Article

The U.N. Convention on the Rights of Persons with Disabilities and the Global South

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INTRODUCTION

Prior to the adoption of the Convention on the Rights of Persons with Disabilities (CRPD or Convention), persons with disabilities lacked protection

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under existing human rights frameworks and were excluded from international programming efforts. Disability rights advocates were forced to rely on a canon of human rights treaties that rarely referenced disability or addressed the myriad disability-specific issues handicapping that population across the globe. Equally damaging was the fact that persons with disabilities were neither schematically included nor empowered to participate in international, regional, or national programming that greatly affected their daily lives. 

By contrast, the CRPD has created a paradigm shift by elevating disability-based human rights to an equal component of the human rights canon within United Nations (U.N.) programming on human rights and development, as well as national-level legal systems. The Convention similarly has precipitated disability inclusion in a range of international and regional human rights

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3. Hence, disability rights claimants either had to invoke a universal provision or embody a separately protected characteristic. See Michael Ashley Stein, Disability Human Rights, 95 CAL. L. REV. 75, 76 (2007), reprinted in NUSSBAUM AND LAW 3 (Robin West ed., 2015); reprinted in VULNERABLE AND MARGINALIZED GROUPS AND HUMAN RIGHTS 665 (David Weissbrod & Mary Rumsey eds., 2011).


instruments, as well as development schemes. 10 Paramount to these advances, and beginning with the aphorism of the global disability rights movement—“nothing about us without us”11—a “participatory dynamic” influenced a dramatic change in U.N. human rights norms. Stakeholders were included in the CRPD’s evolution,12 and procedures were embedded within the treaty’s text to ensure the inclusion of persons with disabilities in the subsequent development and monitoring of laws, policies, and practices that would affect their lives.13 Structurally, this participatory dynamic was intended to empower and protect all persons with disabilities, including those from marginalized populations or living in the developing world, by ensuring their representation—in other words, that their “voices were heard.”14 In sum, the Convention has been nothing less than transformative.15

Yet, despite the CRPD’s many successes, the treaty has yet to be as influential as it ought to be for 80 percent of the world’s more than one billion disabled people living in the Global South 16 (or developing world) relative to those living in the Global North (or developed world).17 Historically, there has


13. See discussion infra Part I.B.

14. For narrative accounts of this process, see HUMAN RIGHTS AND DISABILITY ADVOCACY (Maya Sabatello & Marianne Schulz eds., 2014).


17. We use these terms as heuristics to distinguish between countries that were predominately responsible for colonialism, neo-colonialism, imperialism, and neo-imperialism processes and those that endured and continue to be impacted by those actions. These proxies are imperfect for a number of reasons, including the fact that pockets of underdeveloped areas and repressed populations exist within highly developed states, such as certain indigenous nations in Australia and Canada, but they are a term
been sustained criticism that the international human rights regime, which was initiated and drafted by developed states, has limited salience for people living in developing states. The Convention’s evolution reveals a more nuanced narrative. Global South states led the initiative at the U.N. General Assembly for an ad hoc committee (AHC) to examine the need for a disability-specific human rights treaty, and then led and dominated the agenda of the early negotiation sessions. Disabled Peoples’ Organizations (DPOs)—disability-specific non-governmental organizations (NGOs)—were procedurally empowered to participate in the sessions due to the leadership of the AHC’s initial chair, Ambassador Luis Gallegos of Ecuador, a developing nation. Nevertheless, resource restraints soon reduced the presence of DPOs from the Global South states such that the trajectory of the drafting process tilted from Global South priorities and perspectives toward those of Global North states and DPOs. This reality is illustrated by the pervasively Global North view that prioritized the role of deinstitutionalization over family support when construing the right to independent living in the community, while also evincing an almost total disdain for many Global South considerations, including the rights to clean water, sanitation, and hygiene (WASH) and the removal of landmines.

