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Advocating for the Rights of All Women!

The Honorable Senator John F. Kerry, Chair (D-MA)  
The Honorable Senator Richard G. Lugar, Ranking Member (R-IN)  
Members of the U.S. Senate Foreign Relations Committee  
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18 July 2012 - For entry into the record of the Senate Foreign Relations Committee consideration of the U.S. Senate Ratification of the United Nations Convention on the Rights of Persons with Disabilities

To Honorable Senators Kerry and Lugar and other members of the Senate Foreign Relations Committee,

As President and Founder of Women Enabled, a non-governmental organization dedicated to advancing the rights of persons with disabilities and women, with a special focus on women and girls with disabilities, I vigorously urge prompt U.S. Senate ratification of the United Nations Convention on the Rights of Persons with Disabilities (CRPD). This treaty will advance the rights of all persons with disabilities around the world and includes specific provisions to advance the rights of women and girls with disabilities. I strongly encourage the U.S. to ratify the CRPD without any Reservations, Understandings and Declarations (RUDs) beyond the well-crafted RUDs proposed by the Obama Administration and to do so before July 26, 2012, the anniversary of the U.S. landmark Americans with Disabilities Act (ADA). Such prompt ratification would further advance the spirit of cooperation and collaboration that so well characterized the passage of the ADA itself.

Below I explore two of the most devastating factors that confront women and girls with disabilities – gender-based and sexual violence and access to health care, and how such issues are addressed in the CRPD. Some aspects of my own background that uniquely qualify me to present this statement for your consideration are set forth at the end of this statement.

Women with Disabilities and the CRPD: The United Nations Convention on the Rights of Persons with Disabilities is unique in many ways, and in a recent roundtable at the 2012 Annual Meeting of the American Society for International Law, we addressed violence against women and girls with disabilities, and highlighted the possibilities created by the CRPD's Article 6 on Women, which places the advancement of the human rights of women and girls with disabilities around the world in center stage. Women and girls with disabilities experience the double bind of discrimination because they are women and because they are persons with disabilities and for many women with disabilities other intersecting identities result in compounded discrimination and violence.

The 2011 Report of Rashida Manjoo, 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, indigenous status, language, religion, sexual orientation and gender identity and class can exacerbate the violence women experience.<sup>1</sup>

Although women with disabilities experience many of the same forms of violence all women experience, when gender and disability intersect, violence has unique causes, takes on unique forms and results in unique consequences. Further, women and girls with disabilities who are also members of other identity groups can be subject to particularized forms of violence and discrimination.

Recently the violence and discrimination experienced by women with disabilities has become somewhat more visible and noted by the international community. Despite the evolution of normative frameworks concerning both the human rights of women and of persons with disabilities, the impact of the combined effects of both gender and disability have not gained sufficient attention, data collection is inadequate and the violence remains at shockingly high rates when these multiple identities collide.

Violence against women with disabilities occurs in various spheres including the home, the community, perpetrated and/or condoned by the state and private institutions and in the transnational sphere. The forms of violence to which women with disabilities are subjected are varied; physical, psychological, sexual and/or financial violence, neglect, social isolation, entrapment, degradation, trafficking, detention, denial of health care and forced sterilization and forced psychiatric intervention, among others. Women with disabilities are twice as likely to experience domestic violence as non-disabled women, and are likely to experience abuse over a longer period of time 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, they often lack access to legal protection, law enforcement officials and the legal community are ill-equipped to address the violence, and their testimony is often not viewed as credible by the courts, and they are not privy to the same information available to non-disabled women. 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, although there are increasing efforts to address this urgent concern. Those shelters and spaces that are available are often inaccessible, prohibit service animals such as guide dogs used by blind women, fail to provide reasonable accommodations to women with disabilities or exclude them altogether. Furthermore, women and girls with disabilities are at high risk of gender-based and other forms of violence based on social stereotypes and biases that attempt to dehumanize or infantilize them, exclude or isolate them, target them for sexual and other forms of violence, and put them at greater risk of institutionalized violence. Sexual and gender-based violence also contributes to the incidence of disability among women.

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<sup>1</sup> Special Rapporteur on Violence against Women, Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, U.N. Doc. A/HRC/17/26 (May 2, 2011) (by Rashida Manjoo), available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A-HRC-17-26.pdf>.]

