**APORTACIONES DE LA FUNDACIÓN CERMI MUJERES AL BORRADOR DE OBSERVACIÓN GENERAL PREPARADO POR EL COMITÉ SOBRE LOS DERECHOS DE LAS PERSONAS CON DISCAPACIDAD SOBRE LOS ARTÍCULOS 4.3 Y 33.3 EN MATERIA DE IMPLEMENTACIÓN Y MONITOREO DE LA CRPD**

1. Identificación de la entidad proponente

La Fundación Cermi Mujeres (en adelante, FCM) es una organización española sin ánimo de lucro cuyo objetivo fundamental es favorecer las condiciones para que las mujeres y niñas con discapacidad, así como las mujeres y madres cuidadoras de personas con discapacidad, puedan disfrutar plenamente y en igualdad de condiciones de todos los derechos humanos y libertades fundamentales.

A propuesta del Comité Español de Representantes de Personas con Discapacidad (CERMI) e inspirándose en sus principios fundacionales, la FCM nace en el año 2014 de la preocupación expresada por gran parte de la sociedad civil organizada en torno a la desigualdad de género que también se produce en este sector de la población, y ante la necesidad de profundizar en el conocimiento y en la articulación de respuestas a estas situaciones de discriminación.

La FCM defiende la igualdad efectiva de las mujeres y niñas con discapacidad desde una perspectiva de derechos humanos, aplicando el contenido de la *Convención sobre los Derechos de las Personas con Discapacidad* (en adelante, CRPD) y de la *Convención sobre la Eliminación de Todas las Formas de Discriminación contra la Mujer* (en adelante, CEDAW), y haciendo especial hincapié en los principios de no discriminación, igualdad de oportunidades, inclusión en la comunidad, vida independiente y acción positiva y promoviendo a su vez el empoderamiento individual y colectivo de las mujeres y niñas con discapacidad.

1. Consideraciones generales

La FCM desea en primer lugar felicitar al CRPD por abrir un período de alegaciones al borrador de Observación General sobre los artículos 4.3 y 33.3 en materia de implementación y monitoreo de la CRPD, una práctica fundamental para garantizar la verdadera implementación de la convención en los países que la han ratificado.

Las aportaciones que la FCM propone a este borrador se centran fundamentalmente en dos aspectos: en primer lugar, **garantizar que la visibilidad de las organizaciones de mujeres con discapacidad sea efectiva en los documentos firmados por este órgano de tratado**; en segundo lugar, **expresar la necesidad de incorporar la perspectiva de género en la agenda** de las organizaciones de personas con discapacidad (DPOs/OPDs, por sus siglas en inglés), así como las organizaciones de la sociedad civil (CSOs).

Una vez formuladas las consideraciones generales, nuestras alegaciones se efectuarán siguiendo una estructura de epígrafe por epígrafe.

En relación con la primera consideración, **la efectiva visibilización de las organizaciones de mujeres con discapacidad**, la FCM reivindica (en consonancia con el artículo 29, párrafo 60 de la Observación General No. 3 de la CRPD, relativo a la participación en la vida pública y política de las mujeres y niñas con discapacidad) que las mujeres y las niñas con discapacidad están infrarrepresentadas en la adopción de decisiones públicas y que han tenido menos oportunidades de crear o formar parte de organizaciones que defiendan sus intereses como grupo social.

Actualmente, las mujeres y niñas con discapacidad son el sector mayoritario en el mundo de la discapacidad. No obstante, las organizaciones de mujeres con discapacidad; OWDs, por sus siglas en inglés) aparecen citadas una única vez en el borrador del texto; concretamente en el párrafo 14, sección F). En este sentido, la FCM estima que una identificación puntual de las organizaciones de mujeres con discapacidad no solo es insuficiente, sino que contribuye a la invisibilización de su actividad institucional, y por ende al alcance y a las posibilidades que estas brindan a las mujeres y niñas con discapacidad. Así pues, desde la FCM valoramos la especial importancia de su reiterada inclusión en la redacción del texto, en el mismo plano de reconocimiento que obtienen las DPOs/OPDs.

En relación con la segunda consideración, **la incorporación de las cuestiones de género en la agenda de las organizaciones que trabajan los asuntos de la discapacidad**, la FCM hace constar que la desigualdad entre hombres y mujeres es un lastre instalado en todas las capas de la sociedad; también en la discapacidad. Según el Informe Mundial de la Discapacidad de la OMS, un 60% de las personas con discapacidad son mujeres y niñas. Sin embargo, la ausencia de un marco regulatorio que luche contra esta condición discriminatoria interseccional y corrija los desequilibrios de género en la actividad diaria de las organizaciones que trabajan los asuntos de la discapacidad fomenta la discriminación directa o indirecta por razones de sexo en tanto en cuanto a la participación económica, política y social de las mujeres y niñas con discapacidad.

