



Standard Interpretation of the UN Convention on the Rights of Persons with Disabilities (CRPD) from a Female Perspective

**Position and Reference Paper on the Significance of
References to Women and Gender
in the Convention on the Rights of Persons with Disabilities**

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Preface

This publication is a presentation of the results of a task with which we were commissioned in 2008. It concerns the interpretation of stipulations relating to women and gender as they are specified in the Convention on the Rights of Persons with Disabilities. This position and reference paper's goal is to clarify how the women and gender specifications in the Convention on the Rights of Persons with Disabilities can be interpreted, and to determine the ensuing practical consequences for the States parties. The idea of writing an interpretation of the articles relating to women goes back to our own strong engagement for the visibility of women with disabilities in the CRPD during the Convention negotiations.

Due to the support of the "*filia*" foundation (a "*daughter of the women's movement*"), we have now been able to have the paper translated into English. With this step, we hope to enrich the international discussion concerning the effective implementation of women with disabilities' human rights. During the translation process, some details from the first German edition were altered.

In this paper we dealt exclusively with those passages in the Convention on the Rights of Persons with Disabilities which explicitly refer to women/girls or gender. We are aware of the fact that the Convention includes other clauses that are significant for women and girls with disabilities. For example, this applies to article 23, from which one might deduce the right to parental assistance.

We hope this paper will be of help to all those who support the protection of disabled women's human rights and the improvement of their living conditions.

Berlin, March 2011

The authors

References and Abbreviations

The terms "disabled women" and "women with disabilities" are used synonymously. There are good linguistic and substantive arguments for both terms.

AHC	Ad Hoc Committee
CED	International Convention for the Protection of All Persons from Enforced Disappearance
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women and Committee on the Elimination of Discrimination against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CESCR	Covenant on Economic, Cultural and Social Rights
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons With Disabilities
DBR	Deutscher Behindertenrat: German Disability Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Cultural and Social Rights
ICPD	International Conference on Population and Development
IDC	International Disability Caucus – NGO Coalition during the negotiations
ILO	International Labour Organisation
NGO	Non-Governmental Organization
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
WHO	World Health Organization

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A. Retrospectives

1. Eva Ullrich: A Retrospective of the Establishment of a Women's/Gender Perspective in the UN Convention from the Perspective of a Member of the German Government Delegation

Making Women Visible in the Convention

About Me

My Name is Eva Ullrich. I work in the German Federal Ministry of Labour and Social Affairs in Berlin, where I am a consultant in the area of disability policy. With Resolution 56/168 decreed in December 2001, the UN General Assembly established an Ad Hoc Committee whose task consisted of compiling suggestions for a Comprehensive and Integral International Convention on the Protection of the Rights and Dignity of Persons with Disabilities.¹ I participated in the Ad Hoc Committee's meetings from the beginning of the negotiations in 2002 until the work was finalized in August 2006.

The Human Rights Perspective: New Territory

When I travelled to New York in late July 2002 as a representative of the responsible ministry, I was fully informed about modern disability policies. In July 2001, a modern law on rehabilitation and participation services was implemented in Book No. 9 of the German Social Code (*SGB IX*).² This law was aimed at promoting disabled persons' independent living and social participation. SGB IX is the first federal law that takes disabled women's double discrimination into account. This law is mindful of women and men's different living conditions when it comes to granting benefits and services. This was obviously the only way to ensure disabled women equal participation opportunities. I would also like to

¹ www.un.org/disabilities/default.asp?id=70 (March 5, 2011)

² Book No. 9 of the German Social Code (*SGB IX*) deals with the rehabilitation and participation of disabled persons.

mention the German equal rights law for persons with disabilities: When compared on an international scale, this law is very courageous and progressive. So I was extremely well-prepared in terms of the legal situation in Germany. However, this was not the case in the field of human rights. Just like many delegates and also NGO representatives, knowledge about human rights had to be acquired during the course of the negotiations.

The Negotiations Begin

The debate about protecting disabled women and girls from discrimination and about their inclusion in the convention did not begin right away. In the first two Ad Hoc Committee meetings, the states first had to determine how and under which conditions they would be ready to negotiate a human rights convention of the rights of persons with disabilities within the framework of an Ad Hoc Committee. They also needed to define their basic principles and core themes. In this early phase, it was important for the states to pronounce themselves in the first place as being in favour of a convention on the rights of disabled persons. Moreover, it was necessary to specify if and how the non-governmental organizations should participate in the negotiations, as this was equally new territory. For the first time, a human rights convention with the United Nations was prepared with the continuous participation of non-governmental organizations. For the first time, the non-governmental organizations had a truly extensive right to speak. For the first time, they could really closely observe the arguments of the state representatives. From today's perspective, I think that this first decision concerning the non-governmental organizations' participation had already set the course for the inclusion of women and girls in the convention: Their representatives as well were able to follow the negotiations process, to express their opinion and to claim support for their cause with the state representatives.

Consequently, the question of if and how a women's/gender perspective was to be integrated into the UN convention was not addressed until at a later phase of the negotiations. The German delegation was also initially unaware of the enormous importance of the inclusion of women and girls in this convention. We were occupied with contributing to the negotiations process, gaining ground and struggling for as much equal participation as possible for the non-governmental organizations. It was important to define the parameters: We had to agree upon the topics we unconditionally wanted to be established in a Convention on the Protection of the Rights and Dignity of Persons with

Disabilities.

When I returned from New York after the first negotiations, it was evident to me that this task was too complex for one single ministry, and that disabled people must collaborate in this process. In New York, I had heard about Prof. Dr. Theresia Degener, a German human rights expert and advocate for disabled peoples' rights. It was necessary to use the potential that was already available in Germany. For this reason, a task force was established comprising the Federal Ministry of Foreign Affairs, the then Federal Ministry of Health and Social Security, which was at the time responsible for disability policy, the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, the Federal Commissioner for Matters relating to Disabled Persons and representatives from the *Deutscher Behindertenrat (DBR)*³ as well as some experts. This task force was very helpful for the German delegation to be able to successfully participate in the negotiations. The same applies to the integration of the gender perspective in the Convention.

Opposition Against Making Disabled Women Visible

Within the scope of the applicable human rights conventions, it was standard to use gender-neutral language. The Convention on the Rights of the Child (CRC) and the Women's Rights Convention (CEDAW) were the exceptions to this rule. Some state representatives argued that the term "*persons*" already included all human beings anyway – women, men, old and young persons, disabled and non-disabled people. Many state representatives feared an extension to other groups which also faced this level of discrimination, and as a consequence thereof, a fragmenting of the convention's concerns. Moreover, the gender perspective's opponents stated that disabled women were also women, and as a human rights convention for women already existed, there was no need to include a female perspective into the CRPD. With regards to the CEDAW, they argued that one should lobby for better reporting on the implementation of CEDAW. In this way, the reporting regarding disabled women and girls would be improved, and the inclusion of a gender perspective into the CRPD wouldn't be necessary. There were many arguments for and against making women and girls visible in the convention, and all of them had to be

³ German Disability Council.

considered.

Furthermore, it was common practice for the European Union to act with one voice in United Nations negotiations. That is, during the negotiations, the respective EU Council Presidency would speak in the name of all member states. However, difficult negotiations were often necessary in order to agree upon what that one voice would be. Once there was an agreement upon something, it could only be changed if all member states agreed upon that change. Consequently, it was very difficult to obtain all EU member states' consent regarding the gradual process of including women and girls in the convention, or at least to make sure that the European Union wouldn't pronounce itself as being against the process. A very controversial debate arose as early as during the Ad Hoc Committee's third meeting around the European Union's first suggestions concerning the inclusion of stipulations specifically targeting women into the preamble, even though what was at stake here was "only" the recognition of women and girls' multiple discrimination and the ensuing disadvantages, and the acknowledgement of the fact that disabled women are exposed to the risk of suffering violence and abuse. In the end, the participants agreed to address the discrimination of women and girls in the preamble, but stated that women and girls should, if possible, not be specifically mentioned in individual articles in the convention, and that there shouldn't be a separate article on the situation of women. I recall this in order to clarify that each and every word in the current convention that acknowledges women and girls' specific issues was won through intense debate – also within the scope of the European Union's discussion.

During the negotiations process, it was often incomprehensible to me why European states also closed their minds to the reasonable cause of making women visible in the convention.

A Tough Struggle

In November 2004, the then Federal Ministry of Health and Social Security and the Federal Commissioner for Matters relating to Disabled Persons organized an international expert conference on "human rights and disability". The conference was to help resolve some important questions and to open up new paths. The gender perspective was addressed during the debates. The conference report clearly shows that the participants

realized at this point that the gender perspective hadn't been taken into account in the convention up to that moment.⁴ However, it was necessary that awareness of the specific forms of discrimination against women with disabilities be increased in the UN member states and in societies in general, and that states reports address their situation. Consequently, the inclusion of the gender perspective was absolutely imperative. In the course of the debate, Theresia Degener said: "I didn't think it would be a problem for a UN convention to acknowledge the gender perspective, and I am really surprised that this is obviously not the case. But I don't think the states' opposition is very strong. However, the non-governmental organizations must exert more pressure, and they too neglected this topic until the present day. Regarding the states, I see many African representatives who want to include the women's issue. Also, some member states of the EU, such as Germany and Spain, for example, are strongly supporting this issue. This is why I think the odds are good." Theresia Degener was only wrong in one respect: It would be a tough struggle for the women's issue to actually become integrated into the convention.

*NETZWERK ARTIKEL 3 e.V.*⁵ and the *Sozialverband Deutschland (SoVD)*⁶ became the spearhead of a movement in Germany that called for an amendment to the convention draft in order to implement the principles of gender mainstreaming. They presented specific suggestions that were subsequently debated. Due to their suggestions and their loud request that these must be included in the convention, the German delegation was able to attain a considerably stronger position during the negotiation process.

It was a positive development when disabled women and girls also organized themselves on an international scale and demanded that women and girls be mentioned in articles dealing with issues that particularly affect women and girls. At the same time, they

⁴ Federal Ministry of Labour and Social Affairs, documentation of the expert conference on human rights and disabilities ("Menschenrecht und Behinderung"), Bonn, 2004, http://www.bmas.de/coremedia/generator/1768/property=pdf/menschenrechte_und_behinderung.pdf (March 5, 2011).

⁵ Netzwerk Artikel 3: A German nationwide network of equality initiatives devoted to a human rights oriented vision of issues concerning disabled people. The activities of NETZWERK were shaped by DPI-Germany (Interessenvertretung Selbstbestimmt Leben in Deutschland). See www.nw3.de.

⁶ German social association; nationwide organization representing the interests of pensioners, persons with disabilities, patients as well as long term care patients and their relatives. See www.sovd.de

campaigned for a separate women's article. Individuals who were influential and who would be heard were won to speak at side events, that is, events alongside the negotiations with the aim of contributing to the realization of women's demands. For example, Sheikha Hessa Al-Thani, the United Nations Special Rapporteur on Disability of the Commission for Social Development, was frequently present at the side events.

An Important Background Document

In my opinion, a major breakthrough was achieved when the Ad Hoc Committee's chairperson appointed Theresia Degener to be the facilitator to deal with the suggestions on making women and girls visible in the Convention. With the approval of the German Disability Council, Theresia Degener was a member of the German delegation. This meant that there was an official platform where the states could voice their views, where intense discussions took place and where opinions often clashed.

In December 2005, a week before Christmas, a task force meeting took place in Berlin. With the support of the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, and with the participation of the then Federal Ministry of Health and Social Security and some committed women and one man, this task force met to discuss and finalize an important document for the upcoming negotiations in New York. It was obvious: Time was running out, and the next round of negotiations simply had to be the breakthrough moment in order to make women visible in the convention. This meant that both the German delegation and the non-governmental organizations had to be well prepared. The background document prepared by this task force "*Legal background paper: Gendering the Draft. A Comprehensive and Integral Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities*" was an important document. It facilitated the process, served as groundwork for the debate within the non-governmental organizations and was also of considerable use to the German delegation.⁷ It was handed over to state representatives and channelled the debate in the right direction.

This document contributed to today's Convention on the Rights of Persons with Disabilities and specifically to the fact that there is a separate article on women with disabilities and

⁷ www.netzwerk-artikel-3.org/un-konv/doku/papier-02.pdf. (March 5, 2011)

that several articles that are of particular relevance to women also explicitly refer to women.

Needless to say, we all hugged each other when the Convention was approved by the state representatives. We were very proud – we had done a good job and had succeeded in making women visible in the convention.

2. Interview with Theresia Degener, a Jurist and Woman with a Disability and Member of the German Government Delegation

The Key to our Success: There Were Many of Us, and We Were Everywhere

What was your function in New York during the CRPD negotiations?

I was on the Ad Hoc Committee primarily as an expert member of the German government delegation. I was the only German representative on the Ad Hoc Committee's task force which was responsible for the first draft of the Convention text in January 2004. In August 2005, during the Ad Hoc Committee's sixth session, I was appointed as a facilitator for the women's issues article.⁸ I held this position until the end of the Ad Hoc Committee's seventh session.

Why was the gender aspect missing in the CRPD draft?

I'm afraid that it was simply "forgotten" in the beginning. I have to emphasize here that the first draft was prepared under extremely unfavourable conditions. We only had two weeks and needed to consult a large number of drafts and documents.

The task force members' level of knowledge about the UN, the human rights treaties and their emergence varied to a huge extent. There were New York diplomats and UN experts who were very skilled in the negotiation process, but had hardly taken a look at the issue

⁸ The Ad Hoc Committee's chairperson appointed so-called "facilitators" if the government delegations were unable to reach an agreement about an article during the plenary discussions. The facilitators' task consisted in developing a joined governments' position with delegations who wanted to participate.

of disability. There were government representatives who came from state capitals and who were experts in their national disability policies, but didn't really know how to navigate the international political circles. Furthermore, there were the representatives from civil society, that is, from disabled persons' organizations, who knew a lot about disability policies as emancipatory policies, but who were very unfamiliar with international human rights policies, the UN system and diplomacy. In between these two, there were some specialists in the field of the UN human rights system and national human rights institutions who were equipped with yet another form of expertise. All of these different protagonists now had to collaborate and merge into a functioning team. We all needed to get to know each other. That was very interesting, but we only really succeeded in doing so when the four-year-long negotiation process was reaching its completion.

During the two weeks in January 2004 – I still remember that the temperature in New York had reached minus 15 degrees Celsius! – we worked, debated and wrote from 7 a.m. to 1 or 2 a.m. We often didn't even know where our heads were. One of the key issues was the topic of institutionalization, and the legal capacity and agency of persons with intellectual impairments. It was often difficult to keep in mind that we were also dealing with other human rights and other groups of disabled persons.

I also still remember how I realized all of a sudden, around midnight on the second-to-last day, that our draft included an article on children, but not on women. We were sitting in the New Zealand embassy; the staff there was kind enough to let us use their premises after UN headquarters closed for the night. Around 40 or 50 people were in the room. All of us were extremely exhausted, and we were on the verge of agreeing on a compromise that was to be presented as the first draft the next morning. I briefly considered bringing up the women's issue, but then refrained from doing so, because I thought it would be easy to include that aspect later. The UN had signed CEDAW, and women's issues are well-established within the UN human rights system.

Which alternatives were discussed in order to make women visible? And what were the arguments?

During the Ad Hoc Committee's third meeting, the Republic of Korea presented a draft for an article dealing specifically with women's issues that we called "article 15 bis" at the

time. A large number of countries and groups – for example, the EU – immediately declared themselves as being against it. They were afraid that this article would lead to further articles for disabled persons living in developing countries, or for disabled members of minority religions. "If we accept a separate article on women's issues, we'll be approached by gays and lesbians, religious minorities, senior citizens and so on. It will be endless." That's what people said.

Another objection was regarding the experiences that had been made with the separate article on disabled children in the Convention on the Rights of the Child. These experiences suggested that isolated approaches are not always favourable. And indeed: The experience made with the CRC's article 23 demonstrates that a separate article can also lead to limitations, since most member states think that all rights regarding disabled children are then listed in that one article. However, article 23 only looks into the need for advancement, while other rights, such as the entitlement to protection from violence and exploitation, are dealt with in other articles.

Korea's article 15 bis was met with the counterproposal to make specific mention of disabled women and girls – and other groups – in the preamble. This suggestion was justified with the particular interpretative function that preambles have: Preambles are often used to interpret individual articles. However, some parties argued that a preamble is not legally binding.

The third suggestion pointed to gender mainstreaming. This means that disabled women and girls are explicitly mentioned in important articles in the convention, and that the convention clearly states their multidimensional discrimination. In this way, the advocates hoped to counter the experiences made with the CRC: Instead of mentioning disabled women and girls only once – and in so doing, also only within one single governmental department – they should be kept in mind throughout the text.

Finally, some NGO women proposed the so-called "*twin track approach*". Disabled women were to be taken into consideration with a separate article, and also to be specifically mentioned in as many other Convention articles as possible. In addition to the arguments that had been exchanged up to that point, the "*twin track approach*" drew upon the argument that disabled women and girls are not mentioned in the CEDAW.

How did you become a facilitator?

The Ad Hoc Committee's office approached me and asked me if I would be willing to accept this responsibility. During that period, a lot of facilitators were appointed. This was the case for practically each and every article for which the plenum discussion couldn't reach a consensus.

What were your responsibilities as a facilitator?

My job consisted in preparing a compromise that would be accepted by the plenum. In order to do so, I had to talk to the state representatives who were particularly committed to the question of women and I also had to encourage conflicting parties to debate with each other. I wrote several different drafts and summoned additional meetings outside of the plenum where these drafts were discussed. The number of participants ranged from 50 to 100 people.

Unlike other facilitators, I collaborated with second facilitator, Josephine Sinyo from Kenya, as mandated by Don MacKay, the chairperson. Josephine Sinyo was in charge of the article dealing specifically with children's issues. This happened because one could assume that both articles would encounter the same difficulties during the negotiation process. That is to say that in the meantime, some states had come up with the demand to erase the children's article from the first draft and to mention all "subgroups" either in the preamble or in a special article or at different points in the convention. This meant that Josephine and I had to present collective suggestions and organize joint meetings with the negotiation parties. This complicated the process even more, but the assignment was actually really clever and did promote women's interests: The children's article was met with a lot of support in the plenum, while the women's issue was scrutinized rather critically.

Are you satisfied with the outcome?

Yes. Generally speaking, I'm satisfied, since we implemented the most comprehensive approach – the twin track approach. Disabled women and girls have a separate article (art. 6 CRPD), they are explicitly mentioned at different points within the CRPD and they are included in the preamble. Since the twin track approach was not presented by government

representatives, but by NGOs, we can consider it to be a small miracle that this proposal gained acceptance. Particular support came from African states, who were willing to accept this suggestion and to put their own proposals aside. But also, some EU states – primarily Germany and Austria – helped in the twin track approach's breakthrough.

What would you do differently if you had the same task today?

I would make sure that women's issues are included right from the start, in the first draft.

Were there particularly illuminating experiences during this process?

A particularly illuminating experience for me was seeing the role of the NGOs. In the beginning, they were quite helpless because most of them were not skilled in navigating the sphere of international human rights. Moreover, they didn't succeed very well in coordinating their work. But they turned into experts within no time, and when they established their umbrella organization, the International Disability Caucus (IDC), they were equipped with a very powerful committee. Since the Ad Hoc Committee's chairperson, New Zealand ambassador Don MacKay, was very open-minded towards disabled persons' organizations and was willing to lend them his voice – even against the UN proceedings and rules – they became enormously influential. To my knowledge, there had been no human rights convention up to this moment that had born such equally strong hallmarks of the movement. And the social movement was present in the entirety of its wide range, with all disabled persons' organizations and from all regions. No one can say that it was only the disabled people's groups from the global North (that is, from the industrialized countries) or only the physically disabled who shaped the convention.

Another "aha" moment for me was that disabled people were members of all groups: they were government representatives, NGO representatives, members of UN organizations such as the World Bank, or the Office of the United Nations High Commissioner for Human Rights (UNHCHR) and representatives from national human rights institutions. I think that this was the key to our success: There were many of us, and we were everywhere.



(Dr. Theresia Degener and Josephine Sinyo, the AHC's facilitators for the articles on women's and children's issues)

3. Dr. Sigrid Arnade: The CRPD Negotiations from an NGO Representative's Perspective⁹

The Magic Word: Twin Track Approach

I actually only realized in February 2004 that a UN convention on the rights of persons with disabilities was in the process of being negotiated. At that time, the organization that I work with, the German Disability Council, received the first draft that had been prepared by a Working Group in January 2004. When I noticed that references to women and gender were almost completely absent from this draft, I was scandalized, and immediately wrote an email to all those I considered to be important protagonists concerning this issue. Some

⁹ Dr. Sigrid Arnade represents Weibernetz e.v., a German network advocating on disabled women and girls' behalf, in the German Disability Council. She primarily contributed to the UN Convention in her function as NETZWERK ARTIKEL 3's chairwoman.

responses encouraged me to continue my commitment to women's issues, others replied that there was nothing much to do about it.

At the same time, the German Disability Council prepared a policy brief to the draft's text. It was supplemented by a paper of four pages on political issues relating to women added by Sabine Haefner, attorney, and then social policy officer for women's issues at the *Sozialverband Deutschland (SoVD)*.

The Night in Winnipeg

In September 2004, thanks to *Weibernetz e.V.*¹⁰, I had the opportunity to participate in the Disabled Persons' International (DPI) summit in Winnipeg, Canada. The agenda included a discussion with CRPD ambassadors from New York and I brought the German Disability Council's policy brief along. During the debate in Winnipeg, I raised my hand and pointed to the insufficient acknowledgement of disabled women's living conditions. The New York ambassadors didn't agree: In this case, any group of disabled persons might claim particular acknowledgement. I tried to point out that women with disabilities are not a group, but instead they make up at least 50% of the people targeted by the convention. Fortunately, my position was backed by many women from all over the world. In the end, the ambassadors promised to include our arguments into the negotiations process. They received copies of the German Disability Council's policy brief and left the summit.

Afterwards, I talked to a Canadian woman who had supported me during the debate. We agreed upon the fact that the ambassadors' promises were insufficient, and that we ourselves would have to start an initiative for a women-friendly convention. In the evening, I had a glass of wine in the hotel room with my life partner who had accompanied me as my assistant. It was around midnight when I came up with the idea that we should start a campaign for making disabled women visible in the convention.

The Twin Track Approach is Born

Upon my return to Germany, I called Sabine Haefner to tell her what I had experienced in

¹⁰ German Network by and for WomenLesbians and Girls with disabilities. See www.weibernetz.de.

Winnipeg, and that I had come up with a plan. She was immediately enthusiastic, and so *NETZWERK ARTIKEL 3* and the *Sozialverband Deutschland (SoVD)* brought to life the campaign: "*Towards Visibility of Disabled Women in the UN Convention!*" We set up a trilingual homepage (German/English/Spanish)¹¹, collected signatures for our cause and published them on the website. The campaign was immediately supported by some 500 individuals and almost 100 organizations from around 30 countries. All German Disability Council associations had signed and the European Women's Lobby (the European women's organizations' umbrella organization) as well as the *Deutscher Frauenrat*¹² supported our concerns. Moreover, we prepared suggestions for an endorsement to the Convention, and worked on public relations. The *Bundesministerium für Familie, Senioren, Frauen und Jugend (BMFSFJ)*¹³ supported our position and provided us with financial aid in order to help us expand our network.

In spring 2005, Disabled Persons' International commissioned me with the task of preparing a paper on the inclusion of women into the UN convention. Sabine Haefner and I worked on this together and wrote a paper consisting of three parts called "*Towards visibility of women with disability in the UN Convention*".¹⁴ First of all, we looked at the situation of women with disabilities throughout the world. Secondly, we assessed existing UN documents with regard to their relevance to disabled women. Thirdly, we presented proposed additions, for which we drew upon other states' proposals, and also came up with new phrasings. In the paper's summary, we recommended the "*twin track approach*" – the approach that was implemented in the end. It was published in July 2005.

A Stroke of Luck and Exhausting Negotiations

In spring 2005, we learned that the inclusion of disabled women into the Convention text was to be negotiated during the sixth Ad Hoc Committee's meeting (August 1 – August 12, 2005). Thanks to funding provided by the then Federal Ministry of Health and Social Security, I had the opportunity to travel to New York with my assistant.

¹¹ www.netzwerk-artikel-3.de/un-konv/008e.php (March 5, 2011)

¹² German Women's Council (www.frauenrat.de).

¹³ German Federal Ministry of Family Affairs, Senior Citizens, Women and Youth.

¹⁴ www.netzwerk-artikel-3.org/un-konv/doku/draftend.pdf (March 5, 2011)

For financial reasons, my life partner/assistant and I had to fly into New York on Friday, even though the negotiations were only to begin on Monday. This proved to be a stroke of luck. The Republic of Korea's government delegation had suggested a separate article dealing specifically with women's issues as early as during the Ad Hoc Committee's third meeting in May 2004; now, upon the Koreans' initiative, the NGOs met on Saturday to discuss the issue. During the CRPD negotiations, the NGOs' position was respected and taken very seriously – based on the premise that the NGOs agreed upon shared positions. Consequently, that Saturday before the negotiations was all about finding an agreement upon the inclusion of women in the CRPD. The Koreans were well-prepared and argued in favour of the separate article specifically dealing with women's issues. Another Swedish NGO representative had prepared a paper that presented the gender mainstreaming strategy as ineffective. I opposed this position, made a plea for gender mainstreaming and brought the *"twin track approach"* into play. In the end, we were unable to reach an agreement, but the Korean position was not declared to be the NGO position. We agreed however to continue the debate.

