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## Article 6 – Women with Disabilities

Roxanne Mykitiuk

*Osgoode Hall Law School of York University*, [rmykitiuk@osgoode.yorku.ca](mailto:rmykitiuk@osgoode.yorku.ca)

Ena Chadha

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**Ena Chadha\* and Roxanne Mykitiuk†**

**Article 6\***

**Women with disabilities**

**1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.**

**2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.**

**Introduction**

The Convention on the Rights of Persons with Disabilities ('CRPD' or 'Convention')<sup>1</sup> is a milestone achievement for women and girls with disabilities, with its inclusion of a gender-sensitive approach and Article 6, which speaks directly to gender-disability discrimination. Prior to the CRPD, most international human rights instruments failed to address both disability and gender in their provisions. Many instruments were attuned to either gender to the exclusion of disability,<sup>2</sup> or disability to the exclusion of gender.<sup>3</sup> The recognition of the unique experiences of gender and disability-based discrimination animates the spirit behind several of the CRPD's provisions and, specifically, the content of 'Article 6: Women with Disabilities'.<sup>4</sup> The CRPD is the first instrument of its kind to focus on the multiple

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\* B.A.A., LL.B., LL.M.

† B.A., LL.B., LL.M., J.S.D., Professor of Law, Osgoode Hall School. The authors are grateful to Michelle Legault for her skillful research assistance and Jami Lenis for attention to footnotes.

<sup>1</sup>Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, opened for signature on 30 March 2007, entered into force 3 May 2008) 2515 UNTS 3 (CRPD).

<sup>2</sup>See, for example, the Convention on the Elimination of All Forms of Discrimination against Women, (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW). For an overview of various of human rights principles and instruments that speak to women's rights with respect to health, marriage and parenting, see R Mykitiuk, E Chadha, Sites of Exclusion: Disabled Women's Sexual and Reproductive Rights, in LA Basser, M Jones, M Rioux (eds) *Critical Perspectives on Human Rights and Disability Law* (Martinus Nijhoff, 2010).

<sup>3</sup>Declaration on the Rights of Disabled Persons, UNGA Res 3447(XXX) (9 December 1975) GAOR 30<sup>th</sup> Session Supp 34, 88. For an overview of various of human rights principles and instruments that speak to disability rights, see Gerard Quinn, Theresia Degener, 'The current use and future potential of United Nations human rights instruments in the context of disability' (2002) HR/PUB/02/1 (United Nations).

<sup>4</sup>CRPD, above n1, Art 6.

and compounding forms of discrimination experienced by women with disabilities and to mandate gender-sensitive measures in the guarantee of the human rights and fundamental freedoms set out in it.<sup>5</sup>

This chapter begins by canvassing the historical background and travaux préparatoires on Article 6. It then reviews the text of Article 6 and discuss the interaction between Article 6 and other, substantive articles of the CRPD. We will consider how Article 6 and related articles have been interpreted by the UN Committee on the Rights of Persons with Disabilities ('the CRPD Committee') in its Concluding Observations to date and in General Comment No. 3 on Article 6. As is often the case with gender and disability achievements, the progress effectuated by Article 6 was realized after decades of work and the success, while meaningful on paper, remains to be accomplished in reality.

## Background

Gender and disability have a relatively short history in the human rights arena. The appreciation that people with disabilities have full agency and are entitled to participate in society emerged more globally in the 1970s. In 1971, the United Nations adopted the Declaration on the Rights of Mentally Retarded Persons and, in 1975, the United Nations adopted the Declaration on the Rights of Disabled Persons.<sup>6</sup> However, neither Declaration expressly distinguished between men and women, nor ~~placed any emphasis on contemplated~~ gender issues. At the outset of this decade, the historical view of disability as a matter of charity and the prevailing medicalized perspective of disability eclipsed any human rights conceptualization of how gender and disablement interfaced.

In July 1975, the first World Conference of the International Women's Year was held in Mexico City. The culminating Report ('Mexico Report') ~~reflecteds~~ several ideas and ideals regarding equality and dignity of women with disabilities that echoed hollowly for thirty years until the inclusion of Article 6 in the CPRD. Resolution 13 of the Mexico Report ~~urged encouraged~~ governments to promote the integration into society of women 'handicapped'<sup>7</sup> and further recommended that special studies be conducted on the situation of handicapped women about 'the

**Commented [EC1]:** The other paragraphs in this section are written in past tense so to be consistent we need to make this past tense

<sup>5</sup>See, for example, Ibid Art 25

<sup>6</sup>The Declaration on the Rights of Disabled Persons 'confirmed that persons with disabilities have a right to medical treatment, a right to economic and social security and are further entitled to measures designed to enable them to become as self-reliant as possible. The Declaration on the Rights of Disabled Persons further propounded that the needs of persons with disabilities are to be considered at all stages of social and economic planning and that persons with disabilities are to be consulted in all matters related to disability policy.' See Ena Chadha, Tess Sheldon, 'Promoting Equality: Economic and Social Rights For Persons With Disabilities Under Section 15' (2004) 16 NJCL 25.

<sup>7</sup> Report of the World Conference of the International Women's Year, Mexico City, E/CONF.66/34 (2 July 1975) 35-36. In this chapter, we use the phrase 'disabled women' and 'women with disabilities' interchangeably. We recognize the importance of people first language and do not intend our use of 'disabled' to detract from a people first philosophy, nor to minimize the diversity of social and cultural perspectives of women with disabilities. For the purposes of this chapter, unless otherwise indicated, our use of the word 'women' also includes girls.

most appropriate means of protecting them from the risks associated with their condition and on the most effective measures for achieving their reintegration into socially active life'.<sup>8</sup> Finally, Resolution 13 urged 'governments to provide social and rehabilitation services for physically, mentally or economically handicapped women of all ages'.<sup>9</sup> Resolution 20 addressed the need of States to provide 'greater attention to the education, training, work opportunities and integration of handicapped women' and 'to undertake public information programmes, by means of all mass communication media, regarding the capacities and limitations of handicapped persons in terms compatible with human dignity'.<sup>10</sup> The Mexico Report expressly stated that 'the needs of handicapped women should receive special attention'.<sup>11</sup>

In 1979, the United Nations adopted the Convention on the Elimination of all Forms of Discrimination against Women ('CEDAW').<sup>12</sup> The Preamble of the CRPD states that the CRPD is created recalling 'the Convention on the Elimination of All Forms of Discrimination against Women'.<sup>13</sup> While CEDAW enumerated human rights protection for women, including making note of equality in education for girls and sought the eradication of racial discrimination, it remained silent with respect to disability. CEDAW failed to acknowledge the cumulative disadvantage of disability and gender-based discrimination. This is a striking omission given the gender-disability specific resolutions and recommendations expressly communicated in the Mexico Report.

The 1980s and 1990s witnessed increasing awareness of the human rights implications of gender and disability disadvantage. Starting in 1980, the Second World Conference of the United Nations Decade for Women, held in Copenhagen, impressed upon 'improving the situation of disabled women of all ages'.<sup>14</sup> The Copenhagen Report noted that 'disabled women encounter particular difficulties in developing their individual abilities and skills to the maximum, in becoming self-reliant...and participating fully in social life'.<sup>15</sup> The Report encouraged States to 'give special attention to disabled women in order to promote their full participation and integration all fields of normal life' and requested explicit consideration of the 'special needs of disabled women of all ages for medical, social and vocational rehabilitation'.<sup>16</sup>

The United Nations proclaimed 1981 as the International Year of Disabled Persons and later declared 1983-1992 as the United Nations Decade of Disabled Persons.<sup>17</sup> In 1982, the United Nations General Assembly passed a resolution entitled the World Programme of Action Concerning Disabled Persons

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<sup>8</sup>Mexico Report, above n7.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid 96.

<sup>11</sup> Ibid para 218.

<sup>12</sup> CEDAW, above n2.

<sup>13</sup> CRPD, above n1, preamble, para (d).

<sup>14</sup> Report of the World Conference of the United Nations Decade for Women: Equality, Development and Peace, Copenhagen, A/CONF. 94/35 (19 September 1980) 61.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid 62.

<sup>17</sup> UNGA Res 37/52 (3 December 1982), on World Programme of Action concerning Disabled Persons.

(‘Programme’), promoting global, ~~approach and~~ long-term planning in the areas of disability policy prevention, rehabilitation and equalization of opportunities.<sup>18</sup> ~~†~~The Programme recognized that the consequences of disablement are especially serious for women.<sup>19</sup> ~~The Programme~~ highlighted that women with disabilities are subjected to discriminatory conditions obstructing their access to health care, education, employment and their integration into community life. Although not binding on states, the Programme is noteworthy for spotlighting socio-economic and cultural conditions as exacerbating gender-based disablement.<sup>20</sup> The 1975 and 1980 Women’s Conference Reports and this 1982 Programme stand as some of the earliest examples of official United Nations’ recognition of the differentiation of disabled women’s experiences as distinct from the general communities of women and disability.

In June 1983, the United Nations adopted the Vocational Rehabilitation and Employment (Disabled Persons) Convention, a landmark instrument setting out the fundamental labour rights of persons with disabilities.<sup>21</sup> Article 4 pronounces the right of ‘disabled men and women’ to have equal opportunity and equal treatment with respect to work.

The 1985 Third World Conference on Women held in Nairobi again called attention ‘to ‘especially vulnerable and underprivileged groups of women, such as...physically and mentally disabled women’.<sup>22</sup> The Nairobi Report enumerated several categories of women who, because of ‘their special characteristics’, experience ‘specific difficulties due to their socio-economic and health condition’.<sup>23</sup> Recognizing that a combination of factors render these women more vulnerable, the Report observed that the dignity and human rights of women with disabilities remain constrained. The Report also identified that the ‘rights of intellectually disabled women to obtain health information and advice and to consent to or refuse medical treatment should be respected’ as well as those of intellectually disabled minors.<sup>24</sup>

In 1989, the United Nations adopted the Convention on the Rights of the Child (‘CRC’), which references both equality of the sexes and freedom from discrimination because of disability. Article 2 of the CRC states that the rights

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<sup>18</sup> Ibid.

<sup>19</sup> Ibid para 45.

<sup>20</sup> Beth Ripet contends that, albeit soft law, the Programme provides a more comprehensive conceptualization of disability as a political, medical and social phenomenon and affords greater import for emergent disabilities than the CRPD. See Beth Ripet, ‘Emergent Disability and the Limits of Equality: A Critical Reading of the UN Convention on the Rights of Persons with Disabilities’ (2011) 14 *Yale Hum Rts & Dev LJ* 155.

<sup>21</sup> ILO Convention 159: The Convention concerning the Vocational Rehabilitation and Employment of Disabled Persons (69<sup>th</sup> Conference Session Geneva 1 June 1983) (entered into force 20 June 1985). This Convention was the only legally binding instrument to address women with disabilities prior to the CRPD.

<sup>22</sup> Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, A/CONF.116/28/Rev. 1 (26 July 1985), para 41.

<sup>23</sup> Ibid para 27.

<sup>24</sup> Ibid para 296.

contained in the CRC are to be upheld irrespective of the child's sex or disability and that children should not be discriminated against because of their parents' identities, including the parent's gender and/or disability.<sup>25</sup> While Article 23 of the CRC sets out extensive protections for children with physical or mental disabilities, there is no specific reference to female gender or the unequal treatment experienced by girls with disabilities.<sup>26</sup> Read together, CEDAW and the CRC demonstrate how formally ratified human rights conventions that pre-date the CRPD failed to fully recognize the unique situation of disabled women and girls with disabilities.

Although CEDAW does not reference disability, in 1991, the Committee on the Elimination of Discrimination against Women ('Women's Committee') issued General Recommendation 18, which included a disquieting observation about the on-going failure of States to address the interests of women with disabilities.<sup>27</sup> General Recommendation 18 advocated that States Parties' periodic reports should particularize what measures have been taken to ensure that women with disabilities 'have equal access to education and employment, health services and social security and to ensure that they can participate in all areas of social and cultural life'.<sup>28</sup> However, without formal obligations specified in the treaty, States Parties are not required to undertake a gender-disability analysis of their laws and policies.