These power imbalances could have been mitigated if not rectified post-CRPD by the Committee on the Rights of Persons with Disabilities (CRPD Committee or Committee), the treaty body tasked with monitoring the Convention. The CRPD Committee is required to be geographically representative and inclusive, and is elected and guided by the Conference of States Parties to the CRPD (COSP) which itself includes a majority of developing states; consequently, the Committee’s Members have been chosen predominately from the Global South. Yet despite opportunities for empowering concerns relevant to the developing world through Concluding Observations in response to periodic state reports, the CRPD Committee has made only tentative and uneven efforts to advance the rights of persons with disabilities living in the Global South. We therefore propose constructive methods and areas through which, in fulfilment of its institutional duty, the Committee can and should make the CRPD increasingly responsive to the Global South and thus more truly representative of the vast majority of persons with disabilities worldwide. In addition to honoring its governance mandate, doing so would help mitigate the prevailing bias in human rights discourse and practice favoring the Global North.

The Article proceeds as follows. Part I relates the historical dominance of human rights creation and discourse by the Global North generally and the counter-example of the Global South precipitating the CRPD at the General Assembly. Next, Part II describes the decline of the developing world’s influence during the AHC process, as exemplified by a dominant Global North perspective on the right to independent living and the concurrent eschewing of rights to WASH or landmine removal. Part III examines the tentative and uneven efforts by the CRPD Committee to make those three rights more relevant to developing
states, highlighting both positive accomplishments and shortcomings. Constructively, Part IV proposes procedures and topic areas that the Committee can leverage to fulfil its institutional governance duty to more vigorously use its juridical authority to empower the rights of the 800 million persons with disabilities living in the Global South.

I. HUMAN RIGHTS AND DISABILITY RIGHTS DISCOURSES

Global North states have a sustained history of dominating international human rights discourse. The CRPD offers a partial counter-example against this instantiated hierarchy due to the Global South having successfully championed a disability rights treaty at the General Assembly and the subsequent AHC negotiation and treaty text invoking and empowering DPO participation.

A. The Global North and Human Rights Dominance

The International Bill of Rights, which comprises the Universal Declaration of Human Rights (UDHR),\textsuperscript{19} the International Covenant on Civil and Political Rights (ICCPR),\textsuperscript{20} and the International Covenant on Economic, Social and Cultural Rights (ICESCR),\textsuperscript{21} was strongly modelled on Global North legal norms and priorities.\textsuperscript{22} Notably, the predominately civil and political rights found in the ICCPR have been considered preeminent and inalienable, subject to immediate remedies, and thus traditionally labelled with the accolade of “first generation rights.”\textsuperscript{23} Drawing on the ICCPR, first generation rights typically include rights to autonomy and self-determination, freedom of speech, expression, association and religion, and the ability to freely participate in democratic processes, among others.\textsuperscript{24}

By contrast, social rights have traditionally been labelled as “second generation rights,” characterized as having lower precedence within the canon of human rights, and thereby subjected to progressive implementation (rather

\textsuperscript{19} G.A. Res. 217A (III), Universal Declaration of Human Rights (Dec. 10, 1948).
\textsuperscript{22} See, \textit{INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS} 133-36 (Henry J. Steiner, Phillip Alston & Ryan Goodman eds., 2008). This was regarded at the time as a strength by Global South states desiring the same rights that Global North states extended to their own citizens. See Maya Hertig Randall, \textit{The History of the Covenants: Looking Back Half a Century and Beyond, in THE HUMAN RIGHTS COVENANTS AT 50: THEIR PAST, PRESENT, AND FUTURE} 7, 10-14 (Daniel Moeckli, Helen Keller & Corina Heri eds., 2018).
\textsuperscript{23} The philosopher Isaiah Berlin famously referred to these as “negative rights,” by which he meant prohibitions against state interference with rights. See Isaiah Berlin, \textit{Two Concepts of Liberty, in FOUR ESSAYS ON LIBERTY} 118, 122 (1958) (stating that authentic liberty is simply the absence of “the deliberate interference of other human beings within the area in which I could otherwise act”).
\textsuperscript{24} See, e.g., ICCPR, supra note 20, at art. 6, ¶ 1 (“Every human being has the inherent right to life.”); art. 9, ¶ 1 (“Everyone has the right to liberty and security of person.”); art. 12, ¶¶ 1-4 (“Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”); art. 18, ¶ 1 (“Everyone shall have the right to freedom of thought, conscience and religion.”).
than immediate remedy). Drawing on the ICESCR, second generation rights typically include education, employment, housing, and standards of living, to name a few. Civil and political rights are equally relevant to developed and developing states. Social rights, however, are a far higher priority for the Global South due both to the Global South’s level of economic development as well as the fact that funding for development schemes that support these rights has flowed from the Global North to the Global South.

