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## Women with Disabilities: Towards a More Effective Protection

*Daniela Fanciullo\* and Anna Iermano\*\**

### Abstract

As is well known, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, the UN has proclaimed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind; it affirms the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination.

Despite the various international instruments, women with disabilities are often at greater risk, both within and outside the home of violence, injury or abuse, maltreatment or exploitation. As established by art. 6 of the Convention on the Rights of Persons with Disabilities, States shall take measures to ensure the full and equal enjoyment by them of all human rights and also the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise of the rights and freedoms set out in the Convention. So, it is necessary that gender is mainstreamed in disability policies and disability is mainstreamed in gender policies, both in close consultation with women with disabilities and their representative organisations. Furthermore, it is important to promote their inclusion into the open labour market, to ensure achievement of full and productive employment and decent work also for persons with disabilities and equal pay for work at equal value. In this regard, the 2030 Agenda for Sustainable Development states that States shall achieve gender equality and the empowerment of all women. This policy of mainstreaming should be implemented at national, international and European level. For example, the Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) does not expressly provide for the prohibition of discrimination based on disability.

**Keywords:** *Women with Disabilities; Multiple Discrimination; Convention on the Rights of Persons with Disabilities, Art. 6; Mainstreaming; Positive Measures*

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## General Introduction

Starting from the analysis of the most relevant international and European legal instruments, this study aims to critically check – through an interdisciplinary approach – if the rights of women with disabilities are really effective and recognized by States or require, instead, the adoption of a different approach in their policies.

To better achieve the objective, this study is divided into two Sections.

In particular, the Section I aims to verify whether the principles established in the United Nations Convention on the Rights of Persons with Disabilities are really able to ensure an effective protection for disabled women and if article 6 of this Convention effectively translates into practical action by the European Union and Member States.

The Section II is intended to highlight the multiple disadvantages and the great difficulties experienced by women with disabilities, in particular with regard to education, vocational training and employment and also to analyse the positive measures and policies to promote the integration of disabled women into the working environment.

The specific issues highlighted in this study require a more effective commitment of States and International Organisations to adequately respond to the needs of women with disabilities also by using a ‘mainstreaming’ perspective. Finally, the used methodology allows facing the issue in a theoretical and practical perspective.

### *SECTION I: THE PROTECTION OF WOMEN WITH DISABILITIES IN THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES*

#### **1. The Historic ‘Silence’ of the International Legal Instruments on the Rights of Women with Disabilities: a Brief Introduction**

As is well known, women with disabilities are exposed to ‘multiple discrimination’ that hinders their full and effective participation in society since the prejudice they face is based not only on their disability but also on their gender.

This discrimination arises from two or several grounds: gender inequality, age, religion, ethnicity, cultural and social behaviour as well as disability stereotypes<sup>1</sup>. In particular, disabled women are faced with significant

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<sup>1</sup> As is well known, ‘*Multiple discrimination*’ is a situation where a person can experience discrimination on two or several grounds, in the sense that discrimination is compounded

difficulties in obtaining access to justice, adequate housing, public transport, healthcare, education, vocational training and employment and remain under-represented in democratic processes and decision-making.

Moreover, strong evidence suggests that violence, in particular ‘domestic violence’, is one of the main causes of disability among women (especially in developing countries). Furthermore, women with physical, mental or psychological disability are particularly at risk of violence, maltreatment, exploitation, sexual abuse, forced sterilization, forced abortions, among many others and mothers with disabilities are more likely to have their children taken away. The situation is even worse for migrant disabled women. In other words, women with disabilities are seriously disadvantaged in both their public and private life, because of cultural preferences for males and for women without disabilities.

Therefore, women of all ages with any form of disability are generally among the more vulnerable and marginalized of society: so, promoting the equal rights of these women is one of the most important challenges of our society and especially an ‘ethical obligation’.

In this context, it must be first noted that International legal instruments seem crucial in order to eliminate the multiple discrimination that women with disabilities still face in many areas of their life.

However, as is sadly known, International laws and policies on disability have historically ignored specific aspects related to disabled women. Nevertheless, more general human rights instruments or instruments relating to women are also applicable to women with disabilities.

In fact, in the Universal Declaration of Human Rights<sup>2</sup> and in the International Covenants on Human Rights<sup>3</sup>, the United Nations has

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or aggravated’ (emphasis added). In this regard, see Committee on the Rights of Persons with Disabilities, General comment No. 3 (2016), *Article 6: Women and girls with disabilities*, 2 September 2016. In addition, the Committee states that ‘*Intersectional discrimination* refers to a situation where several grounds operate and interact with each other at the same time in such a way that they are inseparable’ (emphasis added). Furthermore, the Committee notes that ‘Grounds for discrimination include, but are not limited to: age, disability, ethnic, indigenous, national or social origin, gender identity, political or other opinion, race, refugee, migrant or asylum status, religion, sex, or sexual orientation’. See, also the study of the European Commission – European network of legal experts in gender equality and non-discrimination, *Intersectional discrimination in EU gender equality and non-discrimination law*, written by S. Fredman, Brussels, May 2016.

<sup>2</sup> The Universal Declaration of Human Rights was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly Resolution 217 A).

<sup>3</sup> The International Covenant on Civil and Political Rights was adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966 (entered into force on 23 March 1976); the International Covenant on Economic, Social and Cultural Rights was adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966 (entry

proclaimed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind. In particular, article 2 of the International Covenant on Civil and Political Rights states that the rights guaranteed in the Covenant are to be recognised '(...) without distinction of any kind, such as (...) sex (...) or *other status*' (emphasis added). The term 'other status' may refer to persons with disabilities<sup>4</sup>. Likewise, the Vienna Declaration and Programme of Action underline the importance of the full and equal enjoyment by women (paras. 36-44) and disabled persons (paras. 63-65) of all human rights but they do not take into account the specific situation of disabled women<sup>5</sup>.

In addition, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) adopted in 1979 by the UN General Assembly merely states that discrimination against women violates the principles of equality of rights and respect for human dignity but does not contain a specific reference to women with disabilities<sup>6</sup>. Furthermore, in its General Recommendation No. 18, the United Nations Committee on the Elimination of Discrimination against Women asked the States Parties to CEDAW to provide information on women with disabilities in their periodic reports, as well as on measures taken to deal with their particular situation<sup>7</sup>.

Finally, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence<sup>8</sup> affirms that 'The

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into force 3 January 1976).

