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Advocating for the Rights of All Women!

5 January 2013

Justice J. S. Verma
New Delhi, India

Dear India's Justice Verma Committee:

We write with respect to the importance of the inclusion of issues of concern to women and girls with disabilities as the Government of India considers amendments to laws, policies and practices to eliminate violence against women and girls.

Despite the implications for more than 500 million women and girls with disabilities and their families, issues concerning women with disabilities receive only limited, or even invisible, coverage in efforts to amend and modify laws, policies and practices regarding violence against women.

The Government of India can contribute to a more inclusive and effective awareness of violence against all women by including women with disabilities in the consideration of legal reform efforts in this area.

We draw your attention to our just released 228-page Report: Stephanie Ortoleva and Hope Lewis, *Forgotten Sisters - A Report on Violence Against Women with Disabilities: An Overview of its Nature, Scope, Causes and Consequences* (August 21, 2012). Northeastern University School of Law Research Paper No. 104-2012. Available at SSRN: <http://ssrn.com/abstract=2133332>.

This report, prepared by two international human rights lawyers and a team of law student research assistants, reviews available information on the scope, nature, causes and consequences of violence against women and girls with disabilities, drawing on research by academics, practitioners, women with disabilities, Disabled Peoples Organizations (DPOs), governments and international and regional organizations and discusses significant gaps in the research and makes recommendations for future action.

Additionally, we draw your attention to the following recent report by the United Nations Special Rapporteur on Violence Against Women: Rashida Manjoo, Special Rapporteur on Violence Against Women, Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Report on Violence Against Women with Disabilities, U.N. Doc. A/67/227 (August 3, 2012), available at: http://www.un.org/ga/search/view_doc.asp?symbol=A%2F67%2F227+&Submit=Search&Lang=E.

We urgently request that these valuable resources be included as part of the materials upon which you draw to ensure that issues concerning violence against women and girls with disabilities are addressed as you embark on urgently needed legal reforms regarding violence against women.

It is urgent that women with disabilities have a significant role in these processes. Determining viable policy on the prevention and elimination of violence against women requires the inclusion of all stakeholders, including women with disabilities who are experts on these issues. Drawing on the core principle of “Nothing About Us Without Us” which was an intrinsic element of the drafting of the United Nations Convention on the Rights of Persons with Disabilities (CRPD,) to which India is a State Party, women with disabilities should be part of these processes.¹

We discuss below the urgent need for the inclusion of a detailed discussion of violence against women and girls with disabilities in these legal reform efforts. We provide some general discussion of the situation of women and girls with disabilities globally and then with a specific focus on violence against women and girls with disabilities. We then explore the international legal basis for the requirement of inclusion of women with disabilities in this work and processes. Greater detail on these issues can be found in the Ortoleva and Lewis paper referenced above.

Rationale for the Inclusion of Women and Girls with Disabilities in Legal Reform Efforts

Women and girls with disabilities are a part of all societies. They need to be an active part of the advancement of the human rights of all and shaping how societies affect their lives. The justifications for inclusion are numerous. Representation and fairness are the most obvious: women account for more than half of the population of the world. There are approximately one billion persons with disabilities in the world, which constitutes 15 percent of the global population.² The World Health Organization (WHO) and the World Bank’s (WB) recent (9 June 2011) ground-breaking report entitled “World Report on Disability,” notes a dramatic increase in estimates of the number of persons with disabilities worldwide, stating: About 15% of the world’s population lives with some form of disability, of whom 2-4% experience significant difficulties in functioning. There are significant differences in the prevalence of disability between men and women in both developing and more developed countries: male disability prevalence rate is 12% and female disability prevalence rate is 19.2%.^{3 4}

Although significant progress has been made in bringing awareness of and attention to the issues of women in human rights treaties, and in intergovernmental outcomes, the United Nations has recognized that more attention needs to be directed to the situation of specific groups of women,

¹ See, e.g., Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, U.N. Doc. A/RES/61/106 (Dec. 13, 2006), (Preamble (e), Art. 1, 3 (requiring the full integration of persons with disabilities in all segments of society so that they may fully participate and express themselves independently in social, legal, and political life, promoting, protecting and ensuring the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and promoting respect for their inherent dignity, and including those persons with disabilities who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.) *available at* <http://www.unhcr.org/refworld/docid/45f973632.html>.

