



WOMEN  
WITH  
DISABILITIES  
AUSTRALIA  
(WWDA)



people with disability

# Women With Disabilities Australia (WWDA) and People With Disability Australia (PWDA)



Joint Submission to the Committee on the Rights of  
Persons with Disabilities

Draft General Comment on Article 6:  
Women with Disabilities

July 2015

# Women With Disabilities Australia (WWDA) & People With Disability Australia (PWDA)

Joint Submission to the Committee on the Rights of Persons with Disabilities - Draft General comment on Article 6: Women with Disabilities. Prepared by Carolyn Frohmader for and on behalf of WWDA and PWDA. Copyright 2015.

## About Women With Disabilities Australia (WWDA)



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Women With Disabilities Australia (WWDA) is the national cross-disability Disabled Person's Organisation (DPO) for women and girls with all types of disability in Australia. It operates as a transnational human rights organisation and is run by and for women with disability. WWDA's work is grounded in a human rights based framework which links gender and disability issues to a full range of civil, political, economic, social and cultural rights. WWDA represents more than 2 million disabled women and girls in Australia, has affiliate organisations and networks of women with disability in most States and Territories, and is internationally recognised for its global leadership in advancing the human rights of women and girls with disability. WWDA is a founding member of the Australian Cross Disability Alliance (ACDA), which is an alliance of national Disabled Person's Organisations (DPO's) in Australia. The key purpose of the ACDA is to promote, protect and advance the human rights and freedoms of people with disability in Australia by working collaboratively on areas of shared interests, purposes and strategic priorities and opportunities. The ACDA is the recognised coordinating point between Government/s and other stakeholders, for consultation and engagement with people with disability in Australia.

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People with Disability Australia (PWDA) is a national disability rights and advocacy organisation. Its primary membership is made up of people with disability and organisations primarily constituted by people with disability. It also has a large associate membership of other individuals and organisations committed to the disability rights movement. Founded in 1981, the International Year of Disabled Persons, PWDA seeks to provide people with disability with a voice of their own. It has a cross-disability focus representing the interests of people with all kinds of disability. PWDA is a founding member of the Australian Cross Disability Alliance (ACDA), which is an alliance of national Disabled Person's Organisations (DPO's) in Australia. The key purpose of the ACDA is to promote, protect and advance the human rights and freedoms of people with disability in Australia by working collaboratively on areas of shared interests, purposes and strategic priorities and opportunities. The ACDA is the recognised coordinating point between Government/s and other stakeholders, for consultation and engagement with people with disability in Australia.

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## Background

The Committee on the Rights of Persons with Disabilities in accordance with Rule 47 of its Rules of Procedure<sup>1</sup> and para. 54–57 of its Working Methods<sup>2</sup> may prepare General Comments<sup>3</sup> based on the various articles and provisions of the Convention on the Rights of Persons with Disabilities (CRPD) with a view to assisting States Parties in fulfilling their reporting obligations.

In 2015, the CRPD Committee released its Draft General Comment on Article 6 [Women with disabilities], based on that Rule. The CRPD Committee invited Women with Disabilities Australia (WWDA) and other interested parties to provide written input on the Draft General Comment on CRPD Article 6.

Women With Disabilities Australia (WWDA) - the national cross-disability Disabled Person's Organisation (DPO) for women and girls with all types of disability in Australia, and People With Disability Australia (PWDA) – the national DPO for all people with disability in Australia, elected to develop this joint Submission to the CRPD Committee in response to the Draft version of General Comment on CRPD Article 6. The Draft General Comment is provided at the end of this Submission and was retrieved online from:

<http://www.ohchr.org/Documents/HRBodies/CRPD/GC/Women/CRPD.C.14.R.1-ENG.doc>

## Introduction

1. Women With Disabilities Australia (WWDA) and People With Disability Australia (PWDA) thank the Committee on the Rights of Persons with Disabilities for the opportunity to contribute this brief submission to the Committee's Draft General Comment on CRPD Article 6: Women with Disabilities.
2. As human rights based DPO's, WWDA and PWDA operate within and from a human rights framework, with a strong emphasis on women and girls with disability (including older women and adolescents), culturally and Linguistically Diverse (CALD) people with disability; Aboriginal and Torres Strait Islander people with disability; and children and young people with disability.
3. WWDA and PWDA congratulate the CRPD Committee on its work to develop the General Comment [GC] on CRPD Article 6. Our organisations are firmly of the view that the GC on Article 6 should not only clearly articulate and clarify how CRPD Article 6 should be interpreted and implemented, but should also provide a strong educative and awareness raising function for Governments, other duty bearers, the broader community, and importantly, women and girls with disability themselves.

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<sup>1</sup> Committee on the Rights of Persons with Disabilities: Rules of Procedure, 5 June 2014, CRPD/C/1, p. 17;

<sup>2</sup> Committee on the Rights of Persons with Disabilities: Working Methods of the Committee on the Rights of Persons with Disabilities, 4 April 2011, CRPD/C/5/4, p. 7-8.

<sup>3</sup> A General Comment is a human rights treaty body's interpretation of the content of human rights provisions, on thematic issues or its methods of work. General Comments often seek to clarify the reporting duties of State parties with respect to certain provisions and suggest approaches to implementing treaty provisions. General Comments are also sometimes referred to as 'General Recommendations'.

## Over-arching Comments

4. The GC should have a number of functions. It must clearly and comprehensively elucidate the obligations of States parties and other duty bearers in respect of the cross cutting nature of Article 6, and the specific obligations under each substantive Article of the CRPD. The GC should be educative and transformative. It should be an awareness-raising tool in its own right. It should seek to be informative to all women and girls with disability. As an educative transformative tool for women and girls with disability, and an important mechanism to support women and girls with disability to become empowered by and knowledgeable of their human rights and freedoms, we recommend that the GC be published in a range of accessible formats, particularly an Easy English version.
5. Given that the rights of women and girls with disability must be conceptualised, analysed and addressed when interpreting and implementing every article of the CRPD, Section IV of the GC (which examines the inter-relation between Article 6 and the substantive provisions of the CRPD), should clearly and comprehensively elucidate the obligations of States parties and other duty bearers in respect of the cross cutting nature of Article 6, and the specific obligations under EACH substantive Article of the CRPD. It is clear that despite international human rights obligations in relation to gender equality and disability rights, States Parties to the CRPD (and other core international human rights treaties) continue to fail women and girls with disability. Despite States parties obligations under CRPD Article 6 being of an *immediate* nature, there remains an absolute disjuncture between these obligations and their integration into domestic laws, policies, strategies and frameworks to advance both gender equality and disability rights. Given the significant gender based assumptions and expectations which place women and girls with disability at a disadvantage with respect to substantive enjoyment of rights, along with the gendered differences reflected in the life experiences of women with disability and men with disability (see Appendix 2), and the global urgency to address critical subjects of concern for women and girls with disability, it is vital that the GC provide specific guidance on every one of the substantive articles of the CRPD.
6. Given the ‘cross-cutting’ nature of Article 6, we strongly recommend that the following 13 substantive articles are included in Section IV of the GC, with guidance and clear interpretation of these Articles in the context of the human rights of women and girls with disability: Articles 14, 15, 16, 18, 20, 22, 23, 25, 26, 28, 29, 30, and, 31.<sup>4</sup> These 13 Articles are all critical in explicating orientation for the practical implementation of CRPD Article 6. Providing authoritative interpretation of these articles provides duty bearers and others with clear criteria for evaluating the progress of states in their implementation of these rights. Omitting these 13 key articles from Section IV of the GC poses significant risk, in that audiences may (wrongfully) assume that the 13 articles are ‘less important’ than those currently included, and/or that there is no particular responsibility on duty bearers to practically implement these 13 articles to specifically and directly advance the human rights of women and girls with disability.
7. In the context of the critical subjects of concern with respect to the the protection of human rights of women and girls with disability, as identified at para 5 of the current draft of the

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<sup>4</sup> Article 14: Liberty and security of person; Article 15: Freedom from torture or cruel, inhuman or degrading treatment or punishment; Article 16: Freedom from exploitation, violence and abuse; Article 18: Liberty of movement and nationality; Article 20: Personal mobility; Article 22: Respect for privacy; Article 23: Respect for home and the family; Article 25: Health; Article 26: Habilitation and rehabilitation; Article 28: Adequate standard of living and social protection; Article 29: Participation in political and public life; Article 30: Participation in cultural life, recreation, leisure and sport; Article 31: Statistics and data collection.

GC,<sup>5</sup> and as borne out by reviews of States Parties reports by the CRPD Committee and other monitoring bodies of several of the core international human rights treaties<sup>6</sup> we strongly recommend that at an absolute minimum, the following Articles are a priority and must be elucidated in detail in Section IV of the GC: Article 15 [Freedom from torture or cruel, inhuman or degrading treatment or punishment], Article 16 [Freedom from exploitation, violence and abuse]; Article 23 [Respect for home and the family]; Article 25 [Health]; Article 29 [Participation in political and public life] and Article 31 [Statistics and data collection] (Refer to Appendix 3 for more information).

8. People with disability are often treated as asexual, genderless human beings. In reality, most legislative, policy, program and service development often proceeds as though there are a common set of issues - and that men and women, girls and boys, experience disability in the same way. In the Australian context for example, despite the CRPD entering into force in Australia in 2008, domestic disability policy remains un-gendered, and the intersection of gender and disability, along with issues of intersectionality, continue to be largely ignored. Women and girls with disability in Australia have failed to benefit from provisions in international human rights law that give rise to Australia's obligations in relation to gender equality and to disability rights (see Appendix 1 for more detail). The Australian experience demonstrates the very strong case that the GC on Article 6 must be detailed and comprehensive, addressing interrelation with not only all substantive articles in the CRPD, but also interrelation across and within other international human rights treaties.<sup>7</sup>
9. Advancing disability rights and advancing gender equality are not just obligations in relation to the CRPD. They are equally key obligations relating to civil and political rights; economic, social and cultural rights; child rights; as well as rights to be free from torture (and other cruel, inhuman or degrading treatment or punishment); and racial discrimination. The monitoring bodies of several of the international human rights treaties, have made strong recommendations to States Parties (including Australia) in relation to the human rights of women and girls with disability – most notably relating to issues such as sexual and reproductive rights; representation and participation; the right to freedom from all forms of violence; and the right to freedom from torture (and other cruel, inhuman or degrading treatment or punishment). In this context, WWDA and PWDA are of the view that the GC on Article 6 would be significantly strengthened by incorporating and integrating the inter-relationship across, within and between the international human rights treaties. We further suggest that the GC include reference to, and integration of, the UN Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on 13 September 2007. This is particularly important in the Australian context, where Aboriginal and Torres Strait Islander women and girls with disability experience unique and particular forms of multiple and intersecting discrimination and disadvantage.

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<sup>5</sup> (1) violence against women and girls with disability (2) restriction of sexual and reproductive rights of women with disability, including the right to motherhood and child-rearing responsibilities, and (3) intersectional discrimination against women and girls with disability.

<sup>6</sup> See for eg: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Committee against Torture: Concluding observations on the combined fourth and fifth periodic reports of Australia; UN Doc No. CAT/C/AUS/CO/4-5; Human Rights Committee, International Covenant on Civil and Political Rights; List of issues prior to the submission of the sixth periodic report of Australia (CCPR/C/AUS/6), adopted by the Committee at its 106th session (15 October–2 November 2012); UN Doc No. CCPR/C/AUS/Q/6; 9 November 2012; 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; Human Rights Council, Report of the Working Group on the Universal Periodic Review: Australia; 24 March 2011; UN Doc. No. 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.

<sup>7</sup> the Convention on the Elimination of All Forms of Discrimination against Women; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Elimination of All Forms of Racial Discrimination; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the International Convention for the Protection of All Persons from Enforced Disappearance.

10. WWDA and PWDA recommend that the GC on Article 6 would be significantly strengthened by including clear references to the intersection of CRPD Article 6 with other core international human rights treaties, including for example by referencing, where relevant, recommendations to States Parties from the treaty monitoring bodies in relation to the human rights of women and girls with disability. This is important as it demonstrates that advancing disability rights and advancing gender equality are not just obligations in relation to the CRPD. For example, the *Committee Against Torture* (CAT) for example, has made very strong recommendations to States parties regarding violence against women with disability; the forced sterilisation of women and girls with disability, and other reproductive rights violations that fall within the scope of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.<sup>8</sup> The Human Rights Committee, in monitoring States parties compliance with the *International Covenant on Civil and Political Rights* (ICCPR), has also made strong recommendations regarding violence against women with disability, and forced and coerced sterilisation of women and girls with disability.<sup>9</sup> The *Committee on the Rights of the Child* (CRC) has made similar recommendations in the context of children with disability, paying particular attention to gender.<sup>10</sup> The *Committee on the Elimination of Discrimination against Women* (CEDAW) has made very strong recommendations regarding the need for urgent action by states parties in relation to women with disability,<sup>11</sup> particularly in relation to: the pervasive and high incidence of violence perpetrated against women and girls with disability, particularly those living in institutions or supported accommodation; the persistent inequality of women with disability's access to education, employment opportunities and health care services; the absence of women with disability from leadership and decision-making positions and processes; and, the absence of sufficient information and data in States parties reports, on the situation of women and girls with disability. In this context, comprehensive and detailed interpretation of every substantive article in the CRPD is critical not only in relation to the CRPD itself, but also provides States Parties with a better understanding of how to implement other human rights treaties in relation to women and girls with disability.
11. The current draft of the GC identifies the 'horizontal' nature of Article 6 [at par.34], and also the 'cross-cutting' nature of Article 6 [at para.13]. It would be beneficial to use consistent terminology throughout the GC when referring to the 'cross-cutting' nature of Article 6. We would recommend using the term 'cross-cutting' rather than 'horizontal'. Importantly, the 'cross-cutting' nature of Article 6 should be articulated in the Introduction section of the GC, which could be strengthened by making explicit and explaining, that incorporating a gender perspective in all efforts to promote the human rights of people with disability means that the rights of women and girls with disability must be conceptualised, analysed and addressed when interpreting and implementing every article of the CRPD. It is our experience that the 'cross-cutting' nature of Article 6 and the obligations on States parties and other duty bearers arising from it, are not well understood and remain poorly implemented. In this context, it may be useful for paras 11-14 in the current draft to be moved from their current location in the GC, to commence after para.4
12. The GC should emphasise throughout, the imperative of women and girls with disabilities

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<sup>8</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Committee against Torture: Concluding observations on the combined fourth and fifth periodic reports of Australia; UN Doc No. CAT/C/AUS/CO/4-5.

