



## **Women Enabled International’s Comments to the Committee on the Rights of Persons with Disabilities’ Draft General Comment on Article 6: Women**

### **I. Introduction**

[Women Enabled International](#) (WEI) appreciates the opportunity to provide comments on the Committee’s draft general comment on Article 6: Women with Disabilities. WEI advocates and educates for the human rights of all women and girls, emphasizing women and girls with disabilities, and works tirelessly to include women and girls with disabilities in international resolutions, policies, and programs addressing women’s human rights and development.

As the Committee’s draft general comment acknowledges, women with disabilities\* often encounter specific forms of discrimination on the basis of gender and ability. Recognizing the myriad human rights issues raised by the multiple and intersecting forms of discrimination that women with disabilities encounter, WEI’s comments focus on gender-based violence as a pernicious manifestation of such discrimination. Women with disabilities experience gender-based violence at a magnitude greater than women without disabilities, and women with disabilities face numerous barriers to ending the cycle of violence and accessing justice. This general comment provides a valuable opportunity to clarify States’ due diligence obligations with respect to gender-based violence committed against women with disabilities by both state and private actors. WEI’s submission provides an overview of barriers that women with disabilities face in accessing justice and identifies States’ obligations to respond to such violence. The submission then concludes with recommendations for strengthening the language of the draft General Comment to provide greater clarity on these obligations. In addition to this submission, WEI fully supports and endorses the submission by the Center for Reproductive Rights on barriers to sexual and reproductive rights for women with disabilities.

### **II. Violence against Women with Disabilities and Access to Justice**

Women with disabilities are at least two to three times more likely than women without disabilities to experience violence and abuse in various spheres,<sup>1</sup> and they are likely to experience abuse over a longer period of time, resulting in more severe injuries.<sup>2</sup> As the Committee’s draft general comment recognizes, violence committed against women with disabilities can take a variety of forms—physical, emotional, sexual, economic—and includes intimate partner violence, violence at the hands of caregivers, sexual violence, institutional violence, and forced sterilizations and forced abortion.<sup>3</sup> In addition to being at a greater risk of interpersonal and institutional violence, women with disabilities encounter numerous barriers to reporting abusers, ending the cycle of violence, and accessing justice.

Women with disabilities may fear leaving or reporting their abuser because of emotional, financial, or physical dependence. Additionally there is a serious lack of emergency services for women with disabilities seeking to escape violent situations in the home. Shortages of accessible domestic violence shelters and available beds are widespread,<sup>4</sup> and shelters and spaces that are available are often inaccessible and fail to provide reasonable accommodations to women with

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\* For purposes of this submission, all references to “women with disabilities” should be understood to refer to girls, adolescents, and women.

disabilities or exclude them altogether. For example, one study found that only 6% of domestic violence shelters surveyed in the United States indicated they could handle the personal care needs of a woman with a disability requiring assistance,<sup>5</sup> while another study noted that only 35% of responding shelters could accommodate survivors of gender-based violence across a range of disabilities, including those with physical/mobility, cognitive, visual, and hearing impairments.<sup>6</sup> Additionally shelters may have “no animal” policies that serve as a barrier to women who rely on a service animal such as a guide dog.<sup>7</sup>

Women with disabilities may also fear losing custody of their children if they report domestic violence or try to leave a violent relationship, particularly as courts may enforce the discriminatory stereotype that the non-disabled partner must be a more competent parent.<sup>8</sup> They may also fear retribution, institutionalization, or loss of assistive devices and other supports, which can also prevent women with disabilities from reporting violence.<sup>9</sup> Further, police stations may not have the resources necessary to ensure that witnesses with disabilities are able to adequately communicate with the police or access information. For instance, during initial police questioning, sign language interpreters may not be readily accessible to assist women with hearing impairments. Information may not be available in Braille or other alternative formats, making it more difficult for women with a visual disability to pursue their complaints to the fullest extent of the law. Information about legal rights is not often provided in clear, easy-to-understand formats, which can prevent women with cognitive disabilities from understanding their rights. Women with cognitive disabilities can also have trouble remembering the sequence of events, which can make them seem less credible as witnesses.<sup>10</sup> Such communication limitations pose enormous barriers to navigating the justice system.

One of the most obvious and egregious barriers to access to justice for women with disabilities is the physical barrier to courthouses and other institutions of the justice system. Stairs leading to a building, inaccessible witness chairs, lack of technology to enable persons with disabilities to understand or participate in proceedings, and failure to provide materials in alternative formats for women who are blind or sign language interpreters for Deaf women all create substantial barriers to justice for women with disabilities.

