

## HUMAN RIGHTS WATCH

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July 26, 2005

Ms. Kyung-wha Kang  
Permanent Mission of the Republic of Korea to the  
United Nations  
335 East 45th Street  
New York, NY 10017  
Via Post and Fax (212) 986-1083

Dear Ms. Kang,

It was a pleasure meeting you at the side event on women with disabilities at the United Nations in February. This letter is to follow up on our brief conversation and to offer our perspective on how the draft Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities (the Draft Convention) could further address the particular concerns of disabled women and girls. This is a critical human rights concern, and we appreciate your leadership in the area of women's and girls' rights within the Draft Convention.

Human Rights Watch is the largest international human rights organization based in the United States. The Women's Rights Division undertakes research and advocacy on a wide variety of international women's human rights issues.

Our comments below are based on our assessment of the language in the Draft Convention as well as the changes proposed in the reports from the third, fourth, and fifth ad hoc committee meetings on this matter. The comments draw on our knowledge of other international and regional human rights instruments relating to the rights of women and girls. Our comments are as follows:

- **Article 2 (General Principles).** This article specifies important principles, but could benefit from an explicit reference to "rights." We suggest that article 2(e) be changed from "equality of opportunity" to "equality of rights and opportunity." We also believe it would be helpful to have a clear statement about gender equality within these general principles, and would recommend having something parallel to article 3 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). It could read: "(f) the equal right of men and women to enjoy all rights set forth in the present convention."
- **Article 4 (General Obligations).** Article 4(1)(a) of the Draft Convention requires that states parties undertake to "discourage customs or practices that are inconsistent with the convention." Since customs and traditional practices are at the heart of many violations of women's rights, we believe this could be stated more affirmatively and forcefully. Rather than just undertaking to discourage such practices, we would change this to read "states parties shall undertake to actively discourage customs or practices that are inconsistent with this convention by adopting all necessary measures to modify social and cultural patterns of conduct that are inconsistent with the convention." This is similar to language in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).
- **Article 6 (Statistics and Data Collection).** The original draft text for article 6(d) would have required that data on disability be disaggregated according to age, sex, and type of disability. The fourth ad hoc committee report indicates that this article is likely to be streamlined, removing this language. If any specific language is retained about criteria for disaggregating data, which would be our preference, we suggest that additional criteria for



data disaggregation include marital and parental status since people with disabilities often confront hurdles to their rights to marry and found a family.

