



## **Half-day general discussion on the equal and inclusive representation of women in decision-making systems**

### **TCI's written submission to the Committee on the Elimination of Discrimination against Women (CEDAW)**

Transforming Communities for Inclusion (TCI) is a global Organization of Persons with Psychosocial Disabilities (an OPD) and post-CRPD movement of persons with psychosocial disabilities and its cross-disability supporters. It is a membership-based organization, with a presence in over 50+ countries spread across various sub regions of South Asia, SEA, Pacific, East Asia, MENA region countries, East Africa, West Africa and Latin America. TCI also has a small set of members from Europe, USA, Australia and Canada. Our identity of person with psychosocial disabilities is derived from the CRPD description of the disability and is inclusive of persons who identify as 'users and survivors of psychiatry, 'mad' persons', persons who have been targeted as 'of unsound mind', autistic persons, persons with intersectional and neurodiverse identities, including persons with psychosocial disabilities.

TCI warmly welcomes the initiative of the CEDAW Committee to invite women to contribute to this crucial topic. We congratulate the Committee on having such a broad vision to realize the equal and inclusive representation of women in all decision-making systems. It is commendable that the Committee has given such nuanced guidance in the concept note that covers all possible aspects of this process.

We express our deepest gratitude to CEDAW for providing us with a glorious past of a repository of necessary and progressive guidances and declarations to safeguard our rights. The Committee has honourably dealt with all the issues in the past and now we would like to present our feedback for the future.

We acknowledge and amplify the comment from the report of Special Rapporteur on violence against women: "Till women's agency is not acknowledged and their abilities are not supported

through social, economic, and political empowerment, the human rights they are entitled to will remain merely theoretical concepts”<sup>1</sup>.

### **Alignment with the Convention on the Rights of Persons with Disabilities (CRPD)**

We are delighted that the recent recommendations of the Committee have taken into consideration the evolving jurisprudence given out by the CRPD committee. It is promising to see that along with international legal instruments such as Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration on Democracy of the Inter-Parliamentary Council, the future Recommendation aims to align with the Convention.

The CRPD gives concrete guidance to the State Parties on promoting and upholding equal rights of all persons with psychosocial disabilities. We elaborate below on the relevant Articles and General Comments of the Convention, which we strongly recommend, should be covered in the future General Recommendation to ensure equal and inclusive decision-making systems.

The CRPD and its Optional Protocol, is an international human rights treaty that aims to promote, protect, and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. The Convention, through its eight general principles underlines providing equality of opportunity between men and women and promote non-discrimination amongst others [Article 3 (points 2,3,5,7)]. Under its general obligations, it refers to taking all appropriate measures to identify and eliminate any discrimination on the basis of disability by any party (public or private) which includes modifying or abolishing discriminatory laws, regulations, customs and practices that perpetuate disability based discrimination.

The definition of discrimination as elaborated in the CEDAW Convention is an all-encompassing view of the term, but the CRPD has advanced the concept of discrimination by including and offering Reasonable Accommodation. It clearly states that denying reasonable accommodation also constitutes discrimination (Article 2)<sup>2</sup>. This is an essential addition that must be included in the future General Recommendation.

THE CRPD through Article 12 and General Comment no. 1 on equal recognition before the law gives all persons with disabilities the right to recognition as persons before the law and that they enjoy legal capacity on an equal basis as with others. This is one of the most pertinent Articles of the Convention as it strengthens the right to personhood for persons with psychosocial

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<sup>1</sup> A/HRC/11/6 (Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk\* \*\* Political economy of women’s human rights)

<sup>2</sup> “Discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.”

disabilities and is a non-derogable right. Historically, this constituency especially women and girls with psychosocial disabilities have been denied this right and subjected to violations and substituted decision making through guardianships, conservatorship, and mental health laws. These regimes have forced women and girls with psychosocial disabilities to be excluded and marginalized in decision making systems.

Legal rights are meaningful if they can be asserted and hence Article 13 gives provision of access to justice in the form of procedural and legal remedies. Women and girls with psychosocial disabilities have been rendered invisible during formulation of policies, laws and programmes. Article 6 and General Comment no. 3 of the CRPD was a response to this 'invisibility' as it sought to uphold the non-discriminatory principle of the CRPD and guided the State Parties to provide for equality of opportunity and outcomes for this group. This is a cross cutting Article and is also tied with Article 29 of the CRPD on Participation in political and public life and states clearly that any discriminatory laws and policy that does not allow women with disabilities to effectively participate in political and public life should be repealed<sup>3</sup>. We confirm that incorporating these provisions from the CRPD clearly will achieve the goals outlined for the future General Recommendation.

