**Submission in Response to the Draft General Comment on Equality and Non- discrimination (Article 5)**

Christian Action Research & Education (CARE) is a well-established Christian social policy charity providing resources and helping to bring Christian insight and experience to matters of public policy and practical caring initiatives.

CARE welcomes the draft General Comment on Article 5 of the UN Convention on the Rights of Persons with Disabilities (‘the Convention’).

CARE shares the concerns of the Committee that despite the Convention being ratified or acceded by 174 countries worldwide, the rights of disabled persons are not fully recognized or adequately implemented leading to exclusion and segregation of persons with disabilities.

As it is emphasized in the Preamble of the Convention, States must recognize the ‘inherent dignity and worth and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world.’ CARE believes that a failure to recognize this inherent dignity, worth, and equality prevents persons with disabilities from enjoying their human rights fully or at all.

Article 5 of the Convention sets up an important principle of equality and non-discrimination, a principle that exists in several other international documents and states’ constitutions. As identified by the Committee, equality before law:

1. requires states not to ‘discriminate against persons because of their actual or perceived disability.’
2. means that ‘the law itself shall be equal in the sense that all groups of a given society are treated fairly under the law, that the legal standards are the same for all to whom they apply and that all persons in a given jurisdiction are included.’ and
3. means there should ‘be no laws that allow for specific denial, restriction or limitation of the rights of persons with disabilities, and that disability should be mainstreamed in all legislation and policies.’

Unfortunately, such laws are still in existence, even in countries that have a reputation for protecting human rights.

The Committee is fully aware of the challenges faced by persons with disabilities in the UK. CARE welcomes the Committee’s concluding observations on the initial report of the United Kingdom, (CRPD/C/GBR/CO/1, 3 October 2017). CARE shares the concerns expressed in the report concerning the UK’s failings and insufficiencies in implementing the Convention adequately and in applying the human rights model of disability.

CARE further shares the Committee’s concerns regarding the UK’s fulfilment of its obligations under Article 5 of the Convention (equality and non-discrimination). The Abortion Act 1967 is a glaring example of the failures of the UK under Article 5. Unfortunately, no steps have been taken to address this failing of the law. As it stands, the Abortion Act 1967 is incompatible with the Equality Act 2010 and discriminates against persons with disabilities.

*The UK Law*

According to the Abortion Act 1967, abortion is generally allowed until 24th week of pregnancy and in certain cases after the 24 weeks limit, for example, when there is a threat to the life or health of the pregnant woman or when the unborn child suffers from ‘such physical or mental abnormalities as to be seriously handicapped.’ While the provision allowing abortion of the unborn child when the life or health of the pregnant woman is threatened – is not discriminatory, allowing abortion of the unborn child with disabilities is clearly discriminatory. According to the current law, after the 24th week, an unborn disabled child could be aborted because of their disability, while an unborn child without a disability would be protected by the law such that any attempt to abort them would trigger a criminal sanction.

It has to be emphasized that at the time it was debated and adopted the case for law allowing disability-selective late-term abortion was supported by discriminatory arguments that cannot exist in the 21st century. More importantly, the Abortion Act 1967 pre-dates the Equality Act 2010 prohibiting discrimination on grounds of disability. With the Equality Act 2010, the Abortion Act 1967 should have been amended to ensure that the disability-selective late-term abortion provision was removed. However, years after the introduction of the Equality Act 2010, this has not been done yet.

In the Committee’s ‘List of issues in relation to the initial report of the United Kingdom of Great Britain and Northern Ireland’ dated 20 April 2017, the Committee has already requested information from the UK government on the ‘measures taken to prevent discrimination on the basis of potential impairment as regards termination of pregnancy’ in accordance with Article 5 obligations.

In a document dated 21 July 2017, the UK responded to the list of issues stating that: ‘the UKG’s abortion policy, in relation to disability, only differs from standard practice where “serious” foetal impairment is identified to allow abortion without time-limit. Serious impairment is not defined in law; these decisions are made using the expert judgement of two doctors in consultation with the parents, who receive information and support from a properly trained multidisciplinary team.’ The UK government failed to address the discriminatory nature of the provision and only provided a clarification on when it is applied. However, even this explanation of the scope of the provision is misleading as it does not show the extent of the problem of targeting persons with disabilities.

