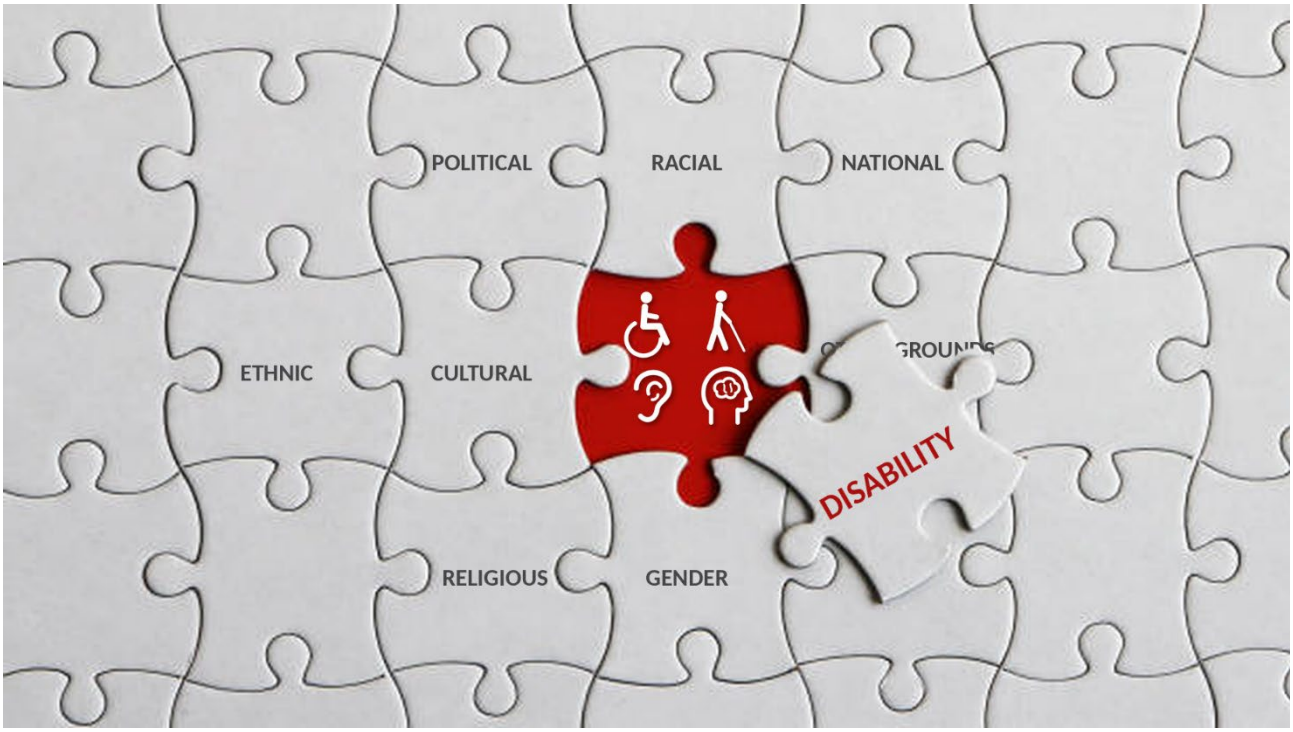
Disability: A Missing Piece of the International Criminal Law Puzzle



Policy Brief

Drafting a Disability Cognizant Convention on Crimes against Humanity: Recommendations for Accounting for Persons with Disabilities

Released in July 2025 in celebration of 35 Years of the Americans with Disabilities Act and Nearly Two Decades of the Convention on the Rights of Persons with Disabilities

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Background [1]

The Convention on the Rights of Persons with Disabilities (CRPD)[2] filled a missing piece in the international human rights law puzzle.[3] It specifies that all international human rights apply to all persons with disabilities and recognizes explicitly that persons with disabilities are entitled to protection under international law in situations of risk, with specific mention of this requirement in Article 11 of the CRPD.[4] The provision affirms that States are obligated to protect persons with disabilities in *all* situations of risk. The CRPD also supports States Parties' duties to investigate and prosecute perpetrators of human rights violations against them.[5] In its Preamble, the CRPD gives recognition to the heightened risk of persons with disabilities to discrimination and affirms the need for protection against discrimination and the promotion and protection of their human rights in the light of significant

[1] The International Disability, Peace and Security Network (IDPS Network) is a coalition of organizations of persons with disabilities, civil society organizations, research institutes and individual advocates committed to ensuring that persons with disabilities are included in and accounted for in all aspects of the international peace and security agenda, consistent with Article 11 of the Convention on the Rights of Persons with Disabilities and UN Security Resolution 2475. The organizations undertaking research, education and legal advocacy in support of the Crimes against Humanity Working Group (CAH Working Group) of the IDPS Network include the US International Council on Disabilities, the CAH Campaign & IDPS Secretariat; Arendt Chambers; Harvard Law School Project on Disability; Center for International and Comparative Law, University of Baltimore School of Law; the Tangata Group; the World Institute on Disability. Special thanks to the following individuals for support in the development and dissemination of this Policy Brief: Isabel Hodge; Janet Lord; Kate McInnes; Gerard Quinn; Michael Stein; Matthew Smith; Kurt Toombs. For more information on the USICD-led IDPS Network and its CAH Working Group, contact: Janet Lord, jlord@ubalt.edu

[2] Convention on the Rights of Persons with Disabilities (CRPD), UN Doc. A/RES/61/106, 24 January 2007 (entered into force 3 May 2008). It is a "core" human rights convention, so designated by the Office of the High Commissioner for Human Rights on the basis of having a treaty monitoring body, namely, the Committee on the Rights of Persons with Disabilities.

