



Women
With
Disabilities
(Australia)

Submission to the Commonwealth Government
on the 'Draft Text for a Comprehensive and
Integral International Convention to Promote
and Protect the Rights and Dignity of Persons
with Disabilities'

February 2004



Women
With
Disabilities
(Australia)

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

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Synopsis

Women With Disabilities Australia (WWDA) Inc. is the national peak body for women with all types of disabilities in Australia. It is a not-for-profit organisation constituted and driven by women with disabilities. It has a very diverse membership base, with associate members from a wide range of sectors – all who support the self-determination of women with disabilities.

This paper is a Submission in response to the Commonwealth Government's (through the Department of Family & Community Services and the Attorney Generals Department) request for comments on the 'Draft Text for a Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities', released in early 2004.

Women With Disabilities Australia (WWDA) strongly supports the development and adoption of a Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities. This Submission outlines reasons why WWDA believes a UN Convention is needed. It also discusses reasons why WWDA does not support the Governments position that a 'free-standing new convention' is not required. WWDA's submission also looks at the Draft Text, and suggests ways in which the Draft Text could be strengthened to better reflect the impact of multiple discriminations caused by the intersection of gender and disability.

Additionally, WWDA strongly recommends that the Australian Government urgently establish meaningful processes to enable people with disabilities to participate in the development of a Draft Convention on the rights and dignity of persons with disabilities.

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Background

In November 2001, the United Nations (UN) General Assembly established an Ad Hoc Committee (AHC) to “consider proposals for a comprehensive and integral convention on the rights and dignity of persons with disabilities.” This action came after many years of advocacy by the disability community for the inclusion of disability in the UN human rights legal framework. The AHC met for the first time in July 2002, deciding that regional consultations should be held, and that the Committee should meet again the following year. When the AHC re-convened in June 2003, the first three days yielded consensus that a convention was indeed needed and that work on drafting a convention should be started. The AHC then focused on establishing a special working group to draft a treaty text for consideration by the Committee in 2004. The Working Group met in New York from 5-16 January 2004 and produced a Draft Text for a Convention. The Draft Text will form the basis for negotiations by Member States at the third session of the Ad Hoc Committee which will take place from 24 May to June 2004. There will also be a fourth session of the Ad Hoc Committee from 23 August to 2 September 2004 (NCD 2004; Landmine Survivors Network 2004).

The Australian Government wrote to Women With Disabilities Australia (WWDA) on 9 February 2004, requesting feedback on the Draft Text for a Convention. It stated: “*In considering the position it will take on various issues, the Government wishes to be informed by the views of stakeholders*”. Responses were required by 12 March 2004. Given the short time frame set by the Government for responses, WWDA is not in a position to undertake widespread consultation with its members on the Draft Text, including meaningful consultation on whether existing instruments sufficiently provide protection for the rights of people with disabilities. Similarly, WWDA does not have the resources to research the reporting and monitoring processes contained in the current international framework, and whether there are “problems” with these processes.

This paper therefore seeks to address some of the broad issues relating to the Draft Text. WWDA strongly recommends that the Australian Government urgently establish meaningful processes to enable people with disabilities to participate in the development of a Draft Convention on the rights and dignity of persons with disabilities.

The Position of Women With Disabilities Australia (WWDA) in Relation to a UN Convention

Women With Disabilities Australia (WWDA) strongly supports the development and adoption of a Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities.

WWDA does not share the Australian Government's preference that:

'the option of a new instrument in the form of a protocol or annex to one of the existing human rights treaties be considered, rather than a free-standing new convention. Australia is concerned that, at a time of limited resources, a new instrument, onerous reporting requirements and possible supervisory body will add to the demands on an already overburdened United Nations and on States' capacities to work on the efficient and practical application of existing instruments.'

Source: 'Australian Government contribution to United Nations Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities' December 2003.

WWDA does not believe that the above 'preference' of the Australian Government reflects the views and aspirations of people with disabilities in Australia. It is not clear how the Australian Government arrived at this position, given that a) the Australian disability movement has strongly articulated its support for a Convention; and b) there have been no processes established by Government whereby people with disabilities can have legitimate and meaningful input to the Convention proposals, including the development of a national position on the Convention.

WWDA's 2003 submission to the Australian Government on the '*Proposals for a Convention on the Rights of People with Disabilities*', clearly stressed the importance of meaningful participation of people with disabilities in the development of a Convention. WWDA's submission articulated the need for the Government to establish processes for informing and educating people with disabilities on a number of issues including: nature and structure of a Convention, elements to be considered (including the work done in the field of social development), human rights and non-discrimination, follow-up and monitoring issues, and the complementarity between a new instrument and existing instruments (including accessible information on existing human rights treaties).