² World Health Organization & World Bank, World Report on Disability, xi (2011), *available at* http://whqlibdoc.who.int/publications/2011/9789240685215_eng.pdf.

³ *Id.* at 261.

⁴ World Bank, Women with Disability (2009)(last accessed Oct. 2009), <http://go.worldbank.org/O14DRFLK90>.

including women with disabilities.⁵

Studies on women with disabilities in rural areas of many countries in the Asian and Pacific region have found that more than 80% of women with disabilities have no independent means of livelihood, and are thus totally dependent on others for their very existence.⁶ The myriad of issues that confront women with disabilities are significantly more pronounced in rural areas due to inaccessible environments and lack of services, lack of information, awareness, education, income, and contact resulting in extreme isolation and invisibility.⁷

The Situation Of Women with Disabilities and Violence

Given how greatly women and girls with disabilities are affected by the double discrimination and gender and disability stereotyping they face because of both gender and disability, they deserve to be heard. The 2011 Report of the United Nations Special Rapporteur on Violence Against Women focused on the multiple and intersecting forms of discrimination that contribute to and exacerbate violence against women, noting that factors such as ability, age, access to resources, race/ethnicity, language, religion, sexual orientation and class can exacerbate the violence women with disabilities experience.

Violence against women and girls with disabilities is perpetrated and/or condoned by the State and private actors within public and private institutions and in the transnational sphere. The forms of violence to which women with disabilities are subjected are varied; physical, psychological, sexual or financial violence, neglect, entrapment, degradation, and forced sterilization and psychiatric treatment. Women with disabilities are twice or three times as likely to experience domestic and other forms of gender-based and sexual violence as non-disabled women, and are likely to experience abuse over a longer period and to suffer more severe injuries as a result of the violence. Their abuser may also be their caregiver, someone that the individual is reliant on for personal care or mobility, frequently they do not report the violence, often lack access to legal protection, law enforcement officials are ill-equipped to address the violence and they are not privy to the same information available to non-disabled women. Sexual and gender-based violence contributes to the incidence of disability among women and girls.

Some other issues which exacerbate violence against women and girls with disabilities, include the following: women with disabilities are the poorest among the poor because of discriminatory employment practices; they are denied educational opportunities because education was not provided for girls, or school facilities were not accessible to them and programs were not designed to meet their needs; they are unable to travel from place to place because of the dangers of violence, which cannot be mitigated because they cannot afford assistive devices like wheelchairs or access transportation systems; they are often the last in the family to receive food because they are viewed as useless, and because they may be too indigent to afford food; they are more likely than men with disabilities or women without disabilities to experience violence and other forms of discrimination, and are unaware of helpful services, or such services are not accessible to them; they are not able to receive health care services, including sexual and reproductive health care services, because these services are not in accessible locations (due to the fact that the availability of these services are communicated in ways that are not accessible to them), and because health care providers cannot communicate with them or believe they are asexual; they are unable to access the justice system, especially for sexual violence cases, either because the police and judges cannot communicate with them or

⁵ U.N. Comm'n on the Status of Women Expert Group Meeting 'Enabling rural women's economic empowerment: institutions, opportunities and participation', Concept Note, U.N. Doc. EGM/RW/2011/INF.1 (June 2011), available at <http://www.un.org/womenwatch/daw/csw/csw56/egm/Concept-noteFINAL.pdf>.

