limited (or even invisible) coverage in efforts to amend and modify laws, policies and practices on access to justice for women. As the CRPD Committee embarks on the elaboration of a General Recommendation on the Rights of women with disabilities, we encourage a focus on violence against women with disabilities and access to Justice, thereby contributing to a more inclusive, effective and vibrant discussion for all women by addressing issues concerning access to justice for women with disabilities.

Coincidently, the Committee on the Elimination of discrimination Against Women has held just this week a General Discussion on Access to Justice for Women. Two crucial elements of human rights, legal capacity and access to justice, are incorporated in both the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD).

In the CRPD, Articles 12 and 13 address these issues, and in the CEDAW, Article 15 addresses equality before the law. The CRPD draws heavily on the approach taken

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378 Henceforth, in this submission when the term “women with disabilities” is used it shall be considered to mean “women and girls with disabilities” unless otherwise noted.
in the CEDAW and rejects the narrower approach taken in the International Covenant on Civil and Political Rights (ICCPR). Interpretations of ICCPR Article 16 make it abundantly clear that this provision only contemplates one aspect of this right—that every person is a subject, and not an object, of the law. This provision does not guarantee that a person has the legal capacity to act.

On the other hand, the approach used in the CRPD utilizes wording similar to that used in paragraph two of CEDAW’s Article 15, which focuses on ensuring women’s legal autonomy and self-determination. It confirms women’s equality with men before the law and also requires States to guarantee equal rights in areas of civil law where women have traditionally suffered discrimination.

Comparably, Articles 3 and 5 of the CRPD emphasize and assure the legal rights of people with disabilities and of men and women. Article 15 of the CEDAW guarantees women equal “legal capacity” with men and the same opportunities to “exercise that capacity.” Each individual is presumed to be able to make life choices and to act independently, clearly incorporating both concepts of “capacity to be a person before the law” and “legal capacity to act.”

Drawing on the core principle of “Nothing About Us Without Us,” the drafting of the CRPD, women with disabilities should be part of the processes to determine policy on access to justice for women. We discuss below the

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See G.A. Res. 2200 (XXI), arts. 14, 15, 16, U.N. Doc. A/RES/21/2200 (Dec. 16, 1966); see also Human Rights Comm., para. 19, General Comment No. 28: Article 3 (Equality of Rights Between Men and Women) U.N. Doc. CCPR/C/21/Rev.1/Add.10 (Mar. 29, 2000) stating “The right of everyone under Article 16 to be recognised everywhere as a person before the law is particularly pertinent for women, who often see it curtailed by reason of sex or marital status. This right implies . . . that women may not be treated as objects to be given, together with the property of the deceased husband, to his family. States must provide information on laws or practices that prevent women from being treated or from functioning as full legal persons and the measures taken to eradicate laws or practices that allow such treatment.”


CRPD, supra, arts. 3(g) & 5(1)

CEDAW, supra, Art. 15, para. 2.

U.N. High Comm’r for Human Rights, supra, para. 18.

See id. para. 37.

See, e.g., CRPD, supra, (Preamble (e), Art. 1, 3 (requiring the full integration of people with disabilities in all segments of society so that they may fully participate and express themselves independently in social, legal, and political life, promoting, protecting and ensuring the full and equal enjoyment of all human rights and fundamental freedoms by all people with disabilities, and promoting respect for their inherent dignity, and including those people with disabilities who have long-term physical, mental,
urgent need for the inclusion of a discussion of access to justice for women with disabilities in the elaboration of this General Recommendation.

We also provide some general discussion of the situation of women with disabilities globally, focusing then on some specific issues concerning access to justice for women with disabilities, and finally exploring the international legal basis for the requirement of inclusion of women with disabilities in this work and processes. Greater detail on these issues can be found in the Ortoleva and Lewis paper referenced below.

**Rationale for the Inclusion of Women with Disabilities in Legal Reform Efforts.**

Women with disabilities are a part of all societies. They need to be an active part of the advancement of the human rights of all, and shape how societies affect their lives. The justifications for inclusion are numerous. Representation and fairness are the most obvious, as women account for more than half of the world's population. There are approximately one billion people with disabilities, which represent 15 percent of the global population.\(^{389}\)

The World Health Organization's (WHO) and the World Bank's (WB) 9 June 2011 ground-breaking report entitled “World Report on Disability”, notes a dramatic increase in the estimated numbers of people with disabilities worldwide, stating that about 15% of the world's population lives with some form of disability. There are significant differences in the prevalence of disability between men and women in both developing and more developed countries: male disability prevalence rate is 12%, while female disability prevalence rate is 19.2%.\(^{390}\)\(^{391}\)

Although significant progress has been made in bringing awareness of and attention to women's issues in human rights treaties and intergovernmental outcomes, the United Nations has recognised that more attention needs to be directed to the situation of specific groups of women, including women with disabilities.\(^{392}\)

More than 80% of women with disabilities in many countries' rural areas have no independent means of livelihood, and are thus totally dependent on others for their 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.) available at [http://www.unhcr.org/refworld/docid/45f973632.html](http://www.unhcr.org/refworld/docid/45f973632.html).\(^{389}\)


**Id. at 261.**\(^{390}\)


The myriad of issues that confront women with disabilities is significantly more pronounced than for women in general, due to inaccessible environments and lack of services, information, awareness, education, income and contact, resulting in extreme isolation and invisibility. Given how greatly women with disabilities are affected by the double discrimination and gender and disability stereotyping they face because of both gender and disability, they deserve to be heard. The 2011 Report by the United Nations Special Rapporteur on Violence Against Women focused on the multiple and intersecting forms of discrimination that contribute to and exacerbate discrimination and violence against women with disabilities.

The report notes that factors such as ability, age, access to resources, race/ethnicity, language, religion, sexual orientation and class can exacerbate the discrimination and violence women with disabilities experience.

Legal and Policy Basis for Inclusion.

The recommendation for the inclusion of issues concerning women with disabilities in legal reform work, focused on addressing access to justice for women, is drawn from and is consistent with the gender-sensitive and disability-inclusive approaches outlined in the United Nations Charter, and with the provisions of the CRPD, especially Article 6 on Women with Disabilities, the CEDAW (especially Article 14), the Convention on the Rights of the Child (CRC); the 1995 Beijing Declaration and the 2000 Special Session of the United Nations General Assembly, reviewing the progress of the outcomes of the Fourth World Conference on Women.

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394 Id.
396 See CRPD, supra, Article 6 on Women and several other articles of the CRPD focus on the rights of women and girls with disabilities.
397 See, CEDAW, supra.
The United Nations General Assembly has issued a series of resolutions, A/65/186 and A/64/131, calling for the mainstreaming of people with disabilities in development. It specifically calls on Governments to promote gender equality and the empowerment of women with disabilities.

**Violence Against Women with Disabilities and the Justice System.**

Violence against women with disabilities occurs in various spheres – in the home and within the community, and it is perpetrated and/or condoned by the state and by private actors within public and private institutions, as well as in the transnational sphere. The forms of violence to which women with disabilities are subjected are varied: physical; psychological; sexual, financial; neglect; entrapment; degradation, forced sterilization and psychiatric treatment. Women with disabilities are twice or three times as likely to experience domestic and other forms of gender-based and sexual violence as non-disabled women, and are likely to experience abuse over a longer period, suffering more severe injuries as a result of the violence.

Their abuser may also be their caregiver, someone that the individual is reliant on for personal care or mobility. Very often, they do not report the violence and they frequently lack access to legal protection. Law enforcement officials are ill-equipped to address the violence, and they are not privy to the same information available to non-disabled women. Sexual and gender-based violence contributes to the incidence of disability among women.

At this juncture, it is important to note that the literature on violence against women frequently uses the term “domestic violence” as a “catch-all” term for this violence. However, the use of this term can have devastating effects on women with disabilities, as it ignores several important aspects of the lives of women with disabilities – it does not cover those living in institutions or residential care facilities; those living with others who are not family members but with whom they live for care or support; Those who have people come to their home regularly, whether paid or unpaid, for care and support, etc.

Incorporating this understanding into the terminology of violence against women recognises the diversity and different life experiences and situations of women's lives. Other issues which exacerbate violence against women with disabilities include the following: women with disabilities are the poorest among the poor because of discriminatory employment practices; they are denied educational opportunities and have shockingly low literacy rates because education was not provided for girls, or

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school facilities were not accessible to them and programmes were not designed to meet their needs.

They are unable to travel from place to place because of the dangers of violence, which cannot be mitigated because they cannot afford assistive devices like wheelchairs or access transportation systems; they are often the last in the family to receive food, as they are viewed as useless, and because they may be too indigent to afford food.

Furthermore, they are more likely than men with disabilities or women without disabilities to experience violence and other forms of discrimination, and are unaware of helpful services, or such services are not accessible to them; they are not able to receive health care services, including sexual and reproductive health care services, because these services are not in accessible locations (due to the fact that the availability of these services is communicated in ways that are not accessible to them), and because health care providers cannot communicate with them or believe they are asexual.

Also, they are unable to access the justice system, especially for sexual violence cases, either because the police and judges cannot communicate with them or they do not find their testimony credible, as officials in the justice system do not have the expertise to address their legal concerns. Subsequently, they have no information on how to access the justice system because the buildings of the justice system are inaccessible to them.

**Role of the Justice System.**

In various ways the justice system itself (and therefore the State) perpetrates and/or condones the violence experienced by women with disabilities. Justice systems and the law itself may be both sources of liberation and oppression, may both remedy and perpetuate inequality and discrimination.

This is the character of the interaction of women with disabilities with the justice system. Many of the factors in the above section on violence against women relate to the denials of access to justice women with disabilities experience. Some of the ways in which the legal system denies access to justice to women with disabilities are outlined below.

**Physical Access to the Institutions of the Justice System.**

One of the most obvious and egregious barriers to access to justice for people with disabilities are the physical barriers to courthouses and other institutions of the

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justice system. Inaccessibility of courthouses includes inaccessible witness chairs and jury boxes; lack of technology to enable people with disabilities to understand the proceedings; lack of wheelchair lifts, and other elements of inaccessible courthouse design.\textsuperscript{403} Another barrier is the failure to provide reasonable accommodations such as sign language interpreters, materials in alternative formats for women who are blind, and use simplified language for women with learning disabilities.

Article 9 of the CRPD requires accessibility, including in the justice system. Further, domestic courts have addressed these issues. In 2004, the U.S. Supreme Court addressed physical access to the courthouse in Tennessee v. Lane.\textsuperscript{404} Citizens with disabilities who could not access the upper floors in state courthouses sued the state, arguing that Tennessee was denying them public services because of their disabilities under Title II of the Americans with Disabilities Act (ADA), \textsuperscript{405} according to which no one can be denied access to public services due to his or her disability.\textsuperscript{406}

Thereafter, the U.S. Access Board Courthouse Access Advisory Committee issued a report in 2006 which illustrated how the design of courthouses impeded the physical access to justice for people with disabilities.\textsuperscript{407} Additionally, in September 2004, the South African Equality Court reached a final settlement in which the government acknowledged that they had failed to provide proper wheelchair access, and that this was a form of unfair discrimination against the complainant and other people with similar accessibility needs.\textsuperscript{408} Obviously, if women with disabilities cannot enter the institutions of the justice system, they cannot vindicate their rights.

Women with Disabilities as Witnesses.

The justice system often fails to see women with disabilities as competent witnesses. Abuse cases involving a complainant with learning disabilities rarely go to court, and the complainant frequently does not serve as sole witness against the accused.\textsuperscript{410} Not only are women with disabilities excluded as witnesses because


\textsuperscript{404} Tennessee v. Lane, 541 U.S. 509 (2004).

\textsuperscript{405} Id.


\textsuperscript{407} Tennessee v. Lane, supra.


they may have difficulty communicating with the police, but stereotypes about women with disabilities operate to exclude or discount their testimony.

The sexual nature of certain crimes, and the general failure for society to see people with disabilities as sexual beings, may result in judges and juries discounting the witnesses’ testimony in sexual assault cases.\(^\text{411}\) This tendency to essentially “infantilize” women with mental disabilities contributes to discounting their testimony.\(^\text{412}\) On the other hand, society may view some women with mental disabilities as hypersexual and lacking self-control, leading to the disregard of their complaints.\(^\text{413}\)

Law enforcement and legal agencies may see women with disabilities who require assistive communication or accommodations, or women with psychosocial and intellectual disabilities, as lacking credibility.\(^\text{414}\) Some judges may require more corroborating evidence of an assault in cases involving women with disabilities than in other cases, and evidence about prior mental health treatment may be used to discredit their testimony.\(^\text{415}\)

Women with cognitive disabilities may have more difficulty with long term memory or remembering the sequence of events, which may make them appear less credible.\(^\text{416}\) Overly paternalistic attitudes towards women with disabilities may cause various players in the judicial system to view them as too fragile to withstand the rigors of examination.

Exclusion is particularly problematic in gender-based violence and sexual assault cases, where testimony of parties and credibility of witnesses are exceptionally important,\(^\text{417}\) placing them at even greater risk, as perpetrators may be more likely to attack them because they know that their complaints may be taken less

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\(^\text{413}\) Id. Benedet and Grant argue that in some instances, courts may inquire into a complainant’s sexual history in order to establish her understanding of sexual matters, even though these inquiries do not satisfy the strict requirements for admission of past sexual history under Canada’s “rape shield” law. Id. at 533.


\(^\text{415}\) Janine Benedet and Isabel Grant, supra.

\(^\text{416}\) Id.

seriously. If prior complaints have been dismissed, women with disabilities are less likely to report abuse in the future, perpetuating the violence.

**Access to Attorneys Who Understand the Needs of Women with Disabilities.**

Women with disabilities face similar problems with legal representation and protection to others who are economically disadvantaged (Availability, affordability, and adequacy). However, both gender and disability stereotyping further exacerbate the disadvantages women with disabilities experience. They must rely on the increasingly scarce free or low-cost legal services and, therefore, they have less choice in who represents them, and, generally, have less understanding of and access to the legal system.

Providing free or low cost attorneys to women with disabilities may be necessary to ensure they can vindicate their rights. Attorneys who do not have much experience interacting with people with disabilities may not fully understand their needs, and may not be aware of appropriate “disability etiquette”. Few law schools require or provide training in working with clients with disabilities or any courses on disability law generally. Lawyers may not always provide information in Braille or other accessible forms of communication, such as sign language interpretation.

Additionally, there are few members of the legal profession who are people with disabilities, and even fewer who are women with disabilities. Research of Carrie Basas notes that many women with disabilities indicated that the combination of being a woman and having a disability served to further compound the view that women are the “weaker sex” and, therefore, puts them at a double disadvantage. As a result, many feel pressure to “cover up” the fact they have a disability in order to avoid this double stigma.

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418 Id.
420 Chris Jennings, supra.
423 Frances Gibson, supra. However, there are some notable exceptions in that a few law schools have successful clinical programmes on disability law. For example, Syracuse University College of Law and the American University Washington College of Law, among others, offer a disability rights clinic and multiple courses related to disability law. The University of Pittsburgh offers a Master of Studies in Law Degree with a concentration in Disability Law.
426 Id.
For women with visible disabilities, they may also feel like they have to perform much better than their colleagues to be viewed as equally competent. Until the legal field becomes more inclusive and accepting of its own members with disabilities, clients with disabilities will continue to face a lack of understanding and barriers in accessing legal assistance.

Access to Information on the Justice System.

Information on human rights, the legal system, and how to vindicate those rights is rarely available to women with disabilities in accessible formats, in user-friendly formats or in plain language.

Women with Disabilities Denied the Right to Serve as Jurors.

The responsibility to serve on juries is a fundamental right in most countries. When women with disabilities are denied this right, they are denied the opportunity to serve their communities. Although some of the legal barriers to jury service have been removed in some countries, other barriers still exist.

When barriers to jury service for people with disabilities are combined with the barriers imposed on women generally, this deprives women with disabilities from having the opportunity for their legal cases to be heard by a jury of their peers. Natasha Azava’s Article asserts: “People with disabilities have long been denied the right to be on a jury.”

Until recently, in the United States, state laws describing jury qualifications “entirely excluded people with disabilities.” Barriers such as: “inaccessible courtrooms, difficulty in obtaining transportation to court, and a lack of reasonable accommodations such as sign interpreters or assistive communication devices,” made participation in jury service impractical.

Although outright prohibitions are now illegal in the United States, often a peremptory challenge is utilised, that is, “one exercised without a reason stated, without inquiry and without being subject to the court’s control.” Similarly, “… Parties can remove a potential juror even though she qualifies to serve under the statute.” She further notes that peremptory challenges based on disability are

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427 Id.
429 Azaya, supra (citing Lynch, supra, at 298).
430 Id. (citing Lynch, supra, at 299).
432 Id. at 124.
still constitutional in the United States, and the use of such challenges is based on ignorance and unwillingness to evaluate the individual situation.433

**Forced Sterilization.**

There is a long and disturbing history of socially- and legally- sanctioned forced and non-consensual sterilization of women with disabilities. The CRPD identifies coerced sterilization as a violation of human rights, and states that people with disabilities have the right to retain fertility on an equal basis with others.434 Guidelines from the International Federation of Gynecology and Obstetrics state that only women themselves can give ethically valid consent to their own sterilization, and that sterilization cannot be made a condition of access to medical care or other benefits.435

Despite legal prohibitions in some states, there are many cases of involuntary sterilization used to restrict the fertility of some people with disabilities, particularly those with intellectual disabilities.436 Other States do not have laws prohibiting involuntary sterilization, and this has been challenged before international

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433 Id. at 124-25 (citing Lynch, supra, at 303).
434 CRPD, supra, Art. 23, para. 1(c).
Involuntary sterilization is contrary to international human rights standards. Women with disabilities must have access to voluntary sterilization on an equal basis with others, but they cannot be forced to undergo sterilization.

**Forced Institutionalization and Psychiatric Treatment.**

Forced institutionalization or medical treatment violates the CRPD's Article 12 on Legal Capacity. Additionally, medical treatments of an intrusive and irreversible nature, enforced or administered without the free and informed consent of the person concerned, and which are aimed at correcting or alleviating a disability or that lack a therapeutic purpose, may constitute torture or ill-treatment.

In this regard, those actions include: forced psychiatric interventions; involuntary commitment to institutions, and forced or “unmodified” electroshock (electro-convulsive therapy). Deprivation of the legal capacity to make one’s own decisions facilitates coerced treatments and violence, and may constitute torture and ill-treatment in itself, as it can amount to a denial of full personhood.

In institutional settings, women with disabilities are subjected to the Forced intake of psychotropic drugs or other forced psychiatric treatment. Furthermore, Forced institutionalization itself constitutes a form of violence. People with mental health conditions and intellectual disabilities are sometimes subject to arbitrary detention in long-stay institutions with no right of appeal, in contravention of human rights law.
Women Prisoners with Disabilities.

Countries are imprisoning more women and the rate is rising faster than that for men. 443 British studies found that between 20 and 30% of offenders have learning disabilities or difficulties that interfere with the ability to cope in the criminal justice system. 444 Higher incidence of disability overlap with higher rates of imprisonment.445

Female prisoners are five times more likely to have a mental disability than the general population,446 and as many as 80% of female jail detainees have a psychiatric disability.447 Jails may house more persons with psychosocial disabilities than all of a country's psychiatric hospitals.448 They are often overlooked by prison officials and by outside groups seeking reform.449

There appears to be a link between domestic violence and women's incarceration, often for crimes directly related to domestic abuse.450 Women in prison face risks that “include ... sexual violence,”451 by other female prisoners, male prisoners, and correctional officers. Also, “[U]nder international law, the rape of a woman in custody by an agent of the State may constitute torture for which the State is held directly responsible.”452

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446 PRISON REFORM TRUST, SUPRA.


Despite the United Nations Standard Minimum Rules for the Treatment of Prisoners prohibition on the use of male staff in facilities with female prisoners, many countries still employ men in these jobs, thus male law officers are the leading source of the abuse of female prisoners. Rape carries not only physical, emotional, and psychological harms, but also the possibility of pregnancy, exacerbated by poor prison health resources, and the possibility that the woman is punished by jailers for it.

Under harsh medical protocols “pregnant women are routinely shackled.” Risks inherent in the incarceration of women are magnified for those who have a disability. In the United States, it is estimated that at least 13% of inmates have been sexually assaulted; many have experienced repeated assaults. The United Nations recognises that “[w]omen prisoners with disabilities are at a particularly high risk of manipulation, violence, sexual abuse and rape.” and they may be actively targeted based on their disabilities, or their special needs are neglected. Most prison staff are not adequately trained to prevent or respond to inmate sexual assaults and prison rape often goes unreported and untreated. Incarceration of people with disabilities without accommodations is illegal, and degrading treatment may violate the International Covenant on Civil and Political Rights. The United Nations noted that “[d]ue to the limited accommodation available for female

454 See Beth Ribet, supra, at 289,).
457 See Beth Ribet, supra, at 295 (perception of physical, psychiatric, or cognitive disability puts one at greater risk of sexual victimization).
460 UNODC WOMEN PRISONERS, SUPRA.
prisoners, they are housed in security levels not justified by a risk assessment on admission." Hence, “[t]his is prima facie direct discrimination on the basis of disability.”

This is further compounded by the lack of facilities able to house women with “impairments,” meaning that “[b]ecause of these access and support issues, it would appear that female prisoners with certain physical, mental health or intellectual disabilities are much less likely to be located in one of the low security facilities compared to women without a disability.” Scarcity of prison facilities for women often results in incarceration far from home, making family visits impractical and costly.

Women with disabilities may face significant difficulties in accessing prison services and recreational and other prison programmes that fail to account for their disabilities, and “[T]hey can be routinely denied participation in work programmes, sometimes significantly lengthening periods of imprisonment.” If they participate in work programmes, they are often paid lower wages for the work, or they may not be able to meet the requirements of existing programmes tailored for prisoners without disabilities.

Those determining the appropriateness of early release consider the ability of a prisoner to adapt to life outside, especially for women with disabilities who may have specific needs that the board may not consider. This problem is exacerbated by the misclassification of women with disabilities as higher risk prisoners, making it much more difficult to secure early release.

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464 Id.
465 Id.
466 L. Alpern, Women and the System of Criminal Justice in Russia: 2000-2002, www.mhg.ru/english/1F4FF6D. (In Russia, for example, this problem is particularly pronounced; many women prisoners must travel thousands of kilometers to their place of imprisonment).
467 MEGAN BASTICK & LAUREL TOWNHEAD, QUAKER UNITED NATIONS OFFICE, HUMAN RIGHTS & REFUGEES PUBLICATIONS, WOMEN IN PRISON: A COMMENTARY ON THE UN STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS 73 (2008 [hereinafter “MEGAN BASTICK & LAUREL TOWNHEAD”]); UNODC PRISONERS WITH DISABILITIES, SUPRA.
468 UNODC PRISONERS WITH DISABILITIES, SUPRA.
469 MEGAN BASTICK & LAUREL TOWNHEAD, SUPRA.
470 QUEENSLAND WOMEN PRISONERS, SUPRA, (stating that it is a problem that is especially acute in the case of those with intellectual disabilities that may go unrecognised by prison staff).
472Id.
Discriminatory Termination of Parental Rights.

Stereotypical views of women with disabilities may result in termination of parental rights. Though disability laws may prohibit discrimination in social services, such laws do not always extend to child custody and protection proceedings.\(^{473}\) Parents with disabilities are no more likely to maltreat their children than are parents without disabilities. However, socio-cultural ambivalence towards women with disabilities becoming parents persists.\(^{474}\)

Women with a psychosocial, intellectual or physical disability have also found that their disability raises issues during child custody battles. Due to a wide-ranging list of prejudices, and to the stereotypical notion that disabled women are unfit mothers, many women have lost custody and even visitation rights with their children during divorce trials. They are also often forced to relinquish their children from their custody by social welfare agencies.\(^{475}\)

Although society’s fear that women with disabilities will raise so-called “defective” children is for the most part groundless, nonetheless, these erroneous concerns have resulted in discrimination against women with disabilities who wish to become pregnant or have children. Women with disabilities are severely restricted, or negatively viewed, with regard to their reproductive rights.\(^{476}\)

Thus, the removal of children or denials of custody may occur in two main situations: in divorce and child custody proceedings and by social service agencies in parental rights termination. Women with disabilities may lose child custody in divorce proceedings with a non-disabled spouse. Unfortunately, it is relatively common for everyday stereotypes and deeply rooted beliefs about women with disabilities to be legitimised in family court and used against them in a divorce hearing or custody trial.\(^{477}\)

Many women with disabilities are well aware of the critical, judgmental and ill-informed scrutiny they undergo as mothers. The fear of being perceived as an unfit mother by a court on the basis of their disability and the breakdown of their relationship has frequently discouraged mothers from separating from an abusive


\(^{474}\) Id., at 927-934.


\(^{476}\) Id.

\(^{477}\) Gender and Disability, Women With Disabilities Australia (WWDA), Dec. 2010.
partner and obtaining the legal advice or assistance that may be in their best interest.\textsuperscript{478}

The result of this longstanding exclusion of women with disabilities as mothers is that society has adopted a negative attitude toward disabled women having legitimate legal capacity or authority over a non-disabled child conceived with a non-disabled father. In many countries, statutes on child custody and divorce may use outdated notions of disability and disability status.

Therefore, divorce proceedings and child custody hearings may focus on the mother’s disability, as opposed to her parenting behavior. In the United States, thirty-seven out of fifty states include disability-related grounds for termination of parental rights. The state codes use unclear definitions and terminology that emphasize disability status rather than behavior.\textsuperscript{479} The remaining states each includes language for termination based on neglectful parenting behavior that may be disproportionately influenced by the mother’s disability status.\textsuperscript{480}

Given existing prejudices about the parenting capabilities of women with disabilities, they may experience greater regulation and prejudice by social service agencies than women without disabilities.\textsuperscript{481} Statutes that include disability as a possible cause for termination of parental rights may implicitly equate parental disability with parental unfitness.\textsuperscript{482} In many cases, the child’s “best interests” are seen as primary to and at odds with maternal rights of women with disabilities.\textsuperscript{483}

Women with a psychosocial, developmental, or intellectual disability may be at particular risk of parental rights termination\textsuperscript{484} and litigation may reaffirm these pre-existing prejudices.\textsuperscript{485} In order to prevent disability discrimination in the termination of parental rights, key principles for statutes include: freedom from discriminatory language; to explicitly affirm that no part of the statute is to be used for anti-disability discrimination; to acknowledge that successful parenting can occur with accommodations, and to require multidisciplinary approaches to address this situation.

\begin{thebibliography}{99}
\item E. Lightfoot et al., supra, at 927-934.
\item Id.
\item Id. At 927-934.
\item Id. At 927-934.
\item Id.
\end{thebibliography}
Hence, the above selected examples of limitations on access to justice for women with disabilities, and the ways in which the justice system itself violates their human rights, demonstrate how actual experiences contrast the human rights guaranteed by the international legal normative framework. This highlights the urgent need to include issues regarding access to justice as the CRPD Committee elaborates this General Recommendation.

Women Enabled, Inc. looks forward to providing any assistance or resources as the elaboration of this General recommendation proceeds. Please contact Ms. Ortoleva at +1.202.359.3045 or WomenEnabled@gmail.com.


RESOURCES. Resources for a General Recommendation on Women and Girls with Disabilities.


Furthering gender equality and women’s empowerment should be part of the policy agenda for women with disabilities and carers in the Capital District. Everyone is aware that most girls, young people and women with disabilities and carers are subject to multiple forms of discrimination, which place limits on their development and full and equal participation, thus creating significant inequalities in the enjoyment of their human rights and fundamental freedoms.

Women with disabilities and carers normally live in poverty and face difficulties when accessing mainstream medical services. Their reproductive rights continue to be violated. Available data show continued high illiteracy rates. In terms of employment, paradigms continue to exist, assigning traditional roles and viewing women with disabilities as unsuitable for certain jobs. Furthermore, they are paid less.

Women with disabilities face notorious disadvantages in their civil and political rights and, for instance, participation rates are poor in elections, and in terms of standing for public office. We in the Department for Women and Gender at the District Institute for Participation and Community Action (IDPAC) have set ourselves the task of strengthening the movement of women with disabilities and carers and their organisation.

In this way, we want to encourage women to view themselves as direct actors, who can put their own needs forward and consolidate them at district level by strengthening everything we have in common as women; by identifying our needs; defending our interests, and expanding as well as extending the spaces in which we participate.
Mutual strengthening will come as a logical and natural consequence of such actions in the future for the Women and Gender Department. Only if we put into practice the principles of solidarity; equity; equal opportunities; personal autonomy, including the freedom to take one’s own decisions; full and effective participation and inclusion; respect for identity; respect for dignity; respect for diversity, and non-discrimination, can transformation become possible.

Once such transformation takes place, then it will be possible to ensure that our actions are substantive and are able to spread, bringing about growth in numbers and quality in terms of the strength of the movement of women with disabilities and carers. As we move forward, we can see how they begin to gain self-esteem and enjoy working together in transforming, among others, attitudinal barriers.

The new paradigm means women with disabilities and carers should view themselves as individuals within a community, actors facing the challenges posed by history, technologies and, above all, their own femininity. Some of these women are already becoming politically active, and it is their own best practises and experiences which keep us going at difficult times. When women's organisations and their members, of whichever gender, join us in this process, we shall begin moving towards a fairer and more equitable society.

The Convention on the Rights of Persons with Disabilities has made the situation faced by girls and women with disabilities more visible. The challenge now is to ensure that disability policies take into account the differences between men and women at the local, the national and the global levels, and to make sure the disability perspective is included in gender policies.

Thus, the District Institute, women's organisations and civil society shall report on the following:

a) In legislation and policies, as well as in programme development, is there recognition of the gender inequalities faced by women and girls with disabilities and carers?

b) Are girls and women with disabilities and carers able to enjoy all fundamental rights and freedoms on an equal basis with boys and men with disabilities?

c) Are girls and women with disabilities and carers able to enjoy all fundamental rights and freedoms on an equal basis with other girls and women without disabilities?

Given the importance of participation, mobilisation and VISIBILISATION processes for women with disabilities and carers at the national level and, above all, for the
women themselves in the district, it is vital that their leaders, families and carers continue to strengthen these processes. Such processes have been ongoing since the Political Constitution of Colombia came into force, and in particular, since 2008, when the adoption of the District Public Policy on Women and Gender was agreed with the district authorities, leading to some actions in relation to which civil society is now calling for implementation.

This is where the commitment made to women with disabilities and carers by the IDPAC Department for Women and Gender becomes its responsibility. A stronger structure at district level leads to greater influence on district policies and, as a result, on development plans, and it therefore gives way to a greater impact on how these plans are implemented to the benefit of women with disabilities and carers.

In turn, this leads to the implementation of the actions set out in the Equal Opportunities Plan for Gender Equality, through support and efforts to strengthen leadership and organisations in different places, based on the Public Disability Policy, as it is set out in line with community-based initiatives.

In Bogota, there is a very large group of women who are driven by solidarity, citizens who are active and committed to their communities and whose permanent and voluntary work is recognised in public policies for people with disabilities as active citizenship. These women put into practise values such as solidarity and non-discrimination, making a major contribution to the development of harmonised societies.

The voluntary work performed by women with disabilities in the social sphere constitutes an important and indispensable driver of social change towards the full social inclusion, as well as the non-discrimination, of women and girls with disabilities. That is why there is an urgent need to ensure effective backing for measures supporting social participation and involving women with disabilities, with the aim of enabling as many people as possible.

In particular, priority should be given to those enabling women with disabilities to engage actively in these activities, supporting peer learning, exchanges and defining best practises at the local and the district levels, while recognising the right of women with disabilities to participate.

Therefore, the aim of this second 2nd Meeting of Women with Disabilities and Carers entitled ‘TOWARDS PARTICIPATION, REPRESENTATION AND REAL, EQUAL INCLUSION FOR ALL’, is to secure acknowledgement and support from local and district authorities for organisations, and among others representative women’s organisations and those representing women with disabilities, in order to further social programmes involving groups at risk of social exclusion such as girls and
women with disabilities.

The meeting also called for mechanisms to be promoted which encourage permanent cooperation between businesses and the disability sector, and which would also include women with disabilities and carers in programmes addressing discrimination and rights violations.

In the case of women with disabilities, it has been noted that despite there being greater awareness among political groups, bodies working towards equality and society in general of the presence of gender violence, and in spite of the increased number of programmes addressing victims, “these programmes have failed to meet the particular needs of women with disabilities and are therefore inaccessible for them.”

Hence, “We can state that disability is invisible in gender policies and disability policies overlook gender, thus perpetuating multiple discrimination and invisibility for girls and women with disabilities and carers”. The key challenge is to take measures in order to mainstream disability in policies, plans and programmes to eliminate gender-based violence.

As a result and as a contribution to solving this problem, the Department for Women and Gender saw the need and committed itself to supporting and offering guidance to set up a space for reflection and critical debate. Its commitment was also to develop proposals in support of the processes led by women with disabilities and carers themselves, and which had been developed in communities in the capital, and which belonged to the guidelines for the Public Disability Policy in the area of Active Citizenship.

Women with disabilities and carers from the District Capital met on the 27th of February, 2011, to develop and formulate initiatives with guidance from staff members of the Department for Women and Gender. The purpose of these initiatives was to restore the rights to participation and communication; decent employment; full health; equal education; non-sexist culture and communication, as well as a violence-free life, housing and peace for all.

Further aims include creating the ideal conditions for active participation, information and assessment on the capabilities and rights held by women with disabilities and carers, on the basis of the acknowledged leadership position held by women citizens with disabilities, which represents an example of active citizenship in Bogota. In addition, the aim was to study the impact caused by individuals, institutions and organisations on the development of those processes for the inclusion of women with disabilities and carers in the District Capital and nationally, while also setting out explicitly their needs.
An analysis of the proposals drawn up and set out in the tables below shows the urgent need to discard old-fashioned approaches. The Colombian State, which is leading the way in this respect, and the city of Bogotá must take responsibility for all actions addressing exclusively girls and women with disabilities and carers. The relevant authorities must commit fully to finding solutions to the problems we face, and implementing targeted programmes aimed at promoting true gender equality, above all for people with disabilities.

**RIGHT TO A VIOLENCE-FREE LIFE.**

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<tr>
<th>RATIONALE</th>
<th>PROGRAMME</th>
<th>GOALS</th>
<th>ACTIONS</th>
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<tr>
<td>It is vital to bring to light the conditions of social, political, economic and cultural inequality, which many women in Bogota experience due to them having a disability.</td>
<td>“Justice includes disability”</td>
<td>To ensure effective access to justice for girls and women with disabilities and carers on an equal basis with other citizens.</td>
<td>1 To disseminate existing disability and human rights legislation.</td>
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<td>To carry out thorough and in-depth studies on the causes of violent acts against women and girls with disabilities and their carers, in order to provide the solutions victims deserve, and serve as guidebooks for those institutions offering support to victims and those responsible for administering the corresponding legal punishments in cases of abuse.</td>
<td>2 To break down barriers and obstacles impeding access to justice when people with disabilities report violence.</td>
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<td>To disseminate the offer made by the state with regard to services and restoration of rights for women with disabilities and carers, and to people with disabilities in general.</td>
<td>To draw up and disseminate widely advocacy manuals and provide the psychosocial guidance this group deserves.</td>
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<td>To draw the public’s attention to and condemn the stark vulnerability of girls and women with disabilities.</td>
<td>To draw up information, training and awareness programmes on fundamental rights and freedoms, access to justice and support mechanisms for victims of all types of abuse targeted at families, service providers, those close to girls and women with disabilities and representatives of disability organisations and their families.</td>
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<td>To review substantive penal and procedural laws</td>
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disabilities and carers, who are completely exposed to the risk of abuse and violence, including at the hands of those they rely on for healthcare, support and, in some cases, care.

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<tr>
<th>People with disabilities suffer constantly because they do not live in a favourable and secure environment, and most do not enjoy minimum acceptable conditions.</th>
<th>District programme &quot;Bogota ensures the inclusion of people with disabilities&quot;.</th>
<th>Ensure people with disabilities are able to enjoy a favourable and secure environment free from violence and with minimum acceptable conditions conducive to good health: safe drinking water, clean air, freedom from visual and noise pollution, a</th>
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<td>to make it possible to detect cases of violence against women in which disability is a relevant factor and to administer more severe punishments on the grounds of the victim's greater vulnerability. To abolish substituted decision-making systems, such as those providing for incapacitation and the appointment of guardians and legal representatives, which largely prevent girls and women with disabilities from enjoying their sexual and reproductive rights, among others. To replace these systems with supported decision-making programmes that take into account the particular circumstances of the individual who is, first and foremost, a woman.</td>
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To make women with disabilities and carers more visible as a group in events marking the 25th of November in local- and district-level activities.

1 To plan joint multi-institution actions which ensure basic living conditions for persons with all types of disability.
conditions conducive to good health: safe drinking water, clean air, freedom from visual and noise pollution, well-prepared foodstuffs, education, housing and recreational activities. They also live in violent environments which do not provide basic equipment to secure access, mobility, participation and strengthening relationships which are characteristic of cities.

### Right to an Equal Education.

<table>
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<tr>
<th>Rationale</th>
<th>Programme</th>
<th>Goals</th>
<th>Actions</th>
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<tbody>
<tr>
<td>Young men and women with disabilities need to travel long distances to join institutions where they can gain academic qualifications. This requires a major investment in terms of resources and time, as local schools are neither physically accessible nor have the technologies required.</td>
<td>Guaranteed real education for all men and women.</td>
<td>Ensure the right to a free education at all stages, including formal and non-formal professions, for all men and women with disabilities and carers. Such education must be accessible in accordance with their living conditions.</td>
<td>Earmark suitable resources to create at least one school per town or village with a significant number of students and including all disability groups in its programmes. Safe accessibility in terms of physical, social, cultural and technological features must be</td>
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<td>There is an urgent need to protect, guarantee and promote effective enjoyment of women with disabilities’ and carers’ right to education to improve their living conditions and enable them to gain employment.</td>
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<td>Formal and non-formal education programmes which incorporate the opportunity for women with disabilities and carers to develop productively.</td>
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<td>Education centre offering comprehensive support in each town or village, with access to information regarding education according to disability.</td>
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<td>Ensure women with disabilities may access to all education services (at all levels and both formal and non-formal) and that these services are accessible.</td>
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<td>Enhance opportunities for women carers to continue developing their life projects through inclusion in education and production, ensuring sufficient income to lead a decent life.</td>
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<td>Ensure education leading towards employment and productivity for women with disabilities, their carers and their families.</td>
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<td>Design and implement formal education programmes which incorporate the opportunity for women with disabilities and carers to develop productively.</td>
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<td>Strengthen current support and advocacy networks, and set up new spaces for participation to address the educational needs and interests of women with disabilities and carers.</td>
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<td>Participate in local and district institutions and social organisations in delivering programmes and training workshops, which increase their employment opportunities.</td>
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<td>Cooperate with the same organisations to facilitate access to employment.</td>
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<td>Create programmes enabling people with disabilities to become</td>
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1. Increase allowances for people with disabilities to ensure their continued participation in education and training processes.
| Education processes which encourage the development of the intellectual skills of women with disabilities and carers. Regardless of age, guarantee access to formal and non-formal education and training. | Workshop leaders and/or formal education teachers. Regardless of age, guarantee access to formal and non-formal education and training. |
| Communication with education centres and institutions at district level is difficult as no-one is trained in sign language to attend to the needs of persons with hearing disabilities. This prevents them from receiving the support they require to demand their rights and is a flagrant violation of their right to privacy. Ongoing training programmes are needed to improve communication with persons with hearing disabilities; public servants, private-sector employees, carers and women with disabilities need to learn sign language and other non-formal means of communication. Art as a form of communication. Sign language should be included in the curriculum as part of efforts to recognise and respect | Sign language training programmes for public- and private-sector employees and people with disabilities. Ensure people with hearing disabilities enjoy effective and permanent communication in public and private spaces to guarantee accessibility and inclusion, and the exercise of all their rights. Deliver ongoing training courses in sign language for public- and private-sector employees and the general public. These courses should be given by people with hearing disabilities and experience in teaching as this is the only way to ensure the training is carried out properly. |
diversity.

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<th>RATIONALE</th>
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<tr>
<td>Activities regarding leisure time, use of free time, enjoyment of the city and other tourist sites beyond the usual</td>
<td>Art, culture and heritage for and by women with disabilities and carers.</td>
<td>Ensure people with disabilities and carers can access art, culture and tourism.</td>
<td>1 Include people with disabilities in tourism, art and culture. 2 Visibilise art and culture as a potential</td>
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environment, to which people with disabilities, their families and their carers have the right to enjoy on an equal basis with others, have not been included at district or local level. There has been no consideration of the participation of PWD and their families when designing and executing tourism projects, not only for their own benefit but for the enrichment of their communities.

No efforts have been made to maintain, enrich and disseminate the cultural and artistic expressions of people with disabilities and their families.

No provision for spaces and mechanisms to enable people with disabilities and their families to express their feelings and ways of expressing their feelings and thoughts in different formats, supporting Media and technologies.

Failure to promote discussion and the

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<th>Identify people with disabilities and carers working in the arts and culture sector.</th>
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<td>life project.</td>
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<td>Promote professionalism in the art sector among women with disabilities and carers.</td>
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<td>4</td>
<td>Tourist and culture activities for women with disabilities and carers, and boys and girls.</td>
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policies of different groups and the artistic expressions of PWD in premises and spaces in District Culture Policies (DPC), and in District and Local Culture Systems.

Nothing is done to promote the equal participation of PWD in cultural life at district level.

| Society defines, perceives and places people with disabilities according to certain characteristics and behaviour, and often views them as disabled and incapable. These stereotypes violate their dignity and prevent them from developing. | Public service campaign to raise awareness of disability and the role of carers. | Sensitise the general public towards a culture which embraces disability and recognises the work performed by carers. |
|---|---|
| There is a need for awareness strategies, research and leadership to transform preconceptions, portrayals and beliefs surrounding disability among both the general public and PWD. There is a lack of initiatives and discussion involving the District Disability System and | 1 Awareness of the role of carers (women carers and practitioners). |
| 2 Promote an inclusive and non-sexist language in the Media. |
| 3 Eliminate discrimination against women carers and women with disabilities. |
| 4 Media network. |
| In particular the goal is to gain a deeper understanding of the concept of disability in relation to social issues, of diversity and the relationship with the surrounding environment, and of respect for the potential people with disabilities have. |
academia regarding the development and dissemination of knowledge to promote a greater understanding by citizens of what it means to have a disability.

Ensure mechanisms are in place to enable PWD and their families to participate in generating a greater understanding of disability, taking into account diversity, languages, and particular narratives and logic.

<table>
<thead>
<tr>
<th>Failure to formulate plans and projects to promote greater access to a physically-accessible environment and to special or adapted spaces for sports training or competitions which ensure the inclusion of people with disabilities.</th>
<th>Sport and physical activities as a project for people with disabilities to lead a decent life.</th>
<th>Raise awareness of high-performance sport by people with disabilities as a worthy life project.</th>
</tr>
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<tbody>
<tr>
<td>Failure to generate or encourage means to enable sports organisations of people with disabilities, in partnership with the District Institute for Recreation and Sport</td>
<td>Ensure backing for women carers as an integral part of the disability movement.</td>
<td>1 Ensure high-performance athletes with a disability receive a decent income.</td>
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<td>2 Provide logistical support to ensure women carers are able to escort sportswomen to events and competitions.</td>
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<td>3 Provide training to sports and physical activities practitioners to allow them to work with people with disabilities.</td>
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<td>4 Professionalisation</td>
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</table>
(IDRD), or whichever body is responsible, to design and develop district- or local-level projects to strengthen and promote Paralympic sport in the district through training programmes, competitions, incentives for sportsmen and sportswomen in accordance with their performances at local and district level, support schemes at different levels of training, provision of sports equipment up to élite level, subsidised transport, medical support and overall technical and administrative support to ensure people with disabilities are able to exercise this right.

## RIGHT TO HOUSING.

<table>
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<tr>
<th>RATIONALE</th>
<th>PROGRAMME</th>
<th>GOALS</th>
<th>ACTIONS</th>
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<tbody>
<tr>
<td>People with disabilities are</td>
<td>Free and accessible housing programme for all people with disabilities, ensuring the houses are accessible to all.</td>
<td>Provide people with disabilities with decent, accessible and affordable housing which meets their physical, sensory and mental needs and those of</td>
<td>Call for local, district and national bodies to provide the resources and conditions needed for the construction of accessible housing for people</td>
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<td>unable to work and their carers</td>
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<tr>
<td>work full-time and so cannot</td>
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<td>gain employment; as a result,</td>
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<td>they are</td>
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<tr>
<td>People with disabilities are unable to live independently and cannot participate fully in all areas of life. There is a lack of relevant measures to ensure suitable and equal access for people with disabilities to the physical environment, transport systems, recreational and cultural facilities, housing, information and communication systems and to other services and facilities which are denied access to credit facilities as they are unable to pay back. PWD, who have access to housing due to their financial difficulties, do not have financial resources for the upkeep of their home.</td>
<td>Programmes to improve housing for PWD who own plots and houses, or who build their own house.</td>
<td>their families. When under construction, consideration should be given to individual and collective interests.</td>
<td>Call for housing renovation programmes targeting people with disabilities.</td>
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<tr>
<td>Local, district and national programmes to provide and equip public and private spaces such as pavements, parks, streets and bridges, among others.</td>
<td>Adjustments in mobility technologies in public and private spaces.</td>
<td>Ensure all PWD enjoy accessible and safe public thoroughfares to enable them to move freely.</td>
<td>Call for resources such as tax benefits for people with disabilities and with limited resources.</td>
</tr>
<tr>
<td>Ensure all PWD enjoy accessible and safe public thoroughfares to enable them to move freely.</td>
<td>Call on authorities to upgrade all public spaces, roads, parks and pavements to make them accessible and enable PWD to move freely and safely.</td>
<td>Call on authorities to upgrade all public spaces, roads, parks and pavements to make them accessible and enable PWD to move freely and safely.</td>
<td>Raise awareness among those responsible for executing building projects which cater for diversity.</td>
</tr>
<tr>
<td>Call for resources such as tax benefits for people with disabilities and with limited resources.</td>
<td>Awareness programmes targeted at drivers and pedestrians on current regulations regarding the mobility of PWD.</td>
<td>Awareness programmes targeted at drivers and pedestrians on current regulations regarding the mobility of PWD.</td>
<td>Create mechanisms to ensure current regulations on accessibility, use of</td>
</tr>
</tbody>
</table>

**Programmes to improve housing for PWD who own plots and houses, or who build their own house.**

- **Call for housing renovation programmes targeting people with disabilities.**
- **Call for resources such as tax benefits for people with disabilities and with limited resources.**
- **Create mechanisms to ensure current regulations on accessibility, use of mobility technologies in public and private spaces.**
open to the public or for public use in both rural and urban areas.

| Due to a lack of financial resources and the constant need for PWD and carers to travel, and as a result of the high cost of public and private transport and the difficulties in travelling with a wheelchair, oxygen and other mobility devices, an urgent solution is needed to enable women with disabilities, carers and other people with disabilities are able to travel without difficulties and with their families to healthcare facilities and other facilities they need to visit frequently.

Transport services to enable PWD to access healthcare services are not available.

There is a need to call on the competent authorities to ensure clear marking of pedestrian pathways and cycle paths and ensure respect for public spaces and new buildings are met to enable PWD to move freely.

| Programme for accessibility and improving the life quality of people with disabilities. |
| Allow PWD free access to all transport systems, thus enabling them to travel to all everyday activities and improve their quality of life. |
| Enter into dialogue with the transport department and other relevant authorities to achieve these goals. |

Improve transport solutions and enhance comfort for PWD.

Equip public transport systems with additional accessible seating.
those spaces reserved exclusively for the use of PWD.

Penalties should be in place for those who fail to comply with mobility regulations.

There is a need to ensure new and old buildings meet current regulations regarding the provision of ramps, lifts, signage, Braille, audio and video signage, adaptations to entrances and exits in public buildings and adapted toilets.

### RIGHT TO HEALTH.

<table>
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<tr>
<th>RATIONALE</th>
<th>PROGRAMME</th>
<th>GOALS</th>
<th>ACTIONS</th>
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<tbody>
<tr>
<td>Following the restructuring of healthcare services in second-level hospitals, and especially in orthopaedic and rehabilitation services, these are now located far from areas with higher numbers of people with disabilities. Women with disabilities and carers are obliged to</td>
<td>Full range of services for women with disabilities and carers.</td>
<td>Introduce and guarantee the right to health and full rehabilitation services for women with disabilities and carers in order to enhance their life quality, ensuring the person receiving care is guaranteed her fundamental rights.</td>
<td>1. Plans and projects targeting disability issues must be based on a prior analysis of local needs and the characteristics of the local population and baseline data from previous years.</td>
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<td>2. When a woman or male carer shows the identity card of the person with disability</td>
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<tr>
<td>travel from one town to another, and this has an impact on their financial situation, health and time, which results in a decrease in life quality.</td>
<td>Health centres for PWD offering a full range of services.</td>
<td>he/she should be given priority in accessing healthcare services.</td>
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<tr>
<td>District development plans should include a higher level of healthcare for people with disabilities and carers than SISBEN.</td>
<td>In the district development plan, introduce and guarantee a scheme to build and equip health and rehabilitation centres following a process of inter-institutional dialogue and in line with the Social Management Strategy (GSI) or a similar strategy.</td>
<td>Extend the free healthcare programme in order to provide cover without discrimination to all types of disability and carers.</td>
<td></td>
</tr>
<tr>
<td>1 Refer to Decree 470, chapter I: “Development of capabilities and opportunities”. Article 10, subsections g and h.</td>
<td>Based on the statistics coming out of DANE in the survey on people with disabilities, there is a need to extend cover and ensure access to new technologies and technical aids.</td>
<td>2 Assess, extend and</td>
<td></td>
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</tbody>
</table>
modify the guidelines for technical aids based on the needs of PWD, new technical and technological, and bearing in mind that it may be necessary to have more than one aid (kit). There should be an advisory committee including men and women with disabilities and carers.

Resources for these projects and programmes should be included in the national disability development plan with CONPES.

| According to a study carried out in the district capital, generally it is women who care for people with disabilities. To secure the right to work, a draft law is needed which ensures full economic rights and recognises their contribution to the economy of the city. | State programme to employ paid carers to assist people with disabilities daily. | Enhance the quality of life of carers and their families, and offering them the chance to care for other people with disabilities, especially when the person they have taken care of all their lives passes away to make them feel useful and provide a salary for subsistence. | The health sector must encourage support for agreement 303 to ensure it continues to make progress in parliament. Reach agreements with health-sector bodies so that women carers have some type of employment contract when caring for people with disabilities. Develop programmes and projects to Foster inclusion in the labour market and enhance the health of carers. |
## RIGHT TO EMPLOYMENT IN DECENT CONDITIONS.

<table>
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<tr>
<th>RATIONALE</th>
<th>PROGRAMME</th>
<th>GOALS</th>
<th>ACTIONS</th>
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<tbody>
<tr>
<td>No plans or programmes are in place to promote inclusion in the labour market for people with disabilities through legislation which places obligations on public- and private-sector businesses from a corporate social responsibility perspective.</td>
<td>Programme to further inclusion in employment among PWD.</td>
<td>Formulate, promote and develop plans and programmes to promote inclusion in the labour market for people with disabilities through legislation which places obligations on public- and private-sector businesses from a corporate social responsibility perspective.</td>
<td>Encourage business initiatives for women with disabilities and carers to improve their quality of life.</td>
</tr>
<tr>
<td>People with disabilities do not have access to decent employment. Furthermore, if they have a moderate or mild disability no efforts are made to facilitate their joining the labour market.</td>
<td>Skills programmes targeted at people with mild, severe and moderate disabilities.</td>
<td>Formulate plans and programmes to boost inclusion in the labour market for those people with a severe disability who cannot be employed in profitable economic activities or mainstream jobs. These plans and programmes should be managed and monitored in close cooperation with productive units and private businesses.</td>
<td>Set up working groups with foundations, NGOs and productive units to foster the inclusion of people with disabilities in those crafts and trades they are skilled to perform. Establish training</td>
</tr>
</tbody>
</table>
market or learning a trade. This creates poverty and poorer quality of life. Programmes should include productivity and employment strategies and ensure a decent income and the corresponding social security benefits. Carers and families should be given the opportunity to participate in these processes. Programmes in crafts and trades with a view to boosting employment among people with severe or moderate disabilities.

Provide financial support to create productive units to enable people with disabilities to have a permanent job and income, thus improving their quality of life and that of their families.

Review regulations in this area, reach the necessary agreements and strengthen them where necessary.

Develop plans and programmes to enable PWD and their families are able to access mainstream and targeted training programmes for employment and entrepreneurship. These plans and programmes should promote access to and continuance in the labour market. To complement these efforts, targeted programmes for PWD are needed to enable them to join the production and sales processes in line with the environment in which they live (rural or urban).
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<tbody>
<tr>
<td>Dialogue on actions by the education and business sectors to ensure the real right to work of people with disabilities, their families and their carers</td>
<td>Mobilise to identify the real needs and set up networks of carers. Women who care for people with disabilities should be recognised for the care work they perform (Law 1413 [2010]). Women with disabilities and carers should be granted a pension.</td>
<td>There are no entrepreneurship programmes for people with disabilities to support them in drawing up a business plan, provide seed funding and ongoing guidance for small business growth. There are no specialised training programmes for women with disabilities and carers.</td>
</tr>
</tbody>
</table>
strengthen businesses and cooperatives.

Encourage official and social support networks by setting up organisations, businesses, sheltered workshops, cooperatives and organisations of people with disabilities to identify new ways to produce goods and services in accordance with the needs of the country, and offer training in production and sales methods which are credible and facilitate access to credit and funding.

RIGHT TO PARTICIPATION AND REPRESENTATION.

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<tr>
<th>RATIONALE</th>
<th>PROGRAMME</th>
<th>GOALS</th>
<th>ACTIONS</th>
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<tbody>
<tr>
<td>There are no spaces for the social inclusion of PWD or their carers, families and social organisations either in the public or private sectors.</td>
<td>Citizens' participation programme targeted at people with disabilities and carers to encourage political engagement.</td>
<td>Draw up robust strategies to eliminate discrimination, both in terms of generating links and solidarity where participants learn to include differences and individual aspirations in group goals, and where collectively progress is made on developing and strengthening the social fabric.</td>
<td>Develop comprehensive training and education programmes for people with disabilities in accordance with the diversity of disabilities. Provide training on the use and management of resources for people with disabilities in line with public policies. Foster programmes targeted at women</td>
</tr>
</tbody>
</table>
Conditions are not conducive to participation.

Public policies in the field of participation should contain guidelines that facilitate participation by people with disabilities.

Create new spaces where people with disabilities and carers may participate and strengthen existing spaces.

Discuss the specific needs people with disabilities have in respect of the public participation policy.

Promote a diversity-friendly approach in spaces for participation.

Link more male and women leaders to local and district-level spaces for participation.

Strengthen existing spaces for participation in terms of disability. Facilitate access to participation processes.

Further and promote participation by people with disabilities in decision-making in district-level planning through public-sector
No specific data is available on people with disabilities, age or type of disability, among others, to enable suitable public policies to be put in place.

Local development plans and, in general terms, spending at district level, does not take people with disabilities into account except in targeted programmes.

| Actions | Profiling to encourage participation. | Carry out research on people with disabilities in order to identify their needs and interests. | Perform a census. Identify needs. Develop targeted programmes in accordance with age and type of disability. Earmark funding in line with the number of people with disabilities and the needs of women with disabilities and women's carers. |

| | | | |
Chapter 25

Women With Disabilities Australia.

Women With Disabilities Australia (WWDA) - submission to the CRPD Committee. 9th Session, 15th - 19th April, 2013.

Half Day of General Discussion on Women and Girls with Disabilities.

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Email: wwda@wwda.org.au, Web: www.wwda.org.au

Contact: Carolyn Frohmader, Executive Director.

Key Issues for Consideration for the Half Day of General Discussion on Women and Girls with Disabilities.

1. Women With Disabilities Australia (WWDA)\(^{486}\) thanks the CRPD Committee for the opportunity to contribute this brief submission to the Committee's 9th session Half Day of General Discussion on Women and Girls with Disabilities. Strengthening the protection of human rights of women and girls with disabilities in Australia is a key priority for WWDA.\(^{487}\) Our work is grounded in a rights based framework which links gender and disability issues to a full range of civil, political, economic, social and cultural rights.

2. As a member state of the United Nations, and as a party to a number of human rights Conventions and instruments which create obligations in relation to gender equality and to disability rights, Australia has committed to take all appropriate measures, including focused, gender-specific measures to ensure that disabled women and girls experience full and effective enjoyment of their human rights.\(^{488}\)

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\(^{486}\) Women With Disabilities Australia (WWDA) is the peak non-government organisation (NGO) for women and girls with all types of disabilities in Australia. For more detailed information on WWDA, go to: [http://www.wwda.org.au](http://www.wwda.org.au)


However, women and girls with disabilities in Australia have failed to benefit from these provisions in international human rights law. Instead, systemic prejudice and discrimination against women and girls with disabilities continues to result in widespread denial, and violation of, their human rights and fundamental freedoms.

The Right to Freedom from Torture or Cruel, Inhuman or Degrading Treatment or punishment: Forced and Coerced Sterilisation of Girls and Women with Disabilities.

3. For more than twenty years, women with disabilities and their allies have been asking successive Australian Governments to show national leadership and undertake wide ranging reforms to stop the forced/involuntary and coerced sterilisation of women and girls with disabilities. These recommendations to the Australian Government for action have been echoed, supported and re-iterated by several international human rights treaty monitoring bodies since 2005.489

4. Forced/involuntary sterilisation – that is, sterilisation in the absence of the free and informed consent of the individual concerned490 - is an act of violence, a form of social control, and a clear and documented violation of the

489 See: UN Committee on the Rights of the Child; Consideration of reports submitted by States Parties under Article 44 of the Convention; Concluding observations: Australia; Sixtieth session, 29 May–15 June 2012; CRC/C/AUS/CO/4; UN General Assembly Human Rights Council (2011) Draft report of the Working Group on the Universal Periodic Review: Australia, 31 January 2011, A/HRC/WG.6/10/L. 8 [para. 86.39]. The final document will be issued under the symbol A/HRC/17/10; Committee on the Elimination of Discrimination against Women (2010) Concluding observations of the Committee on the Elimination of Discrimination against Women: Australia. CEDAW Forty-sixth session, 12 – 30 July 2010. CEDAW/C/AUS/CO/7; UN Committee on the Rights of the Child, Fortieth Session, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations: Australia, CRC/C/15/Add.268, 20 October 2005, paras 45, 46 (e); CRC General Comment No.9 [at para.60] states: ‘The Committee is deeply concerned about the prevailing practice of forced sterilisation of children with disabilities, particularly girls with disabilities. This practice, which still exists, seriously violates the right of the child to her or his physical integrity and results in adverse life-long physical and mental health effects. Therefore, the Committee urges States Parties to prohibit by law the forced sterilisation of children on grounds of disability.’; UN Committee on the Rights of the Child (CRC), General comment No. 13 (2011): Article 19: The right of the child to freedom from all forms of violence, 17 February 2011, CRC/C/GC/13 [paras.16, 21]; CESCR General Comment No.5 [at par 31] states: Women with disabilities also have the right to protection and support in relation to motherhood and pregnancy. As the Standard Rules state, “people with disabilities must not be denied the opportunity to experience their sexuality, have sexual relationships and experience parenthood”....Both the sterilization of, and the performance of an abortion on, a woman with disabilities without her prior informed consent are serious violations of Article 10 (2); See: Human Rights Committee (2000) International Covenant on Civil and Political Rights (CCPR), General Comment No. 28: Equality of rights between men and women, 29 March 2000, CCPR/C/21/Rev.1/Add.10, [paras.11 & 20].

490 Sterilisation which is performed in an emergency situation for life-saving purposes is not considered to be forced sterilisation.
right to be free from torture and other cruel, inhuman, or degrading treatment or punishment.\footnote{491} \footnote{492} \footnote{493} The UN Special Rapporteur on Torture has clarified that sterilisation in this context includes instances in which sterilisation has been authorised by a third party, such as a parent or legal guardian, without the individual's consent.\footnote{494} \footnote{495}

5. Under current laws for children and adults who have an impaired capacity to consent, and who are unable to make an independent decision about whether to undergo a sterilisation procedure, Australian laws provide for authorisation by a court or guardianship tribunal.

According to the Australian Government, these laws are ‘designed to protect the rights of those involved, and to ensure procedures are authorised only where they are in the person's best interests.’\footnote{496} The Australian Government has to date, argued that it: "considers that the 'best interests' test as articulated and applied in Australia is consistent with Australia's international obligations."\footnote{497}

However, the Committee on the Rights of the Child (CRC) has made it clear that the principle of the 'best interests of the child' cannot be used to justify practices which conflict with the child's human dignity and right to physical integrity:

"The Committee emphasizes that the interpretation of a child's best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence. It cannot be
used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity. An adult’s judgment of a child’s best interests cannot override the obligation to respect all the child’s rights under the Convention.\textsuperscript{498}

6. Successive Australian Governments have shown scant regard for the strong and consistent recommendations from United Nations Treaty bodies to “enact national legislation prohibiting, except where there is a serious threat to life or health, the use of sterilisation of girls, regardless of whether they have a disability, and of adult women with disabilities in the absence of their fully informed and free consent.”\textsuperscript{499}

7. WWDA, consistent with a number of UN treaty monitoring bodies and special procedures, calls on the Australian Government to:

a) Prohibit by law, the sterilisation of girls, regardless of whether they have a disability, and of adult women with disabilities in the absence of their fully informed and free consent.

b) Develop policies and programmes that enable disabled women and girls to realise their human rights on an equal basis as others.

c) Promptly and impartially investigate, prosecute and punish all instances of forced sterilisation.

d) Provide adequate redress and compensation, including rehabilitation, to all women and girls with disabilities who have been forcibly sterilised.

The Right to Freedom from Torture or Cruel, Inhuman or Degrading Treatment or Punishment: Forced Electroshock, Seclusion, Restraint & Forced Psychiatric Interventions.

8. Women and girls with disabilities in Australia continue to be subjected to multiple forms and varying degrees of “deprivation of liberty”, and they are

\textsuperscript{498} CRC Committee General Comment No. 13 [at para.61] states: “The Committee emphasizes that the interpretation of a child’s best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence. It cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child’s human dignity and right to physical integrity. An adult’s judgment of a child’s best interests cannot override the obligation to respect all the child’s rights under the Convention.”

subjected to unregulated or under-regulated restrictive interventions and practices.\textsuperscript{500} \textsuperscript{501} This is particularly the case for women and girls with intellectual and/or cognitive disabilities, developmental disabilities and those with psychosocial disabilities.\textsuperscript{502}

Such practices are often imposed as a means of coercion, discipline, convenience, or retaliation by staff, family members or others providing support.\textsuperscript{503} These practices are not limited to institutions such as group homes, but also occur in educational settings (such as schools), hospitals, residential aged care facilities and other types of institutions (such as hostels, boarding houses, psychiatric/mental health community care facilities, prisons, and supported residential facilities).

9. All Australian states and territories have provisions for the ‘treatment’ of people with mental illnesses without consent.\textsuperscript{504} Legislation typically allows for involuntary admission to hospital and, in most jurisdictions, pharmacological or other treatments without consent.

Data on the use of Electroconvulsive therapy (ECT) on involuntary people in Australia is difficult to source, however, where it is available, indicates that three times more women than men are subject to the practice.\textsuperscript{505} Medicare statistics for 2007-2008 record 203 ECT treatments on children younger than 14 -


\textsuperscript{502} In Australia the definition of seclusion is both legislated and policy driven. Seclusion can be understood as ‘the confinement of a person alone at any hour of the day or night in a room, the door(s) and window(s) of which cannot be opened by the person from the inside; or the confinement of a person alone at any hour of the day or night in a room in which the door(s) or window(s) are locked from the outside or their opening is prevented by any other means, such as a person holding the door shut; or where exit from a place is prevented by the presence of another person.