<sup>4</sup> The International Covenant on Civil and Political Rights specifically guarantees certain rights to women, lists a broad spectrum of rights to be applied equally to men and women, and prohibits all discrimination based on sex. Besides the above mentioned article 2, are also relevant: article 3, which speaks of the equal rights of men and women; article 26, which states that all persons are entitled '(...) to equal protection of the law regardless of (...) sex (...) or other status'. In addition, article 2, par. 2, of the International Covenant on Economic, Social and Cultural Rights requires Member States to '(...) undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'. Article 3 states that the Parties undertake to '(...) ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant'. Article 7 affirms '(...) equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work'. Article 10 states that special protection should be given to mothers during childbirth.

<sup>5</sup> Adopted by the World Conference on Human Rights in Vienna on 25 June 1993.

<sup>6</sup> Adopted and opened for signature, ratification and accession by General Assembly Resolution 34/180 of 18 December 1979 and entered into force on 3 September 1981, in accordance with article 27 (1).

<sup>7</sup> United Nations Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 18, adopted at the Tenth Session, 1991 (contained in Document A/46/38).

<sup>8</sup> The Council of Europe Convention on Preventing and Combating Violence against Women

implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, (...) disability (...)’ once again without reference to violence against disabled women.

Given the above, the purpose of this Section is to ascertain whether the principles established in the United Nations Convention on the Rights of Persons with Disabilities<sup>9</sup> are really sufficient to ensure an effective protection for disabled women as well as to fully address their specific needs. In addition, this study aims to verify if article 6 of the Convention effectively translates into practical action by the European Union and Member States.

## **2. A Specific Reference to Women with Disabilities: the UN Convention on the Rights of Persons with Disabilities**

Despite the fact that the international instruments cited in the above paragraph do not take into account the rights of disabled women, some reference to them is found in non-binding instruments. For example, point 45 of the World Programme of Action concerning Disabled Persons speaks of the special situation of women with disabilities and of social, cultural and economic obstacles that affect their access to health care, education, vocational training and employment<sup>10</sup>.

Rule 9.3 of The Standard Rules on the Equalization of Opportunities for Persons with Disabilities provides that States ‘(...) should promote measure to change negative attitudes towards marriage, sexuality and parenthood of persons with disabilities, especially of girls and women with disabilities, which still prevail in society’<sup>11</sup>.

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and Domestic Violence (Istanbul Convention) was opened for signature on 11 May 2011 (entry into force: 1 August 2014).

<sup>9</sup> See *infra*, para. 2.

<sup>10</sup> Adopted by the United Nations General Assembly at its 37th regular session on 3 December 1982, by its Resolution 37/52.1/. In particular, as stated by the already quoted point 45: ‘The consequences of deficiencies and disablement are particularly serious for women. There are a great many countries where women are subjected to social, cultural and economic disadvantages which impede their access to, for example, health care, education, vocational training and employment. If, in addition, they are physically or mentally disabled, their chances of overcoming their disablement are diminished, which makes it all the more difficult for them to take part in community life. In families, the responsibility for caring for a disabled parent often lies with women, which considerably limits their freedom and their possibilities of taking part in other activities’.

<sup>11</sup> Adopted by the United Nations General Assembly, forty-eighth session, Resolution 48/96, annex, of 20 December 1993. Although not a legally binding instrument, the Standard Rules represent a strong moral and political commitment of States to take measures to achieve equalization of opportunities for disabled persons.

In addition, the Beijing Declaration and Platform for Action (Beijing Declaration), adopted at the Beijing Conference, contained several provisions on the rights of women with disabilities<sup>12</sup>.

Furthermore, paragraph 63 of the Resolution adopted by General Assembly of the United Nations, titled 'Further actions and initiatives to implement the Beijing Declaration and Platform for Action', states that '(...) There is (...) need to take into account and to address their concerns in all policy-making and programming. Special measures are needed at all levels to integrate them into the mainstream of development'<sup>13</sup>.

So, in light of the foregoing and unlike the other binding instruments of International law, the United Nations Convention on the Rights of Persons with Disabilities plays a key role<sup>14</sup>. As is well known, this Convention – which is based on the principles of non-discrimination, participation and inclusion in society, equal opportunities and accessibility<sup>15</sup> – does not provide a specific definition of 'disability', acknowledging instead in its Preamble that 'disability is an evolving concept'.

Furthermore, it represents the first human rights convention dedicated to the rights of persons with disabilities as well as the first convention adopted and concluded by the European Union itself, (in addition to its Member States) by way of Council Decision 2010/48/EC of 26 November 2009<sup>16</sup>: this is clearly indicative of a strong commitment at the European Union level to strengthen the rights of women with disabilities<sup>17</sup>.

<sup>12</sup> Fourth World Conference on Women, Sept. 4-15, 1995, Beijing Declaration and Platform for Action, U.N. Doc. A/CONF.177/20/Rev.1 (1996).

<sup>13</sup> A/RES/S-23/3, 16 November 2000.

<sup>14</sup> The Convention on the Rights of Persons with Disabilities and its Optional Protocol (A/RES/61/106) were adopted on 13 December 2006 at the United Nations Headquarters in New York, and were opened for signature on 30 March 2007. The Convention entered into force on 3 May 2008.

<sup>15</sup> Sometimes, the European Court of Human Rights has taken into account the Convention on the rights of persons with disabilities. For example, in the *Glor v. Switzerland* case, referring in particular to the UN Convention, the European Court of Human Rights spoke of a European and worldwide consensus on the need to protect persons with disabilities from discriminatory treatment (ECtHR, *Glor v. Switzerland*, judgment of 30 April 2009, application No. 13444/04).

<sup>16</sup> In particular, this Convention entry into force in the EU on 21 January 2011 in accordance with Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities.

<sup>17</sup> See Court of Justice, judgment of 1 December 2016, case C-395/15, *Mohamed Daouidi v. Bootes Plus SL, Fondo de Garantía Salarial, Ministerio Fiscal*, ECLI:EU:C:2016:917, para. 40: '(...) it must be recalled that the European Union approved the UN Convention by way of Decision 2010/48. Consequently, the provisions of that convention are thus, from the time of its entry into force, an integral part of the EU legal order (see judgment of 18 March 2014, *Z.*, C363/12, EU:C:2014:159, para. 73 and the case-law cited) (...)'

The UN Convention promotes and protects the rights of persons with disabilities, including women and girls: in fact, the text of the Convention contains a specific reference to women with disabilities as well as several points concerning gender issues. In particular, the strong focus of the United Nations Convention on the rights of disabled women is already apparent from the Preamble, which refers to ‘(...) the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of (...) sex (...) or other status’.

