



Gendering the Draft Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities

Legal background paper

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"The commitments made by governments in Beijing reflect the understanding that women's equality must be a central component of any attempt to solve the world's social, economic and political problems. Thus, where once women fought to put gender equality on the international agenda, gender equality is now one of the primary factors shaping that agenda."

Kofi Annan

United Nations Secretary-General

on the occasion of International Women's Day, 8 March 1997

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Introduction

Since the General Assembly established an Ad Hoc Committee to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities in 2001¹, the Ad Hoc Committee has been working on a draft. During its sixth session in August 2005 the Committee discussed the question whether and how to introduce issues of disabled women and a gender perspective into the new convention.

During negotiations as well as in discussions in informal talks at the session, several questions and concerns have been raised concerning explicitly mentioning disabled women in the Convention.

To meet these objections DPI published this background paper, supported by the German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. During a conference on 17 and 18 December 2005, the paper has been intensively discussed and supplemented together with experts on international law and UN human rights system, inter alia with Dr. Ineke Boerefijn from the SIM Netherlands Institute of Human Rights in Utrecht, Mara Bustelo from the Office of the UN High Commissioner for Human Rights in Geneva and Prof. Andrew Byrnes from the University of New South Wales in Sydney. We appreciate their valuable comments and contributions.

We hope that this paper can serve as a valuable contribution towards the full and effective protection and enjoyment of all human rights by men and women with disabilities.

¹ General Assembly Resolution 56/168 (A/RES/56/168)

Summary

A. Women with disabilities are not just a group. Gender is one of the most important categories of social organisation, and gendered differences are also reflected in different life experiences of women with disabilities and men with disabilities. Women with disabilities face particular disadvantages in the areas of education, work and employment, family rights, health, violence and abuse.

B. The reaffirmation of equality of men and women is not sufficient to meet the obligation to eliminate all forms of discrimination against women and to ensure de-facto equality. International human rights law requires actions and appropriate measures as immediate obligation. This means finding an effective way to protect disabled women against discrimination based on sex. Formally inclusive, but gender-neutral treaties have not worked effectively in this respect.

C. The main options for including specific references to women in the Convention are a stand-alone article and the mention of women with disabilities in several articles. Considering the advantages and disadvantages of the two it becomes clear that a combination of the two would make sense and that the possible content of provisions for disabled women and girls is more important than the placement of the provisions. Mentioning women and girls with disabilities should be considered where inequalities between men with disabilities and women with disabilities exist. A specific article should concentrate on discrimination against women with disabilities. It should include the basic measures needed to achieve equality as set forth in art. 2-5 CEDAW, including the strategy of gender mainstreaming – tailored to disability.

D. Group-specific references in other human rights treaties to address a cross-cutting issue are a common practice. Experiences show that they can achieve a higher level of attention, visibility and actions - though neither constant reporting nor sustainable actions are guaranteed.

E. The main arguments against the inclusion of specific references to women in the Convention are not persuasive: Referring disabled women to CEDAW neglects the fact that the current Convention has the goal to tailor all existing human rights towards disability. If groups of disabled people have an equally strong case concerning the need for explicit references as women they should be considered, too. References to women with disabilities do not amount to discrimination against men with disabilities.

F. A gender-sensitive convention has to be accompanied by a gender-sensitive implementation process as well as gender-sensitive mechanisms of collecting data, monitoring, evaluation of policies and programmes.

G. On the basis of the previous considerations this chapter contains some proposals for a specific article 6 and for the inclusion of a gender perspective in articles with a key relevance for women with disabilities.

A. The situation of Women with Disabilities

I. General notes

Women are half of the human population and women with disabilities comprise a similar proportion of persons with disabilities. According to World Bank figures, disability affects the lives of more than 600 million people globally². This means that there are estimated 300 million women with disabilities worldwide, with 240 million of them living in developing countries. This is a large and very diverse group that includes women with physical, sensory and mental impairments whether visually apparent or not.

Gender is one of the most important categories of social organization, and patterns of disadvantage are often associated with the differences in social position of women and men. These gendered differences are reflected in the different life experiences of women with disabilities and men with disabilities. While women with disabilities have much in common with men with disabilities, women with disabilities have to face multiple discrimination in many cases, so that they are often more disadvantaged than men with disabilities in similar circumstances.

II. Areas of specific concerns relating to women with disabilities

1. Education

Education levels and literacy rates of women with disabilities tend to be lower than those of men with disabilities. The estimated literacy rate for people with disabilities worldwide is 3%, with the rates for disabled women and girls being about only 1%³.

Existing statistics on vocational training indicate that the percentage of women trainees is low. Studies carried out in Switzerland⁴ have shown, for example, that more effort is invested in vocational rehabilitation for men than for women.

2. Work and Employment

Three quarters of women with disabilities worldwide and up to 100% in some developing countries are excluded from the workforce - though the majority contribute significantly to their families through cooking, cleaning, caring for children and relatives⁵. So the vast majority of women with disabilities live in poverty. According to

2 www.worldbank.org/disability

3 Groce 1997a cited in: Rousso, Harilyn: Girls and women with disabilities: An international overview and summary of research“, Disability Unlimited Consulting Services, New York 2000 (Background paper for the Beijing +5 Conference in New York, June 2000)

4 Council of Europe: „Discrimination against women with disabilities“, Council of Europe Publishing, Strasbourg 2003

5 The World Disability Report: Disability `99. The International Disability Foundation, Geneva 1998

a Spanish study, throughout the European Union 35% of men with disabilities have jobs, while the corresponding figures for women with disabilities were 25%⁶. Disabled women are twice as unlikely to find work as disabled men⁷. Studies in the US found, that severely disabled women have an average monthly income of only 1000 \$, compared to 2190 \$ for a non-disabled man. Disabled men earned 55% more than disabled women⁸.

