Women Enabled International Questionnaire for 2018 CRPD Committee Candidates:
Women and Girls with Disabilities

Name of Candidate: Rosemary Kayess
State Party Nominating Candidate: Australia

1. Describe any experience you have working on women’s rights and particularly any experience you have integrating women and girls with disabilities into your broader work on disability rights.

Answer:

I am a human rights lawyer, and currently teach in the Faculty of Law at the University of New South Wales (UNSW). Convening international law and human rights subjects, focusing on the equality provisions within international instruments and their translation into domestic law and policy. I also anti-discrimination law which includes discrimination on the basis of disability, sex and race.

I am also a Senior Research Fellow with Social Policy Research Centre UNSW with extensive research experience working and advising on a variety of social policy research projects including access to justice, social inclusion, employment, human rights and disability, including work on the implementation of CRPD in Australia, Asia/Pacific and Europe.

I have a demonstrated interest in achieving gender equality including the protection and promotion of the human rights of women and girls. Throughout my legal career I have been asked to advise Disabled Persons’ organisations on discrimination and human rights law. Central to this has been the intersection of sex, gender and disability. All of my work has included a gender perspective and analysis of the impact on women and girls with disability. I provided the strategic human rights law analysis for the Civil Society Shadow Report for Australia’s first periodic review by the United Nations’ Committee on the Rights of Persons with Disabilities and the 2nd Universal Periodic Review by the Human Rights Council. 2014 the Australian Civil Society delegation to the UN for the Conference of States Parties (COSP) on the CRPD included eight emerging young leaders, including 5 young women and I was invited specifically as a mentor. My work with ACDL has included mentoring young women with disability and emerging Aboriginal and Torres Strait Islander disability leaders at other international fora.

I am a published academic, and have written extensively on human rights and disability, and the implementation of the CRPD. My publications include intersectionality of the rights of women with disability, the right to inclusive education and disability inclusive development.

2. Do you think there are human rights abuses that disproportionately or uniquely affect women and girls with disabilities, as compared to men and boys with disabilities and
non-disabled women and girls? If so, what do you think are the most urgent human rights issues disproportionately or uniquely affecting women and girls with disabilities?

Answer:

Yes;

a) **Violence against women:** Central to my work with Women with Disabilities Australia (WWDA) and Disabled People's Organisations Australia (DPOA) over the past 5 years has been the critical issue of violence against people with disability who experience violence at 3 times the rate of the general population. There are much higher rates for women with disability, particularly Aboriginal and Torres Strait Islander women with disability. This violence is less likely to be reported, investigated or prosecuted.

b) **Sexual and Reproductive rights:** Sexual and reproductive rights have long been denied women and girls with disability. Women and girls with disability are commonly denied the right to have full control over their body, sexuality and sexual health, including making decisions about sexuality and reproductive matters, and to access sexual and reproductive health information, education, services and support. Practices such as forced and/or coerced sterilisation, forced contraception, a focus on menstrual and sexual suppression based on notions of carer burden and forced or coerced abortion and the termination of parental rights. They also experience systemic exclusion from sexual and reproductive health care services. These rights continue to be a serious breach of human rights. Forced sterilisation of people with disability, particularly women and girls with disability, is an ongoing practice in Australia. The ongoing practice of forced sterilisation has been identified as an act of violence, a form of social control and a form of torture by the UN Special Rapporteur on Torture, and as a form of violence by the UN Committee on the Rights of the Child (CRC)

c) **Women’s economic disadvantage:** Women’s economic disadvantage, including gender pay inequality, access to education including STEM education and parental leave deny women and girls the enjoyment of key human rights such as; adequate standard of living, employment, education and living independently and being included in the community. This leaves women and girls with disability at high risk of poverty. Economic disadvantage of older women with disability has meant homelessness rates for women are growing faster than males. There is a strong correlation between homelessness, disability and domestic violence and abuse.