<sup>9</sup> Human Rights Committee, International Covenant on Civil and Political Rights; List of issues prior to the submission of the sixth periodic report of Australia (CCPR/C/AUS/6), adopted by the Committee at its 106th session (15 October–2 November 2012); UN Doc No. CCPR/C/AUS/Q/6; 9 November 2012.

<sup>10</sup> 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.

<sup>11</sup> Committee on the Elimination of Discrimination against Women (2010) UN Doc. CEDAW/C/AUS/CO/7, Op Cit.

(particularly young and adolescent women with disabilities) being supported to organise in their own interests and form their own networks and organisations. Inherent in this is the critical need for States parties to ensure that such structures, mechanisms and initiatives are established and adequately resourced, to enable and foster the participation and engagement of women and girls with disabilities in all forms of decision-making, including the development of relevant policies, programs, and services.

13. The current draft of the GC could benefit from a detail editing particularly to ensure consistent terminology, language and concepts. For example, the terms sex and gender are at times confused, and terms such as ‘intersexual’ [para.8] are not clear (ie: intersex as a term may be more appropriate than ‘intersexual’ which is not a term commonly used). The draft uses some terms interchangeably (ie: forced sterilisation/involuntary sterilisation) with no distinction between them. There are a number of terms and concepts that could benefit from footnote definitions (eg: inclusive education) as well as cross-referencing relevant General Comments throughout the GC (such as the CRC GC on the Rights of Adolescents; and the CRPD GC on the Right to Education).

### Specific Comments on the Draft GC Content

14. **Para 7:** When discussing control over reproductive rights, the current text states: “Their choices often remain unheard and their decisions are substituted by legal representatives, thus violating their rights under article 12 CRPD”. It would be useful to expand on this sentence to reflect that “...their decisions are substituted by third parties, including families, legal representatives, and service providers”. Para 7 could also benefit from a reference to the International Conference on Population and Development Programme of Action, as the critical definitive global consensus statement on sexual and reproductive health - including the right to plan one’s family - and placed individual dignity and human rights, gender equality at the heart of sustainable development. It could also be beneficial to footnote the ICPD Beyond 14 Global Review Report.
15. **Para 8:** the current text states, in part: “Similarly, girls with disabilities face intersectional discrimination on account of their age, gender, sex and disability when subjected to sexual assault. It is this intersection of identities which concurrently reflects and produces a perceived and actual situation of risk and exclusion which renders possible such an act. The perpetrator may target a girl with disabilities...”. This section should reference not only girls but also women with disabilities, as it is also relevant to women with disabilities, including older women. In addition, it is important to use the term ‘perpetrators’ rather than ‘the perpetrator’ in recognition of the fact that women and girls with disabilities are frequently subjected to violence (including sexual violence) by a greater number of perpetrators, compared to their peers.
16. **Para 22:** current text states: “Particularly institutionalized women or girls with disabilities are at risk of violence, involuntary sterilization or other forms of intersectional discrimination.” It may be clearer to state that: “Women and girls with disabilities in institutional and/or service settings, experience, and are at particular risk of violence, involuntary sterilization or other forms of intersectional discrimination.”
17. **Paras 24, 25, 26 and 27:** should also include and make specific reference to girls with disabilities.



18. **Paras 38-40:** the way this section is currently written tends to promote the notion of accessibility as primarily related to the physical environment. It would be beneficial to expand on other elements of accessibility, particularly for example, in relation to accessibility of information about sexual and reproductive rights and freedoms for adolescent girls with disabilities. In addition, the importance of accessibility of online services, programs and information (including through social media platforms) is a further critical component of accessibility for girls and women with disabilities.
19. **Para 43:** this section could be strengthened by including girls with disabilities, and providing more detail and information with regards to the evolving capacity of girls with disabilities – particularly their right to be provided with disability and age appropriate supports to participate in all aspects of decision-making.
20. **Para 44:** this section should make specific reference to the fundamental right for women and girls with disabilities to utilise the means, modes and formats of communication as preferred by the individual. It would also be useful to make particular reference to adolescent girls with disabilities in the final section of this paragraph as it stands in the current draft.
21. **Para 45-46:** this section should be re-worked to give clarity in relation to forced sterilisation and other forced and coerced treatments, practices and interventions. For example, the current draft states: “Forced sterilization, incest, female genital mutilation and coerced abortion are just some clear examples of violations of rights that many women and adolescents with disabilities experience, without giving their consent or fully understanding the intentions.” Firstly, these human rights violations affect girls with disabilities, as well as “women and adolescents with disabilities”. Girls with disabilities continue to be forcibly sterilised before they have even reached puberty or commenced menstruation. This is an on-going practice in various parts of the world (including Australia) and clearly breaches a number of international human rights treaties, including the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It is concerning that the current draft of the GC states, in part that: “Legal frameworks need to be revised that regulate forced sterilisation, coerced abortion, forced contraception, female or intersex genital mutilation.....”. This statement is in contradiction to the recommendations made by a number of human rights treaty monitoring bodies, which have specifically and clearly stated, for example that States parties should: “adopt national uniform legislation prohibiting the use of sterilisation of girls and boys with disabilities, and of adults with disabilities in the absence of their prior, fully informed and free consent.” These recommendations have been supported and endorsed by civil society organisations, along with, for example: the International Federation of Gynecology and Obstetrics (FIGO) Guidelines on Female Contraceptive Sterilization (2011);<sup>12</sup> recommendations of the World Medical Association (WMA) (2011); the International Federation of Health and Human Rights Organisations (IFHHRO) (2011);<sup>13</sup> and the Report of the UN Special Rapporteur on Torture (2013).<sup>14</sup>

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<sup>12</sup> FIGO (International Federation of Gynecology and Obstetrics), Female Contraceptive Sterilization. Available at: <http://www.wvda.org.au/FIGOGuidelines2011.pdf>

<sup>13</sup> World Medical Association (WMA) in conjunction with the International Federation of Health and Human Rights Organizations (IFHHRO) (2011) Global Bodies call for end to Forced Sterilisation: Press Release, 5 September 2011. Available at: <http://www.wvda.org.au/sterilWMA2011.htm>

<sup>14</sup> A/HRC/22/53



22. It is critical that the GC on Article 6 makes it abundantly clear that forced sterilisation, forced abortion, forced contraception, female or intersex genital mutilation – are violations of multiple human rights, including the right to freedom from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The right to be free from torture is one of the few absolute and non-derogable human rights, a matter of jus cogens,<sup>15</sup> and as such is binding on all States, irrespective of whether they have ratified specific treaties. The UN Special Rapporteur on Torture has clarified: “Forced interventions [including involuntary sterilization], often wrongfully justified by theories of incapacity and therapeutic necessity inconsistent with the Convention on the Rights of Persons with Disabilities, are legitimized 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.”<sup>16</sup>
23. The current GC text at para 46 states that “it is the responsibility of medical practitioners to ensure that women and girls with disabilities are sufficiently informed about the fact that the surgery or medical intervention will lead to her being sterilised and the consequences of this for their future.” We are concerned at this statement and the way it is written. It implies that girls with disabilities can choose sterilisation – provided they are sufficiently informed. This is, again, in contradiction of the strong recommendations by the treaty monitoring bodies, civil society and women with disabilities themselves. The Committee on the Rights of the Child (CRC) for example, have made it clear to States parties that they are required to “Enact non-discriminatory legislation that prohibits non-therapeutic sterilization of all children, regardless of disability”.<sup>17</sup> The Committee (on the Rights of the Child) has expressly identified forced sterilisation of girls with disabilities as a form of violence and clearly articulates that all forms of violence against children are unacceptable without exception.<sup>18</sup> It has advised that State parties to the CRC are expected to prohibit by law the forced sterilisation of children with disabilities,<sup>19</sup> and made it very 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.<sup>20</sup>
24. Para 47: This section could be enhanced by making particular reference to, and discussion of, women and girls with disabilities in institutions, including forced institutionalisation.
25. **Para 48:** This section as it appears in the current draft would be better placed under Article 9: Accessibility.
26. **Para 49-52:** It would be useful if this section provided a footnote definition of “inclusive education” and cross referencing to the CRPD General Comment on Article 24: the Right to Education.
27. **Section IV** could be particularly strengthened and provide more detailed, specific recommendations.

<sup>15</sup> Hossain, K. (2005) The Concept of Jus Cogens and the Obligation Under the U.N. Charter. Santa Clara Journal of International Law, Vol. 3, pp.72-98.

<sup>16</sup> Méndez, Juan. E. (2013) UN.Doc A/HRC/22/53.

<sup>17</sup> Committee on the Rights of the Child; UN Doc. CRC/C/AUS/CO/4

<sup>18</sup> 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].

<sup>19</sup> CRC Committee General Comment No.9 [at para.60]

<sup>20</sup> CRC Committee General Comment No. 13 [at para.61]

## Appendix 1: The Australian Experience & the Imperative for a Comprehensive General Comment on CRPD Article 6

- 1.1. Australia has indisputable international human rights obligations in relation to gender equality and to disability rights. 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 women and girls with disability experience full and effective enjoyment of their human rights.<sup>21</sup> The Australian Government has, for example, strongly articulated Australia's *'enduring commitment to human rights'*,<sup>22</sup> including meeting its obligations under the human rights treaties to which Australia is a party, and ensuring that Australia remains a *'leading proponent of the consistent and comprehensive implementation of the Universal Declaration of Human Rights'*<sup>23</sup>, which Australia helped to draft in the late 1940's.<sup>24</sup> Australia's Prime Minister, Tony Abbott has continued to publicly express his Government's commitment to ensuring *'genuine and complete equality between men and women'*.<sup>25</sup> The Minister Assisting the Prime Minister for Women, has also recently reaffirmed that the Government's commitment to gender equality remains *'resolute and unwavering'*.<sup>26</sup> Moreover, when elected in 2013, the Abbott Liberal Government committed to ensuring that *'women's issues and gender equality are taken into consideration in all policy and program development and implementation'*.<sup>27</sup> In addition, the Australian Government has publicly acknowledged that women, children and Indigenous Australians with disability face multiple intersecting disadvantage, and in 2013, publicly committed on the international stage to *'ensuring the specific needs of these vulnerable groups are considered during the development and implementation of relevant policies and programs'*.<sup>28</sup>
- 1.2. However, despite these commitments, obligations and assertions from Australia's leaders and officers at the highest levels of government, women and girls with disability in Australia have failed to benefit from provisions in international human rights law that give rise to Australia's obligations in relation to gender equality and to disability rights. Instead, systemic prejudice and discrimination against women and girls with disability continues to result in widespread denial, and violation of, their human rights and fundamental freedoms. Women and girls with disability are not afforded dignity, recognition, respect, agency and/or autonomy; they remain profoundly more disadvantaged than their male counterparts; and are systematically denied opportunities to develop, participate fully in economic, social and political development, and to experience full and effective enjoyment of their human rights.
- 1.3. The Australian legislative, policy, program and service landscape provides a useful example of the critical need for the GC on Article 6 to strongly and clearly articulate and delineate

<sup>21</sup> UN General Assembly, Convention on the Rights of Persons with Disabilities, 24 January 2007, A/RES/61/106.

<sup>22</sup> Australian Government, Department of Foreign Affairs and Trade; Australia and the United Nations: Human rights and gender equality. Accessed on line April 2014 at: <http://www.dfat.gov.au/un/>

<sup>23</sup> Australian Government, Department of Foreign Affairs and Trade; Human Rights and Gender Equality; Accessed on line April 2014 at: <http://www.dfat.gov.au/un/human-rights-and-gender-equality.html>

<sup>24</sup> The Universal Declaration of Human Rights was adopted by the UN General Assembly on 10 December 1948. See: <http://www.dfat.gov.au/un/> See also: Australian Government (2012) Draft 5th Report by Australia on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment For the period 1 January 2008 to 30 June 2012; Attorney-General's Department, Canberra.

<sup>25</sup> Hon Tony Abbott MP, Prime Minister of Australia, Address to the International Women's Day Parliamentary Breakfast, 4 March 2014. Accessed online March 2014 at: <https://www.pm.gov.au/media/2014-03-04/address-international-womens-day-parliamentary-breakfast> See also: The Coalitions Policy for Women (September 2013) accessed online March 2014 at: <http://paweb-static.s3.amazonaws.com/Coalition%202013%20Election%20Policy%20%E2%80%93%20Women%20%E2%80%93%20final.pdf>

<sup>26</sup> Senator the Hon Michaelia Cash, Correspondence to WWDA, 8<sup>th</sup> April 2014.

