

Women's IDC (30 January 2006)

Response to the Facilitator's Proposals on Women with Disabilities from 28/30 January 2006

PREAMBLE

Facilitator:

n bis) Recognising that women and girls with disabilities are often at greater risk, both within and outside the home of violence injury or abuse, neglect or negligent treatment maltreatment or exploitation including their gender based manifestations.

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n bis) Recognising that women and girls with disabilities are often at greater risk,

REPLACE: both within and outside the home of violence injury or abuse, neglect or negligent treatment maltreatment or exploitation including their gender based manifestations.

BY: to all forms of discrimination and violence as set forth in the Declaration on the Elimination of Violence against Women adopted by the United Nations.

Rationale:

Women's IDC in general welcomes the recognition of the high risk that women and girls with disability face concerning the experience of violence in the preamble. Particularly the recognition of various forms of violence that are specifically experienced by women and girls with disabilities is of great importance.

Nevertheless, with regard to the character of the preamble these gender-specific forms of violence have to be listed in article 16 on violence. This is even more important as CEDAW also does not provide protection and recognition in this respect. A comprehensive description of gender-based violence has been provided by the Declaration on the Elimination of Violence against Women, adopted by the General Assembly resolution 48/104 of 20 December 1993. A reference to this Declaration should be included in the preamble.

ARTICLE 6

Facilitator:

ARTICLE 6

WOMEN WITH DISABILITIES

1. State Parties recognise that women and girls with disabilities are subject to multiple discrimination and that focused, empowerment and gender sensitive measures are necessary to ensure the full and equal enjoyment by women and girls with disabilities of all human rights and fundamental freedoms.
2. State Parties shall take all appropriate measures to ensure the equal rights of women with disabilities to the enjoyment of all rights set out in this Convention.

Comment: This text could be either placed in a paragraph under Article 4 (General obligations) or it could be in Article 6.

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ARTICLE 6

EQUALITY OF MEN AND WOMEN WITH DISABILITIES

1. State Parties recognise that women and girls with disabilities are subject to multiple discrimination and to this end shall undertake focused, empowering and gender sensitive measures to ensure that women and girls with disabilities enjoy all human rights and fundamental freedoms without discrimination on the basis of sex.
2. States Parties shall ensure that women with disabilities can exercise their reproductive rights on an equal basis with others and that exercising this right is not used to perpetuate inequality.
3. State parties shall assess the implications for women and girls with disabilities of any planned action concerning disability, inter alia, legislation, policies or programmes, including the implementation, monitoring and evaluation, in all areas and at all levels, as a strategy so that women and men with disabilities benefit equally of all rights set out in this Convention.

Rationale:

Article 6 as proposed by Women's IDC follows the objective to fulfil the obligation of gender equality for women and men with disabilities.

To achieve this objective Women's IDC considers following elements indispensable which derive from the human rights standard-setting efforts of the United Nations relating to women:

- 1. The formal affirmation that human rights and fundamental freedoms apply to women with disabilities as they do to men with disabilities - art. 6 (1);*
- 2. the recognition of multiple-discrimination of women with disabilities and in particular the discrimination based on sex - art. 6 (1);*
- 3. positive measures to achieve equal treatment and equal opportunities for women with disabilities – art. 6 (1);*
- 4. the use of a gender mainstreaming approach when implementing all rights set forth in this Convention by identifying and addressing obstacles that are based on the gender of a person with disability – art. 6 (3) - and*
- 5. the recognition that women with disabilities have equal reproductive rights and the exercise of these rights shall not lead to inequality – art. 6 (2).*

The exercise of their reproductive rights has strong implications for the equal rights of women in all areas of life, e.g. for the women's role in the family and community, their participation in education, work, public and political life, their needs in the health sector, their participation in rehabilitation etc. On the same time, women with disabilities are often denied their reproductive rights on the basis of their disability.

Therefore, this important issue can only be addressed in the general part of the Convention and in relation with insuring equal rights to women with disabilities.

