



Center for the Human Rights of  
Users and Survivors of Psychiatry

# Reflections on the Human Rights Committee's draft General Comment on Article 6 from a Gender Perspective and a Disability Perspective

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## 1. 1. Introduction

The draft General Comment is highly ambitious and develops the content of the right to life beyond the Human Rights Committee's existing jurisprudence. However, the Rapporteurs pay insufficient attention to the claims of marginalized sectors of the population, in particular women, and persons with disabilities, that are enshrined in norms both under and outside the Covenant but are not adequately reflected in the draft.

Although not generally acknowledged as *lex specialis* in the sense of being an entirely separate regime, non-discrimination treaties and their associated jurisprudence contribute specialized expertise to the development of customary law, and constitute *lex specialis* in the sense of specialized legislation within the human rights treaty framework. The Human Rights Committee should incorporate such norms into its interpretive work, as additional rules of law binding on an overwhelming majority of states parties to the Covenant.<sup>1</sup>

## 2. Abortion and personhood

The draft General Comment conflates the question of fetal life with the question of a fetal right to life; furthermore, by sidestepping the question of personhood as the determinative factor in identifying legal subjects of the right to life,<sup>2</sup> the Rapporteurs also fail to take into account that state regulation of pregnancy impinges on the personhood of pregnant women.

The draft General Comment provides legal precision with respect to states' duty to permit women under some circumstances to terminate a pregnancy, based on the Human Rights Committee's established jurisprudence. However, it is legally incorrect and detrimental to women to contextualize these rights as exceptions to the possibility for states to recognize the right to life of a fetus. While the Rapporteurs say in paragraph 1 of the draft that the right to life is a basic right that facilitates all others, there is a condition prior to the right to life on which it depends, that is, recognition as a person before the law, which itself is protected as a right under Article 16 of the Covenant and other instruments including the Universal Declaration of Human Rights and the CRPD.

### 2.1 Paragraph 7 compared with paragraph 8

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<sup>1</sup> Vienna Convention on the Law of Treaties, Art 31(3)(c).

<sup>2</sup> See submission of Mindy Jane Roseman, JD, PhD.

In paragraph 8, which addresses regulation permissible in light of the “life or potential life” of “frozen embryos, sperms and eggs, stem cells and human clones,” the draft could benefit from greater precision as to the situations envisioned and whether it is contemplated that such regulation pertains to reproductive cells inside the human body, in the laboratory or in any other particular circumstances. With respect to the medical and scientific uses of reproductive material, regulation is less problematic, as there are no living persons whose bodily integrity can be infringed thereby. It is cause for concern, therefore, that the Rapporteurs make the strongest statement on the value of fetal life in the context of paragraph 7, characterizing fetuses inside a woman’s body as “unborn children” and allowing states to endow them with a right to life. This is the very situation in which one would expect greatest restraint - when there is a marginalized class of persons, amounting at least half the human race, whose rights are negatively impacted.

## 2.2 Balancing of fetal life against women’s rights is inappropriate

In paragraph 7, the Rapporteurs accept the possibility for states to recognize a right to life for the fetus inside a woman’s body, subject to exceptions framed primarily on the narrow basis of the pregnant woman’s right to life and to be free from torture and other ill-treatment, notwithstanding the absence of textual support and the fact that such recognition is contrary to the intent of Article 6 as expressed in the *travaux préparatoires*, and contrary to Article 1 of the UDHR.<sup>3</sup> This is an extraordinary departure from the Committee’s own earlier jurisprudence referenced in paragraph 7, and from the general principle of international law that only human beings that have been born can be the holders of human rights.

By allowing states to recognize fetal right to life indirectly (permitting states to “adopt measures designed to protect the life or potential life of unborn children”) and directly (such measures may be accomplished “including through recognition of their capacity to exercise the right the [sic] life”), the draft would legitimize not only restrictions on abortion but other intrusive regulation of the lives and bodies of pregnant women. This is not an abstract risk, as documented by Jocelyn Viterna regarding the criminalization of women who experience stillbirth in Ecuador; it is also the case in eighteen U.S. states that penalize drug use during pregnancy as a form of child abuse.<sup>4</sup> The draft General Comment would give such laws legitimacy under the human rights regime, and would put a discriminatory burden on pregnant women’s exercise of potentially any human rights, not only in domestic jurisdictions where the laws are enacted but at the level of international human rights mechanisms.