Furthermore, the same Preamble recognizes that women 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’ and that it is necessary ‘(...) to incorporate a *gender perspective* in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities’ (emphasis added).

With particular reference to women with disabilities, the text of the Convention has to be integrated by the aforementioned Convention on the elimination of all forms of discrimination against women, which is specifically mentioned in the Preamble (point *d*). Therefore, this provision confirms that CEDAW must be used as a start point to empower and promote women’s rights, including disabled women’s rights.

### **3. The Rights of Women with Disabilities in Light of Article 6 of the UN Convention**

As has already been noted in the previous paragraph, the Convention on the Rights of Persons with Disabilities requires Member States to adopt measures which will safeguard disabled women’s full enjoyment of all their rights and freedoms, such as equal rights to services, education, employment, health care as well as a personal life free from abuse and violence.

Article 6 is clearly the most important provision of the Convention to achieve the objective just mentioned: in fact, according to its paragraph 1, ‘States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms’.

Furthermore, it must be added that the second paragraph of article 6 encourages States Parties to take all appropriate measures to ensure the full development, advancement and empowerment of women. These measures – which can have legal, administrative, political (and other) character – should be able to eliminate *de jure* and *de facto* discrimination against women with disabilities and to ensure their full respect, exercise and enjoyment of all



human rights and fundamental freedoms set out in the Convention on an equal basis with others. This also implies that States Parties should ensure the elimination of acts, regulations, practices that are in stark contrast with the aim of art. 6 of the Convention.

Accordingly, this article aims to reinforce the non-discriminatory approach of the Convention in its particular application to disabled women: thus, it intended to combat all possible types of discrimination against women with disabilities, such as ‘direct discrimination’ (when women with disabilities are treated less favourably than other persons in similar situations) and ‘indirect discrimination’ (when law, policies or practices appear *prima facie* neutral, but have a negative impact on women with disabilities).

Other references to women and gender issues are found in the following articles of the Convention, which appear closely related to the same article 6: article 3 focuses specifically on non-discrimination and equality between men and women; article 8 requires Member States to adopt immediate, effective and appropriate measures ‘(...) (b) To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex (...), in all areas of life’. Additionally, the second paragraph of article 5 of the Convention asks Member States to ‘prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection *against discrimination on all grounds*’ (emphasis added). Other references to the gender issue are contained in article 16, related to freedom from exploitation, violence and abuse, in article 25 regarding health and in article 28 which recognizes special need for women and girls when it ensures ‘access by persons with disabilities [...] to social protection programmes and poverty reduction programmes’.

In this context, is article 6 of the Convention a sufficient response to the ‘historic’ lack of recognition of the rights of women with disabilities? In this regard, interesting issues related to the practical application of this article have been recently pointed out by the Committee on the Rights of Persons with Disabilities in the General Comment No. 3 (2016) of 2 September 2016, with a view to assisting States Parties in fulfilling their reporting obligations.

As is well known, the CRPD is the body of independent experts which monitors implementation of the Convention by the States Parties<sup>18</sup>. In

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<sup>18</sup> Pursuant to article 35 of the UN Convention ‘1. Each State Party shall submit to the Committee, through the Secretary General of the United Nations, a comprehensive report on measures taken to give effect to its obligations under the present Convention and on the progress made in that regard, within two years after the entry into force of the present Convention for the State Party concerned. 2. Thereafter, States Parties shall submit subsequent reports at least every four years and further whenever the Committee so requests’. Further information about the Committee on the rights of persons with disabilities are available at

particular, the General Comment specifies the measures that States Parties should take in a range of areas, including transport, employment, health, education, access to justice, among others, to guarantee disabled women the full enjoyment of their human rights<sup>19</sup>.

The Committee first highlights that article 6 of the Convention ‘is a binding non-discrimination and equality provision that unequivocally outlaws discrimination against women with disabilities and promotes equality of opportunity and equality of outcomes’<sup>20</sup>. Then, the Committee notes that violence, sexual and reproductive health as well as discrimination are still the main concerns with reference to the rights of disabled women.

Also, the Committee is concerned about the lack of or insufficient provisions in legislation and policies to combat multiple discrimination and intersectional discrimination against women with disabilities, on account of their gender, disability and other factors; as well as the insufficient participation of women with disabilities in decision-making processes. It focuses also on the absence of specific measures to promote the education and employment of women with disabilities as well as their effective access to justice and to protect them from sexual violence and abuse, forced sterilization, female genital mutilation, sexual and economic exploitation.

Finally, in the aforementioned General Comment the Committee highlights the lack of inclusion of a gender perspective in disability policies and the lack of a disability rights perspective in gender policies<sup>21</sup>.

#### **4. The Implementation of Article 6 of the Convention by the European Union and by Italy: the Concluding Observations of the Committee on the Rights of Persons with Disabilities**

As repeatedly stated, the European Union and Member States are required to combat discrimination against women with disabilities with positive actions: but, unfortunately, article 6 of the Convention and, in general,

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the following link: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>.

<sup>19</sup> According to the Committee, ‘This general comment reflects an interpretation of article 6 which is premised on the general principles of the Convention, as outlined in article 3, namely, respect for inherent dignity, individual autonomy – including the freedom to make one’s own choices –, and independence of persons; non-discrimination; full and effective participation and inclusion in society; respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; equality of opportunity; accessibility; equality between men and women; and respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities’ (p. 4).

<sup>20</sup> See point 9 of the General Comment.

<sup>21</sup> See point 10 of the General Comment.

other provisions of the CRPD related to disabled women, are not sufficiently implemented.

This appears particularly evident at the European Union level where many directives, communications, actions, strategies and programmes have been adopted both in the field of gender discrimination as well as in that of disability<sup>22</sup>.

However, as it will be explained in the second section of this study, it must be held that there are very few examples of legislation which specifically pertain to women with disabilities.

Although the European Disability Strategy 2010-2020 and the EU 2011-2020 Gender Equality Pact represent one of the main mechanisms used by the European Union for the implementation of the United Nations Convention, no special action is aimed at disabled women specifically, as they are only considered together with men and children. Indeed, these instruments have not received a favourable opinion from the already cited Committee on the Rights of Persons with Disabilities.