<sup>27</sup> Australian Government; Department of Prime Minister and Cabinet 'Whole of Government Approach'; accessed online March 2014 at: <http://www.dpmc.gov.au/women/woag/index.cfm>

<sup>28</sup> Woolcott, P. (2013) OpCit.

the obligations and responsibilities of States Parties in relation to the human rights of women and girls with disability. Australia is often held up globally as a country that is leading the way in relation to promoting and advancing the human rights of people with disability, and in some respects, this may well be justified. However, the reality for women and girls with disability in Australia is in stark contrast to the image of Australia as a model State in advancing the human rights of people with disability.

- 1.4. Australia, like many other countries, is a country permeated by gender differences and gender inequalities. There is no country – including Australia - in which the outcomes of public policy are equal for men and women.<sup>29</sup> In the Australian legislative, policy, program and service contexts and environments, people with disability are often treated as asexual, genderless human beings. Australian disability related policies and programs consistently fail to apply an appropriate gender lens, and gender related policies and programs consistently fail to apply an appropriate disability lens. In reality, most legislative, policy, program and service development proceeds as though there are a common set of issues - and that men and women, girls and boys, experience disability in the same way.<sup>30</sup>
- 1.5. Achieving gender equality and addressing discrimination are intrinsic to advancing the human rights of women and girls with disability. Public policy has the capacity to either perpetuate or eliminate discrimination and gender inequality.<sup>31</sup> Ignoring gender and issues of intersectionality in public policy development indicates a lack of understanding of the often multiple and intersecting discrimination and disadvantage experienced by people with disability, particularly the fact that multiple identity positions (including for e.g. gender, race, ethnicity, sexual orientation, refugee status and so on) increase the likelihood, nature and impact of discrimination and disadvantage. Gender-neutral laws, policies and programs may unintentionally perpetuate the consequences of past discrimination,<sup>32</sup> and/or create misleading analyses of issues and/or inaccurate assessments of likely policy outcomes. In the Australian context, despite the CRPD entering into force in Australia in 2008, domestic disability policy remains un-gendered, and the intersection of gender and disability, along with issues of intersectionality, continues to be largely ignored.
- 1.6. For example, the National Disability Strategy (NDS) is the *'foundation of Australia's work to advance disability rights'*<sup>33</sup> and sets out a ten-year national policy framework for guiding Australian governments to meet their obligations under the CRPD. The NDS was formally endorsed by the Council of Australian Governments (COAG) in February 2011, with all 9 Australian Governments (8 State/Territory and 1 Federal) formally agreeing that the NDS would *"ensure that the principles underpinning the Convention are incorporated into policies and programs affecting people with disability, their families and carers."*<sup>34</sup> Although

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<sup>29</sup> UNDP (2001) Gender Analysis Toolkit. Accessed online January 2014 at:

<http://www.undp.org/content/dam/undp/library/gender/Institutional%20Development/TLGEN1.6%20UNDP%20GenderAnalysis%20toolkit.pdf>

<sup>30</sup> Gray, G. (2010 draft) By Women for Women, the Australian women's health movement and public policy.

<sup>31</sup> Broderick, E. (2012) Applying a gender perspective in public policy: What it means and how we can do it better. Address given to the International Women's Day Forum APS Human Rights Network Meeting, Canberra, 9 March 2012. Accessed on line April 2014 at: <https://www.humanrights.gov.au/news/speeches/applying-gender-perspective-public-policy-what-it-means-and-how-we-can-do-it-better>

<sup>32</sup> Gender-neutral laws and policies may be inadvertently modelled on male lifestyles and thus fail to take into account aspects of women's life experiences which may differ from those of men. These differences may exist because of stereotypical expectations, attitudes and behaviour directed towards women which are based on the biological differences between women and men. They may also exist because of the generally existing subordination of women by men. See para 7 of CEDAW General Recommendation 25: Article 4, paragraph 1, of the Convention (Temporary Special Measures). See also: UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant), 11 August 2005, E/C.12/2005/4, available at: <http://www.unhcr.org/refworld/docid/43f3067ae.html> [accessed 2 June 2010]

<sup>33</sup> Woolcott, P. (2013) Australia's appearance before the Committee on the Rights of Persons with Disabilities: Australia's Opening Statement, 3 September 2013. In: Frohmader, C. (2013) Report from the United Nations Committee on the Rights of Persons with Disabilities (CRPD) 10th Session - Review of Australia. Available online at: <http://wwda.org.au/papers/confpaps/confpaps2011/>

<sup>34</sup> Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA)(2013) National Disability Strategy 2010 – 2020 Report to the Council of Australian Governments 2012. OpCit.

gender equality is a fundamental human rights principle, underpinning not only the CRPD, but every major international human rights instrument to which Australia is a party, the National Disability Strategy (NDS); its national Implementation Plans, its State/Territory implementation plans, its mechanisms and trend indicators for monitoring, review and evaluation, along with its 2 yearly progress Reports to COAG - all remain completely un-gendered. They do not provide for, nor report on any focused, gender-specific measures to ensure that women and girls with disability experience full and effective enjoyment of their human rights. They do not enable capacity at any level to address, monitor or evaluate the gender dimensions of the ten-year Strategy. Despite the Australian Government's commitment to *'genuine and complete equality between men and women'* and to ensuring the specific needs of women and girls with disability are included in the *'development and implementation of relevant policies and programs'*,<sup>35</sup> women and girls with disability continue to be excluded and marginalised from policies and programs affecting people with disability and from policies and programs affecting women and girls.

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<sup>35</sup> Woolcott, P. (2013) OpCit.

## Appendix 2: The Status of Women and Girls with Disability & the Imperative for a Comprehensive General Comment on CRPD Article 6

2.1. Regardless of country or culture, women and girls with disability have fewer opportunities, lower status and less power and influence than men and boys with disability.<sup>36</sup> Gender-based assumptions and expectations place women with disability at a disadvantage with respect to substantive enjoyment of rights, such as freedom to act and to be recognised as autonomous, fully capable adults, to participate fully in economic, social and political development, and to make decisions concerning their circumstances and conditions.<sup>37</sup> Women with disability:

- are poorer and have to work harder than disabled men to secure their livelihoods;
- have less control over income and assets;
- bear the responsibility for unpaid work in the private and social spheres;
- have a smaller share of opportunities for human development;
- are subject to gender-based violence, and other forms of gendered-disability violence, abuse and exploitation;
- have a subordinate social position; and,
- are poorly represented in policy and decision-making.<sup>38</sup>

2.2. These gendered differences are reflected in the life experiences of women with disability and men with disability. For example, women with disability:

- experience gendered disability violence, particularly family/domestic violence, violence in institutional settings, and violence in the workplace, more often than disabled men,<sup>39</sup> are often at greater risk than disabled men, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation;<sup>40</sup> and, are more vulnerable as victims of crimes from both strangers and people who are known to them;<sup>41</sup>
- experience multiple and intersecting forms of discrimination that combine to significantly heighten the risk and likelihood of them experiencing gendered disability violence;<sup>42</sup>
- fall through a number of legislative, policy and service delivery ‘gaps’ as a result of the failure to understand the intersectional nature of the violence that they experience, the vast circumstances and spaces in which such violence occurs, and the multiple and intersecting forms of discrimination which make them more likely to experience, and be at risk of, violence;<sup>43</sup>
- represent 51% of Indigenous Australians aged 15 years and over who have a disability or long-term health condition. Indigenous women are 35 times more likely to suffer family

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<sup>36</sup> Women With Disabilities Australia (WWDA) (2010) Gendering the National Disability Care and Support Scheme: WWDA Submission to Stage One of the Productivity Commission National Disability Care and Support Inquiry. Available online at: [http://wwda.org.au/wp-content/uploads/2013/12/WWDA\\_SubPCInquiry2010.pdf](http://wwda.org.au/wp-content/uploads/2013/12/WWDA_SubPCInquiry2010.pdf)

<sup>37</sup> WWDA (2010) Gendering the National Disability Care and Support Scheme. OpCit.

<sup>38</sup> Department for International Development (2002) Gender Manual: A Practical Guide for Development Policy Makers and Practitioners. Social Development Division; DFID, London, UK.

<sup>39</sup> Women With Disabilities Australia (WWDA) (2007b) ‘Forgotten Sisters - A global review of violence against women with disabilities’. WWDA Resource Manual on Violence Against Women With Disabilities. Published by WWDA, Tasmania, Australia; Meekosha, H. (2004) Gender and Disability. Entry for the Sage Encyclopaedia of Disability. Available on line at: <http://wwda.org.au/gendis2001.htm>.

<sup>40</sup> See Preamble [q] of UN General Assembly, Convention on the Rights of Persons with Disabilities; A/RES/61/106.

<sup>41</sup> Groce, N. (2006) People with Disabilities, in Social Justice and Public Health, Barry S. Levy & Victor Sidel (Eds), accessed online April 2011 at: [http://www.aidslex.org/site\\_documents/DB-0018E.pdf](http://www.aidslex.org/site_documents/DB-0018E.pdf)

<sup>42</sup> Frohmader, C., Dowse, L., and Didi, A. (2015) ‘Preventing Violence against Women and Girls with Disabilities: Integrating A Human Rights Perspective’. Women With Disabilities Australia (WWDA), Hobart, Tasmania. ISBN: 978-0-9585268-4-5.

<sup>43</sup> Ibid.

violence<sup>44</sup> and sustain serious injury requiring hospitalisation, and 10 times more likely to die due to family violence, than non-Indigenous women;<sup>45</sup>

- witness cases involving crimes against them often go unreported, and/or inadequately investigated, and/or remain unsolved and/or result in minimal sentences;<sup>46</sup>
- are often denied effective access to justice because violations of their rights are not taken seriously;
- are more exposed to practices which qualify as torture or inhuman or degrading treatment<sup>47</sup> (such as forced or coerced sterilisation, forced abortion, forced contraception, gendered disability violence, chemical restraint, forced psychiatric interventions);
- are more likely than disabled men to acquire a disability through gendered disability violence;<sup>48</sup>
- are much more likely to experience forced/involuntary electroshock (ECT) than men with disability. Reports and available data indicate that there is a substantial difference in the numbers of men and women receiving both voluntary and involuntary ECT, with nearly three times as many women receiving ECT compared with men;<sup>49</sup>
- are much more likely than disabled men, to experience restrictions, negative treatment, and violations of their sexual and reproductive rights;<sup>50</sup>
- are more likely to be sole parents, to be living on their own, or in their parental family than disabled men,<sup>51</sup> are at higher risk of divorce than disabled men and often experience difficulty maintaining custody of their children post-divorce;<sup>52</sup>
- are up to ten times more likely than other parents to have a child removed from their care by authorities on the basis of the mother's disability, rather than any evidence of child neglect;<sup>53</sup>
- are poorer and more likely to be unemployed than men with disability,<sup>54</sup> less likely to be in the paid workforce than disabled men, and have lower incomes from employment than men with disability;<sup>55</sup>
- are more likely to experience gender biases in labour markets, and are more concentrated than disabled men in informal, subsistence and vulnerable employment;<sup>56</sup>

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<sup>44</sup> 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) Improving responses to family violence in the family law system: An advice on the intersection of family violence and family law issues. Family Violence Committee, Family Law Council, Canberra.

<sup>45</sup> Family Law Council (2009) OpCit.

<sup>46</sup> WWDA (2007b) OpCit; Healey, L., Howe, K., Humphreys, C., Jennings, C. & Julian, F. (2008) Building the Evidence: A report on the status of policy and practice in responding to violence against women with disabilities in Victoria. Published by the Victorian Women with Disabilities Network Advocacy Information Service, Melbourne; French, P., Dardel, J., & Price-Kelly, S. (2010) Rights denied: Towards a national policy agenda about abuse, neglect and exploitation of persons with cognitive impairment, People with Disability Australia, Sydney.

<sup>47</sup> Committee of Ministers of the Council of Europe (2009) Declaration: Making gender equality a reality. 119<sup>th</sup> Session of the Committee of Ministers, Madrid, 12 May 2009.

<sup>48</sup> WWDA (2007b) Op Cit; Commonwealth of Australia (2009) Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009-2021. Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), Canberra.

<sup>49</sup> In Frohmader, C. (2011) OpCit. See Also: 'Child shock therapy'; Herald Sun Newspaper, January 25, 2009. Accessed online December 2012 at: <http://www.heraldsun.com.au/news/victoria/child-shock-therapy/story-e6frf7kx-111118657718>

<sup>50</sup> Manjoo, Rashida (2012) Report of the Special Rapporteur on violence against women, its causes and consequences; UN General Assembly; UN Doc. A/67/227; Grover, A. (2011) Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. United Nations General Assembly; UN Doc. A/66/254.

<sup>51</sup> Meekosha, H. (2004) Op Cit.

<sup>52</sup> Arnade, S. & Haefner, S. (2006) Gendering the Draft Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities. Legal background paper. Published by Disabled Peoples' International (DPI), Berlin.

<sup>53</sup> 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. <http://www.publicadvocate.vic.gov.au/research/302/>

<sup>54</sup> WWDA (2009) Submission to the National Human Rights Consultation. WWDA, Tasmania. Available online at: <http://www.wwda.org.au/subs2006.htm>; Meekosha, H. (2004) Op Cit.

<sup>55</sup> WWDA (2008) Submission to the Parliamentary Inquiry into pay equity and associated issues related to increasing female participation in the workforce. WWDA, Tasmania. Available online at: <http://www.wwda.org.au/subs2006.htm>; Human Rights and Equal Opportunity Commission (HREOC), 2005, National Inquiry into Employment and Disability; Issues Paper 1: Employment and Disability - The Statistics; HREOC, Sydney; O'Reilly, A. (2007) The right to decent work of persons with disabilities. International Labour Office (ILO), Geneva; Arnade, S. & Haefner, S. (2006) Op Cit.

