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**INITIAL THEMATIC REPORT: GENDER VIOLENCE AGAINST GIRLS AND WOMEN  
WITH DISABILITIES**

# GENDER VIOLENCE AGAINST GIRLS AND WOMEN WITH DISABILITIES

## Initial thematic report

### EXECUTIVE SUMMARY

This thematic report is the result of a partnership agreement between the Follow-up Mechanism to the Convention on the Prevention, Punishment, and Eradication of Violence against Women (MESECVI in Spanish) of the Inter-American Commission of Women (CIM in Spanish) and the European Union's EUROsociAL+ program, aimed at raising awareness of the violence that affects girls and women who live with a disability based on both their gender and disability and on providing access to justice for victims or survivors of this type of violence.

The overall objective of this collaboration, which is coordinated by the Gender Equality Policies Department of the program implemented by Expertise France, is to help improve the response of the Convention's States Parties in fulfilling their obligation of prevention, care, protection, and penalty for the various forms of violence faced by girls and women with disabilities. The goal is to ensure the integration of gender and disability perspectives in the work of OAS entities and in States Parties' practices.

Research efforts and queries that began in 2019 resulted in several diagnostic reports on the barriers to justice and promissory experiences. It was later agreed to prepare a thematic report to foster debate and action, making it possible to identify the main concerns, the regulatory framework, and some of the opportunities for driving progress. The report also led to a General Recommendation proposal, created and adopted by the Committee of Experts of the MESECVI.

The report consists of an introduction, seven chapters, and the conclusions. The main sources for the research are reports, general comments, and other documents created by human rights mechanisms from the UN and the OAS, of which the Committee on the Rights of Persons with Disabilities, the Special Rapporteur on the Rights of Persons with Disabilities, the Special Rapporteur on Violence against Women, and the United Nations High Commissioner for Human Rights. Other important sources include reports by multilateral organizations and networks of social organizations linked to the topic.

The introduction explains the project's background and defines the context of the problem within the general framework of international human rights law, specifically the intersection between the system to protect women's right to a life free of violence and the rights of people with disabilities. Although people with disabilities have faced and continue to face various forms of exclusion and violation in every society, there is now a vast framework of standards that acknowledge their human rights and require measures to be taken. A great deal of progress has been made to raise awareness and implement positive measures that improve the living conditions of people with disabilities. However, girls and women with disabilities continue to be particularly exposed to various forms of violence linked to their gender and their disability.

The first chapter explores several dimensions of the reality of disabilities, using diagnoses available in reports by international agencies and organizations, and movements to defend the rights of people with disabilities. Although progress has been made in recent years to raise awareness, adopt inclusive

measures, and make surroundings accessible, disability stereotypes and biases, combined with the lack of detailed and systematic information, have contributed to delaying the rights of people with disabilities. However, recent advances in the models for approaching this problem have made it possible to have a broader view of a reality that particularly affects girls and women with disabilities who are especially exposed to various forms of violence.

The applicable regulatory framework to protect girls and women against violence lies at the intersection between the standards that protect women in general against violence and those that guarantee protection for people with disabilities. This field has grown in recent decades, from the earliest statements acknowledging people with disabilities guided by welfarism and special treatment to their acknowledgment as subject to all human rights.

On the one hand, the Belém do Pará Convention explicitly includes disabilities as factors of intersectional discrimination that increase women's exposure to violence due to gender, and they should be specifically taken into consideration when complying with the treaty's obligations. On the other hand, the Convention on the Rights of Persons with Disabilities (CRPD), adopted by the UN in 2006, defends the social and human rights model for addressing disabilities. This paradigm entails acknowledging that people with disabilities should have all human rights in line with their condition and that reasonable measures should be taken to make surroundings accessible to improve people's living conditions. This fundamental treaty contains a transversal gender perspective and includes guarantees to eliminate the various forms of abuse, violence, and exploitation, and to guarantee access to justice.

The topic of violence against girls and women with disabilities is addressed through the framework of the MESECVI mandate, which requires the mechanism to consider this vulnerability factor as a priority. In general, girls and women with disabilities face the same violence as other women, although they are more exposed to experiencing the consequences and they have fewer opportunities to escape the cycles of violence. They also face specific violence based on both their gender and disability. The doctrine establishes that the various forms of discrimination are comparable to gender violence against women. It also underscores the importance of considering intersectional discrimination factors when designing and implementing measures. After identifying these and other elements that converge in this form of violence, based on the regulatory content of the Belém do Pará Convention, a vast definition is proposed that encompasses violence resulting from the dual condition of gender and disability.

Many factors disproportionately expose women with disabilities to violence compared with other women and men with disabilities (gender gap). Factors such as the age of victims and survivors, the condition and intensity of the disability, and the limitations in making the environment accessible can also increase the risk of exposure. The main types of violence identified by the doctrine include physical, psychological, sexual, and economic violence and some of their variants, all of which can be specified in the convergence of gender and disability factors. Other particularly vulnerable population groups are older women with disabilities, women who are institutionalized in some form, and female inmates.

Since its founding, the MESECVI has stressed that one of its main concerns in the hemisphere is the impunity of cases of gender violence against women, which significantly limits the possibility of finding justice for victims, survivors, and their families. In this context, both the Belém do Pará Convention and the CRPD offer a solid regulatory framework to demand improvements in the right to access justice regarding the duty of due diligence. In the case of women with disabilities, the impunity

of violent crimes can be verified by, among other factors, the lack of reported crimes. In addition to the physical barriers that limit access to facilities and services, some of the barriers that can impact justice and achieve separation are linked to the effect of gender and disability stereotypes, the fear of reporting a crime due to the consequences, the lack of free legal assistance, the lack of credibility given to their testimony, and the lack of adjusted procedures.

Despite the limited information available, there are numerous diagnostic elements on the status of the rights of people with disabilities, particularly girls and women in Latin America and the Caribbean, that confirm the existence of these and other barriers to their human rights. The analysis is based on the content of the reports by human rights bodies responsible for supervising treaties linked to disability and violence against women (MESECVI, the OAS Committee for the Elimination of All Forms of Discrimination Against Persons with Disabilities, and the UN Committee on the Rights of Persons with Disabilities) and a report by the Latin American Network of Organizations of Persons with Disabilities and their Families.

Most countries in Latin America and the Caribbean form part of the Belém do Pará Convention and have ratified the CRPD. Although legislative measures and other types of regulations have been adopted to improve the inclusion of people with disabilities, most of these measures have a minimal impact on reality. In most countries, the policies remain based on the welfare model, and in general, disability policies lack a gender perspective, and gender policies do not properly take into consideration the disability factor. Among other aspects, legal incapacity systems and the mechanisms for monitoring and reporting crimes continue to be inefficient and inaccessible to most women with disabilities. Additionally, structural violence remains intact throughout the region, along with imposed treatments without free and informed consent, such as forced sterilization, isolation, and the mistreatment of hospitalized patients.

The Committee of Experts of the MESECVI believes that although the regulatory advances are a positive sign, an analysis of information available shows the need to substantially improve measures for protecting against the various forms of violence faced by girls and women with disabilities and to expand the resources available significantly. Numerous promising experiences have been taking place in Latin America and Europe for decades. Some of the most successful experiences refer to initiatives such as developing mobile apps to create relationship networks and early warning networks, as well as various experiences, primarily European, aimed at ensuring deinstitutionalization and prioritizing family life and communities.

In the conclusion section, the report states the need to improve the responses of the Belém do Pará Convention's States Parties in four aspects that the MESECVI views as priorities: access to goods and services, guaranteed quality services, legislative and regulatory adjustments, and improved mechanisms for reporting information about girls and women with disabilities and the violence they face.

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## **Acronyms and abbreviations**

OHCHR – Office of the United Nations High Commissioner for Human Rights

WB – World Bank

CRPD – UN Convention on the Rights of Persons with Disabilities

CEDDIS – OAS Committee for the Elimination of All Forms of Discrimination Against Persons with Disabilities

ECLAC – Economic Commission for Latin America and the Caribbean

CEVI or Committee of Experts – Committee of Experts of the MESECVI

IACDIS – Inter-American Convention on the Elimination of all Forms of Discrimination Against Persons with Disabilities

IACHR – Inter-American Commission on Human Rights

CIM – Inter-American Commission of Women

CEDAW – Committee on the Elimination of Discrimination against Women

COE – Council of Europe

Belém do Pará Convention – Convention on the Prevention, Punishment, and Eradication of Violence against Women (OAS)

IACHR – Inter-American Court of Human Rights

CORPD – Committee on the Rights of Persons with Disabilities

DAWN – DisAbled Women’s Network

CERMI – Spanish Committee of Representatives of Persons with Disabilities

MESECVI – Follow-up Mechanism to the Convention on the Prevention, Punishment, and Eradication of Violence against Women

OECD – Organisation for Economic Cooperation and Development

OAS – Organisation of American States

WHO – World Health Organisation

UN – United Nations

UNDP – United Nations Development Programme

RIADIS – Latin American Network of Organizations of Persons with Disabilities and their Families

UAVDI - Unit to Support Victims with Intellectual Disabilities

## INTRODUCTION

The Convention on the Prevention, Punishment, and Eradication of Violence against Women (Belém do Pará Convention), adopted by the OAS in 1994, was the first international treaty to recognise women's right to a life free of violence, both publicly and privately. Its preamble states that 'violence against women constitutes a violation of their human rights and fundamental freedoms, and that it is 'an offense against human dignity and a manifestation of the historically unequal power relations between women and men'.

The various forms of gender-based violence against women are major obstacles to achieving substantive equality between women and men and for women to enjoy their human rights and fundamental freedoms. As pointed out by the Inter-American Commission on Human Rights (IACHR), this violence 'is exhibited in events that, as opposed to being isolated incidents, constitute a pattern of systematic human rights violations'<sup>1</sup>. As a result, by ratifying the Convention, States Parties are required to operate with *due diligence* to prevent, investigate, punish and make reparations for all forms of violence against women to guarantee their access to justice and to fight the impunity that has historically accompanied these situations.

On the other hand, the violence women face and how they experience it is often shaped by the intersection of gender and other vulnerability factors<sup>2</sup>. This is recognized by the Convention by establishing that to comply with their obligations properly, States Parties must take special account of the vulnerability and the violence that affect women with disabilities, among other factors (art. 9). According to a study carried out in Latin America in 2016, people with disabilities are on average three times more likely to experience physical, sexual and emotional violence than people without disabilities, and women with disabilities are up to ten times more likely to experience sexual violence than men with disabilities. The study has also shown that 40% to 68% of young people with disabilities will experience sexual violence before the age of 18<sup>3</sup>.

The approach to disability has traditionally been defined by welfare and biomedical perspective based on charity, exclusion, and the denial of rights, as well as the need to correct presumed deficiencies in people. However, the right of girls and women with disabilities<sup>4</sup> to enjoy all human rights, including the right to a life free of violence, has been added to the international human rights law. The Inter-American Convention on the Elimination of Discrimination Against Persons with Disabilities (OAS, 1999) and the Convention on the Rights of Persons with Disabilities (OAS, 2006) both recognize their intrinsic dignity as human beings and their condition as holders of all human rights.

The Convention on the Rights of Persons with Disabilities (CRPD) defends a model of disability based on inclusion and making the environment accessible. In its preamble, it acknowledges that women and girls with disabilities tend to be exposed to a greater risk of violence, whilst its articles contain a

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<sup>1</sup> IACHR *Impactos de casos de discriminación y violencia contra mujeres, niñas y adolescentes (Impact of cases of violence and discrimination against women, girls and adolescents)*. OEA/Ser.L/V/II. 14 November 2019. Introduction, par. 3.

<sup>2</sup> CIM/MESECVI. *Guide to the application of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women*. Washington DC: 2014. p. 62. OEA/Ser.L/II.6.14.

<sup>3</sup> Cited in: Spotlight Initiative/UNFPA/Humanity & Inclusion. *Promising practices in responding to violence against girls and women with disabilities in Latin America and the Hispanic Caribbean*. 2021. p. 12.

<sup>4</sup> Hereinafter, 'women with disabilities and 'girls and women with disabilities' refer to girls, young females, adult women, and older women with disabilities.

transversal gender perspective and establish guarantees for the prevention of and protection against exploitation, abuse, and violence.

In addition to gender-specific violence, women with disabilities can also be victims of other types of violence originating from the disproportionate effects that certain actions or omissions can have on them due to their disabilities. Examples include abusing service animals, breaking technical assistance equipment for maximum autonomy (such as canes, wheelchairs, and hearing aids), contributing to the limited access to essential spaces or needs, and fostering a sense of burden or blame. Girls and women with disabilities can also be affected by the loss of legal status and institutionalization, as well as by treatments imposed without free and informed consent.

The MESECVI mandate is aimed at supervising the measures adopted by States Parties to comply with the treaty in terms of gender-based violence against women. The convention system does not encompass the rights of women with disabilities in general, but it requires States Parties to take into account the disability variable as a factor in their high vulnerability to violence. As a result, the MESECVI handles violence against women originating from their disability condition, identifying the patterns for this type of violence and the measures to address it with the aim of improving its follow-up efforts of the measures adopted to implement the treaty.

In the third evaluation round of the measures adopted by States Parties to implement the Convention, the Committee of Experts of the MESECVI (hereinafter the Committee of Experts or CEVI) identified the need to strengthen the analysis of diverse factors to help comply with the obligations of protecting, respecting and guaranteeing the right to a life free of violence for all girls and women. To achieve this, a priority line of action on violence against women with disabilities was added to the 2018-2023 Strategic Plan, with a focus on intersectionality and human rights, and an emphasis on prevention and reparations. Additionally, a partnership agreement was reached between the MESECVI and the EUROsociAL+<sup>5</sup> program to promote the integration of disability and gender perspectives in the work of OAS entities and in States Parties in practice. As a result of this mandate, in December 2019, the MESECVI convened a meeting of experts on the intersection between gender and disability and launched a study on the barriers to justice faced by victims or survivors of violence and on the best practices to help ensure their access to justice.

One of the EUROsociAL+ work strategies is to promote the exchange of experiences between Latin America and the European Union. Along these lines, the work to identify best practices has been done by comparing the two regions, making it possible to obtain feedback on the experiences from the two continents. The findings have confirmed that there are similar forms of discrimination and violence against women with disabilities in both regions, along with the existence of experiences that allow making progress towards protecting against violence and providing access to justice.

In July 2021, during the COVID-19 pandemic, a virtual event was held with experts to share the research findings and delve together into the diagnoses. The contributions made were added to the final versions of the diagnoses on the barriers to justice and the documents of promising experiences. As a last resort, it was agreed to redirect the project towards preparing a thematic report, which is also a

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<sup>5</sup> European Union program for technical cooperation that seeks to improve social cohesion and strengthen institutions in Latin America by helping to design, reform and implement public policy, focusing its efforts on gender equality, governance and social policy.

source for the development of a new MESECVI General Recommendation on violence against girls and women with disabilities.

## 1. THE QUESTION OF DISABILITY

### *The dynamic nature of disabilities*

In 1982, the UN World Programme of Action concerning Disabled Persons highlighted that the consequences deriving from any type of disability are particularly serious for women because they are already impacted by social, cultural, and economic disadvantages resulting from gender discrimination. As also stated in the Beijing Declaration and Platform for Action (UN, 1995), ‘girls and women of all ages with any form of disability are generally among the more vulnerable and marginalized of society (par. 63).

The UN Committee on the Rights of Persons with Disabilities (the mechanism that supervises the implementation of the CRPD) has pointed out that the three main reasons for concern are violence, health and sexual/reproductive rights, and discrimination. It has also shown strong concern about the effects of multiple discrimination and other matters linked directly to violence, including the right to life, sexual violence, forced sterilization, female genital mutilation, sexual and economic exploitation, and forced institutionalization.

As stated in the introduction of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (UN, 1993), ignorance, neglect, superstition, and fear are ‘social factors that throughout history have isolated persons with disabilities and delayed their development. However, just as has occurred in the field of feminism in terms of women’s position in the public sphere and regarding the acknowledgment of their human rights, progressive changes in social perceptions about people with disabilities have led to significant regulatory developments that recognize their intrinsic dignity and human rights. This process, which has taken place thanks to the importance of associations for persons with disabilities, has changed the concept of disability and the perspective for approaching it.

Until recently, it was referred to as an ‘impediment’ or ‘handicap’ and approached from a medical, welfare, and dehumanizing perspective. In many societies, ‘people with disabilities are still viewed as recipients of charity services or individuals subject to the decisions of others, but not the holders of rights’<sup>6</sup>. However, the entry into force of the CRPD in 2006 has consolidated into international law and into a growing number of national jurisdictions disability model, which no longer refers to a person’s condition or physical factor in a limited manner, but rather as the result of their interactions with the social and material conditions of their surroundings.