\textsuperscript{504} For a detailed analysis of forced psychiatric interventions and practices, see the Center for the Human Rights of Users and Survivors of Psychiatry (CHRUSP) at: http://www.chrusp.org

including 55 aged four and younger.\textsuperscript{506} Certain legislation in Australia currently allows for children to undergo ECT provided they, or their parent or guardian have given informed consent.\textsuperscript{507}

10. The UN Special Rapporteur on Torture has clarified that ‘the discriminatory character of forced psychiatric interventions, when committed against persons with psychosocial disabilities, satisfies both intent and purpose required under Article 1 of the Convention against Torture’.\textsuperscript{508}

In 2009, the United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, made it clear that policies and legislation sanctioning non-consensual treatments lacking therapeutic purpose or aimed at correcting or alleviating a disability, including sterilizations, abortions, electro-convulsive therapy and unnecessarily invasive psychotropic therapy, violate the right to physical and mental integrity and may constitute torture and ill-treatment.\textsuperscript{509}


11. Women and girls with disabilities experience alarmingly high rates of all forms of violence, exploitation and abuse from a range of perpetrators yet remain largely excluded from violence prevention legislation, policies, services and supports. They continue to be assaulted, raped and abused at a rate of at least two times greater than other women, and are at greater risk of severe forms of intimate partner and other forms of violence.

More than 70\% of women with a wide variety of disabilities have been victims of violent sexual encounters at some time in their lives.\textsuperscript{510} Women and girls with disabilities who live in institutions are at particular and significant risk of violence. The overwhelming majority of perpetrators of sexual abuse of disabled girls and women in institutions are male caregivers, a significant portion of whom are paid

\textsuperscript{509} UN General Assembly (2009), Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; UN Doc. A/64/272, August 2009.

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service providers who commit their crimes in disability service settings, and other forms of institutional settings.\textsuperscript{511}

Compared to non-disabled women, women with disabilities experience violence at significantly higher rates, more frequently, for longer, in more ways, and by more perpetrators, yet programmes and services for this group either do not exist or are extremely limited.

12. The Australian Government concedes that violence against women with disabilities in Australia is 'widespread', that women with disabilities, particularly intellectual disabilities, are extraordinarily vulnerable to violence and abuse, and that disabled women experience significant barriers in accessing domestic violence services and support.\textsuperscript{512}

Yet, successive Australian Governments have shown little interest in, and taken minimal action to address violence against women and girls with disabilities. There have been, and remain, significant systemic failures in legislation, regulatory frameworks, policy, administrative procedures, availability and accessibility of services and support, to prevent and address violence against women and girls with disabilities.

13. It is widely acknowledged that Indigenous Australians have rates of ill-health and disability substantially higher than other Australians.\textsuperscript{513} Australian Bureau of Statistics data shows that nationally, 50% of Indigenous Australians aged 15 years and over have a disability or long-term health condition. Over half are female (51%).\textsuperscript{514}

14. Indigenous women are 35 times more likely to suffer family violence\textsuperscript{515} and sustain serious injury requiring hospitalisation, and 10 times more likely to die due to family violence, than non-Indigenous women.\textsuperscript{516}

\textsuperscript{512} In Frohmader, C. (2011) Op Cit.
\textsuperscript{513} Australian Institute of Health and Welfare (2011) Aboriginal and Torres Strait Islander people with disability: wellbeing, participation and support; IHW 45. Canberra: AIHW.
\textsuperscript{515} The nature of violence from an Indigenous perspective is impacted by numerous systemic factors including dispossession from land and traditional culture, breakdown of community kinship systems, racism and vilification, entrenched poverty, overcrowding and inadequate housing, child removal policies and the loss of traditional Aboriginal female roles, male roles and status. See: Family Law Council (2009) Op Cit.
15. Human rights treaty monitoring bodies and special procedures have urged States Parties to address all forms of violence against women and girls with disabilities. In 2010, the CEDAW Committee made very strong recommendations regarding the need for urgent action by Australian governments to address the abuse and violence experienced by women with disabilities living in institutions or supported accommodation.

Yet, violence against women and girls with disabilities in institutions remains largely outside the increasing public debate and policy responses to violence against women.

The Right to Found a Family and to Reproductive Freedom: Removal of Children from Disabled Mothers.

16. Although the right to ‘found a family’ and to ‘reproductive freedom’ is clearly articulated in a number of international human rights instruments to which Australia is a party, for many women with disabilities in Australia, such fundamental human rights are not realisable.

Instead, women with disabilities remain discouraged or denied the opportunity to bear and raise children. They have been, and continue to be perceived as asexual, dependent, recipients of care rather than care-givers, and generally incapable of looking after children.

Alternatively, women with intellectual disabilities in particular may be regarded as overly sexual, creating a fear of profligacy and the reproduction of disabled babies,

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519 See for example: International Covenant on Economic, Social and Cultural Rights (Article 10); International Covenant on Civil and Political Rights (Article 23); Convention on the Elimination of All Forms of Discrimination against Women (Article 16); Convention on the Rights of Persons with Disabilities (Article 23).


521 Ibid.
which often constitutes a justification for their sterilisation.\textsuperscript{522} These perceptions, although very different, often result in women with disabilities being denied the right to participate in decision-making processes that affect their lives.

According to the UN Special Rapporteur on Violence Against Women, ‘although society’s fear that women with disabilities will produce so-called “defective” children is for the most part groundless, such erroneous concerns have resulted in discrimination against women with disabilities from having children.’\textsuperscript{523}

17. Australia has a history of removing children from their natural parents based on the personal characteristic of the parents, such as indigenous background or marital status. In Australia today, a parent with a disability is up to ten times more likely than other parents to have a child removed from their care.\textsuperscript{524}

Courts and child protection authorities are removing children from their parents on the basis of the parent’s disability rather actual neglect or abuse. A parent’s capacity to parent his or her child, even with full community support is not properly assessed.\textsuperscript{525}

18. In Australia, the denial of the right to reproductive freedom and the right to found and maintain a family takes many forms for women with disabilities, including for example: systematic exclusion from comprehensive reproductive and sexual health education and care, limited voluntary contraceptive choices, a focus on menstrual suppression and control, poorly managed pregnancy and birth, involuntary abortion, forced sterilisation, and the denial of rights to parenting.

Disabled women experience a range of restrictions to realising their right to found and raise a family. These economic, social and environmental barriers and restrictions are many, varied, and entrenched – yet remain largely ignored in


\textsuperscript{524} This happens in two main ways: a) the child is removed by child protection authorities and placed in foster or kinship care; and b) a Court, under the Family Law Act, may order that a child be raised by the other parent who does not have a disability or by members of the child’s extended family. See: Victorian Office of the Public Advocate (OPA) (2012) OPA Position Statement: The removal of children from their parent with a disability. \url{http://www.publicadvocate.vic.gov.au/research/302/}

Australian family related research. The UN Special Rapporteur on Violence Against Women has recently reported that 'research shows that no group has ever been as severely restricted, or negatively treated, in respect of their reproductive rights, as women with disabilities.'


19. Women with disabilities in Australia not only represent one of the groups with the highest risk of poor health, but also experience socioeconomic disadvantage, social isolation, multiple forms of discrimination, poor access to services and inadequate health care.

For many women and girls with disabilities, the services and programmes they require to realise their right to health are simply not available to them. For example, support for choices and services in menstrual management, contraception, abortion, sexual health management, pregnancy, birth, parenting and menopause remain inappropriate, absent or inaccessible.

In many areas of Australia, breast and cervical cancer screening services are not available to women with disabilities, despite the fact that breast cancer is one of the most common cancers for females in Australia and one of the leading causes of death from cancer in females. Women and girls with disabilities experience direct human rights violations that result in ill-health; experience significant disadvantage in the social determinants necessary for health; and are largely absent in the health promotion agenda.

20. Women with disabilities spend more of their income on medical care and health related expenses than men with disabilities. Women with disabilities between the ages of 18 and 44 have almost 2.5 times the yearly health care expenditures of women who are not disabled. Women with disabilities

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between the ages of 45 and 64 have more than three times the average yearly expenditures of their non-disabled counterparts.530

21. In its 2006 Concluding Observations [Australia], the CEDAW Committee expressed its regret at the absence of sufficient information and data on women with disabilities in Australia's combined fourth and fifth periodic report. The Committee also expressed its concern at the lack of access to healthcare for women with disabilities, and called on the Australian Government to develop the necessary infrastructure to ensure that disabled women have access to all health services.531

Yet, in 2013, the situation remains largely unchanged. Successive Australian governments have, to date, failed consistently in their obligations to respect, protect, and fulfil the rights of women with disabilities and, in doing so, have denied women with disabilities the freedoms and the entitlements for health.

The Right to Work: Discrimination in Employment.

22. Women with disabilities in Australia are significantly disadvantaged in employment in relation to access to jobs, in regard to remuneration for the work they perform, and in the types of jobs they gain. Working-age women with disabilities who are in the labour force are half as likely to find full-time employment (20%) as men with disabilities (42%); twice as likely to be in part-time employment (24%) as men with disabilities (12%); and regardless of full-time or part-time status, are likely to be in lower paid jobs than men with disabilities.532


recommended, amongst other things that ‘the Government as a matter of priority collect relevant information on workforce participation of women with disabilities to provide a basis for pay equity analysis and inform future policy direction.’ This recommendation has never been enacted.

24. In 2010, the UN CEDAW Committee expressed its concern at the continued disadvantage experienced by women with disabilities with regard to educational and employment opportunities; including the limited access to job opportunities for disabled women.

The Committee recommended, both in its 2006 and 2010 Concluding Observations [Australia] that “the State Party adopt urgent measures to ensure that women with disabilities are better represented in decision-making and leadership positions, including through the adoption of temporary special measures such as quotas and targets, in accordance with Article 4, paragraph 1 of the Convention and the Committee’s general recommendation No. 25.”

These recommendations have not been taken up by the Australian Government, and disabled women continue to experience marginalisation and exclusion in the Australian labour market – a situation that has remained unchanged for almost two decades.534


25. The CEDAW Committee in both its 2006 and 2010 Concluding Observations [Australia] has expressed its concerns at the slow progress in ensuring the equal participation of women with disabilities in leadership and decision-making positions, in public and political life as well as their equal access to education, employment and health.

The Committee has re-iterated that the measures taken by the Australian Government to enhance the participation of women with disabilities in public life remains inadequate. The Committee continues to be concerned that the State Party does not favour adoption of temporary special measures in the form of compulsory targets and quotas to address the under-representation of women with disabilities in decision-making bodies, in political and public life and the persistent inequality of their access to education, employment opportunities and health care services.


26. The CEDAW Committee has re-iterated its recommendation that the State Party adopt targeted measures, including temporary special measures with clear time frames, in accordance with Article 4, paragraph 1 of the Convention and the Committee’s general recommendation No. 25, to ensure the equal participation and representation of women with disabilities in public and political life.

The Right to Liberty and Security of Person: Overrepresentation and Treatment in the Prison System.

27. Women with disabilities are over-represented in the prison system in Australia. Women with disabilities represent between 30% and 50% of the prison population. Research also indicates that the percentage of women with disabilities in prisons is greater than men with disabilities and that rates for women with disabilities from Aboriginal and Torres Strait Islander background is also higher than equivalent figures for men.535

The Right to an Adequate Standard of Living, Including Adequate Housing.

28. Women with disabilities throughout Australia bear a disproportionate burden of poverty and are recognised as amongst the poorest of all groups in society. The Disability Support Pension is inadequate to support women with disabilities and fails to take account of the non-optional, extra costs associated with disability. An adequate standard of living includes the right to adequate housing, which is universally viewed as one of the most basic human needs.

Women with disabilities in Australia continue to experience serious violations of their right to adequate housing, as well as failures to promote and fulfil this most basic human right. Issues for women with disabilities include: lack of affordable, safe, and secure housing; lack of low cost housing; severe lack of appropriately modified housing; lack of availability of housing which adheres to universal design principles, escalation in the cost of private rental.

Moreover, they are forced to live further away from services as a result of low income and high urban rental costs. They experience discrimination in both the public and private rental markets; lack of supports available in the community; additional costs of disability, which compound lack of options in the housing market; higher risk of homelessness as a result of violence; ignored in homelessness and

535 See: www.sistersinside.com.au
violence policy responses; lack of access to women’s refuges and other crisis and post-crisis accommodation services.\textsuperscript{536}

The Need to Incorporate a Gender Perspective in All Efforts to Promote the Human Rights of People with Disabilities: the National Disability Insurance Scheme (NDIS).

29. As a member State of the United Nations, and as a party to a number of human rights conventions and instruments which create obligations in relation to gender equality, Australia has committed to eliminate all forms of discrimination against women and to ensure equality between men and women.

In recognition of the fact that women with disabilities face multiple discriminations and human rights violations, and are often profoundly more disadvantaged than disabled men, Australia has also agreed to take all appropriate measures, including focused, gender-specific measures to ensure that disabled women and girls experience full and effective enjoyment of their human rights.

The need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by people with disabilities is expressly stated in the CRPD.\textsuperscript{537}

30. The Australian Government is currently introducing a new disability care and support scheme, the National Disability Insurance Scheme (NDIS), in which all Australians with a ‘significant and ongoing’ disability (around 410,000 people) would get long-term care and support.\textsuperscript{538} The Draft NDIS Legislation has recently been developed and a Senate Inquiry is currently being undertaken to review the Draft Bill.\textsuperscript{539}

31. For more than 2 years, WWDA has expressed concern at the lack of a gender perspective and analysis in all aspects of the NDIS developments to date. In its current form, the NDIS Legislation assumes that people with disabilities are a homogenous group who share a common set of issues - and that men and women experience disability in the same way.

\textsuperscript{538} See www.ndis.gov.au
However, women with disabilities and men with disabilities have different life experiences due to biological, psychological, economic, social, political and cultural attributes associated with being female and male. Patterns of disadvantage are often associated with the differences in the social position of women and men.

These gendered differences and gender inequalities are ignored in the NDIS, despite the fact that successive Australian Governments have committed, internationally and domestically, to enshrine gender equality into legislative and policy frameworks, and implement parallel strategies in order to promote gender equality and denounce discrimination against women.

Statistics and Data Collection.

32. Data, research and information about women and girls with disabilities are necessary to develop and inform policy, direct resources, inform service development, and design and monitor specific programmes. They also enable the monitoring of equality of opportunity and progress towards the achievement of economic, social, political and cultural rights for women with disabilities. Data is critical as a tool for accountability and for enhancing the participation of women with disabilities. Good quality data and research are especially necessary for a sound evidence base to improve the effectiveness of mainstream systems for women with disabilities. The lack of data, research and information about women and girls with disabilities results in invisibility and marginalisation in society, which invariably leads to a critical lack of resources, and perpetuates violation of their human rights and fundamental freedoms.

33. The deep-rooted exclusion experienced by women with disabilities in Australia continues unabated due in part to the dearth of information available on its extent or impact, and the apathy of successive Governments in acknowledging the need for such information.

34. This aspect of neglect of disabled women in Australia was specifically identified by the CEDAW Committee in 2010 as an area warranting immediate and urgent attention by the Australian Government, including through the undertaking of a comprehensive assessment of the situation of women with disabilities.

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disabilities in Australia. This recommendation has not been taken up by the Australian Government.

Legal Capacity, Access to Justice & Equal Representation Before the Law.

35. The right of access to justice is among the most important civil and political rights as it determines the extent to which individuals can secure and enforce their other substantive human rights.\textsuperscript{542} Women and girls with disabilities, particularly those with intellectual, cognitive, and/or psychosocial disabilities are often denied effective access to justice because violations of their rights are often not taken seriously.

36. For example, despite high levels of violence against women with disabilities in Australia, few cases are prosecuted. Many cases involving crimes committed against women and girls with disabilities often go unreported, and when they are, they are inadequately investigated, remain unsolved or result in minimal sentences.\textsuperscript{543} 544 545 It has been well documented for decades that police are reluctant to investigate and report cases of violence against women and girls with disabilities.\textsuperscript{546} 547 548

This is in part due to the stereotypical perceptions of women with disabilities that have been found to be operating at almost all levels of the criminal justice system, including police and courts i.e. that women with disabilities are sexually promiscuous, provocative, unlikely to tell the truth, asexual, childlike, or unable to be a reliable witness.\textsuperscript{549} 550

\textsuperscript{543} Women With Disabilities Australia (WWDA) (2007b) Op Cit.
\textsuperscript{549} Women With Disabilities Australia (WWDA) (2007b) Op Cit.
37. Article 12 of the CRPD mandates States Parties to recognise that people with disabilities enjoy legal capacity on an equal basis with others. This means that an individual's right to decision-making should not be replaced by decision-making of a third party.

Instead, each individual without exception has the right to make their own choices and to direct their own lives, whether in relation to living arrangements, medical treatment, or family relationships. Yet, women with disabilities in Australia are often denied these choices – due to stigma and discrimination, through judicial declaration of incompetency or merely by a doctor's decision that the individual “lacks capacity” to make a decision.\textsuperscript{551}

The UN Special Rapporteur on Torture, in his 2013 Report to the Human Rights Council\textsuperscript{552} has recently called upon all States to:

“Safeguard free and informed consent on an equal basis for all individuals without any exception, through legal framework and judicial and administrative mechanisms, including through policies and practices to protect against abuses. Any legal provisions to the contrary, such as provisions allowing confinement or compulsory treatment in mental health settings, including through guardianship and other substituted decision-making, must be revised. Adopt policies and protocols that uphold autonomy, self-determination and human dignity……. Instances of treatment without informed consent should be investigated; redress to victims of such treatment should be provided.”


\textsuperscript{552} Ibid.
Chapter 26
Bulgaria Gender Research Foundation.

Written submission by the Bulgarian Gender Research Foundation.

General Discussion on women and girls with disabilities - CRPD Committee – 17th of April, 2013.

According to data from the National Social Security Institute for 2008, the number of people with disabilities in Bulgaria is 850,959 (based on the number of disability pensions paid). Employment rate among economically active Bulgarians (without disabilities) is 69.3%, and the proportion of people with disabilities who are employed is only 27.1% (data from the national census, 2011).

Bulgaria is at the bottom of the statistics in comparison with other European countries in relation to education and employment of disabled people, poverty and social exclusion. It occupies the first place in terms of having the highest rate of disabled people who drop out from education with 45% (data from Eurostat). The average rate in the European Union is 22%. Children and young people with disabilities, orphans and those with special needs who live in institutions are not included in the above-mentioned statistics.

These groups are deprived from continuing education and are not included in the official statistics. Subsequently, a logical sequence is the low level of employment among people with disabilities, only 33%, in comparison to an average rate of 45% in the EU; 55% of them face economic hardships and poverty in Bulgaria.

The number of women with disabilities in Bulgaria is 260,000, of which only 28,000 have a job. They are more vulnerable to the risk of unemployment, poverty and social exclusion. More often than other groups, they suffer from physical and psychological violence, maltreatment and abuse. Their relatives and family members have difficulties in everyday life because of the lack of specialised institutions and support centres. Disabled children’s mothers cannot continue their professional

553 55% of people with disabilities are women, available at Duma newspaper (12.01.2012), http://www.duma.bg/node/25952.
554 ANED country report on equality of educational and training opportunities for young disabled people, author Kapka Panayotova (http://www.disability-europe.net/content/aned/Media/Report%20on%20equality%20of%20educational%20and%20training%20opportunities%20for%20disabled%20people.pdf).
careers because they must take care of the child at home. This is not recognised work and the whole family becomes vulnerable to poverty and social exclusion. Caring for a child with disabilities in Bulgaria implies unpaid work and no seniority benefits. Social services for disabled and for their family are not developed enough and they are not accessible to the required extent, due to the lack of financial sustainability and universal access of programmes, as “Social assistance” criteria for the services are very rigorous and the places are not enough for all.

Improving access to education and to the right to work is the first step to social and professional realization of women with disabilities in Bulgaria. Providing opportunities for professional qualification is also of utmost importance. These goals can be achieved through investment in appropriate education technologies and materials for people with disabilities, and also through improving the opportunities for mobility by ensuring accessible infrastructure and transport. Provision of information on the rights of those individuals is an inseparable part of the efforts of public institutions.

The state should stimulate employers to hire more women with disabilities. The Bulgarian education system is still dominated by segregated forms of teaching and learning. Despite considerable progress towards the inclusion of disabled children in mainstream schools, as the number of students with special educational needs in mainstream schools has grown by 10 times in the last five years, the proportion remains too low, at only 1.4% of the overall enrolment in primary and secondary schools\(^{556}\).

A large proportion of disabled children are outside the system: children with extensive disabilities and complex needs, as well as those in residential care. Another large group that is excluded from the community is enrolled in special schools with or without boarding facilities. Recent policy documents by the Government sound promising, although there is as yet no indication of real action.

Many disabled children, particularly children with extensive disabilities and complex needs, are not registered in the education system at all. They usually stay at home, are in institutions or attend care centres, which are controlled by the Ministry of Labour and Social Policy.

Institutionalised children with mental disabilities also constitute a large group of those who are excluded from education; they are not even registered in the country’s educational statistics. There is no independent research, monitoring or evaluation report publicly available that would indicate the process of inclusion in education through support for the needs of children with disabilities.

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\(^{556}\) ANED country report on equality of educational and training opportunities for young disabled people, author Kapka Panayotova (http://www.disability-europe.net/content/aned/Media/Report%20on%20equality%20of%20educational%20and%20training%20opportunities%20for%20young%20disabled%20people%20Germany.pdf).
Personal assistance at school or at work is not available to Bulgarian children and adults. Several programmes provide monthly salaries for personal assistants to children without individual assessments, which usually go to the parents or relatives. One of the problems that RC staff shares is a lack of assistance in school for children who need it, which either prevents them from enrolment or makes it very difficult for them to attend classes.

Bulgaria has a major problem with institutional warehousing of people with mental disabilities, including abandonment of children in institutions. The right to live in the community is denied due to lack of community support services, and to the fact that successive governments have failed to implement de-institutionalisation plans.\footnote{http://www.mdac.info/en/bulgaria (Mental Disability Advocacy Center)}

Placement in institutions results in severe restrictions of the rights of children to inclusive education, and the rights of all people with disabilities to live in the community, to have a family life and to participate in society. Ill-treatment, abuse and neglect continue in children’s institutions despite international attention. Bulgarian law does not respect the right to legal capacity, with people under guardianship being deprived access to justice and political participation.

No data are collected and made public about violence against women and girls with disabilities in Bulgaria. Similarly, no special services targeted at such women exist in this field. Some concrete cases of women and girls with disabilities, which reached the courts or other domestic or international jurisdictions, show that women and girls in this situation suffer severe violence and cannot benefit from adequate services. A recent example is the girl who suffered sexual abuse in the case S.V.P. v. Bulgaria under the OP CEDAW/ 2012/. As a result of the violence inflicted to her, the girl was diagnosed with a mental disease and was not provided with adequate services and compensation for the harm suffered.

Another gap in research and policy is the whole field of the right to respect of private and family life of women and girls with disabilities, as well as their sexual and reproductive health and rights. Women and girls with disabilities, as vulnerable groups of women, are not ensured special mechanisms for their access to justice at the national level, which was noted also in the Concluding Observations of the CEDAW Committee to Bulgaria from July, 2012.

In order to ensure effective access to justice by women and girls with disabilities at the international level, we strongly recommend the ratification by the government of the Optional Protocol to the CRPD.

Recommendations.
1) Adoption and implementation of a strategy to fight the isolation of women with disabilities in Bulgaria, which should involve concrete measures to raise public awareness and to fight stereotyped images, as well as policies and services that will ensure the full participation of women with disabilities in society.

2) Provision of accessible services, access to education and training for girls and women with disabilities.

3) Adequate financial support and social insurance for the mothers who are willing to take care of their disabled children.

4) National information campaigns on the opportunities for girls and women with disabilities as an effective measure for their social inclusion and for public awareness.
Chapter 27

Nepal Disabled Women Association.


Submitted by: Nepal Disabled Women Association (NDWA), Kalopul, Kathmandu, Nepal.

Who We Are.

Nepal Disabled Women Association (NDWA) is a non-governmental organization (NGO), which was established in 1998 by a group of energetic women with disabilities that adopted the values of the fundamental rights and responsibilities provided by the constitution of Nepal. It supports women with Disabilities (WWDs) to pursue their human rights through advocacy and a rights-based approach (RBA).

NDWA is actively raising its voice to fight violence against women with disabilities and to advocate for justice. Out of 75 districts, NDWA is working in 29 districts in Nepal for the rights of women with disabilities. NDWA has 56 self-help groups at Village Development Committees in different districts; 15 District Chapters in different districts, and two Regional Offices in 5 Development Regions.

Empowerment of Women with Disabilities to Secure their Fundamental Rights.

Context.

Nepal is one of the least developed countries and a sizeable proportion of the population is excluded and discriminated on the basis of caste, class, ethnicity, gender and even geographic location. People with disabilities are among those who have been historically excluded from mainstream socio-political and economic development. If they are women and/or belong to marginalised castes, class or ethnic groups, then they often face multiple discrimination.

Official data from the latest population census in 2011 state that there are 1.94% people with disabilities in Nepal, but different organizations have estimated the figure is much higher than this. Surveys from different organizations have estimated disability prevalence ranging from 1 to 13% of the total population. It is difficult to get accurate data on the prevalence of disability in Nepal due to different reasons, including the lack of a common understanding of how to define disability.
In Nepali cultures, disability is still seen as a sin from the previous life and hence, a shame to the family, which often results in family members not disclosing their children's disability. Nepal ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol in December 2009, and deposited at the UN in May 2010.

There have been some efforts to address the rights of people with disabilities, as well as a separate article on WWDs and Children with disabilities for the rights of women and children with disabilities. Some of the initiatives that the government has taken include, among others: provisions to protect the rights of people with disabilities in the interim constitution of 2007 in a sub-article on social protection allowances for those with multiple or severe disability (red identity card holder); provision of disability ID cards as per categories of disability (red color ID, blue color ID, yellow color ID and white color ID), and allocations of small budgets at local government.

In addition, there are laws and policies: the "Disabled Protection and Welfare Act 1982", which addresses the needs and rights of people with disabilities, and obliges the Government to provide access to free services (education, health care), as well as set aside a 5% quota in employment. There is also the "Public Service Commission Act."

NDWA is an organization working with women with disabilities (WWDs) who are facing multiple discrimination in society because of gender discrimination, disability and poverty. Due to negative attitudes towards WWDs in society and to the fact that they are not a priority for the government, they are facing self-humiliation and they are also deprived from the basic human rights to which every person is entitled, including WWDs' right to enjoy their rights without any discrimination.

NDWA is a member organization of the CRPD monitoring committee of civil society/DPOs under the National Federation of the Disabled Nepal (NFDN). We mainly concentrate on education, health, livelihood and employment, secure home and violence and discrimination, which are the key topics in day-to-day life for WWDs from the perspective of human rights.

**Education.**

The UN Convention on the Rights of Persons with Disabilities (CRPD) obliges Nepal to ensure that people with disabilities are not excluded from the general education system on the basis of disability, and particularly children with disabilities must not be excluded from free and compulsory primary education, or from secondary education. The interim Constitution of Nepal has established education as one of the citizen's fundamental rights so as to live a life with dignity.
Nepal's government is promoting an inclusive education system which refers to access to educational opportunities for children who are excluded and discriminated. However, children with disabilities are among those most excluded from access to school and education. They have lower enrolment and higher dropout rate (Human Right Watch 2011).

The Flash I Report 2011 (B.S 2068) by the Ministry of Education shows that the overall enrolment percentages of children with a disability in total enrolment at primary, lower secondary, and basic levels are 1.1%, 0.8% and 1.0% respectively. Despite the political commitment to people with disabilities to provide access to education, in practice it is falling short in implementation.

Due to a lack of a disability-friendly environment, inadequate learning and teaching materials, lack of special teachers, and negative attitudes of teachers and parents, people with disabilities are left behind in mainstream education. To secure the fundamental rights of women with disabilities, NDWA is trying to address the shortfall in education issues through its different program at district level.

Several scholarship programmes have been initiated by NDWA for girls with disabilities. NDWA has provided scholarships to some students as well as carrying out strong advocacy and lobbying efforts with different educational institutions, and also in coordination with the Ministry of Education for more scholarships and for building accessibility, such as ramps, toilets, desk benches, teaching and study materials, Braille printing, etc.

Health.

According to NDWA’s study in 2007, under the obligation of international human rights treaties, and the CRPD in particular: “54% of WWDs are facing health trouble due to their disability”, and “45% of WWDs are facing reproductive health problems like UTI, abortion, white discharge”. The state must provide women with disabilities with the same range, quality and standard of free and affordable health care and programmes as provided to others without any discrimination.

However, people with disabilities do not easily have access to health care facilities, safe drinking water, sanitation and nutrition in Nepal. The health care and facilities provided by the government are inadequate to meet the needs of people with disabilities, particularly people with mental and developmental disabilities. Reproductive health issues of women with disabilities are neglected.

NDWA believes that reproductive health is one of the fundamental human rights of women with disabilities so, we strongly advocate ensuring these rights. In 2010, a Supreme Court verdict in favor of WWDs focusing on reproductive rights was not implemented. NDWA is putting pressure on the government to include this in their plan.
Livelihood and Employment.

Most women with disabilities have to depend on support from their family members, as there is virtually no livelihood support for women with disabilities by the state. There is no special provision particularly for women with disabilities, so it is still a challenge to live independently. Where some people with disabilities might have benefitted from the government services, not much has happened in the corporate or the development sector.

Taking into account the concept that employment leads to a dignified life and makes WWDs independent, NDWA is providing different kinds of skill-development training such as tailoring, handicraft making, boutique and beauty parlor to women with disabilities. They are also given support to develop a business plan and provide revolving fund for self employment. More than 70% of all women with disabilities have initiated their own business and have become self sufficient (NDWA target area and group).

Secure Home.

Women with disabilities are looking for the opportunity to live a dignified life. In search of better education they come to the capital, but it is not easy for them to survive in this city. They have to struggle a lot. The first thing is that they will not secure rented rooms, as people will not trust them because they are considered poor, marginalised and disabled. There is always a fear that they may be victimised, so parents will not send their children, and specially girls, away from home. Also, they may need special care.

NDWA established a rehabilitation center (hostel) in 2006 for those girls who have been victimised by their family and society. Also this home is for those helpless girls and women with disabilities who come to the capital for further education and to look for a secure home.

More than 500 WWDs have benefitted from rehabilitation since its establishment up to 2012. Not only are they given a secure shelter but they also get the opportunity to become involved in different kinds of skill development training and engaged in income-generating activities. Similarly, counselling is provided in the hostel.

Violence and Discrimination.

Violence against women is the result of unequal patriarchal power relations deeply rooted within the social structure. Violence against women (VAW) is one of the most pervasive of human rights violations, denying women and girl's equality,
security, dignity, self-worth, and their right to enjoy fundamental freedoms. Women and children with disabilities are among the most vulnerable and marginalised individuals in Nepal.

A World Bank study showed that women with disabilities are even more likely to be victims of violence or rape than non-disabled women, and they are less likely to be able to obtain police intervention, legal protection, or care. Due to their extreme poverty, poor education and other exclusion factors, they suffer from stigma, violence and discrimination from their family as well as by society too.

Similarly, according to the Nepal Disabled Women Association, the traditional gender role foresees women as in-charge of all household chores. When she is no longer able to fulfill her obligations due to disability, she is considered useless and hence less care and support is provided. National laws are in general discriminatory against women and even more against women with disabilities.

NDWA participated in different activities related to violence against women with disabilities. It collected some cases related to violence and participated in different women's organizations' programmes, raising awareness on issues related to women with disabilities.

Conclusion.

Despite efforts in various areas made by DPOs/ civil society and international organizations to address the problems faced by women with disabilities, discrimination is still prevalent in society. Rights have been violated and women and children with disabilities, and especially WWDs, find themselves in vulnerable situations and living in poor economic conditions. They are leading a miserable and pitiable life. They are facing different kinds of health problems.

The issue of disability is taken as a subject of charity in society and they do not have safe places even in family settings. WWDs are considered a burden for the family and society. There is a need to empower women with disabilities and build their capacity, so that they can enjoy their rights and live a dignified life. DPOs need to be strengthened to advocate for their rights.

The government has signed and ratified various international treaties to be a State Party, such as the CRPD and the CEDAW, but implementation is virtually non-existent. Domestic laws have not been amended in line with the CRPD. There are various policies but no strong monitoring mechanisms have been put in place by the government.
Chapter 28
Parigual and Disability Council.

Some Considerations About the Phenomenon of Double Discrimination Against Women, Girls and Adolescents with Disabilities, Taking as an Example the Situation in Paraguay.

Contribution to the Half Day of General Discussion on Women and Girls with Disabilities organised by the CRPD, Geneva, 17th of April 2013.

February 2013.

About the Submission.

This joint submission by PARIGUAL and Disability Council International to the Half Day of General Discussion on “women and girls with disabilities” attempts to shed some light into the situation of women, girls and adolescents with disabilities, taking as an example the situation in Paraguay.

The submission notes that, while the proper normative framework (both national and international) under which Paraguay has committed to support, protect and promote the fundamental rights of women in general exists, at the same time we can see the complete absence of the topic of “gender and disability”, since the appropriate public policies to develop affirmative action in the interests of women, girls and adolescents with disabilities, which have been designed as strategies against the phenomenon of double discrimination, are missing.

PARIGUAL is a civil society organization working to protect, defend and promote the human rights of people with disabilities in Paraguay. It emphasizes the need for a more active role and full inclusion of people with disabilities in society. This NGO is based in Asuncion.

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DISABILITY COUNCIL INTERNATIONAL shares similar objectives, but acts universally and is based in Geneva.
Executive Summary.

As it can also be observed in the majority of the world’s developing countries, in Paraguay there is an influence of a “macho” culture based on a marked predominance of men over women, an environment in which girls, adolescents and women cannot yet fully enjoy their fundamental rights on an equal footing with men. This situation fuels the established stereotypes about the traditional roles of men and women in society.

While in terms of the laws and the Constitution of Paraguay women’s right to equal treatment with men is recognised, this is far from being implemented in everyday practice. The daily reality of girls, adolescents and women with disabilities in Paraguay shows that the isolated measures taken by the government are no more than palliative remedies in practice, which cannot address the essence of the problems faced by this category of people with disabilities as a whole.

There is no doubt that the dimensions of the human personality as both a biological and a psychosocial being, allows us to conduct an analysis of the phenomenon of double discrimination at the individual and the social levels, while at the same time trying to present the two levels as parts of the same global problem.

At an individual level, we are concerned with building their female subjectivity. In this area there is a need to work towards improving their self-esteem through measures that strengthen their self-worth and their self-confidence, which in turn could represent one of the fundamental core areas in which to build a positive image of women with disabilities.

At the social level, the beauty stereotypes imposed by society, with their biased perceptions about personal worthiness, need to be changed in order to improve respect for women, girls and adolescents with disabilities, so that they are viewed as a valuable part of human diversity. The areas of education, health and labor are unfortunately amongst the most affected by these stereotypes and prejudices.
Yet, from a human rights point of view, these areas offer the best environment for the emancipation and development of women with disabilities both at the individual and social levels. These areas have the potential to empower women with disabilities with the tools to improve their quality of life.

If women with disabilities had access to high levels of education and had appropriate healthcare with equal access to relevant services, which ultimately condition access to decent and well paid jobs, then women with disabilities would become fully realised people both as individuals, and in the social context that surrounds them.

For example, motherhood, as an essential and particular women’s role, must be ensured also for women with disabilities, and the relevant services needed to help them to fulfill this role should be available to women with disabilities. In this regard, it should be noted that there is a legal vacuum in Paraguay with regard to regulations concerning sexual and reproductive women’s health.

A. Introduction.

Paraguay has a population of 6,541,591 people. There is no official accurate data on people with disabilities. However, the preliminary results of the census conducted in October and November 2012 estimate that people with disabilities represent 12% of Paraguay’s total population. The number of men with disabilities is presumed as slightly higher than that of women with disabilities.

Paraguay is part of the universal system for the protection of human rights and, in this sense it has ratified most of the human rights instruments which were incorporated into the domestic legal order. Similarly, Paraguay is part of the inter-American system of human rights, and its instruments especially in the field of the protection of women’s rights have also been incorporated into the domestic legal order.

Paraguay has also ratified and incorporated into its legislation the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) through Act No. 1215/1986, and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women through law No. 605/1995.

Likewise, with regard to monitoring the implementation of international instruments, Paraguay receives regular recommendations from UN treaty bodies, and UN Special Rapporteurs conduct regular visits to the country.

The equality of rights between men and women is established in the national legal framework of Paraguay by the national Constitution of 1992 (Articles 46, 47 and 48).
In addition, Article 60 of the same Constitution protects women against violence. Similarly, Paraguay’s Penal Code provides for the protection of women against family violence and Law 1600/2000 against domestic violence.

At the institutional level, we note that an Office for Women’s rights has been established in Paraguay since the 1980s to deal specifically with gender issues. In July 2012, this Office was elevated to the rank of Ministry for Women’s Issues. Yet, all these legislative and institutional efforts were not able to bring about the necessary changes in the situation of double discrimination experienced by women, adolescents and girls with disabilities in Paraguay.

This can easily be seen in the analysis that we provide in this research, which shows how certain human rights of women and girls with disabilities set forth in the Convention and in the national laws remain dead letter. Unfortunately, identical situations can be observed in most developing countries.

B. How to Ensure Full Equality and to Prevent the Double Discrimination of Women, Adolescents and Girls with Disabilities.

The right to equality and non-discrimination established in Article 5 of the Convention on the Rights of Persons with Disabilities (CRPD) is also found in the Paraguayan Constitution (Articles 46, 47 and 48). However, despite this, women with disabilities in Paraguay remain invisible as subjects of rights. This is because they remain confined to their homes, whether for reasons of overprotection by parents and relatives, or due to pure abandonment.

In recent years, the situation of women in Paraguay in general has shown some progress, as a result of the work done by women themselves, who have got together in civil society organizations. Unfortunately, the same organizational level is not found among specific communities of women with disabilities, perhaps because they have been lacking a strong leadership, which is also essential to enable them to assert more effectively their fundamental rights.

Women’s traditional roles, such as that of motherhood, are not presumed for women with disabilities in similar terms, as the latter are in many cases discouraged from fulfilling their role as mothers, due to the prevailing misconception that women with disabilities cannot carry out tasks such as the upbringing of a child, and the education of boys and girls.

The invisibility of women with disabilities causes many of them to end up living their disability as something negative, which curtails their possibilities of interaction and social consideration. They become even more invisible, as they do not fulfill or fit into
the traditional models attributed to women in general, and they subsequently find less incentives to participate in activities that are normal for other women of the same age and sex (indeed, they are not seen in the role of brides, mothers or wives, and they are denied jobs where a “model-like” physical external appearance is essential, etc.).

In many cases, the isolation in which girls, adolescents and women with disabilities live prevents them from integrating and playing a proactive role in their communities. The social stereotypes that are strongly rooted in the Paraguayan society and in the collective unconsciousness prevent women with disabilities from behaving in an independent and autonomous way in most cases, as they are never viewed as people with self-determination and as capable of making their own decisions.

Unfortunately, this is a situation that can be observed in most third-world countries. It could be suggested that the struggle for the rights of women in general should be particularly focused on improving the rights of groups historically ignored, such as that of women with disabilities.

Useful Recommendations for States.

- To promote campaigns to raise awareness among women with disabilities about their rights, and to strengthen the existing platforms in order to promote the participation and expression of women with disabilities, in order to end existing asymmetries with other groups of women.

- To include women with disabilities in campaigns that focus on sexual and reproductive health, so that they can also acquire this knowledge about the roles and methods of self-care and family planning. To conduct such campaigns in formats tailored to the specific needs of women with disabilities. Activities on subjects such as “daily living activities” and personal care or personal hygiene should be planned, in order to cover learning strategies to teach them social etiquette skills and good manners, as well as those concerning appropriate facial and bodily attitudes to enhance the process of social inclusion from a positive women with disabilities’ self-awareness perspective, as they are real players in their own lives.

- Another area requiring special attention concerns the need to address the issue of indigenous peoples with a focus on gender and disability. This would demystify former practices that were consistent with a eugenic model, and replace it by a model that shows respect for their fundamental human rights.

It is the norm in Paraguay and in most third-world countries that women with disabilities do not have the same opportunities to learn about their fundamental human rights. One reason for this may also be the fact that most associations or groups working in the area of disability rights have themselves a traditional leadership consisting of male leaders. This situation very often prevents the empowerment of women with disabilities, as it offers little space in which their self-esteem can be developed and their own skills and aptitudes be rediscovered.

At this point, one cannot ignore the fact that a primary factor contributing to this situation is our own modern consuming society with its patterns of physical beauty and personal success, which ultimately determine the negative image that every woman with a disability has of herself.

This generates a deterioration of her self-esteem. The fact remains that socially established stereotypes about “disability” deny women with disabilities the roles that are traditionally assigned to women in general, such as motherhood, and in this way women with disabilities are discriminated against.

Similarly, the fact that women with disabilities are generally perceived as not fitting within the traditional models of beauty or good presence, also limits their possibilities, including maintaining close intimate relations with partners. This aggravates the perception of physical, sensory and intellectual differences, damaging in this way the self-perception that every woman with a disability has about their bodily abilities and intellectual capacities.

Useful Recommendations for States.

- To create spaces of self-expression intended to strengthen the participation of women with disabilities.
- To promote campaigns aimed at empowering women with disabilities with the knowledge about their rights in accessible formats and through adapted technologies.
- To raise awareness among the population against discrimination of women, girls and adolescents with disabilities, and to promote their inclusion in the framework of diversity.
II) The Importance of Ensuring Effective Protection from Abuse, Violence and Exploitation, as a Means of Assuring Full Equality, and Preventing the Double Discrimination of Women with Disabilities.

In the specific case of Paraguay, the public policies developed by the Ministry of Women’s Affairs do contemplate lines of actions against violence, domestic abuse and trafficking in people, but it is clear that the generalised approach taken without specific emphasis on women, girls and adolescents with disabilities does not allow for the development of specific actions that will protect them and prevent their exposure to the risk of becoming victims of these social problems.

Also, in most cases they are not familiar with the available complaint mechanisms, or these mechanisms often lack specialist knowledge about the attention required in dealing with women with disabilities that may request their services. It should also be noted that the services providing care to women victims of violence do not provide specifications for women, girls and adolescents with disabilities, which makes the early identification of cases difficult.

Often, women with disabilities face possible instances of re-victimization at the time of the submission of a complaint. In addition, these services usually operate only during working days and not at the weekends, which is when higher rates of cases of violence against women with disabilities are recorded. Unfortunately, this situation is common to the majority of Third-World countries.

Useful Recommendations for States.

- To mainstream disability into all actions to prevent violence against women, girls and adolescents undertaken by states.
- States should adapt their campaigns aimed at the prevention of violence against women to formats that are accessible to women with disabilities.
- Special emphasis should be given to specialised training of public officials to enable the early identification of facts of violence and ill-treatment against women, girls and adolescents with disabilities, and to provide adequate support to their needs.
- States should strengthen the existing gender sections in the various government institutions, with the purpose to empower them to carry out their missions and to exercise their roles in an effective manner. States should provide them with the required resources.
- To provide training for members of the Judiciary in the subject area of gender and disability, in order to enable them to implement national laws relevant to the protection of women, girls and adolescents in accordance with the CRPD Convention.
III) The Importance of Access to Education to Ensure Full Equality and to Prevent the Double Discrimination of Women with Disabilities.

While Paraguay introduced a system of special education for people with disabilities more than 50 years ago, this system never worked with a specific focus on gender issues. Again in the 1990s and more particularly since 1998, Paraguay’s Ministry of Education adopted an inclusive education system, but it does not contemplate any specific programmes tailored for women, adolescents and girls with disabilities.

However, Act No. 1264 on general education approaches the issue of education of boys and girls from a gender perspective, but again, there is nothing said about “disability” as an essential element to take into account in the implementation of the teaching and learning process.

In reality, there is an evident lack of access to the formal education system for people with disabilities, and even more so for girls, adolescents and women with disabilities. A number of factors prevent the access of girls with disabilities to education: in the family, in general, we have the overprotective parents who, when faced with a situation of disability, decide in many cases not to send their children to school.

This is due to the lack of knowledge of their son’s or daughter’s real abilities, or because these parents are unable to count in their community with the assistance of trained professionals and institutions that can give appropriate advice in each case.

The low percentage of schooling for girls and adolescents with disabilities, and the low educational level that in many cases is identified in women with disabilities, draw the conclusion that the state needs to redesign their educational strategies in the context of an inclusive education.

Also, states should make efforts and provide more economic resources to the cause of improving the education of people with disabilities, and in particular, the education of girls, women and children with disabilities, viewing it as a human rights issue.


It is impossible to start this analysis without mentioning factors such as disability and poverty, which traditionally follow gender issues. In Paraguay, access to a decent job for people with disabilities in general and women with disabilities in particular, is still very limited, the reason being: the low educational level, low level
of occupational training, and lack of knowledge about life skills of people with disabilities. There is also a lack of information about the reasonable accommodations needed in the work place.

At the same time, there is also the reality that Paraguay’s population ignores to a great extent the existence of national laws in favor of people with disabilities, and even more so those that focus on the employment of people with disabilities. More importantly, even this legislation does not provide for affirmative action to compensate for the inequalities between men and women with disabilities. An important factor that constitutes an obstacle for having access to a formal job is sometimes the lack of time, which is often used by women to take care of children.

The lack of knowledge about family planning among women with disabilities also contributes, in many cases, to a situation where they end up having many children, whose care they cannot afford due to the lack of resources to provide them with meals, healthcare, and proper education. This represents a factor which contributes to raise the poverty rates in society.

In most cases, women with disabilities are also unable to rely on their partners to support them with the necessary resources for the full development of the family nucleus. The business micro-projects that could be developed in the interest of women with disabilities generally have no chance of success, because of the absence of initiatives, both in the rural and urban settings that provide access to affordable loans, and corresponding services to provide for the proper monitoring and viability checking of these initiatives.

Therefore, the “financial" inclusion of women with disabilities in Paraguay remains a pending issue. As a final reflection on these labor aspects of the right to equality and non-discrimination, although we were unable to show all the conditioning factors, it should be noted that if affirmative measures are not identified and established to allow the visibility of women with disabilities in the particular conditions that prevent their access to decent work, there will remain poor and without the possibility of improving their quality of life.

V) The Importance of Participation in the Public and Political Life as a Way of Ensuring Full Equality and Preventing the Double Discrimination of Women with Disabilities.

Even though in Paraguay the right to vote was granted to women in the 1960s, the greatest challenge has been to ensure for them access to the election of the candidates on an equal footing with others. It also requires improving their capacity for self-determination, in order to enjoy their rights, particularly with regard to participation in political life. Unfortunately, civil society also offers little space and
few campaigns intended to promote the self-expression of women, girls and adolescents with disabilities. Unfortunately, this situation is common to most Third-World countries.

Useful Recommendations for States.

- To generate opportunities for training and self-expression that are intended particularly for women with disabilities, so as to strengthen their representation in society.

C. Conclusions.

With this brief analysis, we have tried to provide an overall view of a complex area such as the reality of women, adolescents and girls with disabilities. As “complex” as it may be, it should not be seen as impossible. Instead, a complex issue should provide a challenge for the authorities who have the power and responsibility to improve the living conditions of disadvantaged social groups, through the development and implementation of public policies with an inclusive approach.
Chapter 29
UK CEDAW Working Group.

UK CEDAW Working Group Submission to CRPD General Discussion on Women and Girls with Disabilities.

17th of February, 2013.

Introduction.

Most states lack a specific and comprehensive law, policy or programme on people with disabilities in general or on women with disabilities in particular. States that do have a disability law often do not specifically address the rights of women with disabilities. States may also have a specific law on violence against women that generally provides remedies for all women, within a non-discriminatory framework, but unfortunately, such laws are not effectively implemented in respect of women with disabilities.

Very few states have established dedicated institutional mechanisms, programmes or strategies such as national committees or councils on women and disabilities. The United Kingdom (UK) is no exception. The UK says that it uses the social model of disability, which recognises that disability arises from society's negative responses to us, inaccessible environments, discrimination and disablism.

However, the UK's definition of disability is not compliant with the CRPD. Disability is not an inevitable consequence of impairments, and equality is possible and can be achieved through removing the barriers to social inclusion. This report demonstrates that the statistics fail to recognise that disabled people are not a homogenous group, and to include disabled women as well as men.

This is partly due to a general lack of data disaggregated from a gender and disability perspective. Disabled women's needs are often excluded in the

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558 Report of the Special Rapporteur on violence against women, its causes and consequences on the issue of violence against women with disabilities (2012)
560 http://www.ukdpc.net/site/
mainstream Disability Movement as well as the Women's Movement,\(^\text{561}\) and wider government policy, which explains the lack of both qualitative and quantitative data specifically about disabled women in all the areas discussed below.

Disabled women often remain invisible in mainstream legislation/policy for women. Disabled women's issues are still under-researched, and their concerns are overlooked. Since May 2010, the UK Coalition Government has introduced a large-scale comprehensive spending review, proposing substantial cuts in public spending, and scheduled to take place over the next years. This paper recognises that disabled women will be disproportionately affected by these cuts.\(^\text{562}\)

The Home Secretary, Theresa May warned the Chancellor of the Exchequer that cuts imposed in the June 2010 Emergency Budget may be in breach of the Equality Act 2010\(^\text{563}\) and that the adverse effects of the cuts on women and disabled people, amongst other groups, were illegal. Moreover, the Labour Party's Work and Pensions spokesperson, Yvette Cooper, highlighted that women will face more than 70% of these cuts. Women will be hit hardest by cuts in services and welfare benefits,\(^\text{564}\) which will also disproportionately affect disabled women.

This paper identifies some of the key disability-based and gender-based discriminatory issues experienced by disabled women in the UK. These findings are supported by secondary evidence and data, both quantitative and qualitative, which have been obtained through previous research and Media stories to demonstrate how disabled women are disproportionately disadvantaged due to the austerity measures implemented by the current Government.

Prior to 1995, there was a clear lack of anti-discrimination legislation to protect disabled people in the UK. Since then, subsequent UK governments have developed policies aimed at addressing barriers to mainstream living for disabled people, such as the 1995 Disability Discrimination Act (DDA),\(^\text{565}\) thus marking a significant step in this direction. In addition to the DDA, since 1976, gender equality legislation


\(^{565}\) http://www.nidirect.gov.uk/the-disability-discrimination-act-dda
(including the first Sex Discrimination Act\textsuperscript{566} has been in the statutes, having ratified the CEDAW\textsuperscript{567} in 1986.

Irrespective of gender, disabled people on the whole encounter countless barriers and discrimination in their daily lives. 75\% of disabled women and 70\% of disabled men are already at the bottom end of Great Britain's income distribution scale, and are living in poverty.\textsuperscript{568} Disabled women are one of the poorest groups in society.\textsuperscript{569} Disabled women experience dual discrimination because of their status as ‘disabled’ and ‘women’.

The situation is even worse for certain groups of disabled women such as older women and those belonging to minority ethnic groups. Disabled lesbian, bisexual and trans (LBT) women; Black Minority and Ethnic (BME) women, and Gypsy, Roma and Traveller women, face multiple forms of discrimination when accessing community services and resources. There are specific problems related to each community concerning practical access issues, as well as the profile and relevance of Disabled People's Organisations to LGBT, BME and Gypsy, Roma and Traveller people.\textsuperscript{570}

Moreover, non-disability community organisations are often unfamiliar with the barriers experienced by disabled people on a daily basis. As a result, certain communities of disabled women can become isolated and lead insular lives. For example, specific strategies are needed to target D/deaf and disabled LBT women as they experience multiple discrimination through homophobia within disabled communities and services, and negative attitudes to disabled people in LGBT communities and services.\textsuperscript{571}

Disabled people are often actively discouraged from seeking a social life that others would take for granted, and may be reliant on parents or carers for support, so they may not be able to explore their sexuality independently. Disabled women's dependency on family members and others for personal care needs is particularly problematic for LBT women when the family or carers are homophobic, which makes them vulnerable to abuse.

Such dependency can often have a severe impact on disabled LGBT people, who often rely on a social life for support and as a means of meeting other LGBT people.

\textsuperscript{566} http://www.legislation.gov.uk/ukpga/1975/65
\textsuperscript{567} http://www.un.org/womenwatch/daw/cedaw/
\textsuperscript{569} http://www.unpac.ca/economy/ability.html
\textsuperscript{571} Women's Resource Centre (2010) \textit{In All Our Colours: Lesbian, bisexual and trans women's services in the UK}. Women's Resource Centre: London www.wrc.org.uk/lgbt
However, negative attitudes to disabled people are also common in LGBT communities, and there is a serious lack of access to clubs, pubs, political and social events. There is also little information on or for disabled LBT women, and few services which specifically support disabled women.572

Case Study:

A study in Brighton in 2009573 found that 18% of D/deaf LGBT respondents had experienced bullying, abuse, discrimination or exclusion from mainstream venues and events, and 11% from LGBT venues and events. The study also found that 42% of D/deaf respondents had experienced domestic violence or abuse, and there were indications that they were more likely to have been abused by people other than their partner or family members than non-D/deaf LGBT people.

Recommendation:

Specific strategies are needed to target disabled LBT women, as they experience multiple discrimination through homophobia within disabled communities and services, and negative attitudes to disabled people in LGBT communities and services.

Health and Social Care.

Disabled people make up around 1/3 of the NHS (National Health Service) users in Britain.574 Certain health problems particularly impact on women,575 and disabled women face a number of obstacles in the area of health and social care. This includes inaccessible health centres and facilities, and lack of information related to their health.576 The NHS's procedures and practices are considered to be designed for patients who are ill but not disabled.577

www.wrc.org.uk/lgbt
http://www.wrc.org.uk/includes/documents/cm_docs/2010/d/1_disability.pdf
576 International Network of Women with Disabilities. (2012), a presentation on rural women and girls with disabilities at a side event at the Commission on the Status of Women on February 28th,
Medical professionals’ poor attitude, particularly towards disabled women’s sexual and reproductive health, can also pose another barrier to using medical services. This is often exaggerated by inadequate sex education, inhibiting ‘care’ systems and unhelpful healthcare practitioners and services.

Most healthcare providers in and out of institutions seem to have negative attitudes towards pregnant disabled women, providing little or no help for them either before or after becoming pregnant. They may even suggest abortion or sterilisation, particularly if the disabled woman is said to have any degree of learning difficulties.

Case Study:

In 2012, a young woman with learning difficulties won the right to decide the fate of her unborn baby, after doctors lost their application to carry out an abortion without her consent. By turning a private, sensitive issue public, medical staff can absolve themselves from any responsibility in their dealings with pregnancy complications, and any ‘intimidating’ consequences.

For instance, the mother of a young woman with learning difficulties (pregnant with her second child), who pleaded with a high court judge to allow her daughter to be forcibly sterilised “for her protection.” The families of disabled women may be of a similar attitude but perhaps with differing reasons. The fundamental message seems to be that a large proportion of disabled women have no right to reproduction.

It is assumed that this is in the “best interest” of both the woman and the unborn child, while the underlying reason is intolerance of disabled people. This political and scientific decision, whilst on superficial levels may benefit the state economy, is undignifying for disabled women, and it devalues the life of disabled people and their

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families. Hence, “In short they [disabled people] see prenatal testing and selective abortion as being rooted in and perpetuating the oppression of disabled people.”

The effects of sexuality-based discrimination of the sexual and reproductive health of disabled LBT women is of equal significance. In addition, social service budgets have been subject to extreme pressure. Nearly all social services departments have been told to reduce their budgets by 25%, which has a knock-on effect to their provision of support services and regarding the amount people need to contribute with financially.

For example, similar to many other councils, Lancashire County Council raised the eligibility threshold for supporting disabled people from “moderate” to “substantial, saving £2.5 million a year from 2011-2013. This council also plans to cut spending on personal budgets and home care by £12 million over three years; and increase revenue charges by more than £5.5 million over four years. As illustrated by the case of two old disabled women in this county.

In short, local authorities all over the country are cutting the amount of care funding available, tightening eligibility criteria, and increasing charges for those who are still eligible for care to be able to live independently.

The Disabled People’s Movement has attempted to redefine the meaning of ‘independent’ living. Rather than implying ‘doing things for yourself’ or being ‘self-sufficient’, disabled people have argued that independence, as autonomy and self-determination, can be achieved by having choice and control over any support needed to lead their daily lives. This definition has long been at odds with the ways care services have traditionally understood ‘independent’ living.

Recommendations:

- To take steps to address the poor health conditions of women with psychosocial disabilities, such as making medical and health facilities

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587 See for example http://www.thefword.org.uk/blog/2011/07/disabled_people
accessible, and training medical professionals to be aware of disability/gender related issues, so that they can be sensitive towards all disabled women's needs. Disabled women typically receive health services that are targeted at women in general or at people with disabilities in general. Services need to be targeted specifically at them.

• Improving access to mental health services for disabled women must be accomplished by services that respect the right of disabled women to make their own choices, in accordance with the Convention on the Rights of Persons with Disabilities (CRPD).

• To allocate more financial resources to Social Service departments, requiring them to use the social model of disability when assessing disabled people's support needs for a 'care package'.

• To ensure women and girls with disabilities are educated about sexual and reproductive health, including STIs and maternal services, and to adopt reforms to improve healthcare services and facilities, including those related to sexual and reproductive health.

Political and Public Life.

Media Representation.

Despite the Government's claims to welcome “Media challenge to stereotypes and portrayal of women in a positive manner”,589 today, in literature, films, commercial and Media imagery, positive representations of disabled women, which could set examples for other disabled women, tend to be missing.590

For example, these perceptions are perpetuated by television programmes such as a sensational series called 'The Undateables', broadcast by British TV company Channel 4. "If 'The Undateables' seems an offensive title for a show, then that is probably the marketing aim for a TV channel in the quest for audience. Above a patronising voiceover, viewers are told from the opening that they're about to see a group of 'extraordinary singletons' when in fact we see the opposite: six single people who happen to be disabled."591

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591 UK Disabled People’s Council & European Disability Forum. (2012) ‘Why is The Undateables Unwatchable?’ The Representative Organization of persons with Disabilities in Europe. Available at:
Media has a significant role to play in the relationship between disabled and non-disabled people. Despite major efforts by disabled people in favour of integration or inclusion, Media portrayals reflect that disabled people are often invisible in society. The limited representations of disabled people are mainly undignifying, and people with disabilities are subject to uncomfortable voyeurism, as shown on ‘The Undateables’.

To reinforce disabled women’s exclusion from public life, and the prevailing prejudice against them in the UK, disabled people in general are portrayed and falsely labeled in the Media as at worst, outright benefit scroungers, and at best social burdens who are unable to contribute to society in any meaningful way. With such pejorative language, disabled people are accused of being “unsustainable, unproductive or immoral members of their communities”, and are perceived to not be disabled at all, but “profiting from fraudulent benefit claims”.

On the contrary, disabled people are actually excluded by physical and attitudinal barriers in the workplace. (See more below) There are currently 1.3 million disabled people in the UK who are available for, and indeed want, to work. The societal limitation in creating an accessible work environment with suitable support and adaptations for disabled people – an economic, social and political solution - is overlooked. Instead, disabled people are blamed for their failure to be economically productive.

Incidents of negative language about disabled people such as “burden”, “scrounger” and “cheat” in print Media have increased recently, while sympathetic accounts of disability discrimination have almost disappeared in the tabloid press.


treatment from the Media than other groups such as people with learning difficulties.\textsuperscript{597}

In short, much of the coverage in the tabloid press is “at best questionable and some of it is deeply offensive”.\textsuperscript{598} The increased concentration on benefit fraud with outlandish claims that over 70\% of people on disability benefits are frauds is an example of this kind of coverage. These attitudes are fueled and reinforced by the Government’s misleading claims about Disability Living Allowance (DLA) and Employment Support Allowance (ESA).

For example, in The Sun newspaper in 2011, Iain Duncan Smith Secretary of State for Work and Pensions, implied that disabled people were responsible for the UK’s deficit.\textsuperscript{599} This stereotyped image of disabled people in general, and disabled women in particular, does little to help their integration and equal participation in mainstream society, reducing their visibility as political actors in creating and maintaining human rights and equality. It also negates the gains in social acceptance won by the Disabled People’s Movement over the last few decades.\textsuperscript{600}

It is no surprise, therefore, that there has been a rise in disability hate crime, which has contributed to a highly inflammatory atmosphere, and is associated with the ideological message of the Media on the demonising of disabled people.\textsuperscript{601} The climate of fear is certainly working; some disabled people are frightened to leave their homes because of physical threats and accusations of benefit fraud. (See section on hate crime below).

Recommendations:

- To increase Media images of disabled women with diverse backgrounds in positive roles.
- To educate Media about the discrimination disabled people experience, and to encourage them to report the ‘real’ stories including monitoring the...


portrayal of women with disabilities in the Media alongside industry self-regulation.

- To address the fact that disabled women are under-represented in democratic processes and decision-making more generally, as well as in recreational activities, culture and sport. For example, develop specific rules on participation quotas to include disabled women.
- The UK Government should offer extra support for disabled women who want to become MPs, councillors or other elected officials to tackle their under-representation in public policy.
- To adopt measures to ensure the accessibility of polling stations, booths and voting material for women with disabilities, including permitting an individual an assistant of their own choice to help them to vote, without external surveillance. Information on elections and political campaigns must also be made accessible in the lead up to elections.

Economic and Social Benefits.

The welfare system assumes that disability benefits/services have been too 'generous', reinforcing unnecessary "dependency".602 Therefore, disability and income/related benefits are being granted under more stringent conditions, as well as imposing sanctions in order to incentivise people "off welfare and into work". The benefit system has been referred to as "at best paternalistic and at worst punitive", 603 and unable to recognise that some disabled people will always be less able to work, or to work for the same length and earn as much as non-disabled people, regardless of the amount of 'incentive', which is provided by cutting benefits.

The closures of Remploy workplaces604 (supporting disabled people into mainstream employment), as well as the struggling economy, have also proved to be unhelpful for many disabled people, and particularly for women.605 A study in 2004606 reported that disabled people who received the maximum benefits, already experienced a shortfall of £200 on a weekly basis, compared to the amount required for them to

603 Morris, J. (2012) ‘Fulfilling Potential or Potential Unfulfilled?’ Available at: http://jennymorrisnet.blogspot.co.uk/2012/03/fulfilling-potential-or-potential.html Accessed on: 21/03/2012.
605 http://www.guardian.co.uk/society/2012/feb/20/female-unemployment-crisis-women
lead a minimum standard of living, and an equal life to that of their non-disabled counter-parts.

Disabled people’s day-to-day living costs, including mobility aids, personal care and transport are 25% higher than those of non-disabled people. Yet, it has been warned that disabled people will be hit with more than £9 billion (£140 per month) in welfare cuts over the next five years. More than 2.5 million people received Incapacity Benefit, IB, (which was for people unable to work because of health or impairment), or ESA.

Disabled people are gradually being moved from IB to ESA and will have to be re-assessed. Those deemed fit enough to work are moved on to Jobseeker’s Allowance (JSA) instead. The impact of moving 500,000 people from IB to JSA has been calculated as a loss of £4.87 billion. The move will result in more disabled people being trapped in long-term unemployment, costing the taxpayer far more than at present.

Since 2008, IB has been replaced by ESA for new claimants and from April 2011, people claiming IB have been moved onto ESA. Many Disabled People’s Organisations have raised serious concerns with the way people are assessed for ESA. A national survey by the Disability Benefits Consortium showed that more than half of those respondents who had been for a medical assessment for ESA found it stressful. Furthermore, more than four in ten said it actually made their health condition or impairment worse because of the stress and anxiety caused. More than half of those respondents who had received a decision on their application for ESA did not agree with the decision and, of these, half planned to appeal against it.

