



Gender-based violence against women and girls with disabilities

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In order to showcase the breath of gender-based violence (GBV) and its link to gendered inequalities, the Foundation for European Progressive Studies (FEPS) and the Fondation Jean Jaurès have joined forces for this series of publications on the fight to eliminate sexist and sexual violence. Each publication looks into a different angle regarding GBV, recognising the intersection of gender with other discriminations such as sexuality, disability or economic status.

It is common knowledge that women constitute half of the population. But did you know that 16% have at least one form of another of disability?¹ The European Union (EU) namely counts 60 million women and girls with disabilities, corresponding to the total population of Italy.² Whilst women face significant barriers due to gender inequalities or sexism, those with disabilities are confronted with multi-layered and intersectional forms of inequalities. All aspects of life are concerned including socio-economic discrimination, social isolation, lack of access to community services, poor quality housing or healthcare, the impossibility to actively contribute actively in social activities but

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1 European Disability Forum. Find more here: <https://www.edf-fehp.org/women-and-gender-equality/>

2 Ibid.



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also gender-based violence, forced sterilisation and abortion. Available data indicates that gender-based violence affects women and girls with disabilities to much greater extents than most other women.³ Neither does disability protect nor does it prevent acts of violence against women. The deep-seated taboo and silence surrounding this issue must finally be broken. We need to listen to women and their diverse range of experiences. We need better co-operation with organisations representing women and girls with disabilities, to better inform policies and legislation, including access to victim support systems and to justice.

Violence against a woman because she is a woman

According to international human rights law, including the landmark framework offered by CEDAW (the Convention on the Elimination of All Forms of Discrimination against Women)⁴, discrimination against women encompasses gender-based violence directed against a woman because she is a woman or when it affects women disproportionately and, as such, is a violation of their human rights. The use of the acronym CEDAW is so familiar to gender equality activist that it is good to stop and read out loud what the United Nations decreed 40 years ago and reflect on how far we still need to go before finally reaching that goal of eliminating all forms of discrimination against women because they are women.

The Convention on the Elimination of All Forms of Discrimination against Women – referred to as CEDAW – was adopted by the United Nations General Assembly. It entered into force as an international treaty on 3 September 1981. By the tenth anniversary of the Convention, 99 nations have agreed to be bound by its provisions. It was the culmination of more than thirty years of work by the United Nations Commission on the Status of Women, a body estab-

lished in 1946 to monitor the situation of women and to promote women’s rights. The Commission’s work has been instrumental in bringing to light all the areas in which women are denied equality with men. These efforts for the advancement of women have resulted in several declarations and conventions, of which CEDAW is the central and most comprehensive document. Among the international human rights treaties, the Convention takes an important place in bringing the female half of humanity into the focus of human rights concerns. The spirit of the Convention is rooted in the goals of the United Nations: to reaffirm faith in fundamental human rights, in the dignity and worth of human beings, in the equal rights of men and women. The present document spells out the meaning of equality and how it can be achieved. In so doing, the Convention establishes not only an international bill of rights for women, but also an agenda for action by countries to guarantee the enjoyment of those rights. In its preamble, the Convention explicitly acknowledges that “extensive discrimination against women continues to exist”, and emphasizes that such discrimination “violates the principles of equality of rights and respect for human dignity”. As defined in article 1 “discrimination against women” shall mean “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”.

Violence against a woman because she is a disabled woman

Strong evidence is available to affirm that women and girls with disabilities face barriers in most areas of life. These barriers create situations of multiple and intersecting forms of discrimination against

3 UN Women “Women and Girls with Disabilities”, available at: <https://www.unwomen.org/en/what-we-do/women-and-girls-with-disabilities>

4 UNHCR “Committee on the elimination of discrimination against women”, available at: <https://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>



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women and girls with disabilities particularly with regard to equal access to education, access to economic opportunities, access to social interaction, access to justice and equal recognition before the law, the ability to participate politically and the ability to exercise control over their own lives across a range of contexts.

Violence against women with disabilities is far too common, although it is slowly becoming recognized. Disability does not protect a woman from being subjected to acts of gender-based violence. In fact, this form of violence is more likely as data attests.⁵

- Women and girls with disabilities are two to five times more likely to be victims of such violence than women and girls without disabilities;
- 6 out of 10 women with intellectual disabilities report being sexually abused;
- 34 % of women with a health problem or a disability have experienced physical or sexual violence by a partner in their lifetime;
- sterilisation of women with disabilities without their knowledge or consent is a widespread form of violence, in particular affecting members of ethnic minorities such as Roma women⁶.