WWDA's submission further outlined a number of measures the Government should take to enhance the involvement of people with disabilities (including relevant NGOs) in international activities relating to

the development of an international convention to promote and protect the rights of people with disabilities, including:

- government funded workshops on disability human rights training, and lobby training to assist effective NGO participation in the United Nations environment;
- the funding of an NGO Coordinator to act as the focal point to disseminate information and liaison between NGOs and the Government;
- government funding/resourcing to enable disability organisations to engage in human rights debates;
- financial assistance for disability NGO representatives to attend and participate in relevant international meetings and other fora.

People with disabilities in Australia have articulated the need for disability human rights training in order to participate meaningfully in the development of an international human rights treaty for people with disabilities. This is not peculiar to Australia. For example, the National Council on Disability (2002) suggests that most disability NGOs have not developed the capacity to enable them fully to engage existing international human rights mechanisms, nor have they taken full advantage of opportunities to contribute to monitoring, reporting, and other activities of human rights institutions that complement and enhance domestic advocacy. The treaty-making process constitutes a period of development for disability NGO's to expand their capabilities in a number of areas essential to their future work. These organisations are then better prepared to participate in the following activities:

- monitoring and surveillance of human rights problems;
- notification of emergency situations;
- human rights training and dissemination of information to their allies and the general public about human rights standards and their violations;
- reporting of human rights abuses to State and international bodies (treaty-monitoring and otherwise);
- participation in international human rights litigation; and
- engaging in constructive dialogue with governments and international organisations.

It is widely acknowledged that, for a Convention to be truly effective, it must represent the aspirations and experiences of the people it seeks to protect. It is therefore of great concern to WWDA that to date, the Australian Government has not established processes whereby the Australian disability community can have meaningful input into the development of a Convention.

The Need for a Convention

Over 600 million people, or approximately 10 per cent of the world's population, have a disability of one form or another. Over two thirds of them live in developing countries. Only 2 per cent of disabled children in the developing world receive any education or rehabilitation. The link between disability and poverty and social exclusion is direct and strong throughout the world (Quinn & Degener 2002). There is no doubt that there are widespread and serious violations of the human rights of persons with disabilities, as well as failures to promote and fulfill their rights (Byrnes 2003).

There are many reasons why WWDA believes that there is a need for a Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities.

A Convention would give status, authority and visibility to disability as a human rights issue, and provide an immediate statement of international legal accountability regarding disability rights. It has the potential to bring disability rights firmly and visibly into the mainstream of the United Nations work on human rights, and to provide an impetus to international and national efforts to ensure the enjoyment of human rights and fundamental freedoms by persons with disabilities on the basis of equality with others. (NCD 2002, Byrnes 2003).

The most obvious need for a UN Convention on the Rights of Persons with Disabilities arises from the importance of Universal recognised standards that all States can follow and that can be monitored (Meekosha 2002). Thus the Convention could provide direct recourse for individuals whose rights have been violated.

An International Convention would establish an agreed framework for analysis and for international cooperation. An International Convention has the potential to convey within the framework of international law a core group of disability rights that transcend any particular culture and society and are therefore of universal importance and concern. It would provide a common language within which to address issues of human rights for people with disabilities – it would define what constitutes discrimination against people with disabilities and set up an agenda for national action to end such discrimination. It would also increase the visibility of disability issues at the international and national levels. At a symbolic and ideological level a Convention would help restore subjectivity to disabled people, a power that has been eroded as a result of their objectification as 'the other' (Meekosha 2002, NCD 2002, Byrnes 2003). As Meekosha (2002) points out: *"Issues of recognition and respect are as important as formal rights"*.

A number of advocates for a Convention have identified the importance of a Convention contributing to the task of locating the problems of disability within society rather than the individual. In this way, it would enable governments to legitimately adopt a social inclusion and a rights-based approach to

disability issues, rather than the charity models of assistance or the traditional medical model – a model that focuses on finding medical "solutions" to limitations caused by disability and ignores the need to address the vast array of limitations created and imposed by discrimination, exclusion, and ignorance. As Bickenbach (2001) asserts: *“a human rights framework that embraces a social model of disability has a greater capacity to identify and resolve those fundamental aspects of society that continue to oppress and exclude”*. Leandro Despouy, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, suggests that *“in reorienting the focus from needs to rights, people with disabilities may be recognised as active rights-bearing individuals who are participants in their own development and who should be consulted accordingly in development decision-making”* (Leandro Despouy 1993).

The human rights perspective on disability means viewing people with disabilities as subjects and not as objects. It entails moving away from viewing people with disabilities as problems towards viewing them as holders of rights. Importantly, it means locating problems outside the disabled person and addressing the manner in which various economic and social processes accommodate the difference of disability - or not, as the case may be. The debate about the rights of the disabled is therefore connected to a larger debate about the place of difference in society. The disability rights debate is not so much about the enjoyment of specific rights as it is about ensuring the equal effective enjoyment of all human rights, without discrimination, by people with disabilities (Quinn & Degener 2002). An International Convention would therefore provide the basis for realising equality for people with disabilities by ensuring equal access to, and equal opportunities in, political and public life - including the right to vote and to stand for election - as well as education, employment, health, transport, housing, and culture (NCD 2002).

