

Defying Double Discrimination,

Georgetown Journal of International Affairs, 8, 95-104.

Pre-Publication Draft

Reina, M.V., Adya, M. & Blanck, P. (2007). Defying Double Discrimination, Georgetown Journal of International Affairs, 8, 95-104.

Women with Disabilities and the 2006 United Nations Disability Convention¹

Women and girls are reported to be the largest group in the global disability population, and they have been historically subject to multiple types of discrimination. This article examines the 2006 UN Disability Convention aimed at protecting the rights of all people with disabilities, and in particular, its implications and specific provisions addressing the rights of women and girls. The convention stemmed from efforts initiated in 2001 when the General Assembly created an Ad Hoc Committee (AHC) to consider the need for a disability convention.² Concurrently, a “Disability Caucus” comprised of representatives of the disability community from various allied non-governmental organizations formed and began interacting with the AHC; together, their work led to the 2006 UN Disability Convention.³

Although reliable world statistics are unavailable, the World Health Organization (WHO) estimates that 300 million women and girls worldwide have some kind of disability.⁴ Research also demonstrates that women and girls with disabilities (hereinafter referred to as “women”) face double discrimination compared to men, since the prejudice they face is based not only on their disability but also their gender.⁵ Women face this disparity in terms of a lack of access to equal education, health care, and employment, to name a few areas. Moreover, women with disabilities are among the world’s poorest.⁶

To eliminate discrimination against women, the UN and individual states acknowledge that immediate obligations and concrete measures are necessary. In the past, when national governments did not take steps necessary to implement antidiscrimination standards in domestic legislation and practices, international standards and commitments have served as a catalyst for progress and change. To date, however, there are no binding UN agreements or treaties solely referring to the rights of women with disabilities. Indeed, gender-neutral treaties have not fostered the implementation of measures that prevent discrimination against women with disabilities. Women with disabilities are largely neglected in the monitoring of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).⁷

UN Disability Convention Proceedings

In 2004 Korea introduced a proposal for the insertion of a new article related to disability in the prospective UN Disability Convention during the third Ad Hoc Committee (AHC) meeting. This proposal was fiercely debated, and discussions concentrated on whether and how to introduce issues of disabled women and a gender perspective into the new convention. Perspectives varied from establishing a specific article addressing discrimination against women with disabilities to mainstreaming gender throughout the convention.

The International Disability Caucus advocated what was dubbed the "twin track approach."⁸ Civil society members at the AHC meetings urged that the stand-alone article was necessary to raise attention for women with disabilities, but that this alone was not sufficient. They argued that such a convention should be complimented by a gender perspective throughout the document.⁹

The twin-track approach succeeded and both perspectives were included in the final draft of the convention, agreed upon at the last session of the eighth AHC on 25 August 2006. The final draft of the convention incorporates both the specific article and gender mainstreaming throughout the convention.¹⁰

Article 6

During the negotiations at the third AHC meeting, South Korea introduced a proposal that would require including issues affecting women with disabilities into laws and data collection to ensure special consideration of their unique situation. Paragraphs 15(bis)(c), (d), and (e) focused on protection of motherhood, right to work, sexual exploitation, abuse, and violence.

Kenya presented a similar proposal during the sixth AHC meeting.¹¹ Other states and civil society organizations supported a stand-alone article to protect the rights of women with disabilities.¹² There are three core reasons for their support of a stand-alone article:¹³

1. *Visibility for women's issues:* Women with disabilities suffer from double discrimination, but they are also often alienated at the social and legal levels. Women with disabilities have remained invisible in legislative and policy efforts at national and international levels, without inclusion in the disability discourse or the women's rights arena.¹⁴ A separate article on the rights of women with disabilities would be a key element in highlighting their special circumstances and the disadvantages they face as a group.
2. *Comprehensiveness:* A stand-alone article would lead to the recognition of human rights and fundamental freedoms for women with disabilities, as well as a consideration of women's issues in the convention. It would generate a higher profile for women-specific issues, thus achieving de facto equality of women with disabilities.
3. *Cross-responsibility:* Full implementation of the convention for all people with disabilities requires the active involvement of national agencies in charge of promoting gender equality. A separate article would ensure this and also solidify commitment to issues involving women with disabilities in these institutions.

