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Neliswa Nobatana - Submission - implementation of the UN CRPD

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Date: 7/20/2012 03:23 PM
Subject: Submission - implementation of the UN CRPD
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Attachments: Submission CDLP & GHJRU 20 July 2012.docx; Part.003

Dear Ms Nobatana and Ms Solomons

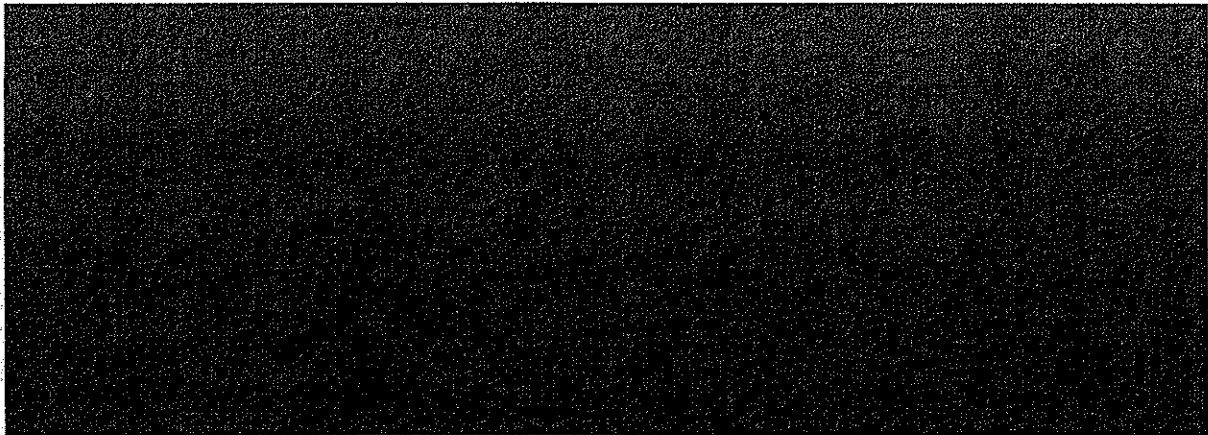
Please find attached our written submission on the implementation of the UN Convention on the Rights of Persons with Disabilities, with specific reference to violence against women with intellectual disabilities and women with psychosocial disabilities.

We would appreciate an opportunity to also make a verbal submission to the Committees during the public hearings to be held on 25-26 July 2012. Please note that we may be joined by our third research partner, the Cape Mental Health Society.

Regards
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Implementation of the UN CRPD in South Africa:

Violence against women with intellectual disabilities and women with psychosocial disabilities: Promoting access to justice

This submission focuses on the implementation of Articles 5, 6, 13 and 17 of the UN Convention on the Rights of Persons with Disabilities in South Africa.

Centre for Disability Law and Policy, University of the Western Cape
Gender, Health and Justice Research Unit, University of Cape Town

20 July 2012

1. Introduction

This submission has been prepared in response to the request from the chairpersons of the Portfolio Committee and Selected Committee on Women, Children and People with Disabilities to comment on the implementation of the Convention on the Rights of Persons with Disabilities (CRPD). The submission looks at the promotion of access to justice where women with disabilities have experienced gender-based violence, with specific emphasis on women with intellectual disabilities and women with psychosocial¹ disabilities. The specific articles of the CRPD in focus are Article 5 (equality and non-discrimination), Article 6 (women with disabilities), Article 13 (access to justice) and Article 16 (freedom from exploitation, violence and abuse). This list is not exhaustive, since these key articles also intersect with, for example, the provisions on accessibility² and protecting the integrity of the person.³

Much effort has in recent years been devoted to addressing gender-based violence in South Africa. However, one aspect that has been almost entirely neglected is violence committed against women with disabilities. As a result, little information is available on the nature and extent of violence against women with disabilities, apart from the results of one small-scale exploratory study published in 2005.⁴

Existing studies and the responses elicited through Groce's 2004 global survey on HIV & AIDS and disability show that persons with disabilities are up to three times more likely to be victims of physical abuse, sexual abuse, and rape.⁵ The 2004 survey also suggested that persons with disabilities have limited access to police, legal counsel, and courts for protection.