- **Article 7 (Equality and Non-Discrimination).** Sub-paragraph 1 of the original draft of this section lists a somewhat standard array of characteristics on the basis of which discrimination should not be allowed. If the approach outlined in the fourth ad hoc committee report is followed, this language will be removed and possibly added to the preamble. We prefer that this remain in the text so that it is binding. To be more in keeping with developments in international human rights law, we would add the bases of pregnancy, marital status, sexual orientation, and gender identity to the list. In terms of sub-paragraph 5 of this article, which covers special measures to accelerate de facto equality, it would be helpful to draw from General Recommendation 25 of the Committee on the Elimination of Discrimination against Women, which has a thorough analysis of “temporary special measures” (the phrasing in CEDAW) aimed at substantive equality. As the most recent and thorough UN interpretation on such matters, it should be a helpful source for formulating the language in the disability convention.
- **Article 14 (Respect for Privacy, the Home and the Family).** This article covers crucial topics relating to the rights of persons with disabilities to have sexual lives and families. We are concerned that the language focuses heavily on parenthood and not on sexual and reproductive autonomy and health more generally. We are also concerned about revisions proposed in bracketed language in the fifth ad hoc committee report. These proposals may not yet have significant backing, but we thought it was important to express our views on these proposals, and how they would violate human rights law, before they go further.
  - In subsection 14(1)(a) (according to the numbering in the fifth ad hoc committee report), rather than talking about “equal opportunity” we would use the words “equal right and opportunity.” After the clause reading “have sexual and other intimate relationships,” we would add “free of coercion, discrimination, and violence.” This language is drawn from the Beijing Platform for Action (para. 95) and has been incorporated into resolutions of the U.N. Commission on Human Rights.
  - Also in subsection 14(1)(a), the proposed addition of the bracketed words “through a legal marriage” in the fifth ad hoc committee report would be discriminatory and contradicts existing international norms. All persons should have the right to exercise their sexuality freely and consensually, not merely in the context of a legal marriage: we would thus delete this language. We would change the last clause which reads “experience parenthood” to “make autonomous decisions about reproduction and parenthood,” believing that this captures broader issues of reproductive choice without excluding parenthood.
  - Finally on subsection 14(1)(a), we are deeply concerned about the bracketed proposal to add the phrase “in accordance with the national laws, customs and traditions in each country” to the end of this subsection. The convention should establish universal minimum standards with which governments should comply, rather than subordinate such standards to national law, or countenance any existing provision, custom, or tradition regardless of whether or not it is abusive or discriminatory. The fact that female genital mutilation, widow inheritance, or the criminalization of consensual homosexual conduct may be consonant with local custom does not mitigate their violation of international legal standards. It is worth recalling that Article 5 of CEDAW obligates states specifically to “modify the social and cultural patterns of conduct of men and women” in order to promote equality and combat discrimination. Moreover, treaty bodies and human rights mechanisms have repeatedly affirmed the priority of universal standards of dignity and non-discrimination over domestic law or custom. In the case of *Toonen v Australia*, for instance, the U.N. Human Rights Committee observed that it “cannot accept” that “moral issues are exclusively a matter of domestic concern” in affirming the universal application of standards of privacy and non-discrimination.
  - In subsection 14(1)(c), we would add “, services and methods” after “family planning education.” While education on family planning is crucial, it will accomplish little without also providing actual access to services and methods of family planning. Moreover, we also suggest requiring states to ensure that family planning and reproductive health services are appropriately tailored to the needs of persons with disability to avoid harmful effects where certain family planning methods may be counter-indicated for persons with certain disabilities. In addition, we would add language to make it clear that family planning education and information must be delivered in ways adapted to various types of disabilities.
  - In subsection 14(2) (according to the numbering of the fifth ad hoc committee report), we would add after the clause “trusteeship and adoption of children” an additional clause reading: “custody of children upon divorce or death of a spouse.” This is important because in a number of countries, disabled parents may be arbitrarily deprived of custody of their children upon divorce or death of their spouse.
- **Article 15 bis (Women with Disabilities).** Recognizing that most victims of domestic violence are women, we suggest adding specific language on this issue, such as:

15 bis (f) Ensure that instances of domestic violence, whether committed by family members, personal assistance, or others, are investigated and prosecuted and that protection and rehabilitation services are provided. In particular, states shall provide accessible shelters for survivors of domestic violence and their children.

If this is not incorporated in article 15 bis, or if a decision is made to not have a distinct article on disabled women at all, this could also be incorporated in article 12 on violence.

- **Article 17 (Education).** Since harassment and violence is rampant in schools and significantly affects disabled women and girls, we would add a new subsection to article 17(2) reading: “(d) that measures are in effect to prevent and remedy harassment, including sexual harassment and disability harassment, and violence in educational settings.”
- **Article 21 (Right to Health and Rehabilitation).** Both the ICESCR and General Comment No. 14 of the Committee on Economic, Social and Cultural Rights on the right to the highest attainable standard of health have stronger language ensuring protection of the right to health than the language in the proposed disability rights convention. We suggest that the Draft Convention be adapted to include this stronger language. Specific references to persons living with disabilities from General Comment No. 14 are included in the appendix to this letter (our emphasis added). We also suggest adding language in the introduction to this article committing states to “ensure the progressive realization of the right to health and rehabilitation.” As noted in General Comment 14, many measures to ensure the right to health and rehabilitation for people living with disabilities can be pursued with minimum resource implications through the adoption, modification or abrogation of legislation or the dissemination of information. Thus even in times of severe resource constraints, vulnerable members of society must be protected by the adoption of relatively low-cost, targeted programs.
- **Article 22 (Right to Work).** Because sexual harassment is also rampant in the workplace, we would add in subsection (h) after the word “grievances” the phrase “, including sexual harassment and harassment relating to disability,”.
- **Article 23 (Social Security and an Adequate Standard of Living).** In some countries, divorced women are denied public assistance. In light of that, we would add in subsection (b) after the phrase “women and girls with disabilities” a clause that reads: “, regardless of their marital status.”