Stigma and stereotypes play a significant role in limiting access to justice for women with disabilities subjected to violence. The court system systematically fails to acknowledge women with disabilities as competent witnesses or give sufficient credence to their testimony, which is particularly problematic in cases involving sexual assault or other forms of gender-based violence where the complaining witness’s testimony may provide the only evidence against the assailant.<sup>11</sup> Because society generally fails to see women with disabilities as sexual beings, for example, such stereotypes may lead judges and juries to discount their testimony.<sup>12</sup> Because barriers to access to justice can limit women’s ability to seek protection or redress, such barriers can functionally perpetuate violence against women with disabilities by compelling women to remain in the abusive situation and emboldening abusers who know that the justice system is unlikely to take complaints seriously.<sup>13</sup>

### **III. Human Rights Law Requires States to Exercise Due Diligence**

It is well established that gender-based violence is a form of discrimination against women,<sup>14</sup> and international and regional human rights standards have clearly articulated that States have specific obligations to prevent, protect against, investigate, punish, and redress gender-based

violence.<sup>15</sup> Article 16 of the Convention on the Rights of Persons with Disabilities (CRPD) conforms with these standards, briefly outlining States' due diligence obligations in the context of violence against persons with disabilities. The CRPD also contains a number of other articles that are applicable to dismantling violence against women with disabilities and ensuring greater access to justice, as discussed below. This general comment provides a valuable opportunity to clarify States' obligations under these articles to address the specific forms of violence committed against women with disabilities and, particularly, the unique barriers women with disabilities face in ending the cycle of violence and accessing justice.

a. *Prevent*

The obligation to prevent gender-based violence requires governments to enact laws and policies that address gender-based violence, in addition to taking steps to dismantle the stereotypes and cultural practices that contribute to violence against women with disabilities. As former UN Special Rapporteur on Violence against Women, Yakin Ertürk, explained, the obligation to prevent “includ[es] the duty to transform patriarchal gender structures and values that perpetuate and entrench violence against women.”<sup>16</sup> This requires States to gather reliable disaggregated data on the prevalence and manifestations of violence against women with disabilities in accordance with CRPD Article 31 to inform the development of laws and policies. States must raise awareness of such violence and take steps to dismantle the underlying stereotypes and stigma that foster violence against women with disabilities, including through public education campaigns and trainings for law enforcement, the judiciary, health care providers, and others who might be in a position to identify or respond to situations of violence. This also requires States to enact a legislative and policy framework that is responsive to the specific manifestations of violence against women with disabilities, including laws to guard against sterilization without consent and adequate monitoring of private and public institutions where women with disabilities reside. Article 6 works in conjunction with CRPD Articles 4(1) (general obligations), 8 (awareness-raising), 16 (freedom from violence), and 23 (right to retain fertility) to require States to take measures to prevent violence against women with disabilities.

b. *Protect*

The obligation to protect requires States to provide adequate, timely, and accessible services to victims of gender-based violence to prevent recurrence of the harm. This includes ensuring that health care and shelter services are available and accessible to women with disabilities and that information—including hotline services and information on obtaining orders of protection and other legal rights—are available in alternative formats and plain language to ensure that they are accessible to women with disabilities. Victims of sexual violence need access to a full range of sexual and reproductive health services, including emergency contraception and anti-retrovirals for post-exposure prophylaxis. States must ensure that sexual and reproductive health services are accessible to women with disabilities and that health care providers are trained to provide such services to them, rather than turning them away on the assumption that they do not require such services. States must ensure that police stations and courtrooms are physically accessible to women with disabilities and address communication barriers in police precincts and courtrooms to ensure that disabled women are able to report incidents of violence and to testify in court. Article 6 works in conjunction with CRPD articles 9 (accessibility), 13 (access to justice), 16 (freedom from violence), 21 (access to information), and 25 (right to health) to require States to take measures to protect women with disabilities subjected to gender-based violence.

### c. *Investigate and Punish*

The obligation to investigate and punish instances of gender-based violence requires States to ensure that allegations of violence against women with disabilities are taken seriously and that the justice system is fully accessible to them. The Committee against Torture has clarified States' obligation to ensure "[j]udicial and non-judicial proceedings ... apply gender-sensitive procedures which avoid re-victimization and stigmatization of victims" and that they "afford equal weight to the testimony of women and girls."<sup>17</sup> This obligation to recognize legal capacity and give equal weight to testimony extends to women with disabilities. The provision of support services can enable women with disabilities to navigate and participate in the judicial process. Article 6 works in conjunction with CRPD articles 9 (accessibility), 12 (equal recognition before the law), 13 (access to justice), and 16 (freedom from violence) to require States to investigate and punish acts of gender-based violence committed against disabled women.

