

International Disability and Development Consortium (IDDC) and Gender and Development Network (GADN) Joint Submission to the CRPD Committee on the Draft General Comment on Article 6: Women with Disabilities¹

24 July 2015

The IDDC is a global consortium of 25 disability and development NGOs, mainstream development NGOs, and DPOs supporting disability and development work in more than 100 countries to promote human rights and inclusive development internationally. GADN is a diverse membership network made up of UK-based NGOs, academics, consultants, and practitioners working on gender, international development and women's rights issues. This document is a joint submission from both networks and reflects the experience and expertise from both networks.

The rights concerning women and girls with disabilities is a central issue deeply connected to IDDC's and GADN's priorities and the priorities of the members of IDDC and GADN. We welcome the Committee's commitment to tackling multiple discrimination on the grounds of gender and disability and its recognition of the complexity of this cross-cutting issue. We also recognise the potential impact of this General Comment in bringing greater clarity regarding multiple discrimination issues more broadly beyond gender and disability. This submission intends to build on the strengths of the Committee's analysis of gender and disability.

This submission focuses on the following issues:

1. The need for greater clarity on normative definitions and explanations
2. The duty of States Parties to provide special temporary measures and clarity on permissible scope of differential treatment
3. The need for greater clarity on non-discrimination obligations relating to provisions that are subject to progressive realisation
4. The need for further guidance on violations of Article 6
5. The need for recognition of and further guidance on gender and disability issues relating to substantive provisions (see also Annex I)
6. The need for further guidance on international cooperation and humanitarian aid
7. The need for further detail concerning national implementation

1. Clarity on Normative Definitions and Explanations

¹ Please note that this submission is also available in track changes to the original Draft General Comment as an alternative version.

We welcome the Committee's recognition of different types of equality and different forms of discrimination. We believe that the Draft General Comment could be strengthened with a clear section towards the beginning of the General Comment **outlining definitions of key terms**, which may include: **non-discrimination**, **equality** (including formal/ *de jure*, substantive/ *de facto*, and transformative equality), **discrimination** (including multiple, intersectional, cumulative, formal/*de jure*, informal/*de facto*, structural/ systemic, direct and indirect discrimination). Many of these terms are defined within the Draft General Comment in various sections, including Sections I, II and III, and some terms are used prior to an explicit definition (e.g., multiple discrimination is used throughout Section I and is defined in Section II). A clear section defining these terms will help States Parties to comprehensively understand the various dimensions of non-discrimination and serve as a useful guide for the rest of the General Comment. Furthermore, we would welcome some reference to vertical discrimination, which involves further marginalisation within express grounds, e.g., women with severe or profound disabilities compared with women with mild to moderate disabilities or women with multiple disability conditions compared with women with one disability condition.

The Draft General Comment oscillates between terms, using both **gender** (e.g., § 16) and **sex** (e.g., § 15). We feel that it would be useful to define or explain these terms if they are used interchangeably.

We agree with the Committee's interpretation of Article 6.2 on the full development, advancement and empowerment of women with disabilities to promote economic, personal, educational, cultural, and political growth in § 25. We feel that this section could be enhanced further with an explicit reference to the **development, advancement and empowerment of women and girls with disabilities taking a life cycle course approach that is inclusive of older women and girls at each life cycle stage**. 'Young children's experiences of growth and development vary according to their individual nature, as well as their gender, living conditions, family organisation, care arrangements and education systems'², and children who experience multiple discrimination are especially at risk³. In addition, older persons are disproportionately represented in disability populations with prevalence increasing considerably for those over 60. The Committee should mention girls and older women in relation Article 6.2 and provide further details outlining the normative content of 6.2 as it relates to girls and older women with disabilities.

2. Duty to Provide Special Temporary Measures and Clarity on Permissible Scope of Differential Treatment

We welcome the Committee's acknowledgement in § 24 that **temporary measures** may be necessary to overcome structural and systemic discrimination and the Committee's

² Committee on the Rights of the Child, General Comment 7: Implementing child rights in early childhood, CRC/C/GC/7/Rev.1, 2005, para. 6(f).

