



**Women Enabled International  
Preliminary Submission on Deprivation of Liberty and Women and Girls with Disabilities  
to the Working Group on the issue of Discrimination against Women in Law and in Practice**

*July 18, 2018*

Women Enabled International (WEI) appreciates the opportunity to provide this preliminary information to the United Nations Working Group on the issue of Discrimination against Women in Law and in Practice (the Working Group) in advance of its July 2018 meeting. WEI will provide a more in-depth analysis of these issues to the Working Group in September 2018, to inform the Working Group's forthcoming report on this topic, and we welcome comments and questions from the Working Group on this preliminary information.

**About WEI**

WEI works at the intersection of women's rights and disability rights to advance the rights of women and girls with disabilities around the world. Through advocacy and education, WEI increases international attention to—and strengthens international and regional human rights standards on—issues such as violence against women, sexual and reproductive health and rights, access to justice, education, legal capacity, and humanitarian emergencies. Working in collaboration with women with disabilities rights organizations and women's rights organizations worldwide, WEI fosters cooperation across movements to improve understanding and develop cross-cutting advocacy strategies to realize the rights of all women and girls.

**Women with Disabilities and Deprivations of Liberty**

*1. Forms of Deprivation of Liberty for Women and Girls with Disabilities*

Women and girls<sup>1</sup> with disabilities face deprivation of liberty in several circumstances, which are influenced by both their gender and disability statuses.

For instance, **women with disabilities are disproportionately represented in jails and prisons.** While women with disabilities account for roughly one-fifth of the world's population of women,<sup>2</sup> one study found that female prisoners were five times more likely to have a mental health-related disability (usually referred to as a "psychosocial disability") than the general population,<sup>3</sup> while another found that as many as 80% of female detainees in jails had a psychosocial disability.<sup>4</sup> The causes of this higher rate of incarceration will be explored in more detail below.

Furthermore, **women with disabilities are disproportionately detained in institutions, including psychiatric hospitals and long-term residential care institutions, as compared to men with disabilities.** All persons with disabilities—particularly psychosocial disabilities and intellectual disabilities (sometimes referred to as cognitive disabilities or learning disabilities)—are vulnerable to being placed in institutions against their will or without their consent, based on their disability status. However, according to the former Special Rapporteur on the Right to Housing, Miloon Kothari, women with disabilities worldwide are more likely to be institutionalized than men.<sup>5</sup> According to UNICEF, girls and young women with disabilities are also more likely to be institutionalized than are boys with disabilities.<sup>6</sup> The causes of this gender disparity in institutionalization will be explored in more detail below.

Finally, **women with disabilities experience isolation, segregation, and dependency on others** more often than men with disabilities or other women, which may also be forms of confinement.<sup>7</sup> Families may isolate women with disabilities due to shame about having a woman with a disability in the family or may segregate them for protection from violence and harassment. But isolation, segregation, and dependency may also be forms of violence against women with disabilities, used as methods of control over a population that already faces significant barriers to participating in society on an equal basis with others.<sup>8</sup>

## 2. *Causes of Deprivations of Liberty for Women and Girls with Disabilities*

Women with disabilities experience higher rates of incarceration and institutionalization based on discrimination that stems from both their gender and disability, among other statuses.

**The closure of psychiatric institutions in some countries has led to a marked increase in criminalization of women with disabilities.** In some countries, the closure of psychiatric and other institutions has not been accompanied by sufficient community-based support services for people with disabilities, particularly psychosocial and intellectual disabilities.<sup>9</sup> This lack of support may lead to higher rates of criminal activity, but also persons with psychosocial disabilities in particular may be discriminatorily perceived as more “dangerous” to themselves or others, also leading to incarceration or other forms of detention.<sup>10</sup>

**Women with disabilities are more likely to be viewed as “burdens” than are men with disabilities or other women, leading to higher rates of institutionalization.** This perception is partially due to *patriarchal gender roles and stereotypes*, which intersect with disability stereotypes. Due to their disability, women with disabilities are viewed as being unable to fulfill the traditional, and discriminatory, gender role as mothers and caregivers.<sup>11</sup> This makes their presence in the family and the community less valued. At the same time, due to their gender, women with disabilities have less power to make decisions within the family.<sup>12</sup> Both of these circumstances increase the chances that women with disabilities will be placed in institutions rather than supported to participate in society. As the Committee on the Rights of Persons with Disabilities (CRPD Committee) has noted, “Cultural norms and values may adversely restrict the choices and control of women and girls with disabilities over their living arrangements, limit their autonomy, oblige them to live in particular living arrangements, require them to suppress their own requirements and instead serve those of others and take certain roles within the family.”<sup>13</sup>