In 1993, the United Nations created the Standard Rules on the Equalization of Opportunities for Persons with Disabilities ('Rules').<sup>29</sup> At that time, the Rules stood as the most comprehensive statement of principles for advancing the rights of persons with disabilities in relation to eight important target areas.<sup>30</sup> The purpose of the Standard Rules is stated as seeking to ensure that disabled children, women and men are equal members of society and that 'special attention' be directed towards them. Although non-binding, several propositions in the Standard Rules addressed commitments that had never previously been formally acknowledged on the international stage and can now be seen reflected in the content of the CRPD. For example, Rule 9 draws attention to 'negative attitudes towards marriage, sexuality and parenthood of persons with disabilities, especially of girls and women

<sup>25</sup>Convention on the Rights of the Child (adopted 20 November 1989, opened for signature 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 art 2. and Mykitiuk, Chadha, above n2 .

<sup>26</sup>Subsequently, the CRC Committee issued General Comment No 9, on the rights of children with disabilities, UN Doc CRC/C/GC/9 (February 27, 2007), para 17.

<sup>27</sup>General recommendations made by the Committee on the Elimination of Discrimination against Women A/46/38 General Recommendation No 18 (tenth session, 1991), available at: <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx> (accessed 24 May 2016). Recommendations are suggestions that, in the committee's view, elaborate on the obligations assumed by State Parties as convention signatories.

<sup>28</sup>Ibid

<sup>29</sup>UNGA Res 48/96 (48th Session) (20 December 1993), Standard Rules on the Equalization of Opportunities for Persons with Disabilities Annex, 17.

<sup>30</sup>The eight targets areas identified in the Standard Rules are: accessibility, education, employment, income maintenance and social security, family life and personal integrity, culture, recreation and sports, and religion.

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However, without formal obligation specified in the treaty, State Parties are not required to undertake a gender-disability analysis of their laws and policies.

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with disabilities, which still prevail in society'.<sup>31</sup> Rule 6 expressly identifies the need to ensure equal education services for girls and women with disabilities. Rule 9 encourages the media to serve 'an important role' in 'removing negative attitudes' about women with disabilities with respect to marriage, sexuality and parenthood.<sup>32</sup>

In 1994, as part of its mandate to interpret and advance the International Covenant on Economic, Social and Cultural Rights ('ICESCR'), the Committee on Economic, Social and Cultural Rights undertook an extensive examination of the social and economic rights of persons with disabilities in General Comment No. 5.<sup>33</sup> Paragraph 19 of General Comment No. 5 pointedly asserted that 'persons with disabilities are sometimes treated as genderless human beings, and as a result, the double discrimination suffered by women with disabilities is often neglected'.<sup>34</sup> The ICESCR Committee strenuously urged State Parties to address the situation of women with disabilities 'with high priority' in future policy planning.<sup>35</sup> Speaking to the issues of reproduction and parenting, General Comment No. 5 highlighted that women with disabilities should be protected and supported in relation to 'motherhood and pregnancy' and that their sexual 'needs and desires' be recognized and respected.<sup>36</sup> While not differentiating on the basis of gender, General Comment No. 5 also mentioned that 'children with disabilities are especially vulnerable to exploitation, abuse and neglect'.<sup>37</sup>

The 1995 Beijing Declaration and Platform for Action adopted at the Fourth World Conference on Women ('Beijing Declaration') recognized women and girls with disabilities, along with other personal characteristics, including age and race, as requiring human rights protection.<sup>38</sup> The Beijing Declaration called on governments to 'intensify efforts' to ensure equal human rights and fundamental freedoms for all women and girls 'who face multiple barriers' to their empowerment because of disability.<sup>39</sup> The Beijing Declaration focused on the advancement of women with disabilities in areas including education ~~and training~~, health, human rights and economic development and further recognized that 'the girl child with disabilities faces additional barriers'.<sup>40</sup> It also highlighted the particular vulnerability of disabled women and girls and their need for protection in circumstances of violence, war and armed conflict.<sup>41</sup>

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<sup>31</sup>Rules, above n29, 18.

<sup>32</sup>Ibid.

<sup>33</sup>ESCR Ctee, General Comment No 5, on persons with disabilities, UN Doc E/1995/22 (9 December 1994), para 19.

<sup>34</sup>Ibid. For an historical overview of General Comment No 5, see Chadha and Sheldon, above n6. See also Mykitiuk and Chadha, above n2.

<sup>35</sup>Ibid, para 30; the International Covenant on Economic, Social and Cultural Rights (ICESCR), UNGA Res 2200A (XXI) (Adopted and opened for signature 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

<sup>36</sup>Ibid

<sup>37</sup>Ibid, para 31.

<sup>38</sup>Report of the Fourth World Conference on Women (Beijing 4-15 September 1995) (17 October 1995) UN Doc A/CONF.177/20/Rev.1.

<sup>39</sup>Ibid, para 32.

<sup>40</sup>Ibid, para 270.

<sup>41</sup>Ibid.

In December 1997, as a follow-up to the Fourth World Conference on Women and the Beijing Declaration, the United Nations General Assembly adopted Resolution 52/100, calling upon States to promote ‘an active and visible policy of mainstreaming a gender perspective at all levels’<sup>42</sup> The concept of ‘gender mainstreaming’ was defined as ‘the process of assessing the implications for women and men of any planned action [...] so that women and men benefit equally and inequality is not perpetuated.’<sup>43</sup> The Resolution reinforced the United Nations’ commitment to the principles of gender mainstreaming ‘as a strategy for achieving gender equality’.<sup>44</sup> While the Resolution noted that gender mainstreaming should be an ‘integral’ element of government policies and the strengthening of human rights protections for women, the Resolution was silent on the topic of disability and gender.

In 1999, the CEDAW Women’s Committee issued General Recommendation No 24 addressing concerns regarding women and health. The Recommendation **raised articulated** several points in relation to women with disabilities and once again stressed that **S**tates should accord ‘special attention ... to the health needs and rights of women belonging to vulnerable and disadvantaged groups, such as ... women with physical or mental disabilities’.<sup>45</sup> Paragraph 25 stated that States should ensure that health services are respectful of the dignity and human rights of women with disabilities, especially because there is limited understanding ‘of the broad range of risks to mental health to which women are disproportionately susceptible as a result of gender discrimination, violence, poverty, armed conflict, dislocation and other forms of social deprivation.’<sup>46</sup>

After monitoring the impact of the Standard Rules during his tenure as Special Rapporteur on Disability, Bengt Lindqvist rendered a final report wherein he characterized women as among the ‘most vulnerable’ of groups of people with disabilities.<sup>47</sup> Lindqvist observed ‘[w]omen with disabilities are often exposed to double, or even triple, discrimination’<sup>48</sup> and recommended that governments and organizations prioritize the protection of girls and women with disabilities.

The foregoing chronology of United Nations documents from the 1970s to 2000 reveals that there was growing acknowledgment of women and girls with

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<sup>42</sup> UNGA 52/100 (12 December 1997).

<sup>43</sup> ESCR, Agreed Conclusions. UN Doc E/1997/2 (18 July 1997) GAOR 52/3, pt I para (a).

<sup>44</sup> Ibid.

<sup>45</sup> CEDAW General Recommendation No 24: Article 12 of the Convention (Women and Health) UN Doc A/54/38/Rev.1, (1999) ch I para 5.

<sup>46</sup> Ibid, para 25.

<sup>47</sup> UNCSD ‘Report of the Special Rapporteur of the Commission for Social Development on monitoring the implementation of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities on his third mandate, 2000-2002’, UN Doc E/CN.5/2002/4 Annex: Reaching the most vulnerable; proposed supplement to the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, (9 January 2002) paras 56-60. See also Anne Lawson, ‘The United Nations Convention on the Rights of Persons with Disabilities: New Era or False Dawn?’ (2007) 34 Syracuse J Int’l L and Com 563, 582.

<sup>48</sup> Division for Social Policy and Development Disability, ‘Special Rapporteur 1994-2002: Bengt Lindqvist’, available at: <<https://www.un.org/development/desa/disabilities/about-us/history-of-disability-and-the-united-nations/special-rapporteur-1994-2002-bengt-lindqvist.html>>

disabilities as a distinct group with special interests, needs and vulnerabilities requiring separate attention from issues related solely to disability or gender. Also, evident in the various Recommendations, Rules and Comments is a heightened awareness of the imbrication of gender and disability in creating complicated discriminatory experiences for women and girls with disabilities. However, notwithstanding the various pronouncements, none of the legally binding United Nations instruments were attentive to gender-disability based discrimination confronted by women and girls with disabilities until the promulgation of the CRPD.<sup>49</sup>

### ***Travaux Préparatoires***

In December 2001, upon the initiation of Mexico, the United Nations General Assembly adopted Resolution 56/168 establishing an Ad Hoc Committee ('AH Committee') to study proposals for the creation of a new international, disability-specific convention.<sup>50</sup> The AH Committee's mandate was to consider 'a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities, based on the holistic approach in the work done in the fields of social development, human rights and non-discrimination.'<sup>51</sup>

Comprised of 27 governmental regional representatives, 12 NGO representatives and one representative of National Human Rights Institutions,<sup>52</sup> this AH Committee was one of the first such United Nations' bodies to formally grant consultative status to NGOs and incorporate contributions from NGOs in developing a new convention.<sup>53</sup> The AH Committee convened its first round of meetings in July-August 2002. In this opening session, the AH Committee received a background paper, entitled 'Human Rights and Persons with Disabilities' prepared by the United Nations' Division for Social Policy and Development ('Social Policy Division'), specifically noting that 'women with disabilities are discriminated against on two grounds: gender and disability' and 'have less access to essential services such as

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<sup>49</sup> Quinn, Degener, above n3. One exception is the Convention concerning Vocational Rehabilitation and Employment (Disabled Persons) adopted in 1983, wherein Article 4 states 'Equality of opportunity and treatment for disabled men and women workers shall be respected'.

<sup>50</sup> Ad Hoc Committee, UNGA Res 56/168 (19 December 2001).

<<http://www.un.org/esa/socdev/enable/rights/adhocom.htm>>

<sup>51</sup> Ibid. para 1. The Resolution noted that, despite the myriad of United Nations' documents and the works of various governments and agencies seeking to advance the equality of people with disabilities, 'efforts have not been sufficient to promote full and effective participation by and opportunities for persons with disabilities in economic, social, cultural and political life'.

<sup>52</sup> See Enable Timeline, (August 2003) available at:

<<http://www.un.org/esa/socdev/enable/convinfohist1.htm>>

<sup>53</sup> The Report of the Special Rapporteur recommended that disability NGOs be consulted: Ad Hoc Committee, above n50, para 74. Resolution 56/168 provided for the accreditation and participation of non-governmental organisations in the Ad Hoc Committee. [The gender-related advocacy of NGOs played a critical role in the advancement of the rights of women with disabilities in the CRPD.](#)

health care, education and vocational rehabilitation.<sup>54</sup>

Remarkably, during the AH Committee's First Session, Mexico presented an entire working draft convention consisting of over 30 articles with a perambulatory statement about the responsibility of governments to eliminate barriers to the integration of persons with disabilities 'vulnerable to multiple or aggravated discrimination.'<sup>55</sup> Article 4 of Mexico's proposed draft directed States to 'adopt specific measures to protect persons with disabilities who are in special situations of vulnerability'; however, the draft did not identify who was captured in this descriptor and did not mention gender as an issue.<sup>56</sup>

The issue of gender ~~took on more~~ grew in prominence during the Second Session of the AH Committee in June 2003. In response to the Secretary General's request for input concerning the proposed nature and structure of the new disability convention, the Social Policy Division produced a report summarizing 35 submissions by governments, intergovernmental organizations and United Nations agencies. This summary highlighted that the submissions placed 'strong emphasis' on 'incorporating a gender perspective' in the elaboration of the convention and, further, that all replies from United Nations bodies supported attention be 'paid to overcoming multiple forms of discrimination'.<sup>57</sup>

At its Second Session, the AH Committee organized three Panels to discuss three 'priority themes': i) typology of proposed convention, ii) principles of non-discrimination and equality from a disability perspective and iii) emerging approaches to definitions of disability.<sup>58</sup> The second 'priority theme' Panel heard from Dr. Rangita de Silva, who advocated that a gender analysis inform the

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<sup>54</sup> UNDESA, Division for Social Policy and Development, 'Human Rights and Persons with Disabilities' A/AC.265/CRP.2 (February 9, 2001). available at:

<<http://www.un.org/esa/socdev/enable/rights/humanrights.htm>>

<sup>55</sup> Working Paper by Mexico, of the Ad Hoc Committee, on a Comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities, UN Doc A/AC.265/WP.1 (29 July- 9 August 2002), preamble (k), available at:

<<http://www.un.org/esa/socdev/enable/rights/adhocmeetaac265w1e.htm>>

<sup>56</sup> Ibid, Art 4.