Continued discussion and polarization concerning having a separate article led to an intervention by an article facilitator.¹⁵ Her proposal combined the establishment of a stand-alone article to protect women with disabilities and gender mainstreaming throughout the entire treaty—the “twin-track approach.”¹⁶ This was the position ultimately adopted by the AHC. The final version of Article 6 in the Disability Convention states the following:

Article 6 - Women with Disabilities

1. States Parties ... shall take measures to ensure the full and equal enjoyment by them [women and girls] of all their human rights and fundamental freedoms.

2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women ...¹⁷

This version is subject to revision by a Drafting Committee.¹⁸

Gender Mainstreaming in the UN Convention

Gender mainstreaming has been endorsed by the Beijing Platform for Action to promote gendering all policies and programs so that an analysis is made of the effects on women and men before decisions are taken.¹⁹ In July 1997, the United Nations Economic and Social Council (ECOSOC) defined the concept of gender mainstreaming as follows:

"Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action ... so that women and men benefit equally ...[the] ultimate goal of mainstreaming is to achieve gender equality."²⁰

According to the Office of the UN Special Advisor on Gender Issues and Advancement of Women, mainstreaming does not replace the need for targeted, women-specific policies and programs, as well as positive legislation.²¹ During the AHC's discussions concerning the article on women, several actors, including the European Union, disagreed and suggested the incorporation of gender criteria in different general provisions (i.e. mainstreaming) rather than in one single article.²² The rationale for their opposition can be summarized as follows:

1. *Higher visibility:* Provisions in favor 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.
2. *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."²³
3. *Avoiding the isolation of a single article:* Mainstreaming gender aspects into several articles would avoid separating women's issues from those addressed by the convention as a whole.²⁴

Gendered Articles in the Disability Convention

At the final meeting of the AHC, states decided to gender some other articles, as the specific obligations contained in these articles would yield more effective results than simply making a general statement of the right to equality of women with disabilities. The following convention sections specifically addressed gender or sex specificities in the final draft:

Preamble

Keeping in mind that the Preamble of the Disability Convention plays an important role in determining the object and purpose of the treaty—although it does not establish binding obligations—it is very important that it cover all people with disabilities, including women.

Although many sections are gender-neutral, the preamble contains three gendered paragraphs referring to some of the key issues surrounding women with disabilities. The following gendered issues needed to be addressed: the multiple or aggravated forms of discrimination women and girls suffer on the basis of various characteristics—for instance, sex and nationality; risk of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, both inside and outside of the home; and the need to incorporate a gender perspective in all efforts to promote the rights of people with disabilities.²⁵

Article 3 - General Principles

As an innovation founded on recent practices in international law, the AHC included specific principles to lay the foundation for the interpretation and implementation of the disability treaty. Auspiciously, among these principles there is a specific provision that addresses the issue of gender equality.²⁶

Article 8 – Awareness-Raising

Stereotypes affect all people with disabilities, but especially women, as is documented in several studies and reports.²⁷ In responding to these stereotypes, Article 8 aims to change negative perceptions and social prejudices through effective measures promoting disability awareness. Particularly regarding gender differences, the states will undertake measures “to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life.”²⁸

Article 16 – Freedom from Exploitation, Violence, and Abuse

The abuse of women with disabilities has been the subject of several investigations, and there is no question that it is a problem of epidemic proportions that takes various forms.²⁹ In particular, women with disabilities are subjected to forced sterilization, abortion, and genital mutilation.³⁰ In the United States, for instance, 62% of women with disabilities experience emotional, physical, or sexual abuse at some point in their lives. This rate is similar to that for all women, but women with disabilities reported longer durations of abuse and more difficulty getting out of the abusive situation. Women with disabilities are more likely to experience emotional abuse by attendants, strangers, or health care providers in both private and public settings.³¹