An International Convention would help build the international disability movement and increase the notion of a global community –it would help give the global disability community a tool with which to recognise and advocate for their rights and would press for consistency in law and policies across countries. Globalisation provides opportunities for restructuring the social, economic and political relations of disability through a globalised disability movement. The global rights environment remains heavily dependent on global media and communications to promulgate claims and report actions and reactions internationally. The capacity for autonomous campaigns allows groups suppressed in their own national arenas to gain political leverage by calling on international community support. The UN Convention will provide much of the stimulus needed to focus on building such a globalised disability movement (Meekosha 2002, NCD 2002).

Another significant reason for supporting the adoption of a Convention is its empowering of disability groups and persons with disabilities. People with disabilities assert that the transformative nature of the treaty-making process itself can generate an range of tangible benefits, including:

- raising the general public's awareness about the human rights of people with disabilities;

- highlighting abuses of those rights;
- further developing the knowledge-base of governmental and non-governmental participants;
- providing the impetus for extensive programmatic developments;
- offering capacity-building opportunities for disability groups as a result of increased global focus on their issues; and
- providing data collection.

UN Conventions are not simply aimed at redressing specific violations. The existence of a Convention also allows for the possibility of alternative reporting mechanisms on behalf of NGOs. Disabled people will also be in the position of being able to compare their own government's performance against international benchmarks.

One of the most pressing issues affecting women with disabilities in Australia and, indeed, world wide, is forced sterilisation and violation of reproductive rights. An International Convention has the potential to take account of these issues (and other issues, such as violence) that women with disabilities have raised. Obligations by states to address these issues would need to be included in the International Convention (Meekosha 2002).

Existing Treaties

There are a number of United Nations treaties currently in force:

- Convention on the Elimination of Racial Discrimination 1965 (CERD)
- Covenant on Economic, Social and Cultural Rights 1966 (ICESCR)
- Covenant on Civil and Political Rights 1966 (ICCPR)
- Convention on the Elimination of Discrimination against Women 1979 (CEDAW)
- Convention against Torture 1984 (CAT)
- Convention on the Rights of the Child 1989 (CROC)
- Convention on the Protection of Migrant Workers 1990 (MWC)

The human rights guarantees in these treaties apply for the benefit of everyone, including people with disabilities.

While there is enthusiastic support within the disability community for a new convention (a support clearly shared by a number of governments which have taken the initiative in moving the process forward) there are still sections of the international community who are not yet convinced of the need for a new convention. Underpinning this doubt (or in some cases opposition) are arguments that the best way forward is to mainstream disability concerns in the interpretation and application of existing human rights treaties and not to duplicate unnecessarily the existing extensive array of treaty committees (Byrnes 2003). It would appear that this is the position of the current Australian Government, although their mandate for adopting such a position is unclear. In its contribution to the Working Group of the Ad Hoc Committee (AHC) in December 2003, the Australian Government reiterated its preference that:

‘the option of a new instrument in the form of a protocol or annex to one of the existing human rights treaties be considered, rather than a free-standing new convention. Australia is concerned that, at a time of limited resources, a new instrument, onerous reporting requirements and possible supervisory body will add to the demands on an already overburdened United Nations and on States’ capacities to work on the efficient and practical application of existing instruments.’

It is clear that despite the existence of the other human rights treaties, people with disabilities the world over continue to experience serious violations of their human rights, as well as failures to promote and fulfill their rights.

There is no doubt that there has been some important progress made in the consideration of disability issues by some of the human rights treaty bodies, reflecting the change in thinking about disability from a welfare or charity-based approach to a rights-based approach. The high point, though by no means the only significant development, has been General comment 5 of the Committee on Economic, Social and Cultural Rights on the human rights of persons with disability, adopted in 1994 (Byrnes 2003).

Yet despite these increases in attention to disability issues, the overall attention given to these issues is still relatively limited. This is because the existing bodies are subject to many demands, have limited time and resources, and must respond to a range of competing priorities (Byrnes 2003). In reaching an assessment of how the existing treaty bodies have done, Professors Gerard Quinn and Theresia Degener, in their comprehensive study for the Office of the High Commissioner for Human Rights (2003) concluded:

"It must be frankly acknowledged that the treaty monitoring bodies will continue to have many different constituencies to keep in focus and many intractable and general issues to wrestle with. The pressure they are under is bound to increase. In other words, there is probably a limit to the extent to which these bodies can focus on disability - a limit that is explained by other pressing priorities. This is in no sense a criticism of the bodies concerned. It is simply a recognition of the reality that other matters will always compete for their attention."

According to Byrnes (2003), it seems unlikely that the existing human rights treaty bodies would in the future be able to bring the focus and attention to disability issues that they do not now provide in a sustained manner. He states: *"the case for a new convention is a compelling one if we want to achieve a satisfactory focus on disability issues at the international level, to influence national policy-making, and to stimulate greater awareness of disability issues in the existing human rights bodies"*.