Women with disabilities living in institutions are in a specifically vulnerable situation. Further measures are needed for their protection, including legislative and procedural changes to better ensure their equal access to justice. The report of the UN Special

Rapporteur on the rights of persons with disabilities on the sexual and reproductive health and rights of girls and young women with disabilities⁷ highlighted the increased risks they face. Children with disabilities are almost four times more likely to experience violence than children without disabilities. The risk is consistently higher in the case of deaf, blind and autistic girls, girls with psychosocial and intellectual disabilities and girls with multiple impairments. Sexual assault is often underreported, even more so in cases of women with disabilities as paragraph 36 of the report denounces: “when, as survivors of sexual violence, they report the abuse or seek assistance or protection from judicial or law enforcement officials, their testimony, especially that of girls and women with intellectual disabilities, is generally not considered credible, and they are therefore disregarded as competent witnesses, resulting in perpetrators avoiding prosecution.”

Moreover, the lack of accessibility and reasonable and procedural accommodation (e.g. sign language interpretation, alternative forms of communication, age- and gender-sensitive support services) often result in serious physical and communication barriers in the justice system, which in turn, hinders access to justice by girls and young women with disabilities and their ability to seek and obtain redress. As underscored by the UN Report (paragraph 37)⁸: “[...] owing to prejudices and stereotypes, courts commonly discount the testimony of girls and young women with disabilities in sexual assault cases, questioning whether girls and young women with intellectual disabilities can understand the oath when testifying to discrediting the testimony of blind witnesses because they are not “able” to know/perceive the sequence of events”.

In 2017, the European Disability Forum and Fundación CERMI, published a report calling for ending forced

5 https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12472-Violence-against-women-and-domestic-violence-fitness-check-of-EU-legislation/F543289_en

6 European Parliament resolution 2018/2685(RSP), available at: https://www.europarl.europa.eu/doceo/document/B-8-2018-0547_EN.html

7 United Nations (2017) “Sexual and reproductive health and rights of girls and young women with disabilities (A/72/133)”; available at <https://undocs.org/en/A/72/133>

8 Ibid footnote 8



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sterilisation of women and girls with disabilities⁹. Here it is important to note that Article 39 of the Istanbul Convention of the Council of Europe on forced sterilisation establishes that performing surgery which terminates a woman's capacity to naturally reproduce without her prior and informed consent constitutes a crime.

Multiple discrimination characterises those situations where a person can experience discrimination on two or more grounds. Intersectional discrimination refers to a situation where several grounds operate and interact with each other at the same time in such a way that they are inseparable. Discrimination takes many forms, some of which are very difficult to recognise and combat effectively. Anti-discrimination policies, namely in the framework of the EU and the United Nations¹⁰, commonly distinguish between:

- direct or indirect discrimination,
- discrimination by association,
- denial of reasonable accommodation,
- structural and systemic discrimination.

Direct discrimination occurs when women with disabilities are treated less favourably than other persons in a similar situation for a reason related to their disability, sex, gender or other prohibited ground. For example, it occurs when the testimonies of women with intellectual or psychosocial disabilities are dismissed from court proceedings based on their legal capacity, thus denying them justice and effective remedies as victims of violence. **Indirect discrimination** means that law, policies or practices appear neutral at face value, but have a disproportionate negative impact on women with disabilities. For example, healthcare facilities may

appear neutral, but do not include accessible examination beds for gynaecological screening. **Discrimination by association** refers to a person closely associated to a disabled person being discriminated because of that association. Often the association is made for women in a caregiver role. For example, a mother of a child with a disability may be discriminated against by a potential employer due to the fear of the employer that she will be committed or unavailable because of her child. **Denial of reasonable accommodation** is discrimination if necessary and appropriate modification and adjustments (that do not impose a disproportionate or undue burden) are denied and are needed to ensure women with disabilities enjoy equal exercise of a human right or fundamental freedom (CRPD). For example, a woman with a disability may be denied reasonable accommodation if she cannot undergo a mammogram at a health centre due to the physical inaccessibility of the built environment. **Structural or systemic discrimination** means hidden or overt patterns of discriminatory institutional behaviour, discriminatory cultural traditions, social norms and/or rules. Harmful gender and disability stereotyping can lead to such discrimination, which is inextricably linked to a lack of policies, regulation and provision of services specifically for women with disabilities. For example, due to stereotyping based on the intersection of gender and disability, women with disabilities may face barriers when reporting violence, such as disbelief and dismissal by police, prosecutors and courts. Likewise, harmful practices are strongly connected to and reinforce socially constructed gender roles and power relations that can reflect negative perceptions of or discriminatory beliefs regarding women with disabilities, such as the belief that men with HIV/AIDS can be cured by engaging in sexual intercourse with women with disabilities. The lack of awareness training and policies to prevent harmful stereotyping of women with disabilities by public officials, be it teachers, health service providers, police officers, prosecutors, judges and the public at large can often lead to individual instances of violations of rights.