### *Barriers and disability conditions*

The social dimension of disabilities refers to at least four aspects: the accessibility of the surroundings, the legal protections against discrimination, the socio-economic conditions, and the existence of suitable services<sup>7</sup>. This vision is clear when comparing life circumstances regarding an environment’s accessibility: a woman with limited mobility whose surroundings are filled with obstacles and are hostile to her condition will have a very different life experience than a woman with the same physical

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<sup>6</sup> OHCHR. Thematic study on the issue of violence against women and girls and disability. Report of the OHCHR. 30 March 2012. Par. 14. A/HRC/20/5.

<sup>7</sup> *Convention on the Rights of Persons with Disabilities. Training guide. Professional training series No. 19.* OHCHR, 2014. p. 8. HR/P/PT/19. Available at: [https://www.ohchr.org/Documents/Publications/CRPD\\_TrainingGuide\\_PTS19\\_sp.pdf](https://www.ohchr.org/Documents/Publications/CRPD_TrainingGuide_PTS19_sp.pdf).

factors whose adapted environment allows her to overcome physical barriers and receive emotional support and care.

When organizations for people with disabilities were consulted for the research project behind this report, the Committee of Experts spoke with representatives from several deaf women's associations, who believe that their situation should be addressed in terms of adapting to the environment. They reason that they are not characterized by a disability but rather by a language that is not a disability in itself. It was also considered that in other instances, simply having access to interpreters and hearing aids is enough to transcend the disability. These approaches show that some deaf people view themselves merely as deaf, others as disabled, and others as deaf and disabled.

In any case, disabilities are not homogeneous conditions. Instead, they encompass a wide array of factors with varying impacts on people's autonomy and independence. In principle, disability factors affect one or several physical, mental, intellectual, or sensory domains. They can appear from birth, at any moment in life, or due to old age.

The UN World Programme of Action underscores that people with disabilities 'encounter different barriers, of different kinds, which have to be overcome in different ways'. This explains the need to establish different yet systematic approaches for the measures geared toward improving the accessibility of physical and social environments, within reason, to ensure the inclusion of people with different disability factors. In the specific case of girls and women, policies must be designed with a dual perspective of gender and disability, particularly in terms of the violence faced throughout their life cycle.

### ***Diversity of girls and women with disabilities***

The Committee on the Rights of Persons with Disabilities notes that women with disabilities are not a homogeneous group. They include:

'(...) indigenous women; refugee, migrant, asylum-seeking and internally displaced women; women in detention (hospitals, residential institutions, juvenile or correctional facilities and prisons); women living in poverty; women from different ethnic, religious and racial backgrounds;

women with multiple disabilities and high levels of support; women with albinism; and lesbian, bisexual and transgender women, as well as intersex persons'. It also stresses that 'the diversity of women with disabilities also includes all types of impairments, in other words physical, psychosocial, intellectual or sensory conditions that may or may not come with functional limitations<sup>8</sup>'.

For its part, the Disabled Women's Network (DAWN)<sup>9</sup> lists the following as disability conditions that affect women: disabilities linked to vision, from limited vision to blindness; loss of hearing, from moderate to full loss; the simultaneous loss of vision and hearing; physical disabilities with an impact on mobility; disabilities related to speech, language or communication; disabilities linked to mental health; intellectual and developmental disabilities; learning disabilities; episodic disabilities that

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<sup>8</sup> Committee on the Rights of Persons with Disabilities. General comment No.3 (2016), on women and girls with disabilities. 25 November 2016. CRPD/C/GC/3. Par. 5. In: <https://undocs.org/CRPD/C/GC/3>.

<sup>9</sup> See: *Promising Practices to End Violence Against Women Study*. Montreal: DAWN-RAFH Canada, December, 2014. Available at: <https://www.dawncanada.net>.

consist of life experiences defined by periods of good health followed by periods of illness or disability; and those classified by the organization as invisible disabilities, including high sensitivity to environmental disturbances. Additionally, women with disabilities can have more than one disability, which impacts their life experiences.

In turn, according to the first Manifesto by Women with Disabilities (1997), the concept of women and girls with disabilities includes ‘women with all types of disabilities (...), regardless of whether they are visible; women with mental illness or mental health issues, learning difficulties or chronic ailments such as diabetes, renal/heart disease, epilepsy, HIV/AIDS or illnesses that affect women, such as breast cancer, arthritis, lupus, fibromyalgia, and osteoporosis primarily. The term also includes girls and women of all ages with disabilities, who reside in rural or urban areas, regardless of their disability’s gravity, their sexual preference, or cultural environment, and are already integrated into communities or institutions’<sup>10</sup>.

### ***Global disability dimensions***

In 1993, at the end of the UN Decade of Disabled Persons (1982-1993), the Guidelines and Principles for the Development of Disability Statistics were adopted. They included a call to action to create databases and information for designing and implementing effective policies. In subsequent years, the importance of improving these practices has remained constant, but despite these efforts, international agencies continue to express the insufficiency of the information available globally as well as on a regional and national scale. In any case, statistical records show that women with disabilities are more exposed to inequality and gender-based violence, and they also face bigger obstacles in their ability to access justice when their rights are violated.

According to recent estimates by the World Health Organisation (WHO), more than one billion people live with one or more disability factors, representing 15% of the global population. These numbers are on the rise due to the progressively aging population and the increment in health problems associated with disabilities. This proves the growing need to address this matter from a systemic perspective<sup>11</sup>.

The prevalence of disabilities is associated with poverty and limited opportunities, globally and regionally. As noted in the UN Special Rapporteur on the Rights of Persons with Disabilities, poverty affects persons with disabilities disproportionately, and this applies to people as well as households. Additionally, ‘intersectional factors, such as gender, ethnic origin, and minorities, residing in rural or outlying areas, and advanced age, lead to even more disproportionate poverty rates amongst people with disabilities’<sup>12</sup>.

According to data from the UNDP, 80% of people with disabilities live in developing countries, and based on WB estimates, 20% of the most impoverished people on the planet live with a disability<sup>13</sup>. According to the OECD, approximately 19% of people in developing countries with less access to

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<sup>10</sup> Adopted in Brussels on 22 February 1997 by the Women’s Task Force of the European Disability Forum. Available at: <https://www.cermi.es/es/mujeres/publicaciones/manifiestos/22-2-1997>.

<sup>11</sup> See: WHO/WB. *World Report on Disability. Executive summary*. 2011. Available at: [www.gob.mx/cms/uploads/attachment/file/7030/Informe\\_Mundial\\_sobre\\_la\\_Discapacidad\\_.pdf](http://www.gob.mx/cms/uploads/attachment/file/7030/Informe_Mundial_sobre_la_Discapacidad_.pdf).

<sup>12</sup> Rights of persons with disabilities. Special rapporteur on the rights of persons with disabilities. UN, 19 January 2021. Par. 70 and 71. A/HRC/46/27.

<sup>13</sup> *Data about persons with disabilities* [online]. UN. Department of Economic and Social Affairs. Available at: <https://www.un.org/development/desa/disabilities-es/la-discapacidad-y-la-estadistica.html>.

education live with a disability, compared with 11% of those with a higher level of education. These factors—poverty and limited opportunities—increase their risk of experiencing additional poverty and violence throughout life.

### ***Factors and prevalence in girls and women with disabilities***

The higher prevalence of disabilities amongst poor people also applies to girls and women. According to estimates by UN Women, the rate is nearly one in five globally, compared with one in eight for men<sup>14</sup>. This number is even higher in low-income countries, where they represent three-fourths of people with disabilities. As far as the Americas, ECLAC estimates that the disability rate (12.5%) is slightly lower than the global rate, although, in more than half of the countries in the region, it is higher for women than for men, particularly over the age of 60<sup>15</sup>. In this regard, it is worth noting that aging can cause disabilities, such as cognitive deterioration or bone disease, which affect women significantly more because they live longer than men on average.

At the start of the last decade, the WB estimated that between 15-50 million women become seriously disabled during childbirth. The CEDAW Committee also notes that ‘many women are at risk of death or disability from pregnancy-related causes because they lack the funds to obtain or access the necessary services’<sup>16</sup>, pointing to the consequences of structural violence resulting from inequality, poverty and a lack of access to necessary services.

Many women also acquire a condition that is equivalent to a temporary or permanent disability when they are victims of sexual violence or other forms of violence against women, including cultural or traditional practices, such as genital mutilation. This proves how gender-based violence can be the direct cause of a disability, showing the correlation between the prevention policies for this type of violence and the protection of personal integrity.

The information available indicates that there is a significant gender gap in multiple aspects, including finding employment or receiving enough support to ensure autonomy. Women with disabilities are also more likely than men with disabilities to have unmet healthcare needs, to be illiterate or not have Internet access<sup>17</sup>. The UN Special Rapporteur on adequate housing states that women face significant barriers in accessing adequate housing, healthcare services, and education, and they are ‘less likely to receive vocational training and employment, but more likely to be sterilized and institutionalized than men with disabilities’<sup>18</sup>.

Women with disabilities are also at a greater disadvantage than women without disabilities. Amongst other things, ‘they are more likely to experience poverty and isolation, and tend to have lower salaries and be less represented in the workforce. As a result, they are also more likely to be victims of violence

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<sup>14</sup> *Accepting the challenge. Women with disabilities: for a life free of violence. An inclusive and cross-cutting perspective.* UNPRPD/UN Women, 2021.

<sup>15</sup> *Disability in Latin America and the Caribbean - Public Policy Challenges.* ECLAC. Available at: [www.cepal.org/notas/74/Titulares2](http://www.cepal.org/notas/74/Titulares2).

<sup>16</sup> CEDAW Committee. General Recommendation no. 24. Women and health. 1999. Par. 27. A/54/38/Rev.1.

<sup>17</sup> *UN Flagship Report on Disability and Development 2018. Realisation of the sustainable development goals by, for and with persons with disabilities.* New York: UN Department of Economic and Social Affairs, 2018. p. 30.

<sup>18</sup> Women and adequate housing. Study by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living. UN, 25 February 2005. Par. 64. E/CN.4/2005/43.

and/or less able to escape the cycle of violence<sup>19</sup>. UN Women estimates that 80% experience some form of gender-based violence throughout their life and are four times more exposed to sexual violence.

The Preamble of the CRPD reflects this reality by noting that ‘women and girls with disabilities are often at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation’. This vulnerability derives from their condition as women and increases when combined with the stereotypes and risks resulting from the disability factor. This risk increases exponentially when other factors are added to these two circumstances, such as poverty, advanced age, migrant condition, indigenous person or ethnic minority. This leads to the importance of creating policies that protect their rights from a gender perspective that considers intersectionality:

Women with disabilities who belong (or are presumed to belong) to underprivileged groups or minorities may face acts of violence and discrimination aggravated by the simultaneous presence of other factors. The recognition of that reality (variously referred to as intersectionality, multidimensionality, and multiple forms of discrimination) is important to any examination of violence against women with disabilities<sup>20</sup>.

Since women with disabilities experience the same violence as other women, ‘when gender, disability, and other factors come together, violence against these women takes on unique forms, has unique causes and leads to unique consequences’. The CEDAW Committee has noted that, among other things, ‘there is limited understanding, in general, of the broad range of risks to mental health to which women are disproportionately susceptible as a result of gender discrimination, violence, poverty, armed conflict, dislocation and other forms of social deprivation’<sup>21</sup>.

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<sup>19</sup> OHCHR. Thematic study on the issue of violence against women and girls and disability (2012). Par. 17.

<sup>20</sup> Report of the Special Rapporteur on violence against women, its causes and consequences. UN, 3 August 2012. Par. 21. A/67/227.

<sup>21</sup> CEDAW Committee. General Recommendation no. 24. Women and health. (1999). Par. 6.

## 2. ADDITIONAL REGULATORY FRAMEWORKS

The right of women to a life free of violence has been progressively recognized on an international and regional level, along with, more recently, the right of people with disabilities to have the same human rights on an equal basis as others, as part of the dignity inherent to their human condition. As pointed out by the Special Rapporteur on the Rights of Persons with Disabilities, this framework creates a synergy ‘to promote changes in laws, policies, and practices that guarantee, in the perceived violence against women and the response to it, the inclusion of women with disabilities’. However, despite this evolution, ‘insufficient attention is being paid to the combined effects of gender and disability, and very little is being done regarding violence against women with disabilities’<sup>22</sup>.

When addressing the right of girls and women with disabilities to a life free of violence, it is important to explore the standards that encompass this dual vulnerability condition in a world defined by unequally effective access to legally recognized rights. In turn, the Belém do Pará Convention must be read alongside the CRPD ‘to understand better State responsibilities in stopping discrimination and promoting equality for women with disabilities’<sup>23</sup>.

### **Rights of persons with disabilities**

#### ***Declarations before the Convention***

In the late 1960s, the UN General Assembly adopted the Declaration on Social Progress and Development (UN, 1969), which establishes the protection of ‘the rights and the assuring of the welfare of children, the aged and the disabled’, along with the provision of protection ‘for the physically or mentally disadvantaged’. In the following decade, the Declaration on the Rights of Mentally Retarded Persons (UN, 1971) and the Declaration on the Rights of Disabled Persons (UN, 1975) was adopted. These two instruments reflect a growing interest in the topic, despite containing a reductionist view of disabilities, obsolete language, and paternalistic leanings focused on medicalization and the social control of functional diversity.

The Standard Rules on the Equalization of Opportunities for Persons with Disabilities, adopted in 1993, define guidelines for promoting integration and ensuring accessibility, rights, and participation for people with disabilities. Regarding the right of personal integrity, they state that persons with disabilities and their families need to be fully informed about taking precautions against sexual or other forms of abuse, considering that they ‘are particularly vulnerable to abuse in the family, community or institutions’ (art. 9).

The Beijing Declaration and Platform for Action, adopted in 1995, significantly improved the visibility of the rights of girls and women who live with disabilities. Among other aspects, it stresses that special measures should be implemented to ensure their active participation in creating policies and development efforts and to guarantee they have the same human rights without discrimination or inequality, ‘including their access to information and services in the field of violence against women (par. 64).

#### ***Rights of persons with disabilities in legally-binding treaties***

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<sup>22</sup> Report of the Special Rapporteur on violence against women (2012). Par. 14.

<sup>23</sup> CRPD. *Training guide*. OHCHR (2014). p. 30.

The Convention on the Rights of the Child (UN, 1989) is the first treaty that establishes a binding commitment to disabilities by having States Parties agree to recognize that ‘a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity’. Although the term ‘disabled’ is used, the text promotes self-reliance and participation and recognizes the right to special care and assistance that guarantees access to education, health, and rehabilitation, and social integration and personal development (art. 23).

The first treaty focused on recognizing the rights of people with disabilities, in general, is the Inter-American Convention on the Elimination of all Forms of Discrimination Against Persons with Disabilities (OAS, 1999). Its main purpose is to prevent and eliminate discrimination and to promote the integration of people with disabilities into society (art. III), thereby it specifies the duty to implement measures in areas such as employment, housing, education, and access to justice. Although it was adopted several years after the Belém do Pará Convention, the articles do not have a gender perspective or specifically address the topic of violence.

The European Council’s European Social Charter (COE, revised in 1996) recognizes that disabled persons have the right to independence, social integration, and participation in the life of the community, requiring States Parties to implement measures for their integration in education and other services (art. 15). In turn, the Charter of Fundamental Rights of the European Union (EU, 2000) establishes the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community (art. 26).

### **The UN Convention and the paradigm shift**

The CRPD, which was adopted in 2006 and entered into force in 2008, defends the disability model, which proposes an approach aimed at making the environment accessible and empowering people by ensuring all of their human rights. This is included in the preamble of the Convention and article 1:

2. Persons with disabilities include people with long-term physical, mental, intellectual or sensory conditions that, when interacting with barriers, may keep them from fully and effectively participating in society on an equal basis as others.

The barriers and obstacles that interfere with exercising rights on an equal basis may be legal, judicial, physical, attitudinal, urban, and architectural, amongst others. As stated by the OAS Committee for the Elimination of All Forms of Discrimination Against Persons with Disabilities (CEDDIS), this instrument ‘is geared toward increasing personal freedoms in people’s lives, broadening the spheres in which they can decide for themselves, and enhancing recognition of the value of their contribution to the society they form part of as citizens’<sup>24</sup>.

This perspective does not ignore the existence of personal factors, but it understands that the environment’s difficulty in including people with disabilities is what causes or exacerbates their exclusion. Therefore, the commitment should be focused on eliminating the limitations behind it to a reasonable degree<sup>25</sup>. The disability model has several consequences worth highlighting, such as the

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<sup>24</sup> CEDDIS. General comment on the need to interpret article I.2, section B, In fine of the IACDIS in the context of article 12 of the CRPD. 28 April 2011. CEDDIS/doc.12 (I-E/11).

<sup>25</sup> See: DELGADO MARTÍN, Joaquín. *Guide and comments on the Brasília Regulations. EUROsocial+ Tools*. Madrid: June 2019. p. 30. Available at: <https://eurosocial.eu/biblioteca/doc/guia-comentada-de-las-reglas-de-brasilia>.

focus on human rights, the duty to make the environment accessible, universal design and reasonable adjustments.