[3] Early on the CRPD negotiations, advocates from Landmine Survivors Network, with Dalma Biro leading the creative campaigning design work, developed promotional materials conveying visually with a map and missing puzzle piece entitled "disability" that explicit protection of the rights of persons with disabilities was indeed a missing piece of the human rights puzzle. This, among other advocacy strategies, including the distribution of "Convention. YES!" pens to all UN ambassadors through the first Chair of the Ad Hoc Committee, Ambassador Louis Gallegos, worked well in the early stages of convincing governments to press ahead.

[4] See International Committee of the Red Cross, "How law protects persons with disabilities in armed conflict", p. 3 footnote 7, 13 December 2017.

[5] CRPD, above note 2 at arts. 4, 13, 16.

barriers to protection.[6] Security Council resolution 2475 highlights the need for the protection of persons with disabilities and for ensuring that perpetrators of crimes against persons with disabilities are held accountable.[7] Three successive reports submitted to the UN General Assembly of the former UN Special Rapporteur on the rights of persons with disabilities, Mr. Gerard Quinn, lend further support to the notion that persons with disabilities are victims and survivors of crimes against humanity and are essential actors in any decisional process seeking to account for crimes against humanity.[8]

This brief presents an updated version of the foundational research undertaken in advance of and in the earliest stages of discussion surrounding the elaboration of a Crimes against Humanity Convention at the United Nations and at subsequent meetings and presentations convened by civil society, the US Institute of Peace, outreach by organizations of persons with disabilities (OPD) and organized briefings by State delegations prior to the adoption of General Assembly Resolution 79/122.[9] It has also benefited from inputs by the leading legal experts on international criminal law and disability. Finally, and importantly, the brief was informed by consultations with leading experts who have spearheaded the work on crimes against humanity for many years, including the founder of the Crimes Against Humanity Initiative, Professor Leila Sadat, and members of the Steering Committee.[10]

The work to advance a disability-cognizant Crimes against Humanity Convention was undertaken, funded and technically resourced by experts at the US International Council on Disabilities, international legal experts the Harvard Law School Project on Disability and the Center for International & Comparative Law at the University of Baltimore School of Law, and disability law and policy experts at the Tangata Group, and the former Special Rapporteur on the Rights of Persons with Disabilities, Mr. Gerard Quinn, together with the support of civil society organizations leading the overall advocacy effort in support of the treaty whose work we gratefully acknowledge. We invite

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[6] CRPD, above note 2 at Preamble, paras. (h), (j), (u). See also *Report of the Special Rapporteur on the Rights of Persons with Disabilities on the Rights of Persons with Disabilities in the Context of Armed Conflict (UNSR Report)*, UN Doc. A/76/146, 19 July 2021, paras. 92-94.

[7] UNSC resolution 2475, UN Doc. S/RES/2475, para. 2 (20 June 2019).

[8] These reports may be found on the Special Procedures website at: https://www.ohchr.org/en/special-procedures/sr-disability/annual-thematic-reports.

[9] GA Res. 79/22, (United Nations Conference of Plenipotentiaries on Prevention and Punishment of Crimes against Humanity) A/RES/79/122.

[10] The findings in the brief do not necessarily reflect the views of any individuals or organizations not part of the International Disability, Peace and Security Network and its Working Group on Crimes against Humanity, however, the disability coalition work on the CAH treaty has benefited greatly from the scholarship of and individual consultations with the leading experts and organizations who have devoted, in some instances, decades of effort to this initiative and therefore whose work must be gratefully acknowledged. For the important work on this effort, see the Crimes against Humanity Initiative.

collaboration with other disability rights-focused organizations and individuals interested in this effort who can bring experience and expertise to the table, especially organizations of persons with disabilities who can bring a survivor perspective to these efforts.

The brief is structured as follows: I. Disability as a Specifically Enumerated Ground of Discrimination; II. Persons with Disabilities as a Specifically Protected Group under International Law; III. 'Nothing About Us Without Us': Giving Voice to Persons with Disabilities in International Criminal Law Treaty Processes; IV. Making Justice Fully Accessible to Victims and Survivors of Crimes against Humanity; V. Monitoring and Implementation Facilitation; VI. Accessibility in the Publicity of Treaty Text; VIII. Recommendations for Accounting for Persons with Disabilities in a Crimes against Humanity Convention.