<sup>57</sup> See Note by the Secretary-General on the Ad Hoc Committee, 'Views submitted by Governments, intergovernmental organizations and United Nations bodies concerning a comprehensive and integral international convention on the protection and promotion of the rights and dignity of persons with disabilities' 51. A/AC.265/2003/4+A/AC.265/2003/4/Corr.1. at para 12 and, for example, at para 44, where the report noted that the African Union expressed significant concern about African women with disabilities who face 'extra hardships', for example in the area of sexuality, where women 'might be forbidden from getting married or having children simply because they were disabled'.

<sup>58</sup> Report of the Ad Hoc Committee A/58/118 & Corr.1 (2<sup>nd</sup> Session) (New York 16-27 June 2003) (June 17, 2003), Annex 2 Panel 1: Chairman's Summary on Panel Discussions on Typology of international conventions and options for a convention on the rights of persons with disabilities. The AH Committee's report reveals that the first Panel considered the merits of the following three typological frameworks for the new convention: (1) a broad and comprehensive holistic model expressing principles, interests and rights like the CRC, (2) a non-discrimination model stating guaranteed rights corresponding with existing treaties akin to the CEDAW and (3) a hybrid model combining statements of existing rights along with holistic considerations of equality.

principles of the convention.<sup>59</sup>

In her report, Dr. de Silva described how women with disabilities 'fall into multiple categories of race, religion, class, ethnicity, sexual preference and handicapping conditions' and how lawmaking must reflect the perspectives of these women with disabilities.<sup>60</sup> She pointed out that sexual violence against women with disabilities is often rendered invisible and that cultural norms can exacerbate discrimination. Dr. de Silva opined that all laws must be scrutinized for biases, both in failing to consider certain perspectives and for incorporating certain factors that have disparate impact. She argued that laws should be about empowering, as opposed to protecting, women because '[p]aternalistic law and practices have the power to reinforce the construct of peoples with disabilities as weak and fragile.'<sup>61</sup> She emphasized the 'transformative possibilities of gender analysis'—~~and its application in the context of disability~~, especially in understanding disability rights and accommodation.<sup>62</sup>

Taking place in tandem with the AH Committee's Second Session were a series of semi-official public forums, called 'side events', where state representatives, United Nations' entities and NGOs met to discuss specific themes related to the formal proceedings. One side event, held on June 20, 2003, dealt with the topic of gender and disability and resulted in the creation of a document entitled 'Towards a Gender Sensitive Disability Rights Convention', aimed at convincing the AH Committee to explicitly integrate gender into the new convention.<sup>63</sup> The document identified core ~~areas of concerns~~ from a gender perspective: equality, right to education and employment, protection against all forms of violence, protection against eugenic health programs/practices and right to access health services and family life.<sup>64</sup>

During its Second Session, the AH Committee assembled a 'Working Group' to prepare a draft text of the convention that would serve as the basis for negotiation by the AH Committee and member states.<sup>65</sup> The Working Group, given only two

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<sup>59</sup> Ibid, Annex 2, Panel II: The Principle of Non-Discrimination and Equality from Disability Perspective: Critical Issues concerning Special Measures and Disability, June 17: Rangita de Silva de Alwis, 'Women and Disability', (17 June 2003), available at: <<http://www.un.org/esa/socdev/enable/rights/paneldesilva.htm>>

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

<sup>63</sup> The forum was called 'Women with Disabilities: Opportunities and challenges for women's rights activists in the development of a Convention on the human rights of people with disabilities'. See <<http://www.un.org/esa/socdev/enable/rights/ahc2panel.htm#Women>> (accessed 2 March 2017).

<sup>64</sup> UN Ad Hoc Committee meeting, 'Towards a Gender Sensitive Disability Rights Convention' (June 24) available at: <<http://www.un.org/esa/socdev/enable/rights/gendersense.htm>> (accessed February 27 2017). The document discussed how disabled women and girls experience multiple forms of discrimination, including restricted access to education, inequality in employment, are subject to physical violence, sexual assault and sterilization and are neglected in health and family planning programs

<sup>65</sup> Report of the Working Group to 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', A/AC.265/2004/WG/1 (27 January 2004).

weeks to undertake this project,<sup>66</sup>determined its mandate was to identify possible approaches and provisions of the convention and narrow down the options from a compilation of proposals and submissions in order to provide the AH Committee with a framework for further discussion and revisions.<sup>67</sup>

In December 2003, the Chair of the AD Committee, Ambassador Luis Gallegos Chiriboga of Ecuador, delivered to the Working Group a detailed draft convention entitled 'Chair's Draft Elements of a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities' ('Chair's Draft').<sup>68</sup> The Chair's Draft included a specific clause ('article 7') with respect to 'equality of women and men with disabilities in the enjoyment of rights'.<sup>69</sup> The Co-ordinator of the Working Group suggested using the Chair's Draft as a guide for discussions with 'the underlying assumption that all the texts in the ~~compilation-proposed draft~~ have 'equal status'.<sup>70</sup>

By the end of its two weeks, the Working Group compiled the submissions and proposals obtained through its consultations and, by consensus, produced a report for the AH Committee setting out its draft of the proposed text for the new disability convention.<sup>71</sup> The draft text was presented at the Third Session of the AD Committee in May-June 2004. While this first draft convention contained a provision recognizing equality and prohibiting discrimination based on a wide array of personal characteristics and other grounds (including race, sex, religion, political, property, source or type of disability, age), the Working Group's draft text failed to address the unique aspect of gender-disability disadvantage.<sup>72</sup>

<sup>66</sup> Ibid, Don MacKay, Ambassador of New Zealand, was named the Co-ordinator of the Working Group. Chairman of the AH Committee. The Working Group met from January 5-14, 2004 and held 20 formal meetings and number of informal consultations.

<sup>67</sup> Report of the Working Group to 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', A/AC.265/2004/WG/1 (27 January 2004), para 9.

<sup>68</sup> SCRPD Ad Hoc Committee on an International Convention, (4<sup>th</sup> session, 23 August - 3 September 2004) 'Chair's Draft Elements of a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities' (December 2003) available at: <<http://www.un.org/esa/socdev/enable/rights/wgcontrib-chair1.htm>> (accessed 18 May 2016).

<sup>69</sup> Ibid, Art 7.

<sup>70</sup> [Report of the Working Group to the Ad Hoc Committee A/AC.265/2004/WG/1 \(16 January 2004\). Working Group Daily Summary January 5, 2004](#) available at: <http://www.dinf.ne.jp/doc/english/rights/040105.html> (accessed 5 March 2017).

<sup>71</sup> Report of the Working Group to the Ad Hoc Committee, on Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, A/AC.265/2004/WG/1 (27 January 2004) Annex I: Draft Articles. available at: <<https://www.un.org/esa/socdev/enable/rights/ahcwgreportax1.htm>>.

<sup>72</sup> Ibid, Art 7. The text of the Working Group's Article 7 is: States Parties recognize that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. States Parties shall prohibit any discrimination on the basis of disability, and guarantee to all persons with disabilities equal and effective protection against discrimination. States Parties shall also prohibit any discrimination and guarantee to all persons with disabilities equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, source or type of disability, age, or any other status.

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As previously noted, the Chair's Draft article 7 incorporated an explicit recognition of the equality of women and men with disabilities.<sup>73</sup> This proposed article stated:

States Parties recognize that women and girls with disabilities are subject to multiple discrimination and that focused, gender-specific measures (including protective measures) will be necessary to ensure that women and girls enjoy all human rights and fundamental freedoms on the basis of equality with men and boys.<sup>74</sup>

As such, at the outset of its work, the Working Group had received for its consideration from the Chair of the AH Committee a specific gender-related provision that emphasized the multiple discrimination experienced by women with disabilities and the need for gender responsive measures.

The Working Group's records further indicate that New Zealand and India also endorsed that the draft convention include specific reference to the fact that women with disabilities experience 'double disadvantage' or 'multiple discrimination'.<sup>75</sup> In addition, the Working Group had before it draft language based on an expert conference held in Bangkok during October 2003.<sup>76</sup> The Bangkok expert group favoured that the new convention recognize multiple discrimination faced by women and children with disabilities and further supported that the convention acknowledge that discriminatory treatment can occur based on intersectionality of multiple grounds, such as, women with disabilities.<sup>77</sup> Notwithstanding these explicit proposals speaking to gender-disability disadvantage, one representative of the Working Group involved in the first draft of the convention text described the absence of gender in the Working Group's proposals to the AD Committee as an oversight caused by the tight timeline.<sup>78</sup>

Based on the draft text of the convention prepared by the Working Group, the AD Committee began negotiations and discussions of the specific structure, language and provisions of the convention in its Third Session (May-June 2004). At this juncture, the Republic of Korea ('South Korea') proposed a draft article on women with disabilities ('article 15bis'). South Korea's article 15bis was even more

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<sup>73</sup> Chair's Draft, above n68, Art 7.

<sup>74</sup> Ibid.

<sup>75</sup> Working Group of the Ad hoc Committee on an International Convention, Compilations of Proposals for Elements of a Convention: Part V – Guarantee of Equality and Non-discrimination (5 January 2004) available at: <<https://www.un.org/esa/socdev/enable/rights/comp-element5.htm>>.

<sup>76</sup> Ad Hoc Committee, Bangkok Recommendations on the elaboration of a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities A/AC.265/2003/CRP/10 (2 – 4 June 2003) available at: <[http://www.un.org/esa/socdev/enable/rights/a\\_ac265\\_2003\\_crp10.htm](http://www.un.org/esa/socdev/enable/rights/a_ac265_2003_crp10.htm)>. The report described the participants as 'experts from governmental and non-governmental organizations, national disability and human rights institutions and independent experts'.

<sup>77</sup> Ibid, paras 13 and 20.

<sup>78</sup> Sigrid Arnade, Sabine Haefner, 'Standard Interpretation of the UN Convention on the Rights of Persons with Disabilities (CRPD) from a Female Perspective: Position and Reference Paper on the Significance of References to Women and Gender in the Convention on the Rights of Persons with Disabilities' (2011), Netzwerk Artikel 3, 15.

detailed than the Chair's Draft article 7 in its focus on proactive responsibilities of states to promote equality for women with disabilities.<sup>79</sup> South Korea's article 15bis articulated the obligation that governments adopt a 'gender perspective' in their legislation and policies.<sup>80</sup> It also delineated that states incorporate women with disabilities in social surveys and collect gender-disaggregated data ~~on disabled people~~; develop and disseminate policies to assist the special needs of women with disabilities ~~regarding~~ pregnancy, ~~and~~ post-partum health and child care; protect employment rights of pregnant women or mothers with disabilities; and ensure that women with disabilities are protected from sexual exploitation and abuse.<sup>81</sup>

During the Fourth, Fifth and Sixth Sessions of the AD Committee (from August 2004 to August 2005), member states discussed the proposed clauses of the CRPD, including South Korea's proposed article 15bis. Comments on article 15bis highlighted a debate between those in favour of a separate clause on gender, no specific provision and those in favour of mainstreaming gender into the substantive provisions of the CRPD.<sup>82</sup> Don MacKay, now the new Chair of the AD Committee, circulated a Report during the Sixth Session which noted that there was 'general agreement' to include gender equality into the Convention; however, there were a variety of views expressed on how best to address gender issues: some delegations supported the proposal for a stand-alone article, others were of the view that a reference in the preamble combined with language in the general principles, the general obligations, or the monitoring section best met the aim. Some delegations proposed to mainstream gender issues throughout thematic articles of specific relevance to women, while others supported both a separate article in addition to mainstreamed references.<sup>83</sup>

For example, Canada supported gender mainstreaming throughout the convention.<sup>84</sup> In contrast, Kenya and Israel supported the standalone article approach.<sup>85</sup> In further contrast, the European Union and Australia suggested including a reference to the vulnerability of women with disabilities to multiple forms of discrimination in the preamble of the CRPD on the basis that such a

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<sup>79</sup> SCRPD, Ad Hoc Committee Report of the Third Session on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, UN Doc A/AC.265/2004/5 (9 June 2004). Available at: <<http://www.un.org/esa/socdev/enable/rights/ahc3reporte.htm>>.

