

장애여성조항 관련 논의

I. 장애여성 및 관련조항의 Twin Track Approach 논거

- 장애여성의 특수성 및 취약성
 - 장애여성은 노인, 아동, 원주민 등 사회적 소수자 계층 중에서 최다 인구비율을 구성하고 있음.
 - 장애와 여성이라는 요소를 가진 cross-cutting group으로 교육, 노동 등의 다양한 영역에서 다중적인 차별을 경험하고 있음.
 - 임신·출산(·육아)의 기능 등 여성 고유의 특성으로 인한 특수한 욕구가 존재함.
 - 여성정책에서 비장애여성과 구분되어 제외되어 왔으며, CEDAW(여성차별철폐조약)내에도 장애여성은 포함되어 있지 않음.
 - 장애정책에 있어서도 gender sensitivity가 반영되지 못한 채 장애와 여성이라는 이유로 소외되고, 장애인 내에서도 장애남성과 다르게 차별을 받음.
 - 따라서 취약계층인 장애여성의 다중적인 차별을 금지하고 완전한 권리의 실현을 위해 장애인권리협약 내에 분명히 명시되어야 함.
- 선언적 규정인 아닌 실질적인 의무 규정 조항의 필요성
 - EU안과 같이 「전문」과 「제4조 일반의무」에만 장애여성(소녀)이 포함되는 것은 선언적인 의미만 부여되어 이를 근거로 한 각국의 실질적인 의무 이행은 한계가 존재하므로 4조에 장애여성(소녀)이 포함될 이유가 부족함.
 - 따라서 별도의 「제6조 장애여성」 조항과 「관련된 조항」에 구체적/직접적인 장애여성(소녀)에 관한 문구 혹은 항의 포함은 이들을 위한 모든 적합한 조치들을 각국이 실질적으로 취하도록 하는데 매우 중요함.
- 장애여성(소녀) 문구 혹은 항이 포함될 수 있는 관련조항 선정의 기준
 - 장애여성 고유의 특성으로 인한 특수욕구가 필요시 되는 영역과,
 - 성별을 고려하지 않아 장애여성이 장애남성보다 더 큰 피해를 입거나 권리를 찾을 수 없는 영역에서
 - 장애여성의 권리 향상 및 완전한 권리의 향유를 보장하기 위하여 관련 조항들이 선택되어야 함.

II. 제6조 장애여성 조항

- 2006년 1월에 개최된 제7차 특별위원회 회의에서 의장이 장애여성과 관련하여 Facilitator가 제안한 안(Twin Track Approach)을 장애인권리협약안 내에 반영한 것은 지지하나, 의장안의 제6조 장애여성 조항과 일부 관련 조항에서 수정 및 보완이 더 필요하다고 사료됨.
- 제6조 장애여성 및 일부 관련조항에 대해 아래와 같이 현재 의장안을 중심으로 6조, 23조, 24조, 25조, 27조, 31조와 관련한 수정안을 제시하고자 함.
- Facilitator는 전문, 3조, 4조, 6조, 8조, 16조, 23조, 24조, 25조, 26조, 27조, 28조, 29조, 31조, 33조, 34조를 Twin Track Approach에 대한 장애여성 관련조항으로 선택하여 안을 제시하였고 이에 대해 한국정부는 지지하는 입장임. 또한 WIDC가 Facilitator's Text를 바탕으로 의견을 제시한 안의 일부 내용도 지지함.
- 의장안에 대한 수정 의견:

1-1. Preamble

(n) Concerned about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, birth, age or other status,

(0) Recognising that women and girls with disabilities are often at greater risk, both within and outside the home of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including their gender based manifestation

- 장애인들이 다양한 사회적인 요소들로 인해 다중적인 차별의 대상이 되고 있는 상황 및 장애여성과 소녀들이 폭력 등에 더 많이 노출되어 위협에 처해있다는 것을 언급한 것에 대해서는 모두 동의함.

1-2. Article 3 General principles

(g) Equality between men and women;

- 남녀평등의 원칙을 동의함.

1-3 Article 6 Women with disabilities

1. States Parties recognise that women and girls with disabilities are subject to multiple discrimination and that focused, empowerment and gender sensitive measures are

necessary to ensure the full and equal enjoyment by women and girls with disabilities of all human rights and fundamental freedoms.

2. States Parties shall take all appropriate measures to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in this Convention.

- 현 의장안의 1항은 '장애여성이 다중적인 차별의 대상이라는 것과 이들의 인권과 기본권의 완전한 향유를 위해 empowerment and gender sensitive measures에 중점을 두는 것을 인정한다' 는 표현으로 선언적인 의미를 갖고 있어 이행의 강제력이 부족함.
- 1항과 2항은 'enjoyment of the human rights and fundamental freedoms'와 같은 표현이 중복되고 있으며, 보다 실질적으로 장애여성(소녀)의 권리보장을 언급하는 내용이 포함되어야 하므로 다음과 같이 수정안을 제시함.

Korean Proposal: "1. States Parties shall provide empowerment and gender sensitive measures to eliminate all forms of discrimination against women and girls with disabilities and to ensure the equality on the basis with others.

2. States Parties shall take all necessary measures to enable women with disabilities to live in freedom, safety and autonomy by addressing the multiple discrimination and the particular disadvantages that they face on the basis of the interactive effect on their gender and disability throughout their life span.

↳ multiple discrimination and/or interactive effect? 장애여성에게 있어 성별과 장애가 상호작용하는 효과를 강조하는 것

3. States Parties shall take all appropriate measures to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in this Convention."

