



# **Abortion and Disability: Towards an Intersectional Human Rights-Based Approach**

## **EXECUTIVE SUMMARY**

Women Enabled International



Ongoing debates around fetal impairment as a legal basis for abortion act as a wedge issue between the disability rights and reproductive rights movements. Disability rights advocates are concerned that laws that expressly permit abortion on grounds of fetal impairment codify the notion that disabled lives are worth less than non-disabled lives. Reproductive rights advocates are concerned that reforming abortion laws to remove fetal impairment grounds—or to expressly ban abortion in the case of a fetal impairment diagnosis—will result in less access to safe abortion and exacerbate the attendant human rights consequences. These tensions are fueled both by advocacy strategies to advance abortion rights that can reinforce harmful disability-related stereotypes and by opponents of abortion rights co-opting disability rights language to impose greater restrictions on abortion access.

Women with disabilities, who live at the intersection of these two movements, care deeply about both protecting reproductive autonomy, including the right to access safe abortion, and dismantling harmful disability-related stigma. Too often, however, their voices are left out of the debate. To remedy this lack of voice and representation in these ongoing debates, Women Enabled International (WEI) conducted a series of consultations with 40 persons with diverse disabilities, who have the biological capacity to become pregnant, and who advocate at the intersection of gender and disability. These consultations provided a safe space in which these advocates from around the globe could discuss specific concerns around this historic tension.

In WEI's framing document, [\*\*\*Abortion and Disability: Towards an Intersectional Human Rights-Based Approach\*\*\*](#), WEI identifies the primary concerns of the women with disabilities who participated in these consultations—as well as the primary concerns of the disability rights and the reproductive rights movements, analyzes the human rights standards that underpin this debate, and applies an intersectional human rights-based approach to posit a way forward.

## **Concerns Voiced at WEI Consultations**

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As advocates working at the intersection of gender and disability, participants in WEI's consultations consistently underscored that pregnant people—with and without disabilities—must be able to exercise reproductive autonomy and that laws, policies, and the medical community at large should respect their decisions. At the same time, there was consensus among the participants in WEI's consultations that it is impossible to address access to abortion, both in law and in practice, without addressing the broader barriers that women with disabilities encounter to sexual and reproductive health and rights, as well as the right to found a family if and when one chooses. WEI's consultations also surfaced the following key points about ensuring meaningful reproductive choice:

- ▶ Systemic disability discrimination plays a major role in reproductive decision-making.
- ▶ Both conscious and subconscious bias on the part of medical providers, including those imparting prenatal diagnoses, can unduly influence reproductive decision-making.
- ▶ Dismantling stigma and discrimination at the societal level—including by ensuring availability of and access to services and supports for persons with disabilities and their families, training medical providers on the rights of persons with disabilities, and ensuring an adequate standard of living and inclusion of persons with disabilities in society—is vital to ensuring meaningful reproductive decision-making.

## **International Human Rights Framework**

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International human rights standards affirm the right to reproductive autonomy and freedom, which includes the rights: to access timely, comprehensive, evidence-based and unbiased information related to sexual and reproductive health; to make autonomous, informed decisions about one's sexual and reproductive health; and to decide the number and spacing of one's children.<sup>1</sup> Human rights treaty bodies have increasingly called on States to fully decriminalize abortion and ensure access to safe abortion services.<sup>2</sup> International human rights law also obligates States to provide appropriate supports and services to persons with disabilities and their families and to dismantle harmful stereotypes around disability,<sup>3</sup> measures that will have the effect of reducing the stigma surrounding giving birth to and parenting children with disabilities.

## Reconciling Stakeholder Concerns: Towards an Intersectional Human Rights-Based Approach

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Violations of the right to personal autonomy are often at the root of fundamental human rights violations faced by both people with disabilities and women, including women with disabilities.

Ensuring that all women are legally able to make decisions about their reproduction is essential for States to guarantee the full range of human rights implicated in this debate. To this end, States must decriminalize abortion generally and move toward a legal framework that respects the right to access safe abortion without restriction as to reason. Expanding access to safe abortion without specifically enumerated grounds for legal abortion would help eliminate the abortion-related stigma that pregnant people experience when abortion is criminalized and dismantle disability-related stigma that stems from laws that treat abortion on the basis of fetal impairment as “justified.”

States also must take comprehensive measures to address the underlying structural and social barriers that prevent persons with disabilities from exercising their rights and becoming full and equal participants in society. Taking steps to address the root causes of inequality for people with disabilities—and to challenge the medical model that pathologizes disability—will also help transform the environment in which pregnant people are making decisions about whether or not to carry a pregnancy to term and will enable meaningful decision-making, advancing rather than jeopardizing the fundamental rights of all women, including women with disabilities.

