



**Women Enabled International Comments on the CRPD Committee's
Draft General Comment No. 6 on Equality and Non-Discrimination**

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I. Introduction

Women Enabled International (WEI) and the above-listed endorsing organizations listed above appreciate the opportunity to submit these written comments to the Committee on the Rights of Persons with Disabilities (CRPD Committee) regarding its Draft General Comment No. 6 on Equality and Non-Discrimination (Draft General Comment). 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 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.

Persons with disabilities, including women and girls with disabilities, experience unique violations of their rights as a result of discrimination based on disability and other statuses. Some of these violations—including disability-based violence and violations in the context of sexual and reproductive rights—not only result from disability-based discrimination but are also distinct forms of discrimination. To provide the best possible guidance to States parties about ensuring the rights of persons with disabilities to equality and non-discrimination, the CRPD Committee's Draft General Comment should more thoroughly explore some of these issues, particularly concerning how discrimination interacts with rights enshrined in Articles 15-17 and Article 25 of the Convention on the Rights of Persons with Disabilities (CRPD). Additionally, recommendations to promote the right of persons with disabilities to equality and non-discrimination should not in turn compromise other fundamental rights, including those of women and girls with disabilities.

Through this submission, WEI provides background information on how violence and sexual and reproductive rights issues impact persons with disabilities, particularly women and girls, as well as context from other treaties and treaty monitoring bodies about how these rights violations constitute discrimination. As part of this discussion, WEI explores how the Draft General Comment's current recommendation concerning prenatal genetic testing would violate the sexual and reproductive rights of women and girls, including women and girls with disabilities. WEI then provides some guidance on how to strengthen the discussion of discrimination against and equality of women and girls with disabilities in the Draft General Comment, including specific recommendations for revising the Draft General Comment.

Please note that, in order to ensure the accessibility of this document to those using screen readers, WEI has included both the current paragraph and a suggested amended paragraph, with suggested amendments in italics and highlighted in yellow for ease of identification.

II. Background and Specific Recommendations

A. Discrimination and Violence

Human rights law has consistently recognized that violence constitutes a form of discrimination when such violence is targeted at members of a protected group because of that group's actual or perceived characteristics or when experienced disproportionately by that group.¹ Under Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), for instance, States parties have a specific obligation to protect racial and ethnic minorities from racially-motivated violence as a means of ensuring their freedom from discrimination.² Although the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) does not contain any specific reference to violence against women, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) has repeatedly recognized that gender-based violence is a form of discrimination against women.³ The UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity has similarly found that violence and discrimination targeted at LGBTI individuals are closely linked.⁴

Disability-based violence similarly constitutes a form of discrimination against persons with disabilities, and the Draft General Comment should recognize it as such. As the CRPD Committee has recognized, persons with disabilities experience violence in unique forms and at disproportionate rates. In particular, the CRPD Committee has recognized that persons with disabilities, including children, uniquely experience violence in institutions,⁵ including neglect.⁶ The CRPD Committee has also recognized that persons with disabilities disproportionately experience violence and abuse within family settings⁷ and are

¹ See, e.g., CEDAW Committee, *General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, ¶ 1, U.N. Doc. CEDAW/C/GC/35 (2017) (“In its general recommendation No. 19 (1992) on violence against women, adopted at its eleventh session, the [CEDAW] Committee clarified that discrimination against women, as defined in article 1 of the Convention, included gender-based violence, that is ‘violence which is directed against a woman because she is a woman or that affects women disproportionately’, and that it constituted a violation of their human rights.”) [hereinafter CEDAW Committee, *Gen. Recommendation No. 35*].

² Convention on the Elimination of All Forms of Racial Discrimination, adopted Dec. 21, 1965, art. 5, G.A. Res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195 (entered into force Jan. 4, 1969).

³ See, e.g., CEDAW Committee, *Gen. Recommendation No. 35*, *supra* note 1, ¶ 1; *General Recommendation No. 19: Violence against Women (Eleventh Session, 1992)*, U.N. Doc. A/47/38 (1992).

⁴ Human Rights Council, *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*, ¶¶ 35-37, U.N. Doc. A/HRC/35/36 (2017).

⁵ See, e.g., CRPD Committee, *Concluding Observations: Armenia*, ¶ 27, U.N. Doc. CRPD/C/ARM/CO/1 (2017); *Bosnia and Herzegovina*, ¶ 31, U.N. Doc. CRPD/C/BiH/CO/1 (2017); *Canada*, ¶ 33, U.N. Doc. CRPD/C/CAN/CO/1 (2017); *Jordan*, ¶ 17, U.N. Doc. CRPD/C/JOR/CO/1 (2017); *Moldova*, ¶ 32, U.N. Doc. CRPD/C/MDA/CO/1 (2017); *Argentina*, ¶ 29, U.N. Doc. CRPD/C/ARG/CO/1 (2012); *European Union*, ¶ 44, U.N. Doc. CRPD/C/EU/CO/1 (2015); *Kenya*, ¶ 31, U.N. Doc. CRPD/C/KEN/CO/1 (2015).

⁶ See, e.g., CRPD Committee, *Concluding Observations: Australia*, ¶ 37, U.N. Doc. CRPD/C/AUS/CO/1 (2013); *Kenya*, ¶ 31, U.N. Doc. CRPD/C/KEN/CO/1 (2015); *Concluding Observations: Ukraine*, ¶ 11, U.N. Doc. CRPD/C/UKR/CO/1 (2015).