<sup>80</sup> Ibid, Art 15bis 2(a).

<sup>81</sup> Ibid.

<sup>82</sup> For a summary of the discussions of States and NGOs about the proposed Art 15 bis, see Ad Hoc Committee's Sixth Session on Article 6: Women with Disabilities, 'Comments, proposals and amendments' (1 – 4 August 2005). Available at: <<http://www.un.org/esa/socdev/enable/rights/ahcstata6sscomments.htm>>.

<sup>83</sup> Ad Hoc Committee's Sixth Session on Article 6: Women with Disabilities, 'Report by the Chairman', (4 August 2005) para 24, available at: <<http://www.un.org/esa/socdev/enable/rights/ahcstata6ssrepchair.htm>>

<sup>84</sup> SCRPD, Article 6 Comments, Proposals and Amendments Submitted Electronically, 6<sup>th</sup> Session (1-12 August 2005) available at: <<http://www.un.org/esa/socdev/enable/rights/ahcstata6sscomments.htm>> accessed 18 May 2016; CRPD Ad Hoc Committee, Daily summary of discussion at the sixth session (2 August 2005), available at: <<http://www.un.org/esa/socdev/enable/rights/ahc6sum2aug.htm>>.

<sup>85</sup> Ibid.

statement would help interpretation of other articles.<sup>86</sup>The competing views highlighted the tension between using interpretative provisions, which can be read expansively but are symbolic and not legally binding, versus entrenching specific substantive obligations into the body of the Convention, which risked narrowing the rights of women and girls to only those particularly worded concerns.<sup>87</sup>As a result during the Sixth Session, Don MacKay, appointed Theresia Degener, a legal expert and member of the German delegation, to serve as a facilitator of a small group to 'examine where and if there were gaps in the convention that needed to be addressed from a gender perspective'.<sup>88</sup>

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At the opening of the Seventh Session, the Chair of the AH Committee noted that '[t]here was clearly agreement that disabled women are at a particular disadvantage and vulnerability and that their situation needs to be appropriately covered by the draft Convention.'<sup>89</sup> He observed that the division between member states on how to best approach the issue of women with disabilities seemed to be of placement rather than substance and, consequently, directed the facilitator to continue to work on the issue of women with disabilities.

On January 31, 2006, Degener's proposal as facilitator was put before the Seventh Session of the AH Committee.<sup>90</sup> Degener proposed that a clause could be added to article 4, which entailed the General Obligations section of the convention, or that a separate provision could be inserted as article 6 setting out the following with respect to gender:

1. State Parties recognise that women and girls with disabilities are subject to multiple discrimination and that focused, empowerment and gender sensitive measures are necessary to ensure the full and equal enjoyment by women and girls with disabilities of all human rights and fundamental freedoms.
2. State Parties shall take all appropriate measures to ensure the equal rights of women with

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<sup>86</sup> Ibid.

<sup>87</sup> See General Discussion On Women And Girls With Disabilities (September 2014), 80, available at: <[http://www.fundacioncermimujeres.es/sites/default/files/general\\_discussion\\_on\\_women\\_and\\_girls\\_with\\_disabilities.pdf](http://www.fundacioncermimujeres.es/sites/default/files/general_discussion_on_women_and_girls_with_disabilities.pdf)>. See also V Della Fina, Article 6 (Women with Disabilities) in V Della Fina et al (eds) *The United Nations Convention on the Rights of Persons with Disabilities* (Springer International, 2017), 175-194.

<sup>88</sup> Report by the Chairman, Draft article 15bis – Women with Disabilities (Sixth Session), para 26. Small groups were employed to address the lack of consensus regarding certain provisions by consulting with delegates and proposing amended language. Available at: <<https://www.un.org/esa/socdev/enable/rights/ahcstata15bissrepchair.htm>> (accessed 5 March 2017).

<sup>89</sup> SCRPD, Letter Dated 7 October 2005 from the Chairman to all Members of the Committee, (7<sup>th</sup> Session New York, 16-27 January 2006) UN Doc A/AC.265/2006/1 (14 October 2005), para 40, available at: <<http://www.un.org/esa/socdev/enable/rights/ahcchairletter7oct.htm>> accessed 18 May 2016.

<sup>90</sup> Ad Hoc Committee on the Convention on the Rights of People with Disabilities, Daily summary of discussion at the seventh session (31 January 2006) available at: <<https://www.un.org/esa/socdev/enable/rights/ahc7sum31jan.htm>>

disabilities to the enjoyment of all rights set out in this Convention.<sup>91</sup>

Additionally, based on her consultations, Degener proposed several points be featured in other parts of the convention with respect to gender. She suggested that the Preamble include a statement recognizing that disabled women and girls are at a greater risk of violence, abuse and neglect and that article 16 reflect state responsibility to take all appropriate measures to protect against such exploitation of disabled people, in particular girls and women with disabilities.<sup>92</sup> Further, she recommended that article 23, pertaining to respect for home and the family, stipulate equality with respect to gender and disability.<sup>93</sup> Lastly, she proposed article 25 regarding health specify the obligation that states develop and disseminate family-planning and pregnancy policies 'that are inclusive of women with disabilities and protect them against any form of coercive treatment, including sterilization'.<sup>94</sup>

The Chair submitted the revised article ('draft article 6') as prepared by Degener for consideration ~~by to~~ the AH Committee. Although shorter than article 15bis, draft article 6 also emphasized gender responsive measures and the goal of women's advancement.<sup>95</sup> Member states were invited to comment on the content of draft article 6 and the key issues continued to be whether a gender-related provision should exist as a separate article or be captured within the General Obligations section of the convention.

Comments on draft article 6 appeared to suggest that member states now preferred the standalone article approach over the gender mainstreaming approach. However, some NGOs, such as the International Disability Caucus, strongly supported a 'twin track approach', which entailed both a standalone article and gender-specific language incorporated in the substantive articles of the CRPD.<sup>96</sup> Eventually certain countries, such as Canada and Israel, also expressed support for a distinct article, as well as mainstreaming gender into the various thematic areas of the convention.

The twin track approach was adopted by the AH Committee at the Eighth Session and enshrined it in its final version of the CRPD. This approach guaranteed

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<sup>91</sup> Ad Hoc Committee's Seventh Session on Article 6: Women with Disabilities, Proposals Made by Facilitators, pt 1: Women, available at:

<<http://www.un.org/esa/socdev/enable/rights/ahcstata6sevfacilitator.htm>>

<sup>92</sup>Ibid.

<sup>93</sup>Ibid.

<sup>94</sup> Ibid.

<sup>95</sup>above n91292

<sup>96</sup> SCRPD Ad Hoc Committee seventh session, Article 6 Comments, Proposals and Amendments Submitted Electronically, (16 January - 3 February 2006), available at:

<<http://www.un.org/esa/socdev/enable/rights/ahcstata6sevcomments.htm>> (accessed 18 May 2016); [International Disability Caucus. "The Convention and Women with Disabilities: We Need the Twin Track Approach!!" UN enable. 14 August 2006. Internet](#)

<http://www.un.org/esa/socdev/enable/rights/ahc8docs/ahc8idcwomgen.doc>. See also Rosemary Kayess, Phillip French, 'Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities' (24 January 2008) 8 HRLR 1, 31; and Peter Blanck, Meera Adya, and Maria Veronica Reina, 'Defying Double Discrimination' (2007) 8 Geo J Int'l Aff 95.

that states preferring a stand alone article and those in favour of gender mainstreaming each had their preferences represented in the convention Article 6 exists as a standalone provision on women and girls with disabilities in the CRPD. The final version of Article 6 represents significant advancement towards a more nuanced articulation of the multifaceted nature of the disadvantages confronted by women and girls with disabilities. Article 6 also stands as a clear statement of the duty of States to safeguard and promote gender equality.

### **Paragraph 1: Multiple discrimination**

Paragraph 1 of Article 6 begins with the obligation that State Parties recognize “multiple discrimination” is an obstacle to the full enjoyment of the rights and freedoms of women and girls with disabilities. The inclusion of the phrase “multiple discrimination” in the opening language of Article 6 advances the reality that women and girls with disabilities routinely experience discrimination because of a combination of overlapping, immutable and systemic factors and that States must take measures to ensure the equal enjoyment and benefit of human rights by all women and girls with disabilities.<sup>97</sup>

Relying on the concepts of “intersectionality” and “multiple discrimination”, feminist scholars in the 1990s reconceptualized women’s identities to capture their lived realities of multifaceted sources of oppression.<sup>98</sup> An intersectional approach shifts the focus from the category or identifying label tagged to the women and, instead, investigates the impact of the discrimination. By examining the effect of the discriminatory treatment, as opposed to fixating only on the marker of the discrimination, a “multiple discrimination” analysis seeks to reflect how disadvantage is experienced in the lives of women with disabilities. This approach is consistent with the social model of disability because it does not locate the problem as inherent to the individual’s characteristic, but rather spotlights the disadvantage that occurs because of how society is constructed and treats the individual.

In late 2016, the CRPD Committee issued General Comment No. 3, a detailed

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<sup>97</sup> Ad Hoc Committee on the Convention on the Rights of People with Disabilities, Daily summary of discussion at the sixth session, (2 August 2005), available at: <<http://www.un.org/esa/socdev/enable/rights/ahc6sum2aug.htm>> . During the meeting the Chair acknowledged that ‘the situation faced by disabled women is more than just the combined disadvantage of disability and gender’.

<sup>98</sup> Kimberle Crenshaw ‘Mapping the Margins: Intersectionality, identity politics, and violence against women’ (1991) 43 Stan L Rev 1241; Nitya Duclos, ‘Disappearing Women: Racial Minority Women in Human Rights Cases’, (1993) 6 CJWL 25; equally, Carol A Aylward, ‘Intersectionality: Crossing the Theoretical and Praxis Divide’, (2010) 1 JCRI 1. The Ontario Human Rights Commission was one of the first state entities to formally acknowledge the concept of intersectionality. The Discussion Paper by OHRC Policy and Education Branch, ‘An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims’ (Toronto: Queens Printer, 2001), 3, available at: <[http://www.ohrc.on.ca/sites/default/files/attachments/An\\_intersectional\\_approach\\_to\\_discrimination%3A\\_addressing\\_multiple\\_grounds\\_in\\_human\\_rights\\_claims.pdf](http://www.ohrc.on.ca/sites/default/files/attachments/An_intersectional_approach_to_discrimination%3A_addressing_multiple_grounds_in_human_rights_claims.pdf)>, states that ‘[a]n intersectional approach takes into account the historical, social and political context and recognizes the unique experience of the individual based on the intersection of all relevant grounds’

report clarifying the scope and nature of the rights and responsibilities in the Convention regarding women with disabilities.<sup>99</sup> There, the CRPD Committee confirmed that Article 6's reference to "multiple discrimination" embodies two distinct dynamics that underlie an intersectional analysis.<sup>100</sup> First, "multiple discrimination" interrogates the notion of single identity or ground of discrimination on the basis that women with disabilities are a collection of various qualities, as well as perceived characteristics. "Multiple discrimination" recognizes adverse treatment occurs because of discrete, yet interconnected, personal and perceived characteristics, such as race, disability and gender.<sup>101</sup> ~~The Committee explained~~General Comment No. 3 explains that intersectionality "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".<sup>102</sup> Second, "multiple discrimination" discerns the unique, often disproportionate disadvantage that intensifies the subjugation of people with layered identities.<sup>103</sup> General Comment No. 3 states that the concept of "intersectional discrimination" acknowledges the "experiences of heightened disadvantage of individuals caused by multiple and intersecting forms of discrimination".<sup>104</sup> Although the CRPD does not include the language of intersectionality, General Comment No. 3 makes several references to the concept and emphasizes intersecting discrimination as a priority area of concern for States in ameliorating the disadvantaged status of women with disabilities.