From Sunday on, I was backed mainly by other German NGO women and by Lydia la Rivière-Zijdel from the Netherlands. We had a lot of debates about the advantages and disadvantages of a separate article and the strategy of gender mainstreaming. However, I understood the advocates of a separate article better as time passed by. They insisted upon a separate article dealing specifically with women's issues because they had experienced that gender mainstreaming is an ineffective strategy in the Republic of Korea, but also in various other Asian and African states. Another argument for a separate article dealing specifically with women's issues was the Koreans' position that it would force states to involve ministries of women's affairs into the process of implementing and monitoring the convention.

On August 2, 2005, the inclusion of women/gender references in the CRPD was discussed in the UN plenum.¹⁵ In the debate's last phase, I and seven NGO representatives got a chance to speak. All of us emphasized the great importance of appropriately considering

¹⁵ The government delegations' positions will be outlined in the Background chapter and are therefore not specified at this point.

women with disabilities in the CRPD. Four of us, including me, spoke in favour of the "*twin track approach*". When the debate came to its end, the Ad Hoc Committee's chairperson announced the appointment of a facilitator to resolve this issue. This person's responsibility would consist in preparing shared positions for the government delegations.

In the following days, we struggled to find shared NGO positions, wrote comments on the facilitator's suggestions and tried to convince government delegations. When I returned to Germany after that week I was very exhausted – and very happy, too: I felt we had come closer to a good solution concerning issues related to women with disabilities.

Merry Christmas!

However, many other resistances needed to be overcome. This was why representatives from German ministries stated that a legal background paper should be prepared. In November 2005, they asked me and Sabine Haefner, if we would take on this task. So we got started.

I was very excited when we were supposed to present our results to experts on a workshop taking place just before Christmas. There was an international law professor from Australia who had made the long trip specifically for this conference. Sadly, Sabine Haefner couldn't participate on the first day. The experts praised our preliminary work, but also argued for substantial changes. We looked into different aspects in separate working groups, and in the end, Sabine Haefner and I received some documents to include in our work, besides the suggestions made in the workshop.

Happy Christmas holidays! The paper was to be completed by the Ad Hoc Committee's seventh meeting (January 16 – February 3, 2006). We managed somehow, and this time both of us travelled to New York thanks to the BMFSFJ's funding; Sabine Haefner stayed for three weeks, and I and my assistant for two weeks.

Inscrutable Diplomacy

In New York, Sabine Haefner and I presented our background paper at a so-called side

event, a meeting which took place during the lunch break.¹⁶ At this stage of the negotiations, it was not only important to continue finding unanimous NGO positions, but also to communicate with government delegations and to convince them of our positions.

We experienced both success and failure; all in all, I had the impression that people didn't always form their opinions based on rational criteria. For example, one government representative turned out to be extremely critical towards the inclusion of women at a meeting with the facilitator. Therefore, Lydia la Rivière-Zijdel and I set up an appointment with him at the UN headquarters' restaurant. He made mincemeat of each of our suggestions and arguments, and afterwards I thought I had failed terribly and had done harm to the common cause. I felt awful.

During the next meeting hosted by the facilitator, I hardly believed my own ears. That same man who had torn our suggestions to pieces now pronounced himself in favour of an extensive acknowledgement of women with disabilities in several of the convention's articles. At this point it became truly clear to me that I just don't get diplomacy. This was not our only success. During the discussion in the UN plenum, many delegations spoke out in favour of the *"twin track approach"*.¹⁷

The convention was discussed in the plenum, article by article. As a group of women with and without disabilities, we came up with positions on the important points, explaining why each reference to women should be inserted. When the individual articles were debated in the plenum and the NGOs had the chance to deliver their opinions, Lydia la Rivière-Zijdel succeeded over and over again in clarifying the NGO women's positions.

A Great Success!

I didn't even want to travel to the Ad Hoc Committee's eighth and last meeting (August 14 – August 25, 2006) because the days in New York were always very exhausting. I knew that Sabine Haefner would be in New York for the entire time. That would be enough, I thought. Less than a week before the negotiations started, Sabine Haefner called me and

¹⁶ www.netzwerk-artikel-3.org/un-konv/doku/papier-02.pdf (March 5, 2011)

¹⁷ See Background.

told me I absolutely had to come to New York, since the inclusion of women into the convention text was threatened. I didn't quite understand why I was the person who could save the day, but I nevertheless travelled to New York for a few days with my assistant. Similarly to the previous round of negotiations, we talked to government representatives and tried at the same time to establish common NGO positions with all disabled women. These were formulated and copied, and served as our basis for further lobbying. Fortunately, we didn't perceive any danger of the rejection of an extensive acknowledgement of women in the convention text as we had feared.

During the plenum debate, almost all speakers declared themselves in favour of the "*twin track approach*". Nevertheless, we had to come up with the ideal phrasing for the article dealing specifically with women's issues and to embed women and gender references in other articles. Regarding the latter, we didn't live up to our own expectations. For instance, the articles on education, on work and employment, and on statistics and data collection lack the appropriate specifications.

All the same, I think that women with disabilities are very widely acknowledged in the CRPD. Many protagonists contributed to this success. I would like to emphasize the credit owed to the Korean government delegation. It was thanks to their suggestion of an article dealing specifically with women's issues during the third round of negotiations, that the inclusion of women became an issue in the meetings to begin with. Also, the German government delegation and the facilitator, Prof. Dr. Theresia Degener, contributed largely to the positive results. Ultimately, we have to thank a large number of women with and without disabilities from all over the world for relentlessly committing themselves to making women visible in the CRPD and to ensuring that they are endowed with a broad range of rights.

B. Background

1. The Convention's Origins

On the following pages, we will outline the process that led to the UN Convention on the Rights of Persons with Disabilities (CRPD). At this point, we will leave the establishment of women-related specifications in the convention aside; we will examine this topic in section 5.

1.1. History¹⁸

In most states, the predominant perspective on disability has been and still is the medical one; in this view, the emphasis is placed on the individual deficit. Consequently, the topic of disability is primarily addressed in terms of social and health codes, instead of being regarded as a human rights issue. The key aspects include prevention, rehabilitation and social security. Thus, it is not surprising that the United Nations likewise approached the issue of disability within the context of the UN Social Development Commission and the World Health Organization, but not as a human rights issue.

At the same time, it is a well-known fact that disabled people face severe human rights violations throughout the world. In 1993, the UN published a report on disabled persons' human rights prepared by the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities Leandro Despouys.¹⁹ The author lists a wide range of human rights violations that are part of disabled peoples' daily experience all over the planet. Among other things, he lists the prohibition of marriage and of the founding of a family, forced sterilization, sexual violence, being forced to live in institutions, the

¹⁸ Unless otherwise noted, the information provided in this section is taken from Theresia Degener's article: "Eine UN-Menschenrechtskonvention für Behinderte als Beitrag zur ethischen Globalisierung." In: Politik und Zeitgeschichte B 08/2003.

¹⁹ Human Rights and Disabled Persons. United Nations publication, Sales No. E.92 XIV.4, New York 1993, www.un.org/esa/socdev/enable/dispaperdes0.htm (March 5, 2011)

prohibition to vote, forced special needs schooling and non-accessible public transport and housing.

Nonetheless, there was a long way to go until a CRPD began to be negotiated. In 1987, an Italian draft was discussed in the UN committees for the first time, only to then be discarded. In 1989, Sweden failed in a renewed attempt. By way of substitute, the United Nations adopted the *"UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities"* in 1993.

In March 2000, the Beijing Declaration²⁰ gave fresh impetus to the debate. Five organizations – *"Disabled Persons International"*, *"Inclusion International"*, *"Rehabilitation International"*, *"World Blind Union"* and *"World Federation of the Deaf"* – called for a legally binding international convention on the rights of all disabled persons. These organizations committed to campaign for such a convention.

In April 2000, the then United Nations High Commissioner for Human Rights, Mary Robinson, was asked in a Human Rights Commission resolution²¹ to examine measures leading to an improvement of disabled people's human rights situations. She commissioned the *"Human Rights and Disability"* study.²² This survey analyzed the human rights treaties that had been established up until that time, along with their impacts and applications with regard to people with disabilities. In the last chapter, the survey's authors pronounce themselves explicitly in favour of the establishment of a UN human rights convention on the issue of disability.

1.2. The CRPD Negotiations²³

On Mexico's initiative, the UN General Assembly adopted Resolution 56/168²⁴ on

²⁰ Beijing Declaration on the Rights of Persons with Disabilities in the new century.

²¹ UN document E/CN.4/RES/2000/51, April 25, 2000, www.un.org/disabilities/default.asp?id=106 (March 5, 2011).

²² Quinn, Gerard/Theresia Degener: *Human Rights and Disability. The current use and future potential of United Nations human rights instruments in the context of disability.* OHCHR, United Nations, New York and Geneva 2002.

²³ Unless otherwise noted, the information provided in this section is taken from the website: www.un.org/esa/socdev/enable/rights/adhoccom.htm (March 5, 2011)

²⁴ Comprehensive and integral international convention to promote and protect the rights and the dignity of persons with disabilities, A/RES/56/168, www.un.org/disabilities/default.asp?id=70 (March 5, 2011)

December 19, 2001. This included the establishment of the so-called Ad Hoc Committee. According to the resolution, the Committee's initial task consisted solely in looking into suggestions for a comprehensive and integral convention on the protection and promotion of disabled persons' rights and dignity. The work was based on the UN's holistic approach in the fields of social development, human rights and non-discrimination. The Committee was also required to take into consideration the Human Rights and Social Development Commissions' recommendations.

Furthermore, the resolution said that states, relevant bodies, organizations from the UN system such as regional commissions, and the UN Special Rapporteur on Disability of the Commission for Social Development as well as interested non-governmental organizations (NGOs) were invited to contribute to the Ad Hoc Committee's work.

The Ad Hoc Committee's first meeting took place from July 29 to August 9, 2002 in the UN headquarters in New York. While preparing the second meeting, the Ad Hoc Committee decided to collect positions and suggestions for a convention from states as well as from all relevant international, regional and national organizations.

During its second meeting between June 16 and June 27, 2003, the Ad Hoc Committee decided to appoint a Working Group whose task consisted in preparing a draft for a convention. This draft was to serve as a basis for the member states' negotiations. The Working Group was to consider any input that had been made available to the Ad Hoc Committee. It was composed of government representatives, NGOs and national human rights institutions. They held a meeting between January 5 and January 16, 2004, and prepared a convention draft with the title, *"Draft Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities"*.

In December 2003, the UN General Assembly adopted Resolution 58/246.²⁵ While the Ad Hoc Committee's task had consisted in merely looking into suggestions, it was now stated that the Committee should begin negotiations about a convention during its third meeting.

²⁵ Comprehensive and integral international convention to promote and protect the rights and the dignity of persons with disabilities, A/RES/58/246, www.un.org/disabilities/default.asp?id=66 (March 5, 2011)

Furthermore, the resolution placed great emphasis on the inclusion of NGOs, and governments were required to incorporate persons with disabilities in their delegations. The German government acted in accordance with this request by appointing Prof. Dr. Theresia Degener as a member of the official government delegation²⁶, by holding regular meetings with representatives from the German Disability Council and by supporting German NGO representatives' participation in the negotiations in New York.

In compliance with Resolution 58/246, the negotiations for the draft were commenced in the Ad Hoc Committee's third meeting (May 24 – June 4, 2004). During the third, fourth (August 23 – September 9, 2004), fifth (January 24 – February 4, 2005) and sixth meeting (August 1 – August 12, 2005), the Ad Hoc Committee completed two readings of the draft's text.

At the seventh meeting (January 16 – February 3, 2006), the Ad Hoc Committee's chairperson, Don MacKay from New Zealand, presented his own draft as a result of the work that had been accomplished up until that point in time. This draft was negotiated during the seventh and eighth meetings (August 14 – August 25, 2006). Upon the closing of the Ad Hoc Committee's eighth meeting, the negotiated convention text as well as the optional protocol (regulating the operating principles for the Committee on the Rights of Persons with Disabilities) was adopted.

This went along with the appointment of an editorial committee which was to carry out a linguistic review of the draft and to conform it to common UN language. The editorial committee finalized their work on December 5, 2006. The reviewed convention and optional protocol versions were handed to the General Assembly for adoption.

The UN General Assembly adopted the convention and the optional protocol unanimously on December 13, 2006. The convention was now called, "*Convention on the Rights of Persons with Disabilities*". Both documents were ready for signature and ratification as of March 30, 2007, in New York. The convention came into effect on May 3, 2008, after being

²⁶ Lachwitz, Klaus: UNO-Generalversammlung verabschiedet Konvention zum Schutz der Rechte behinderter Menschen – Teil I. Excerpt from RdLh 1/2007.

ratified by 20 states.

2. The Convention's General Significance (sans Consideration of the Specifications Relevant to Women)

"Convention with Three Superlatives": This was the title of an interview²⁷ published by the German-language disabled persons' news service, kobinet, on December 13, 2006 – the day the UN General Assembly adopted the Convention. These three superlatives are: *"This is the first major human rights document of the 21st century. Secondly, no convention was ever negotiated in so little time as this one."* The third superlative is attributed to the unprecedented inclusion of disabled persons and their organizations on all levels and during all stages of the negotiation process.²⁸ The phrase, *"Nothing about us without us"* was the guiding principle of the entire consultation process.²⁹

This Convention represents the first international document that systematically looks at disability policies from a human rights perspective. In the past, United Nations documents on disability issues were primarily shaped by the notion of public welfare.³⁰ As stated above (see B 1.1.), the predominant perspective on disability was a medical one which regards disability as an individual deficiency that is responsible for the lack of participation in all fields of society. According to the human rights-oriented social model of disability, disability emerges as a consequence of social barriers, such as non-accessible public transport, a lack of sign language interpretation, forced special needs schooling or websites that cannot be used by blind people. *"People aren't disabled, they are being*

²⁷ Interview with Dr. Sigrid Arnade, conducted by kobinet journalist Ottmar Miles-Paul (www.kobinet-nachrichten.org/cipp/kobinet/custom/pub/content.lang.1/oid.13630/ticket.g_a_s_t) (March 5, 2011)

²⁸ Haefner, Sabine: Folgen der Ratifizierung der UN-Konvention zu den Rechten der Menschen mit Behinderungen. In: *Leben ohne Barrieren!?* Dokumentation der Anhörung vom 23.04.07, Bündnis 90/Die Grünen Bundestagsfraktion, Berlin 2007, pp. 44-49; Theresia Degener: Menschenrechtsschutz für behinderte Menschen. Vom Entstehen einer neuen Menschenrechtskonvention der Vereinten Nationen. Vereinte Nationen 3/2006, pp. 104-110.

²⁹ Lachwitz, Klaus: UNO-Generalversammlung verabschiedet Konvention zum Schutz der Rechte behinderter Menschen – Teil I. Excerpt from RdLh 1/2007.

³⁰ Haefner, Sabine: Folgen der Ratifizierung der UN-Konvention zu den Rechten der Menschen mit Behinderungen. In: *Leben ohne Barrieren!?* Dokumentation der Anhörung vom 23.04.07, Bündnis 90/Die Grünen Bundestagsfraktion, Berlin 2007, pp. 44-49.

disabled", was the slogan employed during the late 1990s in *Aktion Grundgesetz* (a campaign by the German organization *Aktion Mensch*, then *Aktion Sorgenkind*, with the objective of including a clause on non-discrimination into the German constitution) which summed up the social concept of disability.

In the new CRPD, people with all forms of disabilities are regarded as holders of inalienable human rights. This means that disabled life is affirmed as a normal element of human life and society.³¹ At the same time, the problems disabled persons are facing are named, not denied. All existing human rights are considered from a social perspective on disability and are specified and tailored with regard to disabled women and men's living conditions.

The states that ratify the Convention put themselves under the following obligations:

- To ensure the human rights of persons with disabilities;
- To prevent the discrimination of persons with disabilities;
- To adjust their own legislation so that the Convention's stipulations are implemented.³²

In the light of the UN Convention, all existing fields of disability policies and legislation will have to be renegotiated. We list six of these fields here:

- **The term 'disability':** The Convention does not include a fixed definition of disability. However, the preamble stipulates a social perspective on disability, and article 1 roughly defines "*persons with disabilities*". Both phrasings go beyond the common definitions of disability used in German law.
- **Accessibility:** Accessibility is addressed as early as in article 3 (General principles),

³¹ Heiner Bielefeldt identifies this perspective as "diversity approach". See Bielefeldt, Heiner: *Zum Innovationspotenzial der UN-Behindertenkonvention*, Deutsches Institut für Menschenrechte, Berlin 2006.

³² Arnade, Sigrid: Report on the UN Convention of Disabled Persons' Rights at the Rhineland-Palatinate Land advisory council for disabled persons' participation [*Berichterstattung zur UN-Konvention über die Rechte behinderter Menschen beim Landesbeirat zur Teilhabe behinderter Menschen Rheinland-Pfalz*], Mainz, June 21, 2007.

and for the first time ever in a binding human rights document.³³ Subsequently, article 9 lists the different fields in which accessibility shall be achieved. This exceeds the stipulations decreed in the German equal rights law for persons with disabilities [*Bundesgleichstellungsgesetz, BGG*]. For instance, private service companies shall also be obliged to ensure accessibility. Furthermore, the Convention includes a specification calling for plain language, which is an essential aid for people with intellectual disabilities.

- **Disability mainstreaming:** As early as in the preamble, the Convention emphasizes the importance of mainstreaming disability issues as an integral part of all relevant strategies of sustainable development. In article 4 (General obligations), the States parties commit themselves *"to take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes"*.
- **Equal recognition before the law:** Article 12, addressing issues such as legal capacity, guardianship and the like, caused a great deal of controversy during the Convention's preparation. In the end, the parties agreed to reject any form of disenfranchisement. On the contrary, States parties shall give the necessary support to disabled persons so that the latter can enjoy their rights.³⁴
- **Living independently:** Disabled persons' right to an independent life is emphasized above all in article 19. According to the Convention text, this also includes *"the opportunity to choose their place of residence and where and with whom they live"*. Disabled people must not be obliged to live in a particular living arrangement.
- **Education:** States parties must ensure that all children can participate in an inclusive education system (article 24). Exceptions are possible when it comes to learning Braille or sign language.³⁵

³³ Haefner, Sabine: Folgen der Ratifizierung der UN-Konvention zu den Rechten der Menschen mit Behinderungen. In: *Leben ohne Barrieren!? Dokumentation der Anhörung vom 23.04.07, Bündnis 90/Die Grünen Bundestagsfraktion*, Berlin 2007, pp. 44-49.

³⁴ I.c.

³⁵ Deutsche Behindertenhilfe Aktion Mensch e.V. (ed.), prepared by Klaus Lachwitz: *Das Übereinkommen der Vereinten Nationen über die Rechte von Menschen mit Behinderungen*. Deutsche Behindertenhilfe Aktion Mensch e.V., Bonn,

The English power point presentation, "*Convention in Brief*" provides a summary of the CRPD's key aspects.³⁶

3. The Multiple Discrimination of Disabled Women

Around 650 million people are living on this planet with a disability.³⁷ In most OECD states, women are more often disabled than men³⁸ and the simple fact of being a woman represents a higher risk of having a disability.³⁹ Consequently, one can assume that there are at least 325 million women with disabilities. Disabled women face multiple discrimination: They are discriminated against due to their disability, their gender⁴⁰ and often, their poverty.⁴¹

The social sex (gender) is one of the most important markers of difference in social systems. Differences based by gender are also reflected in disabled women and men's experiences in their life. In some areas, the forms of discrimination faced by women with disabilities are particularly conspicuous: education, work and employment, family rights, health, violence and abuse.⁴²

- **Education:** UNESCO and other international organizations estimate that globally speaking, disabled women's literacy rate is at 1%, while the overall literacy rate among disabled people is at 3%.⁴³

n.d.

³⁶ See the link at the bottom of the page www.un.org/disabilities (March 5, 2011)

³⁷ Fact sheet on Persons with Disabilities (www.un.org/disabilities/default.asp?navid=33&pid=18 – March 5, 2011).

³⁸ I.c.

³⁹ Background paper: "Girls & Women with Disabilities: an international overview and summary of research", February 2000 by Harilyn Rousso, Disabilities Unlimited Consulting Services. Women with Disabilities & Beijing + 5, New York.

⁴⁰ Fact sheet on Persons with Disabilities (www.un.org/disabilities/default.asp?navid=33&pid=18 – (March 5, 2011).

⁴¹ Rehabilitation International (RI): Fact sheet: Women and Disability. RI 2007

⁴² Disabled Persons' International (ed.), prepared by Sigrid Arnade and Sabine Haefner: Legal background paper. Gendering the Draft Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities (www.netzwerk-artikel-3.org/un-konv/doku/papier-02.pdf (March 5, 2011).

⁴³ Rehabilitation International (RI): Fact sheet: Women and Disability. RI 2007

Statistics show that less women with disabilities complete vocational trainings than men with disabilities.⁴⁴ For example, research in Switzerland demonstrated that more is invested into men's vocational rehabilitation than into women's.⁴⁵ In different states such as Jordan, India and Russia, reports indicate that if disabled women complete any kind of vocational training at all, they complete job trainings that lead to jobs that are less well-paid than jobs for which disabled men are being trained.⁴⁶

- **Work and Employment:** On a world-wide scale, women with disabilities are excluded from the paid labour market by 75%, and by up to 100% in developing countries, even though the majority of them perform household work such as cooking, washing and taking care of children and relatives.⁴⁷ Disabled men's chances on the labour market are twice as high as disabled women's chances.⁴⁸ According to a Spanish study, 35% of disabled men in the European Union are employed, compared to only 25% of disabled women.⁴⁹ As a result, the large majority of women with disabilities are living in poverty. According to a U.S. survey carried out in 2003, 25% of all disabled women in the U.S. are living below the poverty line.⁵⁰ In rural regions in developing countries, 80% of disabled women are entirely dependent upon others.⁵¹ In the U.S., women with physical disabilities earn an average of \$3,000/year less than women without disabilities, and \$7,000 less than men with physical disabilities.⁵²

⁴⁴ Disabled Persons' International (ed.), prepared by Sigrid Arnade and Sabine Haefner: Legal background paper. Gendering the Draft Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities (www.netzwerk-artikel-3.org/un-konv/doku/papier-02.pdf - March 5, 2011).

⁴⁵ Council of Europe: "Discrimination against women with disabilities", Council of Europe Publishing, Strasbourg 2003.

⁴⁶ Rehabilitation International (RI): Fact sheet: Women and Disability. RI 2007

⁴⁷ The World Disability Report: Disability '99. The International Disability Foundation, Geneva.

⁴⁸ International Labour Office (ed.), prepared by Arthur O'Reilly: Equity Issues. The Right to Decent Work of Persons with Disabilities. International Labour Organization, Geneva 2004, p. 31, (<http://193.134.194.11/public/english/employment/skills/disability/download/righttowork.pdf> - March 5, 2011).

⁴⁹ Council of Europe: "Discrimination against women with disabilities", Council of Europe Publishing, Strasbourg 2003.

⁵⁰ Rehabilitation International (RI): Fact sheet: Women and Disability. RI 2007

⁵¹ I.c.

⁵² Center for Research on Women with Disabilities: Characteristics of the U.S. Population of Women with Disabilities (www.bcm.edu/crowd/?PMID=1330) – (March 5, 2011).

- **Family rights:** In industrialized countries as well as in developing countries, neither partnership nor motherhood are realistic perspectives in disabled women's lives, since society does not think that they are capable of fulfilling these roles and therefore does not allow it.⁵³ Moreover, due to the fear that disabled women pass their disability on to their children, women with disabilities are exposed to the risk of being sterilized on the initiative of governments or their relatives.⁵⁴

Furthermore, it is difficult for disabled women to find suitable accommodation and services. The percentage of disabled women living in institutions is higher than among disabled men.⁵⁵

- **Health:** Disabled women from all age groups face difficulties when it comes to physically accessing health services.⁵⁶

Women with disabilities are exposed to a higher risk of being infected with HIV or other sexually transmitted diseases. This is partly due to the lack of sex education because they are viewed as "sexless". Furthermore, a widespread belief exists in some of the world's regions that AIDS can be cured if the infected man performs sexual intercourse with a disabled woman.⁵⁷

The percentage of women and girls affected by depression is twice as high as the percentage among boys and men.⁵⁸

- **Violence and abuse:** According to the United Nations, women and girls with

⁵³ Disabled Persons' International (ed.), prepared by Sigrid Arnade and Sabine Haefner: Legal background paper. Gendering the Draft Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities (www.netzwerk-artikel-3.org/un-konv/doku/papier-02.pdf) - (March 5, 2011).

⁵⁴ Rehabilitation International (RI): Fact sheet: Women and Disability. RI 2007

⁵⁵ Womenwatch: Women with disabilities Fact Sheet, www.un.org/womenwatch/enable/index.html#factsheet – (March 5, 2011).

⁵⁶ I.c.