### **Importance of legal capacity**

Women with psychosocial disabilities are still denied legal capacity through laws, regulations, policies, and practices. The multiple layers of identity viz their gender, disability, indigenous identity, age, puts them at a greater risk of having their legal capacity denied, effectively becoming a non-person in the eyes of the law. When incapacity provisions applied in law gets entrenched into the daily lives of women with psychosocial disabilities, there is a cascading and compounding loss of rights and entitlements, such as: vote and participate in public life; access to justice and seek legal remedy; own and manage property or a bank account; have a family and custody over children; exercise contractual capacity; and, allowing proxy consent, guardianship, and institutionalization. The denial of rights is often referred to as 'civil death' by organizations of persons with disabilities: their personhood is not recognized nor validated.

The right to equal recognition before the law (Article 12), provided for in the CRPD is not a new human right. Article 6 of the Universal Declaration of Human Rights states clearly: "Everyone has the right to recognition everywhere as a person before the law". Other Conventions have guaranteed this right, particularly ICCPR and CEDAW. Article 15 of CEDAW provides that "States Parties shall accord to women equality with men before the law" and that "States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity". CEDAW provides further, that, "[A]ll contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal

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<sup>3</sup> CRPD/C/GC/3 [Para 64 (a)]

capacity of women shall be deemed null and void". The CEDAW Committee has recognized since long that legal capacity restrictions and denials affect women disproportionately and some disadvantaged groups in the gender spectrum.

That the gender and human rights discourse around the globe has since long struggled with realizing the right to full legal capacity is evidenced in a long list of concluding observations by the CEDAW Committee in varying intersectional, cultural and geographic country contexts. In their Concluding Observations, the Committee has given guidance on the repeal of laws that deny legal capacity and decision-making power to women, including women with intellectual and psychosocial disabilities<sup>4,5</sup>. The Committee has also recognized legal capacity issues in the context of informed consent across a variety of health care settings, sexual and reproductive health and rights, abortion, forced sterilization and forced institutionalization. The struggles to enjoy full legal capacity have been for women generally, and for women in marginalized positions, such as poor women, indigenous women, non-binary persons, women with disabilities, women with intellectual, psychosocial disabilities, etc.<sup>6,7,8</sup> and that it continues to be a struggle is demonstrated by the "urgent call for a paradigm shift", and the theme for a Half Day of General Discussion hosted by the CEDAW Committee on 22 February 2023 on Equal and Inclusive Representation of Women in Decision-Making Systems<sup>9</sup>, towards an elaboration of a General Recommendation.

The right to personhood, as reinforced by having legal capacity, on an equal basis with others, is our right to have rights.<sup>10</sup> It is a requisite for the exercise and enjoyment of economic, political, social and cultural rights and is referred to as the 'key to accessing meaningful participation in society.'<sup>11</sup> The Bali Declaration<sup>12</sup>, adopted at the Bali plenary<sup>13</sup> and created with participation of 21 countries and over 75 participants distinctly outlines the immediate need to realize our right to full and equal recognition before the law and harmonization of State laws with the CRPD so that 'no one with a psychosocial disability shall ever be denied a civil, social, political, economic or cultural rights on the basis of "incapacity" or "unsoundness of mind"'. The same was echoed in Addis Declaration<sup>14</sup> wherein our movement from East Africa called for action of the State Parties to repeal all discriminatory laws and policies and even called for reforming the Constitution to rid itself of all discriminatory provisions.

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<sup>4</sup> CEDAW/C/KEN/CO/8 Concluding Observations of the CEDAW Committee on the 8<sup>th</sup> Periodic Report of Kenya, 2017.

<sup>5</sup> CEDAW/C/INDIA/CO/4-5 Concluding Observations of the CEDAW Committee on the combined 4<sup>th</sup> and 5<sup>th</sup> Periodic Reports of India, 2014.

<sup>6</sup> Arstein-Kerslake, A. (2019). 'Gendered denials: Vulnerability created by barriers to legal capacity for women and disabled women'. *International Journal of Law and Psychiatry*, Volume 66, <https://doi.org/10.1016/j.ijlp.2019.101501>

<sup>7</sup> Dhanda, A. (2000). *Legal order, mental disorder*. New Delhi: Sage Publications.