Women with disabilities are also more likely to **lack means and sufficient support to live in their communities**, which means they or their families may resort to their institutionalization. Women with disabilities are more likely than men with disabilities or other women to live in poverty and generally also have lower rates of employment, situations that affect their opportunity to live independently.<sup>14</sup> Furthermore, some families may feel as if they have no choice but to institutionalize women with disabilities, because they do not have the resources to care for them, fear that they may be abused in their communities, and are concerned otherwise about their limited life prospects, which are influenced by both their gender and disability.<sup>15</sup>

Unlike most other women, **women with disabilities—and particularly those with psychosocial or intellectual disabilities—are frequently deprived of legal capacity**, with guardians appointed to make important life decisions on their behalves. Often, guardians have the decision-making authority to place a woman with a disability in an institution. As long as that woman remains deprived of legal capacity, her ability to challenge her institutionalization is limited, even if that institutionalization goes against her own will and preferences. This violates Article 12 of the Convention on the Rights of Persons with Disabilities (CRPD), as it denies women with disabilities the opportunity on an equal basis with others to make important life decisions.<sup>16</sup> Instead of depriving persons with disabilities of legal capacity, according to the CRPD Committee, “in conjunction with the right to legal capacity on an equal basis with others, States

parties have an obligation not to permit substitute decision-makers to provide consent on behalf of persons with disabilities.”<sup>17</sup>

### *3. Consequences of Deprivations of Liberty for Women and Girls with Disabilities*

**Women with disabilities are already at higher risk of gender-based violence than are other women, and detention increases this risk.** The U.N. has recognized that “[w]omen prisoners with disabilities are at a particularly high risk of manipulation, violence, sexual abuse and rape.”<sup>18</sup> For instance, in the United States, it is estimated that at least 13% of inmates have been sexually assaulted; many have experienced repeated assaults.<sup>19</sup> Prisoners with physical disabilities may be actively targeted based on their disabilities or suffer the effects of having their disability-related needs neglected.<sup>20</sup> Furthermore, most prison staff are not adequately trained to prevent or respond to inmate sexual assaults and prison rape often goes unreported and untreated.<sup>21</sup>

**Women with disabilities are at higher risk of forced treatment, rising to the level of torture or ill-treatment, while deprived of liberty.** Detention of women and girls with disabilities, particularly in psychiatric hospitals and long-term residential care facilities, is often accompanied by forced medical interventions.<sup>22</sup> Indeed, medical treatment is sometimes the reason given for the institutionalization of a person with a disability, and forced institutionalization occurs because the individual did not agree to the treatment.<sup>23</sup> Some forms of forced medical interventions<sup>24</sup> in institutions are specifically targeted at women and girls with disabilities, due to both their gender and disability. In particular, forced reproductive health interventions such as forced sterilization, forced abortion, and forced contraception are performed specifically on women and girls with disabilities to make them easier to handle (for instance, so that caretakers do not have to assist with menstrual hygiene) or to prevent them from becoming pregnant and having a child while institutionalized, including following sexual abuse.<sup>25</sup> These forced reproductive health procedures have been recognized as violations of medical ethics<sup>26</sup> and forms of torture or ill-treatment.<sup>27</sup>

**Women with disabilities often lack recourse to justice for violations committed against them while deprived of liberty.**<sup>28</sup> As the CRPD Committee noted in its General Comment No. 3 on women with disabilities, “Perpetrators [of violations against women with disabilities in institutions] may act with impunity because they perceive little risk of discovery or punishment given that access to judicial remedies is severely restricted, and women with disabilities subjected to such violence are unlikely to be able to access helplines or other forms of support to report such violations.”<sup>29</sup>

### *4. Important Legal Background: Articles 14 and 19 of the CRPD and State Obligations Regarding Deprivation of Liberty and Persons with Disabilities*

In addition to the rights applicable to all women in the context of detention, women with disabilities are further protected by rights enumerated in the CRPD. Of particular salience on the conversation on detention are Article 14, the right to be free from arbitrary detention based on disability, and Article 19, the right to live in the community.