9 "Ending Forced Sterilisation of Women and Girls with Disabilities" (26 December 2017), European Union of the Deaf, available at: <https://www.eud.eu/news/ending-forced-sterilisation-women-and-girls-disabilities/>

10 European Commission (2018). "Combating disability discrimination and realising equality. A comparison of the UN CRPD and EU equality and non-discrimination law.". Retrieved from : https://ec.europa.eu/info/sites/default/files/combating_disability_discrimination.pdf



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We need to address structural and indirect discrimination and take into account power relations in society. To succeed in this, the focus should be on achieving substantive equality. Substantive equality acknowledges that the “dilemma of difference” requires both ignoring and acknowledging differences among human beings, to achieve de facto equality.

In international human rights treaties, until recently disability was often not recognised as a prohibited ground for discrimination. The **UN Convention on the Rights of Persons with Disabilities (CRPD)** was adopted unanimously by the UN General Assembly in December 2006 and it entered into force in May 2008.¹¹ This Convention is among the most ratified of the UN Treaties. Exceptionally, the EU also acceded to it in December 2010, as a regional integration organisation. This is the first time a human rights treaty has been ratified by a regional body. It is also the first international human rights treaty the EU is party to.

The CRPD, in many ways, breaks new ground for the rights of women and girls, men and boys with disabilities. It embodies an important paradigm shift away from the medical model focusing on limitation and attempts to ‘cure’ the person with a disability so that (s)he could fit in with the ‘norm’ towards a social model of disability where disability is the result of an interaction between the individual with an impairment and barriers in society. These two models have been complemented with the human rights model which acknowledges the fact that persons with disabilities are holders of rights on an equal basis with others and that they are not objects of charity. Importantly, it recognizes that ‘disability is one of several layers of identity’.¹²

The CRPD is modern in its recognition of multiple and intersectional discrimination. While these forms of discrimination are increasingly recognised, recent surveys show that most countries do not yet consider intersecting forms of discrimination and vulnerabilities faced by women and girls with disabilities in the

implementation of their human rights obligations. The Convention recognises that women with disabilities are subject to multiple forms of discrimination (Article 6). It acknowledges that women and girls are more vulnerable to violence, which requires appropriate measures to prevent all forms of violence that are gender- and disability-sensitive when it comes to assistance, protection and support services (Article 16). In the UN CRPD Committee’s Concluding Observations to the EU¹³ published in 2015, the Committee called on the EU to accede to the Istanbul Convention as a way of protecting women and girls with disabilities from violence:

" The Committee recommends that the European Union mainstream a women and girls with disabilities perspective in its forthcoming gender equality strategy, policies and programmes, and a gender perspective in its disability strategies. The Committee also recommends that the European Union develop affirmative actions to advance the rights of women and girls with disabilities, establish a mechanism to monitor progress and fund data collection and research on women and girls with disabilities. The Committee further recommends that the European Union accede to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) as a step to combating violence against women and girls with disabilities. " (paragraph 21)

While the CRPD is global in its reach, the past decade has also seen positive developments in the form of new legal instruments in Europe. The Council of Europe’s Istanbul Convention is the first legally binding treaty, and the most comprehensive to date, in Europe. The Istanbul Convention acknowledges

11 Convention on the Rights of Persons with Disabilities of 13 December 2006, U.N. Doc. A/RES/61/106. Available at <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-ofpersons-with-disabilities-2.html>

12 General Comment No. 3 (2016) on Article 3; available at <https://www.refworld.org/docid/57c977344.html>

13 United Nations (2015). “Convention on the Rights of Persons with Disabilities”, available at: <https://undocs.org/en/CRPD/C/EU/CO/1>



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that some groups of women, such as women and girls with disabilities, are often at greater risk of experiencing violence, and calls on the signatories to ensure non-discrimination and adopt positive action to address their specific needs.