The strict historic and dichotomous division between generations of human rights categories is deeply flawed. It is viewed as artificial, retrogressive, and impractical by academics. It is eschewed in the articulation of more recent U.N. human rights treaties, prominently among them the CRPD. It has been criticized by an array of U.N. Special Rapporteurs. And it has been challenged  

25. These rights are also termed “positive rights.” See Paul Harpur, The Evolving Nature of the Right to Life: The Impact of Positive Human Rights Obligations, 9 U. NOTRE DAME L. J. 95, 104 (2007) (arguing that “unlike negative human rights, positive human rights, such as the right to health care, require states to devote resources to ensure the right is discharged”).

26. See, e.g., ICESCR supra note 21, at art 6, ¶ 1 (“The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right”); Id. at art. 11, ¶ 1 (“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right . . . .”); Id. at art. 13, ¶ 2 (a) and (c) (“Primary education shall be . . . available free to all” and “Higher education shall be made equally accessible to all”).

27. Funding has flowed through the work of the World Bank, other international financial institutions, and bilateral state donors. For an international relations perspective, see PATRICK ALLAN SHARMA, ROBERT MCNAMARA’S OTHER WAR: THE WORLD BANK AND INTERNATIONAL DEVELOPMENT (2017). For an alternative economic vision presented by two Nobel Laureates, see ABHIJIT V. BANERJEE & ESTHER DUFOLO, POOR ECONOMICS: A RADICAL RETHINKING OF THE WAY TO FIGHT GLOBAL POVERTY (2012).


29. This integrated approach to human rights can be seen clearly in the provisions in the Convention on the Elimination of All Forms of Discrimination Against Women that are directed both at preventing incidents of direct discrimination and at reinventing environments to eviscerate the subtle effects of cultural bias. See INTERNATIONAL HUMAN RIGHTS IN CONTEXT, supra note 22 at 195 (highlighting the importance of the “utilization of temporary special measures in accordance with article 4, paragraph 1, of the Convention and the Committee’s general recommendation . . . to accelerate the practical realization of the goal of de facto or substantive equality of women with men in all areas of the Convention.”); Brad R. Roth, The CEDAW as a Collective Approach to Women’s Rights, 24 MICH. J.Intl’L L. 187, 203 (2002) (“[A] line between ‘direct’ and ‘indirect’ interferences with the range of chosen activity seems not only arbitrary, but potentially obfuscatory, absolving politics of responsibility for the greater part of the real impediments to chosen activity, and characterizing as ‘free’ a polity in which individuals are as effectively constrained, perhaps, as those in an unfree polity.”).

30. See Stein, supra note 3 at 95-101 (describing the disability human rights paradigm).

increasingly and creatively by social rights advocates, all of whom view human rights as “indivisible and interdependent and interrelated.” Yet divergences remain in the practice of these categories of human rights as does the preference for civil and political rights concepts within the Global North. WASH rights are a good example of this continuing hierarchy. International law has recognized for over forty years that, regardless of the stage of a country’s development, every person has a right to drinking water in quantities and of a quality equal to basic needs. Such recognition is reflected in three core human rights treaties as well as several international instruments that predate the CRPD’s drafting. Nevertheless, as part of the less embraced, allegedly development-based province of social rights, WASH rights have been

(rejecting the notion that social rights are of a lesser priority than civil and political rights).

32. For the work of the NGO ESCR-net, which has been at the forefront of these efforts, see ESCR-NET, https://www.escr-net.org/strategiclitigation. Recent academic advocacy includes ALICIA YAMIN, WHEN MISFORTUNE BECOMES INJUSTICE: EVOLVING HUMAN RIGHTS STRUGGLES FOR HEALTH AND EQUALITY (2020); THE HUMAN RIGHT TO WATER: THEORY, PRACTICE AND PROSPECTS (Malcolm Langford & Anna F.S. Russell eds., 2017).