3. Family Rights

For many women with disabilities, both in industrialized and developing countries, neither marriage nor childbearing and motherhood are seen as a viable option. Studies found that 50% of women with activity limitation were married, compared to 68 % of men with activity limitation⁹. Women who became disabled after marriage are at higher risk of divorce than disabled men and have often problems to maintain custody of their children or to adopt children.

4. Health

When ill, girls and women are less likely to receive medical attention or to be taken to hospitals, especially in developing countries. An untreated earache, for example, can result in acute hearing loss.

Women and girls with disabilities face many barriers to basic health care. Medical research is often based on studies of men and disabled women are not included in the mainstream health care programs, particularly maternal and gynaecological issues. They are often sent to poorly equipped rehabilitation-focused facilities.

In various countries, women with disabilities are prevented from or pressured against having children through sterilisation, unauthorized hysterectomies, medical procedures or abortion. If they do bear children, they may be forced to give up children through adoptions. Women with mental disabilities have got a particularly high risk for involuntary sterilisation.

6 Council of Europe: „Discrimination against women with disabilities“, Council of Europe Publishing, Strasbourg 2003

7 The World Disability Report: Disability `99. The International Disability Foundation, Geneva 1998

8 Asch, et. al reporting the US Census Bureau 1999 cited in: Rousso, Harilyn: Girls and women with disabilities: An international overview and summary of research“, Disability Unlimited Consulting Services, New York 2000 (Background paper for the Beijing +5 Conference in New York, June 2000)

9 Asch, et. al cited in Rousso 2000

5. Violence and Abuse

Women with disabilities are at high risk from physical and sexual violence, at least at double the rate of their non-disabled peers¹⁰. They are viewed as "easy targets". Studies from industrialised countries suggest that 39 to 68% of girls and 16 to 30 % of boys with developmental disabilities will be sexually abused before their 18th birthday¹¹. Women with psychiatric disabilities or women in institutions are also at high risk for violence and abuse. Even if a disabled woman does escape from the violence, very few shelters are accessible.

B. The necessity to complement the Convention by specific references to women with disabilities

I. Obligations

All member states of the United Nations have accepted the obligation to eliminate all forms of discrimination against women and to ensure equality between men and women¹². But guaranteeing equality of men and women in the law is not sufficient, as the duty to eliminate discrimination means more than not to actively discriminate and more than to do nothing. International human rights law requires States to take all appropriate measures (including positive steps) to ensure that women can enjoy equal rights in practice¹³.

In its general comment on the nature of obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Committee on Economic, Social and Cultural Rights (CESCR)¹⁴ has stated that the obligations not to discriminate and to guarantee equal treatment are immediate obligations. This means that States may not argue that ensuring equality and non-discrimination are merely obligations to be progressively implemented, and a lack of resources can never justify discrimination or unequal treatment. The immediate nature of the obligation in relation to non-discrimination in the enjoyment of rights is recognised in article 4 of the Chair's draft text of October 2005.

Related to the Disability Convention this means: as women with disabilities are entitled to enjoy substantive equality in the enjoyment of their human rights, states parties are obliged to look for the most effective way to protect women with disabilities against discriminations. In our view, this means explicit references to the

10 Waxman, Fiduccia & Wolfe 1999 cited in Rousso 2000

11 Sobsey, 1994, as reported in Reynolds, 1997 cited in Rousso 2000

12 As set out in the Charter, the UDHR, ICESCR, ICCPR, CEDAW, etc.

13 CEDAW, Art. 2

14 Committee on Economic, Social and Cultural Rights

position of women and girls are required, both in a stand-alone article and in specific articles of particular importance to women.

II. Neutral documents don't work

The inclusion of formally inclusive, gender-neutral guarantees in other treaties has not resulted in adequate attention being given in the implementation of those treaties to the position of women (including women with disabilities) and the gender dimensions of human rights.

In addition to the multiple discrimination women with disabilities have to experience, they face the problem of a double invisibility as women and as disabled persons¹⁵.

UN member states have accepted the importance of taking into account gender relations in efforts to ensure the full enjoyment by women of their human rights. This consensus is reflected in many documents defining and endorsing gender mainstreaming as a means of ensuring that a gender perspective is explicitly taken into account in the development and implementation of laws, policies and programs¹⁶.

III. Consequences

1. The reaffirmation of equality between men and women is necessary but not sufficient.
2. Specific reference to the problems faced by women with disabilities is necessary to make women with disabilities and the issues that affect them differently or disproportionately visible and to increase the likelihood that they will be addressed by governments and others in the implementation of the Convention.