3. **What obligations do you think States have under the CRPD and other human rights treaties to ensure that persons with disabilities can exercise sexual and reproductive**
autonomy? Do you think States should be allowed to place any limitations on that autonomy, and if so, what limitations?

Answer:

States hold obligations under international law through provisions in several treaties including CRPD, CEDAW and CAT, including autonomy and self-determination rights. These include the right to make to make free and informed decisions and have full control over her body, sexuality, health, relationships, including if, when and with whom to enter intimate relationships, marry and have children. The right to enjoy and express their sexuality, the freedom to make personal decisions about sexuality and reproductive matters, and to access sexual and reproductive health information, education, services and support. At international law autonomy rights can only be limited by provisions that are a) prescribed by law, b) on grounds permitted in relation to the right concerned, c) a reasonable, necessary and proportionate means for pursuit of a legitimate objective. The Convention on the Rights of the Child includes a best interests of the child standard. Common restrictions include the age of consent for sexual relationships and the timing of terminations. These limitations can only apply without discrimination. Traditionally women and girls with disability have had many limitations placed on their autonomy rights in regard to sexual and reproductive rights. There is now a growing body of jurisprudence that makes it clear that disability should not be the basis for such limitations.

4. What do you believe are States’ obligations to address gender-based violence under the CRPD and other human rights treaties? Are there ways you think the CRPD Committee could do more to address this issue with States?

Answer:

States hold broad and cross cutting obligations to address gender based violence at international law including CRPD. The States obligations at international law have been clarified through extensive jurisprudence. The Committee on the Elimination of Discrimination Against Women (CEDAW) in General Recommendation 19 (1992) and more recently General Recommendation 35 (2017) have stated ‘that gender-based violence against women constitutes discrimination against women under article 1 and therefore engages all of the obligations in the Convention. Article 2 establishes that the overarching obligation of States parties is to pursue by all appropriate means and without delay a policy of eliminating discrimination against women, including gender-based violence against women.’ This is an obligation on States comprises two aspects of State responsibility: for such violence resulting from ‘the actions or omissions of (a) the State party or its actors, and (b) non-State actors.’ This general obligation requires States to prevent and protect women and girls including girls with disability from gender based violence through all legislative, executive and judicial means and ensure that gender based violence does not deny women and girls the exercise of other fundamental human rights and freedoms. CRPD
provisions in Article 16 Freedom from exploitation, violence and abuse, reinforces this obligation with regard to people with disability requiring States to take all appropriate legislative, administrative, social, educational and other measures to protect people with disability from exploitation, violence and abuse including their gender based aspects.

The Committee urgently needs to strengthen its gender representation, expertise and focus. The Committees work needs to consistently apply a gender based lens to ensure the intersection of gender and disability is prominent in review dialogue, concluding observations and General Comments.

5. What steps could the CRPD Committee take to better ensure the participation of organizations of women and/or girls with disabilities in its activities, including in its reviews of States and the adoption of General Comments?

Answer:

The Committee currently needs to strengthen its gender representation, expertise and focus. This is important to build networks and links to organisations and encourage engagement with treaty body processes. The Committee’s work needs to consistently apply a gender based lens to ensure the intersection of gender and disability is prominent in review dialogue, concluding observations and General Comments. Further the Committee under Article 4.3 general obligations, Article 33.3 implementation and monitoring and Article 29(b) political participation could enquire what actions States are taking to ensure the active participation of women and girls in public affairs including the monitoring and implementation of CRPD.

6. Do you think the CRPD Committee should be working with other UN treaty monitoring bodies and human rights mechanisms to advance the rights of women and girls with disabilities? If so, with which bodies and mechanisms and on what issues?

Answer:

Yes, for international law to be effective it requires a coherent consistent application. Greater engagement with the other thematic and general application treaty bodies as well as the Human Rights Council special procedures mechanism and the mandate holders including the rights of persons with disabilities, discrimination against women, torture, indigenous issues, would provide understanding of the specific issues that face women and girls with disability in the areas of gendered based violence, sexual and reproductive rights and economic disadvantage.