⁵⁷ Rehabilitation International (RI): Fact sheet: Women and Disability. RI 2007

⁵⁸ Rousso, Harilyn: Girls and women with disabilities: An international overview and summary of research, Disability Unlimited Consulting Services, New York 2000.

disabilities suffer from sexual violence twice as often as girls and women without disabilities.⁵⁹ According to the EU, women with disabilities' risk of experiencing sexual violence is as much as three times higher than the risk faced by women without disabilities.⁶⁰ The danger is particularly high among girls and women who are living in institutions.⁶¹ In particular, this applies to women with learning difficulties and mental disabilities. At the same time, the problem is aggravated by the fact that many counselling centres and women's shelters cause accessibility problems for disabled women, both in terms of transportation to the facility and the use of the actual premises.⁶²

According to a small survey in Orissa, India, almost all girls and women with disabilities were beaten at home. 25% of women with so-called mental disabilities had been raped and 6% of disabled women had undergone forced sterilization.⁶³

4. The Consideration of Women With Disabilities in International Documents (Preceding the CRPD)

Over the course of the past 25 years, a change of perspective occurred with regard to the treatment of disabled persons. Step by step, the welfare perspective was replaced by a human rights perspective.⁶⁴ This means that people with disabilities are not being looked at as objects any more, but as subjects. Disabled people are not regarded as "problematic cases" any more, but as holders of rights.

At the same time, disabled people have become more visible in the United Nations' human

⁵⁹ The World Disability Report: Disability '99. The International Disability Foundation, Geneva.

⁶⁰ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0160+0+DOC+XML+V0//EN> (March 6, 2011)

⁶¹ Szeli, Eva and Dea Pallaska: Violence against women with mental disabilities: the invisible victims in CEE/NIS countries. Feminist review N. 76, 2004, www.palgrave-journals.com/fr/journal/v76/n1/pdf/9400134a.pdf (March 6, 2011)

⁶² BMFSFJ (ed.), prepared by Sigrid Arnade: Einmischen. Mitmischen. Informationsbroschüre für behinderte Mädchen und Frauen. BMFSFJ, Berlin 2007

⁶³ Fact sheet on Persons with Disabilities, www.un.org/disabilities/default.asp?navid=33&pid=18 – (March 6, 2011)

⁶⁴ Quinn, Gerard and Theresia Degener: Human rights and disability. United Nations, New York and Geneva 2002.

rights documents. While people with disabilities are not mentioned in the 1948 Universal Declaration of Human Rights, the General Assembly has adopted a number of documents which address the rights of disabled people since the 1970s. Nevertheless, women with disabilities remained almost invisible in UN human rights policies until the 1980s.

4.1. Documents referring to Disabled Persons

1971 Declaration on the Rights of Mentally Retarded Persons⁶⁵

Women with disabilities are not mentioned in particular and therefore remain invisible.

1975 Declaration on the Rights of Disabled Persons⁶⁶

Only contains indirect mention of women, since discrimination based on a person's gender is prohibited.

1982 World Programme of Action Concerning Disabled Persons (WPA)⁶⁷

Disabled women count among the "special groups of disabled persons":

"The consequences of deficiencies and disablement are particularly serious for women. There are a great many countries where women are subjected to social, cultural and economic disadvantages which impede their access to, for example, health care, education, vocational training and employment. If, in addition, they are physically or mentally disabled, their chances of overcoming their disablement are diminished, which makes it all the more difficult for them to take part in community life. In families, the responsibility for caring for a disabled parent often lies with women, which considerably limits their freedom and their possibilities of taking part in other activities."

Moreover, women are mentioned in the context of the prevention of disabled life.

⁶⁵ <http://www2.ohchr.org/english/law/res2856.htm> (April 27, 2011)

⁶⁶ <http://www2.ohchr.org/english/law/res3447.htm> (April 27, 2011)

⁶⁷ <http://www.un.org/disabilities/default.asp?id=23> (April 27, 2011)

1982 ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention 159⁶⁸

The International Labour Organisation (ILO) is a specialized institution with the United Nations. It authors international conventions aimed at enhancing working conditions, promoting social improvements and ameliorating the standard of living. Convention 159 was adopted by the General Assembly in 1983, and came into effect in 1985. It is the only legally binding international pre-CRPD document that mentions women with disabilities.⁶⁹ Article 4 states that *"equality of opportunity and treatment for disabled men and women workers shall be respected"*.

1993 United Nations Standard Rules for the Equalization of Opportunities for Persons with Disabilities⁷⁰

Women with disabilities are mentioned twice in the second chapter, *"Target Areas for Equal Participation"*; first, in Rule 6 (Education), and second, in Rule 9 (Family life and personal integrity):

Rule 6 (Education): *"In States where education is compulsory it should be provided to girls and boys with all kinds and all levels of disabilities, including the most severe. Special attention should be given in the following areas: a) Very young children with disabilities, b) Pre-school children with disabilities, c) Adults with disabilities, particularly women."*⁷¹

Rule 9 (Family life and personal integrity): *"States should promote measures to change negative attitudes towards marriage, sexuality and parenthood of persons with disabilities, especially of girls and women with disabilities, which still prevail in society."*

⁶⁸ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C159> (April 27, 2011)

⁶⁹ Morgan, Michelle: Women with Disabilities: From Invisible to Visible Citizens. NGO Bulletins, Disability Negotiations Bulletin, Vol. 2, No. 9, June 26, 2003.

⁷⁰ <http://www.un.org/esa/socdev/enable/dissre00.htm> (April, 27, 2011)

⁷¹ Author's emphasis (Dr. Sigrid Arnade).

2002 Special Rapporteur on Disability, Third Final Report⁷²

In 1994 the UN appointed Bengt Lindqvist (Sweden) as Special Rapporteur responsible for monitoring the Standard Rules' implementation. In his third final report, covering the years 2000-2002, the report mentions gaps that must be closed, and specifically names the dimension of gender.

2004 Statement by the Special Rapporteur on Disability to the 42nd Session of the Commission for Social Development⁷³

Hissa Al-Thani was appointed as Special Rapporteur on Disability for the fourth time (2003-2005). One of her key focuses is gender issues.

4.2. Documents and Conferences Dealing with Women

1975 First World Conference on Women in Mexico City⁷⁴

There was no mention at all of women with disabilities at this conference.

1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁷⁵

This convention was adopted by the UN General Assembly in 1979, and came into effect in 1981. It does not contain any explicit mention of women with disabilities.

1979 Second World Conference on Women in Copenhagen⁷⁶

At this conference, governments were asked to direct special attention towards the

⁷² Monitoring the implementation of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities [E/CN.5/2002/4 Report on Third Mandate of the Special Rapporteur] - part 2, <http://www.un.org/disabilities/default.asp?id=208> (April 27, 2011)

⁷³ Statement by the Special Rapporteur on Disability to the 42nd Session of the Commission for Social Development, <http://www.un.org/disabilities/default.asp?id=57> (April 27, 2011)

⁷⁴ <http://www.un.org/womenwatch/daw/beijing/mexico.html> (April 27, 2011)

⁷⁵ <http://www.un.org/womenwatch/daw/cedaw/> (April 27, 2011)

⁷⁶ <http://www.un.org/womenwatch/daw/beijing/copenhagen.html> (April 27, 2011)

needs of older women, single women and disabled women.

1984 Third World Conference on Women in Nairobi⁷⁷

The World Conference report on the UN decade for women, "*Equality, Development and Peace*" contains a paragraph dealing with women with physical and intellectual disabilities.

1990 UN Seminar of Disabled Women in Vienna⁷⁸

For the first time, the United Nations convened a meeting examining the issue of women with disabilities. A list of recommendations was adopted at this meeting.

1990 CEDAW General Recommendation No. 18⁷⁹

This recommendation urgently asks the States parties to provide information on disabled women in their periodic CEDAW reports:

"[...] and on measures taken to deal with their particular situation, including special measures to ensure that they have equal access to education and employment, health services and social security, and to ensure that they can participate in all areas of social and cultural life."

Since recommendations are not legally binding, the CEDAW States parties are not obliged to report on disabled women's living conditions.

1995 Fourth World Conference on Women in Beijing⁸⁰

The Beijing Declaration and the Platform for Action were adopted at this conference. The Platform for Action consists of 361 articles. Women and girls with disabilities are explicitly mentioned in 38 of these articles: In the sections covering the issues of

⁷⁷ <http://www.un.org/womenwatch/daw/beijing/nairobi.html> (April 27, 2011)

⁷⁸ <http://www.un.org/esa/socdev/enable/women/wwdsem0.htm> (April 27, 2011)

⁷⁹ <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm> (April 27, 2007)

⁸⁰ <http://www.un.org/womenwatch/daw/beijing/> (April 27, 2007)

education and vocational training, health, violence against women, economy and girls.

1997/98 UN Resolution 52/100⁸¹

With regard to the Fourth World Conference in Beijing and the Platform for Action the General Assembly adopted resolution 52/100:

"The General Assembly [...]

4. [...] calls once again upon States, the United Nations system and all other actors to implement the Platform for Action, in particular by promoting an active and visible policy of mainstreaming a gender perspective at all levels, including in the design, monitoring and evaluation of all policies and programmes to ensure effective implementation of all critical areas of concern in the Platform for Action."

With this resolution, all United Nations members committed themselves to the principles of gender mainstreaming.

2000/2005 Beijing + 5/ Beijing + 10⁸²

Strong emphasis was placed on the Beijing Declaration and the Platform for Action at both conferences, and more declarations were passed. Women with disabilities and their concerns were acknowledged in this context.

4.3. Other Human Rights Documents

1965 International Convention on the Elimination of All Forms of Racial Discrimination (CERD)⁸³

In 1965, the UN General Assembly adopted the CERD. It came into effect in 1969.

⁸¹ http://www.escwa.un.org/divisions/div_editor/Download.asp?table_name=ecw_other&field_name=id&FileID=26 (April 27, 2011)

⁸² <http://www.un.org/womenwatch/daw/followup/beijing+5.htm>;
<http://www.un.org/womenwatch/daw/Review/english/49sess.htm>; (April 27, 2011)

⁸³ <http://www2.ohchr.org/english/law/cerd.htm> (April 27, 2011)

The Convention includes neither a disability perspective nor a gender perspective. In 2000, the General Recommendation XXV was passed, acknowledging the twofold discrimination on the basis of race and gender.⁸⁴

1989 Convention on the Rights of the Child (CRC)⁸⁵

In 1989, the UN General Assembly adopted the CRC, which came into effect in 1990. Article 23 explicitly refers to children with disabilities, an unusual approach in human rights treaties. However, the gender perspective is lacking: No differentiation is made between the concerns of girls and boys with disabilities.

When looking at the CRC, it becomes clear why it is problematic to insert a separate article on the issue of disability instead of mainstreaming disability issues in all relevant articles. In this manner, States parties tend to report on children with disabilities by exclusively drawing upon this one article and ignore the fact that the entirety of the Convention's articles also refer to children with disabilities.⁸⁶

4.4. Conclusion

Disabled women remained invisible in United Nations human rights documents for a long time. For instance, they are not mentioned in the Convention on the Elimination of All Forms of Discrimination Against Women, CEDAW, which was adopted in 1979. Since the 1980s, they have become a little more visible. However, documents concerning the issue of disability still contain few references to women. Disabled women's issues became slightly more visible in documents relating specifically to women's issues. However, of all the documents mentioning disabled women, not a single one is legally binding. 1983 ILO Convention No. 159 represents the sole exception to this rule.

⁸⁴ Castellino, Joshua: Disability and racial discrimination: the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). In: Quinn, Gerard and Theresia Degener: Human rights and disability. United Nations, New York and Geneva 2002.

⁸⁵ <http://www2.ohchr.org/english/law/crc.htm> (April 27, 2011)

⁸⁶ Kilkelly, Ursula: Disability and children: the Convention on the Rights of the Child (CRC). In: Quinn, Gerard and Theresia Degener: Human rights and disability. United Nations, New York and Geneva 2002.

It was therefore a consequential step to make women with disabilities visible in the UN Convention on the Rights of Persons with Disabilities and to address their living conditions with legally binding stipulations.

5. The Evolution of Women and Gender Specifications in the CRPD

Women and gender references were almost entirely absent from the first convention draft, "*Draft Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities*" prepared by the Working Group in January 2004 (see above).

During the Ad Hoc Committee's third meeting (May 24 – June 4, 2004), the negotiations for the convention text began. It was during this session that the Korean Republic's government delegation suggested a separate article dealing specifically with women's issues on May 27, 2004.⁸⁷ The draft already included article 16, referring to children with disabilities. Therefore, the Republic of Korea suggested placing the article dealing specifically with women's issues between articles 15 and 16, and called it "article 15 bis".⁸⁸ This article proposed by the Republic of Korea addresses several issues in disabled women's lives, such as motherhood and work, as well as violence.

It was only during the Ad Hoc Committee's sixth session (August 1 – August 12, 2005) that the plenum again discussed the inclusion of women with disabilities into the convention text, on August 2, 2005.⁸⁹ Two main groups emerged on this occasion: Those who supported the Republic of Korea and their proposed separate article dealing specifically with women's issues, and those in favour of the EU standpoint. Korea's position was primarily backed up by African, some South American and some Asian states. In contrast to this, the EU suggested mentioning disabled women's multiple discrimination in the preamble and including a reference to equality between women and men in article 4 (General obligations). This was to apply and be implemented horizontally with regard to all

⁸⁷ www.un.org/esa/socdev/enable/rights/ahcstata6tscomments.htm#chile (March 6, 2011)

⁸⁸ "Bis" is Latin for "twofold" or "twice".

⁸⁹ The debate can be accessed at: www.un.org/esa/socdev/enable/rights/ahc6sum2aug.htm (March 6, 2011)

of the other articles in the convention. This position was shared by New Zealand, Australia, Japan and European non-EU states.

Costa Rica and Canada pronounced themselves in favour of a third method: They maintained that disabled women's justifiable claims should be considered throughout the entire convention for the purposes of gender mainstreaming.

Some of the NGOs who had a say on each of the articles at the end of the debates came up with the so-called twin track approach.⁹⁰ In this way, both approaches should be realized: A separate article dealing specifically with women's issues was to be included and, for the purposes of gender mainstreaming, other important convention articles were to be expanded to include women or gender references.

At the close of the sixth meeting, the Ad Hoc Committee's chairperson, New Zealand's ambassador Don MacKay, resumed the debate. He stated that there was strong agreement among the negotiating states concerning the claim that women with disabilities should be considered in the convention for reasons of their multiple discrimination. Differences of opinion existed only when it came to choosing the best strategy. Consequently, he announced that he would appoint a facilitator for this issue.

Subsequently, Prof. Dr. Theresia Degener, an attorney, disabled woman and member of the German government delegation, was appointed as facilitator. During the Ad Hoc Committee's sixth and seventh meetings⁹¹, she prepared proposals for compromise, discussed them repeatedly with the government delegations and modified her suggestions in accordance with how the debate was developing. In the course of these debates, the twin track approach found more and more supporters. In cooperation with the facilitator for the issue of children, Theresia Degener delivered the results of her work on January 28, 2006.⁹²

⁹⁰ Sabine Haefner and Sigrid Arnade proposed the "twin track approach" in the paper "Towards visibility of women with disabilities in the UN Convention", published in July 2005 (see also www.netzwerk-artikel-3.org/un-konv/doku/draftend.pdf – March 6, 2011).

⁹¹ The Ad Hoc Committee's 7th session: January 16 – February 3, 2006.

⁹² www.un.org/esa/socdev/enable/rights/ahc7docs/ahc7fachwo1.doc (March 6, 2011)

On February 1 and February 2, 2006, the inclusion of women with disabilities in the convention was discussed once more in the plenum.⁹³ At that time, many government delegations already

supported both a separate article dealing specifically with women's issues and further references in other Convention articles – that is, they suggested the twin track approach. During the Ad Hoc Committee's eighth meeting (August 14 – August 25, 2006), the issue of "women with disabilities" was once more debated in the plenum on August 16. At this point, the chairperson stated as early as at the opening of the discussion that there was an agreement on the twin track approach. In fact, almost all government delegations voted for this approach, including the Republic of Korea and the EU.⁹⁴

To that effect, the CRPD contains article 6, which deals specifically with women's issues. Moreover, women and gender references are included in the preamble, in article 3 (General principles), in article 8 (Awareness-raising), in article 16 (Freedom from exploitation, violence and abuse), in article 25 (Health), in article 28 (Adequate standard of living and social protection) and in article 34 (Committee on the Rights of Persons with Disabilities).

⁹³ The debate can be accessed at www.un.org/esa/socdev/enable/rights/ahc7sum01feb.htm (March 6, 2011) and www.un.org/esa/socdev/enable/rights/ahc7sum02feb.htm (March 6, 2011)

⁹⁴ Author's notes (Dr. Sigrid Arnade).

C. Comprehensive regulations relevant to Gender Equality or Women's Rights

1. Equal Opportunities Regulations in the Preamble

Preambles are introductory explanations preceding legal documents, such as international law treaties and constitutions, and sometimes other legal documents. While the Convention is a multilateral treaty with immediate legal relevance, the preamble is not legally binding. However, the political goals, references to other international law treaties, or programme objectives included in the preamble do explain the Convention's aim. The preamble is therefore of great importance when it comes to interpreting the Convention text.⁹⁵

1.1. "Gender" as Grounds of Discrimination in the Preamble, Paragraph p)

1.1.1. The Convention Text

Preamble
Paragraph p)

"*Concerned* about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex⁹⁶, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status,"

1.1.2. Legal Significance

The preamble's paragraph p) represents a so-called list of grounds of discrimination: Different possible grounds of discrimination are listed one by one.

⁹⁵ Creifeld: Rechtswörterbuch, 13th edition, Munich 1995.

⁹⁶ Author's emphasis (Sabine Haefner).

Other lists of grounds of discrimination can be found, for example, in article 2, paragraph 2 of the Covenant on Economic, Cultural and Social Rights (CESCR); article 2, paragraph 1 of the Covenant on Civil and Political Rights (CCPR); article 2, paragraph 2 of the Child Rights Convention (CRC); article E of the (revised) European Social Charter or article 13, paragraph 1 of the EC Treaty⁹⁷.

The preamble refers to the Universal Declaration of Human Rights (UDHR) and the United Nations' key human rights treaties, and thus makes clear that the CRPD can be considered to be in line with this tradition. The Convention does not grant any new human rights to people with disabilities, but is instead primarily aimed at supplementing and specifying the existing human rights standards so that they also have practical effects for persons with disabilities.⁹⁸

Against this backdrop, one of the Convention's key principles is the principle of non-discrimination as explicitly established in article 3, para. (b) and article 5 CRPD: All human rights and fundamental freedoms shall be granted to persons with disabilities, without any discrimination on grounds of their disability.

However, article 5, paragraph 3 CRPD also emphasizes that disabled persons shall not only be protected from discrimination on the grounds of disability, but also from discrimination on other grounds. Nevertheless, the CRPD does not include a list of possible grounds of discrimination in the Convention text itself.

During the discussion, it became obvious that the acknowledgement of grounds of discrimination depends on an individual society's experiences and values. For example, the European Union advocated the inclusion of "*sexual orientation*" as ground of discrimination in accordance with article 13 TEC (EC Treaty).⁹⁹ However, this was rejected

⁹⁷ Formerly article 13 TEC, now article 19 TFEU (Treaty on the Functioning of the European Union)

⁹⁸ Deutsches Institut für Menschenrechte, Heiner Bielefeldt, Zum Innovationspotenzial der UN-Behindertenkonvention, Inhaltliche Verbürgungen und Umsetzungsverpflichtungen, Berlin, 2007, http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/essay_no_5_zum_innovationspotenzial_der_un_behindertenrechtskonvention_auf3.pdf (April 27, 2011)

⁹⁹ Ex-article 13 TEC: now article 19 TFEU (Treaty on the Functioning of the European Union)

by other states.¹⁰⁰ Finally, the delegations agreed to include the grounds of discrimination list in the preamble. Since the list does not only refer to defined grounds, but also to an "*other status*", this list is a so-called "open list of grounds of discrimination" that can be interpreted with regard to regional standards in different branches of the law and with different value concepts.

The inclusion of "sex" as grounds of discrimination was never subject to controversial debates; it was already included in the 1966 Covenant on Civil and Political Rights. However, when there was still no agreement during the negotiations on whether and how the gender perspective was to be acknowledged in the Convention, some protagonists argued that it would be sufficient to include the grounds of discrimination "sex" in the preamble to protect women with disabilities from multiple discrimination.

But since the preamble is not legally binding, this argumentation did not win out over other suggestions.

Regardless, preamble paragraph p) asserts that the Convention was prepared with an awareness of the fact that people with disabilities are exposed to multiple discrimination based on one of the listed grounds of discrimination in a way that can further aggravate their difficult living conditions.

On this note, when implementing measures, the States parties are requested to acknowledge at least those other possible grounds of discrimination as defined in article 5, paragraph 2 CRPD.

¹⁰⁰ Third Session of the Ad Hoc Committee, Daily Summary of Discussion related to preamble, June 4, 2004, www.un.org/esa/socdev/enable/rights/ahc3sumpr.htm (April 27, 2011)

1.2. Gender Mainstreaming in the Preamble, Paragraph s)

1.2.1. The Convention Text

Preamble
Paragraph s)

"(s) *Emphasizing* the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities,"

1.2.2. Legal Significance

For the first time ever, the principle of "*gender mainstreaming*" is specifically mentioned in a United Nations human rights convention.

International human rights treaties include the principle of equality between men and women. According to the interpretation provided by the responsible human rights treaty bodies, the gender equality principle requires the application of "*gender mainstreaming*" in order to achieve substantial gender equality (see next chapter). However, the fact that "*gender mainstreaming*" is explicitly established in the preamble emphasizes that the international community now recognizes this principle (that was comprehensively defined at the 4th World Conference on Women in 1995 for the first time) as a programme objective that makes a considerable contribution to making human rights a reality for both men and women.

2. Article 3, Paragraph d): The General Principle of the Equality of Men and Women

2.1. The Convention Text

Article 3
General principles

"The principles of the present Convention shall be:

(a) Respect for inherent dignity, individual autonomy including the freedom to make one's

own choices, and independence of persons;

(b) Non-discrimination;

(c) Full and effective participation and inclusion in society;

(d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;

(e) Equality of opportunity;

(f) Accessibility;

(g) Equality between men and women¹⁰¹;

(h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities."

2.2. Legal Significance of General Principles

The general principles delineated in article 3 represent the framework of the entire Convention. Disabled persons' rights and freedoms included in the Convention as well as the States parties' obligations both derive from these principles. They are, therefore, an aid for interpreting and implementing the Convention.

Although other UN human rights conventions do not normally summarize their fundamental principles in a separate article, as is the case with the CRPD, the general principles listed in article 3 are guidelines that also shape many other UN human rights treaties and instruments, and are included in their preambles and in the texts of the treaties. They can be found in the Universal Declaration of Human Rights as well as in the six most important UN human rights treaties.¹⁰² For example, the Committee on the Rights of the Child

¹⁰¹ Author's emphasis (Sabine Haefner).

¹⁰² Universal Declaration of Human Rights, Resolution 217 A (III), December 12, 1948; International Covenant on Civil and Political Rights, December 19, 1966; International Covenant on Economic, Cultural and Social Rights, December 19, 1966, Convention on the Elimination of All Forms of Racial Discrimination, March 7, 1966; Convention on the Elimination of All Forms of Discrimination Against Women, December 18, 1979; Convention on the Rights of the

defined four main principles in their analysis of four of the Convention's articles. Governments, parliaments and jurisdiction shall realize the advancement of children's rights in light of these principles.¹⁰³

The guidelines specified in article 3 of the CRPD are also included in other international documents on disabled persons' human rights, such as in the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993), the ILO (International Labour Organisation) Vocational Rehabilitation and Employment (Disabled Persons) Convention (1983) or article 15 of the (revised) European Social Charter.¹⁰⁴

The CRPD's approach to list the general principles as a separate article immediately after outlining the Convention's purpose (article 1) and definitions (article 2), is aimed at ensuring that there will be no uncertainties concerning the fundamental principles.¹⁰⁵ The Ad Hoc Committee Working Group's draft already included a separate article on general principles that were to be applicable to the Convention in its entirety.¹⁰⁶ In light of the fact that the United Nations and their member states' disability policies were shaped by a welfare notion for decades, the emphasis placed on the general principles unmistakably underscores the paradigm shift represented by the CRPD; that is, the shift from the welfare concept and a medical approach towards a human rights approach with a social perspective.¹⁰⁷ Environmental protection treaties displayed a similar strategy, such as, for

Child, November 20, 1989; <http://www.ohchr.org/EN/UDHR/Pages/Introduction.aspx> (April 27, 2011)

¹⁰³ Committee on the Rights of the Child, General Comment No. 5 (2003), CRC/CG/2003/5. The four principles are: Non-discrimination, the best interests of the child, right to life and development, recognition of the child's views (participation). <http://tb.ohchr.org/default.aspx?Symbol=CRC/GC/2003/5> (April 27, 2011)

¹⁰⁴ Resolution [48/96] of the United Nations General Assembly, December 20, 1993, Standard Rules for the Equalization of Opportunities for Persons with Disabilities, <http://www.un.org/documents/ga/res/48/a48r096.htm> (April 27, 2011); ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention (1983), http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/publication/wcms_103529.pdf (April 27, 2011); European Social Charter (Revised) by the Council of Europe (May 3, 1996), <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=163&CM=8&CL=ENG> (April 27, 2011)

¹⁰⁵ Landmine Survivors Network, 3rd Session of the Ad Hoc Committee, Comments on the draft text Draft Article 2: General Principles, <http://www.un.org/esa/socdev/enable/rights/wgdca2.htm#lsn> (April 27, 2011)

¹⁰⁶ Report of the Working Group to the Ad Hoc Committee, A/AC.265/2004/WG/1, January 27, 2004, www.un.org/esa/socdev/enable/rights/ahcwgreport.htm (April 27, 2011)

¹⁰⁷ See also chapter B.1.1.

example, the UN Convention to Combat Desertification (1994) or the UN Framework Convention on Climate Change (1992).¹⁰⁸

2.3. The Principle of Gender Equality in Article 3, Paragraph g)

Article 3, paragraph (g) defines equality between men and women as a general principle of the CRPD.