C. Different options for the explicit inclusion of the gender issues

I. The options

Discussion of how to include gender issues in the convention has basically concentrated on two options: one is the inclusion of a stand-alone article on women

15 Disabled Persons' status in the European treaties: Invisible Citizens. European day of disabled persons 1995 and (www.un.org/Conferences/Women/PubInfo/Status/TextOnly.htm)

16 The strategy of gender mainstreaming was introduced at the 3. World Conference on Women in Nairobi, 1985. Since then it has been endorsed in many important UN documents (inter alia the Vienna Declaration 1993, the Beijing Declaration 1995, Resolutions of the General Assembly 1993, 1994, 1995, 1996, 2004)

with disabilities; the other is mentioning women with disabilities and appropriate measures in several articles.

1. The stand-alone article

Bearing in mind also experiences with stand-alone articles in other human rights treaties,¹⁷ a stand-alone article might have the following advantages and disadvantages:

Advantages:

Visibility: The fact that women with disabilities face even more inequalities than men with disabilities becomes visible when addressed in a specific article.

Higher profile: The objective of achieving de facto equality of women with disabilities becomes of greater importance for those responsible for implementing the Convention.

Mobilisation point: States parties may be more mobilised to undertake adequate measures and reporting accordingly to the provisions set forth in the specific article.

Comprehensiveness: A stand-alone article affords the opportunity to address inequalities between women and men with disabilities appropriately and comprehensively.

Disadvantages:

Isolation of the issues: Addressing women with disabilities in a specific article while the whole convention is designed to meet their rights, too, could separate their cause from general disability policies.

Repetitiveness: Depending on the content of a specific article there is a danger of repeating provisions of other articles which could also lead to a separation of women's issues from the general disability policies and actions.

Working against the goal of gender mainstreaming: Addressing women with disabilities in a specific article which would include specific measures for women in order to fulfil their rights set forth in the rest of the convention contradicts the strategy of gender mainstreaming.

2. Mentioning women in several articles

Advantages:

Additional visibility: Including provisions in favour of women with disabilities in articles of special importance might lead to greater recognition of the issue by those authorities responsible for the implementation of a certain article. For example, provisions for women with disabilities in an article on the right to work are more likely to be seen as a basic reference by employment authorities than if they are included in a stand-alone article.

¹⁷ see also the following chapter

Concentration on specific areas for disabled women may better ensure action:

More specific obligations will be more effective in producing results than very general statements of the right to equality of women with disabilities.

Disadvantages:

Singling out only some rights could mean neglecting others.

Duplication: There might be a problem of duplication, if specific provisions for women and girls with disabilities merely repeat those already included in a stand-alone article.

II. Content

In order to assess which combination of the two main options will be most effective, it is necessary to consider the possible contents of a specific article and the inclusion of references to women with disabilities into several articles.

Since the whole convention has the purpose of eliminating inequalities between disabled people and non-disabled people, the specific references to women with disabilities should be addressed in those articles that deal with a field in which women face even more disadvantages than men with disabilities and generic references to “persons” with disabilities risk ignoring the issues which affect women with disabilities disproportionately when compared to men with disabilities: Those fields are at least: **health, education, employment, violence, family rights and participation in public life.**

A **stand-alone article**, on the other hand, should basically concentrate on measures that need to be taken to address and prevent generally discrimination against women with disabilities to meet the obligations States have accepted to achieve equality between men and women.

Inevitable elements are the principle of **non-discrimination** and ensuring the **equal and effective enjoyment of all human rights**. Art. 2-5 CEDAW include such basic principles: elimination of discrimination (art. 2), positive action to ensure exercise and enjoyment of human rights and fundamental freedom (art. 3), the clarification that temporary special measures shall not be considered discrimination based on sex (art. 4) and the obligation to modify social and cultural patterns of conduct, including the elimination of prejudices and customary practices [art. 5 (1)].

Just as other human rights have been tailored to disability throughout the Convention, these basic obligations to achieve equality between women and men should be tailored to disability as well and be included in a specific, stand-alone article.

Moreover, the **strategy of gender mainstreaming**, which has been developed and used world-wide as an effective mean to achieve real progress in ensuring equality

between men and women should also be part of the Convention and could be included in a stand alone article.

D. Examples of group-specific references in other human rights treaties and experience

I. Group-specific references in other human rights treaties

Including specific references to particular social groups in a human rights treaty to address cross-cutting issues is a common practice. Existing human rights treaties frequently include specific provisions to deal with groups in particularly vulnerable circumstances - whether as stand-alone articles or in specific references within broader articles. The objectives are either to address issues specific only to those groups, or to draw attention to particular measures required to ensure the implementation of the rights guaranteed by the treaty for those groups.

Examples of such provisions include:

1. ICCPR¹⁸

- Art. 2 prohibits discrimination based on race, language or religion.

But, in addition, there is **art. 27** on ethnic, religious or linguistic minorities and their right to enjoy their own culture practise their own religion or use their own language.

- Art. 24 states every child shall have the right to such protection as required by his status as a minor.

But **art. 10** (2) (b) also states more specifically that accused juveniles shall be separated from adults and dealt with particularly speedily.

And **art. 23** (4) provides that provision shall be made for protection of children in case of dissolution of marriage.

2. CEDAW¹⁹

The entire convention protects all women against discrimination. But there are still specific provisions to address issues specific to some groups of women, e.g.