³ *Ibid*, para. 11.b.v.

distinction between these temporary measures with long-term measures in order to ensure reasonable accommodation. We feel that special temporary measures should be defined more clearly in the General Comment and that States Parties' obligations relating to temporary measures⁴ and to long term measures to ensure reasonable accommodation should be further clarified. This clarity could be supported with examples specifically relating to gender and disability discrimination to demonstrate the distinctions between measures aimed at gender or at disability. Furthermore, these examples could serve to demonstrate the distinctions and differences between temporary and long-term measures and their respective potential impact.

Due to the complex nature of multiple discrimination, the nature of disability-based discrimination (which is a result of the environment rather than identity), and the need for individualised assessments and adjustments in certain circumstances, we feel that the Draft General Comment should outline the **permissible scope of differential treatment** as it relates to women and girls with disabilities. In international law, differential treatment is prohibited unless the differentiation is reasonable, objective, and compatible with international law⁵ (or the CRPD in this case), but clarity on how this applies would be useful to States Parties.

Clarity on Non-Discrimination Obligations relating to Provisions that are Subject to Progressive Realisation

The Draft General Comment stipulates in § 28 that obligations under Article 6 are of immediate nature and are subject to immediate realisation. We strongly support the notion of non-discrimination having immediate effect. We would like to encourage the Committee to **clarify the nature of these immediate obligations** further, amending the following statement in § 28: 'Upon ratification, States Parties must immediately ~~begin to take~~ **ensure** steps towards the realisation of the rights in article 6'. We also recommend that the Committee adds the following: States Parties must, integrate into national plans and policies relating to provisions that are subject to progressive realisation appropriate strategies and measures to ensure the equal rights of women and girls with disabilities in order to achieve equal rights for all.

Guidance on Violations of Article 6

We support the Committee's interpretation of violations concerning violence and sexual and reproductive choice in § 8. However, the Draft General Comment provides sparse guidance

⁴ See Committee on Economic, Social and Cultural Rights, General Comment 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/2005/4, para. 15; and Committee on Economic, Social and Cultural Rights General Comment 20: Non-discrimination in economic, social and cultural rights (art. 2, para.2, of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/20, 2009, para. 9; and Human Rights Committee General Comment No. 18: Non-Discrimination, 1989, para. 10.

⁵ CESCR General Comment 20, paras. 13-14.

on general violations, which aid in developing greater understanding of the implementation of the Convention. We, therefore, recommend the addition of a brief section to **outline violations** following Section III on States Parties' Obligations⁶.

Recognition of and Further Guidance on Gender and Disability Issues relating to Substantive Provisions

We welcome the Committee's attention to issues concerning gender-based violence, sexual and reproductive rights (including forced sterilisation), and motherhood and child-rearing in Section I. We feel that the Draft General Comment could be strengthened by highlighting additional gender and disability issues, such as participation, autonomous decision-making, inheritance and representation of women with disabilities in public and political life. These issues could be highlighted in a new section on special topics or alternatively within Section IV under the relevant treaty provisions.

In addition, the **definition of violence** in § 6 deriving from an OHCHR report could be further enhanced by definitions from existing General Comments/ Recommendations, such as CEDAW General Recommendations No. 19, CRC General Comment No. 13 and the joint CEDAW-CRC Recommendation No. 31/ General Comment No. 18. We feel that the Committee could elaborate further on the types of violence and make specific reference to harmful practices aimed at women and girls with disabilities, such as neglect of girls, preferential care and treatment of boys, extreme dietary restrictions, infanticide, and others⁷. Further to this, we recommend that the Committee outlines the **State obligations on gender-based violence**, focusing on prevention, protection, redress, rehabilitation, access to justice and data collection. We also recommend that the Committee adopts the recommendations on gender-based violence outlined in the submission from the '[Making It Work](#)' submission to the CRPD Committee: General recommendation on article 6 – women and girls with disabilities', by Handicap International, which draws on good practices on preventing and responding to violence against women and girls with disabilities.

We approve of Section IV outlining the interrelation between the provisions addressing women and girls with disabilities linked to other provisions. However, we strongly encourage the Committee to **address each of the substantive provisions** of the CRPD, which can be grouped together where provisions are related. We feel that this section should provide some concrete **examples of States Parties' obligations as they relate to women and girls with disabilities** rather than providing a narrative of the issues facing women and girls with disabilities. We have provided some illustrative examples in the **attached annex**.