Many of the provisions in Article 16 dealing with protection, assistance, prosecution, and rehabilitation in situations of exploitation are gender neutral. Considerations of this article regarding gender include all types of exploitation, violence, and abuse. As a general principle for all mainstreamed services, protections and recovery services should be required to include disability, gender, and age-sensitive criteria. It also makes the establishment of children and women-focused legislation and policies mandatory.

Article 25 – Health

For women with disabilities, health is a major issue that highlights their considerable disadvantage. In the United States, for example, medical expenses are four times greater for people with disabilities than for the non-disabled population. One of the serious problems among women with physical disabilities is low economic status, which is associated with the lack of medical insurance and, consequently, the loss of access to medical care and health services.³²

Moreover, women with disabilities often do not receive adequate specialized health services, particularly maternal and gynaecological care. Health care providers may also assume that women with disabilities do not participate in sexual activities, so they neglect to screen them for sexually transmitted diseases or even perform a full pelvic exam.³³ Forced sterilization and abortion are also discriminatory practices applied to women with disabilities.³⁴

Article 25 contains a number of gender-neutral components designed to protect and promote the right to health for people with disabilities. Some key issues include the prohibition of discrimination by the state, the medical profession, or by insurance providers; equal access to facilities; and the provision of specialized facilities and services geared to the needs of disabled people.³⁵

This article requires health, including rehabilitation services, to be gender sensitive. However, civil society and other stakeholders did not succeed in including the express mention of particular aspects of feminine health such as family-planning, pregnancy, childbirth, and the post-natal period. This would have been inclusive of women with disabilities and protected them against any form of coercive treatment, including sterilization and abortion.³⁶

Article 28 - Adequate Standard of Living and Social Protection

As reported by the Special Rapporteur on Human Rights and Disability, even in countries with a relatively high standard of living, people with disabilities are often denied the opportunity to enjoy the full range of economic, social, and cultural rights.³⁷ In particular, women with disabilities are more likely to be poor or to have a lower standard of living than men with disabilities.³⁸

Provisions that cover all people with disabilities take into consideration several aspects related to their standard of living and social protection: the right of people with disabilities to an adequate standard of living for themselves and their families, the right of people with disabilities to social protection, and the enjoyment of those rights without discrimination on the basis of disability. Sub-section (b) of Paragraph 2 contains specific reference to women and girls with disabilities as particular recipients of social protection and poverty reduction programs.

Article 34 – Committee on the Rights of Persons with Disabilities

Monitoring procedures are absolutely necessary in order to ensure the effective implementation of a Disability Convention. As in other implementation provisions, articles related to monitoring should include specific mention of gender issues in order to reflect the complexity and specificity of the discrimination suffered by women with disabilities.³⁹

Discussions on international monitoring were intense, with most countries arguing for a treaty-monitoring body, which was finally agreed upon and regulated in Article 34 of the Draft Convention. Such a body should include experts with disabilities, among other members, to consider country reports on measures taken and progress made to meet obligations under the present convention. There was agreement on provisions establishing the consultation with specialized agencies and other competent bodies, including the ones founded by international human rights treaties. The convention will not make the submission of communications and complaints by individuals and groups compulsory, but ratifying countries could sign an optional protocol and allow such submissions to report on alleged problems.⁴⁰ In the article, there is one specific mention of gender in the section dealing with the eligibility of committee members which calls for balanced gender representation.⁴¹

Articles that are not Gender Specific

Some governmental representatives and civil society groups present at the convention negotiations advocated for gender mainstreaming in other neutral articles.⁴² However, this effort failed due to a lack of consensus. The most significant articles mentioned include:

Article 23 – Respect for Home and the Family

Family rights are especially neglected when it comes to women with disabilities. A woman is perceived as unable to perform the roles of wife, mother, and home-maker because of her disability. In particular, prejudices against women with disabilities include the belief that they are unable to become biological mothers and raise children, which leads to limited access to pregnancy and maternity services. Additionally, they may lose custody of their children in divorce or have their children removed from their care by social welfare agencies, solely because they have a disability.⁴³

Family rights were passionately debated during the Disability Convention negotiations. Common provisions of Article 23 include: measures to eliminate discrimination against people with disabilities in all matters relating to marriage, family, parenthood, and relationships. The draft article recognizes the rights and responsibilities of people with disabilities with regard to guardianship, wardship, trusteeship, and adoption of children. Additionally, the draft article looks to prevent concealment, abandonment, neglect, and segregation of children with disabilities, as well as to provide early and comprehensive information, services and support, and when needed, alternative care, to children with disabilities and their families.⁴⁴

The inclusion of gender-specific provisions for a disability treaty would have guaranteed women with disabilities equal enjoyment of family rights and would have established gender-sensitive measures to enable women with disabilities to exercise their roles as wife, mother, and home-maker.⁴⁵

Article 24 – Education

Women with disabilities do not enjoy the same right to education as other women. Studies conducted in the United States have demonstrated that women with disabilities have lower educational attainment than other women and men with disabilities.⁴⁶ Article 24 includes provisions to ensure all students with disabilities enjoy the right to education on the basis of equality and non-discrimination. Disabled people's organizations at the AHC advocated for the

inclusion of provisions that require gender-sensitive education at all levels so as to not perpetuate social and cultural patterns of conduct among men and women.⁴⁷ In addition, a successful gendering of the article should have ensured that women and girls with disabilities are able to access and enjoy education on an equal basis and in a violence-free environment.⁴⁸

Article 26 - Habilitation and Rehabilitation

Women with disabilities experience indirect discrimination in several areas of habilitation and rehabilitation.⁴⁹ In 1996, for example, it was determined that in the United States fewer women received vocational rehabilitation services than men.⁵⁰

The different provisions grouped in Article 26 require states to provide people with disabilities the tools needed to attain their maximum independence as well as physical, mental, social, and vocational ability and full inclusion in all aspects of life. According to women with disabilities groups, an international treaty that protects the rights of men and women with disabilities equally should also prescribe gender-sensitive service and secure the enjoyment of habilitation and rehabilitation programs without discrimination based on sex.⁵¹ Their advocacy was partially successful as there is a mention of gender-sensitive rehabilitation services in the article on health. However, habilitation and rehabilitation is more than a health issue, as was continually reiterated by national representatives and NGO participants.⁵²

Article 27 – Work and Employment

Work and employment covers a particularly relevant area regarding gender differentiation for people with disabilities. . Article 27 delineates protections and measures that apply to both the private and public sectors.⁵³ According to the International Labor Organization “women with disabilities are more likely than their male counterparts to be poor or destitute, illiterate or without vocational skills, and most of them are unemployed.”⁵⁴ “When women with disabilities work, they often experience unequal hiring and promotion standards, unequal access to training and retraining, unequal access to credit and other productive resources, unequal pay for equal work and occupational segregation, and they rarely participate in economic decision-making.”⁵⁵ Moreover, disability organizations report that women with disabilities are often subject to harassment at work and sexual exploitation.⁵⁶

Various United States Census studies have determined that only about one-third of people with disabilities between twenty-one and sixty-four are employed. When compared with those who are employed full-time, it is still only about one-third: For women with physical disabilities it is 30.7 percent versus 69.2 percent for women without disabilities; employment for men with physical disabilities is at 33.7 percent versus 83.2 percent for men without disabilities.⁵⁷ Women with physical disabilities earn substantially less than men with physical disabilities or women without disabilities; they earn only 77 percent of the U.S. median income.⁵⁸