- **art. 11 (2)** protects pregnant women and mothers in the context of equality in employment

¹⁸ International Covenant on Civil and Political Rights, 1966

¹⁹ Convention on the Elimination of all Forms of Discrimination against Women

- **art. 14** focuses on the implementation of the rights guaranteed in the convention for rural women as a particular sub-group of women requiring special attention

3. CRC²⁰

Art. 2 ensures all rights will be ensured for all children, without discrimination based on disability.

- But **art. 23** still provides a stand-alone provision on children with disabilities focusing on the need for special assistance for the child and his/her family - where necessary free of charge – so that the child can enjoy the rights guaranteed by the convention.
- Similarly, the convention includes many other provisions focusing on specific groups of children: **art. 10 (2)** on children whose parents reside in different states; **art. 20** on children deprived of a family environment; **art. 22** on refugee and asylum-seeking children; **art. 30** on children from minority groups (even though they are already covered by art. 27 ICCPR, as all members of minorities); **art. 40** on children in conflict with the law; or **art. 25** on children who have been placed in institutions, foster care etc, who – while already covered by art. 20's provision on children deprived of a family environment – were seen to require specific attention to the need to have the placement decision reviewed on a periodic basis.

II. Experience with Article 23 CRC and Article 14 CEDAW

1. Art. 23 CRC

Evaluating States Parties' reports under the CRC shows that while the provisions in article 2 and article 23 have positive effects in ensuring that some attention is given to children with disabilities, the record of States parties in ensuring the rights of these children are fully guaranteed, still falls well short of the required level of action.

A case study carried out by Dr. Ursula Kilkelly²¹, who analysed several reports between 1998 and 2000, concluded that generally the reporting about the situation of disabled children is insufficient. The reports lacked specific statistical data on children with disabilities and furthermore only inadequate details were given of the extent to which these children enjoyed their rights in practice. The Committee's Guidelines were also often ignored. As a result, the reports did not provide information about the problems and barriers to the implementation of the Convention. Finally, it seems that the majority of States provided hardly any information in relation to article 2 and discrimination against children with disabilities in the context of the whole convention, but only reported under article 23.

²⁰ Convention on the Rights of Children

²¹ Dr. Ursula Kilkelly, „Disability and children: the Convention on the Rights of the Child (CRC)“, in: Quinn and Degner, „Human Rights and Disability“ (2002), HR/PUB/02/1

In her **résumé**, on the one hand Kilkelly saw also a positive effect resulting from the explicit reference to disability in article 2 and the inclusion of article 23, including through the reporting process itself, as well as an increasing prominence of the disability perspective caused by public debates and discussion days, the influence of non-governmental organizations and other activities of UN bodies. But on the other hand she stated that it still would take much additional effort to achieve the full enjoyment and protection of all right of the Convention by children with disabilities.

2. Art. 14 CEDAW

An examination of several recent country reports under the CEDAW Convention²² shows that rural women and their situation are for many countries an important matter of concern, naturally especially for those with a majority of the population living in rural areas.

In the reports rural women and their situation are also generally mentioned in the context of other articles, but there is a vast difference in specificity between reports. Quite often reports provide details of legislation, measures and single initiatives, but provide insufficient description of the situation or the available data is not gender-disaggregated.

Nevertheless, most States Parties include a chapter on women in rural areas or report at least explicitly about their situation – according to the provisions of art. 14 (2) of CEDAW. Thus, the positive effect is that article 14 CEDAW has drawn States Parties' attention to the situation of women in rural areas and activated them to undertake specific measures and to initiate programmes to improve their living standards. Although the full enjoyment of all rights set forth in CEDAW seems still to be out of reach for a majority of women in rural areas, art. 14 made them visible and mobilised countries to undertake special measures to improve their situation.

E. Arguments against specific references to women in the Convention

I. Is CEDAW not enough?

Some have suggested that inclusion of references to women with disabilities in the Convention is not necessary as CEDAW already covers the rights and fundamental freedoms of women.

22 Country Reports are published on: www.un.org/womenwatch/daw/cedaw/reports.htm.

CEDAW is a great convention with its obligation to achieve equality between men and women, the prohibition of discrimination against women, including effective measures and the obligation to examine appropriate measures (compare chapter B).

However, just as other important human rights instruments have no special provisions for disabled women and men and have therefore failed to be truly effective for people with disabilities, CEDAW also does not include any references to women with disabilities. This leaves women with disabilities invisible for many State Parties to CEDAW. Even the demand of the CEDAW committee to include information on disabled women into CEDAW country reports²³ could not ensure that countries take action consistently to address the situation of women with disabilities or refer to them specifically in their reports. This was clearly shown in a study of five country reports from the years 1994 to 1999²⁴ and can also be checked up in recent reports on CEDAW.

Thus, the argument neglects the fact that the current Convention has the goal of tailoring all existing human rights towards disability. Referring disabled women to CEDAW, makes the new Convention a convention for disabled men alone.

II. What implications will there be regarding groups like children or indigenous people?

Some have suggested that the inclusion of references to women with disabilities in the Convention might open the floodgates to the inclusion of a range of specific articles dealing with other groups of persons with disabilities, such as children with disabilities, indigenous people with disabilities, and other groups. They suggest that it would be undesirable to include references to so many specific groups in the Convention as this would fragment the Convention and possibly isolate consideration of the rights of the members of those groups to the provisions of the Convention which explicitly address them.