**Focus of rights:** The belief that people with disabilities receive charity services or care decided by third parties is replaced with a focus that recognizes them as human rights holders.

**Making the environment accessible:** The state and society are responsible for guaranteeing the environment's inclusion, so actions should be centered on transforming and modifying social structures that limit people's possibilities.

**Universal design:** Defends that products, environments, programs, and services should be designed in such a way that they can be used by everyone, to the greatest degree possible, without the need for modifications or special designs for certain individuals. This does not exclude technical assistance for specific groups of people with disabilities when necessary.

**Reasonable adjustments:** This refers to the necessary and appropriate modifications and adjustments that do not entail a disproportionate or inappropriate burden when they are needed in specific instances to guarantee the human rights of people with disabilities on an equal basis as others.

The human rights perspective is in addition to the social perspective, and it represents a particularly significant change for women with disabilities because, in their case, the disability circumstances are interrelated with their gender condition, resulting in a dual vulnerability factor as well as the dual recognition of rights.

### ***Ban on discrimination and rights of persons with disabilities***

Article 2 of the CRPD contains definitions of various concepts, such as 'discrimination on the basis of disability', which 'includes all forms of discrimination, including denial of reasonable accommodation'. Article 3 identifies the general principles of the Convention, including non-discrimination and equality between men and women<sup>26</sup>. Article 5 recognizes equality under the law; requires States Parties to prohibit all discrimination based on disability and adopt measures 'to take all appropriate steps', and defines positive discrimination as part of the present Convention by determining that 'the specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination'.

Non-discrimination as a cross-cutting principle is reiterated in all of the treaty's articles, particularly about recognising the rights of couples to found a family and have children (art. 23); to education (art. 24); health (art. 25); habilitation and rehabilitation (art. 26); work and employment (art. 27); an adequate standard of living and social protection (art. 28); participation in political and public life (art. 29); and participation in cultural life, recreation, leisure and sport (art. 30).

### ***Transversal gender perspective***

In addition to including the principle of equality between men and women in its general principles, article 6 of the CRPD establishes the commitment of States Parties to recognize that 'women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure

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<sup>26</sup> Other CRPD principles include respect for the dignity, self-reliance and independence of people; participation; respect for differences, diversity and the human condition; accessibility; and respect for the evolution of children with disabilities and their right to preserving their identity.

the full and equal enjoyment by them of all human rights and fundamental freedoms'. The States must also agree to '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'.

As noted by the Committee on the Rights of Persons with Disabilities, 'article 6 is a cross-cutting article related to all articles of the Convention to remind States Parties to include the rights of women and girls with disabilities in all actions aimed at implementing the Convention'. This mention regarding women and girls with disabilities:

(...) requires that States Parties go beyond refraining from discriminatory actions to adopting measures aiming at the development, advancement, and empowerment of women and girls with disabilities and promote measures to empower them, by recognizing these constituencies as distinct right holders<sup>27</sup>.

This transversal gender perspective also explicitly states the obligation to adopt immediate, effective, and appropriate measures to raise awareness regarding the new rights of persons with disabilities to, among other aspects, 'combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life' (CRPD, art. 8.b).

## **Women's right to a life free of violence**

### ***Protections against violence***

Article 3 of the Belém do Pará Convention states that 'every woman has the right to be free from violence in both the public and private spheres.'. Violence against women is defined as 'any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere' (art. 1). The definition of violence includes physical, sexual and psychological violence that occurs within the family or domestic unit or any other interpersonal relationship; in the community, the workplace or educational institutions, health facilities or any other place; including any act of violence that is perpetrated or condoned by the state or its agents (art. 2).

This vast definition helps to establish the field of action for the protection system, although as noted in the MESECVI, 'no list of forms of violence against women can be exhaustive.' In fact, 'violence against women expresses itself in numerous and varied ways, which manifest themselves in an ongoing series of multiple, interrelated and at times recurring forms of violence that vary according to social, economic, cultural and political contexts'<sup>28</sup>. This is particularly important regarding women with disabilities, who face specific forms of violence due to the stereotypes and ways in which society responds to the dual condition of women with disabilities.

### ***Violence against women with disabilities***

The Belém do Pará Convention lists disability as one of the vulnerability factors to be taken into account concerning the measures against violence (art. 9), which include those related to condemning all forms of violence and to the policies for preventing, punishing and eradicating such violence with

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<sup>27</sup> Committee on the Rights of Persons with Disabilities. General comment No. 3 (2016). Par. 7.

<sup>28</sup> CIM/MESECVI. Guide to the application of the Inter-American Convention (2014). p. 22.

due diligence (art. 7). It also directly links discrimination and violence by stating that the right to a life free of violence includes the right to be free from all forms of discrimination and to a life free of stereotypes and practices ‘based on concepts of inferiority or subordination’ (art. 6).

On a European level, the Council of Europe Convention on preventing and combating violence against women and domestic violence (COE, 2009), also known as the Istanbul Convention, seeks to protect against all forms of violence against women; to prevent, prosecute and eliminate violence against women and domestic violence; and to eliminate all forms of discrimination against women and achieve equality between women and men (art. 1). For that purpose, it establishes the duty to condemn all forms of discrimination and to adopt measures for its prevention, and also includes disability and age as examples of prohibited discrimination (art. 4).

Regarding girls, the Convention on the Rights of the Child establishes the duty to adopt measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, abuse or exploitation, including sexual abuse (art. 19); prohibits abuse, torture and the deprivation of liberty (art. 37); and states the right to the physical and psychological recovery and the social integration of a child victim of torture or abuse (art. 39). In that regard, the Committee on the Rights of the Child has noted that girls with disabilities are more vulnerable to discrimination than boys, so it recommends adopting special measures to guarantee their protection<sup>29</sup>.

The CRPD systematically addresses the topic of violence against people with disabilities, requiring States Parties to adopt different types of protective measures. Article 15 establishes generic guarantees for the protection against torture and other cruel, inhuman, or degrading treatment or punishment, including that no one shall be subjected without his or her free and informed consent to medical or scientific experimentation; and article 17 establishes that ‘every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others’.

Article 16 includes a specific focus on gender by establishing the obligation to adopt measures ‘to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence, and abuse, including their gender-based aspects’ (par. 1). Appropriate measures must also be taken to ensure ‘appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers’, including through educational measures that promote prevention and reporting, ensuring that protection services are ‘age-, gender- and disability sensitive’ (par. 2).

The States Parties agree to ensure that all institutionalization facilities and programs designed to serve persons with disabilities are monitored by independent authorities that verify any reports of abuse and violence (par. 3). Victims of any form of exploitation, violence, or abuse must be guaranteed their recovery and social reintegration in safe settings that take into account gender- and age-specific needs (par. 4). Finally, it establishes the obligation of putting in place ‘women- and child-focused legislation and policies to ensure that instances of exploitation, violence, and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted’ (par. 5).

### **3. ADDRESSING VIOLENCE AGAINST WOMEN WITH DISABILITIES**

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<sup>29</sup> General comment No. 9 (2006). Rights of children with disabilities. Committee on the Rights of the Child. UN, 27 February 2007. Par. 10. CRC/C/GC/9.

In general, women with disabilities are exposed to the same forms of gender-based violence as other women. As underscored by the Committee of Experts, ‘violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position vis-à-vis men; furthermore, because of their particular condition and circumstance, some women are particularly vulnerable to violence’<sup>30</sup>. This applies to women with disabilities, who are more exposed to violence than other women and are four times more likely to experience sexual violence. According to the Special Rapporteur on violence against women, ‘they are twice as likely to experience domestic violence as non-disabled women and are likely to experience abuse over a longer period of time and to suffer more severe injuries as a result of the violence’<sup>31</sup>.

They are also exposed to forms of violence deriving from their disability condition, but that does not fall into what is viewed as violence against women for gender reasons. This applies to areas such as caregiving, health services, and sexual/reproductive health services, and access to education, justice, and disability care services. Examples are acts of omission of care by caregivers, including the loss of basic needs, assistance, and prescribed care, and various forms of manipulation and intimidation, including verbal aggression and threats, to cause harm or to limit contact.

Intrafamily acts of violence against children with disabilities can be aggravated by gender-based discrimination, as shown by the fact that ‘a female infant or girl with a disability is more likely to die through “mercy killings” than a male infant or boy of the same age with a comparable disability’. Additionally, girls with disabilities are ‘particularly vulnerable to violence, and harmful practices, such as infanticide, child and forced marriage (and) forced sterilization’. They are also more vulnerable to female genital mutilation and are particularly prone to becoming victims of human trafficking, including forced street begging and other exploitative practices<sup>32</sup>.

In this dual context, violence against women with disabilities is not just a subset of gender-based violence. Instead, it is an intersectional category dealing with gender-based and disability-based violence. The convergence of these two factors results in an extremely high risk of violence<sup>33</sup>, so the intersection of the two factors must be taken into consideration for the design and implementation of preventative measures and the assistance given to female survivors.

### ***The MESECVI mandate***

MESECVI is the supervisory mechanism of the Belém do Pará Convention, and its mandate is to monitor the treaty’s implementation. As pointed out by the Committee of Experts, ‘this historic agreement that commits States Parties to protect women against acts that violate their human rights, including the right to a life free of gender-based violence, has led to the adoption of laws and policies on violence against women in the Convention’s States Parties, as well as a political and strategic framework for their implementation.

By establishing that vulnerability to violence because of disability (art. 9) should be taken into consideration, the Convention guides MESECVI in such a way that priority is given to gender-based or disability-based violence against women. Placing more attention on the disability factor allows going

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<sup>30</sup> CIM/MESECVI. Guide to the application of the Inter-American Convention (2014). p. 21.

<sup>31</sup> Report of the Special Rapporteur on violence against women (2012). Par. 31.

<sup>32</sup> Report of the Special Rapporteur on violence against women (2012). Par. 24 and 25.

<sup>33</sup> DAWN-RAFH Canada. Factsheet: Women with Disabilities and Violence. p. 1.

beyond its efforts of promoting the right of women to be free of violence by adding this matter as an aggravating circumstance. Additionally, within the context of cooperation between international entities<sup>34</sup>, this entails expanding their operations regionally, directing their efforts towards bolstering the gender perspective's inclusion in the Inter-American System mechanisms linked to the human rights of persons with disabilities.

The OHCHR also states the need to adopt a dual-track approach. On the one hand, it notes that preventive measures and programs to protect women from violence, in general, should include women and girls with disabilities to take into consideration their needs and guarantee access to existing programs and services, including legal and social assistance services. On the other hand, specific measures for women and girls with disabilities should be guided by international standards and focus on 'eliminating discrimination, promoting autonomy and addressing specific risk factors, with adequate attention to the fields of education, employment, health, and social protection'<sup>35</sup>.

### ***Dual perspective of gender and disability***

In this context, the Belém do Pará Convention's obligations for due diligence should be interpreted through a dual perspective of gender and disability. Additionally, the protection of women with disabilities from exploitation, violence, and abuse, as stated in the CRPD, should be interpreted through the transversal gender perspective. Also, the view regarding the scope of this violence 'should be based on a perception of disability according to the social model (...) and adhere to it', in such a way that without denying the disability's reality or its impact on individuals, the action is geared toward challenging 'the physical and social environments and the legal frameworks that have a negative effect on people with disabilities'<sup>36</sup>.

The inclusion of a gender perspective that takes into account disabilities also entails questioning dominant assumptions, placing the disability experience within the framework of rights and exclusions instead of under the pathological perspective that is based on the idea that a disability is 'a defect or a deficiency'. A disability 'is a cultural interpretation of human variation rather than an inherent inferiority, a pathology to cure or an undesirable trait to eliminate'<sup>37</sup>.

### ***Discrimination as a form of violence***

As underscored by the Special Rapporteur on the Rights of Persons with Disabilities, the juxtaposition of gender and disability biases makes girls and women with disabilities particularly vulnerable to discrimination and violence due to a significant risk of experiencing acts of aggression 'based on social stereotypes and biases that attempt to dehumanize or infantilize, exclude or isolate them, and target them for sexual and other forms of violence'<sup>38</sup>.

The Belém do Pará Convention establishes this correlation between violence and discrimination (art. 6), and although the CEDAW does not refer to violence, the CEDAW Committee has also emphasized

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<sup>34</sup> According to article 3.g of the Regulation, the Committee of Experts is responsible for 'promoting and facilitating cooperation between States Parties, civil society organisations, international entities and cooperation agencies'.

<sup>35</sup> OHCHR. Thematic study on the issue of violence against women and girls and disability. 30 March 2012. Par. 52. A/HRC/20/5.

<sup>36</sup> Report of the Special Rapporteur on violence (2012). Par. 7.

<sup>37</sup> Report of the Special Rapporteur on the Rights of Persons with Disabilities. UN, 3 August 2012. Par. 19. A/HRC/43/41.

<sup>38</sup> Report of the Special Rapporteur on the Rights of Persons with Disabilities (2012). Par. 32.

that the definition of discrimination ‘includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion, and other deprivations of liberty<sup>39</sup>. The Istanbul Convention also includes this correlation because it establishes a legally binding definition of violence against women as a violation of human rights and a form of discrimination against women.

### ***Violence and intersectional discrimination***

The impact of barriers faced by girls and women with disabilities can be aggravated when they belong to certain social groups by being exposed to rejection due to their condition of gender and disability and other factors that comprise their identity. Specifically, stereotypes of factors such as poverty, race, ethnic origin, age, religion, language, sexual orientation, and gender identity create discrimination and can further increase the risk of being the target of violence.

Multiple discrimination indicates the simultaneous presence of two or more grounds for discrimination, whereas intersectional discrimination refers to a situation where several grounds interact at the same time in such a way that they are inseparable. For example, women ‘are more likely to be targeted for certain forms of violence because their social condition is inferior to that of other women and because offenders know that these women have fewer options for obtaining assistance or reporting the violence’<sup>40</sup>. As stated by the Committee on the Rights of Persons with Disabilities:

16. Intersectional discrimination recognizes that individuals do not experience discrimination as members of a homogenous group, but rather as individuals with multidimensional layers of identities, statuses, and life circumstances. It means acknowledging the lived realities and experiences of the heightened disadvantage of individuals caused by multiple and intersecting forms of discrimination, which requires targeted measures concerning disaggregated data collection, consultation, policymaking, the enforceability of non-discrimination, and the provision of effective remedies<sup>41</sup>.

In this context, the addition of an intersectional discrimination perspective entails analyzing the factors that simultaneously come together to increase the risk of exposure to violence. When a woman with disabilities survives gender violence, her dual condition must be taken into consideration, as well as the context of poverty or her status as a migrant or indigenous woman, if applicable. Also, when designing policies, programs, and protocols for dealing with cases of violence, the factors that aggravate the situation of disadvantage must be taken into account, including structural discrimination factors that may stem from the reality of the identity groups they belong to.

### ***Definition of violence against girls and women with disabilities***

In summary, the forms of violence against girls and women with disabilities that should be protected within the framework of the Belém do Pará Convention are, in principle, covered by the treaty’s definition of violence against women (art. 1). In turn, interpreting the scope of this violence requires

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<sup>39</sup> General Recommendation no. 19. Violence against women. CEDAW. Par. 6.

<sup>40</sup> Committee on the Rights of Persons with Disabilities. General comment No. 3 (2016), par. 4.

<sup>41</sup> Committee on the Rights of Persons with Disabilities. General comment No. 3 (2016). Par. 2.

taking into consideration the right of women to be free of discrimination and stereotypes (art. 6), and including the perspective of intersectional discrimination and disability (art. 9).

For the Convention, violence against women is understood as any act or conduct, based on gender and disability, that causes death or physical, sexual or psychological harm or suffering to girls or women with disabilities, whether in the public or the private sphere. This is a vast concept that encompasses all forms of violence against women with disabilities due to their dual condition, as well as any acts that could affect them disproportionately, taking into consideration the stereotypes and burdens resulting from gender and disability.

Along these lines, the OHCHR uses as a starting point the definition of violence against women that appears in the Declaration on the Elimination of Violence Against Women (UN, 1996)<sup>42</sup> to adopt a similar definition, in which violence against women and girls with disabilities ‘encompasses violence accomplished by physical force, legal compulsion, economic coercion, intimidation, psychological manipulation, deception and misinformation, and in which absence of free and informed consent is a key analytical component’<sup>43</sup>.

According to the focus developed by the Special Rapporteur on violence against women, this type of violence must be viewed ‘as the result of gender-based discrimination that comprises the social, economic, cultural and political structures’ under the patriarchal system. In turn, the underlying causes must be eliminated, shifting from ‘an approach based on victimization to a focus on empowerment that includes education, health, and gender equality’ as part of the due diligence obligation to prevent violence against women with disabilities<sup>44</sup>.