<sup>56</sup> UN Development Fund for Women (UNIFEM) (2008) Progress of the World's Women 2008/2009: Who Answers to Women? Gender & Accountability. Available at: <http://www.unhcr.org/refworld/docid/4a09773a2.html> [accessed 2 August 2009]

- share the burden of responsibility for unpaid work in the private and social spheres, including for example, cooking, cleaning, caring for children and relatives;<sup>57</sup>
- are more likely than disabled men, to be affected by the lack of affordable housing, due to the major gap in overall economic security across the life-cycle, and to their experience of gendered disability violence which leads to housing vulnerability, including homelessness;<sup>58</sup>
- are less likely to receive service support than disabled men;<sup>59</sup>
- face barriers in accessing adequate maternal and related health care and other services for both themselves and their child/ren,<sup>60</sup> and are more likely than disabled men to face medical interventions to control their fertility;<sup>61</sup>
- experience more extreme social categorisation than disabled men, being more likely to be seen either as hypersexual and uncontrollable, or de-sexualised and inert;<sup>62</sup>
- are more likely than disabled men to be portrayed in all forms of media as unattractive, asexual and outside the societal ascribed norms of 'beauty';<sup>63</sup>
- have significantly lower levels of participation in governance and decision making at all levels compared to men with disability;<sup>64</sup>
- 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.<sup>65</sup>

<sup>57</sup> Cited in: Australian Human Rights Commission (2010), Op Cit.

<sup>58</sup> Australian Human Rights Commission (2010) Australia's Implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Independent Report to the Committee on the Elimination of Discrimination against Women. Accessed online July 2010 at: <http://www2.ohchr.org/english/bodies/cedaw/cedaws46.htm>

<sup>59</sup> See: Australian Institute of Health & Welfare (AIHW) (2009) Disability support services 2007 – 08. National data on services provided under the Commonwealth State/Territory Disability Agreement. Disability series. Cat. no. DIS 56. Canberra: AIHW; Arnade, S. & Haefner, S. (2006) Op Cit.

<sup>60</sup> World Health Organization (2009) Promoting sexual and reproductive health for persons with disabilities, WHO/UNFPA Guidance Note 2009, accessed on line April 2011 at: [http://whqlibdoc.who.int/publications/2009/9789241598682\\_eng.pdf](http://whqlibdoc.who.int/publications/2009/9789241598682_eng.pdf)

<sup>61</sup> Brady, S., Briton, J. & Grover, S. (2001) The Sterilisation of Girls and Young Women in Australia: Issues and Progress. A report commissioned by the Federal Sex Discrimination Commissioner and the Disability Discrimination Commissioner; Human Rights and Equal Opportunity Commission, Sydney, Australia. Available online at <http://www.wwda.org.au/brady2.htm>; WWDA (2009) Parenting Issues for Women with Disabilities in Australia: A Policy Paper. WWDA, Tasmania. Available online at: <http://www.wwda.org.au/subs2006.htm>; Steele, L. (2008) Making sense of the Family Court's decisions on the non-therapeutic sterilisation of girls with intellectual disability; Australian Journal of Family Law, Vol.22, No.1.

<sup>62</sup> Meekosha, H. (2004) Op Cit.

<sup>63</sup> Ortoleva, S. (2011) Recommendations for Action to Advance the Rights of Women and Girls with Disabilities in the United Nations system; accessed online April 2011 at: <http://sites.google.com/site/womenenabled/>

<sup>64</sup> United Nations Development Programme (UNDP) (2010) Political Participation of Women with Disabilities in Cambodia: Research Report 2010, accessed online April 2011 at: <http://www.un.org.kh/undp/knowledge/publications/political-participation-of-women-with-disabilities-in-cambodia>

<sup>65</sup> Groce, N. (2006), Op Cit.



## Appendix 3: Critical subjects of concern for women and girls with disability & the imperative for a comprehensive General Comment on CRPD Article 6

### 3.1. Article 16: Freedom from exploitation, violence and abuse

International human rights law condemns violence against women in all its forms, whether it occurs in the home, schools, in institutions, the workplace, the community or in other public and private institutions, and regardless of who perpetrates it.<sup>66</sup> Yet violence against women and girls with disability, in all its forms, is a global epidemic which remains largely unacknowledged and unaddressed. This is despite several of the international human rights treaty monitoring bodies repeatedly expressing their deep concern about the high levels of violence experienced by women and girls with disability. Treaty monitoring bodies have found that the inter-connection between violence against women and discrimination on the basis of gender and disability remains unaddressed.<sup>67</sup> They have raised serious concerns about the low rates of reporting, prosecutions and convictions, the lack of data, the lack of inclusive legislation, policies, services and support, and lack of targeted measures to prevent and address violence against women and girls with disability. The monitoring bodies have called on States parties to take urgent measures to address violence and abuse experienced by women and girls with disability, particularly those living in institutional, residential and/or service settings. They have urged States parties to ensure access for women with disability to an effective, integrated response system, and include a more comprehensive consideration of women with disability in policies on the prevention of gender-based violence.<sup>68</sup> Importantly, the treaty monitoring bodies have recognised the multiple and intersecting forms of discrimination experienced by women and girls with disability, along with the multiple and severe forms of violence perpetrated against them, and have called on States parties to take immediate steps to end such violence and discrimination.<sup>69</sup>

### 3.2. Article 23: Respect for home and the family

Although the right to ‘found a family’ and to ‘reproductive freedom’ is clearly articulated in a number of international human rights instruments,<sup>70</sup> for many women with disability, such fundamental human rights are not realisable. Instead, women with disability remain discouraged from, or denied the opportunity and the right, to bear and raise children.<sup>71</sup> They have been, and continue to be perceived as asexual, dependent, recipients of care rather than care-givers, and considered to be generally ‘incapable’ of looking after children.<sup>72</sup> Alternatively, women with intellectual disability in particular may be regarded as overly sexual, creating a fear of profligacy and the reproduction of disabled babies, often a

<sup>66</sup> United Nations General Assembly (2006) In-depth study on all forms of violence against women. Report of the Secretary-General. UN Doc. No. A/61/122/Add.1. New York.

<sup>67</sup> Manjoo, R. (2012) Report of the Special Rapporteur on violence against women, its causes and consequences. United Nations General Assembly, UN Doc No. A/67/227.

<sup>68</sup> See for eg: Committee on the Rights of Persons with Disabilities (2013) Concluding observations on the initial report of Australia, adopted by the Committee at its tenth session (2-13 September 2013); UN Doc. CRPD/C/AUS/CO/1.

<sup>69</sup> Frohmader, C. (2014) ‘Gender Blind, Gender Neutral’: The effectiveness of the National Disability Strategy in improving the lives of women and girls with disabilities. Prepared for Women With Disabilities Australia (WWDA), Hobart, Tasmania. ISBN: 978-0-9585268-2-1. See also: Frohmader, C. & Cadwallader, J. (2014) Joint Submission from National Cross-Disability Disabled People’s Organisations (DPO’s) to the Senate Standing Committee on Finance and Public Administration ‘Inquiry into Domestic Violence in Australia’. Available at: [http://wwda.org.au/wp-content/uploads/2013/12/Final\\_Draft\\_DPO\\_Sub\\_DV\\_Senate2014.pdf](http://wwda.org.au/wp-content/uploads/2013/12/Final_Draft_DPO_Sub_DV_Senate2014.pdf)

<sup>70</sup> See for eg: 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).

<sup>71</sup> Women With Disabilities Australia: ‘Parenting Issues for Women with Disabilities in Australia’ - A Policy Paper (May 2009). Available at:

[www.wwda.org.au/motherhd2006.htm](http://www.wwda.org.au/motherhd2006.htm)

<sup>72</sup> Ibid.

justification for their sterilisation.<sup>73</sup> The denial of the right to reproductive freedom and the right to found and maintain a family takes many forms for women with disability, 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, forced removal of babies and children, and the denial of rights to parenting. Women with disability 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 family related research.<sup>74</sup> The UN Special Rapporteur on Violence Against Women has 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.’*<sup>75</sup>

- 3.3. Fears of women with disability as parents persist although evidence demonstrates that parents with disability are no more likely to maltreat children or to raise so-called “defective” children than non-disabled parents.<sup>76</sup> Statutes in many countries on termination of parental rights, child custody and divorce include disability-related grounds for termination of parental rights or loss of custody and may emphasise and focus on disability status rather than actual parenting skill or behaviour, implicitly equating parental disability with parental unfitness.<sup>77</sup> Because of such legal definitions and societal prejudices, mothers with disability are often subjected to greater scrutiny by social service agencies than non-disabled women. Fear of being incorrectly perceived as an unfit mother by a court on the basis of disability, and the breakdown of their relationship with children, has frequently discouraged mothers with disabilities from separating from an abusive partner.<sup>78</sup>
- 3.4. Recent data demonstrates that a parent with a disability (usually a mother) is up to ten times more likely than other parents to have a child removed from their care, with the child removed by authorities on the basis of the parents disability, rather than any evidence of child neglect.<sup>79</sup> Women with disability are also coerced to have hysterectomies after they have given birth to one or more children, who have usually been taken from their care; or as a condition of having access to their child who has been taken from their care.<sup>80</sup>
- 3.5. For many women and girls with disability, knowledge of sexual and reproductive rights and health has been shown to be poor and access to information and education limited. Women with disability express desires for intimate relationships but report limited opportunities and difficulty negotiating relationships.<sup>81</sup> For women with intellectual disability in particular, attitudes toward sexual expression remain restrictive and laws addressing sexual exploitation may be interpreted by others as prohibition of relationships.<sup>82</sup> Paternalistic and

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<sup>73</sup> Women With Disabilities Australia (WWDA) (2007b) 'Forgotten Sisters - A global review of violence against women with disabilities'. WWDA Resource Manual on Violence Against Women With Disabilities. Published by WWDA, Tasmania, Australia.

<sup>74</sup> Frohmader, C., Meekosha, H., & Sodatic, K. (forthcoming) Unruly Mothers or Unruly Practices? Disabled Mothers Surviving oppressive state practices in Australia.

<sup>75</sup> UN General Assembly, Secretary General (2012) Report of the Special Rapporteur on violence against women, its causes and consequences. UN Doc No. A/67/227.

<sup>76</sup> UN General Assembly, Secretary General (2012) Report of the Special Rapporteur on violence against women, its causes and consequences. UN Doc No. A/67/227.

<sup>77</sup> See: Disability and Parental Rights Legislative Change Project, 'Guide for Creating Legislative Change'; University of Minnesota,

<http://www.cehd.umn.edu/ssw/CASCW/attributes/PDF/LegislativeChange.pdf>

<sup>78</sup> Frohmader, C. & Ortoleva, S. (2013) OpCit.

<sup>79</sup> 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. <http://www.publicadvocate.vic.gov.au/research/302/>; See also: [Disability Rights Now \(2012\) OpCit.](#)

<sup>80</sup> People With Disabilities Australia (PWDA) (2013) Submission to the Senate Standing Committee on Community Affairs: Inquiry into the involuntary or coerced sterilisation of people with disabilities in Australia. See: [www.pwd.org.au](http://www.pwd.org.au)

<sup>81</sup> In Frohmader, C. (2013) OpCit.

<sup>82</sup> Eastgate, G., Scheermeyer, E., van Driel, M. & Lennox, N. (2012) Intellectual disability, sexuality and sexual abuse prevention: A study of family members and support workers. Australian Family Physician Vol. 41, No. 3, pp. 135-139.

stereotypical attitudes towards women and girls with disability, often result in others deciding on a disabled woman or girls behalf what is in their 'best interests'. It is clear that negative attitudes, values and stereotypes about the reproductive capacity of women with disability influences decisions taken about their sexual and reproductive rights. When these negative attitudes are combined with authority and power, they are a potent combination.<sup>83</sup>

### 3.6. Article 15: Freedom from torture or cruel, inhuman or degrading treatment or punishment

There is growing recognition at the international level that medical interventions of an invasive and irreversible nature, absent a therapeutic purpose, may constitute torture or ill-treatment when administered without the prior, free and informed consent of the person concerned.<sup>84</sup> Forced and coerced sterilisation<sup>85</sup> is a clear example of such an intervention. Forced sterilisation is now globally recognised as an act of violence,<sup>86</sup> a form of social control, and a clear and documented violation of the right to be free from torture.<sup>87</sup> Women and girls with disability are at particular risk of forced and coerced sterilisations performed under the auspices of legitimate medical care or the consent of others in their name.<sup>88</sup> Forced sterilisation is performed on young girls and women with disability for various purposes, including eugenics-based practices of population control, menstrual management and personal care, and pregnancy prevention (including pregnancy that results from sexual abuse).<sup>89</sup> The reasons used to justify forced sterilisations of disabled girls and women generally fall into five broad categories, all couched as being in the "best interests" of the woman or girl concerned: a) the genetic/eugenic argument; b) for the good of the state, community or family; c) menstrual management; d) incapacity for parenthood; and e) prevention of sexual abuse.<sup>90</sup>

### 3.7. The monitoring bodies of the United Nations core international human rights treaties<sup>91</sup> have all found that forced and coerced sterilisation clearly breaches multiple provisions of the respective treaties.<sup>92</sup> Yet forced sterilisation is an ongoing practice that remains legal and

<sup>83</sup> McCarthy, M. (2009) 'I have the job so I can't be blamed for getting pregnant': Contraception and women with learning disabilities. *Women's Studies International Forum*, 32, pp. 198-208.