But in view of the **importance of gender** as a fundamental category of social relations (see chapter A. I.), one must realise that gender is different from these other categories. Women are not just another group, and the obligation to achieve equality between women and men has been proclaimed in very strong terms at international level; there is clearly international agreement and commitment to address gender inequality as a priority (see chapter B. I.).

However, the question of the inclusion of other social groups should be considered on the **merits of each case**. If there are particular experiences of disadvantages which members of those groups with a disability experience differently or disproportionately, and there is a need explicitly to name those violations in order to ensure that they receive adequate attention, then the mere fact that a number of

23 General recommendation No. 18, 1991

24 Bruce, Quinlivan, Degener in: "Human Rights and Disability", page 107, UN, HR/PUB/02/1

groups will be mentioned is not a persuasive reason for refusing to include explicit reference to groups which have made out such a case.

This approach has been adopted in other human rights conventions (see the examples mentioned above in chapter D.). Indeed, it would reflect the diversity of experiences of persons with disabilities, and underlines the need to be aware of that diversity in developing strategies to ensure that all persons with disabilities enjoy their human rights on the basis of equality with others.

III. Would the inclusion of specific references to women and girls with disabilities amount to discrimination against men and boys with disabilities?

Some may argue that the inclusion in the Convention of specific provisions relating to women and girls with disabilities may amount to discrimination against men and boys with disabilities.

This suggestion fails to recognise **fundamental differences** in the life experiences of women with disabilities and men with disabilities.

First, the **concept of substantive equality** accepted under international law and included in the draft Convention, accepts that persons in different circumstances may need to be treated differently in order to be treated equally. For example, ensuring that women receive adequate health care in relation to pregnancy and childbirth is a different treatment than men would receive, but does not involve discrimination against men – it simply reflects a difference between women and men. To the extent that the Convention includes provisions addressing issues specific to women, it is therefore simply ensuring substantive equality and does not involve discrimination. Conversely, there may be issues which are specific to men with disabilities which are not applicable to women with disabilities; the inclusion of specific provisions on these matters in the Convention could also be appropriate, once they have been clearly identified.

Secondly, although women with disabilities and men with disabilities all face serious discrimination and denial of their fundamental human rights, it is beyond doubt that in many areas the **position of women with disabilities is significantly worse** than of men with disabilities, e.g. in the areas of education, family life and employment as statistics show (see chapter A. II.). Focusing attention on the particular disadvantage of women with disabilities is necessary and justifiable in order to ensure that they are not left behind – but it does not mean that the issues of discrimination that face all persons with disabilities do not need to be addressed. They do, but in order to increase the level of enjoyment of their human rights by all persons with disabilities, it is necessary to recognise and respond to the particular disadvantages that women with disabilities face.

F. Implications of a gender-sensitive approach for implementation and monitoring of the Convention

I. Introduction

Implementation processes as well as mechanisms to monitor and evaluate policies and programmes have been largely gender-neutral, and thus gender-blind, for a long time. But neither processes of implementing policies nor the collection and analysis of data are gender neutral processes. Results can be influenced by gender bias derived from a lack of gender awareness, cultural attitudes or social practices of the people involved²⁵.

II. Checklists for gender-sensitive monitoring

1. In 1995 the **International Labour Organization (ILO)** developed general guidelines on using gender-sensitive monitoring and evaluation mechanisms. They also developed checklists with gender considerations. Their general recommendations include: to analyse gender roles within the target group, to identify their different needs and take steps to address them, to involve groups and organisations with gender expertise in the planning process, and to involve people from the target group, especially women so that they can express their needs and priorities²⁶.
2. In 1998 **Womenwatch**²⁷ developed and published mechanisms to hold governments accountable for mainstreaming gender, inter alia:
 - Disaggregated statistics, performance indicators, expert scrutiny and regular public reporting
 - Regularly reviewed qualitative and quantitative performance indicators. ...
 - Strengthen the role of the National Machineries to assist in the formulation of gender-sensitive performance indicators and in introducing gender analysis in government reports
 - Introduction of gender auditing systems and possibly of gender budgeting
 - Strengthen the participation of NGOs ...²⁸

25 Paola Brambilla: Gender and Monitoring: A Review of Practical Experiences. BRIDGE, Institute of Development Studies, Brighton, 2001 (www.ids.ac.uk/bridge/)

26 ILO, 1995, Guidelines for the Integration of Gender Issues into the Design, Monitoring and Evaluation of ILO Programmes and Projects, Evaluation Unit (PROG/EVAL), Bureau of Programming and Management, International Labour Organization (ILO) (www.ilo.org/public/english/bureau/program/eval/guides/gender/annex1.htm)

27 Womenwatch is a joint United Nations project created in March 1997 to support implementation of the 1995 Beijing Platform for Action.