#### **4. FORMS AND MANIFESTATIONS OF VIOLENCE**

Gender-based violence against women is defined according to the setting and type of violence. On the one hand, it can be interpersonal (including the home and family), community (including public community spaces), institutional (public services and institutions), and transnational. On the other hand, violence can be physical, psychological, sexual, and economic. The text below explores some of the risk factors of exposure to violence, along with the settings and types of violence and its various forms when the survivors are girls and women with disabilities, including forms that are rarely identified, investigated, or punished as violence.

##### **Risk factors**

According to a 2015 study performed in Spain, violence results in a higher rate of physical harm, including pain, scratches, and bruises, in women with disabilities, who are also more likely to have negative feelings after experiencing abuse, primarily impotence, sadness, and rage<sup>45</sup>. However, as highlighted by UN Women, when addressing violence against women and girls with disabilities, it is

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<sup>42</sup> Article 1 of the declaration contains a definition of violence against women that is similar to the one in the Belém do Pará Convention: ‘any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life’.

<sup>43</sup> OHCHR. Thematic study on the issue of violence against women and girls and disability (2012).

<sup>44</sup> Cited from the OHCHR report (2012). Par. 5.

<sup>45</sup> Report on gender-based violence against women with disabilities based on the 2015 macro-survey by the Spanish Committee of Representatives of Persons with Disabilities. Cited in: *Mujer con discapacidad. Doble discriminación*. Barcelona: Observatorio de la Discapacidad Física, August 2018. Monográfico #12.

essential to consider that not all are exposed to gender-based violence in the same manner or to the same degree. Several factors play a key role in identifying forms and levels of exposure to acts of violence, such as the variety of circumstances surrounding the disability, the seriousness of the condition, the dependence, and the intersections and barriers faced.

**Age:** The risk of girls with disabilities having to face gender-based acts of violence at a young age is confirmed. According to UN Women, although the risk is always present throughout life, the probability of experiencing violence is four times greater for girls with disabilities than for girls without disabilities. In turn, women of advanced age are also exposed to numerous acts of violence.

**Disability conditions:** Several disability categories significantly increase the risk of exposure, which is greater for girls and women with severe hearing or visual disabilities, autism spectrum disorders, psychosocial or intellectual disabilities, or multiple disabilities.

**Dependence factor:** There are many degrees to which autonomy is affected, depending on the seriousness of a disability in relation to the environmental conditions, making this an important factor regarding the risk of exposure to violence.

**Prevalence of stereotypes:** As stated by the Special Rapporteur on violence against women, women with disabilities are at a greater risk of being exposed to acts of violence due to social biases and stereotypes that deny their full human condition or infantilize, exclude or isolate them.

**Intersectional discrimination:** When two or more discrimination risk factors come together simultaneously, the condition of girls or women with disabilities (social exclusion, migrant or minority status, gender identity, and more) significantly increases the risk of violence.

**Care center system:** Women and girls in care centers are extremely vulnerable to acts of violence, which are often carried out by medical or administrative staff at these facilities, caregivers, or other patients with disabilities.

**Lack of training:** A lack of sexual education can contribute to a greater risk of sexual violence by making it harder for girls and women with disabilities to identify inappropriate or abusive behaviors.

Other causes that contribute to the greater risk of violence and that support its continuity and the lack of awareness of the violence faced by women with disabilities include physical, psychological, cultural, social, and economic factors<sup>46</sup>:

- The power imbalance impact of gender inequality that affects all girls and women is exacerbated by disabilities.
- Refusing their status as human rights holders due to stereotypes that perceive them as ‘defective’ or incomplete individuals.
- The culture of abuse in light of disabilities, which is present in homes, the community, and institutionalization facilities.

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<sup>46</sup> This list is based on a discussion about the topic in: MUN MAN SHUM, Grace; CONDE RODRÍGUEZ, Ángeles; PORTILLO MAYORGA, Inés. *Mujer, discapacidad y violencia. El rostro oculto de la desigualdad*. Madrid: Institute of Women, 2006.

- The conditions of exclusion, social isolation and poverty faced by many girls and women with disabilities.
- The street conditions in which many women with disabilities find themselves.
- Family abandonment and the imposed obligation to assume a role as caregivers;
- The lack of social and institutional support is linked to exclusion, marginalization, and abandonment.
- The reliance on other people for care and the duration of that dependence throughout the life cycle and the day.
- The degree to which abusers can be certain of not being discovered due to the disability and depending on its characteristics.
- The belief that testimony from the victim or survivor will be thrown out based on disability stereotypes.
- The greater risk of manipulation due to the dependence factor, as well as the fear of not being believed or of being abandoned.
- In general, it is harder to defend themselves physically, and they can be more vulnerable to threats or coercion in public places.

### ***Legal incapacity as a greater risk***

Interdiction systems that suppress or restrict a person from making decisions regarding their life deprive many women with disabilities of the legal capacity and authority to make decisions, thereby exposing them to a higher risk of gender-based violence. These forms of incapacity can impact the exposure to violence in several ways: they bolster the dependence on caregivers, who in many instances are potential abusers; they make them vulnerable to violent practices linked to their disability, such as all types of forced medical procedures; and they can refrain from reporting abuse out of fear that their caregivers will increase their control or even abandon them<sup>47</sup>.

### **Areas of violence**

As noted in the Belém do Pará Convention, women's right to a life free of violence should be verified in the public and private spheres. However, just like other women, those with disabilities are exposed to all types of violence in various places, including at home, work, or school, and in public spaces as well as public or private institutions<sup>48</sup>.

Women with disabilities are subject to multiple discrimination and violence not only within family relations but also by private social service providers. They also face violence in public community spheres as well as in institutional facilities, perpetrated and/or tolerated by the State. Examples include health institutions, where reported abuse, torture, and sexual exploitation are rampant.

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<sup>47</sup> This approach is documented by Women Enabled International in the fact sheet titled *The Right of Women and Girls with Disabilities to be Free from Gender-Based Violence*. Available at: [www.womenenabled.org](http://www.womenenabled.org)

<sup>48</sup> Report of the Special Rapporteur on violence against women (2012). Par. 35.

Violence can also be structural or systemic, which is any form of inequality or discrimination—whether regulatory, programmatic or attitudinal—that keeps women in a subordinate position that cannot be altered without external intervention. This form of violence manifests itself ‘through hidden or overt patterns of discriminatory institutional behavior, discriminatory cultural traditions, social norms and/or rules’<sup>49</sup>. By being linked to predominant stereotypes, this form of violence often goes unnoticed or is difficult to question because it is considered inevitable. The consequences are even more serious in the case of women with disabilities due to gender and disability dimensions.

Another particularly important aspect is related to decision-making without free and informed consent, and it applies to areas such as decisions about a person’s life and autonomy, and the mental, sexual and reproductive health of girls and women with disabilities. This form of violence is when treatments or procedures are imposed despite the individual’s refusal or without their knowledge, or when the individual does not have the opportunity to sign their consent with full knowledge of the facts. It is also important to consider acts by omission or abstention because, depending on the degree of dependence, acts such as abandoned caregiving or isolation can be serious forms of violence with irreversible consequences.

### ***Violence in families, households or other interpersonal relations***

Any behavioral pattern used to exercise power and control over a woman within the sphere of interpersonal relations through acts of physical, sexual, emotional, economic, and psychological nature (including threats of those actions). Although this is usually linked to intimate partner violence, the Committee of Experts has established that it encompasses partners and interpersonal relations, including couples who do not live together, former partners, domestic workers, family members, and inner circles. In the case of women with disabilities, it includes violence carried out by personal assistants and violence resulting from treatments imposed without consent, which includes the violation of sexual and reproductive rights.

This is one of the most common forms of violence against women, and it is rarely reported ‘out of fear of reprisal, pressure from the family or community (...), women’s scarce knowledge of their own rights, lack of support services, economic dependence and the perception that the police do not respond with appropriate solutions’<sup>50</sup>. The higher vulnerability and dependence of women with disabilities decreases their likelihood of reporting acts of violence due to factors such as the fear of not being believed and of losing the support of their caregivers.

It is also important to highlight the consensual exploitation by families so that women with disabilities carry out domestic, parenting and care activities without any kind of payment.

### ***Violence in the community***

As underscored by the Committee of Experts, violence against women is present in ‘neighborhoods, means of transport, educational institutions, hospitals, places of work, and in general, anywhere that women meet and participate’. As a result, the Convention also encompasses the protection of women in public spheres. Within this category, girls and women with disabilities can face acts of physical, psychological, sexual, and economic violence through various forms of theft and extortion. Acts of

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<sup>49</sup> Committee on the Rights of Persons with Disabilities. General Comment No. 3 (2016), par. 18 and 29.

<sup>50</sup> CIM/MESECVI. Guide to the application of the Inter-American Convention (2014). p. 23.

violence that occur in the heart of a community include femicide, rape, sexual harassment, human trafficking, and forced prostitution. Forms of violence that occur in communities, families and social institutions are discrimination and violence against women because of their sexual orientation and/or sexodiverse gender identity.

### ***Institutional violence***

The Committee of Experts has defined institutional violence as ‘a violence perpetrated by a public servant to discriminate or delay, obstruct or prevent women from enjoying or exercising their fundamental rights and freedoms, and violence that seeks to obstruct or in fact obstructs women’s access to and enjoyment of public policies intended to prevent, care, investigate, punish and eradicate the manifestations, types, and modalities of violence set forth in the law’<sup>51</sup>. It also includes all acts of gender-based violence against women carried out by state agents carrying out public duties.

### ***Transnational violence***

Transnational violence involves organized criminal networks that operate locally as well as internationally, regionally, and globally. It affects girls and women with and without disabilities who are at risk of human trafficking and sexual exploitation, as well as other types of exploitation, enslavement, servitude, or forced labor (including street begging and service work). According to the Special Rapporteur on violence against women, ‘the four main risk factors for susceptibility to trafficking are poverty, ignorance, minority status and being a woman’<sup>52</sup>. A specific form of human trade is organ trafficking, which is a practice that has particularly affected patients kept in psychiatric institutions<sup>53</sup>.

### **Types and forms of violence against women**

Most of the types of violence listed below can take place in the settings classified in the previous section.

#### ***Physical violence***

This is the harm that occurs from hitting and other forms of physical aggression. It disproportionately affects women with disabilities because they are more vulnerable to physical coercion and includes the active denial of medical care, coerced consumption of alcohol or drugs, and blocked access to assistance or rehabilitation services they may need, either at home or at external institutions. It also refers to property damage, which in the case of girls and women with disabilities, includes the objects and processes required for everyday life, such as canes, wheelchairs, ramps, lenses and hearing aids.

#### ***Femicide***

Femicide is the violent death of women for gender-based reasons, and it occurs within the family, household or any other interpersonal relationship; in the community, by the hand of anyone; or an act

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<sup>51</sup> CIM/MESECVI. *Hemispheric Report on Child Pregnancy in the States Parties to the Belém do Pará Convention*. 2016. Par. 123 (p. 44). MESECVI/CEVI/doc.234/16 Rev.1.

<sup>52</sup> UN. Report of the Special Rapporteur on violence against women (2012). Par. 57.

<sup>53</sup> These forms of violence, which occur because of collusion involving the inner workings of public institutions, are addressed by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN, 2000) to the United Nations Convention against Transnational Organized Crime (UN, 2000).

perpetrated or tolerated by the state and its agents, through their actions or omissions. According to the MESECVI Declaration on Femicide, this horrible crime is ‘the most serious manifestation of discrimination and violence against women’, and it is primarily caused by ‘the high rates of violence against women, their limited or non-existent access to justice, the prevalent impunity in cases of violence against them, and the persistence of discriminatory sociocultural patterns’. Girls and women with disabilities are exposed to the risk of femicide, although systematic records have not been verified to prove to what degree they are affected compared with other women.

### ***Sexual violence***

This is any act of sexual nature committed against the will of the girl or woman survivor, regardless of whether they are the attacker’s partner, that takes place without their consent or when it is impossible for them to give consent. It can occur at home, work, school, or in the street, as well as in state-run or private institutions, care homes, health centers, or detention centers, among others. Women with disabilities are more exposed to this type of violence in their family setting or inner circle, as well as in the community or institutions, where reports of sexual violence are commonplace.

### ***Sexual harassment***

This is any form of physical contact without consent, including all types of sexual molestation without penetration. It also refers to non-physical violence, such as behavioral harassment, undesired sexual comments, requests or demands for sexual favors, stalking, and displaying sexual organs.

### ***Rape***

This is any sexual act with vaginal, anal, or oral penetration without consent and using a sexual organ or an object. Rape can occur in the community or an institution and within a marriage or a couple.

### ***Psychological violence***

It is not a visible violence. It is aimed at devaluing, attacking, rejecting, and discriminating against the people or groups to whom it is addressed and that seeks to suppress a woman’s will through intimidation and threats of physical harm and other forms of violence against her and other people within her sphere of interest, such as her partner, children, family members, and pets. It includes gender-based harassment and the threat of destroying valuable property. It also consists of undermining the person’s trust towards friends, family and their circle of support and isolating them from school or work to exert greater control over their intimate space. This becomes more serious in parallel to the person’s degree of dependence.

The consequences of these expressions generate anxiety, depression, memory alterations, language alterations, somatized anxiety, depression, in the people to whom it is addressed.

### ***Emotional violence***

This is a form of psychological violence that seeks to exercise control over a person’s emotions, attacking their self-esteem through insults, criticism, undervaluing their capabilities, and other forms of verbal abuse, all without the threat of physical violence. It includes a lack of love and affection in a woman’s relationships with the most important people in her life, such as children in the case of

mothers, or family members and close friends. Girls and women with disabilities can be particularly vulnerable to this form of violence, in line with their degree of dependence on independent life.

### ***Economic violence***

This consists of subjecting a woman to economic dependence by exercising control over the resources that allow her to meet her needs and impeding her from accessing them despite belonging to her. It also refers to preventing her from working or attending training sessions as a way of hindering her autonomy. In the case of girls and women with disabilities, it includes preventing them from receiving subsidies, pensions, aid, or inheritances. The gender stereotypes that overlap a disability can increase the belief that they do not deserve that support, be it of a family, community, or institutional nature. These situations can hasten their dependence or worsen a situation of dependence and contribute to the loss of subsistence resources in the short and medium-term.

### ***Violation of sexual or reproductive rights***

Girls and women with disabilities are frequently victims of this specific form of gender-based violence against women. In a family setting, it can consist of imposing or refusing treatment, as well as not providing information or access to public services. Some of the ways in which this appears in health services are dehumanized treatment or that which is done without care or in a violent manner, unjustified medicalization, and pathologizing natural processes. It also occurs by refusing access to these services as well as to information for full and healthy sexuality.

Concerning the most serious forms, the Special Rapporteur on the Rights of Persons with Disabilities states that ‘girls and young women with disabilities are disproportionately subjected to forced and involuntary sterilization for different reasons, including eugenics, menstrual management, and pregnancy prevention. In addition, ‘girls and young women with disabilities are frequently pressured to end their pregnancies owing to negative stereotypes about their parenting skills and eugenics-based concerns about giving birth to a child with disabilities’<sup>54</sup>.

As stated by the UN Special Rapporteur on torture, sterilizations and forced abortions violate a person’s right not to be subjected to torture. In this regard, it denounces that ‘targeting ethnic and racial minorities, women from marginalized communities and women with disabilities for involuntary sterilization because of discriminatory notions that they are “unfit” to bear children is an increasingly global problem.’ Throughout the world, medical professionals participate in this practice by claiming, among other reasons, that women with disabilities ‘are not “worthy” of procreating, are unable to make responsible decisions about contraception, and are unable to be “good mothers” or should not have children’<sup>55</sup>. Additionally, the right to life is compromised when forced abortions are performed in unsafe conditions.

### ***Obstetric violence***

Obstetric violence, which has been recognized by MESECVI since 2012, is a specific form of sexual and reproductive violence linked to maternal care and childbirth in health services. In 2019, the Special

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<sup>54</sup> Report of the Special Rapporteur on the Rights of Persons with Disabilities. Sexual and reproductive health and rights of girls and young women with disabilities. UN, 14 July 2017. Par. 31. A/72/133.

<sup>55</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. UN, 1 February 2013. Par. 48. A/HRC/22/53.

Rapporteur on violence against women published a report on the abuse and violence against women in this context, including a term that has become widely used in regional legislation and pointing out that this is a global and systematic phenomenon. In 2020, the CEDAW Committee ruled for the first time that a pregnant woman had been a victim of ‘obstetric violence’ upon arriving at the hospital and being subjected to a series of unnecessary medical interventions, including induced labor without her consent or any justification<sup>56</sup>. Just as in the case of other forms of violence, girls and women with disabilities and of reproductive age are at risk of obstetric violence due to their vulnerability factors. Examples of obstetric violence include the use of forceps during childbirth and unnecessary cesarean sections.