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610 For example see case of Ruth Amin http://www.guardian.co.uk/society/2012/oct/03/work-woman-care?intcmp=239
611 Disability Benefits Consortium. Benefiting Disabled People? A report by the Disability benefits Consortium looking at the support offered to disabled people and people with a health condition by the benefits system and how this support could be improved. http://www.disabilityalliance.org/dbcreport.htm Accessed 8 April 2011
Case Study.613

Sharon, from North Wales, has chronic fatigue syndrome. Despite this, she ran her own company until 2010, but she was forced to close it because her health deteriorated. She applied for ESA, and what followed was a lengthier and more emotionally taxing process than she had expected. She only started receiving money eight weeks later and, not long after, the benefit was stopped because she was declared fit for work in an assessment. She finally secured her entitlement to ESA after appealing against the decision.

The government has said it wishes to focus support for those most in need. However, the Disability Alliance has pointed out that:

“A focus on those disabled people with the greatest need will exclude many disabled people who still face additional costs associated with their disability or condition. The people accessing the lowest rates of DLA are often unlikely to be able to access support elsewhere and cuts to these groups could lead to unsustainable pressure on social care or NHS budgets. In the context of council budget cuts and the NHS being under considerable pressure, people’s needs could remain unmet elsewhere. This is especially relevant given the Government’s announced changes to time-limiting contributory ESA and increasing sanctions and conditions on the disabled people who receive this out-of-work benefit.”614

People on ESA will be placed in two groups. Those whose disability is “severe” or who are terminally ill will be in the support group and will not be expected to work. Those who are judged to be less severe are placed in the Work Related Activity Group (WRAG), and are expected to take part in work focused activity.

There are two types of ESA – contributory (based on National Insurance (NI) contributions), and income-related for those who have not made sufficient NI contributions. Contributory ESA will only be paid to people in the WRAG for one year, after which it will be means tested. If they have savings, assets or a partner who works, then their benefits will stop. Whereas the DLA has three rates of care component, the new Personal Independence Payment (PIP) will have only two rates of the ‘daily living’ component.

The mobility component of PIP is being withdrawn from people living in residential care. There is a 20% cut to the DLA (this benefit was originally introduced to compensate for the additional costs of being disabled, such as higher heating bills or

http://www.cutswatchcymru.org/
buying pre-prepared foods) and the Government’s Welfare Reform Bill has abolished DLA for working age adults (16-64 years of age).

Those people will need to be reassessed for the new benefit, the PIP. The PIP will not cover some of the areas the DLA contributes towards. The PIP will have no equivalent low-rate ‘care’ payment, meaning that the 643,000 people receiving this support from DLA are now at risk of losing help. Many claimants with visual impairment also may lose their higher rate mobility award, which was only recently won after years of campaigning.

Government’s proposals related to a new assessment framework for the PIP do not take a holistic approach or account for ‘motivations’, social and practical as well as physical barriers disabled people face when returning to employment. The assessments are also not necessarily carried out by a medical doctor, and already 40% of rejected claims go through an appeal with up to 70% of those decisions being overturned.

Birmingham City Council, for example, restricted social care to people whose needs were assessed to be “critical”. This move was judged to be unlawful by the High Court because the council had failed to ‘pay due regard’ to the impact on disabled people during the decision-making process, contravening the DDA.

Case Study:

A survey by Essex Coalition of Disabled People in 2010 found 57% of DLA claimants fear their benefit may be taken away, and 2/3 felt their level of support would be at risk.

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A national report by Citizens Advice\textsuperscript{623} highlighted a number of specific problems with the assessments including the fact that seriously ill people who should be exempt from the assessment are forced to be assessed. It also noted that the assessment does not “take sufficient account of variable symptoms. There is little recognition of generalised pain and exhaustion, or the seriousness of an underlying condition."

\textit{It takes no account of the context of the work environment, including a person's education, skills and circumstances or the discrimination they may face in looking for work". Therefore they concluded that the assessment is producing 'inappropriate outcomes':}

\begin{quote}
“\textit{Citizens Advice and other organisations have been concerned for many years about the quality of medical assessments for benefits.}

\textit{We still hear repeated reports of rushed assessments, assumptions being made without explanation, inaccurate recording and poor recognition of mental health problems.}”\textsuperscript{624}
\end{quote}

In addition to the stress caused by the assessment for ESA, disabled people will also lose out from the move to limit contributory ESA to one year for people who are in the WRAG. This means that people with assets, savings or a working partner will no longer receive benefits.

This will particularly affect disabled women, women who are carers and the partners of disabled people.\textsuperscript{625} The Welfare Reform Bill includes provisions automatically to end PIP payments at the point when someone retires or turns 65. This means that people receiving PIP would have to apply for Attendance Allowance (AA). AA provides no mobility support and, this change could see thousands of older disabled people losing crucial support and the ability to continue living independently.\textsuperscript{626}

Older women are more likely to be living with a disability in later life\textsuperscript{627} and older disabled women’s impairments may significantly affect the quality of their lives,\textsuperscript{628}


yet they may not satisfy current DLA criteria for age related reasons.\textsuperscript{629} Therefore, with the rising cost of living generally and extra costs of disability in particular, disabled people living on benefits will be further limited.\textsuperscript{630}

Although not all these changes will disproportionately affect women, they will have a serious impact on the incomes of disabled women and women carers. The changes to disability benefits may lead to a significant drop in income for some groups of women, particularly those who were receiving IB but are assessed as not being entitled to ESA. This may leave these women in poverty with implications for their human rights.

Additionally, the new PIP consultation does not take in extra costs related to being female e.g. higher costs for ‘personal care’ issues. The Disabled People’s Movement has attempted to redefine the meaning of ‘independent’ living. Rather than implying ‘doing things for yourself’ or being ‘self-sufficient’, disabled people have argued that independence, as autonomy and self-determination, can be achieved by having choice and control over any support needed to lead their daily lives. This definition has long been at odds with the ways care services have traditionally understood ‘independent’ living.\textsuperscript{631}

Case Study:

Lancashire County Council is raising the eligibility threshold for supporting disabled people from ‘moderate’ to ‘substantial’, saving £2.5 million a year for the next two years. This council also plans to cut spending on personal budgets and ‘home care’ by £12 million over three years; and increase revenue charges by more than £5.5 million over four years, as illustrated by the cases of two older disabled women in this county.\textsuperscript{632}

With the rising cost of living generally and extra costs for disabled people particularly, disabled people living on benefits will be further limited.\textsuperscript{633} Reforms to benefits and services risk leaving disabled people without the support they need to


live independently, with restrictions in local authority eligibility criteria for social care support, the replacement of the DLA with PIP, the closure of the Independent Living Fund (ILF) and changes to housing benefit risk interacting in a particularly harmful way for disabled people.634

Richard Whitehurst of DPAC said “These vicious cuts have already led to at least 31 disabled people committing suicide and many more are now talking about it as they feel they have no future. In the 21st century, in one of the richest nations in the world, disabled people should not be forced to live in fear every day of their lives”.635

Case Study:

“Elaine Christian, 57, of Hull, was worried, according to reports of an inquest in July, about a meeting to assess her disability benefits. She was found drowned in a drain with evidence of ingested painkillers and ten self-inflicted cuts to her wrist. Although she left a suicide note, an open verdict was recorded. Her husband told the inquest: ‘She [Elaine] was worried about the assessment, but was never one to complain’.”636

Ministers plan to stop paying out cash in the form of the ILF to help more than 21,000 ‘severely’ disabled people, who live in their own homes. The fund, set up in 1988, pays (maximum £475 per week) for carers and other help so ‘severely’ disabled people can live at home rather than moving into care homes. It was announced in June 2011 that the fund was refusing all new claims. Whether this funding will continue at all is still uncertain.637

In addition, almost 65,000 disabled people (including those with profound mental health issues) are at risk of losing their homes because of a cut in mortgage payment support for vulnerable people.638 The National Housing Federation commented that at least 64,000 people will be at risk of falling behind on mortgage support.

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payments; with those affected struggling to keep up with their payments, falling into arrears and eventually losing their properties.639

Furthermore, the Chartered Institute of Housing has calculated that the cumulative effects of the Coalition’s proposals mean that by 2020, every tenant’s (both in social housing and in the private sector) Housing Benefit (HB) will be too low to cover their rent.640 There are also plans to remove any security of tenure from social housing tenants and to increase rents to 80% of market values. Together with the caps on HB, this will make renting in the social housing sector unaffordable in many higher priced areas of the country.

Disabled people will only be able to afford to rent the cheapest properties in an area, which are more than likely to be inaccessible. This will exaggerate the difficulties disabled people face in finding suitable accommodation to live independently, increase homelessness amongst disabled people and push them further into poverty, especially if DLA recipients are cut by 1/5 as planned by Department for Work and Pensions (DWP).

From 2013, HB for working age social rented sector customers will be restricted for those who are occupying a larger property than their household size would warrant.641 670,000 households – 2/3 containing a disabled family member – will be hit by an average £670 penalty every year, because they are deemed to have a spare bedroom.642

It means that if a disabled person is living in an adapted property (with an extra bedroom), which may have cost thousands of pounds to adapt, but then have no apparent need for the extra bedroom, they will only get HB paid at the one bedroom rate. This is something that the Labour Government and DWP tried to introduce in the Welfare Reform Bill 2007, but were forced to drop by pressure from Housing Associations.643

The Joint Human Rights Committee have noted that reforms to benefits and services

640 Ramesh, R. (2012) ‘Housing benefit cuts will put 800,000 homes out of reach, according to study’ The Guardian, 1st January 2012 http://www.guardian.co.uk/society/2012/jan/01/housing-benefits-cuts-rents-study
risk leaving disabled people without the support they need to live independently. Restrictions in local authority eligibility criteria for social care support, and that the replacement of the DLA with PIP, the closure of the ILF and changes to housing benefit all risk interacting in a particularly harmful way for disabled people.644

Case Study:

A disabled couple, Mark and Helen Mullins, are said to have killed themselves at their rundown home after being reduced to despair as they struggled to live off just £57.50. Once a week they would undertake a 12-mile round trip on foot to the food kitchen. The free vegetables they brought back with them would be made into seven days worth of soup, cooked on a single gas ring set up in the one habitable room in the house in which they lived.645

Recommendations:

- To create a fair system which assesses disabled women's gender and disability specific needs and entitles them to benefits accordingly. The system must assess disability, housing and income benefit entitlement on a case by case basis, rather than impose a one size fits all model on disabled women.
- To simplify the application process to the benefits system. Most importantly, the system should recognise that disabled people are experts on their needs and the difficulties they face. The benefits should allow for them to remove the barriers they experience on a daily basis.

Education and Training.

It is reported that 23% of disabled people have no qualifications compared with 9% of non-disabled people.646 Adults with impairments are twice as likely to say their educational opportunities are limited (17%) compared with adults without

644 JCHR (Joint Committee on Human Rights). (2012) 'Rights of disabled people may be at risk, says Human Rights Committee' Available at: http://just-fair.co.uk/hub/single/rights_of_disabled_people_may_be_at_risk_says_human_rights_committee/ Accessed on: 21/03/2012.
impairments (9%). In addition, disabled women's lifetime earnings are on average lower than non-disabled men's, which may mean it is more difficult for women to meet the increased costs of studying.

Cuts to further and higher education may also prevent women from obtaining educational qualifications, due to increased fees for higher education (HE) and reduced support for further education (FE), particularly for disabled women, who have additional support costs. Consequently, women who are unable to obtain educational qualifications resulting from increased fees and reduced disability support may see their earning potential and job opportunities further decreased.

Moreover, there is a wealth of evidence to demonstrate that in the British context, disabled students experience discrimination in HE, due to barriers such as inaccessible information and physical structures, as well as lack of funding and support. Non-disabled people are twice as likely to have studied at HE than disabled people.

In addition, 11% of working age disabled people hold a degree-level qualification compared to 22% of working age non-disabled people. In 2009-10, of the 959,060 people, who entered into HE, only 7% were disabled learners. It is predicted that

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Accessed on: 25/02/2012


by 2020, 42% of jobs will require a degree level qualification or above. Hence, there is a strong correlation between low skills and unemployment for disabled women.\textsuperscript{656}

Many disabled women are economically dependent on others.\textsuperscript{657} A limited, or indeed complete lack of education, can have a negative impact on disabled women in later life. Older disabled women from ethnic minority communities, for example, often have limited access to training and employment options through online resources, mostly due to the poor formal education they have received.\textsuperscript{658}

Recommendations:

- To create inclusive education practices, both at school and at FE and HE level to support disabled women into and through education and training.
- To address the particular disadvantages, and thus lower rates of participation, in vocational training by disabled women.

Employment.

Disabled people's social mobility is said to be on a sharp decline.\textsuperscript{659} The employment rates of disabled people are around 48%, compared with around 78% of non-disabled people.\textsuperscript{660} Due to factors such as a lack of job opportunities, inaccessible transport, employer prejudice and barriers or family responsibilities, 56% of adults with impairments face restrictions in the paid work they can undertake compared with 26% of adults without impairments.\textsuperscript{661}

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Disabled people are significantly more likely to experience unfair treatment at work than non-disabled people.\textsuperscript{662} In 2008, 19\% of disabled people experienced unfair treatment at work compared to 13\% of non-disabled people.\textsuperscript{663} Disabled employees are over twice as likely as other employees to report experiencing discrimination, bullying or harassment in the workplace, while disabled women are four times more likely to report being bullied than other employees.\textsuperscript{664}

The average gross hourly pay for disabled employees is also £11.08, compared to £12.30 for non-disabled employees.\textsuperscript{665} Disabled women are far less likely to be in employment and to suffer widespread discrimination\textsuperscript{666} than non-disabled women. Despite the Government’s claim to have introduced “reforms to remove barriers to work”\textsuperscript{667} disabled women are said to experience extreme levels of exclusion and more discrimination in the search of a suitable job in the workplace, from colleagues and employers, based on sexist and disablist attitudes.

As it is the case with many other areas, in theory disabled women are said to have equal opportunities in the labour market but in practise, the situation is often very different. For instance, a tenth of disabled women have incomes below £31 per week compared with a tenth of disabled men, who have incomes below £59 per week.\textsuperscript{668} Additionally, the pay gap between disabled women and non-disabled men is 22\%.\textsuperscript{669}


Women's roles are often linked to their duties as homemakers; when a disabled woman is seen as unable to fulfil her home-related duties, society further devalues her, including in the job market. Disabled women are perceived as belonging to the 'corner' of the house and incapable of being economically productive: "Just because a woman is confined to a wheelchair, it is commonly assumed that she is best at work with her hands." This then affects the quality of disabled women's lives, being unable to have stimulating, satisfactory and independent life opportunities. Disabled women, generally, receive an insufficient amount of vocational rehabilitation, which is also noted to be a male-oriented service, after acquiring an impairment. As well as facing the possibility of exploitation by their employers, disabled women are often denied adaptation and support to be able to have an equal access to employment, as the following case study indicates.

Case Study:

Maggie Woolley: "If I was to marry a deaf man, he could get the hearing aid he wanted free because of his work but my work is not important enough. I find that really heavy discrimination."

At the same time as the Government claims to be helping disabled people back into work, the Access to Work funding scheme, which meets the costs to employers of any reasonable adjustments needed in a workplace, has been slashed. In general, 95% of employers employ 20 or less people and thus are unlikely to pay for the many items that employers are expected to contribute to or pay the full cost of with the Access to Work cutbacks.

The eligibility criteria for this benefit has been changing and tightening since 2010. In general, current reforms to unemployment benefits, and the delivery of the Work Programme, scrutinise disabled individuals' motivation and attitude.

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Employment rates vary greatly according to the type of impairment a person has, and are particularly poor for those with learning disabilities (less than one in five). Only 15% of people with Autism, and 35% of those with mental health issues are in employment. Furthermore, as the following case study indicates, women with learning difficulties are marginalised to a deeper level in the working environment simply because of their difficulties at memorising and understanding.

Case Study:

“Other employees were kind to me at first, but rapidly grew impatient as I constantly asked questions. I couldn't memorize the prices, despite studying the menu during breaks…”

Additionally, budget cuts are leading to public sector job losses which are hitting women harder, as it is where many disabled women work because of the focus on equality and anti-discrimination in the sector. Therefore, disabled women's career choices are limited compared to non-disabled women or even disabled men. The implications are that disabled women have to depend on state benefits and friend/family charity.

Unfortunately, sometimes this means that they tolerate violent living conditions in order to ensure a minimum level of survival. (See more below). Being economically disadvantaged means that disabled women are deprived of accessible and safe housing (particularly in rural areas), and suitable medical care. Thus, both at work and in their lives, they may be exploited, marginalised, powerless and in extreme cases, subjected to violence.

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Recommendations:

- To take steps to address the gender pay gap and high unemployment rates of women with disabilities, such as creating accessible employment opportunities for disabled women and providing appropriate support and adaptation.
- To introduce and expand specific programmes, policies, and facilities geared towards recruitment of disabled women.

Disability Hate Crime and Violence Against Disabled Women.

There has been a rise in disability hate crime. Among 16-34 year-olds 38% of disabled people reported they were a victim of crime compared to 30% of non-disabled people. More than 20% of disabled people have experienced harassment in public because of their impairment.683

Harassment is the most common crime experienced by disabled people, followed by verbal abuse outside the home and repeated burglaries. 66% of people with a learning disability have been bullied regularly, with 32% stating that bullying was taking place on a daily or weekly basis.684

Case Study:

A newspaper reports the experience of a disabled woman being verbally abused: “A few months ago, I was followed by a man I had never met before. For the length of the street where I live, he shouted ‘fucking DLA stick!’ at me every few seconds.”685

The threat of being a victim of crime is ever present for disabled women. Research by the Equality and Human Rights Commission686 found that among disabled women, 46% felt very or fairly worried about being a victim of crime, compared to 39% of non-disabled women. (For men, the figures were 37% for disabled men and 30% for non-disabled men.) 57% of disabled women also felt a bit or very unsafe, compared

686 http://www.equalityhumanrights.com/
to 38% of nondisabled women. (For men, the figures were 30% for disabled men and 14% for non-disabled men).

43% of disabled women felt very or fairly worried about being physically attacked by strangers, compared to 39% of non-disabled women. (For men, the figures were 30% for disabled men and 25% for non-disabled men). Among disabled women, 37% also felt very or fairly worried about being insulted or pestered by anybody, compared to 35% of non-disabled women. (For men, the figures were 26% for disabled men and 22% for non-disabled men.)

Concerns of disabled women survivors of violence against women (VAWG) seem to have remained invisible in current UK VAWG strategies. In 2009-2010, 16.29% of women seeking advice from the Rights of Women telephone helpline on sexual violence issues identified as disabled indicating a very real need for any strategy on sexual violence to address the needs of disabled women.

Women with limiting disabilities are more likely than the average to have experienced non-sexual partner abuse and stalking and a significantly higher proportion of disabled women in England and Wales experience non-sexual abuse from partners, as compared with non-disabled women. Disabled women are twice as likely to experience domestic violence as non-disabled women but are less likely to report it, and are more likely to experience it for longer before attempting to escape.

Disability, especially learning disability, exacerbates vulnerability to VAWG. Disabled people are often reliant on the person who is abusing them who may be their partner. This can leave them at risk of sexual violence and/or financial abuse.

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Research shows that disabled women experience a greater need for services because of the types of abuse to which they are subject.693

Older and disabled people who experience abuse by carers or relatives are particularly vulnerable to repeat occurrences.694 Disabled women's abuse in the 'safe environment' of their care homes is also prevalent.

Case Study:

Watts, a driver for a care home for severely disabled adults, was charged with “four counts of sexual activity with a person with a mental disorder … and two counts of sexual assault”.695

The financial dependency of disabled women, particularly on their families, may result in living arrangements that subject them to different forms of abuse, including mental, physical and sexual violence.696 The lack of accessible information and support for disabled women can prevent them from accessing social housing and shelter, if a woman's domestic living environment becomes unbearable.

In some cases, police officers are said to be inadequately trained both in terms of professional and personal attitude and their approach to know how to deal with disabled victims in general. More specifically, “… the needs of disabled women who are victims of violence have been neglected at all levels.”697 Due to extremely limited resources, most disability organisations do not offer any specific services on VAWG either.698

There is only one Independent Sexual Violence Advocate (ISVA) in England and Wales, based in London, who specialises in sexual assault of victims with learning disabilities, despite academic studies finding that up to 70% of women and 32% of

men with learning disabilities experience sexual abuse at some point in their lives (and this is still likely to be an underestimate).699

Changes to benefits for disabled people may increase disabled women's financial dependence on their partner or family. This will increase these women's vulnerability to financial abuse and may make it harder for women to leave violent relationships. It is predicted that by 2015, 98,170 single disabled people will lose £127 million of the day-to-day support they rely on.700

This situation can force many disabled women to stay in abusive relationships and endure hardship.701 This is in addition to cuts to women’s services, cuts to legal aid and police, and cuts to transport and street lighting that offer safety and a lifeline to many women living in refuges and rebuilding their lives after escaping a violent relationship.702

In situations of domestic violence, it can be particularly difficult for disabled victims to end the relationship and build a new safe life. All the respondents in Women’s Aid Federation England’s research into the needs of disabled victims of domestic violence703 said that “being disabled made the abuse worse, and also severely limited their capacity to escape or take other preventative measures”.

Information about available help may not be readily available in accessible formats, and many refuges are ill-equipped to meet the needs of disabled women. For example, of the 400 Women’s Aid refuges available in 2011 for victims of domestic violence, only 138 had wheelchair access.704 Those who leave their registered address also risk losing their access to welfare entitlements, personal assistants and so on (i.e. their ‘care’ package).

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701 For example see http://www.guardian.co.uk/society/2012/nov/19/domestic-violence-disabled-women-abuse
703 Hague et al., 2008, Making the Links: Disabled women and domestic violence. Available from: http://www.womensaid.org.uk/domestic-violencearticles.asp?itemid=1722&itemTitle=Making+the+links%3A+disabled+women+and+domestic+violence&section=00010001002200080001&sectionTitle=Articles%3A+disabled+women
704 http://www.peterboroughtoday.co.uk/news/features/revealed_the_shocking_truth_of_domestic_abuse_of_disabled_women_1_3004746
In addition, the situation has become worse in some areas of the UK, where funding to rape crisis and domestic abuse refuge services has been removed.\textsuperscript{705} The Police and Crown Prosecution Service are facing budget cuts and voluntary organisations fear that the support available to victims and survivors of violence will continue to be reduced.\textsuperscript{706} Due to extremely limited resources, most disability organisations are not able to offer any specific services around VAWG.\textsuperscript{707}

Although the UK Government claims to have invested in support and protection for victims within the Criminal Justice System, the particular concerns of victims who are disabled women have remained invisible.

Case Study:

A young woman with a learning disability had been threatened with a gun, to force her to engage in prostitution (the latest in a long history of such incidents). She was supported by a member of staff to report this crime to the local police. The nature of the woman's learning disability meant that she needed support to be able to give a coherent statement, but the position of the police was that this was not permissible, as the staff member would be seen as 'interfering' with the interview process.

They were sympathetic but adamant there was nothing they could do. The irony is that had this woman been accused of a crime, the police would have been obliged to have an 'appropriate adult' present during an interview.\textsuperscript{708}

Rape and sexual assault against disabled women tends to be dealt with only as a 'violence against women' issue rather than potentially both a violence against women and disability-related harassment issue. A report by the Crown Prosecution Service Inspectorate examined 151 cases of rape cases and found that mental health and learning difficulties were 'frequently identified vulnerabilities', yet, this does not appear to be on the radar of people managing 'violence against women' programmes.\textsuperscript{709}

Case Studies:


\textsuperscript{709} See http://www.hmcpsi.gov.uk/index.php?id=47&docID=258
Gemma Hayter, a woman with learning disabilities, was viciously beaten by five so-called friends, led to a railway embankment and forced to drink urine before being stripped and left to die.\textsuperscript{710}

In the case of Christine Lakinski, who collapsed near her home in 2007 in Hartlepool. Instead of helping her, her neighbour, Antony Anderson urinated over her as she lay dying, whilst he encouraged a friend to film the event. Yet, this incident was not treated as a crime and the Crown Prosecution Service stated: “Defendant claimed that he thought that the victim was drunk or on drugs and there was no evidence to suggest that the defendant knew she was disabled”. However, they were neighbours and she had a visible impairment.\textsuperscript{711}

There was also the case of Laura Milne, a young woman with learning disabilities who was murdered in 2007\textsuperscript{712} which demonstrated that agencies are not engaged in considering how to protect young women with learning disabilities at risk of harm.

**Recommendations:**

- To ensure steps are taken to address the heightened risk for girls and women with disabilities of becoming victims of violence, abuse, exploitation and harmful practices, such as forced marriage, in the home, community and institutions.
- Effective legislation and policies must be put in place, including women-focused legislation and policies that include disability, to ensure that instances of exploitation, violence and abuse against women with disabilities are identified, investigated and, where appropriate, prosecuted.
- To ensure that both services and information for victims are made accessible to women and girls with disabilities which guarantee their access to redress and protection, including training of police and others and increasing the number of accessible domestic abuse refuge services.


Equality before the Law.

Fiona Pilkington's case in October 2007 demonstrated the influence of negative Media portrayals, and the widespread incidences of hate crime in the lives of disabled people and their families. Pilkington killed herself and her daughter Frankie, who had learning difficulties, following a hate campaign by local youths. The campaign targeted Frankie's learning disability, leading to this tragedy.

Local police recorded Ms Pilkington's complaints as evidence of anti-social behaviour, not as an on-going hate crime concern and a 'cry for help'. Sturcke\(^\text{713}\) notes that "the jury blamed poor sharing of information between the police and councils for contributing to the deaths, but also noted Pilkington had neither 'sought nor accepted' help on occasions."

Disabled people are less likely than their non-disabled peers to think the Criminal Justice System is fair (54% as opposed to 61% of non-disabled people).\(^\text{714}\) Disabled people's access to the justice system is also reported to be restricted due to access and attitudinal barriers.\(^\text{715}\) Additionally, research\(^\text{716}\) has shown that a woman's status as a witness, or her evidence, is accorded less respect/weight than that of a man.

When a disabled woman's legal capacity is limited in this way, she is denied her rights to be equal to men, and also to report and address disability/gender-based violence. Disability charities and Justice Select Committee MP's have also argued that the Government's plans to cut civil legal aid for welfare benefits, unemployment tribunals and debt advice will make it more difficult for disabled women to appeal a decision about their benefits,\(^\text{717}\)\(^\text{718}\) or to get recourse to justice.

Imprisoning disabled women also violates their rights. In Price v. United Kingdom, 2001, the European Court of Human Rights found that incarceration without


necessary accommodations constitutes ill-treatment.\textsuperscript{719} When combined with pervasive discrimination, the poor living conditions and violence already present, the risks of incarceration are magnified for those women who have a disability.\textsuperscript{720}

**Recommendations:**

- To make the justice system accessible to people with a range of impairments and backgrounds, and to support innovative justice services, including one-stop shops, legal aid and specialised courts, in order to ensure substantive and procedural access to justice. Women with disabilities should also be involved in shaping and restructuring the legal system.

- To reform the law to guarantee the equal recognition before the law of women with disabilities, including the adoption of measures to ensure that having a disability does not directly or indirectly disqualify a person from exercising her legal capacity autonomously, and to ensure that people with disabilities have access to support that they may need to exercise legal capacity on an equal basis with others, respecting the will and preferences of the person concerned.

- Reforms are necessary to reduce the unnecessary imprisonment of women with disabilities, and to develop alternatives to custody.

**Rural Women.**

In the area of health and social care, rural local authorities already receive lower funding allocations than urban areas, and therefore are less likely to provide social care at the lower Fair Access to Care Services\textsuperscript{721} levels: “Through the Personalisation programme disabled women will have to purchase support and care but there are few economies of scale to attract providers in rural areas and higher costs, so the range of services available look set to diminish and cost of purchasing increase.”\textsuperscript{722}

The negative impact of these cuts on disabled rural women’s health and well-being as well as quality of life is therefore considerable. Disabled rural women are left out of most aspects of mainstream life by not having access to the Internet, which exacerbates their isolation. “For women and girls with disabilities. It may actually be

\textsuperscript{719} Price v. the United Kingdom, European Court of Human Rights (2001) http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59565#(%22itemid%22:%22001-59565%22)


\textsuperscript{721} http://www.scie.org.uk/publications/guides/guide33/files/facs-leaflet.pdf

more difficult in a rural area to build up a network, keep up relationships and achieve status in the community.”

In rural areas, the lack of job centres forces disabled women to travel long distances to begin the search for jobs, which “poses a particularly significant barrier to work and training options for rural disabled women, increasing risk exposure if travelling alone.” Additionally, disabled people are more likely to consider public transport as a significant aspect of their mobility, and therefore are heavy users of bus and train services, especially in rural areas.

However, the current public spending cuts are impacting on local authorities’ ability to support rural bus services. The closure of local post offices and other amenities also has a greater impact on disabled rural women's quality of life. As research from the Campaign for Better Transport indicates, overall 70% of the local authorities in England plan major cuts in bus services. This will restrict disabled women’s participation in mainstream life including political and cultural activities as well as their access to health services and education.

The spending cuts of more than 40% by the Department for Transport, will also lead to the loss of well-trained staff on the transport network, who promote independent living by supporting disabled people in their travels, further isolating disabled people from mainstream life. If disabled women do not have their own car or cannot drive, the lack of accessible transportation essentially confines them to their homes and limits their freedom. If they face violence, they have few opportunities to flee.

For disabled people who do have private means of transportation, the estimated number of valid Blue Badge holders on 31 March 2010 was 2.55 million. However, 

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when driving, disabled people are constantly scrutinised and need to justify using their blue badge in public parking spaces.  

Case Study:

“In the early days of my blue badge ownership, I was often glared at disapprovingly. I'd simply smile weakly and say I had multiple sclerosis. Most times that was enough, though once a burly aggressive gentleman spat out disparagingly 'you're a liar. You can't have that because they're all in wheelchairs’.”

Recommendation:

- To increase accessibility in public transport, and train bus/train staff to assist disabled women travellers.

Conclusion.

The current Government policies in the UK show that the barriers encountered by disabled women in all the areas discussed above are exacerbated by the interplay of their identities as 'disabled' and 'woman'. On the whole disablism and sexism coexist simultaneously. Whilst the intersectionality of ‘disability’ and ‘gender’ disadvantages disabled women doubly in these key spheres, the disproportionate effects of the current public spending cuts will have further negative impact on their human rights.

Restricting eligibility to care and closing the ILF, removing financial support for those who leave work because of a health condition or impairment, and removing financial support for disabled people seeking legal aid, infringes on fundamental articles in the CRPD. In addition to these, age, 'class', ethnicity, and sexuality similarly can increase or decrease disabled women's oppression in all the aspects explored here.

Recommendations:

- To take into account the intersection of gender and disability and mainstream disabled women in all government policies.
- To implement an effective data collection system which is disaggregated by sex, age, disability and region, which can inform the development of

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731 Glenelg, I. (2012) 'Comment is Free readers on... negative attitudes towards disability' Guardian.co.uk. http://www.guardian.co.uk/commentisfree/2012/feb/08/disabled-people-abuse-peoples-panel
Accessed on: 25/02/2012.
Accessed on: 25/02/2012.
policies and programmes to promote equal opportunities for women and girls with disabilities.

- To ensure that disabled women know their rights, and that others know their obligations, particularly under the CEDAW and the CRPD, by spreading specific materials in universally accessible formats.
Chapter 30

World Blind Union.

WORLD BLIND UNION, 1929 Bayview Avenue, Toronto, Ontario, Canada M4G 3E8.

WBU Submission to the CRPD Committee's General Discussion on Women and Girls with Disabilities.

9th Session, 17th of April, 2013.

The World Blind Union (WBU) is a global organisation that represents the worldwide community of 285 million blind and partially sighted people. “We envision a community where people who are blind or partially sighted are empowered to participate on an equal basis in any aspect of life they choose.”

We have been working for more than 3 decades to make significant difference in the lives of millions of Blind/Partially sighted people through our work in the areas of Representation, Capacity Building, Resource Sharing and Accessibility which includes our efforts to influence the policies and regulations of the UN and other international agencies to reflect the needs and views of blind and partially sighted people.

WBU operates through 6 regional unions, which are comprised of organizations of and for the blind in some 190 countries. WBU is one of the key, active and founding members of the International Disability Alliance, and it also has consultative status with UN ECOSOC, WHO and a number of other relevant UN and international agencies.

WBU wholeheartedly welcomes and sincerely appreciates the initiative of the Committee on the Convention on the Rights of Persons with Disabilities (hereinafter “CRPD Committee”) to hold a Half Day of General Discussion on Women/Girls with disabilities in the lead-up to the adoption of a General Recommendation.

General Comments.

- The United Nations Convention on the Rights of Persons with Disabilities (hereinafter referred to as “UNCRPD”) recognises the factors of multiple and dense marginalisation and exclusion which Women/Girls with disabilities in general, and Blind/Partially sighted women/girls suffer in day to day life as a result of poverty, gender, ethnicity, religion, caste and cultural ideates.
The chance of exclusion, deprivation and denial of human rights and fundamental freedoms which they face, are many times higher than for nondisabled Women/Girls and also significantly higher than for men/boys with Blindness/low vision. Several rights contained within the CRPD uphold the rights of women and girls with disabilities in general, and of those who are Blind/Partially sighted in particular.

In this context, they do so by adopting the twin-track approach through the dedicated article and the explicit mention of Women/Girls with disabilities throughout the Convention’s text. Article 3: General principles proclaim the gender equity and justice by incorporating an important principle of “Equality between men and Women”, which reflects the demonstrated commitment of CRPD to Women/Girls with disabilities.

- Article 4(3) - Consultation and involvement of women with visual disabilities in the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to women with visual disabilities. States Parties shall closely consult with and actively involve women and girls with visual disabilities through their representative organisations. This includes consultation and involvement of women and girls with disabilities with respect to all facets of life, to make it effective and meaningful for all individuals.

Women and girls who are Blind/Partially sighted experience multiple forms of discrimination, which create further barriers to the guarantee of their rights and redress for rights violations. Due to the intersections of discrimination on the basis of gender and disability, Blind/Partially sighted women and girls are at a higher risk of diverse nature, such as gender-based violence, sexual abuse, neglect, maltreatment, harassment and exploitation.

They suffer violence in the home, in institutions and within the community, perpetrated by family, caregivers, healthcare or school personnel, and strangers, including rape (also marital rape); forced marriage; forced abortion; forced contraception; forced sterilisation; female genital mutilation (FGM), and other harmful practices in peacetime, conflict and post conflict contexts.

It has been documented that women and girls with disabilities are rendered more vulnerable to these practices: almost 80 percent of women with disabilities are victims of violence, and they are four times more likely than other women to suffer sexual violence.
Specific Comments.

WBU makes this submission to the committee by commenting on several key and important articles that are of particular importance and significance to blind and partially sighted women and girls, in order to draw the Committee’s attention to the unique and specific issues and concerns of Blind/Partially sighted Women/Girls in the general discussions leading to General Recommendations. These are the following:

- **Article 6 – Women with Disabilities.**
  The World Health Organization now estimates that approximately two-thirds of the world’s blind persons are women. Any programmes, therefore, must ensure that the unique needs of blind and partially sighted women are addressed so as to ensure their equitable access and participation, since they face many additional barriers imposed as a consequence of being both blind and being women.
  These barriers include reduced access to education, health care, rehabilitation and a reduced likelihood of securing employment. In addition, blind and partially sighted women are very vulnerable to abuse and violence, and are more likely to be infected with HIV/AIDS or other infectious diseases.

- **Article 13** mandates the States Parties to ensure access to justice. **Access to justice** is a right in and of itself and also acts as guarantor of all rights, and as such it reflects the universality, interdependence and indivisibility of human rights. Access to justice has historically been a challenge for Blind/Partially sighted people.

  The act of lodging a complaint; seeking police assistance; engaging a lawyer; obtaining legal aid; testifying in court; participating in court proceedings, or in investigations, among others, has, in most jurisdictions, been overwhelmingly frustrated by inaccessible mechanisms and procedures, lack of awareness and training of actors in the justice system, and a lack of information.

  Indeed, general disability-based discrimination exercised in the law, policy and practice pertaining to the administration of justice: “This is the reality of the justice system for persons with visual disabilities… sometimes the justice system remedies inequality and discrimination, and sometimes it is the justice system itself that perpetuates that very inequality and discrimination.”

  Without access to remedies for violations, rights are rendered meaningless and people with visual disabilities continue to occupy a marginalised position.

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in society, and continue to be excluded from invoking and exercising their human rights on an equal basis with others.

Despite the grave nature of these violations, access to justice remains out of reach for many women and girls with visual disabilities. First, the law itself may deny judicial mechanisms from treating the complaints of women with visual disabilities, if they have been deprived of their legal capacity. While such practices violate Article 15 of CEDAW, Article 12 of the Convention on the Rights of Persons with Disabilities (CRPD), and Article 16 of the International Covenant on Civil and Political Rights (ICCPR), in many jurisdictions, women with visual disabilities continue to be denied their legal personhood.

Regardless of one's legal capacity status, women and girls with visual disabilities are frequently denied access to justice because they are not considered as credible or competent witnesses, and their complaints are not taken seriously if they are reported to the authorities. To the police, judges and other justice delivery actors may discount their testimony on the basis of stereotypes— in sexual assault cases, the general failure of society to see women with visual disabilities as sexual beings may result in judges and juries discounting the testimony of witnesses.

On account of these multiple attitudinal, physical, communicational, procedural and substantive barriers rooted in gender and disability discrimination, women with visual disabilities report negative experiences when trying to secure assistance from law enforcement officials and the justice system, and many are discouraged from coming forward again and seeking help when their first complaints were dismissed.

By excluding them, the rights violations remain unexposed and unremedied and as a result, there is a stark lack of data on the situation of access to justice for women and girls with visual disabilities. This invisibility maintains their vulnerability, as their needs remain unaddressed and they are unable to participate in initiatives and strategies concerning the reform of the justice system which impact upon them.

The result is the sustained victimisation of women and girls with visual disabilities, and the continued impunity of perpetrators, which act to perpetuate and legitimise cycles of violence and rights violations.

- **Articles 15 and 16** mandate States Parties to protect Women/Girls with visual disabilities from violence, abuse, inhuman, degrading treatment or punishment. Women and girls who are Blind/Partially sighted experience violence in many ways: in their homes or in institutions; at the hands of
members of their immediate family; by care-givers or strangers; in the community; in schools, and in other public and private institutions.

According to a report by the European Parliament, almost 80 per cent of women with disabilities are victims of violence, and they are four times more likely than other women to suffer sexual violence. The report also found that 80 per cent of those who live in institutions are exposed to violence from the people around them, whether they are health and service personnel or care-givers.

Research has also found that women and girls with visual disabilities are at particularly high risk of violence, including sexual violence. Women and girls with visual disabilities have increased exposure to the forms of violence experienced by women without disabilities.

Due to some of the factors mentioned above, acts of violence against women and girls with visual disabilities also include other forms of physical and psychological violence and neglect, including: the withholding of medication and assistive devices, such as low vision devices, mobility aids and white canes; the removal of a railing or mobility devices, and refusal of care-givers to assist with daily living needs.

Further acts of violence can include: the denial of food or water or threat of any of these acts; verbal abuse and ridicule related to the disability; removing or controlling communication aids; causing fear by intimidation; harming or threatening to harm, take, kill or destroy objects or pets; psychological manipulation, and controlling behaviours involving restricting access to family, friends, phone calls.

Women and girls with visual disabilities are also particularly vulnerable to forced sterilisation and forced medical treatment. Research has found evidence of forced sterilization of women with disabilities, especially visual disabilities, in several countries in Europe, as well as in Asia, Australia, Latin America, and in the Middle East.

Children with disabilities, particularly girls with visual disabilities, are estimated to be 1.7 times more at risk of violence including neglect, abandonment, abuse and sexual exploitation, in comparison to other children. Physical and emotional abuse appears to be the most prevalent abuse during childhood, while sexual violence increases in puberty.

Girls with visual disabilities are also disproportionately vulnerable to non-registration at birth, which undermines their right to an identity, name and nationality, and
exposes them to exploitation and violence. Older girls with blindness or low vision may also be particularly vulnerable to violence and humiliation. Research shows that girls with disabilities, especially girls who are blind/partially sighted, are also more vulnerable to corporal punishment in all settings.

Information submitted by non-governmental organisations for the study conducted by OHCHR indicates that in societies where there is prejudice and discrimination against people with disabilities, some parents respond with violence because of the shame the child had brought on the family.

Importantly, the prejudice attached to disability is compounded by gender discrimination, and blind/partially sighted girl infants and girl children are more likely to die through ‘mercy killings’ than boy children of the same age with comparable disabling conditions. In addition, gender specific neglect may exacerbate discrimination against girl children with visual disabilities.

Girls with visual disabilities are particularly vulnerable to violence and harmful practices including infanticide, early and forced marriage and forced sterilisation perpetrated by family members, members of the community and by those with specific responsibilities towards them, including teachers and employees of children institutions.

Their social isolation and dependence also makes them vulnerable to female genital mutilation (FGM)/cutting even in countries where such practices are banned. Furthermore, they are also particularly vulnerable to other types of violence, such as “virgin rapes” in the context of the AIDS epidemic.

Women and girls with visual disabilities may in some cases be targeted for exploitation because of their disability, which can in turn expose them to further violence. There is evidence that some forms of disabilities are directly linked to different patterns of trafficking (forced begging, labour exploitative practices). There have been reports of persons, particularly women and girls with visual impairments being trafficked into forced begging because a visible disability may have a stronger impact on public sympathy.

Women and girls with visual disabilities are also particularly vulnerable to violence during situations of conflict and other natural disasters, which may force migration and or displacement. Disasters compound the social effects of disability, especially for girls and women who face other barriers.

A 2010 report by Human Rights Watch on violence against women with disabilities in Northern Uganda documented frequent abuse and discrimination by strangers, neighbours, and even family members against women and girls with visual
disabilities in the northern part of the country during the conflict. Women interviewed for the report stated that they were unable to access provisions such as food, clothing, and shelter in camps for displaced persons or in their own communities.

- **Article 23** ensures respect for family and home of people with disabilities. According to a World Bank report on disability for India “Commitments to outcomes” 2008, the chances of widowhood among Women with disabilities, particularly those with visual disabilities, is four times higher than non-disabled women. The chances of not getting married are many times higher than for men with disabilities, and multiple times higher than for nondisabled women. Domestic legal frameworks often prevent women with visual disabilities from adoption, procreation and parenthood on account of their visual disability. These instances clearly expose the grim reality of profound violation of Article 23 of Women with visual disabilities.

- **Education** is a basic and fundamental human right enshrined in various UN instruments including the international bill of rights. The World report on disability by WHO and WB clearly reveals the grim reality of the educational situation of children with disabilities, and highlights the magnitude of exclusion from education, which is four times higher than for those children from other excluded sections.

  More than 50% of children with disabilities are out of school, whereas girls with Blindness/low vision are excluded to an even greater extent. Those who get enrolled into regular schools often do not get quality education due to poor infrastructure, inadequate trained human resources, and teaching methodology. The lack of access to Braille books, teaching and learning materials, further contributes to the dropout of girls with visual disabilities from school.

  Gender bias and stereotypes often prevent girls with visual disabilities from getting into education or special schools, where there is also a higher rate of incidents of sexual abuse, rape and violence.

- **Article 25** promotes the right to health of all, including those with visual disabilities. According to a World report on disability by WHO and World Bank, Blind/Partially sighted Women/Girls are often denied right to general health care and to specific care for their impairment. They do not have full access to Sexual and reproductive health services.
Sexual and reproductive health services include family planning; maternal health care; preventing and managing gender-based violence, and preventing and treating sexually transmitted infections, including HIV/AIDS. While little information is available, it is widely thought that Women/Girls with visual disabilities have significant unmet needs. Adolescents and adults with visual disabilities are more likely to be excluded from sex education programmes. A national study in the United States showed that women with functional limitations were less likely to be asked about contraceptive use during visits to general practitioners.

- Article 29 mandates the States Parties to ensure political and public participation of Women/Girls who are Blind/Partially sighted, but the ground realities shows that this has been profoundly denied for Blind/Partially sighted Women on account of their gender and disability. Blind and partially sighted Women are not encouraged by the family members to cast their vote since they need assistance, which is often provided by male staff in polling stations.

Often, family members (particularly males) cast the vote of blind/partially sighted women without taking them to polling stations by the mercy and pity of political party agents and polling station staff. In many developing countries, electronic voting machines are not frequently used. Even in some instances, EVMs are used, but they do not have Braille markings or auditory instructions.

On the basis of the UNCRPD provisions, the World Blind Union makes the following recommendations to the CRPD Committee:

1. In accordance with Articles 3(g), 4(3), 6, 7 and 29 of the CRPD, To call on states to consult with and actively involve women and girls with visual disabilities in legislative and other initiatives to remove barriers, and to improve women and girls’ experience of access to all human rights, through ensuring the application of reasonable accommodation and measures of accessibility to facilitate their meaningful participation in all stages of legal and policy reform and in training and awareness-raising.

2. In accordance with Article 9 of the UNCRPD, To call on states to introduce into the law, policies and practices, requirements for the physical, environmental, communicational, informational and technical/Technological accessibility of all aspects of development, including the accessibility of home appliances and domestic electronics, the provision of information in alternative formats and the provision of other procedural accommodations
and measures of support to ensure that women and girls with visual disabilities can participate in all aspects of life on an equal basis with others.

3. To call on states to introduce compulsory training of all actors in the administration of justice (law enforcement officials, prosecutors, judges, legal aid lawyers, private lawyers, etc) on the rights and needs of women and girls with visual disabilities, and on the barriers which they typically face in accessing justice. Consult with and actively involve women and girls with visual disabilities in the formulation of these laws and in the design and conduct of training.

4. In accordance with Articles 15 and 16 of the UNCRPD, to call on states and non-State actors to take steps to effectively prohibit gender-based violence, such as sexual violence and abuse including rape, forced marriage, forced abortion, forced sterilisation, FGM and other harmful practices, and adopt legislation and policies, including disability- and gender-specific and child-focused measures to protect women and girls with visual disabilities from gender-based violence, including putting into place accessible information and support services for victims.

Take urgent steps to ensure that instances of gender-based violence are identified, investigated and, where appropriate, prosecuted to combat impunity for perpetrators, and to ensure the provision of remedies and redress for victims/survivors.

5. In accordance with Article 23 of the UNCRPD, call on the States Parties and stakeholders of strategic relevance to undertake all appropriate measures, including legal, administrative, programmatic and schematic, etc., in order to promote the respect for family and home of women with visual disabilities, and end all the discriminatory practices which deny right to marriage, family, parenthood, home, etc.

6. In accordance with Article 24 of the UNCRPD, to call on states parties and other stakeholders of strategic relevance to ensure quality education, including higher and professional education of Women/Girls who are Blind/Partially sighted in an appropriate environment.

7. In accordance with Article 29 of the UNCRPD, call on State parties to ensure accessible election and voting processes, in order to promote Women/Girls with visual disabilities to exercise their right to vote and to be elected on an equal basis with others with dignity.
8. In accordance with Article 31 of the UNCRPD, To call on states to collect systematic, scientific and adequate data on women and girls with visual disabilities and their participation in the administration of development, and use disaggregated data and results of studies to develop laws, policies, programmes, awareness-raising campaigns and training, to ensure the effective and meaningful access to justice by women and girls with disabilities.

9. In accordance with Article 33 of the UNCRPD, To call on states to continuously involve and consult with women and girls with visual disabilities in the monitoring and evaluation of adopted laws, policies and programmes for the effective access to all human rights.

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Chapter 31
Peruvian Commission of Blind Women.

BLIND AND PARTIALLY-SIGHTED WOMEN IN PERU.

The double discrimination women and girls with disabilities in Peru face as a result of their gender and their sensory, physical, mental or intellectual disability, is aggravated by the fact that there is insufficient statistical information on the situation in which they find themselves. This lack of information means it is not possible to develop public policies targeting women and girls with disabilities.

Thus, it is organisations of women with disabilities themselves that make a considerable effort to become more visible, through developing projects aiming to assist this group in obtaining the skills required to strengthen leadership. In addition to these difficulties, in Peru, disability is prevalent above all among the poorest sectors in society. Within this group, girls and women form the most highly vulnerable population.

Based on this, one can infer a correlation between poverty and disability, the reasons for this being:

- High cost of health care. Women often have less access to economic resources within families to cover health care.

- Inaccessible transport. A lack of accessibility in public transport means it is practically impossible for women with disabilities to travel to health centres independently.

- Prejudice and mistaken ideas surrounding women. Women with disabilities often have fewer chances to travel than men, due to social prejudices that hold a woman may only leave home if she is accompanied.

- Poor access to information and resources. It is estimated that the illiteracy rate among women, and especially among older people, is reasonably high, and as a result they do not have the knowledge they need to make their own decisions regarding health, sexuality and reproduction.

In addition, a lack of protocols governing care for women with disabilities means that health services are not equipped with the information they require on how to care for women with disabilities, when the latter visit a hospital or health centre. Furthermore, although there are biological differences between men and women, such as the fact that it is women and not men who give birth, there are certain
differences along with natural and biological factors which are the result of social constructs based on categorisation and the distribution of roles.

This means that in our society women are seen as the only people responsible for raising children and performing household tasks. These social or gender differences restrict women in the management of their time, above all, if we compare the time men and women spend in paid employment and unpaid employment. In this sense, we can realise that while men only spend a third of their time on unpaid work, for women it takes up to two thirds of their time.

This represents a significant disadvantage, as it limits women's autonomy in decision-making on the use of the family's financial resources. Although women make up a significant portion of the population with disabilities in Peru, they are severely underrepresented, even within the disability movement itself. Women with disabilities in leadership positions are still very rare, and proposals that attempt to include the gender perspective face stiff opposition from men with disabilities in order to get underway.

Therefore, it is necessary to design and to implement policies that prioritise the needs of girls and women with disabilities and, for this reason, mainstreaming gender and disability must become one of the key demands for public and private organisations, as well as for organisations active in gender issues and organisations of and for people with disabilities.

Consequently, a national legislative framework must be in place to outlaw discriminatory practices against girls and women, while there is also a need for instruments to secure equal opportunities and close the gap between men and women.

Among the main instruments in the international regulatory framework we find two key documents to guide the development of national norms on gender and disability. The first of these is the Convention on the Elimination of All Forms of Discrimination against Women, adopted on December 18th 1979.

The first paragraph of this Convention states that:

“Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex.”
The second document we shall refer to is the Convention on the Rights of Persons with Disabilities, which was ratified by Peru in 2008 through the approval of legislative resolution number 29127. This international treaty addresses in a comprehensive fashion a wide range of obstacles that prevent people with disabilities from enjoying their human rights on an equal basis with other people. The Convention establishes robust equality and safeguards for non-discrimination in all areas of life, and protects the political, civil, economic, cultural and social rights of people with disabilities.

In Peru, education and training for girls and women with disabilities is a fundamental necessity that must be addressed to boost their full inclusion in society and employment. We currently have a traditional and inadequate training system that fails to meet the specific needs of girls and women with disabilities, so it is vital to push for holistic education and training based on values such as solidarity and tolerance, including the gender perspective from the early stages, with a view to setting the foundations needed to build an open and plural society.

Unfortunately, due to traditional beliefs regarding woman's roles, it is still difficult to persuade society, and even many families, that their daughters with disabilities must receive an education that is as mainstream as possible. Many societies feel that women do not need to be educated, and if we add to this the fact that the woman has a disability, they receive almost no encouragement from their families to enter the education system, particularly in the poorest rural areas.

As a result, the illiteracy rate among women with disabilities is higher than among men with disabilities. It is thought they should receive help from their families. In the last few years, and in line with the General Education Act, the main goal of public policies is to ensure boys and girls with disabilities can access education. However, the reality is discouraging, as families trying to enrol their daughters with disabilities into basic schooling are rejected.

Subsequently, headmasters inform them that teachers are not trained to teach pupils with disabilities, and they feel other children's parents will be uncomfortable because the teacher will neglect other students to spend time with the girl with a disability. Even if parents are finally able to enrol their daughters with disabilities in a primary school, they must face the problem that textbooks are not available in accessible formats (Braille or large print), and that there are no sign language interpreters, ramps, curricular adaptations, properly-trained teachers and adapted material, etc.

With regard to employability, obviously if women with disabilities lack education, training and qualifications, they have little or no chance of earning an income and improving their situation. Expectations regarding the professional career of a woman with disabilities are generally low, and of those who work, most do so in badly-paid
jobs and are exploited, working in jobs in the service sector, manual jobs and, only in a minority of cases, in professional jobs.

Although international treaties guarantee the equal rights of women with disabilities to access the labour market, the reality is that being a woman with a disability continues to be perceived as a situation of exclusion, as they are not considered to fit within the framework of productive, efficient and economically viable employees.

Moreover, we can also add the myths and prejudices surrounding ‘appropriate’ or ‘ideal’ jobs for people with disabilities, such as working as a physiotherapist, telemarketing operator or lift attendant. These prevent properly-qualified women with disabilities from aspiring to jobs which entail a high degree of responsibility, and through which they would be able to demonstrate their true capacity.

Furthermore, cost savings in production processes have become the touchstone of the new globalised market, and any factor impinging upon profitability is ruled out. For this reason women with disabilities are often prevented from taking part in recruitment processes as there is a misconception that they will suffer health problems constantly and other circumstances, which would lead them to ask for time off, or for permission to arrive late at work. This is why it is vital to adopt measures to put a stop to this trend; promote equal opportunities and effective compliance with international obligations, and safeguard dignity in the workplace.

Moving on and with regard to sexuality and reproductive health, services providing information and guidance must be set up to address sexuality, living with a partner, maternity and disability naturally and free from taboos. Women with disabilities must be able to choose freely if they wish to have children or not, while being fully conscious of the responsibilities involved and knowing if their disability is hereditary or not.

In the struggle to combat the violence women face in all areas - institutions, social settings, within the family and in work environments - it is necessary to put in place mechanisms to enable them to put forward their demands permanently. This problem, which affects almost all women, involves particular aspects in the case of women and girls with disabilities, which require specific measures different from those aimed at preventing violence against women in general.

One key aspect in understanding the phenomenon of violence against women with disabilities is their portrayal in society and their self-image. Women with disabilities grow up maximising their limitations, devaluing their own capabilities, and denying themselves the right or opportunity to face up to the challenge of living independently.

When we talk about women with disabilities, we talk about the different roles they perform throughout their lives as wives, girlfriends, daughters, sisters or mothers, leaving them exposed to violence in all its forms. Nevertheless, there are
determining factors that make them, as women with disabilities, more likely to be subject to violence than women without disabilities, thus placing them in a position of vulnerability.

Another relevant aspect relating to violence is the difficulties women with disabilities face in accessing justice. Our justice system has never taken into account the needs of women with disabilities to enable them to become aware of their own rights, and report crimes with all their accessibility needs covered, such as the provision of sign language interpretation, accessible facilities and information in alternative formats.

All of the points mentioned above are evidence of the fact that women with disabilities face double discrimination, and that they must overcome a myriad of obstacles which make it difficult for them to achieve goals in life that are considered essential. Greater difficulties in education, little or no access to healthcare programmes and services for women, as well as the higher risk of falling victims to sexual and physical abuse, are just some of the social traits identifying women with disabilities.

This reality represents the worsening of women's situation in general, much more severe and difficult to counteract, which affects aspects such as education, employment, marriage, family, economic status, rehabilitation, access to information, and so on.

In addition, many women with disabilities are deprived of their rights as citizens, as often they do not have a birth certificate or a national identity card. Other women who do have an identity card discover that their signature is not included in the document, thus hindering their ability to enter into contracts, apply for loans or open a bank account.

Given this situation, it is absolutely vital to set up a national registry of women with disabilities which will give us an approximate figure as to how many of us there are; the financial situation faced by the families of women and girls with disabilities; average educational attainments; level of access to health services and the amount of information they receive when they are seen in health centres, as well as the percentage of women with disabilities of working age who are active in the Peruvian workforce.

Further information could be provided on the conditions they find themselves in, and about the progress in inclusive education to enable girls and young women with disabilities to equip themselves and, in the future, be able to compete in an increasingly competitive labour market. Women with disabilities in Peru look forward to a not too distant future, in which society will place no limits on us because of our gender or disability.
Elizabeth Campos Sánchez, President
Rosario Galarza Meza, Director of Communication and Corporate Image
Peruvian Commission of Blind Women

Sonia Povis Medina
Head of Disability Rights Programme
Association for Human Rights (APRODEH)
Chapter 32

CONCLUSIONS

The women present at the First National Meeting of Women with Disabilities, held in San José, Costa Rica, on the 20th and 21st of September, 2012, recognise that:

1) Families and society in general have constructed stereotypes and prejudices which have served the sole purpose of excluding and isolating women with disabilities, thus deteriorating their dignity.

2) In most cases, women with disabilities in Costa Rica have been victims of multiple discrimination in all its different forms throughout their entire lives, with gender-based violence and physical and sexual abuse being some of the most frequent manifestations.

3) Most Costa Rican women with disabilities have been made invisible during their lives and are unaware of their rights and means to exercise them.

4) Despite having a wide-ranging legal framework for the protection and promotion of human rights, in Costa Rica no efforts are being made to ensure women with disabilities can live a dignified life.

THEREFORE:

The First Meeting of Women with Disabilities offered a suitable forum for mapping the real situation faced by this group in Costa Rica through an exchange of experiences. The meeting enabled women to realise that their situation is not unique and that, on the contrary, it can be explained collectively and group action can be taken to counter it, while at the same time respecting the heterogeneity and specificities of the different disabilities and diversity in the population of women with disabilities.

During the meeting, it was possible to learn the reasons for such deep-rooted discrimination and to learn about new approaches and disability models. It was clear there is a keen interest to learn more about human rights and disability in the light of the new paradigm. It was also evident that there is a lack of institutional articulation
which prevents the issues of gender and disability from being addressed and mainstreamed.

It was motivating to have organisations of women without disabilities participating in the meeting, thus underlining the fact that if we want to achieve we can, and that in the end we are all women. Women with disabilities who were involved in the meeting decided to set up networks to come together, taking advantage of the fact that their regions or cantons are close to one another.

Without a doubt, everyone felt comfortable working with their peers, and all participants demonstrated solidarity and sorority. All the women concluded the meeting fully committed and hopeful that they could become agents of their own change. All participants returned to their regions with the hope of becoming stronger and extending a helping hand to their peers in their local communities.

The participants recognised their personal skills and acknowledged the resources available in their regions. There are many challenges ahead both in personal terms and in terms of securing the support we deserve from the Costa Rican government, in order to enjoy a more dignified life, as set out in our constitution.

RECOMMENDATIONS.

The women present at the First National Meeting of Women with Disabilities recommend the following:

1. The state of Costa Rica, through its institutions, must become sensitive to and aware of the real situation faced by women with disabilities, in order for its public servants to act in a more humane fashion and to secure effective enforcement of the law.

2. Education and awareness-raising campaigns on the human rights enjoyed by women, young women and girls with disabilities are needed. The state of Costa Rica must ensure compliance with Law 7600 and all similar international and national standards so that women, young women and girls with disabilities are heard, respected and free from discrimination on the grounds of their disability, age, nationality or socioeconomic background.

3. Women with disabilities should be offered opportunities to take out loans and financial incentives to develop their ideas and projects.

4. Each state school in Costa Rica should have at least one Costa Rican sign language interpreter.
5. The deaf women present put forward a proposal to pass a law to set up offices for people with disabilities in all public institutions.

6. Public institutions should promote training among its staff in the different regions, in order to ensure they are aware of women with disabilities and able to perform their duties correctly.

7. The National Women's Institute should include women with disabilities in its Women's Forum and in all its policies.

8. The Ministry of Employment and Social Security should redouble its efforts towards women with disabilities in its offices for integration in the labour market.

9. The Costa Rican social security system should include women and young people with disabilities in its sexual and reproductive health programmes.

10. When drawing up all public policies, the needs of women with disabilities, including those who are in situations of greater vulnerability, should be considered.

11. Networks of women with disabilities should share all available information with their regional contacts and seek guidance.

12. The National Council for Rehabilitation and Special Education (CNREE in Spanish), and the National Women's Institute (INAMU), should host more women's meetings to learn further about the new disability model, providing fora to exchange experiences with other women.

13. There should be follow-up on the agreements reached at this meeting.

14. Regional meetings of this type should be held in the different country regions.

15. Jobs should be made available to women with disabilities in institutions addressing women's affairs (INAMU, women's offices in municipalities, etc.).

16. In order to enhance the participation of women in this meeting, these recommendations should be forwarded to members of parliament, central government advisers, INAMU, CNREE, etc.

17. More jobs should be made available to women and young women with disabilities, and increased support for employment should be provided.
18. Greater opportunities for engagement in education should be made available to women, young women and girls with disabilities.

19. Financial support for travelling expenses should be provided.

20. Sanctions should be put in place to punish non-compliance with legislation.

21. Follow-up work on the eleven networks of women with disabilities set up in this meeting needs to be carried out in order to identify more women human rights advocates in the community, hold workshops to develop their skills, and make them a source of employment, while also setting up support groups to share experiences and assist them to ensure they are included in the community.

22. These networks shall help to unite women with disabilities and ensure their voices are heard. They will also serve as channels for information sharing and dissemination, thus improving women’s quality of life and allowing women to enforce their rights more effectively. The networks shall also provide an opportunity for building partnerships with networks of women without disabilities.

**Strategic guidelines on gender and disability for the National Council for Rehabilitation and Special Education (CNREE).**

Based on experiences and the outcomes of the First National Meeting of Women with Disabilities, the organising committee of the meeting has drawn up the following draft guidelines for following up on the conclusions, and with regard to the work the National Council for Rehabilitation and Special Education, as the official body in charge of such matters, should take on board in the area of gender and disability.

**Introduction.**

“All actions towards achieving gender equality must be framed within the principle of equity, which requires granting men and women equal opportunities and treatment while fostering mainstreamed strategic and operational actions in order to transform policies and practices that cause discrimination in different spheres of life.” (United Nations Division for the Advancement of Women: http://www.un.org/womenwatch/daw/csw/55sess.htm).

Girls, young women and, in general, women with disabilities, are unable to exercise their rights on an equal footing with boys and men with disabilities, and even less so on an equal basis with the general population. For this reason, it is vital to highlight
the need to incorporate the gender perspective into all activities aimed at promoting the human rights and fundamental freedoms of people with disabilities.

The Convention on the Rights of Persons with Disabilities (Act 8661) encompasses equality between men and women as one of its fundamental principles. In Article 6 Costa Rica, as a State Party, recognises that girls, young women and women with disabilities are subject to multiple discrimination, and commits to adopting measures to ensure their full and equal enjoyment of all human rights and fundamental freedoms.

As a signatory to the Convention, Costa Rica also assumes an obligation to take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention (Act 8661).

As a result of the above, these draft guidelines aim to set out clearly the role to be played by CNREE, as the body responsible for disability issues, in including and fostering the gender and disability perspective in line with its institutional mission and vision, as well as in national and international law, the PONADIS and its action plan.

The following proposed guidelines contain the paradigmatic and legal measures which should be taken into account within the organisation and in the development of policy, projects and measures. Their goal is to eliminate the current situation of exclusion faced by girls, young women and women with disabilities in our country.

1 Inclusive Development for Girls, Young Women and Women with Disabilities.

- To foster inclusive development for girls, young women and women with disabilities, and ensure the following rights are effectively assured and free from violation:
  a. Right to inclusive education.
  b. Right to job training and vocational training.
  c. Equal right to employment, free from gender-based discrimination.
  d. Right to be treated with dignity.
  e. Right to appropriate and quality health care.
  f. Right to maternity and to experience their sexuality fully and responsibly.
  h. Right to take control of their own lives.
i. Right to a respectable social image.

j. Equal right to political participation.