28 Womenwatch, 1998, National Machineries for Gender Equality, Expert Group Meeting,

III. Recommendations

1. The 1993 Vienna Declaration and Programme of Action advises treaty monitoring bodies to include the status of women and the human rights of women in their deliberations and findings, making use of gender-specific data. States should be encouraged to supply information on the situation of women de jure and de facto in their reports to treaty monitoring bodies.²⁹
2. In 1997 the Economic and Social Council recognised the limitations of a gender neutral approach for achieving socio-economic progress. Therefore gender-sensitive analysis should be an integral part of the development and monitoring of policies and programmes with the participation of women in the design of policies and programmes³⁰.
3. At the Beijing+5 Conference in New York in 2000 the need for National Machineries at all levels to develop their capacity for gender sensitive monitoring and evaluation was stressed during the consultation on the Role of National Machineries³¹.
4. The harmonized guidelines on reporting under the international human rights treaties from 2005 contain the recommendation for collecting gender-disaggregated data. Furthermore the reporting state should include information on „Participation of those most affected by specific provisions of the relevant treaties, including women, ...“³²
5. In the draft text on monitoring presented by National Human Rights Institutions at the 6th session of the Ad Hoc Committee in August 2005 an equal number of women and men members in the international monitoring committee is recommended.
6. An expert meeting on possible monitoring mechanisms for the new Disability Convention in November 2005 in Geneva stressed the desirability of gender balance in the membership of the new committee.

Santiago, Chile, 31 August- 4 September 1998, United Nations (UN) (www.un.org/womenwatch/daw/news/natlmach.htm), cited in: Paola Brambilla: Gender and Monitoring: A Review of Practical Experiences. BRIDGE, Institute of Development Studies, Brighton, 2001 (www.ids.ac.uk/bridge/)

29 Vienna Declaration and Programme of Action (A/CONF.157/23), endorsed by General Assembly resolution 48/121 of 20 December 1993 (A/RES/48/121)

30 Economic and Social Council: Report of the Secretary-General: Mainstreaming the gender perspective into all policies and programmes in the United Nations system. UN E/1997/100

31 Womenwatch, 2000, Report of the Consultation on the Role of National Machineries in Beijing+5 Follow-up and National Agenda Setting, Womenwatch, United Nations (UN) (www.un.org/womenwatch/daw/news/consultation.html)

32 UN: Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents. HRI/MC/2005/3

IV. Consequences for implementing and monitoring processes of the UN Disability Convention

- Women with disabilities and their organizations have to participate in all stages of implementation as well as national and international monitoring processes.
- Gender-disaggregated data are necessary.
- They must be complemented by gender-sensitive indicators.
- The quantitative analysis has to be completed by a qualitative analysis.
- Gender balance should be ensured in the membership of the treaty monitoring body.

G. Proposals

New proposals are printed in bold letters.

Article 6:

EQUALITY OF WOMEN WITH DISABILITIES

The States Parties to the present Convention undertake to ensure the equal right of men with disabilities and women with disabilities to the enjoyment of all rights set forth in the present Convention, and to this end undertake³³:

- 1. to take in all fields, in particular the political, social, economic and cultural fields, all appropriate measures - including by embodying in all legislation concerning disability the principle of equality of men and women - to eliminate discrimination against women with disabilities for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men with disabilities,³⁴**
- 2. to take all appropriate measures to abolish or modify laws, regulations, customs, practices or social and cultural patterns of conduct of men and women, with a view to achieving the elimination of all prejudices and practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men with disabilities and women with disabilities;³⁵**
- 3. to adopt temporary special measures aimed at accelerating de facto equality between men with disabilities and women with disabilities, which shall not be considered discrimination based on sex but shall be discontinued when the objective of equality of opportunity and treatment has been achieved; and³⁶**
- 4. to assess the implications for women and men of any planned action concerning disability, including legislation, policies or programmes, in all areas and at all levels, as a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of legislation, policies and programmes concerning disability so that women with disabilities and men with disabilities benefit equally and inequality is not perpetuated.³⁷**

33 (Article 3 ICCPR and ICESCR)

34 (Article 2 a and 3 CEDAW)

35 (Article 5 CEDAW)

36 (Article 4 CEDAW)

37 (Agreed Conclusions 1997/2, ECOSOC)

Article 16

FREEDOM FROM EXPLOITATION, VIOLENCE AND ABUSE

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect ~~people~~ **men and women, girls and boys** with disabilities both within and outside the home, from all forms of exploitation, violence and abuse.

(1bis) For the purposes of this Convention, the term "violence" includes any act of violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to people with disabilities, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.³⁸

(1ter) When implementing these measures States parties shall take particularly into account that women and girls with disabilities are at great risk of all forms of violence, neglect and exploitation in private or public settings.³⁹ Violence against women with disabilities shall be understood to encompass, but not be limited to, the following:

(a) Physical, sexual and psychological violence occurring in the family or other private sphere, including battering, sexual abuse of female children with disabilities in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational and vocational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence caused by forced sterilization.

(d) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.⁴⁰

2. States Parties shall also take all appropriate measures to prevent exploitation **and all forms of** violence and abuse by ensuring, inter alia, appropriate forms of **gender sensitive** assistance and support for persons with disabilities and their families and caregivers, including through the

38 Adapted from Article 1 Declaration on the Elimination of Violence against Women , General Assembly resolution 48/104 of 20 December 1993

39 Adapted from the second facilitator's text, August 2005, for article 16 (1)

40 Article 2 Declaration on the Elimination of Violence against Women

provision of information and education on how to avoid, recognise and report instances of violence and abuse.