In the Committee’s concluding observations, document dated 3 October 2017, the Committee recommended the UK to:

‘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.’

The Committee said that it was ‘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.’ CARE fully supports the Committee’s conclusion and recommendation and CARE hopes that the UK government will be willing to engage in a dialogue on the issue.

To address this discriminatory provision, Lord Shinkwin proposed a bill to remove the provision from the Abortion Act 1967. His Abortion (Disability Equality) Bill [HL] aims to accommodate the provision for disability equality and for the provision of balanced information in respect of abortions. The bill had its first reading on 11 July 2017 and currently awaits its second reading.

While it is commendable that an individual parliamentarian, a life-long disability campaigner, should have introduced such a Bill, two things must be acknowledged:

First, as a non-government, ‘Private Members Bill’ it is unlikely to progress very far, and may indeed never be debated.

Second, while Lord Shinkwin is doing the right thing, the Government is moving in the diametrically opposite direction:

In the first instance, the Government is currently considering the introduction of NIPT (non-invasive prenatal testing) into the NHS Fetal Anomaly Screening Program. If implemented, the testing would affect the process of identifying disabilities prenatally, mainstreaming discrimination against persons with disabilities, especially persons with Down’s syndrome.

In the second instance, the UK government has recently intervened in relation to the draft General Comment No. 36, supporting the content of a draft that discriminates against persons with disabilities. The UK government supported the very broad interpretation of the provision of abortion as covered under the right and indicated no concerns about the provision of disability-selective late-term abortion that is accommodated in the Abortion Act 1967.

CARE is very concerned that the discriminatory provision enshrined in the Abortion Act 1967 has a wider impact than on the unborn disabled children as it sends a message that the life of the unborn disabled child is not worthy of legal protection, contrary to a non-disabled child, and can be deprived of his or her life at any stage before birth, contrary to a non-disabled child. In a society where such a provision is law, there is little hope that persons with disabilities would enjoy full and equal rights with others.

As emphasized by the Committee in its response to the draft General Comment on Article 5, any such laws (customs or practices) must be modified or abolished. Apart from ensuring that the law does not contain any provisions accommodating discrimination of persons with disabilities, states must also take steps to ensure *de facto* equality of persons with disabilities. This may include introducing provisions and policies that would help to combat stereotypes, stigmatization or discrimination of persons with disabilities.

CARE fully supports the Committee’s recommendations for the UK to ‘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.’

*International Law*

While CARE appreciates the work done by the Committee to help persons with disabilities, we are very concerned that some discriminatory provisions directed against disabled persons seem likely to be incorporated into international law by way of the recent draft of the General Comment No. 36. Paragraphs 9 and 10 of the draft General Comment No. 36 contain an interpretation of the right to life that is discriminatory against persons with disabilities, ultimately denying the right to life of persons with disabilities on grounds of their disabilities. Such a selective reading of the right is highly controversial as it accommodates and normalizes discrimination against persons with disabilities. Such interpretation is further contrary to Article 5 of the CRPD.

**Paragraph 9 of the draft General Comment No. 36**

*‘States parties must provide safe access to abortion to protect the life and health of pregnant women, and in situations in which carrying a pregnancy to term would cause the woman substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or when the foetus suffers from fatal impairment.’*

CARE is concerned about the recommendation as it neglects the States’ obligation to care for persons with disabilities and imposes an obligation to provide abortion instead. This interpretation opens the door to discriminatory provisions, allowing abortion on grounds of disability (while abortion of persons without disabilities continues to be prohibited, apart from a limited number of scenarios).

CARE stresses the need for States to protect the rights of disabled children and protect them from discrimination, especially, from discriminatory legal provisions.