Article 6 is the first international treaty to incorporate a model of differential treatment that emphasizes "multiple discrimination".<sup>105</sup> This formal recognition of "multiple discrimination" correlates with the CRPD's guiding principle of respecting the diversity of the disability community and acknowledgement of aggravated experiences of discrimination.<sup>106</sup> Although paragraph 1 does not assign which personal characteristics correspond with the notion of "multiple discrimination",

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<sup>99</sup> CRPD Committee, General Comment No 3, on Article 6: Women and girls with disabilities, UN Doc CRPD/C/GC/3 (25 November 2016). At the time of issuance, General Comment No 3 was the lengthiest comment consisting of 17 pages and 65 paragraphs.

<sup>100</sup> Ibid, paras 4 and 13. Paragraph 4(c) notes that the '[g]rounds for discrimination include, but are not limited to: age, disability, ethnic, indigenous, national or social origin, gender identity, political or other opinion, race, refugee, migrant or asylum status, religion, sex, or sexual orientation'.

<sup>101</sup> For example, when a low income, single mother of colour with a mental health disability is denied housing, it is important to understand the refusal to rent is likely to be a case of 'multiple discrimination' due to the combination of ethnicity, disability, family status and poverty, as opposed to simply because of the woman's gender or disability. The second conceptualization of 'multiple discrimination' is the reality that a single mother of colour with a mental health disability is disproportionately vulnerable to aggravated unfairness and prejudice which is significantly dissimilar than that experienced by a non-disabled or non-racialized, married man.

<sup>102</sup> General Comment No 3, above n99, para 4.

<sup>103</sup> See, for example, Adrienne Asch, 'Critical Race Theory, Feminism, and Disability: Reflections on Social Justice and Personal Identity' (2001) 62 Ohio State Law Journal 391.

<sup>104</sup> General Comment No 3, above n99, para 16.

<sup>105</sup> Marianne Schulze, Understanding the UN Convention on the Rights of Persons with Disabilities, (August 2010) available at: <[http://accessible-techcomm.org/wp-content/uploads/Understanding\\_The\\_UN.pdf](http://accessible-techcomm.org/wp-content/uploads/Understanding_The_UN.pdf)> (accessed 19 April 2017).

<sup>106</sup> CRPD, above n1, Art 3, paras (p) and (m), lists the CRPD's general principles.

the CRDP's Preamble lists numerous protected categories, including race, language, religion, age, etc., and Article 5 protects against discrimination on all these grounds.<sup>107</sup> Therefore, pursuant to Article 5. State Parties should address multiple discrimination against women and girls with disabilities on the enumerated grounds in order to achieve formal and substantive equality pursuant to Article 5 of the CRPD.<sup>108</sup>

By locating the phenomenon of “multiple discrimination” upfront in paragraph 1, Article 6 requires States to apprehend the complex nature of discrimination incurred by disabled women and girls.<sup>109</sup> The wording of Paragraph 1 also requires States to undertake necessary actions to ensure that all members of the diverse community of women and girls with disabilities are equally protected and able to benefit from their full range of human rights and fundamental freedoms.<sup>110</sup> To this end, the CRPD Committee has recommended that State Parties “adopt effective and specific measures to prevent intersectional forms of discrimination against women and girls with disabilities;”<sup>111</sup> “take specific measures to tackle multiple and intersectional discrimination against women with disabilities”<sup>112</sup> and employ a “twin-track approach which also includes levelling and affirmative action measures to eliminate multiple and intersectional discrimination from all areas of life, both in urban and in rural areas.”<sup>113</sup>

## **Paragraph 2: Development, advancement and empowerment**

Paragraph 2 of Article 6 requires that State Parties take “all appropriate measures” to ensure the “development,” “advancement” and “empowerment” of women and girls with disabilities so that they can exercise their human rights and fundamental freedoms as articulated in the CRPD. The provision recalls the ideals put forward by Degener that governments engage in “focused, empowerment and gender

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<sup>107</sup> Ibid, Preamble para (p) lists race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status. It is noteworthy that, although the CRPD does not specify sexual orientation or gender identity as protected characteristics, General Comment No 3, above n99, para 5, details ‘lesbian, bi-sexual, transgender women, and intersex persons’ among the diverse groups of women with disabilities that require protection under the Convention.

<sup>108</sup> CRPD, above n1, Art 5.

<sup>109</sup> General Comment No 3, above n100, para 18, indicates that ‘State parties must adopt legal provisions and procedures that explicitly recognize multiple discrimination to ensure complaints made on the basis of more than one ground of discrimination are considered in determining both liability and remedies’.

<sup>110</sup> Ibid, para 17(e). The Committee endorsed the notion that systemic discrimination is as harmful as direct discrimination and must be remedied by States.

<sup>111</sup> CRPD Committee, Concluding Observations on the initial report of Sweden, UN Doc CRPD/C/SWE/CO/1 (12 May 2014), para 14.

<sup>112</sup> CRPD Committee, Concluding Observations on the initial report of Uganda, CRPD/C/UGA/CO/1, (12 May 2016) para. 12(b).

<sup>113</sup> CRPD Committee, Concluding Observations on the initial report of Portugal, CRPD/C/PRT/CO/1, (20 May 2016) para 18. Not a direct quote:

sensitive measures”<sup>114</sup> and reflects the call of South Korea for “action oriented language” to address the invisibility of women with disabilities in “existing global norms”.<sup>115</sup>

Paragraph 2 affirms that States Parties are under a positive duty to marshal the means necessary to facilitate the realization of the rights and freedoms guaranteed in the CRPD. General Comment No. 3 puts to rest any doubt over the affirmative nature of the CRPD’s obligations by unequivocally stating that the “appropriate measures” declared in Paragraph 2 “...may be temporary or long-lasting and should overcome de jure and de facto inequality” of women with disabilities.<sup>116</sup> Such measures can take different forms: educational, legislative, administrative or political, for example.<sup>117</sup> Thus, under the purview of Article 6, in its Concluding Observations the CRPD Committee has recommended that the United Arab Emirates conduct “~~carry out~~ “awareness-raising and education programmes...to foster respect for the rights and dignity” and “combat stereotypes, prejudices and misconception” of women and girls with disabilities ~~and combat stereotypes, prejudices and misconceptions about~~ them;”<sup>118</sup> recommended that Guatemala “bring its legislation on sexual and reproductive rights into line with the Convention and ensure that those rights are not limited or restricted for women and girls with disabilities”<sup>119</sup> and even more strongly directed Brazil to “take immediate action to adopt a due diligence framework to ensure that its laws, policies and programmes that target violence against women, including institutionalized women, are accessible and effective in preventing and redressing violence”.<sup>120</sup> General Comment No. 3 further notes that while “temporary special measures such as quotas” may be necessary to overcome systemic discrimination, long-term, proactive measures, such as legislative reform, are “essential prerequisites for achieving substantive equality for women with disabilities.”<sup>121</sup>

Paragraph 2 breaks new ground in being the first, legally binding treaty provision to embody positive human rights obligations with respect to women with disabilities. Paragraph 2 confirms that Article 6 is more than just an anti-discrimination clause. By providing that States must take all “appropriate measures” to bring about the “full development, advancement and empowerment of women”, paragraph 2 enacts affirmative governmental responsibility to foster the civil,

<sup>114</sup> Joint Facilitators’ proposal of the Ad Hoc Commission, on Women and Children, pt 1: Women (7<sup>th</sup> session)(28 January 2006). Available at: <<http://www.un.org/esa/socdev/enable/rights/ahc7facilitator.htm>>

<sup>115</sup> UN Convention on the Human Rights of People with Disabilities Ad Hoc Committee - Daily Summaries, (August 2 2005) <http://www.dinf.ne.jp/doc/english/rights/050802.html>

<sup>116</sup> General Comment No 3, above n99, para 20.

<sup>117</sup> Ibid, para 24.

<sup>118</sup> CRPD Committee, Concluding Observations on the initial Report of the United Arab Emirates, UN Doc CRPD/C/ARE/CO/1 (3 October 2016) para 14(b).

<sup>119</sup> CRPD Committee, Concluding Observations on the initial Report of Guatemala, UN Doc UN Doc CRPD/C/GTM/CO/1 (30 September 2016) para 22.

<sup>120</sup> CRPD, Concluding observations on the initial report of Brazil, UN Doc CRPD/C/BRA/CO/1 (29 September 2015) para 15.

<sup>121</sup> General Comment No 3, above n99, para 20.

political, social and economic interests of women and girls with disabilities. Indeed, in order to promote the development, advancement and empowerment of women with disabilities, the CRPD committee has recommended that Uganda “ensure that gender as well as disability policy address the situation of women with disabilities and allocate appropriate human, technical and budgetary resources”<sup>122</sup> to these ends.

While “development” and “advancement” are concepts often related specifically to economic growth and the eradication of poverty, General Comment No. 3 makes it clear that they state responsibilities under Article 6 are not limited to those areas. Gender and disability specific initiatives will be required in the realms of employment, education and violence against women and girls to ensure their full economic empowerment; however General Comment No. 3 provides that measures are also required in the areas of health, participation in sports, culture and politics.<sup>123</sup> Moreover, as the CRPD Committee has recommended in a number of Concluding Observations<sup>124</sup> and as stated in General Comment No. 3 “ensuring the empowerment of women with disabilities means promoting their participation in public decision-making”<sup>125</sup> and promoting “the participation of representative organizations of women with disabilities, not just disability-specific consultative bodies.”<sup>126</sup>

Paragraph 2 serves as concrete recognition that, in order for women and girls with disabilities to meaningfully exercise and enjoy their rights and freedoms, States need to create gender-specific measures that are targeted at promoting disabled women’s development and empowerment. Cumulatively, paragraphs 1 and 2 of Article 6 propound a social and human rights model of disability by mandating that States take action to ensure that disabled women overcome multiple barriers that exist not only because of personal traits, but simultaneously due to systemic alienation.<sup>127</sup> Paragraph 2 picks up from the Paragraph 1 directive requiring States to devise “measures” in regards to “multiple discrimination” and further expounds state responsibility to fully develop and advance the rights and freedoms of women with disabilities.<sup>128</sup> Paragraphs 1 and 2 make clear that the diversity of women and girls with disabilities must be respected<sup>129</sup> and that conditions which limit their

**Commented [EC6]:** Girls are covered by the footnote in the introduction defining “women”

<sup>122</sup> CRPD Report of Uganda, above n112, para 11(c).

<sup>123</sup> General Comment No 3, above n99, para 21.

<sup>124</sup> See for example: CRPD Committee, Concluding Observations on the initial Report of Thailand, UN Doc CRPD/C/THA/CO/1 (12 May 2016) para 16(d); CRPD Committee, Concluding Observations on the initial Report of Serbia, UN Doc CRPD/C/SRB/CO/1 (23 May 2016) para 12(c); CRPD Committee, Concluding Observations on the initial Report of New Zealand, UN Doc CRPD/C/NZL/CO/1 (31 October 2014) para 16.

<sup>125</sup> General Comment No 3, above n99, para 23.

<sup>126</sup> Ibid.

<sup>127</sup> Peter Blanck, Meera Adya, and Maria Veronica Reina, above n96, describe how women with disabilities are alienated at social and legal levels.

<sup>128</sup> For example, the Committee recommends that Brazil “implement a strategy to promote each of the three elements contained in article 6(2) of the Convention.” CRPD Report of Brazil, above n120, para 17.

<sup>129</sup> To this end, the Committee calls upon Germany to “implement programmes for women and girls with disabilities,” particularly migrants and refugees, “to eliminate discrimination in all areas of life”.

participation in society must be addressed.<sup>130</sup> Read together these paragraphs make it incumbent on States to adopt gender-sensitive initiatives to overcome disadvantage, encourage human rights progress and promote the inherent dignity of women and girls with disabilities.

