

Committee on the Rights of Persons with Disabilities

Comments on the draft General Comment No36 of the Human Rights Committee on article 6 of the International Covenant on Civil and Political Rights

The Committee on the Rights of Persons with Disabilities (hereinafter “the CRPD Committee”) would like to provide the following comments to the above-mentioned draft General Comment No36 of the Human Rights Committee:

1. Paragraph 9, line 9: “ most notably where the pregnancy is the result of rape or incest or when the foetus suffers from fatal impairment”

The CRPD Committee proposes to delete these examples. Laws which explicitly allow for abortion on grounds of impairment violate the Convention on the Rights of Persons with Disabilities (Art. 4,5,8). Even if the condition is considered fatal, there is still a decision made on the basis of impairment. Often it cannot be said if an impairment is fatal. Experience shows that assessments on impairment conditions are often false. Even if it is not false, the assessment perpetuates notions of stereotyping disability as incompatible with a good life.

2. Paragraph 10, line 7: “At the same time, States parties [may allow] [should not prevent] medical professionals to provide medical treatment or the medical means in order to facilitate the termination of life of [catastrophically] afflicted adults, such as the mortally wounded or terminally ill, who experience severe physical or mental pain and suffering and wish to die with dignity”

The CRPD Committee proposes to reformulate the sentence as follows: “At the same time, State parties should not prevent medical professionals to provide medical treatment or the medical means in order to facilitate painful situations at the end of life” Again giving examples as the ones mentioned in the text perpetuates stereotypes about severely impaired people suffering and being better off dead.

3. Paragraph 27.

The CRPD Committee proposes that in the list of groups exposed to patterns of violence persons with disabilities are also included, as they are often victims of such practices.

4. Paragraph 28.

The CRPD Committee proposes to delete this paragraph, as there is not a similar paragraph for other groups, such as children, women, or migrants as such. This paragraph gives the impression that persons with disabilities need special measures to protect their right to live. Also, the wording: “reasonable accommodation of public policies” does not

make sense. Reasonable accommodation is a non-discrimination measure aimed at individuals not policies. The wording “prevent excessive use of force by law enforcement...” is contrary to the Convention on the Rights of Persons with Disabilities (Art. 14, 17, see A/72/55, Annex, Guidelines on Art. 14)

5. Paragraph 29.

The CRPD Committee proposes to insert “including reasonable accommodation for persons with disabilities”, as in this context reasonable accommodation can be life saving.

6. Paragraph 53, “States parties must refrain from imposing the death penalty on individuals who have limited ability to defend themselves on an equal basis with others, such as persons with serious psycho-social and intellectual disabilities,¹ and on persons with or without disability that have reduced moral culpability.”

The CRPD Committee recommends that the paragraph be redrafted. The CRPD Committee is of the opinion that the duty to refrain from imposing the death penalty on persons with intellectual or psychosocial disability is grounded on the disproportionate and discriminatory denial of fair trial guarantees and procedural accommodations to them and not on grounds of perceived lack of legal capacity due to limited mental capacity.

¹ Concluding Observations: Japan (2014), para. 13. Cf. Communication 684/1996 R.S. v Trinidad and Tobago, Views adopted on 2 April 2002, para. 7.2.