⁷ See, e.g., CRPD Committee, *Concluding Observations: Armenia*, ¶ 27, U.N. Doc. CRPD/C/ARM/CO/1 (2017); *Moldova*, ¶ 32, U.N. Doc. CRPD/C/MDA/CO/1 (2017).

⁸ See, e.g., CRPD Committee, *Concluding Observations: Canada*, ¶ 33, U.N. Doc. CRPD/C/CAN/CO/1 (2017); *Jordan*, ¶ 17, U.N. Doc. CRPD/C/JOR/CO/1 (2017).

at higher risk of labor exploitation.⁸ It has further recognized that persons with disabilities are disproportionately at risk of violations in the context of health care, including when guardians or others can authorize medical interventions without the full free and informed consent of persons with disabilities.⁹ The CEDAW Committee has classified substituted decision making in the context of reproductive health as a form of violence against women.¹⁰ To ensure protection from violence, the CRPD Committee has recommended that States parties provide independent monitoring and inspection of institutions, as well as access to effective independent complaint mechanisms for those living in institutions, so that violence against persons with disabilities might be redressed.¹¹ It has also recognized that States parties must replace substituted decision-making regimes with access to support services, so that persons with disabilities can exercise their legal capacity and make important life decisions for themselves, including concerning medical treatment.¹²

Women and girls with disabilities in particular experience higher rates of violence due to both their gender and disability, among other factors,¹³ as the CRPD Committee found in its General Comment No. 3 on women and girls with disabilities.¹⁴ The CRPD Committee has recognized that in situations where the risk of violence is heightened for persons with disabilities generally, it is further heightened for women and girls with disabilities. This holds true in institutional settings,¹⁵ within families including as a result of domestic violence,¹⁶ and in health care settings, including through forced reproductive health procedures.¹⁷ The CRPD Committee has recommended that States parties take particular steps to ensure justice for victims of this violence, while also ensuring accessible support services and reasonable accommodation within those services.¹⁸ It has also recommended that States parties ensure that laws and policies adopted to tackle gender-based violence contain specific action items, benchmarks, and programs related to women and girls with disabilities.¹⁹

Under international human rights law, States must take specific measures to prevent violence by state actors and exercise due diligence to prevent and redress discriminatory violence committed by non-state actors.²⁰ In particular, due diligence requires that States take “all appropriate measures to prevent, as well as to investigate, prosecute, punish and provide reparations for, acts or omissions by non-State actors that

⁸ See, e.g., CRPD Committee, *Concluding Observations: Armenia*, ¶ 27, U.N. Doc. CRPD/C/ARM/CO/1 (2017); *Honduras*, ¶ 41, U.N. Doc. CRPD/C/HON/CO/1 (2017).

⁹ See, e.g., CRPD Committee, *Concluding Observations: Bosnia and Herzegovina*, ¶ 32, U.N. Doc. CRPD/C/BiH/CO/1 (2017); *Concluding Observations: Canada*, ¶ 35, U.N. Doc. CRPD/C/CAN/CO/1 (2017); *Concluding Observations: Cyprus*, ¶ 41, U.N. Doc. CRPD/C/CYP/CO/1 (2017).

¹⁰ CEDAW Committee, *Gen. Recommendation No. 35*, *supra* note 1, ¶ 18.

¹¹ CRPD Committee, *Concluding Observations: Bosnia and Herzegovina*, ¶ 31, U.N. Doc. CRPD/C/BiH/CO/1 (2017).

¹² CRPD Committee, *General Comment No. 1 (2014) Article 12: Equality recognition before the law*, ¶ 29, U.N. Doc. CRPD/C/GC/1 (2014).

¹³ See, e.g., CRPD Committee, *Concluding Observations: Bosnia and Herzegovina*, ¶ 13, U.N. Doc. CRPD/C/BiH/CO/1 (2017).

¹⁴ CRPD Committee, *General Comment No. 3: Article 6: Women and girls with disabilities*, U.N. Doc. CRPD/C/GC/3 (2016) [hereinafter CRPD Committee, *Gen. Comment No. 3*].

¹⁵ CRPD Committee, *Concluding Observations: Armenia*, ¶ 9, U.N. Doc. CRPD/C/ARM/CO/1 (2017); *Moldova*, ¶ 32, U.N. Doc. CRPD/C/MDA/CO/1 (2017);

¹⁶ CRPD Committee, *Gen. Comment No. 3*, *supra* note 14, ¶¶ 18 & 35.

¹⁷ See, e.g., CRPD Committee, *Concluding Observations: Cyprus*, ¶ 41, U.N. Doc. CRPD/C/CYP/CO/1 (2017); *Honduras*, ¶ 43, U.N. Doc. CRPD/C/HON/CO/1 (2017); *Jordan*, ¶ 35, U.N. Doc. CRPD/C/JOR/CO/1 (2017); *Moldova*, ¶ 34, U.N. Doc. CRPD/C/MDA/CO/1 (2017).

¹⁸ CRPD Committee, *Concluding Observations: Armenia*, ¶ 10, U.N. Doc. CRPD/C/ARM/CO/1 (2017).