The fragility of women’s rights under the regime proposed in paragraph 7 is underscored by the narrow basis on which the Human Rights Committee rests the right to abortion, emphasizing the severity of harm that must threaten a pregnancy women from denial of access to abortion before a state’s restriction of such access is called into question. While this approach is consistent with the Human Rights Committee’s General Comment No. 28 on Article 3, it contrasts with CEDAW text and jurisprudence, which emphasize women’s right to autonomous decision-making with respect to conception and pregnancy, along with the harm to health and other adverse consequences from limiting women’s reproductive freedom.<sup>5</sup> The right to autonomous decision-making with respect to one’s own body and health is a crucial element of the human rights regime that non-disabled men may take for granted, but that is crucial to legal protection against torture and ill-treatment of

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<sup>3</sup> Draft General Comment, footnote 9; see also Roseman submission.

<sup>4</sup> Submission of Jocelyn Viterna, Harvard University Sociology Professor; Guttmacher Institute, State Policies in Brief as of November 1, 2015: Substance Abuse During Pregnancy ([http://www.guttmacher.org/statecenter/spibs/spib\\_SADP.pdf](http://www.guttmacher.org/statecenter/spibs/spib_SADP.pdf)).

<sup>5</sup> CEDAW General Recommendation No. 21 paras 21 and 22.

populations whose bodily autonomy is contested.<sup>6</sup> The underlying right to make decisions about pregnancy must be guaranteed irrespective of the threshold of harm that determines whether a violation additionally constitutes torture or ill-treatment.

### 2.3 Personhood of pregnant women

Human rights law takes the male subject as normative, notwithstanding the commitment to equality of the sexes in the Covenant and other instruments. Pregnancy, of which only women are capable, is treated as a special condition in human rights law, while the condition of being a person who cannot become pregnant is not considered extraordinary. Given that women and men are equally entitled to recognition as persons before the law, this right cannot be limited when a woman becomes pregnant; human rights law has to accommodate pregnancy as part of the human condition.

#### 2.3.1 Split between subject and object

The necessary implication of equality between the sexes with respect to the recognition of legal personhood is recognition of the condition of pregnancy as pertaining to the woman as a subject of law, rather than a condition in which a fetus inside the woman's body is endowed with legal personhood separate from that of the woman. When a woman becomes pregnant, she retains her right to full legal capacity, to have control over her own body and health, and her status as a responsible member of the community.<sup>7</sup>

Men never run the risk of the state treating their body as the location of two legal persons holding competing and potentially conflicting interests. The impact on all women of being split into legal subject and object by such characterization, irrespective of whether individual women become pregnant or choose to carry their pregnancies to term, is to reinforce the regime of male domination that denies the unity of a woman's body and personhood. This regime is expressed in rape and domestic abuse, in the systematic extraction of resources from women, whether in the form of children or unpaid labor, including emotional labor, and in the social norms that evolve to support women's subordination, including stereotypes that treat the female body and women's attention as being available to men and to the public gaze, in contrast to the male body and men's attention which command deference in respect of the person coextensive with that body. This encompasses, but goes beyond, sexual objectification. Legal regimes have not fully grappled with the implications of female personhood, but CEDAW, in grappling with the reality of women's lives, including reproductive coercion,<sup>8</sup> comes closest with norms that center women, including pregnant women, as rights holders, and enshrine women's legal autonomy.

#### 2.3.2 The Covenant and CEDAW jurisprudence

The Covenant guarantees to all persons equal recognition everywhere as a person before the law. The question of whether a fetus in a woman's body can have the right to life depends on who counts as a person before the law, more than a scientific determination of when life begins. Both active and passive dimensions of women's legal personhood are infringed when states are permitted to set up competing interests in the right to legal personhood within a woman's body.

The Committee has interpreted Article 16 to include the active dimension of legal capacity to conclude contracts and exercise civil rights, and has called for eradication of laws and practices that

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<sup>6</sup> See CRPD General Comment No. 1 paras 41 and 41, and Guidelines on Article 14 paras 11 and 12.

<sup>7</sup> CEDAW Art 15, CRPD Arts 12 and 25(d), ICESCR Art 12 and CESCR General Comment No. 14 para 8. See also ICCPR Art 16 and Human Right Committee General Comment No. 21 paras 19 and 20.