### d. *Redress*

The obligation to redress violence committed against women with disabilities requires States to take a holistic response to experiences of violence. Rashida Manjoo, former Special Rapporteur on Violence against Women, has emphasized the important contribution that CRPD's Article 16 has made to developing a robust articulation of the obligation to redress victims of violence. She notes, "The growing importance attached to reparations is best expressed by the [CRPD], which calls upon States parties to take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities 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."<sup>18</sup> It is also essential that women with disabilities not fear institutionalization or loss of custody of their children when seeking justice for gender-based violence. Article 6 works in conjunction with CRPD articles 16 (freedom from violence), 19 (living independently and inclusion in the community), and 23 (right to parent) to require States to redress violence against women with disabilities.

## IV. Specific Recommendations

**Paragraph 15:** The current draft of the General Comment importantly identifies gender-based violence, denials of sexual and reproductive rights, and intersectional discrimination as the three main subjects of concern with respect to the human rights of women and girls with disabilities. Although Articles 16 and 25 take a gender-sensitive approach to violence and sexual and reproductive health, respectively, it would be important to also acknowledge gender-based violence and denials of sexual and reproductive rights as forms of gender-based discrimination.<sup>19</sup>

**Paragraphs 23-27:** Stigma and stereotypes play a significant role in fostering violence against women with disabilities and obstructing access to justice, as well as limiting their development, advancement, and empowerment in other crucial areas. In addressing the normative content of article 6(2), it would be important to highlight States' obligations to transform patriarchal and ableist structures that perpetuate and entrench violence against women with disabilities.

**Paragraph 32:** In addressing States' obligations to protect, it would be important to enumerate all components of States due diligence obligations to ensure consistency with established international standards. Accordingly we would suggest that the relevant sentences read as follows (proposed changes bolded): "They must exercise due diligence to prevent, **protect**

**against, investigate** and sanction such discrimination, **and provide redress where violations occur.**” “In particular, States Parties must apply due diligence ... through prevention, investigation, prosecution, and punishment, **and provide reparations where abuses do occur.**”

**Paragraph 33:** In addressing States’ obligations to fulfill, it would be important to highlight the need for women with disabilities to access information on their rights and reiterate the connection to the three identified core issues. Accordingly we suggest the following sentence be revised as follows: “Further, States Parties must facilitate women ... to organize themselves to **understand and advocate** for their rights ... for dealing with complaints against multiple discrimination, **gender-based violence, and denials of sexual and reproductive rights.**”

**Paragraphs 35-37:** Given that the prevalence and specific manifestations of violence against women with disabilities are consistently overlooked in laws, policies, and programs aimed at addressing gender-based violence, it is crucial to highlight States specific obligations with regard to raising awareness about such violence. Accordingly we propose the following additions: To para. 35: “...thus exacerbating isolation, **and** social exclusion, **and gender-based violence.**” To para. 36: “They limit the development, advancement and empowerment ..., **and foster gender-based violence.**” To para. 37: “**States Parties should also raise awareness among law enforcement, the judiciary, service providers, and health care providers of the prevalence and manifestations of violence against women with disabilities.**”

**Paragraphs 38-40:** Accessibility of emergency support services, police precincts, courtrooms, and information for obtaining orders of protection are crucial to ensuring justice for survivors of gender-based violence. It would be important to include an additional paragraph identifying the specific accessibility concerns as they relate to protection of women with disabilities who are victims of violence and the investigation and prosecution of perpetrators of such violence.

**Paragraph 43:** We suggest adding the following sentence: “**States must ensure that law enforcement and the judiciary afford equal weight to the testimony of women with disabilities when investigating and prosecuting allegations of gender-based violence.**”

**Paragraph 44:** We suggest adding the following sentence: “**States must ensure that judicial and non-judicial proceedings apply gender-sensitive procedures that avoid revictimization and stigmatization of victims of gender-based violence.**”

**Between paragraphs 44 and 45:** Adding an additional subsection on Article 16 as it intersects with Article 6 would provide States with crucial guidance on their due diligence obligations with respect to the specific manifestations of violence against women with disabilities.

**Between paragraphs 48 and 49:** Adding an additional subsection on Article 23 as it intersects with Article 6 would provide important guidance regarding forced sterilization of women with disabilities, as well as the right of women with disabilities to retain custody of their children. Stereotypes around disability and motherhood should not unduly influence custody proceedings, and mothers with disabilities should not fear loss of custody if they report gender-based violence.