Equal rights for people with disabilities to earn a living through freely-chosen work and without discrimination are the foundations of this article. Gender-sensitive provisions would have ensured that women with disabilities enjoy their right to work on a basis of equality, including equal protective rights concerning pregnancy and maternity leave, and protection of women and men with disabilities from sexual and other forms of harassment in the workplace.⁵⁹

Article 31 - Statistics and Data Collection

Article 31 provisions contain measures to gather appropriate information, including statistical and research data, to enable states to formulate and implement policies in order to make the convention effective. A particular provision determines that information collected would be disaggregated as appropriate and used to help assess the implementation of States Parties obligations, and identify and address the barriers faced by persons with disabilities in exercising their rights.⁶⁰ According to civil society and some states, a gender-mainstreamed article on statistics would have encouraged states' parties to disaggregate all data on the basis of sex and ensure that the data provide information on issues that may affect women and girls with disabilities differently than men and boys with disabilities.⁶¹

Conclusion

Having been approved under a draft form in August at the eighth session of its AHC, the final text of convention is expected to be adopted during the sixty-first session of the General Assembly. The new Treaty on the Rights of Persons with Disabilities will constitute a historic achievement for the estimated 650 million people with disabilities around the world. While the convention does not create new rights, it specifically prohibits discrimination against people with disabilities in all areas of life including education, work, and transportation. Certainly, the Disability Convention will make a difference for a population that has been exposed to the most extreme denials and violations of the full range of human rights.⁶²

With respect to gender issues, the development of the Convention on Disability has promoted much reflection on the distinct population of women with disabilities and the disparate impact of discrimination they face. While advocates for women with disabilities may not see all the language they would like in this convention, strong initial steps have been made. The future will require careful monitoring and data collection to assess the impact of this convention and to ensure that it equally meets the needs of all people with disabilities, including women and girls.

¹ For additional information on disability law and policy issues, see The Burton Blatt Institute (BBI), <http://bbi.syr.edu> (last visited Nov. 17, 2006). This research was in part funded by grants to the Peter Blanck Ph.D, J.D from: (a) the U.S. Department of Education, National Institute on Disability and Rehabilitation Research, for the Rehabilitation Research and Training Center (RRTC) on Workforce Investment and Employment Policy for Persons with Disabilities, Grant No. H133B980042-99, "It Works," Grant No. H133A011803; "Demand Side Employment Placement Models," Grant No. H133A060033, "Technology for Independence: A Community-Based Resource Center," Grant No. H133A021801; the Rehabilitation Services Administration (RSA) for RRTC on Employment Policy for People with Disabilities, and (b) the Center for International Rehabilitation (CIR).

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³ *Ibid.*

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¹³ International Disability Caucus. *Op.cit.*

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⁴⁰ Draft Convention on the Rights of Persons with Disabilities and the Draft Optional Protocol to the International Convention on the Rights of Persons with Disabilities to be adopted simultaneously with the Convention. *op.cit.*

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⁶¹ Article 6 - Women with Disabilities, Background Documents. Sixth Session. Comments, proposals and amendments submitted electronically. Governments. UN enable. United Nations 2005

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Article 31 - Statistics and data collection, Background Documents. Seventh Session. Comments, proposals and amendments submitted electronically. Non-governmental organizations. International Disability Caucus. Un enable. United Nations. 2006 <http://www.un.org/esa/socdev/enable/rights/ahcstata31sevscomments.htm>. Article 31 - Statistics and data collection, Background Documents. Op Cit

⁶² See generally Peter Blanck et al., *Disability Civil Rights Law and Policy: Cases and Materials*. 2005; Blanck, P. Americans with Disabilities and their Civil Rights: Past, Present, Future, *University of Pittsburgh Law Review*, 66, 687-719. 2005