<sup>8</sup> Brosnan, L. & Flynn, E. (2017). Freedom to negotiate: a proposal extricating 'capacity' from 'consent'. *International Journal of Law in Context*, 13,1 pp. 58–76.

<sup>9</sup> Concept-Note-GR-40 (2022). Concept Note on the Future General Recommendation on Equal and Inclusive Representation of Women in Decision-Making Systems. Towards a Half Day of General Discussion, CEDAW Committee.

<sup>10</sup> A/HRC/37/56 (Report of the Special Rapporteur on the rights of persons with disabilities)

<sup>11</sup> CRPD/C/GC/1 (General comment No. 1 (2014) Article 12: Equal recognition before the law)

<sup>12</sup> Bali Declaration (2018) <https://www.tci-global.org/bali-declaration/>

<sup>13</sup> TCI Asia Pacific (2020). 'Reframing the momentum: From "mental health" to "inclusion" of persons with psychosocial disabilities'. Report of the Classic Edition Plenary of Transforming Communities for Inclusion (TCI) Asia Pacific, Pune. [Plenary report]. Available at <https://www.tci-global.org/bali-plenary-report/>

<sup>14</sup> Addis Declaration, Upcoming (2023)

There has been a disturbing trend of countries placing a reservation and declaration on Article 12 of the Convention thereby violating the CRPD and threatening the safety of rights of persons with psychosocial disabilities. Countries such as Ireland<sup>15</sup>, Canada, Poland, Estonia, France are a few examples wherein these processes have led to human rights violation such involuntary detention, forced institutionalization, forced treatments for persons with psychosocial disabilities. These must be addressed and strictly prohibited and should be stated as such in the future General Recommendation. When countries overlay the Articles of Convention with their internal, often discriminatory and outdated frameworks, it further isolates persons with psychosocial disabilities, making them vulnerable against the power lobbies and a political economy around psychiatry, its psychopharmacy and institutions upholding that mindset. Such reservations should not be allowed. Mental health laws, often outdated and obsolete, impinging on our rights, are also being challenged by our movement in their regions<sup>16</sup>. We do not need fresh guidance documents which supposedly help States to amend or create new 'CRPD compliant' mental health laws while retaining coercion and deprivation of our legal capacity at their core.<sup>17</sup> These are not in line with the Convention, and they place a legal barrier on us to live complete, independent lives. Full and equal participation in public, political, private lives will never be possible until these legal shackles continue to bind us.

### **Women's decision making in healthcare context**

When women and girls with psychosocial disabilities are not adequately represented in decision making bodies, the issues faced by them and the remedies for the same remain at the periphery. Rendered 'nonpersons' by legal incapacity laws, this group lose their rights over deciding for their lives, deciding for their own bodies, health care, right to family, parenthood, etc. and are excluded from full participation in families and communities.

Despite decades old feminist movements and a legacy of human rights mechanisms, the limited presence of women in decision making spaces is still an all-pervasive issue. Some narrow cultural, traditional, patriarchal, ableist mindsets and unequal power hierarchies in families and communities have limited women, especially women with disabilities, to the private and domestic spheres, making public and political participation a distant dream<sup>18</sup>. Additionally, women with disabilities are more susceptible to gender-based violence, exploitation, and abuse.<sup>19</sup>

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<sup>15</sup> <https://whatweneed.tci-global.org/spotlight-interview-of-liz-brosnan/>

<sup>16</sup> <https://whatweneed.tci-global.org/spotlight-interview-of-dorothy-gould/>

<sup>17</sup> TCI Response & Statement (WITHDRAW The Proposed WHO & OHCHR Guidance On MH, Human Rights And Legislation) Available at: <https://whatweneed.tci-global.org/tci-response-statement-withdraw-the-proposed-who-ohchr-guidance-on-mh-human-rights-and-legislation/>

<sup>18</sup> CEDAW General recommendation No. 23: Political and public life (Point 11)

<sup>19</sup> A/67/227, para. 13 (Report of the Special Rapporteur on violence against women, its causes and consequences: Advancement of women)

An infringement on of women's reproductive rights constitutes violence towards women.<sup>20</sup> Power hierarchies in health care settings, the age-old burden of 'our best interest' and presence of unfair laws takes away decision making power of women with psychosocial disabilities. They are regularly exposed to violence, abuse, coercive practices<sup>21</sup> such as forced sterilization, forced abortions, forced hysterectomies, forced medications, if they conceive, their children are taken away, forced treatments like electroconvulsive therapy, psychosurgery, cochlear implants etc. These coercive and involuntary practices are further exacerbated in institutions and closed-door settings. Forced institutionalization has also been recognized as a form of violence.<sup>22</sup> There have been strong suggestions made by Human Rights Council to categorize abuses in healthcare settings as torture and ill-treatment.<sup>23</sup>