¹⁹ CRPD Committee, *Concluding Observations: Canada*, ¶ 16, U.N. Doc. CRPD/C/CAN/CO/1 (2017).

²⁰ See, e.g., CEDAW Committee, *Gen. Recommendation No. 35*, *supra* note 1, ¶¶ 22-24.

result in ... violence....”²¹ States must also adopt diverse measures to address discriminatory violence, “including having laws, institutions and a system in place to address such violence and ensuring that they function effectively in practice and are supported by all State agents and bodies who diligently enforce the laws.”²² These obligations apply to violence experienced uniquely or disproportionately by persons with disabilities.

Articles 15, 16, and 17 of the CRPD provide specific protections for persons with disabilities from violence, exploitation, and abuse; violations of bodily integrity; and forms of torture or ill-treatment. The Draft General Comment briefly mentions these articles and, in other sections, addresses some forms of violence, particularly against children and women. However, the Draft General Comment does not explicitly explore how violations of Articles 15-17 constitute discrimination beyond these examples. As such, WEI recommends that the CRPD Committee include a paragraph and a recommendation on violence against persons with disabilities, such as the following:

DELETE Para. 63 and ADD new para. following Para. 64:

64bis. Persons with disabilities experience violence, exploitation, and abuse and violations of their bodily integrity in unique forms and at higher rates than people without disabilities. Persons with disabilities are more likely to be institutionalized than others and face violence in this context, including neglect. Adults and children with disabilities face higher rates of violence within their families and are more likely to be subjected to forced medical procedures, a recognized form of violence, a violation of bodily integrity, and a form of ill-treatment that sometimes rises to the level of torture. Women and girls with disabilities are particularly at risk of violence and violations of their bodily integrity based on both their gender and their disability, including sexual violence, domestic violence, institutional violence, and forced reproductive health procedures. Violence experienced uniquely or disproportionately by persons with disabilities is not only a violation of Articles 16 and 17 (and often also Article 15) but is also a prohibited form of discrimination under the Convention.

ADD new sub-para. following Para. 76(n):

76(n)bis. Provide specific protections against and exercise due diligence to prevent and redress violence, exploitation, and abuse and violations of bodily integrity experienced uniquely or disproportionately by persons with disabilities. States parties must ensure that this violence is specifically prohibited by civil and criminal law. States parties must also ensure that institutions housing persons with disabilities are consistently monitored and that persons within those institutions have effective access to independent complaint mechanisms to report violence and seek redress. Furthermore, States parties must provide effective access to justice for persons with disabilities who experience violence, including by reforming laws and policies that discriminate against persons with disabilities in accessing the justice system (such as laws that prohibit those deprived of legal capacity from testifying in court); training justice system actors to work with persons with disabilities; and ensuring that justice systems are fully accessible, including by providing reasonable accommodations when required.

B. Discrimination and Sexual and Reproductive Rights

1. Sexual and Reproductive Rights, the Right to Health, and Discrimination

Women and girls with disabilities, like other women, face discrimination when accessing sexual and reproductive health information, goods, and services. Because this is health care of particular importance to women, barriers to accessing this care can amount to discrimination against women. Under CEDAW, States parties must take all appropriate measures to dismantle discrimination so that women and girls can

²¹ *Id.*, ¶ 24(b).

²² *Id.*

access needed health services, including family planning and services related to pregnancy.²³ The CEDAW Committee has further found that “[m]easures to eliminate discrimination against women are considered to be inappropriate if a health-care system lacks services to prevent, detect and treat illnesses specific to women” and that States parties must show how their policies and programs address the specific health needs of women as part of the obligation to ensure equality and eliminate discrimination.²⁴ Although all women and girls face barriers to accessing sexual and reproductive health care in many contexts—including legal restrictions, lack of availability, and lack of provider sensitivity and training²⁵—women and girls with disabilities face multiple and intersecting forms of discrimination in this context. As the CRPD Committee noted in its General Comment No. 3, stereotypes about women and girls with disabilities that they are asexual or hypersexual or that they cannot make their own decisions about their sexual and reproductive health can lead health care providers to deny women and girls with disabilities access to essential sexual and reproductive health information, goods, and services and contribute to violence in health care settings (for instance, forced reproductive health procedures, as outlined above). Inaccessible facilities, barriers to communication, and lack of provider training about working with persons with disabilities, similarly lead to discriminatory outcomes in sexual and reproductive health for women and girls with disabilities.²⁶

The CRPD Committee has frequently recognized that persons with disabilities, especially women and girls, are regularly discriminated against in realizing their right to health, especially their sexual and reproductive health.²⁷ The Draft General Comment, as currently written, does not yet address how the right to health interacts with the rights to non-discrimination and equality, a significant lacuna that should be addressed in particular to ensure the rights of women and girls with disabilities. WEI therefore recommends that the CRPD Committee include a discussion about Article 25 in the Draft General Comment to ensure that States parties understand and address equality and non-discrimination in the context of the right to health for persons with disabilities.

ADD new para. following Para. 72:

Article 25- Health

72bis. The right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability or any other intersectional or multiple form of discrimination is essential to realizing equality and the human dignity of persons with disabilities. Articles 5 and 25 of the CRPD

²³ Convention on the Elimination of All Forms of Discrimination against Women, adopted Dec. 18, 1979, art. 12, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46, U.N.T.S. 13 (entered into force Sept. 3, 1981).