### **Inter-Relationship between Article 6 and other CRPD Articles**

The CRPD introduces a new paradigm for international human rights treaties by dedicating a distinct article to women ~~and girls~~ with disabilities, while also mainstreaming gender throughout the Convention and affirming an intersectional, human rights perspective. In addition to Article 6, gender equality is a founding principle of the CRPD (Preamble and Article 3), gender is specifically referenced in several thematic articles (Articles 8, 16, 25 and 28) and mandatory gender parity is established for the configuration of the CRPD Committee (Article 31). However notwithstanding the cross-cutting nature of Article 6, certain articles of the CRPD are striking for their omission of disabled women and girls. These include: Article 11 (Humanitarian Emergencies), Article 15 (Torture), Article 23 (Family), Article 24 (Education), Article 27 (Employment) and Article 31 (Data collection). We will briefly examine the text of each of these Articles in seeking a better understanding of the CRPD's protections and limitations in relation to the rights of women ~~and girls~~ with disabilities.

### **Interpretatory Guidance**

The entry point into the CRPD's adoption of human rights principles is the Preamble, which situates the legislative and social context of the Convention.<sup>131</sup> Four paragraphs of the CRPD's Preamble address gender-related issues with respect to women and girls with disabilities.<sup>132</sup> Sub-paragraph (d) acknowledges the rights contained in the CEDAW and CRC are the backdrop to the CRPD. Sub-paragraph (p) highlights "the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of...sex".<sup>133</sup>

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CRPD Committee, Concluding Observations on the initial Report of Germany, CRPD/C/DEU/CO/1 (13 May 2015) para 16(a). See also: CRPD Committee, Concluding Observations on the initial Report of Kenya, CRPD/C/KEN/CO/1(30 September 2015) para 12 (a).

<sup>130</sup> The Committee recommends the establishment of a "formal consultation mechanism to ensure that women and girls with disabilities" and their "representative organizations, are meaningfully consulted" and "enabled to participate in the legislative and political spheres." CRPD Committee, Concluding Observations on the initial Report of the Cook Islands, CRPD/C/COK/CO/1(15 May 2015) para 12 (a). See also: CRPD Committee, Concluding Observations on the initial Report of Argentina, CRPD/C/ARG/CO/1 (8 October 2012) para 14; CRPD Committee, Concluding Observations on the initial Report of Costa Rica, CRPD/C/CRI/CO/1 (12 May 2014) para 14; CRPD Committee, Concluding Observations on the initial Report of Qatar, CRPD/C/QAT/CO/1(20 October 2015) para 14.

<sup>131</sup> In accordance with the Vienna Convention on the Law of Treaties, (entered into force 27 January 1980) 23 May 1969, 1155 UNTS 331 art 31, the text and preamble of a treaty are used for interpretation.

<sup>132</sup> CRPD, above n1. The preamble has 25 paragraphs.

<sup>133</sup> *Ibid*, para (p).

More explicitly, sub-paragraph (q) of the Preamble states “that women and girls with disabilities are often at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation.”<sup>134</sup> This provision is important for its identification of the different manifestations of violence that women with disabilities routinely experience and for its recognition that the abuse is perpetrated both in women’s own residences and the community at large. Lastly, the CRPD unequivocally espouses the importance of gender-mainstreaming in sub-paragraph—(s) by “[e]mphasizing the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities.”<sup>135</sup>

In addition to the Preamble, Article 3 enumerates the general principles of the CRPD for the purposes of guiding its interpretation. In expressing the core values of the CRPD, Article 3 endorses “equality between men and women”, along with respect for inherent dignity, the diversity of disability and the rights of children with disabilities.<sup>136</sup> It also affirms the principles of non-discrimination, inclusion in society, equal opportunity and accessibility.

Since the Preamble and Article 3 constitute the interpretive provisions of the CRPD, there can be little doubt that gender equality and freedom from the multifaceted nature of gender-disability discrimination are central tenets of the Convention and, further, that the **import and** meanings of all other Articles must be construed in accordance with these overarching principles. This is once more evident in Article 8, entitled “Awareness-raising”, which entrenches a duty on States to implement effective measures to combat gender “stereotypes, prejudices and harmful practices...in all areas of life”.<sup>137</sup>

## Article 16 - Violence

Article 16 elaborates on the rights of people with disabilities to be free from exploitation, violence and abuse and reiterates the theme raised in the Preamble about special attention to female victimization.<sup>138</sup> Substantial passages of Article 16 outline the responsibility of States to undertake “all appropriate legislative, administrative, social, educational and other measures” to protect against all forms of exploitation and abuse of people with disabilities in private and public spheres

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<sup>134</sup> Ibid, para (q).

<sup>135</sup> Ibid, para (s).

<sup>136</sup> Ibid, Art 3.

<sup>137</sup> Ibid, Art 8. The Committee recommends that States Parties combat or overcome entrenched disability and gender stereotypes in the Concluding Observations of a number of countries. See: CRPD Committee, Concluding Observations on the initial Report of Slovakia, CRPD/C/SVK/CO/1 (18 April 2016) para 28; CRPD Report of Uganda, above n112, para. 16 (a); CRPD Committee, Concluding Observations on the initial Report of Gabon, CRPD/C/GAB/CO/1 (2 Oct. 2 2015) para 21.

<sup>138</sup> CRPD, above n1, Art 16. See also, the UNGA, Declaration on the Elimination of Violence Against Women, UN Doc A/RES/48/104 (20 December 1993) preamble, which states that ‘violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men’.

including addressing the “gender-based aspects” of the violence.<sup>139</sup> It further directs that government initiatives for prevention, recovery and reintegration must be comprised of appropriate “gender- and age-sensitive assistance and support” taking into account “gender- and age-specific needs”.<sup>140</sup> The provision concludes:

States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

Article 16 reflects a commitment to a contemporary understanding of how gender and disability converge to create heightened vulnerability of women with disabilities to abuse and violence.<sup>141</sup> As documented in General Comment No. 3, women with disabilities experience violence and abuse as a consequence of “physical force, economic coercion, trafficking and deception; misinformation; abandonment; the absence of free and informed consent... neglect...bullying, verbal abuse...psychological manipulation.”<sup>142</sup> Women with disabilities frequently experience violence in situations of dependence on perpetrators, such as “interpersonal violence” at the hands of partners or personal care workers in the home or various service providers in a public setting.<sup>143</sup> General Comment No. 3 elucidates that Article 16 incorporates distinct disability-related forms of abuse (e.g. such as, the removal of communication aids or the harming of assistance dogs) and abuse that is gender-specific (e.g. such as, refusal by caregivers to assist with menstruation management or forced abortions).<sup>144</sup>

Article 16 reinforces the serious obligation on States to take proactive legal, social and educational measures to prevent and protect against gender-based

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<sup>139</sup> CRPD, above n1, Art 16(1).

<sup>140</sup> Ibid, Art 16(2).

<sup>141</sup> A Canadian multivariate research study found that ‘patriarchal dominance and sexually proprietary behaviors were strongly linked’ to elevated risks of severe partner violence against women with disabilities: Douglas A Brownridge, ‘Partner violence against women with disabilities: Prevalence, risks and explanations’ (2006) 12 Violence against Women 805, 818. According to Dena Hassouneh-Phillips and Mary Ann Curry, ‘Abuse of Women with Disabilities: State of the Science’ (2002) 45 RCB 96, 96, women with disabilities experience higher rates of violence compared to the general population. They ‘experience disability-specific forms of abuse for prolonged periods of time and from multiple perpetrators’.

<sup>142</sup> General Comment No 3, above n99, para 31.

<sup>143</sup> Ibid, para 29. See also, Laurie E Powers, Rosemary B Hughes, Emily M Lund, ‘Interpersonal violence and women with disabilities: A Research Update’ (2009) VAWnet Applied Research Forum, Available at: <[http://www.arcgreatertwincities.com/pdf/AbusePrevention/PowersHughesAndLund\\_2009.pdf](http://www.arcgreatertwincities.com/pdf/AbusePrevention/PowersHughesAndLund_2009.pdf)> (28 January 2017), 2. These authors use the phrase ‘interpersonal violence’ to denote the scope of the problem extends beyond domestic violence and includes violence perpetrated by third parties. See also, Laurie E Powers, et al, ‘Interpersonal violence and women with disabilities: Analysis of safety promoting behaviors’ (2009) 15 Violence Against Women 1040.

<sup>144</sup> General Comment No 3, above n99, paras 31 and 32. See also, Hassouneh, Curry, above n138, 102. See also, Jennifer Nixon, ‘Domestic violence and women with disabilities: locating the issue on the periphery of social movements’ (2009) 24 Disabil Soc 77.

violence<sup>145</sup>, as well as the necessity to provide gender and age appropriate psychosocial support to victims. Finally, although Article 13 stands as the “access to justice” provision of the CRPD, it is noteworthy that the concluding paragraph of Article 16 also targets ~~access to justice~~the same by urging States to “prosecute” exploitation, violence and abuse of women and girls with disabilities.<sup>146</sup>

## Article 25 – Health

Article 25 guarantees the right of people with disabilities to enjoy the “highest attainable standard of health”.<sup>147</sup> It begins with the declaration that States ~~must~~ undertake all appropriate measures to ensure access to health services that are “gender-sensitive”.<sup>148</sup> However, the remaining language of Article 25 is predominantly gender-neutral and the provision appears to extend a formal equality framework.

Health services are a crucial issue for women with disabilities because, as repeated studies confirm, they encounter myriad obstacles precluding access to health care both in high and low income countries.<sup>149</sup> Numerous studies have identified frequent barriers to health care include, *inter alia*, inaccessibility of written and oral communications, inaccessible physical premises and equipment, lack of training of medical staff and limited transportation to appointments.<sup>150</sup>

In regards to sexual and reproductive health, women with disabilities are typically viewed as not needing “information or services with respect to contraception, safe sex, or childbearing” because they are perceived “as asexual (or sexually inadequate), not desirable, and incapable of ovulating, menstruating, conceiving or giving birth”.<sup>151</sup> Article 25 touches on this issue by requiring States to

<sup>145</sup> See also: CRPD Committee, Concluding Observations on the initial Report of Italy, CRPD/C/ITA/CO/1(6 October 2015) para 44; CRPD Committee, Concluding Observations on the initial Report of Ethiopia, CRPD/C/ETH/CO/1(4 November 2016) para 36 (c).

<sup>146</sup> It is noteworthy that, General Comment No 3, above n99, para 52, discusses how women with disabilities face various barriers to accessing justice, including dismissive attitudes, negative stereotypes, lack of accommodation, problematic reporting procedures, which discourage seeking legal redress. See also: CRPD Committee, Concluding Observations on the initial Report of Hungary, CRPD/C/HUN/CO/1 (22 October 2012) para 32.

<sup>147</sup> CRPD, above n1, Art 25.

<sup>148</sup> Ibid.

<sup>149</sup> See for example, Gloria L Krahn, Deborah Klein Walker, Rosaly Correa-De-Araujo, ‘Persons With Disabilities as an Unrecognized Health Disparity Population’ (2015) 105 Am J Public Health 198. [See for example, a recent American study on cancer screening found lower rates of pap tests and breast and cervical cancer screening among women with disabilities: C Brooke Steele at al, ‘Prevalence of Cancer Screening Among Adults With Disabilities, United States, 2013’ \(26 January 2017\) 14 Prev Chronic Dis 1, available at: <\[https://www.cdc.gov/pcd/issues/2017/pdf/16\\\_0312.pdf\]\(https://www.cdc.gov/pcd/issues/2017/pdf/16\_0312.pdf\)>.](#)

<sup>150</sup> Ibid. See also, The World Health Organization, Disability and Health Fact sheet (November 2016) Available at: [www.who.int/mediacentre/factsheets/fs352/en/](http://www.who.int/mediacentre/factsheets/fs352/en/) (accessed 18 February 2017). The WHO notes that ‘women with mobility difficulties are often unable to access breast and cervical cancer screening because examination tables are not height-adjustable and mammography equipment only accommodates women who are able to stand’.