¹ Psychosocial disabilities are also sometimes referred to as 'psychiatric disabilities', 'mental illness' or 'mental health problems'. The term 'psychosocial' is used here to refer to the interaction between the psychological and social/cultural components of this disability. The psychological component refers to ways of thinking, processing experiences and perceptions of the world. The social/cultural component refers to societal and cultural limits for behaviour that interact with the psychological aspect well as the stigma that society attaches to label people as disabled [World Network on Users and Survivors of Psychiatry].

² Article 9.

³ Article 17.

⁴ E Naidu et al (2005) *On the Margins: Violence against Women with Disabilities* [Centre for the Study of Violence and Reconciliation].

⁵ Cf also K Nordström 'Forgotten again – violence against women' *Human Rights Africa* [Quarterly Newsletter of the Secretariat of the African Decade of Persons with Disabilities] Number 1, 2007; Human Rights Watch *As if We Weren't Human: Discrimination and Violence against Women with Disabilities in Northern Uganda* (2010) at 34-35. See however the interesting findings from a pilot study conducted in Malawi: MH Kvam & SH Braathen *Violence and Abuse against Women with Disabilities in Malawi* (2006) at 48-49.

Anecdotal evidence from several southern African countries indicates that disabled women experiencing gender-based violence have inadequate access to support services from the gender-based violence sector, including appropriate information resources setting out their

An intellectual disability is a disability that significantly affects one's ability to learn and use information. It is usually a disability that is present during childhood and continues throughout one's life, but can also have its origin later in life (for example, due to head injuries sustained in a car accident). A person who has an intellectual disability is capable of participating effectively in all aspects of daily life, but sometimes requires more support than others in learning a task, adapting to changes in tasks and routines, and addressing the many barriers to participation that result from the complexities of society.

[Community Living Ontario]

rights, as well as poor access to the criminal justice system itself. Women reportedly experience both physical and communicational limitations⁶ as well as procedural and evidentiary⁷ limitations of access to justice.

An international and regional framework for the promotion of the rights of persons with disabilities has recently emerged in the southern African subregion, consisting of the *Convention on the Rights of Persons with*

Disabilities, the *Protocol to the African Charter on the Rights of Women in Africa* and the *SADC Protocol on Gender and Development*.

In summary, there is currently a lack of reliable information available in South Africa on violence against women with disabilities and, more specifically, on whether women with disabilities experiencing gender-based violence can rely on their rights to access to justice included in the human rights framework for protection against further violence, prosecution of the perpetrator and, where applicable, restitution. This lack of information in itself constitutes a potential threat to the realisation of the rights set out in the CRPD.

⁶ Physical limitations include limited access to court buildings, police stations and other facilities. Communicational limitations include a lack of sign language interpreters to take witness statements or interpret during testimony in court.

⁷ Procedural limitations include investigative and judicial procedures that do not accommodate the needs of persons with disabilities. Evidentiary limitations include rules that limit or exclude the capacity of persons with disability to give testimony.

2. Current project

Against this background, the Centre for Disability Law and Policy (University of the Western Cape), in partnership with the Cape Mental Health Society and the Gender, Health and Justice Unit (University of Cape Town) initiated a one-year⁸ research project aimed at -

- Gathering knowledge on the barriers making the South African criminal justice system less accessible to women with disabilities experiencing gender-based violence, with specific reference to women with intellectual disabilities and with psychosocial disabilities;
- Gathering knowledge on examples of existing 'good practices' in addressing these barriers; and
- Formulating recommendations on improving access to justice for disabled women experiencing gender-based violence in South Africa;

Psychiatric (or psychosocial) disabilities are mental and emotional disorders (such as severe depression, schizophrenia and bipolar affective disorder) that affect people's ability to cope with their feelings and with the demands of the outside world. Psychiatric disability is characterised by varying degrees of seemingly inappropriate behaviour, communication and understanding, and having a different experience of reality at times. It can affect anyone - and generally starts in adolescence or adult life (though there are exceptions). The onset of mental illness can be sudden or gradual, and the illness can be acute, chronic or intermittent. There can be a good chance of recovery from a mental illness, following appropriate treatment and support.