<sup>8</sup> CEDAW General Comment No. 21 paras 21 and 22. See also throughout emphasis on legal and economic autonomy as context for impact of childbearing on women's lives.

prevent women from being treated or functioning as full legal persons.<sup>9</sup> This approach is consistent with CEDAW and CRPD, which are more explicit about the right to legal capacity on an equal basis. The right to full and equal legal capacity can also be derived from Article 26 as an aspect of equality before the law and equal protection of the law.

CEDAW Articles 15 and 16 support the view that women's right to legal autonomy includes sovereignty over her own body with respect to pregnancy. Article 15 guarantees to women a legal capacity identical to that of men, which cannot be restricted, along with equal opportunities to exercise that capacity. Article 16(e) requires states to ensure to women "the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information... and means to enable them to exercise these rights." In General Recommendation No. 21, the CEDAW Committee emphasized the harm to women's equal status as responsible members of the community when their legal capacity is denied. Women remain responsible members of the community when they are pregnant, whose exercise of responsibility with respect to their own bodies must be honored irrespective of whether other members of the community or disagree with their decisions.<sup>10</sup>

The text of Article 16(e) sets women and men on an equal footing with respect to reproductive rights. Yet it is only women who become pregnant, and as recognized in General Recommendation No. 21, women's disparate responsibilities "to bear and raise children" have a significant impact on women's education, employment, personal development, and physical and mental health, and these responsibilities also result in inequitable burdens of work. For these reasons, the CEDAW Committee concluded, "women are entitled to decide on the number and spacing of their children," and "decisions to have children or not... cannot be limited by spouse, parent, partner or Government."<sup>11</sup> While the General Recommendation does not specify abortion per se as a means by which women can exercise their reproductive decisions, it would logically fall within the scope of decisions to have children or not, with which a state may not interfere.

In addition, CEDAW Article 12 requires states to provide services to women in relation to pregnancy, childbirth and the post-natal period, including adequate nutrition for pregnancy and lactation.<sup>12</sup> Women, and not the fetus, are the legal subject for these services (and of course once the fetus is born, it becomes a child with human rights of its own). States have an interest in supporting women's gestation of new life by supporting women, and have a duty to not impair women's equal enjoyment of human rights by treating fetal life as having an independent interest that the state can support against the woman's interests and will.<sup>13</sup> The Human Rights Committee should consider this approach, which strikes a correct balance between affirming the value of life and honoring women as the bearers of life who are furthermore legal subjects of international human rights law.

Although the CEDAW Committee has not outright called for removal of all restrictions on abortion in subsequent General Comments or its Concluding Observations, the general principles articulated above suggest that this failure amounts to political compromise, and that the actual norm tends toward abolition of restrictions, similar to how the draft General Comment views abolition of the death penalty. Both CEDAW and the Human Rights Committee have urged states to remove

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<sup>9</sup> Human Rights Committee General Comment no. 21 para 19.

<sup>10</sup> A similar approach is taken in CRPD General Comment No. 1; see in particular para 15.

<sup>11</sup> CEDAW General Recommendation No. 21 paras 21 and 22.

<sup>12</sup> See also CEDAW General Recommendation No. 24.

<sup>13</sup> Roseman submission makes a similar point on page 2.

restrictions on abortion, but do not urge states to enact more severe restrictions.<sup>14</sup> The Committee on the Rights of Persons with Disabilities has recommended that states refrain from allowing abortions differentially based on fetal impairment, but did not specify in which direction the law should be equalized; furthermore, these recommendations were not made in the context of any substantive rights, but under General Obligations, in an exercise of restraint against implying that fetuses could be rights-holders under the Convention.<sup>15</sup>

The Human Rights Committee has the authority to say what the Covenant requires, irrespective of whether its standards differ from other human rights treaties, just as other treaty bodies have authority in their own mandates. However, the Committee should take account of the theoretical basis for women's reproductive rights under CEDAW, along with corresponding state obligations, as complementary *lex specialis* within the human rights regime. As CEDAW has a well developed approach to women's reproductive rights and the rights of pregnant women that centers women as autonomous beings and legal subjects, against which it is apparent that any permission to a state to recognize fetal rights necessarily reduce the rights of women, and the Covenant can also supply a textual basis for the CEDAW approach, the Human Rights Committee should refrain from adopting this standard, which would impair the rights of women under both instruments.