²⁴ CEDAW Committee, *General Recommendation No. 24: Article 12 of the Convention (women and health)*, (20th Sess., 1999), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, ¶¶ 11-12, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008).

²⁵ *Id.*, at ¶¶ 9, 31.

²⁶ CRPD Committee, *Gen. Comment No. 3*, *supra* note 14, ¶¶ 42-48.

²⁷ See CRPD Committee, *General Comment No. 1: Article 12: Equal recognition before the law*, ¶ 41, U.N. Doc. CRPD/C/GC/1 (2014); *General Comment No. 2: Article 9: Accessibility*, ¶ 40, U.N. Doc. CRPD/C/GC/2 (2014); *General Comment No. 4: Article 24: Right to inclusive education*, ¶ 52, U.N. Doc. CRPD/C/GC/4 (2016); *Concluding Observations: United Arab Emirates*, ¶ 45, U.N. Doc. CRPD/C/ARE/CO/1 (2016); *Colombia*, ¶ 56, U.N. Doc. CRPD/C/COL/CO/1 (2016); *Uganda*, ¶¶ 46 & 50, U.N. Doc. CRPD/C/UGA/CO/1 (2016); *Serbia*, ¶ 51, U.N. Doc. CRPD/C/SRB/CO/1 (2016); *Qatar*, ¶ 45, U.N. Doc. CRPD/C/QAT/CO/1 (2015); *Ukraine*, ¶ 46, U.N. Doc. CRPD/C/UKR/CO/1 (2015); *New Zealand*, ¶ 51, U.N. Doc. CRPD/C/NZL/CO/1 (2014); *Mexico*, ¶ 49, U.N. Doc. CRPD/C/MEX/CO/1 (2014); *Italy*, ¶ 61, U.N. Doc. CRPD/C/ITA/CO/1 (2016); *Slovakia*, ¶ 69, U.N. Doc. CRPD/C/SVK/CO/1 (2016); *Chile*, ¶ 47, U.N. Doc. CRPD/C/CHL/CO/1 (2016); *Paraguay*, ¶ 59, U.N. Doc. CRPD/C/PRY/CO/1 (2013); *El Salvador*, ¶ 51, U.N. Doc. CRPD/C/SLV/CO/1 (2013).

obligate States parties to prohibit and prevent discriminatory denial of health services to people with disabilities and to provide gender-sensitive health services,²⁸ including sexual and reproductive health care. In particular, States parties must address intersecting and multiple forms of discrimination that women and girls with disabilities face in accessing health services due to exclusion from State programs and laws;²⁹ harmful stereotypes, including that they are asexual or hypersexual;³⁰ lack of provider training;³¹ and provider prejudices.³² States parties must also address discrimination against people with disabilities that impede their right to health through violations of the right to receive health care on the basis of free and informed consent;³³ inaccessible facilities, communication, and information;³⁴ and a lack of inclusive health education, especially comprehensive and inclusive sexuality education that is age-appropriate, based on scientific evidence and human rights standards, and provided in accessible formats.³⁵ Moreover, States parties must ensure substantive equality for persons with disabilities in their access to health care goods, information, and services, including access to the same range and quality of sexual and reproductive health care as is available to others, along with other specific health services which they require because of their disabilities and the reasonable accommodations required to fully access health services on an equal basis with others.³⁶

2. Prenatal Genetic Testing and Sexual and Reproductive Rights

Like all women, pregnant women and girls with disabilities should be provided with appropriate information to make decisions about their pregnancies, as needed and requested, to exercise their autonomy and determine the course of their lives.³⁷ Important information includes information about access to available prenatal genetic tests on a voluntary and informed basis; accurate, unbiased, and non-discriminatory information and counseling about the results of that testing; objective information about raising a child with a disability, available services and supports for children with disabilities and their families; and information about access to abortion.

²⁸ CRPD Committee, *General Comment No. 2: Article 9: Accessibility*, ¶ 40, U.N. Doc. CRPD/C/GC/2 (2014).

²⁹ CRPD Committee, *Concluding Observations: Portugal*, ¶ 49, U.N. Doc. CRPD/C/PRT/CO/1 (2016); *Costa Rica*, ¶ 49, U.N. Doc. CRPD/C/CRI/CO/1 (2014); *Argentina*, ¶ 13, U.N. Doc. CRPD/C/ARG/CO/1 (2012).

³⁰ CRPD Committee, *Gen. Comment No. 3*, *supra* note 14, ¶ 30; *Concluding Observations: Uganda*, ¶¶ 32 & 46, U.N. Doc. CRPD/C/UGA/CO/1 (2016); *Italy*, ¶ 61, U.N. Doc. CRPD/C/ITA/CO/1 (2016).

³¹ CRPD Committee, *Concluding Observations: Cook Islands*, ¶ 45, U.N. Doc. CRPD/C/COK/CO/1 (2015); *Brazil*, ¶ 46, U.N. Doc. CRPD/C/BRA/CO/1 (2015).

³² CRPD Committee, *Concluding Observations: Colombia*, ¶ 56, U.N. Doc. CRPD/C/COL/CO/1 (2016); *Dominican Republic*, ¶ 46, U.N. Doc. CRPD/C/DOM/CO/1 (2015).