⁶ U.N. ESCAP Workshop on Women and Disability: Promoting Full Participation of Women with Disabilities in the Process of Elaboration on an International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities, *Final Report*, Bangkok, Thailand, Aug. 18-22, 2003, available at www.wvda.org.au/unescapwvd1.doc.

⁷ *Id.*

do not find their testimony credible, or because they have no information on how to access the system; and they are sometimes unwilling to return to their former home communities because of the fear of being ostracized based on their disability, or because the shelter in the refugee camp was slightly more accessible than their former home.

Legal and Policy Basis for Inclusion

The recommendation for the inclusion of issues of concern to women and girls with disabilities in legal reform work focused on addressing violence against women is drawn from and is consistent with the gender-sensitive, disability-inclusive approaches outlined in the United Nations Charter,⁸ and consistent with the provisions of the United Nations Convention on the Rights of Persons with Disabilities (CRPD), especially its Article 6 on Women with Disabilities,⁹ the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), especially its Article 14¹⁰ and the Convention on the Rights of the Child (CRC), as well as the¹¹ 1995 Beijing Declaration and¹² and the 2000 Special Session of the United Nations General Assembly, reviewing the progress of the outcomes of the Fourth World Conference on Women.¹³

The United Nations General Assembly has over the last few years issued a series of resolutions, especially Resolutions A/65/186 and A/64/131,¹⁴ calling for the mainstreaming of persons with disabilities in development, and has specifically called upon Governments to promote gender equality and the empowerment of women with disabilities.

Role of the Justice System

In various ways the justice system itself (and therefore the State) perpetrates and/or condones the violence experienced by women with disabilities. Justice systems, and the law itself may be both a source of liberation and a source of oppression,¹⁵ may remedy inequality and discrimination and perpetuate inequality and discrimination. This is the character of the interaction of women with disabilities with the justice system: they frequently do not report violence, often lack access to legal protection and representation, institutions of justice often are not physically accessible and do not provide reasonable accommodations, law enforcement officials and the legal community are ill-equipped to address the violence, testimony is often not viewed as credible, and do not have access to information available to non-disabled women.

⁸ U.N. Charter (1945), available at <http://www.un.org/en/documents/charter/index.shtml>.

⁹ See Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, U.N. Doc. A/RES/61/106 (Dec. 13, 2006), (Article 6 on Women and several other articles of the CRPD focus on the rights of women and girls with disabilities) available at <http://www.unhcr.org/refworld/docid/45f973632.html>.

¹⁰ See, Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, U.N. Doc. A/RES/34/180 (Dec. 18, 1979)[hereinafter CEDAW], available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

¹¹ Convention on the Rights of the Child, G.A. Res. 44/25, U.N. Doc. A/RES/44/25 (Nov. 20, 1989) [hereinafter CRC] (Article 23 of the CRC recognizes the special needs of disabled children and specifically calls on the community to make the necessary accommodations so that disabled children are fully integrated into society and can enjoy a fair and decent life.), available at <http://www2.ohchr.org/english/law/pdf/crc.pdf>.

¹² Fourth World Conference on Women, Beijing, P.R.C., Sept. 4-15, 1995, *Beijing Declaration and Platform for Action*, ¶ 232(p), available at <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>.

¹³ G.A. Res. S-23/3, ¶ 69(j), U.N. Doc. A/RES/S-23/3 (Nov. 16, 2000). At ¶ 83(d).

¹⁴ Realizing the Millennium Development Goals for Persons with Disabilities Towards 2015 and Beyond, G.A. Res. 65/186, U.N. GAOR, 65th Sess., 71st plen. mtg., U.N. Doc. A/RES/65/186 (Dec. 21, 2010), available at: <http://www.un.org/disabilities/default.asp?id=36>; Realizing the Millennium Development Goals for Persons with Disabilities, G.A. Res. 64/131, U.N. GAOR, 64th Sess., 65th plen. mtg., U.N. Doc. A/RES/64/131 (Dec. 18, 2009), available at: <http://www.un.org/disabilities/default.asp?id=36>.