I. *Disability as a Specifically Enumerated Ground of Persecution (Cluster 2)* [11]

Disability is a prohibited ground of discrimination under international law and warrants inclusion as a specific basis for persecution as defined in a Crimes against Humanity Convention. The CRPD clarifies the existing obligation under international human rights law that disability is a prohibited ground of discrimination.[12] Second, the treaty gives recognition to the reality that disability is a basis on which individuals with physical, sensory and psychosocial disabilities have been subjected to persecution, including the paradigmatic case of crimes against humanity under the Nazi extermination program of persons with disabilities, and other serious violations of international human rights and international humanitarian law.[13] Third, Article 11 of the CRPD, on "situations of risk and humanitarian

[11] Discussion in the General Assembly's 6th Committee has been organized around the ILC Draft text on the basis of five thematic clusters: Cluster 1, Introductory provisions (preamble and Draft Article 1); Cluster 2, definition and general obligations (Draft Articles 2, 3 and 4); Cluster 3, national measures (Draft Articles 6 to 10); Cluster 4, international measures (Draft Articles 13 to 15 and the annex) and Cluster 5, safeguards (Draft Articles 5, 11 and 12).

[12] CRPD, above note 2 at art. 11.

[13] Preambular paragraph (u) underscores that "conditions of peace and security based on full respect for the purposes and principles contained in the Charter of the United Nations and observance of applicable human rights instruments are indispensable for the full protection of persons with disabilities, in particular during armed conflicts and foreign occupation…" CRPD, above note 2 at Preamble. Articles 14, 15, 16, and 27 articulate human rights bearing on protection against serious violations of human rights. Id.

emergencies" provides an explicit obligation to protect persons with disabilities in risk situations, consistent with the broad protection framework across the international legal system.[14] Accordingly, the provision is an important reaffirmation that the protections found in international criminal law and other international law domains such as refugee law, international humanitarian law, and international health law apply equally to persons with disabilities.

Prior to the adoption of the CRPD, the Convention on the Rights of the Child (CRC) explicitly recognized disability as a prohibited ground of discrimination under international human rights law and the protection of all children affected by armed conflict.[15] Such recognition is also clear under international humanitarian law where no adverse distinction may be made on the basis of disability in the application of those rules.[16] The general obligation to treat every person humanely, in all circumstances, and without any adverse distinction based on grounds of race, colour, religion or faith, sex, birth or wealth, or any other "similar criteria," implicitly covers disability and therefore prohibits

[14] CRPD, above note 2 at art. 11. ("States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.")

[15] Convention on the Rights of the Child (CRC), UN GA Res A/RES/44/25, adopted 20 November 1989 (entered into force 2 Sept 1990).

[16] See Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law,* Vol. 1*: Rules,* Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study), Rule 138 ("Rule 88. Adverse distinction in the application of international humanitarian law based on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria is prohibited.") The inclusion of the phrase 'or any other similar criteria' indicates that the list is not exhaustive and that it encompasses distinctions on the basis of disability. See ICRC, *How law protects persons with disabilities in armed conflict,* Geneva, 13 December 2017, p. 2, available at (providing that: "'Disability' is not explicitly mentioned as a prohibited ground of adverse distinction under IHL. However, adverse distinction based on "any other similar criteria" to those explicitly enumerated is equally prohibited; this includes adverse distinction based on disability."). For more information, see Jean-Marie Henckaerts *et al.* (eds), 'Commentary on the First Geneva Convention,' (2nd edition, 2016). See especially the Commentary on Art. 12, p. 495, para. 1393. In relation to adverse distinction and disabled prisoners of war, see Jean-Marie Henckaerts *et al.* (eds), 'Commentary on the Third Geneva Convention: Convention (III) relative to the Treatment of Prisoners of War', 2nd ed., ICRC, Geneva, 2020, para. 605 (ICRC Commentary on GC III) ("As is evident from the addition of the concluding phrase 'or any other similar criteria', this list is not exhaustive but only illustrative. Adverse distinction founded on other grounds, such as age, state of health, level of education or family connections of a person protected under common Article 3 would therefore equally be prohibited.")

adverse distinction based on disability.[17] In addition to the codification of the principle of adverse distinction in multiple international humanitarian law treaties, it is also well established that adverse distinction founded on grounds such as disability is prohibited as a matter of customary international humanitarian law.[18] As such, ***the term "disability" must be made explicit in the definition of persecution*** in a future Crimes against Humanity Convention ***to clarify the current content of international law and to avoid the inevitable marginalization that made a specific convention on the rights of persons with disabilities so necessary*** in the first place.

II. *Persons with Disabilities as a Specifically Protected Group under International Law (Cluster 2)*

Persons with disabilities are a ***specifically protected group*** warranting ***explicit*** protection under a treaty on crimes against humanity. One of the foundational texts of international law, written 400 years ago by the Dutch lawyer, Hugo Grotius, recognizes that persons with disabilities are entitled to specific protection, along with women and children, given that they face unique risks in crisis situations.[19] Modern international law gives recognition to this concept in numerous treaties and under customary international law.[20]

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[17] ICRC Commentary, above note 16, common Article 3, pp. 198–202, paragraphs 568–573. The Commentary uses the term "health" to illustrate one of the additional criteria which is one among several terms used under international humanitarian law to denote disability.