To truly ensure autonomy requires not just the legal right to make decisions, but the ability to make meaningful choices about reproduction. Laws and policies that respect decision-making over one’s body must be coupled with an enabling social protection program and access to the information necessary to make decisions free from undue legal, attitudinal, and financial coercion.

## Recommendations and Key Takeaways

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The disability rights and reproductive rights movements and women with disabilities share common experiences of stigma, discrimination, and denials of autonomy. Many actors within these movements also share common objectives: a society where people with disabilities are included and can participate as equal members of society, where people with disabilities and their families have access to the range of supports and services that they may need, where pregnant people have voluntary access to unbiased and evidence-based information, and where pregnant people are able to make autonomous and informed decisions both in law and in practice and are supported rather than stigmatized in that decision-making process.

Fostering a climate where the rights and dignity of people with disabilities and all women are respected is essential to ensuring meaningful reproductive choice for all. Working to overcome historic tensions between the disability and reproductive rights movements and to strengthen cross-movement collaboration will bolster efforts to transform the legal, policy, and social environments in which important life decisions, including sexual and reproductive health decisions, are made. WEI’s framing document includes a number of specific recommendations for key stakeholders to strengthen such collaboration, for example:

### To the reproductive rights movement:

- ▶ Where politically feasible, advocate for either fully decriminalized abortion or legal abortion without restriction as to reason as the ideal legal framework on abortion, rather than focusing on minimum grounds on which abortion should be legal.
- ▶ Avoid language that reinforces the perceived “burden” of parenting a child with a disability; where advocacy relates to the social well-being of the pregnant person, focus instead on the personal circumstances of the pregnant person and on the failure of the State to provide appropriate and locally-available supports for children with disabilities and their families.
- ▶ Engage the disability rights community to better understand the intersecting disability rights issues relating to autonomy—such as forced abortion and issues around legal capacity. Be an ally to the disability rights movement in their advocacy on corollary rights issues.

### To the disability rights movement:

- ▶ Recognize that reproductive autonomy is an issue of major concern to women with disabilities and should be a priority of the disability rights movement.
- ▶ Engage the reproductive rights community to better understand intersecting reproductive rights issues relating to autonomy—such as informed consent and supported decision-making. Be an ally to the reproductive rights movement in their advocacy on corollary rights issues.
- ▶ Advocate for either fully decriminalized abortion or legal abortion without restriction as to reason as the ideal legal framework on abortion.

### To the funder community:

- ▶ Recognize that funding silos—whether disability rights, women’s rights, or reproductive rights—can widen rather than bridge the divide between movements, weakening overall efficacy. Fund collaboration between movements.

By approaching these issues with an open mind toward the views and experiences of each movement, advocates can foster greater understanding and bridge historic tensions to work together toward collective goals. Such efforts may not be easy, but they are essential to ensuring successful advocacy to advance the rights of all stakeholders in these debates.

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- 1 See, e.g., Committee on the Rights of Persons with Disabilities (CRPD Committee) & Committee on the Elimination of Discrimination against Women (CEDAW Committee), *Joint statement by the Committee on the Rights of Persons with Disabilities and the Committee on the Elimination of All Forms of Discrimination against Women, Guaranteeing sexual and reproductive health and rights for all women, in particular women with disabilities* (Aug. 29, 2018); 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 Convention on Economic, Social and Cultural Rights)*, ¶ 28, U.N. Doc. E/C.12/GC/22 (2016); Committee on the Rights of the Child (CRC Committee), *General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)*, ¶ 56, U.N. Doc. CRC/C/GC/15 (2013); CRC Committee, *General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, ¶ 60, U.N. Doc. CRC/C/GC/20 (2016).
  - 2 CRC Committee, *General Comment No. 20, supra note 1*, ¶ 60; CEDAW Committee, *General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, ¶ 31(a), U.N. Doc. CEDAW/C/GC/35 (July 14, 2017); ESCR Committee, *General Comment No. 22, supra note 1*, ¶ 28. See also CEDAW Committee, *General Recommendation No. 24: Article 12 of the Convention (women and health)*, ¶ 31(c), U.N. Doc. A/54.38/Rev.1 (1999); CRPD Committee & CEDAW Committee, *Joint statement on guaranteeing sexual and reproductive health and rights, supra note 1*.
  - 3 Convention on the Rights of Persons with Disabilities, arts. 7, 8, G.A. Res. 61/106, U.N. Doc. A/RES/61/106 (Dec. 13, 2006).
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Women Enabled International advances human rights at the intersection of gender and disability to: respond to the lived experiences of women and girls with disabilities; promote inclusion and participation; and achieve transformative equality. Women Enabled International envisions a world where women and girls with disabilities claim human rights, act in solidarity and lead self-determined lives.



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