In this regard, the Concluding Observations of the Committee, published on 2 October 2015, sent a strong message regarding the European Union's commitment to equality and respect for human rights<sup>23</sup>. Once again, regarding disabled women the Committee 'is concerned that the European Union has neither mainstreamed a disability perspective in all its gender policies, programmes and strategies, nor adopted a gender perspective in its disability strategies'<sup>24</sup>. So, the Committee 'recommends that the European Union mainstream a women and girls with disabilities perspective in its forthcoming gender equality strategy, policies and programmes, and a gender perspective in its disability strategies'.

Then, the Committee highlights the need to adopt affirmative actions to advance the rights of women with disabilities as well as to establish a mechanism to monitor progress and fund data collection and research on the issue. In this connection, it should be recalled that it would be particularly effective to develop a comprehensive campaign to raise awareness about the rights of persons with disabilities, especially of disabled women, aimed at eradicating prejudice and stereotypes and encouraging social acceptance, social participation, respect and tolerance.

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<sup>22</sup> In this regard, 'Although on the one hand, problems relating to women and, on the other, problems relating to people with disabilities are being addressed separately with increasing attention and urgency, no serious approach has yet been taken to tackle the dual form of discrimination to which women with disabilities are subjected' (Beleza 2003, 9).

<sup>23</sup> Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of the European Union, CRPD/C/EU/CO/1, 2 October 2015.

<sup>24</sup> See points 20 and 21 of the Observations.

Additionally, the Committee recommends that the European Union accede to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) ‘as a step to combating violence against women and girls with disabilities’ (p. 3). In fact, a relevant example of non-implementation of article 6 of the aforementioned Convention pertains to violence against women with disability<sup>25</sup>: European Union legislation to protect women with disabilities from exploitation, violence and abuse is incorporated in those policies aimed at protecting women in general or in anti-discrimination policy. It does not specifically take into account the situation of disabled women. This is confirmed by the legislative package on victims’ rights that is a general improvement on citizens’ and people’s rights, but it does not specifically focus on women with disabilities<sup>26</sup>.

So, in light of the Observations of the Committee, on 7 July 2016 the European Parliament adopted a Resolution on the implementation of the United Nations Convention on the Rights of Persons with Disabilities, that calls for the EU Institutions to take effective measures to strengthen the lives of women with disabilities in accordance with the aforementioned recommendations of the Committee<sup>27</sup>.

In this regard, as we can see in the Resolution, the European Parliament accords, *inter alia*, a particular attention to the need to address the issue of violence against women with disabilities in private and institutional environments, and calls on the Member States to provide support services

<sup>25</sup> ‘Violence can take different forms. It can be active, expressed in words or actions, or it can be passive, as when food is withheld from a woman unable to feed herself independently, or when a woman who needs help with dressing is inadequately clothed, or when women are prevented from leading normal lives, including normal sex lives. Violence can be inflicted by members of the disabled woman’s family, doctors or other health professionals, other persons on whom the woman depends, or strangers. If the perpetrators are people on whom the woman depends from day to day, she may have no means to defend herself, which means that proper supervision is essential. Abuse can take place in the home, on the street or in institutions where women with disabilities live’ (Beleza 2003, 47-48).

<sup>26</sup> See for example Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, in OJ L 315, 14.11.2012, pp. 57–73.

<sup>27</sup> European Parliament Resolution of 7 July 2016 on the implementation of the UN Convention on the Rights of Persons with Disabilities, with special regard to the Concluding Observations of the UN CRPD Committee (2015/2258(INI)). See also European Union Agency for Fundamental Rights, Fundamental Rights Report 2016 - FRA opinions, May 2016, in particular pp. 19-20: ‘To allow for a full implementation of the CRPD, it is FRA’s opinion that the EU institutions should use the CRPD Committee’s concluding observations as an opportunity to set a positive example by ensuring rapid implementation of the committee’s recommendations’ (p. 19).

that are accessible to women with all types of disabilities<sup>28</sup>. The European Parliament urges the Member States to adopt measures to ensure that all healthcare and services provided to disabled women are accessible and based on the free and informed consent of the individual concerned<sup>29</sup>; also, it invites Member States to foster and ensure a legislative and policy framework for participation of women with disabilities in the labour market<sup>30</sup>.

What has been said for the European Union is even truer for Member States. Regarding the implementation of article 6 of the Convention by Italy, in its Concluding Observations of 6 October 2016<sup>31</sup> the Committee on the Rights of Persons with Disabilities notes that women with disabilities are not systematically mainstreamed in the gender equality agenda and in the disability agenda. Therefore, the Committee ‘recommends that gender be mainstreamed in disability policies and disability be mainstreamed in gender policies, both in close consultation with women and girls with disabilities and their representative organisations’<sup>32</sup>.

Furthermore, as can be read at point 44 of the Observations, the Committee encourages Italy to adopt legislation, including monitoring mechanisms, to detect, prevent and combat violence against women with disabilities, within and outside the home. In this regard, the Committee recommends the adoption of an action plan to implement the already quoted Istanbul Convention, with a particular care to the situation of women with disabilities. Adequate training for members of the police, judiciary, health and social services plays a key role in achieving these objectives.

Finally, the Committee underlines ‘the lack of physical accessibility and information regarding sexual and reproductive health services, including discrimination and stereotyping, particularly to disabled women’ (point 61) and is concerned about the low level of employment and the insufficient provisions to encourage the inclusion of women with disabilities in the open labour market (point 69).

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<sup>28</sup> See point 34 of the Resolution.

<sup>29</sup> See point 94 of the Resolution.

<sup>30</sup> See point 110 of the Resolution.

<sup>31</sup> Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Italy, CRPD/C/ITA/CO/1, 6 October 2016.

<sup>32</sup> See point 14 of the Observations. The Committee ‘also recommends that the State party take into account article 6 of the Convention and the Committee’s general comment No. 3 (2016) on women and girls with disabilities while implementing targets 5.1, 5.2 and 5.5 of the Sustainable Development Goals’. In this regard see point 14 of the aforementioned Concluding Observations.

## **5. Some Conclusive Remarks Regarding the Implementation of Article 6 of the UN Convention**

To date, there are no binding UN Conventions which solely refer to the rights of women with disabilities. So, in view of all of the above, the entry into force of the United Nation Convention on the Rights of Persons with Disabilities constitutes an enormous step forward.

In particular, the provision of article 6 of the Convention represents a strong reaction to the historic 'silence' of international legal instruments on the rights of women with disabilities. Indeed, for the first time an international convention gives States (as well as international organisations such as the European Union) a solid foundation on which to implement the fundamental rights of disabled women in their legal systems, with the expectation that its provisions will be really transposed into national legislation.