We hope that you find this letter constructive, and would be happy to meet with you at your convenience to discuss this further.

Sincerely,

Janet Walsh  
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Women’s Rights Division

Scott Long  
Director  
Lesbian, Gay, Bisexual and Transgender Rights Program

Rebecca Schleifer  
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Cc: Peggy Hicks, Global Advocacy Director, Human Rights Watch  
Joanna Weschler, U.N. Representative, Human Rights Watch

## Appendix

### Language on Disability from General Comment No. 14 of the U.N. Committee on Economic, Social and Cultural Rights

12. "The right to health in all its forms and at all levels contains the following interrelated and essential elements, the precise application of which will depend on the conditions prevailing in a particular State party:

...

12(b); Accessibility: ...

Physical accessibility: **health facilities, goods and services must be within safe physical reach for all sections of the population**, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, **persons with disabilities** and persons with HIV/AIDS. Accessibility also implies that medical services and underlying determinants of health, such as safe and potable water and adequate sanitation facilities, are within safe physical reach, including in rural areas. **Accessibility further includes adequate access to buildings for persons with disabilities.**

...

#### Article 12.2 (d). The right to health facilities, goods and services

17. "The creation of conditions which would assure to all medical service and medical attention in the event of sickness" (art. 12.2 (d)), both physical and mental, includes the provision of equal and timely access to basic preventive, curative, rehabilitative health services and health education; regular screening programmes; **appropriate treatment of prevalent diseases, illnesses, injuries and disabilities, preferably at community level**; the provision of essential drugs; and appropriate mental health treatment and care. A further important aspect is the improvement and furtherance of participation of the population in the provision of preventive and curative health services, such as the organization of the health sector, the insurance system and, in particular, participation in political decisions relating to the right to health taken at both the community and national levels.

#### Non-discrimination and equal treatment

18. By virtue of article 2.2 and article 3, the Covenant proscribes any discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, **physical or mental disability**, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health. **The Committee stresses that many measures, such as most strategies and programmes designed to eliminate health-related discrimination, can be pursued with minimum resource implications through the adoption, modification or abrogation of legislation or the dissemination of information. The Committee recalls General Comment No. 3, paragraph 12, which states that even in times of severe resource constraints, the vulnerable members of society must be protected by the adoption of relatively low-cost targeted programmes.**

...

#### Children and adolescents

22. Article 12.2 (a) outlines the need to take measures to reduce infant mortality and promote the healthy development of infants and children. Subsequent international human rights instruments recognize that children and adolescents have the right to the enjoyment of the highest standard of health and access to facilities for the treatment of illness.

The Convention on the Rights of the Child directs States to ensure access to essential health services for the child and his or her family, including pre- and post-natal care for mothers. The Convention links these goals with ensuring access to child-friendly information about preventive and health-promoting behaviour and support to families and communities in implementing these practices. Implementation of the principle of non-discrimination requires that girls, as well as boys, have equal access to adequate nutrition, safe environments, and physical as well as mental health services. There is a need to adopt effective and appropriate measures to abolish harmful traditional practices affecting the health of children, particularly girls, including early marriage, female genital mutilation, preferential feeding and care of male children. **Children with disabilities should be given the opportunity to enjoy a fulfilling and decent life and to participate within their community.**

...

#### Persons with disabilities

26. The Committee reaffirms paragraph 34 of its General Comment No. 5, which addresses the issue of persons with disabilities in the context of the right to physical and mental health. **Moreover, the Committee stresses the need to ensure that not only the public health sector but also private providers of health services and facilities comply with the principle of non-discrimination in relation to persons with disabilities.**