33. World Conference on Human Rights, Vienna Declaration and Programme of Action, U.N. Doc. A/CONF. 157/23 (June 25, 1993); see also INTERNATIONAL HUMAN RIGHTS IN CONTEXT, supra note 22 (“The interdependence principle, apart from its use as a political compromise between advocates of one or two covenants, reflects the fact that the two sets of rights can neither logically nor practically be separated in watertight compartments.”).

34. Primarily, for example, as to their justiciability. See Malcolm Langford, THE JUSTICIABILITY OF SOCIAL RIGHTS: FROM PRACTICE TO THEORY, in SOCIAL RIGHTS JURISPRUDENCE: EMERGING TRENDS IN INTERNATIONAL AND COMPARATIVE LAW 3 (Malcolm Langford ed., 2008) (noting that adjudicatory bodies increasingly are recognizing and upholding social rights but that the battle remains an uphill one). For a helpful practice guide, see OFFICE OF THE UNITED NATIONS HIGH COMM’R FOR HUMAN RIGHTS, KEY CONCEPTS ON ESCRs - CAN ECONOMIC, SOCIAL AND CULTURAL RIGHTS BE LITIGATED AT COURTS?, https://www.ohchr.org/en/issues/esrc/pages/canescribebiligatedatcourts.aspx.

35. See, e.g., ARYEH NEIER, TAKING LIBERTIES: FOUR DECADES IN THE STRUGGLE FOR RIGHTS xxix-xxx (2003) (assertion by creator and former president of the Open Society Institute that economic, social, and cultural rights are not legitimate rights); Kenneth Roth, DEFENDING ECONOMIC, SOCIAL AND CULTURAL RIGHTS: PRACTICAL ISSUES FACED BY AN INTERNATIONAL HUMAN RIGHTS ORGANIZATION, 26 HUM. RTS. Q. 63 (2004) (explaining that NGOs are most effective, and so concentrate on, using shaming methods against clear first generation rights violations).

36. See generally THE HUMAN RIGHT TO WATER, supra note 32 (analyzing the right to water).


40. See generally SOCIAL RIGHTS JUDGMENTS AND THE POLITICS OF COMPLIANCE: MAKING IT STICK (Malcolm Langford, César Rodríguez-Garavito & Julieta Rossi eds., 2017); DEVELOPMENT AS A HUMAN RIGHT: LEGAL, POLITICAL AND ECONOMIC DIMENSIONS (Bárd Anders Andreassen & Stephen P.
generally marginalized, including at the AHC.41

Prioritizing the interests of developed states over those of developing states likewise reflects the colonial history between these groups. The Global North invaded and actively denied human rights to their subjects while justifying their repression on the grounds of “civilizing” these populations.42 In Australia, strikingly, indigenous people were not regarded as human and, unlike cattle, were excluded from the national census until 1967.43 The suppression and exploitation of aboriginal groups in the name of human rights, including the whitewashing of their culture and practical achievements,44 remain a major contributing factor to continuing social inequalities.45 International human rights laws classically prioritize individual rights over collective rights, yet many Global South cultures construct rights through a collective or community frame.46 More broadly, scholars have critiqued the application of contemporary human rights as colonial and advocated instead for a post-colonial agenda.47

The economic and political strength of the Global North has meant that international disability norms have been developed and implemented by Global North disability advocates and experts, as well as by the states in which they live. Consequently, many of these norms fail to address the lived experiences of persons with disabilities in the developing parts of the globe.48 Global North

Marks eds., 2010).