<sup>84</sup> Commonwealth of Australia (October 2013) Senate Community Affairs References Committee: Involuntary or coerced sterilization of intersex people in Australia. Retrieved August 2014 from:

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Involuntary\\_Sterilization/Sec\\_Report/~media/Committees/Senate/committee/clac\\_ctte/involuntary\\_sterilization/second\\_report/report.ashx](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilization/Sec_Report/~media/Committees/Senate/committee/clac_ctte/involuntary_sterilization/second_report/report.ashx)

<sup>85</sup> 'Forced sterilization' refers to the performance of a procedure which results in sterilization in the absence of the prior, free and informed consent of the individual who undergoes the procedure, including instances in which sterilization has been authorized by a third party, without that individual's consent. This is considered to have occurred if the procedure is carried out in circumstances other than where there is a serious threat to life. Coerced sterilization occurs when financial or other incentives, misinformation, misrepresentation, undue influences, pressure, and/or intimidation tactics are used to compel an individual to undergo the procedure. Coercion includes conditions of duress such as fatigue or stress. Undue influences include situations in which the person concerned perceives there may be an unpleasant consequence associated with refusal of consent. Any sterilization of a child, unless performed as a life-saving measure, is considered a forced sterilization. See for eg: Frohmader, C. (2013) 'Dehumanised: The Forced Sterilization of Women and Girls with Disabilities in Australia'. Submission to the Senate Inquiry into the involuntary or coerced sterilization of people with disabilities in Australia. Women With Disabilities Australia (WWDA), Hobart, Tasmania. ISBN: 978-0-9876035-0-0

<sup>86</sup> See: Manjoo, Rashida (2012) Report of the Special Rapporteur on violence against women, its causes and consequences; UN General Assembly; UN Doc. A/67/227;. See also: Radhika Coomaraswamy (1999), Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences: Policies and practices that impact women's reproductive rights and contribute to, cause or constitute violence against women, (55th Sess.), E/CN.4/1999/68/Add.4 (1999), [para. 51].

<sup>87</sup> Méndez, Juan. E. (2013) Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN General Assembly; UN Doc. A/HRC/22/53; See also: Nowak, M. (2008) Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; UN General Assembly, UN Doc. A/HRC/7/3; Committee on the Rights of the Child (2011) General Comment No. 13: Article 19: The right of the child to freedom from all forms of violence; UN Doc. CRC/C/GC/13.

<sup>88</sup> Women With Disabilities Australia (WWDA), Human Rights Watch (HRW), Open Society Foundations, and the International Disability Alliance (IDA) (2011) Sterilization of Women and Girls with Disabilities: A Briefing Paper. Available at: [http://www.wwda.org.au/Sterilization\\_Disability\\_Briefing\\_Paper\\_October2011.pdf](http://www.wwda.org.au/Sterilization_Disability_Briefing_Paper_October2011.pdf). See also: International Federation of Gynecology and Obstetrics (2011) Female Contraceptive Sterilization. Available at: <http://www.wwda.org.au/FIGOGuidelines2011.pdf>

<sup>89</sup> Women With Disabilities Australia (WWDA), Human Rights Watch (HRW), Open Society Foundations, & International Disability Alliance (IDA)(2011) Op Cit. See also: Brady, S., Briton, J., & Grover, S. (2001) The Sterilization of Girls and Young Women in Australia: Issues and Progress. A report commissioned by the Federal Sex Discrimination Commissioner and the Disability Discrimination Commissioners; Human Rights and Equal Opportunity Commission, Sydney, Australia. Available at: [www.wwda.org.au/brady2.htm](http://www.wwda.org.au/brady2.htm)

<sup>90</sup> Frohmader, C. (2013) OpCit.

<sup>91</sup> OHCHR, The Core International Human Rights Instruments and their monitoring bodies. See: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>

<sup>92</sup> Frohmader, C. (2013) OpCit.

sanctioned by a number of Governments (including Australia). Perpetrators<sup>93</sup> are not held accountable and those individuals who have experienced this violent abuse of their rights are unable to obtain justice – such as reparation, satisfaction and guarantees of non-repetition as well as compensation, rehabilitation and recovery.<sup>94</sup>

- 3.8. The Committee Against Torture (CAT) has made it very clear that violence against women, which disproportionately affects with women with disability and indigenous women – is a violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. For example, the CAT Committee has recently called on Australia to “redouble its efforts to prevent and combat all forms of violence against women” throughout its territory by, (amongst other things), “increasing its efforts to address violence against indigenous women and women with disabilities.”<sup>95</sup>

### 3.9. Article 25: Health

Women with disability 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 disability, the services and programs 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 countries, breast and cervical cancer screening services are not available to women with disability, despite the fact that, in some countries, breast cancer is one of the most common cancers for females and one of the leading causes of death from cancer in females.<sup>96</sup> Women and girls with disability 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. In Australia, women with disability spend more of their income on medical care and health related expenses than men with disability.<sup>97</sup> Women with disability 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 disability between the ages of 45 and 64 have more than three times the average yearly expenditures of their non-disabled counterparts.<sup>98</sup>

- 3.10. Young women with disability, like all people, self-identify according to a range of sexual and gender identifications,<sup>99</sup> and must be afforded the fundamental right to express and explore these identities, and be provided access to relevant and specific information and resources regarding sex, sexuality and gender identity. However, for many women and girls with

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<sup>93</sup> A State’s obligation to prevent torture applies not only to public officials, such as law enforcement agents, but also to doctors, health-care professionals and social workers, including those working in private hospitals, other institutions and detention centres. As underlined by the Committee against Torture, the prohibition of torture must be enforced in all types of institutions and States must exercise due diligence to prevent, investigate, prosecute and punish violations by non-State officials or private actors. See: Méndez, Juan. E. (2013) UN.Doc A/HRC/22/53.

<sup>94</sup> Frohmader, C. (2013) ‘Dehumanised: The Forced Sterilization of Women and Girls with Disabilities in Australia’. Submission to the Senate Inquiry into the involuntary or coerced sterilization of people with disabilities in Australia. Women With Disabilities Australia (WWDA), Hobart, Tasmania. ISBN: 978-0-9876035-0-0

<sup>95</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Committee against Torture: Concluding observations on the combined fourth and fifth periodic reports of Australia; UN Doc No. CAT/C/AUS/CO/4-5;

<sup>96</sup> Women With Disabilities Australia (WWDA) (2009) Submission to the National Human Rights Consultation. WWDA, Rosny Park, Tasmania. Available online at: [www.wwda.org.au/subs2006.htm](http://www.wwda.org.au/subs2006.htm)

<sup>97</sup> Salthouse, S. & Howe, K. (2004) Lack of Data Means Lack of Action - A clinical examination of access to health services for women with disabilities. A paper presented on behalf of Women With Disabilities Australia (WWDA) to the Human Rights and Equal Opportunity Commission (HREOC) National Summit: ‘Access to Health Services for People with Disabilities’. Sydney, 28 May 2004.

<sup>98</sup> Blanchard, J. & Hosek, S. (2003) Financing Health Care for Women with Disabilities. A RAND White Paper. Prepared for the FISA Foundation. Accessed online April 2009 at: [www.wwda.org.au/health2001.htm](http://www.wwda.org.au/health2001.htm)

<sup>99</sup> The term “gender identity,” distinct from the term “sexual orientation,” refers to a person’s innate, deeply felt psychological identification as a man, woman or some other gender, which may or may not correspond to the sex assigned to them at birth. See: <http://www.hrc.org/resources/entry/sexual-orientation-and-gender-identity-terminology-and-definitions>

disability, knowledge of sexual and reproductive rights and health has been shown to be poor and access to information and education limited. The fundamental right of all young people, including young women with disability, to express their sexuality and gender identity, and have uncensored access to relevant, accessible and information and resources regarding these identities should be addressed in the GC on CRPD Article 6.

### 3.11. Article 29: Participation in political and public life

Participation of women with disability as citizens is at the basis of the recognition of their dignity. Access to decision-making, political participation and representation are essential markers of gender equality. Women and girls with disability are often excluded from, and denied opportunities to participate in decision-making about issues that affect their lives and those of their families, community and nation. For women and girls with disability, participation in social and political life is dependent on ensuring an adequate standard of living and on their access to fundamental social structures such as education, employment, health care, housing, accessible transport, and free enjoyment of the most fundamental human rights, such as the right to sexuality and reproduction and freedom from all forms of violence. Although there has been progress in women's participation in decision-making globally, the participation of women with disability in all areas of public life remains woefully inadequate.<sup>100</sup>

- 3.12. States parties to the CRPD (and other core international human rights treaties) have clear obligations to ensure the active, free, informed and meaningful participation of women and girls with disability at all stages of the design, implementation, monitoring and evaluation of decisions and policies affecting them. It is widely recognised however, that this requires capacity-building and human rights education and information for women and girls with disability, and the establishment of specific mechanisms and institutional arrangements, at various levels of decision-making, to overcome the obstacles that women and girls with disability face in terms of effective participation.
- 3.13. International human rights treaty monitoring bodies have expressed concern at the slow progress of States parties in ensuring the equal participation of women with disability in leadership and decision-making positions in public and political life, and have urged successive governments to address this issue.<sup>101</sup>

### 3.14. Article 31: Statistics and data collection

Data, research and information about women and girls with disability is necessary to develop and inform policy, direct resources, inform service development, and design and monitor specific programs. It also enables the monitoring of equality of opportunity and progress towards the achievement of economic, social, political and cultural rights for women with disability. It is critical as a tool for accountability and for enhancing the participation of women and girls with disability. Good quality data and research are especially necessary for a sound evidence base to improve the effectiveness of mainstream systems for women and girls with disability.<sup>102</sup> The lack of data, research and information about women and girls with disability results in invisibility and marginalisation in society,

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<sup>100</sup> In Frohmader, C. (2014) OpCit.

<sup>101</sup> See for eg: Committee on the Rights of Persons with Disabilities; UN Doc. CRPD/C/AUS/CO/1

<sup>102</sup> Commonwealth of Australia (2010) National Disability Strategy 2010-2020; an initiative of the Council of Australian Governments (COAG); available online at: [http://www.fahcsia.gov.au/sa/disability/progserv/govtint/nds\\_2010\\_2020/Pages/default.aspx](http://www.fahcsia.gov.au/sa/disability/progserv/govtint/nds_2010_2020/Pages/default.aspx)

which invariably leads to a critical lack of resources, and perpetuates violation of their human rights and fundamental freedoms. The deep-rooted exclusion experienced by women and girls with disability worldwide continues unabated due in part to the dearth of information available on its extent or impact, and the apathy of many States parties in acknowledging the need for, and developing such information.



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Item 8 of the provisional agenda

**General comments and days of general discussion**

**General comment on Article 6: Women with disabilities**

**Draft prepared by the Committee**

The Draft general comment on Article 6 on Women with disabilities was prepared pursuant to Rule 47, paragraphs 1 and 2 of the Committee's Rules of Procedure (CRPD/C/1) and paragraph 54 of the Committee's Working Methods (CRPD/C/5/4).



1. The Committee on the Rights of Persons with Disabilities in accordance with Rule 47 of its Rules of Procedure<sup>103</sup> and para. 54–57 of its Working Methods<sup>104</sup> may prepare general comments based on the various articles and provisions of the Convention with a view to assisting States Parties in fulfilling their reporting obligations. This draft general comment is prepared based on that Rule.

## I. Introduction

2. Women and girls with disabilities have long been neglected by international and national disability policy and law. Traditionally, policies addressed to women have made disability invisible and policies on disability have forgotten gender, perpetuating the situation of multiple discrimination of women and girls with disabilities. Gradual changes occurred in the 1980s when women with disabilities organized themselves and participated in the International Year of Disabled Persons 1981, in the following UN Decade of Disabled Persons 1983–1992, and in most World Conferences on Women. In 1990 the Vienna seminar on Women with Disabilities was organized by the United Nations.<sup>105</sup> They were recognized as a marginalized group in the World Programme of Action of 1982<sup>106</sup> and in the Standard Rules on the Equalization of Persons with Disabilities of 1993<sup>107</sup>. While they could meet only informally at the 1985 World Conference on Women on Nairobi<sup>108</sup>, women with disabilities had their own forum alongside the Fourth World Conference on Women in Beijing 1995. The outcome documents, the Beijing Declaration and the Platform for Action mention women with disabilities in 38 of 361 paragraphs.<sup>109</sup> Today, several bodies of the United Nations human rights mechanism have addressed the situation of women and girls with disabilities.<sup>110</sup> However, most binding human rights instruments yet do not address human rights violations of women and girls with disabilities. With the exception of ILO Convention No 159<sup>111</sup>, human rights treaties have ignored women and girls with disabilities. Article 6 CRPD is a response to this long time neglect. Empowering women with disabilities, by raising their self-confidence and increasing their power and authority to take decisions in all areas affecting their lives, is the key and most urgent issue of our times.

3. Gender equality and gender justice belong to the core of international human rights. The United Nations' Charter promotes universal respect for human rights for all without distinction as to sex among other categories. The Universal Declaration of Human Rights of 1948<sup>112</sup> as well as most core human rights treaties<sup>113</sup> explicitly prohibit discrimination and promote equality. The rights to equality and non-discrimination and equality along with the right to liberty are therefore characterized as the most fundamental human rights in modern international law. While sex or gender are always specifically referred to in non-discrimination and equality clauses, disability is rarely mentioned and usually falls under open clause formulas such as “any other status”. Article 6 is the first binding equality

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<sup>103</sup> Committee on the Rights of Persons with Disabilities: Rules of Procedure, 5 June 2014, CRPD/C/1, p. 17;

<sup>104</sup> Committee on the Rights of Persons with Disabilities: Working Methods of the Committee on the Rights of Persons with Disabilities, 4 April 2011, CRPD/C/5/4, p. 7-8.