The National Council on Disability (2002) has found that research suggests that the prevailing opinion of professionals working in the fields of disability and international human rights law is that the current international human rights framework is, in the context of disability, deficient in two fundamental respects. First, without specific attention and language devoted to the most common practices leading to the violation of human rights for people with disabilities in any single international human rights treaty, many governments remain unaware of their legal obligations. Consequently, the international human rights framework rarely is used to protect people with disabilities. Second, the existing human rights treaty-monitoring bodies established by a variety of international human rights treaties only marginally address, if at all, the routine human rights violations to which people with disabilities are subjected (National Council on Disability, 2002).

Comments on the Draft Text

NB: Over the coming months, WWDA will be seeking to undertake a more detailed analysis of the Draft Text. Given the short time frame provided by the Australian Government for responses, the following comments are therefore general in scope.

Preamble

WWDA believes that the current Preamble in the Draft Text needs to be significantly strengthened in relation to the intersection of disability and gender. The current Preamble makes only one reference to gender:

n) Emphasising 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,

It is widely acknowledged that women with disabilities are one of the most marginalized, neglected, excluded and isolated groups in society. They are over represented in poverty and face the greatest incidence of disadvantage. They suffer triple discrimination – female, poor and disabled. Women with disabilities are ignored in Government legislation, policies and programs. Their issues and needs are neglected within services and programs across all sectors. They are excluded from social movements designed to advance the position of women, and the position of people with disabilities. They are subject to exploitation in all areas of their lives. Women with disabilities are raped, abused, unlawfully sterilised, chemically restrained, medically exploited, institutionalised, denied control over their bodies, their finances and living situations. They are denied employment, education and training. They are denied social contact and opportunities to participate in their community. They are denied opportunities to participate in organisations, in leadership roles and training. They are discriminated against, harassed, humiliated, victimised, and vilified. Women and girls with disabilities are the most vulnerable and least protected (WWDA 2002; UN ESCAP Workshop on Women and Disability 2003).

WWDA believes that the current Preamble needs to make explicit recognition of the impact of multiple discriminations caused by the intersection of gender and disability:

Emphasising that women and girls with disabilities suffer particular disadvantages, including marginalisation and multiple discrimination, and that specific measures are needed to ensure full and effective enjoyment of their human rights and fundamental freedoms and full participation on the basis of equality.

WWDA also believes that the Preamble should contain a statement which affirms the Convention as an instrument built on a rights-based social model.

Draft Article 2: General Principles

WWDA believes that the current General Principles need to be expanded to ensure that gender equity is included as an overarching principle underpinning the Convention.

The Need for a Specific Article on Women With Disabilities

The current Draft Text contains an Article (Draft Article 16) on 'Children with Disabilities'. This Article recognizes the particular needs of children with disabilities in the context of a Convention. WWDA believes that the Convention should also contain a specific, separate Article on Women With Disabilities, in recognition of the need to acknowledge, emphasise and address the particular disadvantages faced by women with disabilities the world over. Such an article should make explicit the impact of multiple discriminations caused by the intersection of gender and disability, and should include, for example:

States Parties recognize that women and girls with disabilities are subject to multiple discrimination and that focused, gender-specific measures (including protective measures) will be necessary to ensure that women and girls enjoy all human rights and fundamental freedoms on the basis of equality with men and boys.

Each State Party undertakes to take all necessary measures to ensure the equal right of women with disabilities to the enjoyment of all rights set forth in this Convention.

Draft Article 3: Definitions

WWDA recognizes that there are a range of definitions of disability at the international level, and these reflect different purposes, different understandings of disability, and changes in the understandings of disability.

WWDA believes that the Draft Convention should contain a definition of disability that reflects the social model of disability. Such a definition should not be restrictive, and should cover physical, sensory, intellectual, psychiatric, neurological and multiple disabilities. It should acknowledge that disability can be permanent, temporary, episodic, intermittent, and perceived. In elaborating the definition of disability, it should be recognised that, while individuals have impairments, disability is not an individual pathology. It has a range of implications for social identity and behaviour, and largely depends upon context. Disability may also be a consequence of discrimination, prejudice and exclusion (WWDA 2002; UN ESCAP Workshop on Women and Disability 2003).

Some writers have suggested that in defining disability, it may be useful for the Convention to adopt an understanding of disability as a process as opposed to something which individuals possess. For example, New Zealand, in its contribution to the UN Ad Hoc Committee (December 2003) suggested that the 'process' of disablement occurs when people with impairments experience barriers to their full participation in society and their enjoyment of human rights (cited in Landmine Survivors Network December 2003).