¹⁵ International Development Research Centre, Background Paper on Women's Access to Justice in the MENA Region, 2007, available at http://www.idrc.ca/.../12151851101Women's_access_to_justice_in_MENA-Bandi_En.doc (last visited Feb. 23, 2011).

Physical Access to the Institutions of the Justice System. One of the most obvious and egregious barriers to access to justice for persons with disabilities are the physical barriers to courthouses and other institutions of the justice system. Inaccessibility of courthouses includes inaccessible witness chairs and jury boxes, lack of technology to enable persons with disabilities to understand the proceedings, lack of wheelchair lifts, and other elements of inaccessible courthouse design.¹⁶ Another barrier is the failure to provide reasonable accommodations such as sign language interpreters, materials in alternative formats for women who are blind, and use simplified language for women with learning disabilities.

In terms of the international normative framework, CRPD Article 9 requires accessibility, including in the justice system. Further, domestic courts have addressed these issues. In 2004, the U.S. Supreme Court addressed physical access to the courthouse in *Tennessee v. Lane*.¹⁷ In the case, citizens with disabilities who could not access the upper floors in state courthouses sued the state, arguing that Tennessee was denying them public services because of their disabilities under Title II of the Americans with Disabilities Act (ADA),¹⁸ under which no one can be denied access to public services due to his or her disability.¹⁹ The U.S. Supreme Court held that Congress had evidence that persons with disabilities were being denied the fundamental right of access to the courts and that Title II of the ADA constitutes a valid exercise of Congress' enforcement power under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.²⁰ Thereafter, the U.S. Access Board Courthouse Access Advisory Committee issued a report in 2006 which illustrated how the design of courthouses impeded the physical access to justice for people with disabilities.²¹ The design of courthouses poses challenges to access due to various features, such as courtroom areas that are elevated within confined spaces, inaccessible jury boxes and witness chairs, lack of ramps and elevators, etc.²²

Additionally, In September 2004, the South African Equality Court reached a final settlement in which the government acknowledged that they had failed to provide proper wheelchair access and that this was a form of unfair discrimination against the complaining and other people with similar accessibility needs.²³ Obviously, if women with disabilities cannot enter the institutions of the justice system, they cannot vindicate their rights.

Women with Disabilities as Witnesses

The justice system often fails to see women with disabilities as competent witnesses. Abuse cases involving a complainant with learning disabilities rarely go to court and the complainant frequently does not serve as sole witness against the accused.²⁴ Not only are women with disabilities excluded as witnesses because they may have difficulty communicating with the police, but stereotypes about women with disabilities operate to exclude or discount their testimony. The sexual nature of certain crimes and the general failure for society to see people with disabilities as sexual beings may result in judges and juries discounting the witnesses' testimony in sexual assault cases.²⁵ This tendency to essentially "infantilize"

¹⁶ Stephanie Ortoleva, Esq., *Inaccessible Justice: Human Rights, Persons with Disabilities and the Legal System*, 17 *ILSA J. Int'l & Comp. L.* 281, 305 (2011).

¹⁷ *Tennessee v. Lane*, 541 U.S. 509 (2004).

¹⁸ *Tennessee v. Lane*, 541 U.S. 509 (2004).

¹⁹ Title II of the Americans with Disabilities Act of 1990, 104 Stat. 337, 42 U.S.C. §§ 12131–12165.

²⁰ *Tennessee v. Lane*, 541 U.S. 509, 533-34 (2004) (citations omitted).

²¹ U.S. Access Board, *Justice for All: Designing Accessible Courthouses* (Nov. 15, 2006) (available at <http://www.access-board.gov/caac/report.pdf>).

²² U.S. Access Board, *Justice for All: Designing Accessible Courthouses* (Nov. 15, 2006), pg. 9.