The Universal Declaration of Human Rights (1948) and the United Nations Charter (1945) confirmed the peoples' faith in the equality between men and women in their preambles.¹⁰⁹ Consequently, in the key international human rights treaties, the States parties put themselves under the obligation to ensure equality between men and women in their enjoyment of all economic, social, cultural, civil and political rights.¹¹⁰ The 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is entirely founded on this obligation.¹¹¹ The 1989 Convention on the Rights of the Child also professes its commitment to this principle: The educational goals for children include teaching them gender equality.¹¹²

In the Ad Hoc Committee Working Group's early draft for article 3 (formerly article 2) of the CRPD, the gender equality principle was not yet included. But as early as during the Ad Hoc Committee's third meeting (May 24 – June 4, 2004), Canada, Mexico, Costa Rica and Norway suggested including this principle, and many other delegations supported this proposal.¹¹³ For this reason, the gender equality principle was also an element of the draft

¹⁰⁸ UNCCD - United Nations Convention to Combat Desertification, www.unccd.int/convention/text/convention.php (April 27, 2011) ; UN Framework Convention on Climate Change, http://unfccc.int/essential_background/convention/background/items/2853.php

¹⁰⁹ The Universal Declaration of Human Rights, resolution 217 A (III), December 10, 1948, <http://www.ohchr.org/en/udhr/pages/introduction.aspx> (April 27, 2011)

¹¹⁰ International Covenant on Civil and Political Rights (1966), article 3; International Covenant on Economic, Cultural and Social Rights (1966), article 3. <http://www2.ohchr.org/english/law/cescr.htm> (April 27, 2011)

¹¹¹ See CEDAW preamble.

¹¹² Convention on the Rights of the Child (1989), article 29, paragraph 1 (d), <http://www2.ohchr.org/english/law/crc.htm> (April 27, 2011)

¹¹³ Report of the third session of the Ad Hoc Committee, A/AC.265/2004/5, <http://www.un.org/esa/socdev/enable/rights/ahc3reporte.htm> (April 27, 2011)

version that the Ad Hoc Committee's chairperson handed over to all delegations in October 2005, as a revised "*working text*".¹¹⁴ Finally, during the Ad Hoc Committee's seventh and eighth session in January and August 2006, the principle of gender equality was affirmed in article 3.

2.4. Legal Significance of the Gender Equality Principle

Women and girls are often impeded from enjoying their rights; because of a social status that is ascribed to them for cultural, traditional or religious reasons, or because of open or covert discrimination.¹¹⁵ Additionally, many women are confronted with the experience that they are not only facing discrimination because of their gender, but also for other reasons – for example, because of their skin colour, their religion, their origins, their age, their marital status, because they are refugees or migrants, or because they have a disability.¹¹⁶

For instance, women with disabilities experience multiple discrimination with regard to their reproductive rights, their rights of being protected from violence, their right to education, to health services or to work and employment. The risk of a women being discriminated against in one of these fields is multiplied by the risk of being impeded in the enjoyment of one's human rights as a disabled person.

2.4.1. Legal Significance in Other Non Gender-Specific Human Rights Conventions

2.4.1.1. Sources

In order to understand the gender equality principle's importance for the CRPD, it is helpful to take a look at the interpretation and implementation of the gender equality principle in other, non gender-specific conventions. Several treaty bodies that are responsible for monitoring the UN human rights conventions' implementation, published so-called

¹¹⁴ Letter dated October 7, 2005, from the chairman to all members of the Committee, A/AC.265/2006/1, <http://www.un.org/esa/socdev/enable/rights/ahcchairletter7oct.htm> (April 27, 2011)

¹¹⁵ CCPR, General Comment No. 28, Rz. 5., <http://www2.ohchr.org/english/bodies/hrc/comments.htm> (April 27, 2011)

¹¹⁶ CESCR, General Comment No. 16 (2005), Rz. 5; on the situation of women with disabilities, see also chapter B.3., <http://www2.ohchr.org/english/bodies/cescr/comments.htm> (April 27, 2011)

"General Comments" on States parties' obligations based on the gender equality principle.

General Comments or Recommendations issued by treaty bodies serve as international "soft law" sources, and provide orientation for the implementation of human rights. They are a value standard for assessing states' progress when it comes to the implementation process. They express the current interpretation of human rights norms, and therefore have political and legal weight.¹¹⁷

The Human Rights Committee, responsible for monitoring the International Covenant on Civil and Political Rights (ICCPR), published a first General Comment on the gender equality principle established in article 3 ICCPR as early as in 1981.¹¹⁸ This comment was completely reviewed in 2000 and was replaced by a comprehensive new General Comment that same year.¹¹⁹ Likewise, the Committee on Economic, Social and Cultural Rights published an extensive General Comment in 2005, addressing men and women's equal right to the enjoyment of all economic, social and cultural rights.¹²⁰

Ensuring men and women's equal right to participate in all economic, social and cultural rights is a **mandatory and immediate obligation** of the States parties.¹²¹ The General Comments on two of the key human rights treaties (ICCPR and ICESCR) make it clear that the principle of gender equality is not a mere declaration. Instead, it implies comprehensive obligations for States parties to combat discrimination and to ensure the equal exercising of human rights.

Therefore, the gender equality principle as established in both the ICCPR's and ICESCR's

¹¹⁷ Deutsches Institut für Menschenrechte (*German Institute for Human Rights*), "Was sind Allgemeine Bemerkungen?" (*What are General Comments?*), <http://www.institut-fuer-menschenrechte.de/de/themen/entwicklungszusammenarbeit/oft-gestellte-fragen/frage-7-was-sind-allgemeine-bemerkungen.html> (March 12, 2011)

¹¹⁸ CCPR, General Comment No. 4: Equality between the sexes (Art. 3), <http://www2.ohchr.org/english/bodies/hrc/comments.htm> (April 27, 2011)

¹¹⁹ CCPR, General Comment No. 28, <http://www2.ohchr.org/english/bodies/hrc/comments.htm> (April 27, 2011)

¹²⁰ CESCR, General Comment No. 16 (2005), <http://www2.ohchr.org/english/bodies/cescr/comments.htm> (April 27, 2011)

¹²¹ CESCR, General Comment No. 16 (2005), paragraph 16, <http://www2.ohchr.org/english/bodies/cescr/comments.htm> (April 27, 2011)

article 3 cannot be considered separately, but must be considered in the context of all rights included in the ICCPR and the ICESCR – it is a **cross-cutting obligation**.¹²² This means that women and men must be equally able to enjoy, de jure and de facto, all delineated political, civil, social and cultural rights.

At the same time, according to the CDESCR a **de facto equality** cannot only be accomplished through gender-neutral legislation and policies (**de jure equality**). Instead, there is a risk that inequalities will even be reinforced if existing economic, social and cultural inequalities that concern women in particular are not acknowledged in policies and legislation. De facto gender equality thus requires the evaluation of the impacts of political, legislative and administrative activities. Existing forms of discrimination must not continue, but must instead be diminished.¹²³

The gender equality principle must be respected **in and before the law**. The legislator must ensure that legislation promotes men and women's equal recourse to all rights. And the States parties must ensure that the administration, courts and other judicial institutions apply rights equally for both men and women and without discriminating against either of them.¹²⁴

The principle of gender equality also demands that **discrimination on the basis of a person's gender or any other grounds of discrimination is prohibited**. This applies both to the public and private sector.¹²⁵

Insofar as the principles of gender equality and non-discrimination might be insufficient, other **temporary special provisions** might be necessary in order to balance out any inequalities between people or groups who are discriminated against and others. Likewise,

¹²² CCPR, General Comment No. 28, paragraph 6; CDESCR, General Comment No. 16 (2005), paragraphs 2 and 22, <http://www2.ohchr.org/english/bodies/hrc/comments.htm> (April 27, 2011)

¹²³ CDESCR, General Comment No. 16, paragraph 6-9, <http://www2.ohchr.org/english/bodies/cescr/comments.htm> (April 27, 2011)

¹²⁴ CDESCR, General Comment No. 16, paragraph 9, <http://www2.ohchr.org/english/bodies/cescr/comments.htm> (April 27, 2011)

¹²⁵ CDESCR, General Comment No. 16, paragraph 10; CCPR, General Comment No. 28 (2000), paragraph 4, <http://www2.ohchr.org/english/bodies/cescr/comments.htm> (April 27, 2011)

temporary special provisions are not only targeted towards formal (de jure) equality, but also towards factual (de facto) equality between men and women. This can also denote the necessity of provisions to the benefit of women aimed at changing conditions that perpetuate discrimination against women.

2.4.1.2. Measures Within the Gender Equality Principle's Scope

As in the case of all human rights, the gender equality principle involves **three types of obligations to States parties**: respect, protect and fulfil human rights.

Respecting the gender equality principle can mean that States parties do not act in any discriminating way, that they do not pass any laws that do not comply with the gender equality principle, or that they assess seemingly gender-neutral laws and programmes with regard to their possibly discriminating effects.¹²⁶

Protecting the gender equality principle can for example include combating prejudices, or overcoming cultural, traditional, religious and other practices that perpetuate discrimination or stereotypes, or that serve as a justification of human rights violations.¹²⁷ Other ways of protecting the gender equality principle include the establishment of norms with regard to the gender equality principle within or outside constitutional law, antidiscrimination legislation, and measures in administration and other social fields aimed at protecting women from discrimination.¹²⁸

Human rights are being **fulfilled** when all people are able to enjoy them equally. Possible measures include, for example, providing effective legal instruments, establishing courts and a monitoring system, developing programmes with long-term effects, temporary special provisions to accelerate women's equal participation in all areas and to enable their

¹²⁶ CESCR, General Comment No. 16, paragraph 18, <http://www2.ohchr.org/english/bodies/cescr/comments.htm> (April 27, 2011)

¹²⁷ CESCR, General Comment No. 28, paragraph 5, <http://www2.ohchr.org/english/bodies/cescr/comments.htm> (April 27, 2011)

¹²⁸ CESCR, General Comment No. 16, paragraph 19; CCPR, General Comment No. 28, paragraph 4., <http://www2.ohchr.org/english/bodies/cescr/comments.htm> (April 27, 2011)

empowerment, support through financial means, human rights education, etc.¹²⁹

2.4.2. Legal Significance of the Gender Equality Principle for the CRPD

As has already been stated, both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Cultural and Social Rights (1966) compel States parties to undertake extensive measures in all legal fields by means of the established gender equality principle. In their reports to the responsible treaty bodies, the States parties are requested to state if the entirety of rights can be enjoyed equally by both men and women, which conditions prevent equal recourse to rights, and which measures are being undertaken in order to ensure an equal enjoyment of human rights and fundamental freedoms. In their General Comments, the responsible treaty bodies provide indications as to which relevant aspects must be considered with regard to individual rights.

Likewise, for the CRPD this means:

- The gender equality principle is relevant to the Convention in its entirety;
- Men and women with disabilities must be equally able to de facto realize and enjoy all human rights and fundamental freedoms that are established in the Convention;
- The States parties are compelled to respect, protect and realize this requirement by drawing upon suitable provisions (see above);
- The States parties are also compelled to provide the appropriate explanations in their reports, as specified in article 35.

2.5. Conclusion

The general principles in article 3 CRPD are helpful when it comes to interpreting and implementing the Convention. Thanks to their explicit nature, they emphasize the CRPD's

¹²⁹ CESCR, General Comment No. 16, paragraph 21; CCPR, General Comment No. 28, paragraph 3, <http://www2.ohchr.org/english/bodies/cescr/comments.htm> (April 27, 2011)

paradigmatic shift from the welfare concept to a human rights approach.

The implementation of the gender equality principle as mentioned in article 3 CRPD is a mandatory and direct cross-cutting obligation for the States parties. It is required that all men and women must be able to enjoy, de facto and de jure, all so-called political, civil, economic, social and cultural rights.

This necessitates the following:

- To respect the gender equality principle by refraining from discrimination, analyzing all legislation, policies and programmes with regard to discriminating effects that they might have on women or men, and ensuring that discrimination is not continued, but instead reduced (gender mainstreaming);
- To protect the gender equality principle by combating prejudices, overcoming cultural, traditional, religious and other customs that aggravate gender inequalities, establishing norms with regard to the gender equality principle within or outside constitutional law, prohibiting discrimination on the grounds of a person's gender in both the public and private sector;
- To fulfil the gender equality principle by providing effective legal instruments, establishing courts and a monitoring system, developing programmes with long-term effects and temporary special provisions to accelerate women's equal participation in all fields and to enable their empowerment, providing support through financial means, human rights education etc.

With regard to the CRPD, this means:

- The gender equality principle is relevant to the Convention in its entirety.
- Men and women with disabilities must be equally able to de facto realize and enjoy all human rights and fundamental freedoms that are established in the Convention.
- The States parties are required to respect, protect and fulfil this target by drawing upon suitable provisions.

- The States parties are also required to provide the appropriate explanations in their reports, as specified in article 35 CRPD.

3. Article 6: Women With Disabilities

3.1. The Convention Text

Article 6

Women with disabilities

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

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

3.2. The CRPD's Article 6 as a Reinforcement of the Gender Equality Principle

The gender equality principle requires States parties to combat discriminatory treatment and undertake measures for the establishment of gender equality within the framework of the Convention's implementation.

This principle is further concretized by article 6, paragraph 1: With article 6, the States parties unequivocally acknowledge the multiple discrimination of women and girls with disabilities. Consequently, since the acknowledged forms of discrimination entail a mandatory and immediate obligation to act upon them, article 6, paragraph 1 also includes an immediate obligation to undertake antidiscrimination measures aimed at enabling women and girls with disabilities to equally enjoy human rights and fundamental freedoms.

Likewise, article 6, paragraph 2 represents a concretization and further development of the operational guidelines that go along with the gender equality principle. One such guideline consists of the demand to provide special measures for the advancement of women (or

men) if they are necessary, in order to ensure their equal participation in human rights and fundamental freedoms.

Nevertheless, while States parties have still been conceded a certain degree of discretion with regard to the implementation of special measures aimed at realizing the gender equality principle, discretion was reset to zero regarding the measures to promote women with disabilities as stated by article 6, paragraph 2. Considering that women with disabilities are confronted with multiple discrimination, States parties are obliged to carry out special measures: They must contribute with all appropriate measures to ensuring "*the full development, advancement and empowerment of women*", so that the latter can exercise and enjoy the human rights and fundamental freedoms set out in the Convention.

3.3. Article 6 in Detail

3.3.1. Article 6, Paragraph 1, First Half Sentence

"1. States parties recognize that women and girls with disabilities are subject to multiple discrimination [...]"

3.3.1.1. Text Development

At a rather early stage of the negotiations, the delegations agreed on the fact that women and girls with disabilities are confronted with multiple discrimination and are therefore facing specific disadvantages. However, the question of whether this insight would be acknowledged in the Convention and what effects this acknowledgement would have, provoked controversy until the very end of the negotiations.

The insight that women and girls with disabilities are facing multiple discrimination was initially acknowledged in the European Union's suggestion in the preamble's subparagraph n bis).¹³⁰ When the plenum discussed the separate article 15 bis (Women with disabilities)

¹³⁰ Report of the third session of the Ad Hoc Committee, Annex II, Compilation of proposed provisions and amendments, Preamble lit. n bis, "Recognizing that women and girls with disabilities are often subject to multiple discrimination and therefore suffer particular disadvantages", A/AC.265/2004/5, June 9, 2004, <http://www.un.org/esa/socdev/enable/rights/ahc3reporte.htm> (April 27, 2011)

that was proposed by the Republic of Korea during the Ad Hoc Committee's sixth session (August 1 – August 12, 2005), the Republic of Kenya and the International Disability Caucus pronounced themselves in favour of explicitly recognizing the multiple discrimination of women and girls with disabilities in a separate article in the Convention.¹³¹ In the end, the recognition of multiple discrimination was included in the proposal for article 6, paragraph 1, as suggested by Theresia Degener, at that time the appointed facilitator for specifications regarding women's issues in the CRPD.¹³²

3.3.1.2. Legal Significance

The recognition of the multiple discrimination of women and girls with disabilities is of relevance to the further resulting obligations for the States parties.

States parties do not only recognize that women and girls with disabilities can be victims of multiple discrimination; instead they recognize multiple discrimination as an invariable fact.

In this way, the Convention text itself represents a basis for the States parties' mandatory and immediate obligation to undertake measures that ensure all human rights and fundamental freedoms for women and girls with disabilities.

Discrimination must always result in counteracting measures by states with the objective to combat discrimination, to protect affected groups and to establish de facto equality.¹³³ It is a case of discrimination whenever people are withheld from an equal enjoyment of their human rights and fundamental freedoms; and that requires mandatory and immediate

¹³¹ Proposed Modifications by Governments, Sixth Session, Contribution by Kenya, Draft Article 15 bis, <http://www.un.org/esa/socdev/enable/rights/ahc6kenya.htm> (April 27, 2011); NGO Comments on the Draft text, International Disability Caucus, Draft Article 15 bis, www.un.org/esa/socdev/enable/rights/ahc6contngos.htm (April 27, 2011)

¹³² Revisions and amendments at the Seventh session, Joint Facilitators' proposal on Women and Children, January 28, 2006: "States parties recognise that women and girls with disabilities are subject to multiple discrimination and that focused, empowerment and gender sensitive measures are necessary to ensure the full and equal enjoyment by women and girls with disabilities of all human rights and fundamental freedoms", www.un.org/esa/socdev/enable/rights/ahc7facilitator.htm (April 27, 2011)

¹³³ See the explanations about the significance of the gender equality principle.

action by the respective States parties.¹³⁴

This can also be derived from article 5 of the CRPD. Article 5, paragraph 2 not only requires States parties to prohibit any kind of discrimination on the grounds of disability, but also compels States parties to protect disabled persons from discrimination on other grounds, such as forms of discrimination on the grounds of their gender. In order to promote equality and to eliminate discrimination, the States parties must undertake all necessary steps to ensure this (article 5, paragraph 3). Special provisions aimed at accelerating or establishing de facto equality for disabled persons must not be considered discrimination (article 5, paragraph 4).

3.3.2. Article 6, Paragraph 1, Second Half Sentence

"[...] and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms."

3.3.2.1. Text Development

The proposal made by Theresia Degener, the responsible facilitator during the Ad Hoc Committee's seventh negotiations round (January 16 – February 3, 2006), included another concretization of the measures that must be undertaken. According to this proposal, these measures must be focused, provide empowerment, and be gender sensitive.¹³⁵ However, these adjuncts were removed from the text in the course of the ongoing negotiations during the eighth meeting (August 2006).

In view of the government delegations' suggestions during the eighth meeting, it becomes apparent that some member states preferred the common wording "*all appropriate*

¹³⁴ CESCR; General Comment No. 16, para. 16, <http://www2.ohchr.org/english/bodies/cescr/comments.htm> (April 27, 2011)

¹³⁵ Revisions and amendments at the Seventh session, Joint Facilitators' proposal on Women and Children, January 28, 2006: "States parties recognise that women and girls with disabilities are subject to multiple discrimination and that focused, empowerment and gender sensitive measures are necessary to ensure the full and equal enjoyment by women and girls with disabilities of all human rights and fundamental freedoms", www.un.org/esa/socdev/enable/rights/ahc7facilitator.htm (April 27, 2011)

measures".¹³⁶

The goal of empowering women was finally embedded in article 6, paragraph 2. Among other things, this was probably also caused by the fact that article 1 recognizes the multiple discrimination against women *and* girls with disabilities: Some states expressed their fear that state-induced measures to the benefit of women *and* girls might possibly exceed the aims of the Child's Rights Convention, specifically, article 5 CRC. This article protects the parents' right to "*provide [...] appropriate direction and guidance in the exercise by the child of the rights recognized in the [...] Convention*".¹³⁷

At the closing of the eighth and final round of negotiations, all that remained were the sole "*measures*" that must be undertaken with regard to the multiple discrimination of women and girls with disabilities so that they can fully and equally enjoy all human rights and fundamental freedoms.

3.3.2.2. Legal Significance

There are different types of obligations in human rights treaties. First, they can include obligations to use specific instruments and means, or specific activities in order to achieve a defined goal. Second, there are obligations to achieve defined goals, but the States parties are free to choose the appropriate means.¹³⁸

On this note, article 6, paragraph 1, includes this second type of obligation. The goal is precisely defined: the full and equal enjoyment of all human rights and fundamental freedoms

by women and girls with disabilities. The States parties have an obligation that they must

¹³⁶ For example, Egypt, Morocco, Sudan, Syria, Qatar, Saudi Arabia, the European Union, El Salvador, Venezuela, Guatemala, Mexico, Chile, Colombia, Argentina, Costa Rica, Dominican Republic, Panama, Cuba, Trinidad and Tobago and Jamaica; Proposed Modification of Governments at the Eighth session, Article 6, www.un.org/esa/socdev/enable/rights/ahc8gpcart6.htm (April 27, 2011)

¹³⁷ Author's recollections (Sabine Haefner) from the AHC's eighth negotiations round, August 2008

¹³⁸ Hanna Beate Schöpp-Schilling, *The circle of empowerment: twenty-five years of the UN Committee on Elimination of Discrimination against Women*, New York, 2007, p. 20, with further references

immediately fulfil; the question of "if" measures must be undertaken is not left to their discretion.

Nevertheless, the States parties are conceded a restricted discretion regarding the choice of measures. It is restricted since the measures must be undertaken with regard to the multiple discrimination of women and girls with disabilities; that is, states must establish a comprehensive **safeguard that protects women with disabilities from discrimination and that is aimed at equality**. This does not only concern possible discrimination as compared to disabled or non-disabled men, but also discrimination as compared to non-disabled women.

Moreover, also within a framework of measures aimed at protecting other vulnerable groups from discrimination, disabled women and girls' particular vulnerability to discrimination must be acknowledged due to the possibility of multiple discrimination. For example, this applies to disabled women with a migratory background, to elderly women with disabilities etc.

Guidelines for protection against discrimination

The 1948 Universal Declaration of Human Rights already included a **prohibition of discrimination** based on the insight that all human beings have equal rights and dignity. Ever since then, the prohibition of discrimination has been an element of all key documents in the context of the international human rights system.¹³⁹ The German Institute for Human Rights [*Deutsches Institut für Menschenrechte*] identified four current key trends concerning protection from discrimination: (a) an expansion of the recognized grounds of discrimination; (b) the goal of de facto equality, linked to an increasing awareness of indirect and structural forms of discrimination; (c) the states are accepting

¹³⁹ Articles 2 and 7, Universal Declaration of Human Rights; article 2 paragraph 2, International Covenant on Economic, Cultural and Social Rights; article 1, paragraph 2 and article 26, International Covenant on Civil and Political Rights; article 1 paragraph 2, UN Convention on the Elimination of All Forms of Racial Discrimination (CERD); article 1, UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); article 2, UN Convention on the Rights of the Child; article 14, European Convention on Human Rights (ECHR) and additional protocol No. 12; article 1 paragraph 2, American Convention on Human Rights; article 2, African Charter on Human and Persons' Rights

responsibility for protecting individuals from discrimination by protagonists from the private sector; (d) the implementation of protection from discrimination is supported by institutions such as antidiscrimination offices that provide aid to affected individuals and monitor the implementation of protection from discrimination.¹⁴⁰

(a) Measures undertaken on the basis of article 6, paragraph 1 must consider the fact that article 1 acknowledges the **multiple discrimination** of women and girls with disabilities. This means: Measures that are undertaken to counteract the discrimination of disabled women and girls cannot only address disability or gender as grounds of discrimination. Article 5, paragraph 2 of the CRPD also states that all other possible reasons for additional discrimination of disabled women and girls must be considered.

Article 5, paragraph 2 does not include a complete list of grounds of discrimination and is therefore open to further development. Among other things, one can say that grounds of discrimination lists also reflect the state of an educational process within a society, measured by the degree of awareness of current forms of discrimination.¹⁴¹ However, during the negotiations for the CRPD, the member states represented in the AHC agreed to embed an open and more detailed grounds of discrimination list in the preamble. Paragraph (p) now reads as follows: "*(p) Concerned about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status, [...]*".¹⁴²

(b) As stated above in the context of the gender equality principle, protection from discrimination is not only aimed at establishing de jure equality, but also at leading to **de facto equality**:

¹⁴⁰ Deutsches Institut für Menschenrechte (*German Institute for Human Rights*), „Diskriminierungsschutz in der politischen Diskussion“, Heiner Bielefeldt, Petra Follmar-Otto, Policy Paper No. 5, Berlin, February 2005, p. 6, http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Policy_Paper/policy_paper_5_diskriminierungsschutz_in_der_politischen_diskussion.pdf (March 12, 2011)

¹⁴¹ I.c.

¹⁴² See chapter C.1.1.

- Gender or disability neutral policies, legislation and administrative activities must therefore be assessed with regard to discriminating effects on women and girls in accordance with article 6, paragraph 1 of the CRPD.
- Administrations, courts and other law users must apply the law for women and girls with disabilities in an equal and non-discriminatory way.
- The **discrimination** of women and girls with disabilities must be **prohibited** with due regard to their multiple discrimination in both public and private sectors.

If the goal consists in ensuring equal opportunities in the de facto enjoyment of human rights, **all forms of discrimination** – direct, indirect and structural discrimination as well as the denial of appropriate measures – must be considered (see art. 2 CRPD).

Rigid structures or a lack of appropriate measures entail a particularly high risk of discrimination against women and girls with disabilities. For example, balancing family and work is especially difficult for mothers with disabilities because of insufficient accessibility; finding an accessible gynaecological practice in rural areas in Germany is becoming increasingly difficult because of the growing shortage of doctors; the solidification of the low-pay sector, notably consisting of female employees who do not enjoy sufficient financial and social security, puts disabled women at an even greater disadvantage if their additional financial needs stemming from their disability are not compensated by other sources.

- In particular, overcoming structural forms of discrimination might demand **temporary special measures**.¹⁴³ Looking at the examples mentioned above, these could include: the systematic establishment of accessibility in public space and in childcare facilities; accessibility of all medical practices, including gynaecological practices, providing vocational training and further education for raising doctors' awareness of the needs of disabled persons, and financially rewarding treatment of persons with disabilities in the framework of the medical compensation system if the treatment entails additional effort;

¹⁴³ Deutsches Institut für Menschenrechte, Diskriminierungsschutz in der politischen Diskussion, I.c., p. 7.

establishing employment promotion measures in order to counteract low-pay sector jobs.

(c) Protection from discrimination must not exclude **protagonists from the private sector**. The state is the addressee of human rights obligations; nevertheless in the context of its obligation to provide protection (respecting, protecting and fulfilling)¹⁴⁴, States parties must provide protection from discrimination by private protagonists and provide a legal framework that supports people when they defend themselves against discrimination.¹⁴⁵

In the CRPD, this obligation of the state to protect and fulfil, is explicitly explained in article 4 (General obligations). According to this, the States parties must take all appropriate measures to eliminate discrimination on the grounds of disability by any person, organization or private enterprise (art. 4, para. 1 (e) CRPD).

In the context of art. 6, para. 1, one example could be a private media corporation that would represent women with disabilities in a marginalizing way. States parties must at least "*encourage*" media institutions to represent women with disabilities in a way that prevents stereotypes, prejudices and harmful practices (this also derives from art. 8).

(d) Furthermore, based on international standards for protection from discrimination, one would expect the **establishment of an institutional framework**. Antidiscrimination institutions shall counsel and attend to affected people, provide help in finding effective legal protection against discrimination, analyze discrimination cases, issue recommendations to the political sphere, and overall promote a communal life without any forms of discrimination; they shall perform their tasks independently.

In the context of the obligations deriving from the CRPD, the specific legal basis for the establishment of such an institutional framework can be found in art. 33 para. 2, CRPD. The States parties are obliged to establish structures on a national level, in order to monitor the Convention's implementation. This also includes independent mechanisms "*where applicable*".

¹⁴⁴ See chapter C.1.4.1.2.

¹⁴⁵ Deutsches Institut für Menschenrechte, Diskriminierungsschutz in der politischen Diskussion, I.c., p. 8.

However, the question of whether protection from discrimination as defined in the CRPD requires the establishment of new structures, or if the existing structures are sufficient, must be individually assessed in every state.

With regard to art. 6, para. 1 of the CRPD, independent institutions must prove that they are sufficiently competent when it comes to dealing with the multiple discrimination of disabled women and girls.

3.3.3. Article 6, paragraph 2 CRPD

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

3.3.3.1. Text Development

The proposal made by the facilitator, Theresia Degener, during the AHC's seventh meeting, did not yet include the goal to ensure the full development, advancement and empowerment of women with disabilities.¹⁴⁶ However, in the course of the further negotiations in the plenum, the goals of women's full development and empowerment were included into the text, following the example of the CEDAW's article 3.¹⁴⁷

In the beginning of the eighth round of negotiations, some states suggested subsuming the two paragraphs in the draft for article 6. However, these proposals would have entailed a weakening of the states' obligations.¹⁴⁸ In the end, it was only the goal of empowerment that was added to paragraph 2; this had initially been included in the draft for the first

¹⁴⁶ Joint Facilitators' proposal on Women and Children, New York, January 28, 2008, www.un.org/esa/socdev/enable/rights/ahc7facilitator.htm (April 27, 2011)

¹⁴⁷ See Report of the seventh session of the Ad Hoc Committee, A/AC.265/2006/2, New York, February 13, 2006, www.un.org/esa/socdev/enable/rights/ahc7report-e.htm (April 27, 2011)

¹⁴⁸ See joint proposal by Egypt, Morocco, Sudan, Syria, Qatar and Saudia Arabia as well as the EU's suggestion considering article 6 in the AHC's eighth session, www.un.org/esa/socdev/enable/rights/ahc8gpcart6.htm (April 27, 2011)

paragraph.

3.3.3.2. Legal Significance

Paragraph 2 addresses the development, advancement and empowerment of women. It assumes that women can be ensured the rights designated in the Convention if the States parties strive to achieve and promote these goals with appropriate means and in all of the fields addressed by the Convention.

The States parties enjoy a certain degree of discretion when it comes to choosing appropriate means. The German Federal Constitutional Court considers a means to be appropriate, as defined in constitutional law, if it contributes to promoting the desired success.¹⁴⁹ However, the legislator is allocated a certain freedom of legal arrangement – with due regard to the relevant field's standards – when it comes to making decisions about how legislative institutions want to implement the protection they are required to provide.¹⁵⁰

Article 3 CEDAW exhibits a similar wording; its interpretation provides some clues as to what are appropriate measures in the context of article 6, paragraph 2 CRPD: *"States parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of ensuring them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men."*

The CEDAW treaty body identifies the following essential obligations derived from this wording: A national institution must see to women's human rights; it must be allocated a clear mandate, appropriate resources and authority. Moreover, gender mainstreaming and gender budgeting shall be implemented.¹⁵¹

As with article 3 CEDAW, article 6 CRPD cannot be considered to be a stand-alone article;

¹⁴⁹ BVerfGE 33, 171 (187).

¹⁵⁰ BVerfGE 107, 205-218; BVerfGE 103, 293 <307>.

¹⁵¹ Schöpp-Schilling, The Nature and scope of the convention, in: Schöpp-Schilling, Flinterman, The Circle of Empowerment, New York, 2007, p. 21.

instead, it is a **cross-cutting obligation** that must be taken into consideration in the context of the interpretation and implementation of each and any of the Convention's articles. This necessitates an analysis of the state of disabled women's exercise of the rights designated in the CRPD. If a need for action emerges, it is necessary to implement advancement measures to promote disabled women's participation in accordance with the specific field.

With regard to the guidelines developed by the CEDAW treaty body, this implies (a) a national implementation system, (b) gender and disability mainstreaming, (c) gender and disability budgeting and (d) the implementation of advancement measures.

National implementation system

First of all, national institutions must be commissioned with the unequivocal task of seeing to the development, advancement and empowerment of women with disabilities in order to ensure their human rights. These can be government institutions; however a national human rights institution complying with the "*Paris Principles*" can also assume responsibilities.¹⁵² It is of essential importance that these national institutions be allocated appropriate organizational, financial and human resources, including the corresponding authorization.

In the case of Germany, according to the federal system, these responsibilities could be assumed by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth as well as the responsible federated states ministries. However, one must emphasize here that advancement measures according to article 6, paragraph 2, are aimed at ensuring disabled women's participation in all of the human rights and fundamental freedoms designated in the CRPD. Insofar, it is necessary to award the responsibility of implementing or initiating advancement measures for the benefit of disabled women at institutions that are competent in all fields. Thus, it might be an additional necessity for the corresponding specialist state institutions to also participate in appropriate measures.

¹⁵² "Paris Principles" are "principles relating to the status of national institutions", adopted by the United Nations General Assembly on December 20, 1993, UN Doc. E/CN.4/1992/43, December 16, 1991.

Implementing gender and disability mainstreaming

In addition to implementing advancement measures, it is necessary to identify all possible negative effects of current and future laws, policies and programmes.

This means assuring that article 6 is not only based on women's disadvantages as compared to men, but also addresses the multiple discrimination of disabled women and girls that derives mostly from the intersection of gender and disability as grounds of discrimination.

Therefore, an analysis of current and future laws, programmes and policies must:

- consider men and women's different living conditions stemming from their biological differences and their social roles, especially in the field of disability-related measures (gender mainstreaming);
- likewise, consider disabled and non-disabled women's different living conditions stemming from their different social participation opportunities on the basis of their disability, especially in the context of laws, programmes and policies that target women and their empowerment (disability mainstreaming).¹⁵³

In the course of the implementation of gender and disability mainstreaming, it is necessary to provide corresponding training for government employees and other responsible people.

The responsible government or human rights institutions must have the necessary competence in relation to gender and disability issues in order to be able to monitor the analysis' implementation.

Gender and disability budgeting

The analysis of laws and programmes should be supplemented by an analysis of public budgets, following the concept of gender budgeting.

Internationally, the notion of gender budgeting denotes the gender-sensitive analysis of

¹⁵³ The obligation of disability mainstreaming is also derived from article 4, paragraph 1 (c) CRPD.

public budgets. Within the gender mainstreaming strategy's framework, gender budgeting comprises a set of instruments to assess budgets with regard to their effects on the equality between genders.¹⁵⁴

With regard to article 6, paragraph 2 CRPD, a budget analysis necessitates:

- a gender-differentiated analysis of all budget means for persons with disabilities;
- a disability-specific analysis of all budget means for the advancement of women;
- and the analysis and allocation of budget means for specific and appropriate measures targeting the promotion of the development, expression and empowerment of women with disabilities.

Advancement measures

Article 6 paragraph 2 CRPD includes a cross-cutting obligation. Appropriate measures for the promotion of women's development, expression and empowerment must pursue the target that women with disabilities have the ability to exercise all of the human rights mentioned in the Convention.

Therefore, if the analysis indicates that women with disabilities are discriminated against when it comes to exercising any of the rights designated in the Convention, article 6, paragraph 2 requires specific special provisions for the advancement of women.

3.4. Article 6 – Conclusion

Through Article 6, the States parties recognize the fact that women and girls with disabilities are routinely confronted with multiple discrimination. It is in consideration of this, that Article 6 concretizes and expands the States parties' responsibilities in regards to the equality principle and that it requires antidiscrimination measures as well as specific advancement measures for the benefit of women with disabilities. Article 6 should be taken

¹⁵⁴ Bundesministerium für Familie, Senioren, Frauen und Jugend, Gender Mainstreaming, Das Konzept Gender Budgeting, see: www.gender-mainstreaming.net/bmfsfj/generator/gm/Wissensnetz/instrumente-und-

as a general model for the obligations established in the Convention that need to be mainstreamed into all implementation fields.

Measures as defined in article 6, paragraph 1 are:

- Obligatory and direct measures which counteract the multiple discrimination of women and girls with disability;
- Protection against discrimination which counteracts discrimination based on gender as well as discrimination based on a disability;
- In light of Article 5, paragraph 2 of the CRPD, the consideration of all other possible reasons for any additional discrimination experienced by women and girls with disabilities,
- The evaluation of current and prospective laws, policies and programmes in terms of any possible discriminatory effect as well as their non-discriminatory application;
- A ban on discrimination with due regard to the fact that disabled women and girls experience multiple discriminatory effects through direct, indirect and structural disadvantages including the denial of appropriate provisions;
- Temporary special measures, where required;
- Protection against discrimination, also from private actors;
- An institutional framework, as in, for example, antidiscrimination offices which serve to advise and support affected women and girls, to be helpful with providing effective legal protection, to analyze cases of discrimination and to devise recommendations for further action.

Appropriate measures as defined in article 6, paragraph 2 are:

- The commissioning of (a) national institution(s) which ensure(s) the implementation

and monitoring of the rights established for women with disabilities in the Convention;

- Providing the appropriate organizational, financial infrastructure and human resources infrastructure for the responsible institution(s);
- An analysis of to what extent the human rights and fundamental freedoms established in the Convention can be invoked equally before the law in the case of women with disabilities;
- Gender and disability mainstreaming, especially in the area of measures specifically referring to policies regarding women and disabled persons;
- A gendered budget analysis of all budget resources for persons with disabilities, a disability specific budget analysis for the promotion of women as well as the analysis and allocation of budget resources for specific measures to promote the expression, development and strengthening of women with disabilities' autonomy (gender and disability budgeting);
- Specific measures which promote the full development and promotion of women, as well as a strengthening of their autonomy, in all of the areas included in the Convention, so that they will be ensured all human rights and fundamental freedoms named in the Convention.

3.5. Examples of an Implementation of Article 6

3.5.1. The Right to Education (Article 24 CRPD)

3.5.1.1. Content of Article 24 CRPD

Article 24 contains specifications which state that all students with disabilities should be ensured the same right to education. The States parties are required to ensure that an inclusive educational system will be created at all levels, so that no one will be excluded based on a disability. It must also be ensured that persons with disabilities can complete a university education or vocational training and that they have access to adult education and other life-long learning opportunities.

3.5.1.2. The Multiple Discrimination of Women and Girls Concerning their Recourse to an Equal Right to Education

Access to school education or vocational training for women and girls with disabilities is more difficult than for non-disabled women worldwide, but even more difficult than for boys and men with disabilities.¹⁵⁵ There is therefore a very strong possibility that women with disabilities will lead a life of poverty, without education or vocational training, unemployed; which leads them to be unable to participate in life in society.¹⁵⁶

There are multiple causes: Women and girls with disabilities are confronted with social prejudices about disabilities like all persons with disabilities. In the view of many societies, a disability excludes the ability to earn one's own income and to lead an autonomous life. Moreover however, in most states, there are preconceived notions of roles which dictate that the man of the house earns the income and makes the decisions. Even though these preconceived notions are changing and women around the world are increasingly well-educated and independent, this does not normally apply to women with disabilities. Assuming that marriage, motherhood or a professional life are not possible for them, their families do not invest in their education. The fate of many women is therefore lifelong dependency and poverty, whereby they become the victims of further discrimination.

3.5.1.3. Antidiscrimination Measures

Possible measures in order to ensure girls and women with disabilities equal access to an inclusive educational system could be:

- Statutory regulations which prohibit the discrimination of boys and girls with disabilities concerning access to public or private regular schools;
- The guarantee of primary school education free of charge and the adoption of

¹⁵⁵ See chapter B.3., The Multiple Discrimination of Disabled Women.

¹⁵⁶ International Labour Organisation Publication, Integrating Women and Girls with Disabilities into Mainstream Vocational Training, Bangkok, 1999, www.ilo.org/public/english/region/asro/bangkok/ability/wwdtext_01.htm (April 27, 2011)

compulsory education for boys and girls with disabilities as well;

- The combating of social and familial prejudices and stereotypes about the assumed roles and abilities of women with disabilities;
- Measures against violence and assaults at schools as well as at all places of education;
- The evaluation of education policies and laws in terms of any discriminatory effects for girls and women with disabilities;
- Specific aid programmes, for example, early intervention programmes or specific school and education programmes for girls and women with disabilities;
- The establishment of public offices for the counselling and support of disabled women and girls and their legal guardians concerning access to regular schools, for the providing or procurement of legal protection, the collection of cases of discrimination and the preparation of recommended counteractions;
- Increased activity concerning vocational training positions, for example with objectives to increase the amount of women, publish open training positions, have flexible training schedules and entry qualifications, provide support with the application for subsidies and other aids, have further education and awareness training for training staff, provide an equal opportunities commissioner;
- Requiring employers to provide a portion of their vocational training positions to disabled women;
- Accessibility.

3.5.1.4. Appropriate Measures as Defined in Article 6, Paragraph 2

Article 6 paragraph 2 CRPD could include the following measures in the implementation of the right to education:

- On a national level, or at the Federated States level in a federal state like Germany,

there must be institutions which are commissioned to analyze, implement and monitor girls and women with disability's equal access to schools or vocational training programmes.

These could be attached to the responsible ministries or education authorities. The task requires an appropriate organizational, financial and human resources infrastructure.

- The entire educational policy, education reports, education statistics, all educational programmes and the education budget must be specifically analyzed along gender and disability lines, or in other words, it must be made clear how equal access will be ensured to disabled women and girls, men and boys (gender and disability mainstreaming and budgeting).
- Additional budget funds are to be allocated for measures which serve the advancement of the development, expression and strengthening of the autonomy of women with disabilities.

For example, appropriate measures for this purpose could be self-assertion courses, the strengthening of disabled women's self-confidence concerning their own abilities, professional and educational information centres for disabled women, training assistance, making motherhood and education compatible for disabled women, ensuring a diversity of educational opportunities.

3.5.2. Work and Employment (Article 27 CRPD)

3.5.2.1. Content of Article 27 CRPD

Article 27 CRPD aims to ensure the equal right for disabled persons to work for a salary at a freely chosen place of employment; and prohibits discrimination based on a disability. The States parties shall protect disabled persons against discrimination in hiring, career advancement or concerning working conditions. They shall ensure equal opportunities and equal pay as well as a safe and healthy working environment. Disabled persons shall have access to unions, counselling programmes, job placement services and vocational and further education opportunities or rehabilitation programmes. And states shall support

occupational independence for disabled persons.

3.5.2.2. The Multiple Discrimination of Women and Girls Concerning Their Recourse to an Equal Right to Work and Employment

Discrimination in the area of education has direct consequences for the participation of disabled women in a professional life.¹⁵⁷ For women with disabilities, an occupation means an escape from poverty, dependence and social isolation.

In their professional lives, women with disabilities are paid less and promoted less often than non-disabled women, they have no equal access to professional development measures, they often have no access to loans or other sources in order to be able to afford a professional life, and they seldom participate in economic decisions. And even when states offer aid to disabled persons, as in income compensation, social insurance benefits or occupational rehabilitation, disabled women are discriminated against because the aid is often attached to a former occupation or training.¹⁵⁸

3.5.2.3. Antidiscrimination Measures

Possible measures so that disabled women can equally enjoy the right to employment are:

- The establishment of a legal prohibition of the discrimination against women with disabilities by public and private employers in hiring, further education and career advancement opportunities;
- Protection from (sexual) violence or harassment at the workplace as well as ensuring the practice of safety precautions in the case of pregnancy or motherhood;
- The evaluation of existing labour market programmes and laws in regards to their effect on women with disabilities;

¹⁵⁷ See chapter B.3., The Multiple Discrimination of Disabled Women.

¹⁵⁸ International Labour Organisation (ed.), Arthur O'Reilly, The right to decent work of persons with disabilities, Geneva, 2007, p. 49, http://www.ilo.org/public/english/region/eurpro/moscow/info/publ/right_dw_pd.pdf (April 27, 2011)

- The gender-specific evaluation of assistance programmes and social services for persons with disabilities;
- Occupational advancement programmes for disabled women to compensate for discrimination;
- (Antidiscrimination) offices which advise and support women with disabilities, are helpful with effective legal protection, collect and analyze cases of discrimination and devise recommendations for further action;
- The promotion of associations and organizations which provide counselling.

3.5.2.4. Appropriate Measures as Defined in Article 6, Paragraph 2

Article 6, paragraph 2 CRPD could include the following measures in the implementation of the right to work and employment:

- National or regional (for example, European) institutions must be responsible for the implementation and monitoring of the equal recourse to Article 27 by women with disabilities and must be appropriately equipped, organizationally and financially as well as in terms of human resources;
- Gender and disability mainstreaming with respect to existing employment schemes, aid programmes, rehabilitation and placement services including gender disability budgeting;
- Formulation of a plan of action to improve the participation of disabled women in the labour market;
- The allocation of budgetary funds which are specifically used to promote the development, expression and strengthening of women with disabilities' autonomy in order to secure their participation in the labour market.

For example, appropriate measures in this case could be self-assertion courses, the strengthening of disabled women's self-confidence concerning their own abilities, professional and educational information centres for disabled women, making a work

assistant available, making motherhood and occupation compatible for disabled mothers, for example, by providing more barrier-free childcare facilities, improved possibilities for part-time employment or a right to parental assistance, services for the creation of better mobility and a more comprehensive accessibility.

D. Interpretation of the Other References to Women/Gender in the Convention

1. Article 8: Awareness-raising

1.1. The Convention Text

Article 8

Awareness-raising

"1. States parties undertake to adopt immediate, effective and appropriate measures:

- (a) To raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;
- (b) To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex¹⁵⁹ and age, in all areas of life;
- (c) To promote awareness of the capabilities and contributions of persons with disabilities.

2. Measures to this end include:

- (a) Initiating and maintaining effective public awareness campaigns designed:
 - (i) To nurture receptiveness to the rights of persons with disabilities;
 - (ii) To promote positive perceptions and greater social awareness towards persons with

¹⁵⁹ Author's emphasis (Dr. Sigrid Arnade).

disabilities;

- (iii) To promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market;
- (b) Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;
- (c) Encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention;
- (d) Promoting awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities."

1.2. Rationale

Stereotypes and prejudices exist concerning all disabled persons. Women with disabilities are especially affected by this.¹⁶⁰ They are thought even less capable than men with disabilities of being able to live independently. Moreover, there are social prejudices concerning the capabilities of disabled women to perform duties surrounding the family and upbringing of children or to fulfil any other social role.¹⁶¹

1.3. References in Other UN Documents

In the United Nations 1982 *"World Programme of Action concerning Disabled Persons"* (see above), a seven paragraph section deals with *"information and public action"*.¹⁶² The first clause of the UN's 1993 *"Standard Rules on the Equalization of Opportunities for Persons with Disabilities"* deals with raising the awareness of the general public. The title

¹⁶⁰ Hidden sisters: Women and Girls with disabilities in the Asian and Pacific Region. Asian and Pacific Decade of Disabled Persons, 1993-2002 Social Development Division, United Nations ESCAP, 1997, www.un.org/depts/escap/decade/wwd3.htm (March 6, 2011)

¹⁶¹ Peláez, Ana und Lydia la Rivière-Zijdel: The „case" of disabled women. European Parliament, Brussels 2004 <http://www.edfwomen.org.uk/case.htm> (March 6, 2011) and IDC Response to facilitator on women 30 January 2006, www.un.org/esa/socdev/enable/rights/ahcstata8sevscomments.htm (March 6, 2011)

¹⁶² www.un.org/esa/socdev/enable/rights/ahcstata8refdispecifi.htm (March 6, 2011)

of this clause has the same title as Article 8 of the CRPD, namely, "*Awareness-raising*".

There are congruencies between both of the older UN documents and Article 8 of the Convention. What is missing however, is the combating of stereotypes and prejudices and there is no mention of gender. In this respect, the individual obligation of States parties to "*combat stereotypes, prejudices [...] including those based on sex [...] in all areas of life*" is new in the Convention (Article 8, paragraph 1 (b)).

However, combating prejudices plays a role in other UN conventions: The States parties pledge to combat prejudices in Article 7 of the 1965 Convention on the Elimination of All Forms of Racial Discrimination (CERD; in effect as of 1969). According to article 5 in the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW; in effect as of 1981), the States parties shall also undertake all appropriate measures for the elimination of prejudices.

1.4. Experiences with the Application of other Conventions

1.4.1. Convention on the Elimination of All Forms of Racial Discrimination (CERD)

In Germany's fifteenth report on the International Convention on the Elimination of all Forms of Racial Discrimination (CERD) from June 2000, eight paragraphs covering two pages report on Article 7. They deal above all with the measures aimed at combating racist prejudices in schools.

These parts of the report are not specifically dealt with in the final comments issued by the Committee on the Elimination of Racial Discrimination. Concerning cases of racism in police precincts, it is urged to increase training measures for the corresponding police officers.

Germany's summarized reports 16-18 from October 2006 on the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) report on this in detail. All the same, twelve pages are dedicated to the combating of prejudices according to Article 7 of the Convention.

1.4.2. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

In part 1 "*Living Conditions of Women in Germany*" of Germany's fifth report completed in August 2002 concerning the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the living situation of women with disabilities is discussed. The text states, "*Women often lament that traditional roles, performance-oriented, competitive ways of thinking, stereotypes and morality concepts affect them two-fold – as disabled persons and as women.*" Furthermore, newer laws are elucidated and projects which have been initiated by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth [*Bundesministerium für Familie, Senioren, Frauen und Jugend, BMFSFJ*] are detailed. There is no project for the express purpose of altering stereotypes and prejudices.

In the second part of the fifth CEDAW report, one chapter, under the title "*Elimination of Stereotyped Roles and the Promotion of Men and Women's Co-responsibility Regarding the Education and Development of Children*", deals with the implementation of Article 5 of the Convention. This entails three paragraphs: "*Reconciliation of Family and Work*", "*New Father Image*" and "*Combating Violence against Women*". There is no mention of disabled women in this chapter.

In addition, the fifth CEDAW report contains an extensive list of disabled women's networks, initiatives like photography exhibitions by and about disabled women and publications regarding this topic.

Nevertheless, in the concluding remarks from January 2004, the Committee on the Elimination of Discrimination against Women expressed apprehensiveness "*concerning the continuation of the ubiquitous stereotypes and conservative views in regards to the roles and responsibilities of women and men.*" It recommends "*an increase in political measures and the implementation of programmes, among others, campaigns aimed at raising awareness and education for women and men [...], in order to contribute to the elimination of stereotypes concerning the traditional roles in the family and at the workplace, as well as in society as a whole.*"

Article 5 of the CEDAW was also extensively reported upon in Germany's sixth report on the United Nation's Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) from June 2007.¹⁶³ In this case, it concerns on the one hand parental leave and parental allowance, and on the other, different forms of violence against women and the measures against such violence. In this context, violence against disabled women is mentioned twice (see the chapter on Article 16 of the CRPD).

Furthermore, the concluding remarks in the Committee on the Elimination of Discrimination against Women (CEDAW) are commented upon. Concerning the combating of stereotypes in education policy, "*Girls' Day*" and the project "*New Paths for Boys*" are cited. Disabled girls and women are not named in relation to this, although the *Weibernetz*, a project promoted by the German Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (BMFSFJ), also frequently calls for disabled girls to be involved in the activities surrounding "*Girls' Day*".¹⁶⁴

1.5. Consequences

Taking into account the concluding remarks of the Committee on the Elimination of Discrimination against Women (CEDAW) about Germany's fifth CEDAW report, the clause in Art. 8 paragraph 1 (b) of the CRPD is to be interpreted to that effect; that the States parties are called upon to implement campaigns aimed at raising awareness and education. The goal of these campaigns, with the focus on girls and women with disabilities, is to combat stereotypes, prejudices and harmful practices concerning this group of people in all areas of life.

This could, for example, be in the form of poster campaigns which show disabled women in a variety of roles in the work place or performing familial duties. There could also be brochures with portrayals of these women. Another idea would be a corresponding film project.

¹⁶³ Bundestagsdrucksache 16/5807 (www.bmfsfj.de/bmfsfj/generator/Politikbereiche/gleichstellung.did=99414.html – March 6, 2011)

¹⁶⁴ www.weibernetz.de/maedchen.html (March 6, 2011)

The emanating effects from article 8 on all areas of life also become clear through the choice of words in this article. The "*working world*", "*job market*", "*education system*" and "*media institutions*" are explicitly mentioned. In this respect, the States parties are obliged to assess the necessity of awareness-raising measures concerning all of the other articles in the Convention.

2. Preamble, Paragraph q) and Article 16: Freedom from Exploitation, Violence and Abuse

2.1. The Convention Text

Preamble

"The States parties to the present Convention -

[...]

(q) Recognizing that women and girls with disabilities¹⁶⁵ are often at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,"

Article 16

Freedom from Exploitation, Violence and Abuse

"1. States parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

2. States parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid,

¹⁶⁵ Author's emphasis (Dr. Sigrid Arnade).

recognize and report instances of exploitation, violence and abuse. States parties shall ensure that protection services are age-, gender- and disability-sensitive.

3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by 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. 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 gender- and age-specific needs.

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

2.2. Violence against Women in International Human Rights¹⁶⁶

Violence against women was not understood as a serious human rights issue until the mid-1980s. Correspondingly, the term "*violence*" does not appear in the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). It is largely thanks to the efforts of the Committee on the Elimination of Discrimination against Women (CEDAW) at the United Nations that violence against women was recognized as a violation of human rights during the ensuing period.

Therefore, in January 1992, the Committee on the Elimination of Discrimination against Women (CEDAW) adopted the General Recommendation No. 19 (Violence against

¹⁶⁶ Unless otherwise noted, the information provided in this section is taken from Heisoo Shin: CEDAW and violence against women: Providing the "Missing Link", in: Hanna Schöpp-Schilling (ed.): The circle of empowerment: twenty-five years of the UN Committee on the Elimination of Discrimination against Women. The Feminist Press, New York 2007.

Women). Within this text, gender-based violence is defined as acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty, for example violence and abuse in the family, forced marriage, female genital mutilation of girls and women, trafficking in women, exploitation of female prostitution, sexual harassment at the workplace etc. Moreover, the States parties are required to implement the Convention on the Elimination of All Forms of Discrimination Against Women by using targeted measures in order to eliminate all forms of violence against women.

The definition of violence against women was certified in the 1993 UN General Assembly's Declaration on the Elimination of Violence against Women.¹⁶⁷ With these two documents, the international community of states made it unmistakably clear that every form of violence against women shall be seen as discrimination against women, as defined in Article 1 of CEDAW, which the States parties will try to eliminate by all appropriate means.

2.3. Legal Significance of the Preamble, Paragraph q)

It is already recognized in the preamble of the CRPD that women and girls with disabilities are in particular danger of exploitation, violence and abuse of all forms.

This assertion is also to be found in similar form in other international documents:

- It is asserted in the preamble of the 1993 UN General Assembly's Declaration on the Elimination of Violence against Women¹⁶⁸, that women with disabilities and women in institutions are in particular danger of experiencing violence.

It is specified in Article 1 and 2 of this declaration that the term violence encompasses all forms of physical, sexual and psychological violence which occur in the family or in public life and which are exerted or tolerated by the state. In this context, rape inside and outside of marriage, sexual abuse of girls, violence related to dowries, female genital mutilation, sexual harassment at the workplace, in educational institutions or elsewhere as well as

¹⁶⁷ www.un.org/documents/ga/res/48/a48r104.htm (March 6, 2011)

¹⁶⁸ I.c.

trafficking in women and forced prostitution, among others, are listed.

- In the Platform for Action which was approved at the 1995 World Conference on Women in Beijing, it was established in point 116 that disabled women and women living in institutions are especially vulnerable to violence.¹⁶⁹
- It was established in a United Nations document from 1998 that disabled women are victims of sexualized violence twice as often as non-disabled women.¹⁷⁰
- According to a 2007 European Parliament resolution, the risk for women with disabilities of becoming victims of sexual violence is actually three times as high as for women without disabilities.¹⁷¹

The realization that women and girls with disabilities are particularly endangered by all forms of violence is therefore not a new one.

In human rights treaties, preambles serve as an interpretation aid for the subsequent provisions. It may therefore be deduced from the preamble paragraph (q) together with article 6 and article 16 of the Convention that States parties have a special obligation to protect girls and women with disabilities from all forms of violence and to offer them all appropriate and necessary support if they become victims of violence.

2.4. Legal Significance of Article 16, Paragraph 1

This paragraph of the Convention deals with States parties' measures for protection from all forms of exploitation, violence and abuse. The paragraph states that gender-specific aspects should also be considered.

In this context, the following are to be considered gender-specific aspects:

¹⁶⁹ <http://www.un.org/womenwatch/daw/beijing/platform/violence.htm> (March 6, 2011)

¹⁷⁰ International Disability Foundation: The World Disability Report - Disability '99. Geneva, 1998

¹⁷¹ European Parliament resolution of 26 April 2007 on the situation of women with disabilities in the European Union (2006/2277(INI))

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007IP0160:EN:HTML> (March 6, 2011)

- the particular endangerment of girls and women with disabilities (see above);
- all forms of violence by which women are particularly affected and which are named in the 1992 General Recommendation No. 19 of the Committee on the Elimination of Discrimination against Women (CEDAW) and in the 1993 UN General Assembly's Declaration on the Elimination of Violence against Women¹⁷² (see above).

In order to be able to effectively protect individuals from all forms of violence, the degree of violence must first be known. To this end, all inquiries and studies on violence against disabled persons must undergo a gendered analysis. At the same time, the characteristic of disability is to be taken into particular account in all inquiries and studies on violence against women. The preamble also contains a call for "*disability mainstreaming*" in paragraph (g):

"(g) *Emphasizing* the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development [...]"

In Germany for example, the most recent representative study from 2004 on violence against women did not include a disability mainstreaming perspective. It is indeed established that "*persons with disabilities*" can be affected by violence to a higher degree. It is also stated that it would be useful to perform deeper analyses regarding disabled women. Otherwise however, the situation of women with disabilities is not especially considered in the study. This information gap was recognized by the German government, which has therefore contracted a scientific study on violence against disabled women.

As discussed, a state responsibility can therefore be deduced from article 16, paragraph 1 of the CRPD for commissioning or providing

- scientific studies on violence against women with disabilities.

Further need for legal action in Germany can be deduced from art. 16, para. 1 in the following reports:¹⁷³

¹⁷² www.un.org/documents/ga/res/48/a48r104.htm (March 6, 2011)

¹⁷³ [In the following articles, the proposed measures are mostly related to Germany and the German legal system. This](#)

- Extension of the Protection against Violence Law

The specific living situation of disabled girls and women must be taken into greater account than it has been thus far. There is a lack of fast, temporary solutions, for example, concerning the possible situation where it is the assistant or attendant who is inflicting the violence on a woman with assistance needs. In such a case, it must be ensured that the assistance is continued when the perpetrator has to leave the place of residence. Another situation which has not been settled is what happens to the inhabitants of institutions where the individual perpetrating the violence also lives in the institution. She or he cannot then be expelled offhand from the premises.¹⁷⁴

- Protection from Sexual Violence

Another legal measure discussed in German is a supplement in the German social law: it already contains a list of general objectives social benefits shall meet when granted to disabled people. It is now demanded to extend this list by the additional goal of protection from sexual violence..¹⁷⁵

- Youth and Social Assistance Authorities as Service Providers for Trainings to Increase Self-confidence

Trainings to increase self-confidence have proven to be successful in the effective prevention of (sexual) violence. According to German social law¹⁷⁶), these are to be provided by the rehabilitation organizations. However, a legal loophole exists in that the social and youth assistance authorities are not under any obligation to provide this service. This cannot be justified either factually or within the context of the German

[should be regarded as an example of implementing the CRPD regulations within a national framework. We hope that the content of the listed measures is transferable to other states.](#)

¹⁷⁴ Martina Puschke: Besserer Schutz vor Gewalt? Weiberzeit Nr. 11, 2006.

¹⁷⁵ Julia Zinsmeister (ed.): Sexuelle Gewalt gegen behinderte Menschen und das Recht. Gewaltprävention und Opferschutz zwischen Behindertenhilfe und Strafjustiz. Leske + Budrich, Opladen 2003, p. 256.

¹⁷⁶ paragraph 44 section. 1 No. 3 Book 9 German Social Code (*Sozialgesetzbuch IX*). Book 9 of the German Social Code came into effect in summer 2001 and deals with the rehabilitation and participation of disabled persons.

legal system.¹⁷⁷ For this reason, a legal measure would be to concretize the German integration assistance ordinance in particular, that youth and social assistance authorities must provide services according to the social law.¹⁷⁸

2.5. Legal Significance of Article 16, Paragraph 2

Article 16, para. 2 deals with prophylactic measures designed to prevent all forms of exploitation, violence and abuse. This paragraph is made up of two sentences which each contain a gender reference. In order to pre-empt all forms of exploitation, violence and abuse, the States parties must adopt gender-sensitive measures with respect to the assistance and support of persons with disabilities, their families and their caretakers on the one hand (sentence 1), and with respect to the protection services for the people affected (sentence 2) on the other.

For Germany, five obligations can be deduced from the specifications in art. 16, para. 2 in particular.

- **The Right to Same Gender Care**

Persons with disabilities receive aid and support from family members, friends, neighbours, officially appointed caregivers, outpatient care-taking services or employees at institutions which provide in-patient and day-patient services; or they themselves become employers through hiring an assistant. In order to prevent (sexual) violence, among other reasons, women with disabilities, above all, have been demanding the right to be able to determine who helps them for a long time, especially regarding assistance with intimate care. They want to at least be able to determine if a

¹⁷⁷ Renate Bieritz-Harder: Schutzpflichten des Rehabilitationsträgers gegenüber der Rehabilitationsempfängerin in Bezug auf Prävention sexualisierter Gewalt. In: Julia Zinsmeister (ed.): Sexuelle Gewalt gegen behinderte Menschen und das Recht. Gewaltprävention und Opferschutz zwischen Behindertenhilfe und Strafjustiz. Leske + Budrich, Opladen 2003, pp. 218-220.

¹⁷⁸ Julia Zinsmeister (ed.): Sexuelle Gewalt gegen behinderte Menschen und das Recht. Gewaltprävention und Opferschutz zwischen Behindertenhilfe und Strafjustiz. Leske + Budrich, Opladen 2003, p. 256.

man or a woman helps them.¹⁷⁹

Indeed, the CRPD contains no express obligation on the part of the States parties which ensures the right to same gender care. This obligation can however be deduced from art. 16, para. 2 in connection with art. 6, para. 2 (Women with disabilities) and art. 17 (Protecting the integrity of the person).

According to German university professor, Gerhard Igl and his colleague Sybille Dünnes, there is already a legal claim to same gender care in home and in-patient care in conformity with the constitutional interpretation of the German social law. In their legal opinion from 2002, the authors recommend a corresponding clarification in the book 9 of the German social code (*Sozialgesetzbuch XI*). Among other reasons, women with disabilities, above all, have been demanding for a long time the right to be able to determine who helps them, especially regarding assistance with intimate care. They want to at least be able to determine if a man or a woman helps them.¹⁸⁰

On the other hand, in 2008 the book 11 of the German Social Code¹⁸¹ has been complemented by the general principle "*Requests for same gender care by those in need of care shall be duly considered whenever possible.*" However, the government's draft expressly stated in the explanatory memorandum that this regulation does not stipulate any right to same gender care.¹⁸²

In light of the German Constitution and especially in light of the CRPD, this interpretation of the law is untenable. In fact, it is demanded to establish the right to same gender care as the right to choose in the German Social Code.¹⁸³

As long as the government delays in making this clarification, the federated states must

¹⁷⁹ BMFSFJ (ed.): Einmischen. Mitmischen. Informationsbroschüre für behinderte Mädchen und Frauen. BMFSFJ, Berlin 2007.

¹⁸⁰ BMFSFJ (ed.): Einmischen. Mitmischen. Informationsbroschüre für behinderte Mädchen und Frauen. BMFSFJ, Berlin 2007.

¹⁸¹ Book 11 of the German Social Code (SGB XI) contains social benefits for long-term care

¹⁸² <http://dip21.bundestag.de/dip21/btd/16/074/1607439.pdf> (March 6, 2011)

¹⁸³ Sozialgesetzbuch XI is a German law. It is about mandatory long-term care insurance.

establish corresponding regulations in their equality laws for disabled persons. A first sign of this happening is the *"Thuringian law on promoting the equality and integration of persons with disabilities"* [ThürGIG] from December 16, 2005.¹⁸⁴ In paragraph 8, section 3 of this law, it states: *"If possible, at their request, persons with disabilities shall be cared for by a person of the same gender."* This clause must be rephrased to *"Persons with disabilities shall be cared for by a person of the same gender at their request"* and should also be adopted as such in the equality rights laws of the other 15 German federated states.

- **Women's Affairs/Equal Opportunities Commissioners**

It can also be deduced from art. 16, para. 2 of the CRPD that there is an obligation to appoint women's affairs commissioners and/or equal opportunities commissioners to positions in all institutions providing social assistance. Social services providers and responsible funding bodies are required to prevent intrusions in the (sexual) self-determination of both male and female assistance recipients.¹⁸⁵ The employment of female commissioners and/or equal opportunities commissioners can be considered to be an effective preventative measure against (sexual) violence.

In German, an obligation to employ women's affairs commissioners in all institutions providing social assistance could also be inserted in the German Social Code..¹⁸⁶

- **Female Living Groups**

In order to prevent all forms of exploitation, violence and abuse as defined in art. 16, para. 2, all social service providers must arrange to offer female living groups as a quality feature in the service level agreements with social service providers.¹⁸⁷

¹⁸⁴ www.netzwerk-artikel-3.de/dokum/th_rglg.pdf (March 6, 2011)

¹⁸⁵ Julia Zinsmeister (ed.): *Sexuelle Gewalt gegen behinderte Menschen und das Recht. Gewaltprävention und Opferschutz zwischen Behindertenhilfe und Strafjustiz.* Leske + Budrich, Opladen 2003, p. 256

¹⁸⁶ I.c.

¹⁸⁷ Julia Zinsmeister (ed.): *Sexuelle Gewalt gegen behinderte Menschen und das Recht. Gewaltprävention und Opferschutz zwischen Behindertenhilfe und Strafjustiz.* Leske + Budrich, Opladen 2003, pp. 256 and 257

- **Education and Counselling**

In the second part of the first sentence of art. 16 para. 2 it states: "[...] including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse".

It can be deduced from this specification that all States parties are obligated to compel all institutions that work with disabled persons to provide gender-sensitive education and counselling. This could include education courses in gender-separated groups in the (still existing) special needs schools and the barrier-free accessibility at women's counselling services locations as well as the possibility of receiving counselling from a women at disabled persons' counselling services locations.

- **Protective Services Training**

Art. 16, para. 2, sentence 2 requires the States parties to assure, among other things, that protective services take into account the gender of the affected person.

This obligation includes, for example, corresponding training of police forces who deal with violent offences, and in particular with domestic violence. These trainings must also address the women and disability-specific aspects.

2.6. Legal Significance of Article 16, Paragraph 4

While the first paragraphs of article 16 deal with measures whose purpose is to prevent all forms of exploitation, violence and abuse, the fourth paragraph is concerned with the social reintegration of persons with disabilities who have become victims of a violent act. In sentence 2 of this paragraph, it is stipulated that recovery and social reintegration must take place in an environment that takes gender-specific needs into account.

For Germany, the following obligations can be deduced from art. 16, para. 4:

- **Accessible Counselling Service Locations**

Counselling service locations, which counsel women after their experiencing violence, must be accessible. Along with being wheelchair accessible, that includes

corresponding communication assistance: Communication must be mediated by a sign language interpreter as needed. Information pamphlets and brochures must also be provided in formats accessible to blind girls and women as well as in plain language form for victims of violence with learning difficulties. The counsellors must be trained to competently counsel girls and women with different impairments.

- **Accessible Women's Shelters**

Correspondingly, women's shelters must fulfil all accessibility criteria in order to provide disabled girls and women with a safe space as well. The providers of these protective institutions are to be adequately financed in order to be able to realize this obligation.

- **Social Services Providers' Obligations**

Social services providers must be expressly legally obligated to ensure that disabled women and men who have experienced (sexual) violence are offered comprehensive and adequate assistance (for example, psycho-therapeutic) and that a change in institution or service is made possible as quickly as necessary and that this is financed.¹⁸⁸

2.7. Legal Significance of Article 16, Paragraph 5

This paragraph deals with the detection, investigation and prosecution of cases of exploitation, violence and abuse.

To that effect, the penal law and the code of criminal procedure have been changed since the beginning of this century in Germany, in that the concerns of girls and women with disabilities have been dealt with to a greater extent. Some obligations for Germany can nevertheless be deduced from art. 16, para. 5:

- **Training**

¹⁸⁸ Julia Zinsmeister (ed.): Sexuelle Gewalt gegen behinderte Menschen und das Recht. Gewaltprävention und Opferschutz zwischen Behindertenhilfe und Strafjustiz. Leske + Budrich, Opladen 2003, p. 256

All those who have job-related contact with girls and women must be trained so that they detect signs of committed violence and can react appropriately. This concerns, among others, nursing staff, doctors, teachers, employees of vocational training and vocational advancement centres as well as workshops for disabled persons.

Those who work with victims of violence must be informed and trained on the situation of girls and women with disabilities, ways to make criminal proceedings accessible, and the appropriate handling of injured disabled persons. This concerns, among others, law enforcement personnel (see above), doctors, attorneys and judges.¹⁸⁹

- **Reform of Sexual Crime Legislation**

The sexual crime legislation should be fundamentally reviewed and the protection of the sexual self-determination of disabled and non-disabled persons should be afforded more importance. This requires an increase in the consideration of the victim's perspective.¹⁹⁰

As a temporary solution, the following reforms should be sought for in order to improve the protection of those affected and for the realization of more justice¹⁹¹:

1. In paragraph 174a of the German Criminal Code (*StGB*)¹⁹², institutions providing day-patient care are expressly to be included, so that the corresponding criminal offences will also be prosecuted in institutions which provide care for persons with disabilities, as, for example, in workshops.
2. In para 179 clause 1 and 2 of the German Criminal Code (sexual abuse of mentally

¹⁸⁹ Julia Zinsmeister (ed.): *Sexuelle Gewalt gegen behinderte Menschen und das Recht. Gewaltprävention und Opferschutz zwischen Behindertenhilfe und Strafjustiz.* Leske + Budrich, Opladen 2003, p. 256

¹⁹⁰ Julia Zinsmeister (ed.): *Sexuelle Gewalt gegen behinderte Menschen und das Recht. Gewaltprävention und Opferschutz zwischen Behindertenhilfe und Strafjustiz.* Leske + Budrich, Opladen 2003, p. 255.

¹⁹¹ See Julia Zinsmeister (ed.): *Sexuelle Gewalt gegen behinderte Menschen und das Recht. Gewaltprävention und Opferschutz zwischen Behindertenhilfe und Strafjustiz.* Leske + Budrich, Opladen 2003, p. 255.

¹⁹² Strafgesetzbuch; German Criminal Code. Paragraph 174a deals with the sexual abuse of people in need of protection.

incapacitated, persons with reduced consciousness or physically helpless persons), it should be stated that a custodial sentence of at least one year should be stipulated for sexual assault, comparable to the threat of punishment in para 177 clause 1 of the German Criminal Code (sexual assault).

2.8. Summary of the Consequences of Article 16 for Germany

As was made clear in the last section, girls and women with disabilities are significantly affected by (sexual) violence; this is unacceptable. Correspondingly, a multitude of obligations to act resulted from the stipulations in article 16 of the CRPD, which, using Germany as an example, will be listed below in a summarized form:

2.8.1. Preventative Measures/Protective Measures

Scientific studies on violence against women with disabilities;

- Social services providers' obligation to provide optimal protection from sexual violence¹⁹³
- Youth and social assistance providers should act as service providers for trainings to increase self-confidence¹⁹⁴
- Fixation of the right to same gender care as a right to freedom of choice for persons with disabilities¹⁹⁵
- Requirement of all social services providers' institutions to employ women's affairs/equal opportunity commissioners¹⁹⁶
- Including the possibility of female living groups by social service providers as an

¹⁹³ demanded: amendment to para. 10 Book No. 1 of the German Social Code (SGB I)

¹⁹⁴ demanded: concretization of para. 6 provision for rehabilitation assistance (*EinglHilfeVO*)

¹⁹⁵ demanded: amendment to para. 33 Book No. 1 of the German Social Code (SGB I), para. 2 Book No. 9 of the German Social Code (SGB IX) and the Federated States Equality Acts

¹⁹⁶ demanded: (amendment to para 17 Book No. 1 of the German Social Code (SGB I)

obligatory quality feature in the service level agreements with social service providers;

- Gender-sensitive education and counselling;
- Training of protective service employees;
- Barrier-free counselling service centres;
- Training of all those involved;
- Sexual crime legislation reform.

2.8.2. Measures to Support Girls and Women with Disabilities Who Have Experienced Violence

- Amendment to the Protection from Violence Act in order to close up legal loopholes concerning women;
- Barrier-free counselling service centres;
- Barrier-free women's shelters;
- Require the social services provider to provide optimal protection to victims of violence.

The content of these measures is transferable to other states. They should be then implemented according to the respective legal and structural conditions.

3. Article 25: Health

3.1. The Convention Text

Article 25

Health

"States parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of 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 that are gender-sensitive¹⁹⁷, including health-related rehabilitation.¹⁹⁸ In particular, States parties shall:

- (a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health 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 minimize and prevent further disabilities, including among children and older people;
- (c) Provide these health services as close as possible to people's own communities, including in rural areas;
- (d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private

¹⁹⁷ Unlike the legally binding UN original text, the German, Austrian and Swiss version of the CRPD mentions „gender-specific" health services. According to the authors of this standard interpretation, a considerable difference of meaning exists between these two terms. See elaborations in chapter 3.5.1.

¹⁹⁸ Author's emphasis (Sabine Haefner).

health care;

(e) Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;

(f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability."

3.2. Rationale¹⁹⁹

More often than men with disabilities, women with disabilities have a minimal income at their disposal and are dependent on social services or on their families. They are thus less able to pay for quality health care. Even in states with free health services or with social health insurance, one must anticipate additional costs for services and medication which one must pay for oneself. In many states, the access to social health insurance is moreover dependent on gainful employment or marital status.

Women with disabilities have higher health risks than non-disabled women. For example, physical disabilities can lead to a lack of exercise and therefore to weight problems. The risk of osteoporosis, heart conditions, high blood pressure and diabetes are linked to this as well. The social isolation linked to disability and illness involves the danger of depression as well as emotional, physical and sexual abuse.

In addition, there are social and physical barriers, as for example doctor's offices, gynaecological offices or early detection centres (for example mammography centres) which are not barrier-free or adjusted to meet the needs of disabled women.

A fundamental problem is also the lack of knowledge that disabled women and their caretakers or families have about essential preventative health care.

¹⁹⁹ For a very good overview on the health needs of disabled women over the course of their lives, see: Linda Snell DNS, WHNPc, Karen Piotrowski MSN, RNC (2007): Health Care Needs of Women With Disabilities, *Journal of Obstetric, Gynecologic, & Neonatal Nursing*, Volume 36 (1) , p. 78–78, Washington, January/February 2007, www.4women.gov/healthpro/publications/2007.awhonn.pdf (March 30, 2008).

In many societies, social limitations or the existence of cultural prejudices lead to disabled women's reproductive rights not being supported, under the assumption that persons with disabilities shouldn't have children. In many people's view, women with disabilities are still seen as asexual, meaning that health services to do with contraception, sexually transmitted diseases, prenatal classes, and birth control or infertility are either not adapted to disabled women's needs or are not taken into consideration in their personal circles. Conversely, disabled girls and women are more often victims of sexualized violence than non-disabled women, or must undergo involuntary sterilization or the termination of a pregnancy.

3.3. Text Development

In light of the variety of barriers that affect women with disabilities regarding their health, establishing the corresponding governmental measures aimed at ensuring the right to health was always central to the consideration of women-specific provisions in the Convention text.

3.3.1. Gender-sensitive Health and Rehabilitation Services

This dealt on one hand with ensuring barrier-free health and rehabilitation services which are adjusted to the particular needs of disabled women and girls in terms of expertise, staff and equipment.

Text proposals to this end were first introduced at the 3rd AHC meeting (May 24 – June 4, 2004). New Zealand proposed for example, that women with disabilities should be expressly ensured equal access to public health programmes, clean water, sanitary facilities as well as cervical and breast cancer screenings. Israel made the proposal, among others, of also establishing the specific rehabilitation needs of disabled women and girls.²⁰⁰ The discussion was continued at the 6th AHC meeting (August 1– August 12, 2005).²⁰¹ Article 25's chapeau took on its present form based on the facilitator Theresia

²⁰⁰ Report of the third session of the Ad Hoc Committee, A/AC.265/2004/5, New York, June 9, 2004, www.un.org/esa/socdev/enable/rights/ahc3reporte.htm (April 27, 2011)

²⁰¹ See summary of the plenum discussion, August 8, 2005, www.un.org/esa/socdev/enable/rights/ahc6sum8aug.htm

Degener's proposal at the 7th AHC meeting (January 16 – February 3, 2006).²⁰²

3.3.2. The Ensuring of Sexual and Reproductive Health Services

Explicitly establishing the protection of disabled women's reproductive rights in the Convention was a central concern of disabled women and their organizations during the negotiations.

First of all, reproductive rights do not only affect health care. Whether or not a woman can freely practice her right to have or not to have children (article 16 CEDAW), is also dependent on the surrounding conditions of other areas of life. The UN Women's Rights Convention (CEDAW) therefore mentions reproductive rights in the following areas: Family Education (article 5 CEDAW), Education (article 10 CEDAW), Employment (article 11 CEDAW), Health Care (article 12 CEDAW), Economic and Social Benefits (article 13 CEDAW), or Marriage and Family Life (article 16 CEDAW). For this reason, disabled women's organizations in the International Disability Caucus (IDC) were campaigning until the 8th and final AHC negotiations for an establishment of the reproductive rights of disabled women in the comprehensive article 6 of the CRPD.²⁰³ In the end however, disabled persons' reproductive rights are only included in article 23 of the CRPD (Respect for Home and Family) and in article 25 of the CRPD, without explicitly discussing the specific needs of women with disabilities.

The subsection (a) of the draft of the Convention worked on by the AHC Working Group in January 2004 already contained a similar wording; however, instead of the current phrasing in the original text which reads: "*health care [...] including in the area of sexual and reproductive health*", in the Working Group's first draft, it reads "*health [...] services including sexual and reproductive health services*".²⁰⁴

(April 27, 2011)

²⁰² See Joint Facilitators' proposal on Women and Children, January 28, 2008, www.un.org/esa/socdev/enable/rights/ahc7facilitator.htm (April 27, 2011)

²⁰³ See, for example, IDC comments on article 6 during the 8th session of the Ad Hoc Committee, www.un.org/esa/socdev/enable/rights/ahc8contngos.htm (April 27, 2011)

²⁰⁴ Report of the Working Group to the Ad Hoc Committee, A/AC.265/2004/WG/1, Annex I Draft Comprehensive and

This inclusion of sexual and reproductive health services was disputed in the AHC up until the end of the negotiations. Indeed, the right to family planning health services as well as services during pregnancy, childbirth and lactation was included in binding human rights conventions.²⁰⁵ Labelling it as sexual and reproductive health care only occurred up until now, however, in non-binding UN programmes and action plans.²⁰⁶ Some states as well as non-governmental organizations were concerned that the explicit labelling of these health services would create new rights, in particular, that it could contain the right to an abortion.²⁰⁷ The AHC's indication that the Convention shouldn't create any new rights, they said, does not protect it against other interpretations.²⁰⁸

The chair of the AHC pointed out several times with regard to this discussion that the Convention is not intended to create new rights or to influence national policies regarding family size, reproduction etc. The Convention does not require the passage of new laws in the area of reproductive health or related areas, but rather that persons with disabilities have the same, non-discriminatory access to the corresponding health services.²⁰⁹ Article 25 (a) is above all an antidiscrimination provision with the effect that States parties ensure that the health services provided can also be used by persons with disabilities without discrimination based on their disability.²¹⁰

During the 8th and last meeting, the word "services", as in "*health services*", was finally

Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, Draft Article 21, www.un.org/esa/socdev/enable/rights/ahcwgreporta21.htm (April 27, ,2011)

²⁰⁵ See CEDAW article 12.

²⁰⁶ See below, chapter 5.6.2.

²⁰⁷ See, for example, the discussion during the Ad Hoc Committee's 6th session, August 8, 2005, www.un.org/esa/socdev/enable/rights/ahc6sum8aug.htm (April 27, ,2011) ; discussion during the 7th session of the AHC on January 24 and 25, 2006, www.un.org/esa/socdev/enable/rights/ahc7summary.htm (April 27, ,2011);

²⁰⁸ See, for example, comments by the Society of Catholic Social Scientists, Pro-Life/Pro-Family Coalition for the Protection of Persons with Disabilities during the AHC's 6th meeting, www.un.org/esa/socdev/enable/rights/ahc6contngos.htm (April 27, ,2011)

²⁰⁹ See, for example, report of the AHC's 6th session, A/60/266, August 17, 2005, www.un.org/esa/socdev/enable/rights/ahc6reporte.htm (April 27, 2011)

²¹⁰ Report of the 7th session of the AHC, footnote 4, A/AC.265/2006/2, February 13, 2006, <http://www.un.org/esa/socdev/enable/rights/ahc7report-e.htm> (April 27, 2011)

taken out of the text.²¹¹ According to the original English text, the States parties must provide persons with disabilities the same scope of health care as other persons, including in the area of sexual and reproductive health. The States parties obligation is made less concrete with this wording (compare below: Legal Significance of Article 25).

Many states and organizations' stipulation²¹² that the States parties be expressly required in article 25 to protect persons with disabilities from a forced abortion or sterilization could not be realized. According to article 25 (d), the States parties must however impose the obligation on health care professionals to only provide care to persons with disabilities with their informed consent.

3.4. Legal Significance of Article 25

The 1948 Universal Declaration of Human Rights (UDHR) already contained the right to a standard of living adequate for health and well-being (UDHR, art. 25). As the first legally binding convention, the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) contains the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (ICESCR, art. 12). As in the CRPD, the right to health was also included for the respective individuals in the Convention on the Rights of the Child (CRC, art. 24), the Women's Rights Convention (CEDAW, art. 12) and the Anti-Racism Convention (CERD, art. 5). The right to health has also been established in regionally binding human rights conventions, as in, for example, the 1961 Council of Europe's European Social Charter.

3.4.1. Normative Content of the Right to Health

In the General Comment No. 14 from August 11, 2000, the Committee on Economic, Social and Cultural Rights (CESCR) responsible for monitoring the ICESCR, gave a final,

²¹¹ See Uruguay's suggestion for compromise, AHC's 7th session, January 25, 2006, www.un.org/esa/socdev/enable/rights/ahc7sum25jan.htm (April 27, 2011)

²¹² Discussion during the 6th meeting of the AHC, August 8, 2005: www.un.org/esa/socdev/enable/rights/ahc6sum8aug.htm (April 27, 2011); cp. e.g. Joint Facilitators' proposal on Women and Children, January 28, 2006, www.un.org/esa/socdev/enable/rights/ahc7facilitator.htm (April 27, 2011)

comprehensive description of the normative meaning of the right to health, governmental obligations, incompatibilities, the practical implementation on a national level as well as the obligation of non-governmental actors.²¹³

The right to health includes freedoms and entitlements:

- The right to have control over one's own health and body without anyone interfering, including sexual and reproductive freedom as well as the right to be free from non-consensual medical treatment and experimentation;
- The right to a system of health protection that provides equality of opportunity for persons to enjoy the highest attainable standard of health;
- Access to institutions, products and services that are necessary for the realization of the highest attainable standard of health;
- The highest attainable standard of health includes both the individual biological requirements and the socioeconomic and financial conditions in a state;
- The right to health is an inclusive right, that is dependent upon the implementation of other rights and conditions, such as access to safe and potable water and adequate sanitation, healthy nutrition, housing, healthy environmental conditions, health education, including on sexual and reproductive health as well as the involvement of the public in decisions specific to health-related issues.

The right to health requires:

- Availability: (Public) health care facilities (sanitation facilities, clinics, hospitals, doctors' practices), products indispensable to good health (safe and potable water, essential medicines as defined by the WHO), and adequate health services (trained medical personnel), which can depend on a country's stage of development;

²¹³ CESCR, The right to the highest attainable standard of health, General Comment No. 14 (2000), E/C.12/2000/4, Geneva, August 11, 2000, [www.unhcr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En?OpenDocument) (April 27, 2011)

- Accessibility: Non-discriminatory physical accessibility (wide scope provision of health services, also in rural areas, barrier-free), economic accessibility (affordable health care services for all), access to health care information;
- Acceptability: Respect for medical ethics, privacy, respect for each individual's culture, minorities, sensibility for gender-specific needs or requirements specific to particular living conditions;
- Quality: Scientific, medically appropriate, quality health services, trained personnel, scientifically researched medicines, clean drinking water, and appropriate sanitation.

3.4.2. Progressive and Immediate State Obligations

The Social Committee's (CESCR) pointed out that the standard of health care services is also dependent on the socioeconomic and financial development of a States party. This is based on art. 2, para. 1 of the ICESCR, according to which each state is required to use all means available to gradually fully implement economic, social and cultural rights. This gradual obligation is also included in art. 4, para. 2 of the CRPD in the context of economic, social and cultural rights:

"With regard to economic, social and cultural rights, each State party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving gradually the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law."

Referring to art. 2, para. 1 of the ICESCR, the Social Committee (CESCR) differentiated between gradual and immediate states obligations. The immediate obligations hereafter include, in particular, the non-discriminatory provision of economic, social and cultural rights.²¹⁴ Each economic, social and cultural right contains core obligations which are to be implemented immediately. Concerning the right to health, these are:

²¹⁴ CESCR, The nature of States parties obligations (Art. 2, par.1), General comment No. 3, Geneva, December 14, 1990, [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/94bdbaf59b43a424c12563ed0052b664?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/94bdbaf59b43a424c12563ed0052b664?Opendocument) (April 27, 2011)

- To ensure the right to access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups;
- To ensure access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger for everyone;
- To ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water;
- To provide essential drugs, as defined by WHO;
- To ensure equitable distribution of all health facilities, goods and services;
- To adopt and implement a national public health strategy and plan of action.²¹⁵

Even though art. 25 of the CRPD is henceforth only to be gradually implemented, the States parties must be responsible for immediately assuring, at a minimum, that persons with disabilities have non-discriminatory access to their state's health care and that the core obligations for persons with and without disabilities are equally ensured.

3.5. Legal Significance of Article 25, Paragraph 1, sentence 2 (chapeau) – Gender-sensitive Health and Rehabilitation Services

3.5.1. Translation Problem in Germany

In the original, legally binding English text, article 25, para. 1, sentence 2 states:

"States parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation."

Although "*gender-sensitive*" was translated as "*geschlechtersensibel*" in the first draft of the German translation, the term was changed in the translation coordinated by Germany,

²¹⁵ CESCR, The right to the highest attainable standard of health, General Comment No. 14 (2000), E/C.12/2000/4, Geneva, August 11, 2000, [www.unhcr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En?OpenDocument) (April 27, 2011)

Liechtenstein, Austria and Switzerland to "*geschlechtsspezifisch*" (gender-specific).

Considering the fact that both the term "*gender-specific*" (art. 16, para. 4 CRPD) and "*gender-sensitive*" (art. 16, para. 2; art. 25 CRPD) were used in the original English text, the interpretation of the terminology must also be differentiated. Health services which are gender-sensitive are those services which take into consideration the fact that men and women have different needs. Access to gender-specific health care services means making services available which first and foremost meet the health care needs of men or women respectively, as in, for example, gynaecological health care services for women. While such gender-specific health care services can certainly be a part of gender-sensitive health care, conversely, the limitation of such health care services in the article 25 chapeau cannot have been intended in the CRPD: The chapeau makes a general stipulation requiring the States parties to ensure access to health care services for disabled persons, before further individual aspects are detailed in subparagraphs (a) to (f).

3.5.2. Requirement of Gender-sensitive Health Care Services in other Human Rights Documents

The CRPD is the first legally binding convention in which the term gender-sensitivity is expressly stated. However, no new entitlements are created hereby for persons with disabilities. That is rather the result of many years of development in the area of human rights instruments interpretation, in particular the equality principle between genders, in which the recognition of the fact that men and women are exposed to different conditions in the exercise of their human rights is becoming increasingly important.

For example, in the area of health rights, the 1995 4th Conference on Women in Beijing emphasized the necessity of gender-sensitive policies and programmes on all levels.²¹⁶ Their Platform for Action recommended creating and implementing gender-sensitive health care programmes (including decentralized health care services) which meet women's needs throughout their life span and which account for their diverse roles and

²¹⁶ Report of the Fourth World Conference on Women, A/CONF.177/20, 17 October 1995, Beijing Declaration, para. 19, www.un.org/esa/gopher-data/conf/fwcw/off/a--20.en (April 27, 2011)

responsibilities. The specific needs of women in rural areas, disabled women and other disadvantaged groups should also be accounted for in the programme.²¹⁷

The 1999 Women's Rights Committee (CEDAW) explicated in its General Recommendation No. 24 how equal access to the right to health for women and men is to be ensured.²¹⁸ The following recommendations, among others, are included in the document:

- Integration of a gender perspective in all areas, policies and programmes which could affect the health of women and the incorporation of women into the planning, implementation and monitoring;²¹⁹
- Gender-sensitive training for health care personnel in order to be able to diagnose and treat the health consequences of gender-specific violence;²²⁰
- Ensuring appropriate guidelines for health care services which consider the needs of women with disabilities and which respect their human rights and dignity.²²¹

The Social Committee (CESCR) also elaborated upon the gender perspective of the right to health in its comprehensive General Comment No. 14. It recommends that the States parties of the Social Covenant (ICESCR) integrate a gender perspective and promotion of women's health into their health-related policies, plans, programmes, and research. That includes:

- The recognition that biological and sociocultural factors play a significant role in influencing the health of men and women;
- The disaggregation of health and socioeconomic data according to gender is essential

²¹⁷ Report of the Fourth World Conference on Women, A/CONF.177/20, 17 October 1995, Platform for Action, para. 106 (c), www.un.org/esa/gopher-data/conf/fwcw/off/a--20.en (April 27, 2011)

²¹⁸ CEDAW, General Recommendation No. 24 (20th session, 1999), (article 12 : Women and health), www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24 (April 27, 2011)

²¹⁹ CEDAW, General Recommendation No. 24, para. 31.

²²⁰ CEDAW, General Recommendation No. 24, para. 15 (b).

²²¹ CEDAW, General Recommendation No. 24, para. 25.

for identifying and remedying inequalities in health;

- The combating of discrimination against women in regards to access to health care services, the availability of health education and information, including concerning sexual and reproductive health;
- The protection of women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights.²²²

The World Health Organization (WHO) and its Gender, Women and Health department provide extensive information concerning gender-specific requirements in health care.²²³

3.5.3. Guidelines for the Creation of Gender-Sensitive Health and Rehabilitation Services

Using the already delineated health risks which are specific to women with disabilities and the normative meaning of the right to health care services as a backdrop, the following measures for ensuring gender-sensitive health care services as defined in article 25, sentence 2 of the CRPD could be applicable:²²⁴

Gender-sensitive availability and accessibility

- All health care services and early detection programmes shall be offered to women and men with disabilities as well as to those without;
- Accessible counselling;
- Medical competence centres in which women with disabilities can receive comprehensive, primary and specialized health care in one visit;

²²² CESCR, The right to the highest attainable standard of health, General Comment No. 14 (2000), para. 20, 21

²²³ WHO, Department of Gender, Women and Health, www.who.int/gender/en/index.html (April 27, 2011)

²²⁴ See also Linda Snell DNS, WHNPc, Karen Piotrowski MSN, RNC (2007) Health Care Needs of Women With Disabilities, *Journal of Obstetric, Gynecologic, & Neonatal Nursing*, Volume 36 (1), p. 78, Washington, January/February 2007

- Mobile health care services for disabled women in rural areas or for homeless persons, as well as the development of diagnostic technologies, as in for example, internet consultations;
- Transport services for disabled persons, parking for disabled persons, barrier-free hallways, waiting and examination rooms, toilets, elevators and ramps;
- Making gender-sensitive information available in accessible formats concerning topics relating to health care;
- Providing health care education in a form which can be understood by both disabled women and men as well as by those in their personal sphere;
- Accessible shelters (for example women's shelters) in which disabled women can find refuge from domestic violence.

Gender-sensitive quality and acceptability

- Adjustable treatment tables and chairs;
- Mammography machines which can also be used by women in wheelchairs;
- Sufficient personnel so that women with disabilities can be assisted during medical examinations in a way which respects their dignity and takes their comfort into consideration;
- The training of all medical personnel regarding the specific needs of women and men with disabilities;
- Raising the medical personnel's awareness concerning the fact that women with disabilities have a sexual life, use contraception or have children, and also that they can suffer from sexually transmitted diseases;
- Regular examination of women with disabilities with regard to sexual, physical or emotional abuse;

- Promoting research which could improve the health-related situation of women and men with disabilities, including gender-differentiated statistics.

3.6. Legal Significance of Article 25, Paragraph a) –

Ensuring Health Care Services in the Area of Sexual and Reproductive Health

3.6.1. Translation Problem in Germany

As discussed in the Background section, the exact text of article 25 (a) has long been controversial concerning its treatment of sexual and reproductive health. Although expressly mentioned in action programmes, resolutions and in the General Comments of human rights committees, the CRPD is the first document where the term "*sexual and reproductive health*" is used in a legally binding human rights instrument. Some states and also NGOs were concerned that a right to abortion would be stipulated for the first time due to this. In order to be able to reach a compromise, the word "*services*" as in "*health care services*" was taken out of the text during the 8th AHC round of negotiations.²²⁵

The first working draft German translation by the Federal Ministry of Labour and Social Affairs [*Bundesministeriums für Arbeit und Soziales*] had translated the original English text literally:

"The States parties shall provide [...] persons with disabilities [...] with health care as provided to other persons, including in the area of sexual and reproductive health [...]".

In the meantime, Germany, Liechtenstein, Austria and Switzerland agreed on a translation in January 2008 which states:

"In particular, the States parties provide persons with disabilities [...] with health care as provided to other persons, including sexual and reproductive health services [...]"

If the discussion should be held in the German-speaking areas concerning to what extent the inclusion of reproductive health care *services* necessarily implies a right to abortion

which supersedes any state's legal scope (not taking into account here the question of whether such an interpretation is justified), one should draw upon the legally binding original UN text's compromise.

3.6.2. A New Human Right?

The right to sexual and reproductive health is based on the fundamental right of all couples and individuals to found a family freely and responsibly (art. 23, para. 2 ICCPR) and the right of man and woman to have the same rights to decide on the number and spacing of their children (art. 16, para. 1 (e)). This right is also expressly confirmed for persons with disabilities in the CRPD (art. 23, para. 1 (a) and (b)). In order to avail oneself of this right, the corresponding information and means (including the highest attainable standard of sexual and reproductive health) are required.²²⁶

The right to sexual and reproductive health is on the one hand derived from the right to found a family and on the other from the right to the highest available standard of health. It has been recognized and described according to these definitions in many international documents:

- In September 1994, 179 states agreed upon **the Action Programme of the International Conference on Population and Development (ICPD)**.²²⁷ The Action Programme signified the beginning of a new era. The aims of the agreement were the establishment of an improved quality of life, an increase of life expectancy and the promotion of population development, by, among other things, fighting poverty, sustainable economic development, education (in particular for girls), gender equality, decrease in the infant, child and maternal mortality rates, universal access to reproductive health including family planning methods and sexual health as well as

²²⁵ See chapter 5.3.1.

²²⁶ cf. Report of the Fourth World Conference on Women, A/CONF.177/20, 17 October 1995, Platform for Action, para. 95, www.un.org/esa/gopher-data/conf/fwcw/off/a--20.en (April 27, 2011); vgl. auch General Assembly, A/S-21/5/Add.1, Overall review and appraisal of the implementation of the Programme of Action of the International Conference on Population and Development, Report of the Ad Hoc Committee of the Whole of the Twenty-first Special Session of the General Assembly, July 1, 1999, para. 3, www.un.org/popin/unpopcom/32ndsess/gass/215a1e.pdf (April 27, 2011)

food safety.

In chapter 7, the Action Programme comprehensively describes reproductive rights and reproductive health.²²⁸

The Action Programme defines **reproductive health** as a state of complete physical, mental and social well-being in all matters relating to the reproductive system and to its functions and processes.

Reproductive health implies that persons are in the position to lead a satisfying and safe sexual life, that they are able to propagate and to freely make their own decisions concerning this issue.

This includes the right of women and men to be informed about family planning methods, to have access to safe, effective, affordable and acceptable methods of family planning according to their choice, as well as to have access to other methods of regulating their fertility, as long as these are not illegal.

Appropriate health care shall help women to get through pregnancy and birth safely and supports couples and individuals in having a healthy child.

Reproductive health care shall be defined as a combination of methods, techniques and services which contribute to reproductive health and well-being through corresponding prevention and treatment in this area. It also includes the preservation of sexual health, also expressly for the purposes of the enrichment of one's life and personal relationships and not only in connection with reproduction or sexually transmitted diseases.

The ICPD recognized that abortions are performed in about 90 percent of countries, but found particular fault with the significant number of unsafe abortions which lead to

²²⁷ UN General Assembly, Resolution 49/128, December 19, 1994.

²²⁸ Report of the International Conference on Population and Development, A/CONF.171/13, Cairo, September 5-13, 1994, www.un.org/popin/icpd/conference/offeng/poa.html (April 27, 2011)

health problems or the death of women.²²⁹

The ICPD clarified that **abortions** shall in no way be promoted as a method of family planning, but rather that the highest priority shall be given to avoiding unwanted pregnancies.²³⁰

- An Ad Hoc Committee was assembled in 1999 in order to monitor the implementation of the 1994 Programme for Action of the International Conference on Population and Development. The final report comprehensively details which problems exist in the practice of rights to sexual and reproductive health and demonstrates what governments should do in order to ensure these rights.²³¹
- The **4th World Conference on Women** used the ICPD as a guide for their definition of reproductive health and of reproductive health care.²³²

In regards to abortion, the 4th World Conference on Women explicated how unsafe abortions endanger the lives of a large amount of women. They present a serious health problem in many states, since it is often the poorest and the youngest who take this risk. Fatalities, health problems and injuries could be avoided if women had access to appropriate health care services, safe and effective family planning methods, emergency obstetric care as well as sufficient corresponding information.

- In their General Recommendation No. 24 from 1999, the Women's Rights Committee (**CEDAW**) affirmed that access to health care, including reproductive health, is a fundamental right of the Women's Rights Convention.²³³

²²⁹ ICPD Report, para. 8.19.

²³⁰ I.c., para. 8.25.

²³¹ General Assembly, A/S-21/5/Add.1, Overall review and appraisal of the implementation of the Programme of Action of the International Conference on Population and Development, Report of the Ad Hoc Committee of the Whole of the Twenty-first Special Session of the General Assembly, July 1, 1999, www.un.org/popin/unpopcom/32ndsess/qass/215a1e.pdf (April 27, 2011)

²³² Report of the Fourth World Conference on Women, A/CONF.177/20, 17 October 1995, Platform for Action, para. 94-97

²³³ CEDAW, General Recommendation No. 24 (20th session, 1999, article 12 : Women and health), www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24 (April 27, 2011)

Measures aimed at the combating of discrimination in this area must, for example, stipulate legal guidelines so that certain reproductive health care services are made available to women. If a doctor, for instance, refuses to perform a particular (legal) service based on a conscientious objection, it must be ensured that another doctor is available to women.

States parties shall ensure that young women and men are educated in the areas of sexual and reproductive health.

- In 2000, the **Social Committee (CESCR)** also highlighted the right to health in its General Comment No. 14, according to article 12 of the ICESCR, that non-discriminatory health care for women shall include health services in the area of sexual and reproductive health. Any constraints to the full enjoyment of this right must be overcome. This includes traditional cultural practices and norms which endanger health or deny women their full reproductive rights.²³⁴

These examples demonstrate that there is an overwhelming international consensus that the right to sexual and reproductive health is a fundamental element of human rights. It therefore seems to be a natural consequence that the CRPD took up this development and named this right explicitly.

Also, by looking at the documents named above, it cannot be assumed that abortions are an inherent part of reproductive health care services and that the Convention is now stipulating the entitlement to abortion. However, in states where abortions are performed legally, it must be ensured that these are conducted safely and that all women including women with disabilities have equal access.

3.6.3. Consequences for the Sexual and Reproductive Health Care of Women with Disabilities

Article 25 (a) contains no specific services to be instituted for persons with disabilities, but

²³⁴ CESCR, The right to the highest attainable standard of health, General Comment No. 14 (2000), E/C.12/2000/4, para. 21.

is rather above all a non-discriminatory clause: People with disabilities must have access to the same scope, quality and standard of free of charge or affordable health care as other people. This also applies to the area of sexual and reproductive health.

Since this is a non-discriminatory clause, it shall be immediately implemented. In the area of sexual and reproductive health, this could entail the following measures which should be publicly promoted and supported:

- Persons with disabilities, in particular women with disabilities, should receive sexual education just like non-disabled young persons, and in a form which is understandable for them. This should include education regarding legal family planning methods and the dangers of sexually transmitted diseases;
- Social, medical or also familial prejudices that state that women with disabilities are asexual must be dispelled. Bodily changes during puberty, care during menstruation or first sexual experiences should be openly discussed with young disabled women as well as, if necessary, with families or care takers;
- It is in fact young women with disabilities in particular who should have their self-confidence enhanced so that they feel comfortable with their bodies and develop an understanding for the fact that they could be capable of having sexual relationships. Since women with disabilities are at a greater risk of becoming victims of sexual abuse, they should be helped to learn how to recognize sexual abuse and to defend themselves against it;
- The independent decision of disabled women to use family planning methods or other legal methods to regulate their fertility should be supported. In the choice of contraception methods, the possible higher risk of disabled women getting thrombosis should be taken into consideration. Sterilization or abortions must only be performed on a consensual basis as defined in article 25 (d) CRPD;
- Persons with disabilities, in particular women with disabilities, should be informed concerning all factual possibilities concerning reproductive health care services in a form adapted to them. Reproductive health care services must also be accessible,

affordable and acceptable for persons with disabilities;

- Teenage disabled women must also have the possibility of essential gynaecological health care services. A corresponding, sensitive health care is to be ensured;
- Gynaecological examinations should not be referred to specialists in the area of the respective disability, but rather, gynaecological practices should be made accessible;
- Doctors and other medical personnel must be aware that disabled women are not asexual, but that they can have sexually transmitted diseases, unwanted pregnancies, breast or cervical cancer;
- Early prevention examinations for breast cancer should be conducted more often for disabled women depending on the extent to which these individuals have paresthesia in their hands due to their disability;
- Since pelvic examinations can be difficult due to physical disabilities, it is important that medical personnel know the possible transfer techniques or alternative examination positions and that they are able to help the patient to relax;
- For pregnant women with disabilities and their partners, medical counselling during the time of their pregnancy, birth and post-partum stage must be made available. Their decisions regarding prenatal diagnostics must be respected.

4. Article 28: Adequate Standard of Living and Social Protection

4.1. The Convention Text

Article 28

Adequate standard of living and social protection

"(1) States parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

(2) States parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

(a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;

(b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;²³⁵

(c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;

(d) To ensure access by persons with disabilities to public housing programmes;

²³⁵ Author's emphasis (Sabine Haefner).

(e) To ensure equal access by persons with disabilities to retirement benefits and programmes."

4.2. Rationale

Persons with disabilities around the globe are often amongst the poorest of the poor, without access to education or gainful employment. This is especially the case for women with disabilities.²³⁶ Even if states offer a social security system, it is most often linked to having an occupation and requires regular contributions. In very many states, there is no social assistance which even secures unemployed individuals a minimum income, or it is so closely measured that disability-related costs cannot be covered.

Therefore, the aim of article 28 is that disabled persons have a standard of living which, at a minimum, makes it possible for them to enjoy healthy nutrition, accessible housing, essential medication and important technical support.

Social protection which also includes social services that are not dependent on regular contributions, is particularly necessary for those that are ill, unemployed or multiply disabled. Also, those family members who are unable to pursue an occupation due to their caring for a disabled family member, need support.

The realization of the right to social protection and an adequate standard of living is fundamental for these people in order to be able to live a life in dignity.

4.3. Text Development

The right to social security that includes social insurance and the right to an adequate living standard are inherent human rights.²³⁷ For this reason, the AHC Working Group's first draft of the Convention already contained the draft of an article 23 on the right to social security and an adequate living standard, including the particular mention of women and

²³⁶ See chapter B.3.

²³⁷ See article 25 UDHR, article 9 and 11 paragraph 1 ICESCR, article 5 (e) (iv) and (iii) CERD, article 14, paragraph 2 (c), article 27, paragraphs 1-3 CRC.

girls with disabilities in the subparagraph (b).²³⁸

In the scope of the negotiations, the desire was repeatedly expressed that the term social security be replaced with a term which is more comprehensive and which integrates all public support.²³⁹ In a letter written before the 7th AHC meeting in October 2005, the chairperson suggested using the term "*social protection*" instead of the term "*social security*", since it is very widely applied. The chairperson referred here to the definition of "*social protection*" in the UN Secretary-General's report to the Commission for Social Development on August 12, 2000 at their 39th meeting (E/CN.5/2001/2) as well as to article 23, para. 3 and art. 25 para. 2 of the Universal Declaration of Human Rights.²⁴⁰ In the end, the term "social protection" replaced "social security including social insurance".

The particular mention of women and girls with disabilities in para. 2b) was occasionally criticized during the AHC negotiations on the grounds that the gender-specific particularities would be ensured through a general obligation at the beginning of the Convention text.²⁴¹ However, along with article 6 of the CRPD, article 28 remained the only article in the Convention in which women and girls with disabilities are expressly mentioned.

4.4. Legal Significance of Article 28

4.4.1. Article 28, Paragraph 1 – The Right to an Adequate Standard of Living

The right to an adequate standard of living is established in the following United Nations human rights instruments: art. 25 para. 1 UDHR, art. 23 para. 2 ICESCR, art. 27 CRC. At the EU level, the right to an adequate standard of living is embedded in the (revised)

²³⁸ Report of the Working Group to the Ad Hoc Committee, A/AC.265/2004/WG/1, Annex I, Draft Article 23 Social Security and Adequate Standard of Living, www.un.org/esa/socdev/enable/rights/ahcwgreporta23.htm (April 27, 2011)

²³⁹ See Report of the 6th session of the AHC, A/60/266, para. 112, www.un.org/esa/socdev/enable/rights/ahc6reporte.htm (April 27, 2011)

²⁴⁰ Letter dated 7 October 2005 from the Chairman to all members of the Committee, A/AC.265/2006/1, para. 100, <http://www.un.org/esa/socdev/enable/rights/ahcchairletter7oct.htm> (April 27, 2011)

²⁴¹ See, for example, the discussion in the AHC on January 26, 2006, www.un.org/esa/socdev/enable/rights/ahc7sum26jan.htm (April 27, 2011)

European Social Charter.

The right to an adequate standard of living is part of economic, social and cultural rights, and therefore represents a gradual obligation for the States parties.²⁴² However, the States parties are compelled to grant this right to disabled persons without discrimination on the grounds of disability (art. 4 para. 1 CRPD). As soon as disabled persons face any discrimination when exercising this right, immediate measures must be undertaken in order to eliminate such discrimination.²⁴³ Likewise, it is the States parties' immediate duty to ensure disabled men and women's equal access to services providing them with an adequate standard of living (art. 3 (g) CRPD). Any form of discrimination against women and girls with disabilities in the exercising of this right must be eliminated and disabled women must receive support (art. 6 CRPD).

In its General Comment No. 5 (1995), the Social Committee (CESCR) referred to the issue of ensuring an adequate standard of living for persons with disabilities, and explained that in addition to access to adequate food and other material needs, support services and resources must be made available to disabled persons in order to increase their level of independence. For persons with disabilities, the right to adequate housing means the right to an accessible residence outside an institution. Also, for them the right to adequate clothing means that they must have clothes that fit their particular needs and enable them to participate fully in society. Wherever possible, personal assistance should be provided so that these rights can be exercised.²⁴⁴

The Social Committee published additional specific General Comments on States parties' obligations to ensure adequate housing²⁴⁵ as well as adequate food²⁴⁶ and drinking

²⁴² See chapter D.3.4.2.

²⁴³ See also CESCR, General Comment No. 15, The Right to Water, para. 13, 16, 17; <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/402/29/PDF/G0340229.pdf?OpenElement> (April 27, 2011)

²⁴⁴ CESCR General Comment No. 5, Persons with disabilities, para. 33, December 9, 1994, [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/4b0c449a9ab4ff72c12563ed0054f17d?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/4b0c449a9ab4ff72c12563ed0054f17d?Opendocument) (April 27, 2011)

²⁴⁵ CESCR General comment No. 7, The right to adequate housing, May 20, 1997; [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/959f71e476284596802564c3005d8d50?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/959f71e476284596802564c3005d8d50?Opendocument) (April 27, 2011)

²⁴⁶ CESCR, General Comment No. 12, The right to adequate food (Art.11), E/C.12/1999/5, [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/3d02758c707031d58025677f003b73b9?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/3d02758c707031d58025677f003b73b9?Opendocument) (April 27, 2011)

water²⁴⁷; these Comments support States parties in implementing the right to an adequate standard of living.

4.4.2. The Right to Social Protection

The right to social protection and social security is mentioned in the following United Nations human rights instruments: art. 23 para. 3 and 25 UDHR, art. 9 ICESCR, art. 5 (e) (iv) CERD, art. 11 (e) and 23 (c) CEDAW. With regards to social security benefits, the Social Committee (CESCR) set forth the States' parties obligations in its General Comment No. 19 (February 2, 2008).²⁴⁸

At the EU level, this right is embedded in the (revised) European Social Charter (art. 12) and in the Charter of Fundamental Rights of the European Union (2010/C 83/02) (Title IV, Art. 33, 34).

The CRPD is the first legally binding convention that uses the notion of "*social protection*" instead of "*social security*". During the negotiations, some participants referred to a more comprehensive definition of this term that includes social assistance to groups who are in need of protection or who are facing unemployment, and that additionally accommodates states in which social security systems are practically non-existent.²⁴⁹

Against the backdrop of a changing world and the process of globalization, the Secretary-General of the United Nations presented a comprehensive explanation and provided guidance on the notion of "*social protection*" in his report to the Social Development Commission dated December 12, 2000, concerning their 39th session (E/CN.5/2001/2).²⁵⁰

²⁴⁷ CESCR, General Comment No. 15, The right to water, E/C.12/2002/11, January 20, 2003, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/402/29/PDF/G0340229.pdf?OpenElement> (April 27, 2011)

²⁴⁸ CESCR, General Comment No. 19, The right to social security, E/C.12/GC/19, February 4, 2008, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/403/97/PDF/G0840397.pdf?OpenElement> (April 27, 2011)

²⁴⁹ See discussion in the AHC, January 26, 2006, www.un.org/esa/socdev/enable/rights/ahc7sum26jan.htm (April 27, 2011)

²⁵⁰ Economic and Social Council, Commission for Social Development, Enhancing social protection and reducing vulnerability in a globalizing world, Report of the Secretary-General, December 8, 2000, E/CN.5/2001/2, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/792/23/PDF/N0079223.pdf?OpenElement> (April 27, 2011)

This explanation served as a basis for the use of this term in the CRPD. Hereafter, social protection comprises the following provisions (this list is not conclusive):

- Different public and private policies and programmes for insurance claims in order to balance a loss or decrease in income;
- Benefits for poor people and people in need of help as well as for earners in the event of typical life risks (for instance, sickness, old age, incapacitation for work);
- Access to an income, livelihood and aid for families with children;
- Not only financial aid, but also material aids such as employment promotion measures, health care and education services or food and housing;
- In this way, social protection comprises two main categories: the field of social support, and the field of social security;
- Social support includes public services for persons in need that are not funded via payment of contributions and that are aimed at ensuring them a minimum adequate standard of living;
- Social security structures offer social security that is primarily financed through payment of contributions and that covers risks;
- Social protection as described by the UN Secretary-General is based on the values of solidarity, courtesy, confraternity, but also personal responsibility and self-help.

Likewise, art. 28 para. 2 CRPD places a gradual obligation on the States parties as defined in art. 4 para. 2 CRPD. Independently from this however, the States parties must immediately ensure that persons with disabilities can access all existing social benefits and that disabled women and men can access these benefits equally and without being discriminated against on the grounds of their disability (art. 4 para. 1 and 3 (g), art. 6 CRPD).²⁵¹

²⁵¹ See also CESCR, General Comment No. 19, The right to social security, para. 32 and 40.

Moreover, the States parties must immediately take action in order to fulfil the obligations defined in art. 28 para. 2 CRPD to the maximum of available resources (art. 4 para. 2 CRPD). The right to social protection must be granted the highest priority in law and policy because of its fundamental importance for human dignity.²⁵²

4.4.3. Art. 28, Paragraph 2 b) –

Social Protection and Poverty Reduction Programmes

Art. 28 para. 2 (b) emphasizes that access to social protection and poverty reduction programmes must in particular be ensured for women and girls with disabilities and for older persons with disabilities. In this respect, States parties must immediately take appropriate steps that could include the following provisions:

- Evaluation of the existing social security system and of all state benefits, particularly in the fields of employment promotion, health care, education, pension plans, social welfare and all services for disabled persons, with regard to possible discriminating effects on individuals and especially women, girls and elder people with disabilities;
- Supporting access to social security systems based on employment and payment of contribution, with the help of specific programmes for the promotion of vocational training and further education as well as of employment or freelance work that include a special consideration of disabled women and girls' needs;
- Supporting disabled women in the balancing of their professional lives and their family lives, for example, through domestic assistance, parental assistance, personal assistance, accessible schools and kindergartens, technical aids;
- Ensuring health services independently from health insurance, in particular for women with disabilities during their pregnancy as well as during and after childbirth;
- Social welfare to ensure the livelihood of non-working men and women with disabilities, and in particular for single mothers with disabilities in order to make it possible for them

²⁵² I.c., para. 40 et seq.

to live independently without being dependent from their family of origin.

- Ensuring financial services during maternity leave also for disabled women in atypical working conditions and for an adequate period of parental leave both for men and women with disabilities.

4.5. Conclusion

The realization of the right to an adequate standard of living and social protection is of fundamental importance for persons with disabilities. As a social, economic and cultural right, it places States parties under a gradual obligation. Existing benefits aimed at ensuring this right must however be immediately ensured to disabled persons on a non-discriminatory basis. States parties where this right is not ensured, must take immediate action to the maximum of their available resources in order for disabled persons to enjoy an adequate standard of living and minimum social security.

For persons with disabilities and their families, an adequate standard of living means that the inevitably accrued costs related to their disability are covered (for example, specific clothes, technical aids, medication, accessible housing) and that relatives who perform care work are likewise insured.

The right to social protection includes non-discriminatory access to an existing social security system or to corresponding private insurance as well as to other social aids that must at least include education, health care and insurance against unemployment and old age.

In many states, women and girls with disabilities are denied access to vocational training and employment for traditional or cultural reasons. Subsequently, they remain dependent on their family of origin over the course of their entire lives, or must live in an institution. States parties must therefore provide special advancement measures to women and girls in order to ensure them an independent life to a large extent.

5. Article 34: Committee on the Rights of Persons with Disabilities

5.1. The Convention Text

Article 34

Committee on the Rights of Persons with Disabilities

"1. There shall be established a Committee on the Rights of Persons with Disabilities (hereafter referred to as "the Committee"), which shall carry out the functions hereinafter provided.

2. The Committee shall consist, at the time of entry into force of the present Convention, of twelve experts. After an additional sixty ratifications or accessions to the Convention, the membership of the Committee shall increase by six members, attaining a maximum number of eighteen members.

3. The members of the Committee shall serve in their personal capacity and shall be of high moral standing and recognized competence and experience in the field covered by the present Convention. When nominating their candidates, States parties are invited to give due consideration to the provision set out in article 4.3 of the present Convention.

4. The members of the Committee shall be elected by States parties, consideration being given to equitable geographical distribution, representation of the different forms of civilization and of the principal legal systems, **balanced gender representation**²⁵³ and participation of experts with disabilities.

5. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States parties from among their nationals at meetings of the Conference of States parties. At those meetings, for which two thirds of States parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States parties present and voting.

²⁵³ Author's emphasis (Dr. Sigrid Arnade).

6. The initial election shall be held no later than six months after the date of entry into force of the present Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States parties inviting them to submit the nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating the State parties which have nominated them, and shall submit it to the States parties to the present Convention.

7. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. However, the term of six of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these six members shall be chosen by lot by the chairperson of the meeting referred to in paragraph 5 of this article.

8. The election of the six additional members of the Committee shall be held on the occasion of regular elections, in accordance with the relevant provisions of this article.

9. If a member of the Committee dies or resigns or declares that for any other cause she or he can no longer perform her or his duties, the State Party which nominated the member shall appoint another expert possessing the qualifications and meeting the requirements set out in the relevant provisions of this article, to serve for the remainder of the term.

10. The Committee shall establish its own rules of procedure.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention, and shall convene its initial meeting.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

13. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations."

5.2. Rationale

The process of implementing and monitoring treaties, measures and programmes is not gender-neutral. Publications suggest that this awareness has permeated the UN system's organizations since the 1990s. For example, the International Labour Organisation (ILO) and Womenwatch²⁵⁴ prepared and published checklists for gender-sensitive monitoring.²⁵⁵

Furthermore, UN institutions and their associated institutions have prepared numerous recommendations and guidelines since the 1990s that deal with the gender-sensitive implementation and monitoring of measures and programmes.²⁵⁶

The balanced composition of the Committee on the Rights of Persons with Disabilities with both women and men represents one of the consequences which resulted from these checklists, recommendations and guidelines. In the CRPD negotiations process, such a composition was recommended as early as during the sixth meeting of the Ad Hoc Committee in August 2005, in a paper prepared by national human rights institutes.²⁵⁷

5.3. Specifications in Other UN Conventions

The CRPD is the first UN convention to urgently stipulate that the monitoring committee be equally composed of men and women. In the conventions that were adopted earlier, some importance was attached to an equitable geographic distribution, to a representation of

²⁵⁴ Womenwatch is a project in the UN periphery that was founded in 1997 in order to promote the implementation of the 1995 Beijing Platform for Action.

²⁵⁵ 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); Womenwatch, 1998, National Mechanisms for Gender Equality, Expert Group Meeting, Santiago, Chile, August 31 – September 4, 1998, United Nations (UN) (www.un.org/womenwatch/daw/news/natlmach.htm – March 6, 2011)

²⁵⁶ Vienna Declaration and Programme of Action (A/CONF.157/23), endorsed by General Assembly resolution 48/121 of December 20, 1993 (A/RES/48/121); 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; Womenwatch, 2000, Report of the Consultation on the Role of National Mechanisms in Beijing+5 Follow-up and National Agenda Setting, Womenwatch, United Nations (UN) (www.un.org/womenwatch/daw/news/consultation.html – March 6, 2011); 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

²⁵⁷ www.un.org/esa/socdev/enable/rights/ahc6reporte.htm (March 6, 2011); www.netzwerk-artikel-3.org/un-konv/doku/papier-02.pdf (March 6, 2011)

different cultures and of the principal legal systems, but the gender perspective was non-existent. Even the 1989 Child Rights Convention (CRC) and the 1990 Migrant Workers Convention (CRMW) do not include any specifications with regard to the gender balance in their commissions.

Solely the International Convention for the Protection of All Persons from Enforced Disappearance (CED) that was adopted shortly after the CRPD on December 20, 2006, includes the same stipulation as the CRPD for a balanced gender representation in the commission.²⁵⁸

Article 36 of the Rome Statute of the International Criminal Court, issued on July 17, 1998, served as another model for the CRPD. According to this article, the States parties shall in the selection of judges, take into account the need, within the membership of the Court, for the fair representation of female and male judges (art. 36 para. 8 (a) Rome Statute).

5.4. The Composition of Other Committees

When this document was written in 2008, the Human Rights Council's president and his four deputies were men. On the relevant websites, the other members are only listed by nationality, not by name; one can therefore not draw any conclusions as far as the gender balance in the committee's composition is concerned.

The following chart provides an overview of the gender balance in the composition of other committees that are responsible for monitoring other human rights conventions.

Convention monitored by committee	Number of committee members	Women	Men
Civil Rights Covenant (ICCPR)	18	5	13
Social Rights Covenant (ICESCR)	18	4	14
Anti-Racism Convention (CERD)	18	1	17
Women's Rights Convention (CEDAW)	22	21	1

²⁵⁸ In art. 26 para. 1 CED, the wording corresponds exactly to art. 34 CRPD.

Anti-Torture Convention (CAT)	10	3	7
Child Rights Convention (CRC)	18	9	9
Migrant Workers' Convention (CRMW)	10	3	7

This chart (dated from 2008) clearly demonstrates that the Committee on the Elimination of Discrimination against Women (CEDAW) is the only committee in which women outnumber men; the sole committee with an equitable composition is the CRC committee. For the remainder, women represent a minority in all committees.

5.5. Legal Significance of the Gender Reference in Article 34

The CRPD is the first convention to introduce an equitable gender representation in its committee. This development is irreversible, as is proven with the case of the CED (Enforced Disappearance Convention). The CED includes this same stipulation (see above). This means that the CRPD established a new standard regarding the composition of the committee.

This stipulation is aimed at embedding both genders' perspectives in the CRPD monitoring process. In order to achieve this goal, the States parties are encouraged to make further efforts in addition to the equitable composition of the commission. These include, for example, the following measures:²⁵⁹

- For the purpose of gender equality monitoring, any data collection must be gender-differentiated;
- Data must be supplemented by gender-sensitive indicators;
- The quantitative analysis must be accompanied by a qualitative analysis;
- Women with disabilities and their organizations must not only be considered during the implementation of the Convention, but also (in compliance with art. 34, para. 3 and art. 4, para. 3 CRPD) during all stages of national and international monitoring as well as in their roles as experts in the Disability Rights Committee;

²⁵⁹ See footnotes on these checklists, recommendations and guidelines mentioned in chapter 5.2.

- Regarding their obligations deriving from art. 6, States parties are asked to ensure that the experts they nominate are equipped with specific professional expertise concerning the multiple discrimination of women.

E. Outlook

Through its inclusion of the gender perspective, the CRPD is setting new standards in the field of human rights treaties. Article 6 in particular compels the States parties to undertake comprehensive measures aimed at improving the situation of women and girls with disabilities.

In a next step, disabled women and girls all over the world must be enabled to benefit from this Convention as soon as possible. In order to achieve this goal, the authors of this standard interpretation make the following recommendations:

1. Information

The CRPD should promptly be further translated into all languages and accessible formats, and should be made available to women, men and children with disabilities, for example in schools, at events and seminars, in newspaper articles and on the internet.

Women with disabilities and their organizations should be provided with information about those aspects of the Convention that are of particular relevance to them. For example, the translation and publication of this standard interpretation into other languages and formats might contribute to achieving this goal.

In compliance with art. 4, para. 3 CRPD, disabled women and men along with their organizations should be consulted and involved with regards to the preparation of national translations and information.

2. Ratification

The ratification process should be expedited efficiently.

3. Plan for Action

The ministries and authorities that are responsible for the CRPD's implementation should prepare a plan for action in cooperation with the institutions responsible for equal opportunities policies and policies regarding women, national human rights institutions and in close consultation with women and men with disabilities and their representative organizations (art. 33, para. 2 CRPD).

This plan for action should specify:

- Which national institutions are responsible for implementing the stipulations included in the Convention and for coordinating its implementation (art. 33, para. 1 CRPD);
- With regard to national human rights institutions, which institutions are to ensure the independent promotion, protection and monitoring of the Convention's implementation (art. 33, para. 2 CRPD);
- That these implementation and monitoring institutions assume the special responsibility of monitoring the Convention's stipulations regarding disabled women and girls.

In compliance with the category of each individual obligation included in the Convention, the plan for action should define which goals shall be achieved immediately, in the medium term and in the long term for all fields mentioned in the Convention.

Measures of the most specific nature possible should be stipulated in all fields, for example, measures aimed at situation analyses, necessary legislation changes and amendments or at the implementation of advancement programmes.

The plan for action must clearly determine those measures aimed at implementing the Convention's stipulations for disabled women and girls. In the context of the special obligations deriving from article 6 CRPD, the question of whether a separate plan for action for disabled women and girls is necessary must be discussed.

The plan for action must be published and made known to disabled persons as well as deputies, ministries, courts and the administration.

The Authors

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