ARTICLE 8

RAISING AWARENESS REGARDING DISABILITY

Facilitator:

1. States Parties undertake to adopt immediate, effective and appropriate measures:
 - (b) To combat stereotypes, prejudices and harmful practices relating to persons with disabilities **including those based on gender and age** in all areas of life;
2. Measures to this end include:
 - (d) Promoting awareness training programmes regarding people with disabilities and their rights **taking into account gender and age specific aspects of disability.**

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Women's IDC welcomes the proposals of the Facilitator.

ARTICLE 16
FREEDOM FROM EXPLOITATION, VIOLENCE AND ABUSE

Facilitator:

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities both within and outside the home, from all forms of exploitation, violence and abuse **in particular that directed to girls and women including their gender based aspects.**

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1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities both

REPLACE: within and outside the home

BY: in private and public settings,
from all forms of exploitation, violence

REPLACE: and abuse, **in particular that directed to girls and women including their gender based aspects.**

BY: **injury, abuse, neglect, negligent treatment and/or maltreatment, including their gender based manifestations.**

ADD: Violence encompasses also forced sterilisation, abortion and female genital mutilation.

Rationale:

Compare also rationale to preamble. As stated there, forms of violence that specifically occur to women with disabilities have to be included in art. 16.

According UN sources women with disabilities are twice as much victims of gender based violence as women without disabilities. Furthermore, they are subject to forced sterilisation, abortion and genital mutilation.

Forced sterilization and abortion, as all forms of (medical) treatments that are perpetrated without a person's consent, have to be defined as violence. Regarding the practice in many countries this has to be specifically stated.

Genital mutilation has to be included as it forms a bigger life risk to girls and women with disabilities.

Facilitator:

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

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REPLACE: States shall ensure that protection services are age, gender and disability sensitive.

BY: States shall ensure that prevention services are gender sensitive to persons with disabilities in all life stages.

Rationale:

The way the last sentence of this paragraph is written seems to undermine specifically the intersectional effects of gender, disability and age, as it could be understood as separate issues and open for listing other elements of a person's being. But gender aspects affect both women and men with disabilities at all stages of their life.

Furthermore, "protection services" should be replaced by "prevention services" to refer to the objective of the paragraph.

Facilitator:

3. In order to prevent the occurrence of **all forms of** exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.
4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person **and takes into account gender and age specific needs.**
5. States Parties shall put in place effective **gender and age sensitive** legislation and policies to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

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Women's IDC supports the proposals done by the Facilitator concerning 16 (3) to 16 (5).

ARTICLE 17

PROTECTING THE INTEGRITY OF THE PERSON

Facilitator:

2 bis) States Parties shall protect children with disabilities from sterilisation on the basis of disability

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Although under article 17 the issue of sterilisation is mentioned the Women's IDC likes to reiterate the importance to define forced sterilisation and abortion as violence under article 16.

ARTICLE 23

RESPECT FOR THE HOME AND THE FAMILY

Facilitator:

1.

(b) That the right of all **men and women** with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized [and that spouses should be equal partners];

[(c) The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children [and to have access to information, reproductive and family planning education, the means necessary to enable them to exercise these rights and the equal opportunity to retain their fertility **on a basis of equality with respect to gender and disability** to the extent that these are permitted by national laws of general application].

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Women' IDC welcomes the Facilitators proposal.

Facilitator

2 bis) States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realising these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.

2 ter) Where the immediate family is unable to care for a child with disabilities, States Parties shall make every effort to provide alternative care within the wider family, and failing that, within the community.

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2 bis)

REPLACE: **children**

BY: **girls and boys**

Rationale:

The addition is welcomed, but has to ensure that girls and boys with disabilities enjoy the right to have a family life on an equal basis, and that this right is not denied particularly on the basis of the interaction of gender and disability.

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Article 24 EDUCATION

Rationale:

Education is the most crucial areas for women and girls with disabilities.

The education levels and literacy rates of women with disabilities are significantly lower than those of men with disabilities. Girls with disabilities are less often sent to school than boys with disabilities and seldom follow further education.

But only education can enhance autonomy, empowerment and economic independence of women and girls with disabilities.