Thank you for the opportunity to provide comments. Please do not hesitate to contact Stephanie Ortoleva, President of WEI ([President@WomenEnabled.org](mailto:President@WomenEnabled.org); +1-202-630-3818) or Suzannah Phillips, Legal Advisor ([LegalAdvisor@WomenEnabled.org](mailto:LegalAdvisor@WomenEnabled.org)) should you have any questions or require additional information on any of the comments addressed herein.

## Notes:

<sup>1</sup> UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT (USAID), UNITED STATES STRATEGY TO PREVENT AND RESPOND TO GENDER-BASED VIOLENCE GLOBALLY 7 (Aug. 10, 2012), <http://www.state.gov/documents/organization/196468.pdf>. It is worth noting that no global data exists on the incidence of such violence, and studies draw on different sources of data.

<sup>2</sup> Rashida Manjoo, *Report of the Special Rapporteur on violence against women, its causes and consequences: women with disabilities*, para. 31, U.N. Doc. A/67/227 (Aug. 3, 2012) (hereinafter Manjoo, Women with Disabilities).

<sup>3</sup> STEPHANIE ORTOLEVA AND HOPE LEWIS, FORGOTTEN SISTERS—A REPORT ON VIOLENCE AGAINST WOMEN WITH DISABILITIES: AN OVERVIEW OF ITS NATURE, SCOPE, CAUSES AND CONSEQUENCES Sect. II (2012).

<sup>4</sup> See, e.g., United Nations Population Fund, *An Assessment of the State of Violence against Women in Fiji* (2008).

<sup>5</sup> C.A. Howland, et al., *Programs delivering abuse intervention services to women with disabilities*, CROWD: Houston (2001).

<sup>6</sup> ELEANOR LYON, SHANNON LANE, & ANNE MENARD, MEETING SURVIVORS' NEEDS: A MULTI-STATE STUDY OF DOMESTIC VIOLENCE SHELTER EXPERIENCES 7 (2008).

<sup>7</sup> Karen Nutter, *Domestic Violence in the Lives of Women with Disabilities: No (Accessible) Shelter from the Storm*, 13 S. CAL. REV. L. & WOMEN'S STUD. 329, 345 (2004).

<sup>8</sup> See E. Lightfoot et al., *The Inclusion of Disability as a Condition for Termination of Parental Rights*, CHILD ABUSE & NEGLECT, 34:927-934 (2010); Women with Disabilities Australia, *Gender and Disability* (Dec. 2010).

<sup>9</sup> Manjoo, Women with Disabilities, *supra* note 2, paras. 59, 62; Karen Nutter, *supra* note 7, at 340.

<sup>10</sup> Manjoo, Women with Disabilities, *supra* note 2, para. 42.

<sup>11</sup> *Id.*, para. 42.

<sup>12</sup> Hilary Brown, *Sexual Assault: Facing Facts*, 87 NURSING TIMES 65 (1991); Jeanine Benedet and Isabel Grant, *Hearing the Sexual Assault Complaints of Women with Mental Disabilities: Evidentiary and Procedural Issues*, 52 MCGILL L.J. 515, 523 (2007); Manjoo, Women with Disabilities, *supra* note 2, para. 60.

<sup>13</sup> Manjoo, Women with Disabilities, *supra* note 2, paras. 34, 43.

<sup>14</sup> CEDAW Committee, *General Recommendation No. 19: Violence against Women*, paras. 1, 7 (1992).

<sup>15</sup> See, e.g., *id.*, para. 9; Yakin Ertürk, *Report of the Special Rapporteur on violence against women, its causes and consequences*, U.N. Doc. E/CN.4/2006/61; Organization of American States, *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women*, art. 7, 33 I.L.M. 1534; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2<sup>nd</sup> Ordinary Sess., Assembly of the Union, *adopted* July 11, 2003, arts. 4, 23; Council of Europe, *Convention on preventing and combating violence against women and domestic violence*, art. 5 (*entry into force* Aug. 1, 2014).

<sup>16</sup> Yakin Ertürk, *supra* note 15, para. 15.

<sup>17</sup> Committee against Torture, *General Comment No. 3: Implementation of article 14 by States parties*, para. 33, U.N. Doc. CAT/C/GC/3 (Dec. 13, 2012).

<sup>18</sup> Rashida Manjoo, *Report of the Special Rapporteur on violence against women, its causes and consequences: reparations*, FN 4, U.N. Doc. A/HRC/14/22 (Apr. 23, 2010).

<sup>19</sup> See, e.g. CEDAW Committee, *General Recommendation No. 19*, *supra* note 14, paras. 1, 7; CEDAW Committee, *General Recommendation No. 24: Women and Health* (1999).