[18] ICRC Customary Law Study, above note 16, Rule 138 ("Rule 138. The elderly, disabled and infirm affected by armed conflict are entitled to special respect and protection.")

[19] Hugo Grotius, 'De Jure Belli ac Pacis Libri Tres in quibus Jus Naturae & Gentium, item Juris Publici praecipua explicantur by Hugo Grotius', in *The Classics of International Law Vol. II*, ed. by James B. Scott (Washington D.C.: Carnegie Institution of Washington, 1913, reprinted Buffalo: William S. Hein & Co., 1995), Book III, Chap. XI, VII, p. 731. For detailed treatment of the Grotian tradition under the law of war in the context of disability, see Bryce Hollander & Janet E. Lord, 'Grotian Traditions and Disability in De jure belli ac pacis' __ *Grotiana* 1-37 (2026).

[20] For more on the legal basis of disability inclusion in international criminal law, and the yawning gaps that remain, see Kate McInnes, 'Opportunities and failures to prosecute violence against persons with disabilities at the international tribunals for the former Yugoslavia, Rwanda and Sierra Leone', *International Review of the Red Cross*, 105:922 (2023), 484-517 (p. 507); Janet E. Lord, "Accounting for persons with Disabilities under IHL," *International Review of the Red Cross,* Vol. 105, No. 922.

The effort underway to initiate negotiations for a legally binding treaty concerning crimes against humanity will, it is hoped, result in an instrument reflecting the current status of international law, encompassing both the lessons of Nuremberg and its jurisprudence — including its unrealized potential with respect to atrocities against persons with disabilities — *and* developments reflective of contemporary instruments of international law that restore disability-cognizance into its frameworks of protection, including the CRPD. Likewise, developments in respect of age and gender merit recognition, as well articulated by leading civil society organizations engaged in the crimes against humanity process.[21]

The International Law Commission's (ILC) Draft Articles on Prevention and Punishment of Crimes against Humanity[22] (ILC Draft) reflect a good basis on which to start negotiations. Yet, as many State delegations have noted, it should reflect the contemporary state of international criminal law and fill gaps in the Rome Statute definition of crimes against humanity. As already highlighted in the prior section, the ILC Draft does not specify disability as a basis of persecution, notwithstanding egregious crimes against humanity committed against persons with disabilities by the Nazi regime (under the T-4 program of extermination, among other disability-specific crimes). and reflected in the jurisprudence of the Nuremberg Tribunal.[23] The omission of an explicit reference to persons with disabilities who are specifically protected under international law and specifically addressed in UN Security Council resolution 2475 would ignore the history of atrocity crimes committed against them – a history that gave rise to the concept of crimes against humanity in the first place.[24]

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[21] See Crimes against Humanity Initiative.

[22] *Draft Articles on Prevention and Punishment of Crimes Against Humanity* art. 2(1)(h), U.N. Doc. A/74/10 (2019), *reprinted in* [2019] 2 Y.B. Int'l L. Comm'n 24, U.N. Doc. A/CN.4/SER.A/2019/Add.1.

[23] The Hadamar Trial (*USA v. Alfons Klein and Others*, Control Council Law No. 10, vol. 1, Nuremberg, October 1946–April 1949) exemplifies this unrealised potential. Although the vast majority of victims at Hadamar were German nationals with disabilities, the prosecution confined its charges entirely to the killings of Russian and Polish slave labourers, explicitly stating that the defendants were 'not on trial for any German nationals they may have killed.' Their deaths were not adjudicated. See Kate McInnes, 'Justice Denied by Design: Nuremberg's Neglect of Atrocities against Institutionalized Persons with Disabilities and Enduring Gaps of Protection Under the Rome Statute', *Journal of International Criminal Justice* (2026). *See also* Tamara Zwick, 'First Victims at Last: Disability and Memorial Culture in Holocaust Studies', *Conatus*, 4:2 (2019), 45-63 (p. 52-3); Janet E. Lord, *Genocide, Crimes against Humanity and Human Rights Abuses against People with Disabilities* in ENCYCLOPEDIA OF GENOCIDE AND CRIMES AGAINST HUMANITY, (Dinah L. Shelton, ed., Macmillan Reference USA, 2004); Janet E. Lord, 'International Humanitarian Law and Disability: Paternalism, protection or rights?' in DISABILITY, HUMAN RIGHTS AND THE LIMITS OF HUMANITARIANISM, ed. Michael Gill and Cathy Schlund-Vials 155-178 (Burlington, VT: Ashgate, 2014).

[24] William I. Pons et al., "Addressing the Accountability Void: War Crimes against Persons with Disabilities", *International Review of the Red Cross*, Vol. 105, No. 922, 2022, pp. 465-483; Lord, above note 20; Jae-Chun Won,

Accordingly, ***persons with disabilities must be given explicit recognition as an explicitly protected group in a new instrument.*** First, ***persons with disabilities bear specific mention in a preambular paragraph***, including in a provision highlighting the groups likely to be subjected to crimes against humanity and those groups subjected to heighted risk (e.g., women and children). Second, as noted in the previous section, ***persons with disabilities bear specific reference in the definition of persecution, either as part of ILC Draft Article 2(h) on persecution or, alternatively, in a separate article***. This would provide the much-needed recognition that persons with disabilities and atrocities committed against them must be accounted for by the international criminal law framework.

