



WOMEN
WITH
DISABILITIES
AUSTRALIA
(WWDA)

Women With Disabilities Australia (WWDA)

Submission to the UN Committee on the Rights
of the Child (CRC)

Development of the General Comment on the
Rights of Adolescents

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Winner, National Human Rights Award 2001
Winner, National Violence Prevention Award 1999
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Nominee, French Republic's Human Rights Prize 2003
Nominee, UN Millennium Peace Prize for Women 2000

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Submission to the Committee on the Rights of the Child: Development of the General Comment on the Rights of Adolescents

Background

1. Women With Disabilities Australia (WWDA)¹ thanks the Committee on the *Convention on the Rights of the Child* (CRC)² for the opportunity to contribute this submission to assist with informing the Committee's *General Comment on the Rights of Adolescents*. Strengthening the protection of the human rights of women and girls with disabilities is a key priority of WWDA.³
2. WWDA is the national, non-government disabled persons' organisation (DPO) for women and girls with all types of disabilities in Australia. We operate as a transnational human rights organisation and are run by women with disabilities, for women with disabilities. We also work with partners and allies⁴ who share our commitment. Our work is grounded in a human rights framework which links gender and disability issues to a full range of civil, political, economic, social and cultural rights. Representing more than two million disabled women in Australia, WWDA is nationally and internationally recognised for our leadership in advancing the human rights of women and girls with disabilities.
3. WWDA recognises that the international human rights framework, including treaties, conventions, optional protocols, and general comments provide a strong framework for defining the obligations and responsibilities of governments and other duty bearers in relation to the human rights of women and girls with disabilities. WWDA consistently draws on these frameworks to promote and demand accountability and due diligence from Governments and duty bearers in relation to recognising and addressing myriad violations of the fundamental human rights and freedoms of all women and girls with disabilities.

Overview

4. Any articulation of specific rights and freedoms that should be afforded to adolescents and young people must include a detailed, critical consideration of the experiences and needs of young people with disabilities, particularly young women with disabilities. WWDA strongly encourages the CRC Committee to engage a gender and disability cognizant and responsive framework in its formulation of a *General Comment on the Rights of Adolescents*, consistent with the content and spirit of the CRC, the *Convention on the Rights of Persons with Disabilities* (CRPD)⁵ and other relevant human rights instruments.

¹ WWDA works at regional, state/territory, national and international levels; services a direct and fast growing individual membership; undertakes substantial evidence-based research; implements projects at national and international levels; undertakes systemic advocacy; and, provides extensive policy advice and expertise to a wide and growing range of stakeholders, including at all levels of government, non-government, researchers, industry groups, United Nations machinery, and more. For detailed information on WWDA, go to: <http://wwda.org.au/>

² The Committee on the Rights of the Child (CRC) is the body of 18 Independent experts that monitors implementation of the Convention on the Rights of the Child by its State parties. It also monitors implementation of two Optional Protocols to the Convention, on involvement of children in armed conflict and on sale of children, child prostitution and child pornography. On 19 December 2011, the UN General Assembly approved a third Optional Protocol on a communications procedure, which will allow individual children to submit complaints regarding specific violations of their rights under the Convention and its first two optional protocols. The Protocol entered into force in April 2014. See more at: <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>

³ For more information please see WWDA Strategic Plan 2010 – 2015 available at <http://wwda.org.au/about/stratplan/>

⁴ WWDA works as a member organisation of the Australian Cross Disability Alliance (ACDA), which is made up of national DPO's including: People with Disability Australia (PWDA); the National Ethnic Disability Alliance (NEDA); and, the First People's Disability Network Australia (FPDN). WWDA also works in collaboration with national and state/territory organisations across a wide range of sectors, including for eg: the Victorian Youth Disability Advocacy Service (YDAS). See <http://www.ydas.org.au>

⁵ UN General Assembly, *Convention on the Rights of Persons with Disabilities*; A/RES/61/106.

5. In the context of the CRC and the development of a *General Comment on the Rights of Adolescents* - which will provide a comprehensive interpretation of the provisions of CRC in relation to adolescents - the critical importance of gender as a fundamental tenet in the development of the *General Comment* cannot be over-stated. We live in explicitly gendered societies that are permeated by experiences of difference and inequality that arise from prejudice and discrimination in relation to gender. At the intersection of disability and gender, countless women and girls with disabilities experience multiple discriminations and disadvantages.⁶ The development of a *General Comment on the Rights of Adolescents* in regard to clarifying the provisions contained within the CRC is an important opportunity to render explicitly visible, the particular and specific needs, experiences and fundamental human rights of young women with disabilities.

6. Inter- and intra-national policy and programs which treat people with disabilities (including young women with disabilities) as a homogenous group, fail to do justice to the fact that women and girls with disabilities and men and boys with disabilities have different life experiences due to biopsychosocial, economic, political and cultural attributes associated with being female and male. Patterns of disadvantage are often associated with the differences in the social position of women and men, girls and boys. Universally, there is systemic inequality between men and women and clear patterns of women's inferior access to resources and opportunities.⁷ Moreover, women are systematically under-represented in decision-making processes that shape their societies and their own lives. It is widely recognised that women and girls with disabilities have fewer opportunities, lower status and less power and influence than men and boys with disabilities.⁸ Gender-based assumptions and expectations place young women with disabilities at a disadvantage with respect to substantive enjoyment of rights, such as freedom to act and to be recognised as having capacity, to participate fully in economic, social and political development, and to make decisions concerning their circumstances and conditions.⁹ These gendered differences are reflected in the life experiences of young women with disabilities and young men with disabilities.¹⁰ Given that young women with disabilities fare much worse in respect to substantive enjoyment of all human rights and freedoms, the role of clarifying and extending the particular rights of adolescents, as a mechanism to advance the human rights of all young women with disabilities is critical.

7. Drawing on our extensive knowledge and history working with young women with disabilities in Australia and internationally, WWDA has identified [eight] areas of concern that we believe must be considered by the Committee and explicitly clarified in the *General Comment on the Rights of Adolescents*. Each area of concern is detailed further in this Submission. Fundamental rights and freedoms that young women with disabilities must be afforded include (but are not limited to):
 - i. Freedom from forced or coerced sterilisation;
 - ii. Freedom from forced contraception;
 - iii. Freedom to exercise full control over sexual and reproductive health;
 - iv. Freedom to express sexuality and gender identity¹¹ and to be access relevant and accurate information and resources regarding sexuality and gender identity;
 - v. Freedom from all forms of violence, exploitation and abuse;
 - vi. Acknowledgment of the multiple and intersectional nature of identity and experience;
 - vii. Right to inclusive education;
 - viii. Right to justice and freedom from denial of legal and decision-making capacity.

⁶ For extensive discussion and resources, please see www.wwda.org.au

⁷ UNFPA; *Promoting Gender Equality*. Accessed online March 2014 at: https://www.unfpa.org/gender/resources_faq.htm

⁸ Women With Disabilities Australia (WWDA)(2010) '*Gendering the National Disability Care and Support Scheme: WWDA Submission to Stage One of the Productivity Commission National Disability Care and Support Inquiry*'. Available online at: http://wwda.org.au/wp-content/uploads/2013/12/WWDA_SubPCInquiry2010.pdf

⁹ WWDA (2010) OpCit.,

¹⁰ See WWDA (2013). '*WWDA Submission to the CRPD Committee: Day of General Discussion on the Right to Education for Persons with Disabilities*'. WWDA, Tasmania. Available online at: http://wwda.org.au/wp-content/uploads/2013/12/CRPD_13Sess.pdf

¹¹ Gender identity refers to an individual's internal, innate understanding of their gender, which may or may not be consistent with the sex assigned them at birth. Gender expression refers to how an individual expresses their gender identity in the world, for example, through the clothes they wear, language, mannerisms. Gender expression is often constrained by social and cultural constructs of masculinity and femininity.

Freedom from forced or coerced sterilisation

8. Young women with disabilities are at significantly increased risk of forced or coerced sterilisation. In formulating the *General Comment on the Rights of Adolescents*, the Committee should explicitly address forced and coerced sterilisation as a key human rights violation that predominantly affects young women with disabilities, and which fundamentally affects and impacts their adolescent experience across a range of cultural, social and political contexts.
9. Women and girls with disabilities are at particular risk of forced and coerced sterilisations performed under the auspices of legitimate medical care or the consent of others in their name.¹² Forced sterilisation¹³ of women and girls with disabilities is a practice that remains rife throughout the world, and represents grave violations of multiple human rights.¹⁴ It is an act of violence,¹⁵ a form of social control, and a clear and documented violation of the right to be free from torture.¹⁶ Perpetrators¹⁷ are seldom held accountable and women and girls with disabilities who have experienced this violent abuse of their rights are rarely, if ever, able to obtain justice.¹⁸

Freedom from forced contraception

10. In formulating the *General Comment on the Rights of Adolescents*, the Committee should explicitly address the use of forced contraception as a prevalent form of torture that continues to be enacted upon young women with disabilities prior to and during their adolescence; a practice that frequently continues throughout the entirety of their lives without their knowledge, consultation or consent. The option to use contraception, as one component of a healthy sexual life must be matched by equitable access to relevant, gendered and disability-specific information support and resources concerning gender, sex, sexual orientation, practice and expression.¹⁹
11. Young women with disabilities have a fundamental right to safe and effective contraception and yet, discriminatory and prejudicial social and cultural attitudes often portray women with disabilities as either asexual²⁰ or hypersexual, and as such, often deny them this most fundamental right. Pervasive negative attitudes, values and stereotypes about the reproductive capacity of young

¹² WWDA, Human Rights Watch (HRW), Open Society Foundations, and the International Disability Alliance (IDA) (2011) *Sterilization of Women and Girls with Disabilities: A Briefing Paper*. Available at: http://wwda.org.au/wp-content/uploads/2013/12/Sterilization_Disability_Briefing_Paper_October2011.pdf See also: International Federation of Gynecology and Obstetrics (2011) *Female Contraceptive Sterilization*. Available at: <http://www.wwda.org.au/FIGOGuidelines2011.pdf>

¹³ 'Forced/involuntary sterilisation' refers to the performance of a procedure which results in sterilisation in the absence of the free and informed consent of the individual who undergoes the procedure, including instances in which sterilisation has been authorised by a third party, without that individual's consent. This is considered to have occurred if the procedure is carried out in circumstances other than where there is a serious threat to life. Coerced sterilisation occurs when financial or other incentives, misinformation, misrepresentation, undue influences, pressure, and/or intimidation tactics are used to compel an individual to undergo the procedure. Coercion includes conditions of duress such as fatigue or stress. Undue influences include situations in which the person concerned perceives there may be an unpleasant consequence associated with refusal of consent. Any sterilisation of a child, unless performed as a life-saving measure, is considered a forced sterilisation.

¹⁴ Centre for Reproductive Rights, European Disability Forum, InterRights, International Disability Alliance and the Mental Disability Advocacy Centre (2011) *Written Comments Submitted in the European Court of Human Rights: Joelle Gauer and Others [Applicant] Against France [Respondent]*, 16 August 2011. See also: Méndez, Juan. E. (2013) *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN General Assembly; UN.Doc A/HRC/22/53.

¹⁵ See: Manjoo, Rashida (2012) OpCit. See also: Radhika Coomaraswamy (1999), *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences: Policies and practices that impact women's reproductive rights and contribute to, cause or constitute violence against women*, (55th Sess.), E/CN.4/1999/68/Add.4 (1999), [para. 51].

¹⁶ Méndez, Juan. E. (2013) UN.Doc A/HRC/22/53, Op Cit., See also: Nowak, M. (2008) *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*; UN General Assembly, UN Doc. A/HRC/7/3; Committee on the Rights of the Child (2011) *General Comment No. 13: Article 19: The right of the child to freedom from all forms of violence*; UN Doc. CRC/C/GC/13.

¹⁷ A State's obligation to prevent torture applies not only to public officials, such as law enforcement agents, but also to doctors, health-care professionals and social workers, including those working in private hospitals, other institutions and detention centres. As underlined by the Committee against Torture, the prohibition of torture must be enforced in all types of institutions and States must exercise due diligence to prevent, investigate, prosecute and punish violations by non-State officials or private actors. See: Méndez, Juan. E. (2013) UN.Doc A/HRC/22/53, Op Cit.

¹⁸ Frohmader, C. (2013) *'Dehumanized: The Forced Sterilisation of Women and Girls with Disabilities in Australia'*. Women With Disabilities Australia (WWDA), Rosny Park, Australia. At: http://www.wwda.org.au/WWDA_Sub_SenateInquiry_Sterilisation_March2013.pdf

¹⁹ Sexual orientation refers to an individual's primary emotional, sexual and/or relational attraction in relation to gender. For example, a lesbian woman is primarily attracted to other women. Sexual practice or behaviour refers to who an individual chooses to have sexual or intimate relationships with. This may or may not be consistent with how they internally understand their sexual orientation. For example, a man who primarily identifies as heterosexual may choose to have sex with other men. Sexual expression refers to how one publicly describes their sexual identity. In some cultural and social contexts it is unsafe for a non-heterosexual identifying person to publicly identify as non-heterosexual.

²⁰ Though some individuals identify their sexual identity as asexual, this is distinct from being determined to be asexual because of the presence of disability.

women with disabilities make getting accurate information about contraceptive options very difficult. Although the contraceptive needs of young women with disabilities are essentially no different from those of the general population,²¹ the pattern of contraceptive use amongst women with disabilities and non-disabled women differs widely. Women with disabilities (particularly those with intellectual disabilities) are more likely to be sterilised, more likely to be prescribed long-acting, injectable contraceptives and less likely to be prescribed oral contraceptives. In addition, women with disabilities are much less likely to be involved in choice and decision-making around the type of contraception they use.²² For young women with disabilities, the practice of forced contraceptive use often begins early in their lifetime, without their consultation and without their knowledge.

12. Forced contraception, recognised as a form of torture,²³ is commonly used on women and girls with disabilities to suppress menstruation or sexual expression for various purposes, including eugenics-based practices of population control, menstrual management and personal care, and pregnancy prevention (including pregnancy that results from sexual abuse).²⁴ For example, the disproportionate use of Depo-Provera²⁵ and other long acting contraceptives on young women with disabilities (including those who are not sexually active, or who are yet to begin menstruation) has been recognised for some time in a number of different countries.²⁶ It is a contemporary and widespread problem, and illustrates that the legacy of past eugenic ideologies and practices has far from disappeared.

Freedom to exercise full control over sexual and reproductive health

13. Sexual and reproductive rights are fundamental human rights. They embrace human rights that are already recognised in international, regional and national legal frameworks, standards and agreements.²⁷ They include the right to autonomy and self-determination – the right of everyone to make free and informed decisions and have full control over their body, sexuality, health, relationships, and if, when and with whom to partner, marry and have children - without any form of discrimination, stigma, coercion or violence. This includes the right of everyone to enjoy and express their sexuality, be free from interference in making personal decisions about sexuality and reproductive matters, and to access sexual and reproductive health information, education, services and support. It also includes the right to be free from torture and from cruel, inhumane or degrading treatment or punishment; and to be free from violence, abuse, exploitation and neglect.²⁸
14. Young women with disabilities throughout the world have failed to be afforded, or benefit from, provisions in international, regional and national legal frameworks, standards and agreements. Instead, systemic prejudice and discrimination against them continues to result in multiple and extreme violations of their sexual and reproductive rights, through practices such as forced and/or coerced sterilisation, forced contraception and/or limited or no contraceptive choices, a focus on menstrual and sexual suppression, poorly managed pregnancy and birth, forced or coerced abortion, termination of parental rights, denial of/ or forced marriage, and other forms of torture and violence, including gender-based violence. They also experience systemic exclusion from sexual and reproductive health care services. These practices and violations are framed within traditional

²¹ Frohmader, C. (2013) OpCit., Dowse, L. (2004) 'Moving Forward or Losing Ground? The Sterilisation of Women and Girls with Disabilities in Australia'. Available online at: <http://www.wwda.org.au/steril3.htm>; Jones M. & Basser Marks L. (1997) Female and Disabled: A Human Rights Perspective on Law and Medicine in K. Petersen (ed) *Intersections: Women on Law, Medicine and Technology* Aldershot, Dartmouth: 49-71.

²² O'Connor, J. *Literature Review on Provision of Appropriate and Accessible Support to People with an Intellectual Disability who are Experiencing Crisis Pregnancy*. Available at: <http://crisispregnancy.ie/wp-content/uploads/2012/05/Literature-Review-on-Provision-of-Appropriate-and-Accessible-Support-to-People-with-an-Intellectual-Disability-who-are-Experiencing-Crisis-Pregnancy.pdf>

²³ Méndez, Juan. E. (2013) UN.Doc A/HRC/22/53, Op Cit.,

²⁴ Frohmader, C. (2013) OpCit.,

²⁵ See: [http://www.betterhealth.vic.gov.au/bhcv2/bhcmcd.nsf/pages/pfcdepoi/\\$File/pfcdepoi.pdf](http://www.betterhealth.vic.gov.au/bhcv2/bhcmcd.nsf/pages/pfcdepoi/$File/pfcdepoi.pdf) Note: "Depo-Provera should not be used if you are pregnant or intend to become pregnant." [emphasis added]

²⁶ McCarthy, M. (2009) 'I have the jab so I can't be blamed for getting pregnant': Contraception and women with learning disabilities. *Women's Studies International Forum*, 32, pp. 198-208

²⁷ High-Level Task Force for the ICPD (2013) *Policy Recommendations for the ICPD Beyond 2014: Sexual and Reproductive Health & Rights for All*. <http://www.afppd.org/files/3913/7144/5835/policy-recommendations-for-the-ICPD-beyond-2014.pdf>

²⁸ Ibid.

social attitudes and entrenched disability-based and gender-based stereotypes that continue to characterise disability as a personal tragedy, a burden and/or a matter for medical management and rehabilitation.²⁹

Freedom to express sexuality and gender identity and to access relevant and accurate information and resources regarding sexuality and gender identity

15. Young women with disabilities, like all people, self-identify according to a range of sexual and gender identifications,³⁰ and must be afforded the fundamental right to express and explore these identities, and be provided access to relevant and specific information and resources regarding sex, sexuality and gender identity. However, for many women and girls with disabilities, knowledge of sexual and reproductive rights and health has been shown to be poor and access to information and education limited. Young women with disabilities express desires for intimate relationships but report limited opportunities and difficulty negotiating relationships.³¹ For young women with intellectual disabilities in particular, attitudes toward sexual expression remain restrictive and others may interpret laws addressing sexual exploitation as prohibition of relationships.³² The fundamental right of all young people, including young women with disabilities, to express their sexuality and gender identity, and have uncensored access to relevant, accessible and information and resources regarding these identities should be addressed in the *General Comment on the Rights of Adolescents*.
16. Paternalistic and stereotypical attitudes towards women and girls with disabilities often result in others deciding on a disabled woman or girls behalf what is in their 'best interests'. The best interest approach has, however, only served to perpetuate discriminatory attitudes against women and girls with disabilities, and facilitates violations of their sexual and reproductive rights. In reality, the 'best interest' approach has been shown to have very little to do with the young disabled girl or woman, and more to do with the 'best interests' of others, particularly health workers, families and caregivers.³³ It is clear that negative attitudes, values and stereotypes about the reproductive capacity of women with disabilities influences decisions taken about their sexual and reproductive rights. When these negative attitudes are combined with authority and power, they are a potent combination.
17. There is a dearth of accessible and relevant information and education for women and girls with disabilities on sexual and reproductive rights. This lack of information and education remains an urgent and unaddressed issue worldwide. Accessibility in this context includes the right to seek, receive and impart information and ideas concerning sexual and reproductive rights in an accessible format. This includes both content that reflects the experiences of women with disabilities and format of information available, such as Braille, audio, plain and simple language, the use of telephone access relay services, sign interpreters, and accessibility compliant websites. A further dimension of access includes being able to understand and meaningfully participate in the services and programs available, including information and education resources.

²⁹ Frohmader, C. (2013) OpCit.; Ortoleva, S. & Lewis, H. (2012) 'Forgotten Sisters- A Report on Violence Against Women with Disabilities: An Overview of its Nature, Scope, Causes and Consequences'; Northeastern University School of Law Research Paper No. 104-2012. At: <http://womenenabled.org/pdfs/Ortoleva%20Stephanie%20%20Lewis%20Hope%20et%20al%20Forgotten%20Sisters%20-%20A%20Report%20on%20ViolenceAgainst%20Women%20%20Girls%20with%20Disabilities%20August%2020%202012.pdf?atredirects=0>

³⁰ The term "gender identity," distinct from the term "sexual orientation," refers to a person's innate, deeply felt psychological identification as a man, woman or some other gender, which may or may not correspond to the sex assigned to them at birth. See: <http://www.hrc.org/resources/entry/sexual-orientation-and-gender-identity-terminology-and-definitions>

³¹ In Frohmader, C. (2013) OpCit.

³² Eastgate, G., Scheermeyer, E., van Driel, M. & Lennox, N. (2012) Intellectual disability, sexuality and sexual abuse prevention: A study of family members and support workers. *Australian Family Physician* Vol. 41, No. 3, pp. 135-139.

³³ In Frohmader, C. (2013) OpCit., Dowse, L. & Frohmader, C. (2001) 'Moving Forward or Losing Ground? The Sterilisation of Women and Girls with Disabilities in Australia'. At: <http://wwda.org.au/issues/sterilise/sterilise2001/steril3/>

Freedom from all forms of violence, exploitation and abuse

18. The *General Comment on the Rights of Adolescents* should explicitly recognise and address the fact that young women with disabilities experience multiple and intersectional forms of violence, exploitation and abuse. Any consideration concerning engaging and supporting the rights of adolescents must, perforce, address the cultural, social, political and corporeal sites where such violence is experienced and have their greatest impact. Indisputably, young women with disabilities viscerally experience the full force of this impact.
19. Multiple and intersecting forms of discrimination contribute to and exacerbate violence against women and girls with disabilities.³⁴ Although young women with disabilities experience many of the same forms of violence all women experience, when gender and disability intersect, violence has unique causes, takes on unique forms and results in unique consequences.³⁵ Further, young women with disabilities who are also members of other identity groups can be subject to intersectional forms of violence and discrimination. Despite the evolution of normative frameworks concerning both the human rights of women and of persons with disabilities, the impact of the combined effects of both gender and disability have not gained sufficient attention and violence remains at shockingly high rates when these multiple identities collide.
20. Violence against women and girls with disabilities occurs in various spheres including the home, the community, perpetrated and/or condoned by the State and private institutions and in the transnational sphere. The forms of violence to which young women with disabilities are subjected are varied: physical, psychological, sexual and/or financial violence, neglect, social isolation, entrapment, degradation, trafficking, detention, denial of health care, forced sterilisation and psychiatric treatment, among others. Women with disabilities are twice as likely to experience domestic violence as non-disabled women, and are likely to experience abuse over a longer period of time and to suffer more severe injuries as a result of the violence. The perpetrator of the violence may also be their caregiver, someone that the individual is reliant on for personal care, mobility or other types of support. Yet for many women with disabilities, identification and recognition that violence in their lives is a problem or a crime remains a significant issue. They may have difficulties in recognising, defining and describing the violence; have limited awareness of strategies to prevent and manage it; and lack the confidence to seek help and support. Frequently they do not report the violence, they often lack access to legal protection; law enforcement officials and the legal community are ill-equipped to address the violence; their testimony is often not viewed as credible by the courts; and they are not privy to the same information available to non-disabled women. The lack of appropriate, available, accessible and affordable services, programs and support is a factor that increases and contributes to violence against women and girls with disabilities.³⁶ Sexual and gendered violence also contributes to the incidence of disability among women.
21. International and regional human rights bodies have recognised that women and girls with disabilities throughout the world experience, and are more vulnerable to, all forms of violence, exploitation, abuse and neglect, and have called on States to urgently address this global problem that remains largely ignored by governments and other actors.³⁷ Violence against women and girls

³⁴ Manjoo, Rashida (2012) OpCit.

³⁵ Dowse, L., Soldatic, K., Didi, A., Frohmader, C. and van Toorn, G. (2013) Stop the Violence: Addressing Violence Against Women and Girls with Disabilities in Australia. Background Paper. Hobart: Women with Disabilities Australia. See also: Frohmader, C., Dowse, L. & Didi, A. (2015) 'Preventing Violence against Women and Girls with Disabilities: Integrating A Human Rights Perspective'. Women With Disabilities Australia (WWDA), Hobart, Tasmania.

³⁶ Frohmader, C. (2011) 'Submission to the Preparation Phase of the UN Analytical Study on Violence against Women and Girls with Disabilities', (A/HRC/RES/17/11). Prepared for Women With Disabilities Australia (WWDA). Available online at: <http://wwda.org.au/wp-content/uploads/2013/12/WWDAsubUNStudyViolenceWWDDec2011.pdf> See also: Dowse, L., Soldatic, K., Didi, A., Frohmader, C. and van Toorn, G. (2013) OpCit., See also: Frohmader, C., Dowse, L. & Didi, A. (2015) OpCit.

³⁷ Ibid., See also: Manjoo, Rashida (2012) OpCit.; Ortoleva, S. & Lewis, H. (2012) OpCit., Committee on the Elimination of Discrimination against Women (2010) Concluding observations of the Committee on the Elimination of Discrimination against Women: Australia. CEDAW Forty-sixth session, 12 – 30 July 2010. CEDAW/C/AUS/CO/7.

with disabilities has devastating social, economic and inter-generational consequences and jeopardises their sexual and reproductive health and rights.³⁸

Acknowledgment of the multiple and intersectional nature of young women with disabilities' identity and experience

22. The Committee's *General Comment* should incorporate recognition of, and explicitly address young women with disabilities as a specific population group who have and continue to experience multiple forms of violence, exploitation and abuse. In the context of the development of a *General Comment on the Rights of Adolescents*, this must include specific articulation, and embedding of, issues of intersectionality in recognition of the multiple and intersecting discrimination and disadvantage experienced by people with disabilities with multiple identity positions. The *General Comment* should consider that young women with disability who also identify with a range of other social and cultural identities can be further discriminated against, and be subject to even greater levels of violence and violations of their fundamental human rights and freedoms.³⁹
23. Recognition of the particular rights and needs of adolescents requires holistic measures that address both inter-gender and intra-gender inequality and discrimination and violence. Any analysis of experiences of discrimination and violation of human rights and freedoms must account for both individual and structural factors, including structural and institutional inequalities; and incorporate consideration of social, cultural, political and economic hierarchies among young women, and between young women and men. Although women with disabilities experience many of the same forms of discrimination all women experience, when gender and disability intersect with other identifications and cultural experiences, discrimination takes on unique forms, has unique causes, and results in unique consequences. Young women with disabilities who are also people of colour or members of minority or indigenous peoples, or who are lesbian, queer, transgender or intersex or who live in poverty, or who are incarcerated in institutions, can be subject to particularised forms of violence and discrimination. These intersections must be explored in greater depth to ensure that the complexities of denials of the fundamental rights of young women with disabilities are properly understood and addressed.
24. Social sanctions on identity status or life experiences can further increase the risk of group or individual exclusion and denial of sexual and reproductive rights for women with disabilities.⁴⁰ The recognition of this reality variously referred to as "intersectionality," "multidimensionality," and "multiple forms of discrimination," is important to any examination of the sexual and reproductive rights of women and girls with disabilities. Young women with disabilities who also belong to (or are perceived as belonging to) disfavoured or minority groups may face compounded violence and discrimination based on several factors simultaneously rather than one or two. For example, this can affect young women with disabilities who are indigenous⁴¹; located in conflict or post-conflict regions;⁴² sexuality and or gender diverse;⁴³ and, young women with disabilities who are incarcerated in institutions.⁴⁴

³⁸ High-Level Task Force for the ICPD (2013) OpCit.

³⁹ Frohmader, C., Dowse, L. & Didi, A. (2015) OpCit., See also: Dowse, L., Soldatic, K., Didi, A., Frohmader, C. and van Toorn, G. (2013) OpCit.,

⁴⁰ Bond, Johanna E. (2001) 'International Intersectionality: A Theoretical and Pragmatic Exploration of Women's International Human Rights Violations', 52 (1) *Emory Law Journal*, 71-186. See also Manjoo, Rashida (2011) *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences*, U.N. Doc. A/66/215.

⁴¹ Indigenous persons with disabilities often experience multiple forms of discrimination and face barriers to the full enjoyment of their rights, based on their indigenous status and their disability; the discrimination is compounded when gender and youth is part of the mix.

⁴² Young women with disabilities in conflict or post-conflict regions may be at additional risk of violence as members of a targeted race/ethnic, religious, or linguistic group and may have great difficulty in accessing services in the conflict environment. Refugee camps impose additional burdens. Justice and post-conflict reconciliation activities generally do not include young women with disabilities, nor are such programs made accessible or inclusive.

⁴³ Young women with disabilities who identify as lesbian or bisexual or sexuality diverse, as well as young transgender and gender-diverse women face double discrimination in terms of sexual and reproductive rights. Sexual and gender minorities who identify as female who also have disabilities confront social barriers and isolation from both sexual minority status, gender identity and disability. They face a complex matrix of able-ism and discrimination on the basis of sexual orientation and both heteronormativity and ableism function as a social matrix, with exclusionary practices that operate in similar ways.

⁴⁴ When combined with pervasive discrimination against women with disabilities, poor living conditions and systemic violence already present in many prisons raises the risks of incarceration for young women with disabilities to new and unacceptable heights. They may be actively targeted based on their disabilities or simply have their disability-related rights and needs neglected. Those with psychosocial disabilities face similar

Right to inclusive education

25. The role of education as a mechanism to advance the human rights of young women with disabilities is critical. In regard to the development of a *General Comment on the Rights of Adolescents*, the committee should critically address, articulate and embed the rights of young women with disabilities to access inclusive education. Although 'inclusive education' has not been specifically defined in international human rights law, the *Committee on the Rights of the Child* (CRC) has conceptualised and endorsed 'inclusive education' as a set of values, principles and practices that seeks meaningful, effective and quality education for all students, and that does justice to the diversity of learning conditions and requirements not only of children with disabilities, but for all students.⁴⁵
26. Gender is a key factor in implementation of the CRC, which recognises that policies, programs and other measures should be grounded in a broad approach to gender equality that ensures young women's full political participation; social and economic empowerment; recognition of equal rights related to sexual and reproductive health; and equal access to information, education, justice and security, including the elimination of all forms of sexual and gender-based violence.⁴⁶ The CRC specifically recognises that girls with disabilities are often more vulnerable to discrimination due to gender discrimination, and requires that States parties pay particular attention to girls with disabilities by taking the necessary measures, (and when needed extra measures), in order to ensure that they are well protected, have access to all services and are fully included in society.⁴⁷ These provisions and indications should be critically addressed, fully articulated and embedded in the *General Comment on the Rights of Adolescents*.
27. Whilst there has been significant progress globally in girls' participation in formal education, disparities in access to education and educational outcomes for girls and women continue to exist. The 15 year *'Review of the implementation of the Beijing Declaration and Platform for Action, the outcomes of the twenty-third special session of the General Assembly and its contribution to shaping a gender perspective towards the full realization of the Millennium Development Goals'*⁴⁸ found that, in relation to education, girls and women with disabilities are at a greater disadvantage than their non-disabled counterparts. It also found that the lack of disaggregated data remains a significant impediment to measuring progress on realising the right to education for women and girls.
28. Negative attitudes and practices continue to restrict disabled girls' and women's access to and participation in all forms of education. In many countries, families may assign greater value to educating boys, and expect girls to attend to a number of domestic responsibilities, such as caring for siblings and relatives.
29. Both girls and boys remain influenced by traditional gender norms and stereotypes throughout all levels of education. While efforts have been undertaken to reduce gender biases in curricula, textbooks and teacher attitudes, the scale of such measures varies greatly, and their impact remains insufficiently documented.⁴⁹ For girls and women with disabilities, however, there remains almost no positive portrayal of disabled girls and women in curricula, books, media, popular culture and so on. Girls and women with disabilities are still stereotyped as burdens and recipients of care,

threats of inadequate care and mistreatment, in addition to the risks of self-harm and the deterioration of their mental well-being due to the nature of incarceration.

⁴⁵ Committee on the Rights of the Child, general comment No. 1 (2001) on the aims of education (at Para.67).

⁴⁶ See: UN Committee on the Rights of the Child (CRC), *General comment No. 13* (2011): Article 19: The right of the child to freedom from all forms of violence, 17 February 2011, CRC/C/GC/13; UN Committee on the Rights of the Child (2013) *General comment No. 15*: The right of the child to the enjoyment of the highest attainable standard of health (Article. 24); UN Doc. CRC/C/GC/15; 14 March 2013.

⁴⁷ Ibid.

⁴⁸ E/2010/4*-E/CN.6/2010/2*

⁴⁹ E/2010/4*-E/CN.6/2010/2*

as 'child-like, asexual or over-sexed, dependent, incompetent, passive, and genderless'.⁵⁰ This has an effect on a girl's self esteem, and on her expectations. Further, it has an effect on her experience, and on the expectations of those around her.⁵¹

Right to justice and freedom from denial of legal and decision-making capacity

30. Young women with disabilities have a range of strengths and expertise. Any consideration of the rights of adolescents, and particularly the rights of young women with disabilities, should include recognition of, and active encouragement of States to engage with the specific knowledges, perspectives and expertise of adolescents. Young women with disabilities are best placed to identify, describe and make decisions concerning their particular needs and experiences.
31. The right to participate in all decision-making processes that affect them is a basic right of all women, including young women disabilities. More often than not, young women with disabilities are excluded from participating in decisions that affect their lives on a daily basis, including as active partners in their own sexual and reproductive health care. They are further excluded and ignored in sexual and reproductive health policy, service and program development, including information and education resources.⁵² The *General Comment* should critically address the fundamental right of young women with disabilities to participate and lead decision-making processes that affect their lives, relationships and overall wellbeing.
32. The determination of legal capacity is inextricably linked to the exercise of the right to autonomy and self-determination. To make a finding of incapacity results in the restriction of one of the most fundamental rights enshrined in law, the right to autonomy.⁵³ Yet millions of women with disabilities worldwide are stripped of their legal capacity, due to stigma and discrimination, through judicial declaration of incompetency or merely by a doctor's decision that the woman "lacks capacity" to make a decision. 'Incapacity' is very often used as a valid justification for violations of the sexual and reproductive rights of women and girls with disabilities. However, the CRPD clearly mandates States Parties to recognise that persons with disabilities enjoy legal capacity on an equal basis with others and should be supported to exercise their legal capacity (CRPD Art. 12). This means that an individual's right to decision-making cannot be substituted by decision-making of a third party, but that each individual without exception has the right to receive the supports they need to make their own choices and to direct their own lives, whether in relation to medical treatment, family, parenthood and relationships, or living arrangements.⁵⁴ The CRPD also requires respect for the evolving capacities of children (CRPD Art 3 and 7) and the provision of support for children with disabilities to express their views, and for these views to be given appropriate weight in the context of their age and maturity.

⁵⁰ Frohmader, C. (2013) *'Dehumanised: The Forced Sterilisation of Women and Girls with Disabilities in Australia'* - WWDA Submission to the Senate Inquiry into the involuntary or coerced sterilisation of people with disabilities in Australia; ISBN: 978-0-9876035-0-0. Available online at: <http://wwda.org.au/issues/sterilise/sterilise2011/>

⁵¹ Hastings, E. (undated) *'Assumption, Expectation And Discrimination: Gender Issues For Girls With Disabilities'*. Accessed online February 2015 at: <https://www.humanrights.gov.au/news/speeches/gender-issues-girls-disabilities>

⁵² Women With Disabilities Australia (WWDA) (2010) *'Women With Disabilities & The Human Right to Health: A Policy Paper'*. Available online at: <http://wwda.org.au/issues/health/health2006/>

⁵³ Law Reform Commission (Ireland) (2011) *'Sexual Offences and Capacity to Consent'*. A Consultation Paper. Law Reform Commission, Dublin.

⁵⁴ In Frohmader, C. (2013) OpCit.