1-4. Article 23 Respect for home and the family

- 장애여성들은 본인의 의사와 관계없이 장애를 이유로 강제적인 불임이나 낙태, 불임약복용 등을 강요당하는 사례가 많아 이를 방지하는 규정의 추가는 중요함.

Korean Proposal의 예(미확정): "States Parties shall ensure that women and girls with disabilities are not subject to forced sterilization or forced abortion on the basis of their disability against their will."

1-5. Article 24 Education

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity,

States Parties shall ensure an inclusive education system at all levels, and life-long learning, directed to:

(a) The full development of the human potential and sense of dignity and self worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;

- 교육에서 많은 부분 소외되어온 장애여성과 소녀를 직접적으로 명시하여 강조하는 것은 중요하다고 판단됨. 현재 의장안에는 장애여성과 소녀에 대한 언급이 포함되어 있지 않아 장애와 성별로 인한 차별 및 장애여성의 교육에 대한 권리를 강조하고 있는 Facilitator안을 지지함. Facilitator는 다음과 같이 제안하고 있음.

Facilitator's Text: "2. In realizing this right, States Parties shall ensure:

(a) That persons with disabilities are not excluded from the general education system on the basis of disability and sex, and that children especially girls with disabilities are not excluded from free and compulsory primary and secondary education on the basis of disability;"

Eliminate discrimination

1-6. Article 25 Health

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of physical and mental health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to gender sensitive health services, including health-related rehabilitation. In particular, States Parties shall:

- 임신·출산 등의 기능을 담당하는 장애여성들은 장애남성이나 비장애여성들에 비해 보다 더 장애와 성, 그리고 장애여성만의 의료적 욕구를 배려하는 의료서비스가 지원되어야 하므로 Facilitator's Text의 "gender sensitive health services" 와 "the needs of women with disabilities" 의 추가는 중요함. Facilitator의 제안은 다음과 같음.

Facilitator's Text: "States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of physical and mental health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to **gender sensitive health services**, including health-related rehabilitation. In particular, States Parties shall:

(d) Require health professionals to provide care of the same quality to persons with disabilities as to others, **taking into account the needs of women with disabilities** and on

the basis of free and informed consent by, where necessary, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care”

1-7. Article 27 Work and Employment

1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

(a) Prohibit discrimination on the basis of disability with regard to all matters concerning employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement, and working conditions;

(b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redressing of grievances;

(c) Ensure that persons with disabilities are able to exercise their labour and trade union rights [on an equal basis with others and in accordance with national laws of general application];

(d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;

(e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining and maintaining and returning to employment;

(f) Promote opportunities for self-employment, entrepreneurship and starting one's own business;

(g) Employ persons with disabilities in the public sector;

(h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes,

incentives and other measures;

(i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;

(j) Promote the acquisition by persons with disabilities of work experience in the open labour market;

(k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

– 노동 및 고용시장 진입과정에서부터 차별을 받는 취약한 위치에 있는 장애여성들의 안정적인 고용권 보장을 위해 ‘장애여성’이라는 용어의 추가는 매우 중요하므로 27조의 샤프에 ‘장애여성’이 포함되는 것도 바람직함. 의장안에는 총체적인 여성주의적 시각이 결여되어 있으며, 장애여성의 임신·출산에 관한 지원내용 역시 포함되어야 함.

(예) 1. States Parties recognize the right of persons with disabilities, especially women, to work, on an equal basis with others;

– 장애여성이라는 용어를 강조하고 직장 내 장애여성에 대한 성폭력 등의 내용이 포함된 Facilitator와 WIDC의 안을 지지함. (※ 7차 회의 수정안 이전의 의장안을 바탕으로 제시된 안)

– 현재 의장안은 7차 특별위원회 회의 이후 많은 부분 수정되어 조항의 구성과 내용이 바뀌었음.

Facilitator's Text: “(f) To encourage employers to hire persons with disabilities, **particularly women**, through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures

(j)[ensure that women with disabilities enjoy their rights to work on a basis of equality and that women and men with disabilities are protected from sexual or other harassment at the workplace on an equal basis with others.]”

WIDC Text: “(j) ensure that women with disabilities enjoy their rights to work on a basis of equality, including equal protective rights concerning pregnancy and maternity leave, and that women and men with disabilities are protected from sexual and other

harassment at the workplace.”

1-8. Article 31 Statistics and Data Collection

1. States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention. The process of collecting and maintaining this information shall:

(a) Comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities;

(b) Comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles of statistics.

2. The information collected in accordance with this article shall be disaggregated as appropriate and used to help assess the implementation of States Parties obligations under the present Convention, and to identify and address the barriers faced by persons with disabilities in exercising their rights.

3. States Parties shall assume the responsibility for the dissemination of these statistics and ensure their accessibility to people with disabilities and others.

- 성별에 따른 데이터 수집 및 통계 분석은 장애여성과 소녀들에 관한 국가정책 수립의 기본적인 근거가 되므로 관련 내용이 명확히 들어가는 것이 바람직하다고 생각하여 Facilitator의 안을 지지함.

Facilitator's Text: “1. Where necessary, States Parties undertake to collect appropriate information, including statistical data, to enable them to formulate and implement policies to give effect to this Convention. The process of collecting and maintaining this information should:

(add before a)

(0) involve both men with disabilities and women with disabilities and their organisations in the design of relevant indicators and the collection and analysis of the data;

(0.1) enable States Parties to disaggregate all data on the basis of sex and ensure that the data provides information on issues that may affect differently women with disabilities and men with disabilities”