ISTANBUL CONVENTION

The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)¹⁴ was adopted by the Committee of Ministers and opened for signature in Istanbul on 11 May 2011. The Convention entered into force on 1 August 2014, and recognises gender-based violence against women as a violation of human rights and a form of discrimination. Providing a holistic approach to address violence against women and girls, the Convention aims to:

- protect women against all forms of violence;
- prevent, prosecute and eliminate violence against women and domestic violence;
- promote real equality between women and men;
- provide assistance to organisations and law enforcement agencies to cooperate effectively in order to adopt an integrated approach.

It focuses on several areas, obliging States Parties to take a number of measures against violence against women and domestic violence. So far, all EU Member States have signed the Convention but only 21 of them have ratified it (Austria, Belgium, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Italy, Ireland, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovenia, Spain, Sweden). In total, 34 Council of Europe members have ratified the Convention, whilst 12 countries have signed but not ratified it.

For data-driven policy making, it is important that the Convention suggests collecting data disaggregated by factors such as disability. This emphasis on the need of disaggregated data is shared by the UN CRPD Committee: in many of its Concluding Observations it draws attention to gaps in available data on the situation of persons with disabilities. These important issues are often met with resistance linked to the protection of sensitive personal data, as disability is considered as a health-related sensitive piece of personal data. This is characteristic of the lacuna in available data on the situation of women with disabilities.

In ensuring that the intersecting experiences of women with disabilities to violence are taken into consideration, women's organisations¹⁵ have called onto the GREVIO monitoring process (the independent expert body responsible for monitoring the implementation of the Istanbul Convention) for strengthening approaches to:

- **improve the collection of disaggregated data and research on the experiences of women with disabilities on violence and access to protection, support and justice;**
- **develop more awareness raising campaigns and preventative actions that include and/or focus on women with disabilities;**
- **ensure the availability of accessible services, including shelters, that consider the specific needs of women with disabilities;**
- **provide accessible information on women's rights and the means of reporting offences for women with psychosocial disabilities, as well as those with intellectual or sensorial disabilities;**

¹⁴ Council of Europe "Istanbul Convention", available at: www.coe.int/en/web/istanbul-convention/home

¹⁵ European Women's Lobby (2020). "Towards a Europe free from male violence against women and girls. Recommendations from the European Women's Lobby to end violence against women and girls in Europe once and for all". Available at: <https://www.womenlobby.org/IMG/pdf/ic-2.pdf>



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- **train staff within the judiciary and police forces to assist women with sensorial or intellectual disabilities that have been subjected to violence, or to provide appropriate communication instruments for these women other than verbal language.**

Experiences during the COVID-19 pandemic – a concomitant pandemic of violence

The years 2020 and 2021 were milestone anniversary years for many key moments in the fight for equality between women and men: the Beijing Declaration, UN CEDAW; the Convention on the Elimination of All forms of Discrimination against Women. Unfortunately, they will also be remembered as the year the pandemic hit the world and caused so much loss and sorrow. The COVID-19 pandemic has had a devastating toll in many respects. The horrific increases reported in the number of cases of domestic violence and intimate partner violence have highlighted the need for support systems, shelters and call lines to help women trapped in their homes by lockdown measures or loss of employment. This has been recognised, which is positive.

Yet, it remains to be seen how much of the resources now being poured into ravaged economies to try and revive them, do eventually trickle down to the grass-roots support services for victims of gender-based violence. It is the task of the women's movements around the world to step up front to ensure that the recovery benefits women equally.

The European Disability Forum draws attention to the fact that the most devastating consequences of the pandemic occurred in segregated residential institutions, which became hotbeds of infection and, despite

this, people living in these settings were in many cases neglected or deprioritised by public authorities, left without protection or even without emergency treatment, with the result that half of the deaths of the pandemic happened in these residential institutions. It is important to emphasise the harmful effects on mental health caused by extreme isolation that many persons with disabilities face in order to prevent infection. Due to COVID-19 prevention measures such as social distancing, persons with disabilities faced the tremendous difficulties and risks to receive support to carry out their everyday activities, such as personal assistance, care, tactile interpreting for deafblind people. The same applies to the discontinuation of crucial public and private services for persons with disabilities due to the pandemic. The pandemic has worsened intersectional forms of discrimination against marginalised groups, such as women and girls with disabilities, older persons with disabilities, persons with disabilities living in poverty and in the homeless, asylum seekers and refugees with disabilities, racialised persons with disabilities, LGBTIQ+ persons with disabilities and persons with disabilities in prison or any closed setting.