### ***Other forms of violence against women***

The Committee of Experts has identified other forms of violence against women, including moral violence (any conduct that entails slander, defamation, or harm against a woman) and symbolic violence (messages, values, or symbols that convey and reproduce relationships of dominance, inequality, and discrimination against women). For example, girls and women with disabilities are frequently the targets of grotesque humor based on gender and disabilities, or they are exposed because of their presumed weakness or deviated hegemonic norms that drive patriarchy.

The MESECVI has also addressed political violence in a broad sense, which refers to limiting the political participation of women through coercive and structural methods. In the case of people with disabilities, aspects such as not being taken into consideration when designing public policies or facing obstacles when creating associations or participating in the country’s public life are forms of violence and barriers to advancing their rights. This is combined with restrictions on exercising the most basic political rights linked to democracy, such as the right to vote.

### ***Lack of reasonable adjustments***

The CRPD highlights the lack of reasonable adjustments as a factor for discrimination. According to the Committee on the Rights of Persons with Disabilities, when this occurs in priority care facilities for women and girls with disabilities, it could be a form of violence by limiting their access to essential services. This is verified in aspects such as the lack of accessible spaces for care services or the existence of physical and communication barriers that restrict people from exercising their rights and promote discrimination. A reasonable adjustment would be a mechanism that allows women with disabilities to breastfeed their children at work. On the other hand, an example of denying the right to reasonable adjustments is when a health center is not physically accessible.

### **Specific situations and population segments**

#### ***Intersectional discrimination factors***

Indigenous peoples, rural populations, minorities, migrants, refugees, and people at risk of social exclusion and poverty are particularly exposed to discrimination and violence. These population segments are the most likely to be deprived of their rights, thereby increasing the risk of women with disabilities being exposed to discrimination and violence.

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<sup>56</sup> Decision adopted by the Committee under article 4 (2) (c) of the Optional Protocol, concerning communication No. 138/2018. CEDAW, 28 February 2020. CEDAW/C/75/D/138/2018.

When faced with forms of structural discrimination, they are usually resistant to finding justice in formal systems because they do not believe their needs are represented, or their reports are addressed accordingly. On many occasions, ‘despite their efforts to be heard about the violence they experience, they might be effectively silenced both by community social sanction and ineffective anti-violence laws’<sup>57</sup>. For this reason, policies, programs, and initiatives aimed at protecting women with disabilities from these population segments against violence must find a balance between respecting the rights of people with disabilities and the cultural and at-risk conditions in which they live, and this includes paying attention to the need to promote better living conditions.

### ***Older women with disabilities***

According to the Special Rapporteur on the Rights of Persons with Disabilities in a recent general comment on this matter, ‘older women with disabilities have consistently worse life prospects and outcomes than older women without disabilities and older men with disabilities. They are frequently economically dependent and poorer due to gender inequalities and ‘are likely to be subject to violence, abuse, and neglect; and have higher chances of facing unmet needs and human rights violations’. Additionally, they ‘are more likely to be institutionalized or incapacitated owing to the higher life expectancy of women compared with men’.

Aside from facing challenges such as stigmatization, discrimination, institutionalization, and denial of autonomy and legal capacity, they are also at a high risk of experiencing violence, abuse and neglect. These abuses occur in family and community settings and also in ‘hospitals, nursing homes and other residential settings, and include physical, psychological and sexual abuse, caregiver neglect and financial exploitation. Specifically, the high rates of abuse in institutions primarily affect people with dementia. They are often administered neuroleptics against their will and are poorly informed of existing protective services against violence. In addition, ‘older women with disabilities who are survivors of sexual violence face particular barriers to disclosure and access to justice, and when they do report abuse, they ‘may be viewed as poor witnesses owing to memory problems’<sup>58</sup>.

### ***Women with disabilities are subjected to forced institutionalization***

The CDPC prohibits the arbitrary deprivation of liberty and establishes that the existence of a disability does not justify in any instance the deprivation of liberty (art. 14). In fact, according to the Special Rapporteur on torture, ‘inappropriate or unnecessary non-consensual institutionalization of individuals may amount to torture or ill-treatment as use of force beyond that which is strictly necessary’<sup>59</sup>.

The CRDC states that ‘women with disabilities are more likely to be subjected to forced interventions than other women in general and men with disabilities’, whereas violations relating to deprivation of liberty ‘disproportionately affect women with intellectual or psychosocial disabilities and those in institutional settings’<sup>60</sup>. In psychiatric institutions, they are kept in restraints and held in prolonged solitary confinement, which are forms of violence that may constitute torture and ill-treatment<sup>61</sup>. This

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<sup>57</sup> Report by the Special Rapporteur on the Rights of Persons with Disabilities (2021). Par. 85.

<sup>58</sup> Report of the Special Rapporteur on the Rights of Persons with Disabilities. UN, 17 July 2019. Par. (9, 18, 36 and 37). A/74/186.

<sup>59</sup> Report of the Special Rapporteur on torture (2013). Par. 70.

<sup>60</sup> Committee on the Rights of Persons with Disabilities. General comment No. 3 (2016). Par. 53 and 54.

<sup>61</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. UN, 28 July 2008. Par. 55 and 56. A/63/175.

primary violence is combined with the fact that ‘in institutional settings, women with disabilities are subjected to numerous forms of violence, such as the forced ingestion of psychotropic medication and other forced psychiatric treatments’. These acts can take place over extended periods of time, sometimes indefinitely, and are also common forms of physical abuse, such as inadequate treatment, neglectful or aggressive handling of women, and inappropriate practices by medical staff or caregivers, including overmedication.

### ***Women inmates with disabilities***

The prison systems of many countries lack minimal accommodation measures and security standards for female prisoners, so women inmates with disabilities face a high risk of violence, sexual abuse, and rape. Incarcerating people with disabilities without first making the necessary adjustments can be viewed as illegal and degrading treatment. According to the Special Rapporteur on violence against women, jail sentences can be viewed as causes of disabilities for all female inmates: pre-existing disabilities can worsen, and new inmates can develop disabilities resulting from prison conditions. In turn, most women inmates with disabilities may face discrimination when trying to access prison services and programs because their disabilities are not taken into consideration, or they are denied the chance to participate<sup>62</sup>.

## **5. ACCESS TO JUSTICE**

The main concern of the Committee of Experts about the right to access justice for women who survive acts of violence is the high rate of impunity linked to these crimes. This lack of justice is due to, ‘among other things, limited access of women to justice, as well as gender bias during legal, police and prosecutorial procedures’<sup>63</sup>. In cases of violence against girls and women with disabilities, the impunity is exacerbated by the obstacles resulting from their dual vulnerability status, which, notes the OHCHR, ‘include denial of their legal standing and due process guarantees and the inaccessibility of the physical and communication environments during proceedings.’ These factors are combined with ‘the lack of available free legal aid for persons with disabilities, including for those living in institutions, and for women and girls with disabilities facing violence or abuse. In turn, the legislation ‘often contains provisions that deny equal treatment of persons with disabilities before courts’<sup>64</sup>.

The Inter-American Court of Human Rights (I/A Court H.R.) believes that persistent impunity sends the message that violence against women is tolerated; this leads to the perpetuation and social acceptance of the feeling women have that they are not safe and contributes to their mistrust in the administration of the justice system<sup>65</sup>. In this sense, the Committee of Experts has highlighted that guaranteeing the right to justice entails organising the entire governmental apparatus, particularly the administration of the justice system, to ensure they can guarantee free and full access to justice for all women, with no discrimination. For this, the states must take into account the special needs and obstacles faced by women and girls with disabilities when seeking reparations for situations of

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<sup>62</sup> Report of the Special Rapporteur on the Rights of Persons with Disabilities (2019). Par. 50 to 54.

<sup>63</sup> *Inter-American Model Law on the Prevention, Punishment and Eradication of the Gender-Related. Killing of Women and Girls*. Washington DC: CIM/MESECVI, 2015. p. 8. OEA/Ser.L/II.6.21.

<sup>64</sup> OHCHR. Right to access justice under article 13 of the Convention on the Rights of Persons with Disabilities 27 December 2017. A/HRC/37/25. Par. 41. Available at: <https://undocs.org/es/A/HRC/37/25>.

<sup>65</sup> I/A Court H.R. Case of González et al. v. Mexico. Judgement of 16 November 2009. Par. 400.

violence<sup>66</sup>. As underscored by the I/A Court H.R., ‘any person who is in a vulnerable condition is entitled to special protection’. Therefore, in compliance with their general duties to respect and guarantee human rights, ‘states must take legislative, social, educational, occupational, and any other type of action as may be necessary as to prevent all types of discrimination associated with mental disabilities’<sup>67</sup>.

### **The duty of due diligence**

The right to justice is specified in international and regional instruments on human rights, and it is an essential element of the Rule of Law, a fundamental right in itself, and an essential requirement for protecting and promoting all other human rights. The Belém do Pará Convention recognizes the right to equal protection before the law and to an effective recourse to a competent court (art. 4), and it establishes the duty to ‘apply due diligence to prevent, investigate and impose penalties for violence against women (art. 7.b). In turn, the CRPD explicitly recognizes the right to access for persons with disabilities (art. 13), which should be interpreted through a transversal gender perspective (art. 6), taking into consideration that women and girls with disabilities face specific barriers because of gender and disabilities. The fundamental right to access justice entails recognizing other rights, such as equal recognition before the law (art 12), and it must be guaranteed through the provision of procedural and age-appropriate accommodations (art. 13.1).

As part of the duty of due diligence, states are required to investigate and bring to trial individuals who are allegedly responsible for acts of violence against women, impose the corresponding punishment, and establish appropriate reparations for the harm caused. According to the OHCHR, this element of effective remedies, in particular for persons with disabilities, ‘given that cases of violence, abuse, exploitation and other forms of harm to their mental and bodily integrity commonly remain unaddressed due to lack of reporting, delays in opening investigations on the grounds of lack of credibility of the victims or a failure to do so’. Therefore, ‘complaint mechanisms and investigations require positive measures which are gender-sensitive to ensure that victims of gender-based violence are able to come forward and seek and obtain reparation’<sup>68</sup>.

According to the I/A Court H.R., the application of the due diligence standard includes adopting measures that prevent discrimination, providing access to adequate and effective judicial remedies for victims and their family members when they suffer acts of violence, particularly taking into consideration that there are ‘certain groups of women as being at particular risk for acts of violence due to having been subjected to discrimination based on more than one factor’<sup>69</sup>. For its part, the Committee of Experts has identified several elements that should be guaranteed to comply with this duty: increasing the availability of services for receiving complaints, issuing protection orders and making sure they are effective, having trained personnel and protocols for dealing with cases of

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<sup>66</sup> *Third Hemispheric Report on the Implementation of the Belém do Pará Convention: Prevention of Violence against Women in the Americas. Paths to Follow*. Washington DC: CIM/MESECVI, 2017. Par. 496 and 503.

<sup>67</sup> I/A Court H.R. Case of Ximenes-Lopes v. Brazil. Judgement of 4 July 2006. Par. 103 and 105.

<sup>68</sup> OHCHR. Right to access justice (2017). Par. 3 and 44.

<sup>69</sup> I/A Court H.R. Case Jessica Lenahan (Gonzales) et al. v. United States. Report No. 80/11. 21 July 2011. Par. 126 and 127.

violence, and implementing measures to prevent the emergence of gender stereotypes in the justice administration<sup>70</sup>.

An additional instrument to assist with reparations for acts of violence against girls and women with disabilities are the Brasilia Regulations on Access to Justice of Persons in Vulnerability Status<sup>71</sup> (2008). Their purpose is to promote access to justice with no discrimination for everyone under the same conditions, regardless of their vulnerability status<sup>72</sup>. They integrate gender and disability perspectives, as well as intersectional discrimination (rules 4 and 17), and specifically include women, girls and adolescents with disabilities who are victims of violence. Some of the proposed measures to improve access to justice include receiving equal treatment; being recognized person before the law; respecting autonomy, safety, mobility, comfort, comprehension, privacy and communication; and access to the required technological resources (rule 8). In turn, the principle of reasonable adjustments requires ‘the elimination of all types of architectural, information, communication and attitudinal barriers’ (rule 77).

Additionally, the Special Rapporteur on the Rights of Persons with Disabilities, the Committee on the Rights of Persons with Disabilities and the Secretary-General’s Special Envoy on Disability and Accessibility have listed ten principles that should be taken into consideration to improve access to justice for people with disabilities<sup>73</sup>, and they coincide with the rights they should have under the same conditions:

1. The right to legal capacity, which means that no one shall be denied access to justice based on disability.
2. Facilities and services must be universally accessible to ensure equal access to justice without discrimination against persons with disabilities.
3. Persons with disabilities, including children with disabilities, have the right to appropriate procedural accommodations.
4. The right to access information in a timely and accessible manner on an equal basis with others.
5. The right to all substantive and procedural safeguards, and states must provide the necessary accommodations to guarantee due process.
6. The right to free or affordable legal assistance.
7. The right to participate in the administration of justice.
8. The right to report complaints and initiate legal proceedings, and the right to have their complaints investigated and be afforded effective remedies.

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<sup>70</sup> MESECVI. *Second Follow-Up Report on the Recommendations of the Committee of Experts of the MESECVI*. Washington, United States: MESECVI, par. 234, p. 92.

<sup>71</sup> The regulations, which were redacted in 2008 as part of the Ibero-American Judicial Summit and updated in 2018 to adopt the social disability model specified in the CDPC, are included in the analysis to promote the connection between international conventions on women’s rights and other regional instruments.

<sup>72</sup> DELGADO MARTÍN, Joaquín. *Guide and comments on the Brasilia Regulations*. (2019). p. 30.

<sup>73</sup> *International Principles and Guidelines on Access to Justice for Persons with Disabilities*. Special Rapporteur on the Rights of Persons with Disabilities, Committee on the Rights of Persons with Disabilities, and Secretary-General’s Special Envoy on Disability and Accessibility. UN, 2020.

9. The right to have effective monitoring mechanisms.
10. All those working in the justice system must be provided with training programmes addressing the rights of persons with disabilities, in particular in the context of access to justice.

### **Barriers to access justice**

Women, girls and adolescents with disabilities who are victims of violence experience multiple obstacles when accessing their rights through the justice system. These barriers can be symbolic (such as stereotypes and biases that influence the work of the individuals leading investigations and judicial procedures) and material (linked to the physical surroundings and access to information and communication). They can also be caused by a limited gender and disability perspective when requesting and obtaining evidence, performing an in-depth analysis and dictating measures for reparations.

Women with disabilities who are subjected to relationships of subordination and dependence can be reluctant to report the situations of violence and abuse they face out of fear of losing their support from caregivers (who are frequently the people who commit the abuse)<sup>74</sup>. Those who come forward often find that their credibility is doubted and their accusations dismissed.

Denying persons with disabilities of legal capacity keeps victims from participating directly in the process and they are sometimes institutionalised in prison facilities with fewer guarantees than people deprived of their liberty. Additionally, denied access to justice is frequently the result of factors such as a lack of: accessible information, procedural adjustments, legal aid, access to effective remedies, suitable reparations and compensation, and properly trained legal operators<sup>75</sup>.

Other circumstances that can intimidate or dissuade them from seeking justice include the requirement of being accompanied by another person when coming forward, the possibility that instead of being offered legal assistance they are referred to social services, and the disrespectful attitude of the agents responsible for legal compliance. These and other attitudes and factors result in the impunity and invisibility of the problem, which in turn leads to the persistence of violence over prolonged periods.

### ***Effects of stereotypes***

The prevalence of practices based on stereotypes, biases and customs that legitimise or exacerbate violence against women is a fundamental obstacle to exercising the rights of women and girls. As a result, eliminating stereotypes from justice systems is an essential measure to ensure equal access to justice for victims and survivors with disabilities. In turn, women with disabilities who are migrants, refugees, indigenous, rural residents, poor or sexodiverse, among other population categories, are the targets of specific forms of exclusion in their relationships with the justice system. As a result, intersectional discrimination must be taken into account when designing measures to eliminate barriers to access justice, thereby ensuring that they are not geared toward a homogeneous group.

### ***Fear of reporting***

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<sup>74</sup> Committee on the Rights of Persons with Disabilities. General comment No. 3 (2016). Par. 52.

<sup>75</sup> OHCHR. Right to access justice (2017). Par. 43-61.

Aside from fearing the effects of stereotypes, the fear of reporting can result from emotional, financial or physical dependence, which in turn is usually derived from poverty, a lack of resources, isolation, low education levels and, in general, discrimination against women with disabilities. Some of the retaliations they may fear as a result of reporting or deciding to abandon their caregivers include forced institutionalisation, loss of aid and other support, increase in abuse when they are out of sight and loss of custody.