2 Women's Participation.

- To promote women's engagement in decision-making in relation to all processes and issues of interest to them.
- To increase the engagement of women with disabilities in designing, running and assessing available services.

3 Empowerment and Organisation.

- To ensure the full development, advancement and empowerment of girls, young women and women with disabilities, for the purpose of guaranteeing them the exercise and enjoyment of their human rights and fundamental freedoms.
- To strengthen networks made up of women with disabilities and foster the gender perspective in existing NGOs.
- To promote closer relations and strategic alliance building between disability organisations, civil society organisations, institutional networks and national networks in the country, with a view to incorporating the gender/disability perspective.

4 Social Portrayal.

- To promote a social image that ensures respect for the dignity of girls, young women and women with disabilities.
- To combat stereotypes, prejudices and harmful practices with regard to girls, young women and women with disabilities, including those based on gender or age, in all areas of life.

5 Accessibility.

- To ensure information, communication, services and programmes are made accessible for girls, young women and women with disabilities in the fields of healthcare, education, employment, transport and physical spaces, to eliminate barriers to their personal autonomy and independent living.

6 Legislation and Policy.

- To ensure legislative, administrative, social and educational measures, and other types of measures, are taken effectively in order to protect girls, young women and women with disabilities both in their homes and outwith and
against all types of exploitation, violence and abuse, including those based on gender and age.

- To draw up government policies aimed at promoting, protecting and respecting the dignity of girls, young women and women with disabilities. Disability policies should take into account the differences between men and women, while gender policies should include the disability perspective.
- To eliminate discrimination and to ensure equal opportunities for girls, young women and women with disabilities in all legal and regulatory provisions concerning all topics, and bring forward new gender- and disability-related measures which are not provided for in existing legal and regulatory provisions.
- To promote government actions in order to make sure instances of exploitation, violence and abuse against girls, young women and women with disabilities are detected, investigated and, if warranted, prosecuted.

7 Research.

- To promote qualitative and quantitative research into the reality faced by girls, young women and women with disabilities.
- To incorporate the gender perspective into those CNREE’s actions directly linked to statistics gathering on people with disabilities in the country, while including gender-based indicators and indicators on income, schooling, age, violence, type of employment and type of disability according to the ICF.
- To work towards incorporating the gender and disability perspectives in global population studies, and including the disability perspective in research and studies on women.

8 Government Planning and Budgeting.

- The CNREE should draw up Institutional Operational Plans (IOPs) and annual budgets that ensure the human rights and fundamental freedoms of girls, young women and women with disabilities are promoted, protected and guaranteed.

9 Poverty Reduction.

- To incorporate gender and disability into care, social protection and poverty reduction programmes and actions.

10 CNREE Gender Equality Unit.
To promote the establishment of the Gender Equality Unit within the CNREE, with a view to including the gender perspective in planning processes in order to bring about improvements in service provision and enhance coordination among institutions.

Report submitted by:

Ileana Chacón
Committee of Women with Visual Impairment
Costa Rica
Chapter 33
World Federation of the Deaf.

WORLD FEDERATION OF THE DEAF

An International Non-Governmental Organisation in official liaison with ECOSOC, UNESCO, ILO, WHO and the Council of Europe, established in Rome in 1951.

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Deaf Women and Girls not Able to Enjoy Basic Human Rights.


Presented at the session by: Jenny Nilsson, President, World Federation of the Deaf Youth Section (WFDYS)

Submission authored by: Dr. Joseph Murray, Chair, World Federation of the Deaf (WFD) Human Rights Work Group, and Jenny Nilsson, President, WFDYS.

Thanks to WFD President Colin Allen and Noppawan Thamsiriboon, WFD Intern, for comments and assistance in preparing this document.

The World Federation of the Deaf (WFD) is an international non-governmental organisation representing approximately 72 million deaf people worldwide. It is estimated that more than 80 percent of these 72 million live in developing countries, where authorities are rarely familiar with their needs or desires. WFD is recognised by the United Nations (UN) as the representative organisation for deaf people worldwide.

The WFD works closely with the UN and its various agencies in promoting the human rights of deaf people in accordance with the principles and objectives of the UN Charter, the Universal Declaration of Human Rights and other general acts and recommendations of the UN and its specialised agencies.
WFD has a policy of closely collaborating with its member organisations. This close interaction ensures that WFD’s work truly reflects the best interests of deaf people, by having member input from planning through implementation and follow-up. WFD has an Expert Group on Deaf Women and Children. Members of Expert Groups provide technical aid and expert advice, either directly or indirectly, to the WFD Secretariat and WFD Ordinary Members. The WFDYS is a section of the WFD which works to promote the interests of Deaf youth worldwide.

This submission on strengthening the human rights of deaf women and girls is based in part on the WFD Report Deaf People and Human Rights (henceforth “Report”)735 This Report is based on a survey which explores the lives of Deaf people in 93 countries, most of which are developing countries.

The report concludes “relatively few countries deny Deaf people access to education, government services or equal citizenship on the basis of deafness alone. But lack of recognition of sign language, lack of bilingual education, limited availability of sign language interpreting services and widespread lack of awareness and knowledge about the situation of Deaf people deprive most Deaf people of access to large sections of society. Thus they are not able to truly enjoy even basic human rights.”736

Basic Factors for Human Rights of Deaf People.

For deaf people, sign language is a fundamental human right from which it is possible to achieve all other human rights. The Report outlines four basic factors for the achievement of human rights for deaf people:

• “Recognition and use of sign language(s), including recognition of and respect for deaf culture and identity.
• Bilingual education in sign language(s) and the national language(s).
• Accessibility to all areas of society and life, including legislation to secure equal citizenship for all and prevent discrimination.
• Sign language interpretation”737

736 Deaf People and Human Rights (2009), 7.
737 Deaf People and Human Rights (2009), 9. Figure from same page.
The emphasis on sign language is apparent in the image above, taken from the Report, with sign language occupying a central and determining role for all other basic human rights. The Report notes, “It has frequently been observed that sign language is repressed in many countries and its use is not permitted in education. The consequence is that Deaf people are not aware of the rights they have, and live as a highly marginalised group especially in most developing countries.

There is usually no or only very little access to information for Deaf people.” The UN Convention on the Rights of Persons with Disabilities recognises the importance of sign language and access to a deaf community in five of its Articles. Full implementation of these Articles entails, among other items, recognition of national signed languages.

**Lack of Data on the Situation of Deaf Women and Girls.**

This submission wishes to highlight a significant barrier with regard to fully understanding the human rights situation of deaf people in gender-specific ways. There is simply very little data on the lives of deaf people, especially deaf people in developing countries. As noted in the Report, “The lack of data hinders efficient planning and targeting of development cooperation projects; as well, lack of knowledge about the situation of Deaf people in each country and region makes education and improved awareness more problematic.”

The Report goes on to note the paucity of data on “the quality and quantity of the various services and institutions serving Deaf people” and of gender-specific data in particular. Research on deafness has largely focused on a medical model which looks at hearing loss. With this submission, the WFD and WFDYS wishes to bring attention to the need for more research focused on the human rights situation of deaf people, and of specific populations of deaf people, including deaf women and girls.

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738 Deaf People and Human Rights (2009), 9.
739 Deaf People and Human Rights (2009), 10.
740 Deaf People and Human Rights (2009), 10.
741 Deaf People and Human Rights (2009), 52.
International, Regional, and National Meetings of Deaf Women.

One way in which to understand the needs of deaf women and girls is through the principle of “nothing about us without us”. Deaf women and girls should have the opportunity to comment on their own life situations. The WFD’s quadrennial World’s Congresses of the World Federation of the Deaf has special interest group (SIG) meetings for particular groups. SiGs on Deaf Women have been a regular feature of the WFD’s Congresses.

An overview of SIG reports from past Congresses show these SiGS emphasised the importance of:

- Deaf female role models and deaf women leaders.
- Gender equality.
- Deaf bilingual education.
- Employment opportunities for deaf women.
- Promotion of women to leadership or management positions.
- Recognise the history of deaf women by developing books in this area.

Key conclusions from several Congresses were that information, training programmes, and support for deaf women, especially those from developing countries should be a priority.

The WFD has eight Regional Secretariats which conduct activities in different world regions. There have been regional meetings of Deaf women in Asia, the Caribbean, Europe, and the Arab Region. The WFD and WFDYS both attended the “First Forum of Deaf Training for Deaf Women” in Doha, Qatar in 2012, with representatives from 13 Arab nations present742.

The WFD Asia/Pacific Region (WFD RSAP) November 2012 meeting highlighted issues of discrimination for deaf women. Among other items, the meeting stressed that there is not a lot of access to information about women’s rights on Sign Language. They conclude that deaf women suffer serious discrimination part of two causes: being deaf and being women, this double discrimination impacting all areas of their life743.

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742 Colin Allen, “President’s Column”, WFD Newsletter June 2012, p. 4.
743 Ichiro Miyamoto, Director WFD Regional Secretariat, Asia. “Report on Deaf Women’s Meeting: The Deaf women’s meeting is a new session held in WFD Regional Secretariat in Asia/Pacific Representatives Meeting.” E-mail communication with WFD Office, February 5, 2013.
These meetings are important in highlighting gender-specific issues for deaf women in different nations and regions of the world. There are also associations or groups in several countries, such as Colombia, Uganda, and the United States, which serve to highlight human rights issues concerning deaf women and girls.

**Conclusion.**

The WFD and WFDYS urge the United Nations and its affiliated agencies, national governments, non-governmental associations, aid organisations, and other entities working with deaf people to cooperate to remedy the lack of gender-specific data on deaf women and girls, with attention being paid to national, regional, and other variations in the lived experiences of this population.

These entities should work with the WFD, the WFDYS and representative organisations of deaf people worldwide to promote and utilize associations and networks of deaf women. In this way, we can work to achieve human rights objectives for deaf women and girls.

In conclusion, the WFD and WFDYS would like to remind the Committee of the continuing need for fulfillment of the WFD’s Vision, affirmed by the WFD General Assembly in 2011:

> “Deaf people have full human rights in an equal world where they and their sign languages are recognised and included as part of human diversity.”

We recommend the Committee, and other actors in the human rights field, to use this Vision as a guiding principle in the further promotion of the needs of deaf women and girls.
Chapter 34

International Network of Women with Disabilities.

Interdependence: Including Women with Disabilities in the Agenda of the Women's Movement - Our Fears, Realities, Hopes, and Dreams.

by Myra Kovary, Coordinator of the International Network of Women With Disabilities

The Committee that drafted the Universal Declaration of Human Rights was chaired by a woman, Eleanor Roosevelt. Her husband Franklin Roosevelt, the President of the United States of America, was a man with a mobility disability. In 1948, in the wake of the horrors of World War II, the governments of the world adopted the Universal Declaration of Human Rights, making a commitment to promote the human rights of all human beings. That commitment includes a commitment to promoting our human rights -- the rights of women with disabilities.

The International Network of Women With Disabilities (INWWD) was founded in 2008, following the entry into force of the Convention on the Rights of Persons with Disabilities (CRPD). INWWD's mission is to enable women with disabilities from all around the world to share our knowledge and experience, enhance our capacity to speak up for our rights, and empower ourselves to bring about positive change and inclusion in our communities.

In March 2011, INWWD produced a significant document on Violence Against Women with Disabilities that was published by the Center for Women Policy Studies. Violence against all people, including violence against women, causes disability of all kinds – mobility disabilities, blindness, deafness, psychosocial disabilities, pain, and other visible and invisible disabilities. Violence is more likely to happen to women. And violence is more likely to happen to people with disabilities than to people without disabilities.

The experience of violence affects children whose mothers and fathers experienced such violence, whether or not the children witnessed the violence, and those effects carry on for generation after generation. We are all those children. We have all been touched by violence, in one form or another. We are the 100%.

How can we end violence? Promote human rights for all people all over the world? Those are tall orders, but in the process of implementing the Convention on the
Rights of Persons with Disabilities, we have an opportunity to make a difference by addressing violence against women with disabilities.

There is an opportunity now, here at the United Nations, to link women with disabilities’ issues with efforts to advance women’s rights in general. As a colleague Stephanie Ortoleva stated several times as a refrain during her presentation at the UN at a side event at CSW 56, “Women with disabilities are women too!” The general women’s movement, particularly in our work at the UN, must embrace issues we face as women and girls with disabilities in the contexts of CSW, CEDAW, CRC, and the CRPD.

Involving UN Women in advocating for the human rights of women and girls with disabilities will be absolutely necessary to accomplish our common goal of the promotion of human rights for all members of the human family. If UN Women takes the lead, the rest of the world will follow.

The world’s population is aging. Women from the second wave of the women’s movement are aging. I am one of the youngest of that generation and I will be 60 years old this year. The fears, realities, hopes and dreams of women in general are congruent with those that we as older women with disabilities live with everyday. Misogyny and elder abuse lead to the medicalization of disability (particularly psychosocial disabilities) and poverty, which leads to more misogyny and more abuse and more poverty. This vicious cycle must be interrupted.

The process of implementing the new paradigm embodied in the CRPD that sees disability from a social model perspective rather than from a medical model perspective provides us with an opportunity not to be missed. Women with disabilities are no longer considered to be “faulty beings” to be pitied. Now we too are formally recognised as part of the human family.

Margaret Mead said, “Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has.”

However, advocacy and activism are sometimes in conflict with self-care, self-empowerment and self-advocacy, especially when psychosocial disabilities is already a factor. Women with disabilities are often torn about whether to take care of ourselves, take care of our loved ones, advocate for ourselves or advocate for the human rights of people in general, which hopefully include our rights as well.

What is the best way to proceed at any given moment? That is for each one of us to decide, but sorting out our priorities while making those decisions is never easy for women with disabilities. We cannot do all this work all on our own. Our organizations need your financial support and we need your support to enable us as individuals to exercise our right to legal capacity on an equal basis with others, the right to make our own decisions, to make our own choices, with no discrimination on the basis of gender or on the basis of disability.
We are here to say that we expect to get that support from all of you because we know that if you did not care about human rights, you would not be here at the UN today.

We women with disabilities of all kinds, particularly older women, women who are alone, widows, women who are called witches, women who are considered to be demented or mentally ill, women who have fled war zones or drought with or without our children, women who have been forced to flee from violence in our own homes with or without our children, women who have had our children taken away from us on the basis of our disability or theirs.

We women with disabilities who are afraid of being abandoned, women who are starving, homeless and living in extreme poverty, women who are forced into prostitution in order to support our families, women who are living with AIDS, women who do not have access to adequate medical care, women who are raped, beaten, force medicated with psychoactive medications and/or addictive painkillers in institutions that are supposedly set up to care for us.

We women with disabilities who are institutionalised so others can gain control of us, of our property, our money and/or our children, women who are coerced or forced into undergoing electroshock under the pretence of easing our pain, women who rely on abusive spouses or caretakers for our daily needs, women who go out to find water or firewood for our families and are raped or beaten or killed when we are alone and unprotected and are consequently traumatised and/or physically disabled.

We women with disabilities are among the most traumatised, the most mistreated and the most oppressed. Violence against women with disabilities is sometimes even perpetrated by the States themselves, particularly against women with psychosocial/mental disabilities under the guise of acting “in our best interest” allegedly “for our own good”, under the cover of forced psychiatry.

But in contrast to how governments and people without disabilities often think about us, we who have survived are among the strongest in society, not the weakest. We have had to learn how to survive under the most adverse circumstances. Mahatma Ghandi said, “A nation’s greatness is measured by how it treats its weakest members.”

I would like to change that a bit, to say that a nation’s greatness is measured by how much it learns from its members who have experienced the most discrimination and oppression, its members who, despite that discrimination and oppression, have figured out how to live and love and work to make the world a better place, in our own homes, in our communities, in our countries, and even at the United Nations.

Yes, women with disabilities are women too. On the average, we live longer than men, and aging contributes to the likelihood of acquiring a disability. We are also
even more likely to be victims of violence than women in general. The experience of violence is likely to lead to disability. Almost all of us are people with disabilities, for at least part of our lives. And I suspect that all people, men and women, able and disabled, fear violence and abandonment and the possibility of becoming disabled or more disabled.

Here are our specific recommendations to end violence against women with disabilities, excerpted from our March 2011 INWWD Barbara Faye Waxman Fiduccia paper on Violence Against Women with Disabilities, published by the Center for Women Policy Studies (USA) at


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When measures are taken to end violence against people with disabilities, targeting “people” with disabilities without recognizing that there are unique issues for women with disabilities contributes to a gender-neutral concept of disability that ignores women with disabilities, renders their needs invisible, and contributes to their isolation. Given that violence against women with disabilities is hidden and ignored already, this “gender-neutral” approach increases their risk of exposure to violence.

**Recommendations:**

Violence against women with disabilities is a pervasive human rights violation that manifests itself in several different forms, resulting in significant physical and emotional harm. Such violence can be perpetrated intentionally as well as through systemic and societal practices thought to be “well-intentioned.”

A broad range of stakeholders have important roles to play in ensuring the rights of women with disabilities to be free from violence. These stakeholders include: national and local governments, the United Nations (particularly UN Women and the UN Population Fund), service providers, donors and civil society (including women’s organizations, human rights groups, HIV organizations, and disabled people’s organizations).

Given the serious and pervasive nature of violence against women with disabilities, these stakeholders can and should undertake a broad range of actions and initiatives to ensure that women with disabilities do not become victims of violence and that provide them with empowering, accessible, and safe means of recourse in
the event of violence. This Paper offers important recommendations for a variety of groups of stakeholders.

Some of the recommendations cut across all of the above-mentioned stakeholders and should be incorporated within all actions and measures that seek to protect women against abuse and violence. Some recommendations are primarily directed at governmental bodies and some are intended to inform and guide the actions of advocates.

**Cross-Cutting Recommendations:**

It is essential for any stakeholders providing programmes and resources for women with disabilities to recognize the heterogeneity of disability and ensure that women with all types of experiences of disability are included in all measures concerning women with disabilities, and that such measures are of equal value to all women with disabilities. It is critically important that women with disabilities be included in mainstream endeavours initiated by governments, human rights organizations, development partners, and civil society to address violence against all women.

Stakeholders must ensure that women with disabilities can physically access programmes and services, by taking measures to provide access to transportation or support, to provide sign language interpretation, and to take any other necessary actions to ensure that such programmes do not exclude any woman on the basis of her disability (including psychosocial and intellectual disabilities).

Stakeholders at all levels should take measures to fight stigma, discrimination and all forms of violence against women and girls with disabilities, through awareness campaigns and community discussions, for example. It is important for all stakeholders and service providers to be cognizant of the need for multiple formats for communication, and they should disseminate information in formats that are accessible to people with learning and sensory disabilities (through Braille, sign language, and easily understood language, for example).

**Recommendations for National and Local Governments:**

Adopt laws and policies recognizing that all actions that violate the right to bodily integrity of women with disabilities are illegal, including psychiatric assault and forced institutionalization, and that these should be considered acts of violence.

Actively include diverse women with disabilities in developing and implementing programmes, policies and protocols for service providers, law enforcement officers, and other personnel who work with women with disabilities.
Recommendations for Governmental Bodies, International Donors, and Development Practitioners:

Ensure that all research, actions, and advocacy related to violence against women with disabilities incorporates the forms of violence identified by women with psychosocial disabilities, including psychiatric assault, and fully investigates their experiences.

Ensure that women with disabilities can retain their legal capacity and freedom.

In partnership with disabled persons’ organizations and other community-based organizations, educate parents, partners, nurses, caregivers and other health care service providers to deal respectfully with women with disabilities and offer quality care when their help is required.

Train communities on how to include and communicate with people with different types of disabilities to avoid isolation of women and girls with disabilities.

Recommendations for Local Authorities, National Human Rights Commissions and Bodies, Humanitarian Aid Workers, UN Bodies, Direct Service Providers, and Non-governmental organizations (NGOs):

Create accessible channels for distributing information, consulting, and reporting about all forms of violence against women and girls with disabilities.

Collect data on the number of women with disabilities who access services and programmes for preventing violence against women and serving victims of such violence and use this data to develop more inclusive initiatives.

Investigate the causes of all forms of violence against women with disabilities and specifically the needs of girls, elderly women, single women, indigenous women and women who live in rural areas with regard to the isolation and victimization that can contribute to violence in such circumstances.

Educate women and girls with disabilities about their human rights.

Provide women and girls with disabilities with information and counselling on sexual and reproductive health issues.

Recommendations for Disabled Persons’ Organizations, Community-Based Organizations and Other Members of Civil Society:

Develop advocacy, information, and support services for women and girls with disabilities who are survivors of all forms of violence.
Train women with disabilities to organise and manage support services efficiently, to develop skills and abilities for economic self-sufficiency, and to use technological aids that that lead to greater independence.

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The CRPD created an opportunity that women with disabilities and allied women seized to form the International Network of Women with Disabilities. We the members of INWWD -- across cultures, across oceans, across national borders, across all disabilities including mental, intellectual, sensory, and mobility disabilities, women with disabilities and women without disabilities, old and young, heterosexual, lesbian and transgender women, rich and poor, employed and unemployed, indigenous and non-indigenous -- we are learning to work together and to do so effectively. We are human beings first and we are women. We are your mothers, sisters and daughters. We are also often caretakers of your fathers, brothers and sons. We have to prioritize our actions on a daily basis to survive. We realize that we cannot rely solely on our own strengths and our fierce desires for independence. We have become interdependent. We are changing the world with our individual and collective efforts every day.

If you are willing to walk in our shoes, see the world through our eyes and fingers, hear with our ears and hands, ride on our wheels -- you will find that it is possible to create a world where people support each other, care for each other, care about each other, accommodate ourselves to our own disabilities and accommodate other people, some of whom have disabilities and some of whom do not. And very interestingly, we do all this with very little money.

In the face of so much discrimination, with so many cards stacked against us -- if we can do all this, we know that the Member States of the United Nations and the UN entities charged with promoting human rights, including UN women, can too. We challenge you, to ask us and ask our organizations in your countries how we do it. We will be happy to tell you.

I close in solidarity with all people with disabilities, over a billion worldwide, and in honor of all who did not survive their experience of disability, with the motto of the International Disability Alliance:

Nothing About Us Without Us.

Resources and contact information for the International Network of Women with Disabilities:

INWWD Website: http://inwwd.wordpress.com
INWWD Social Networking site on Facebook: https://www.facebook.com/InternationalNetworkOfWomenWithDisabilities

Contact information for INWWD: inwwd@yahoo.com

Resources on our websites include our INWWD Barbara Faye Waxman Fiduccia Paper (published by the Center for Women Policy Studies) on Violence Against Women with Disabilities, INWWD Beijing +15 Review, WomenEnabled papers, as well as other INWWD documents.


Chapter 35
Christian Blind Mission.

CBM submission on women and girls with disabilities to the Committee on the Rights of Persons with Disabilities, as requested by CRPD/C/8/3.

16th of February, 2013.
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Introduction.

CBM welcomes the decision by the Committee on the Rights of Persons with Disabilities to host a general discussion on women and girls with disabilities, and submits this short paper in response to the Committee's request for submissions. The paper starts with a short discussion on issues faced by women and girls with disabilities. It places the discussion in the context of the intersection between disability and gender, and how human right treaties and future development frameworks must be cognizant of the interaction between the two in order to provide effective protection for women and girls with disabilities.

The paper then suggests three key areas for the Committee on the Rights of Persons with Disabilities to consider:

(a) The need for cooperation and synergy between monitoring mechanisms of CEDAW and the CRPD.

(b) Important legal and policy areas for women and girls with disabilities.

(c) The mainstreaming of women and girls with disabilities into the post-2015 framework, giving an example of how CBM is working to progress the rights of women with disabilities.

The final section offers some short conclusions and recommendations to the Committee for future consideration.

Context.

“The plight of women with disabilities is not the simple sum of the barriers faced by people with disabilities and the barriers faced by women. The combination of their disabilities and inferior status as women goes beyond the mechanical doubling of discrimination to a situation of utter social alienation and policy neglect”.

It is well recognised that women and girls with disabilities are subject to multiple discrimination; in that they not only face discrimination and exclusion from the perspective of being disabled, but also from being a women/girl. Some commentators have gone further to suggest that women with disabilities face ‘triple discrimination’.

discrimination’ particularly those women who live in low income and poor countries.  

Yet, despite these facts, up until recently women and girls with disabilities have largely been invisible within both disability and gender law, as well as policy and within global development policies. Progress is being made on a number of fronts; however, the rationale behind the Committees request for this submission on women and girls with disabilities demonstrates that much remains to be achieved.  

The intersection of both gender and disability places women and girls with disabilities in situations of increased vulnerability to poverty, and can in fact place their lives at risk. The UN claims that “the combination of male preference in many cultures and the universal devaluation of disability can be deadly for disabled females”. Data remains limited on women and girls with disabilities.  

What is clear is that women with disabilities are more exposed to practices which qualify as torture or inhuman or degrading treatment; they are more susceptible to violence and abuse; are at an increased risk of increased poverty; and if they are from ethnic or indigenous communities, are more likely to have to contend with forces that exclude them on the basis of gender as well as disability, culture and heritage.  

However, as the quote at the start of this section from the Korean delegation highlights, tackling the discrimination faced by women with disabilities is not simply about adding disability and gender together. Instead it is about identifying where both gender and disability intersect to create unique forms of discrimination that require a holistic response by law and policymakers. The following sections discuss this in more detail with respect to the international normative framework protecting the rights of women and girls with disabilities and future global development policies.  

A. Normative frameworks and the need for cooperation and synergy to protect the rights of Women and Girls with Disabilities.  

The rights of women and girls with disabilities are protected by international law, within the general treaties of the IESCR and the ICCPR and, more specifically, with

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745 See UNESCAP, Hidden Sisters: Women with Disabilities in the Asia Pacific Region, Social Devt. Division, Bangkok

746 The rationale for the call for this submissions is based on the scarcity of information provided in State Reports submitted to-date to the CRPD Committee

747 See the Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, submitted in accordance with Commission resolution 2002/31, E/CN.4/2003/58, paragraph 67


the Convention on the Elimination of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD).

While not explicitly referencing women with disabilities in its original treaty text, CEDAW has subsequently included references in General Recommendation no 18. In particular, it recognises the double discrimination faced by women and girls with disabilities.

Similarly, the CRPD recognises the double disadvantage faced by women and girls with disabilities. Furthermore, it takes a twin-track approach to progressing the rights of women and girls with disabilities through (a) the inclusion of a specific Article ensuring the rights which could be considered specific to the situation of women with disabilities (such as institutionalization and forced sterilization) are protected, and (b) the general rights contained in the CRPD, such as antidiscrimination (Article 5) awareness raising (Article 8), protection from exploitation (Article 16), violence and abuse and health (Article 24) are gender sensitive.

There is no doubt that the CRPD has made progress on moving away from a homogenous view of disability to one where multiple identities are recognised. Degener describes it as “the only Convention which explicitly refers to multiple discrimination in the binding text”. She explains that one of the factors contributing to this is that the CRPD as one of youngest international treaties has benefited from the recent commentary from United Nations bodies on multiple discrimination.

Building on this, De Silva suggests that the CRPD has the potential to enable the different human rights treaties affecting women and children with disabilities “to be implemented together within an interlocking web of the human rights framework”. She believes that an intersectional approach between CEDAW, CRC and the CRPD can go some way towards decreasing the incidence of multiple-discrimination faced by women and girls with disabilities.

However, despite the growing recognition of multiple-discrimination the fact remains that the struggle faced by the community of women with disabilities to include a specific Article on women with disabilities in the CPRD demonstrates the dichotomy that exists in law and policy, when responding to issues faced by women with disabilities.

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750 See General recommendation No 18 (1991) which recognises that women with disabilities face double discrimination
752 The CRPD being the youngest of the treaties has had the benefit of building on recent years commentary coming from UN treaty bodies on multiple discrimination for example General Comment on CEDAW no 18, see the European Union Non-Discrimination Law and Intersectionality, Chapter 2,
753 See “ European Union Non-Discrimination Law and Intersectionality” Chapter 7 (2011)
The failure of traditional disability and law and policy to include women with disabilities highlights how women with disabilities fall between existing gender and disability protections and remain invisible. This raises questions of where specific approaches are needed (as in case of Article 6 of the CRPD) or when a gender sensitive approach is needed which is envisaged by both CEDAW and the CRPD.

To-date State reporting under both CEDAW and the CRPD, and their respective lack of information on women with disabilities, suggest a number of important points for the Committee on the Rights of Persons with Disabilities to consider with respect to monitoring the implementation of the rights of women and girls with disabilities:

- A need to prioritize information and data gathering on women with disabilities in future CRPD State reports.
- A need to ensure that reporting across all areas of the CRPD includes a gender aspect.
- A need for sharing information between the Committees of the CRPD and CEDAW.

B. Key Issues Facing Women with Disabilities.

As noted earlier in the introductory section, getting to the heart of the discrimination faced by women and girls with disabilities is not about simply adding gender and disability. Many of the issues faced by women and girls with disabilities are issues faced by women throughout the world and stem from society’s response to gender. In the context of strengthening human rights protections for women and girls with disabilities and ensuring their inclusion in future development policy, this section highlights key issues facing women and girls with disabilities, which cross-over with mainstream gender issues.

754 For example, previous measures such as the World Programme of Action on Disability made minimal references to diversity within disability, recognizing women and children with disability within the category of special groups rather than integrated throughout its actions. Similarly the UN Standard Rules references women and children with disabilities at different junctures, however the CRPD explicitly references them throughout the text and also with specific articles.

755 It could be reasonable then to suggest that the experience of women with disabilities falling between the gaps of gender and disability could be described as similar to that of the case made by Kimberley Crenshaw on race and gender where she claims that the "intersection of racism and sexism factors into Black women’s lives in ways that cannot be captured wholly by looking at the race or gender dimensions of those experiences separately," see Mapping the Margins: Intersectionality, Identity Politics, and Violence Against, Women of Color. Crenshaw, Kimberly, Stanford Law Review Vol. 43, July 1991.

756 The rationale behind this call for submission by the CRPD Committee highlights how the first set of State reports to the Committee on the Rights of Persons with Disabilities have had a 'scarcity of information on the situation of women and girls with disabilities'. This was also highlighted by the CEDAW committee, which found scarcity of information on women and girls with disabilities, see General Recommendation No.18.
1. Access to Economic and Social Rights: While data remains limited, it is generally accepted that women and girls with disabilities have less access to education, social services and employment opportunities than non-disabled women and disabled men. For example, USAID reports that women with disabilities are at increased risk of being sicker, poorer and more socially isolated than men with disabilities or able-bodied women.

In terms of accessing education, the UNDP reports the literacy rate for women with disabilities may be as low as 1%, and UNICEF reports that women and children with disabilities receive 20% less rehabilitation services. Finally, in terms of access to employment opportunities, studies on women with disabilities in rural areas of many countries have found that more than 80 percent of women with disabilities have no independent means of livelihood, and are totally dependent on others for their very existence.

2. Vulnerability to Violence and Abuse: From a gender perspective, a recent report by the UN Special Rapporteur found that by virtue of being a woman and having a disability, the risk of violence increases. From a disability perspective, studies have shown that disabled women are far more likely to be subjected to violence and abuse than non-disabled women and in some instances the form of abuse is particular to the fact of the woman having a disability.

For example, studies have found that women with disabilities are more likely to experience abuse by attendants or health-care providers, and are less likely than non-disabled women to access support and help when they need it.

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757 See in general the IESCR and in specific terms see CEDAW (Articles 10, 11, 12 and 13), see CRPD (Articles 24, 25, 26, 27 and 28)
759 See general provisions in ICCPR and in specific terms see CEDAW (Article 6); see CRPD (Article 15, 16 and 17)
760 See A/67/227 Report of the Special Rapporteur on Violence against women, its causes and consequences (pg. 4)
761 See ‘Forgotten Sisters – A Report on Violence Against Women with Disabilities: An Overview of its nature, scope, causes and consequences’ Ortoleva and Lewis (2012); see also report from the Triple Jeopardy project that took place from 2010 – 2012, and was implemented by Banteay Srei, the Cambodian Disabled People’s Organisation, CBM-Australia, the International Women’s Development Agency and Monash University with support from AusAID.
762 See Making the links: Disabled women and domestic violence, final report by Hague et al (2007)
3. Access to Justice:

Access to justice for women with disabilities remains an under-researched topic. Under the CRPD, CEDAW and other treaties women with disabilities are guaranteed equal access to the law. However, in practice many barriers exist for women and girls with disabilities in seeking justice.

Recent research conducted on violence against women found that a number of factors contribute to these barriers. These include: weak implementation of laws regarding disabilities; low levels of knowledge about law and the process of participating in the formal justice system by women with disabilities and finally, a lack of resources to promote the laws, which means that local authorities are not aware of the laws they can use to protect women’s rights and ensure their safety.763

4. The Right to Home and Family 764

Society generally views women with disabilities as not capable of having children and therefore, incapable of fulfilling their role of being a mother and participating in family life. This is particularly prevalent in developing countries, where women with disabilities are not seen as marriage material and, in many circumstances, are left hidden away resulting in an increased vulnerability to a life of poverty.

The prejudice faced by women with disabilities in accessing their sexual and reproductive rights can manifest itself through decisions about reproduction and family planning being made by a third party in the “best interests of women with disabilities”. This results in women and girls with disabilities not being aware of their rights, and having little or no information on reproduction and sexual health.

5. Participation in Political and Public Life765

Like non-disabled women, women with disabilities face challenges when participating in political and public life. While non-disabled women’s political participation rates are low, disabled women’s participation rates are low to non-existent. Not being at the table for decision-making processes contributes to the lack of visibility of the issues faced by women with disabilities.

Prejudice and stigma faced by women with disabilities hinders the participation of women with disabilities, resulting in what Ortoleva describes as “the human rights

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763 For further reading see Triple Jeopardy - a study of violence against women with disabilities in Cambodia (2013)
764 See CEDAW (Article 16) and CRPD (Article 23)
765 See ICCPR Article 25 (a) and (b) and CEDAW Article 7(a)
(of women with disabilities), and their other demands and priorities most probably being ignored or bargained away”.

C. Mainstreaming Women and Girls with Disabilities in Global Development Frameworks.

As noted in this section, over the coming 18 months a new framework will be developed and international disability organisations such as CBM are advocating for the inclusion of people with disabilities. The Millennium Development Goals (MDGs) in their original format have been widely criticised for failing to explicitly reference disability. As a result, many international organisations now claim that achieving the success of the MDG's is limited due to this omission.

For the purposes of this submission as it relates to women and girls, it is interesting to explore the context in which women with disabilities are discussed in the current gender-oriented goals of the MDGs. These goals include MDG 3 (Promote Gender Equality and Empower Women), MDG 4 and MDG 5 (Child Mortality and Maternal Health).

Assessing how women with disabilities or disability in general are included in the MDG's gives an indication where development policy makers place their focus i.e. is it from the perspective of disability impacting gender or from the perspective of measures taken to include women with disabilities in gender policies? There is some small evidence available from desk research carried out to ascertain where disability is referenced in the MDG's, which gives an indication where the current focus is.

The research carried out found that where disability was cited in reports under MDG 3, the references to disability were made for the most part on the impact of disability on gender, e.g. women acquiring an impairment through poor maternity services, poverty etc. For example, one country report highlighted the issue of women as caregivers of people with disabilities.

Another report stressed the need to understand how gender equality was affected by different factors such as disability. Finally under MDG 4 and MDG 5, the issue of how the lack of obstetric, pre and postnatal care was a cause of disability was raised. In terms than of any references specific to women with disabilities and their inclusion, the only reference was a one-time financial assistance for women with disabilities.

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766 See Ortoleva, Women with Disabilities – the forgotten peace-builders (2011)
767 See A/64/180 Realizing the Millennium Development Goals for Persons with Disabilities through the implementation of the World Programme of Action concerning Disabled Persons and the Convention on the Rights of Persons with Disabilities
768 ibid
As discussed in previous sections, the issue of where to place a focus (disability or gender) from a legal or policy perspective can result in the invisibility of women with disabilities. This raises a number of points for the Committee to consider in the context of the upcoming consultation and negotiations on post-2015. These are:

- The need for the post-2015 framework to be consistent with the principles of the CRPD, in particular with Articles 3, 4 and 5.
- The need for disability to be mainstreamed through its overall goals and objectives.
- The need for new gender-oriented goals/objectives to be inclusive of women with disabilities.

**CBM and its Approach to Inclusion of Women and Girls with Disabilities.**

One of the key values of CBM’s work is inclusion and, to this end, CBM strives to deliver programmes that are disability-inclusive and part of this includes women and girls with disabilities. As CBM takes steps to ensure that its programmes are compliant with the CRPD (particularly Article 32), there is a need to ensure that the programmes delivered meet both the specific needs of women and girls with disabilities and are also sensitive to wider gender issues.\(^{69}\)

Two examples from CBM’s work on measures taken to include women and girls with disabilities are worth referencing. First of all a toolkit prepared by CBM Australia highlights a number of important points for including women with disabilities in development programmes.

In this context, these include: the need to have the voice of women with disabilities heard; for barriers to education for girls with disabilities to be removed so they can participate in meaningful work later in life; visibility of women with disabilities issues to be increased so that disability and gender biased can be tackled and, finally, integration of disability into gender programmes and vice versa.\(^{70}\)

Secondly, CBM through its programming has delivered innovative projects which promote the rights and independence of women with disabilities. One such project is the **Advocacy for Women with Disabilities Initiative**, an NGO that is made up of women with disabilities coming together to form self-help groups in the communities where they live.

The main purpose of the group is to advocate for an enabling environment for women with disabilities around the world and especially in Nigeria. The project coordinator describes the group’s vision below:

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\(^{69}\) As required by Article 6 of the CRPD

\(^{70}\) See Inclusion Made Easy: A guide to disability in development, reasons for including women with disabilities (pg. 4)
“Investing in a girl child with disability is not a waste of resources but preparing her for the future as a woman with disability just like every other person in society, a positive future where she can contribute to herself, her family and her community. This is the beginning of creating an enabling environment, which is the main goal of Advocacy for Women with Disabilities Initiative for an inclusive society.”

So far, there are 41 self help groups in 14 states across Nigeria, comprising of over 500 women with disabilities representative of different types of impairment, and also women living with HIV Aids and leprosy. The different types of activities the groups support include: capacity building of women with disabilities; workshops on how to form self-help groups; financial support in the form of loans to start small businesses, and wider human rights lobbying and advocacy work.

Conclusions and Recommendations.

CBM’s submission to the Committee has attempted to highlight the barriers faced by women and girls with disabilities in achieving their full potential. These barriers, some are specific to the situation of women and girls with disabilities while others fit within the continued struggle of all women for equal rights and opportunities. The submission also highlighted the need for support for specific measures for women and girls with disabilities in terms of rights protections, as well as the need for general gender goals and objectives to be inclusive of women with disabilities.

CBM makes the following recommendations to the Committee, in order to further strengthen the rights of women and girls with disabilities:

- Guidance by the CRPD committee to State Parties on how to collect data and evidence pertaining to human rights violations of women and girls with disabilities.
- Support services for women, particularly in the area of violence and abuse and access to justice they must be inclusive of women with disabilities.
- Increased cooperation between the CRPD and CEDAW committee with a view to sharing respective competencies to strengthen monitoring (e.g. information sharing and exchange between disability and gender experts).

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771 Quote from Patience Ogolo (Operations Officer for CBM Nigeria country Office & AWWDI National Coordinator), for more details about the project see http://www.CBM.org/programmes/AWWDI-Advocacy-for-Women-with-Disabilities-Initiative-323124.php

772 See the AWWDI newsletter to read more about the work of the group http://www.CBM.org/programmes/downloads/76931/AWWDI_NEWS_4th_quarter_2011___1st_quarter_2012.pdf
• The need for disability to be mainstreamed through its overall goals and objectives of post-2015 framework, and the need for new gender oriented goals/objectives to be inclusive of women with disabilities.
Chapter 36

Center for the Human Rights of Users and Survivors of Psychiatry.

Center for the Human Rights of Users and Survivors of Psychiatry

http://www.chrusp.org/

Submission to the Committee on the Rights of Persons with Disabilities for the Half Day of General Discussion on “Women and Girls with Disabilities”.

20th of March, 2013.

What is the Intersection between Oppression of Women and Psychiatric Oppression?

Introduction.

1. Girls and women face many contradictions in the ordinary course of life, navigating myriad oppressions that put women in the wrong whether for attempting stereotypically feminine behavior or for rejecting the limitations of a feminine role. Sexual predation, discrimination in public life, lack of safety even at home, and inequitable access to resources, deprive women and girls of the conditions needed for free development of the personality. Psychiatric oppression, and the underlying ostracism of “mad persons”, is a trap that polices the behavior of all girls and women with unpredictable physical, emotional, linguistic and legal violence, labeling those who fall in as members of an inferior social caste.

2. By “psychiatric oppression” we mean diagnostic labeling, civil commitment, forced interventions with drugs and electroshock, restraint and solitary confinement, and all the associated abuses and discrimination. We also refer to this as “psychiatrizing.” “Pathologizing” means labeling of mental, emotional, spiritual and social distress or crisis as an illness, with psychiatric diagnoses. “Psychiatric survivor” is a person who identifies as having survived psychiatric oppression or abuse.
Psychiatric Oppression in the Lifespan of Girls and Women.

1. Psychiatric oppression often comes at the transition from childhood to adulthood, complicating this already difficult transition for girls/women. In many respects it can also be seen as a punitive response to women's difficulties accomplishing the transition. Some girls are expected to take on adult responsibilities while they are still children, caring for parents or younger siblings while denying their own needs. The needs do not go away and when the girl reaches womanhood she may experience a crisis that is labeled by the psychiatric system as psychosis or some other pathologizing diagnosis. Some girls are pathologised and put into the psychiatric system as children, and are deprived of ordinary life and development, including education, for many years, which can hinder them in adult life.

In many cases, girls and women are psychiatrised for reacting to rape or other sexual violence, or as part of a pattern of domestic violence. I was originally taken for electroshock at age 17 because I slept too much to suit my parents, and because I argued with my father who was drunk every night on 4 or more martinis.

I had mononucleosis and was tired and sleepy, but even though everyone knew that I had mono, no one made the connection between my need for sleep and having mono. (This connection was known even in 1965.) My parents did not want me to participate in any talk therapy and did not want anyone to know about their drinking or about their marital problems (they were on the verge of divorce).

The next year, I was abducted at the airport (by my parents) and put in a mental hospital because my mother had been drinking and did not remember that she had told me over the phone to come home from college. She thought I had just decided to come home out of the blue. No one believed me when I told them I had cleared my return with my parents before I flew home. In the records from the hospital it is repeatedly stated that I kept saying I had cleared my return with my parents, but because my parents did not remember the phone call, no one believed me, and I was thought to be making it up. This led to three more years of outpatient maintenance electroshock and major tranquilizers. Yes, families can scapegoat people and can use the mental health system to do so.

I begged my parents to get a second opinion, and begged them to let me talk to a psychologist or counselor, but my mother's defensive response was "The insurance pays 80% for the psychiatrist and only 50% for a psychologist, and besides, psychologists always say it's all the mother's fault." (Anonymous, U.S.)
2. In addition, the adult roles open to women have been in transition themselves for the last half-century or so, and adulthood for women is not as clear a status distinguished from childhood, as it is for men. Women did not have equal legal capacity as men until comparatively recently, and do not enjoy full equality under the law in many countries, including the United States. Derogatory expressions towards women, particularly those who assert leadership or boldly pursue personal ambitions (whether for personal satisfaction or social justice or both), still hinder women's full self-expression and contributions to humanity. Women are still at times referred to as “girls” past the age of maturity, while boys on the contrary can be referred to as “men” before they become adults. Asserting personal authority or social authority demands of women a skill and sensitivity that can be challenging, and this can lead to psychiatric labeling when the woman experiences personal crisis as a result or when she comes into conflict with others who both enact gender politics and deny the relevance of gender in the situation. Women who react to years of domestic violence by killing the abuser can be imprisoned for life in the psychiatric system following a verdict of “not guilty by reason of insanity.” As women age, there are additional challenges of reduced social respect, impoverishment and vulnerability to economic exploitation and deprivation of legal capacity.

3. Feminists have criticised the pathologizing of women's resistance to oppression, yet by and large have failed to appreciate the depth to which this is present in all psychiatric labeling, thus perpetuating a distinction between “mad” and “sane” women and perpetuating the power of psychiatry to make this distinction. It is not only when a woman is actively rebelling against patriarchal gender roles requiring her to be meek and submissive to men, that psychiatric labeling is inappropriate. When a woman is trying to conform to gender role expectations she may be equally likely to be pathologised as “too” passive. Self-expression that not only violates social norms but also confronts others with a depth of pain and contradiction that is uncomfortable to face, like self-injury (cutting), or retreating into silence, or taking one's clothes off in public, does not need to be fully understood as an expression of gender politics, to matter as a reflection of women's and girls' experience that has meaning. This is true also of the self-expression of boys and men.

**Psychiatric Oppression and the Feminist Account of Women's Lives.**
4. Psychiatric oppression removes women from many of the opportunities to struggle with gender politics and actively contribute to the social transition towards gender equality and equity. It is not so much that there is an intersection of oppressions based on different facets of personal identity, but that psychiatric oppression places a person into a social caste with inferior legal rights and inferior access to resources and to the means to defend oneself against violations. In that sense, psychiatric oppression is related to other intersecting oppressions like poverty, or women who are sex workers or who live in the streets. There is a qualitative difference in experience to that of other women who have never been segregated in that way, and it creates a gulf between women and an omission of aspects of women's experience from much of the feminist account of women's lives.

5. Psychiatric oppression is more than the fact of madness or alleged madness, and more than being institutionalised and forcibly drugged or electroshocked. It means that a woman might lose her home and job, and have difficulty getting work because of gaps in work history that cannot be explained without divulging information that can be used against the person for discriminatory reasons. It means that a woman might be living in congregate mental health housing, which can impose demeaning requirements such as taking unwanted psychiatric drugs and allowing staff to enter at any time, because she cannot afford her own apartment on a disability pension and there are no friends or family with whom she can share living space. It means that a woman might be living in the community under an outpatient commitment order, required to take drugs and attend psychiatric programmes, even if she has her own apartment and would prefer to get a job or go to school. It means that a woman might be less self-confident, less assured of a welcome for the whole of who she is, having the memory of being treated as if she were nothing as a “mental patient” in an institution, which the society around her does not condemn but actually endorses as public policy. It means that she might be a “childless mother” whose children were taken away due to prejudice and fear after she was institutionalised. She might experience cognitive disabilities resulting from electroshock or tardive dyskinesia and other health problems from psychiatric drugs.
Women in the Psychiatric Survivor Movement.

6. In the psychiatric survivor movement, women often take leadership roles, but it is difficult to address gender politics aside from issues of rape (trauma particularly from childhood rape as a cause of distress and crisis that gets responded to by psychiatrizing, and also rape in institutions), and discrimination in child custody. The politics of women's liberation is not universally accepted in the psychiatric survivor movement, particularly reproductive freedoms and the choice to terminate a pregnancy, women's right to function as assertive leaders and to not present themselves as maternal, and rejection of sexist cultural materials. The contents of men's subjective experiences of trauma and injustice, as well as their religious and spiritual beliefs, often include sexist material, which can be difficult for women to confront when it arises in peer support. (The same is true for people of color dealing with white people's subjective experience and beliefs that include racist material.) Women may face judgment in peer support settings regarding expression of anger (still reacted to as a male prerogative) and articulation of a politics of women's liberation, and may not be able to trust the group with their most meaningful experiences or beliefs. Lesbian experience beyond the mere fact of orientation towards same-sex partners is invisible in the psychiatric survivor movement, in particular the richness of lesbian-feminist culture and spirituality.

Intersecting Oppression.

7. Thus, in many ways the intersection of psychiatric oppression and women's oppression resembles a gap rather a fertile space. A female survivor of psychiatry, particularly if she is a lesbian (and/or a woman of color/cultural minority woman), and if her experience of women's oppression is not centered on sexuality and reproduction, may find no “home” in any social justice movement or in mainstream society. At the same time, she may well make significant contributions to the feminist movement, the user/survivor movement, the disability movement and society as a whole. Since the user/survivor movement is both politically small and a matter of urgency for those of us whose priority is resisting psychiatric oppression, there has been little opportunity to develop a substantial political space of female users and survivors of psychiatry.
In the CRPD drafting and negotiations, we participated actively in work on Article 6 and gender issues, particularly at the beginning of those discussions, but when the women's caucus was holding all-day meetings near the end of the process, we fell away because our priority had to be the articles on legal capacity, liberty and integrity/free and informed consent that would secure our legal equality and freedom. Our contributions are seen in some of the earlier International Disability Caucus proposals for Article 6, which included references to women's autonomy.

Recommendations.

8. State obligations towards female users and survivors of psychiatry under the CRPD remain centered on the articles that secure our legal equality and freedom. It is essential to do away with substituted decision-making and disability-based defenses that preclude criminal responsibility,773 and to abolish civil commitment and forced or coerced psychiatric interventions, which have been recognised as acts of torture and ill-treatment774 and as acts of violence against women.775

In implementing Article 6 and other gender-related provisions of the CRPD, it will be necessary for states to address these legal and practical obstacles to the advancement, empowerment and equality of women with psychosocial disabilities, otherwise measures for the advancement of women will fail to achieve these aims for women with psychosocial disabilities, leaving us further behind.

9. Furthermore, states should take account of the ways in which social and legal oppression of women, and violence against women, contribute to the kinds of personal or social crisis for which women may seek mental health services, or during which they come to be incarcerated in the psychiatric system.

These gender-based injustices need to be addressed at the root, rather than targeting women for mental health screening that perpetuates a pathologizing approach to women's lives and needs. States should recognise the ways in which psychiatric violence functions as an extension of domestic violence, and should support social transformations that promote women's

774 Special Rapporteur on Torture, E/CN.4/1986/15, paras 118-119; A/63/175 (2008) paras 38, 40, 41, 44, 47, 61-65; A/HRC/22/53 (2013) especially paras 85(e) and 89 (and see clarifications made in Mr Mendez’s statement to the Human Rights Council on 4 March 2013, that deprivation of liberty on mental health grounds is not justified by a motivation to protect the person or others).
775 See Statement by Rashida Manjoo, Special Rapporteur on Violence against Women, at side event on violence against women and girls with disabilities, 12 October 2012 (New York).
equality with men as well as the elimination of medical/legal authority over women's and girls' lives, including women and girls whose reactions to trauma take the form of serious crisis and distress. Furthermore, in implementing a shift from medical model to alternative services and supports, states need to ensure that such services and supports are able to identify with female-centered life perspectives.

10. In keeping with other treaty bodies that have invoked a right to remedy and reparations for violations following the issuance of UN Guidelines on the subject, the CRPD Committee should call for immediate action to cease violations against the autonomy and integrity of women with disabilities and of all people with disabilities, and to institute measures of remedy and reparation for victims. Articles 4 and 16 support such actions, and in the interpretation of Article 16 the Committee must include all forms of violence including forced psychiatric interventions. Remedy and reparations need to be undertaken in a spirit of holistic and comprehensive commitment to reversing the measures that violate human rights. Hence, they must involve victims of violations as full partners in every step of the process, particularly in telling their individual stories and having opportunities to collectively develop a framework and particular suggestions for reparation measures. As part of these measures, a holistic open political space needs to be created for female users and survivors of psychiatry to consider in full the varied dimensions of their experiences.

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Chapter 37

Center for Reproductive Rights.

Submission to the Committee on the Rights of Persons with Disabilities for the Half Day of General Discussion on Women with Disabilities.

I. Introduction and Foundational Principles.

The Center for Reproductive Rights (“the Center”), an international non-governmental legal advocacy organization dedicated to the advancement of reproductive freedom as a fundamental human right, submits this paper to the Committee on the Rights of Persons with Disabilities (CRPD Committee) in order to call attention to the overlap between reproductive rights and disability rights, particularly as these issues affect women with disabilities.

The Center is an ECOSOC-accredited non-governmental organization and has worked with treaty monitoring bodies at the UN for over 20 years, submitting shadow reports and letters during state reviews, using complaint mechanisms to bring individual cases to the committees, and helping to develop general recommendations that address reproductive rights.

The Center also undertakes fact-finding missions and legal casework at the national and regional levels across the globe. The Center is based in New York and has offices in Geneva, Kathmandu, Nairobi, and Bogota.

The exercise of reproductive rights, including the right to decide freely on the number and spacing of one's children, is essential to ensuring that women can achieve equality and overcome discrimination by exercising their autonomy and self-determination. Too often, however, women face restrictions, in law and/or in practice, on the exercise of their reproductive rights.

States' failure to take positive measures to ensure access to reproductive health services and to prevent and punish violations, contributes to the barriers women face in exercising their reproductive rights. Autonomy is also one of the foundational principles and core legal obligations outlined in the Convention on the Rights of Persons with Disabilities (CRPD).

Although all women and girls face barriers to accessing reproductive health information and services, women and girls with disabilities may have particular
difficulty ensuring their reproductive rights, though the ways in which barriers to access affect women with disabilities have not yet been widely studied.

As the CRPD recognises, women with disabilities are subject to multiple discrimination because of both their gender and disability statuses. The CRPD requires states to take measures to address this multiple discrimination, which also manifests itself in the exercise of reproductive rights, and poses additional barriers for women with disabilities in exercising their autonomy, including through the provision of information and services that support that autonomy.

The CRPD recognises the importance of fulfilling reproductive rights for people with disabilities, particularly women and girls, and includes the most expansive language on reproductive rights of any UN human rights Convention. The reproductive rights specifically enumerated in the CRPD include the rights “to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education” to retain fertility on an equal basis with others, including for children with disabilities, and to health on an equal basis with others, “including in the area of sexual and reproductive health and population-based public health programmes.”

These obligations imposed by the CRPD give the CRPD Committee the opportunity and the imperative to set important and progressive standards in the field of reproductive rights. Additionally, the CRPD Committee can encourage states to document, gather disaggregated data, and report on barriers to accessing reproductive health information and services for women and girls with disabilities, which the CRPD has done for collecting general data on women with disabilities, thereby filling an important gap in the understanding of reproductive rights for this population.

This submission explores some of the reproductive rights issues affecting women and girls with disabilities, including access to information in healthcare settings and through sexuality education, and access to services such as contraception and abortion on the basis of free and informed consent.

The submission addresses how the CRPD can be used to address many of these violations, including examples of how other UN treaty bodies and human rights

777 CRPD, supra note 1, Art. 23 (b).
778 Id. Art. 23 (c).
779 Id. Art. 25 (a).
mechanisms have addressed reproductive rights issues. Finally, the submission includes recommendations to the CRPD Committee about how to strengthen its comments on reproductive rights to ensure autonomy, equality, and non-discrimination for women and girls with disabilities.

II. Access to Sexual and Reproductive Health Information for Women and Girls with Disabilities.

In order for women with disabilities to fully exercise their reproductive autonomy, they must have access to the accurate and timely information they need to make important life decisions. This information, however, is often not provided to women with disabilities because they are unable to physically access healthcare facilities, the information provided to them is biased by a perception that they are unable to take care of children, or the information they receive is not in accessible formats.

Although sexuality education, both in and out of schools, is an important part of ensuring that women and girls are empowered to protect their reproductive rights, sexuality education is often effectively denied to women and girls with disabilities because of stereotypes about their sexuality, lack of accessibility of information, and exclusion from mainstream schools.

A. Access to reproductive Health Information in Healthcare Settings.

Access to information in healthcare settings is an issue that affects all women, as laws often restrict what information is available or require healthcare professionals to provide unnecessary or misleading information to women about their health. In some circumstances, the information that is provided reflects biases and prejudices about the role of women and the health services that should be available to them.

Accurate and timely information is essential to exercising autonomy and making an informed choice to undergo medical procedures. When accurate and evidence-based information, free from biases and prejudices, is denied to individuals in healthcare settings, including reproductive healthcare, it is a human rights violation.

781 OPEN SOCIETY FOUNDATIONS, AGAINST HER WILL: FORCED AND COERCED STERILIZATION OF WOMEN WORLDWIDE, 6 (2011) [hereinafter AGAINST HER WILL].
782 WORLD HEALTH ORGANIZATION, WORLD REPORT ON DISABILITY 205-206 (2011) [hereinafter WORLD REPORT ON DISABILITY].
783 Id.
Women with disabilities may face barriers to accessing information about their reproductive health distinct from other women, because of physical barriers to entry into healthcare facilities or to the use of transportation, and communication barriers or lack of reproductive health information in accessible formats.

For example, two women with physical disabilities in Northern Uganda reported that they were not able to seek reproductive health information and services following rape because the facilities were too far away, and they had no accessible means to get to them. The information that is provided to women with disabilities about reproductive healthcare and parenting may undermine their rights, exposing a bias in the community that people with disabilities are not able to care for their children.

Social science research has documented that women with disabilities face skepticism about their ability to care for children from family members and healthcare professionals. Parents of children with intellectual disabilities in particular may be biased against the ability of their children to become parents, sometimes resulting in abusive practices such as forced sterilization.

B. Access to Sexuality Education.

Comprehensive and accurate sexuality education is a key component of ensuring that reproductive rights are fulfilled, by providing needed information at an early age so that people can make decisions about their reproductive health. Sexuality education is also important as a means to empower women and girls to protect themselves from unwanted pregnancies and STIs, such as HIV/AIDS, as well as to access reproductive health services.

However, according to the World Health Organization, adolescents with disabilities are more likely to be excluded from sexuality education programmes than other
children.\textsuperscript{792} The UNESCO technical guidelines on sexuality education establish that sexuality education should be comprehensive and at minimum include information about anatomy and physiology, puberty, pregnancy, and STIs, including HIV/AIDS.\textsuperscript{793} Additionally, these programmes should address the relationships and emotions involved in sexual experiences, promote self-esteem, respect for the rights of others, gender equality,\textsuperscript{794} and avoid “reinforcing demeaning stereotypes and perpetuating forms of prejudice.”\textsuperscript{795} Inadequate sexuality education, including abstinence-only programmes, creates barriers to youth exercising their reproductive rights because these programmes provide adolescents with neither accurate nor sufficient information to make decisions about preventing STIs and to determine the timing and spacing of their children.\textsuperscript{796}

Sexuality education should also be available to women and girls both in school and outside of formal school settings in order to reach the widest possible audience.\textsuperscript{797} Sexuality education for all is not only a means to empower women and girls with disabilities to understand their reproductive health but also to educate the public about the sexuality of people with disabilities.

For instance, accurate sexuality education can help dispel myths that pervade communities about women and girls with disabilities, such as that they are asexual, or in some instances over-sexual.\textsuperscript{798} On the other hand, lack of information on sexuality may in turn make people with disabilities more susceptible to sexual abuse.\textsuperscript{799}

Children with disabilities, particularly girls, are often shut out of education, including sexuality education. The World Bank estimates that as many as 97 percent of all individuals with disabilities – and 99 percent of women with disabilities – are

\textsuperscript{792} WORLD REPORT ON DISABILITY, supra note 7, at 61.
\textsuperscript{793} RATIONALE FOR SEXUALITY EDUCATION, supra note 16, at 22.
\textsuperscript{794} CENTER FOR REPRODUCTIVE RIGHTS, THE REPRODUCTIVE RIGHTS OF ADOLESCENTS: A TOOL FOR HEALTH AND EMPOWERMENT 6 (2008) [hereinafter REPRODUCTIVE RIGHTS OF ADOLESCENTS].
\textsuperscript{796} See REPRODUCTIVE RIGHTS OF ADOLESCENTS, supra note 19, at 6-7.
\textsuperscript{797} Id. at 7.
\textsuperscript{798} For instance, many northern Ugandans believe that women with disabilities are asexual and thus do not have HIV/AIDS, or even that sex with a woman with disability can cure AIDS. This made women with disabilities especially vulnerable to HIV infection. HRW, "AS IF WE WEREN’T HUMAN", supra note 12, at 46-47. Women with disabilities are also sometimes perceived as being over-sexual, leading to many human rights abuses. See Desjardin M. The sexualised body of the child, parents and the politics of ‘voluntary’ sterilization of people labelled intellectually disabled in R McRuer and A Mollow (editors) Sex and Disability, Durham [N.C.]; Duke University Press (2012).
illiterate. Thus, it is imperative that sexuality education not only begin at the earliest stages in school, but that governments initiate programmes to reach the large number of young people outside the school system.

C. International Human Rights Standards for Access to Sexual and Reproductive Health Education and Information.

UN human rights bodies have recognised that states have a legal obligation to provide sexual and reproductive health information to women and girls in an accessible manner. Indeed, the Committee on Economic, Social, and Cultural Rights (ESCR Committee) has considered that the right to health includes “access to health-related education and information, including on sexual and reproductive health.”

According to this Committee, accessibility of health information includes “the right to seek, receive and impart information and ideas concerning health issues” and the provision of this information without discrimination. In order to ensure that women do not face discrimination in accessing health information, the ESCR Committee has required “the removal of all barriers interfering with access to health services,

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800 WORLD REPORT ON DISABILITY, supra note 7, at 205-206; HUMAN RIGHTS WATCH, HIV AND DISABILITY 8 (2012) [hereinafter HIV AND DISABILITY]; see also REPRODUCTIVE RIGHTS OF ADOLESCENTS, supra note 19, at 7.

801 Susheela Singh et al., Evaluating the need for sex education in developing countries: sexual behaviour, knowledge of preventing sexually transmitted infections/HIV and unplanned pregnancy, 5(4) SEX EDUCATION 307, 310 (2005).


804 Id. para. 12(b).
education and information, including in the area of sexual and reproductive health.\textsuperscript{805}

The Committee on the Elimination of all forms of Discrimination against Women (CEDAW Committee) has recognised the importance of reproductive health information in the exercise of decision-making autonomy, noting that “women must have information about contraceptive measures and their use, and guaranteed access to sex education and family planning services” to be able to make informed decisions regarding their reproductive health.\textsuperscript{806}

Additionally, the Committee on the Rights of the Child (CRC Committee) has emphasised the importance of such information for adolescents, indicating that “States Parties should provide adolescents with access to sexual and reproductive information, including on family planning and contraceptives, the dangers of early pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted diseases (STDs).”\textsuperscript{807}

In his most recent report to the Human Rights Council, the UN Special Rapporteur on Torture classified denial of reproductive health information as a potential form of cruel, inhuman or degrading treatment (CIDT), stating that “[a]ccess to information about reproductive health is imperative to a woman’s ability to exercise reproductive autonomy, and the rights to health and to physical integrity.”\textsuperscript{808}

Several UN treaty monitoring bodies have acknowledged the importance of sexuality education to fulfilling basic human rights. These bodies have recognised the importance of accurate and objective sexuality education as a means to reduce maternal mortality, abortion rates, adolescent pregnancies, and HIV/AIDS prevalence, and to generally promote gender equality in education.\textsuperscript{809}

\textsuperscript{805}Id. para. 21.


\textsuperscript{807}Committee on the Rights of the Child, Gen. Comment No. 4, supra note 27, para. 28.

\textsuperscript{808}Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Rep. of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, para. 47, U.N. Doc. A/HRC/22/53 (Feb. 1, 2013) [by Juan E. Méndez] [hereinafter Rep. of the Special Rapporteur on torture].

In its General Comment No. 4 on adolescent health and development, the CRC Committee states that countries must ensure that “all adolescent girls and boys, both in and out of school, are provided with, and not denied, accurate and appropriate information on how to protect their health and development and practice healthy behaviors.”

The UN Special Rapporteur on the Right to Education has stated that sexuality education “is especially important in ensuring the enjoyment of women’s right to live free of violence and gender discrimination...” and has highlighted that sexual education should be accurate and comprehensive and provided on a non-discriminatory basis.

According to the CRC Committee, part of the obligation to ensure access to sexuality education is training of teachers to provide accurate information. As part of ensuring women’s health, the CEDAW Committee has also recommended that “States Parties should ensure the rights of female and male adolescents to sexual and reproductive health education by properly trained personnel in specially designed programmes that respect their right to privacy and confidentiality.”