The General Recommendation should give strong guidance, based on the long tradition upheld under CEDAW, for the States to take immediate steps to cease such practices by mainstreaming rights and needs of persons with disabilities in policies and programmes. The UN Guidelines on Deinstitutionalization provide a clear direction for the State to initiate and implement the deinstitutionalization process.<sup>24</sup> Also, women and girls with disabilities locked up in institutions lose all access to justice to challenge any of the atrocities committed against them including their forceful institutionalisation. CRPD Article 6, 15, 16, 17, 23, 25 and General Comment 5 are important to mention while talking about the prevalent abuse of women and girls with disabilities within institutional settings.

The General Recommendation should emphasize on acknowledging the harms done by such coercive practices, often having lifelong consequences and that formal and legal reparations should be offered to all those who have been affected by these practices. 'Any person or group of persons with disabilities that has been the victim of a violation of the right to health should have access to effective judicial or other appropriate remedies.'<sup>25</sup> Reparations for women with psychosocial disabilities, who have been forced to endure lifelong harms of such ill-intentioned practices must strive towards a transformative potential.<sup>26</sup>

The future General Recommendation could draw concrete suggestions from the following resources to address this aspect. The CRPD General Comment 3<sup>27</sup> guides States parties to outlaw gender and disability-based discrimination and violence; criminalizing violence against women

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<sup>20</sup> E/CN.4/2002/83 (Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 2001/49)

<sup>21</sup> E/CN.4/1999/68/Add.4 (Report of the Special Rapporteur on violence against women, its causes and consequences, Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1997/44.)

<sup>22</sup> A/HRC/47/L.18/Rev.1 (Human Rights Council; Accelerating efforts to eliminate all forms of violence against women and girls: preventing and responding to all forms of violence against women and girls with disabilities)

<sup>23</sup> A/HRC/22/53 (Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez)

<sup>24</sup> CRPD/C/5

<sup>25</sup> CRPD/C/5

<sup>26</sup> A/HRC/14/22 (Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo: Reparations for women subjected to violence)

<sup>27</sup> CRPD/C/GC/3

and prohibiting all forms of forced procedures and treatments. It also urges the State Parties to meaningfully engage women and girls with psychosocial disabilities in policy planning processes and encourage creation of networks of women with disabilities to take leadership roles in public decision-making bodies. It is the responsibility of the State to examine all instances of violence against women, as well as systemic failures that fail to prevent such violence.<sup>28</sup> Equal and inclusive participation of women and girls in decision making systems will always be impeded till women and girls, continue to live in unfair, unsafe, violent societies that is always forcing their decisions on us.

## Public and political participation

The level of women's participation in political and public life can serve as a benchmark for their empowerment and gender equality. Women's involvement in elections, as voters, candidates, election officials, or party advocates, allows them to voice their needs and perspectives, leading to more representative decisions and a more inclusive political process. This, in turn, strengthens democracy.<sup>29</sup>

Even though this fact is acknowledged and accepted by all stakeholders and communities, it does not reflect in the actual processes. This group has been missing from public life and political participation and has often resulted in women related priority areas of action missing from State policies and programmes and if present, are often in the form of a tokenistic role.

The UN Human Rights Mechanisms has an illustrious history of creating and publishing resources which promotes equal participation of women in decision making processes. The General Recommendation no. 23 (point 5)<sup>30</sup> directs State parties to eliminate all forms of discrimination against women in public and political life to ensure they are on an equal basis as with men. The overarching applicability of this provision covers not only national and regional levels but also includes civil society, women organization etc. General Recommendation no. 23 (point 17) states how imperative it is for women to have full equality in the exercise of political power by meaningfully and effectively being involved in decision making at all levels possible.<sup>31</sup> The Beijing

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<sup>28</sup> A/HRC/23/49 (Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo: State responsibility for eliminating violence against women)

<sup>29</sup> UNDP, UNPRPD, & Inclusion International. (2021). *POLITICAL PARTICIPATION OF PERSONS WITH INTELLECTUAL OR PSYCHOSOCIAL DISABILITIES*. <https://www.undp.org/publications/political-participation-persons-intellectual-or-psychosocial-disabilities>