³³ CRPD Committee, *General Comment No. 1: Article 12: Equal recognition before the law*, ¶ 41, U.N. Doc. CRPD/C/GC/1 (2014); *Concluding Observations: United Arab Emirates*, ¶ 45, U.N. Doc. CRPD/C/ARE/CO/1 (2016); *Italy*, ¶ 63, U.N. Doc. CRPD/C/ITA/CO/1 (2016); *Ethiopia*, ¶ 37, U.N. Doc. CRPD/C/ETH/CO/1 (2016); *Costa Rica*, ¶ 49, U.N. Doc. CRPD/C/CRI/CO/1 (2014); *El Salvador*, ¶ 51, U.N. Doc. CRPD/C/SLV/CO/1 (2013)]; *Slovakia*, ¶ 69, U.N. Doc. CRPD/C/SVK/CO/1 (2016); *Mongolia*, ¶ 38, U.N. Doc. CRPD/C/MNG/CO/1 (2015).

³⁴ CRPD Committee, *General Comment No. 2: Article 9: Accessibility*, ¶ 40, U.N. Doc. CRPD/C/GC/2 (2014); *Concluding Observations: Italy*, ¶ 62, U.N. Doc. CRPD/C/ITA/CO/1 (2016); *Colombia*, ¶ 57, U.N. Doc. CRPD/C/COL/CO/1 (2016); *Uganda*, ¶ 51, U.N. Doc. CRPD/C/UGA/CO/1 (2016); *Slovakia*, ¶ 70, U.N. Doc. CRPD/C/SVK/CO/1 (2016); *Chile*, ¶ 52, U.N. Doc. CRPD/C/CHL/CO/1 (2016); *El Salvador*, ¶¶ 51-52, U.N. Doc. CRPD/C/SLV/CO/1 (2013).

³⁵ CRPD Committee, *General Comment No. 4: Article 24: Right to inclusive education*, ¶ 52, U.N. Doc. CRPD/C/GC/4 (2016).

³⁶ See Committee on Economic, Social, and Cultural Rights (ESCR Committee), *General Comment No. 22 (2016) on the Right to Sexual and Reproductive Health (Article 12 of the International Covenant on the Economic, Social and Cultural Rights)*, ¶ 24, U.N. Doc. E/C.12/GC/22 (2016).

³⁷ *Id.*, ¶ 24; CRPD Committee, *Gen. Comment No. 3*, *supra* note 14, ¶ 40.

Withholding prenatal genetic testing deprives all women, including women and girls with disabilities, of the opportunity to make important decisions about their health and about the course of their lives, a situation that would potentially coerce them into specific decisions related to their pregnancies and deprive them of autonomy,³⁸ in violation of one of the core principles underpinning the CRPD.³⁹ As the European Court of Human Rights (ECtHR) found in the case of *R.R. v. Poland*, denying access to prenatal genetic testing to a woman, thereby preventing her from making an informed decision about whether or not to seek an abortion, can result in physical and mental pain and suffering that amounts to inhuman and degrading treatment, as well as a violation of the right to respect for private life.⁴⁰ As part of its findings, the ECtHR noted in particular that “during pregnancy the foetus’ condition and health constitute an element of the pregnant woman’s health” and that “in the context of pregnancy, the effective access to relevant information on the mother’s and foetus’ health, where legislation allows for abortion in certain situations, is directly relevant for the exercise of personal autonomy.”⁴¹ Furthermore, prenatal genetic testing allows women and their health care providers to prepare to provide specialized post-natal health care to a baby who might be born needing immediate medical attention⁴² or for parents to prepare their home and obtain the necessary services to meet the needs of a child with a disability.

In paragraph 44 of the Draft General Comment, the CRPD Committee’s call for States parties to eliminate “disability-selective” antenatal screening policies would, in many situations, lead to severe human rights violations against women, including women with disabilities. Compulsory antenatal screening, including prenatal genetic testing would violate women’s rights, but classifying all policies making prenatal genetic testing available to women as a form of disability discrimination sends a signal to States parties that they should deny pregnant women access to such testing. Denying women, including women with disabilities, access to information about their own health and that of their fetus undermines their equality in the context of the right to health, and which, as noted above, invades their privacy, deprives them of reproductive autonomy, and potentially subjects them to ill-treatment.⁴³

Moreover, States parties have an obligation under the CRPD to implement other measures that will have the effect of reducing the stigma surrounding giving birth to children with disabilities, without undermining women’s rights concerning their pregnancies. For instance, States parties should raise awareness about the lives and contributions of persons with disabilities.⁴⁴ States parties should also mandate training for health care workers about the life experiences and human rights of persons with disabilities. This training would not only allow health care workers to provide accurate and unbiased information to pregnant women and their families, but would also give health care workers the tools to provide better and more disability-sensitive care to persons with disabilities themselves, as required by the CRPD.⁴⁵ Additionally, States parties should establish and/or raise awareness about a broad system of support services available to persons with disabilities and their families, to ensure that children and adults with disabilities are included and able to participate in public life, access inclusive education, and exercise their broad range of rights on an equal basis with others, as required by the CRPD.⁴⁶ Indeed, by meeting their other obligations under the CPRD, States parties will be taking significant steps to address the

³⁸ See, e.g., *R.R. v. Poland*, No. 27617/04 Eur. Ct. H. R. ¶ 197 (2011).