## 2.4 Conclusion and recommendations

The Human Rights Committee has attempted to reconcile polar opposite positions on the question of fetal life and a woman's right to terminate a pregnancy. As the human rights regime only applies to persons, including women, and recognition of fetal rights (or permission under the Covenant for states to recognize such rights) would impair women's equality with men in all fields of life, and would call into question the recognition of her distinct personhood as a legal subject on an equal basis with men, it is not possible to reconcile these opposite positions without violating fundamental principles of the international human rights framework: in particular the principle that the subjects of human rights law are persons, meaning human beings that have been born; and the principle of equality of the sexes. For these reasons the Human Rights Committee should consider deleting paragraph 7 entirely, and should address women's reproductive rights without attempting to balance these rights against fetal rights or state interests in protecting fetal life counter to the woman's interests and will, for which purpose the following suggestions are submitted:

- Re-affirm that the right to life as such only pertains to persons, that is, to human beings that have been born, and do not leave it open to states to recognize the capacity of embryos, fetuses, or reproductive cells to enjoy or exercise the right to life.
- Recognize that persons have human rights with respect to their body parts, including reproductive material, and with respect to the potential for life contained in their reproductive material.
- Permit states to regulate with respect to reproductive material and embryos stored outside the human body, in order to promote respect for human dignity, which is implicated in the scientific use of such materials.
- Clarify that a pregnant woman is a person who retains full rights over her bodily autonomy, including the sole right to make decisions about the pregnancy and

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<sup>14</sup> Concluding Observations cited in footnotes to paragraph 7 of the Draft General Comment; informal survey of recent CEDAW Concluding Observations.

<sup>15</sup> CRPD/C/ESP/CO/1 paras 17 and 18; CRPD/C/HUN/CO/1 paras 17 and 18. See also Roseman submission page 4.

whether to terminate it. I make this suggestion de lege ferenda as a logical implication of women's equality with men and an approach to women's equality that does not center men exclusively as the normative subject of law but takes equal account of women's lives and experiences. Restrictions on abortion would be treated as a political compromise with the aim of treating women as fully responsible members of the community who uniquely are capable of bearing life and uniquely have the right to make decisions about conception, gestation and birth.

- Honor the value of human dignity by enacting policies that equally support women's right to bring new life into the world, and to refrain from bringing new life into the world.

### **3. Disability**

The draft General Comment does not include persons with disabilities in paragraph 26 among the vulnerable groups whose right to life must be protected against heightened threat by means of measures such as police protection, restraining orders against potential aggressors, and protective custody with the free and informed consent of the individual concerned. This is a serious omission, since persons with disabilities are commonly subjected to extreme forms of abuse, neglect, and deliberate killing, and to medical neglect and abuse including non-consensual treatment with psychiatric medications and electroshock, which threaten or violate their right to life.<sup>16</sup> Nor do they mention disability-related killings as a form of arbitrary deprivation of life that must be prohibited in paragraph 24, or take the opportunity to address threats to the survival of children with disabilities in paragraph 61. In that regard, it should be noted that CRPD Article 18(b) together with Article 12.1 requires states to ensure that children with disabilities are registered at birth, so that they are protected against infanticide and concealment.<sup>17</sup>

The rights of persons with disabilities are mentioned only in connection in connection with the application of the death penalty (paragraphs 22 and 51), risks to life in custody of state mental health facilities (paragraph 27), and implicitly in connection with suicide (paragraph 10). The approach to these issues is in large part inconsistent with the specialized regime of the CRPD and its associated jurisprudence, emanating from a treaty body that has specialized expertise on the human rights of persons with disabilities.

The draft cites CRPD Article 10 in connection with "special protective measures" said to be required to ensure the rights of persons with disabilities to protection against arbitrary detention on an equal basis with others. However, Article 10 contains no reference to such measures, and the measures proposed in this draft in connection with limitations on application of the death penalty are in some respects contrary to the jurisprudence of the CRPD Committee under other articles of the treaty.

#### **3.1 Suicide prevention**

The characterization of the state of mind of individuals planning or attempting suicide as being a "temporary crisis that hinders the ability to make rational decisions" is problematic as it calls for evaluation of another person's decision-making ability and valorizes rationality, which leads to

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<sup>16</sup> See CRPD Concluding Observations on China, CRPD/C/CHN/CO/1 paras 19 and 20, and Spain CRPD/C/ESP/CO/1 paras 29-30; see also CHRUSP parallel report to Human Rights Committee on the United States (non-consensual medication), Section II, <https://dk-media.s3.amazonaws.com/AA/AG/chrusp-biz/downloads/283810/CHRUSPUSICCPRshadowreportFINAL.pdf>.