²³ South African Government Information, *Equality Court Victory for People with Disabilities*, <http://www.info.gov.za/speeches/2004/04022415461001.htm> (last visited Feb. 23, 2011) [hereinafter South African Government Information].

²⁴ Pamela Cooke & Graham Davies, *Achieving Best Evidence from Witnesses with Learning Disabilities: New Guidelines*, 29 *British Journal of Learning Disabilities* 84 (2001).

²⁵ Hilary Brown, *Sexual Abuse: Facing Facts*, 87 *Nursing Times* 65 (1991).

women with mental disabilities contributes to discounting their testimony.²⁶ On the other hand, society may view some women with mental disabilities as hypersexual and lacking self-control, leading to the disregard of their complaints.²⁷

Law enforcement and legal agencies may see women with disabilities who require assistive communication or accommodations, or women with psycho-social and intellectual disabilities, as lacking credibility.²⁸ Some judges may require more corroborating evidence of an assault in cases involving women with disabilities than in other cases, and evidence about prior mental health treatment may be used to discredit their testimony.²⁹ Women with cognitive disabilities may have more difficulty with long term memory or remembering the sequence of events, which may make them appear less credible on the stand.³⁰ Overly paternalistic attitudes towards women with disabilities may cause various players in the judicial system to view women with disabilities as too fragile to withstand the rigors of examination.

This exclusion is particularly problematic in gender-based violence and sexual assault cases, where the testimony of the parties and the credibility of the witnesses are exceptionally important.³¹ This exclusion may place women with disabilities at even greater risk, because perpetrators may be more likely to attack women with disabilities because they know that their complaints may be taken less seriously. If prior complaints have been dismissed women with disabilities are less likely to report abuse in the future,³² perpetuating the violence.³³

Access to Attorneys who Understand the Needs of Women with Disabilities

Women with disabilities face similar problems with legal representation and protection as others who are economically disadvantaged (Availability, affordability, and adequacy). However both gender and disability stereotyping further exacerbate the disadvantages women with disabilities experience. They must rely on the increasingly scarce free or low-cost legal services and therefore have less choice in who represents them, and generally have less understanding and access to the legal system.³⁴ Providing free or low cost attorneys to women with disabilities in civil and criminal matters may be necessary to ensure that they can vindicate their rights.³⁵

Attorneys who do not have much experience interacting with people with disabilities may not fully

²⁶ Janine 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).

²⁷ Janine Benedet and Isabel Grant, *Hearing the Sexual Assault Complaints of Women with Mental Disabilities: Evidentiary and Procedural Issues*, 52 McGill L.J. 515, 522, 537 (2007). Benedet and Grant argue that in some instances, courts may inquire into a complainant's sexual history in order to establish her understanding of sexual matters, even though these inquiries do not satisfy the strict requirements for admission of past sexual history under Canada's "rape shield" law. *Id.* at 533.

²⁸ Disability Discrimination Legal Service, *Beyond Belief, Beyond Justice: The Difficulties for Victims/Survivors with Disabilities when Reporting Sexual Assault and Seeking Justice* (Nov. 2003), p. 59. Located at www.wwda.org.au/beyondbelief1.pdf

²⁹ Janine Benedet and Isabel Grant, *Hearing the Sexual Assault Complaints of Women with Mental Disabilities: Evidentiary and Procedural Issues*, 52 McGill L.J. 515, 531-32 (2007).

³⁰ Janine Benedet and Isabel Grant, *Hearing the Sexual Assault Complaints of Women with Mental Disabilities: Evidentiary and Procedural Issues*, 52 McGill L.J. 515, 531-32 (2007).

³¹ Chris Jennings, *Family Violence & Sexual Assault: A Criminal Justice Response for Women with Disabilities* (13 July 2005).

³² Chris Jennings, *Family Violence & Sexual Assault: A Criminal Justice Response for Women with Disabilities* (13 July 2005).