In addition to the rights in the CRPD to access reproductive and sexual health information described above, the CRPD also provides a right for people with disabilities “to seek, receive, and impart information and ideas on an equal basis with others” through the provision of information in accessible formats.

States are obligated under the CRPD to ensure that facilities and transportation, including medical facilities and emergency services, are accessible to people with...
disabilities,\footnote{Id. at Art. 9.} an important part of ensuring access to needed health information. Although the CRPD Committee has yet to comment on the need for sexuality education or reproductive health information for people with disabilities, the Committee has taken some steps to ensure that the rights to health and information in the CRPD are fulfilled.

The Committee has commented on “systemic barriers that make it impossible for people with disabilities to access health services…,” including “physical barriers, a dearth of accessible materials, a lack of health-care professionals trained in the human rights model of disability …”\footnote{CRPD Committee, Concluding Observations: Argentina, para. 39, U.N. Doc. CRPD/C/ARG/CO/1 (2012).} The CRPD Committee has also expressed concern about lack of available health services, particularly in rural areas, and its effect on access for people with disabilities.\footnote{CRPD Committee, Concluding Observations: Peru, para. 39, U.N. Doc. CRPD/C/PER/1 (2012).}

III. Access to Reproductive Health Services.

As noted above, one of the foundational principles of both reproductive rights and disability rights is the idea that individuals should be able to exercise their autonomy and make important decisions about their lives for themselves. But in reproductive healthcare settings, restrictions on reproductive health services in law and in practice often undermine women’s autonomy. Women and girls with disabilities face particular barriers to accessing services because they are too often denied the opportunity to decide for themselves whether to have children or face stereotypes about their capabilities that undermine the exercise of their reproductive rights. This section explores the discrimination women and girls, including those with disabilities, face when trying to access contraception and abortion, as well as the violence perpetrated against them in the forms of forced sterilization or forced abortion, and the international human rights and medical standards surrounding access to these services.

A. Access to Contraception.

Lack of access to modern contraceptive information and services means that women and adolescents are often unable to protect themselves from HIV and other sexually transmitted infections (STIs) or to control their fertility and reproduction, with attendant negative consequences for their health and lives.\footnote{See CENTER FOR REPRODUCTIVE RIGHTS, ACCESS TO CONTRACEPTIVES: THE SOCIAL AND ECONOMIC BENEFITS AND ROLE IN ACHIEVING GENDER EQUALITY 1 (2009).} Of the
approximately 80 million women who annually experience unintended pregnancies, 45 million have abortions.\textsuperscript{820}

Many of those are clandestine and unsafe due to laws that restrict or ban abortions, making unsafe abortion a leading cause of maternal mortality and morbidity.\textsuperscript{821} Satisfying the current unmet need for contraceptives—for women who are sexually active and do not want children but do not use modern contraceptives—could prevent roughly 150,000 maternal deaths and 25 million induced abortions worldwide annually.\textsuperscript{823}

Due to limited data, it is unclear how women with disabilities are affected by lack of access to contraception; however, given the barriers to healthcare that they experience, it is likely that women with disabilities have serious challenges in accessing contraceptive information and services. Contraceptive information and services may be unavailable to individuals with disabilities due to physical barriers, lack of accessible information, stigma and discrimination.\textsuperscript{824}

It is commonly assumed that individuals with disabilities are not sexually active, and so not in need of contraception, but research shows that they are as likely to be sexually active as their non-disabled peers.\textsuperscript{825} However, they are less likely to receive information about HIV prevention and safe sex, and are less likely to have access to prevention methods such as condoms.\textsuperscript{826}

Lack of access to and information about contraception, including emergency contraception, can have particularly severe physical and mental consequences for women who are victims of sexual violence.\textsuperscript{827} Women with disabilities experience violence, including sexual violence, at higher rates than other women,\textsuperscript{828} making access to contraception essential for the exercise of their reproductive rights.

\textsuperscript{821} Id. at 1598.
\textsuperscript{822} Women who use traditional methods of contraception are included in the number with an unmet need, because traditional methods of contraception are more likely to fail. Susheela Singh & Jacqueline E. Darroch, \textit{Guttmacher Institute & UNFPA, Adding It Up: Costs and Benefits of Contraceptive Services, Estimates for 2012} 4, 14 (2012).
\textsuperscript{825} Id. at 3; \textit{HIV and Disability, supra} note 25 at 8.
\textsuperscript{826} \textit{HIV and Disability, supra} note 25 at 8.
As the Center for Reproductive Rights has documented however, women are often unable to access these services, because of legal restrictions on access to emergency contraception in some countries or, for women with disabilities, lack of accessible services. Emergency contraceptive services must be reached as quickly as possible, and generally no later than 120 hours after unprotected intercourse, in order for them to be effective at preventing pregnancy, which may be particularly difficult for women with disabilities that impact their mobility.


Women's and adolescents' right to modern contraceptives and information about contraceptives is grounded in basic human rights protections. These human rights include the rights to equality and non-discrimination, to privacy, to determine the number, timing, and spacing of children, to life and health, to education and information, to be free from torture or CIDT, and to benefit from scientific progress.

Contraceptives are also included on the World Health Organization's (WHO) Model List of Essential Medicines, medicines the WHO considers necessary for a basic healthcare system. The ESCR Committee has stated that lack of access to contraception is a violation of the right to health. States thus have an obligation to provide all women with access to affordable, acceptable, accessible, and good quality contraceptives.

To this end, the ESCR Committee has called upon States Parties to ensure that all drugs on the WHO Model List of Essential Medicines, which include a range of


830 CENTER FOR REPRODUCTIVE RIGHTS & UNFPA, BRIEFING PAPER: THE RIGHT TO CONTRACEPTIVE INFORMATION AND SERVICES FOR WOMEN AND ADOLESCENTS 10-11 (2010) [hereinafter RIGHT TO CONTRACEPTIVE INFORMATION].

831 World Health Organization, Emergency Contraception: Fact Sheet No. 244 (2012).

832 Two rape survivors with physical disabilities in Northern Uganda reported that they could not travel the long distances to health centers to get post-exposure prophylaxis for HIV or emergency contraception. “AS IF WE WEREN’T HUMAN,” supra note 12, at 48.

833 RIGHT TO CONTRACEPTIVE INFORMATION, supra note 55, at 12-14.


contraceptives, be made accessible and has noted that access to drugs on this list is a core state obligation under the right to health.

In addition, states have core obligations to ensure minimum essential levels of the right to health, and this includes the duty to ensure access to contraceptive information and services "on a non-discriminatory basis, especially for vulnerable or marginalised groups" and "[t]o provide essential drugs, as . . . defined under the WHO Action Programme on Essential Drugs," which includes contraceptives.

The CEDAW Committee has also affirmed that, to avoid discrimination against women, states need to ensure family planning services, which include contraception. As part of this obligation, states should themselves provide family planning services, not obstruct women in accessing those services, and ensure that those who attempt to obstruct access face legal sanctions. In addition, the CEDAW Committee has recommended that states take special measures to ensure that women with disabilities have equal access to healthcare, including reproductive health services.

Treaty bodies have also acknowledged that lack of access to contraception, particularly emergency contraception, may cause severe physical or mental suffering for women and girls and put their lives and health at risk. The CRC Committee raised the issue of access to emergency contraception in Ecuador, where some forms of emergency contraception are illegal, stating that access to emergency contraception is an important part of preventing unsafe abortions or suicides, and recommending that the state make all forms of emergency contraception available to adolescents.

Treaty bodies have also recognised the additional traumatization of being forced to carry unwanted pregnancies for victims of sexual violence. In its 2012 concluding observations for Peru, the Committee against Torture expressed concern at the lack

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836 ESCR Committee, Gen. Comment No. 14, supra note 28, paras. 12(a), 43 (d), 44 (a).
837 Id. para. 43(d).
838 Id. para. 43.
839 Id. paras. 43(a), (d).
840 CEDAW Committee, Gen. Recommendation No. 24, supra note 39, para. 2.
841 Id. paras. 14-15, 17.
842 "Women with disabilities, of all ages, often have difficulty with physical access to health services. Women with mental disabilities are particularly vulnerable, while there is limited understanding, in general, of the broad range of risks to mental health to which women are disproportionately susceptible as a result of gender discrimination, violence, poverty, armed conflict, dislocation and other forms of social deprivation. States Parties should take appropriate measures to ensure that health services are sensitive to the needs of women with disabilities and are respectful of their human rights and dignity." Id. para. 25.
of access to oral emergency contraception to victims of rape, classifying the practice as potential torture or CIDT.844

The Committee against Torture then called on Peru to remove legal restrictions on the distribution of emergency contraception to rape victims in order to protect its citizens from torture or CIDT.845 Under the CRPD, people with disabilities have the right to health, with specifications that health services should be “gender sensitive”, and that people with disabilities should have equal access to services “in the area of sexual and reproductive health and population-based public health programmes.”846

People with disabilities also have the right to found a family and “decide freely and responsibly on the number and spacing of their children,” including through access to “reproductive and family planning education ... and the means necessary to enable them to exercise these rights...”847 These rights strongly indicate that women with disabilities should have access to modern contraceptives, though the CRPD Committee has not yet addressed the issue of access to elective contraceptive services for women with disabilities.

B. Forced Sterilization and Forced Abortion.

In many parts of the world, women rely on access to a range of methods to control their fertility, including voluntary sterilization. Sterilization is defined as “a process or act that renders an individual incapable of sexual reproduction.”848 Voluntary sterilization is an important part of ensuring that a wide range of contraceptive methods are available to women, including women with disabilities, who do not want children or do not want more children and is a widely-used form of voluntary contraception throughout the world.849

Too often, however, sterilization is not a choice. Forced and coerced sterilization,850 which takes away reproductive capacity without free and informed consent, is often

845 Id. para. 15(b).
846 CRPD, supra note 1, Art. 25(1) (a).
847 Id. Art. 23(1)(b).
848 MOSBY’S MEDICAL DICTIONARY, (8th ed., 2009). Voluntary sterilization refers to the process or act being undertaken with the individual’s free and informed consent. Conversely, involuntary sterilization refers to the process or act being undertaken without the free and informed consent of the individual, such as when a person is forced or coerced into submitting to a sterilization procedure.
849 International Federation of Obstetrics and Gynecology, Guidelines on Female Contraceptive Sterilization, para. 2 (2011) [hereinafter FIGO, Female Contraceptive Sterilization].
850 For purposes of this paper, forced sterilization refers to the situation in which a person is sterilised after expressly refusing the procedure, without her knowledge or is not given an opportunity to provide
targeted at women with disabilities. Additionally, women with disabilities are often subject to forced abortion as a result of discriminatory beliefs about who should have children or unjustifiable state policies.

Forced or coerced sterilization of women and girls with disabilities is often undertaken as a way to control menstrual cycles\textsuperscript{851} or because of misconceptions and discriminatory attitudes about the ability of women with disabilities to take care of children.\textsuperscript{852} Women with disabilities are particularly vulnerable to forced sterilizations performed under the auspices of legitimate medical care or as the result of decisions made by their parents, guardians, or doctors without the individual woman’s consent.

The Special Rapporteur on Violence against Women in her most recent report called forced sterilization of women with disabilities a form of violence and classified it as a “global problem.”\textsuperscript{853} The UN Special Rapporteur on the Right to Health recognised that “[f]orced sterilizations, rape and other forms of sexual violence, which women with mental disabilities are vulnerable to, are inherently inconsistent with their sexual and reproductive health rights and freedoms.”\textsuperscript{854}

Research has indicated that parents of children with intellectual disabilities may consider sterilization for their children because of perceptions that their children would not be good parents themselves, that other means of contraception would not be effective at preventing unwanted pregnancies, or that pregnancy may result from sexual abuse.\textsuperscript{855}

In reality, however, parents may feel they need to sterilize their children because the parents lack support in caring for children with disabilities undergoing menstruation,\textsuperscript{856} or because supports are not available in the community for people


\textsuperscript{852} AGAINST HER WILL, supra note 6, at 6.

\textsuperscript{853} SRVAW, Rep. of the Special Rapporteur (2012), supra note 53, para. 28.


\textsuperscript{855} Houngmai H. Pham, In the patient’s best interest? Revisiting sexual autonomy and sterilization of the developmentally disabled, 175 WORLD JOURNAL OF MEDICINE 283 (2001).

\textsuperscript{856} Although parents may have concerns handling girls with disabilities who are undergoing menstruation, many requests for sterilization of girls with disabilities actually occur before menstruation even begins. See, e.g., STERILISATION OF GIRLS AND YOUNG WOMEN IN AUSTRALIA, supra note 76.
with disabilities who decide to have children. And contrary to parents’ reasoning concerning sexual abuse, forced sterilization is itself a form of abuse.857

Although the issue of forced abortion for women with disabilities is not yet widely studied, news reports indicate that when women and girls, particularly with intellectual or mental disabilities, become pregnant, they are sometimes forced or coerced into undergoing an abortion.858

The European Disability Forum (EDF) noted in a submission to OHCHR on sexual and reproductive rights that “[i]n some countries where therapeutic sterilization of women with disabilities has become illegal, the practice of coerced abortion of women with intellectual or psychosocial disabilities or women and girls with intensive support needs has become even more common…”859

EDF explains that, because of the widespread societal notion that women with disabilities should not become mothers,860 “women with disabilities sometimes have to argue with the medical personnel that they actually want to keep their baby [and] often feel pushed by their own families, or persons close to them/personnel in the institutional setting where they live to undergo an abortion.”861 Women with disabilities who live in institutional settings may be particularly vulnerable to forced abortion.862

1. International Human Rights and Medical Standards on Forced Sterilization and Forced Abortion.

Numerous reports from UN bodies and medical associations indicate that the only valid form of informed consent is that which stems from the patients themselves.

857 See, e.g., id. Additionally, interviews with parents of children with disabilities in Nepal found that parents chose to have their children undergo forced sterilization as a means of addressing menstruation or fears of unwanted pregnancy, but others reported that they decided against sterilization since the surgery could also cause trauma and because their daughters may be at even greater risk of rape and sexual violence once family members know that they cannot have children. HUMAN RIGHTS WATCH, FUTURES STOLEN: BARRIERS TO EDUCATION FOR CHILDREN WITH DISABILITIES IN NEPAL 37 n. 147 (2011).


859 EUROPEAN DISABILITY FORUM, EDF INPUT TO THE GENERAL DISCUSSION OF THE CESC.R ON SEXUAL AND REPRODUCTIVE RIGHTS 6 (2010) [hereinafter EDF INPUT].

860 Id. at 6; See also Melissa Masden, Pre-Natal Testing and Selective Abortion: The Development of a Feminist Disability Rights Perspective (1992), available at http://www.wwda.org.au/masden1.htm (“There are...strong social sanctions against women with a disability as parents”).

861 EDF INPUT, supra note 84, at 6.

The International Federation for Gynecology and Obstetrics (FIGO), a global organization of professionals in these fields seeking to promote the wellbeing of women and improve practice standards, recently released guidelines on female contraceptive sterilization that stress that surgical sterilization must be preceded by “the patient’s informed and freely given consent.”

The guidelines note that “[m]edical practitioners must recognise that, under human rights provisions and their own professional codes of conduct, it is unethical and in violation of human rights for them to perform procedures for prevention of future pregnancy on women who have not freely requested such procedures or who have not previously given their free and informed consent.”

According to the UN Special Rapporteur on Health’s report on informed consent and the right to health, informed consent is “not mere acceptance of a medical intervention but a voluntary and sufficiently informed decision protecting the right of the patient to be involved in medical decision-making, and assigning associate duties and obligations to health-care providers, its ethical and legal normative justifications stem from its promotion of patient autonomy, self-determination, bodily integrity and well-being.”

For women and girls with disabilities, however, “informed consent” for sterilization or abortion often comes from parents, guardians, or medical professionals rather than themselves. This practice is the result of the widespread and worldwide practice of depriving them of legal capacity and thus the right to make important life decisions, or because individuals assume that women with disabilities lack capacity to make choices about their reproductive health.

The CRPD Committee has interpreted Article 12, which includes the right to full exercise of legal capacity on an equal basis with others, to mean that people with disabilities should not be deprived of legal capacity and that states should replace

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864 FIGO, Female Contraceptive Sterilization, supra note 73, para. 2.
865 Id. para. 6.
867 AGAINST HER WILL, supra note 6, at 6; SRVAW, Rep. of the Special Rapporteur (2012), supra note 53, para. 28.
current regimes of substituted decision-making, such as guardianship, with systems to support people with disabilities in making decisions.\textsuperscript{868}

The Committee has explicitly stated that “a substitute decision-making model that overrides the wishes of the persons concerned ... runs counter to Article 12 of the Convention.”\textsuperscript{869} The CRPD Committee has considered forced sterilization and forced abortion as violations of the rights to bodily integrity, family and fertility, health, or legal capacity.\textsuperscript{870}

Although the CRPD protects people with disabilities from torture or ill-treatment,\textsuperscript{871} the CRPD Committee has not yet addressed forced or coerced sterilization or abortion of women and girls with disabilities as a form of torture or ill-treatment. Other UN human rights bodies have taken this step. The Committee against Torture in its 2012 concluding observations for Peru condemned the practice of forced sterilization of persons with intellectual or mental disabilities as potentially amounting to torture or CIDT, and called for the repeal of administrative decrees that allowed the practice.\textsuperscript{872}

The Special Rapporteur on Torture, in his recent report on torture and ill-treatment in healthcare settings, specifically set out that forced sterilization or abortion of vulnerable or marginalised groups, including people with disabilities, may amount to torture or ill-treatment, and called for the repeal of laws allowing this practice.\textsuperscript{873}

C. Access to Abortion.

Lack of access to safe and legal abortion services has a devastating impact on women’s health and lives. Historically, women have been denied the right to choose to terminate a pregnancy and as such, the ability to make decisions about their lives and bodies. Moreover, gaps in the implementation of abortion laws or procedural


\textsuperscript{871} CRPD, \textit{supra} note 1, Art. 15.

\textsuperscript{872} CAT Committee, \textit{Concluding Observations: Peru}, para. 19, U.N. Doc. CAT/C/PER/CO/6, (2012). The Committee against Torture has also recognised forced sterilization schemes that were targeted at other marginalised groups, such as indigenous women or women from the Roma minority, as a form of torture or CIDT. See CAT Committee Peru 2006 and 2012; \textit{Czech Republic}, para. 12, U.N. Doc. CAT/C/CZE/CO/4-5 (2012).

\textsuperscript{873} \textit{Rep. of the Special Rapporteur on torture, supra note 33}, paras. 48, 88.
barriers placed in the way of abortion services have undermined women's access to this reproductive health service.\textsuperscript{874}

Evidence has shown that women who wish to terminate their pregnancies will do so regardless of the legality of this service.\textsuperscript{875} However, the legal status of abortion will largely determine whether they can access abortion services in safe or unsafe conditions.\textsuperscript{876} In circumstances in which abortion is legally restricted, women are more likely to seek out clandestine and unsafe abortions, which are associated with increased rates of maternal mortality and morbidity.\textsuperscript{877}

Moreover, in countries in which women are unable to access the abortion services to which they are legally entitled, they may also be forced to seek clandestine and unsafe abortions. An estimated 22 million women undergo unsafe abortions each year and 47,000 women die from unsafe abortions annually,\textsuperscript{878} accounting for up to 13 percent of maternal deaths worldwide.\textsuperscript{879}

Human rights bodies have increasingly recognised women's access to safe and legal abortion as a human rights issue,\textsuperscript{880} calling on states to remove legal restrictions on abortion and ensure women's access to safe abortion services.\textsuperscript{881} Since the adoption of the International Conference on Population and Development Programme of Action, which called on governments to support a woman's right to make decisions about her reproductive capacity and her body,\textsuperscript{882} thirty countries worldwide have liberalised their abortion laws.\textsuperscript{883}

\textsuperscript{874} Procedural barriers include mandatory and biased counseling requirements, waiting periods, third-party consent and notification requirements, limitations on the range of abortion options (such as restrictions on medical abortion), conscience clauses, limitations on abortion funding, and abortion advertising restrictions. These burdensome procedural barriers impede access to safe and legal abortions, demean women, and undermine their autonomy in making decisions about their lives. Reed Boland & Laura Katzive, \textit{Developments in Laws on Induced Abortion: 1998-2007}, \textit{34 International Family Planning Perspectives} (2008) [hereinafter \textit{Developments in Laws on Induced Abortion}]; \textit{World Health Organization, Safe Abortion: Technical and Policy Guidance for Health Systems 96-97} (2nd ed., 2012) [hereinafter WHO SAFE ABORTION GUIDANCE].

\textsuperscript{875} See WHO SAFE ABORTION GUIDANCE, supra note 99, at 23.

\textsuperscript{876} See id. at 23; Gilda Sedgh et al., \textit{Induced Abortion: Incidence and Trends Worldwide from 1995 to 2008}, 379 The Lancet 625 (2012).

\textsuperscript{877} See WHO SAFE ABORTION GUIDANCE, supra note 99, at 23.

\textsuperscript{878} Id.

\textsuperscript{879} Id.

\textsuperscript{880} Guttmacher Institute, \textit{Facts on Induced Abortion Worldwide – In Brief: Fact Sheet 2} (2012).


They have generally done so by amending penal code provisions criminalizing women who seek or healthcare providers who offer abortions in order to decriminalize this service in certain circumstances. 884 During this time, only a few countries have legally restricted abortion. 885 This trend toward the liberalization of abortion laws and increasing women's access to abortion services has been a major victory in recognizing women's, including women with disabilities', right to have their decisions and autonomy respected.

The abortion laws in 60 countries throughout the world permit a woman to terminate her pregnancy without restriction as to reason within certain gestational limits, thereby recognizing a woman's capacity to make decisions about her body and reproduction. 886 Beyond the gestational limit for which a woman can terminate her pregnancy without restriction.

Hence, abortion is normally permitted on specific grounds, such as in circumstances in which the pregnancy poses a risk to the woman's life or health or in cases of rape, incest or fetal impairment. 887 Conversely, approximately 125 countries maintain restrictive abortion laws, banning this service altogether or only authorizing it in limited circumstances, such as to protect a woman's life or health or in cases of rape, incest or fetal impairment. 888

These abortion laws not only deprive women of their autonomy concerning decisions about their reproductive lives; they also pose significant risks to women's health and lives. Women choose to continue or terminate their pregnancies for myriad reasons that are personal to them. These decisions vary immensely and depend on a variety of factors that affect women's health and well-being, such as their health, family relationships, economic resources, and the availability of medical care.

Given the complexity of this decision, the only person equipped to make it is the pregnant woman herself, with support provided by people of her choice if she requests it. All women, including women with disabilities, have difficulty navigating through restrictive environments to ensure the full exercise of their reproductive

884 Developments in Laws on Induced Abortion, supra note 99, at 117; Seventeen Years of Reform, supra note 108; World's Abortion Laws 2011, supra note 108.
885 Seventeen Years of Reform, supra note 108.
886 See World's Abortion Laws 2013, supra note 108.
887 For more information see World's Abortion Laws 2011, supra note 108. Threats to the life or health of the woman may not arise until later in the pregnancy and many tests to detect fetal impairments are not available until beyond the gestational limit for which abortion is authorised without restriction as to reason. Reed Boland, Second Trimester Abortion Laws Globally: Actuality, Trends and Recommendations, 18 Reproductive Health Matters, 67, 68 (2010).
888 For more information see World's Abortion Laws 2011, supra note 108.
rights, but women with disabilities are placed at a particular disadvantage because of barriers to accessing reproductive health services, as described above.

In countries with restrictive abortion laws, women are often unable to access abortion services in the limited circumstances for which they are permitted due to a variety of factors including lack of clarity about the legal grounds for abortion, lack of training for health care workers, lack of information about legal abortion services, stigma around performing abortion, criminal penalties attached to performing illegal abortions, and health care workers’ fear of prosecution for performing even legal abortions.

Coupled with the barriers already experienced by women with disabilities in accessing reproductive health services, including barriers to physical access, the absence of alternative formats of information and communication, lack of disability-related support services, and stigma, abortion services may be virtually inaccessible for women with disabilities in practice.

Moreover, restrictive abortion laws affect the rights of women with disabilities in other ways. For example, many countries with restrictive abortion laws do not permit women to terminate pregnancies that result from sexual violence, leaving them with a choice between carrying the pregnancy to term or undergoing a clandestine, unsafe abortion. Since women with disabilities experience sexual violence at higher rates than other women, they may more often be subjected to carrying a pregnancy resulting from rape.

1. International Human Rights Standards for Access to Abortion.

As noted above, the CRPD contains the strongest and most explicit language of any UN human rights treaty on reproductive rights, providing the CRPD Committee with an opportunity to advance the commentary in this important area for ensuring the rights of women, including women with disabilities. An important aspect of ensuring
reproductive rights is providing access to safe and legal abortion services to ensure that women have control over their lives and bodies.

Nearly all of the UN treaty monitoring bodies have framed maternal deaths due to unsafe abortion as a violation of women's rights and recognised the detrimental consequences of criminalizing abortion on women's lives, health, and well-being. As such, they have called on states to review and repeal laws that criminalize abortion. Among other rights, they have analyzed this issue in the context of the right to non-discrimination, noting that the problem of maternal mortality due to unsafe abortion is evidence of discrimination against women.

Moreover, they have called on states to ensure women's access to safe abortion services where legal, recognizing that the failure to do so constitutes discrimination. Notably, the CEDAW Committee has also indicated that, in certain

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894 See, e.g., CEDAW Committee, Concluding Observations: Philippines, para. 28, U.N. Doc. CEDAW/C/Phil/CO/6 (2006) (“The Committee recommends that the State Party consider reviewing the laws relating to abortion with a view to removing punitive provisions imposed on women who have abortions and provide them with access to quality services for the management of complications arising from unsafe abortions and to reduce women's maternal mortality rates in accordance with the Committee's general recommendation 24 on women and health and the Beijing Declaration and Platform for Action.”); Human Rights Committee, Concluding Observations: Morocco, para. 29, U.N. Doc. CCPR/CO/82/MAR (2004) (“The State Party should ensure that women are not forced to carry a pregnancy to full term where that would be incompatible with its obligations under the Covenant (arts. 6 and 7) and should relax the legislation relating to abortion.”); CEDAW Committee, Concluding Observations: Nigeria, para. 34, U.N. Doc CEDAW/C/NGA/CO/6 (2008) (The Committee “also calls upon the State Party to assess the impact of its abortion law on the maternal mortality rate and to give consideration to its reform or modification.”); CRC Committee, Concluding Observations: Nicaragua, para. 59(b), U.N. Doc. CRC/C/NIC/CO/4 (2010) (“Repeal the articles of the Penal Code that criminalize abortion and ensure that girls are not subject to criminal sanctions for seeking or obtaining an abortion under any circumstances”); Human Rights Committee, Concluding Observations: Sri Lanka, para. 12, CCPR/CO/79/LKA (2003) (“The State Party should ensure that women are not compelled to continue with pregnancies, where this would be incompatible with obligations arising under the Covenant (Art. 7 and General Comment 28), and repeal the provisions criminalizing abortion.”).  

circumstances, forcing a woman to continue a pregnancy constitutes discrimination.897

As per above, no UN treaty monitoring body has ever recommended that a State Party eliminate a legal grounds for abortion, recognizing that women will procure abortions regardless of its legal status, with attendant risks to their health and lives. Instead, as described above, UN treaty monitoring bodies have called on States to liberalize their abortion laws in order to support women’s reproductive rights.

The recent concluding observations from the CRPD Committee on Hungary and Spain could be interpreted to contravene these well-established human rights standards. In these concluding observations, the CRPD Committee recommended that each State Party eliminate the fetal impairment ground for abortion,898 characterizing the law that explicitly allows for abortion on this ground as a form of discrimination “on the basis of disability” with respect to Hungary.899

As previously discussed, restricting women's access to legal abortion services will not prevent them from seeking to terminate a pregnancy if they wish to do so; such restrictions will only force them to resort to clandestine and unsafe abortions, which may place their lives and health at risk. Furthermore, seeking to restrict the fundamental rights of women by limiting their access to abortion does not address the core problem of discrimination against people with disabilities.

People with disabilities have historically been, and continue to be, subjected to discrimination that has devalued their lives, and laws that list fetal impairment as a grounds for abortion may reinforce feelings of exclusion.900 The CRPD Committee has sought to address this subject in its concluding observations by recommending that states eliminate specific reference to fetal impairment as a ground for abortion.

However, eliminating grounds for abortion will not resolve this problem. The most effective ways to promote the rights of individuals with disabilities and to combat discrimination against them is to implement policies and practices that support the autonomy and rights of all people, as outlined in the CRPD and other human rights instruments. This includes providing families the support they need to raise children with disabilities, and ensuring that people with disabilities are included in their

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communities, instead of restricting reproductive autonomy for women, including women with disabilities.

Moreover, framing abortion on the ground of fetal impairment as a form of discrimination also opens the door to the recognition of prenatal legal personhood. The histories of the negotiations of the major human rights treaties and the jurisprudence of the UN treaty monitoring bodies clarify that human rights protections do not apply before birth and recognize that bestowing rights before birth could contradict human rights protections for women.901

Recognizing rights for a fetus, such as the right to non-discrimination, could jeopardize many women’s rights, including their rights to life, health, non-discrimination, privacy, and freedom from cruel, inhuman or degrading treatment, among others. For example, it could prevent doctors from administering emergency medical treatment to pregnant women for fear of harming the fetus, or lead to the prohibition of abortion in all circumstances, which, as discussed above, poses grave risks to women’s health and lives.

IV. Conclusions.

Women cannot fully exercise their human rights without reproductive autonomy. State obligations to ensure reproductive autonomy are particularly important for women and girls with disabilities, who have historically faced, and continue to face, discrimination in forming families, including in deciding the number and spacing of children, and making important decisions about their own lives.

The CRPD provides a framework for tackling many of the reproductive rights violations facing women and girls with disabilities. The CRPD Committee could strengthen its jurisprudence promoting the rights of women and girls with disabilities by ensuring that these important issues, including access to information and essential services such as contraception and abortion, are part of its analysis of state compliance with the CRPD, and by condemning these violations using the strongest means possible.

V. Recommendations to the CRPD Committee.

A. Foundational Principles.

- To include in lists of issues provided to states questions about access to reproductive health information and services for women with disabilities, including concerns about accessibility of information and services, legal restrictions on access to abortion and contraception, and restrictions on the exercise of autonomy and legal capacity in healthcare settings.

B. Access to Information.

- To recommend that states ensure that healthcare facilities are accessible to people with disabilities, including by providing facilities in rural locations, so that people with disabilities can access essential reproductive health services in a timely manner.
- To recommend that states train and raise awareness among doctors and other healthcare providers and staff on disability rights and the reproductive rights requirements of the CRPD, to ensure that women with disabilities receive unbiased and accurate information about their reproductive health.
- To recommend that states produce reproductive health materials in accessible formats, and provide assistance to women with disabilities who are seeking reproductive health information so that they can more effectively communicate with healthcare professionals and staff.
- To recommend that states provide comprehensive, accurate, and accessible sexuality education to all young women and girls with disabilities, inside and outside of school, in order to ensure that women can exercise their rights to health and life, to found a family, and to be free from violence, exploitation, or abuse.

C. Access to Services.

- To recommend that states ensure access to all forms of contraception, including emergency contraception, to women with disabilities without restrictions. Recommend that states overcome barriers to accessibility by ensuring that contraceptives are available in locations close to all communities, including rural communities.
- To recognise that women with disabilities are more often victims of sexual violence, and recommend that states remove restrictions on access to reproductive health services such as emergency contraception and abortion in order to avoid further violations of their human rights. Classify denial of these services in cases of sexual violence as a violation of the
rights to health, to decide on the number and spacing of children, and to be free from torture or CIDT.

- To strengthen jurisprudence on forced sterilization and forced abortion by recognizing these acts as torture or CIDT under Article 15 of the CRPD.
- To refrain from recommending that states restrict women's access to legal abortion services on grounds of fetal impairment and instead encourage states to fulfill their obligations by taking measures to ensure that individuals, women and families have the support they need to raise children with disabilities.
Chapter 38
Equality and Human Rights Commission, United Kingdom.

Submission from the Equality and Human Rights Commission to the COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES.

Half Day of General Discussion on “Women and Girls with Disabilities”.

1. The Equality and Human Rights Commission (‘the Commission’) is the National Human Rights Institution (‘NHRI’) (‘A’ List) for England and Wales and for non-devolved matters in Great Britain. The Commission monitors the UK government’s implementation of the UNCRPD in Great Britain and is also responsible to ensure compliance with the Equality Act 2010.

It has research, policy and legal functions and has developed a number of major projects relevant to the half day of discussion, in particular relating to violence against women and girls with disabilities and to other matters regarding the status of women and girls with disabilities in society, two of which are mentioned briefly at the end of this submission. These additional issues should not be taken as exhaustive; they are included simply to exemplify the roles that women with disabilities ought to be able to choose in society.

2. The Commission welcomes the opportunity to make a submission to the CRPD Half Day of General Discussion on Women and Girls with Disabilities. The subject matter could not be more timely or appropriate. The UK government in the process of developing an action plan on the CRPD. As yet there are limited gender-specific references.

It is the Commission’s hope that the UK government will use its recently released overview of data on disability to develop a focused approach to the issues faced by women and girls with disabilities. This is an under-researched area that requires increased attention.

This submission then focuses on identifying a number of key areas where there is a strong emerging evidence base and other matters where, as yet, there are

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significant data gaps. The latter are generally in areas where it is possible to infer accumulated disadvantage from existing data on disability and gender respectively but where inter-sectional research is still required.

**Violence Against Women and Girls with Disabilities.**

3. This is an issue which clearly engages Articles 6, 10, 13, 15, 16 and 17 of the UNCRPD. British crime statistics indicate a generally higher prevalence of partner and family abuse than for the rest of the population (6.9 vs. 2.7 per cent).903 There are a number of studies which demonstrate that women with disabilities experience disproportionate levels of violence and abuse at the hands of carers and partners904, as well as in the community.

4. In addition to this, violence against women services may be difficult to access despite women with disabilities having three times greater odds of experiencing non-sexual family abuse than women who do not.905

5. In 2009, the Commission published a research report entitled 'Disabled People's Experience of Targeted Violence and Hostility'906. In its literature review, the report identified a number of issues specific to women, including a higher incidence of domestic violence amongst disabled women (compared with non-disabled women) as well as higher rates of domestic abuse and violence against women with learning disabilities, complex disabilities and mental health conditions.

Another study has shown that compared to women without mental health problems, women with depressive disorders were around 2 and a ½ times more likely to have experienced domestic violence over their adult lifetime (prevalence estimate 45.8%); women with anxiety disorders were over 3 and a ½ times more likely (prevalence estimate 27.6%); and women with post-traumatic stress disorder (PTSD) were around 7 times more likely (prevalence estimate 61.0%).

Women with other disorders including obsessive compulsive disorder (OCD), eating disorders, common mental health problems, schizophrenia and bipolar disorder were also at an increased risk of domestic violence compared to women without mental

904 It is worth noting that there are significant levels of violence and abuse against men with disabilities by their carers or partners, but that the incidence amongst women is greater.
health problems. The senior author said that “there are two things happening: domestic violence can often lead to victims developing mental health problems, and people with mental health problems are more likely to experience domestic violence.”

6. The report for the Commission by Sin et al. identified the perpetrators of domestic abuse as ‘predatory caregivers’ or ‘corrupted caregivers': “The former are considered to maintain opportunities (for example, through employment) to have access to victims. .........Predatory caregivers are thought to be likely to commit extreme cases of physical and sexual violence as well as low-level harassment.”

This should be compared with the vernacular term' cuckooing' (cf. paragraph 8 below).

Perpetrators of domestic violence may reinforce their control by exploiting someone’s impairment such as moving aids out of their reach or not providing care.

7. In situations of domestic violence, it can be particularly difficult for disabled victims to end the relationship and build a new safe life. All the respondents in Women’s Aid Federation England's (WAFE) research into the needs of disabled victims of domestic violence said that ‘being disabled made the abuse worse, and also severely limited their capacity to escape or take other preventative measures’.

Disabled people who are reliant on the person who is abusing them (often their partner or carer) are often trapped – especially if their home has been adjusted to accommodate their physical, communication or psychological/mental health needs. This can leave them at risk of further sexual violence and emotional or financial abuse.

Information about available help may not be readily available in accessible formats, and many refuges are ill-equipped to meet the needs of disabled women. Those who

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909 ibid n4 pg. 56.
leaves their registered address risk losing their access to welfare entitlements, personal assistants and so on (i.e. their ‘care’ package).

8. The Commission’s statutory inquiry into disability-related harassment, *Hidden in Plain Sight*, further defined patterns of abuse, including ‘cuckooing’\(^\text{912}\) (where a ‘friend’ moves in ostensibly to help provide care but actually to get access to food, clothes, drugs or benefits) and cyber-bullying. ‘Cuckooing’ - which appears to be a commonly understood term amongst some inquiry participants - is a feature of the experience of both men and women with disabilities.

However, it is important to recognise the specific ways in which women and girls with disabilities experience abuse at home as well as the prevalence of cyber-bullying as a form of abuse when shaping recommendations.

9. Analysis carried out for the Commission\(^\text{913}\) has found that disabled women in England and Wales in 2007-08 to 2009-10 were more likely than non-disabled women and men to report feeling either ‘a bit unsafe’ or ‘very unsafe’ when walking alone after dark. Among disabled women, 57 per cent felt a bit or very unsafe, compared to 38 per cent of non-disabled women. For men, the figures were 30 per cent for disabled men and 14 per cent for non-disabled men.

Disabled women were more likely to report being either ‘very’ or ‘fairly’ worried about being physically attacked by strangers. Among disabled women, 43 per cent felt very or fairly worried, compared to 39 per cent of non-disabled women. For men, the figures were 30 per cent for disabled men and 25 per cent for non-disabled men. Disabled women were more likely to report being ‘very or fairly’ worried about being insulted or pestered by anybody.

Among disabled women, 37 per cent felt very or fairly worried, compared to 35 per cent of non-disabled women. For men, the figures were 26 per cent for disabled men and 22 per cent for non-disabled men. Disabled women were more likely to report being either ‘very’ or ‘fairly’ worried about being a victim of crime. Among disabled women, 46 per cent felt very or fairly worried, compared to 39 per cent of non-disabled women. For men, the figures were 37 per cent for disabled men and 30 per cent for non-disabled men.\(^\text{914}\)

10. Among public authorities, there appears to be little understanding of how a victim may be targeted as a result of more than one aspect of their identity and how

\(^{912}\) *Hidden in Plain Sight*: EHRC 2012, pgs 84-5.

\(^{913}\) Andrew Nocon, Paul Iganski and Spyridoula Lagou, Disabled people’s experiences and concerns about crime. EHRC Briefing Paper 3 2011


\(^{914}\) EHRC (2010), *How Fair Is Britain?* (EHRC, 2010).
to meet the needs of diverse victims. For example, rape and sexual assault against disabled women tends to be dealt with only as a ‘violence against women’ issue rather than potentially both a violence against women and disability-related harassment issue\textsuperscript{915}.

A report by the Crown Prosecution Service Inspectorate examined 151 cases of rape cases and found that mental health and learning difficulties were ‘frequently identified vulnerabilities’\textsuperscript{916} yet this does not appear to be on the radar of people managing ‘violence against women’ programmes.\textsuperscript{917}

The Commission’s Inquiry did not come across a single case of sexual violence against a disabled person that has been recorded and prosecuted as hate crime, despite some evidence disabled women are at greater risk of being targeted for these offences than non-disabled women.

11. Following its inquiry, the Commission has developed its recommendations into a publication called \textit{Out in the Open: Manifesto for Change}\textsuperscript{918}. These address:

- Reporting, recording and recognition.
- Addressing gaps in legislation and policy.
- Ensuring adequate support and advocacy.
- Improved practice and shared learning.
- Redress and accessing justice.
- Prevention, deterrence and understanding motivation.
- Transparency, accountability and involvement.

12. Key to addressing disability-related harassment is understanding how it manifests itself and removing the barriers to reporting. Public authorities are urged, amongst other things, to use the Public Sector Equality Duty (PSED)\textsuperscript{919} to develop evidence-based policies and practices to address abuse against people with disabilities. This will include recognising and addressing forms of violence and abuse that are specific to women with disabilities or disproportionately experienced by them.

\textsuperscript{915} Hidden in Plain Sight: Inquiry into Disability-related harassment pg128: EHRC August 2011.
\textsuperscript{917} Ibid.
\textsuperscript{919} Equality Act 2010 s 149. The PSED is a duty on public authorities ‘to have due regard to the need to: (a) eliminate unlawful discrimination and harassment (b) advance equality of opportunity and (c) foster good relations.
13. Currently, the UK government is reviewing the PSED as part of its ‘red tape challenge’ to assess whether it is an unnecessary burden and should be abolished.\textsuperscript{920} Notwithstanding this, \textit{Out in the Open} acknowledges the positive steps which are being undertaken by public authorities to develop action plans to address disability-related harassment, though much work still needs to be undertaken.

**Reproductive Rights and Family Life.**

14. The evidence in Great Britain concerning sterilisation, particularly of women and girls with learning disabilities, is notable for its absence. Unlike some other European countries, there has never been an official policy of sterilisation or eugenics in Great Britain and therefore there is little official data. However, in the past, families have applied for legal authorisation to sterilize family members.

Since the 1990’s, however, applications through the Courts for sterilisation of family members lacking capacity has declined markedly, with one study\textsuperscript{921} claiming that only one official request for sterilisation took place between 2002 - 2007.

In 2011, a Court of Protection case where the applicant, the child’s mother, was seeking the involuntary sterilization of her daughter was adjourned (for further evidence), and then withdrawn, indicating perhaps that there may be unease about this matter because of the human rights implications\textsuperscript{922}. However, the study says that ‘in the absence of subsequent empirical research it is impossible to assess the current extent of sterilization’.

15. Notwithstanding this, studies have identified persistent interest and debate about eugenic policies and attitudes, including amongst the families of women and girls with intellectual disabilities\textsuperscript{923}. The question of the level of choice in informal sterilisations, conducted with the apparent consent of the woman or girl who is the subject of the procedure, may be an issue which requires much greater exploration.

**Participation in Elected Public Office.**

16. This issue engages UNCRPD Articles 3, 5, 6 and 29, particularly Article 29 (b) (i). The numbers of people with disabilities who hold elected office in the UK

\textsuperscript{920} http://homeoffice.gov.uk/equalities/equality-act/equality-duty/equality-duty-review/.


\textsuperscript{922} Re P (Sir Nicholas Wall) 2011 Unreported but many Media reports e.g. http://www.telegraph.co.uk/news/uknews/law-and-order/8325181/Sterilisation-ruling-what-is-the-Court-of-Protection.html.

\textsuperscript{923} ibid n. 20.
parliament or English and Welsh local councils remains disproportionately low. Of the current members of the UK House of Commons only four are known to have physical or sensory impairments.

Further, only one – Dame Anne Begg – is a woman. With such low numbers, it is not possible to identify trends or barriers which are specific to women with disabilities. However, it may be possible to infer accumulated disadvantage as there is a substantial evidence that both women as a group\textsuperscript{924} and people with disabilities are under-represented in political office.

A significant problem in any future research on this subject is that there are likely to be low levels of disclosure because politicians fear that they will lose votes or open themselves up to criticism if they disclose their impairments.

17. It should be noted that in response to the low numbers of disabled people seeking to run for public office, the UK government has set aside £2.6 million to encourage people with disabilities to become involved\textsuperscript{925}. The funding lasts until the end of the 13/14 financial year.

The Commission welcomes this development but has noted Media reports that only relatively small numbers of disabled people have so far received funding. If these reports are accurate, it is likely to be because of the attitudinal and environmental barriers identified in the Commission's own research\textsuperscript{926} and further consideration may need to be given to overcoming these them.

**Employment and Pay Gaps.**

18. The employment rate of people with disabilities in Great Britain is low in comparison with the non-disabled population. The latest data indicates that 49.6% of disabled people were in work (much lower than the non-disabled population). There is very little difference between men and women with disabilities in respect of the numbers who are economically active and inactive, but more men than women with disabilities are unemployed (224,000 as opposed to 183,000)\textsuperscript{927}.

\textsuperscript{924} In 2011, women’s average representation rate in major political roles in Great Britain was 26.2. http://www.equalityhumanrights.com/uploaded_files/sex+power/sex_and_power_2011_gb__2_.pdf pg 6.


\textsuperscript{927} ONS Data from February 2013. A08 Labour Market Status of Disabled People. The data covers the period from October - December 2012.
The Commission's triennial review stated that significantly more workers with disabilities were in part time work than those without, though the figures are likely to be different now because of the growth of part-time work in place of full-time jobs.

19. There is a large pay gap for those people with disabilities - both men and women - who are in work. Up to date information about the pay gap for women with disabilities is not available. The latest reliable study, so far as we are aware, was published by the Commission in 2008. This concluded that: "Disabled workers have a large pay gap, compared to non-disabled workers. However, gender pay gaps are larger than those for disabled men. Not only do disabled women earn less than disabled men, but non-disabled women in full-time work also earn less on average than disabled men in full-time work."

20. The Commission is of the view that closing employment and pay gaps, and ensuring effective access to public office, are fundamental measures essential in the protection and promotion of the rights of women and girls with disabilities. It welcomes the government's plans through the 'Fulfilling Potential' project to develop a series of indicators to monitor the progress of people with disabilities in British society. These indicators will include measures in the areas of employment and income. The Building Understanding report, developed as part of the project, contains useful disaggregated information about disability and gender, which could be usefully built upon.

930 ibid pg 24.
International Women's Development Agency, Australia.


International Women's Development Agency (IWDA) is Australia’s only development agency entirely focused on women's rights and gender equality. We have worked with women's groups to promote women's rights and gender equality in Cambodia since 1989.

This submission draws on a major research project, Triple Jeopardy: gender-based violence, disability, rights violations and access to related services among women in Cambodia, conducted as a partnership with CBM Australia and Monash University in Australia, and Banteay Srei and the Cambodian Disabled People's Organisation in Cambodia, with support from AusAID through the Australian Development Research Awards.931

The Triple Jeopardy research compared experiences and levels of violence, discrimination, mental wellbeing, and financial autonomy of women with and without disabilities.932 This submission draws on the research to discuss some of the violations of rights enshrined in the Convention on the Rights of Persons with Disabilities experienced by women with disabilities in Cambodia, illustrated with first

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931 The research project was conducted during 2010 – 2012. This submission draws on raw data from surveys, interviews with women with disabilities who have experienced violence, internal reports and published reports from the research. Grateful acknowledgement is due to Dr Jill Astbury and Fareen Walji for this work. All published reports and tools from the research can be accessed from http://www.iwda.org.au/research/triple-jeopardy/.

932 A variety of methods were used to conduct the research, including surveys with 354 women (half without disabilities), focus group discussions with approximately 80 women with disabilities, in-depth interviews with 30 women with disabilities who had experienced violence, and interviews with 15 key informants working at relevant organisations. All quotes contained herein are from the in-depth interviews.
person voices, and concludes with recommendations from women with disabilities in Cambodia to strengthen the protection of their rights.

**Article 16: Freedom from Exploitation, Violence, and Abuse.**

It is clear that the experience of interpersonal violence is different and more abject for women with disabilities than those without. In our research, we found extremely high levels of all kinds of violence by family members other than an intimate partner (emotional, physical and sexual) against women with disabilities, much higher than for women without disabilities. This was in addition to an array of controlling and coercive behaviour including having to seek permission from others in the family before accessing health care.

<table>
<thead>
<tr>
<th>Family Violence Over Lifetime</th>
<th>Women with Disabilities</th>
<th>Women without Disabilities*</th>
<th>Overall Prevalence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Emotional Violence</td>
<td>52.5%</td>
<td>35.2%</td>
<td>43.9%</td>
</tr>
<tr>
<td>Physical Violence</td>
<td>25.4%</td>
<td>11.4%</td>
<td>18.4%</td>
</tr>
<tr>
<td>Sexual Violence</td>
<td>5.7%</td>
<td>1.1%</td>
<td>3.4%</td>
</tr>
</tbody>
</table>

*The difference between results for the two groups is highly statistically significant.

<table>
<thead>
<tr>
<th>Controlling Behaviour by Family Members</th>
<th>Women with Disabilities</th>
<th>Women without Disabilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insist on knowing where you are at all times</td>
<td>48%</td>
<td>37.5%</td>
</tr>
<tr>
<td>Ignore you or treat you differently</td>
<td>27.1%</td>
<td>17%</td>
</tr>
<tr>
<td>Expect you to ask permission before seeking health care for yourself</td>
<td>48.6%</td>
<td>34.7%</td>
</tr>
</tbody>
</table>

“My parents do not care about me. Yesterday my father rapped me on the head with his knuckles, and when I refused to tend the cows the next morning, he hit me again. Though I have become an adult he still beats me... [Once] my mother got drunk and cursed me. I said that I did
not want to live anymore and my mother told me to hang myself. Suddenly, she tied me with a rope around my neck and beat me with a firewood stick. My whole body was hurt. I untied the rope by myself. My elder brothers and sisters did not save me but laughed at me and said, ‘It serves you right; you said you wanted to die’, and I replied that I did not want to die, I wanted to live to see bad people. My mother has also beaten me with a pan. I do not want to live with her; I want to go live in an organisation.” (IDISRU3)

“My father told me to work while he went to drink wine. When he came back, he would beat me and not speak to me properly. He would beat us all but my brothers ran away to the pagoda, leaving me alone. It is my father and second brother who beat me, insulted me, cursed and kicked me. When they got angry and I talked back to them they would throw at me whatever objects they were holding in their hands including knives or axes. My father also dragged me to the bridge, which is about 30 metres away. He threw me to the ground, tied me up and dragged me. Then he tied me to the coconut tree and was beating me there, with a stick. He did this because I tried to run away from home. When we arrived back home my step-mother came to save me.” (IDISRU4)

<table>
<thead>
<tr>
<th>Partner violence in lifetime</th>
<th>Women with disabilities</th>
<th>Women without disabilities*</th>
<th>Overall prevalence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Emotional Violence</td>
<td>48.9%</td>
<td>41.8%</td>
<td>43.5%</td>
</tr>
<tr>
<td>Physical Violence</td>
<td>26.6%</td>
<td>23.4%</td>
<td>24.3%</td>
</tr>
<tr>
<td>Sexual Violence</td>
<td>24.4%</td>
<td>16.8%</td>
<td>18.6%</td>
</tr>
</tbody>
</table>

*The difference between the two groups is not statistically significant.

Women with disabilities experienced slightly higher rates of violence perpetrated by partners than women without disabilities, though the differences were not statistically significant. However, women with disabilities were up to 4.2 times more likely to be subjected to controlling behaviours by their partners than women without disabilities.
Controlling Behaviour by Partners | Women with Disabilities | Women without Disabilities | Both
--- | --- | --- | ---
Insists on knowing where you are at all times | 62.2% | 28.0% | 36.7%
Expects you to ask his permission before seeking health care for yourself | 71.1% | 49.2% | 54.8%

“My husband was hungry and angry with me because I did not finish cooking in time for his meal. He threw a plate at me and I was badly injured but did not go the hospital. I just asked the doctor to come to my house. I told a lie that I had had an accident and had walked into a wall. I did that to save his face.” (IDIKS6)

“For the first one or two years of marriage, he loved me. But afterwards, he started drinking wine frequently and would start conflicts with me and threaten to hit me. He used to take something like a long knife to hit me. But he could not hit me because I ran away. I just told my relatives. I never told the local authority. I do not want to break the relationship. So I just try to be patient to live with him. His father is vice-chief of the village, but he never educated his son to stop doing this kind of bad thing to me.” (IDIBB5)

Impact of Violence.

We found a strong correlation between disability, violence and mental distress. We used the Self-Report Questionnaire (SRQ), developed by the World Health Organisation, to measure psychiatric disturbance. Women without a disability and who did not report experiencing violence had the lowest levels of psychological distress as measured by the SRQ, while women with disabilities and who had experienced violence suffered the highest levels.
In this sample, women with disabilities are more likely than those without disabilities to sleep badly, feel frightened, have trouble thinking clearly, cry more than usual, feel their work was suffering, feel like a worthless person, feel tired all the time, think about ending their life and to have tried to do so. These feelings and behaviours underline the heavy burden of psychological distress experienced by women with disabilities in Cambodia.

“I get really upset when my father and cousins blame me. Sometimes it is without reason. I feel that as a person with a disability I create a burden on others, and do not want to live.” (IDIPP5)

“I have both mental and physical difficulties. My life is of no hope and I seem to be waiting for the final day. I do not want anything, even medicine.” (IDIBB1)

“I can’t say when I’ve felt the most pain. I’ve suffered a lot of times. I remember one time my sisters and I made the same mistake, but my father only hit me. I really wanted to run away, but I did not know where to go. If I went to my uncle’s he would only bring me back. At times I’ve felt very hopeless like I wanted to die. One time I wanted to kill myself by cutting my wrists.” (IDIPP1)

Violence perpetrated by family members was found to have an even worse impact on women with disabilities than on women without disabilities. 92.2% of women with disabilities reported that family violence had affected their health, compared to 66%
of women without disabilities, an almost 6 fold increase in their odds of reporting an adverse impact.

Similarly, 18.8% of women with disabilities reported being injured, compared to 8.5% of women without disabilities. It appears that generally family violence has a worse impact on women’s wellbeing than violence perpetrated by partners; the reasons for this were not investigated in the research.

Many services in Cambodia for women experiencing violence are aimed at women experiencing partner violence; this focus ultimately discriminates against women with disabilities who do not recognise themselves in awareness-raising material about violence against women and do not therefore seek out services.

At the same time, service providers and community organisers both often fail to reach women with disabilities and do not identify women with disabilities as experiencing violence. Local authorities have assisted women in some cases in responding to violence and chastising the perpetrator; some, however, do not pay attention to the woman’s claim and fail to see violence against women with disabilities as a violation of her rights.

*Most women with disabilities, including me, do not know about that [services for women experiencing violence]: “I am afraid of lawsuit, and I do not know whether the organisation helps destitute women who have crisis for free or not after receiving the claim.”* (IDIBB1)

*Women with disabilities tend to be more vulnerable than women without disabilities. When they face violence, there is no intervention from local authority. Importantly, most women with disabilities in the rural area are poor. So the local authorities do not pay attention to address those problems. On the other hand, they tend to think that violence against women with disabilities is normal.* (KII12)

**Article 25: Access to Healthcare.**

Women with disabilities experience significant obstacles in accessing healthcare. This ranges from family members and partners physically stopping them from going to a medical practitioner, taking their money saved for healthcare, and refusing to care for them. The need for a family member to assist with accessing healthcare can be a barrier, as this means the carer cannot engage in paid work.
“I asked my husband to take me to the hospital, but he refused to and tied up my cart so as I couldn't go. I do not know who he got jealous of. He did not help me, but for the sake of my child I struggled to go.... I saved 50,000 Riel for spending after giving birth. He [my husband] stole that money to pay for his drinking. I sat down and cried out, 'Now I lose all the money. Where can I get the money to spend after giving birth?' I tried to be good with him to take the money back – I agreed to sleep with him when I was pregnant. ... He, eventually, bet all the money in gambling--nothing remained. ... When I stayed at the hospital, he did not come to care for me, but asked for 10,000 Riel from me. I refused to give it to him, so he stole my skirt to sell.” [IDBB4]

“After I fell ill, both my mother and my husband's relatives gave me support but I could not recover. Over ten years of my illness, I sold all of my properties. Now I have nothing in my hand, and my husband seems to be hopeless; he doesn't bother even earning a living. He only stays at home and does nothing. Only my mother took me to receive medical treatment.... The physician said I have bone cancer, and recommended that I get injection costing $50-$100 to shrink it. I did not get injection because I got dizzy on my way there. I only got my blood tested and had an x-ray to see where the tumours were spreading; some parts of my rib and coccyx are corroded in holes by virus. Now I do not know if the virus is corroding my foetus or not. When I give the birth, I will see if the baby can survive or not. The foetus doesn't disturb me. It just moves normally, but makes me uncomfortable to bend down and move. If I try to move, it makes me feel like urinating uncontrollably until I get too exhausted to move other parts of my body. Some people came and asked how I was. I told them I could do nothing but just let it be. My mother and relatives believed the physician when he said that my illness cannot be cured no matter where I go to, and that there is no need for them to take me to Vietnam or Thailand for medical treatment, but just keep the money to feed me. They believe so and leave me alone until now.” [IDBB1]

Most women surveyed who had been injured by a partner or family member had not received health care for the injury: 68% of women injured by a partner, 82.9% of women injured by a family member. The rates were similar for women with and without disabilities. Few women disclosed to their healthcare worker the real cause of their injury.
Thus, only 21.7% of women were injured by a family member and 30% by a partner. Again, the rates were similar for women with and without disabilities. The stigma and shame attached to interpersonal violence is another barrier to adequate healthcare.

**Article 23: Respect for Home and the Family.**

A higher proportion of women with disabilities (57.6%) had never been married or lived with a male partner than those without (19.2%) and this difference was highly statistically significant. Related to this, was the finding that women with disabilities were significantly more likely to live with their family of birth (71.1%) than those without (44.6%).

The research did not investigate this disparity but one could assume that discriminatory ideas about disability are a factor preventing women with disabilities from enjoying such relationships.

**Article 27: Right to Work; Article 12: Equal Recognition Before the Law.**

Women with disabilities suffer significant financial disadvantage. Married women with disabilities lacked information on their financial rights within the marriage. Many expressed concern about providing for children, and sometimes sacrificed their own safety as they believed their children needed their fathers around for financial support.

Many women with disabilities found it difficult to earn enough income because of their disability, lack of education etc. Fewer women with disabilities compared with those without disabilities reported that they earned money (70.6% vs. 81.4%). This difference was highly statistically significant.

A different pattern between women with disabilities and those without emerged in relation to the level of discretion they had over how they spent their money, and whether they had to give all or part of it to someone else. More women with disabilities compared with those without, reported they were able to spend their money how they wanted (13.4% vs. 3.5%).

More women with disabilities also reported they had to give all their money to someone else (5.5% vs. 2.8%) but fewer reported they had to give part of their money to someone else (81.1% vs. 93.7%). The 5 most common people to whom women with disabilities gave money were, in rank order, their mother (54.3%), children (42.2%), sister (27.6%), father (25.9%) and ‘other’ (23.9%).
Women with disabilities were significantly less likely than those without disabilities to report that they could raise enough money in an emergency to house and feed themselves and their family for four weeks (20.5% vs. 48.0%): 

“Before I had a disability, my relatives used to take me many places. Now they say it is too hard to bring me along. Before I became disabled, my neighbours used to treat me better. For example yesterday there was an NGO coming to grant loans to people. I wanted to become a member of the borrower group but they did not allow me; they said I had no work, so I did not have the ability to earn money to pay debt. I was not angry with them but upset with myself. They said they did not allow me to become their member because I did not have any means of earning money to pay the debt. I did not insist. If they were good they would have allowed me to take part. When I take part in activities most of them do not want me. Neither my family nor my friends support me.” (IDISRU1).

Women with disabilities had significantly less financial autonomy than women without disabilities. This was measured by asking women eleven questions about their ownership of small and large assets, such as small animals, mobile phones, jewellery, house or land. Theoretically scores could range from a minimum of zero (owned nothing) to a maximum of 11 (owned all items asked about).

The average financial autonomy of women with disabilities was 3.2; for women without disabilities it was 5.2. The difference is highly statistically significant.

Women with disabilities were more than 60% less likely to own land than women without disabilities; 70% less likely to own their house; 50% less likely to own large animals; 60% less likely to own small animals.

Furthermore, 60% were less likely to own a business (noting that only a few women at all who did own a business); 60% less likely to own large household items; 40% less likely to own items such as jewellery, gold or other valuables; and 40% less likely to own a mobile phone. Women with disabilities in Cambodia are thus highly dependent and highly vulnerable:

“I can only be hired to cut Rompeak trees and make baskets. This is what I can do to make money for my children’s study. My husband sends me 150,000 Riel ($34 AUD) and a bag of rice costing nearly 100,000 Riels every month. Please imagine how my children can go to school with this money and what would happen if their bicycles were
out of order. I worry so much because I have to spend money on many things, especially on my children’s studies.” (IDISRU1)

“This is the point that is worrying me both mentally and physically. If I do not have money for my children, when they ask for it then I cry. As a mother, I only want my children to have enough food because they are too young. When I force my husband to earn money, he shouts back. He says “why do not you go yourself? I will not go”. I have urged him countless times. I have asked him to earn money for the children’s studies. I have said I do not care about myself because my mother feeds me every day, but I just want my children to have enough food. He says nothing and does nothing. Whenever he gets drink he makes trouble with me and frightens the children.” (IDIBB1)

**Article 30: Participation in Cultural Life, Recreation, Leisure and Sport.**

Key informants spoke of terrible discrimination against women with disabilities, to the point where they are extremely isolated from their communities, abused by family and neighbours, and not allowed to join in local ceremonies or meetings. Women with disabilities are commonly not accepted as productive members of their family or community.

“Last year in Takeo province, I met a 32-year-old woman with a disability who had been neglected and excluded. She said that she has never been out of her home, she even crawls to the toilet. She looked very dirty. If she wishes to join other ceremonies, local people just ignore her, saying she is totally handicapped and so it is not necessary for her to join the ceremony.

This is another form of emotional abuse, as well as psychological abuse, which stops her from going outside of home. She is 32 years-old, illiterate, and never goes outside! She does not even know when the village/commune meeting is, so she never joins the meeting. She just crawls from her bedroom to the toilet, and she has experienced emotional and psychological abuse from her neighbours, as well as her family, who say that she is a woman with disabilities so she has no options in life besides support from her siblings who feed her.” (KII2)
“Sometimes the ceremony owners invite me to the “eating” ceremony or wedding party to wash dishes. I feel that people do not like me because I am a blind person. I do not have new clothes or much money.” (IDISRU4)

From the surveys, there was a trend indicating that women with disabilities were less likely to regularly attend a group or organisation and a statistically significant difference indicating women with disabilities (6.2%) were more likely to have been prevented from attending a meeting or participating in an organisation than those without disabilities (1.1%).

A significantly different pattern also emerged regarding the people who were identified as preventing attendance at a meeting or organisation. Women with disabilities were more likely to have been prevented from attending by birth relatives, friends and neighbours or ‘others’ while those without a disability were more likely to have been prevented by partners:

“I have never been invited to any ceremonies. I do not attend them because people say that I am a fool and they do not allow me to attend. I have been the pagoda with my neighbours for the Pchum Ben ceremony.” (IDISRU3)

In the in-depth interviews, women spoke of community members mocking them, avoiding or ignoring them, imitating them, and using derogatory language towards them. They described how family members and others found it difficult to include them in community events; and when they were included, it was often as a dishwasher or rubbish collector rather than a valued person.

They talked about having few friends, or people staying away from them because they were considered to be diseased. Conversely, there were also friends or neighbours who were supportive and protected women with disabilities. It is clear that while there is significant discrimination against women with disabilities, there are also community members who are inclusive and can be role models for others:

“Some people do not understand about disability. I used to visit my family during the water festival. People used to say “Why do you come here with such difficulty? It’s difficult to assist you, you better stay at home”. Although I was ok with this, my friend got very angry. She shouted at them, ‘How about you, why do you also come here?’” (IDIPP5)
Recommendations.933

Women with disabilities identified a variety of initiatives that could help them cope with or escape violence and discrimination. Some cited being able to study, work, and earn an income which would give them independence and the ability to leave a violent relationship. Others wanted support from legal services or organisations that could provide legal, moral and financial support.