<sup>17</sup> CRPD General Comment No. 1 para 43.

discriminatory denials of legal capacity of persons with disabilities.<sup>18</sup> The evaluation of decision-making ability, even if informal, perpetuates negative stereotypes with respect to persons with disabilities and should not be invoked in a legal standard with respect to the obligations of states to prevent suicide.

The valorization of rationality as a standard for proper decision-making is furthermore a conceptual and legal fiction that elevates the self-proclaimed status of white, non-disabled, professional men as arbiters of everyone else's judgment. Rationality is valued positively as being associated with whiteness, maleness, professional employment, and presumptive sanity, while females, persons of color, blue collar workers, and those who are seen as mad both lack access to the conditions under which the use of rationality in decision-making can lead to satisfying results, and are penalized for prioritizing rationality since they are thereby challenging social hierarchies. Rationality thus functions as a political judgment and is not useful to distinguish situations in which people may have emotional, social, physical or other needs that will not be met by suicide, from those in which people have made a serious and deliberate choice to die.

While the draft does not mention the use of coercive mental health interventions, including detention on the basis of "danger to oneself," in connection with suicide prevention, they do not preclude such measures, as the standard of "generally respecting personal autonomy" is vague and suggests that exceptions may be allowed, without articulating the basis for any potential exceptions. This draft as well as the Committee's existing jurisprudence as summarized in General Comment No. 35 paragraph 19, contravenes the standard that must be applied under the Convention on the Rights of Persons with Disabilities, with 159 states parties as of 23 January 2016, as well as under general international law as applied by the Working Group on Arbitrary Detention. CRPD Article 14 contains an absolute prohibition of impairment-based detention and compulsory treatment, including detention of persons with actual or perceived psychosocial impairments based on alleged danger to oneself or others, as affirmed most recently by the Committee on the Rights of Persons with Disabilities in its Guidelines on Article 14.<sup>19</sup> The Working Group on Arbitrary Detention has similarly affirmed the absolute prohibition of disability-based detention and compulsory treatment.<sup>20</sup> The CRPD Committee called particular attention to the application of this prohibition in emergency and crisis situations, reiterating its jurisprudence in General Comment No. 1 to the effect that persons with disabilities retain their legal capacity to make decisions in emergency and crisis situations, that policies and legislative provisions allowing forced treatment must be abolished, and that non-medical approaches must be made available.<sup>21</sup> Services should be provided based on the free and informed consent of the person concerned to support individuals struggling with suicidal thoughts.<sup>22</sup> The Human Rights Committee should reverse its jurisprudence to date and specify that detention and other coercive mental health interventions are not permitted as a means of protecting the right to life, as they constitute unjustified adverse treatment of persons with disabilities on the basis of their disability.

The recommendation to prevent suicidal individuals from accessing firearms should be limited to an obligation to secure firearms anywhere so that no unauthorized person can access them (as the Committee has recommended in past Concluding Observations),<sup>23</sup> and not knowingly providing

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<sup>18</sup> CRPD General Comment no. 1 para 15.

<sup>19</sup> CRPD Guidelines on Article 14 paras 10 – 15.

<sup>20</sup> UN Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court, A/HRC/30/37, paras 38, 103, 106(b), 107(a), (d) and (e).

<sup>21</sup> CRPD Guidelines on Article 14 paras 22 and 22.

<sup>22</sup> See for example <http://www.abc.net.au/news/2015-08-20/culturally-sensitive-program-launched-tackle-indigenous-suicide/6712482>, and <http://www.westernmassrlc.org/alternatives-to-suicide>.

<sup>23</sup> Human Rights Committee Concluding Observations on Switzerland (2009) para 12.

such access to a person who intends to use it to commit suicide. If not limited in time, or if understood to encompass a duty to identify individuals who may be suicidal, the resulting measures would intrude on civil liberties and put persons with psychosocial disabilities in particular at risk.

Lastly, it is surprising to see the termination of life-prolonging treatment coupled with suicide and characterized as an extraordinary measure which medical professionals have the discretion to accommodate or not. The decision to accept or refuse life-prolonging treatment is a simple exercise of free and informed consent, which is a general principle of law and guaranteed under ICESCR Article 12 and CRPD Articles 12 and 25. While medical professionals must always be under a duty to exercise their best ethical judgment and be vigilant against undue influence, either for or against a treatment,<sup>24</sup> the decision ultimately belongs only to the person concerned. Persons with disabilities are doubly impacted with regard to termination of life-prolonging treatment, as their decision-making capacity is disproportionately likely to be challenged, and their lives are viewed as less worthy than others'; furthermore, a person in a vulnerable physical condition or who communicates in non-conventional ways is at greater risk of abuse. The balance struck in the CRPD, respecting and supporting legal capacity and requiring safeguards to prevent abuse while continuing to respect the person's will and preferences, offers the greatest human rights protection to those who are most vulnerable.