WWDA notes that the Current Draft provides an Article on Statistics and Data Collection. If this Article remains in the Draft Text, then the issue of defining disability has the potential to be problematic. For example, to date, many contributors to the Draft Convention have not supported the World Health Organisation's International Classification of Functioning, Disability and Health (ICF), as the potential definition for the Draft Convention. Many feel that there are too many 'problems' with the ICF, including that it does not adequately reflect the social model of disability. In the Australian context, Australian institutions are in the midst of actively implementing the ICF, in a wide range of contexts. For example, the Australian Institute of Health and Welfare and the Australian Bureau of Statistics are aligning their data collections with the ICF. If then, the Draft Convention retains Article 6 (Statistics and Data Collection) but doesn't use the World Health Organisation's International Classification of Functioning, Disability and Health (ICF) as the definition of 'disability', then one of the key challenges will be determining the basis for collecting nationally and internationally comparable data on people with disabilities.

In relation to the definition of Discrimination, WWDA suggests that a definition should be inclusive of the following aspects:

- (a) *Discrimination against persons with disabilities means any distinction, exclusion, or restriction based on a disability, suspected, imputed, assumed or possible future disability, record of disability, condition resulting from a previous disability, or perception of disability, or the characteristics of a disability whether present or past, which has the effect or objective of impairing or nullifying the recognition, enjoyment or exercise by a person with a disability of his or her human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.*
- (b) *Discrimination shall include all forms of discrimination, including direct, indirect, intended and unintended, hidden, and systemic, and shall also include discrimination based on an actual or perceived disability.*

WWDA also supports the idea that a definition of discrimination should include protection for associates of persons with disabilities against discrimination because of their association. In this context,

'associate' would include: a family member, friend, colleague, helper, carer, or relative, or advocate for a person with a disability.

Draft Article 7: Equality & Non-Discrimination

WWDA believes that Article 7 (Equality & Non-Discrimination) should make specific reference to the multiple discrimination faced by women with disabilities, and the rights of women with disabilities to equality and non-discrimination in the enjoyment of human rights and fundamental freedoms. It should also include the need for States Parties to employ gender-specific measures to achieve equality and non-discrimination for women with disabilities, for example:

States Parties recognize that women and girls with disabilities are subject to multiple discrimination and that focused, gender-specific measures (including protective measures) will be necessary to ensure that women and girls enjoy all human rights and fundamental freedoms on the basis of equality with men and boys.

Draft Article 8: Right to Life

WWDA believes that if the Draft Text retains Article 8 (Right to Life) then it needs to be broadened from its current state, to include addressing the particular infringements upon the right to life that people with disabilities most often experience. For example, tailoring the right to life to the experiences of people with disabilities in relation to forced/coercive abortion on account of disability or practices of euthanasia (withholding life saving treatment to newborns with physical and/or mental disabilities) (Landmine Survivors Network 2003). Forced sterilization forced/coercive abortion, female Infanticide, and honour killing would also need to be considered within this Article.

Draft Article 11: Freedom from Torture or Cruel, Inhuman or Degrading Treatment or Punishment

WWDA believes that this Article in its current form, is too limited and does not reflect the significant issues for women with disabilities in relation to torture or cruel, inhuman or degrading treatment or punishment. For example, the current Draft Article 11, recognizes the need to: '*protect persons with disabilities from forced interventions or forced institutionalisation aimed at correcting, improving, or alleviating any actual or perceived impairment*', yet does not include forced sterilization, female-genital mutilation, forced/coercive abortion, female Infanticide or honour killing.

This Article also needs to include the issue of violence against people with disabilities, and should make particular reference to the particular vulnerability of women with disabilities to all forms of violence and abuse. Inherent in this, is the need for this Article to recognize the need for States Parties to take

measures to specifically protect women with disabilities from all forms of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.

WWDA considers it may also be necessary to make explicit mention of violence by caregivers (both formal and informal) within this Article.

Draft Article 12: Freedom From Violence And Abuse

WWDA believes that this Article requires specific reference to the particular vulnerability of women with disabilities to all forms of violence and abuse, and should make explicit reference to forced sterilization, forced/coercive abortion, female-genital mutilation, female Infanticide, and honour killing. WWDA believes that it is imperative that any Article concerning Violence and Abuse must emphasise these forms of abuse.

As with Draft Article 11, WWDA believes that any Article dealing with Violence and Abuse should also make reference for the need for States Parties to take measures to specifically protect women with disabilities from all forms of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse and sexual exploitation. As with Draft Article 11, the issue of violence by caregivers (both formal and informal) may need to be spelled out within the Article on Violence and Abuse.

Draft Article 14: Respect for Privacy, the Home and the Family

WWDA believes that Draft Article 14 (Respect for Privacy, the Home and the Family), in its current form, does not give due recognition of particular disadvantages and discrimination experienced by women with disabilities in relation to relationships, family, reproductive rights, parenting, and sexuality.

Compared to both men with disabilities and non-disabled women, women with disabilities are more likely to never marry, marry later, and be divorced if they do get married (Asch & Fine, 1988; Hannaford, 1989; Simon, 1988). With regard to relationships, women with disabilities often may have to put up with abusive or exploitative relationships because of their limited social and economical means or because the only other alternative may be a life in an institution. Forced marriage is also a major issue affecting women with disabilities.