Inclusive and transparent recovery

The Recovery and Resilience Facility (RRF)¹⁶ is the EU's main funding mechanism to mitigate the social and economic impacts of the COVID-19 pandemic, providing €672.5 billion to support public investments and reforms to make Member States' economies more resilient and better prepared for the future. The way this money is spent will be decided largely by the Member States themselves and laid down in their national Recovery and Resilience Plans (RRP), for approval by the Commission.

The pandemic has had a significant and disproportionate impact on persons with disabilities in all areas of their lives. Persons with disabilities have

¹⁶ The Facility is the centrepiece of NextGenerationEU, a temporary recovery instrument that allows the Commission to raise funds to help repair the immediate economic and social damage brought about by the coronavirus pandemic. The Facility is also closely aligned with the Commission's priorities ensuring in the long-term a sustainable and inclusive recovery that promotes the green and digital transitions. Find more here: https://ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility_en#the-facility-and-nextgenerationeu



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experienced higher infection and mortality rates and there have been cases of people being denied emergency care because of their disability. Persons with disabilities have also faced job losses, disruption to the services they require, additional obstacles to accessibility, and have been underserved by efforts to continue education online in a way that is accessible to all. Now more than ever, there is an urgent need for support for persons with disabilities to facilitate their access to jobs, accessible and inclusive education and social protection that protects them from the risk of poverty, especially women with disabilities. The support stemming from the RRF is a unique opportunity to:

- Invest in areas such as accessible transportation and ICT as a way of facilitating social and economic inclusion for all and sustainable development in Europe and globally;
- Invest in the provision of community-based services, enabling persons with disabilities to find alternatives to institutional care;
- Reform the way support is provided to persons with disabilities to facilitate greater inclusion in the community and more options of personal assistance;
- Make sure that reforms, especially in the field of digitization, such as a move towards more online services, comply fully with the requirements of the European Accessibility Act;
- Ensure digital learning becomes a clear priority whereby all types of formats and educational materials can be used by learners, teachers and parents with disabilities;
- Prioritise economic recovery from the pandemic by investing in training and job opportunities for those most excluded from the open labour market;
- Create employment for persons with disabilities in the open labour market, especially for women with disabilities;

- Craft reforms to make paid work compatible with disability allowance payments as a means of reducing the significant risk of in-work poverty faced by persons with disabilities.

Finding solutions: changes to combat discrimination effectively

To move forward we need a new model of equality striving for transformative or inclusive equality. This is a model that acknowledges that individuals, as a general basis, experience discrimination as members of one (or several) social group(s) and that these groups are not homogeneous. Inclusive equality is a new model of equality developed in the Istanbul Convention. It embraces a substantive model of equality and extends the meaning of equality recognising the need to combat stigma, stereotyping, prejudice and violence and to value the dignity of human beings and their intersectionality. Such a complex problem needs multiple layers of solutions.

- 1) **Legislative change.** One way is through legislation: we can combat multiple discrimination by repealing discriminatory laws, policies and practices that prevent women with disabilities from enjoying all human rights and fundamental freedoms. Repealing any existing laws, policies and practices that discriminate against women and prevent them from enjoying all their rights is an important first step. What is also needed is to adopt appropriate laws, policies and actions to ensure that the rights of women with disabilities are included in all policies.
- 2) **Removing barriers to participation and inclusion of women with disabilities.** To effect change, legislation is necessary but not sufficient in itself. We must also remove all barriers that prevent or restrict the participation of



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women with disabilities and ensure that women with disabilities, through their representative organisations, are included in the formulation, implementation and monitoring of all programmes which have an impact on their lives.

- 3) ***Gender-sensitive policy making, including gender budgeting.*** Applying a gender perspective means more than merely ticking the box. It requires a new way of thinking about, amongst others, the allocation of budgets and resources.

- 4) ***Training for professionals on gender-based violence and anti-discrimination.*** Awareness raising and training of professionals is included in many toolkits for the promotion of equality. When discussing violence against women with disabilities, one key challenge is breaking the wall of silence and taboos around women with disabilities and sex. This is especially important so that victims of violence can receive effective support. Furthermore, much remains to be done in terms of training the legal professions and the justice sector.



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