³³ **For a domestic court decision overruling a lower court and** **R. v. D.A.I. [2012] S.C.R. 5 (Can.),** available at <http://scc.lexum.org/en/2012/2012scc5/2012scc5.html>.

³⁴ Chris Jennings, *Family Violence & Sexual Assault: A Criminal Justice Response for Women with Disabilities* (13 July 2005).

³⁵ Frances Gibson, *Article 13 of the Convention on the Rights of Persons with Disabilities— A Right to Legal Aid?*, 15 AUSTL. J. OF HUM. RTS. 123, 131 (2010).

understand their needs and may not be aware of appropriate “disability etiquette”.³⁶ Few law schools require or provide training in working with clients with disabilities or any courses on disability law generally.³⁷ Lawyers may not always provide information in Braille or other accessible forms of communication or provide sign language interpretation.³⁸

Additionally, there are few members of the legal profession who are persons with disabilities and even fewer women with disabilities. The research of Carrie Basas notes that many women with disabilities indicated that the combination of being a woman and having a disability served to further compound the view that women are the “weaker sex” and therefore put them at a double disadvantage.³⁹ As a result, many women with disabilities may feel pressure to “cover up” the fact they have a disability in part to avoid this double stigma.⁴⁰ For women with visible disabilities, they may also feel like they have to perform much better than their colleagues to be viewed as equally competent.⁴¹ Until the legal field becomes more inclusive and accepting of its own members with disabilities, clients with disabilities will continue to face a lack of understanding and barriers in accessing legal assistance.

Therefore, the above examples of limitations on access to justice for women with disabilities demonstrates how the actual experiences of women with disabilities contrasts with the human rights guaranteed by the international legal normative framework and accentuate the urgent need to include issues of concern to women and girls with disabilities in legal reform efforts addressing violence against women.

The undersigned look forward to providing any assistance or resources as this legal reform process proceeds and hope that the comments and resources we have shared will result in the greater inclusion of a substantive discussion of violence against women and girls with disabilities and the greater participation of women and girls with disabilities. Please contact Ms. Ortoleva at +1.202.359.3045 or WomenEnabled@gmail.com.

Signed,⁴²

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³⁶ Stephanie Ortoleva, *Inaccessible Justice: Human Rights, Persons with Disabilities and the Legal System*, 17 ILSA J. Int'l & Comp. L. 281, 301 (2011).

³⁷ Frances Gibson, *Article 13 of the Convention on the Rights of Persons with Disabilities— A Right to Legal Aid?*, 15 AUSTL. J. OF HUM. RTS. 123, 128 (2010). However, there are some notable exceptions in that a few law schools have successful clinical programs on disability law. For example, Syracuse University College of Law and the American University Washington College of Law, among others, offer a disability rights clinic and multiple courses related to disability law. The University of Pittsburgh offers a Master of Studies in Law Degree with a concentration in Disability Law.

³⁸ Stephanie Ortoleva, *Inaccessible Justice: Human Rights, Persons with Disabilities and the Legal System*, 17 ILSA J. Int'l & Comp. L. 281, 300-01 (2011).

³⁹ Carrie Griffin Basas, *The New Boys: Women with Disabilities and the Legal Profession*, 25 Berkeley J. Gender L. & Just. No.1, 116 (2010).

⁴⁰ Carrie Griffin Basas, *The New Boys: Women with Disabilities and the Legal Profession*, 25 Berkeley J. Gender L. & Just. No.1, 126 (2010).

⁴¹ Carrie Griffin Basas, *The New Boys: Women with Disabilities and the Legal Profession*, 25 Berkeley J. Gender L. & Just. No.1, 145 (2010).

⁴² Note: The signer is Co-Chair of the International Disability Rights Interest Group (IDRIG) of the American Society of International Law (ASIL), but the views expressed herein and in the above-referenced Report do not necessarily reflect those of the IDRIG or the ASIL more broadly.

Cc:

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