Examples given were microfinance to raise pigs or the presence of a disabled person’s organisation. Others thought attitude change in the community was important, as acceptance of people with disabilities would lead to a better situation for them:

“If the disabled women face violence and live with depression like me, I would like to suggest that the authorities or organisations encourage them to be stronger and get hope – they should help them. I feel very happy after sharing with you. Those women already have crisis, so help them to avoid from depression.... I would like request them to help disabled women who travel in a wheelchair like me by providing information and giving emotional support and help them to get rid of hardship.” (IDIBB1)

“I would like to request the authorities to create a close atmosphere with women with disabilities to help solve their problems immediately. I want the authorities to establish confidence and trust with women with disabilities. If they make a claim about violence or sexual abuse the authorities should take immediate action 24 hours a day. They should also keep the claims confidential.” (IDIBB3)

“I wish that the local authority could find the service provider of wheelchairs and build the accessible ramp at the commune hall for wheelchair user. I have a lot of barriers to travel to the commune hall which is located upstairs without ramp. The local authorities do not understand my disability. He always asked me to go upstairs. He does not come downstairs.” (IDIBB5)

Community members clearly both discriminate against and attempt to support women who experience violence. There is an urgent need to change discriminatory attitudes and raise awareness on the situation for women with disabilities in

933 The two-page policy brief developed by the research team outlined key directions and recommendations to address the violence and discrimination experienced by women with disabilities: http://www.iwda.org.au/wp-content/uploads/2013/02/20130204_TripleJeopardyBrief.pdf.
contexts where care, support and service access depends on the action of family members.

At the same time, **information should be provided to community members on how they can support women with disabilities.** Such activities should also target local authorities. As village chiefs and police were commonly named as the first authority that the women went to for support, they need to be equipped with the skills and tools to handle the unique situation of women with disabilities more appropriately as well as better support victims of violence more broadly.

As women with disabilities experience more violence from family members than from partners, services which focus on domestic violence – as commonly understood to be perpetrated by partners rather than family members – will exclude women with disabilities from accessing their services.

**Of urgent importance is developing policies that address the types of violence faced by women with disabilities, and targeting funding to support dedicated legal, advocacy and shelter services for them.** Moreover, there appears to be more stigma attached to suffering family violence, which results in women who experience this kind of violence being less likely to seek help.

This affects women with disabilities disproportionately, as they experience higher rates of family violence than women without disabilities. **Awareness-raising campaigns about violence against women should explicitly discuss violence perpetrated by family members:**

> “I suggest NGOs work with family members to help them better understand people with disabilities and how to support them so that the women with disabilities can live peacefully without violation.”
> (IDIBBS)

**Closer collaboration between disability-focused and gender-focused policy makers and civil society organisations** will help to better identify and address the unique challenges experienced at the intersection of gender and disability. Women with disabilities face a triple jeopardy of gender, disability and violence.

Disability services which do not include a specific focus on women can end up failing to attend to issues such as interpersonal violence and focus instead on infrastructure. Women's services which do not include a specific focus on disability will often fail to reach women with disabilities, fail to identify the violence they experience and fail to prevent, respond to and challenge violence against women.
with disabilities. Special attention must be paid to women with disabilities to ensure that they are not forgotten and left behind.

**Summary of Recommendations for Government and Civil Society.**

1. Provision of support services which use a twin-track approach to provide specialist support for women with disabilities and integrate them in mainstream services to assist women to study, earn an income, and access legal advice.
2. Establishment and/or support for disabled person's organisations.
3. Activities to change discriminatory attitudes which perpetuate and condone violence and discrimination against women with disabilities.
4. Awareness-raising activities to assist community members and local authorities support women with disabilities.
5. Of urgent importance is developing policies that address the types of violence faced by women with disabilities, and targeting funding to support dedicated legal, advocacy and shelter services for them.
6. Awareness-raising campaigns about violence against women should explicitly discuss violence perpetrated by family members.
7. Closer collaboration between disability-focused and gender-focused policy makers and civil society organisations to better identify and address the unique challenges experienced at the intersection of gender and disability.
Chapter 40

Philippine Coalition on the UN Convention on the Rights of Persons with Disabilities and Philippine Alliance of Human Rights Advocates.

For consideration of the Committee on the Rights of Persons with Disabilities on "Strengthening the Protection of Human Rights of Women and Girls with Disabilities".

Half Day of General Discussion.
17th of April, 2013.

A joint submission from the Philippine Coalition on the U.N. Convention on the Rights of Persons with Disabilities and the Philippine Alliance of Human Rights Advocates.

DUTY TO PROTECT.

The state’s duty to protect the rights of women and girls with disabilities is part of its overall mandate to respect, protect and fulfil all its obligations to all people with disabilities, according to the Convention. As duty-bearer, protection of the rights of women and girls with disabilities is defined as the prevention of interference by others or third parties with the exercise or enjoyment of a right, or a deprivation of access by the right-holders of their rights and freedoms.

These third parties are non-state actors, including individuals, businesses, institutions, private organizations and others. Thus, the state needs to be able to demonstrate due diligence in preventing the violation of a right, or, responding to the violation of a right. It would also imply state responsibility and activity in the monitoring and regulation of the activities of non-state actors.

WOMEN AND GIRLS WITH DISABILITIES IN THE PHILIPPINES.

Women with disabilities comprise a subsector of Filipino women rarely included or even acknowledged. They experience marginalization and discrimination at the intersecting planes of gender and disability. Thus, the societal barriers that isolate them operate through complex multidimensional relationships and social
interactions with Filipino men, those of the majority, as well as Filipino men with disabilities.

**Articles 15, 16: Protection from Cruel and Inhuman Treatment; from Violence, Exploitation and Abuse.**

*In the home.*

In over 168 cases of gender-based violence documented by the Philippine Deaf Resource Center\(^\text{934}\), the most frequent site of violence is in the home of the deaf woman or girl herself. Included here are the numerous cases of incest by male members of the immediate or extended family.

With a growing number of households where fathers are left to care for their daughters with disabilities and where young girls are out of school, there has been increasing vulnerability to abuse. This is compounded by typical use of alcohol by fathers. In households where both parents are working specially in informal settler areas, more children with disabilities are locked up or chained\(^\text{935}\).

Findings also include increasing reports of intimate partner or domestic violence between deaf couples. Notable are a few reports of LBT\(^\text{936}\) cases of violence. Police stations and local government staff lack the awareness or experience to handle such incidents or cases brought to them. The fact that there is no national system of sign language interpreting with standards and mechanisms presents enormous barriers to communication in law enforcement and access to justice.

Thus, it is the State Party's failure, particularly by the justice branches and even the NHRI, to be unable to provide equal protection and equal benefits to women /girls with disabilities under the law.

*In schools.*

Filipino women's gender-stereotyped roles also affect women with disabilities, seriously restricting their opportunities to education, livelihood & employment, and overall self-development and dignity of personhood. Despite very limited state data, the most compelling of this discrimination is revealed in gender / disability – based violence. Frequently, this also intersects with age, thus affecting many girls with disabilities.


\(^\text{935}\) Phil Coalition on the UNCRPD. Communications with disabled people's organizations.

\(^\text{936}\) Lesbian, bisexual and transgender women.
The need for protection from violence, exploitation and abuse for women and girls with disabilities is essential in different domains of individual and collective life. These range from the intimate domains of family and home, through the various levels of schooling, the community at large, and broadly, in institutions, and in the realm of broadcast Media and information and communication technology.

Apart from public schools and programmes for children with disabilities, there are numerous educational programmes, facilities and ministries privately run by non-profit corporations and faith-based groups. Regulation or monitoring of these private entities by the Department of Education is usually limited only to listing in the school rosters in the area, and does not deal with standards of school management or administration. These privately run residential schools for the deaf, blind and other children with disabilities are very much like their public counterparts, in relation to the fact they are notorious for gender-based violence, promiscuity, pregnancy and various sexuality-related problems. These are frequently associated with the physical building and the design of the residential dormitory and its toilet facilities, which do not provide sufficient privacy between boys and girls with disabilities.

In addition, these school facilities offer very limited (if any) sexual education programmes, and guidance and counselling support. From primary to postsecondary levels, accounts of lateral violence to girls with disabilities by male children with disabilities also happen. Especially at secondary and postsecondary level programmes, sexual violence toward young deaf girls with disabilities by deaf fraternities has been unabated for years.

Schools are aware of this problem yet are virtually powerless in even trying to gather information because of deeply guarded secret codes of conduct in these organizations. In several occurrences of rape, and other forms of sexual abuse by teachers, school officials or staff, the ensuing action by the Department of Education was just to transfer the perpetrators to other schools or regions.

More often than not, the transfers constitute the extent of action, and there are very few sanctions actually pursued and completed against perpetrator teachers, school officials or staff.

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937 Phil Coalition on the UNCRPD. In progress. Disability rights budget analysis – Focus group discussion.
938 Phil Coalition on the UNCRPD. Communications with disabled people’s organizations.
939 Phil Coalition on the UNCRPD. Communications with disabled people’s organizations.
In the community.

In the monitoring of cases by the Philippine Deaf Resource Center from 2006-2012, findings revealed that the most common perpetrator of gender-based violence toward deaf girls and women were neighbors of the complainants. In households where both parents are working, especially in informal settler areas, children with disabilities are often left to roam around on the streets on their own.

This makes them vulnerable to abuse. For rape cases of deaf women and girls involving religious members as perpetrators, the Catholic Church's response has only been to transfer the priests to other parishes in other localities or provinces941.

Among the advocacy experiences on the ground by DPOs such as the Filipino Deaf Women's Health and Crisis Center, and the Support and Empower Abused Deaf Children, several cases of pimping by other deaf individuals as well as their own families have been discovered,942 including those which have actual court cases943. In disturbing clusters of cases involving deaf women and girl children, users of trafficking services and the members of the syndicates behind them include other people with disabilities as well.

Also, in the past few years, where there has been a marked increase in displacement of families with children with disabilities due to natural calamities, sexual abuse concerns have arisen in evacuation centers944.

In institutions.

Electroconvulsive therapy (ECT), which is overwhelmingly given to women, has come to be viewed as a form of violence against women. It is seen as a patriarchal form of assault and social control, enforcing sex roles, not unlike wife battery945. The WHO Assessment Instrument for Mental Health systems verified the practice of ECT in the Philippines where, compared to 27 other Asian countries, is 'generally well accepted' here946.

942 Philippine Deaf Resource Center. Communications with Filipino Deaf Women's Health and Crisis Center, Support and Empower Abused Deaf Children.
944 Phil Coalition on the UNCRPD. 2012. Communications with disabled people's organizations.
In broadcast Media and on the Internet.

It is an irony that increased advocacy for people with disabilities as a whole in the Philippines has brought both greater visibility, as well as incidents of violence. For instance, in some TV documentaries, episodes on gender-based violence experienced by women victims have purposively or inadvertently divulged personal information or even their identity. This exploitation involves not only the individuals but also the DPOs or NGOs who support and advocate for them.947

The recent wave of ‘reality TV shows’ including ‘people’s court’ type of programmes have featured domestic/intimate partner violence involving women with disabilities without even providing accessibility such as sign language interpreting. In the guise of being ‘popular legal education’, such episodes clearly use women with disabilities for entertainment purposes and the increase of broadcast station ratings.

The Movie and Television Review and Classification Board monitors TV programmes for objectionable content and presentation to the viewers, but has reprimanded very few (if any) TV stations or producers for their treatment of women with disabilities.

In technology-based violence, people with disabilities (both men and women) who promote and support online sale of pornographic images to foreigners, particularly of women / girls who are deaf or have mobility impairments, are known within the sector. Despite these, there are very few (if any) investigations or sanctions on such activities.

Article 12: Protection Before and Under the Law.

The Coalition in its data-gathering notes discriminatory laws and their interpretations, which are evident in legal arguments, practices and jurisprudence for legal proceedings even at the Supreme Court level. These include non-recognition of legal capacity particularly of women/ girls with intellectual disabilities, or psychosocial disabilities. Article 5.1 of the Convention mandates that all people with disabilities are entitled to equal protection and equal benefit of the law.

Yet, it is an irony that the very legislation that aims to protect women from sexual violence carries contentious issues for different disability constituencies of women as well. Precedence set by this jurisprudence perpetuates discriminatory attitudes and stereotypes among public attorneys, private prosecutors, various lawyers, judges and legal practitioners.

1. Women with intellectual disabilities. Republic Act 8353 or the Anti-Rape Law passed in 1997 states:

“Article 266-A. Rape: When and how committed. Rape is committed:
1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
   a) Through force, threat, or intimidation;
   b) When the offended party is deprived of reason or otherwise unconscious.”

In all the lower courts, as well as the Court of Appeals and the Supreme Court, it is conspicuous in jurisprudence that women with intellectual disabilities are placed in this category of being “deprived of reason”, and thus unable to give consent.

Below are excerpts from some cases:

“A mental condition of retardation deprives the complainant of that natural instinct to resist a bestial assault on her chastity and womanhood. For this reason, sexual intercourse with one who is intellectually weak to the extent that she is incapable of giving consent to the carnal act already constitutes rape; without requiring proof that the accused used force or intimidation in committing the act.”

G.R. No. 186411. People vs. Arturo Paler

“The absence of will determines the existence of the rape. Such lack of will may exist not only when the victim is unconscious or totally deprived of reason, but also when she is suffering some mental deficiency impairing her reason or free will. In that case, it is not necessary that she should offer real opposition or constant resistance to the sexual intercourse. Carnal knowledge of a woman so weak in intellect as to be incapable of legal consent constitutes rape. Where the offended woman was feeble-minded, sickly and almost an idiot, sexual intercourse with her is rape. Her failure to offer resistance to the act did not mean consent for she was incapable of giving any rational consent.”

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“The deprivation of reason need not be complete. Mental abnormality or deficiency is enough. Cohabitation with a feebleminded, idiotic woman is rape. Sexual intercourse with an insane woman was considered rape.”

“... Carnal knowledge of a mental retard is rape under paragraph 1 of Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353 because a mental retardate is not capable of giving her consent to a sexual act.”

G.R. No. 168932. People vs. Charlie Butiong

“...It upheld the RTC's reliance on the testimonies of Dr. Marfil and AAA in concluding that AAA is indeed intellectually disabled. The CA pointed out that a woman with a mental age below that of a person less than 12 years of age is effectively “deprived of reason” and that sexual intercourse with her constitutes rape under either paragraph (2) or paragraph (3), Article 335 of the Revised Penal Code.”

THE COURT’S RULING:

“By law and jurisprudence, sexual intercourse with a mentally retarded woman incapable of giving rational consent constitutes rape.”

G.R. No. 182412. People vs. Jojo de la Paz

The spirit of the law appears to lean strongly toward the protection of the woman /girl with disability and thus, the complainant does not need to even show resistance to the rape. However, this safeguard may actually be at the expense of denying her legal capacity. This protection might ultimately be even effected as paternalism, and thus, non-recognition of an ability to give consent. The UNCRPD states that all people with disabilities enjoy legal capacity equally as all other individuals (Article 12). The state must be then able to uphold both the right of women with intellectual disabilities to legal capacity, as well as their right to be protected from all forms of violence and abuse.

2. Women with psychosocial disabilities. The Anti-Rape Law continues to state that:

"Article 266-A. Rape: When and How Committed. - Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
   a) Through force, threat, or intimidation;
   b) When the offended party is deprived of reason or otherwise unconscious;
   c) By means of fraudulent machination or grave abuse of authority; and
   d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present."

The same denial of legal capacity (discussed above for women with intellectual disabilities) is seen again here with cases of rape of women with psychosocial disabilities952. Thus, the complexity of recognition before the law and safeguards from violence are again evident.

Other questions also arise:

- Shall women with psychosocial disabilities not have the right to ever exercise their sexuality, even within the context of marriage?
- In a consensual sexual relationship involving a woman with psychosocial disabilities, can her partner be wrongly charged with rape and even be convicted? At times, it is actually other members of the family of people with disabilities who object to the woman's sexual activity or relationships.

It should be noted that a proposed amendment of the Anti-Rape Law still carries this provision regarding women with psychosocial disabilities.


In the case of monitoring efforts by the Philippine Deaf Resource Center, as well as various interactions of the Philippine Coalition on the UNCRPD with DPOs and people with disabilities, it is a very frequent occurrence in rape and other gender-based violence complaints by women and girls with disabilities that families either opt to back out of complaints or cases, or, instead settle amicably for compensation.

This appears to be due to a complexity of factors including poverty, and seemingly lesser importance is given to female members of the family who have disabilities, and thus, greater priority is given to resources for the other members of the family (who do not have disabilities)953.

953 Phil Coalition on the UNCRPD. 2012. Communications with disabled people's organizations.
Articles 14, 19: Protection of right to liberty, and right to living independently & be included in the community.

Many women with disabilities in both urban and rural areas go through their childhood as girls bound by unpaid work, servitude to other family members in their households (including female members who have no disabilities). There is a vicious cycle of very restricted opportunities for education, community involvement, and employment, which keep them isolated, powerless and fully dependent on their families.\(^{954}\)

Article 17: Protection of Integrity of Person.

Forced medication and electroconvulsive therapy of women with psychosocial disabilities by families, private facilities and physicians, as well as institutions, has been increasingly noted by the Coalition.\(^{955}\)


Doctors and families force medication on women with disabilities, and the latter take over child rearing responsibilities, virtually shutting these women out of their own families. Frequently they justify these actions with the argument that women with disabilities are unfit, or incapable of raising their own children.\(^{956}\)

Article 24: Protection of the Right to Education.

In 2011, the Philippine Institute for Development Studies\(^{957}\), reported that twice as many women than men with disabilities had not completed any grade (or level of primary education) at all, especially in rural areas. The MDG core indicator data by the National Statistics Coordination Board and the Department of Education - Special Education statistics do not disaggregate by disability and / or gender.\(^{958}\) It is uncertain whether there are really no statistics on private schools / programmes including those run by NGOs / DPOs, or that the reporting mechanisms have just not been set in place.


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954 Phil Coalition on the UNCRPD. 2012. Communications with disabled people’s organizations.
955 Phil Coalition on the UNCRPD. 2012. Communications with disabled people’s organizations.
956 Phil Coalition on the UNCRPD. 2012. Communications with disabled people’s organizations.
The Philippine Institute of Development Studies describes Filipino women with disabilities, particularly those in the rural areas as showing strong disparities in type of employment and income, compared to men with disabilities. The Ateneo de Manila University Center for Organization Research and Development reports that Filipino employers prefer people with disabilities who are males and have motor disability.

The top reason for hiring people with disabilities is “added business value”, i.e., an enhanced positive company image that decisions to hire people with disabilities will bring to the company. Several NGOs, foundations, faith-based organizations and private corporations who hire people with disabilities are themselves violating the rights of people with disabilities, including women with disabilities. Violations include under compensation (compared to peers without disabilities), prolonged temporary employment without contracts or permanency status.

Article 30: Protection of the Right to Participation in Cultural Life, Recreation, Leisure and Sport.

The Philippine Institute of Development Studies reports that female respondents allocate relatively more time to household duties and personal activities (i.e., meals, grooming) both during working as well as nonworking days. Male respondents on the other hand, spend more time on work and leisure, even during working days.

Opposition to House of Representatives Bill 6079 (declaring Filipino Sign Language as the national sign language) has taken place in Congress Committee deliberations in 2012. These public hearings have been overrun by private schools insisting on the use of artificial sign systems, and the oral approach (prohibiting the use of sign language). This undermines the explicit advocacy of the national Philippine Federation of the Deaf for the cultural and linguistic identity of the Filipino Deaf community, and affects the education of girls with disabilities.

RECOMMENDATIONS.

Overall:

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961 Phil Coalition on the UNCRPD. 2012. Communications with disabled people's organizations.
963 Minutes/proceedings of Congress Committee deliberations, 2012.
Though the State duty to respect, protect and fulfil are inextricably linked, definitive legislation, policy and practice must address the needs and problems of human rights violations by the various non-state actors.

The protection of the rights of women and girls with disabilities must begin with the review, amendment, and if needed, abolition of laws and policies discriminatory on the basis of the intersection of disability, gender and age.

Of critical importance to this duty to protect is the integration of reliable, comprehensive mechanisms for statistics and gathering of disability-/ gender- / age- disaggregated data in education, work, access to justice and health as an essential component of protection of all rights and freedoms.

Specific:

Programmes, activities or projects toward the following ends are to be integrated in the framework and implementation of all Philippine development plans, including the 2013-2022 Decade for Persons with Disabilities. The following are to be sufficiently financed, with mechanisms for efficient implementation, annual evaluations at both the national and local levels of government:

1. Comprehensive, coordinated and sustained awareness-raising to change deeply ingrained attitudes, and stereotypes among families and local communities, including faith-based entities, resulting from cultural and traditional societal views of the patriarchy, intersecting with the medical /charity models of disability. This shall include professional practitioners in the areas of the law and justice, health, employment and education;

2. Protection of women and girls with disabilities against gender-based violence through relevant formal and alternative educational interventions in curriculum, student support services, and administration;

3. Effective and efficient activities and programmes in law enforcement, investigation and prosecution, directed at individual perpetrators as well as organised syndicates (including lateral violence by male people with disabilities) at both the national and local levels;

4. Monitoring of private educational facilities and programmes (including those operated by various non-profit and faith-based organizations) to prevent the occurrence of violence and abuse to girls with disabilities;

5. Monitoring of private health facilities and programmes (including those operated by various non-profit and faith-based organizations) to prevent the occurrence of
torture and inhuman treatment to women and girls, particularly with intellectual and psychosocial disabilities;

6. Formulation of guidelines and ethical standards, mechanisms for reporting, sanctions and grievances, as well as coordinated monitoring to address media and internet exploitation of women and girls with disabilities, particularly victims of gender-based violence; and

7. While maintaining respect for individual autonomy and the freedom to make one’s own choices, the State should promote the linguistic and cultural identity of people with disabilities, including Filipino Sign Language, and the Deaf history and culture of the community in the Philippines.

These are critical as means toward reasonable accommodation and accessibility for women and girls with disabilities in education, health, work and access to justice.

About the Submitting Organizations.

- The Philippine Coalition on the U.N. Convention on the Rights of Persons with Disabilities was initially organised in 2010 and formally constituted in February 2011. The core group is currently comprised of twenty-five disabled people’s organizations (DPOs) and non-governmental organizations (NGOs), covering nine disability constituencies, and several national federations. The Coalition as a whole represents over 65,000 Filipinos with disabilities. For further information contact Lauro Purcil, Jr. / Liza B. Martinez, Ph.D.: philcoalitioncrpd@gmail.com.

- The Philippine Alliance of Human Rights Advocates (PAHRA) is a network of forty human rights and sectoral civil society organizations nationwide and a member of the International Federation of Human Rights Leagues (FIDH), as well as an affiliate network of the World Organization Against Torture (OMCT). It is also a member of regional organization Asian Forum of Human Rights and Development (FORUM-ASIA). The Philippine Coalition on the U.N. Convention on the Rights of Persons with Disabilities collaborates with the PAHRA on various human rights advocacies, including the writing of joint submissions to the U.N. such as the Universal Periodic Review. For further information, contact Max de Mesa/Rose Trajano: pahra@philippinehumanrights.org.
Chapter 41

DisAbled Women's Network/Réseau d'Action des Femmes Handicapées, Canada.

Submission to the Committee on the Rights of Persons with Disabilities- Half Day of General Discussion on Women and Girls with Disabilities, April 2013.

Submitted by: Fran Odette, MSW, VAW Consultant on behalf of DAWN Canada.

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Introduction.

The DisAbled Women's Network (DAWN-RAFH) Canada is a national organization of women with various disabilities. DAWN-RAFH is the national voice for women with disabilities in Canada, and has as its mandate to represent the concerns of disabled women in the areas of poverty, housing, employment, violence against women and access/representation in both the women's and disability movements.

DAWN Canada was founded in 1985 and has published research studies in the areas of violence, how to make shelters accessible, employment, suicide, motherhood and disability, amongst others. DAWN is the first and only feminist voice of women with disabilities in Canada, and its research studies have been widely used in both the service sector and in academia.

DAWN Canada receives requests from students, researchers and individuals interested in DAWN's research, history and services. DAWN is now known as DAWN-RAFH Canada (DisAbled Women's Network Canada (DAWN) / Réseau d'action de femmes handicapées du Canada (RAFH). This name change is a reflection of the organisation's commitment to being a bilingual and inclusive Pan-Canadian voice for women with disabilities.
Women with Disabilities and Violence.

The Issues.

Violence against women with disabilities shares common characteristics with violence against women in general\(^{964}\). Women with disabilities also experience forms of abuse that women without disabilities do not. Violence against women and girls with disabilities is not just a subset of gender-based violence - it is an intersectional category dealing with gender-based and disability-based violence.

The confluence of these two factors results in an extremely high risk of violence against women with disabilities\(^{965}\). Women with disabilities experience a wider range of emotional, physical and sexual abuse: by personal attendants and by health care providers, as well as higher rates of emotional abuse both by strangers and other family members\(^{966}\). They also can be prevented from using a wheelchair, cane, respirator, or other assistive devices\(^{967}\).

There remains almost no literature regarding the risk of abuse, women's experiences of abuse, and barriers to seeking help among women with disabilities. The absence of attention to this issue from both disability and violence researchers has contributed to the 'invisibility' of the victimization of women with disabilities\(^{968}\).

High Rates of Violence.

- A DAWN-RAFH Canada study found that although 1 in 5 of all Canadian women lives with a disability\(^{969}\), 40% of respondents had experienced some form of violence in their lives\(^{970}\).
- Another study indicated that 60% of women with disabilities are likely to experience some form of violence in the course of their adult lives\(^{971}\).

\(^{965}\) Ibid., p.7.
\(^{966}\) Young et al., op.cit; Nixon, J. (2009), "Domestic violence and women with disabilities: locating the issue on the periphery of social movements", Disability & Society, 24 (1), 77 – 89.
\(^{969}\) Statistics Canada, Participation and Activity Limitation Survey (PALS), 2006.
• Considering all violent crimes, including those committed by spouses, a Canadian study shows that 51% of women with activity limitations had been victims of more than one violent crime during the 12 preceding months, compared to 36% of women without limitations\textsuperscript{972}.

• Disabled women are at risk of violence in many forms – neglect, physical abuse, sexual abuse, psychological abuse and financial exploitation.\textsuperscript{973}

Women and girls with disabilities are at a high risk of experiencing gender-based and other forms of violence due to social stereotypes that often serve to reduce their agency by infantilizing, dehumanizing and isolating them, making them vulnerable to various forms of violence, including institutional violence.\textsuperscript{974}

• People with mental or behavioural disabilities experience personal victimization at a rate four times higher than that of people who have none\textsuperscript{975}.

• Women with disabilities are exposed to additional risks of abuse by caregivers who provide services specifically related to her disability\textsuperscript{976}.

• Women with disabilities are more likely to be victims of violence related to alcohol or drug use than are men with disabilities\textsuperscript{977}.

• Women with disabilities experience sexual violence in various forms, such as violations of privacy; restraint; strip searches and solitary confinement that replicate the trauma of rape; rape by staff and other inmates/residents of institutions, and forced abortion and forced sterilization\textsuperscript{978}.

• In a study comparing the rates of instances of sexual and physical assault among women with and women without disabilities, it was determined that women with disabilities were four times more likely to have experienced a sexual assault than women without disabilities\textsuperscript{979}.

\textsuperscript{972} Perreault, S. (2009), Criminal Victimization and Health: A Profile of Victimization Among Persons with Activity Limitations or Other Health Problems. Ottawa, Ontario: Canadian Centre for Justice Statistics, p.10


\textsuperscript{974} Idem.

\textsuperscript{975} Idib., p.8.

\textsuperscript{976} Education Wife Assault (2001), Tips for Women’s Service Providers Working with Women with Disabilities, p.4.


Intimate Partner Violence: A Hidden Reality.

- Investigators rarely assume that disabled women have intimate partners, so IPV (intimate partner violence) often goes undetected.\(^{980}\)
- People with disabilities were between 50% and 100% more likely than those without disabilities to have experienced violence by a spouse.\(^{981}\)
- Male partners of women with disabilities were about 2.5 times more likely to behave in a patriarchal dominating manner, and about 1.5 times more likely to engage in sexually proprietary behaviours than were male partners of women without disabilities.\(^{982}\)

Barriers to reporting abuse.

- There are various barriers that specifically affect women with disabilities, such as: difficulty in making contact with shelters or other intervention services; lack of access to information about available services; difficulties in accessing transportation; fear of losing their financial security, their housing or their welfare benefits, and fear of being institutionalised\(^{983}\).
- Women with disabilities are less likely to report being victims of violence than men with disabilities (49% of incidents concerning men are reported while only 30% of women reported incidents)\(^{984}\).
- Women with disabilities might fear they will not be believed, or that they will be perceived as not credible by the police or the courts, or that there will not be appropriate services available\(^{985}\).
- When the violence is perpetrated by personal assistants, family members and/or friends, it is often considered to be a problem that can be addressed by the social service system rather than considered to be a crime that should be addressed by the police and/or the criminal justice system\(^{986}\). In situations in which domestic violence is experienced, women with disabilities may fear

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\(^{981}\) Perreault, S. (2009), *Criminal Victimization and Health: A Profile of Victimization Among Persons with Activity Limitations or Other Health Problems*. Ottawa, Ontario: Canadian Centre for Justice Statistics, p.10.


\(^{984}\) Perreault, S. (2009), *Criminal Victimization and Health: A Profile of Victimization Among Persons with Activity Limitations or Other Health Problems*. Ottawa, Ontario: Canadian Centre for Justice Statistics, p.10.

\(^{985}\) *Idem*.

leaving their abuser because of dependence of the emotional, financial or physical variety, and fear of losing custody of their children may prevent women with disabilities from reporting abuse. 987

- When an incident was reported, people with disabilities were more likely than people without limitations to say they were very dissatisfied with the police response (39% compared to 21%).988

- Law enforcement authorities may not take appropriate action to respond to reports of violence against women and girls with disabilities, and women with disabilities may avoid reporting instances of abuse in order to avoid discriminatory action, retribution, potential institutionalization or loss of economic and other supports. 989

- Women with disabilities who are from indigenous or rural communities may lack information about access to available services for the prevention and response to violence and abuse.990 The process may be slower for a woman with a disability who is considering leaving her abusive partner as accessing housing, attendant care, and interpreters may take time.991

- One woman out of ten got the support she asked for at women's shelters or transition houses992. When they do not receive proper support, it is often for accessibility reasons.993

- Only about one-quarter (22%) of shelters provided TTY/TDD equipment (i.e., specially equipped telephones) for people who are hearing impaired; 17% provided sign language or interpretation services, 17% provided large print reading materials to people who are visually impaired and 5% provided Braille reading materials.994

988 Perreault, S. (2009), Criminal Victimization and Health: A Profile of Victimization Among Persons with Activity Limitations or Other Health Problems. Ottawa, Ontario: Canadian Centre for Justice Statistics, p.10.
994 Canadian Centre For Justice Statistics (2009), Family Violence in Canada: A Statistical Profile, p.15.
Chapter 42

Disability Rights International and Mental Disability Rights Initiative, Serbia.

Women and Girls with Disabilities in Serbia.

Written submission to the CRPD Committee for the Half Day of General Discussion on Women and Girls with Disabilities (17th of April 2013).

MDRI-Serbia, an affiliate of Disability Rights International (DRI), is an advocacy organization dedicated to combating prejudices, developing positive public opinion and promoting the human rights and full participation in society of children and adults with mental disabilities in Serbia.

Established in 2008 as an independent organization, MDRI-Serbia is drawing on the skills and rich experience of its members being a member of the Disability Rights International team. MDRI-Serbia is cooperating with and reporting to different national and international agencies and human rights bodies, such as state authorities, Serbian Ombudsman, EU and UN bodies. MDRI-Serbia is currently a part of the Serbian NPM, conducting monitoring visits to institutions.

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Introduction.

Serbia is a country located at the crossroads of Central and Southeast Europe, with a population of 7,186,862. It is estimated that approximately 10% of the population have a disability (700,000). Given the fact that there is no exact official data available, it is difficult to estimate how many of them are women or girls.

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Serbia has acceded, succeeded or ratified most UN human rights instruments relevant for women and girls with disabilities, including the Convention on the Rights of Persons with Disabilities (CRPD)\textsuperscript{996} and its Optional Protocol;\textsuperscript{997} the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)\textsuperscript{998} and its Optional Protocol,\textsuperscript{999} as well as the Convention on the Rights of the Child (CRC).\textsuperscript{1000}

Several national laws have been adopted in recent years to bring the situation in line with the country's international obligations\textsuperscript{1001} and the disability related legal framework has definitely improved. However, these human rights oversight and enforcement mechanisms lack specialised age and gender sensitive services. Also, a good legislative and policy framework is not sufficient.

In Serbia, support programmes and projects are sporadic, not systemic, thereby representing privileges to only a handful of the people with disabilities in need. Moreover, the developing of legislative and policy frameworks has been followed by small-scale awareness-raising campaigns. This translates into the larger society not being aware of the problems people with disabilities are facing.

There are widespread prejudices and stigmatization, these negative attitudes existing not only among common people but also among public authorities and professionals.\textsuperscript{1002} Furthermore, they exist among people with disabilities themselves, who are not aware of their rights and often have low levels of self-esteem. This makes them less likely to exercise and demand for their rights to be accepted, and more likely to accept the status quo.

\textsuperscript{996} Ratified on 31\textsuperscript{st} of July 2009.
\textsuperscript{997} Ratified on 31\textsuperscript{st} of July 2009.
\textsuperscript{998} To which Serbia succeeded on the 12\textsuperscript{th} of March 2001.
\textsuperscript{999} To which Serbia acceded on the 31\textsuperscript{st} of July 2003.
\textsuperscript{1000} To which Serbia succeeded on the 12\textsuperscript{th} of March 2001. Other relevant UN human rights instruments are the International Covenant on Civil and Political Rights (ICCPR) (to which Serbia succeeded on the 12\textsuperscript{th} of March 2001) and its Optional Protocol (ratified on the 6\textsuperscript{th} of September 2001), the International Covenant on Economic, Social and Cultural Rights (ICESCR) (to which Serbia succeeded on the 12\textsuperscript{th} of March 2001), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (to which Serbia succeeded on the 12\textsuperscript{th} of March 2001) and its Optional Protocol (ratified on the 26\textsuperscript{th} of September 2006) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (to which Serbia succeeded on the 12\textsuperscript{th} of March 2001, making also a declaration through which it recognised the competence of the Committee on the Elimination of Racial Discrimination).
\textsuperscript{1002} Most frequently this referred to medical professionals, but also to workers in centers for social work, teachers, staff in residential institutions.
Among people with disabilities, women and girls with disabilities are generally, as we will emphasize below, in a worse position than men with disabilities. There are Serbian advocates who believe that this is due to the patriarchal characteristics of Serbian society, in which women are still expected to fulfill certain roles, namely to care for children and family.

Women and girls with disabilities are often perceived as not being able to fulfill these roles and therefore treated as worthless. At the same time, others argue that people with disabilities have been dehumanized by society, to the extent that their gender identity has been diminished. This does not seem however to reduce gender inequality in fields such as education and employment.

Whatever the causes of the higher vulnerability of women and girls with disabilities, however, it is clear that discrepancies in access and treatment provided to this group exist in relation to men with and without disabilities, as well as in comparison to women without disabilities. Women and girls with disabilities are specifically targeted for mental and physical violence in institutions, including sexual abuse.1003

They are often denied reproductive and parental rights,1004 and when they are young and recently released from orphanages and institutions, they are especially at risk of becoming victims of sex trafficking.1005 This short paper will underline the areas in which discrimination and vulnerability are most visible. The findings are based on MDRI’s field work and research activities.

De-Institutionalization.

People with disabilities, especially people with psychosocial and intellectual disabilities, are generally in Serbia at a risk of institutionalization. One possible reason is that services which are necessary for independent living, such as housing, are completely absent. In 2011, there were 6,176 people with disabilities in institutions (3,258 males and 2,918 females). People with disabilities in Serbia can

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1003 Such abuses are spread in Serbia, as well as in the region. For examples, see (2002). Not on the Agenda: Human Rights of People with Mental Disabilities in Kosovo. Mental Disability Rights International (now Disability Rights International), pp. 8-13.
also live in institutions for old people and retired persons.1006 However their number is unknown.

Institutions are often perpetuating different types of human rights violations. One very often encountered problem is related to the right to privacy, which is often highly disregarded. People lack individual spaces where they can engage in intimate behaviour. They also often lack the possibility of having personal items because, as some staff members sometimes put it, “everything is potentially dangerous for them”.

In a recent report,1007 MDRI-Serbia revealed that there is at least one institution where women and men with psychosocial disabilities share their rooms, as the staff considers they are not aware of their sexuality. Generally however the staff of institutions is aware of the existence of the sexual needs and desires of their patients. While sexual behaviour is not encountered with significant reticence, there are concerns related to not providing private space and not having sexuality education accessible.

This leaves women with disabilities particularly susceptible to sexual abuse. Moreover, they are the ones to which contraceptives are usually administered, often in a non-selective manner. One other significant problem women and girls with disabilities encounter in institutions is gender-based violence. In Serbia, as in many other countries, the number of males residing in an institution is often higher than the number of females.

For example, in 2011, in institutions for children and youth with developmental disabilities, boys outnumbered girls by 17% when compared with the total number of residents.1008 While not necessarily a decisive factor, this can require special measures to protect women and girls with disabilities from gender-based violence.

The necessity of such measures is obvious to us, when we also take into consideration different stories we have heard from women who live in institutions. For instance, we encountered women alleging that sexual favours have been required from them in order to obtain a job. Also, when talking about emotional

1007 (2013). The hidden and forgotten. MDRI-S.
1008 (2012). Statistical Yearbook of the Republic of Serbia. Statistical Office of the Republic of Serbia, p. 66, available at http://webrzs.stat.gov.rs/WebSite/repository/documents/00/00/81/77/04_HUMAN_HEALTH_SOCIAL_WORK_ACTIVITIES_AND_COMPULSORY_INSURANCE.pdf; the same report reveals that the number of male residents is often higher than that of female residents: in the single existing institution for adult people with disabilities from Belgrade there were 52 males and 31 females; in the 2 existing institutions for mentally disabled adult persons from Vojvodina there were 279 males and 230 females etc.
relationships they were a part of, women mentioned that such relationship contributed to assuring their safety in an institution.

People with intellectual and mental disabilities, particularly women, are subjected in Serbia and in many other countries to a higher risk of abuse and violence on the part of other residents as well as members of staff (this includes the violation of privacy, acts of restraint, undressing, isolation, rape, forcible abortion or sterilization).  

These facts are sufficient to affirm that there are concerns related to the prevalence of gender-based violence and a gender-related power imbalance in institutions. General non-enforcement of violence prevention measures and gender equality related measures make women more susceptible to violence and abuse.

Their situation is further worsened by the non-existence of trauma sensitive programmes. Women with mental disabilities in any society are more likely to have been subject to abuse in their home, and that is one main reason why they present psychiatric symptoms. The experience of institutionalization, lack of control, forced treatment, restraints, etc. can “retraumatize” them and worsen their mental condition.” This is why trauma sensitive programmes at every level must be established to be sensitive to this history and need.  

Family Life.

As mentioned above, women with disabilities are often seen as worthless because they are generally perceived as not being able to fulfil their gender-assigned roles in a patriarchal society. Such negative attitudes are widespread among the general population and medical and legal professionals.

This can have harsh consequences on women with disabilities’ parental rights. For example, “after divorce, the custody of children is usually given to a violent husband rather than to a wife with disabilities, because she is considered ‘not physically capable to take care of children.”

Health.

As referred to above, people with disabilities often mention that prejudice and lack of information are widespread among medical professionals, especially in general health services. Women and girls with disabilities are particularly disregarded in relation to their reproductive and sexual health. Medical staff are often not aware of specific problems these women might have, or disregard them when providing services.

In the case of women with physical disabilities, the lack of accessible gynaecological chairs has often been mentioned. There has been one project conducted by an NGO through which several gynaecological practices across the country were adjusted for women who use wheelchairs, and educational programmes on reproductive health have been implemented.

This project represented for many women and girls with disabilities the only opportunity to have gynaecological check-ups, although they were insufficient and short lived. The reproductive and sexual rights of women and girls with disabilities can be in many ways violated. We have encountered women who have alleged that the termination of their pregnancy was decided for them.

Gender-Based Violence.

Women and girls with disabilities are often subjected to violence and abuse in Serbia. “Out of Circle”, an NGO that has been working with disabled women in Serbia since 1997, has warned that people with disabilities, particularly women, are four times more exposed to violence. In relation to this, there are many concerns which have been emphasised by women and girls with disabilities who were involved in our projects.

The perpetrators can be people unknown to the victim, but also family members, carers and service providers. For this reason, some women with disabilities have stated that victims of violence have no support in escaping abuse, particularly when they are institutionalised. Furthermore, it has been alleged that women’s safe houses that exist in Serbia are not accessible nor open to women with disabilities.

1012 For more details see (2013). The hidden and forgotten. MDRI-S.
It has also been asserted that perpetrators who violate women and girls with disabilities’ right to freedom from violence and abuse often receive trivial sanctions, such as parole. This makes the victims feel humiliated and it discourages them from reporting the cases.

Education.

The enrolment of all children in mainstream elementary schools, based on the place of residence, is mandatory in Serbia. Technically, a child can be transferred to a special school or class for children with disabilities only after several months of attendance to mainstream school, and after all available measures of inclusive education have been applied. These special schools or classrooms are organised by type of disability, which implies segregation.

In this manner, children with disabilities have little or no chance of interaction with children with no disabilities or children with different types of disabilities. There are in total 48 special schools, 13 of them being in Belgrade. Most elementary schools (14) and combined elementary and secondary schools (20) are for the education of pupils with mental disabilities.

There are also schools for education of pupils with hearing impairment (8), blind pupils (2, both in Belgrade) and pupils with behavioural difficulties, moving difficulties and children on prolonged hospitalization. The total number of special classes in mainstream schools is 314.1014

In the Statistical Yearbook of the Republic of Serbia from 2012,1015 the education of pupils with developmental disabilities was seen as education for children and youth with mental and physical disabilities, taking place in special schools or in special school units within regular schools.1016 No data was provided in relation to children with disabilities who might be included in pre-school education.

It was reported that primary education of children with developmental disabilities was taking place for 6,616 students (2,666/40% females) in the 2009-2010 school year, and for 6,120 (2,521/ 41.2% females) in the 2010-2011 school year.1017

1015 Available at http://webrzs.stat.gov.rs/WebSite/repository/documents/00/00/81/86/05_EDUCATION.pdf.
Secondary education of children with developmental disabilities was taking place for 1,721 students (660/38.34% females) in 2009-2010 and for 1,916 students (707/36.89% females) in 2010-2011.\(^{1018}\)

As it can be noticed, the number of girls with disabilities who are taking part in the educational system is significantly lower than the number of boys with disabilities. Moreover, the rate of females with disabilities participation decreases in more advanced levels of education. No data is available in relation to the total numbers of people with disabilities that could benefit from educational services.

However, by looking at the numbers related to children who are part of the regular system, it can be noticed that the gender imbalance is almost non-existent: 48.6% of students in primary education were female in 2009-2010 and in 2010-2011,\(^{1019}\) and 49.94%, respectively 50% of the students involved in secondary education were female in 2009-2010, and in 2010-2011.\(^{1020}\)

No disaggregated data is available in relation to the participation of people with disabilities at higher levels of education. What remains certain is that the educational system, although it has improved in recent years, constantly fails to respond to the educational needs of people with disabilities, and WWD remain, generally, less educated than MWD.\(^{1021}\) There is also a lack of vocational training programmes, and the educational adult system is underdeveloped.

Employment.

According to the Poverty Reduction Strategy,\(^{1022}\) people with disabilities in Serbia belong to the vulnerable groups exposed to the highest poverty risk, and women are poorer than men. Data collected by the Ministry of Labour and Social Policy shows that, in 2009, about 70% of people with disabilities were poor and their employment rate was low. More than 80% did not work, and most lived off social welfare.


\(^{1021}\) This is a conclusion drawn from MDR's field work and research activities which implied analyzing national strategies (National Strategy for Improving the Position of Women and Promotion of Gender Equality (2008-2014) and National Strategy for Improving the Position of Persons with Disabilities (2007-2015)) and the few existing publications focusing on the situation of women with disabilities (such as "Out of Circle", available at http://www.izkruga.org).

\(^{1022}\) http://www.prsp.gov.rs/engleski/strateski.jsp.
A total of 22,758 people with disabilities are registered with the National Employment Service, and few of them were able to find jobs (in the first half of 2009, only 68 people found employment). According to the data provided by the National Employment Agency, the number of women with disabilities recorded by the National Employment Agency is much lower than that of men with disabilities, but it is increasing – from 6,672 (32.7%) to 6,886 (33.16%) as of 31st December 2010 and 30th June 2011 respectively. However, WWD remain very often economically dependent.

Regarding the level of education, people with primary school education (more than 7,000 people) are prevalent. The government has started tackling this issue through its legal framework. The 2009 Law on Professional Rehabilitation and Employment of Persons with Disabilities created for Serbian employers a legal obligation to employ people with disabilities.

However, employers can be exempted from this obligation by fulfilling certain financial commitments. This law also establishes special forms of employment for people with disabilities. However, it can be concluded from the data provided above that the situation has not improved.

The Serbian Ombudsperson has warned that the position of people with disabilities is worsening due to the high level of unemployment, poverty, discrimination, political underrepresentation and the prevalence of violence, particularly against women. People with disabilities are almost absent in political parties and decision-making positions.

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1025 This is a conclusion drawn from MDRI's field work and research activities which implied analyzing national strategies (National Strategy for Improving the Position of Women and Promotion of Gender Equality (2008-2014) and National Strategy for Improving the Position of Persons with Disabilities (2007-2015)) and the few existing publications focusing on the situation of women with disabilities (such as "Out of Circle", available at http://www.izkruga.org).
1027 Employers with 20 to 49 employees have to employ one person with disabilities. For every other 50 employees one has to have a disability.
Recommendations.

**De-institutionalization.**

- To develop services necessary for independent living; to take gender-related needs into consideration.
- To work towards promoting the right to privacy of people with disabilities through awareness and de-institutionalization campaigns.
- To develop programmes to raise awareness on sexual and reproductive rights.
- To establish functional complaint mechanisms against gender-based violence.
- To assure access to information about gender equality issues for all residents in institutions.
- All inpatient and community services should be trauma sensitive.

**Health.**

- To ensure access to gynaecological consultation for women and girls with disabilities.
- To develop individualised schemes of contraceptive distribution.
- To develop sex education-related programmes.

**Gender-Based Violence.**

- To establish functional complaint mechanisms against gender-based violence.
- To ensure access of women and girls with disabilities to safe houses for victims of violence.
- To ensure effective prosecution of perpetrators engaging in violent behaviour towards women and girls with disabilities.

**Education.**

- To collect data disaggregated by age, gender and type of disability regarding children with disabilities who are, should or could be a part of the educational system at all levels: pre-school and primary, secondary and third-level education.
- To conduct research on why women and girls with disabilities are less likely to be a part of the formal educational system.
- To find and implement solutions to ensure equal access to education for women and girls with disabilities.
Employment.

- To encourage the development of vocational programmes for women with disabilities.

General Recommendations.

- To collect comprehensive data in relation to people with disabilities, disaggregated by gender and age in all relevant fields; this is an obligation Serbia has assumed under Article 31 of the CRPD.
- To conduct research on relevant foreign practice and programmes and existing best practice; use this as a basis for developing new policies.
- To encourage awareness-raising campaigns and training programmes in relation to the rights and abilities of women with disabilities; they should target the general population, but also family members, people with disabilities themselves and legal and medical professionals.

Human Rights Oversight and Enforcement.

- Age and gender sensitive human rights oversight and enforcement programmes should be established in accordance with CRPD Article 16. Such program should include women with disabilities to provide outreach, education, and education to recipients of services in institutions and community programmes.
Chapter 43
Institute for Social Justice, Pakistan.

Situation of People with Disabilities in Pakistan, with a Focus on Women and Girls with Disabilities.

By the Institute for Social Justice (ISJ).

www.isj.org.pk

In Pakistan, the issue of disability has remained neglected and ignored within all areas, including in administrative, financial and legal contexts. People with disabilities are the most marginalised because they are ‘unseen, unheard and uncounted’ in the country.1029 There are no serious attempts by the government to conduct a comprehensive survey to assess the problems of people with disabilities (PWDs).

In the absence of data, it is difficult to gauge and understanding of the scale and magnitude of problems being faced by women and girls with disabilities. However, this paper offers general details that cover issues related to women and girls.1030

Statistics.

In Pakistan, there are no updated statistics on the number of people with disabilities, and specifically, there are no updated statistics on women and girls with disabilities and the types of disabilities they are affected by. Disability has been recognised and included in the census. However, “statistics on disability suffer from inadequacies such as lack of standardised definitions. The [World Health Organization] estimates

1029 Sheikh, A. et al; Assessment of Approaches and Practices of Disability Network Organizations in Pakistan; Sightsavers
1030 In the wake of the 18th Constitutional Amendment, in 2010, there have arisen more ambiguities in roles and responsibilities between the federal and provincial governments and problems of PWDs have doubled. After the 18th Amendment, the disability (and associated matters to it) has become a provincial subject. There is no centralised coordination and data gathering mechanism; efforts taken by the federal, provincial and district governments and civil society organizations are so scattered. All provinces and Islamabad Capital Territory (ICT) are responsible to deal with employment, rehabilitation, education and training of PWDs. The relevant laws had to be adopted by the provinces such as the Disabled Persons (Employment and Rehabilitation) Ordinance, 1981, is a major national law that deals with employment, rehabilitation, education and training of people with disabilities; only province Punjab has adopted it in 2012.
of disability for the developing countries [including Pakistan] were found to be 10% of the total population.\textsuperscript{1031}

The 1998 National Population Census says that 2.49 percent (3,286,630) of the total population were disabled in Pakistan. Out of these, 8.06 percent were blind; 7.43 percent were deaf/mute; 18.93 percent were crippled; 6.39 percent were insane; 7.60 percent were mentally retarded, 8.23 percent had multiple disabilities, and 43.37 percent were under the category of "others"\textsuperscript{1032}.

Out of the total disabled population, 2,173,999 (66 percent) were in rural areas and 1,112,631 (34 percent) in urban areas. The highest number of people with disabilities was reported in Punjab (1,826,623), followed by Sindh (929,400), Khyber Pakhtunkhwa (375,448), and Balochistan (146,421).\textsuperscript{1033}

<table>
<thead>
<tr>
<th>Table 1: Population with Disabilities by Sex, Nature of Disability.</th>
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<td><strong>Sex</strong></td>
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<tr>
<td>Both Sexes</td>
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<td>Male</td>
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<td>Female</td>
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Source: Population Census 1998, Government of Pakistan

**Categories and Causes of Disability.**

Disabilities in Pakistan are categorised into physical handicap, hearing impairment, visual impairment and mental retardation. Further, these are classified as mild, moderate, and severe/profound.\textsuperscript{1034}

While there are various known causes of disability, in some cases exact causes are not known. There are situations where disability occurs due to the impact of several causes. Generally, there are two main known causes of disability: 1) biomedical/physiological, and 2) socio-cultural or environmental.

\textsuperscript{1031} Network of Organizations Working for Persons with Disabilities, Pakistan (2008); A report on the status of people with disabilities and the way forward; page 8.

\textsuperscript{1032} The category of others is not specified


\textsuperscript{1034} Network of Organizations Working for Persons with Disabilities, Pakistan (2008); A report on the status of people with disabilities and the way forward.
The first one originates within the person’s body, and the second is related to causes that originate outside the body, including the person’s lifestyle and behaviour. Disability can begin at any life stage, such as at the prenatal, perinatal, or neonatal stages, or during infancy, early childhood, adolescence, adulthood and old age.\textsuperscript{1035}

**International Legislation.**

On the 12th of November 1990, Pakistan ratified the Convention on the Rights of the Child (CRC), which recognises the rights of children with disabilities in Article 2 (para 1) and Article 23.\textsuperscript{1036} These articles apply to all children, including girls. Similarly, on the 12th of March 1996, Pakistan ratified the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). The CEDAW does not directly talk about the rights of women and girls with disabilities.

On the 25th of October 1994, Pakistan ratified the Vocational Rehabilitation and Employment (Disabled Persons) Convention 1983 (No 159). The Convention defines a disabled person as follows: “an individual whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognised physical or mental impairment.”

Therefore, each State Party to the Convention “shall consider the purpose of vocational rehabilitation as being to enable a disabled person to secure, retain and advance in suitable employment and thereby to further such person’s integration or reintegration into society.”\textsuperscript{1037}

In August 2011, Pakistan ratified the Convention on the Rights of Persons with Disabilities, which recognises issues, problems and rights related to women and children with disabilities in Articles 6 and 7 respectively.\textsuperscript{1038} In 2012, the Directorate

\textsuperscript{1035} Network of Organizations Working for Persons with Disabilities, Pakistan (2008); A report on the status of people with disabilities and the way forward.

\textsuperscript{1036} Article 23 says “A disabled child has the right to special care, education and training to help him or her enjoy a full and decent life in dignity and achieve the greatest degree of self-reliance and social integration possible.”


\textsuperscript{1038} Article 6 - Women with disabilities: 1. States Parties recognise that women and girls with disabilities are subject to multiple discriminations, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms. 2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention. Article 7 - Children with disabilities: 1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children. 2. In all actions concerning
General Special Education and Social Welfare (DGSE&SW) established a cell called UNCRPD Secretariat for the implementation of the Convention.

In addition, a Core Committee was formulated to monitor/coordinate with the Federal Ministries/Divisions/Departments/Provincial Government Departments/NGOs/DPOs for the implementation of the Convention.1039

**National Legislation and Policy.**

*Pakistan’s 1973 Constitution:* The Constitution is very silent regarding the rights of people with disabilities. In one sense, their rights can be seen as equal to those of all other citizens who have no disability. However, Article 38 (d) talks about the promotion of social and economic well-being of the people by the state.

This article says that the State has to “provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment.” The Article provides protection to all people with disabilities including women and girls.

*Pakistan’s Penal Code (PPC) from 1860:* In Section 332 (1) of the PPC, the act of disabling the organ of someone’s body is considered hurt, which carries around 10 years’ imprisonment.

*Disabled Persons (Employment and Rehabilitation) Ordinance, 1981:* The Ordinance laid a formal foundation for the institutional care of people with disabilities in the country. The Ordinance defines a disable person as: “who, on account of injury, disease1040 or congenital deformity, is handicapped for undertaking any gainful profession or employment in order to earn his livelihood, and includes a person who is blind, deaf, physically handicapped or mentally retarded.”1041

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1039 The Ministry of Capital Administration Development Division; Directorate General of Special Education and Social Welfare at http://www.mocad.gov.pk/gop/index.php?q=ahR0cDovLzE5Mi4xNjguNzAuMTM2L2NhZCBuL2ZybURldGFpbi4MwXNweD9vcHQ8bWlzY2xpY2xpbmtzJmlkPTez

1040 It includes the physical or mental condition arising from the imperfect development of any organ (Section 2 (d)).

1041 Section 2 (c)
The Ordinance provides the possibility to create Funds, and it established the National Council for the rehabilitation of Disabled Persons. It made employing 2 percent disabled people in the public sector mandatory.

The National Council's Rules were notified in 1983. The National Council for the rehabilitation of Disabled Persons was mandated to formulate policies for the employment, rehabilitation and welfare of disabled people. In addition, it has a mandate to conduct the medical examination, treatment and survey on people with disabilities.

*The National Policy for Persons with Disabilities (2002):* It is a comprehensive document that has a vision, guiding principles and strategies to achieve the objectives leading to the empowerment of people with disabilities. Since disability is a cross-cutting, overarching, multi-dimensional and multi-disciplinary subject, this policy was prepared in consultation with the relevant ministries, including Health, Labour & Manpower; Housing & Works; Science and Technology, as well as other departments and prominent NGOs.

The policy included administrative, legal and other measures for providing facilities to people with disabilities during the prenatal and postnatal periods, through proper assessment education, vocational training and employment.

*National Plan of Action (NPA) to implement the National Policy for Persons with Disabilities (2006):* After four years, the NPA was introduced to implement the National Policy for Persons with Disabilities, remaining a “lack of ownership from coordinating agencies both in the public and private sectors and particularly at provincial level”. The NPA was an integrated operational approach that aimed to address the issues of access, inclusion and equalization of opportunities for people with disabilities by using all potential resources.

The NPA has “identified 17 critical areas of intervention from assessment of the magnitude of the problem to service delivery systems. It spells out short term steps to be taken by the end of June 2009 and long term measures to be adopted by July, 2025”, assigning the responsibilities for each activity to the relevant departments and agencies.

Some short term objectives of the NPA for PWDs included: “establishment of data bank; sample surveys of people with disabilities in selected districts; reduction in incidence of disabilities through primary and secondary preventive care, strengthening of disability prevention programmes; arrangements for early

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detection and institutional interventions; escalating medical rehabilitation services; promoting inclusive education; expanding and reinforcing vocational training; employment including self employment; legislative support to people with disabilities; and boosting up public opinion and increasing support to NGOs.”

The long term objectives include: “creation of barrier free physical environments for PWDs in all public, private and commercial buildings and public places, and the revision of construction bye laws. More effective enforcement and expansion of social assistance and social security programmes under the provisions of existing laws would be beneficial.”

Of the total 17 areas of action to implement the NPA, two areas were about children with disabilities. Under these actions goals/outcomes, barriers and performance indicators were set. These areas of actions are:

1) Strengthening of Special Education for children with severe and moderately severe disabilities.

**Goal/Outcome:** All children with SEN have opportunities for quality education from kindergarten to class 10 level and develop their fullest capacity for economic and social integration that promotes self confidence and empowerment.

**Identified barriers:** About 1-2% children with disabilities have access to commensurate SE centers (SEC). Rural children have no access to SEC.

**Performance Indicator:** By year 2025 all children with SEN have access to quality educational services

2) Promoting Inclusive Education for children with Special Education Needs (SEN).

**Goal /Outcome:** Inclusive Educational opportunities are available to large number of children with moderate and mild level disabilities from kindergarten to class 10 in cost effective ways.

**Identified Barriers:** Regular schools are not geared to accommodate children with special needs.

**Performance indicators:** All regular schools have provision for children with special needs.

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One area of action in the NPA was about women with disabilities. Under this action, the following goal/outcome, barriers and performance indicators were set:

**Goal/outcome:** Women with disabilities have a role to play for their betterment, through sport services.

**Identified barriers:** They have presently no access to the existing programmes/services, both in public and private sectors.

**Performance indicators:** Programmes are prepared/implemented associating women with disabilities at every stage of development, preparation and implementation.

These areas of action for women and children with disabilities in the NPA which meant to address issues, problems and difficulties of women and girls with disabilities remained only on paper because of “lack of ownership from coordinating agencies both in the public and private sectors and particularly at provincial level. Although there are a number of coordinating networks, they are not effectively vibrant and active for implementation of the...NPA.”

The Pakistan Bait-ul-Mal Act (1992): The Bait-ul-Mal is administered by the Board and the resources in the Bait-ul-Mal are utilised to: provide financial assistance to destitute and needy widows, orphans, invalid, infirm and other needy persons; render them help for their rehabilitation in various professions or vocations; provide them (specially children) with assistance for educational pursuits; provide them with residential accommodation and necessary facilities.

The Mental Health Ordinance (MHO), 2001: The MHO repeals the Lunacy Act, 1912. The Ordinance provides to consolidate and amend the law relating to the treatment and care of mentally disordered persons, to make better provisions for their care, treatment, management of properties and affairs and to provide for matters connected therewith or incidental thereto and to encourage community care of such mentally disordered people, and to provide for the promotion of mental health and prevention of mental disorder. In addition, it provides to: establish the federal mental health authority, and regulate its powers and functions as well as provide for assessment and treatment of people with mental disorders; regulate duration of periods of detention of people with mental disorders; deal with leave and discharge of people with mental disorders from psychiatric facilities; provide for judicial proceedings for appointment of guardian of person and manager of people with mental disorders' property; regulate liability to meet cost of maintenance of people with mental disorders admitted to psychiatric facility; make provision for protection of human rights of persons with mental disorders.

1045 Bait-ul-Mal is an Arabic word which means house of money or wealth.
The National Plan of Action (NPA) for Children (2006 to 2015): In addition to mentioning the rights of children with disabilities in various cross cutting sections, the NPA has an exclusive Section (21) on the rights of people with disabilities. In Goal V, the NPA promises to take special measures to eliminate discrimination against children on the basis of disability and other matters, and ensure their equal access to education, health and basic social services.

The National Commission for Child Welfare and Development (NCCWD) facilitated the implementation process of the NPA as per the objectives of the project, since the NPA required multi-ministerial interventions both at the Federal and Provincial level, with the devolution of the federal education, health, labour and social welfare ministries, the NPA could not be implemented effectively. However, civil society believes that the NPA was never implemented and not many coordination meetings took place between ministries and departments before devolution. The NPA for Children remained ineffective from its inception mainly due to NCCWD’s capacity and competence, which was responsible for facilitating the implementation.

The National Education Policy (NEP), 2009: The NEP does not contain any direct objective that is meant to address the needs of children and women with disabilities. The goals and targets agreed upon at the 1990 Jomtien Conference on EFA, aimed at expanding early childhood care and developmental activities, including family and community interventions, especially for poor, disadvantaged and disabled children.1046

National Plan of Action for Women:

Pending Legislation.

The Special Citizens Bill (2008): The Bill aimed to provide people with disabilities with the right to access everywhere (every public place), which included facilitating access for wheel chairs in all public and private buildings; allocating seats in public transport for special citizens, and adapting footpaths for wheel chairs and blind people; and giving them priority while crossing roads.

The Special Citizens (Right to Concessions in Movement) Bill, 2009: This private member bill aimed to provide concessional rates to people with disabilities. Also a private member Bill was submitted to the National Assembly of Pakistan, which

basically meant to change the previous Ordinance of 1981 into Act only for the Islamabad Capital Territory.

This law was called the Disabled Persons Employment and Rehabilitation Act, 2012. All these bills lapsed after the dissolution of the National Assembly. These Bills have to be re-reviewed and then submitted in the next legislative national assembly.

**Institutional Arrangements.**

As a result of the 18th Constitutional amendment in 2010, the Ministry of Social Welfare and Special Education, which was dealing with issues related to disability and was responsible for coordinating with the concerned bodies and departments in Pakistan issues related to the care, education, training and rehabilitation of people with disabilities, was devolved. It communicated “all policy decisions to all decisions to all government and non-government organizations for implementation”.1047

Now all the responsibilities have been transferred to the Ministry of Human Rights, which is taking care of the implementation of the Convention on the Rights of People with Disabilities. Besides the Ministry of Human Rights, the National Commission on the Status of Women is responsible to look after the rights of women with disabilities. However, after devolution, there has been confusion regarding the roles and responsibilities among the provincial and the federal governments.

With the occasion of the United Nations International Year of Disabled Persons, Pakistan established the following four centers for children within Islamabad in 1982: the National Special Education Centre for Intellectually Challenged Children; the National Special Education Centre for Hearing Impaired Children; the National Special Education Centre for Visually Handicapped Children, and the National Special Education Centre for Physically Handicapped Children.1048

In 1985, under the guidelines of the then president of Pakistan, the Directorate General of Special Education was set up in Islamabad as an attached Department to the Ministry of Health, Social Welfare & Special Education, which aimed specifically for the development of facilities for people with disabilities.1049

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1047 UN Economic and Social Commission for Asia and the Pacific; last retrieved at http://www.unescap.org/sdd/issues/disability/policycentral/CountryProfiles/Pakistan.doc
1048 The Ministry of Capital Administration Development Division; Directorate General of Special Education and Social Welfare at http://www.mocad.gov.pk/gop/index.php?q=aHR0cDovLzE5Mi4xNjguNzAuMTM2L2NhZC8uL2ZybURldGFpbHMuYXNweD9vcHQ9bWlzY2xpbnRzJmlkPTEz
1049 The Ministry of Capital Administration Development Division; Directorate General of Special Education and Social Welfare at http://www.mocad.gov.pk/gop/index.php?q=aHR0cDovLzE5Mi4xNjguNzAuMTM2L2NhZC8uL2ZybURldGFpbHMuYXNweD9vcHQ9bWlzY2xpbnRzJmlkPTEz
After the 18th Constitutional amendment, the Directorate's geographic scope has been limited to the ICT and placed under the Ministry of Capital Administration Development Division, and its name has also been changed into the Directorate General of Special Education & Social Welfare, which has the following projects: Computerization of the National Braille Press at NSEC for VHC, Islamabad; the Construction of Housing Colony of Teacher/Staff of DGSE (Phase-II), Islamabad, and the Construction of a Model Child Welfare Centre, Humak, Islamabad. The total cost of all these projects is Rs89.044 million.1050

Before the devolution of various ministries (as a result of the 18th Amendment), including social welfare, health and education, there were various national institutions functioning at the federal capital, Islamabad, under the supervision of the Directorate General of Special Education. The Status of these institutions is not yet clear. These Institutions are: the National Institute of Special Education (NISE) was established in 1986. It develops the curriculum and conducts training of SE teachers in all four currently served disciplines.