³⁹ Convention on the Rights of Persons with Disabilities, adopted Dec. 13, 2006, art. 1, G.A. Res. A/RES/61/106, U.N. GAOR, 61st Sess., U.N. Doc. A/61/611, (entered into force May, 3 2008) [hereinafter CRPD].

⁴⁰ *R.R. v. Poland*, No. 27617/04 Eur. Ct. H. R. (2011).

⁴¹ *Id.*, at ¶ 197.

⁴² See, e.g., C. Cunniff & L. Hudgins, “Prenatal genetic testing and diagnosis for pediatricians,” 22(6) CURR. OPIN. PEDIATR. 809 (2010).

⁴³ See *R.R. v. Poland*, No. 27617/04 Eur. Ct. H. R. (2011).

⁴⁴ See CRPD, *supra* note 39, arts. 8, 24, 27 & 29.

⁴⁵ See *id.*, art. 25.

⁴⁶ See *id.*, arts. 7, 24 & 29.

CRPD Committee's concerns regarding discrimination and prenatal genetic testing, without restricting the sexual and reproductive rights of women, including women and girls with disabilities.

For the reasons discussed in the two foregoing sections, WEI recommends that the CRPD Committee include a reference to violence as a key issue to address through awareness raising and that it remove references to antenatal screening so as to avoid conflicts with States parties' obligations to women under the CRPD and other human rights treaties. Instead, WEI recommends that, following the above-proposed new section on the right to health following paragraph 72, the Draft General Comment include an additional new paragraph addressing State obligations to mandate training for health care providers about the lives and human rights of persons with disabilities so that they can provide unbiased and disability-sensitive information to all of their patients on this topic.

REVISE Paras. 44-45 (awareness raising):

Current Paragraphs

44. Discrimination cannot be combatted without awareness raising among all sectors of government and society. Thus, any non-discrimination and equality measure adopted under article 5 needs to be accompanied by adequate awareness raising measures and measures to change or abolish compounded pejorative disability stereotypes, including those based on gender and age, as well as harmful stereotypes⁴⁷ In addition, harmful practices and prejudices need to be tackled by awareness raising campaigns. In particular, States parties need to address discriminatory portrayals of persons with disabilities in the media, which perpetuate the charity, welfare and medical approach to disability. States parties should undertake measures to encourage the media to portray persons with disabilities in a manner consistent with the purpose of the Convention and to combat harmful views of persons with disabilities, such as those that portray them as sufferers and dependent objects of care without autonomy. Likewise, States parties should address stigmatization through modern forms of discrimination, such as a disability-selective antenatal screening policy that go against the recognition of the equal worth of every person. States parties should take into account all factors, including the diversity of persons with disabilities and their identities and address multiple and intersecting discrimination when designing and carrying out awareness-raising measures.

45. In particular, States parties should raise awareness of non-discrimination among members of the legal profession, including the judiciary, clearly highlighting the duty to provide reasonable accommodation as an obligation to ensure equality.

Suggested Amendments

44. Discrimination cannot be combatted without awareness raising among all sectors of government and society. Thus, any non-discrimination and equality measure adopted under article 5 needs to be accompanied by adequate awareness raising measures and measures to change or abolish compounded pejorative disability stereotypes, including those based on gender and age, as well as harmful stereotypes.⁴⁸ In addition, **violence**, harmful practices, and prejudices need to be tackled by awareness raising campaigns. In particular, States parties need to address discriminatory portrayals of persons with disabilities in the media, which perpetuate the charity, welfare and medical approach to disability. States parties should undertake measures to encourage the media to portray persons with disabilities in a manner consistent with the purpose of the Convention and to combat harmful views of persons with disabilities,

⁴⁷ Office of the High Commissioner for Human Rights, *The harms of gender stereotyping* (June 20, 2014), <http://www.ohchr.org/EN/NewsEvents/Pages/GenderStereotyping.aspx>

⁴⁸ *Id.*

such as those that portray them as sufferers and dependent objects of care without autonomy. [7] *States parties should specifically raise awareness about the lives of children with disabilities and the opportunities they have to be included and participate in education, employment, and public life, including support services available to them and their families.* States parties should take into account all factors, including the diversity of persons with disabilities and their identities and address multiple and intersecting discrimination when designing and carrying out awareness-raising measures.

45. In particular, States parties should raise awareness of non-discrimination among members of the legal profession, including the judiciary *and law enforcement officers, and the medical and social services professions, including doctors and social workers,* clearly highlighting the duty to provide reasonable accommodation as an obligation to ensure equality. *Similarly, States parties should raise awareness among family members of persons with disabilities, educators, and administrative personnel who serve as gatekeepers to services for persons with disabilities. Importantly, States parties should also conduct targeted awareness raising among persons with different disabilities to inform them of their rights and available recourse for rights violations.*

ADD new para. following para. 72bis. (see above):

72ter. In order to fulfill their obligation to ensure that persons with disabilities do not face discrimination in health care settings, States parties must also ensure that all doctors and other health care providers are trained about the human rights and life experiences of persons with disabilities, as a means of reducing provider discrimination and bias and to ensure that providers can give unbiased, accurate, and evidence-based information on disability to all persons under their care who desire such information, including pregnant women and their families. States parties should provide training to medical professionals, inside and outside of medical and nursing schools, on providing services to persons with disabilities and understanding disability through the social model rather than the medical model of disability.