Many women with disabilities have experienced denial of their desire to become mothers through coerced sterilisation, contraception or abortion; lack of access to information and services; discrimination if they have attempted to adopt children or become foster mothers; along with the hegemonic effects of the widespread belief that women with disabilities cannot and should not bear and raise children (Finger 1984; 1985; Cole 1988; Callo-Brazil 1993; Lonsdale 1990; Asch and Fine,

1988; Waxman 1993; Kallianes & Rubinfeld 1997). When women with disabilities do become mothers they encounter many difficulties because the non-disabled world assumes that the disability makes them unfit to be mothers. Many lose custody of their children in divorce while others may have their children removed from their care by social welfare agencies, solely on the grounds that they have a disability (Corbett, 1989).

For many women with disabilities, issues of reproductive health also continue to be problematic. Support for choices and services in menstrual management, contraception, abortion, sexual health management, pregnancy, birth and menopause are inappropriate, absent or inaccessible (WWDA 2001). For women with disabilities, reproductive rights is seen as more than the right to choose not to have a child. It also encompasses the right to be recognised as sexual; to bear and raise children (even a child with a disability); to be seen as 'fit' to mother and to refuse the use of genetic technologies, as well as the right to make use of reproductive technologies such as donor insemination and IVF (Kallianes & Rubinfeld 1997; Saxton 1984; Finger 1984; Asch 1988; Morris 1991; Rock 1996; Hershey 1994, List 2000).

Whilst WWDA acknowledges the contribution families provide to people with disabilities, and the importance of families, it must also be recognized that people with disabilities live in different family structures. For example, there are families of origin and families of choice or destination, each of which has differing characteristics, relationships, decision making processes and power arrangements. When families as carers are unable to deal with both internal and external pressures, the most vulnerable member of that unit - the person with disabilities - can be placed in physical, economic and psychological jeopardy. In many cases, 'family' does not exist as a support for the person with disabilities. In some cases, particularly for women with disabilities, the 'family' can in fact be the site of oppression, particularly in situations of domestic violence (WWDA 2002).

WWDA therefore believes that any Article relating to Home and the Family must make explicit the fact that women with disabilities experience particular disadvantages and discrimination in relation to relationships, family, reproductive rights, parenting, and sexuality.

Draft Article 16: Children With Disabilities

WWDA believes that Draft Article 16 (Children With Disabilities), needs to include explicit recognition of the particular vulnerability of children with disabilities (particularly girls with disabilities) to all forms of violence and abuse. Inherent in this, is the need to specifically acknowledge the fundamental right to life for the girl child with disabilities.

The practices of female infanticide, selective abortion (also called gender-selective abortion, sex-selective abortion, or female feticide) are among the forms of gender discrimination against women and girl children where sexual roles outweigh the value of human life.

Female genital mutilation (FGM) is a centuries-old cultural practice found in many countries among people following various religions and beliefs. It includes a variety of procedures that remove part or all of a girl's healthy exterior sexual organs. Also known as female genital cutting, female genital circumcision, female genital operations, or clitoridectomies, FGM is most prevalent in African countries. Although FGM procedures may be performed any time between birth and young adulthood, FGM is generally carried out before a girl begins to menstruate. It is estimated that between 85 and 115 million girls and women have undergone some form of FGM (Youth Advocate Program International 2000). The Program for Appropriate Technology in Health (PATH) estimates that 2 million girls are undergoing FGM annually (PATH cited in Youth Advocate Program International 2000).

Research of FGM shows that there are several short-term and long-term health ramifications. Immediately after the procedure girls often experience intense hemorrhaging, pain and shock. FGM cases resulting in severe bleeding and the inability to urinate have caused the death of many girls. Girls undergoing FGM may develop permanently disabling infections such as tetanus, hepatitis and HIV (PATH cited in Youth Advocate Program International 2000).

Honour killing is the practice of killing girls and women who are perceived to have defiled a family's honour by allegedly engaging in sexual activity or other improprieties before marriage or outside of marriage. The girl is killed to restore the family's honour. Honour killing is an extreme form of child abuse and domestic violence.

The organization Youth Advocate Program International (2000) reports the case of a 16 year old girl with 'mental retardation' who was reportedly raped several times by a government employee in Pakistan in 1999. The girl's uncle reported the rape to the police who held the girl in protective custody before releasing her to her tribe, the Mazuzai. The tribal leader concluded that the only way to restore the tribe's honour was to kill the girl for the shame she brought on the tribe. At a tribal gathering, the girl was shot dead (Amnesty International 2000).

WWDA believes that any Article in the Draft Convention dealing with Children With Disabilities must emphasize these specific forms of abuse as they relate to girls with disabilities. Inherent in this, is the need for such an Article to recognize the need for States Parties to take measures to specifically protect girls with disabilities from these practices.

WWDA recognizes that there are a myriad of other human rights abuses of children with disabilities, and that the Draft Text may need to include more explicit recognition of such abuses. Potentially, this could include such practices as:

- Children with disabilities working as beggars, including the practice of families deliberately maiming their children so that they can beg and help support the family (Mennonite Central Committee 2004);
- Girls with disabilities who are sold or kidnapped to serve in brothels (Nepalese Youth Opportunity Foundation 2004).