The National Council for Rehabilitation of Disabled Persons (NCRDP) was founded in 1982 to implement and monitor the implementation of the 1981 measures. The National Mobility and Independence Training Centre (NMITC) for visually handicapped (VH) conducted courses on mobility and independence of visually handicapped.

The National Training Center for Special Persons (NTCSP), 1986, was established with the aim of providing vocational rehabilitation to persons falling under visual impairment and hearing impairment. The National Special Education Centers1051; National Library & Resource Center (NLRC), 1986, is working as a resource center for print and audio-visual material on special education and disabilities. The National Institute for Handicapped (NIH), 1987, worked as speech and hearing disorder therapy center, in 1997 it was upgraded to a general hospital for handicapped.

The National Trust for the Disabled (NTD) 1052, 1988, whose aim was to ensure the implementation and coordination of the services for diagnosis, assessment, treatment, education, job placement and rehabilitation of people with disabilities. The Vocational Rehabilitation and Employment of Disabled Persons (VREDP), 1993,
was working to promote community-based rehabilitation through skills training and micro credit facilities. Finally, 531 Disability Wise Special Education Schools /Institution were set up by the end of 2006.  

In the wake of the 18th Amendment, since the subject of the rights of people with disabilities has been transferred to provinces, there is a need to look into provincial activities, programmes and plans of action, mainly through the Provincial Councils for Rehabilitation of Disabled Persons (PCRDP) in all provinces.

If a person (woman) with a disability is willing to be employed, he or she has to get her/himself registered with these councils. These Councils issue a certificate to the person if he/she provides a medical certificate by a Medical Board established at district level in the District Headquarter Hospitals, and taking into account the criteria given in the ordinance.

The Sind Child Protection Authority: In Sindh, the Sindh Child Protection Authority law was passed in 2011. Under this law, an 11-member authority has been set up to coordinate and monitor child protection issues at provincial and district levels. The Authority would establish an institutional mechanism for child protection, and set minimum standards for all institutions relating to children, including educational institutions, orphanages, shelter homes, child parks, hospitals, etc, and to ensure implementation. There is no direction mention of the protection of the rights of children with disabilities. However, it can be presumed that authority may intervene in places where children with disabilities are kept.


Civil Society Organizations' Initiatives.

There are a number of civil society organizations that have been working to promote the rights of people with disabilities (including children and women), but their efforts are scattered and uncoordinated. Many of these organizations are headed or run by people affected by one or more disabilities. Interestingly, various organizations

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1054 Section 12 of the Ordinance 1981
which are working on children and on human rights do not have people with disabilities as their staff members.

**Challenges, Constraints and Recommendations.**

There is a big list of challenges and constraints faced by people with disabilities as well as by organizations working for their rights.

The issues of women and girls with disabilities are not seen or addressed separately from those related to men with disabilities. There are however areas of actions in the NPA that offer a great deal of solutions to the problems of women and girls with disabilities, but the NPA is only part of books and literary discourse rather than a practical guideline for the said purpose.

There is little recognition or ownership of the issues of people with disabilities (mainly regarding women and girls). There is also very little commitment and will from governments. The relevant stakeholders are not familiar with or aware of the rights of women and girls with disabilities, related laws, policies, plan of actions and protocols. Therefore, there is no implementation of these.

Also, the current policy or legislative framework is inadequate to meet needs of women and girl children. There is extremely poor coordination between the government departments and divisions; and negligible excess to civil society organizations.

It is interesting to note that it has been estimated there are only 531 institutions to cater for the rehabilitating and educational needs of about 3.29 million people who are living with one or more disabilities. Unfortunately, some of these institutions are mainly located in urban areas, which deprive a great number of women and children with disabilities from the services provided at these institutions.

Pakistani society's infrastructure is made to address the needs of people without any disability. This is why there are barriers for women and children with disabilities to access public places, even in cities which include government offices, schools, colleges, shopping malls and restaurants. Most buildings do not have support facilities such as rails, wheelchairs and lifts to help women and children with disabilities.

It is being noted that lifts are built in a way that women and children with disabilities cannot use them. Overall, the transport sector does not take care of the needs of
women and children with disabilities; they are deprived of seats in public transport.

Other challenges include: absence of coordination and networking mechanisms; lack of updated and reliable data or information; there are no surveys to assess needs of real beneficiaries; lack of community-based rehabilitation and education programmes; absence of systems and mechanisms that can protect the rights of women and children with disabilities.

As the general society does not care about these marginalised people, it is the role of the Media that does not provide these people with opportunities to be mainstreamed. Instead, they live and work and are rehabilitated in segregated places; NGOs and INGOs lack policies for recruiting women and girls with disabilities; lack of trained and qualified teachers and social workers, audiologists, speech therapists, physiotherapists and occupational therapists; this marginalised group does not get adequate financial resources so that policies and plans of action could be run; the definition of disability is not that of the CRPD.

In light of the challenges and problems, the Institute for Social Justice recommends the Government of Pakistan to take all possible administrative, legal and resource related measures, which include the effective implementation of laws, policies and national plans of action; the allocation of more resources; increasing educational and rehabilitative institutions for women and girls, and bringing national legislation to complete conformity with the CRPD.

Chapter 44

International Development Law Organization

Submission for the Half Day of General Discussion on Women and Girls with Disabilities on ‘Improving the Legal Response to Violence Against Women with Disabilities’.

29th of March, 2013.

The International Development Law Organization (IDLO) is an inter-governmental organization dedicated to promoting a culture of justice. IDLO’s HIV and health law program has developed considerable experience in strengthening and expanding legal services in this area since 2009.

HIV can be considered as a disability based on the Convention on the Rights of Persons with Disabilities (the Convention) definition of people with disabilities to “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.”

Convention on the Rights of Persons with Disabilities [hereafter CRPD], GA Res 61/106, UN Doc A/RES/61/106 (December 13, 2006), Art. 1. In its discussion of disability and HIV, UNAIDS, WHO, and OHCHR state that: “The Convention does not explicitly refer to HIV or AIDS in the definition of disability. However, States are required to recognise that where persons living with HIV (asymptomatic or symptomatic) have impairments which, in interaction with the environment, results in stigma, discrimination or other barriers to their participation, they can fall under the protection of the Convention. States Parties to the Convention are required to ensure that national legislation complies with this understanding of disability. Some countries have accorded protection to people living with HIV under national disability legislation.” UNAIDS, WHO and OHCHR, Policy Brief: Disability and HIV (April 2009) 1, available at www.who.int/disabilities/jc1632_policy_brief_disability_en.pdf.

Disability and HIV also intersect to increase HIV risk for people with disabilities. Human Rights Watch notes that:

“Individuals with disabilities are often assumed to be at lower risk, and thus face lower of HIV infection rates, than their non-disabled peers. They are believed to be asexual, less likely to use drugs or alcohol, and at a lower risk of violence or sexual assault than the general population. But a growing body of research shows that these assumptions are wrong—the HIV infection rate among people with disabilities is up to three times as high as people without disabilities.” Human rights abuses which increase the risk of HIV include: a higher risk of violence and lack of legal protection; barriers to education, including sexual health education; lack of information about HIV prevention and safe sex, and barriers to prevention methods such as condoms based on false assumptions that people with disabilities are not sexually active. Human Rights Watch, Fact Sheet: HIV and Disability (June 2011) at www.hrw.org/news/2011/06/08/fact-sheet-hivaids-and-disability.
IDLO sees opportunities to learn from its earlier work to support people with other forms of disability. This submission will focus on several lessons learned from IDLO’s work on improving access to justice for women, marginalised groups and stigmatised populations.

I. Shortcomings in the Legal Response to Violence Against Women with Disabilities.

As the Commission on the Status of Women noted in its 2013 conclusions, in spite of a global commitment to eliminate violence against women, the state response to violence against women remains lacking. Shortcomings from investigation to prosecution include: insufficient resources and training for police, lawyers, and judges; and logistical barriers to reporting, documenting, and prosecuting a violation abound.

For example, in some parts of the world, women must pay for the form that is to be completed to file an assault claim or for the medical officer’s examination. Also, post-rape treatment is often entirely absent or not available within the time limit during which it is most effective.

These shortcomings when preventing and responding to violence against women are frequently exacerbated for women with disabilities. The Convention on the Rights of Persons with Disabilities (the Convention) recognises “that women and girls with disabilities are often at greater risk, both within and outside the home of violence, injury or abuse.”

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1060 “If you take for example some of the countries where we work, the police do not even know how to investigate sexual violence. You need to train them. The judiciary doesn’t know how to prosecute it...The police must be able to adequately investigate the issue of sexual violence to build a case. In some countries, women have to pay $100 to get the report to be able to take action against the perpetrators. Where can a poor woman in a village get $100 to get the medical certificate? Sometimes she has to travel miles and by the time she comes back, the evidence is lost. In some countries, when people are arrested, the victim has to feed the prisoner, who is the perpetrator, while the case is in the courts. All these are the issues.”
The International Network of Women with Disabilities notes that “[v]iolence against women and girls with disabilities is not just a subset of gender-based violence: it is an intersectional category dealing with gender-based and disability-based violence.”\textsuperscript{1061} The UN Special Rapporteur on Violence against Women notes that “social sanctions relating to poverty, race/ethnicity, religion, language and other identity status or life experiences can further increase the risk of group or individual violence against women with disabilities.”\textsuperscript{1062}

Disability advocates and experts have consistently noted the inadequacy of efforts to prevent and redress this violence, as well as the barriers to justice encountered by women with disabilities.\textsuperscript{1063} The UN Special Rapporteur on Violence against Women recently noted that in spite of normative frameworks on women’s rights and on disability rights, violence against women with disabilities remains neglected.\textsuperscript{1064}

The Convention emphasizes the importance of access to justice for people with disabilities, and it clearly elaborates a state obligation to “ensure effective access to justice for people with disabilities on an equal basis with others...in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.” To achieve this goal, states “shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.”\textsuperscript{1065}

The ratification and implementation of the Convention provides significant opportunities for the development of an enabling legal environment on disability rights. However, even as legal environments are strengthened, laws may already be in place which can be used to promote the rights of women with disabilities. As noted in the IDLO/UNAIDS/UNDP Toolkit: Scaling Up HIV-Related Legal Services, “[t]he priority for legal services may be to have these [existing] laws enforced through the courts, rather than to change the law.”\textsuperscript{1066}


\textsuperscript{1064} VAW with Disabilities report, para. 12.

\textsuperscript{1065} CRPD, Art. 13.

Strategies for Improving the Justice Sector’s Response to Violence Against Women with Disabilities.

A. The Importance of Legal Empowerment.

IDLO’s 2013 study, Accessing Justice: Models, Strategies, and Best Practices on Women’s Empowerment, highlights the importance of a comprehensive approach to legal empowerment:

An alternative strategy [to traditional rule of law models] to strengthen efforts to improve women’s access to justice is to integrate legal empowerment components into broader law reform projects aimed at providing women with quality justice. Legal empowerment programmes encompass a range of activities sharing a common core concept: using the law to empower the disadvantaged within society. Typical legal empowerment activities include legal education, legal aid services, support for non-discriminatory alternative dispute resolution fora to complement or supplement customary systems, training of paralegals, and rights awareness for disadvantaged and marginalised groups.... In the legal empowerment paradigm, the critical actors are the people themselves.1067

Legal education is crucial to ensuring that violence and abuse, which is often “normalised” in certain settings, is recognised as a violation which must be prevented and redressed.1068

B. Importance of a Participatory Process.

A participatory process is essential to ensuring that legal services will reach and meet the needs of the people they are meant for. A key principle when designing legal services is the participation of key populations in developing the service models that will be effective in meeting their needs and that are tailored to the local context. As the HIV Toolkit notes:

Where possible, designing legal services should be informed by a situation analysis and needs assessment. Needs assessment can help in shaping a strategy for establishing services and for scaling up services nationally. The

1068 The Special Rapporteur on extreme poverty and human rights has noted the lack of empowerment and access to information that is available for those who experience discrimination on grounds such gender or disability. See: Special Rapporteur on extreme poverty and human rights, Report on access to justice for people living in poverty (August 2012) A/67/278, paras. 24-27.
process of conducting a needs assessment should be participatory. Involving...members of relevant key populations to help design and conduct the needs assessment can ensure that it is designed in a way that will reach those in the community who stand to benefit most from [the targeted] legal service.1069

Participatory needs assessments are conducted to:

- Ensure that local perspectives inform the analysis of local legal needs and challenges;
- Identify community potential to contribute to solutions, e.g. existence of informal legal systems.
- Build trust between the community and the organization assessing needs and generate community ownership in the programme.1070

C. Sensitizing Legal Professionals to the Specific Needs of their Clients.

As is the case with HIV, members of the legal profession are often not prepared to respond to the specific needs of women with disabilities. Women’s legal aid organizations may not have a specific background in disability, and in resource-strapped environments, they are often not structured in a way that is logistically or structurally accessible to women with disabilities.

Legal professionals who work on disability rights may not be familiar with the issues that arise for women with disabilities. Further, legal professionals may also find that they have to address their own stereotypical and stigmatizing beliefs about the marginalised and stigmatised groups they work with.

It is particularly important that legal professionals understand how intersectional or compounded discrimination affects their clients.1071 For women with disabilities, violations may involve issues that legal professionals are not versed in—violations in institutional settings, including healthcare settings; reproductive health violations, including coercive practices such as coercive sterilization, and stereotypes about women with disabilities.

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1069 HIV Toolkit, 27.
1070 Id. See 27-29 for more on conducting participatory needs assessments and situation analysis.
1071 For example, people living with HIV are both more likely to interact with healthcare settings because of their healthcare needs and to experience discrimination in these settings because of their HIV status. This is particularly true for women living with HIV, who tend to seek healthcare services more frequently because of issues relating to reproductive and maternal healthcare. Rights violations of women living with HIV in healthcare settings, such as coercive sterilization and verbal and physical abuse are well documented in many parts of the world.
i. Recognizing Violence in Healthcare Facilities and Other Institutional Settings.

Justice sector’s responses to violence against women often focus on intimate partner violence or violence within the home, while overlooking the violence that takes place in institutional settings, such as healthcare settings and schools. The INWWD notes that,

There is a lack of a broad definition of violence which embodies all forms of violence against women with disabilities—and some forms of violence against women with disabilities are permitted by law and carried out under the authority of the state. Professionals, relatives, friends, and others are unable to discern circumstances resulting from violence against women with disabilities because of the misperception that the circumstances are ‘inherent’ to the disability.1072

Institutional and quasi-institutional settings are frequently sites of violence against people with disabilities. The United Nations Special Rapporteur on Torture has noted that there are people with disabilities who are:

either neglected or detained in psychiatric and social care institutions, psychiatric wards, prayer camps, secular and religious-based therapeutic boarding schools, boot camps, private residential treatment centres.... Severe abuses, such as neglect, mental and physical abuse and sexual violence, continue to be committed against people with psychosocial disabilities and people with intellectual disabilities in health-care settings.1073

It is crucial that justice sector’s professionals understand state obligations to prevent and redress violations by both public and private actors in these settings.

Violations of women with disabilities' reproductive rights, such as involuntary sterilization and coercive family planning practices in healthcare settings, are

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1072 INWWD Paper, 8. "In addition, researchers and policy makers rarely identify situations, such as physical abandonment or psychological cruelty, as maltreatment. Further, if an intervention is made in a situation where the violence was perpetrated by a personal assistant, a family member or a friend, the incident is often addressed only by the social service system and is rarely considered to be a crime that should be addressed by the police and/or the criminal justice system. There is a lack of credibility accorded to women who require assistive communication or reasonable accommodation in communication and to women who have already been labelled with a psychiatric diagnosis or an intellectual disability." INWWD Paper, 8.

widespread. The UN Special Rapporteur on Violence against Women has stated that “Research shows that no group has ever been as severely restricted, or negatively treated, in respect of their reproductive rights, as women with disabilities.”

The UN Special Rapporteur on Torture also notes the prevalence of these practices among marginalised groups, including women with disabilities, and has clearly stated that “forced abortions or sterilizations carried out by state officials in accordance with coercive family planning laws or policies may amount to torture.”

ii. Stereotypes About Women and Disability.

Stereotypes about women's role and their sexual behavior severely impede an effective response to violence against women, particularly sexual violence. These stereotypes are further complicated for women with disabilities, and may vary depending on the particular disability, and can lead to complaints being dismissed or minimised.

The UN Special Rapporteur on Violence against Women notes that:

stereotypes [about women with disabilities] operate to exclude or discount their testimony. For example, in sexual assault cases, the general failure of society to see people with disabilities as sexual beings may result in judges and juries discounting the testimony of witnesses. On the other hand, complaints may be disregarded because of views and beliefs about some women with mental disabilities as hypersexual and lacking self-control...The failure to afford the testimony of women with disabilities due respect is problematic in gender-based violence and sexual assault cases, where the testimony of the parties and the credibility of the witnesses are exceptionally important.

1074 Id., para. 48. “Some women may experience multiple forms of discrimination on the basis of their sex and other status or identity. Targeting ethnic and racial minorities, women from marginalised communities and women with disabilities for involuntary sterilization because of discriminatory notions that they are “unfit” to bear children is an increasingly global problem. Forced sterilization is an act of violence, a form of social control, and a violation of the right to be free from torture and other cruel, inhuman, or degrading treatment or punishment.”


1076 Torture in health-care settings, para. 57.

1077 VAW with Disabilities report, para. 42. “Sexual abuse cases involving a complainant with learning disabilities rarely go to court, and if they do, the complainant frequently does not service as a witness against the accused. The tendency to “infantilize” women with mental disabilities contributes to the
D. The Importance of Police Engagement.

While this submission focuses primarily on legal professionals, the lessons learned are relevant to all sectors of the justice system. Police units are particularly crucial as frontline responders and gatekeepers to access to justice.

Initiatives on policing and public health, and on police engagement with marginalised populations, have identified the following key elements as part of a successful strategy:

- Police must recognise their impact on public and personal health, and there is institutional and professional responsibility; multi-sectoral partnerships and collaborations, with police as essential members of public health teams; principles of policing for public health are widely embedded in law enforcement policies and practices; police apply a full range of response options in terms of viable alternatives to arrest and prosecution for named offences.

Where possible, designing legal services should be informed by a situation analysis and needs assessment. Needs assessment can help in shaping a strategy for establishing services and for scaling up services nationally. The process of conducting a needs assessment should be participatory. Involving...members of relevant key populations to help design and conduct the needs assessment can ensure that it is designed in a way that will reach those in the community who stand to benefit most from [the targeted] legal service.1078

iii. Other Key Considerations in Delivering Quality Legal Services and Carrying Out Systemic Change.

Key considerations include:
- Accessibility of services.
- Applicable legislation.

1078 HIV Toolkit, 27.
• Relevant case law.
• Legal issues faced by people with disabilities, particularly women with disabilities.
• Non-legal issues which impact on the ability to access justice and referral.
• Role of paralegals and community educators in improving access to justice.
• Different models of legal service delivery, which include:
  o Stand-alone issue-specific legal services.
  o Legal services integrated into the government's legal aid agency.
  o Issue-specific legal services integrated into an organization which works on the issue(s).
  o Legal services provided through community outreach.
  o Issue-specific legal services integrated into an organization with a broader human rights focus.
  o Issue-specific legal services provided by private sector lawyers on a pro bono basis.
  o Issue-specific legal services provided by private lawyers on retainer to community-based organizations.
  o Issue-specific legal services provided by university Law school.

About IDLO (www.idlo.int)

IDLO is an intergovernmental organization that promotes legal, regulatory and institutional reform to advance economic and social development in developing countries, countries in economic transition and in those emerging from armed conflict. IDLO empowers people and enables governments to reform laws and institutions to promote peace, justice, social development and sustainable economic growth.

Our vision is that of a world free of poverty where every human being lives in dignity and under the rule of law. Our mission is to strengthen the rule of law, human rights and good governance in developing countries.

Founded in 1983 and one of the pioneers of justice sector reform and development assistance, IDLO's mandate is to strengthen the rule of law by supporting economic and social development that it is driven by societal demand. By involving stakeholders from all levels of society in its development programmes, IDLO helps develop sustainable and equitable solutions that reflect a country's broad needs and desires.

IDLO has worked with over 20,000 legal professionals in 175 countries. Its network of 47 legally established IDLO Alumni Associations around the world, with membership drawn from legal, business, academic and civil society communities,
contribute to the overall impact and long-term sustainability of the Organization’s work. IDLO has its headquarters in Rome, a liaison office for the United Nations in New York and Geneva, and country offices in Afghanistan, Kenya, Kyrgyzstan, South Sudan, Somalia (based in Nairobi) and Tajikistan.

More information on IDLO’s Health Law programme can be found at www.idlo.int/healthlaw. For further information, please contact:

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Chapter 45

Women and Girls with Disabilities Empowerment Group Chile.

CRPD Committee's General Discussion on Women and Girls with Disabilities.
17th of April, 2013.


Name of the Organisation: Women and Girls with Disabilities Empowerment Group Chile (CIMUNIDIS-Chile).

State Under Review: Chile (Latin America).

Website: We authorise the CRPD Committee to publish this shadow report on its own website.

Original Language: Spanish.

Outline of the Shadow Report for the CRPD Committee.

1 The Chilean government constantly ignores Article 4.1 (a) of the CRPD, which establishes that states shall recognise people with disabilities as rights holders. Despite being aware of the urgent demands put forward by DPOs, as well as of the overall needs of PWDs, particularly those of women and girls with disabilities, the Chilean government fails to fulfil its obligation to amend the lack of systematic public information that includes the generation of studies on prevalence, and the issuing of regular statistical reports which include a gender focus in relation to disability.

The Chilean government does not produce regular reports with updated, quantitative and qualitative basic data on people with disabilities. As a result, it does not follow an efficient and relevant state policy that focuses on people with
disabilities in general and women and girls with disabilities in particular, in order to ensure their rights are protected in accordance with the international treaties it has signed and ratified.

The latest complete data we have is from the 2004 National Study on Disability (ENDISC in Spanish), which is based on the International Classification of Functioning. However, organisations of people with disabilities were not asked to participate in drawing up this survey, and indeed have never been engaged in designing censuses and other national surveys to gather data on social and economic issues.

In 2011, the Chilean government was due to complete its work on preparing the National Population Census or ‘2012 Census’. In this context, DPOs requested the government to include questions to garner basic information on people with disabilities at the local, regional and national levels, including general information and data on the type of disability. However, the government rejected this demand from people with disabilities and their families, alleging financial difficulties, while failing at the same time to provide information on the cost effectiveness of including disability-related questions, and giving detailed and consistent reasons for rejecting the requests.

This contradicts Article 4 (c) of the CRPD, which obliges all States Parties to deliver policies, programmes, products (in this case the census) and environments based on universal design and, if this is not the case, to provide reasonable accommodations or efficiently manage international cooperation and funding.

The problem is that the Chilean government does not know who is entitled to benefit efficiently and properly, or how to go about doing this, if people with disabilities, especially women with disabilities, not only are they just invisible from a political and technical point of view, but they do not demand, denounce or vote.

2 The Chilean government has neither amended its national legislation nor put forward new legislation in line with international treaties concerning people with disabilities. It has failed to publicly promote the rights of people with disabilities and disseminate information on the national and international mechanisms in place to exercise these rights. As a result, there is a shortfall in terms of people with disabilities’ exercise of their right to advocacy, which would enable the development of harmonised jurisprudence, laws and regulations.

3 We condemn the fact that Chile is one of the 19 countries worldwide which has not adopted a mental health act in accordance with all WHO member countries. Since the Caracas Agreement was reached in Venezuela, DPOs have consistently been calling for such a law, but no progress has been made in the recognition and exercise of rights by people with psychosocial and intellectual disabilities. This agreement, promoted by the Pan-American Health Organisation, enabled the growth of anti-psychiatry or community-based psychiatry in Latin America, giving way to the
community-based rehabilitation method, which represents one of the positive supported decision-making models mentioned in Article 12 of the CRPD.

With regard to the lack of legislation in the field of mental health, in the past thirteen years Chile has only managed to adopt D.S. 570 and various associated health regulations, due to the lack of political backing for the demands put forward by DPOs during the nineties. The regulations and related rules have not been harmonised, repealed or reviewed since the CRPD was signed.

For example, in relation to Article 12 on Legal Capacity and sections (a) and (b) of Article 14, D.S. 570 and its enabling regulations have not been revoked, despite providing for legal practices including prohibition and guardianship, which deny the right to be a subject or legal entity, provoking in this way the “civil and political death” of people with psychosocial disabilities who are sectioned in psychiatric institutions.

Furthermore, recent legislation on the Right to Health – Law 20.584, 2012, known as the Law on the Rights and Responsibilities of Healthcare Users - has consolidated systems involving legal incapacity and guardianship in its references to people with psychosocial, intellectual and physical disabilities. These systems constitute a flagrant violation of the CRPD, and have a particular impact on women and girls with disabilities, who are victims of sexual abuse, are subjected to all types of involuntary institutionalisation, and are made to undergo forced sterilisation, thus violating their right to decide regarding their own bodies.

Law 18.600 on persons with psychosocial and intellectual disabilities, which includes provisions for legal incapacitation in relation to their rights to goods, bequests and income, has not been repealed either. This law also denies persons with psychosocial or intellectual disabilities the legal capacity to enter into an employment contract in accordance with current Chilean labour law and Administrative Statute for Public Authorities.

This older law contradicts provisions recently adopted in this area in Law 20.422 on integration, enacted in 2010. As recently as March 2013, the Chilean lower house studied the validity of this law, and its Commission on Eliminating Poverty and Disability questioned whether it should remain on the statute book.

People with disabilities suffer discrimination and are incapacitated and denied employment rights, which they should enjoy on an equal legal footing with all other Chilean citizens, such as equal pay for the same job; the right to demand a legal employment contract that includes social security benefits; safety at work; stable employment; job training, and guaranteed posts for people with disabilities both in private businesses and in public administrations.

This situation has a particular impact on women, who earn approximately 30% less than men for performing the same job, affecting women with disabilities even more.
In addition, there is a contradiction in the social security system which remains unresolved, as people with disabilities' social welfare benefits are cut off if they find a job.

This occurs despite the fact that families which include members who have a disability have higher living expenses, and that jobs for people with disabilities, and especially those for women with disabilities, are paid very poorly and are generally temporary positions. This is why many people with disabilities often prefer to turn down an employment offer in such precarious conditions, in order not to lose their allowance, which at least constitutes a secure and permanent source of income.

5 People with disabilities, and particularly women with disabilities, are victims of discrimination in the field of employment in Chile. According to a 2010 report by the ILO, only 1% of all people with disabilities in employment have a work contract. Informal and independent working arrangements are used by the majority of active people with disabilities.

The situation is aggravated in the case of women with disabilities. Figures from the 2004 National Study on Disability, corroborated by the ILO in 2010, indicate that most women with disabilities remain outside the labour force and are inactive because they only perform ‘domestic labour’ or ‘unpaid family work’.

6 Due to the scourge of legal incapacitation affecting people with psychosocial or intellectual disabilities, serious and regular financial abuses are allowed to take place under the legal system of indefinite guardianship in Chile. In addition, the regime facilitates the occurrence of abuse in the workplace through the practise of indefinite work rehabilitation, known as ‘sheltered employment’ or ‘training contracts’, which take advantage of the so-called ‘financial incentives’, above all in hospitals.

Private-sector companies in hospital environments benefit from these employees, and are also able to utilise the provisions in Law 18.600, which enables them to provide salaries that are below the legal minimum wage in the case of people with psychosocial or intellectual disabilities.

7 We, the organisations of people with disabilities in Chile, wish to express our indignation at current Chilean social protection and social security legislation. According to a 2012 report by the Trust for the Americas, state agencies administering these social and economic rights discriminate against the poorest people with disabilities by putting pressure on them to go through the process of legal incapacitation, in order to enjoy the social security rights they have as people with disabilities and the ‘privilege’ of receiving the Basic Solidarity Pension.

The Social Security Act also discriminates against people with disabilities by forcing them to choose between giving up the right to ‘equal pay for the same job’ or
enjoying the ‘privilege’ of continuing to enjoy their rights in terms of social security and public healthcare coverage. We condemn the fact that people with disabilities, and particularly people with psychosocial or intellectual disabilities, are regularly subjected to both practises in the field of social security by the state.

8 We wish to point out that Chile violates Article 15 of the CRPD on Torture and Cruel, Inhuman and Degrading Treatment, and the International Convention Against Torture, as it fails to protect women and girls with disabilities in cases of rape or incest (for example in safe houses or shelters). It does so by not facilitating the reporting process; not offering state support; not assisting the entire legal process following the report, as well as the channels through which abuse can be reported to the authorities, while at the same time making sure they are accessible to people with all types of disabilities.

The scarce information gathered by bodies such as the Police Unit for Investigations (PDI in Spanish) is analysed by the Reception Centre for Victims of Sexual Abuse (CAVAS in Spanish), which only operates in the Metropolitan Region, and by the relevant public ministry. As statistics are not disaggregated, it is impossible to quantify violations of the rights of people with disabilities, and in particular of the rights of women and girls with disabilities.

According to reports by leaders of organisations for people with intellectual disabilities, 70% of all sexual abuse cases are committed against people with disabilities. This is not surprising, as a 2005 report submitted by CAVAS to the Public Ministry pointed out that sexual abuse data indicated that in 70% of all cases, girls between 3 and 11 years old were involved, while in 80% of all cases the perpetrator was a family member.

According to a recent study (2012) by UNICEF, Chile on Violence against Schoolchildren, 10% of children in the country have suffered sexual violence, and in particular sexual abuse in family circles. We organisations of people with psychosocial disabilities are studying the issue of sexual abuse on girls, and the lack of reports of sexual violence on children involving penetration.

Findings by international studies in this area show that sexual violence of this type leaves no physical marks. Children in these circumstances cannot make themselves understood or express themselves due to several factors, such as their young age; their language difficulties as a result of a physical, hearing, psychosocial and/or intellectual disability; discrimination by adults against women, girls and boys with disabilities, and lack of credibility.

Despite this reality being a long-lasting type of violence involving incestuous relations and leading to unwanted pregnancies, complicity by parents and the community constitutes an added difficulty. This is a serious issue, as the lack of
complaints to the authorities leads to a lack of cases to be pursued, punished and redressed.

9 For decades, Chile has engaged in prophylactic or health practises involving forced surgical sterilisation, as a response to the scourge of sexual violence. Chile recognises that such practises involve mainly people with disabilities or the “mentally ill”, and it is even part of university course curricula for healthcare students.

Recently, in the area of public health, this traditional practice that violates the right to parenthood mentioned in Article 23 of the CRPD is known as “positive eugenics”, regarding pregnancy in women and girls with disabilities and in particular, psychosocial and intellectual disabilities and people with mental illness. We denounce that these obsolete practices, which have been regulated for thirteen years by Regulation no. 72, have not been eliminated, despite the provisions of Law 20.584 on the Right to Health, which bans eugenics nationwide.

Since the year 2000, mental health is regulated by D.S. 570, and by the corresponding regulation issued by the Ministry of Health. The regulations for the recently-enacted Law 20.854 have not yet been adopted, nor have obsolete regulations been repealed, due to a failure to comply with Law 20.500 on citizens’ participation, and failure to consult closely with DPOs, in line with the CRPD, according to a decision by the Comptroller General of the Republic.

Old-style practices of mass sterilisation of people with disabilities and widespread infringements of the rights of people with disabilities to maternity and parenting, have been limited over the past decade to people with psychosocial or intellectual disabilities by Ministry of Health's Regulation no. 72, which concerns irreversible surgical sterilisation.

The body set up by the Health Ministry to manage applications from relatives for ‘forced and regulated sterilisation’ and other irreversible treatments is called the National Commission for the Protection of People with Mental Illness (CNPPEM in Spanish). It is composed of members nominated directly by the health minister, and by an executive secretariat made up of paid professionals and civil servants.

Members are entitled to review a wide range of detailed documents containing sensitive information about the individual with disabilities or ‘mental illness', before deciding whether or not to approve an irreversible surgical procedure, including information regarding the debatable but indispensable condition of the capacity to offer consent or informed consent.
Most requests are submitted by the individual's direct family upon the onset of puberty; pre-pubescent children and adolescents are generally provided with reversible contraceptive methods, but not young people.

10 In relation to the work carried out by the CNPPEM, we believe its decisions are biased. People representing users at national level continually appeal against its decisions due to systematic discrimination against users of mental healthcare services. The Convention on the Elimination of All Forms of Discrimination against Women, and the recently-adopted national legislation known as the Zamudio or Anti-discrimination Act, are also subject to violations by the state with regard to women and girls with disabilities.

The most common grounds for discrimination are poverty or social vulnerability; unemployment; youth; lack of qualifications; social risk and weak family structure, plus the most important factor: dependence as a result of intellectual, psychosocial or multiple disabilities.

Finally, after prolonged deliberations and on sanctioning an irreversible medical procedure, the CNPPEM healthcare staff often decree that it be formally noted and the individual's family be formally notified that "surgical sterilisation does not protect the patient against sexual abuse, and measures to protect against sexual violence continue to be the family's responsibility."

This is due to the fact that, in addition to sexual violence, there is a presumed greater susceptibility or risk of the family neglecting the individual. All practices of this type, carried out under the aegis of civil law, are contrary to the CRPD and in particular, violate CRPD articles 12, 15 and 17.

11 We would also like to highlight the existence of other rules arising from obsolete and unregulated surgical practices which have yet to be revoked, such as the neurosurgical mutilations known as 'irreversible or psychosurgical treatments involving people with severe psychosocial disabilities'.

Ministry of Health's rules in this area in Chile include provisions for this type of neurosurgery as a last resort in cases of obsessive-compulsive disorder and refractive obsessive-compulsive disorder, but authorisation can only be granted after it has been proved that intensive cognitive behavioural therapy has been applied unsuccessfully.

Despite attempts by the executive secretariat to retain control over these surgical practices, and to ensure they are only performed in approved public healthcare facilities, thus excluding psychiatric hospitals, it has not proven possible to put in place monitoring protocols to measure the 'benefits to the health system', due to a
complete lack of cooperation by the doctors involved, families turning to private clinics, and some families even going abroad to seek treatment.

Consequently and despite implementing these rules, no serious scientific debate has taken place in this area. These rules, currently in place in Chile, are completely at odds with the CRPD, which remains the highest mandatory regulatory framework in the country.

We wish to express our concern to the CRPD Committee regarding the failure as yet to revoke regulations governing the use of electroconvulsive therapy derived from former Regulation 570. These norms have, for thirteen years, regulated this invasive and potentially ineffective treatment, which was used on most people with mental health problems or psychosocial disabilities, and which is now limited to people with refractory major depression.

We have confirmed that the perverse and cruel effects of electroconvulsive therapy have not been taken into account adequately in relation to possible ‘therapeutic benefits’, such as in the questionnaire regarding the informed consent of the individual who is the ‘subject’ of this medical practice, which has already been banned in other countries.

The most serious negligence consists of not informing people with mental health problems or psychosocial disabilities of the high risk of cardio respiratory arrest, among other risks, during this ‘therapeutic procedure’. Electroconvulsive therapy is also considered cruel, inhuman or degrading treatment and should be banned in line with the CRPD.

Other cases of negligence which have been noted are the result of specialist medical expertise in public psychiatry services. This is a serious matter because there is a lack of suitable medical staff, and in particular of anaesthesiologists who are trained in this psychiatric procedure, and this is causing some controversy. In this respect, organisations of family members have reported cases of medical negligence in the use of anaesthetics which can lead to severe psychological trauma and broken bones in mental patients.

Access to information aimed at the public and citizens is even more limited in the case of women and girls with disabilities. AIDS prevention, sexually transmitted diseases, information on rights and mechanisms to protect the exercise of these rights, access to sexual and reproductive healthcare, among others, remain inaccessible to women with different types of disabilities, and especially to those who live in places which are far from the capital.

We have evidence that Chile is failing to comply with CRPD Article 11 in terms of guaranteeing protection for women and girls with disabilities in the event of a
situation of emergency or natural disaster. When Chile was recently hit by an earthquake, deaf people did not have access to information.

The country was cut off for months and there were no accessible communication channels to enable people with disabilities, and in particular women and girls with disabilities, to avail of rescue activities, transfers and national reconstruction efforts. Persons with disabilities affected by the earthquake have, to date, yet to benefit from these efforts and investments.

15 We shall now go on to put forward our proposals regarding CRPD Article 9 and outline our concerns as women and girls with hearing, visual and physical disabilities belonging to CIMUNIDIS-Chile.

We begin by quoting CRPD Article 9:

To enable people with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to people with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility...

15.1 We wish to raise our concerns to the CRPD Committee of Experts regarding Chile, which has failed to implement effective policies to introduce the concept of ‘intersectionality’, as it is set out in Law 20.422 (Article 3, section d), which is understood to be the principle by which the rights of people with disabilities must be mainstreamed in policies on all public issues.

This results in systemic institutional and structural violence against women and girls with disabilities, and in particular against deaf women and girls, whose rights to access information, to be taken care of by valid interlocutors, and to express their decisions and opinions in Chilean sign language, are being violated, despite the fact that these rights are recognised in Article 26 of the aforementioned law.

All Chilean citizens have equal right to access, to be informed, to participate and to provide input to services and resources delivered by each state agency, but in practice the policy is to ‘refer’ these citizens to services specifically aimed at ‘the disabled’.

15.2 The Convention on the Rights of Persons with Disabilities and Law 20.422 establish as guiding principles ‘independent living’ (Article 3, section a); state promotion of personal autonomy (Article 12); recognition of sign language as a
means of communication used by the deaf community (Article 26), and the requirement for public buildings to be accessible and usable (Article 28).

However, public healthcare provision continues to be a serious obstacle for people with visual and hearing disabilities, and in particular for blind and deaf women and girls, for the following reasons (inter alia):

a) Administrative care systems and healthcare staff do not have the resources or accommodations required by people who are deaf, hard of hearing or blind.

b) The health system does not cater for the right to choose a means of communication involving independent and competent interpreters who can properly transmit the reason for the visit.

c) The doctor in charge fails to explain directly and personally to the individual what is happening during the visit, the diagnosis, the treatment he or she is suggesting or the need to be careful with certain contraindications.

d) Blind and deaf people are asked to attend visits with a relative, a friend or another person who can interpret for them. Not only is this in stark conflict with the principle of independence; it also raises serious problems related to privacy and confidentiality.

Our case is based not just on constitutional and international sources, but also on the spirit behind Article 8 of Law 20.422, which calls for accommodations to be made in “environments, products, services and procedures to ensure non-discrimination... thus enabling any individual with a disability to participate equally in relation to other citizens”. This opens the door to possible legal actions against those who deny this kind of treatment.

It appears the state does not understand that women with disabilities have sexual and reproductive rights; very often these are undermined by agreements between family members and doctors. Chile does not uphold the right of persons who are deaf or blind, including women with these disabilities, to doctor-patient confidentiality and to informed decision-making by the patient. The state does not understand that the right to communication enshrined in CRPD Article 9, section (f) on access to information for all people with disabilities, is being violated widely in hospitals and doctors’ surgeries.

15.3 Article 25 in Law 20.422 states that “All public service campaigns financed using public funding, propaganda during elections, presidential debates and national channels which broadcast on television or are available through audiovisual methods must be broadcast with subtitles, Chilean sign language and audible translation for blind people.”
This is not a matter of little importance for women and girls with disabilities in Chile, as government public service campaigns are not made available with Chilean sign language, subtitles or audible translation to make them accessible. Some examples include campaigns on services available on social networks, on employment, on protection programmes for women and their children, and of course the lack of communication in the event of emergencies and crisis caused by natural disasters such as the earthquake which struck Chile in 2010.

The government should adopt regulations involving the ministry for planning, the transport and communications ministry and the general secretariat. In fact this should have been carried out in July 2010 but it wasn't, and by February 2013 this requirement should have been ‘fully met’.

It has taken Chile around three years to create regulations enabling people to demand that the requirements of the aforementioned Article are met. People with hearing and visual impairments, and especially women and girls with these disabilities, are still subjected to a situation in which they are ignored and they rely on others for communication and information from all audiovisual and television outlets funded through public funds. These are vital in the case of national channels, as they will enable them to participate as citizens and vote in the 2013 elections for those who will run the country.

Women and Girls with Disabilities Empowerment Group Chile (CIMUNIDIS-Chile)

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Chapter 46

International Disability Alliance.

IDA Submission to the CRPD Committee's General Discussion on Women and Girls with Disabilities.
9th Session, 17th of April, 2013.

The International Disability Alliance (IDA) is a network of global and regional organisations of people with disabilities (DPOs), currently comprising eight global and four regional DPOs. With member organisations around the world, IDA represents over one billion people worldwide living with a disability, which constitutes the world's largest and most frequently overlooked minority group. IDA's mission is to promote the effective implementation of the UN Convention on the Rights of Persons with Disabilities, as well as compliance with the CRPD within the whole UN system, including in the work of the treaty bodies.

IDA welcomes the initiative of the Committee on the Rights of Persons with Disabilities (hereinafter “the Committee”) to hold a Half Day of General Discussion on Women and Girls with Disabilities, which provides an important forum for raising awareness about and discussing the rights of women and girls with disabilities. IDA encourages the Committee to adopt a General Comment following these discussions, which can serve as guidance to identify issues for states to address in their policies, programmes and in their reporting obligations to the Committee, as well as guidance to other relevant stakeholders on the respect, promotion and fulfilment of the rights of women and girls with disabilities.

Women and girls with disabilities experience multiple discrimination based on their gender and disability as well as other characteristics, which places them at a higher risk of infringement of the enjoyment and exercise of all their rights, given the universal, interdependent and indivisible nature of human rights.

In particular, they are subjected to gender-based violence; sexual abuse; neglect; maltreatment; harassment and exploitation both within and outside the home, at school, in the workplace, in the community and when confined in institutions. This violence includes sexual violence; rape (also marital rape); forced marriage; female genital mutilation (FGM), and other harmful practices.

Women and girls with disabilities have consistently been the targets of harmful practices in efforts to hide, alleviate or correct their disabilities, and to the extent of eliminating individuals with disabilities altogether, including taking measures...
concerning women with disabilities to prevent the birth of future children presumed to have disabilities. Girls with disabilities are particularly vulnerable to harmful practices exercised by their family or communities.

In this regard, newborn girls with disabilities are more likely to be murdered in different regions across the world due to a lack of family's capacity or willingness to take care of a child considered to be a burden, and girls with disabilities are three to five times more likely to be sexually assaulted and raped than girls without disabilities.\textsuperscript{1079}

Despite the grave nature of these violations, access to justice frequently remains out of reach for many women and girls with disabilities due to legal, attitudinal, communicational, informational and physical barriers, leaving them without access to justice, remedies or redress.

It is recognised that there are numerous areas in which women and girls face inequalities, including education; employment; participation in political realms, and health care. However, this paper will limit itself to explore the three themes included within the Half Day of General Discussion, namely: intersections of discrimination; violence, and sexual and reproductive rights, together with access to justice on account of its intimate link to the enjoyment and exercise of the rights concerned.

In conclusion, concrete recommendations are proposed to the Committee with a view to fulfilling its mandate to protect and promote the human rights of women and girls with disabilities (pp 12-14).

**Intersections of Discrimination.**

It is indisputable that individuals are not one-dimensional, but are instead composed of multiple identities that have an impact on the accumulation of their experiences, including their lived experiences of discrimination. Women and girls with disabilities are most often subject to multiple discrimination, that is; differential treatment on account of their gender and their disability.

There is no doubt this may be compounded by discrimination on the bases of other features of their identity such as race; ethnicity; indigenous or social origin; religion;

language; sexual orientation; nationality; political or other opinion, etc. Whilst
discrimination on more than one grounds may operate separately in different
circumstances, “intersectional discrimination is the term widely used to describe
situations in which two or more grounds operate inextricably as the basis of
discrimination.”

This means that had the individual not possessed each one of the protected
characteristics, they would not have been subjected to discrimination. Justice
L’Heureux-Dubé of the Supreme Court of Canada described it as follows: “[...] it is
increasingly recognised that categories of discrimination may overlap, and that
individuals may suffer historical exclusion on the basis of both race and gender, age
and physical handicap or some other combination.”

Justice L’Heureux-Dubé further argues: “[...] categorizing such discrimination as
primarily racially oriented, or primarily gender-oriented, misconceives the reality of
discrimination as it is experienced by individuals. Discrimination may be experienced
on many grounds, and where this is the case, it is not really meaningful to assert
that it is one or the other. It may be more realistic to recognise that both forms of
discrimination may be present and intersect.”

Women and girls with disabilities often find themselves victims of multiple
discrimination but also intersectional discrimination, which manifests in violations of
their rights, not least through violence and the denial of their sexual and
reproductive rights, as it will be elaborated upon below.

For example, women with disabilities are more likely to be subjected to forced
interventions that infringe their reproductive rights, such as forced sterilisation, than
women without disabilities and men with disabilities. A study has shown that
women with disabilities are more likely to be subject to guardianship proceedings for
the formal removal of their legal capacity.

This facilitates and may even authorise forced interventions. Such non-consensual
treatment is perpetrated against them on account of the interaction and
intersection of their gender and disability, which concurrently lead to such practices,
thus seeking to control women’s bodies in their reproductive function. Moreover,

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1080 Paola Uccellari, “Multiple Discrimination: How Law can Reflect Reality” The Equal Rights Review, vol 1
1081 Dissenting opinion in Mossop (1993), Supreme Court of Canada.
1082 According to the 2009 survey of the Austrian Institute of Legal and Criminal Sociology (ILCS), 60%
Kennzahlen für die gerichtliche Sachwalterrechtspraxis als Grundlage für die Abschätzung des Bedarfs
these practices subsequently manifest eugenic objectives on the basis of disability, in order to prevent women with disabilities from giving birth to children with disabilities.

The resulting myriad of violations of rights includes the right to non-discrimination; freedom from torture and ill-treatment; protection of personal integrity; right to legal capacity; right to family; right to health, and right to access to justice.

Similarly, girls with disabilities face intersectional discrimination on account of their age, gender and disability when subjected to sexual assault. It is this triple intersection of traits, which concurrently reflects and produces a perceived and actual situation of vulnerability and exclusion, rendering possible such an act.

The perpetrator may target the disabled girl for any of the following reasons, and most likely due to a combination of them: because she is perceived to be innocent, weak, passive, unable or unlikely to speak out, or unlikely to be believed by others to be the object of a sexual assault. Such acts result in multiple violations of rights, including protection from discrimination; freedom from torture and ill-treatment; protection from violence; abuse and exploitation; protection of personal integrity, and access to justice.

The intersections of multiple discrimination have been recognised as a significant barrier to the enjoyment and exercise of human rights by UN treaty bodies. In addition to the concern shown by the CRPD Committee,1083 intersectional and multiple discrimination including on the basis of gender and disability, have been the subject of Concluding Observations by the CEDAW and CRC Committees.1084

Whilst it is an encouraging sign that treaty bodies are calling on states to take notice of and address intersectional and multiple discrimination, within domestic

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jurisdictions there continues to be a disconnect between the lived experiences and realities of women and girls with disabilities, as well as on the basis of other multiple grounds of identity, and between the law and its application.

This results in the sustained denial of the recognition of the enjoyment and exercise of rights and remedies on an equal basis with others, as well as their institutionalised marginalisation in society.

Apart from a handful of jurisdictions, most states do not recognise multiple and intersectional discrimination. Most equality and anti-discrimination laws and provisions across the world categorise identity and require each protected characteristic to be dealt with in isolation. Such an approach is divorced from human experience, necessarily falls short of reflecting peoples’ sense of self, and thus fails to protect their human dignity.

For example, in some jurisdictions, victims of discrimination can only bring a complaint of discrimination with respect to one ground because multiple and intersectional discrimination is not provided for in the law. And where a remedy can be sought and obtained with respect to one aspect of the multi-dimensional discrimination, this fails to recognise the heightened disadvantage experienced by the victim, and the corresponding heightened damage caused, and cannot adequately provide redress nor restore their individual dignity.

However, when intersectional discrimination is recognised in the law and infuses the determination of liability, it is more likely that it will also figure in the pronouncement of remedies. Some jurisdictions apply this practice and facilitate the bringing of complaints on multiple and intersectional grounds of discrimination, recognise the aggravating circumstances of such a finding and ensure that the awards of damages are duly reflected in order to provide effective remedies that restore the full scope of injury and disadvantage caused by this form of discrimination.

The recognition of intersectional and multiple discrimination has significant implications for policymakers: “if policymakers fail to look at multidimensional aspects of discrimination, they will identify the most obvious problems of the group as a whole, but will miss the less obvious specific concerns of the groups within groups... In failing to conceive of the problems occasioned by multiple discrimination, the law provides no motivation to tackle them.”

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1087 Id p 29.
Clearly, the roles of data collection and consultation are essential to ensure that intersections and interactions between and among groups, such as women and girls with disabilities, who are normally invisible in terms of policies with respect to women, disabled people and non-discrimination, are exposed in order to ensure that laws and policies are better formulated and tailored.

They are also crucial in order to ensure that those laws and policies are informed and evidence-based through consultations, to meet their specific needs and to uphold their rights in the context of their diverse lived experiences, and to eliminate decision-making based on stereotypes.1088

Violence against Women and Girls with Disabilities.

Women and girls with disabilities suffer violence in the home, at institutions and within the community. This violence is perpetrated by family; caregivers; healthcare or school personnel, and strangers. These acts of violence may include rape (also marital rape); forced marriage; forced abortion; forced contraception; forced sterilisation; female genital mutilation (FGM), and other harmful practices in peacetime, conflict and post conflict contexts.

It has been documented that women and girls with disabilities are rendered more vulnerable to these practices: almost 80 percent of women with disabilities are victims of violence, and they are four times more likely than other women to suffer sexual violence.1089 Prevailing stereotypes (e.g. women with disabilities seen and treated as asexual beings), as well as structural factors (e.g. institutionalisation of women and girls with disabilities in residential institutions), contribute to the continued practice of violence against women and girls with disabilities.1090

Women and girls with disabilities are also subjected to the same harmful practices committed against women and girls without disabilities, with consequences that sometimes aggravate existing disabilities, create new ones, or which magnify their already present vulnerability and social exclusion.

Hence, practices such as female genital mutilation (FGM), forced marriage, and rape (including marital rape, and rape committed by people living with HIV/AIDS on the

1088 Id p 42.
1090 See also Special Rapporteur on violence against women, Report on violence against women with disabilities, A/67/227, 3 August 2012.
basis of the myth of virgin cleansing\(^{1091}\) are commonly exercised on women and girls with disabilities with impunity.

In some cultures, parents and families arrange the marriages of women and girls with disabilities, who have no say or choice in the matter.\(^{1092}\) The reason predominantly cited by parents for these forced arrangements is to ensure a form of security for their disabled children for when parents and/or family members are no longer able to fulfil their caregiving role.

Other reasons for forced marriage of women and girls with disabilities include: obtaining assistance for ageing parents; obtaining financial security for the person with a disability; believing the marriage will somehow “cure” the disability; a belief that marriage is a “rite of passage” for all young people; mistrust of external (e.g. social care/health) carers, and a fear that younger siblings may be seen as undesirable if older sons or daughters are not already married.\(^{1093}\)

The consequences of forced marriage can be the same for women and girls with disabilities as for those without disabilities: marital rape, domestic violence exercised by their spouse or extended family, domestic servitude, abandonment by their spouse, and exploitation of an individual’s finances and property.\(^{1094}\)

For all victims of forced marriage, leaving their marriage, family and community may be the only alternative, but many will require support to do this. Women with disabilities may require greater levels of support for longer periods of time, and in many cases they may have no experience of life outside the family, and may lack the

\(^{1091}\) It is a widely held belief in certain communities that persons living with HIV/AIDS can be cured of their infection by engaging in sexual intercourse with a virgin as a form of ritual cleansing. Persons with disabilities, often viewed by wider society as genderless and sexually inactive, are therefore targets by those believing in the myth. The myth also extends to women who are divorced or who have had an abortion who have been told by traditional healers in certain communities to have sex with someone with a limp or a disability in order to improve their chances of remarrying, or to cleanse themselves after an abortion. The latter cases involve female perpetrators with respect to boys with disabilities.

\(^{1092}\) According to research and statistics related to the forced marriage of persons with intellectual disabilities, it appears that the practice is imposed as much on men with intellectual disabilities as it is on women with intellectual disabilities; “... findings from research suggest that forced marriage involving people with learning disabilities may be occurring at a similar rate for men and women, although the abusive consequences are likely to disproportionately affect women.” Forced Marriage and Learning Disabilities: Multi-Agency Practice Guidelines, (December 2010) p. 6; [http://www.fco.gov.uk/resources/en/pdf/travel-living-abroad/when-things-go-wrong/fm-disability-guidelines](http://www.fco.gov.uk/resources/en/pdf/travel-living-abroad/when-things-go-wrong/fm-disability-guidelines). These practice guidelines have been developed to assist professionals encountering cases of forced marriage of people with learning disabilities, it draws on research undertaken by the Ann Craft Trust in partnership with the Judith Trust and statistics collected from reports to the Forced Marriage Unit (a joint Foreign & Commonwealth office and Home office Unit).

\(^{1093}\) Id p 13.

\(^{1094}\) Id p 14.
financial, physical, social or moral support to leave and start again. Access to victim support services and access to justice is discussed later on.

**Sexual and Reproductive Rights.**

Sexual and reproductive health rights of women and girls with disabilities have traditionally been denied, ignored or at best misunderstood by medical and health professionals, policymakers, and the wider society.

The medical model continues to dominate, according to which women with all types of disabilities, and in particular people with intellectual and psychosocial disabilities are viewed as unable or unfit to engage in sexual activity, and unable or unfit to exercise parental rights and responsibilities, and deemed unworthy to be informed and educated about their right to sexual and reproductive health.

As a result of this long-standing and continuing discrimination, women and girls with disabilities have frequently been considered genderless or asexual. In the case of institutional settings, staff often reject the idea that “patients” or “residents” are interested in engaging in intimate relationships, and any display of sexual interest or conduct is considered as a treatable consequence of their condition.

Due to widespread attitudes of neglect and psychiatrisation in institutional settings and in society, the right to sexual autonomy is prohibited, and no efforts are taken to provide information or education about healthy sexual relationships and reproductive health. The failure to address these important issues increases the risk of sexual abuse and exploitation, and the transmission of HIV and other sexually transmitted infections (STIs).

Women and girls with disabilities are also subjected to forced abortion; forced contraception (including pills, injections and intrauterine devices –IUDs), and forced sterilisation (hysterectomy, tubal ligation, essure) within institutions and the community. In some institutions, there may be formal or informal policies on forced contraception for women which may be carried out without their knowledge.

Women and girls with disabilities may also be lawfully forcibly sterilised against their will and without their knowledge in the community, upon their families’, guardians’ and doctors’ decision, both with and without court approval.

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1095 Id p 14.
Forced Sterilisation.

Laws on sterilisation across the world, where they exist, commonly prohibit sterilisation without the free and informed consent of the individual concerned, and some also carry a blanket prohibition on the sterilisation of children. Yet these same laws commonly possess an exception when it comes to women and girls with disabilities.

Hence sterilisation can be performed without the consent of the individual concerned where any or a combination of the following applies: that the individual is incapable of giving consent; is unfit to raise children; has been legally incapacitated and placed under guardianship, custodianship or another substituted decision-making regime; or is placed under an involuntary hospitalisation order.

Some jurisdictions justify forced sterilisation by characterising the intervention to be: in the “best interest” of the individual; required by medical necessity as a threat to life or health; on the basis of “medical scientific knowledge that a child would be born with severe inborn physical or mental illnesses,” or on account of serious danger for the pregnant woman’s psychological state of health, which may include the danger of serious and persistent suffering that could be caused by the forcible removal of her child upon a court’s decision.

The reasons used to justify forced sterilisation of women with disabilities generally fall into three broad categories as reflected in the laws. First, in order to eliminate

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1097 Among others, Germany, Moldova, UK, Spain, Hungary.
1099 Among others, Spain, Portugal, Moldova, Germany, Croatia, Hungary.
1100 Australia, see Mental Health Act 2006 (NSW); draft WA Mental Health Act.
1101 Among others, the UK, New Zealand.
1102 Among others, Lithuania, Croatia, Austria, Germany, Hungary.
1103 According to Article 2 of the Croatian Law on Health Measures for the Realisation of the Right to Free Choice on giving Birth (Official Gazette 814/78), the right to freely decide on giving birth can be limited only to protect health. For persons over the age of 35 without full legal capacity, their sterilisation can be requested by their parents or their guardian with the consent of the guardianship authority (Article 10) and it is considered that consent is implicit in the request (Article 11)). See also Croatian State report to the CRPD Committee.
1104 s 1905, Civil Code of Germany.
the re/production of children with disabilities, similar to eugenic policies and practices aimed at eliminating certain ethnic and marginalised groups.1106

Second, for the good of the state, community or family which is centred on the “burden” that disabled women and girls and their potentially disabled offspring place on the resources and services funded by the state and provided through the community. A related line of argument is the added burden of care that menstrual and contraceptive management1107 places on already overstretched families and carers.

Third, the idea of the incapacity of women with disabilities for parenthood, which is based on widely held societal attitudes that women with disabilities are incapable and cannot be competent parents, leading to pressures to prevent women with disabilities from becoming pregnant.

All of the above reasons are discriminatory in nature and act to exclude women with disabilities from the enjoyment and exercise of their rights. Further, regimes of substituted decision making imposed on people with, in particular intellectual disabilities, act to legally remove decision making and the exercise of rights from the individual, and have them substituted by a guardian.

The presumption here is that a guardian is better placed to make choices in the best interest of the individual concerned. Thus, ”Often forced abortion, sterilisation, etc. are performed on disabled girls and women under the pretext that they are in her “best interest”. Recognition of legal capacity can help shift away from the best interest approach to a universal capacity approach.”1108

The principle of best interest, almost exclusively applied to children, is often used to justify the taking of decisions by third parties on behalf of people with disabilities who are deemed to lack capacity, the purported aim being to protect such people from harm in their “best interest” as interpreted by third parties.1109

1106 See Buck v Bell, 274 U.S. 200 (1927) (the majority opinion stating that “it is better for all the world, if instead of waiting to execute degenerate offspring for crime or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind... Three generations of imbeciles are enough.”).
1109 In the context of best interests, “the vocabulary used includes terms such as non/therapeutic, in/voluntary, un/authorised, un/lawful and non/consensual sterilisation. Each of these terms derive from particular perspectives which take as their starting point the gendered, disablist view that the menstruation, sexuality and reproductive lives of disabled women and girls are the legitimate domain of legal, medical or other experts to determine.” L Dowse, Women with Disabilities Australia (WWDA), “Moving Forward or Losing Ground? The Sterilisation of Women and Girls with Disabilities in Australia”
The best interest principle and the institution of guardianship in effect perpetuate discriminatory attitudes against people with disabilities, who are considered as incapable and in need of care or treatment, and continue to facilitate the practice of forced sterilisation of women with disabilities.

Moreover, women and girls with disabilities are not educated nor informed of their sexual and reproductive rights. Widespread stereotypes, which have been incorporated into existing legal provisions, continue to expound that without sterilisation, pregnancy cannot be prevented by other reasonable means.1110

Instead of educating and informing women and girls with disabilities on how to protect themselves against sexual abuse and unwanted pregnancy, institutions and caregivers resort to forced measures of sterilisation or contraception. There is no monitoring of the efforts taken to ensure that information and education are made available as an alternative means to prevent abuse and unwanted pregnancy.

Comprehensive steps are not taken either as a common practice to ensure that information, education and services on sexual and reproductive health are available in accessible formats and languages, including sign languages, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication.

In June 2011, the International Federation of Gynecology and Obstetrics (FIGO) issued new guidelines on female contraceptive sterilisation and informed consent. The FIGO guidelines state very clearly that sterilisation for prevention of future pregnancy cannot be ethically justified on grounds of medical emergency, and that a woman’s informed decision must be respected, even if it is considered liable to be harmful to her health.

In this sense, the 2011 FIGO recommendation states: “Sterilisation for prevention of future pregnancy is not an emergency procedure. It does not justify departure from the general principles of free and informed consent. Therefore, the needs of each woman must be accommodated, including being given the time and support she needs – while not under pressure, in pain, or dependent on medical care – to consider the explanation she has received of what permanent sterilisation entails and to make her choice known.”1111

1110 § 1905, Civil Code of Germany.
It goes on to state that only women themselves can give ethically valid consent to their own sterilisation. Family members – including husbands, parents, legal guardians, medical practitioners and, for instance, government or other public officers – cannot consent on any woman's or girl's behalf.

In a recent report focusing on torture in the context of healthcare, the Special Rapporteur on Torture reiterated that forced sterilisation is an act of violence, and that “forced interventions [including involuntary sterilisation, are], often wrongfully justified by theories of incapacity and therapeutic necessity inconsistent with the Convention on the Rights of Persons with Disabilities, are legitimised under national laws, and may enjoy wide public support as being in the alleged “best interest” of the person concerned. Nevertheless, to the extent that they inflict severe pain and suffering, they violate the absolute prohibition of torture and cruel, inhuman and degrading treatment.”

In addition, at the CEDAW Committee’s last session in February 2013, strong language against the forced sterilisation of women with disabilities was a prominent feature of its Concluding Observations on Hungary: “Eliminate forced sterilization of women with disabilities by training health professionals, raising their awareness toward their own prejudices, and repeal or amend Act CLIV of 1997 which enables doctors to perform forced sterilizations on very wide grounds, contrary to international health standards on free and informed consent of people with disabilities.”

Attesting to the CEDAW Committee’s recognition of the gravity of the violation, it also designated this particular recommendation as one for which immediate follow up was required within one year.

Access to Fertility Treatments.

Women with disabilities are also subject to discrimination and violation of their right to found a family when they are denied access to fertility treatment. This could be

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1113 Special Rapporteur on Torture, Report on torture in the context of healthcare A/HRC/22/53, February 2013, para. 64, see also paras 33, 48.

1114 CEDAW Committee Concluding Observations on Hungary, CEDAW/C/HUN/CO/7-8, February 2013, para. 33(b), see also para. 32.

1115 CEDAW Committee Concluding Observations on Hungary, CEDAW/C/HUN/CO/7-8, February 2013, para. 44.
for a variety of reasons, all of which are entrenched in the medical model of disability, which views the bodies and minds of people with disabilities as unsuitable or undesirable for reproduction.

For example, women with psychosocial disabilities who have trouble conceiving and require fertility treatment, can be withheld such treatment if they are deemed unfit to become parents on the basis of a psychiatric history or a medical opinion. They are denied the right to found a family on an equal basis with others because the authoritative view is that they cannot amount to anything else but their actual or perceived condition.

The same obstacles exist for women with developmental disabilities, who are most often automatically deemed unfit to be parents and hence denied fertility treatment. For people with spinal cord injuries, it is often the case that fertility treatments are inaccessible due to the costs for such treatments.