### ***Legal incapacity***

When a person is deprived of their legal capacity, they cannot access justice to oppose the restriction of their rights, thereby locking them in a cycle that violates their freedom and could lead to various forms of violence. According to the Committee on the Rights of Persons with Disabilities, this exclusion from judicial processes ‘has devastating effects on the right of persons with disabilities to a fair trial with due process guarantees’. Some of the consequences include being deprived of the right to be heard, to give evidence or contest witnesses; or being subjected to tests to assess their competence or fitness to stand trial, which sometimes leads to detention and treatment against their will. The Committee on the Rights of Persons with Disabilities has strongly rejected the concept of unfitness to stand trial and its discriminatory character and has called for its removal from the criminal justice system, calling for persons with psychosocial disabilities to be given ‘the opportunity to stand trial promptly, with support and accommodations, rather than declaring such persons incompetent’<sup>76</sup>.

### ***Discredited testimonies***

It is common for the procedural system to not recognise women with disabilities as competent witnesses due to factors such as the tendency to ‘infantilise’ women with mental disabilities, their difficulty in communicating with the police, and the stereotypes that deny their status as sexual beings. Their credibility is also refuted based on the belief that they require assistance to communicate, are too fragile to withstand questioning, or in the case of psychological and intellectual disabilities, their testimonies are not deemed worthy. There is a tendency for judges to require more corroborating evidence of an assault in cases involving women with disabilities than in other cases, and evidence about prior mental health treatment may be used to discredit the testimony of such witnesses.

According to the Special Rapporteur on violence against women, ‘this exclusion is particularly problematic in cases involving sexual assault or other forms of gender-based violence, in which the complaining witness may provide key evidence necessary for a conviction’. In this sense, ‘excluding them from the witness stand denies the reality that they face violence to a disproportionate degree’.

Perpetrators may target women with disabilities because they know that complaints may be taken less seriously, so women with disabilities whose complaints have been dismissed are less likely to come forward again to report abuse<sup>77</sup>.

### ***Shortage of accessible facilities and services***

The physical barriers that make it materially impossible to enter police stations, courts and inaccessible indoor spaces can put justice out of reach. Shelters and emergency spaces tend to also be inaccessible, without reasonable adjustments and thereby excluding women with disabilities altogether.

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<sup>76</sup> OHCHR. Right to access justice (2017). Par. 34 and 35.

<sup>77</sup> Report of the Special Rapporteur on violence against women (2012). Par. 41 to 43.

Additionally, shelters usually do not allow pets, which also acts as a barrier for women with service animals. Accessibility is linked to the availability of services and facilities, and it requires, to the degree possible, the guaranteed existence of services at a reasonable distance from major population centres.

### ***Lack of training with an intersectional focus***

It is rare for caregivers, social workers and medical professionals in public services, as well as the people involved in the administration of the justice system, to have specialised training in assisting women and girls with disabilities who are survivors of gender-based violence. This barrier is a contributing factor that allows behaviours based on gender and disability stereotypes to extend throughout the process, including sentencing. As a result, the types of violence, barriers and situations faced by women with disabilities go unnoticed or are not taken into consideration, but it causes judgements lacking a gender or disability perspective, or that are insensitive to other related intersectional discrimination factors.

### ***Lack of information and accessible communication***

Courts and police stations rarely have the resources needed to ensure that accusers can communicate properly and access the information needed to report their incidents and receive legal assistance. Sign language interpreters may not be available and information may not be provided in Braille or other formats using plain language for certain disabilities and ages. This also keeps many women and girls with disabilities from understanding and knowing how to defend their rights.

### ***Lack of procedural adjustments***

The CRPD requires States Parties to guarantee appropriate procedural adjustments so people with disabilities can exercise their rights as direct and indirect participants in legal proceedings, starting with the investigation and other preliminary stages. In the Case of Furlan and Family v. Argentina, the I/A Court H.R. Stated that:

(...) persons with disabilities must enjoy effective access to justice and benefit from a due legal process on an equal footing with those who do not face such disadvantages. To accomplish its objectives, the judicial process must recognize and correct any real factors of inequality facing those who are brought before the courts. The presence of conditions of inequality requires compensatory measures to help reduce or eliminate the obstacles and deficiencies that impair or diminish an effective defence of their interests<sup>78</sup>.

These adjustments should be done systematically, thereby transforming legal systems to make them accessible and inclusive for all persons with disabilities, and specifically by making the necessary adjustments in each case. The best example is to make it easier to participate in courts using the communication methods for people with disabilities. Age adjustments can consist of sharing information using suitable language for each age. Other obstacles that stand in the way of participating are the language used in the courtroom and how the cross-examination process is carried out. As a result, the Special Rapporteur on violence against women has stated that protocols should be

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<sup>78</sup> I/A Court H.R. Case of Furlan and Family v. Argentina Preliminary Objections, Merits, Reparations and Costs. Judgement of 31 August 2012. Par. 268.

established to encourage clearer communication, along with support services for ‘witnesses with a cognitive disability to ensure that they can navigate the trial process’<sup>79</sup>.

### ***Lack of free legal aid***

One of the biggest economic barriers blocking justice under the same conditions is the difficulty in obtaining free legal assistance. According to the Committee of Experts, this is a key factor in having access to justice because it ensures that those who lack resources can participate effectively in the process. As a result, the Committee has also proposed increasing the number of attorneys responsible for defending ex officio women and girl children victims of violence and discrimination<sup>80</sup>. As part of its practice to supervise the measures adopted by States Parties, the Committee on the Rights of Persons with Disabilities has highlighted that in certain countries where free legal aid services have been established, they lack the necessary resources, do not operate independently, are inaccessible to people with disabilities or the individuals lack specific knowledge and sufficient experience.

### ***Reparations lacking gender and disability perspectives***

According to the criteria put forth repeatedly by the Committee of Experts, for reparations to be effective, they must be based on a gender stereotype diagnosis, the nature of the bias caused, the origin, the context and the necessary means for its elimination. In addition to guaranteeing the satisfaction, rehabilitation, guarantees of non-repetition and compensation for the harm caused, reparation must have a gender-based ‘transformational purpose’ to address the structural situation of violence and discrimination that initially led to the violated rights<sup>81</sup>. Concerning gender and disabilities, the CRPD urges states to guarantee the rehabilitation, social integration and physical, cognitive and psychological recovery of people with disabilities in an environment that fosters their health, well-being, self-esteem, dignity and autonomy, and that takes into consideration their specific needs in terms of gender and age.

## **6. VIOLENCE AGAINST WOMEN WITH DISABILITIES IN LATIN AMERICA AND THE CARIBBEAN**

A 2021 study by the Spotlight Initiative found that one of the biggest obstacles to raising awareness of the violence against girls and women with disabilities in the region is that because they are ‘naturalised’, they are not identified as such, thereby making them invisible to society. Additionally, the few women with disabilities who decide to file a report come face to face with the reality that health, social, police and judicial services are not accessible due to barriers that violate their rights daily, such as the lack of information as well as physical, communication, attitudinal and economic barriers. There are also no procedures, guidelines or resources aimed at altering the gender and disability perspective in a cross-cutting manner<sup>82</sup>.

The following text explains additional diagnostic elements on the status of the rights of people with disabilities in the region, with an emphasis on girls and women, including the progress made in the

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<sup>79</sup> Report of the Special Rapporteur on violence against women (2012). Par. 44.

<sup>80</sup> CIM/MESECVI. *Third Hemispheric Report* (2017). Par. 500, 501 and 586.

<sup>81</sup> CIM/MESECVI. *Guide to the application of the Inter-American Convention* (2014). p. 32.

<sup>82</sup> *Promising practices in responding to violence against girls and women with disabilities in Latin America and the Hispanic Caribbean*. Spotlight Initiative, 2021. p. 17.

measures adopted and structural violence factors<sup>83</sup>. The Committee of Experts hopes that this summary will help raise awareness of this type of violence and alert people to the need of adopting urgent measures aimed at fulfilling the duty of due diligence under the Belém do Pará Convention and the CRPD.

### ***RIADIS report***

According to the 2019 Regional Report by the Latin American Network of Organizations of Persons with Disabilities and their Families (RIADIS), gender-based violence is one of the main causes of disabilities in Latin America<sup>84</sup>, and women with disabilities face obstacles in the access to basic rights and services, such as suitable housing, health, education, vocational training and employment, and they are also more likely to be institutionalised.

Regarding violence, RIADIS stresses that ‘the convergence of factors such as gender and disability means that women with disabilities are at a high risk of experiencing some form of abuse’ and regrets that precise statistics are not available for Latin America ‘because many women and girls with disabilities do not report having been victims of sexual or domestic violence, either out of shame, fear of their perpetrators, or simply because they do not have accessible mechanisms for reporting’.

In terms of sexual violence, the report notes that ‘families of people with intellectual or psychosocial disabilities hide these types of situations, thereby contributing to the ongoing existence of these acts’. Although there are programmes for guidance and advice on the main forms of violence to help identify and report them, ‘these do not consider the specific needs of women with disabilities, thereby making those programmes inaccessible to them’.

The report highlights the rise of violence and femicide as one of the main obstacles to making progress in the region about respecting and ensuring the rights of women with disabilities. Other important barriers include discriminatory policies based on gender, disabilities and factors such as age, race and sexual orientation; the absence of accessible services for sexual and reproductive health; misconceptions about the right to sexuality of women with disabilities; the lack of community-based rehabilitation programmes for women with disabilities in rural regions; and the absence of accessible and easy to understand sexual education programmes for women with intellectual disabilities so they can learn about their body and discover their sexuality.

### ***Evaluation of the Belém do Pará Convention***

The MESECVI indicator system for analysing the implementation of the Belém do Pará Convention includes several indicators linked to girls and women with disabilities regarding the measures adopted and violence records. In the Third Hemispheric Report, the system was added to the evaluation methodology, highlighting the limited information available on violence against girls and women with disabilities (par. 354). Of the countries that did not reply to the indicators, Caribbean nations in

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<sup>83</sup> The sources used include the Regional Report by the Latin American Network of Organizations of Persons with Disabilities and their Families (2019), the MESECVI Third Hemispheric Report on the Implementation of the Belém do Pará Convention (2017), CEDDIS recommendations to several IACDIS States Parties, and the final comments by the Committee on the Rights of Persons with Disabilities on the reports of ten Latin American countries.

<sup>84</sup> Other causes it has identified include acquired illness, traffic accidents, street violence, acts of terrorism in conflict zones, wars, poverty, problems during labour and age. In: *Informe regional sobre la implementación de los objetivos de desarrollo sostenible en América Latina bajo el enfoque de la Convención sobre los Derechos de las Personas con Discapacidad* (Regional report on the implementation of sustainable development goals in Latin America under the focus of the Convention on the Rights of Persons with Disabilities). RIADIS, 29 March 2019. p. 13.

particular stand out. On the other hand, only Colombia, Ecuador and Guatemala offered information about indicators of violence against girls and women with disabilities.

The information available for Colombia suggests that cases are under-reported because the rate of violence against women with disabilities in 2015 was only 1.39 for every 100,000 women. In the case of Ecuador, the 2011 figures show that 49% of women with disabilities experienced gender-based violence from their partner or former partner, compared with 46.2% for other women. Finally, Guatemala reported that 7.25% of female victims of intrafamily violence over the age of 6 years had some form of disability (par. 384).

In the analysis of measures to guarantee a life free of violence, the adoption of specific laws in several countries stand out, including Ecuador's constitutional provisions that recognise the right of people with disabilities to live a life free of violence (art. 66). In Peru, the special law on women's rights included the topic of disability, whereas Honduras, Mexico and Costa Rica reported that they have a national policy for persons with disabilities (par. 139 and 140). Costa Rica's policy establishes measures to protect against violence and abuse, and to ensure access to justice, and Mexico's programme includes actions to prevent, protect and assist them against acts of violence. Both countries confirmed that organisations for disabled persons helped design their inclusion programmes and policies (par. 178).

In response to the indicator of national mental health policies and laws that address the right to a life free of violence, nine countries reported about their mental health laws. Although many are designed from a human rights perspective, most do not contain specific concepts about the right to a life free of violence. As a result, the Committee of Experts thought that it was appropriate to highlight the case of Costa Rica, whose National Mental Health Plan includes language on the prevention of intrafamily violence, as well as Mexico, whose regulations on medical-psychiatric services address the prevention of family violence, sexual violence, and violence against women in general (par. 145-147).

### ***IACDIS evaluation***

The methodology for CEDDIS country reports focuses primarily on analysing the sufficiency and consistency of information<sup>85</sup>. Just like in the case of MESECVI indicators, the conclusion that most stands out in the IACDIS supervision mechanism is the lack of available information, specifically regarding violence against women.

For example, in the 2016 report on Argentina, the response for the indicator on information and accessible service in cases linked to disabilities and violence was incomplete and not broken down, thereby making it impossible to perform an overall assessment. Regarding access to justice, CEDDIS recognises measures to guarantee accessibility for persons with disabilities as well as training, but its general assessment notes that although progress has been made, 'information was not submitted to analyse the country's reality (...) or the information submitted does not allow a precise evaluation of the data'.

The Uruguay report confirmed the diagnosis of missing information because the Committee noted 'that appropriate, pertinent and coherent information was not submitted for any of the aspects mentioned', including the life free of violence section. This stands in the way of 'making recommendations,

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<sup>85</sup> CEDDIS reports are available at: [www.oas.org/es/sedi/ddse/paginas/index-4\\_informes.asp](http://www.oas.org/es/sedi/ddse/paginas/index-4_informes.asp).

inferring challenges and highlighting the country's actions on the social inclusion of persons with disabilities'.

In the second report submitted by Bolivia, the Committee highlights the existence of laws, resources and training on violence against people with disabilities, but it recommends creating instruments to track, monitor and evaluate the protection measures, specifically to include the disability perspective in the activities of the governing body that promotes women's rights. Regarding access to justice, it is pending approval of a judicial policy with a focus on human rights for persons with disabilities. In turn, it requires building databases of cases that reach the courts to have a realistic vision of access to justice.

As far as Paraguay, on the topic of a life free of violence, the State Party reported all of the descriptors, highlighting the 2011 promulgation of a law enforcement procedure manual for cases involving intrafamily and gender-based violence. However, the adoption is pending of a policy aimed at preventing and punishing acts of violence against persons with disabilities that includes the gender and age perspectives, as well as people with disabilities who have been deprived of their liberty.

In general, the Dominican Republic's report also lacks data, particularly because it does not contain information on violence. As a result, the Committee urged the state to adopt urgent measures aimed at protecting against and dealing with violence, including protocols to assist victims. Regarding access to justice, the Committee advised the state to speed up disability training in the justice system and establish mechanisms and protocols, attempting to provide verification sources that support the efforts.

### ***Committee on the Rights of Persons with Disabilities***

RIADIS believes that the comments and recommendations adopted by the Committee on the Rights of Persons with Disabilities 'are a primary source of information so persons with disabilities may understand and fully exercise their rights'. The Committee summarises the main topics of concern it has focused on in the final comments on the States Parties reports, of which most are verified in the comments about the reports of countries in Latin America and the Caribbean (except regarding female genital mutilation). These topics are:

(...) the prevalence of multiple and intersectional discrimination against women with disabilities; the discrimination experienced by women and girls with disabilities on account of their gender, disability and other factors that are not sufficiently addressed in legislation and policies; the right to

life; equal recognition before the law; the persistence of violence against women and girls with disabilities, including sexual violence and abuse; forced sterilization; female genital mutilation; sexual and economic exploitation; institutionalisation; the lack of or insufficient participation of women with disabilities in decision-making processes in public and political life; the lack of inclusion of a gender perspective in disability policies; the lack of a disability-rights perspective in policies promoting gender quality;

and the lack of or an insufficient number of specific measures to promote the education and employment of women with disabilities<sup>86</sup>.

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<sup>86</sup> Committee on the Rights of Persons with Disabilities. General comment No. 3 (2016). Par. 10.

Of the 33 countries in Latin America and the Caribbean, 31 have ratified the CRPD and 24 have also ratified the Optional Protocol. The following analysis is done based on the Committee's final comments on the reports of ten Latin American nations, and although its emphasis lies on the consequences of discrimination and violence against girls, adolescents and women, due to the nature of the problems analysed, it also addresses topics that affect people with disabilities in general. The body has not yet issued reports with the final comments to Caribbean nations, and only the initial country report submitted by Jamaica appears<sup>87</sup>.

### *Positive aspects*

Some of the positive aspects highlighted by the Committee on the Rights of Persons with Disabilities in its final comments include the adoption of legislation linked to the mandate of promoting and protecting the rights of persons with disabilities. In most cases, general laws were adopted that recognise their rights, based on the treaty's contents, and public policies, protocols and guidelines, among other instruments, were designed. Progress was also made in officially recognising the corresponding sign languages as the language of people with hearing disabilities and in measures linked to inclusive education and the accessibility of public services in rural settings.