[Cape Mental Health Society]

The overall goal of the project is to promote the realisation of the rights of women with disabilities in South Africa to access to justice, gender equality and freedom from violence as guaranteed in the UN CRPD, international human rights law⁹ and the Constitution.¹⁰

This project has opted to emphasise the regrettable position of *women with intellectual disabilities* and *psychosocial disabilities* experiencing violence. In our experience, these groups are often overlooked in both research and advocacy activities and more importantly, bear the brunt of unspoken disability-based prejudice on the part of police and court officials, including the judiciary.

⁸ The project started in January 2012 and is due for completion in December 2012.

⁹ This body of international law includes the Convention on the Elimination of All Forms of Discrimination against Women.

¹⁰ Constitution of South Africa Act 108 of 1996. Sec 9 (the right to equality) and sec 12(1)(c) (the right to freedom from all forms of violence) are of particular importance.

3. Main activities

Researchers have to date conducted approximately 55 interviews with representatives from organisations directly providing services to women with disabilities as well as those 'indirectly' providing such services (such as organisations for women who have experienced gender-based violence, whose clients occasionally include women with disabilities). We have also held three focus group discussions: two with women with psychosocial disabilities to speak about their perceptions of the barriers that may be experienced when victims approach the police and courts and another with a group of case workers at an organisation providing services to persons with intellectual disabilities and psychosocial disabilities.

The focus of the interviews, which have taken place in Gauteng, the Western Cape and KwaZulu-Natal, has been to gather information about the barriers encountered by women with disabilities who have experienced gender-based violence when they approach the criminal justice system, to discover how service providers and other stakeholders have responded to these barriers and to compile their recommendations for addressing these obstacles in future.

In this respect, one of the key points of comparison between Western Cape and the other research sites has been the *Sexual Assault Victim Empowerment* (known as 'SAVE') programme established by the Cape Mental Health Society to provide assessment, support and court preparation services to persons with intellectual disabilities who have been the victims of sexual assault.

The SAVE programme, which has been in operation since the early 1990s, has been evaluated and shown to be successful in facilitating access to justice for persons with intellectual disabilities. This is achieved through –

- assistance with investigation
- the administering of psychometric tests
- evaluation of the victim's competence to act as witness
- evaluation of the victim's capacity to consent to sexual intercourse
- the compilation of a court report, and
- the provision of expert evidence in court.

In addition, the programme trains members of the police force and public prosecutors to develop the skills they need to conduct interviews with complainants with intellectual disabilities with greater sensitivity to and understanding of their special needs.

It should be noted that this programme, which is by its nature 'cost-intensive' in terms of requiring specialised staff such as social workers and psychologists, is currently administered

and funded (through fund-raising initiatives) by the Cape Mental Health Society.

Given the demonstrable success of this programme, the research project accordingly aims to investigate the feasibility of setting up the SAVE programme in additional sites beyond the Western Cape province, where it currently operates, bearing in mind the realities of variations in local conditions.

4. Preliminary impressions: Challenges to implementation of the CRPD rights

Given the fact that this study is the first of its kind in South Africa and speaks to several articles of the CRPD, we would like to draw the attention of the Committees to certain themes that are emerging from the research.

We wish to emphasise to Committee members that our research has not yet reached the point where we can present definitive research results or findings. We are still in the process of concluding the field work and then the formal stage of data analysis will commence. However, it is already possible to identify the following preliminary impressions.