⁶ See, for example, CESCR General Comment 16, paras. 40-42.

⁷ Committee on the Elimination of Discrimination against Women and Committee of the Rights of the Child, Joint General Recommendation No. 31 / General Comment No. 18 on Harmful Practices, CEDAW/C/GC/31-CRC/C/GC/18, 2014, para. 9. See also 'IDA submission for the joint General Comment/Recommendation of the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women on harmful practices', International Disability Alliance, <http://www.ohchr.org/Documents/HRBodies/CEDAW/HarmfulPractices/InternationalDisabilityAlliance.pdf>.

Further Guidance on External Action (International Cooperation and Humanitarian Aid)

The Draft General Comment states in § 58 that ‘States that are not able to comply with their obligations and cannot realise the rights enshrined in Article 6 due to a **lack of resources** must seek international cooperation and assistance.’ We feel that this wording may confuse States Parties regarding the immediate nature of the obligations of Article 6 – i.e., that States should ensure that from those resources being allocated towards development policies and programmes, women and girls with disabilities have a right to equal access to those resources. It may also be problematic in dealing with States that lack political will but claim a lack of resources. We recommend that the Committee considers changing the wording to promote information-sharing through international cooperation and technical assistance, particularly around assisting developing countries to set up or fund programmes to promote and protect the rights of women and girls with disabilities⁸.

Furthermore, we support the Committee’s reminder to States providing assistance of their **promises of giving to international cooperation** in § 58 but recommend that the actual percentage of GDP is removed, as the obligation on States is to provide assistance in accordance with international agreements and strategies, and percentages agreed may change or discourage giving above recommended percentages.

We recommend that the Committee adds to § 59 the suggestion of taking a **twin-track approach** of both gender and disability mainstreaming, as well as the development of programmes specifically aimed at promoting the rights of women and girls with disabilities. We also suggest that § 59 calls explicitly not only for all strategies, programmes, and projects, but for the design, implementation, and monitoring thereof, to be gender and disability sensitive. These strategies, programmes and projects should systematically and actively involve women with disabilities, DPOs and NGOs representing women with disabilities in their design and monitoring. We agree with the Committee that **intergovernmental organisations** have a key role to play in realising Article 6, and we recommend that the Committee adds the World Bank, IMF and multi-lateral bodies to the list of organisations in § 60. Furthermore, we request that the Committee clearly spells out the obligations of these bodies relating to Article 6.

Regarding Humanitarian Assistance, we welcome the Committee’s acknowledgement of girls’ and women’s increased susceptibility to risk in situations of humanitarian emergencies. As in our previous comment on International Cooperation, we recommend that § 42 includes a suggestion to use a twin-track approach of gender and disability in the context of humanitarian interventions.

Further Detail concerning National Implementation

⁸ See, for example, Committee on the Rights of the Child, General Comment No. 9: The rights of children with disabilities, CRC/C/GC/9, 2007, para. 22.

We welcome the many recommendations of the Committee concerning national implementation throughout the Draft General Comment and feel that § 61 could be strengthened with an explanation of a 'national machinery' in § 66 and the addition of guidance on plans of action, remedies and coordination across government departments.

Recommendations regarding Wording

We recommend the following changes in **bold/underline** as additions or ~~striketrough text~~ as removals to the wording of the Draft General Comment:

§ 2: 'However, most binding human rights instruments yet do not **explicitly** address human rights violations of women and girls with disabilities.' ... 'Empowering women with disabilities, by **addressing the root causes of their discrimination and** raising their self-confidence ~~and increasing~~ **will increase** their power and authority to take decisions in all areas affecting their lives, which is ~~the a~~ **a** key and ~~most~~ **most** urgent issue ~~of our times.~~' All human rights treaties address the rights of women and girls with disabilities, and we are concerned that States may interpret that this group is only covered by the CRPD. However, we acknowledge that the CRPD and the Committee have brought the issue into public discourse. To ensure that women with disabilities have the power and authority to take decisions in their lives member states must address the root causes of their oppression. Women and girls with disabilities must be able to access education, livelihoods opportunities and healthcare before they can be considered empowered. Also, we feel that while the issues of women and girls with disabilities is an urgent matter, a declaration that it is the 'most urgent issue of our times' is inconsistent with the notion that there is no hierarchy of rights.