III. *'Nothing about Us without Us': Giving Voice to Persons with Disabilities in the Elaboration of a Crimes against Humanity Convention*

Civil society organizations leading the call for a person-centered development of a crimes against humanity convention emphasize the importance of giving voice to victims and survivors of crimes against humanity in the elaboration of a new treaty.[25]

Lessons drawn out of the negotiations of the CRPD are instructive in this respect.[26] As noted by the former UN Special Rapporteur on the Rights of Persons with Disabilities, Mr. Gerard Quinn, the CRPD "is grounded on the personhood, autonomy and voice of persons with disabilities... [and] is chiefly reflected in article 12 (dealing with legal capacity), article 19 (on the right to live independently in the community) and article 4 (3) (on the right to be consulted)."[27]

Janet E. Lord, Michael Ashley Stein and Yosung Song, "Disability, Repressive Regimes, and Health Disparity: Assessing Country Conditions in North Korea", in Ruth Bonnevalle-Kok and Jure Vidmar (eds), *Hague Yearbook of International Law* , Vol. 27, Brill Nijhoff, Leiden, 2014.

[25] Center for Global Justice et al., 'Joint Call to Advance Gender Justice in the Draft Crimes Against Humanity Convention,' Oct. 5, 2023.

[26] At the request of the civil society coalition, the IDPS Network developed a brief detailing some of the lessons learned from the negotiations of the Convention on the Rights of Persons with Disabilities under an ad hoc committee of the General Assembly's Third Committee. See IDPS Network, 'Policy Note on Modalities of NGO Participation in a Future Crimes against Humanity Treaty Negotiation and Based on 3rd Committee of the General Assembly Experience in the Negotiation of the Convention on the Rights of Persons with Disabilities,' May 2024.

[27] UN SR Report, above note 6 at para. 18.

Indeed, the very first decision rendered by the Ad Hoc Committee of the Third Committee under which the CRPD text was developed aimed to facilitate access to the discussions and ensuing treaty negotiations by persons with disabilities and their representatives organizations and it thus rendered a *Decision on the modalities for the participation of accredited non- governmental organizations in the Ad Hoc Committee in considering proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities* deciding:

> (a) That representatives from non-governmental organizations accredited to the Ad Hoc Committee may participate in the work of the Ad Hoc Committee by:
>
> i. Attending any public meeting of the Ad Hoc Committee;
>
> ii. Making statements, given the availability of time, in accordance with current United Nations practice;
>
> iii. When time is limited, selecting from among themselves spokespersons, on a balanced and transparent basis, taking into account equitable geographical representation and the diversity of non-governmental organizations;
>
> iv. Receiving copies of the official documents, as well as making written or other presentations. Written presentations shall not be issued as official documents except in accordance with Economic and Social Council resolution 1996/31 of 25 July 1996. Furthermore, non-governmental organizations may make their material available to delegations in accessible areas designated by the Secretariat.[28]

During its 10th meeting, the aforementioned decision was referenced and the Ad Hoc Committee decided to extend an invitation to regional commissions, United Nations bodies and mechanisms, experts, national human rights institutions and national disability institutions to participate in its future sessions. These decisions solidified the robust participation of non-State actors with an interest in the treaty process that characterized the treaty negotiation.

Second, the Working Group of the Ad Hoc Committee that developed the foundational text upon which negotiations were launched included 12 representatives of civil society given equal voice in the working group dialogue and its drafting process. Third, civil society had opportunities during the formal sessions to intervene and provide commentary on the evolving text. Fourth, States and civil society worked collaboratively throughout the entirety of the CRPD negotiation and it was civil society, working collaboratively with States, who spearheaded and launched the development of the historical archives of the negotiation through the work of lawyers from Landmine Survivors Network. The ongoing work summarizing the negotiating sessions was eventually funded by a coalition of States and

[28] Report of the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities, para. 10.

civil society organizations who found the summaries invaluable during the negotiations. These summaries now comprise an important part of the historical archive of the CRPD process.

Process-focused rights of participation are set out in the CRPD in several key provisions. Article 4(3) establishes as a general obligation a right to be involved in all policy processes (and relevant decisions) that affect persons with disabilities.[29] Article 29 further affirms the importance of participation in political and public life for persons with disabilities.[30] Further, participation is an overarching principle of the Convention as set out in Article 3.[31] ***These principles should be respected throughout the process and supported in enhancing access for all, including persons with disabilities who must be afforded access to all aspects of the Crimes against Humanity Convention process***. Significantly, the modalities of participation should be directed at ensuring that ***procedures, facilities and materials*** associated with the process are ***appropriate, accessible and easy to understand and use.***

IV. *Making Justice Fully Accessible to Victims and Survivors of Crimes against Humanity (Cluster 5)*

While it is imperative that the substantive law prohibits crimes against humanity explicitly on the ground of disability, this will have little meaning absent specific mechanisms to ensure that justice is accessible. All victims of gross violations of international humanitarian and human rights law, including crimes against humanity, must under international law have equal access to effective judicial remedies.[32] Persons with disabilities are less likely to have such access even though they are more likely to fall victim to heinous crimes.[33] People with disabilities continue to face attitudinal, legal, communication, physical, and economic barriers across legal systems, including at the international level and in transitional justice processes where crimes against humanity have occurred.[34]

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[29] CRPD, above note 2 at art. 4(3).