Therefore, the key question, already posed in the introduction of this Section, is to verify if and how the European Union and its Member States are implementing their CRPD obligations with specific reference to disabled women.

For the purpose of answering the question thus formulated, it should be noted at the outset that the EU and States Parties have made significant progress over the last years in recognising and acting on the needs of women with disabilities. Whilst significant progress has been made, much remains to be done.

Indeed, the present study shows that although the European Union and Italy have created a solid anti-discrimination framework, they have not yet paid sufficient attention to the specific problematics of disabled women and multiple instances of discrimination and inequality on grounds of gender and disability still persist.

The introduction at European level of key instruments (such as the aforementioned UN Convention on the Rights of Persons with Disabilities, the European Disability Strategy 2010-2020 and the European Union 2011-2020 Gender Equality Pact) is still insufficient to ensure, in practice, an effective protection to women with disabilities. In this regard, as is well known, the full economic and social participation of women with disabilities is essential if the aim of the Europe 2020 Strategy is to create smart, sustainable and inclusive growth.

Likewise, at national level, for example, the Italian Law of 5 February 1992, No. 104 (regarding framework law for the assistance, social integration and rights of handicapped persons) does not contain any specific reference to

women with disabilities, although it encloses some provision relating to disabled children<sup>33</sup>.

It follows from the foregoing considerations that it is necessary to ensure the effectiveness of the rights set out in the Convention, which cannot be left exclusively to the mechanism charged with monitoring its implementation. It is also clear that the concept of ‘multiple discrimination’ requires the legislators to rethink the same notion of ‘discrimination’.

That being said, it is important to note that in signing the UN Convention, the EU and the Member States have made the commitment to ensure the rights of disabled women: now this commitment needs to be transposed into legislative and practical action. Abstain from discriminatory actions is not enough! Therefore, the European Union and States ratifying the UN Convention should be more effective on the implementation of article 6 of the Convention on the Rights of Persons with Disabilities to ensure that women with disabilities are able to live as women without disabilities.

It must also be emphasised in this regard that the European Union and States have a range of general obligations: in particular, they have to adopt appropriate laws, policies and actions to eliminate the legal, procedural, administrative, social (just to name a few) obstacles that affect the lives of women with disabilities and ensure their full development, advancement and empowerment. Such measures should be adopted particularly regarding access to justice, the elimination of violence, respect for home and the family, sexual health and reproductive rights, health, education, employment, and social protection. Member States have to provide adequate measures to facilitate and to empower women’s active involvement and participation. Member States could create a specific mechanism through which women with disabilities could contribute to transpose the provisions of the Convention into national law and to monitor its implementation. More specifically, Member States and the European Union have to reach out to women with disabilities in order to consult and involve them in legal reform processes and identify and improve shortfalls in both law and practice.

In conclusion, the article takes the view that – as it will arise from the Second Section – to ensure the rights of disabled women is necessary adopt legislation and other specific measures for their rights; amend or repeal laws that discriminate disabled women directly or indirectly; include disability in all relevant policies and programmes for women and include gender perspective in all relevant policies and programmes for disabled.

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<sup>33</sup> As supplemented and modified. See GURI NO. 39 of 17 February 1992.

## *SECTION II: THE PROMOTION OF THE INCLUSION OF DISABLED WOMEN IN THE LABOUR MARKET*

### **1. Introduction: Women with Disability in Working Life**

Despite existing international instruments, women with disabilities are still multiply disadvantaged, in particular in relation to education, vocational training and employment, which can lead to social isolation and psychological trauma<sup>34</sup>. Their status is not only worse than that of women without disabilities, but also worse than that of their male peers; this is especially so in rural areas, where matriarchal and primary economic systems, with fewer services and opportunities for this group than in urban environments, are still predominant. However, public policies do not take into account such flagrant discrimination, because they do not include indicators that bring to light the gender and disability perspectives together.

This state of things lead to women with disabilities being victims of a persisting structural inequality as well as facing significant difficulties in their working life, as they suffer from a double discrimination on grounds both of their gender<sup>35</sup> and their disability, thus preventing them from living an independent and active life. This, in turn, results in many women and young girls being denied their basic human rights.

For this reason it is especially important to promote their inclusion into the open labour market and their economic independence, to ensure achievement of full and productive employment and decent work also for them and equal pay for work at equal value.

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<sup>34</sup> See Article 45 of the World Programme of Action concerning Disabled Persons - United Nations Decade of Disabled Persons 1983-1992: 'The consequences of deficiencies and disablement are particularly serious for women. There are a great many countries where women are subjected to social, cultural and economic disadvantages which impede their access to, for example, health care, education, vocational training and employment. If, in addition, they are physically or mentally disabled, their chances of overcoming their disablement are diminished, which makes it all the more difficult for them to take part in community life. In families, the responsibility for caring for a disabled parent often lies with women, which considerably limits their freedom and their possibilities of taking part in other activities'.

<sup>35</sup> About discrimination against women see Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly and in particular Article 1: 'the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field'.



Today there is also the need to support disabled migrant women and girls – that are at greater risk of poverty and social exclusion because of multiple discrimination – in order to develop skills that would give them opportunities to obtain suitable employment.

In this regard, the 2030 Agenda for Sustainable Development states that States shall achieve gender equality and the empowerment of all women. It is necessary that gender be mainstreamed in disability policies and disability be mainstreamed in gender policies.

## **2. Inclusion of Disabled Women in Education and Vocational Training**

The combination of discrimination on the basis of gender and disability results in low literacy rates for women and girls with disabilities, school failure and absenteeism. Considering that education is one of the key determinant factors in the struggle against inequalities, social exclusion and poverty, there is a need to promote inclusion in education for disabled women and girls in order to mitigate the clear disadvantage they suffer in education, which in turn hinders their subsequent inclusion in the labour market and community.

In light of this, as underlined by the cited Agenda, it is necessary: 1) to eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for women with disabilities<sup>36</sup>; 2) to build and upgrade education facilities that are disability, sensitive and provide inclusive and effective learning environments for all; 3) to provide inclusive and equitable quality education at all levels, for persons with disabilities, so they should have access to life-long learning opportunities that help them acquire the knowledge and skills needed to exploit opportunities and to participate fully in society.