3. In order to prevent the occurrence of exploitation, **all forms of** violence and abuse, States Parties shall **provide access to gender-sensitive remedies and** ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by **competent and** independent authorities.
4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence, or abuse, including through the provision of protection services **and accessible, acceptable and affordable shelters**. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person **and takes into account the specific needs of women with disabilities**.
5. States Parties shall put in place effective legislation, **legislated measures** and policies to ensure that instances of exploitation, violence, and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

Article 23

RESPECT FOR THE HOME AND THE FAMILY

1. States Parties to this Convention shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family and personal relations, and in particular shall ensure, on an equal basis with others:
 - (a) that persons with disabilities are not denied the equal opportunity to [experience their sexuality,] have sexual and other intimate relationships and experience parenthood ~~[in accordance with national laws, customs and traditions of general application];~~
 - (b) that the right of all [men and women] [persons] with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending **partners spouses** is recognised ~~[and that spouses should be equal partners];~~
 - (c) the rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children [and to have access to information, reproductive and family planning education, the means necessary to enable them to exercise these rights and the equal

opportunity to retain their fertility **on a non-discriminatory basis and on a basis of equality between men and women with disabilities. to the extent that these are permitted by national laws of general application**].

2. States Parties to this Convention shall ensure the rights and responsibilities of persons with disabilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount. States Parties shall render appropriate assistance to disabled persons in the performance of their child-rearing responsibilities.
3. States Parties shall ensure that a child is not separated from his or her parents against their will, except when competent authorities determine, in accordance with national laws and procedures of general application and subject to judicial review or other forms of administrative review as established by law, that such separation is necessary in the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

Article 24

EDUCATION

1. States Parties recognise the right of people with disabilities to education. With a view to achieving this right without discrimination, **and** on the basis of equal opportunity **and on a basis of equality between men and women**, States Parties shall ensure an inclusive education at all levels and life-long learning, directed to:
 - a) the full development of the human potential and sense of dignity and self worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
 - (b) the development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
 - (c) enabling persons with disabilities to participate effectively in a free society.
2. In realising this right, States Parties shall ensure:
 - (a) that persons with disabilities are not excluded from the general education system on the basis of their disability, and that children with disabilities are not excluded from free and compulsory primary and secondary education on the basis of their disability;

- (b) that persons with disabilities can access inclusive, quality, free primary and secondary education to the extent possible in the communities in which they live;
 - (c) reasonable accommodation of the individual's requirements;
 - (d) that persons with disabilities receive the support required, within the general education system, to facilitate their effective education. In exceptional circumstances where the general education system can not adequately meet the support needs of persons with disabilities, States Parties shall ensure that effective alternative support measures are provided, consistent with the goal of full inclusion;
 - (e) the development of initial and continuing training, which incorporates disability awareness, the use of appropriate communication means and modes, educational techniques and materials to support persons with disabilities, for all professionals and staff who work at all levels of education.
3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall:
- (a) facilitate the learning of Braille, alternative script, orientation and mobility skills, and facilitate peer support and mentoring;
 - (b) facilitate the learning of sign language and the promotion of the linguistic identity of the Deaf community;
 - (c) ensure that the education of children who are blind, deaf, and deaf/blind is delivered in the most appropriate languages and modes of communication for the individual, and in environments which maximise academic and social development.
4. States Parties shall take appropriate measures to ensure quality education to students with sensory disabilities through the employment of teachers who are fluent in sign language or Braille, including teachers with disabilities.
5. States Parties shall ensure that persons with disabilities may access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on the basis of equality of opportunity. To that end, States Parties shall render appropriate support to persons with disabilities.
- 6. States shall ensure that women and girls with disabilities are not denied their right to education and shall take steps to ensure their full enjoyment of that right in particular by ensuring that they benefit from educational curricula and skills development that do not perpetuate gender stereotypes and stigmatisation. States shall ensure an environment in which girls and women with disabilities can learn without harassment, with appropriate role models and with access to gender-sensitive services.⁴¹**

41 cp. Second Facilitator's proposal, August 2005

Article 25

HEALTH

States Parties recognise that persons with disabilities have the right to the enjoyment of the highest attainable standard of physical and mental health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services, including health-related rehabilitation. In particular, States Parties shall:

- (a) provide persons with disabilities with the same range and standard of **affordable** health services as provided other persons, [including sexual and reproductive health services] and population-based public health programmes;
- (b) provide those health services needed by persons with disabilities specifically because of their disabilities including early identification and intervention as appropriate, and services designed to minimise and prevent further disabilities including amongst children and the elderly;⁴²
- (b bis) ensure that disabled women are enabled to decide freely and responsibly on the number and spacing of their children, without discrimination based on disability. To that end, States Parties shall develop and disseminate policies and programs in fields such as family-planning and parenthood, pregnancy, childbirth and the post-natal period that are inclusive to women with disabilities and protect them against any form of coercive treatment.**⁴³
- (c) provide **these accessible, acceptable and affordable** health services to **persons with disabilities**, as close as possible to people's own communities, including in rural **and remote** areas;
- (d) require health professionals to provide care of the same quality to persons with disabilities as to others, **taking into account the specific needs of women with disabilities**,⁴⁴ and on the basis of free and informed consent by, where necessary, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training, **accessible general information** and the promulgation of ethical standards for public and private healthcare;
- (e) prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where permitted by national law, which shall be provided in a fair and reasonable manner.

42 Comment Lydia la Rivière Zydell: "This is a very tricky article. It could be interpreted very double!

Does this mean early interventions, too. It should be rephrased differently."