[30] CRPD, above note 2 at art. 29.

[31] CRPD, above note 2 at art. 3.

[32] UNGA Res. 60/147, 21 March 2006, para. 12 (Basic Principles). These principles are also known as the Van Boven/Bassioini Principles.

[33] Erika Harrell, Bureau of Justice Statistics, Crime Against Persons with Disabilities, 2009–2019 – Statistical Tables (2021).

[34] Janine Natalya Clark, "Transitional Justice and Inclusiveness: Where Does Disability Fit In?" *Journal of Intervention and Statebuilding,* Vol. 18, No. 2, 2024, pp. 139–160.

The CRPD builds on the rights of participation referenced in Part III of this Policy Brief in several key respects relevant to ensuring accessible justice for persons with disabilities. Article 13 of the CRPD affirms that persons with disabilities must have equal access to justice and that States Parties are obliged to "ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages".[35] Article 12 clarifies that persons with disabilities may not be excluded from the justice system based on legal capacity; rather, supported modalities of participation must be provided where needed in a particular instance.[36] These guarantees are further developed in the United Nations Human Rights Special Procedures, "International Principles and Guidelines on Access to Justice for Persons with Disabilities."[37] Finally, Goal 16 of the Sustainable Development Goals addresses the need to promote peaceful and inclusive societies, to provide access to justice for all and to build effective, accountable and inclusive institutions at all levels. ***A Crimes against Humanity Convention can secure accessible justice to all victims and survivors by adopting inclusive and accessible accountability measures and transitional justice arrangements.***

A. Inclusive Accountability Measures and Transitional Justice (Cluster 5)

Persons with disabilities are often overlooked among the overall victims of conflict, and the transitional justice movement has lacked integration of a disability perspective.[38] Transitional justice processes are key in redressing past wrongs and lend support to building sustainable peace in societies where crime

[35] CRPD, above note 2, art. 13. For an excellent summary of access to justice for persons with disabilities and the significant hurdles they experience, see US Department of Justice, Office of Access to Justice, Fact Sheet: Access to Justice is Disability Access.

[36] CRPD, above note 2, art. 12.

[37] United Nations Human Rights Special Procedures, "International Principles and Guidelines on Access to Justice for Persons with Disabilities," August 2020.

[38] Janine Natalya Clark, above note 34"Transitional Justice and Inclusiveness: Where Does Disability Fit In?" *Journal of Intervention and Statebuilding,* Vol. 18, No. 2, 2024, pp. 139–160. See also Anita Aaron, Bruce Curtis, Alex Ghenis, Danielle Lane and Ariana Barth, "The involvement of persons with disabilities in conflict resolution and peacebuilding efforts: inclusion of persons with disabilities as part of the solution in the post-conflict arena", Special report (World Institute on Disability, 2014.

against humanity have occurred.[39] Transitional justice addresses the legacy of serious international human rights law and international humanitarian law violations, including crimes against humanity.[40]

Transitional justice at its best places victims at the center and such measures work to ensure acknowledgement, accountability and redress for those who have suffered wrongful acts.[41] Nonetheless, transitional justice too often falls short of integrating the voices of persons with disabilities and their families.[42] This is increasingly understood as a major gap.[43] The five pillars of transitional justice—truth, justice, reparation, guarantee of non-repetition and memorialization— are complementary and interrelated to ensure the most effective means of justice and accountability.[44] Where such mechanisms appropriately account for all those affected by crimes against humanity (and other serious violations of international human rights and international humanitarian law), they can help affirm the humanity and human dignity of both victims and survivors, including persons with disabilities.

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[39] See Report of the Secretary General on The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, UN Doc. S/2004/616, 23 August 2004, paras. 2-8; Guidance Note of the Secretary General on Transitional Justice: A Strategic Tool for People, Prevention and Peace, 11 October 2023, p. 2, available at Luke Moffett and Nikihil Narayan, "Provisional justice in protracted conflicts: The place of temporality in bridging the international humanitarian law and transitional justice divide", *International Review of the Red Cross*, Vol. 106 No. 927, 2012, p. 1224.

[40] Understood in broad terms, transitional justice comprises all processes and mechanisms that a society uses to address a history of large-scale abuses, aiming to ensure accountability, deliver justice, and achieve reconciliation. See Report of the Secretary General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, UN Doc. S/2004/616, 23 August 2004, para. 8.

[41] Janet E. Lord & Christpher Hart, 'Disabled Dead Bodies: Marking the Intersections of International Humanitarian Law and International Human Rights Law' *International Review of the Red Cross*, Vol. 929 (2025).