Essentially, therefore, inclusive education for girls and women with disabilities must be viewed through the lens of equal opportunities, the paradigm of quality education, and universal accessibility throughout the entire life cycle, ensuring women with disabilities can enjoy access to continuing education as a means to enhance their personal independence, the free development of their personality, and their social inclusion, while exercising permanently the right to decide for themselves and choose their way of life. So it is important that the barriers to mobility and higher dependence on family members and carers be overcome, in order to encourage

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<sup>36</sup> At European level see Resolution of 4 July 2013 on the impact of the crisis on access to care for vulnerable groups.

active participation by women with disabilities in education, labour market and social and economic life of the community.

In addition to education, women with disabilities must receive quality training enabling them to opt for employment in the labour market in both the public and private sectors, and they should be offered specific opportunities for lifelong training with a view to gaining the necessary training and qualifications.

When specific training is required, women with disabilities should not be placed at a disadvantage in relation to others. In addition, they must be given suitable access to all training programmes, including technical and vocational guidance programmes, placement services and vocational and continuing training.

In this regard it is necessary to adopt individualised measures for women with disabilities on the basis of different levels and features of disabilities, even more intensive support based on human rights and dignity, so that suitable arrangements can be made at all stages of education and training and professional life<sup>37</sup>; and to guarantee that initial and ongoing teacher training and training for educational counselling staff includes suitable qualifications, specialization and skills refreshment to adjust interventions in order to address the specific needs of women with disabilities, with particular attention to the greater vulnerability shown by girls with disabilities in situations involving all types of bullying and sexual abuse in the school setting. And indeed, women with disabilities are more likely to suffer from violence<sup>38</sup> and sexual assault, which also reportedly lasts longer and is more intense than for women without disabilities<sup>39</sup>, with violence is also sometimes being the cause of their disability<sup>40</sup>.

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<sup>37</sup> Recommendation concerning Human Resources Development: Education, Training and Lifelong Learning, No. 195, 2005. Recommendation 195 specifically states that members should 'promote access to education, training and lifelong learning for people with nationally identified special needs, such as youth, people with disabilities, migrants, older workers, indigenous people, ethnic minority groups and the socially excluded...' See, also, European Parliament resolution of 8 March 2011 on equality between women and men in the European Union – 2010 (2010/2138(INI)) that points out that women with disabilities are often discriminated against in professional life and calls on the Commission to support the Member States in increasing the employment prospects of disadvantaged women, such as women with disabilities.

<sup>38</sup> Declaration on the Elimination of Violence against Women, adopted in 1993 by the UN General Assembly and in particular Article 1: 'the term "violence against women" means 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>39</sup> FRA report, Violence against women: an EU-wide survey. Main results: [http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-main-results-apr14\\_en.pdf](http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-main-results-apr14_en.pdf).

<sup>40</sup> About victims with disabilities, see also Directive 2012/29/EU of the European Parliament

So, *inter alia*, the European Parliament in Resolution of 7 July 2016 on the implementation of the UN Convention on the Rights of Persons with Disabilities<sup>41</sup>, with special regard to the Concluding Observations of the UN CRPD Committee, underlines the urgent need to address the issue of violence against women and girls with disabilities in private and institutional environments, and calls on the Member States to provide support services that are accessible to women and girls with all types of disabilities.

### **3. Women with Disabilities in Matters of Employment and Occupation**

Article 27 of the UN Convention on the Rights of Persons with Disabilities recognises the right of women with disabilities to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. The realization of the right to work should be safeguarded and promoted, including for women who acquire a disability during the course of employment, by taking appropriate steps, including through anti-discrimination legislation.

Considering the high unemployment and labour market inactivity rates among women with disabilities, it is necessary to develop a policy of mainstreaming at national, international and European level, promoting not only training, but also job placements, access to employment, job retention, equal pay for equal work, adaptations in the work place and work-life balance.

First of all women with disabilities must have the right, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value.

At European level it is relevant the Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)<sup>42</sup>. The Directive regulates equality between men and women that is

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and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, in OJ L 315/57, 14 November 2012.

<sup>41</sup> European Parliament Resolution of 7 July 2016 on the implementation of the UN Convention on the Rights of Persons with Disabilities, with special regard to the Concluding Observations of the UN CRPD Committee (2015/2258(INI).

<sup>42</sup> In this regard see European Parliament Resolution of 8 October 2015 on the application of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. See also Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and

a fundamental principle of EU law, under article 2, article 3 (3) and article 8 of the Treaty on European Union and the case-law of the Court of Justice. Those treaty provisions proclaim equality between men and women as a 'task' and an 'aim' of the EU and impose a positive obligation to promote it in all its activities<sup>43</sup>, as also underlined by European Pact for Gender Equality (2011-2020)<sup>44</sup>.

In particular, article 153 of the Treaty on the Functioning of the European Union, now provides a specific legal basis for the adoption of Community measures to ensure the application of the principle of equal opportunities and equal treatment in matters of employment and occupation.

The Directive at hand focuses its attention on women, declaring in the recital 22 that Member States should, in the first instance, aim at improving the situation of women in working life, but it deals mainly with women during pregnancy and maternity and not women with disabilities, and it does not expressly provide for the prohibition of discrimination based on disability.

In this regard it is useful to recall articles 21 and 23 of the Charter of Fundamental Rights of the European Union, which prohibit in general terms any discrimination on grounds of sex and disability and enshrine the right to equal treatment between men and women in all areas, including employment, work and pay, while article 26 expressly states that the Union recognises and respects 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<sup>45</sup>.

In addition the Community Charter of the Fundamental Social Rights of Workers<sup>46</sup> also recognises the importance of combating every form of

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occupation, in OJ L303, 2 December 2000, 16-22.

<sup>43</sup> Progress on equality between women and men in the EU in 2013 European Parliament Resolution of 10 March 2015 on progress on equality between women and men in the European Union in 2013 (2014/2217(INI)), in OJ C316/2, 30.8.2016 and Commission communication of 21 September 2010 entitled '*Strategy for equality between women and men 2010-2015*', COM(2010)0491.

<sup>44</sup> Brussels 7 March 2011. In this regard also see Council conclusions on the European Pact for gender equality for the period 2011-2020.

<sup>45</sup> See also Communication from the Commission A Strengthened Commitment to Equality between Women and Men. A Women's Charter Declaration by the European Commission on the occasion of the 2010 International Women's Day in commemoration of the 15<sup>th</sup> anniversary of the adoption of a Declaration and Platform for Action at the Beijing UN World Conference on Women and of the 30<sup>th</sup> anniversary of the UN Convention on the Elimination of All Forms of Discrimination against Women, COM/2010/0078 final, 5 March 2010.