Numerous barriers confront women with disabilities when accessing all forms of health care, including physically inaccessible facilities and equipment, unavailability of sign language interpreters for women who are deaf, health care providers who do not understand their unique needs or who treat them like children, and other problems. With respect to the urgent issue of access to health care, women with disabilities are less likely to receive screening and preventive services for disease such as screening for breast and cervical cancer compared with women without disabilities. Additionally, women with disabilities are less likely to be able to access sexual and reproductive health care to provide important pre-natal care and prevention of sexually transmitted diseases.

The CRPD – Fostering Non-Discrimination and Equality for Persons with Disabilities: I also wish to reiterate a few points made at this Committee's 12 July 2012 hearing on the CRPD. The well-crafted and carefully considered Reservations, Understandings and Declarations (RUDs) proposed by the Obama Administration, as well as the drafting history of the CRPD (including several U.S. Government Explanations of Position during the treaty negotiations) make it abundantly clear that this Convention is a non-discrimination instrument, ensuring that persons with disabilities are entitled to participate in society on an equal basis with others. In no way does this Convention mandate funding for abortion or any other health care service; rather, it clearly states that persons with disabilities have the right to access health care services on an equal basis with other persons.

The convention does not affect U.S. law with regard to abortion. Rather, as described in detail under Article 25, the convention guarantees to persons with disabilities equal access to reproductive health care as provided or permitted under domestic law and on an equal basis with others. Indeed, during the negotiations of the text of the CRPD governments and civil society organizations on both sides of the issue of abortion came together and acknowledged that there was absolutely no need to take a position on the issue of abortion in this important treaty.

Of particular significance to States Parties and civil society is Article 23(1)(c)'s express recognition of the right of persons with disabilities "to retain their fertility on an equal basis with others," reaffirming that coerced sterilization is a violation of a fundamental human right. During several formal and informal treaty negotiations sessions, stark references were made to the U.S. Supreme Court decision in Buck v. Bell, 274 U.S. 200 (1927), which upheld the sterilization of persons with so-called mental disabilities. Fortunately, a more enlightened U.S. Supreme Court, drawing upon the U.S. Constitution's penumbra of privacy, held that all persons, including those with disabilities, enjoy general protections of the privacy of the home and family relationships, and Buck is no longer good law in the United States — evidencing the very positive trend of U.S. disability law and clarifying that some of the most offensive practices of concern to civil society are impermissible in the United States.

The CRPD's Article 25 on Health sets out provisions related to States Parties' "recogni[tion] that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability." States Parties are required to take "appropriate measures" to ensure access for persons with disabilities to services, including sexual and reproductive health programs, early identification of disabilities and "intervention as appropriate," and "care of the same quality for persons with disabilities as to others."

The text and the negotiating history of Article 25 make clear that it is a nondiscrimination provision, intended to guarantee to persons with disabilities the same rights to health care as are granted to persons without disabilities on a nondiscriminatory basis. The travaux préparatoires is replete with such references, including an express statement during the Seventh Ad Hoc Committee negotiating session that "the Ad Hoc Committee understands draft Article 25(a) to be a non-discrimination provision that does not add to, or alter, the right to health."

"The Sixth Ad Hoc Committee, like the Seventh, expressly explained that health care in the area of sexual and reproductive health "was not intended to alter or prejudice the general policies of governments in regard to family planning or related matters, to the extent that these were permitted by national legislation of general application. The phrase in the CRPD was a statement on the right to be free from discrimination, and its effect was that persons with disabilities would need to be treated on an equal basis with others in this area." Report of the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities on its sixth session, page 18, paragraph 85, <http://www.un.org/esa/socdev/enable/rights/ahc6reporte.htm>. That Report states, in relevant part: at page 6, paragraph 6 "The Committee will also need to address proposals that were made throughout the text to insert language such as "on an equal basis with others"; page 7 paragraphs 11 and 15, "There was general support to the essence of draft article 15 that persons with disabilities should be free to choose their living arrangements on an equal basis with others."; pages 10-11 paragraphs 37 and 38. "The Committee noted that the reference [on free public education] did not create any new obligation for states to provide free and compulsory secondary education. Rather the provision is a non-discrimination one, and means that if a State did provide free and compulsory secondary education to the general population, then it should also be provided to persons with disabilities."; page 13 paragraphs 51 and 53 "To ensure that there would be no expectation that states should grant extra political rights to persons with disabilities that others did not enjoy, the Committee agreed to add the phrase 'on an equal basis with others'. That would ensure that no state would be obliged to give non-citizens with disabilities a right to vote if noncitizens in general would not be entitled to vote."; page 22 paragraph 112 "The Committee discussed options to replace or complement 'social security' in order to encapsulate the assistance provided by a state, and to ensure that there was no discrimination against persons with disabilities in the provision of that assistance."; page 25 paragraph 135 "There was general support to include the phrase 'on an equal basis with others' within the chapeau of paragraph 1".