[42] Academic research by Hollander and Gill on the 'marked' bodies of persons from northern Uganda in post conflict settings is a rare example of addressing persons with disabilities in transitional justice processes. The work recognizes the perspectives of 14 survivors whose bodies were 'marked' due to injuries sustained during conflict between the Lord's Resistance Army (LRA) and the government forces of Uganda. Theo Hollander and Bani Gill, "Every Day the War Continues in My Body: Examining the Marked Body in Postconflict Northern Uganda", *International Journal of Transitional Justice,* Vol. 8, 2014.

[43] See Janet E. Lord and Michael Ashley Stein, "Peacebuilding and Reintegrating Combatants with Disabilities", *International Journal of Human Rights*, Vol. 19, No. 3, 2015; Minerva Rivas Velarde, et al., "Disarmament, Demobilization, and Reintegration in Colombia: Lost Human Rights Opportunities for Ex-Combatants with Disabilities", *Journal of Human Rights*, Vol. 21, No. 1, 2021.

[44] Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, UN Doc. A/HRC/54/24, 10 July 2023, para. 16.

As noted above, CRPD Article 13, obligates States to ensure that legal systems at all levels – and the participation of persons with disabilities in them – are fully accessible.[45] Article 13, combined with Article 12 on equal recognition of persons with disabilities before the law, means that ***participation in the justice system, whether at national or international levels, must take place on the basis of equality***.[46] UN Security Council Resolution 2475 similarly emphasizes that States must "end impunity for criminal acts against civilians, including those with disabilities" and ensure access to appropriate remedies and reparations.[47]

B. Person-Centered and Rights-Based Assistance (Cluster 5)

The development of a Crimes against Humanity Convention thus offers the chance to ensure accountability and ***the tailoring of transitional justice measures, including reparations***, to redress such heinous crimes and meet both victims and survivors with disabilities where they are, cognizant of and responsive to their specific needs. Article 11 of the CRPD is the springboard for a disability inclusive approach in such processes. This provision seeks to ensure the rights of persons with disabilities are realized in every domain with a protection remit – and thereby across all five pillars of transitional justice. A Crimes against Humanity Convention must ***account for the specific needs for victims and survivors with disabilities and reflect the current status of international law***. This means ensuring that procedural access measures are person-centered and rights-based and that substantive measures for redress are disability-cognizant.

Building on the ILC Draft Articles, ***it is important to make explicit that the needs of persons with disabilities*** are specifically accounted for, consistent with the CRPD. ***Appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of crimes against humanity, including through the provision of protection services***. Such recovery and reintegration must occur in an environment that fosters the health, dignity and autonomy of the individual, ***in consideration of disability-, gender- and age-specific needs and reasonable accommodations***. Access will also require for some individuals ***measures to ensure access to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries***. These must be provided at affordable cost. Assistance must be provided in a way that is sustainable, timely, appropriate, inclusive

[45] CRPD, above note 2, art. 13.

[46] CRPD, above note 2, arts. 12 & 13.

[47] UN SC 2475, above note 7, para. 2.

and accessible, including reintegration, rehabilitation and psychosocial support, to ensure that specific needs are effectively addressed.

V. *Implementation Facilitation and Monitoring (Cluster 4)*

Mechanisms for the facilitation of implementation are now standard in international treaties addressing global issues. These may include a variety of measures such as data collection, regular meetings of States Parties to discuss implementation, develop guidance for States Parties and other stakeholders and share good practices. A Crimes against Humanity Convention reflecting these mechanisms will serve to facilitate and serve States Parties and should be embraced. Here, the CRPD is instructive. It includes several measures on implementation, including the gathering of data and statistics, together with measures to ensure confidentiality and privacy rights of persons with disabilities.[48] This bears study for its potential application in a new treaty. Likewise, the CRPD broke new ground for human rights conventions by **adopting an article convening a Conference of States Parties for the purpose of annual implementation meetings**.[49] This practice is even more robust in the international environmental sphere.[50] Such a provision is warranted in a Crimes against Humanity Convention.

Proposals for establishing a monitoring mechanism in a new Crimes against Humanity Convention merit serious attention. A monitoring mechanism could shore up the prevention-oriented aspects of the treaty as well as the obligations regarding accountability. Any monitoring mechanism adopted must align with the good practices of the CRPD Committee in terms of ensuring accessible facilities, procedures and practices, consistent with the core principles of the CRPD as set out in Article 3.[51]

VI. *Accessibility in the Publicity of Treaty Text*

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[48] CRPD, above note 2 at art. 31. ("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 in the collection and use of statistics.")

[49] CRPD, above note 2 at art. 40.

[50] See, for instance, the website for the Biodiversity Convention's Conference of States Parties: https://www.cbd.int/cop

[51] CRPD, above note 2 at art. 3.

The publicity of treaty text is typically included among the implementation or final provisions of a multilateral instrument. For example, Contracting Parties to the 1949 Geneva Conventions[52] and their 1977 Additional Protocols[53] are obliged to disseminate the provisions of those instruments as widely as possible both in peacetime and in periods of armed conflict so that they are known to the armed forces and to the population as a whole.[54] States Parties to the Convention on the Rights of the Child[55] (Art. 42) and to its Optional Protocol of May 2000 on the involvement of children in armed conflict[56] (Art. 6) undertakes to make the principles and provisions of those instruments widely known by appropriate means, to adults and children alike.