<sup>105</sup> Women and Disability, Some Issues, Seminar on Disabled Women (Vienna, Aug. 20-24, 1990) UN Doc. SDW/1990/wp.1 (1990)

<sup>106</sup> World Programme of Action concerning Disabled Persons, Report of the Secretary General, 15 Sept 1982, A/RES/37/351/Add.1, para 11/2/45, p. 30.

<sup>107</sup> Standard Rules on the Equalization of Persons with Disabilities, Adopted by the United Nations General Assembly, forty-eighth session, resolution 48/96, annex, of 20 December 1993.

<sup>108</sup> Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, Nairobi 15-26 July 1985; United Nations, New York, 1986, online: [http://www.5wwc.org/downloads/Report\\_of\\_WCW-1985.pdf](http://www.5wwc.org/downloads/Report_of_WCW-1985.pdf) [28 Jan 2015].

<sup>109</sup> Beijing Declaration and Platform for Action, The fourth World Conference on Women, online: <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf> [28 Jan 2015].

<sup>110</sup> E.g. Committee on the Elimination of Discrimination against Women: General Recommendation No. 18 on Disabled Women, Committee on the Rights of the Child: General comment No. 9, The rights of children with disabilities, 13 November 2007, CRC/C/GC/9/Corr.1; Committee on Economic, Social and Cultural Rights: General Comment No. 5, Persons with Disabilities, E/1995/22; Office of the High Commissioner for Human Rights: Thematic study on the issue of violence against women and girls and disability, 2012; ILO, Integrating women and girls with disabilities into mainstream vocational training – A practical guide, 1999; World Health Organization: Eliminating forced, coercive and otherwise involuntary sterilization. An interagency statement OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO (2014).

<sup>111</sup> Art. 4 Convention concerning Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)

<sup>112</sup> Art. 1 and 2 UDHR

<sup>113</sup> Art. 3 CCPR, Art. 2 CESC, Art.1 and 2 CRC, Art. 1 CEDAW, Art. 7 CMW, Art. 2 CERD

provision in United Nations' human rights law that unequivocally outlaws discrimination on the basis of gender and disability.

4. While equality and non-discrimination have been the foundation of modern human rights, their notions have developed over the last decades. Whereas formal equality was the goal in the beginning, more comprehensive concepts, such as substantive equality and transformative equality, have evolved over time. This development is a reflection of human rights becoming truly universal and personalized. It acknowledges that human beings experience discrimination differently according to their statuses throughout life-cycle and that discrimination occurs in various forms, directly, indirectly, structurally or systemic, or multiple. Transformative equality as a concept acknowledges that positive action for change is necessary in order to overcome discrimination that is deeply interwoven in legal, political, economic and cultural structures of society.

5. Based on the initial reports of State Parties that the CRPD Committee has reviewed so far and taking into consideration the contributions to the half day of general discussion on women and girls with disabilities which took place during its 9th session in April 2013<sup>114</sup>, the Committee observes that there are three main subjects of concern with respect to the protection of human rights of women and girls with disabilities: (1) violence against women and girls with disabilities (2) restriction of sexual and reproductive rights of women with disabilities, including the right to motherhood and child-rearing responsibilities, and (3) intersectional discrimination against women and girls with disabilities.

6. Violence against women and girls with disabilities encompasses "violence accomplished by physical force, legal compulsion, economic coercion, intimidation, psychological manipulation, deception, and misinformation, and in which absence of free and informed consent is a key analytical component".<sup>115</sup> Women with disabilities face a confluence of violence which reflects both gender and sex-based and disability-based violence. It may be interpersonal violence or institutional and structural violence. Interpersonal violence includes such forms of abuse as economic, psychological, sexual, emotional, physical and verbal threats and actions. Institutional and structural violence is any form of structural inequality or institutional discrimination that maintains a woman in a subordinate position, whether physical or ideological, to other people within her family, household or community.<sup>116</sup> In terms of physical and psychological violence, women and girls with disabilities are victims of exploitation, violence and abuse (CRPD article 16), but are also subject to forms which are aggravated, amounting to cruel, inhuman or degrading treatment (CRPD article 15). According to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, certain forms of violence and abuse may be tantamount to cruel, inhuman or degrading treatment. Among these are 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.<sup>117</sup> Sexual violence against women and girls with disabilities includes rape and sexual abuse in all scenarios within both state and non-state institutions, within family or the community. Institutionalized women and girls with disabilities are at a higher risk of violence than men or boys with disabilities. Women with disabilities may experience violence for longer periods of time due to inadequate pathways to safety. Violence may be based on gender or disability or both.

7. Women with disabilities are often treated as if they have no control or should have no control over their sexual and reproductive rights. Their choices often remain unheard and their decisions are substituted by legal representatives, thus violating their rights under article 12 CRPD.<sup>118</sup> Guardianship laws may allow forced sterilisations or forced termination of wanted pregnancies in the name of "best interest" standards. Thus, some jurisdictions have higher rates of imposing substituted decisions on women than on men<sup>119</sup>.

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<sup>114</sup> All contributions received during the celebration of half the day of general discussion on women and girls with disabilities were gathered by the Committee in a specific publication available on the Committee website in English and Spanish.

<sup>115</sup> Report of the Office of the United Nations High Commissioner for Human Rights (2012) (A/HRC/20/5). Thematic study on the issue of violence against women and girls and disability. Paragraph 4.

<sup>116</sup> Report of the Special Rapporteur on violence against women, Paragraph 24, 25 and 26. 2011. A/HRC/17/26.

<sup>117</sup> See Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. 2013. A/HRC/22/53

<sup>118</sup> See World Health Organization: Eliminating forced, coercive and otherwise involuntary sterilization. An interagency statement OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO (2014).

<sup>119</sup> CRPD General Day of Discussion on Women and Girls with Disabilities (2013).

Therefore, it is particularly important to reaffirm that the legal capacity of women and girls with disabilities should be recognised on an equal basis with others.<sup>120</sup> Women and girls with disabilities are particularly at risk of forced sterilisation, which is carried out without their consent for a number of reasons. Women and girls with disabilities are often 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. Sexual rights are fundamentally entrenched in the human rights to, dignity, physical and mental integrity, private life, health and equality, in addition to the right to non-discrimination and with the physical and mental integrity on an equal basis with others. The main areas of concern to the Committee in respect of sexual and reproductive rights in the Convention are: 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/AIDS services; sexual violence and denial of free and informed consent to any medical or other therapeutic treatment.

These practices violate human rights of women and girls with disabilities. Like all women, women with disabilities have the 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.<sup>121</sup>

8. Women and girls with disabilities are often confronted with intersectional discrimination, which means that several forms of discrimination based on various layers of identity may intersect and produce new forms of discrimination which are unique and cannot be correctly understood by describing them as double or triple discrimination. Intersectionality is a form of multiple discrimination. Acknowledging intersectional or multiple discrimination helps to visualize human rights violations which remained unseen because discrimination was only viewed from one dimension such as ethnicity or skin colour, or gender or disability or sexual orientation or age or socio-economic situation. Most anti-discrimination laws and policies have this one-dimensional approach, in fact, many human rights treaties have this one-dimensional approach. However, human beings are not only men, women, intersexual or transgender, they also have ethnic, cultural and/or religious backgrounds, they may have an impairment or not and have other layers of identity, such as age and sexual orientation. Women and girls with disabilities are more likely to be subjected to forced interventions which infringe their reproductive rights such as forced sterilisation than women without disabilities and men with disabilities. They 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. This non-consensual treatment is perpetrated against them on account of the interaction and intersection of their gender. 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, to living independently and being included in the community, and access to justice. Similarly, girls with disabilities face intersectional discrimination on account of their age, gender, sex and disability when subjected to sexual assault. It is this intersection of identities which concurrently reflects and produces a perceived and actual situation of risk and exclusion which renders possible such an act. The perpetrator may target a girl with disabilities 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.

9. Most States do not recognise multiple and intersectional discrimination. Often 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. In some jurisdictions, victims of

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<sup>120</sup> Art. 12 CRPD and CRPD General Comment No 1, paragraph 31; Art. 15 CEDAW.

<sup>121</sup> Declaration and Beijing Declaration and Platform for Action. The Fourth World Conference on Women, Beijing from 4 to 15 September 1995. Paragraph 96.

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. In addition, where a remedy can be sought and obtained with respect to one aspect of the multidimensional 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 which restore the full scope of injury and disadvantage caused by this form of discrimination.

10. The role of data collection and consultation is 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, persons with disabilities 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, as well as to eliminate decision-making based on stereotypes. Increasingly, treaty bodies<sup>122</sup> are calling on States to take notice of and address intersectional and multiple discrimination, within domestic jurisdictions, whereas the CRPD is the first treaty which addresses multiple discrimination explicitly.

11. The present general comment reflects an interpretation of article 6 which is premised on the general principles of the Convention, as outlined in article 3, namely, respect for inherent dignity, individual autonomy — including the freedom to make one's own choices —, and independence of persons; non-discrimination; full and effective participation and inclusion in society; respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; equality of opportunity; accessibility; equality between men and women; and respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

12. Article 6 of the Convention recognizes that women with disabilities all over the world are subject to multiple discrimination. In order to respect and protect human rights of women with disabilities, State Parties need to take active measures for ensuring gender and disability equality. States must take all appropriate measures to ensure that women with disabilities can fully develop, advance and be empowered for the purpose of exercising and enjoying all human rights enshrined in the CRPD. The legal nature of article 6 is thus cross-cutting in the sense that it accompanies all human rights enshrined in the Convention. All rights must be interpreted in light of article 6 and thus the multiple discrimination of women with disabilities needs to be taken into account when implementing the CRPD. State Parties are under a comprehensive obligation to read and implement the Convention with women and girls with disabilities in mind.

13. The cross-cutting nature of article 6 is accompanied by specific references to gender equality and gender justice throughout the Convention: Preamble para. p) lists various grounds of discriminations which might aggravate or multiply disability discrimination. Sex is mentioned among these. The list is open ended and includes “any other status.” Preamble para s) emphasizes the need for gender mainstreaming in all efforts of implementation of the Convention. Article 3 (g) postulates that equality between women and men shall be considered as one of the core principles of the Convention. Article 8 para. b) demands that sex-based stereotypes, prejudices and harmful practises related to persons with disabilities be combated by State Parties. Article 16 and Preamble para. q) alert to the fact that women with disabilities are at higher risk of (sexual) violence, abuse and exploitation and demand that State Parties take all appropriate measures to protect women and girls with disabilities against these human rights violations. Article 25 demands that health services are gender sensitive and para a) requires State Parties to ensure, that all persons with disabilities are provided with the equal health care services, including in the

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<sup>122</sup> Among others, CEDAW Committee Concluding Observations on Austria, CRC Committee Concluding Observations on Seychelles,

area of reproductive and sexual health and population-based public health programmes. Article 28 on adequate standard of living and on social protection provides that State Parties must ensure that women with disabilities and girls with disabilities have equal access to social protection and poverty reduction programmes. Article 34 (4) provides that the CRPD should reflect a balanced gender representation.

14. Article 6 as a stand alone article on women with disabilities and the references to sex or gender in several other articles throughout the Convention manifest a two track approach to gender and disability. This twin-track approach seeks to ensure comprehensive and holistic recognition of women and girls with disabilities in the implementation of the Convention. Whereas the stand alone article reminds State Parties that specific measures need to be taken in order to ensure that women with disabilities are protected against multiple discrimination and can enjoy human rights and fundamental freedoms on an equal footing, the gender references in several articles of the treaty highlight the necessity of gender mainstreaming in disability policy. The fact that not all provisions of the Convention have explicit references to women with disabilities must, however, not be taken as an excuse for ignoring gender aspects in the implementation of these provisions. Article 6 has horizontal effect on all other provisions of the treaty.

## II. Normative content of article 6

### Article 6 paragraph 1

15. Article 6 paragraph 1 recognizes that women and girls with disabilities are subject to multiple discrimination on grounds of disability and sex, which might be aggravated by other grounds. Disability-based discrimination is defined as “any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.”<sup>123</sup> Discrimination against women is defined as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, or enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”<sup>124</sup>

16. The concept of reasonable accommodation in discrimination law was not widely known when CEDAW was adopted. But it has been applied to women with disabilities by CEDAW Committee.<sup>125</sup> While it is not included in the definition of sex-based discrimination according to CEDAW and it is linked to disability-based discrimination in this Convention, denial of reasonable accommodation on the basis of gender or disability may amount to discrimination under article 6. A core characteristic of multiple discrimination is its intersectional nature which means that more than one ground of discrimination is involved. Often it is impossible to separate the grounds in the context of discrimination. Which part of the discrimination is based on which ground is often impossible to tell. Further intersectional discrimination manifests itself as an entirely new form of discrimination. The Convention demands that State Parties guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.<sup>126</sup> Thus, denial of reasonable accommodation either on the ground of disability or on the basis of gender may amount to discrimination against women with disabilities.<sup>127</sup>

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<sup>123</sup> Art. 2 CRPD

<sup>124</sup> Art. 1 CEDAW

<sup>125</sup> CEDAW/C/HUN/CO/7-8 (CEDAW, 2013) Hungary

<sup>126</sup> Art. 5 (2) CRPD

<sup>127</sup> Art. 2 CRPD defines the concept of reasonable accommodation and the extent to which it has to be provided: “ ‘Reasonable accommodation’ means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;”.