Women's IDC therefore again strongly underlines the need for references to women and girls with disabilities in article 24 with the following proposals:

1. States Parties recognise the right of people with disabilities to education. With a view to achieving this right without discrimination, on the basis of equal opportunity, States Parties shall ensure an inclusive **ADD: gender-sensitive** education at all levels and life-long learning **ADD: that do not perpetuate social and cultural patterns of conduct of men and women**, directed to:

- a) the full development of the human potential and sense of dignity and self worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
- (b) the development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
- (c) enabling persons with disabilities to participate effectively in a free society;

ADD:

(d) ensuring women and girls with disabilities the right to access and enjoy education on an equal basis in a violence free environment.

2. In realising this right, States Parties shall ensure:

- (a) that persons with disabilities are not excluded from the general education system on the basis of their disability **ADD: and sex**, and that children, **ADD: especially girls**, with disabilities are not excluded from free and compulsory primary and secondary education on the basis of their disability;

(...)

ARTICLE 25 HEALTH

Facilitator:

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of physical and mental health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to **gender sensitive** health services, including health-related rehabilitation. In particular, States Parties shall:

(...)

b) bis) develop and disseminate policies and programs in fields such as family-planning and parenthood, pregnancy, childbirth and the post-natal period, that are inclusive of women with disabilities and protect them against any form of coercive treatment, including sterilization.

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States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of physical and mental health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to **gender sensitive** health services, including health-related rehabilitation. In particular, States Parties shall:

(...)

b) bis) develop and disseminate policies and programs in fields such as family-planning and parenthood, pregnancy, childbirth and the post-natal period, that are inclusive of women with disabilities and protect them against any form of coercive treatment, including

ADD: forced

sterilization

ADD: and abortion.

(...)

(d) require health professionals to provide care of the same quality to persons with disabilities as to others **ADD: and to enhance their knowledge and understanding of the combined element of disability and sex** and on the basis of free and informed consent by, **ADD: inter alia**, where necessary, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities, through **ADD: information**, training, and the promulgation of ethical standards for public and private healthcare;

Rationale:

Women's IDC welcomes the Facilitator's proposal. Disabled women are not included in the mainstream health care programs, particularly maternal and gynaecological issues. "Forced" sterilisation and "abortion" have to be added to clarify that women with disabilities are not "protected" from their equal rights concerning sterilisation and abortion.

Furthermore, regarding the immense lack of knowledge of the interactive effects of disability and sex in the medical community, the Women's IDC regards the proposed amendments in subparagraph (d) as necessary.

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Article 26

HABILITATION AND REHABILITATION

Rationale:

Women with disabilities are underrepresented in all areas of habilitation and rehabilitation. This is the case in developed as well as in developing countries. Therefore, also article 26 should be complemented with the following proposals:

1. States Parties shall take effective and appropriate measures to enable persons with disabilities to attain their maximum independence, fullest physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organise, strengthen and extend comprehensive **gender-sensitive** habilitation and rehabilitation services, particularly in the areas of health, employment, education and social services **without discrimination based on sex**, in such a way that:
 - (a) habilitation and rehabilitation services and programmes begin at the earliest possible stage, and are based on the multidisciplinary and assessment of individual needs;
 - (b) habilitation and rehabilitation services and programmes support participation and inclusion in the community and all aspects of society, and are available to persons with disabilities as close as possible to their own communities, including in rural areas;

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Article 27

WORK AND EMPLOYMENT

ADD new:

- (j) **ensure that women with disabilities enjoy their rights to work on a basis of equality, including equal protective rights concerning pregnancy and maternity leave, and that women and men with disabilities are protected from sexual and other harassment at the workplace.**

Rationale:

Three quarters of women with disabilities worldwide and up to 100% in some developing countries are excluded from the workforce. Additionally, when working they often are subject to sexual exploitation.

Depending on the work place general employees protection law is not always implemented. Furthermore, trade union protection is often lacking. Therefore, the needs of women with disabilities are often not met when being pregnant or having a child, which affects them in their equal enjoyment of their right to work.