The first important observation is that there are considerable challenges to the implementation of the right to access to justice of women with intellectual disabilities and with psychosocial disabilities in the three provinces where the research is taking place. This may appear to be a generalised, broad statement: however, the challenges that we have observed are also of a broad and systemic nature.

Our initial premise of disability-based prejudice on the part of criminal justice personnel has been borne out by the reports from research participants who observed that police officials, especially those staffing Community Service Centres (CSC), appear to have an entrenched view of complainants with intellectual or psychosocial disabilities as 'mad', 'unreliable' and generally unable to provide adequate statements. Sexuality-based myths, for example, that women with intellectual disabilities are 'over-sexed' and 'go looking for it' further appear to influence police responses.

Research participants indicated that the criminal justice process is harrowing for all women who have experienced gender-based violence. However, certain factors place additional barriers in the way of women with intellectual and psychosocial disabilities. These include difficulties in communication and the stigma that attaches to these disabilities.

Researchers have observed a stark difference between the Western Cape, where the Cape Mental Health Society's SAVE programme is in operation, and the other two provinces, where no comparable programmes are in place. In the Western Cape, there were numerous

accounts of cases that had successfully proceeded through the criminal justice process (i.e. resulted in a conviction), mostly originating from the SAVE programme; in the other provinces, research participants were hard-pressed to note any examples of cases even proceeding to trial. There were one or two exceptions: most notably a programme in place at the Zululand Mental Health Society in KwaZulu-Natal. This programme resembles the SAVE programme.

We were further concerned by the observations from women with psychosocial disabilities, conveyed in the focus group discussions, to the effect that they would not go to the police if they were the victims of crime. This distrust was based on their previous experiences of the police as unsympathetic and insensitive, in most cases where the police had engaged with them as a result of their disability (for example, where family members had requested the police to intervene due to perceived inappropriate behaviour on the part of the person with a psychosocial disability).

5. Recommendations

Based on our preliminary impressions, we recommend the following:

Focusing on the state -

- a) The prospect of expanding the SAVE programme to other provinces should be considered as a matter of urgency. The Cape Mental Health Society has developed protocols, training manuals and other material to facilitate such expansion. Importantly, this assessment of expansion should be seen against the backdrop of the commitments undertaken by the South African government upon its ratification of the CRPD.
- b) Research participants almost unanimously called for training of personnel across the criminal justice system, with specific focus on police, prosecutors and magistrates. This should include disability-specific training as well as on the provisions of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 – known as ‘the Sexual Offences Act’. In the case of police, both CSC personnel and members of specialised investigative units, such as FCS’s, should be included in training.
- c) There was also a strong view that ‘special people need special people’. The FCS was not always seen as specialised enough to deal with intellectual and psychosocial disability. This calls for a partnership between government and civil society (including NGO’s, DPO’s, universities and private practitioners), where such

specialised skills have been developed.

Focusing on civil society –

- a) There appears to be little inter-action between disability organisations and gender-based violence organisations. It is important to improve this interface, both for purposes of sharing resources and to improve referral mechanisms.
- b) Both gender-based violence and disability organisations have noted that they would benefit from training on the Sexual Offences Act and on service provision to people with disabilities.
- c) There is need for a debate, especially in the disability sector, on the question of personal agency and weighing the potential benefits of approaching the criminal justice system against the disadvantages.

5. The way forward

Once we have completed our analysis, the research findings with our recommendations will be presented at a stakeholders' workshop in Cape Town. This workshop is scheduled for December 2012. However, we would appreciate an opportunity prior to this (ideally during October – November) to present our findings to the two Committees and to discuss the implications for improving the implementation of the CRPD in future.

**Centre for Disability Law and Policy, University of the Western Cape
Gender, Health and Justice Research Unit, University of Cape Town**

20 July 2012



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