### *General principles and obligations (arts. 1 to 4)*

The Committee notes its concern about the persistence of disability assessment criteria for medical or social services limited to the charity-based medical model, without taking into consideration the barriers faced or including the human rights model. In this sense, it shows the contradiction of having ratified the Convention without first making progress on a legislative coordination task. The RIADIS report also notes this contradiction because although countries in the region have made efforts to establish public policies for education, employment and health, significant results have not been obtained 'because most did not consult with organisations for persons with disabilities (and) are based on a welfare concept under the medical/rehabilitative model of disability'<sup>88</sup>.

Among other structural discrimination circumstances, the reports by the Committee on the Rights of Persons with Disabilities mention the existence of laws, regulations, customs and practices that represent serious forms of discrimination against persons with disabilities, with an emphasis on restricting capabilities and sidestepping the social dimension of disabilities, leading to the exclusion and discrimination of people with disabilities, particularly psychosocial and intellectual disabilities. Due to the lack of legislative adjustments, throughout the region there continue to be laws, standards and precedents that use inadequate and derogatory terminology, including terms such as 'invalid', 'incapable', 'handicapped', 'insane', 'helpless patients' and 'lunatics'. The disadvantages resulting from this biased approach to disabilities are multiplied in the case of girls and women because they are combined with the effects of gender biases that are prevalent throughout the region.

In several cases, the Committee has stated its concern about the lack of national disability policies and the absence of mechanisms to punish the failure to comply with protection measures in public and

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<sup>87</sup> The reports for the 'final comments on the initial report' analysed are: Costa Rica (CRPD/C/CRI/CO/1, 12 May 2014); Mexico (CRPD/C/MEX/CO/1, 27 October 2014); Chile (CRPD/C/CHL/CO/1, 13 April 2016); Bolivia (CRPD/C/BOL/CO/1, 4 November 2016); Guatemala (CRPD/C/GTM/CO/1, 30 September 2016); Colombia (CRPD/C/COL/CO/1, 30 September 2016); Honduras (CRPD/C/HND/CO/1, 4 May 2017). In the case of Ecuador: Final comments on the combined second and third periodic reports of Ecuador. CRPD/C/ECU/CO/2-3. 21 October 2019.

<sup>88</sup> RIADIS. Regional report (2019). p. 72.

private spheres. Among other aspects, institutionalisation due to disability remains in place, along with forced sterilisation and the systems that limit legal capacity, and these forms of violence disproportionately affect girls, adolescents and women. Regarding participation, the Committee on the Rights of Persons with Disabilities highlights the lack of permanent query mechanisms with organisations for people with disabilities, which particularly affects organisations for women with disabilities, as underscored by the Committee on several occasions. Another concern is the lack of disability legislation and programmes that are shared in accessible formats.

#### *Equality and non-discrimination (art. 5)*

The Committee on the Rights of Persons with Disabilities voices its concern about the incidence of discrimination against people with disabilities, particularly in the presence of additional discrimination factors such as gender and age. Among other aspects, it highlights discrimination against girls and women with other violence risk factors because they are systematically subjected to multiple forms of discrimination, including legal restrictions on their human rights.

As far as regulations, the absence of the disability perspective on legislation targeting discrimination and violence against women is concerning. In turn, numerous jurisdictions do not recognise or prohibit multiple and intersectoral discrimination or discrimination against women with disabilities, nor do they recognise the refusal to make reasonable adjustments as a form of discrimination due to disability. The Committee also highlights the lack of mechanisms for identifying and punishing acts of discrimination, noting that the limited number of complaints, records and declarations regarding discrimination are proof of the lack of availability and knowledge of existing resources and their ineffectiveness. Finally, it expresses its concern about the lack of shared information about the legal resources available and the fact that registered complaints are not categorised by type of disability.

#### *Women with disabilities (art. 6)*

The Committee's analysis of discrimination against girls and women with disabilities in the region points to the overall lack of prioritising the transversal gender perspective in public policies on disabilities, as well as the lack of including women and girls with disabilities as a specific category in gender equality policies and specific programmes for women. In this sense, the mechanism draws attention to topics linked to the obligation of adopting measures to achieve equality for women with disabilities by fighting discrimination and preventing violence.

The signs include concern about the lack of affirmative measures to achieve *de facto* equality for women with disabilities and to ensure progress on their rights, as well as the lack of effective participation mechanisms. It also notes the absence of policies and strategies for preventing and punishing violence, the ineffectiveness of existing measures, and the lack of strategies. In general, gender and disability policies do not include women with disabilities, who are also not present in policies and strategies for equal opportunities between women and men. In certain instances, the Committee is worried that legislation will limit or restrict the sexual and reproductive rights of women and girls with disabilities.

#### *Children with disabilities (art. 7)*

The Committee warns, among other aspects, of insufficient protection measures to prevent abandonment, including abusing institutionalisation as a measure against high child abandonment rates. The prevalence of the welfare and charity paradigm in assistance programmes, combined with

the lack of measures to address intersectional discrimination in relation to poverty, indigenous status and rural life, and the limited reach of specific measures for rural regions and indigenous communities, are also factors of concern. Regarding indigenous and rural communities, the lack of access to universal and accessible healthcare services for children with disabilities also stands out.

In terms of violence, the Committee voices its concern about the high rate of ill-treatment, abuse and corporal punishment, and the continued institutionalisation practices and policies for investing in care homes, without implementing deinstitutionalisation measures and independent living programmes in communities. Another concern is the lack of information and diagnoses about the status of children with disabilities who are institutionalised, abandoned, victims of abuse, or living in poverty or rural settings.

Regarding participation, the Committee voices its concern about the lack of measures to guarantee that children with disabilities can freely state their opinions and have them taken into consideration. It also notes the lack of transparency in judicial proceedings, which goes against the guaranteed access to justice and results in arbitrary decisions being made about indefinite institutionalisation.

#### *Raising awareness (art. 8)*

The Committee emphasises the persistence of harmful attitudes and stereotypes towards people with disabilities, particularly against those who face multiple and intersectional forms of abuse, including girls and women, and the insufficient efforts to overcome these stereotypes. Among other aspects, some customs and practices particularly affect girls and women with disabilities and whose effects are increased by gender biases, resulting in serious violations of the dignity, safety and other fundamental rights of those individuals. Other concerns include the lack of programmes and public campaigns on human rights and disabilities, and to the contrary, campaigns carried out in media outlets and paid with public funds that promote stereotypes and bolster the welfare and charity model of disabilities.

#### *Right to life (art. 10), risk situations and humanitarian emergencies (art. 11)*

Regarding the right to life, the reports by the Committee on the Rights of Persons with Disabilities express a concern about the high rate of femicide, information about infanticide due to disability and driven by persistent biases—which requires improving measures against disability stereotypes—and murder reports of people with disabilities. In certain countries, femicide rates are alarmingly on the rise. This crime also affects women and girls with disabilities, and it goes unpunished in most cases.

Regarding the adoption of measures to ensure protection in light of risk situations and humanitarian emergencies, the Committee worryingly notes the lack of specific plans and protocols for prevention and protection, along with assistance for persons with disabilities in numerous countries. Specifically, regarding the peace process in Colombia, it notes that the violence resulting from the armed conflict has significantly impacted women and girls with disabilities, and regrets that the disability perspective has not been included for the rehabilitation and assimilation into society of victims, particularly considering the high number of anti-personnel mine victims.

#### *Equal recognition before the law (art. 12)*

The Committee on the Rights of Persons with Disabilities highlights the persistence of legal incapacity systems based on disability, which subject affected individuals to full or partial guardianship. According to sources such as RIADIS, the interdiction specifically exposes women and children to a

greater risk of violence, ill-treatment, abuse and torture<sup>89</sup>. MESECVI believes that this role disproportionately discriminates against women, who in turn are subjected to new violence resulting from their coercive imposition.

Of the rights restricted by law, the Committee lists the right to vote, the right to a family, access to justice, and the right to give or refuse free and informed consent. Economic rights are also affected, including the right to own and inherit property, control personal economic matters and receive bank loans. Another important aspect is the absence of measures to remove these restrictions to legal capacity based on disability, the lack of social awareness in this regard, and the resistance to guarantee equal recognition before the law.

In some instances, the interdiction declaration process is based on a psychiatrist's certification, thereby particularly affecting individuals institutionalised for mental disability reasons. In other cases, there are no measures for abolishing these legal roles, leaving individuals affected by these arbitrary acts defenceless.

#### *Access to justice (art. 13)*

Among other concerns, the Committee notes the limited access to justice for women and girls with disabilities who are victims of violence and abuse, including those who have been institutionalised, as well as the lack of credibility given to the accounts of victims who have disabilities, particularly in the case of women and girls. It also points out the lack of procedural adjustments adapted to disabilities, both from the physical accessibility perspective as well as in relation to protocols and procedures. Specifically, the Committee is concerned about the lack of appropriate adjustments for age and gender as well as the absence of sign language interpreters, written Braille and other accessible formats. It is also concerned about barriers that block full access to justice for interdicted or institutionalised individuals, particularly those who require more intensive support, such as women and girls with disabilities who are victims of violence.

Other factors that stand out are the lack of training for justice system employees on the rights of people with disabilities, and the restricted access to justice for women and girls with disabilities who are victims of violence and abuse. If assistance protocols and manuals exist, they are not put into practice, and any training for justice employees is scarce and does not ensure comprehensive training. According to the MESECVI, training must include the transversal gender perspective and specialised training to handle cases of violence and discrimination against girls and women with disabilities.

#### *Personal liberty and safety (art. 14)*

In most countries, civil law and mental health regulations remain in force to authorise the deprivation of liberty without consent and under the supposed presence of a psychosocial disability, in combination with the 'danger' criteria. Among other rights violations, systematic hospitalisations without consent continue to occur, sometimes solely with the authorisation of the legal representative, as well as involuntary medication, restraint and treatment practices for institutionalised people with disabilities. Institutionalisation affects girls and women with psychosocial and intellectual disabilities to a greater degree, and even more so in cases of abandonment or ill-treatment.

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<sup>89</sup> RIADIS. Regional report (2019). p. 57.

As far as the deprivation of liberty for committing crimes, the Committee notes the high number of people declared unchargeable who are institutionalised for extended periods in psychiatric hospitals and the prolonged procedures for the judicial review of causes leading to institutionalisation, in violation of guaranteed due process. The Committee is also concerned that there are centres for the deprivation of liberty of condemned individuals that are not accessible and do not have specific medical and rehabilitation services for persons with disabilities. Other serious aspects include the lack of accessibility and specific adjustments at detention centres and police stations, and the absence of detailed records of the people who are subjected to institutionalisation measures due to their disability. This is combined with the effects of not including the gender perspective in the justice systems throughout the region, and its impact on women and girls who are victims of violence and hope to find justice.

*Protection against torture (art. 15)*

The comments made by the Committee on the Rights of Persons with Disabilities confirm the continued existence of systems that violate the right to informed consent for persons with disabilities. Third parties are permitted to apply measures that, according to international doctrine, may be equivalent to torture. Specifically, the Committee considers alarming the forced confinement practices at psychiatric institutions, including acts of physical coercion, prolonged solitary confinement and physical constraints, as well as psychosurgeries, electroconvulsive therapy and other treatments classified as cruel, inhumane or degrading.

The Committee is also concerned about the lack of mechanisms to identify, investigate and bring to trial cases of violence and abuse against persons with disabilities; and when protection mechanisms for these situations are available, there are no effective remedies or supervision for situations involving persons with disabilities institutionalised against their will. It also highlights the absence of law enforcement protocols for handling people with disabilities, leading to rights violations and even death as a result of abuse or negligence.

*Protection against exploitation, violence and abuse (art. 16)*

The analysis of the Committee's reports shows an unfavourable outlook regarding the adoption of measures to halt the various forms of violence and abuse, and to guarantee the appropriate punishment. In several cases, the Committee on the Rights of Persons with Disabilities has highlighted its concern about the persistence of physical and/or psychological abuse, and sexual and gender-based violence against women, girls and older people with psychosocial or intellectual disabilities, at home and in institutions. The comments also note the absence of effective protection mechanisms, the lack of investigations, the impunity of these violent crimes, and the insufficient records and statistics. Other structural problems include the absence of legislation, policies and protocols to protect against violence and abuse, and the lack of effective measures to protect women and girls with disabilities against violence and to repair the damage caused.

The Committee also highlights the ineffective reporting mechanisms and reparations, the limited availability of rehabilitation services, and the lack of preventive and protective measures for retaliation against people with disabilities who are victims of violence, human trafficking and organ trafficking. It also underscores its concern about the limited information and lack of detailed records about acts of violence against women and children with disabilities (including factors such as gender, age and ethnic

origin, public and private settings; psychiatric hospitals, detention facilities and homes; resolution of existing reports).

#### *Protection against personal integrity (art. 17)*

The Committee on the Rights of Persons with Disabilities highlights its major concern about the prevalence of practices and treatments that are forced on women and girls with disabilities, or done without their consent, as well as the existence of regulations and jurisprudence that allows sterilisation without consent. Certain institutions recommend, authorise and/or apply forced sterilisations and other decisions linked to sexual and reproductive health, sometimes merely at the request of a family member or guardian. All of this is a violation of the right to personal integrity and of sexual and reproductive rights due to factors such as the absence of guarantees to ensure informed consent and support from people with psychosocial and intellectual disabilities.

#### *Right to live independently and to be included in the community (art. 19)*

The Committee highlights the absence of strategies aimed at deinstitutionalising people with disabilities who are kept in shelters or psychiatric hospitals, and ensuring their inclusion in society. It also notes the lack of support for families to ensure they can remain in the family setting, and the proliferation of private facilities where institutionalisation measures are adopted without state supervision and controls. Another key aspect is the lack of measures to ensure that institutions have sign language interpreters as well as accessible formats and technologies for the different types of disabilities, including the absence of support for indigenous people in their native language. These structural limitations restrict communication and access to information, thereby affecting the access to justice for victims of violence, among other rights.

#### *Respect for the home and family (art. 23)*

The Committee on the Rights of Persons with Disabilities notes that the civil regulations in numerous countries restrict the right of people with disabilities to get married, start a family and exercise their parental rights, with a greater impact on women with disabilities. It also expresses its concern about the state actions aimed at separating children from women with disabilities, particularly those who live with psychosocial and intellectual disabilities. The Committee on the Rights of Persons with Disabilities points out in several reports that girls with disabilities living in poverty are more at risk of abandonment and institutionalisation.

#### *Education (art. 24)*

The Committee regrets the overall low level of schooling of children with disabilities, the persistence of the special education model that segregates students, and the lack of effort to establish or expand the coverage of inclusive education. In certain cases, special education continues to be the only available option due to negative attitudes that reject inclusion in the education system. The Committee also expresses its concern about the prevalence of educational exclusion affecting women and girls with disabilities, people with multiple disabilities and indigenous populations; the existence of all types of barriers; and the lack of accessibility of educational institutions and materials.

#### *Access to health (art. 25)*

In several reports, the Committee on the Rights of Persons with Disabilities notes that discrimination can still be found in the health services for people with disabilities, who are partially or completely refused medical attention and treatments. In general, there is a welfare focus and little progress has been made to guarantee accessibility in the physical setting of services and the full inclusion of people with disabilities. It also notes the absence of protocols, professionals trained in inclusive medical care, and integrated sign language.

Regarding sexual and reproductive rights, the biases and stereotypes about how the sexuality and maternity of women with disabilities are viewed stand out, along with the limited information available on sexual and reproductive health. In terms of mental health, several reports note that it continues to be based on the medical disability model and that no significant advances have been made towards the community model. The Committee is also concerned that appropriate mechanisms have not been established to ensure free and informed consent for treatment decisions.

#### *Work and employment (art. 27)*

On the matter of inclusion policies for work and employment, the Committee expresses its concern because most people with disabilities do not have formal jobs, and this type of discrimination affects primarily women with disabilities. It also emphasises that the refusal to make reasonable adjustments in the workplace is a form of discrimination. As a result, it highlights the need to adopt affirmative measures to speed up equality, particularly for women with disabilities.

#### *Appropriate standard of living and social protection (art. 28)*

The Committee on the Rights of Persons with Disabilities points out the consequences of multidimensional factors that lead to high levels of poverty for women with disabilities, as well as other segments, and it makes special reference to the general poverty conditions of indigenous people and the lack of information on the matter. In many countries, it finds it worrying that disabilities are not properly taken into account in the public policies for indigenous populations.

#### *Political rights (art. 29)*

The Committee highlights the lack of action aimed at ensuring women with disabilities can access elected positions, which hinders their effective and independent participation. It underscores that the interdiction declaration due to disability includes restricting the right to vote and run for elected positions, particularly in the case of people with intellectual or psychosocial disabilities. Other concerns are the infrastructure and communication barriers in polling stations, and the lack of information about physical accessibility and communication measures.