<sup>151</sup> Mykitiuk, Chadha, above n2. See also, Heather Becker, Alexa Stuijbergen, Mindy Tinkle, ‘Reproductive health care experiences of women with physical disabilities: a qualitative study’

provide people with disabilities with the “same range, quality and standard of free or affordable health care”, including in the “area of sexual and reproductive health”.<sup>152</sup>

Nevertheless, Article 25 neglects to consider the disadvantageous confluence of disability and gender in sexual and reproductive health care. For example, in many countries women and girls with disabilities continue to be forcibly sterilized under the guise of health-related services, such as a form of birth control and menstruation management.<sup>153</sup> Further, the existence of discriminatory cultural mores permeating gynecological care result in ~~women with disabilities disabled women~~ being discouraged from having sex, receiving limited information about contraceptive use and not assessed for sexually transmitted diseases based on the belief that they should abstain for fear of passing on the disability.<sup>154</sup>

The absence of a statement in Article 25 recognizing the need for safe access to sexual and reproductive health services for women with disabilities is surprising given the advocacy around this issue during the drafting of the CRPD.<sup>155</sup> The ~~gender issues~~ facilitator ~~on gender issues~~ proposed that the Health article ~~include a requirement that require~~ States “develop and disseminate policies and programs” related to family-planning, pregnancy, childbirth and the post-natal period “that are inclusive of women with disabilities and protect them against any form of coercive treatment, including sterilization.”<sup>156</sup> Kenya’s submissions regarding the ~~CRPD’s~~ inclusion of gender issues ~~in the CRPD~~ articulated a nuanced understanding of the interconnections of the traditional cultural practices and reproductive health. Kenya proposed the Convention require States to:

...undertake measures to specifically increase education, awareness creation and access to

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(December 1997) 78 Arch Phys Med Rehabil 26, available at:  
<<https://www.ncbi.nlm.nih.gov/pubmed/9422004>>.

<sup>152</sup> CRPD, above n1, Art 25, para (a).

<sup>153</sup> Above n151 and See also [Barriers to accessing safe motherhood and reproductive health services: the situation of women with disabilities in Lusaka, Zambia. Smith E, Murray SF, Yousafzai AK, Kasonka L, Disabil Rehabil. 2004 Jan 21;26\(2\):121-7. https://www.ncbi.nlm.nih.gov/pubmed/14668150](#)~~bid. [redacted]~~

<sup>154</sup> For example, researchers found that, in Zambia, ‘a generalized assumption among reproductive health service providers that women with disabilities will not be sexually active, and not require [reproductive health] services, leads to increased vulnerability to sexually transmitted infection including HIV’: ~~ibid?? E Smith, ‘Barriers to accessing safe motherhood and reproductive health services: the situation of women with disabilities in Lusaka, Zambia’ (2004) 26 Disabil Rehabil 121-~~

<sup>155</sup> In its submissions to the facilitator, the Women’s International Disability Caucus wrote: ‘The exercise of their reproductive rights has strong implications for the equal rights of women in all areas of life, e.g. for the women’s role in the family and community, their participation in education, work, public and political life, their needs in the health sector, their participation in rehabilitation etc. On the same time, women with disabilities are often denied their reproductive rights on the basis of their disability.’: Women’s IDC (31 January 2006), ‘Response to the Facilitator’s Proposals on Women with Disabilities from 28/30 January 2006’. Available at: <<http://www.netzwerk-artikel-3.de/un-konv/doku/fac-re-20060130.pdf>>.

<sup>156</sup> Ad Hoc Committee’s Seventh Session on Article 6: Women with Disabilities, Proposals made by the Facilitators (Women and Children), pt I Art 25, available at: <<http://www.un.org/esa/socdev/enable/rights/ahcstata6sevsfacilitator.htm>>

information on issues unique to women, especially those that discriminate and marginalize, particularly women with disabilities, including but not limited to: a. Single parenthood; b. Negative cultural practices; c. Negative religious beliefs and practices; and d. Reproductive health.”<sup>157</sup>

General Comment No. 3 attempts to address the shortcomings of Article 25 by discussing at length the multiple barriers that women with disabilities experience in “the enjoyment of sexual and reproductive health”, as well as lack of access to information and services. Significantly, General Comment No. 3 expounds on the discriminatory practices that deny the rights of women with psychosocial and intellectual disabilities to independent decision-making regarding fertility and reproductive autonomy.<sup>158</sup> Additionally, General Comment No. 3 recognizes the particular vulnerability of certain women with disabilities, including refugees and migrants, who face additional barriers due to the denial of health services.<sup>159</sup>

In Article 25, we see that the CRPD disappointingly ignores an important dimension of the lives of women and girls with disabilities by failing to challenge their exclusion from reproductive and sexual health care programs.<sup>160</sup> Although Article 25 advances a formal notion of gender-equality in health services, it fails to confront the systemic issues that perpetuate barriers to health care and subordinate the health status of women and girls with disabilities around the world.

### **Article 28 – Standard of Living**

Article 28 recognizes the right of persons with disabilities to “an adequate standard of living for themselves and their families” and indicates this entails “adequate food, clothing and housing”.<sup>161</sup> This Article also promotes the prompt fulfilment of the right by requiring States to “take appropriate steps to safeguard and promote the realization”, including measures to ensure women and girls with disabilities can access “social protection” and poverty reduction programmes.<sup>162</sup> The CRPD Committee has explained that “social protection” includes “interventions designed

<sup>157</sup> Draft Article 15 Bis by Kenya, Comments, proposals and amendments submitted electronically, Sixth session on Article 6: Women with Disabilities, para 2, available at: <<http://www.un.org/esa/socdev/enable/rights/ahcstata6sscomments.htm>>

<sup>158</sup> General Comment No 3, above n99, para 44.

<sup>159</sup> Ibid, para 39.

<sup>160</sup> Notwithstanding, the Committee has recommended that States Parties address issues of discrimination and stereotyping regarding the sexual and reproductive health rights of disabled women and girls and provide access to services, in a few Concluding Observations. See: CRPD Committee, Concluding Observations on the initial Report of El Salvador, CRPD/C/SLV/CO/1 (8 October 2013) para 52 (a); CRPD Committee, Concluding Observations on the initial Report of Ukraine, CRPD/C/UKR/CO/1 (2 October 2015) para 47.

<sup>161</sup> This list mirrors the list in Article 11 of the ICESCR, above n35, para 30.

<sup>162</sup> Sub-paragraph 2 articulates this specific duty on states. Kenya proposed an expansive obligation on States to protect disabled women in regards to social security and noting property ownership: ‘States parties undertake to ensure sustainable livelihood for women with disabilities by adopting and implementing appropriate policies and legislative measures that guarantee and enhance their access to and ownership of land and other property, access to credit, gainful employment and social security’, Draft Article 15 Bis by Kenya, above n154, para 5.

to guarantee basic income security and —access to essential social services, with the ultimate goal of achieving social inclusion and participation in the community.”<sup>163</sup>

Gender-based disparities in economic and social status are well documented.<sup>164</sup> Compared to men with disabilities, women with disabilities suffer greater poverty, have less education and often carry additional expenses related to raising children.<sup>165</sup> In some cultures, widespread prejudice and stigma against women with disabilities engenders social isolation and concomitant deep poverty. ~~Helen Meekosha points out that systemic conditions exacerbate poor standards of living for women with disabilities in “developing countries” because “poverty hits harder on women and girls due to patriarchal property ownership structures” and “aid is less likely to reach women and girls who are less able to compete in situations of scarcity.”<sup>166</sup> Even in countries with strong economies, like the USA and Canada, All over the world, women with disabilities have lower incomes and experience greater hardships, particularly disabled young and elderly women and single mothers, than their non-disabled counterparts.<sup>167</sup>~~

In General Comment No. 3, the CRPD Committee points out that “[p]overty is

<sup>163</sup> Report of the CRPD Committee, Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention, UN Doc CRPD/C/15/R.2/Rev.1, (6 October 2016) para 27.

<sup>164</sup> See, for example, research from the UK: Disability, Poverty and Development, DFID Information Department (February 2000) available at: <<http://hpod.org/pdf/Disability-poverty-and-development.pdf>>. See for example, research from the USA: Shawn Fremstad, ‘Half in Ten: Why Taking Disability into Account is Essential to Reducing Income Poverty and Expanding Economic Inclusion’ (September 2009) CEPR, available at: <<http://cepr.net/documents/publications/poverty-disability-2009-09.pdf>>. See also for example, Cameron Crawford, ‘Looking into poverty: Income sources of poor people with disabilities in Canada’ (2013), Institute for Research and Development on Inclusion and Society, available at: <<http://www.ccdonline.ca/media/socialpolicy/Income%20Sources%20Report%20IRIS%20CCCD.pdf>>.

<sup>165</sup> Chadha, Sheldon, above n6, 65. ~~Helen Meekosha points out that systemic conditions exacerbate poor standards of living for women with disabilities in “developing countries” because “poverty hits harder on women and girls due to patriarchal property ownership structures” and “aid is less likely to reach women and girls who are less able to compete in situations of scarcity.” Helen Meekosha, ‘Women With Disabilities Australia: ‘Gender and Disability (2004) available at: <<http://wwda.org.au/issues/gendis/gendis2001/>>. See also, Nora Ellen Groce, Jillian London, Michael Ashley Stein, ‘Working Paper 17: Intergenerational Poverty and Disability: The implications of inheritance policy and practice on persons with disabilities in the developing world, Leonard Cheshire Disability and Inclusive Development Centre (2012), available at: <<https://www.ucl.ac.uk/lc->~~

~~<<http://wwda.org.au/issues/gendis/gendis2001/>>. See also, Nora Ellen Groce, Jillian London, Michael Ashley Stein, ‘Working Paper 17: Intergenerational Poverty and Disability: The implications of inheritance policy and practice on persons with disabilities in the developing world, Leonard Cheshire Disability and Inclusive Development Centre (2012), available at: <<https://www.ucl.ac.uk/lc->~~  
~~eer/centrepublications/workingpapers/WP17\_Disability\_and\_Inheritance.pdf~~

<sup>167</sup> See for example, Susan L Parish, Roderick A Rose, Meagan E Andrews, ‘Income poverty and material hardship among U.S. Women with disabilities’ (2009) 83 Social Service Review, 33; Crawford, ‘Looking into Poverty’, above n160, 28-32.

both a compounding factor and the result of multiple discrimination.”<sup>168</sup> It is apparent that the need to redress systemic patterns of discrimination contributing to poor standards of living for women with disabilities is a global problem. It is also necessary to recognize that long-standing gender-disability inequities with respect to economic development are compounded by social exclusion. Article 28’s identification of women and girls with disabilities as recipients for “social protection” and “poverty reduction programs” is clearly aimed at ameliorating the gendered poverty gap suffered by women with disabilities.

### **Article 34 – Committee on the Rights of Persons with Disabilities**

Article 34 establishes the creation of the Committee on the Rights of Persons with Disabilities. According to this clause, the CRPD Committee should consist of 18 independent members, elected by States, to monitor the implementation of the Convention. Committee members are to be experts in the areas of disability and human rights because they are required to study state reports and issue recommendations in the form of concluding observations.<sup>169</sup> Sub-paragraph (4) expressly stipulates gender parity in the composition of the Committee:

The members of the Committee shall be elected by States Parties, consideration being given to equitable geographical distribution, representation of the different forms of civilization and of the principal legal systems, balanced gender representation and participation of experts with disabilities.<sup>170</sup>

By mandating equal gender participation on the Committee, the Convention values the need to ensure a range of perspectives and recognizes diverse experiences are required to effectively evaluate the information provided by States on how the rights in the CRPD are being implemented in their countries. Gender representation is especially vital given the various provisions in the CRPD that advance the interests of women and girls with disabilities. Further, it appears that Article 34 seeks to realize the goals of article 8 of CEDAW, which holds that women must be provided “on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.”<sup>171</sup>

While the wording of Article 34 clearly intends for the Committee to be fully gender inclusive, the current reality is regrettably far from the expressed ideal. The election process for the 2017 term to fill nine vacancies resulted in all-male appointments, despite three women campaigning for the open positions.<sup>172</sup> The United Nations’ entity for gender equality and the empowerment of women, called

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<sup>168</sup> General Comment No 3, above n99, para 59.

<sup>169</sup> Each member serves a four-year term with the possibility of one additional term upon re-election.

<sup>170</sup> CRPD, above n1, Art 34(4).

<sup>171</sup> CEDAW, above n2, Art 8.