17. Multiple discrimination means discrimination based on more than one status. It might manifest itself as cumulative discrimination<sup>128</sup> in the sense that discrimination based on one ground is added to discrimination based on another ground and both forms of discriminations can be separated. But more often, the grounds for discrimination are inextricably linked<sup>129</sup> and cannot be separated. Thus, intersectional discrimination may lead to different or to another degree of discrimination or to new forms of discrimination not yet acknowledged by law, policy or in research.<sup>130</sup> Whether cumulative or intersectional, multiple discrimination often has aggravating or compounding effects. To recognize multiple discrimination means to recognize that persons experience discrimination not as members of a homogenous group but as individuals with different statuses and in different life circumstances. It means to acknowledge that multiple discrimination has unique and specific impact on individuals and merits particular consideration and remedying.<sup>131</sup>

18. Multiple discrimination might be based on disability and gender but also on any other ground. Preamble para p) lists a number of other grounds such as colour, language or religion. But the list is not exhaustive and includes “any other status”. The Convention protects persons with disabilities against all forms of discrimination on all grounds.<sup>132</sup> Thus, multiple discrimination against women with disabilities may be based on “race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age”<sup>133</sup> or, for instance on “marital status, sexual orientation and gender identity, health status, place of residence, economic or social situation.”<sup>134</sup>

19. Determination of (multiple) discrimination requires finding the right comparator. The equality principle as a fundamental human rights principle is inherently relative and context specific. With regard to multiple discrimination of women and girls with disabilities it is important to note that comparators can be either men or boys with disabilities or women or girls without disabilities or other groups depending on the status at stake. Justification of multiple discrimination – if applicable – requires justification on all grounds at stake.

20. Multiple discrimination can take all forms of discrimination: direct or indirect discrimination, denial of reasonable accommodation, structural and systemic discrimination. Direct discrimination applies when women or girls with disabilities are treated less favourably than another person in a similar situation for a reason related to a prohibited ground. It also includes detrimental acts or omissions on the basis of prohibited grounds where there is no comparable similar situation.<sup>135</sup>

Indirect discrimination means that law, policies or practices appear neutral at face value, but have a disproportionate impact<sup>136</sup> on women or girls with disabilities.

Denial of reasonable accommodation is discrimination if necessary and appropriate modification and adjustments are denied that do not impose a disproportionate or undue burden and are needed to ensure a woman or a girl with disabilities enjoy equal exercise of a human right or fundamental freedom.<sup>137</sup>

21. Structural or systemic discrimination is difficult to trace because discrimination is routed in hidden or overt patterns of institutional behaviour, cultural traditions and norms, rules and other social structures that lead to unfavourable “othering” of women and girls with disabilities. Systemic discriminations are persistent and pervasive disadvantages against women or girls with disabilities as a group.<sup>138</sup>

22. Multiple discrimination against women and girls with disabilities may take place in private and public sphere. International human rights law has long acknowledged State

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<sup>128</sup> CESCR General Comment No 20 para 17

<sup>129</sup> CEDAW General Recommendation No 28 para.18

<sup>130</sup> CERD General Recommendation 25 para. 2 & 3

<sup>131</sup> CESCR GC 20 para. 17

<sup>132</sup> Art. 5 (2), Art. 2 CRPD

<sup>133</sup> Preamble p) CRPD

<sup>134</sup> CESCR GC 20 para. 27 -35

<sup>135</sup> CESCR General Comment 20 para 10

<sup>136</sup> CESCR GC 20 para. 10

<sup>137</sup> Art. 2 CRPD

<sup>138</sup> CESCR GC 20 para. 12

responsibility for private discrimination.<sup>139</sup> For State Parties to the CRPD it has been explicitly enunciated as general State Party obligations.<sup>140</sup> Women and girls with disabilities may experience multiple discrimination within family relations or by private social service providers. Particularly institutionalized women or girls with disabilities are at risk of violence, involuntary sterilization or other forms of intersectional discrimination.

## Article 6 paragraph 2

23. 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.

24. While States Parties are afforded flexibility in determining how best to achieve the purpose of the Convention, they must take “all appropriate measures”. These may be legislative, educational, administrative, cultural, political or other measures. Measures are appropriate if they achieve the goal of guaranteeing women with disabilities the exercise and enjoyment of the human rights and fundamental freedoms set out in the Convention. Measures may be temporary or long term and should overcome *de jure* and *de facto* inequality. While temporary measures might be necessary to overcome structural and systemic multiple discrimination long, term measures might be necessary with regard to reasonable accommodations.

25. All measures must ensure the full development, advancement and empowerment of women with disabilities. Development and advancement relate to economic growth and eradication of poverty but are not limited to these fields. Women with disabilities need to develop with respect to all rights and fundamental freedoms enshrined in the Convention. While gender and disability sensitive development measures in the field of education, literacy, employment and relating to combating violence may be appropriate measures to ensure the full economic development of women with disabilities, additional measures are necessary to ensure the full development of women with disabilities with regard to health and political and cultural participation for example.

26. Advancement goes beyond the goal of development in so far as measures must target the improvement of the situation of women with disabilities throughout their lifespan. It is not enough that women with disabilities are also recognized in development measures. Appropriate measures are those which are geared towards advancing the situation of women with disabilities in relation to their current situation and environment, in terms of human rights, fundamental freedoms and social development.

27. Ensuring empowerment of women with disabilities means to shift the paradigm from treating women and girls with disabilities as objects of pity to regarding them as right holders who are entitled to full and equal exercise of all human rights and fundamental freedoms.

## III. States parties’ obligations

28. Obligations under article 6 are of immediate nature. The progressive realization clause<sup>141</sup> does not apply to non-discrimination duties. As such, the rights provided for in article 6 apply at the moment of ratification and are subject to immediate realization. Upon ratification, State Parties must immediately begin to take steps towards the realization of the rights in article 6. These steps must be deliberate, well-planned, and include the consultation and real, effective and meaningful participation of women and girls with disabilities and their representative organizations.

29. States Parties have to take measures to achieve formal, substantive and transformative equality for women and girls with disabilities. Whereas formal equality relates to legal equality and similar treatment, substantive equality refers to *de facto* equal

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<sup>139</sup> CCPR, GC 18 para. 9, CCPR 28 para. 31, CESCR GC 20 para. 11, CEDAW GR 28 para. 9, CERD GR 25 para 1, 2;

<sup>140</sup> Art. 4 (1) (e) CRPD

<sup>141</sup> Art. 4 (2) CRPD



opportunity without disadvantage for and oppression of women and girls with disabilities. Transformative equality in the context of disability and gender means removal of barriers and discriminative structures and institutions by undertaking positive action measures to bring about change.

30. State Parties to the Convention are under an immediate legal obligation to respect, to protect and to fulfil the rights of women and girls with disabilities under article 6 in order to guaranteeing them the enjoyment and exercise of all human rights and fundamental freedoms. These duties imply the undertaking of legal, administrative, educational and other measures.

31. The duty to respect requires State Parties not to take measures that undermine the full development, advancement and empowerment of women and girls with disabilities. As such, existing laws, regulations, customs and practices that constitute discrimination against women and girls with disabilities must be modified or abolished.<sup>142</sup> Laws that do not allow women with disabilities to marry or have children are frequent examples for such legal discrimination. Further, the duty to respect implies to refrain from engaging in any act or practice that is inconsistent with article 6 and to ensure that public authorities and institutions act in conformity with it.<sup>143</sup> Compliance with the Convention can be secured by employing gender and disability mainstreaming in all policies and programmes.<sup>144</sup>

32. The obligation to protect means that State Parties have to ensure that the rights of women and girls with disabilities are not infringed upon by private parties or organizations. Thus, State Parties must take all appropriate measures to eliminate discrimination against women and girls with disabilities by any person, organization or private enterprise.<sup>145</sup> They must exercise due diligence to prevent and sanction such discrimination. It also includes the duty to exercise due diligence in ensuring that the development, advancement and empowerment of women and girls with disabilities is not impeded by non-State actors, including social service providers.

Promoting the training of professionals and staff working with women and girls with disabilities on the rights recognized in this Convention so as to better provide the assistance and services guaranteed by those rights<sup>146</sup> is part of this obligation. In particular State Parties must apply due diligence in protecting women and girls with disabilities against all forms of exploitation, violence and abuse through prevention, investigation, prosecution and punishment.<sup>147</sup>

33. The obligation to fulfil imposes an ongoing and dynamic duty to adopt and apply the measures needed to secure the development, advancement and empowerment of women and girls with disabilities. As such State Parties must determine a time-table for achieving equality for women and girls with disabilities. Educating and training women and girls with disabilities in civil, political, economic, social and cultural empowerment are important measures in this respect. Providing women and girls with disabilities with accessible information about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance and habilitation and rehabilitation support services and facilities<sup>148</sup> also falls under this duty. State Parties are further required to take affirmative action measures to advance women and girls through and in State agency, e.g. through gender and disability budgetary policy, or through the establishment of equality bodies (ministries, departments, ombudspersons) with a mandate to advance and empower women and girls with disabilities.

In order to analyze trends and determine the level of advancement and empowerment of women and girls with disabilities it is important to collect and analyze appropriate and accurate gender- and disability- disaggregated data, set benchmarks and indicators. Further, States Parties must facilitate women and girls with disabilities to organize themselves to do advocacy for their rights and to ensure equal access to justice, including accessible legal aid

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<sup>142</sup> Art. 4 (1) (b) CRPD

<sup>143</sup> Art. 4 (1) (d) CRPD

<sup>144</sup> Art. 4 (1) (c) CRPD

<sup>145</sup> Art. 4 (1) (e) CRPD

<sup>146</sup> Art. 4 (1) (i) CRPD

<sup>147</sup> CEDAW GR 28 para 19 ### CHECK

<sup>148</sup> Art. 4 (1) (h) CRPD

and advice and procedures for dealing with complaints against multiple discrimination.

#### **IV. Interrelation between the provisions addressing women and girls with disabilities and their link to other CRPD provisions.**

34. The horizontal nature of article 6 already ensures that it is inextricably linked to all other substantive provisions of the CRPD. Furthermore modern international law states that all human rights are universal, indivisible and interdependent and interrelated.<sup>149</sup> In addition to the articles that have an explicit reference to gender<sup>150</sup> the rights of women and girls with disabilities under article 6 are particularly interrelated with the following provisions.

##### **Article 8-Awareness raising**

35. History, culture, attitudes and structures in the community, including the family, have served to stereotype women and girls with disabilities negatively, thus exacerbating isolation and social exclusion. Often women with disabilities are ignored or stereotyped from a medical and asexual perspective. Gender and disability stereotyping impedes the achievement of gender and disability equality and the empowerment of women and girls with disabilities. Article 8 calls upon State Parties to adopt immediate, effective and appropriate measures to combat disability and gender stereotypes.<sup>151</sup>

36. Stereotypes about women and girls with disabilities both result from and are the cause of deeply engrained attitudes, values, norms and prejudices. They are used to justify and maintain the historical relations of power of men over women as well as persons without disabilities over persons with disabilities. They limit the development, advancement and empowerment of women and girls with disabilities.

37. States parties should adopt effective education and awareness raising programs that inform about gender and disability equality and, the rights of women and girls in particular and combat respective stereotypes. Public and private mass media need to be encouraged to portray women and girls with disabilities in accordance with the spirit and the rights enshrined in the CRPD.

##### **Article 9-Accessibility**

38. To ensure the rights of women and girls with disabilities, it is necessary to mainstream the gender perspective when designing, developing and executing urban planning policies for public and private facilities, based on accessibility, independence, sociability and habitability criteria. The built environment and urban design must be planned in accordance with civil safety standards to enable citizens to circulate on foot safely, while ensuring that groups at greater risk of violence and abuse (such as women, boys and girls, older people and persons with disabilities) feel safe and protected. Renewed measures are needed to train current and future professionals in the fields of architecture, design and engineering in universal accessibility, design for all and the gender perspective in architecture and construction.

39. Accessible sexual and reproductive health services, facilities and equipment are required such as contraceptive information, gynaecologist's examination beds and mammography equipment. All care services for women (and especially those related to health, motherhood, violence against women and childcare) must be fully accessible to women and girls with disabilities. Wheelchair users and those using crutches require space in waiting rooms including dressing and undressing areas. It is necessary to ensure universal accessibility, design for all and a gender perspective in products, objects, instruments, tools and devices in order to ensure that those used regularly by women and

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<sup>149</sup> Vienna Declaration and Programme of Action: Adopted by the World Conference on Human

<sup>150</sup> Mentioned supra para ##

<sup>151</sup> Art. 8 (1) (b) CRPD

girls are also accessible to women and girls with disabilities. Particular attention should be paid to those related to the sexual health of women with disabilities and to motherhood (babies' bottles with handles, prams designed to be clipped on to wheelchairs or pushed with one hand, wheelchair-accessible nappy changers, and so on), and should be included in publicly-available catalogues at affordable cost.

