IDA-EDF Online Workshop
Using UN optional protocols to defend the rights of women and girls with disabilities

Monday 10th of May
2-3:30 pm CET
Session 2:

Learning from experience.

Examples from the Optional Protocol of the Convention on the Rights of Persons with Disabilities
Optional protocol to the CRPD

- 97 countries ratified, 28 signatories, 73 no action
Optional protocol to the CRPD

• Views adopted (and cases discontinued explicitly): 44
• On 18 countries:

Argentina (1), Australia (11), Austria (2), Brazil (2), Denmark (1), Ecuador (1), Germany (2), Greece (1), Hungary (2), Italy (1), Lithuania (1), Mexico (1), Saudi Arabia (1), South Africa (1), Spain (4), Sweden (6), Tanzania (3), United Kingdom of Great Britain and Northern Ireland (3)
Optional protocol to the CRPD

To make use of the OP, consider:

• Admissibility requirements (art. 2 OP)

• And their exceptions: E.g. to 2(d) – Exhaustion of domestic remedies: They are not available; application national remedies is “unreasonably prolonged”, unlikely to bring effective relief ("no prospect of success")

• Interim measures under Article 4 OP
IDA’s Websites on OP to the CRPD

• To facilitate access to this area of work of the CRPD Committee

**Website on individual communications**

• Includes short descriptions of the 44 views adopted (and discontinued explicitly), in reverse chronological order.

• For each case, a summary of the views adopted. Within each summary, links to the complete Views at the official source

  https://www.internationaldisabilityalliance.org/crpd-committee-interpretation

**Website on the Inquiry Procedure (with summaries of 3 reports)**

  https://www.internationaldisabilityalliance.org/inquiry-procedure-crpd-committee
For countries which have not ratified the OP

Section K of Working methods: Early-awareness and urgent-action procedures:

• preventing existing problems within States parties from escalating into full-fledged conflicts or
• preventing the revival of pre-existing problems.
• issues that may require immediate attention in order to avoid serious violations of the Convention or to reduce the number or degree of such violations.
Article 6 in the OP practice

Article 6 - Women with disabilities

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

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

See also CRPD Committee General comment 3 on Article 6
The case concerns a woman with albinism and a single mother who was attacked by several men that amputated her one arm and mutilated the other. The attackers were detained and later, they were released because the victim's testimony was invalidated under the argument that she was visually impaired. The Committee found:

- discrimination on the basis of her disability, because the violence against people with albinism is a generalized practice in the State; and
- disability-based discrimination owing to impunity for the violent acts that she suffered. After the incident, the victim was not provided with assistance for her rehabilitation and reintegration.

- **Violation of Articles 5, 15 (1), 16 and 17**
Ms. Z. v. Tanzania - 19.09.2019

On Article 6
• the author was the single mother of a small child and was pregnant.
• as a consequence of the attack, the author suffered a miscarriage.
• these resulted in her isolation from the community amounting to gender- and disability-based discrimination.
• None of these elements was considered during national procedures to address gender discrimination
• “invisibilization” of the impacts suffered as a woman amounts to gender-based discrimination, contrary article 6 of the Convention, which requires
  • recognizing and addressing multiple discrimination, and
  • ensuring the full development, advancement and empowerment of women, for guaranteeing the exercise of rights

Violation of article 6, read in conjunction with articles 5, 15 (1), 16 and 17 of the Convention.
The case concerns a national from Iraq, who applied for asylum in Sweden and was diagnosed with “depression with psychotic features.” Her asylum application based on the fact that she had received death threats from relatives in Iraq due to a relationship she maintained with a man whom her family disapproved, was rejected, decision ultimately confirmed by the Migration Court of Appeal. She pursued new administrative and court proceedings to prevent her deportation, now based on the deterioration of her mental health and on the allegation that she would not be able to access adequate mental health care services in Iraq.

- Main allegations under Articles 10 (right to life) and 15 (Freedom from torture or cruel, inhuman or degrading treatment or punishment) of the CRPD

- On Article 6 of the CRPD, in her complaint: “as a woman without a family network in Iraq, her special vulnerability as a woman with disabilities is to be recognized under article 6 of the Convention.”
NL v Sweden - 28.08.2020

The Committee found:

• Claim under Article 6 is inadmissible under article 2 (e) of OP (not sufficiently substantiated):

  “the author has not provided any additional specific information or argumentation to justify her claims under articles 6 ..., nor has she explained how these claims would amount to a real and personal risk of irreparable harm if she were to be removed to Iraq” (similar MD. v. Australia, on indigenous background).

• State failed to discharge obligations under Article 15 of the CRPD (Freedom from torture or cruel, inhuman or degrading treatment or punishment), as it failed to assess whether the author would in fact be able to access adequate medical care if removed to Iraq.
Other thematic areas in views adopted to consider

- Access to justice, procedural accommodation and accessibility: Boris Makarov v Lithuania (2017); Beasley v Australia (2016); Michael Lockrey v Australia (2016),
- Access to justice, legal assistance and treatment in detention: Munir Al Adam and ADHRB v Saudi Arabia (2016)
- Institutionalization following diversion from criminal proceedings: Marlon Noble v Australia (2016); C.L. v. Australia (2019)
- Family reunification and nationality: Iuliia Domina and Max Bendtsen v Denmark (2018)
- Health and rehabilitation: HM v Sweden (2012) (Reasonable accommodation)
- Employment: Jungelin v Sweden (2014) (reasonable accommodation); V.F.C v. Spain (2019); Sahlin v Sweden (2020)
- Right to vote: Zsolt Bujdosó v Hungary (2013) (on legal capacity); Fiona Given v Australia (2018) (accessibility and support)
Thank you for your attention

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International Disability Alliance
https://www.internationaldisabilityalliance.org/
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