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Article 29

PARTICIPATION IN POLITICAL AND PUBLIC LIFE

Rationale:

Amendments for women with disabilities in this article are very crucial. Women with disabilities are underrepresented in all areas of political and public life, including the areas of disability policy as well as gender policy.

Issues of women with disabilities are mostly only associated with social and sometimes with economic rights, but hardly ever with political and civil rights. Also in its General Recommendation No. 18 and No. 24 the CEDAW Committee refers only to the social, economic and cultural rights of women with disabilities.

But Empowerment and participation in political and public life are crucial to enhance capacity building of women with disabilities.

Women with disabilities need equal opportunities in comparison to women without disabilities and to men with disabilities to participate in political and public life on national, regional and international level.

States Parties shall guarantee to persons with disabilities their political rights and the opportunity to enjoy them on an equal basis with others **ADD: and shall take effective measures to ensure equal enjoyment of these rights by women with disabilities**, and **ADD: to this end** undertake to:

- (a) ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others in accordance with national laws of general application, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, by:

- (i) ...
- (ii) protecting the right of persons with disabilities to vote by secret ballot in elections and public referenda, without intimidation, and to stand for elections and to hold office and perform all public functions at all levels of government, **ADD: including representation at the international level and participation in the work of international organisations¹;**

(...)

ADD:

- (c) ensure that women with disabilities are empowered to participate in political and public life, including where appropriate through the use of positive measures.**

ARTICLE 31 STATISTICS AND DATA COLLECTION

Facilitator:

1. Where necessary, States Parties undertake to collect appropriate information, including statistical data, to enable them to formulate and implement policies to give effect to this Convention. The process of collecting and maintaining this information should:

(add before a)

- (0) involve both men with disabilities and women with disabilities and their organisations in the design of relevant indicators and the collection and analysis of the data;**

- (0.1) enable States Parties to disaggregate all data on the basis of sex and age and ensure that the data provides information on issues that may affect differently women and girls with disabilities and men and boys with disabilities**

Women's IDC

Women's IDC welcomes and underlines the Facilitator's proposal.

¹ cp. Art. 8 CEDAW

ARTICLE 33 NATIONAL IMPLEMENTATION AND MONITORING

Facilitator:

2. States Parties shall, in accordance with their legal and administrative system, maintain, strengthen, designate or establish at the national level a framework to promote, protect and monitor implementation of the rights recognized in the present Convention **including focusing on gender and age specific issues.**
3. Civil society, in particular **men and women** with disabilities and their organizations, shall be involved and participate fully in all levels of the monitoring process.

Women's IDC

Women's IDC supports the IDC proposal for a monitoring system of this Convention. Concerning the Chair's Discussion Text the proposed amendments by the Facilitator are welcomed and underlined.

INTERNATIONAL MONITORING

Facilitator:

Proposals are based on the discussion text, which was not yet available at the facilitator's meeting

Article 39 – Reporting by States Parties

2. The States parties shall submit a first, comprehensive, **gender and age sensitive** report within two years of the entry into force of the present Convention for the State party concerned (CRC, article 44.1). States parties shall submit further reports upon request of the Committee. The Committee shall determine the issues or provisions of the present Convention to be addressed by States parties in these reports (OHCHR background paper, paragraph 37).

Article 44 - Co-operation with organizations and bodies

3. In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention (CRC, article 45, chapeau) the relevant organs, offices and specialized agencies and funds of the United Nations, in particular the Department of Economic and Social Affairs, International Labour Office, the World Health Organization, the United Nations Educational, Scientific and Cultural Organization, **the Division for the Advancement of Women, the United Nations Development Fund for Women**, and the United Nations Children's Fund, shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite these organs, offices and specialized agencies and funds and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates and may invite them to submit reports on the implementation of the Convention in areas falling within the scope of their activities (CRC, article 45(a))

Women's IDC

Women's IDC supports the IDC proposal for a monitoring system of this Convention. Concerning the Chair's Discussion Text the proposed amendments by the Facilitator are welcome. However, the discussion text yet needs a closer look concerning the question how to ensure a gender balanced monitoring mechanism, including the adequate participation of women with disabilities and their organisations.