<sup>46</sup> Adopted on 9 December 1989 by the declaration of all Member States, with exception of the United Kingdom.

discrimination, including the need to take appropriate action for the social and economic integration of disabled people.

Besides in respect of women with disabilities, the legislative framework for the EU continues to address disability and gender largely as separate issues.

For example, Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation provides no definition of disability, but at article 5 'Reasonable accommodation for disabled persons' provides that in order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned<sup>47</sup>; and at article 7(2) states that with regard to disabled persons, the principle of equal treatment shall be without prejudice to the right of Member States to maintain or adopt provisions on the protection of health and safety at work or to measures aimed at creating or maintaining provisions or facilities for safeguarding or promoting their integration into the working environment<sup>48</sup>.

In specific terms, in relation to disabled women, in Resolution of 11 December 2013 on women with disabilities the European Parliament regrets the fact that the European Disability Strategy 2010-2020 does not include an integrated gender perspective or a separate chapter on gender-specific disability policies, despite the fact that women with disabilities often find

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<sup>47</sup> About concept of disability see the ruling of the European Court of Justice, Grand Chamber in case C-13/05, of 11 July 2006, *Sonia Chacón Navas v. Eurest Colectividades SA*, regarding Directive 2000/78/EC – Equal treatment in employment and occupation, paras. 39-40: "The concept of "disability" is not defined by Directive 2000/78 itself. Nor does the directive refer to the laws of the Member States for the definition of that concept. It follows from the need for uniform application of Community law and the principle of equality that the terms of a provision of Community law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the Community, having regard to the context of the provision and the objective pursued by the legislation in question (see, inter alia, Case 327/82 *Ekro* [1984] ECR 107, para. 11, and Case C-323/03 *Commission v. Spain* [2006] ECR I-0000, para. 32)".

<sup>48</sup> In this regard see also Council Directive 2000/43/EC of 29<sup>th</sup> June 2000, implementing the principle of Equal Treatment between persons irrespective of their racial or ethnic origin and Council Directive 2004/113/EC of 13<sup>th</sup> December 2004 implementing the principle of Equal Treatment between men and women in the access to and supply of goods and services that do not include any references to the issue of disability.

themselves at a greater disadvantage than men with disabilities and are more often at risk of poverty and social exclusion.

After all, article 10 of the Treaty on the Functioning of the European Union expressly provides that in defining and implementing its policies and activities, the Union shall aim to combat discrimination based on disability; furthermore, under article 19 it can adopt appropriate legislative measures to combat discrimination based on disability.

In this regard, for example, we recall that the EU has established a European Social Fund for disabilities, to finance positive actions to promote labour market participation of people with disabilities, combat social exclusion and fight against discrimination.

However, the European Employment Strategy (EES) of 1997, which now constitutes part of the Europe 2020 growth strategy and consists of eight Employment Guidelines, contains a specific commitment to address gender inequality in employment and to reduce employment gaps for persons with disabilities, but does not explicitly recognise the intersection of gender and disability disadvantage in employment.

Thus, with Resolution on the EU Strategy for equality between women and men post-2015<sup>49</sup>, the Parliament calls on the Commission to address the needs of women with disabilities in order to ensure their increased participation in the labour market and in society.

#### **4. Positive Measures and Policies for Disabled Women**

Equal treatment and positive measures and policies for women with disabilities are a fundamental human right and an ethical obligation.

It follows that it is first of all necessary to increase financial expenditure and economic investment for women with disabilities, making more efficient use of social policy resources, not least the European Social Fund and the Structural Funds, that is a long-term return investment in the well-being of all in a sustainable society where also women with disabilities can work more efficiently under better conditions; it is also necessary to promote policies to combine family and work commitments, which is much more difficult for women with disabilities who work and are also mothers. In particular, it is important to provide personal or public assistance as a means to support them and their families, enabling them to access the workplace, and assisting them also in the event of pregnancy and motherhood. These measures to

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<sup>49</sup> European Parliament, Resolution of 9<sup>th</sup> June 2015 on the EU Strategy for equality between women and men post 2015.

accommodate the needs of disabled women at the workplace plays in fact an important role in combating discrimination on grounds of disability.

Secondly it is necessary that women with disabilities and their organisations be involved in all measures and decisions which affect them and in all implementation processes at all levels, as set out in article 33 of the UN Convention on the Rights of Persons with Disabilities: they have to be enabled and empowered to participate in decision-making processes in order to ensure that their interests and rights are expressed, supported and protected, thus ensuring a genuine grassroots gender perspective. To this end, States must provide adequately adapted services and facilities that would empower their active involvement and participation, and invest in assistive and adaptive technologies and e-inclusion. In addition, there should be adequate training in gender issues for people in charge of these tasks within organisations.

In this context, it is also important to look at an organisation's information output and communication strategy, as these tools can be vital in providing active support for gender issues. Organisations should, therefore, ensure that gender impact is measured when drafting, editing and disseminating information, not only in their communication output (newsletters, informative notes, press articles, leaflets and posters, radio programmes, general interest material, etc.), but also in each of their leaders' communication processes (speeches, addresses, conferences, etc.).

They should also create informative campaigns on existing subsidies and reductions available when hiring women with disabilities, to raise awareness in order to break down attitudinal barriers among employers towards women with disabilities, and could raise the profile and improve the image of women with disabilities in the media, which will make the general public more aware of their daily lives and give them greater opportunities to express themselves and take part in social and political life. Very often disabled women have no means of making their voice heard and it is other people who speak on their behalf, due to psychological barriers such as low self-esteem, fear or shame, or physical obstacles such as the fact that many live in isolation, either in their own homes or in institutions.

Furthermore, it would be useful to promote research and development, particularly in terms of accessibility of new and innovative technologies for women with disabilities, to develop affirmative actions, establish a monitoring mechanism, fund data collection and research on women and girls with disabilities and adopt measures to decrease the high unemployment rates of women with disabilities.

At European level, the European Institute for Gender Equality should provide guidance to EU institutions and Member States with regard to the specific situation of women and girls with disabilities, and play an active

role in advocacy work to secure equal rights and combat discrimination, also ensuring that women with disabilities enjoy the same freedom of movement on the European labour market as other workers, in accordance with the principle of free movement as stated in the European Union Treaties; and it could also be useful to promote cooperation and exchange among Member States of best practices relating to women with disabilities, based on social, employment and environmental aspects, as well as to put in place mechanisms for a regular review of the progress made.