C. Discrimination Against and Equality for Women and Girls with Disabilities

As the CRPD Committee recognizes throughout the Draft General Comment, women and girls with disabilities regularly experience discrimination and violations of their right to equality, often on intersecting or multiple grounds. This discrimination can take particularly devastating forms, such as forced sterilization or so-called virgin rapes.⁴⁹ Violations of the right to equality for a woman or girl with a disability can further infringe on the person's ability to realize other essential human rights. In General Comment No. 3, the CRPD Committee did an effective job of covering the forms of discrimination that women and girls with disabilities face. However, the Draft General Comment does not make the connection between the two comments clear enough. A more explicit connection between the intersectional and multiple discrimination that women with disabilities face and States parties' duties under Articles 5 and 6 of the CRPD needs to be drawn out in the Draft General Comment. This is essential to ensure that States parties understand their obligation to address women and girl's equality as an integral part of their obligation to address disability-based discrimination, rather than as a separate gender issue.

General Comment No. 3 explains how Article 6 obligates States parties to take action against the discrimination that women with disabilities face, noting that:

⁴⁹ CRPD Committee, *Gen. Comment No. 3*, *supra* note 14, ¶ 37.

Article 6 reinforces the non-discriminatory approach of the CRPD in particular in respect of women and girls, and requires that States parties go beyond refraining from taking discriminatory actions to adopting measures aimed at the development, advancement and empowerment of women and girls with disabilities and the promotion of measures to empower them by recognizing that they are distinct rights holders, providing channels to have their voice heard and to exercise agency, raising their self-confidence and increasing their power and authority to take decisions in all areas affecting their lives.⁵⁰

The Draft General Comment does not include sufficient guidance to States parties on how to address the gender dimensions of the intersectional and multiple forms of discrimination that women and girls with disabilities experience in relation to Article 5. The Draft General Comment should contain further clarification of States parties' duties to address these forms of discrimination and distinctive aspects of this obligation. As such, WEI recommends the following changes:

REVISE Paras. 20(e) and 22 (intersectional and multiple discrimination)

WEI recommends that the CRPD Committee reframe the explanations of intersectional and multiple discrimination in paragraph 20(e) and paragraph 22 to clarify the distinction between the two forms of discrimination and associated obligations in line with the CRPD Committee's General Comment No. 3.

Current Paragraphs

20(e). Intersectional discrimination when a person having a status or a characteristic associated with one or more prohibited grounds is discriminated on several prohibited grounds or statuses. Intersectional discrimination can appear as direct or indirect discrimination, denial of reasonable accommodation and as harassment.

22. "Protection against discrimination on all grounds" means that all possible grounds of discrimination and their intersections have to be taken into account. Possible grounds include but are not limited to: race, colour, descent, sex, pregnancy and maternity, civil, family or carer status, gender identity, sexual orientation, language, religion, political or other opinion, national, ethnic, indigenous or social origin, migrant, refugee or asylum status, association with a national minority member, economic status or property, health status, genetic or other predisposition towards illness, birth, and age, or a combination of any of these grounds, or characteristics associated with any of these grounds.⁵¹ In many cases persons with disabilities experience discrimination on multiple grounds and in such cases it is difficult to separate these grounds. States parties must address multiple and intersectional discrimination against persons with disabilities. "Multiple discrimination" has been defined by the Committee as "a situation where a person can experience discrimination on two or several grounds, in the sense that discrimination is compounded or aggravated. "Intersectional discrimination" refers to a situation where several grounds operate and interact with each other at the same time in such a way that they are inseparable".⁵²

⁵⁰ *Id.*, ¶ 7.

⁵¹ See CRPD, *supra* note 39, preamble, ¶ p; CRPD Committee, *Gen. Comment No. 3*, *supra* note 14, ¶ 4(c); Equal Rights Trust, *Declaration of Principles on Equality*, part II Non-Discrimination, 5. Definition of Discrimination, p. 6.

⁵² CRPD Committee, *Gen. Comment No. 3*, *supra* note 15, ¶ 4; see also CEDAW Committee, *General Recommendation No. 25: Article 4, paragraph 1, of the Convention (temporary special measures)*, ¶ 12, U.N. Doc. CEDAW/C/GC/25 (2004) [hereinafter CEDAW Committee, *Gen. Recommendation No. 25*]; *General Recommendation No. 28 on the core obligations of States parties under art. 2 of the Convention on the Elimination*

Suggested Amended Paragraphs

20(e). “Intersectional discrimination,” *which occurs* when a person having a status or a characteristic associated with one or more prohibited grounds is discriminated *against* on several prohibited grounds or statuses *at the same time and in such a way as to be inseparable*.⁵³ Intersectional discrimination can appear as direct or indirect discrimination, denial of reasonable accommodation and as harassment ...