§ 7: 'Like all women, women with disabilities have the right to have control over and decide freely ~~and responsibly~~ on matters related to their sexuality...'. We are concerned that the insertion of responsibility may be interpreted as conditional to the exercise of sexual rights.

§ 31: 'Further, the duty to respect ~~implies~~ **requires States Parties** to refrain from engaging in any act or practice that is inconsistent with Article 6 and to ensure that public authorities and institutions act in conformity with it.' We feel that the language of obligations should be clear and directly state the States Parties' duties. In addition, it is unclear how the following statement relates to the obligation to respect: 'Compliance with the Convention can be secured by employing gender and disability mainstreaming in all policies and programmes.' We feel that this statement is more illustrative of the obligation to fulfil and that it could be moved to § 33. If, however, the Committee feels that this statement applies to the obligation to respect, then it would be helpful if the Committee could explain the link within the text of the General Comment.

§ 32: 'The obligation to protect means that State Parties have to ensure that the rights of women and girls with disabilities are not infringed upon by **third parties, such as** private

parties or organisations.’ We feel that the introduction of ‘third parties’ is consistent with other General Comments and is a broader group, which includes non-State actors that do not fit into either category.

§ 33: ‘The obligation to fulfil imposes an ongoing and dynamic duty to adopt and apply the measures needed to secure the development, advancement and empowerment of women and girls with disabilities, **such as adopting measures to recognise intersectional discrimination in law.**’ The Committee highlights in § 9 the challenges associated with dealing with each protected ground in isolation, and we support this assessment and recommend that the Committee provide some guidance to States Parties regarding their obligations concerning this issue.

§ 44: ‘Appropriate information, training and awareness raising programmes shall be ensured for women and girls with disabilities, ~~and mothers of boys and girls~~ **parents of** children with disabilities, **care givers, medical staff and staff from local Disabled Peoples Organisations** regarding their rights and fundamental freedoms and the opportunities they have to access justice; **there will be** ~~with~~ a particular focus on those groups at greater risk of discrimination, such as women and girls with high support needs, women and girls with disabilities in institutions, older women with ~~disability~~ **disabilities**, women and girls with disabilities who live in rural settings and indigenous women and girls with disabilities. **Training and awareness programmes need to be extended to police and justice personnel to develop inclusive and accessible justice systems.**’ We are concerned that the ‘*appropriate information, training and awareness raising programmes*’ mentioned shall be solely for women and girls with disabilities and for mothers of children with disabilities. We recommend that all caregivers and care providers receive such training including fathers, personal assistants, medical staff and staff from Disabled Peoples Organisations. Specific training for police and for all justice personnel must also be included so to create an inclusive and accessible justice system.

§ 45: ‘Women with disabilities ~~need~~ **must be able to access inclusive sexual and reproductive health education to be able to be able** to give their full consent and fully understand the intentions to protect reproductive freedom’. We welcome the call for legal frameworks to be revised to ensure reproductive rights for women and girls with disabilities. We urge that an explicit reference to accessing sexual and reproductive health education is included within this paragraph, as it can act as a catalyst to women and girls reclaiming and maintaining control over their reproductive health and bodily integrity.

§ 50: ‘Education programmes must cater for the training needs of those girls and women with disabilities who are at greatest risk of exclusion (such as those with high support needs, migrants, those belonging to indigenous populations, those residing in rural areas and older women and illiterate women), ensure they receive proper attention, and combat school failure and drop-out by these groups. **Inclusive education programmes must ensure that adapted curricula, access to appropriate learning aids and safe transport provision is included to ensure that girls with disabilities are able to participate fully and meaningfully.**’ We believe that adapted curricula, access to appropriate learning aids and

safe transport provision is all essential to girls and young women accessing and staying in education. We urge their specific inclusion to ensure that education programmes are able to fully meet the needs of women and girls with disabilities.

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