<sup>172</sup> UN Women Statement on the Committee on the Rights of Persons with Disabilities, (1 July 2016), available at: <<http://www.unwomen.org/en/news/stories/2016/6/committee-on-the-rights-of-persons-with-disabilities#sthash.IsmAES4U.dpuf>>

UN Women, reports that in 2014-2016, there were six women out of 18 members and for the 2017-2019, there will be only one woman on the CRPD Committee.<sup>173</sup> Unfortunately, General Comment No. 3 is silent on the topic of the Committee's failure to adhere to the Convention's promise of equal gender representation. Even though the CRPD was heralded for introducing gender parity in its Committee, the current lone female representative is symbolic of the profoundly disenfranchised status of women with disabilities and how much still needs to be accomplished in order to meaningfully protect and promote the rights of women with disabilities.

### Omissions

-Although the final draft of the CRPD was approved with the intention of advancing a twin track approach that mainstreamed gender throughout the Convention in tandem with gender-focused provisions, there are several conspicuous junctures in the document where the non-existence of gender-specific language is lamentable.

For example, Article 11 (situations of risk and humanitarian emergencies) and Article 15 (freedom from torture or cruel, inhuman or degrading treatment or punishment) do not identify gender-specific concerns that arise during periods of civil strife or the gender-related aspects of war crimes. Neither clause contemplates how women with disabilities are highly vulnerable to being raped as a form of torture in situations of armed-conflict.<sup>174</sup> Ribet argues that Article 15 is further deficient because it "imposes no obligation on its state signatories to consider disability as a consequence of torture, or to ever consider the specific rights or identities of people who are disabled by torture."<sup>175</sup> General Comment No. 3 seeks to remedy these failings by repeated reference to the fact that women with disabilities are at increased risk of sexual violence in crisis settings.<sup>176</sup> In addition, General Comment No. 3 emphasizes certain factors in emergency situations exacerbate the vulnerability of and discrimination against women with disabilities, including the lack of sanitation facilities, inaccessible buildings and lack of accessible information and barriers to communication.<sup>177</sup>

The absence of women and girls as specific categories subject to the CRPD's reporting requirements in Article 31 is also extremely problematic. The need to collect data disaggregated on gender was advocated by various delegates during the AH Committee meetings.<sup>178</sup> The original draft by South Korea proposed that the

<sup>173</sup> Ibid. In 2012-2014 seven women out of 18 members, eight women out of 18 members in 2010-2012 and five women out of 12 members in 2008-2010.

<sup>174</sup> Rangita de Silva de Alwis, 'Mining the Intersections: Advancing the Rights of Women and Children with Disabilities Within an Interrelated Web of Human Rights' (Jan 2009) 18 Pac Rim L & Pol'y J 295, 298, describes various situations in Asia where 'rape is a tool of war'.

<sup>175</sup> Ripet, above n20, 181.

<sup>176</sup> General Comment No 3, above n99, para 49-50.

<sup>177</sup> Ibid, para 50.

<sup>178</sup> See, for example, Ad Hoc Committee on the UN Convention on the Human Rights of People With Disabilities 'Daily summary of discussion at the sixth session' (2 Aug 2005) available at: <<http://www.un.org/esa/socdev/enable/rights/ahc6sum2aug.htm>>, where the oral submissions of the National Human Rights Institutions urging that specific reference to gender-segregated data in relation to Article 6 and that states should be required to 'produce reports in a gender-segregated

CRPD “[i]ncorporate women with disabilities in social surveys and statistics collection efforts and collect gender-disaggregated data on persons with disabilities”.<sup>179</sup> The facilitator on gender issues noted in her report summarizing the consultations that there was “general support” for the inclusion of a gender perspective in the monitoring provisions.<sup>180</sup> The fact that Article 31 omits to instruct States to collect gendered statistics flies in the face of the CEDAW Women’s Committee’s vigorous recommendations in this regard. The CEDAW Committee directed States to provide detailed information in their periodic reports on the status of women with disabilities, in particular regarding education, employment, health services and social security.<sup>181</sup> Indeed, the absence is even more puzzling in light of repeated recommendations by the Committee in successive Concluding Observations calling on States Parties to compile data about persons with disabilities disaggregated by *inter alia* gender.<sup>182</sup> While General Comment No. 3 makes three references to gender data collection in the discussion of targeting multiple discrimination, it does not specify particular subject areas.<sup>183</sup> One queries if the omission of data collection about disabled women in Article 31 had anything to do with the fact that gender-related provisions are also missing from the CRPD in two out of the four areas identified by the CEDAW Women’s Committee, namely education and employment.

Notwithstanding the decades of United Nations women’s conferences, the vast array of United Nations and NGO commentaries and the number of delegates before the AH Committee that emphasized the magnitude of inequities experienced by women and girls with disabilities with respect to education and employment, the

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fashion’. See also, the Ad Hoc Committee of the CRPD (fourth session) ‘Daily summary of discussions related to Article 6’ (25 August 2004), available at:

<<http://www.un.org/esa/socdev/enable/rights/ahc4sumart06.htm>>, where the International Disability Caucus and Cuba supported the disaggregation of data on gender.

<sup>179</sup> Ad Hoc Committee Article 6L women with disabilities third session, Comments, proposals and amendments submitted electronically by Republic of Korea (27 May 2004) para (b), available at: <<http://www.un.org/esa/socdev/enable/rights/ahcstata6tscomments.htm#chile>>. See also, Disabled Persons International’s Towards visibility of women with disability in the UN Convention, Proposals to complement the Draft Convention in order to fulfill the Principles of Gender Mainstreaming (November 19 2004), Art 6, wherein they state ‘In our opinion, it is absolutely vital to codify at least gender-disaggregated data collection as suitable data is paramount in recognizing gender-specific problems and taking effective measures’.

<sup>180</sup> Facilitator’s Reports of the Ad Hoc Committee on the Convention on the Human Rights of People with Disabilities, Daily summary of discussion at the sixth session (11 August 2005) available at: <<http://www.un.org/esa/socdev/enable/rights/ahc6sum11aug.htm>>.

<sup>181</sup> UN High Commissioner for Human Rights CEDAW Committee (10<sup>th</sup> session, 1991) General Recommendation No 18: Disabled Women, Un Doc A/46/38 (General Comments). See also, CESCR Committee’s General Comment No 14: The Right to the Highest Attainable Standard of Health (Art 12), (22<sup>nd</sup> session) E/C.12/2000/4 (11 August 2000) para 20, states that the disaggregation of health and socioeconomic data according to gender is essential for identifying and remedying inequalities in health.

<sup>182</sup> As of April 2017, this recommendation was made in 22 out of 45 Concluding Observation Reports available.

<sup>183</sup> General Comment No 3, above n99, paras 16 and 63(d) and (e).

CRDP is surprisingly silent on these topics.<sup>184</sup> Neither Article 24 (Education) nor Article 27 (Employment) consider the gendered implications of lack of education or employment for women and girls with disabilities.<sup>185</sup> This is particularly disconcerting because of the pervasive exclusion and discrimination experienced by women and girls with disabilities with respect to schooling and work. In its submissions to the AH Committee regarding education, UNESCO pointed out that the majority of children who do not attend school are children with disabilities and over 57% of them are girls.<sup>186</sup> The facilitator on gender issues noted that in her consultations there was “a majority view” that women with disabilities should be mentioned in the substantive paragraphs dealing with education and employment; however, it is unclear why gender-specific language was omitted from these thematic areas.<sup>187</sup> This vacuum of gender-sensitivity in Articles 24 and 27 is especially alarming given the well documented linkages between lack of education and unemployment to women’s impoverishment, victimization and further disablement.<sup>188</sup>

Finally, it is noteworthy that Article 23, “respect for home and the family”, does not contain reference to women and girls with disabilities. This is striking considering the ever-mounting universal recognition that women and girls with disabilities have a right to marry, found a family and become parents.<sup>189</sup> During the AH Committee meetings, Qatar proposed that the CRPD include a provision promoting “measures to change prevailing negative attitudes” towards marriage, sexuality and parenthood by women and girls with disabilities and sought “the encouragement of the media to play an important role in removing such negative attitudes”.<sup>190</sup> Blank et al. contend that the CRPD should have included gender-

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<sup>184</sup> During the Ad Hoc Committee’s fourth session, Landmine Survivors Network Comments, proposals and amendments on Draft Article 15bis, available here: <<http://www.un.org/esa/socdev/enable/rights/ahcstata6fsccomments.htm#lsn>>, the Landmine Survivors Network comments on Korea’s proposed Article 15(bis) highlighting that ‘the protection of the motherhood of women with disabilities, and ensuring that women with disabilities are not deprived of their right to work due to their pregnancy or childbirth are not adequately covered’ in the CRPD.

<sup>185</sup> For example, De Alwis, above n170, 300, describes how girls with disabilities are less likely to attend school and women with disabilities have lowest literacy rates in the disability community.

<sup>186</sup> UNESCO Statement Comments made at the Sixth Session of Ad Hoc Committee submitted to the UN Secretariat, UNESCO Statement on Education Article 17, Contributions from UN System Organizations, available at:

<<http://www.un.org/esa/socdev/enable/rights/ahc6contunagencies.htm>>

<sup>187</sup> Ad Hoc Committee on the Convention on the Human Rights of People with Disabilities, Daily summary of discussion at the sixth session (11 August 2005), available at:

<http://www.un.org/esa/socdev/enable/rights/ahc6sum11aug.htm> (accessed March 10, 2017).

<sup>188</sup> UNESCO’s submissions to the AH Committee stated that “The undeniable link between poverty and education cannot be overlooked”: UNESCO Statement of Comments, above n181.

<sup>189</sup> See, De Alwis, above n170, 312. De Alwis highlights the need to bring forward a gendered disability perspective in identifying ‘customary laws and practices that discriminate against women and children in relation to their rights to marry, bear children and found a family; to have custody of their children and to inherit and own property.’ Also see Mykitiuk, Chadha, above n2, and General Comment No 5, above n33, para 30.

<sup>190</sup> Report of the third session 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

specific provisions guaranteeing women with disabilities “equal enjoyment of family rights” and “gender-sensitive measures to enable women with disabilities to exercise their roles as wife, mother, and home-maker.”<sup>191</sup>

## Conclusion

The inclusion of Article 6 in the CRPD signals to the international community that States must ~~act to~~ **proactively** take measures to achieve both formal and substantive equality for girls and women with disabilities and that they have an immediate duty to protect, respect and fulfill their rights and fundamental freedoms. Through entrenching the concept of ‘multiple discrimination,’ Article 6 acknowledges that women and girls with disabilities experience compound and intersecting forms of discrimination and oppression, as well as barriers that must be addressed in order for them to achieve full participation in society. As noted by the Committee in successive Concluding Observations, the implementation of Article 6 requires States to adopt or amend anti-discrimination legislation to prohibit multiple discrimination, including on the grounds of gender and disability. In addition, States are called upon to mainstream gender and disability perspectives into legislation, policy and programs, to establish mechanisms to monitor the progress in implementing Article 6, and fund data collection and research on women and girls with disabilities. It is also strongly recommended that States consult with women and girls with disabilities on the design and implementation of the CRPD and that sufficient budgetary resources be allocated for legal and policy objectives as well as data collection initiatives. As part of a twin tracking approach to gender mainstreaming in the CRPD, Article 6 must be read in (and into) the context of the convention as a whole, and in light of the other articles that directly reference gender. It is an interpretive provision through which the responsibility of States across the Convention is articulated. While it is too early to assess the practical import of Article 6, it is encouraging that the recently released General Comment No. 3 has ameliorated some of the Convention’s shortcomings identified in this chapter, especially in relation to the place of gender in articles apart from Article 6. What we can say for certain is that States must not only remedy intersectional discrimination against disabled women, but adopt measures aimed at their development, advancement and empowerment and promote “measures to empower them, by recognizing” them “as distinct right holders, providing channels to have their voices heard and to exercise agency, raising their self-confidence and increasing their power and authority to take decisions in all areas affecting their lives.”<sup>192</sup>

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Disabilities, UN Doc A/AC.265/2004/5 (Qatar) (9 June 2004) available at: <<http://www.un.org/esa/socdev/enable/rights/ahc3reporte.htm>>

<sup>191</sup> Peter Blanck, Meera Adya, and Maria Veronica Reina, above n96.

<sup>192</sup> General Comment No. 3, above n99, para 7.