<sup>30</sup> 5. Article 7 obliges States parties to take all appropriate measures to eliminate discrimination against women in political and public life and to ensure that they enjoy equality with men in political and public life. The obligation specified in article 7 extends to all areas of public and political life and is not limited to those areas specified in subparagraphs (a), (b) and (c). The political and public life of a country is a broad concept. It refers to the exercise of political power, in particular the exercise of legislative, judicial, executive and administrative powers. The term covers all aspects of public administration and the formulation and implementation of policy at the international, national, regional and local levels. The concept also includes many aspects of civil society, including public boards and local councils and the activities of organizations such as political parties, trade unions, professional or industry associations, women's organizations, community-based organizations and other organizations concerned with public and political life.

<sup>31</sup> 17. In order to achieve broad representation in public life, women must have full equality in the exercise of political and economic power; they must be fully and equally involved in decision-making at all levels, both nationally and internationally, so

Platform for Action, a visionary agenda for empowerment of women, highlighted that an equal representation of women in decision making bodies and spheres is a necessity to strengthen a democracy and its functioning. It also laid out clear steps for State Parties, and stakeholders and building capacities of women to participate more effectively.<sup>32</sup> A UNDP report provides a list of actions to be taken up by various stakeholders to ensure equality of participation and opportunity of women in the political life.<sup>33</sup> A detailed guide on how Electoral Management Bodies can ensure inclusive elections and prioritise advancing gender equality has been also published by UN Women and UNDP.<sup>34</sup> The future General Recommendation will find it helpful to include some of the guidance provided in the mentioned documents.

We would like to draw the Committee's recommendation again on legal capacity, in the context of political participation. Restoring and ensuring legal capacity of women is essential. When decision making is taken away by legal incapacity assessments or discriminatory laws, women, girls, elderly women, indigenous women, women of colour with psychosocial disabilities and intellectual disabilities, none of them will have full rights for political participation, on an equal basis with others. This also limits possibilities and opportunities for women with psychosocial disabilities to form their organizations, associations, or political parties, which is an important part of mobilizing for advocacy in any democratic process. Hence, we confirm that ensuring legal capacity of women with psychosocial disabilities is the need of the hour and a legal binding on every country that has ratified the CRPD.

### **To conclude,**

1. The recommendations must bring the CRPD guidance and jurisprudence on legal capacity (Article 12, General Comment 1, Guidelines on De-institutionalization) as a generic human right within which other more specific rights (family, political participation, etc.) are embedded.
2. A key recommendation should be the 'removal of all legal barriers' to the enjoyment of full freedoms and human rights of persons with disabilities, including women, girls, older persons and persons with intersectional, neurodiverse identities on the gender spectrum.
3. Persons with disabilities should not be subjected to institutionalization, psychiatric drugging, shock treatments, forced sterilization, hysterectomies, conversion therapies

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that they may make their contribution to the goals of equality, development and the achievement of peace. A gender perspective is critical if these goals are to be met and if true democracy is to be assured. For these reasons, it is essential to involve women in public life to take advantage of their contribution, to assure their interests are protected and to fulfil the guarantee that the enjoyment of human rights is for all people regardless of gender. Women's full participation is essential not only for their empowerment but also for the advancement of society as a whole.

<sup>32</sup> Beijing Declaration and Platform for Action, 1995

<sup>33</sup> UNDP, UNPRPD, & Inclusion International. (2021). *POLITICAL PARTICIPATION OF PERSONS WITH INTELLECTUAL OR PSYCHOSOCIAL DISABILITIES*. <https://www.undp.org/publications/political-participation-persons-intellectual-or-psychosocial-disabilities>

<sup>34</sup> UN Women, & UNDP. (2015). *Inclusive Electoral Processes: A Guide for Electoral Management Bodies on Promoting Gender Equality and Women's Participation*. <https://www.unwomen.org/en/digital-library/publications/2015/7/inclusive-electoral-processes>



and various other coercive treatments. These must be recognized as inhuman, cruel, degrading, and torturous treatments. women, girls, older persons, and persons with intersectional, neurodiverse identities on the gender spectrum must have the human right to make their own health choices and treatment decisions. Service providers should ensure a conducive decision-making environment, with support needed for decision making, in being able to exercise full and informed consent.

4. Persons with disabilities should have the right to exercise their legal capacity before (as holder of rights) and under (as actors) the law, and where needed, be provided with supports for decision making, as per their will and preference.