41. See discussion infra Part II.B.
44. See BRUCE PASCOE, DARK EMU: ABORIGINAL AUSTRALIA AND THE BIRTH OF AGRICULTURE (2014) (documenting and describing sophisticated pre-colonial agricultural systems that have been papered over in the rhetoric of colonial mythologizing bringing “civilization” and industry to “primitive” persons).
46. See generally CAROLYN SMITH-MORRIS, INDIGENOUS COMMUNALISM: BELONGING, HEALTHY COMMUNITIES, AND DECOLONIZING THE COLLECTIVE (2019) (illustrating the value indigenous cultures place on communal values and how they can be used to challenge the hyper-individualism of much of the globe). Cf. Matthew S Smith & Michael Ashley Stein, Connecting the Right of Collective Legal Capacity by Indigenous Peoples with the Right of Individual Legal Capacity by Persons with Disabilities, 9 INT’L HUM. RTS. L. REV. 147 (2020) (arguing that the concept of indigenous collective rights should be transposed to the context of persons with disabilities).
48. See Shaun Grech, Disability and the Majority World: A Neo-colonial Approach, in DISABILITY AND SOCIAL THEORY: NEW DEVELOPMENTS AND DIRECTIONS 52 (Dan Goodley, Bill Hughes & Lennard Davis eds., 2012) (arguing that Global North theories and tenets about disability are consistently exported to a Global South it never intended to address); Meekosha, supra note 43 at 678
disability advocates have developed their models to repudiate the controlling roles of charities and the health profession. By contrast, many in the Global South have a vastly different experience of disablement: they are not supported by charities and are unable to access health services.\textsuperscript{49} Furthermore, Global North theories of disablement fail to consider the disabling impact of colonialism on previously more ability-inclusive cultures,\textsuperscript{50} or the many innovations arising from the Global South.\textsuperscript{51} Accordingly, differences in cultural and social contexts mean that norms developed in the Global North are not readily acceptable to the Global South.\textsuperscript{52} Thus, rather than viewing disability and related advocacy through a Global North lens, it is critical to understand how persons with disabilities in the Global South view ability diversity and to help create a more representative agenda.\textsuperscript{53}

B. The CRPD as a Global South Endeavor

The impetus for the CRPD came from the Global South. Mexico proposed, and Brazil seconded, a motion at the U.N. General Assembly that a disability-specific treaty be developed. The resulting General Assembly resolution established an AHC not to draft a human rights instrument but rather to “consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities.”\textsuperscript{54} The resolution was “open to the participation of all Member States and observers of the United Nations,”\textsuperscript{55} and encouraged NGOs (and by inference, DPOs) to attend as “contributors.”\textsuperscript{56}

(agreeing that a process of intellectual decolonization must take place if [people with disabilities] in the Global South are to be included in scholarly thinking, theoretical developments and disability studies emancipatory projects). \textit{See generally SARAH DAUNCEY, DISABILITY IN CONTEMPORARY CHINA: CITIZENSHIP, IDENTITY AND CULTURE (2020); ANITA GHAI, RETHINKING DISABILITY IN INDIA (2019)}.

\textsuperscript{49} This difference exists because health services are far more limited in the Global South than in the Global North. \textit{See, e.g.,} Justine Aenishânsîn, Abu Amara & Lina Magnusson, \textit{Experiences Accessing and Using Rehabilitation Services for People with Physical Disabilities in Sierra Leone, Disability and Rehabilitation} 1 (2020) (reporting on thirty-eight interviews with persons with disabilities across Sierra Leone that found participants faced multiple barriers to accessing and using rehabilitation services).

\textsuperscript{50} Many long-standing beliefs in the Global South are arguably more progressive than those held in the Global North. Some colonized cultures, such as the Maori in New Zealand, had a more inclusive approach to disability as diversity prior to the arrival of Christian missionaries, who taught them that disability was associated with sin. \textit{See} Huhana Hickey, \textit{A Personal Reflection on Indigeneity, Colonisation and the CRPD, in RECOGNISING HUMAN RIGHTS IN DIFFERENT CULTURAL CONTEXTS: THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES} 79 (Emily Julia Kakoullis & Kelley Johnson eds., 2020).

\textsuperscript{51} \textit{See generally} Harpur & Stein, \textit{supra} note 8.

\textsuperscript{52} Take, for example, the dispute in the AHC over the right to full capacity. Global North disability rights advocates argued that “there is no such thing as substituted decision making,” because it amounts to guardianship. Global South states, including China, maintained the opposite view, arguing that the right to exercise capacity could not always be exercised, even with the support of family. \textit{See} Michael Ashley Stein, \textit{China and Disability Rights}, 3 LOYOLA L.A. INT’L & COMP. L. REV. 7, 19 (2010).


\textsuperscript{54} G.A. Res. 56/168 (Dec. 19, 2001).

\textsuperscript{55} \textit{Id. at} ¶ 1.