En atención a lo señalado, urge que las recomendaciones del CRPD hagan incidencia en la apertura de las esferas interna y externa de las OPDs/DPOs/CSOs a una agenda de género que permeabilice todos sus ámbitos de actuación, a saber: estrategia política, estructura organizativa y funcionamiento de los órganos de gobierno y representación, política de recursos humanos, plan de acciones contra el acoso sexual y moral, estrategia de comunicación, formación, gestión económico-financiera y responsabilidad social empresarial y discapacidad (RSE-D).

Expuestas las alegaciones, ambas consideraciones generales afectarían a los párrafos enumerados a continuación: [1, 2, 5, 7, 8, 9, 11, 12, 13, 14, 15, 16, 18, 19, 22, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 53, 54, 55, 56, 57, 58, 59, 60, 61, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73 y 75].

Sirva como ejemplo la enmienda al párrafo 1:

*The close consultation and active involvement of persons with disabilities, through disabled persons organizations (DPOs)/ organizations of persons with disabilities (OPDs) [and organizations of women with disabilities (OWDs)] in the negotiations, development and drafting of the Convention on the Rights of Persons with Disabilities, had a positive impact on its quality and relevance for persons with disabilities, and also showed the power possessed by persons with disabilities. The active involvement of DPOs/OPDs/[OWDs] and their allies resulted in an advanced and innovative human rights treaty, which is ground-breaking in changing the disability paradigm [on the basis of equal opportunities for men and women with disabilities]. Effective and meaningful participation of persons with disabilities, through DPOs/OPDs/[OWDs], is thus at the heart of the Convention.*

1. Aportaciones en relación con otras disposiciones de la Convención

Párrafo 53

*Policies to promote non-discrimination and equality of persons with disabilities stipulated in article 5 should be adopted and monitored in compliance with articles 4.3 and 33.3. The close consultation and active involvement DPOs/OPDs/[OWDs], who represent the vast diversity in society, including but not limited to [women] children, young people, [the LGBTI community], ethnic minorities, and indigenous peoples, rural communities, and stateless, asylum-seeking, refugee persons with disabilities in the adoption and monitoring of specific measures, such as legal frameworks and guidance material to promote de facto equality, [introducing gender perspective] and affirmative action measures, is key for their success.*

Párrafo 54

*Any existing consultation procedures should not exclude persons with disabilities nor be discriminatorily based on disability [or gender]. The establishment of DPOs/OPDs/[OWDs] of young persons with disabilities, who often have a different view on certain matters, is thus recommended. While procedures and related materials should be inclusive of and accessible to persons with disabilities, through their DPOs/OPDs/[OWDs], and including early intervention time frames and technical assistance, reasonable accommodation, such as for example sign language interpreters and Easy Read, should always be provided in all dialogue and consultation processes.*

Párrafo 55

*Article 6 promotes the empowerment and participation of women and girls with disabilities, including through the creation of [OWDs], for enabling participation and involvement under article 4.3.* *Participation of women through their representative organizations should be considered a pre-requisite in the design, implementation and monitoring of all programmes that have an impact on their lives, and in addressing specific issues impacting exclusively or disproportionately on women with disabilities, as well as women’s rights and gender equality policies in general, especially in relation to sexual and reproductive health and rights, and gender-based violence, including sexual violence. [Women with disabilities have a right to represent themselves and organise themselves. They should be given space and power within umbrella organisations of persons with disabilities through equal representation, women’s committees, empowerment programmes, etc. In addition, umbrella organisations of persons with disabilities should encourage women and girls with disabilities to create their own organisations, and should welcome these organisations as full and equal members alongside other member organisations]. Women with disabilities must also be included in all branches and bodies of the national monitoring and implementation system. The general rule should be that all consultation bodies, mechanisms and procedures must be disability-specific, inclusive and consider a gender perspective.*

Párrafo 56

*Articles 4.3 and 33.3 are fundamental for the implementation of the rights of children with disabilities as stated in article 7 of the Convention. Consultation with and the active involvement of children, through their DPOs/OPDs/[OWDs], as well as the provision of disability and age-appropriate assistance and procedures, and non-conditional support, in all aspects of planning, implementation, monitoring and evaluation of inclusive education policies, should be ensured. Children with disabilities and, when appropriate, their families, must be recognized as partners and not merely recipients of education. The participation of their DPOs/OPDs/[OWDs] should be considered a requisite in consultations addressing specific issues that concerns them, [with particular attention to the exclusion, violence, abuse and the lack of education of girls with disabilities], and their views given due weight in accordance with their age and maturity.*