When it is one’s disability which is the cause of infertility, treatments and their costs should be within reach to ensure that people with disabilities have opportunities to conceive on an equal basis with others. And where a disability is genetically transferable, such as muscular dystrophy or cystic fibrosis, fertility treatments may offer a way to have children and break the genetic chain of the disability.

However, such solutions are rarely explored. In general, the inaccessibility of fertility treatments for women with disabilities has a negative impact on research and development to explore and find new opportunities for people with disabilities who face challenges in conceiving, or who are infertile.

**Access to Justice.**

Access to justice is a right in and of itself, and it also acts as guarantor of all rights, and as such it reflects the universality, interdependence and indivisibility of human rights. Access to justice has historically been a challenge for people with disabilities. The acts of lodging a complaint; seeking police assistance; engaging a lawyer; obtaining legal aid; testifying in court, participating in court proceedings or in investigations, among others, have, in most jurisdictions, been overwhelmingly frustrated by inaccessible mechanisms and procedures, lack of awareness and training of actors in the justice system, a lack of information, and general disability-based discrimination exercised in the law, policy and practice pertaining to the administration of justice.

Indeed, “This is the reality of the justice system for people with disabilities... sometimes the justice system remedies inequality and discrimination, and
sometimes it is the justice system itself that perpetuates that very inequality and discrimination.”\textsuperscript{1116} Without access to remedies for violations, rights are rendered meaningless and people with disabilities continue to occupy a marginalised position in society, excluded from invoking and exercising their human rights on an equal basis with others.

Despite the grave nature of the violations enumerated above, access to justice remains out of reach for many women and girls with disabilities. First, the law itself may deny judicial mechanisms from treating the complaints of women with disabilities, if they have been deprived of their legal capacity by being placed under a substituted decision-making regime such as guardianship.

While such practices violate Article 15 of CEDAW, Article 12 of the Convention on the Rights of Persons with Disabilities (CRPD) and Article 16 of the International Covenant on Civil and Political Rights (ICCPR), in many jurisdictions, women with disabilities under guardianship continue to be denied their legal personhood.

In effect, they are refused the right to take legal action without their guardian, meaning that if they have been subjected to violence or abuse by a private individual or a public institution, they are not permitted to lodge a complaint without their guardian. In cases where the guardian is the perpetrator, the arrangement clearly poses a conflict of interest in which the legally incapacitated individual is placed in a very vulnerable position, and victimised on multiple accounts.

Regardless of one’s legal capacity status, women and girls with disabilities are frequently denied access to justice because they are not considered as credible or competent witnesses, and their complaints are not taken seriously if they are reported to the authorities.\textsuperscript{1117} The police, judges and other justice delivery actors may discount their testimony on the basis of stereotypes.

In sexual assault cases, for example, society’s failure to see women with disabilities as sexual beings may result in judges and juries discounting the testimony of witnesses, while on the other hand, complaints may be disregarded because of

views and beliefs about some women with disabilities as hypersexual and lacking self-control.1118

Disability-specific stereotypes also exist: women with psychosocial disabilities may be discredited due to their mental health history; women with intellectual disabilities may be questioned on their ability to tell the truth; and women with visual and hearing disabilities, including women and girls who are deafblind, may be considered unreliable due to the fact that they cannot recount what was literally seen or heard.

Testimonies and participation in court proceedings are also often excluded on account of communication barriers, as well as the lack of accessibility and accommodations. For example, after five years of prosecutorial investigations and trial mostly without sign language interpretation, a Filipino court acquitted a man accused of raping a deaf girl.1119

In the Philippines, Supreme Court policy provides sign language interpreting only if a deaf person needs to be understood:1120 of 213 cases involving deaf parties, only 24% were appointed sign language interpreters; of 63 cases with unschooled deaf parties requiring deaf relay interpreting, only 25% were appointed interpreters; in 16 cases of gender-based violence filed by unschooled deaf complainants requiring deaf relay interpreting, only 13% were appointed interpreters.1121

Furthermore, information on legal rights and legal aid may not be available in Braille, plain language and other alternative formats. A recent study concluded that the access to rights and justice across Europe by people with intellectual disabilities is by no means guaranteed.1122 It identified the lack of support and special measures available within the justice system to facilitate access for people with intellectual disabilities, including accessibility of procedures and information.1123

1118 OHCHR Thematic study on the issue of violence against women and girls and disability, A/HRC/20/5, 30 March 2012, para 41.
1119 Communication of “R” was lodged in March 2011 against the Philippines to the CEDAW Committee under the Optional Protocol to CEDAW.
1120 Supreme Court of the Philippines Memorandum 59-2004; Supreme Court Circular 104-2007.
1123 Id. at 28 (These findings are corroborated in a “Comparative Study on Access to Justice in Gender Equality and Anti-Discrimination Law” produced at the request of the European Commission in February 2011. Available on request from the European Commission DG JUST. These studies, as well as the report on “Access to Justice in Europe: an Overview of challenges and opportunities” published by the European Union Agency for Fundamental Rights around the same time, identifies ten EU and EEA countries – Austria, Cyprus, Czech republic, France, Latvia, Liechtenstein, Norway, Poland, Romania and Sweden – where the conditions for legal standing are considered to be excessively strict, requiring people to pass a double threshold: that of having a full legal capacity and of proving their direct
Physical accessibility of police stations and courthouses is also an obstacle, whilst women and girls living in private or public institutions are denied access to lodge complaints by their physical confinement, or for fear of retribution. The lack of victim support services or access to accessible assistance and shelters also play a role in non-reporting of violence by women and girls with disabilities.

On account of these multiple attitudinal, physical, communicational, procedural and substantive barriers rooted in gender and disability discrimination, women with disabilities report negative experiences when trying to secure assistance from law enforcement officials and the justice system, and many are discouraged from coming forward again and seeking help when their first complaints were dismissed.

By their exclusion, the rights violations remain unexposed and unremedied and as a result there is a stark lack of data on the situation of access to justice for women and girls with disabilities. This invisibility maintains their vulnerability, as their needs remain unaddressed and they are unable to participate in initiatives and strategies concerning the reform of the justice system which impacts upon them.

The result is the sustained victimisation of women and girls with disabilities and the continued impunity of perpetrators which act to perpetuate and legitimise cycles of violence and rights violations.

Recommendations.

- To elaborate and adopt a General Comment following the Half Day of General Discussion which puts forward recommendations to guide states and other actors in ensuring that the perspectives of women and girls with disabilities are mainstreamed throughout all government policies and programmes engaging both public and private actors, in consultation with a diverse range of women and girls with disabilities and their representative organisations, and which calls for the systematic collection of data disaggregated by gender and disability, as well as


other neglected categories, with a view to the recognition of intersections of discrimination and evidence based law, policy and decision-making.

- To call on states to adopt legal provisions and procedures which explicitly recognise multiple and intersectional discrimination, in order to ensure the making of complaints on more than one ground of discrimination both in the context of determination of liability and remedies. To take steps to provide awareness-raising and training on multiple and intersectional discrimination to both public and private actors, and provide for research, studies and the systematic collection of data in this respect.

- To call on states in order to adopt measures to ensure that having a disability does not directly or indirectly disqualify a woman from exercising her legal capacity, and to ensure that women with disabilities have access to support that they may need to exercise legal capacity on an equal basis with others, respecting the will and preferences of the person concerned, including with regard to the exercise of reproductive and parental rights, seeking protection from violence, the right to give and refuse free and informed consent, accessing justice, the right to marry, to vote, etc.

- To call on states and non-state actors to take steps to effectively prohibit gender-based violence, such as sexual violence and abuse, including rape; forced marriage; forced abortion; forced sterilisation; FGM and other harmful practices, and adopt legislation and policies, including disability- and gender-specific and child-focused measures to protect women and girls with disabilities from gender-based violence, including putting into place accessible information and support services for victims, such as sign language, Braille, tactile communication, large print, and other alternative modes, means and formats of communication. To take urgent steps to ensure that instances of gender-based violence are identified, investigated and, where appropriate, prosecuted to combat impunity for perpetrators, and to ensure the provision of remedies and redress for victims/survivors.

- To call on states to take immediate steps to abolish legal provisions which permit forced interventions regarding the reproductive health and rights of women and girls with disabilities, such as forced sterilisation forced abortion and forced contraception, who are restricted or deprived of their legal capacity, viewed to be unfit or incapable, or on the illegitimate bases of eugenic concerns or immediate danger to the woman's life, bodily integrity, or health in case of future pregnancy, which have been recognised by international human rights and medical authorities to be discriminatory and violent, and which amount to constitute torture or cruel, inhuman or degrading treatment or punishment.
• To call on states to adopt measures to ensure that all health care and services provided to women with disabilities, including all reproductive health and mental health care and services, are accessible and are based on the free and informed consent of the individual concerned, and that involuntary treatment and confinement are not permitted by law in accordance with the latest international standards. To adopt measures to ensure that all education, information, healthcare and services relating to sexual and reproductive health, HIV and STIs, are made available to women and girls with disabilities in accessible and age-appropriate formats, including sign language, Braille, tactile communication, large print, and other alternative modes, means and formats of communication.

• To call on states to introduce into laws, policies and practices, requirements for the physical, environmental, communication and informational accessibility of all aspects of the administration of justice, including the physical accessibility of police stations, courthouses and prisons, the provision of information in alternative formats and of sign language interpretation and the provision of other procedural accommodations and measures of support to ensure that women and girls with disabilities can participate in justice systems on an equal basis with others. Moreover, To call on states to introduce compulsory training of all actors in the administration of justice (law enforcement officials, prosecutors, judges, court personnel, legal aid lawyers, private lawyers, etc) on the rights and needs of women and girls with disabilities and the barriers which they typically face in accessing justice. Consult with and actively involve women and girls with disabilities in the formulation of these laws and in the design and conduct of training.

• To call on states to systematically collect data on women and girls with disabilities with respect to all government sectors and all rights, including discrimination, violence, sexual and reproductive health and rights, access to justice, and use disaggregated data and results of studies to develop laws, policies, programmes, awareness-raising campaigns and training directed to state actors, service providers, civil society and women’s rights organisations, as well as to women and girls with disabilities and their families, to ensure the effective and meaningful participation of women and girls with disabilities in society.

• In accordance with Articles 4(3), 6, 7 and 29 of the CRPD, to call on states to closely consult with and actively involve women and girls with disabilities in legislative and other initiatives to remove barriers and to improve women and girls’ experience of equality, protection from violence and harmful practices, sexual and reproductive rights, access to justice, through ensuring the application of reasonable accommodation and measures of accessibility to facilitate their meaningful participation in all stages of legal and policy reform and in training and awareness-raising. To call on states to continuously actively involve and consult with women
and girls with disabilities in the monitoring and evaluation of adopted laws, policies and programmes concerning them.

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Chapter 47
Human Rights Watch.

3rd of April, 2013.

Members of the United Nations Committee on the Rights of Persons with Disabilities.

Re: Half Day of General Discussion on Women and Girls with Disabilities.

We write in advance of the upcoming Committee on the Rights of Persons with Disabilities’ (Committee) Half Day of General Discussion on Women and Girls with Disabilities, to highlight areas of concern that we hope will inform your discussion of these issues.

This submission outlines violations of the rights of women and girls with disabilities in contravention of Articles 12, 15, 16, 23 and 25 of the Convention on the Rights of Persons with Disabilities (CRPD). This submission is based on our reports, ‘As If We Weren’t Human: Discrimination and Violence against Women with Disabilities in Northern Uganda’\textsuperscript{1126} and ‘Illusions of Care: Lack of Accountability for Reproductive Rights in Argentina’\textsuperscript{1127}, which were both published in 2010.

In addition, it is also based on advocacy materials we have developed on women and children with disabilities, and on sterilization of women and girls with disabilities.\textsuperscript{1128}

While this submission is not exhaustive of all issues facing women and girls with


disabilities, we hope to highlight the multiple-discrimination they experience, based on their disability, age and gender.

This submission highlights four key areas of concern, which we wish to bring to the Committee’s attention:

1. Sexual and gender-based violence against women and girls with disabilities.
2. Barriers to access to justice.
3. Discrimination in health and reproductive rights.
4. Discrimination in HIV services and education.

1. Sexual and Gender-Based Violence Against Women and Girls with Disabilities (Article 16).

Article 16 of the CRPD requires that governments take all appropriate legislative, administrative, social, educational and other measures to protect people with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

Article 16 also requires that governments put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against people with disabilities are identified, investigated and, where appropriate, prosecuted.

One fundamental concern is the lack of reliable data on the number of women and girls with disabilities who experience sexual and gender-based violence. This data is crucial in order for governments and UN agencies, such as the United Nations Population Fund (UNFPA), to develop appropriate programmes and services for this marginalised and vulnerable population.

A number of international and treaty bodies, including the UN Secretary General, have commented on the general lack of data on violence against women and girls, an issue that needs attention through the collection of disaggregated data.1129

According to a number of studies, it is estimated that women with disabilities are 1.5 to 10 times more likely to be abused, either physically or sexually, by a family member or caregiver than women without disabilities.1130 The World Health

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1129 See e.g. Background Documentation for Secretary General’s study of violence against women, A/61/122/Add. 1 at 79.

Women and girls with disabilities face a heightened risk of physical and sexual violence, including rape, because of perceptions that they are less able to defend themselves or demand justice for violations. Other factors include: social exclusion; limited mobility, as well as lack of support structures and communication barriers. Women with disabilities are often trapped in abusive relationships because they may be dependent on caregivers or others, and due to their very real poverty.

States have a duty to implement measures to prevent violence committed by both public and private actors against women and girls with disabilities. However, programmes aimed at the prevention of gender-based violence in general are lacking,\footnote{1132 See e.g. Commission on the Status of Women, Prevention of violence against women and girls: Report of the Secretary-General, E/CN.6/2013/1 (2013) at 5.} and where such programmes exist, they rarely include women and girls with disabilities, especially those with psychosocial or intellectual disabilities.

Research has pointed to the lack of education about issues related to violence against women and girls with psychosocial or intellectual disabilities as one important obstacle to maintaining safety, especially in the context of interpersonal violence.\footnote{1133 VAWnet, "Interpersonal Violence and Women with Disabilities: A Research Update", September 2009, available at http://vawnet.org/Assoc_Files_VAWnet/AR_WomenWithDisabilities.pdf.} Community-based victims’ services agencies, including sexual abuse programmes, shelters, and other crisis programmes where they exist, as well as police departments, often lack the capacity to adequately serve women with intellectual or psychosocial disabilities in particular.\footnote{1134 Center on Self-Determination, Oregon Institute on Disability and Development, Oregon Health & Science University, "Violence and Abuse Against People with Disabilities: Experiences, Barriers and Prevention Strategies, available at http://www.directcareclearinghouse.org/download/AbuseandViolenceBrief%203-7-04.pdf}

In addition, the lack of oversight of institutions for people with disabilities means that abuses against women and girls with disabilities often remain hidden from the public, and women and girls who reside in such institutions are often isolated and, therefore, have difficulty accessing services and support.

We ask the Committee to urge governments to:

- include data on women and girls with disabilities who experience gender-based violence in the collection of data on all forms of gender-based violence;
- consult women and girls with disabilities about their experiences of sexual and gender-based violence, and in accessing services and counseling; and use this information to develop or strengthen existing programmes and services;
- develop comprehensive and far-reaching prevention programmes, including public education programmes to reduce violence against people with disabilities.

2. Barriers to Access to Justice (Article 13).

Article 13 of the CRPD requires governments to ensure effective access to justice for people with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants in all legal proceedings, including at investigative and other preliminary stages.

Under Article 13, governments must also promote appropriate training for those working in the field of administration of justice, including police. One important aspect of facilitating access to justice for women and girls with disabilities is therefore the need to make accommodations in all legal proceedings, in order to enable people with disabilities to participate fully and equally in the process, whether as complainant, defendant, or witness.

These include physical and communication needs such as ramps, accessible podiums, sign language interpretation, and Braille and large print text of court documents. This also involves training of law enforcement and legal professionals in how to communicate respectfully and interact with people with disabilities, particularly women.

Due to the stigma associated with rape, women and girls may find it difficult to report such crimes.\textsuperscript{1135} Compounded by the stigma associated with disability, women and girls with disabilities are rarely comfortable reporting sexual violence to the local authorities. The process of reporting violence is made more difficult because of long distances to travel from remote areas, a lack of accessible transport to police posts, or lack of assistance with communication barriers (such as sign-language interpreters).\textsuperscript{1136}

In a Human Rights Watch investigation conducted in northern Uganda, over one-third of 64 women and girls with disabilities interviewed by Human Rights Watch reported that they had experienced some form of sexual and gender-based violence,

\textsuperscript{1135} Uganda Domestic Violence Act, signed into law in March 2010.
\textsuperscript{1136} Disability Rights Brochure, above n 3, 5.
including rape.\textsuperscript{1137} Several women with disabilities interviewed also indicated that they had tried to seek justice for sexual and gender-based violence but failed.\textsuperscript{1138}

For example, one woman with communicative and physical disabilities had been raped while her husband was away from home, and had previously been beaten by her husband. Because of her limited physical mobility and communication, she had little recourse and almost no ability to report the assaults.\textsuperscript{1139} In other cases, women with disabilities who have experienced violence in northern Uganda have been encouraged to report assaults to local councillors instead of police because of mobility or communication barriers in accessing police services.

However, instead of investigating as police would and bringing charges, councillors often attempt to negotiate or mediate between the parties, resulting in no change in behaviour or continued violence and abuse.\textsuperscript{1140}

Due to the stigma associated with reporting sexual and gender-based violence, and the fact that the perpetrators are sometimes members of the family, the presence of an accompanying family member may discourage women and girls with disabilities from coming forward. In the case of deaf women and girls, particularly those in rural areas, many do not know formal sign language and communicate only through local signs, which mainly their close family members understand.\textsuperscript{1141}

We ask the Committee to urge governments to:

- ensure that access to justice is available for all women and girls, including those with disabilities;
- improve procedures for reporting violence experienced by women with disabilities, including by improving police responses and facilitating communication between women with disabilities and authorities;
- review national laws and procedures related to access to justice, and undertake reform in line with the CRPD.

3. Discrimination in Health and Reproductive Rights (Articles 12, 15, 23 and 25).

Article 23 of the CRPD provides that people with disabilities have the right to found and maintain a family and “to retain their fertility on an equal basis with others.” By recognizing that people with disabilities enjoy legal capacity on an equal basis with others in all aspects of life, Article 12 of the CRPD also ensures that people with

\textsuperscript{1137} Northern Uganda Report, above n 1, 7.
\textsuperscript{1138} Id., at 9.
\textsuperscript{1139} Disability Rights Brochure, above n 3, 5.
\textsuperscript{1140} Northern Uganda Report, above n 1, 35.
\textsuperscript{1141} Id., at 36.
disabilities can make their own choices, with support when necessary, including with respect to fertility and medical choices.

In addition, Article 25 clearly articulates that free and informed consent should be the basis for providing health care to people with disabilities. Medical procedures performed without consent can constitute a form of torture or other cruel, inhuman or degrading treatment, in contravention of Article 15 of the CRPD.

Sterilization is an irreversible medical procedure with profound physical and psychological effects. Involuntary sterilization occurs when a person is sterilised after expressly refusing the procedure, without her knowledge, or she is not given an opportunity to consent. Involuntary sterilization is an act of violence, a form of social control, and a violation of the right to be free from torture or other cruel, inhuman or degrading treatment.

Involuntary sterilization continues to be practised on women and girls with disabilities in numerous countries throughout the world for a variety of reasons, including eugenics-based practices of population control, menstrual management and personal care, and pregnancy prevention (including pregnancy that results from sexual abuse).1142

In many countries, governments, as well as legal, medical and other professionals and carers continue to debate and justify the practice of involuntary sterilization as being in the “best interests” of women and girls with disabilities.1143 It must be acknowledged that the decision to sterilize is often not arrived at lightly by family and caregivers, and is often made with good intentions.

However, arguments for their “best interests” often have little to do with the rights of women and girls with disabilities and more to do with social factors, such as avoiding inconvenience to caregivers, the lack of adequate measures to protect against the sexual abuse and exploitation of women and girls with disabilities, and the lack of adequate and appropriate services to support women with disabilities in their decision to become parents.

Many women and girls with disabilities face difficulties in understanding or communicating what was done to them, increasing their vulnerability to forced sterilization. A further aggravating factor is the widespread practice by legal guardians or others making these life-altering decisions on behalf of people with disabilities, or consenting to medical procedures on their behalf.

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1143 Id., at 2.
Sterilization should never be used as a substitute for proper education about family planning, the use of reversible contraceptive measures, and support during menstruation. Governments have an obligation under the CRPD to ensure access to these services, and to prevent this violation of the rights of women with disabilities.

These measures include: making sexual education and parenting programmes available and accessible; providing the necessary personal assistance and support services in the community that will reduce the risk of sexual abuse; monitoring closed settings in which women and girls with disabilities are often placed (such as orphanages, psychiatric hospitals, and institutions), and providing alternative methods of contraception which are not irreversible or as intrusive as sterilization.

In many countries, women with disabilities are particularly impacted by ignorance on the part of health care personnel about their health care needs.\textsuperscript{1144} During our research in northern Uganda, for example, we spoke with one young deaf mother in Lira who had been advised by nurses to conceive naturally and to avoid birth control, stating erroneously that birth control would result in the birth of a child with a disability. As a result, the woman stopped taking birth control. When the doctor advised her to begin birth control after she gave birth, the nurses discouraged her again.\textsuperscript{1145}

In other instances, women with disabilities face negative attitudes by health care personnel, including instances of verbal abuse for getting pregnant. Human Rights Watch documented discriminatory practices among reproductive health care providers in northern Uganda. In one case, a nurse admonished a woman with a physical disability who was unable to climb onto a bed for examination, saying “How did you get on the bed where you got pregnant?”\textsuperscript{1146}

More generally, existing clinics in Uganda cannot currently accommodate women with physical disabilities as a result of a lack of appropriate beds for delivering babies. Similarly, in research on Argentina in 2010, Human Rights Watch found that women and girls with disabilities were all but invisible in the reproductive health system. At the time, this invisibility was reflected on the logistical measures to accommodate women and girls with disabilities to the system.

There was a lack of accessible information produced about contraception and HIV, and for women with physical disabilities, hospital buildings and facilities were often

\textsuperscript{1145} Human Rights Watch interview with Victoria, deaf woman, Lira district, May 24, 2010.
\textsuperscript{1146} Human Rights Watch interview with Honorable Nalule Safia Juuko, member of parliament representing women with disabilities, Kampala, May 25, 2010.
In its report to the CRPD Committee in April 2012, the government reported that it had taken some measures to improve the provision of sexual and reproductive health information and services for women and girls with disabilities in recent years.\(^{1148}\)

In order to address past grievances and correct systemic failure to prevent harm, accountability mechanisms must be implemented, such as regular monitoring of the health system, and the underlying physical and socio-economic determinants of health, which affect an individual’s health and ability to exercise their rights.\(^{1149}\) States should develop “appropriate indicators to monitor progress made, and to highlight where policy adjustments may be needed.”\(^{1150}\)

Monitoring helps States Parties develop a better understanding of the “problems and shortcomings encountered” in realizing rights, providing them with the “framework within which more appropriate policies can be devised.”\(^{1151}\) Monitoring is also a basic component of the state obligation to adopt and implement a national public health strategy and plan of action, including right to health indicators and benchmarks by which progress can be closely monitored.\(^{1152}\)

Data based on appropriate indicators should be disaggregated on the basis of gender and disability, in order to monitor the elimination of discrimination, as well as to ensure that vulnerable communities are benefiting from healthcare schemes.\(^{1153}\)

In its upcoming discussion, Human Rights Watch asks the Committee to urge governments to:

- ban the practice of forced sterilization of all women and girls, including those with disabilities;
- ensure that reproductive health services are available and accessible for women and girls with disabilities, including through physical access,

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\(^{1147}\) Argentina Report, above n 2, 35-36.

\(^{1148}\) Argentina Report, above n 2, 35-36.


\(^{1150}\) Special Rapporteur on the right to health, “The right of everyone to the enjoyment of the highest attainable standard of physical and mental health,” September 2006, A/61/338, para. 28 (e).


\(^{1153}\) Ibid., General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (art 2, para 2), June 10, 2009, E/C.12/GC/20, para. 41.
adequately trained staff, transportation and dissemination of information about the services in accessible formats;
- combat stigma and discrimination against women with disabilities, through awareness raising and Media campaigns on the right to sexual and reproductive health for all women;
- ensure that decisions about fertility and health care are made by women and girls with disabilities exercising free and informed consent;
- adopt accountability mechanisms to correct past and future grievances and instances of discrimination;
- collect disaggregated data on the basis of gender and disability, in order to monitor the elimination of discrimination against women and girls with disabilities in health and reproductive rights.


Article 25 of the CRPD calls for the “highest attainable standard of health without discrimination on the basis of disability”. Article 25 also requires that health services for people with disabilities be “gender-sensitive” while providing “the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes”, and calls on governments to “provide these health services as close as possible to people’s own communities, including in rural areas”.

A 2004 World Bank study suggests that people with disabilities globally are infected with HIV at a rate of up to three times greater than non-disabled people.1154 Women and girls with disabilities are particularly vulnerable to HIV infection, and especially unlikely to have access to retroviral drugs.1155 All of the risk factors associated with HIV are compounded for women with disabilities: poverty, stigma, inability to negotiate safe sex, increased risk of violence and rape, and lack of access to services and information.1156

In Northern Uganda, Human Rights Watch found that women and girls with disabilities faced stigmatizing beliefs as well as discrimination in health care. Many Northern Ugandans believe that women and girls with disabilities are asexual and therefore cannot be infected, or even that sex with a woman with a disability can cure AIDS.1157 Women with disabilities are frequently abandoned by their partners, and each new partner brings a heightened risk of HIV infection. In Northern Uganda, women with

1154 Northern Uganda Report, above n 1, 46.
1155 Id., at 10.
1156 Disability Brochure, above n 3, 8.
1157 Northern Uganda Report, above n 1, 46.
disabilities reported heightened difficulties in accessing health clinics after being raped due to mobility restrictions, uncooperative hospital staff, and attitudes of healthcare personnel who are sometimes hostile towards women with disabilities, making derogatory remarks.1158

People with disabilities are often shut out of education, including on sexual health. They are considered a distraction in schools, or incapable of learning. In many parts of the world, children with disabilities do not go to school because schools are physically inaccessible. It is commonly assumed that individuals with disabilities are not sexually active, but research shows that they are as likely to be as sexually active, and engage in the same kinds of sex (including homosexual sex) as their non-disabled peers.

A disability advocate living with HIV in Zambia told Human Rights Watch how misguided attitudes about sexual practices of people with disabilities, prevented them from accessing vital information, as service providers often believed that it was not necessary to give HIV and family planning information to people with disabilities, as they did not have sex.1159

As a result of these attitudes, people with disabilities are less likely to receive information about HIV prevention and safe sex, and are less likely to have access to prevention methods such as condoms. Confidentiality in HIV testing is especially problematic for the deaf, or for people with communication barriers, who may be forced to bring a family member to interpret the results.

The availability of health center staff trained in sign language would be an important step towards expanding voluntary counseling and testing among the deaf.1160 Strategies to reduce the risk of HIV transmission from mother to child may be especially difficult for women with disabilities. Aside from initial difficulties in accessing the necessary drugs for prevention of mother-to-child transmission, delivering in a health center or hospital may not be an option for women with restricted mobility, and the enduring poverty associated with disability may make formula feeding difficult.1161

1158 Id., 8-9; Northern Uganda Report, above n 1, 47-48.
1159 HIV Brochure, above n 3, 9.
1160 Efforts at increasing the number of sign language interpreters should be paired with increased education in formal sign language for deaf women and girls.
1161 Breastfeeding by mothers with HIV increases the risk of HIV transmission to the infant. UNAIDS recommends that “when replacement feeding is acceptable, feasible, affordable, sustainable and safe, avoidance of all breastfeeding by HIV infected mothers is recommended. Otherwise, exclusive breastfeeding is recommended during the first months of life and should then be discontinued as soon as it is feasible.” UNAIDS, “Nutrition and Food Security,” http://www.unaids.org/en/PolicyAndPractice/CareAndSupport/NutrAndFoodSupport/ (accessed July 5, 2010).
Human Rights Watch asks the Committee to urge governments to:

- Ensure HIV services, including testing centers, care services, and teaching and training sessions are fully accessible to women with different types of disabilities. This includes providing sign language interpretation, easy-to-understand information materials, Braille resources and ensuring that the services are physically accessible.
- Provide information about HIV and sexual health in formats tailored to women with different disabilities.
- Promote and fund research on HIV and disability, ensuring that people with disabilities are included in the team designing, implementing and analyzing the research.

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We hope you will find the comments in this letter useful, and we would welcome an opportunity to discuss them further with you. Thank you for your attention to our concerns, and with best wishes for a productive session.

Sincerely,

Shantha Rau Barriga
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Human Rights Watch
1. INTRODUCTION.

In September 2009, the Spanish government appointed CERMI as the independent monitoring body in charge of promoting, protecting and overseeing the implementation of the Convention, in accordance with its Article 33.2.

This contribution is drawn up and submitted by CERMI with the purpose of studying the implementation and respect of the rights and principles set out in the UN Convention on the Rights of Persons with Disabilities (UNCRPD), in relation to violence against women and girls with disabilities in Spain.

The main aim of this paper is to gather information that facilitates a better implementation of the Convention, and which enhances the respect of the human rights and fundamental freedoms of all people with disabilities.

CERMI is the representative body for the disability movement in Spain, and it comprises more than 5,500 associations and organisations of people with disabilities and their families. One of CERMI’s core aims is to carry out advocacy to promote the rights of people with disabilities, which currently amount to more than 4 million people and, together with their families, around 10 million citizens.

Since the Convention was adopted, we have worked tirelessly towards its full implementation in Spain. In addition to this paper, we would like to make available to the Committee the other studies and research in the CERMI collection, which aim to address those topics of interest for and affecting girls and women with disabilities from all angles. The publications are available to committee members at www.cermi.es.
2. GENERAL FACTS AND FIGURES ON WOMEN AND GIRLS WITH DISABILITIES IN SPAIN.

According to the Survey on Disability, Personal Autonomy and Dependence (EDAD in Spanish), which was carried out by the National Institute for Statistics in 2008, there are 3.85 million people with disabilities in Spain. Of these, 60% are women. Disability rates by age groups show that there are slightly more men than women with disabilities up to the age of 44, while from the age of 45 onwards the opposite is the case and women with disabilities outnumber men with disabilities. The gap becomes greater as age increases.

In addition, 67.2% of all people with disabilities have difficulties in terms of mobility or moving objects; 55.3% face difficulties in performing household tasks, and 48.4% report difficulties with personal care and hygiene. According to the survey, the activity rate among people with disabilities is 35.5% (40.3% for men and 31.2% among women). The overall employment rate for people with disabilities is 28.3% - 33.4% among men and 23.7% for women.

The unemployment rate among people with disabilities is 20.3% - 17.2% among men and 24% for women. Whatever the case, the main characteristic shown by female population is that it is an extremely heterogeneous group, but one which shares the particular experience of falling victim to high levels of multiple discrimination.

Figures show that women with disabilities are more likely to be illiterate; have lower educational attainment levels; lower activity rates in the labour market and/or lower paid jobs with fewer responsibilities; greater social isolation; lower self-esteem; greater financial dependence on their families and/or carers; greater socio-affective and emotional dependence, and they are more likely to suffer all types of violence.

Moreover, they suffer from lower levels of social and personal development; are largely unaware of their sexuality; are victims of numerous horrendous myths related to it; enjoy lower levels of social and health protection and have a negative personal body image. This manifests itself in high rates of violence against women with disabilities.

3. OVERVIEW OF VIOLENCE AGAINST WOMEN AND GIRLS WITH DISABILITIES.

The number of reported cases of gender-based violence during the second quarter of 2011 in Spain rose to 34,347, which represents an increase of 5.7% with regard to
the previous quarter\textsuperscript{1162}. We do not have the figures for the number of women with disabilities who suffer physical and psychological abuse, but as organisations of people with disabilities we know there are many cases.

These cases occur, \textit{inter alia}, in the family environment, at residential care institutions and medical centres; and it is not just women with greater support needs who become victims. There are women of all kinds among victims. Having a disability, whatever that disability is, exacerbates the situation.

In its report on ‘Abuse of the Elderly in the Family in Spain’, the \textit{Centro Reina Sofía} reports that the vast majority of studies show a higher percentage of female victims (Cooney & Mortimer, 1995; González et al, 2005; Wolf, 1997). According to the same report, women are victims in between 66% and 100% of all cases and, furthermore, it would appear women are victims in the most serious cases of both physical and psychological abuse (Pillemer & Finkelhor, 1988).

In addition, 21.1% of all victims have some type of disability, as opposed to 13.6% of older people who have never suffered maltreatment\textsuperscript{1163}. In line with the National Strategic Plan for Children and Adolescents, the General Directorate for Social Policy, Family and Children and the \textit{Centro Reina Sofía} for the study of violence, have jointly carried out research on ‘child abuse in the family in Spain’.

One of the conclusions of this quantitative research project is that disability is a key factor that greatly increases the risk of abuse. The fact that abuse is more prevalent when the child has a physical or mental illness (7.8%, compared to 3.57% when no such disability is present), and children with some type of disability suffer higher rates of maltreatment than those without disability (23.08% and 3.87% respectively), are some of the key quantitative findings provided by this study.

There is discriminatory legislation that fails to recognise people with disabilities’ independence and legal capacity. For example, the laws that authorise the guardianship of adults and their sectioning in institutions increase their vulnerability to violence and impunity of such acts. These laws are part of the systematic violence carried out against girls and women with disabilities, and in particular against women with psychosocial or intellectual disabilities and older women.

Forced sterilisations and coerced abortions continue to occur in the case of women and girls with disabilities and, above all, girls and women with intellectual or psychosocial disabilities without their consent, without them understanding the

\textsuperscript{1162} Reported cases, legal and criminal proceedings, protection orders issued by Courts on Violence against Women and verdicts from courts of law, second quarter of 2011. General Council of the Judiciary.

specific purpose of the operation, and under the pretext of looking after the welfare of the person with a disability.

Organisations of people with disabilities have carried out a number of studies on violence against women with disabilities in Spain\textsuperscript{1164}. Nevertheless, the lack of specific studies and statistics regarding gender-based violence and disability has an impact on the reality faced by girls and women with disabilities in Spain. As in other countries, disability has not been linked to the concept of gender-based violence in any significant study carried out by public or academic institutions at the national level.

4. CERMI’s ALTERNATIVE REPORT TO THE COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES.

In its alternative report submitted to the Committee on the occasion of the study of the situation in Spain by the Committee on the Rights of Persons with Disabilities, CERMI highlighted the following key areas of concern in relation to violence against women and girls with disabilities:

- The Spanish Penal Code allows forced sterilisation of people with disabilities. Sterilising people with disabilities who are legally incapacitated, without their consent regarding this mutilating practice, is permitted in our legal system. Article 156 of the Penal Code states the following:

  (...) sterilisation of an incapacitated person who suffers from a severe mental handicap shall not be punishable when it has been authorised by the judge, based on the guiding principle of the

\textsuperscript{1164} The following are among the studies performed in Spain by organisations of people with disabilities:

- National Confederation of Deaf Persons (CNSE), 2010: \textit{The situation of deaf women in relation to gender-based violence}. This is a qualitative research project involving federations of organisations of the deaf in three regions (Madrid, Galicia and Andalusia). The report is available in Spanish at: http://www.observatorioviolencia.org/upload_images/File/DOC1276603015_situacion_de_las_mujeres_sordas_ante_la_violencia_de genero.pdf

- Federation of Associations for the Advancement of Women with Disabilities LUNA Andalusia, 2011: \textit{Self-diagnosis regarding the situation of women with disabilities in Andalusia}, Department for Equality and Social Welfare, Andalusia Regional Government. This study on different types of violence against women with disabilities was carried out in Andalusia using a sample of 1 115 women. Of the 1 115 women with disabilities interviewed for the study, 345 had fallen victim to violence, amounting to 31%.

best interests of the individual, either during the incapacitation process itself or subsequently by means of voluntary judicial proceedings following a request by the legal guardian of the incapacitated individual, having considered reports from two specialists and the Prosecutor’s Office, and following an examination of the incapacitated individual.

CERMI demands the Penal Code to be amended in order to remove the decriminalisation of sterilisation without the express consent of the interested party, when that person has a disability\(^{1165}\).

**Public programmes and policies aimed at preventing gender-based violence do not consider the particular circumstances faced by women with disabilities.** Data at the European level show that women with disabilities are more vulnerable to gender-based violence. According to a report by the Council of Europe, 40% of all women with disabilities are or have been victims of abuse.

Despite this glaring vulnerability, there are no public policies or data-gathering systems in Spain which adequately address or reflect the situation faced by these women in our country. On the one hand, this is the case because the legal concept of gender-based violence refers solely to abuse perpetrated within a relationship involving partners - the victim and the perpetrator. On the other, there is no special focus on the needs and particular circumstances of women with disabilities, and there is also a lack of indicators to gather this information, identify problems and draw up solutions.

In their development, implementation and when being monitored, prevention and care policies for gender-based violence must mainstream measures to guarantee effective responses for women with disabilities. The statistics provided in the report by the Spanish government also indicate higher levels of abuse among minors with disabilities (paragraph 82, report submitted by the Spanish government).

In this respect, and as the Committee on the Rights of the Child rightly points out in its Concluding Observations to the Spanish government\(^{1166}\), there is a need for Spain to:

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(...)\textit{strengthen its efforts in the promotion and protection of the rights of children with disabilities, and in doing so it recommends that studies on violence against children with disabilities be undertaken. The State Party should take into account the Committee’s General Comment N. 9 (2006) on the rights of children with disabilities.}
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\(^{1166}\) Concluding Observations Spain 2010 (CRC/C/ESP/CO/3-4).
5. CONCLUDING OBSERVATIONS BY THE COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES.

During its constructive dialogue with Spain as a State Party to the Convention, the United Nations Committee on the Rights of Persons with Disabilities expressed its concern in relation to the fact that public programmes and policies aimed at preventing gender-based violence do not adequately take into consideration the situation faced by women with disabilities.

Furthermore, another issue of concern for the Committee is that employment policies do not include a comprehensive gender perspective and unemployment, inactivity and training rates are significantly higher for women with disabilities than for men with disabilities.

The Committee’s recommendations to Spain with regard to violence against women are as follows:

- To include a more comprehensive consideration of women with disabilities in public programmes and policies on the prevention of gender-based violence, particularly so as to ensure access for women with disabilities to an effective and integrated response system.
- To include a gender perspective in employment policies, and particularly specific measures for women with disabilities.
- To elaborate and develop strategies, policies and programmes, especially in the fields of education, employment, health and social protection, to promote the autonomy and full participation of women and girls with disabilities in society, and to combat violence against them.1167

6. CURRENT STATUS OF ONGOING ISSUES.

In relation to forced sterilisation, on the 14th of September, 2012 the Council of Ministers of the Spanish government adopted the draft Penal Code Reform Bill. This bill provides for the sterilisation of people with disabilities to be dealt with in civil law proceedings.

Furthermore, the sterilisation of people who are incapable of giving consent shall be permitted under penal authorisation and following a process which includes the strictest possible safeguards. In addition, the wording used in the Penal Code has

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been amended in line with the recommendations, and the terms currently employed ('minusvalía' and 'incapaz') will be replaced by 'discapacidad' (disability) or 'persona discapacitada necesitada de especial protección' (disabled person in need of special protection).

With regard to other topics, no other measures which may be considered positive steps have been proposed.
Chapter 49
International Disability Alliance Submission on Indigenous Women and Girls with Disabilities.

Half Day of General Discussion on Women and Girls with Disabilities.

CRPD Committee, 9th Session, 17th of April, 2013.

The International Disability Alliance (IDA) is a network of global and regional organisations of people with disabilities (DPOs), currently comprising eight global and four regional DPOs. With member organisations around the world, IDA represents over one billion people worldwide living with a disability, which represents the world's largest – and most frequently overlooked – minority group.

IDA’s mission is to promote the effective implementation of the UN Convention on the Rights of Persons with Disabilities, as well as compliance with the CRPD within the whole UN system, including in the work of the treaty bodies. IDA welcomes the initiative of the Committee on the Rights of Persons with Disabilities (hereinafter “the Committee”) to hold a Half Day of General Discussion on Women and Girls with Disabilities.

In addition to the general IDA submission on women and girls with disabilities, this present paper focuses on indigenous women and girls with disabilities and the specific challenges which they face in the enjoyment and exercise of their rights. It concludes with an analysis and recommendations related to certain key CRPD provisions to ensure that the perspective of indigenous women and girls with disabilities are consistently taken into account by states and other actors.

Indigenous women and girls with disabilities face discrimination in the exercise and enjoyment of their rights on multiple and intersecting grounds, on the basis of their gender, disability, age and indigenous background, as well as others. Both people with disabilities and indigenous people are over-represented amongst those living in poverty. They often live in rural areas with limited opportunities and access to employment, education and healthcare, which has a significant impact on their level of poverty.1168

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1168 Permanent Forum on Indigenous Issues, Study on the situation of indigenous people with disabilities, with a particular focus on challenges faced with regard to the full enjoyment of human rights and inclusion in development, E/C.19/2013/6, February 2013, para 40
These realities intersect and create unique situations of disadvantage, which place indigenous women and girls with disabilities as one of the most marginalised groups in society, who are rendered vulnerable by the lack of their political voice and the lack of attention to their specific needs and rights, constituting both their situation's causes and consequences.

Women and girls with disabilities of indigenous origin face challenges which are common to other indigenous women such as lack of representation in government, including in indigenous parliaments, lack of good hospital networks, lack of consultation, multiple forms of discrimination, poor access to education, health care and ancestral lands, high rates of poverty, increased risk of violence and sexual abuse, including trafficking.1169

Furthermore, indigenous women and girls with disabilities are subjected to the violent and harmful practices which other women and girls with disabilities commonly suffer, among others, sexual abuse; domestic violence; forced sterilisation and neglect, which are perpetrated in the home and within their own communities, in institutional settings, schools and the wider community.

Within the overall context of the colonisation of indigenous peoples, a unique history and identity emerge, which continue to be a burden upon the struggle for substantive and de facto equality. The policies and practices endorsed by states in seeking to assimilate or exterminate indigenous groups, such as forced removal of indigenous children from their families, or forced sterilisation, had a specific impact on women and girls with disabilities.

All this has become an intrinsic part of the intergenerational and historical trauma still at issue, something which is contended in many countries today. Indigenous girls with disabilities taken from their families and placed into residential schools or into foster families, were at high risk of abuse and neglect and resulted in post-traumatic stress disorder, anxiety grief and psychosocial disabilities.1170 It is known that policies and practices of forced sterilisation often targeted indigenous women with disabilities as an instrument of indigenous population control.1171

As a societal tool, the law may serve to protect individual dignity, integrity and self-determination of individuals, while at the same time serving to mask and institutionalise discrimination and the denial of individual dignity, integrity and self-determination of others. For marginalised groups such as women, children, indigenous people, people with disabilities and intersections of those groups and

1169 Id para 50
1170 Id p 11
1171 Id para 51
others, the law has reflected, and continues to reflect the dominant views in society, much to their detriment.

For example, the legal doctrine of terra nullius, deriving from Roman law, was used to expropriate native land belonging to Aboriginals in Australia.\textsuperscript{1172} The \textit{Indian Act} in Canada denied native women their indigenous status if they married a non-Aboriginal man;\textsuperscript{1173} and the mechanism of legal incapacitation and substituted decision-making continues to deprive people with disabilities of the exercise of their own rights.

Whilst the two former examples have evolved since in advance of the rights of indigenous women generally, the latter example continues across jurisdictions and is yet to be in compliance with the CRPD and UNDRIP. Indigenous women with disabilities continue to experience more restrictions on their legal capacity\textsuperscript{1174}.

These facts contribute to erase their legal personhood, facilitating and legitimising non-consensual decision-making, which renders indigenous women and girls with disabilities more susceptible to violations of rights, including protection of integrity; freedom from torture and ill-treatment; access to health, education, employment, social protection and housing, and access to justice. As a cause and consequence then, this hinders their full and equal participation in society.

\textbf{With the entry into force of the Convention on the Rights of Persons with Disabilities (CRPD) in 2008, and the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, a clear recognition of the rights of both indigenous people and people with disabilities came about. The instruments intersect in their mandates to protect and promote the rights of indigenous people with disabilities and, in particular, they demand special attention to be given to women and girls.}\textsuperscript{1175}

\textsuperscript{1172} The terra nullius doctrine was overturned by the Australian High Court in \textit{Mabo and Others v Queensland (No. 2) [1992] HCA 23; (1992) 175 CLR 1} and the common law doctrine of native title was recognised, which in itself does not fully recognise Aboriginal land ownership given that native title can be extinguished by the government in certain situations. See also \textit{Wik Peoples v Queensland [1996] HCA 40; (1996) 187 CLR 1; (1996) 141 ALR 129; (1996) 71 ALJR 173 (23 December 1996)}.

\textsuperscript{1173} This legal provision was overturned through application of the decision of the UN Human Rights Committee in \textit{Lovelace v Canada}, Communication No. 24/1977, 30 July 1981.

\textsuperscript{1174} Permanent Forum on Indigenous Issues, Study on the situation of indigenous people with disabilities, with a particular focus on challenges faced with regard to the full enjoyment of human rights and inclusion in development, E/C.19/2013/6, February 2013, para 50.

\textsuperscript{1175} The CRPD’s preamble (para p) refers to the difficult conditions faced by people with disabilities who are subject to multiple or aggravated forms of discrimination including on the basis of indigenous origin, and Article 6 is dedicated specifically to women with disabilities; and Articles 21 and 22 of the Declaration on the Rights of Indigenous Peoples refer to the need for particular attention to marginalised indigenous groups such as women and people with disabilities.
The need to mainstream the rights of indigenous women and girls with disabilities across all CRPD provisions in a way that is sensitive to the culture and world vision of indigenous peoples, is a key factor to their inclusion and participation in society. Indeed, it is acknowledged that there are numerous areas in which indigenous women and girls with disabilities face inequalities, including education, employment, social protection, among others, and that all rights are interdependent.

However, this analysis will limit itself to the following themes:

- **Articles 5, 6, 7, 12, 18 – Equality and non-discrimination; equal recognition before the law; birth registration of children.**

  Indigenous women and girls with disabilities must benefit from equal protection and recognition before the law. **Indigenous children with disabilities, like all children, must be registered immediately after birth, and should have the right to a name.**

  **Substituted decision-making regimes must be eliminated, and supported decision-making mechanisms which are respectful of the individual's rights, wills and preferences must be established, in order to ensure effective decision-making in all areas of life, including political participation; health; marriage and family; the choice of where and with whom to live; employment; social protection, and access to justice.**

  Implicit in this is the need for mechanisms to be culturally appropriate for indigenous women with disabilities, and that they may express their preferences for an arrangement which best suits their individual situation. **States must take steps to explicitly include in their legislation multiple and intersectional discrimination, including on the grounds of gender, disability, indigenous origin and age.**

  **States must also take steps to recognise the reality of discrimination experienced by individuals, as aggravating circumstances that should be duly reflected in the determination of liability and the availability of appropriate and effective remedies, which restore the full scope of injury and disadvantage caused by intersecting and multiple discrimination.**

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1176 There is evidence that children with disabilities, including indigenous children with disabilities are overrepresented among non-registered children. Indigenous institutions which are responsible for birth registration in indigenous communities must not discriminate against children with disabilities. See Permanent Forum on Indigenous Issues, Study on the situation of indigenous people with disabilities, with a particular focus on challenges faced with regard to the full enjoyment of human rights and inclusion in development, E/C.19/2013/6, February 2013, paragraph 58.
• Articles 3, 4, 5, 6, 7, 29, 33 - inclusion, participation and consultation of women and girls with disabilities.

For indigenous peoples, political participation is part of their self-determination, understood as the right to determine their political status and freely pursue their economic, social and cultural development. Further, equality, cultural integrity, free, prior and informed consent and property underpin the right to participation of indigenous peoples. This reflects the collective dimension of this human right for indigenous peoples.

As it is established in Articles 5 and 18 of the UNDRIP, states must also recognise the right of indigenous peoples to maintain and strengthen their distinct, political, legal, economic, social and cultural institutions while retaining their right to participate fully, if they so choose, in the state’s political, economic, social and cultural life.

Indigenous women with disabilities must have equal opportunities to participate in both indigenous decision-making institutions and state institutions, through the provision of reasonable accommodation, and by putting in place special measures to promote their involvement.

Indigenous women with disabilities, in the exercise of their political rights, must be considered individuals, but also members of their peoples. This fact gives rise to specific responsibilities related to the “community” that must be recognised by states. “Currently, the exercise of power for indigenous women takes the form of opportunities to “attend”, to be present, speak and decide for themselves. For them, participation means visibility within the community and the ability to express their desires, ideals, position and struggle.”

Indigenous institutions should be involved in the national monitoring of the implementation of the CRPD. Similarly, indigenous women and girls with disabilities should be consulted and play a leading role as part of the government;

1177 Article 3, Declaration on the Rights of Indigenous Peoples
as part of the designated body for independent monitoring of the CRPD implementation under Article 33(2), and as part of civil society.

The CRPD enables specific actions to ensure that all women and girls with disabilities are able to participate on an equal basis with others. Consultation by the government with women and girls with disabilities, and their direct participation in decision-making, must reach out to marginalised subgroups, including indigenous women and girls with disabilities.

This must be done by ensuring consultation in different languages, and by putting in place disability and age-appropriate assistance to facilitate, especially for children, the free expression of their views on all matters affecting them. DPOs should also make concerted efforts to include and empower indigenous women and girls with disabilities, and to collaborate with women's rights and indigenous rights organisations.

- Articles 5, 6, 7, 10, 14, 15, 16, 17 - Right to Life; Freedom from Arbitrary Detention; Torture; Ill-Treatment; Violence; Exploitation and Abuse; Protection of Personal Integrity.

Violence against indigenous women and girls with disabilities is multifaceted in nature and cannot be separated from either the disability-inherent aspects of the violence being exercised upon them, or from the violence that “stems from the ongoing impact of colonisation, including the breakdown of community structures and cultural authority, which is a correlation of alcohol and drug-associated violence against indigenous women and girls.”

It has been documented that women and girls with disabilities are rendered more vulnerable to violence: almost 80 percent of women with disabilities are victims of violence, and they are four times more likely than other women to suffer sexual violence. Similarly, indigenous women are disproportionately victims of sexual violence, for example, in New Zealand, nearly 20 percent of Maori women are reported as being assaulted or threatened by an intimate partner, which is three times the national average.

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1180 Permanent Forum on Indigenous Issues, Study on the extent of violence against indigenous women and girls in terms of Article 22(2) of the UNDRIP, E/C.19/2013/9, 12 February 2013, para 6(a)
1182 Amnesty International, Maze of Injustice (2007)
It has been also documented that in Australia, indigenous women are 45 times more likely to experience family violence than non-indigenous women, and far more likely to be killed by their partner than non-indigenous women.\textsuperscript{1184} Violence experienced by indigenous women and girls is intimately linked to the structural violence against indigenous peoples originating from colonisation.

This violence is further reproduced in countless ways, leading to the “implosion and severe dysfunction of many indigenous communities and cultures, and the subsequent increased rates of violence against women and girls.”\textsuperscript{1185} This is also manifested through increased prevalence of psychosocial disabilities and intergenerational trauma.

Due to the lack of data, targeted studies and research on indigenous women and girls with disabilities, details of how and what forms of violence impact upon the intersections of gender, disability and indigenous origin have not been fully explored. Despite the lack of documented information, one can envisage that the combination of these characteristics heighten the risk of indigenous women and girls with disabilities to violence and harmful practices.

Prevailing stereotypes (e.g. indigenous women with disabilities seen as incapable and not credible) as well as structural factors (e.g. invisibility of indigenous women and girls with disabilities in indigenous and wider communities), contribute to the continuation of violent practices which often go unreported.\textsuperscript{1186}

Indigenous women with disabilities, like many indigenous women, may share a desire not to bring shame upon their communities, often resulting in violence not being

\textsuperscript{1184} Aboriginal and Torres Strait Islander Women’s Task Force on Violence, The Aboriginal and Torres Strait Islander Women’s Task Force on Violence Report, Queensland State Government, Australia, 2000; Paul Memmot and others, Violence in Indigenous Communities, Crime Prevention Branch of the Commonwealth Attorney-General’s Department, 2001, both cited in Permanent Forum on Indigenous Issues, Study on the situation of indigenous people with disabilities, with a particular focus on challenges faced with regard to the full enjoyment of human rights and inclusion in development, E/C.19/2013/6, February 2013, para 13


reported and being tacitly accepted. The lack of victim support services, particularly in isolated indigenous communities, and the lack of services in general which are culturally and disability sensitive and accessible, do not help to break these cycles of violence.

CRPD provisions require states to take all appropriate legislative, administrative, social, educational and other measures to protect indigenous women and girls with disabilities both at institutions and within and outside the home, from acts that simultaneously violate the protection of personal integrity. This includes: all forms of forced detention; forced treatment; interventions which are tantamount to torture or cruel, inhuman or degrading treatment or punishment; exploitation, violence and abuse.

Furthermore, all non-consensual acts including domestic violence; sexual violence; forced marriage; forced sterilisation; forced abortion; FGM both perpetrated by private and public actors, within and outside of indigenous communities, constitute also violent acts. Specific attention must be given to the impact of structural violence caused by the effects of colonisation and the reign of the medical model of disability, which further victimise and disempower women and girls with disabilities.

Moreover, these provisions require states to put in place effective legislation and policies, not only women-, child-, disability- and indigenous-focused legislation and policies, but those that address violence on account of intersectional and multiple discrimination, including culturally sensitive, disability-aware and accessible information; complaint and support services for victims, to ensure that instances of torture or ill-treatment and arbitrary deprivation of liberty against indigenous women and girls with disabilities are identified, investigated and, where appropriate, prosecuted.

The key to the success of these policies will be consultation with indigenous women and girls with disabilities, as well as their wider indigenous communities. It has been demonstrated that the most successful and enduring measures to tackle violence in indigenous communities are those that are conceived of and developed by indigenous communities with the support of the state, and that indigenous community initiatives to combat violence are more likely to succeed because of the

\footnote{Paul Memmot and others, *Violence in Indigenous Communities*, Crime Prevention Branch of the Commonwealth Attorney-General’s Department, 2001, both cited in Permanent Forum on Indigenous Issues, Study on the situation of indigenous people with disabilities, with a particular focus on challenges faced with regard to the full enjoyment of human rights and inclusion in development, E/C.19/2013/6, February 2013, para 31}
degree of self-determination exercised by such communities over their development and implementation.1188

- Articles 5, 6, 7, 23, 25- Right to Health; Right to Family.

Women and girls with disabilities and indigenous women have been subjected to practices that aim at controlling their bodies, restricting their reproduction, and preventing or removing their role as mothers. These two groups (and their intersections) make up the groups which have been most at issue by laws, policies and strategies aiming at their forcible sterilisation and the forcible removal of their children, resulting in the disintegration of families and communities and causing irreparable and intergenerational harm.

Among others, Articles 23 and 25 of the CRPD are relevant when protecting the right to family of indigenous women and girls with disabilities, including deciding freely and responsibly on the number and spacing of their children, retaining their fertility on an equal basis with others, as well as their right to health on the basis of free and informed consent.

It is incumbent on the state to eliminate laws and practices which infringe the reproductive rights and the right to family of indigenous women and girls with disabilities, including third party decision-making by parents, spouse, family, guardians, doctors and courts. The state should ensure that information on reproductive health and family planning education is provided in different languages (including indigenous languages and sign languages), and in accessible and age-appropriate formats.

The state should also ensure that community and healthcare staff and professionals are trained to provide services and information in culturally appropriate ways, and which are respectful of the rights of indigenous and disabled women. The active involvement of indigenous women with disabilities both at the level of their community and at the State level will be key to the successful design and management of intercultural health and social systems in the community that are fully accessible to people with disabilities, and which prioritise support respectful of the rights, will, and preferences of each individual.

indigenous woman with disabilities for the preservation of families and communities.\textsuperscript{1189}

- **Articles 5, 6, 7, 19 - Living and being included in the community.**

Living in the community for indigenous women and girls with disabilities includes living and being included in both the wider society and their own indigenous communities, as well as living according to their customs and traditions. Assimilation policies often targeted indigenous children by displacing them from their families and communities, and placing them in residential school settings or into foster families, affecting whole generations and leading to intergenerational trauma.

Moreover, living in the community for indigenous women and girls with disabilities means access to services within their communities. More often than not, the necessary supports do not exist within their own communities, and they are subsequently left with no choice but to leave in order to access services available in group home settings.

There, the physical divide with their community is reinforced by a lack of support to participate in their community events, and due to the lack of staff with “culturally competent skills” to ensure their continued participation in their community. States must allocate resources to develop accessible and appropriate community-based services and support within indigenous communities.

Resources must also be allocated for community development projects within indigenous communities that are conceived and led by indigenous peoples, and which aim to build the capacity of their community, including women and girls with disabilities. This should include awareness-raising and education on the CRPD, as well as on the UNDRIP and other human rights instruments.

- **Articles 5, 6, 7, 12 13 - Access to Justice.**

Access to justice often remains out of reach due to societal, legal and judicial prejudices and mechanisms which fail to recognise and respond to indigenous women and girls with disabilities on account of an intersection of their gender, age, disability and indigenous origin. They are not considered to be credible by the police, or police may feel reluctant to become involved in what they deem to be private

\textsuperscript{1189} Permanent Forum on Indigenous Issues, Study on the situation of indigenous people with disabilities, with a particular focus on challenges faced with regard to the full enjoyment of human rights and inclusion in development, E/C.19/2013/6, February 2013, para 38

\textsuperscript{1190} Permanent Forum on Indigenous Issues, Study on the situation of indigenous people with disabilities, with a particular focus on challenges faced with regard to the full enjoyment of human rights and inclusion in development, E/C.19/2013/6, February 2013, paras 43, 44
matters within the indigenous community and/or with respect to the caregiving context of the disabled indigenous woman or girl.

Reporting mechanisms and courts are not accessible to indigenous women with disabilities, in terms of ensuring reasonable accommodation for witnesses, which discourages them from filing complaints against perpetrators and seeking justice. A handful of jurisdictions have acknowledged the need to recognise and apply accessible modes of communication for indigenous people.

They must also meet people with disabilities’ needs, including the use and training on different modes of questioning which are sensitive to the language styles and structures of indigenous groups, such as Aboriginal English, as well as the use of plain language for people with intellectual disabilities.

This provision must take into account indigenous women and girls with disabilities and their right to access to justice on an equal basis with others, in order to have access to remedies and bring perpetrators to justice. The general justice system needs to be accessible to for women with disabilities, as well as sensitive towards indigenous women and cognizant of the increased risk of indigenous women and girls with disabilities being subjected to violence and harmful practices.

In particular, accessibility measures and age-appropriate accommodations and procedures should be provided to ensure the effective role of indigenous disabled women and girls as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

This includes requirements for the physical, environmental, communicational and informational accessibility of all aspects of the administration of justice, including the physical accessibility of police stations, courthouses and prisons; the provision of information in alternative formats and of sign language interpretation, and the provision of other procedural accommodations and measures of support, to ensure that indigenous women and girls with disabilities can participate in justice systems on an equal basis with others, both in state-run and indigenous justice systems and mechanisms.

Further, access to justice for indigenous women and girls with disabilities also needs to consider restorative justice and reconciliation for violence and harm perpetrated against communities, whether this stems from historical generational injustice which has fragmented or destroyed indigenous communities, or from

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violence and harm perpetrated by private actors, such as multinational corporations.

Disability-awareness training, with rights-based and intercultural and gender-sensitive approaches for those in charge of the state’s justice administration, and also within indigenous communities, need to be provided in consultation with indigenous women and girls with disabilities.

- Articles 4, 5, 6, 7, 31- Data Collection.

Clearly, the role of data collection and consultation is essential to ensure that intersections and interactions between and among groups, such as indigenous women and girls with disabilities, who are normally invisible in terms of policies with respect to women, children, disabled people, indigenous persons, and non-discrimination, are exposed in order to ensure that laws and policies are better formulated and tailored, as well as being informed and evidence-based through consultations, to meet their specific needs and to uphold their rights in the context of their diverse lived experiences, and to eliminate decision-making based on stereotypes.\textsuperscript{1192} Data collection research and studies tend to be focused on mutually exclusive categories which act to reinforce the invisibility of groups such as indigenous women and girls with disabilities who are clearly neglected subsets of subgroups and whose marginalisation in society is further exacerbated as a result.

Article 31 in particular ensures that it is incumbent on states to systematically collect data disaggregated by gender, age, disability, indigenous origin, among others, across all sectors, in order to facilitate informed policy-making, which is particularly relevant when it comes to addressing multiple and intersectional discrimination.

While the collection of data is important to grasp the prevalence of indigenous women and girls with disabilities and all statistics related to them, it must be accompanied by consultation, research and studies which prioritise the gathering of their stories and lived experiences, in order to evaluate the well-being and the inclusion of indigenous women and girls with disabilities. Such exercises must be conceived together with indigenous women and girls with disabilities themselves, and include the development of new statistical and data collection tools which are

accessible and able to reflect their diverse situations in a culturally sensitive way.\textsuperscript{1193}

For further information please contact: vlee@ida-secretariat.org.

\textsuperscript{1193} Permanent Forum on Indigenous Issues, Study on the situation of indigenous people with disabilities, with a particular focus on challenges faced with regard to the full enjoyment of human rights and inclusion in development, E/C.19/2013/6, February 2013, para 8
STATEMENT ON THE HALF DAY OF GENERAL DISCUSSION ON WOMEN AND GIRLS WITH DISABILITIES.

The Committee on the Rights of Persons with Disabilities decided, at its 7th session, to devote a half day of general discussion to the rights of women and girls with disabilities, given the Committee’s review of the first national reports and the scarcity of information within reports on the situation of women and girls with disabilities.

The Committee made public at its 8th session a statement expressing its concern at the existence of multiple forms of discrimination of this population in all areas of life and the scarcity of information and, therefore, invited civil society - and in particular organisations of people with disabilities - to submit written contributions to reach a deeper understanding of this reality.

During its 9th session, the Half Day of General Discussion on Women and Girls with Disabilities took place, focusing on the intersectionality of gender and disability, violence against women and girls with disabilities, and their sexual and reproductive rights.

The Committee wishes to thank States Parties, UN Specialised Agencies (UN Women, UNICEF, and WHO), the Office of the High Commission on Human Rights, members of other treaty bodies, National Human Rights Institutions and civil society, particularly organisations of women with disabilities and those of people with disabilities, for their contributions.

It would also like to thank the International Disability Alliance (IDA), the Disability Rights Advocacy Fund (DRF) and the UN Voluntary Fund for Indigenous Populations for the development of a side event on the specific situation of indigenous women and girls with disabilities.

The Committee expresses its thanks to UNICEF and the German Government for their support in helping to bring women with disabilities from developing countries to participate in the Half Day of General Discussion.

Given the evidence of violence, exploitation, abuse and maltreatment that women with disabilities suffer due to the serious and systematic violation of their rights that was presented in this half day of general discussion, the Committee reiterates its concern regarding the violence, exploitation, abuse and ill treatment against women and girls with disabilities, restrictions to their sexual, reproductive and maternity rights, as well as the failure to include gender as a cross-cutting issue in public
policies on disability and disability as a cross-cutting issue in public policies addressing women in general.

Consequently, the Committee decides to set up a working group on Art. 6 of the UNCRPD. This working group will be given the responsibility to elaborate an in-depth report that analyses all information submitted during this half day of general debate. The Working Group will also be entrusted with drafting a General Comment on this matter.
GENERAL DISCUSSION ON WOMEN AND GIRLS WITH DISABILITIES

UNITED NATIONS COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES