

GENDER IN THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

*Rodrigo Jiménez Sandoval**

I would first like to begin by thanking the organizers of this symposium, The University of Alabama School of Law, as well as Professor Martha Morgan.

When it comes to gender in the Convention on the Rights of Persons with Disabilities,¹ it is first of all important to clarify the relationship between both gender and disability terminology:

Sex: refers to the biological differences between men and women, natural differences according to the shape and function of their sexual organs.

Deficiency: is the absence or loss of a body structure or a physiological function, including mental ones.

In this case both terms are related to a biological situation, although gender and disability terminology can be related to a social and cultural construction as well:

Gender: is a historically built, social and cultural condition. Gender is that group of characteristics, roles, attitudes, values, and symbols which form how every man and woman ought to be, all of this imposed by society.

Restricted participation: is the social barrier that people with disabilities experience as they are involved in vital situations. The presence of

* Rodrigo Jiménez Sandoval is a Costa Rican lawyer and consultant specializing in the rights of people with disabilities and women's rights. He studied Law at the University of Costa Rica and since 1984 has been Professor of the International Law course at the Autonomous Central American University (UACA). He also has a degree in Education and a Master's in Business. For more than ten years he has worked as legal advisor for many Costa Rican NGOs, including the Helen Keller Association, the Down Syndrome Association, and the Costa Rican Association of Handicapped People. He has also been a board member of the National Rehabilitation Council and of the National Rehabilitation Patronate. For eight years he served as an international consultant for the Inter-American Institute of Human Rights (IHR). He has also worked for the United Nations Development Program (UNDP), the World Bank, and the Fundación Arias para la Paz y el Progreso Humano. Since 1995, he has been Sub-Director of the Women, Justice, and Gender Program of The United Nations Latin American Institute for the Prevention of Crime and Treatment of Offenders (ILANUD). He has written various books and many magazine articles on persons with disabilities and women's rights.

1. Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, U.N. Doc. A/RES/61/106 (Dec. 13, 2006), available at <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>. All future references to "the Convention" or to particular articles of "the Convention" are references to The Convention on the Rights of Persons with Disabilities unless otherwise indicated.

restricted participation is determined by the participation of that person in comparison to what would be expected from a person without disabilities, in that specific society or culture.

The discrimination against people with disabilities is constructed in a very similar way to the discrimination against women. Just as we understand the difference between women and men, society constructs the difference between a person with disabilities and persons with no disabilities.

Society usually sees people with disabilities as abnormal, unproductive, dominated, useless, dependent, passive, and as a problem. On the other hand, society sees people with no disabilities as: normal, productive, dominant, useful, independent, active, and without problems.

These stereotypes are the bases of the discrimination against people with disabilities.

As I mentioned before, the definition of discrimination against women and discrimination against people with disabilities, are very similar to each other. The similarity is shown clearly in the following definitions:

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): “For the purposes of the present Convention, the term ‘discrimination against women’ shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”²

Convention of the Rights of Persons with Disabilities (CRPD): “‘Discrimination on the basis of disability’ means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.”³

It must also be said that, women with disabilities suffer a double discrimination, both as women and as persons with disabilities.

Statistics regarding men and women with disabilities show:

- Illiteracy:
 - Men 36%
 - Women 64%
- Unemployment:

2. Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, U.N. Doc. A/RES/34/46 (Dec. 18, 1979), available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article1>.

3. Convention on the Rights of Persons with Disabilities, *supra* note 1, art. 2.

- Women 50%
- Men 31%
- Care:
 - Mother 87%, Father 13%
 - Wife 61%, Husband 39%
 - Sister 70%, Brother 30%
 - Daughter 71%, Son 29%

As of January 2009, 137 States have signed the Convention on the Rights of Persons with Disabilities and 46 States have ratified it.⁴

The purpose of the Convention is to promote, protect, and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

The big discussion on women with disabilities' rights was, if the issue should be mainstream or in a special article. In the end, the States Parties decided to include the issue in the Convention's sixth article and to include the gender perspective in some other articles.

The Preamble to the Convention establishes the interpretation bases, and some of them are related to the gender issue:

- (c) Reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination . . .
- (d) Recalling . . . the Convention on the Elimination of All Forms of Discrimination against Women, . . .

This interpretation basis means that the interpretation and application of this Convention may also use CEDAW and the recommendations of its Committee.

- (e) Recognizing that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others . . .
- It is important to notice the evolving concept of disability.

- (i) Recognizing further the diversity of persons with disabilities
Persons with disabilities exhibit diversity regarding age, gender, sex, type of disability, ethnic-economic conditions, sexual orientation, etc.

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

This refers to the double discrimination that women and girls suffer.

4. United Nations Enable, <http://www.un.org/disabilities/countries.asp?id=166> (last visited Jan. 29, 2009).

- (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 . . .

This point is very important because it allows incorporating the gender perspective in all interpretations and applications of the Convention.

Article Three of the Convention also establishes principles that facilitate these interpretations. These principles are:

- Individual autonomy including the freedom to make one's own choices, and independence of persons
- Nondiscrimination
- Full and effective participation
- Diversity of persons with disabilities as part of humanity
- Equality of opportunity
- Accessibility
- Equality between men and women
- Respect for the evolving capacities of children with disabilities

Article Four of the Convention establishes the general obligations of the States Parties:

- To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;
- Modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
- Protection and promotion of the human rights of persons with disabilities in all policies and programs;
- To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;
- To undertake or promote research and development of universally designed goods, services, equipment and facilities availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities;
- To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities.

Article Five refers to equality and nondiscrimination. Just as CEDAW did, the Convention on the Rights of Persons with Disabilities allows the adoption of specific measures which are necessary to accelerate or achieve *de facto* equality of persons with disabilities, which shall not be considered discrimination.

In Article Six, the Convention intends to protect women with disabilities against double discrimination.

States Parties recognize that women and girls with disabilities are subject to multiple discriminations, and in this regard shall take measures to ensure their full and equal enjoyment of all human rights and fundamental freedoms.

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

Article Seven has the same intention as Article Six except that it applies to protecting children with disabilities by:

- Recognizing double discrimination;
- Espousing the principle of the best interests of the child; and
- Giving children the right to express their views freely on all matters affecting them.

Article Eight is dedicated to raising awareness of persons with disabilities. It is very important to change cultural beliefs and values by raising awareness of the rights of persons with disabilities. It is also important to combat stereotypes and prejudices that cause discrimination against persons with disabilities, as well as discrimination based on sex, age, etc.

The combination of disabilities and sex stereotypes along with prejudice is the cause of great contradictions; for example, women are expected to be mothers, but women with disabilities can not be mothers. Women are meant to be sex symbols, but women with disabilities are considered asexual. Men are supposed to be productive for society, but men with disabilities are useless to society. All of these contradictions do nothing but create even more discrimination.

Article Nine addresses Accessibility. Accessibility is needed in different areas such as housing, transportation, information, communication, and technology.

Article Ten divides the right to life in two, when it comes to people with disabilities: First, it prohibits abortion based on a disability, because this promotes an idea that a person with a disability must not live. Second, the article prohibits the practice of involuntary euthanasia based on a disability.

Article Eleven refers to situations of risk and humanitarian emergencies. The truth is that humanitarian agreements like The Geneva Convention and The Hague Convention do not regulate the situation of persons with disabilities. We still must sadly remember that during the war in Bosnia-Herzegovina, people with Down syndrome were used to clean landmines.

The Convention's article about legal capacity, Article Twelve, changes the traditional model of approaching legal capacity. What's more, capacity is not something that you have or do not have. None of us has absolute capacity; we all need some form of support.

For example, when we make a medical decision, we have the support of a doctor. When we want to make an investment, we consult a specialist.

People will have different grades of capacity; some will need total support, others do not. It all depends on the abilities and capacity of each individual person.

Article Thirteen is about access to justice. The article's main focus is on the following principles:

- Adjustment on the procedures
- Equal conditions
- Guarantees to due process
- Right to be part of a judicial procedure on equal conditions
- Judicial guarantees
- No revictimization based on a disability during the judicial process
- Witnesses
- Understand the judicial process
- Training for those working in the field of administration of justice, including police and prison staff

Article Fourteen was written to ensure the liberty and security of the person. It says that:

- People with disabilities should not be deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

Article Fifteen is about the freedom from torture or cruel, inhuman, or degrading treatment or punishment. It says that:

- No one shall be subjected without his or her free consent to medical or scientific experimentation, and
- To prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment, States Parties should take all effective legislative, judicial, and administrative measures.

Article Sixteen is about the freedom from exploitation, violence and abuse. As in women's issues, persons with disabilities suffer violence and discrimination in their private life. Most ways of violence against persons with disabilities are not socially recognized. For example, over protection is a form of domestic violence but people that suffer this type of violence do not go to court for protection.

- Protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

It is important to emphasize the gender based aspects of practices such as: sexual abuse, non-recognition of domestic work, involuntary sterilization, etc.

- 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.

The assistance mentioned above must have gender perspective, which means that women and men with disabilities have the right to specialized services in psychology, social work, and medical services with a gender perspective.

- Ensure that all facilities and programs designed to serve persons with disabilities are effectively monitored by independent authorities.

- 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, and take into account gender- and age-specific needs.

States Parties must insist on the importance of gender and age and how these two factors are related.

- 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.

Article Seventeen was designed to protect the integrity of the person. The States had big pressure from the medical industries, because many persons with disabilities serve as guinea pigs in pharmacological experiments. However, no one can be used in an experiment without their consent.

Article Eighteen says that States Parties shall recognize that persons with disabilities have liberty of movement and nationality.

Article Nineteen requires that persons with disabilities should be allowed to live independently and be included in the community. Persons with disabilities should be able to:

- Choose their place of residence
- Choose where and with whom they live
- Have access to community support services, including personal assistance if necessary

This article is fundamental in order to bringing a democratic approach to personal autonomy and breaking the patriarchal scheme that believes that taking care of a person with a disability is exclusively a female job.

Article Twenty is about personal mobility. The article's principles are:

- Facilitating the personal mobility of persons with disabilities:
 - In the manner and at the time of their choice, and at affordable cost;
 - Quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, which includes making them available at an affordable cost;

- Providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities;
- Encouraging entities that produce mobility aids, devices, and assistive technologies to take into account all aspects of mobility for persons with disabilities.

Article Twenty-One guarantees freedom of expression and opinion, and access to information. It requires States Parties to allow persons with disabilities to have equal access to information by:

- Providing information intended for the general public in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;
- Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes, and formats of communication of their choice by persons with disabilities in official interactions;
- Encouraging the media, including providers of information through the Internet, to make their services accessible to persons with disabilities;
- Recognizing and promoting the use of sign languages.

Article Twenty-Three requires respect for the home and the family of persons with disabilities. Throughout history, people with disabilities have been institutionalized in hospitals and care centers, denying them the right to live in a family environment. In developing countries it is quite normal to allow women with disabilities to stay home as long as they help around the house, while men with disabilities are institutionalized, responding to a patriarchal way of thinking.

The Convention attempts to reaffirm persons' with disabilities right to live in a family environment and to develop meaningful relationships such as marriage, adoption, and reproduction. In some countries, these types of relationships are completely off limits for people with disabilities.

In the case of reproduction, the Convention establishes, for the first time in a mandatory instrument, the right to reproduction and family planning. This responds to the constant sexual and reproductive rights violations, such as involuntary sterilizations of women with disabilities or the failure to recognize paternity even when DNA tests have been run.

This article, along with the right to health, is a fundamental step to the full recognition of both sexual and reproductive rights which have been denied to people with disabilities for such a long time.

Article Twenty-Four is about the challenges that persons with disabilities face when seeking to gain an education. States Parties to the Convention must ensure:

- An inclusive education system;
- The full development of human potential;

- The development by persons with disabilities of their personality, talents, and creativity, as well as their mental and physical abilities, to their fullest potential;

- Thereby enabling persons with disabilities to participate effectively in a free society.

The Convention's article dealing with health services is Article Twenty-Five. States Parties should ensure:

- Access for persons with disabilities to health services that is gender-sensitive, including health-related rehabilitation.

The need to incorporate gender perspective into health services is fundamental to women with disabilities. Especially since most of the time disabled women receive deficient gynecological services, not taking into account their needs referring to both sexual and reproductive health. Likewise, men with disabilities could need rehabilitation in the sexual area, which is not contemplated as necessary at the present moment. States Parties should also:

- Provide persons with disabilities with the same range, quality, and standard of free or affordable health care and programs as provided to other persons, including in the area of sexual and reproductive health and population-based public health programs;

An emphasis must be made when it comes to viewing both sexual and reproductive rights as human rights which apply to the disabled population. Finally, signatories to the Convention are required to:

- Provide these health services as close as possible to people's own communities, including in rural areas;

- Require health professionals to provide care of the same quality to persons with disabilities as to others,

- Prohibit discrimination against persons with disabilities in the provision of health insurance and life insurance

Article Twenty-Six is about habilitation and rehabilitation. The principles of these two services are:

- Begin at the earliest possible stage;

- As close as possible to their own communities, including in rural areas;

- Promote the development of initial and continual training for professionals and staff working in habilitation and rehabilitation services.

The article on work and employment, Article Twenty-Seven, intends to lower the very high unemployment indexes concerning people with disabilities that reach up to 90%, where women with disabilities are the ones who have the highest percentage. Regretfully, this article does not incorporate a gender perspective referring to the sexual division of labor and the high percentage of female unemployment. It regulates very general aspects such as:

- Right to work, on an equal basis with others;
- Prohibit discrimination on the basis of disability;
- To have effective access to general technical and vocational guidance programs, placement services, and vocational and continuing training;
- Promote employment opportunities;
- Promote opportunities for self-employment;
- Employ persons with disabilities in the public sector.

The topic covered in Article Twenty-Eight is the need for adequate standard of living and social protection. This topic is fundamental regarding the fight against the feminization of poverty. The unemployment indexes for people with disabilities along with the caring obligations imposed by the patriarchal system increase the feminization of poverty, where single women head the household of families which include people with disabilities. The present article regulates:

- The right to an adequate standard of living for themselves and their families;
- The right to social protection;
- To ensure equal access for persons with disabilities to clean water;
- To ensure access for persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programs and poverty reduction programs;
- To ensure access for persons with disabilities to public housing programs;
- To ensure equal access for persons with disabilities to retirement benefits and programs.

Article Twenty-Nine is about participation in political and public life for persons with disabilities. Just as in the previously mentioned article, the disadvantages that women encounter when entering the political environment are not taken into account:

- Public life on an equal basis with others;
- Ensuring that voting procedures, facilities, and materials are appropriate, accessible, and easy to understand and use;
- Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation,
- Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;

In conclusion, it is important to emphasize the dispositions regarding the composition of the Committee of the Convention, which follow the example of the International Criminal Court. The Convention says, "The members of the Committee shall be elected by States Parties, consideration being given to equitable geographical distribution, representation of the

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different forms of civilization and of the principal legal systems, balanced gender representation and participation of experts with disabilities.”⁵

Thank you.

5. Convention on the Rights of Persons with Disabilities, *supra* note 1, art. 34.