



Open Letter to:

Committee on the Rights of Persons with Disabilities¹
c/o crpd@ohchr.org

RE: "Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland" CRPD/C/GBR/CO/1, 29 August 2017 (As adopted during the 18th session of the Committee on the Rights of Persons with Disabilities (14 -31 August 2017))

9 November 2017

Dear members of the Committee on the Rights of Persons with Disabilities,

I am the International Coordinator of the International Campaign for Women's Right to Safe Abortion and an abortion rights advocate for more than 35 years, living in the UK. I am writing to you in a personal capacity regarding the "Concluding observations on the report of the UK to the Committee on the Rights of Persons with Disabilities", as above.

Your recommendations to the UK overall are absolutely fair and just, but I am writing to take issue with those related to abortion, and to explain why. These are as follows:

Equality and non-discrimination (art. 5)

12. The Committee is concerned about perceptions in society that stigmatize persons with disabilities as living a life of less value than that of others and about the termination of pregnancy at any stage on the basis of fetal impairment.

13. The Committee recommends that the State party amend its abortion law accordingly. Women's rights to reproductive and sexual autonomy should be respected without legalizing selective abortion on the ground of fetal deficiency.

My concerns regarding these recommendations are threefold: the first is to do with your definition of "a person". The second is to do with the reasons why women have abortions vs. how different laws address and codify reasons for abortion as legal or illegal grounds. The third is that I believe including any ground for abortion in the law whatsoever – apart from permitting abortion at the woman's request – is a mistake because it serves to restrict women's autonomy and decisions over their own bodies.

1. The definition of a person

Re the definition of a person in regard to human rights and discrimination, I offer the abstract from a paper by Rhonda Copelon, Christina Zampas, Elizabeth Brusie and Jacqueline deVore, which was published in the journal *Reproductive Health Matters* in November 2005:

In the Universal Declaration of Human Rights, the foundation of human rights, the text and negotiating history of the "right to life" explicitly premises human rights on birth. Likewise, other international and regional human rights treaties, as drafted and/or subsequently interpreted, clearly reject claims that human rights should attach from conception or any time before birth. They also recognise that women's right to life

¹ This Open Letter was mistakenly addressed to the Special Rapporteur on the Rights of Persons with Disabilities and well as the Committee on the Rights of Persons with Disabilities. The recommendations to the UK were made by the CRPD Committee, not by the Special Rapporteur. We apologise for the error. Anyone who wishes to reprint this letter is welcome to do so but must use this revised version.

and other human rights are at stake where restrictive abortion laws are in place. This paper reviews the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination Against Women, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Inter-American Human Rights Agreements and African Charter on Human and People's Rights in this regard. No one has the right to subordinate another in the way that unwanted pregnancy subordinates a woman by requiring her to risk her own health and life to save her own child. Thus, the long-standing insistence of women upon voluntary motherhood is a demand for minimal control over one's destiny as a human being. From a human rights perspective, to depart from voluntary motherhood would impose upon women an extreme form of discrimination and forced labour. ([http://www.tandfonline.com/doi/abs/10.1016/S0968-8080\(05\)26218-3](http://www.tandfonline.com/doi/abs/10.1016/S0968-8080(05)26218-3))

If you accept this interpretation of international human rights law, then it is surely a contradiction in terms in your recommendations to the UK, or indeed to any State party, to call for "women's rights to reproductive and sexual autonomy to be respected" and then to call for an exception to those rights for any reason and in this case, for one reason only.

This is no different from other groups calling for abortion not to be allowed in cases of rape or incest, and still others in cases where the embryo/fetus is female, and still others in cases where there is a risk to the woman's life. All three of these are actual stances taken by those who are anti-abortion in different parts of the world. For anyone apart from the pregnant woman herself to decide which abortions are acceptable and which are not denies women's rights to reproductive and sexual autonomy. It means that there will always be someone – who is not the woman herself – who will assert their power to determine what she is and is not permitted to do. In the end, it means someone else can always deny her an abortion. That is the power you wish to exercise in your recommendation to the UK.

I believe that the focus on "legal grounds/indications for abortion" per se has boxed us into a corner in almost every country in the world. Abortions on the ground of fetal anomaly, just like abortions on the ground of fetal sex, have been described as "selective" abortions. That is, unlike abortion based on a risk to the woman's health or based on her social circumstances, these grounds seem to allow abortion on the basis of a condition(s) of the embryo/fetus. Abortion following rape or incest might also be considered to be "selective", since the pregnancy arises from the violence of the man responsible for engendering it.

However, to accept this picture in each of these instances makes the woman's response invisible by shifting the locus of decision-making about the pregnancy away from her and its effects on her life. It also leads to new forms of "discrimination". Thus, it implies, for example, that a male embryo/fetus has fewer rights than a female one, if only female fetuses are protected, or that an embryo/fetus without any identified anomalies has fewer rights than one with identified anomalies, if only fetuses with anomalies are protected, as you are proposing. Such outcomes are also and equally unacceptable.

The only way to avoid this conundrum is to reject assertions that the embryo/fetus: a) has human rights before birth, or that: b) any condition in the embryo/fetus is the reason for abortion or for refusing abortion. In other words, it must always and only be the woman's reasons for abortion that count – and the bottom line is that she seeks an abortion because she cannot cope with having that baby at that time. This may mean any baby whatsoever or it may mean a baby that is male or female, or one with or without an identified fetal anomaly, or one that is the product of sexual violence or of wanted sex, or one that is unwanted from the start or becomes unwanted during the course of the pregnancy – in short, no matter what the reason may be.

Furthermore, and most importantly for this discussion as I see it, fetal anomalies and disability are not the same. An embryo/fetus has no "abilities" of its own. Its life and development are utterly dependent on the woman carrying it. Disability (and ability) are conditions that come into existence only after birth. Disability may arise from fetal anomalies present before birth or from events and illness after a baby is born, which may occur throughout the life course. I have never heard this distinction made, but I believe it must be.

Your text uses the phrase "fetal deficiency". No one working in fetal medicine today would use that term. Fetal anomalies are medical conditions that arise when something serious or even fatal goes wrong during fetal development. Medical science is working hard to identify these conditions and figure out why they occur and whether they can be treated or prevented. Women carrying an embryo/fetus with one or more of these conditions needs to know they are there, so as to be able to decide whether this is a pregnancy and potentially a child who, if it can survive at all, she can cope with for the rest of her life. She has to take into account her own, her partner's and her existing children's life circumstances, and whether she will get any support to do so. In the end, as Copelon et al say in the abstract above, "*to depart from voluntary motherhood would impose upon women (my emphasis) an extreme form of discrimination and forced labour*".

It was therefore a great relief to me that our government, in its initial response to you on 3 October 2017, did not accept your recommendation to change our abortion law. I think you should know that groups in the UK Voice for Choice coalition, of which I am a member, will be opposing any such change in the law. Instead, we are working for decriminalization of all abortions.

One of the most concerning issues about your stance on this topic is that it is so out of line with the recommendations on making all abortions safe by the CEDAW and other OHCHR Committees, and those of the Special Rapporteurs on the right to health and against torture, as well as those of the Working Group on all forms of discrimination against women in law and practice.

I therefore feel it is very important that more people are aware of your recommendation to the UK on this subject. I will be publishing this Open Letter in the newsletter of the International Campaign and sharing it with colleagues.

In closing, I should like to express my respect and admiration without reservation for all of your efforts in opposing discrimination on the grounds of disability. I hope as the Special Rapporteur and Committee on the Rights of Persons with Disabilities, you will discuss this matter with others in the OHCHR community and reconsider your stance.

With kind regards,



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