Article 14 states that States have an obligation to “ensure that persons with disabilities, on an equal basis with others, ... are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and *that the existence of a disability shall in no case justify a deprivation of liberty.*”<sup>30</sup> In a guidance note on Article 14, the CRPD Committee has asserted an “absolute prohibition of detention on the basis of impairment,” actual or perceived, noting that detention on the basis of disability is discriminatory in nature and thus amounts to an arbitrary deprivation of liberty.<sup>31</sup> According to the Committee, detention on the basis of disability includes involuntary commitment of persons with disabilities on both disability and health care-related grounds, such as “risk or

dangerousness, alleged need of care or treatment or other reasons tied to impairment or health diagnosis.”<sup>32</sup> In particular, the Committee notes that persons with intellectual or psychosocial disabilities may be considered dangerous to themselves or others for exercising their right to withhold consent from medical or therapeutic treatments,<sup>33</sup> which means a neutral “dangerousness” grounds for detention may still be discriminatorily applied to them.

Article 19 states that “States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community.”<sup>34</sup> Under this article, States have an obligation to ensure that persons with disabilities can choose their place of residence and with whom to live on an equal basis with others and access specific services to support living and inclusion in the community, and that “community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.”<sup>35</sup> Concerning women with disabilities in particular, the CRPD Committee has found that Article 19 requires States to take measures to tackle discrimination and barriers women with disabilities face in accessing social services needed for independent living and to address violence, as well as supports for entering the labor market.<sup>36</sup>

## 5. Conclusions

Thank you again for the opportunity to contribute to the Working Group’s work on women’s rights in the context of deprivations of liberty. For any further inquiries on this matter, please contact Stephanie Ortoleva, President and Executive Director, at [president@womenenabled.org](mailto:president@womenenabled.org) and Amanda McRae, Director of U.N. Advocacy, at [a.mcrae@womenenabled.org](mailto:a.mcrae@womenenabled.org).

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<sup>1</sup> For purposes of this submission, WEI will use the term “women” to refer to all women and girls of all ages, unless otherwise noted.

<sup>2</sup> WORLD HEALTH ORGANIZATION (WHO) AND WORLD BANK, WORLD REPORT ON DISABILITY 28-29 (2011).

<sup>3</sup> PRISON REFORM TRUST, BROMLEY BRIEFINGS PRISON FACTFILE 32 (Dec. 2011), available at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley%20Briefing%20December%202011.pdf>.

<sup>4</sup> Janet I. Warren et al., *Personality Disorders and Violence Among Female Prison Inmates*, 30 J. Am. Acad. Psychiatry Law 502-503 (2002), <http://www.jaapl.org/cgi/reprint/30/4/502.pdf>.

<sup>5</sup> Commission on Human Rights, *Women and adequate housing: Study by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, Miloon Kothari, ¶ 64, U.N. Doc. E/CN.4/2005/43 (2005), [http://www.un.org/womenwatch/enable/E-CN4-2005-43\\_Housing.pdf](http://www.un.org/womenwatch/enable/E-CN4-2005-43_Housing.pdf).

<sup>6</sup> UNICEF, *Factsheet: Children and Young People with Disabilities* 19 (May 2013), [https://www.unicef.org/disabilities/files/Factsheet\\_A5\\_Web\\_NEW.pdf](https://www.unicef.org/disabilities/files/Factsheet_A5_Web_NEW.pdf).

<sup>7</sup> See, e.g., CRPD Committee, *General Comment No. 3: Article 6: Women and girls with disabilities*, ¶¶ 33 & 36, U.N. Doc. CRPD/C/GC/3 (2016).

<sup>8</sup> See, e.g., *id.*, ¶ 31 (“Examples of violence, exploitation and/or abuse against women with disabilities that violate article 16 include ... the exercise of control, for example by restricting face-to-face or virtual access to family, friends or others.”).

<sup>9</sup> See, e.g., CRPD Committee, *General Comment No. 5: Article 19: Living independently and being included in the community*, ¶ 33, U.N. Doc. CRPD/C/GC/5 (2017).

<sup>10</sup> See, e.g., CRPD Committee, *Guidelines on Article 14 of the Convention on the Rights of Persons with Disabilities*, ¶¶ 13-14 (Sept. 2015), <https://www.ohchr.org/Documents/HRBodies/CRPD/GC/GuidelinesArticle14.doc>.

<sup>11</sup> For instance, in Nigeria, women with disabilities are perceived as having less value to a family than do men with disabilities, because men with disabilities are perceived as being more able to fulfill their gendered role by working and supporting a family, and they are also able to inherit familial property.

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<sup>12</sup> Non-governmental organizations in India report that the disempowerment of women and girls within in families is one reason behind the higher rates of institutionalization of women and girls with disabilities in that country.

<sup>13</sup> CRPD Committee, *General Comment No. 5: Article 19: Living independently and being included in the community*, ¶ 74, U.N. Doc. CRPD/C/GC/5 (2017).

