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

Name of Candidate: Markus Schefer
State Party Nominating Candidate: Switzerland

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.

In the course of the past twenty years, I have written various commentaries on the protection of women against discrimination under international and Swiss constitutional law, from a comparative law perspective. In these papers, I touch on a wide variety of issues of gender discrimination. In my work on the rights of persons with disabilities, I have frequently dealt with issues pertaining to children with disabilities, as, for example, in a detailed legal opinion on the permissibility of privatizing education for children with mental disabilities. In addition, I published on the particular protection human rights law affords to children, based on the CRC and the Swiss constitution.

Women and girls with disabilities are a particularly vulnerable group, as they combine several impermissible grounds for discrimination. History has shown, that they are in need of particular efforts by the law to afford them protection. As a form of intersecting discrimination, they constitute form a particularly important group of people whose needs my work addresses.

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: The likelihood of living in poverty, suffering from disease, being abused, or being excluded from justice is significantly higher for women and girls with disabilities than for men and boys with disabilities. The reasons are manifold, ranging from patriarchal societies’ stereotypical views of women as inferior to men, to male violence against women and girls. Three of the most pressing prerequisites for general equality between women and girls with disabilities and men and boys with disabilities, are economic empowerment of women, educational opportunities for women and girls, and overcoming gender stereotyping and misogyny in today’s societies. For women and girls with disabilities, these three aims need a particular focus. The SDGs form a uniquely useful tool to address these issues.

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?
The issue of reproductive rights based on international or constitutional law has proved to be a vexing issue. At the beginning of the 1970s, some highly regarded constitutional courts (e.g. Germany, United States, Austria) started to recognize such rights, based on their constitutions. The political backlash was fierce, hardening the political debate in ways not anticipated. At the same time, recognizing a woman’s right to choose her own sexuality was an integral part of achieving gender equality.

Today’s human rights law needs to learn the lessons from these developments a few decades ago. Defining reproductive rights on an international level is of utmost delicacy, as the cultural, social and historical circumstances in which these definitions are applied are extremely heterogeneous; and reproductive rights are usually closely interrelated to the cultural and historical background of a given society.

Based on these considerations, international human rights law needs to recognize reproductive rights of women, as, for example, the European Court of Human Rights does; it should, however, be reluctant to confer individual rights of a self-executing nature. Such rights can short-circuit the political process in a country, with effects far more detrimental than in the countries mentioned. The strength of international human rights law in general – and the CRPD in particular – with respect to reproductive rights lies in the reporting procedures. Recognizing a member state’s duty to progressively realize women’s reproductive rights permits a gradual and interrelated development of human rights law on one side and the domestic political process on the other side, thereby averting a hardening of the political process.

These thoughts pertain equally to reproductive rights of women with disabilities. The rights of women with and without disabilities are the same, as the privacy and equality concerns do not differ. However, the problems women with disabilities face in the exercise of the reproductive rights, are usually far more pronounced than those of women without disabilities. This includes the most severe infringements like involuntary sterilization. As the constraints women with disabilities face are often substantially more profound, the protection international human rights law in general, and the CRPD in particular, affords must be particularly tailored to these issues.

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: Gender-based violence is one of the most pervasive form of human rights violation women, and particularly women with disabilities, face throughout the world. The guarantees of physical and psychological integrity protect against it. The states’ obligations to protect against such infringements are varied and far-reaching. CEDAW regularly addresses these issues. The CRPD forcefully addresses issues of violence perpetrated by private actors and the state’s responsibility to protect against it, as for example in the recent case against Tanzania (I would have analyzed the state’s responsibility to protect slightly differently in this case).

Addressing gender-based violence against women with disabilities requires a keen focus on those areas, in which women with disabilities are particularly at risk. In this regard, the obligation to de-institutionalize living arrangements of persons with disabilities is an important step toward reducing violence; the CRPDs respective general comment moves in the right direction. A systematic assessment of the major risk-prone areas would be necessary and welcome.
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: I am unable to answer this question, as I am not familiar with the details of the current practice.

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: Working together with other treaty bodies and human rights mechanisms is crucial, on a substantive as well as on a procedural level. The rights of persons with disabilities are human rights and, as such, part and parcel of the UN human rights system. Developing them in isolation would lead to a separate body of human rights law, limited in scope and truncated in its effectiveness. The rights of women and girls with disabilities highlight the need for cooperation; this need, however, is not constricted to this area. With respect to the rights of women and girls with disabilities, CEDAW and the CRC are the natural first partners for cooperation, but not the sole ones. Issues pertaining to incarceration of women and girls with disabilities need to be addressed in conjunction with the CAT, issues of racial discrimination with respect to women and girls with disabilities need to be raised together with CERD, the specific problems women and girls with disabilities face in migration settings need to be tackled together with the UNHCR, etc. In addition, the Special Rapporteurs in many areas, of course including the SR on the rights of persons with disabilities, need be closely consulted; this pertains, for example also to the SR on the right to development with respect to the substantial socio-economic disadvantage women and girls with disabilities face, the SR on the right to education, as girls with disabilities are most severely discriminated against as far as their educational opportunities are concerned, etc.