The Human Rights Committee should reconsider its approach to suicide and ensure that the autonomy of persons with disabilities is respected on an equal basis with others in carrying out suicide prevention activities, by excluding coercive mental health interventions and registries of persons once found to have been suicidal, and ensuring that the focus remains on systemic measures and provision of fully consensual services; furthermore, the Committee should adhere to the norm of free and informed consent with respect to refusal of any medical treatment, and not accord medical professionals a gate-keeping role in such matters.

### 3.2 Application of the death penalty

The characterization of persons with disabilities as requiring "special measures of protection" is linked directly with application of the death penalty. The singling out of persons with disabilities for particular concern suggests an uneasiness with persons with disabilities as subjects of the criminal justice system and criminal responsibility that should be questioned.

The first recommendation is that state organs dealing with relevant proceedings "afford considerable weight" to the extent to which persons with disabilities were able to defend themselves on an equal basis with others. It would be helpful to reframe the recommendation as referring to barriers faced by persons with disabilities in defending themselves, focusing on the environmental aspect of disability as direct and indirect discrimination rather than scrutinizing the person. For example, persons with disabilities might face prejudice as witnesses in their own defense, lack of reasonable accommodation or support needed to participate effectively in legal proceedings, and incompetent counsel. The social model of disability enshrined in the CRPD is designed to promote equality and non-discrimination by placing the burden on social institutions to ensure that diversity is accommodated, rather than treating an individual's ability apart from its social context, which leads to paternalistic measures depriving the individual of legal and practical autonomy. While the intent of the first recommendation is laudable, the wording opens the door to declarations of incompetence, which are contrary to CRPD Articles 12, 13 and 14, and contrary to the Basic Principles and Guidelines issued by the Working Group on Arbitrary Detention.<sup>25</sup> The Human

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<sup>24</sup> CRPD General Comment No. 1 paras 41 and 42; see also Guidelines on Article 14 paras 14 and 15.

<sup>25</sup> CRPD Guidelines on Article 14 para 16; CRPD General Comment No. 1 paras 38 and 39; UN Basic Principles and Guidelines paras 106(a), 107(a) and (b); see also Minkowitz, Rethinking

Rights Committee should change the wording to reflect the existence of barriers or obstacles rather than decontextualized ability.

The second and third recommendations are for those state organs to consider in appropriate cases the person's level of moral culpability and their ability to understand the reasons for their punishment. It is difficult to see why the level of moral culpability pertains uniquely to persons with disabilities, as there may be many relevant personal and social circumstances beyond those that are disability-related; the same may be true of a person's understanding of the reasons for punishment. To provide the widest possible human rights protection, and to avoid unfairly characterizing persons with disabilities as inferior moral actors, which impairs their status as equal members of the community, such measures should be extended to all persons involved in proceedings related to the death penalty. A universal approach would be consistent with the social model of the CRPD as described above with respect to barriers and obstacles facing persons with disabilities in obtaining a fair trial. Furthermore, singling out persons with disabilities in measures related to the negation of criminal responsibility is contrary to CRPD Article 14; such measures deprive individuals of equal guarantees to a fair trial and are accompanied by detention in mental health facilities or other disability-linked institutions.<sup>26</sup> The Human Rights Committee should escape the paradigm of paternalism towards persons with disabilities and, similarly to the question of equality of the sexes, affirm standards for protection of the rights of persons with disabilities that do not sacrifice full and equal personhood.

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Center for the Human Rights of Users and Survivors of Psychiatry (CHRUSP) aims to provide strategic leadership in human rights advocacy, implementation and monitoring relevant to people experiencing or labeled with madness, mental health problems or trauma. In particular, CHRUSP works for full legal capacity for all, an end to forced drugging, forced electroshock and psychiatric incarceration, and for support that respects individual integrity and free will.

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Criminal Responsibility from a Critical Disability Perspective, Griffith Law Review 23:3, 434-466, <http://dx.doi.org/10.1080/10383441.2014.1013177>.

<sup>26</sup> CRPD Guidelines on Article 14 para 16; CRPD Concluding Observations on Kenya (2015) para 28(b).