Draft Article 21: Right to Health and Rehabilitation

WWDA believes that Draft Article 21 (Right to Health and Rehabilitation), in its current form, does not give due recognition of particular disadvantages and discrimination experienced by women with disabilities in relation to their right to health and rehabilitation. WWDA believes that a significant amount of work needs to be done in relation to this Article.

Draft Article 22: Right to Work

It is WWDA's impression that the current Article 22 (Right to Work) appears to take as a starting point, the assumption that many people with disabilities are in positions where they can and do work. The Draft Article appears to be focusing on strategies which '*promote employment opportunities and career advancement for people with disabilities in the open labor market....*'. It is of concern to WWDA that Draft Article 22 does not appear to reflect the severe human rights abuses experienced by many people with disabilities (particularly women and children with disabilities) in relation to 'work'. Examples include, but are not restricted to:

- children and adults with disabilities 'working' as beggars;
- girls and women with disabilities 'working' as prostitutes;
- girls and women with disabilities who are sold or kidnapped to 'work' as sex slaves;
- people with disabilities 'working' in 'sweat shops' or similar;

Conclusions

This paper has sought to address some of the broad issues relating to the Draft Text for a Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities’.

Given the short time frame set by the Government for responses, WWDA is not in a position to undertake widespread consultation with its members on the Draft Text, including consultation on whether existing instruments sufficiently provide protection for the rights of people with disabilities. Similarly, WWDA does not have the resources to research the reporting and monitoring processes contained in the current international framework, and whether there are “problems” with these processes.

WWDA believes that the Draft Text, in its current form, does not acknowledge, emphasise and address the particular disadvantages faced by women with disabilities the world over. Such a Convention should make explicit the impact of multiple discriminations caused by the intersection of gender and disability. WWDA also believes that the current Draft Text needs a significant amount of work in order to reflect the vast human rights abuses experienced by people with disabilities, especially women and children with disabilities.

WWDA believes that, for a Convention to be truly effective, it must represent the aspirations and experiences of the people it seeks to protect. For this reason, WWDA strongly recommends that the Australian Government urgently establish meaningful processes to enable people with disabilities to participate in the development of a Draft Convention on the rights and dignity of persons with disabilities.

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Appendix 1: About Women With Disabilities Australia (WWDA)

Women With Disabilities Australia (WWDA) was incorporated in 1995 and evolved from the National Women's Network within Disabled People's International Australia (DPIA), where it had been operating as an un-funded Network for some eight years. WWDA was initially established by a group of women with disabilities who felt that their needs and concerns were not being acknowledged or addressed within the broader disability sector, or the women's sector in Australia.

Women With Disabilities Australia (WWDA) is the peak organisation for women with all types of disabilities in Australia. It is a federating body of individuals and networks in each State and Territory of Australia and is made up of women with disabilities and associated organisations. The national secretariat is located in Tasmania, an island State of Australia. WWDA is run by women with disabilities, for women with disabilities. It is the only organisation of its kind in Australia and one of only a very small number internationally. WWDA is inclusive and does not discriminate against any disability. WWDA seeks to ensure opportunities in all walks of life for all women with disabilities. In this it aims to increase awareness of, and address issues faced by, women with disabilities in the community. WWDA seeks to ensure the advancement of education of society to the status and needs of women with disabilities in order to promote equity, reduce suffering, poverty, discrimination and exploitation of women with disabilities. WWDA is unique, in that it operates as a national disability organisation; a national women's organisation; and a national human rights organisation. WWDA addresses disability within a social model, which identifies the barriers and restrictions facing women with disabilities as the focus for reform.

The aim of Women With Disabilities Australia (WWDA) is to be a national voice for the needs and rights of women with disabilities and a national force to improve the lives and life chances of women with disabilities.

The objectives of Women With Disabilities Australia (WWDA) are:

- to actively promote the participation of women with disabilities in all aspects of social, economic, political and cultural life;
- to advocate on issues of concern to women with disabilities in Australia; and
- to seek to be the national representative organisation for women with disabilities in Australia by a) undertaking systemic advocacy; b) providing policy advice; c) undertaking research; and d) providing support, information and education.

More information about Women With Disabilities Australia (WWDA) can be found on WWDA's website at: www.wwda.org.au

Appendix 2: The Position Of Women With Disabilities In Australia - A Snapshot

Women with disabilities are, from the government record, one of the most marginalised and disadvantaged groups in Australia. Analysis of data available from a variety of sources, gives us the following information about women with disabilities in Australia.