The U.S. has proposed an Understanding affirming that the purpose of the CRPD is to promote, protect, and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to prevent discrimination on the basis of disability in the provision of any such rights.

Thus, the CRPD's Article 25 clearly is a nondiscrimination provision and does not address the matter of abortion. The Convention does not affect United States law with regard to abortion, as the text and travaux quoted above make clear. Rather the convention guarantees equal access to reproductive health care as provided or permitted under domestic law for all persons with disabilities.

The Americans with Disabilities Act, and where applicable the Rehabilitation Act, would implement the requirements of the CRPD's Article 25. These statutes provide, among other things, that persons with disabilities have the right to access health care and support services on an equal basis with others. Both the U.S. Department of Justice and the U.S. department of Health and Human services are charged with the enforcement program for ensuring compliance with these laws.

Examples of requirements under these two laws specifically applicable to reproductive health care include requirements for accessible medical equipment, such as adjustable height examination tables, accessible radiologic equipment, and mechanical lifts. Additionally, healthcare providers must ensure that they are providing effective communication for individuals who are deaf, hard-of-hearing, blind, have low vision, or have speech impairments. Staff involved in direct patient assistance should have proper training on providing equal access for patients with disabilities.

Furthermore, the Patient Protection and Affordable Care Act will enhance health care for persons with disabilities by mandating further barrier removal and improved access to wellness

for persons with disabilities. HHS funds and administers a vast array of programs that provide national health care standards and goals, research, technical assistance, and funding that support the CRPD Article 25's fundamental premise that "persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability."

The Obama Administration's package transmitting the CRPD to the Senate for ratification outlines details of several important HHS and DOJ programs and activities that have a positive effect on the lives and health of persons with disabilities. Similarly, the Department of Defense's Military Health System also affords the military community and their families several programs that benefit the health of persons with disabilities.

Related to the specific points raised in my testimony concerning violence against women with disabilities and access to health care for women with disabilities, several U.S. Government programs address these issues. The U.S. Department of Health and Human Services website <http://www.hhs.gov/od/women-with-disabilites-violencecounseling/index.html>, provides information on combatting violence against women with disabilities, strategies for screening and counseling concerning violence, a study on the status of research on violence against women with disabilities, as well as some specific examples of HHS-funded programs engaged in work on these issues. For example, the organization 'Deaf Hope,' funded by HHS, focuses on deaf survivors of domestic and sexual violence.

The U.S. Department of Justice Office of Violence Against Women funds several important projects to address violence against women with disabilities. In Washington, DC, for example, Project Peer is one project which DOJ funded is a collaboration of anti-violence and disability support agencies and groups working together to share their strengths. As a result of this project, agencies that respond to violence and trauma and agencies that support people with disabilities are working together to better support women with developmental and psycho-social disabilities who experience violence and abuse. With OVW support, Project Peer partners came together to listen and learn from each other and survivors with disabilities. Organizations are changing their own systems and services to improve quality and expand access to services for survivors with disabilities. Initiatives have focused on: Confidentiality: Building a shared understanding of best practices in confidentiality across disciplines and practice settings to enable survivors to maximize control over their "stories." Another important focus is the development of strategies to ensure sustainability and ongoing collaboration after the project funding has ended. For more information on this innovative project, please see <http://www.accessingsafety.org>.

The U.S. Department of Justice's Disability Rights Section is charged with the enforcement of the Americans with Disabilities Act and several recent settlements relate to issues discussed in this testimony. For example, An individual who has myasthenia gravis complained that the outpatient center of a Maryland hospital refused to provide her scheduled medical services because she uses a service animal. The hospital agreed to adopt and implement a policy permitting service animals in its facilities and, in instances when a service animal cannot be in the room during a procedure (such as an MRI), the hospital will provide, at no cost to the patient, a bonded pet sitting service if the patient is unable to bring a companion to look after the service animal. The hospital also agreed to train staff on ADA requirements and compensate the complainant \$5,000. In another case, an individual who uses a wheelchair complained that the entrance to a Pennsylvania doctor's office was inaccessible. The office installed a ramp at a secondary entrance used by employees, removed an "employees only" sign from that entrance, and agreed to keep it unlocked during business hours. A woman who is deaf complained that a Texas doctors' office denied her services when she requested a sign language interpreter for a scheduled appointment. The office developed and supplemented a program to train staff on the

office's written effective communication policy, posted a notice in the waiting room and inside the office area informing the public, as well as staff, of the availability of auxiliary aids and services for people with disabilities, and established contracts to ensure that qualified sign language interpreters would be available when needed. These settlements and other enforcement activities of the U.S. department of Justice can be found in the Report, "Enforcing the ADA, Status Report from the Department of Justice, January - March 2011" available at: <http://www.ada.gov/janmar11.htm>.