40. Transportation should be accessible to all persons with disabilities to ensure autonomous mobility. Bearing in mind the facts that women comprise the majority of public transport users in comparison with their male peers, that women have more limited access to private vehicles than men, and that their daily travel patterns are more complex than men's, it is essential that in designing, developing and monitoring transport policies, the intersection of aspects related to disability and gender are considered in order to ensure women with disabilities equal opportunities and protection against discriminated. To this end, it is important to invite experts with disabilities to take part as consultants in all stages of the process. With regard to accessibility of means of transport, in view of the limited financial resources of women with disabilities, regulatory processes for measures to ensure persons with disabilities or with reduced mobility are able to use and enjoy means of transport must, in their implementation, take into consideration and give priority to greater use of various means of transport (coach, train, by air or by sea) at lower cost, not just in urban settings but also and especially in rural environments. Specialist transportation staff should receive training specifically in assisting women, and care should be taken to observe the basic rules regarding respect between the sexes. When women with disabilities travel with their sons or daughters, staff shall make available the required specific services for children where necessary (play areas, nappy-changing facilities, breast-feeding rooms, and so on).

### **Article 10-Right to life**

41. In societies where girls are valued less than boys, the investment in education, health care or job training that families are willing to make in girls are often substantially less than for boys with disabilities. Globally, it is widely acknowledged that the greatest impediment to the lives of young people with disabilities is prejudice, social isolation and discrimination. While all individuals with disability may be affected by this lifelong cycle of stigma and prejudice, coming from different cultural, linguistic and religious traditions, ethnic or minority status, can place females at increased risk. Girls are less likely than boys to receive care and food and are more likely to be left out of family interactions and activities. Girls and young women with disabilities confront not only the prejudice and inequities encountered by persons with disabilities in general, but are also constrained by traditional gender roles and barriers<sup>152</sup>.

### **Article 11-Humanitarian Assistance**

42. Situations of risk and humanitarian emergencies considerably jeopardise the safety and protection of women and girls with disabilities, notably reducing their chances of survival. Women and girls with disabilities are more at risk before, during and after the occurrence of risks such as armed conflict, occupation of territories, natural disasters and humanitarian emergencies. They are at increased risk of experiencing sexual violence, including rape, and abuse. Humanitarian aid efforts must prevent such situations and address them if they do occur, including provision health care and mental health services to overcome psychological trauma. Appropriate services for women and girls with disabilities in situations of risk and humanitarian emergency, based on their individual needs, should be made available and their accessibility should be secured by removing physical, communicative, social, cultural, economic, political and other barriers, including the expansion of quality services in rural and remote areas .

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<sup>152</sup> The State of the World's Children 2013. Children with Disabilities. UNICEF. Introduction.

## **Article 12-Equal recognition before the law**

43. Women with disabilities must be able to exercise their legal capacity by taking their own decisions, including decisions on retaining their fertility, their right to motherhood, and to establish relationships. Effective measures must be adopted to provide women with disabilities access to the support they may require in exercising their legal capacity. Such support, when required, must be proportional to their individual and personal needs and abilities to take decisions on matters of daily life. They should also include trust-building activities to help women with disabilities to evaluate the implications and consequences of some of their actions or inactions. The guidelines of General Comment No 1 on article 12 apply.

## **Article 13-Access to justice**

44. Women and girls with disabilities' effective access to accessible, easy-to-use and safe justice must be ensured. They must be granted access at all stages of the process to support systems and technologies for the method of oral communication they choose, including sign language interpreters and guide-interpreters for people who are deafblind, in order to ensure proper communication with police and justice personnel. People providing personal assistance and/or caregivers may also be the person assaulting and abusing the woman or girl with disabilities. Thus, there is a need to ensure independent, accessible communication methods to enable the reporting of such situations and guarantee immediate temporary referral to comprehensive care centres until the case has been resolved. Appropriate information, training and awareness raising programs shall be ensured for women and girls with disabilities and mothers of boys and girls children with disabilities regarding their rights and fundamental freedoms and the opportunities they have to access justice, with a particular focus on those groups at greater risk of discrimination, such as women and girls with high support needs, women and girls and girls with disabilities in institutions, older women with disability, women and girls with disabilities who live in rural settings and indigenous women and girls with disabilities.

## **Article 17-Protecting the integrity of the person**

45. Many women and girls with disabilities are still denied the right to reproductive freedom under the pretext of their wellbeing. Forced sterilization, incest, female genital mutilation and coerced abortion are just some clear examples of violations of rights that many women and adolescents with disabilities experience, without giving their consent or fully understanding the intentions. These practises are a violation of fundamental rights, including the right to bodily integrity and to maintain control over one's reproductive health.<sup>153</sup> Women with disabilities need to give their full consent and fully understand the intentions to protect reproductive freedom. Legal frameworks need to be revised that regulate forced sterilisation, coerced abortion, forced contraception, female or intersex genital mutilation, informed consent and legal capacity in order to ensure reproductive rights for women and girls with disabilities.

46. It is the responsibility of medical practitioners to ensure that women and girls with disabilities are sufficiently informed about the fact that the surgery or medical intervention will lead to her being sterilised and the consequences of this for their future. States Parties should adopt necessary measures in terms of awareness, information and training for both the families of girls and women with disabilities who are at greatest risk of experiencing forced sterilisation, and practitioners, health professionals, and those involved in the legal field require training and information regarding those at greatest risk of forced sterilisation or coerced treatments.

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<sup>153</sup> World Health Organization: Eliminating forced, coercive and otherwise involuntary sterilization. An interagency statement OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO (2014).

## **Article 19-Independent Living**

47. Women and girls with disabilities have the right to live in the community, with choices equal to other people, and their full inclusion and participation in the community should be ensured. Equally, they have the right to choose their place of residence and where and with whom they live, and are not obliged to live in a particular living arrangement. The intersection of gender and faith, ethnic origin or culture can result in women with disabilities unable to exercise their right to choose their place of residence and with whom they live.

## **Article 21-Freedom of Expression**

48. Mainstream communication services, including services for violence against women and childcare services, must be provided in all languages and formats possible and be easily accessible and safe. If such services are provided by means of a telephone hotline or tele-assistance, they should also be accessible for deaf and deafblind women and girls. In addition, information related to reproductive rights must be accessible.<sup>154</sup>

## **Article 24-Education**

49. Education is one of the key determinant factors in the struggle against inequality, social exclusion and poverty. Girls and women with disabilities have high rates of illiteracy, school failure, absenteeism and drop-outs, due to environmental barriers and discrimination. These circumstances have major consequences as regards to social cohesion, engagement and behaviour. The only way to achieve a society which is more tightly interwoven, more mature, fairer and more willing to show solidarity, and in which the values of social cohesion take precedence over obstacles hindering universal engagement, is through the effective realization of basic rights, including the right to high-quality, inclusive and free-of-charge education. There is a need to promote inclusive education for girls and adolescents with disabilities in order to mitigate the clear disadvantage this population experiences in education, which in turn hinders their subsequent inclusion in the labour market and community of women with disabilities.

50. Girls and women with disabilities must be able to enjoy their right to education on an equal basis with others and receive an inclusive high quality education which is gender sensitive. The entire education community must be sensitive to the reality, diversity and intrinsic value of girls and women with disabilities, and the contribution they make to the society in which they live. Families and teaching staff must be given complementary training on the gender perspective applied to disability with a view to engendering respect for an appropriate portrayal of girls and women with disabilities, recognizing and respecting their human rights and focusing particularly on eradicating negative stereotypes which are deeply-held in society and hinder their development as people and full inclusion on equal terms as others. Education programmes must cater for the training needs of those girls and women with disabilities who are at greatest risk of exclusion (such as those with high support needs, migrants, those belonging to indigenous populations, those residing in rural areas and older women and illiterate women), ensure they receive proper attention, and combat school failure and drop-out by these groups. All educational facilities, including sanitary facilities must be accessible to women and girls with disabilities.

## **Article 27-Employment**

51. Considering the high unemployment and labour market inactivity rates among women with disabilities, it is necessary to develop both mainstream and positive actions targeting women with disabilities to promote training, job placements, access to employment, job retention, equal pay for equal work, accommodations in the work place and work-life balance. Women with disabilities must have the right, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal

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<sup>154</sup> Committee on the Rights of Persons with Disabilities: General Comment No. 2 on Art. 9, 11 April 2014, CRPD/C/GC/2, para. 40.

remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and services to redress grievances. In addition, hygienic water and sanitation facilities in the workplace must be fully accessible to women with disabilities.

52. States Parties to the Convention should encourage women with disabilities to seek employment opportunities which enjoy decent salaries and working conditions. They should be given effective support to find, obtain, maintain or return to employment, through means such as, *inter alia*, monitoring programmes and contacts with employers, and legal protection against unfair dismissal on account of their disability.

53. At the same time, it is necessary to promote awareness-raising campaigns in order to overcome negative attitudes among employers towards women with disabilities by taking measures such as creating attractive traineeship schemes and briefing campaigns on existing subsidies and deductions available when hiring women with disabilities.

54. Furthermore, States Parties must boost measures to promote self-employment, entrepreneurship among women with disabilities, development of cooperatives or starting one's own business. These women with disabilities should have equal rights to financial assistance and should be viewed as fully-qualified entrepreneurs. Positive action measures should be provided in this regard to women with disabilities who are entrepreneurs by means of soft loans, micro-credits and non-returnable grants.

55. There is a need to carry out research on women with disabilities and their social and employment status, labour market developments, and the effective opportunities women with disabilities enjoy, to identify new sources of employment for them in emerging and competitive sectors.

56. Women with disabilities should be given accessible and relevant information on the mainstream labour market and the existing opportunities to secure employment in the public and private sectors, and offered guidance and assistance if required. Women with disabilities should receive quality training enabling them to opt for employment in the labour market in both the public and private sectors, and they should be offered specific opportunities for lifelong training with a view to gaining the necessary skills and qualifications in terms of responsibility, confidence-building and capabilities. When specific training is required, women with disabilities should not be placed at a disadvantage in relation to others. In addition, they must be given suitable access to all training programmes, including technical and vocational guidance programmes, placement services and vocational and continuing training. Furthermore, their involvement should be actively encouraged.

57. States Parties should improve accessibility to childcare, in particular through financial support, and should strengthen public childcare systems and offer incentives to companies to set up childcare facilities on their premises. Women with disabilities and mothers of boys and girls with disabilities should have priority when such services are offered.

## **Article 32-International cooperation**

58. International cooperation and assistance are crucial for the realization of the right to gender disability equality. States that are not able to comply with their obligations and cannot realize the rights enshrined in article 6 due to a lack of resources must seek international cooperation and assistance. States that are in a position to do so must respond to such requests in good faith and in accordance with the international promise of giving 0.7% of their gross national income for international cooperation and assistance.<sup>155</sup>

59. States and individual donors have an obligation to comply with the human rights standards particularly with respect to women and girls with disabilities. To this end, international assistance should not function in a manner that reinforces or condones legal, procedural, practical or social barriers to the full development, advancement and

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<sup>155</sup> "International Development Strategy for the Second United Nations Development Decade", UN General Assembly Resolution 2626 (XXV), 24 October 1970, paragraph 43

empowerment of women and girls with disabilities. All strategies, programmes and projects need to be gender and disability sensitive and thus gender and disability mainstreaming must be applied.

60. Intergovernmental organizations, and in particular specialized UN agencies including OHCHR, UN Women, UNICEF, WHO, ILO and UNESCO, have a crucial role to play and contribution to make in the universal realization of equality rights and social development of women and girls with disabilities. They provide capacity strengthening, technical guidance and information.

#### **IV. Article 33-Implementation at national level**

61. Repeal or reform all legislation which discriminates against women and girls with disabilities either directly or indirectly. This requires the abolition of legal provisions that deny women with disabilities to be regarded as a person before the law, including the right to marry and have a family, or regulations which allow involuntary sterilization. Criminal and civil laws for the protection against exploitation, violence and abuse need to be amended if they do not adequately protect women and girls with disabilities. Anti-discrimination legislation should be in place and need to be reformed, if multiple discrimination is not appropriately addressed. All anti-discriminatory legislative efforts need to be supported by running public cultural campaigns in parallel in order to strengthen the legal willpower to transform the discriminative attitudes entrenched in the culture.

62. Install gender- and disability-mainstreaming and -budgeting in all policies and programmes. In particular, the rights of women and girls with disabilities need to be respected and fulfilled in all programmes relating to combating and preventing violence and discrimination and promoting reproductive and sexual health.

63. Investigate impediments against the development, advancement and empowerment of women and girls with disabilities, in particularly with respect to multiple discrimination, exploitation, violence and abuse and reproductive and sexual rights.

64. Ensure that women and girls with disabilities have access to justice and legal aid and are regarded as persons before the law on an equal basis with others.<sup>156</sup>

65. Guarantee appropriate forms of gender- and age-sensitive assistance and support for women and girls with disabilities who became the targets of violence, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. Ensure that protection services are age-, gender- and disability-sensitive.<sup>157</sup>

66. Establish a national machinery for the development, advancement and empowerment of women and girls with disabilities and ideally this should be linked to the national monitoring in accordance with article 33 CRPD. In particular, such a national machinery should be provided with the necessary resources to address multiple discrimination, reproductive and sexual rights and exploitation, violence and abuse.

67. Engage with women and girls with disabilities through their representative organisations, in drawing up and implementing legislation and policies and research towards the effective implementation of the CRPD, and in other decision-making processes on issues related to women and girls with disabilities. Networks and organisations of women and girls with disabilities need to be adequately facilitated.

68. Collect and analyze gender- and disability-sensitive data, set benchmarks and indicators in particular with respect to discrimination, exploitation, violence and abuse and reproductive and sexual health. At the same time, States Parties shall take all measures to incorporate women and girls with disabilities in the implementation of the Post 2015 Development Agenda, its sustainable development goals, targets and indicators

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<sup>156</sup> Art. 12 & 13CRPD

<sup>157</sup> Art. 16 (2) CRPD