**Paragraph 10 of the** **draft General Comment No. 36**

*‘States parties [may allow] [should not prevent] medical professionals to provide medical treatment or the medical means in order to facilitate the termination of life of [catastrophically] afflicted adults, such as the mortally wounded or terminally ill, who experience severe physical or mental pain and suffering and wish to die with dignity.’*

CARE is deeply concerned that the draft General Comment No. 36 recommends the provision of assisted suicide and euthanasia in that this may be discriminatorily used against persons with disabilities. Assisted suicide and euthanasia differentiate between life worthy of protection and life unworthy of protection based on physical or mental characteristics accommodating discrimination based on this differentiation. The life that is designated as unworthy of protection by way of such differentiation includes the lives of disabled people.

Similarly, the recommendation accommodating the termination of the life of disabled persons is discriminatory in that it devalues the life of disabled persons and presents the protection of the right to life as conditional upon the well-being of persons which can be understood as not including those with disabilities. Again, such understanding of the right to life discriminates against persons with disabilities and prevents persons with disabilities from ever gaining equality in the society.

CARE stresses the need to amend the recommendation to focus on assisting persons with disabilities to live, not to die. CARE further emphasizes the need to respect state sovereignty. For example, the UK recently debated the issue at length and voted overwhelmingly against assisted suicide. Their decision must be respected. Paragraph 10 of the draft General Comment No. 36 continues:

*'In such cases, States parties must ensure the existence of robust legal and institutional safeguards to verify that medical professionals are complying with the free, informed, explicit and, unambiguous decision of their patients, with a view to protecting patients from pressure and abuse.’*

The recommendation to introduce safeguards to the provision of assisted suicide and euthanasia are detached from empirical reality. The empirical data indicates that once assisted suicide or euthanasia are legalised, any safeguards introduced to protect individuals or limit the use of the provision are redundant or irrelevant. In both the Netherlands and Belgium, despite the fact that the law aimed to regulate the practice of euthanasia to prevent abuse of the procedure, this aim has not been achieved. Despite the fact that the use of assisted suicide or euthanasia was meant for cases of incurable illnesses or excruciating pain and suffering, deaths under the law have included individuals that do not fit these criteria, and which include those with disabilities.

**Paragraph 28 of the draft General Comment No. 36**

*‘Persons with disabilities, including psychosocial and intellectual disabilities, are entitled to special measures of protection so as to ensure their effective enjoyment of the right to life on equal basis with others.’*

CARE commends the recommendation to introduce special measures of protection ‘to ensure the effective enjoyment of the right to life [of disabled persons] on equal basis with others.’ However, CARE notes that this recommendation is contradicted in the body of the draft General Comment No. 36 in paragraph 10 where it is recommended that States facilitate the termination of life in some instances. Persons with disabilities will never achieve an effective enjoyment of the right to life on an equal footing with others if States decide which lives are worthy of unconditional protection and which lives can be terminated because of the disability, while the life of a non-disabled person would have been protected.

**Paragraph 64 of the draft General Comment No. 36**

*‘The right to life must be respected and ensured without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or any other status, including caste, sexual orientation and gender identity, disability albinism and age. Legal protections for the right to life must apply equally to all individuals and provide them with effective guarantees against all forms of discrimination. Any deprivation of life based on discrimination in law or fact is ipso facto arbitrary in nature. Femicide, which constitutes an extreme form of gender-based violence that is directed against girls and women, is a particularly grave form of assault on the right to life.’*

CARE commends the explicit prohibition of discrimination concerning the right to life. CARE agrees that the right to life of all, irrespective of disability, must be protected by States and the protection must be applied equally. However, CARE notes that this provision is contradicted in the body of the draft General Comment No. 36 in paragraphs 9 and 10.

*Conclusions*

The recommendation accommodating the provision of abortion in paragraph 9 of the draft General Comment No. 36, despite being framed as non-discriminatory, is detached from the empirical reality of the provision of abortion, as it is clear from the example of the Abortion Act 1967 that discriminates against persons with disabilities.

Similarly, the recommendation accommodating the termination of life of disabled persons is discriminatory in that it devalues life of disabled persons and presents the protection of the right to life as conditional upon the well-being of persons.

CARE stresses the need to ensure that any law is compatible with Article 5 of the Convention, namely, is not discriminatory and accommodates equality of persons with disabilities.