Another important question concerns the existing lower pay rates for women, especially in professions traditionally dominated by men. States should take full account of the gender pay gap in their social policies<sup>50</sup>. Women and girls with disabilities often face underpayment<sup>51</sup>.

The principle that men and women should receive equal pay for equal work has been enshrined in the European Treaties since 1957 (today: article 157 TFEU). Moreover, article 153 TFEU allows the EU to act in the wider area of equal opportunities and equal treatment in matters of employment and occupation. Within this framework, article 157 TFEU further authorises positive action to empower women.

In this regard, equality promotion and monitoring bodies should play a greater role in diminishing this gap. These bodies should be empowered to monitor, report, and, where possible, enforce gender equality legislation more effectively and more independently, supporting and advising victims of pay discrimination (both direct and indirect); they should have legal powers to bring wage discrimination cases to court; they should provide special training for social partners and for lawyers, judges and ombudsmen based on a toolbox of analytical instruments and targeted measures to be used either when drawing up contracts or when checking whether rules and policies to address the pay gap are being implemented.

In addition, it is desirable to promote entrepreneurship among women with disabilities, development of cooperatives and opportunities for self-employment as well as to establish a system of soft loans, microcredit and non-returnable grants for women with disabilities who are entrepreneurs.

In conclusion, to secure real change in the disability sector which can lead to transformational actions towards a more equal society, it is necessary to

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<sup>50</sup> Resolution of 12 September 2013 on the application of the principle of equal pay for male and female workers for equal work or work of equal value.

<sup>51</sup> On this, see the cited European Parliament Resolution of 8 October 2015: 'the pay gap is even more pronounced among women with multiple disadvantages, such as women with disabilities'. See, also, European Parliament resolution of 18 November 2008 with recommendations to the Commission on the application of the principle of equal pay for men and women (2008/2012(INI)).



start by securing a clear and unreserved commitment to equality through specific policies, institutional mechanisms and intersectional action programmes and measures.

## 5. Conclusions

History, attitudes and prejudice in society have stereotyped women with disabilities negatively, thus bringing about their social isolation and exclusion.

Moreover, today the intersection of factors such as economic situation, race, ethnic origin, social class, age, sexual orientation, nationality, religion and culture, interacting at multiple and, frequently, simultaneous levels, has a multiplier effect which increases the discrimination in women and girls with disabilities, contributing to systematic social inequalities<sup>52</sup>.

In this regard, the importance of recognising the concept of multiple discrimination is strongly supported by the European Disability Forum (EDF), that supports the position that as multiple forms of discrimination intersect, they create new ‘hybrid forms of discrimination’, which need a separate strand of analysis to understand and separate remedial actions:

‘The double discrimination faced by women with disabilities is not the result of adding together their needs as persons with disabilities and women; as both variables combine, a different and special status arises that must be understood and recognised. Given that it is a structural status, it requires a specific, innovative and long-term approach [...]’.

This intersectionality also occurs in respect of employment, creating the need to strengthen the recognition and understanding of the intersectionality of gender and disability in EU and Member State legislation and policy<sup>53</sup>. Women with disability have the right to live in a society in which they enjoy equal opportunities as others and equal treatment, especially in matters of employment and occupation, so as to ensure their full participation therein. Their inclusion in society regardless of a country’s socio-economic, political

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<sup>52</sup> About definition of intersectionality see United Nations (2001) *Background briefing on intersectionality. Working Group on Women and Human Rights, 45th session of the UN*: ‘Intersectionality is an integrated approach that addresses forms of multiple discrimination. Intersectional discrimination is ... a distinct and particular experience of discrimination unified in one person or group’. See also Schiek and Lawson, 2011; Fagan et al., 2006. They have noted that intersectionality provides a more ‘nuanced’ tool than ‘double disadvantage’ for understanding gender-based differences in exposure to various forms of discrimination and social exclusion.

<sup>53</sup> See Study on the situation of women with disabilities in light of the UN Convention for the Rights of Persons with Disabilities - A Final Report for the DG Employment, Social Affairs and Equal Opportunities of the European Commission, C-3659, December 2009.

or cultural status is not just a development issue but also a human rights issue.

As underlined by the European Commission and Parliament in Resolution of 26 April 2007 on the situation of women with disabilities, in the European Union the ‘social model of disability’, which focuses on society’s barriers, as opposed to the ‘medical model of disability’, which deals only with the medical aspects of disability, is the proper basis for providing solutions, services and support, for devising policies, for assigning resources and for improving also the situation of women with disabilities.

So the overall aim of the European Disability Strategy 2010-2020<sup>54</sup> is to empower people with disabilities so that they can enjoy their full rights, and benefit fully from participating in society, ensuring effective implementation of the UN Convention<sup>55</sup> across the EU calls for consistency.

Promoting the equal rights of women and girls with disabilities is also one of the most important aspects of the work of the cited European Disability Forum, which adopted the 1<sup>st</sup> Manifesto of Disabled Women in Europe on 22 February 1997 and the 2<sup>nd</sup> Manifesto on the Rights of Women and Girls with Disabilities in the European Union – a toolkit for activists and policymakers, in Budapest on 28-29 May 2011.

In conclusion, the European Union, the United Nations and all the organisations working on a regional or sub-regional level in Europe must develop actions to promote equal rights for disabled women and girls and include disability in all programmes, measures and policies on gender, as well as devise and develop positive action measures to achieve progress for them, eradicating prejudice, negative perceptions and social stigmas; encouraging social acceptance, social participation, respect and tolerance and valuing human diversity as an asset for society as a whole.

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<sup>54</sup> Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and the Committee of the Regions European Disability Strategy 2010-2020: a renewed commitment to a barrier-free Europe, COM/2010/0636 final. This Strategy focuses on eliminating barriers. The Commission has identified eight main areas for action: Accessibility, Participation, Equality, Employment, Education and training, Social protection, Health, and External Action. For each area, key actions are identified, with the overarching EU-level objective highlighted in a box. These areas were selected on the basis of their potential to contribute to the overall objectives of the Strategy and of the UN Convention, the related policy documents from EU institutions and the Council of Europe, as well as the results of the EU Disability Action Plan 2003-2010, and a consultation of the Member States, stakeholders and the general public. See, also, Commission staff working document - Progress Report on the implementation of the European Disability Strategy (2010 - 2020), SWD(2017) 29 final, Brussels, 2 February 2017.

<sup>55</sup> About implementation of the UN Convention for the Rights of Persons with Disabilities, see section 1, para. 4.

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