Párrafo 57

*Article 4.3 is of particular importance for raising awareness (art. 8). In its concluding observations, the Committee recommends States parties to implement, with the participation of DPOs/OPDs/[OWDs] systematic awareness- raising programmes, including media campaigns, aimed at portraying positive images of persons with disabilities, particularly persons with albinism, persons with psychosocial and/or intellectual disabilities, [women and girls with disabilities] and deaf-blind persons, as human rights holders. Awareness-raising campaigns and training programmes aimed at all public-sector officials must be in conformity with the principles of the Convention and based on the human rights model of disability in order to overcome entrenched gender and disability stereotypes in society. States parties should actively combat discrimination and negative stereotypes in the media, such as those present in public campaigns like the ‘Teletón’ (Telethon), and rather promote public campaigns that portray persons with disabilities as rights holders.*

Párrafo 58

*For DPOs/OPDs/[OWDs] to be able to properly participate in consultations and monitoring processes of the Convention, it is indispensable to have optimal accessibility (art. 9) to the procedures, mechanisms, information and communication, facilities and buildings, including reasonable accommodation. Internationally accepted accessibility standards must be developed, adopted and implemented in close consultation with DPOs/OPDs/[OWDs] and in accordance with article 4, paragraph 3, of the Convention, [and must include the gender perspective to ensure that women and girls with disabilities can also benefit from them]. Additionally, the processes of national and international monitoring of the implementation, in line with article 33.3 of the Convention, should promote and ensure the effective participation of DPOs/OPDs, including living up to international standards regarding accessibility.*

Párrafo 59

*In situations of risk and humanitarian emergencies (art. 11), it is important for States parties and humanitarian actors to ensure the active participation, coordination and meaningful consultation with DPOs/OPDs/[OWDs], including those representing women, men, and children with disabilities of all ages and at all levels. This requires the active involvement of DPOs/OPDs/[OWDs] in the development, implementation and monitoring of emergency-related legislation and [gender-sensitive] policies and setting priorities for aid distribution, in line with art. 4.3. This necessitates non-conditional public funding for the independent, full and effective participation of civil society. Within the setting of different refugee camps, especially in zones of armed conflict, DPOs/OPDs/[OWDs] of refugees with disabilities should be established.*

Párrafo 60

*Equal recognition before the law (art. 12) ensures that all persons with disabilities have the right to exercise their full legal capacity and have equal rights to choose and control decisions affecting them and be directly and effectively consulted and involved in the development and implementation of legislation and policies to implement the Convention. However, the current lack of compliance with article 12 must under no circumstance preclude the inclusive implementation of articles 4.3 and 33.3. Recalling and living up to the Committee’s general comment No. 1 (2014), legal capacity is the key to accessing full and effective participation in society, and participation in decision-making processes should be guaranteed to all persons with disabilities, including persons with intellectual and/or psychosocial disabilities as well as [women and] children with disabilities, through their DPOs/OPDs/[OWDs], and if necessary through supported decision-making regimes that respect the person’s autonomy, will and preferences.*

Nuevo párrafo (entre el 61 y el 62)

*[It should be ensured that governmental bodies monitoring protection from exploitation, violence and abuse (art. 16) closely consult and actively involve persons with disabilities through their own representative organisations, including women's and children's organisations. Similarly, all policies developed to eliminate exploitation, violence and abuse must include disability as one of their indicators].*

Párrafo 64

*To ensure the right to education (art. 24), States parties must consult with and actively involve persons with disabilities, including children with disabilities, through DPOs/OPDs/[OWDs], in all aspects of planning, implementation, monitoring and evaluation of inclusive education policies and legislation, [particularly those that promote gender stereotypes]. Persons with disabilities and, when appropriate, their families, should be recognized as partners and not merely recipients of education and be ensured their right to be heard and to have their opinion be given due consideration within the education system.*

Nuevo párrafo (entre el 64 y el 65)

*[To give effect to the right of access to the health care system and physical and psychological rehabilitation (arts. 25-26) , including counselling in cases of gender-based violence, DPOs/OPDs/OWDs should consult and actively involve persons with disabilities in order to ensure the accessibility of these services that are inclusive, gender- and age-sensitive]*.