<sup>14</sup> See, e.g., CRPD Committee, *General Comment No. 3: Article 6: Women and girls with disabilities*, ¶ 59, U.N. Doc. CRPD/C/GC/3 (2016).

<sup>15</sup> For instance, in South Africa, as a result of lack of community-based support services and the prevalence of resentment towards women with disabilities (as burdens to their family), families sometimes choose to institutionalize women with disabilities to enable these families to “just get on with their lives.” (Talia Meer & Helene Combrinck, *Help, Harm or Hinder? Nongovernmental Service Providers’ Perspectives on Families and Gender-Based Violence against Women with Intellectual Disabilities in South Africa*, 32 *DISABILITY & SOCIETY* 1, 37-55 (2017)).

<sup>16</sup> CRPD, art. 12. CRPD Committee, *General Comment No. 1: Article 12: Equal Recognition Before the Law*, ¶ 41, U.N. Doc. CRPD/C/GC/1 (2015).

<sup>17</sup> *Id.*

<sup>18</sup> United Nations Office on Drugs and Crime (UNODC), *HANDBOOK FOR PRISON MANAGERS AND POLICYMAKERS ON WOMEN AND IMPRISONMENT 45* (2008), <http://www.unodc.org/documents/justice-and-prison-reform/women-and-imprisonment.pdf>.

<sup>19</sup> PRISON RAPE ELIMINATION ACT OF 2003, S. 1435, 108th Cong., 1st Sess. (2003).

<sup>20</sup> UNODC, *HANDBOOK FOR PRISON MANAGERS AND POLICYMAKERS ON WOMEN AND IMPRISONMENT 45* (2008), <http://www.unodc.org/documents/justice-and-prison-reform/women-and-imprisonment.pdf>.

<sup>21</sup> PRISON RAPE ELIMINATION ACT OF 2003, S. 1435, 108th Cong., 1st Sess. (2003).

<sup>22</sup> CRPD Committee, *Guidelines on Article 14 of the Convention on the Rights of Persons with Disabilities*, ¶ 11 (Sept. 2015), <https://www.ohchr.org/Documents/HRBodies/CRPD/GC/GuidelinesArticle14.doc>.

<sup>23</sup> *Id.*, ¶¶ 13-14.

<sup>24</sup> A “forced” medical intervention occurs when any non-urgent medical intervention is performed without the full free and informed consent of the person themselves.

<sup>25</sup> See, e.g., CRPD Committee, *General Comment No 3: Article 6: Women and girls with disabilities*, ¶ 45, U.N. Doc. CRPD/C/GC/3 (2016).

<sup>26</sup> In 2011, FIGO adopted guidelines specifically regarding female contraceptive sterilization, stating that only women themselves can give ethically valid consent to their own sterilization. FIGO, *Female Contraceptive Sterilization*, 115 *INT’L J. OF GYNECOLOGY AND OBSTETRICS* 88, 88-89, ¶ 8 (2011).

<sup>27</sup> See, e.g., Human Rights Council, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*, ¶ 46, U.N. Doc. A/HRC/22/53 (Feb. 1, 2013).

<sup>28</sup> For instance, although India’s Criminal Law (Amendment) Act 2013 outlaws violence against women with disabilities in institutional settings, in practice women with disabilities have effectively no access to the justice system when they are institutionalized, either to challenge forced institutionalization or to report violence committed against them in institutions. See also HOPE LEWIS & STEPHANIE ORTOLEVA, *FORGOTTEN SISTERS: A REPORT ON VIOLENCE AGAINST WOMEN WITH DISABILITIES* 56-58 (2012), <https://womenenabled.org/pdfs/Ortoleva%20Stephanie%20%20Lewis%20Hope%20et%20al%20Forgotten%20Sisters%20-%20A%20Report%20on%20ViolenceAgainst%20Women%20%20Girls%20with%20Disabilities%20August%2020%202012.pdf>.

<sup>29</sup> CRPD Committee, *General Comment No. 3: Article 6: Women and girls with disabilities*, ¶ 53, U.N. Doc. CRPD/C/GC/3 (2016).

<sup>30</sup> CRPD, art. 14 (emphasis added).

<sup>31</sup> CRPD Committee, *Guidelines on Article 14 of the Convention on the Rights of Persons with Disabilities* (Sept. 2015), <https://www.ohchr.org/Documents/HRBodies/CRPD/GC/GuidelinesArticle14.doc>.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> CRPD, art. 19.

<sup>35</sup> *Id.*

<sup>36</sup> CRPD Committee, *General Comment No. 5: Article 19: Living independently and being included in the community*, ¶¶ 74-75, U.N. Doc. CRPD/C/GC/5 (2017).