22. “Protection against discrimination on all grounds” *obligates States parties to condemn all forms of discrimination, including taking into account and addressing both intersectional and multiple forms of discrimination against persons with disabilities*.⁵⁴ *Persons with disabilities are not a homogenous group and often experience discrimination on intersecting or multiple grounds, especially women and girls with disabilities*.⁵⁵ Possible grounds include but are not limited to: *disability*, race, colour, descent, sex, pregnancy and maternity, civil, family or carer status, gender identity, sexual orientation, language, religion, political or other opinion, national, ethnic, indigenous or social origin, migrant, refugee or asylum status, association with a national minority member, economic status or property, health status, genetic or other predisposition towards illness, birth, and age, or a combination of any of these grounds, or characteristics associated with any of these grounds.⁵⁶ *Intersectional discrimination and multiple discrimination are distinct but related forms of discrimination. Intersectional discrimination is defined in para. 20(c) above, while “multiple discrimination” has been defined as occurring when a “person experiences discrimination on two or more grounds, leading to discrimination that is compounded or aggravated.”*⁵⁷ *States parties must legally recognize intersecting and multiple forms of discrimination and the compounded negative impact such discrimination has on people with disabilities, particularly women and girls*.⁵⁸ *For example, failure to provide a woman with a disability with the reasonable accommodation of an accessible room to breastfeed may amount to discrimination under both CRPD Articles 5 and 6*.⁵⁹ *States parties also have an obligation to take specific temporary and permanent special measures to address and eliminate intersecting and multiple forms of discrimination against persons with disabilities,*⁶⁰ *including in the private sphere*.⁶¹

REVISE Para. 41 and ADD Para. 41bis (Article 6):

WEI recommends that the CRPD Committee expand the discussion of Article 6 of the CRPD to include further explanation about the relationship between Articles 5 and 6, along with a greater emphasis on States parties’ obligations to ensure the equality of—and address discrimination against—women and girls with disabilities.

Current Paragraph

of All Forms of Discrimination against Women, ¶ 18, U.N. Doc. CEDAW/C/GC/28 (2010) [hereinafter CEDAW Committee, *Gen. Recommendation No. 28*].

⁵³ CRPD Committee, *Gen. Comment No. 3*, *supra* note 14, ¶ 4(c).

⁵⁴ *Id.*; CEDAW Committee, *Gen. Recommendation No. 28*, *supra* note 52, ¶ 15.

⁵⁵ See CRPD Committee, *Gen. Comment No. 3*, *supra* note 14, ¶¶ 5 & 16.

⁵⁶ *Id.*, ¶¶ 4(c) & 5; Equal Rights Trust, Declaration of Principles on Equality, part II Non-Discrimination, 5. Definition of Discrimination, p. 6;

⁵⁷ CRPD Committee, *Gen. Comment No. 3*, *supra* note 14, ¶ 4(c).

⁵⁸ *Id.* at ¶ 13; CEDAW Committee, *Gen. Recommendation No. 28*, *supra* note 52, ¶ 18.

⁵⁹ CRPD Committee, *Gen. Comment No. 3*, *supra* note 14, ¶ 15.

⁶⁰ See CEDAW Committee, *Gen. Recommendation No. 25*, *supra* note 52, ¶ 12; *Gen. Recommendation No. 28*, *supra* note 52, ¶ 18.

⁶¹ CRPD Committee, *Gen. Comment No. 3*, *supra* note 14, ¶ 18.

41. As set out in the Committee's general comment No. 3 on women and girls with disabilities (2016), women with disabilities are among those groups of persons with disabilities who most often experience multiple and intersectional discrimination.⁶² Article 6 is a cross-cutting article and needs to be taken into account in relation to all provisions of the Convention.⁶³ While only article 6 mentions the term multiple discrimination, multi-dimensional discrimination may occur in any combination of two or more grounds. Moreover, article 6, like article 7, must be regarded as illustrative, rather than exhaustive, setting out obligations in respect of two prominent examples of multiple and intersectional discrimination.

Suggested Amended Paragraph and New Paragraph

41. As set out in the Committee's general comment No. 3 on women and girls with disabilities (2016), women with disabilities are among those groups of persons with disabilities who most often experience multiple **or** intersectional discrimination.⁶⁴ *Article 6 is a binding equality and non-discrimination article that prohibits discrimination against women and girls with disabilities and obligates States parties to promote equality of both opportunity and outcomes,⁶⁵ for example, by combating harmful stereotypes, prejudices and harmful practices that both lead to and constitute discrimination against women and girls with disabilities.* Moreover, article 6, like article 7, must be regarded as illustrative, rather than exhaustive, setting out obligations in respect of two prominent examples of multiple and intersectional discrimination.

41bis. Article 6 is a cross-cutting article and needs to be taken into account in relation to all provisions of the Convention,⁶⁶ *in particular the articles enumerating the rights of persons with disabilities to be free from exploitation, violence and abuse (Article 16), to respect for home and the family (Article 23), to health (Article 25),⁶⁷ and to equal recognition before the law (Article 12).*⁶⁸

Thank you for your time and attention to this submission. Should you have any questions or require further information, please do not hesitate to contact us.

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⁶² CEDAW Committee, *Gen. Recommendation No. 28*, *supra* note 52, ¶ 31.

⁶³ CRPD Committee, *Gen. Comment No. 3*, *supra* note 14, ¶ 12.

⁶⁴ CEDAW Committee, *Gen. Recommendation No. 28*, *supra* note 52, ¶ 31.

⁶⁵ CRPD Committee, *Gen. Comment No. 3*, *supra* note 14, ¶ 9.

⁶⁶ *Id.*, ¶ 12.

⁶⁷ *Id.*, ¶ 28.

⁶⁸ *Id.*, ¶¶ 44-45.