#### *General obligations*

The Committee on the Rights of Persons with Disabilities highlights its concerns about the widespread deficiencies in data collection and statistics (art. 31), including the use of the medical disability model to gather information, the lack of consistency in data collection efforts, and the absence of detailed data broken down into the following categories: social barriers, human rights violations, gender-based violence, living conditions and other intersectional dimensions. Regarding the justice administration, there are concerns as to the lack of detailed data about reports, investigations and trials, as well as the absence of records on gender-based violence. Finally, the Committee has stated on several occasions that it is concerned about the lack of independent mechanisms to track the Convention's application

(art. 33) due to a shortage of space in which organisations of people with disabilities may participate and the limited participation of human rights defence mechanisms to carry out this task.

## 7. PRACTICAL INITIATIVES

The research project that led to this thematic report included descriptions of inspiring initiatives that could help promote access to justice for girls and women with disabilities who are victims or survivors of violence<sup>90</sup>. The list, coordinated by EUROSocial+ and created by consulting with organisations of people with disabilities in Europe and Latin America, includes regulations, protocols, specialised services and training programmes. Some of the report's findings are summarised below to raise awareness of alternatives for the protection, prevention and punishment of violence against women and girls with disabilities in the States Parties of the Belém do Pará Convention.

### ***Regional networks***

RIADIS, which was founded in 2002 and is headquartered in Quito (Ecuador), represents 56 organisations for people with disabilities from 19 countries in Latin America and the Caribbean. It seeks to promote and protect their rights in the region through assistance programmes and mental health interventions. During the COVID-19 pandemic, he launched a remote-psychology programme for girls and women with disabilities, including survivors of gender-based violence. Another regional initiative is the 'Mapeo Discapacidad y Feminismos: acción colectiva en América Latina y el Caribe Hispanohablante' (Mapping disabilities and feminism: Collective action in Spanish-speaking Latin America and the Caribbean) project, which launched the creation of an accessible directory of organisations of women with disabilities and feminist entities to drive training, networking, dissemination and awareness.

### ***Support services***

Since 2004, the Paso a Paso Foundation has been working in Mexico on the intersection between people with disabilities and indigenous peoples through technical assistance, training, lobbying, and research on sexual and reproductive rights and violence against women. In addition to providing legal aid to young survivors of violence, it promotes adjustments to create accessible spaces. For example, it managed to transform the local auditorium, formerly reserved for authorities, into a meeting place for older people by having a ramp installed at the entrance.

The Mujeres Invisibles (Invisible Women) project, carried out in 2019 by the Centro Interdisciplinario de Derechos, Infancia y Parentalidad (Interdisciplinary Centre of Rights, Childhood and Parenthood) in Mexico City, promoted the creation of spaces for dialogue to inform women with disabilities about reproductive rights and obstetric violence, as well as to create networks for sisterhood and support with health professionals. This led to the Red de Mujeres Profesionales de la Salud, Parteras, Doulas y Asesoras de Lactancia (Women's Network of Health Professionals, Midwives, Doulas and Lactation Experts), who accompany and support women with disabilities to improve the conditions in which their sexual and reproductive rights are addressed.

In Peru, the Comisión de Damas Invidentes (Blind Women's Commission) implemented a project in 2020 to diagnose and raise awareness aimed at promoting proper care for women with disabilities who

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<sup>90</sup> Compiled under the title of: *Iniciativas públicas latinoamericanas y europeas para garantizar el acceso a la justicia de las mujeres con discapacidad víctimas o sobrevivientes de violencia*. Andrea Parra and Carmen Miguel Juan. EuroSOCIAL+. 2021.

are victims of gender-based violence. It included, among other initiatives, a gender and disability information guide for police and emergency services, and a certification programme for justice and judiciary employees and law enforcement.

ALBA is a programme driven by the Spanish Confederation of the Deaf that allows sharing information and tips for situations of gender-based violence. The programme, which is run by experts in gender-based violence who live with hearing disabilities, assists victims, including psychology services and guidance for shelters, medical centres and victim support centres.

Also in Spain, within the context of the COVID-19 pandemic, the CERMI Women's Foundation carried out the 'No estás sola' (You are not alone) initiative, a tool to help women with disabilities who are victims of violence get out of isolation, share their experiences and become aware of their situation. The initiative, based on the support group and group intervention methodologies, brought together women with disabilities and female caregivers for people with disabilities.

### ***Access to justice***

In Mexico, the Documenta Association has a technical team of 'justice facilitators' who accompany people with disabilities throughout their judicial proceedings and train women with disabilities on their right to access justice. They also promote adjustments to judicial proceedings and judge training on the CRPD and how to apply it in the access to justice.

In Chile, the National Disability Service's Programme for Access to Justice of Persons with Disabilities promotes access to justice under the same conditions and adjustments to procedures and based on age. Its support network helps provide access to free and specialised legal assistance and promotes the disability perspective in the justice system.

In Ireland, the Justice Department's Judicial Service for the Equality of Persons with Disabilities has focal points for promoting access to justice for people with disabilities and providing specialised legal assistance tailored to people with disabilities for civil and criminal proceedings.

The French city of Lille has a public service that provides free legal assistance to persons with psychosocial disabilities being kept in hospitals without their consent, thereby offering access to justice outside of the court system. Various security forces also have units to assist persons with disabilities, such as the Spanish Civil Guard's UAVDI (Support Unit for People with Intellectual Disabilities), which specialises in cases of sexual abuse against persons with intellectual disabilities.

The Council of Europe's Resolution 1663 on women in prison (2009) promotes protecting the rights of women with disabilities deprived of their liberty, and it asks states to guarantee the assistance they need throughout the process (sign language interpreters, Braille documents, medical attention, etc.), ensuring that they are not segregated from other prisoners in social and educational activities that take place in prison by arranging appropriate programmes and services for them.

On the other hand, in the European Union, the European Commission's Recommendation on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings (2013) aims to strengthen the procedural rights of people who are not able to understand and participate effectively in criminal proceedings due to age, 'their mental or physical condition or disabilities'.

### ***Mechanisms for access to services***

Several countries have carried out initiatives to access assistance services using smartphone apps for people with disabilities. Examples include Nuestra Decisión (Argentina) and Morada (Mexico), which provide information about gender-based violence and direct access to emergency phone numbers for victims of violence. These apps are made with a gender and disability perspective, using simple and accessible language, and they contain information about rights and service databases. In Spain, the PORMÍ app has been specifically designed to report acts of sexual violence, providing emergency contact information and access to other resources. It is also available to people who have knowledge of violence but are not the direct victims.

### ***Procedural adjustments***

In France, the PULSE Group initiative is comprised of professionals from the fields of motor, multiple and mental disabilities, who prepare documents and strategies to be shared with everyone in an accessible manner using adapted communication mediums, easily accessible content and icons that are easy to understand. These tools can be freely modified and adapted to any communication setting and institutional practice.

In 2020, Spain signed an agreement between Plena Inclusión España and Poder Judicial to promote accessibility in the justice system and to guarantee the right to effective judicial guardianship for people with disabilities. In addition to redacting guides and protocols, it aims to assist people with intellectual or developmental disabilities in the court system through procedural adjustments. It includes searching for alternatives to the deprivation of liberty. During the first stage, young people with cognitive disabilities analysed courts under construction to make the language easier to understand<sup>91</sup>.

The European standards for making information easy to read and understand (2009) contain standards to improve access to information by creating educational materials that are easy to understand, in written, electronic and audiovisual formats. In turn, the Directive on the accessibility of websites and mobile apps in the public sector (2016) aims for Member States to regulate both aspects so they are more accessible, understandable and robust, particularly for people with disabilities.

### ***Alternatives to institutionalisation***

In 1993, Sweden passed a law that established the right to personal assistance for all persons with disabilities, including those with greater needs. The subsequent 1995 mental health reform abolished the guardianship system and instead promoted measures to assist with decision making. In addition to recognising the legal capacity of people with disabilities and the duty to guarantee the necessary assistance, this legislation introduced the role of Personal Defender, who helps persons with disabilities make their own decisions.

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<sup>91</sup>The Spanish Ministry of Equality, through the Government Delegation against Gender Violence, provides a telephone service for information, legal advice and immediate psychosocial care by specialized personnel for all forms of violence against women, through the short dialing telephone number 016; by WhatsApp at the number 600 000 016 and by e-mail to the online 016 service: 016-online@igualdad.gob.es. This resource is accessible for people with hearing and speech disabilities (SVIsual: <http://www.svisual.org>; Telesor: <https://www.telesor.es>; WhatsApp: 600 000 016 (this number only supports WhatsApp, does not support phone calls); Chat online; Email: 016-online@igualdad.gob.es; DTS or text phone: 900 116 016; Apps for cell phones; and it is also accessible for people with low vision. The email, its content and structure are adapted to facilitate its use by people with visual limitations.

Since 2001, Finland has implemented an open dialogue approach to protect the rights of people who experience a mental health crisis and their networks. It promotes reducing institutionalisation and the use of medication, and focuses instead on psychotherapy in a person's natural habitat. The initiative encompasses three principles: tolerance of uncertainty, dialogue and support for social networks.

In 2011, Ireland shared the report titled *Time to move on from congregated settings*, which promoted allowing institutionalised people with disabilities to live with their families and community. The report was based on an analysis of various housing and social support alternatives, and contained specific recommendations for government authorities. It became a public policy the following year and was implemented through the health system under the slogan 'living ordinary lives in ordinary places'.

In 2013, the European Union adopted the European guidelines on the transition from institutional to community care, aimed at supporting a sustained transition from institutions to family-based and community-based alternatives. Two years later, Italy adopted a law to guarantee the right of persons with disabilities to an independent life, offering specific assistance to people with serious disabilities who do not have family support, including the creation of innovative housing solutions.

## CONCLUSIONS

Disabilities and gender-based violence are two closely linked factors because of their effects and consequences. In many instances, women are faced with disabilities as a result of gender-based violence (be it physical or sexual violence), violated sexual and reproductive rights, and maternity in unsafe conditions, among other circumstances. In every situation, women and girls with disabilities are the target of exclusion, discrimination and violence to a greater degree than men with disabilities, and they are also more exposed to the various forms of violence than women in general. This occurs due to the convergence of gender and disability, which are two vulnerability factors that increase when other intersectional discrimination factors coincide, such as unfavourable economic conditions, age, indigenous or rural populations, migrants, and sexual orientation and/or identity.

Significant advances have been made to create legislation that recognises the rights of persons with disabilities, specifically including the rights of girls and women with disabilities. The first binding agreement on this matter was the IACDIS, adopted in 1999 in the heart of the OAS, and the most important international regulation is the United Nation's CRPD, which includes safeguards to protect against abuse, exploitation and violence, and includes the transversal gender perspective. Adopted in 2006, it has fostered major changes in the approach to disabilities by integrating the social model and the human rights model of disability into international law.

This model leaves behind the medical perspective and instead recognises that persons with disabilities hold all human rights. It promotes transforming the environment to eliminate barriers and obstacles so people with disabilities are better able to achieve maximum autonomy when exercising their rights. To do so, states agree to adopt a variety of measures, including actions and programmes to fight against stereotypes, discrimination and exclusion; and the implementation of adjustments to improve the accessibility of spaces and procedures; and the integration and participation of people with disabilities in the various spheres of life.

The disability status is extremely varied regarding the factor or factors that limit people's lives, the intensity with which their lives are affected, and society's ability to make adjustments for inclusion. In any case, as proven by the diagnoses of the mechanisms aimed at promoting decent treatment and respecting their human rights, violence and discrimination against girls and women with disabilities occurs throughout the world and the incidence rates are strongly determined by the level of access to financial means. In addition to being more exposed to specific forms of violence for their gender, they also face forms of violence linked to their disability. Among other actions that impact them to a greater degree than men with disabilities, the restricted rights and the refusal of legal status are worth noting along with the specific forms of violence linked to forced institutionalisation and the coercive imposition of treatments, including sterilisation and forced abortions.

On the other hand, when accessing justice to demand their rights, girls and women with disabilities who are victims or survivors of violence face specific barriers and obstacles based on both their gender and disability. These challenges in obtaining access, which are confirmed by the limited number of reported cases, can result in victims either deciding not to report the situations that affect them or being forced to face a variety of barriers.

These barriers include inadequate treatment due to the stereotypes about women and disabilities and the lack of training on human rights, the legal incapacity due to their disability, a lack of credibility or discredited testimonies, the existence of physical barriers that hinder or impede access to proceedings,

and the absence of procedural adjustments to ensure that plaintiffs can make their way through the entire process with the necessary support. In turn, the limited or absence of training on genders and disabilities in the justice system leads to judgements and sentences for reparations that do not take into account this dual perspective or other related intersectional discrimination factors.

On a hemispheric level, the task of monitoring the rights of persons with disabilities in Latin America and the Caribbean by the mechanisms available presents itself as paradoxical and disheartening. Although most states have ratified the CRPD and many have taken the first steps to adjust legislation and design plans and programmes, most of the measures are not implemented effectively. In most of the countries, the Committee has identified policies based on the welfare model that coexist with legal incapacitation systems for people with disabilities. Some of the limiting factors include the insufficient and limited implementation of programmes and plans, and the absence or ineffectiveness of mechanisms for surveillance, supervision and reporting. In turn, the policies linked to the rights of persons with disabilities do not properly include the gender perspective, and the policies to prevent gender-based violence do not properly include the gender and disability perspectives.

On the other hand, structural violence continues to occur throughout the region, including coercively imposed treatments without free and informed consent, and other actions that violate rights, such as institutionalisation without consent, forced sterilisation, isolation and the mistreatment of hospitalised patients. In all the countries analysed, patterns of violence have been identified that disproportionately affect girls, adolescents and women with disabilities, whereas under-reporting and deficiencies in gathering information and statistics stand in the way of accurately and effectively tracking the inadequacies of the administration of the justice system and the systems that supervise public services for disabilities.

According to the Committee of Experts, these diagnoses show the need to urgently and systematically address the compliance of all the commitments made by the states regarding the rights of persons with disabilities, and specifically with the contents of the Belém do Pará Convention, to protect girls, adolescents and women with disabilities from the various forms of violence they face.

To comply with their obligations contained in the convention, States Parties must safeguard the right of all women to a life free of discrimination and violence (art. 6), in conjunction with the obligation to take into consideration disability and age when complying with the obligations outlined in the treaty (art. 9). Additionally, they must condemn all forms of violence against women and implement urgent, effective and systematic measures to ensure that rights are respected and due diligence duties are met, including legislative coordination and adjustment of the administration of the justice system to ensure access to justice with full procedural guarantees and the required procedural adjustments (art. 7). They must also adopt progressive measures to safeguard the accessibility and availability of quality services to assist victims and survivors, as well as those aimed at eliminating gender- and disability-based stereotypes, along with their consequences, from all areas of society (art. 8).

The Committee of Experts has prepared a General Recommendation on the topic that includes specific recommendations to help improve compliance with the obligations contained in the convention. In general, the CEVI believes that the most urgent actions should be aimed at:

- promoting accessibility through measures to adapt the environment, particularly in the case of health services and filing/handling reports, thereby ensuring physical accessibility and the

availability of pertinent and adapted information, as well as the application of the reasonable adjustments that may be needed;

- guaranteeing a policy for supervising assistance services, including the public and private facilities where institutionalisation measures are applied, to promote punishment for and the progressive elimination of violence;
- promoting quality services defined by respecting human dignity, ensuring the transversal gender perspective and the participation of women and girls with disabilities;
- developing large-scale awareness programmes on human rights and the intrinsic dignity of girls and women with disabilities, along with training programmes for all levels of care, including employees of the administration of the justice system, from the judiciary to the facilities where reports are filed;
- reviewing legislation and other standards to ensure they are adapted to the social model of disability and recognise all human rights for all girls and women with disabilities, with an emphasis on including broad guarantees to prevent and protect against violence;
- promoting the creation of protocols and performance guides for all the entities involved in providing assistance, preventing and protecting against violence, and guaranteeing the corresponding punishment and reparations for all the acts committed, fully respecting the rights of girls and women who are victims or survivors of violence, as well as their families;
- developing efficient and systematic mechanisms for reporting and gathering detailed information as an essential tool to ensure the design and effective implementation of policies based on a realistic diagnosis.

## SOCIAL ORGANISATIONS AND OTHER ENTITIES CONSULTED

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Nellie Zabel Foundation

Loza Arquitectas

World Federation of the Deaf

Sordas Sin Violencia

Women Enabled International

Centro Mujer Sorda

Centro de Vida Independiente de Guatemala

Women Enabled International Spain

Red de Mujeres con Discapacidad - Quito

SEHLAC- Human Security Network in Latin America and the Caribbean

Maynooth University

Legal Clinic at the National University Human Rights Programme at the UNAM

Support Girona

Polimorfias

Human Rights Watch

En Primera Persona / Redesfera

Inclusion Europe

Odisex Peru

Sordos Mexico

Alianza Latinoamericana de Mujeres con Discapacidad

Asdown Colombia

Paso a Paso Foundation

Caleidoscopicas Mulheres com deficiencia / Instituto AzMina

Helen Keller Feminist Collective

ONCE Group

UN Special Envoy on the rights of persons with disabilities

UNFPA

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