Efforts such as the above can be shared internationally so that women with disabilities in other countries can benefit from these experiences but also so that we in the United States can learn from the best practices in other countries. For example, recently Sweden undertook a substantial study on violence against women with disabilities and the report provided guidance to government officials and those working on addressing violence against women strategies to ensure the inclusion of women with disabilities. This report, by the Swedish National Board of Health and Welfare, entitled "Looking the Other Way: A Study Guide to Female Victims of Violence with Disabilities" (Feb. 2012), is available at [http://www.euroblind.org/media/ebu-media/Sweden\\_Guide\\_violence\\_against\\_disabled\\_women\\_2011.pdf](http://www.euroblind.org/media/ebu-media/Sweden_Guide_violence_against_disabled_women_2011.pdf). Collaboration on efforts such as this, sharing our experiences and knowledge, would be enhanced by U.S. prompt ratification of the CRPD and our participation in venues such as the CRPD upcoming 5<sup>th</sup> Conference of States Parties.

U.S. ratification of the CRPD also would advance the human rights of everyone in the U.S., including veterans, U.S. citizens who travel and work abroad and the community at large. With prompt ratification, the U.S. would join the more than 117 nations which have ratified this ground-breaking Convention and would provide us with the opportunity to share our experiences with laws such as the Americans with Disabilities Act and learn from the experiences of other countries.

Please contact me with any questions and I look forward to hearing your thoughts as well. I remain available to address any questions you or your staff may have regarding the CRPD.

Respectfully submitted,

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Check out updates on my website at: [www.WomenEnabled.org](http://www.WomenEnabled.org), follow me on Twitter at <http://twitter.com/WomenEnabled> and connect with me on LinkedIn at <http://www.linkedin.com/> under Stephanie Ortoleva, for information on human rights, women's rights and the rights of women with disabilities internationally.

Relevant Experience: I bring a special professional perspective to the ratification of this treaty as I served on the United States Government Delegation to the United Nations during the negotiations of this treaty for several sessions in 2006 and 2007. Furthermore, as an international human rights lawyer, I served as the U.S. Department of State's Disability Coordinator from 2005 through 2009, at which time I left the Department to pursue other international human rights work. My work at the U.S. Department of State also included working on women's rights issues, conflict and post-conflict situations, human rights education, rule of law as well as engaging in multilateral diplomacy.

I have worked in numerous countries overseas, collaborating with advocacy groups and governments worldwide, providing human rights education and have explored the situation of persons with disabilities in several countries. Furthermore, I have published several law review articles and other scholarly publications on disability rights, women's rights and rule of law and access to justice, many of which are available on Women Enabled's website at <http://www.WomenEnabled.org>. I have consulted for governments and international organizations, including as a special advisor to the UN on both disability and women's rights, including for the Secretariat for the CRPD, the Special Rapporteur on Violence Against Women and the World Bank. Recently, I have prepared a comprehensive paper for the UN on violence against women with disabilities, addressing issues such as the lack of access to justice, forced sterilization, access to sexual and reproductive health care services, women with disabilities as witnesses and numerous other issues. I also serve on the Boards of Directors of Disability Rights International and the United States International Council on Disability, as well as an active participant in the International Network of Women with Disabilities, an on-line community which has published papers on violence against women with disabilities and other topics.

Additionally, I have a long professional career as a lawyer in U.S. civil rights enforcement, working for U.S. Government and local government agencies as well as civil rights organizations. From this experience, I am quite familiar with the vast scope of U.S. disability rights and women's rights laws and their enforcement mechanisms.

Finally, I am not only a woman with a disability myself who is a renowned advocate for the rights of persons with disabilities and for women, but also have extensive personal experience in the evolution and the advancement of disability law in the United States. As one of the first children to attend the general public education system in my childhood community, prior to the enactment of the Individuals with Disabilities Education Act, I participated in one of the earliest programs to provide education to students with disabilities in the general education system. I credit this experience with affording me the opportunity to work with a diverse community of people and with encouraging me to participate in opportunities for advanced education and, ultimately, to go to law school and graduate from law school with honors, serve on the law review and serve as a law clerk to a judge of the U.S. Court of Appeals for the Second Circuit.