- There are 3.6 million people in Australia with a disability, making up 19% of the total population. The proportion of males and females with a disability is similar (around 9.5% each) although it varies across age groups.
- There are 1.8 million women with disabilities in Australia. There are more women with disabilities in the older age groups, most notably those 79 years onwards.
- Of the 1.1 million people with a profound or severe core activity restriction, 616,000 are women with disabilities (56%). Among older people with disabilities, the rates of severe and profound disability are markedly greater for females.
- Over 57% of women with disabilities living in households need assistance to move around or go out, shower or dress, prepare meals, do housework, undertake property maintenance or paperwork, or communicate.
- Women with disabilities are less likely to be in paid work than other women, men with disabilities or the population as a whole. Men with disabilities are almost twice as likely to have jobs than women with disabilities. In 1997-98 Commonwealth Government funded open employment services assisted over 31,000 people with disabilities in their efforts to find and maintain jobs on the open labour market. 66.6% of those assisted were men with disabilities. Annual Census of Commonwealth Government funded open employment services show that the percentage of women with disabilities being assisted by these services has continued to decline.
- Women with disabilities' participation rates in the labour market are lower than men with disabilities' participation rates across all disability levels and types. Women with disabilities are less likely than men with disabilities to receive vocational rehabilitation or entry to labour market programs. Commonwealth Rehabilitation Services statistics for 1994/5 indicate only 35% of referred clients were female with women more likely to be rehabilitated to independent living (45%) than vocational goals (36%).

- Women with disabilities earn less than their male counterparts. 51% of women with a disability earn less than \$200 per week compared to 36% of men with a disability. Only 16% of women with a disability earn over \$400 per week, compared to 33% of men with a disability.
- There is a higher incidence of incapacity (10.2%) for unemployed females in Australia compared to unemployed males (7.6%). This applies consistently across all age groups. Unemployed females have a one-third greater incidence of incapacity than unemployed males. The higher incidence of incapacity for unemployed females is more pronounced for those under 50 years age, and especially for 30-39 and under 21 year olds.
- Women with disabilities are less likely than their male counterparts to receive a senior secondary and/or tertiary education. Only 16% of all women with disabilities are likely to have any secondary education compared to 28% of men with disabilities.
- Women with disabilities are substantially over-represented in public housing, comprising over 40% of all persons in Australia aged 15-64 in this form of tenure. Women with disabilities are less likely to own their own houses than their male counterparts.
- Women with disabilities pay the highest level of their gross income on housing, yet are in the lowest income earning bracket. Some women with disabilities pay almost 50 per cent of their gross income on housing and housing related costs. Over 20% of women with disabilities living in public housing are dissatisfied with the service they receive from their State or Territory housing authority.
- Women with disabilities spend more of their income on medical care and health related expenses than men with disabilities.
- Women with disabilities have a consistently higher level of unmet need than their male counterparts across all disability levels and types. Women with disabilities are less likely to receive appropriate services than men with equivalent needs or other women. 60% of recipients of disability support services funded under the Commonwealth/State Disability Agreement are men with disabilities.
- Women with disabilities are less likely than women without disabilities to receive appropriate health services, particularly breast and cervical cancer screening programs, bone density testing, menopause and incontinence management. In Australia, 41% of women with disabilities with core activity restriction aged 70-75 have never had a mammogram. Almost 30% of women with disabilities aged 70-75 with core activity restriction have never had a pap smear. Of those women with disabilities aged 70-75 core activity restriction who have had a pap smear, 39% have not had regular pap smears (every 2 years). These figures are likely to be much higher for women with

disabilities with different disability types (eg: intellectual, cognitive, psychiatric, deaf/hearing impaired, blind/visually impaired) across all age groups.

- Girls and women with disabilities are more likely to be unlawfully sterilised than their male counterparts. Between 1992-1997 at least 1045 girls with disabilities in Australia have been unlawfully sterilised. Comparisons with other data sources suggest that the true number is much greater, perhaps by a factor of several times.
- Regardless of age, race, ethnicity, sexual orientation or class, women with disabilities are assaulted, raped and abused at a rate of at least two times greater than non-disabled women. Statistics indicate that 90% of women with intellectual disabilities have been sexually abused. 68% of women with an intellectual disability will be subjected to sexual abuse before they reach 18.
- Women with disabilities are more likely to be institutionalised than their male counterparts.
- Women with disabilities are often forced to live in situations in which they are vulnerable to violence. They are more likely to experience violence at work than other women, men with disabilities or the population as a whole.
- Access to telecommunications is a major area of inequity for women with disabilities in Australia. A national survey in 1999 found that 84% of women with disabilities are restricted in their access to telecommunications. 49% of women with disabilities are restricted by issues of affordability; 76% by poor design of telecommunications equipment; 20% by lack of training; 20% by lack of information; and 18% by discrimination.

(Sources: Anderson 1996; Frohmader 1998; WWDA 1998; WWDA 1999, ABS 1999, ABS 1993, AIHW 1998, AIHW 1999, AIHW 2000, Currie 1996, Brady & Grover 1997, Temby 1997, Cooper & Temby 1997, Horsley 1991, Binstead 1997, Rutnam, Martin-Murray & Smith 1999, Warburton et al 1999).