Párrafo 65

*The adoption of all policies regarding the right of persons with disabilities to work and employment (art. 27), should be taken in consultation with and involvement of DPOs/OPDs/[OWDs]. Policies should seek to guarantee access to employment; promote work in open, inclusive, accessible and competitive employment markets and environments [free of sexual harassment]; ensure equal opportunities and gender equality, and provide for reasonable accommodation and support for persons with disabilities, including women and indigenous persons with disabilities. This includes establishing coordinated strategies and the effective implementation of binding affirmative action measures to promote the employment of persons with disabilities in both public and private sectors.*

Párrafo 67

*The right of persons with disabilities to participate in political and public life (art.29) is of extreme importance to ensure equality of opportunity for persons with disabilities to be fully and effectively participating and included within society, [especially women with disabilities, who are disproportionately underrepresented in public decision-making]. This is closely interrelated with their right, through DPOs/OPDs/[OWDs], to be consulted and involved in the decision-making and monitoring process and assert their individual autonomy, including the freedom to make one’s own choices, and their right to be recognized as persons before the law. States parties are required to establish an enabling environment in which persons with disabilities can effectively and fully participate without discrimination and on an equal basis with others, including through the provision of accessible information.*

Párrafo 70

*When deciding upon and implementing international cooperation (art. 32), a close partnership, cooperation and involvement of persons with disabilities, through DPOs/OPDs/[OWDs], is crucial to adopt [gender-inclusive] development policies that are in line with the Convention. This means including its principles and values in all international cooperation policies, programmes, and initiatives, and mainstreaming the rights and views of persons with disabilities in implementing and national monitoring in the 2030 Agenda for Sustainable Development, as well as the Sendai Framework for Disaster Risk Reduction 2015–2030. DPOs/OPDs/[OWDs] should be consulted and involved at every level of development, implementation and monitoring of international cooperation plans, programmes and projects.*

1. Aportaciones para la implementación a nivel nacional

Párrafo 75

En varias secciones de este párrafo resulta conveniente incorporar la perspectiva de género de cara a la implementación de la Observación General sobre los artículos 4.3 y 33.3 a nivel nacional. Especialmente en las siguientes:

Sección A)

*Repeal all* *laws that prevent any person with disabilities, regardless of type of impairment, to be closely consulted with and actively involved, through their DPOs/OPDs/OWDs, including the right not to be confined, including through forced institutionalisation and isolation within the family, on the basis of any kind of disability, [and mainstreaming the gender perspective into legislation in matters concerning disability].*

Sección D)

*To support the establishment of preferably one single umbrella DPO/OPD, which coordinates and represents the activities of a number of single DPOs/OPDs/OWDs of persons with different disabilities, to ensure the inclusion and full participation of persons with all kinds of disabilities [and to take the gender perspective] in the monitoring process [into account].*

Sección I)

*Encourage and support the creation, capacity-building, funding and effective participation of DPOs/OPDs/OWDs or groups of persons with disabilities, including parents and families of persons with disabilities in their supportive role, at the local and national levels in the conception, design, reform and implementation of policies and programmes [that incorporate the gender perspective].*

Sección N)

*Provide* *disability, [gender] and age-appropriate assistance for the participation of persons with disabilities through their DPOs/OPDs/OWDs in public decision-making, consultation and monitoring processes.*

De igual forma, en las sucesivas secciones del párrafo 75 corresponde hacer una serie de modificaciones.

Sección B)

*Create an enabling environment for the establishment and functioning of DPOs/OPDs/OWDs, by adopting a policy framework favourable to their establishment and sustained operation. This includes guaranteeing their independence and autonomy from the State party, the establishment, implementation of and access to adequate funding mechanisms, including public funding and international cooperation; and the provision of support, including technical assistance [and affirmative actions for under-represented sectors] for empowerment and capacity-building.*

Sección Q)

*Ensure that existing consultation procedures in non-disability specific areas of law, are made accessible to and inclusive of persons with disabilities, through their DPOs/OPDs/OWDs, [especially in children's policies and policies aimed at women and gender equality].*

Sección R)

*Actively involve and closely consult with persons with disabilities, [including women and children], through their DPOs/OPDs/OWDs, in public budgeting processes, international decision-making and in international cooperation with other States parties and adopt development policies which mainstream the rights and views of persons with disabilities when implementing and monitoring the 2030 Agenda for Sustainable Development at the national level.*

Sección S)

*Guarantee the participation, representation and easy access of [women and men with disabilities] to focal points at all levels, the coordination mechanism, as well as their cooperation and representation within the independent monitoring mechanisms.*