43 cp. Second facilitator's text, August 2005, for Art. 23 or 25

44 co, Women's Caucus Response, August 2005

Article 26

HABILITATION AND REHABILITATION

1. States Parties shall take effective and appropriate measures to enable persons with disabilities to attain their maximum independence, fullest physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organise, strengthen and extend comprehensive habilitation and rehabilitation services, particularly in the areas of health, employment, education and social services, in such a way that:
 - (a) habilitation and rehabilitation services and programmes begin at the earliest possible stage, **and** are based on the multidisciplinary **and gender-sensitive** assessment of individual needs;
 - (b) habilitation and rehabilitation services and programmes support participation and inclusion in the community and all aspects of society, and are available to persons with disabilities as close as possible to their own communities, including in rural areas;
 - (c) **these services do not discriminate against girls and women with disabilities, are gender-sensitive and promote access for girls and women with disabilities.**
2. States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.

Article 27

WORK AND EMPLOYMENT

States Parties recognise the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall set an example through employment of persons with disabilities in the public sector, and shall take other appropriate steps to safeguard and promote the realisation of the right to work, including measures to:

- (a) protect through legislation persons with disabilities with regard to conditions of recruitment, hiring and employment, continuance of employment, career advancement, working conditions, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, and the redressing of grievances;

- (b) ensure that persons with disabilities are able to exercise their labour and trade union rights in accordance with generally applicable national legislation;
- (c) enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services, and vocational and continuing training;
- (d) promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining and maintaining and returning to employment;
- (e) promote opportunities for self-employment, entrepreneurship and starting one's own business;
- (f) encourage employers to hire persons with disabilities through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;
- (g) ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
- (h) promote the acquisition by persons with disabilities of work experience in the open labour market;
- (i) promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities;
- (j) ensure that women with disabilities are not denied their rights to work on a basis of equality and are protected from sexual or other harassment at the workplace. States parties shall ensure that the needs of women with disabilities during pregnancy, child birth and child care are met.**

Article 29

PARTICIPATION IN POLITICAL AND PUBLIC LIFE

States Parties shall guarantee to persons with disabilities their political rights and the opportunity to enjoy them on an equal basis with others **and shall take effective measures to ensure equal enjoyment of these rights by women with disabilities**, and **to this end** undertake to:

- (a) ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others in accordance with national laws of general application, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, by:

- (i) ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;
 - (ii) protecting the right of persons with disabilities to vote by secret ballot in elections and public referenda, without intimidation, and to stand for elections and to hold office and perform all public functions at all levels of government;
 - (iii) guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request allowing assistance in voting by a person of their own choice;
- (b) actively promote an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:
- (i) participation in non-governmental organisations and associations concerned with the public and political life of the country, including the activities and administration of political Parties;
 - (ii) forming and joining organisations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.
- (c) ensure that discrimination against women with disabilities in political and public life is eliminated and actively promote their participation in these fields, including where appropriate through the use of quotas, targets and other appropriate measures.**

Article 31

STATISTICS AND DATA COLLECTION

1. Where necessary, States Parties undertake to collect appropriate information, including statistical data, to enable them to formulate and implement policies to give effect to this Convention. The process of collecting and maintaining this information should:
 - (add before a)
 - (0) involve both men with disabilities and women with disabilities and their organisations in the design of relevant indicators and the collection and analysis of the data;**
 - (0.1) enable States Parties to disaggregate all data on the basis of sex, and ensure that the data provides information on issues that may affect differently women with disabilities and men with disabilities;**

- (a) comply with legally established safeguards to ensure confidentiality and respect for the privacy of persons with disabilities, including legislation on data protection;
 - (b) comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles of statistics.
2. The information collected in accordance with this Article shall be used to assess the implementation of States Parties obligations under this Convention, and shall also be used to identify and address the barriers faced by persons with disabilities in exercising their rights.

Article 33

NATIONAL IMPLEMENTATION AND MONITORING

- [1. States Parties shall designate a focal point within government for matters relating to the implementation of the present Convention, and give due consideration to the establishment or designation of a co-ordination mechanism to facilitate related action in different sectors and at different levels.
2. States Parties shall, in accordance with their legal and administrative system, maintain, strengthen, designate or establish at the national level a framework to promote, protect and monitor implementation of the rights recognised in the present Convention.]
3. Civil society, in particular ~~persons~~ **men with disabilities and women with disabilities** and their representative organisations, shall be involved and participate fully in all levels of the monitoring process.

Article 34

INTERNATIONAL MONITORING

- *Ensure that article 34 includes requirement that reporting provide specific information on the enjoyment of all rights by women and girls with disabilities.*
- *Ensure that women with disabilities are involved and participate fully in all levels of the monitoring process.*
- *Include a provision regarding balanced gender representation of the Monitoring Committee, e.g.:*

In the composition of the Monitoring Committee consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.⁴⁵

45 Article 5 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 18 December 2002 by GA resolution A/RES/57/199

H. Editor/the Authors

Disabled Peoples' International (DPI) is a network of national organizations or assemblies of disabled people, established to promote human rights of disabled people through full participation, equalization of opportunity and development. On behalf of DPI Dr. Sigrid Arnade and Sabine Häfner wrote this discussion paper.

In November 2004 Dr. Sigrid Arnade and Sabine Haefner founded the initiative "Towards visibility of disabled women in the UN Convention!" (<http://www.un-disabledwomen.org>).

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