In the CRPD, the obligation on dissemination of the treaty text appears in the final clauses at Article 49.[57] It reads: "The text of the present Convention shall be made available in accessible formats."[58]

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[52] Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950) (GC I); Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950) (GC II); Geneva Convention (III) relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950) (GC III); Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) (GC IV).

[53] The obligation to disseminate the Conventions and the Protocols is reiterated and developed in the 1977 Additional Protocols (AP I, Art. 83; AP II, Art. 19). Protocol I makes provision for specific measures with a view to strengthening the general obligation. Protocol II makes the obligation applicable to situations of non-international armed conflict. Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 12 July 1978), Art. 34(1) (AP I); Protocol Additional (II) to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts, 1125 UNTS 609, 8 June 1977 (entered into force 7 December 1978), art. 8 (AP II).

[54] ICRC, The Obligation to Disseminate International Humanitarian Law (Feb. 2003).

[55] CRC, above note 16 at art. 42 ("States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.").

[56] Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts, art. 6, A/RES/54/263, 25 May 2000 (entered into force 12 February 2002).

[57] CRPD, above note 2 at art. 49.

[58] CRPD, above note 2 at art. 49.

The ILC Draft Articles should be ***amended to include a publicity provision*** in the final clauses or other section of the CAH treaty text and reflect the wording of the CRPD, "***accessible formats***."

VII. *Summary of Key Recommendations in Support of Aligning a Crimes against Humanity Convention with Existing International Law on the Rights of Persons with Disabilities*

U.N. Member States have the opportunity rectify gaps in the existing ILC Draft Articles. In order to achieve a disability-cognizant treaty, States should take into careful consideration the fact that the notorious T-4 Programme directed against persons with disabilities was a paradigmatic crime and therefore endeavor to include persons with disabilities in the proposed Crimes against Humanity Convention. Specific recommendations, where relevant listed by Cluster, include the following:

- Adopt modalities for the ***full participation of civil society*** in a Crime against Humanity treaty process, ***including persons with disabilities who must be afforded access to all aspects of the Crimes against Humanity Convention process***. The modalities of participation should be directed at ensuring that ***procedures, facilities and materials*** associated with the process are ***appropriate, accessible and easy to understand and use.***
- Cluster 1: Preamble additions: Ensure the inclusion of a preambular paragraph according to which ***groups recognized as specifically protected in situations of risk such as armed conflict are enumerated*** and ***make specific reference to persons with disabilities***.
- Cluster 2: ***Specify "disability" as a basis of persecution*** in the definition of crimes against humanity under Article 2(1)(h) of the Draft ILC Articles or, *in the alternative*, should States decide to elaborate the definition of "persecution" in Article 2(2)(g) of the Draft ILC Articles, explicitly enumerate "disability" as a "group" or "collectivity" within the definition of "persecution."
- Cluster 4: Consider the ***addition of an institutional arrangement for monitoring and for overseeing implementation*** of provisions in a treaty on crimes against humanity. This could include, among other arrangements, the creation of a periodic Conference of States Parties like the one established pursuant to Article 40 of the CRPD and a monitoring body.
- Cluster 4 (or Final Provisions): Ensure the inclusion of a ***provision on the publicity of the text*** of the CAH treaty text, whether in the final clauses or elsewhere in a revised draft, to the effect that the treaty text be made available and widely disseminated in "accessible formats".
- Cluster 5: Introduce amendments to the ILC Draft Article to:
    - Clarify that persons with disabilities must have ***equal access to justice*** in the context of accounting for crimes against humanity without restriction and consistent with equal recognition before the law. (Article 12(2) Draft ILC Articles)

- Reflect CRPD general principles (Art. 3) to ***ensure victim rights are accessible to all***, including victims with disabilities, and consistent with CRPD Article 13 (Access to justice).
- Give recognition to ***reasonable accommodation as an integral element of the non-discrimination duty*** owed to persons with disabilities consistent with the CRPD (Arts. 2 & 5).

Conclusion

The negotiation of a new treaty is an opportunity to reflect on the current status of international law and the progressive developments made in the early 21st century to codify the human rights of persons with disabilities in a legally binding instrument. In the context of a Crimes against Humanity Convention, this points to the need to raise the visibility of persons with disabilities and the reality of historical and contemporary abuse against them and to connect accountability obligations with disability rights principles. The dual opportunity arising from the development of a Crimes against Humanity Convention is to fill a missing piece of the international criminal law puzzle in two ways – through a treaty on these heinous crimes and through specifying that disability persecution is a core part of the definition of crimes against humanity and ensuring accessibility in all respects from the drafting process through to implementation of accountability measures and dissemination of the treaty.[59]

[59] Janet E Lord, et al., '*The UN Process for a Crimes against Humanity Treaty. Will it Account for Persons with Disabilities?*' JUST SECURITY, May 26, 2023.