\textsuperscript{56} \textit{Id. at} ¶ 3.
NGOs have a long history of contributing to U.N. negotiations by providing expertise informally to U.N. and state representatives and are permitted to attend relevant events when holding consultative status with the U.N.’s Economic and Social Council (ECOSOC). One week before the first AHC meeting, the General Assembly confirmed NGO attendance rights, and also extended them by permitting other non-accredited organizations to apply for AHC meeting accreditation. Although it was a positive development, this situation was complicated by the fact that only seven DPOs held ECOSOC consultative status, and all were based in the Global North. Nevertheless, building on the broader accreditation process, and at the instigation of Ambassador Gallegos and his invocation of the credo “nothing about us without us,” the AHC authorized DPOs (as NGOs) to attend all public meetings, make statements, receive copies of all official documents, distribute their own documents, and select their own spokespeople, “taking into account equitable geographic representation and diversity.” Consequently, the CRPD drafting process launched a new participatory dynamic by opening the door for the inclusion of DPOs, and in doing so became the first instance in U.N. human rights treaty drafting history where affected stakeholders were formally involved in drafting processes.

The participatory dynamic became influential early on in practice. The second AHC meeting decided that a Working Group would be formed to prepare a draft treaty for development through the remaining sessions. The rules of who


64. U.N. DEP’T OF ECON. & SOC. AFFS., Ad Hoc Committee on a Comprehensive and Integral
could participate in the drafting were debated, and the seven DPOs with ECOSOC consultative status were initially the only NGOs considered.\textsuperscript{65} Lobbying resulted in this number being expanded to twelve, and a number of criteria were advanced for determining which organizations should be selected, including whether the organization was controlled and run by persons with disabilities; whether it was rights-based or a service delivery entity; and whether it was globally representative. Similarly, discussions turned to whether the individuals present at the session would be representative of the disability community.\textsuperscript{66} Geographical representation became a central tenet, ensuring that as many persons with disabilities as possible from the Global South were represented during the drafting process.\textsuperscript{67}

The participatory dynamic remained present throughout the drafting process and “animates the CRPD.”\textsuperscript{68} Notably, Article 3 includes among the Convention’s general principles “full and effective participation and inclusion in society” and “equality of opportunity.”\textsuperscript{69} The CRPD’s general obligations require states parties to closely consult and involve persons with disabilities in decisions, policies, and laws concerning them “through their representative organizations” and to promote DPO development.\textsuperscript{70} Article 33(3) connects this state-related DPO involvement with a role in conjunction with the CRPD Committee in implementing and monitoring the Convention.\textsuperscript{71} Collectively, these articles are intended to ensure that persons with disabilities, through DPOs, can fully participate in the CRPD’s implementation and monitoring.\textsuperscript{72} The extent to which the voices of persons with disabilities are heard on the international and domestic stages is influenced by whether they are thought to be represented by a DPO that meets the Convention’s mandates—a remit that the CRPD Committee interpreted in 2018 through a General Comment on participation.\textsuperscript{73}

The desire for the adequate representation of persons with disabilities likewise influenced the development of Article 34, which governs the creation

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\textsuperscript{65} See Lord, supra note 60, at 98.
\textsuperscript{66} Id. See generally HUMAN RIGHTS AND DISABILITY ADVOCACY, supra note 14, passim.
\textsuperscript{67} See Lord, supra note 60, at 98 (analyzing how the disability community determined who could legitimately represent them in the AHC); Woodburn, supra note 61, at 77-78.
\textsuperscript{68} Lord & Stein, supra note 12, at 168.
\textsuperscript{69} CRPD, supra note 1, at arts. 3 (c), (e).
\textsuperscript{70} Id. at arts. 4(3), 4(1)(i).
\textsuperscript{71} Id. at art. 33(3).
\textsuperscript{73} See Comm. on the Rights of Persons with Disabilities, General Comment 7 on the Participation of Persons with Disabilities, U.N. Doc. CRPD/C/GC/7 (Nov. 9, 2018) [hereinafter General Comment 7]; see also infra discussion, Part III.A.
and remit of the CRPD Committee. Various proposals were presented for ensuring sufficient inclusion of persons with disabilities in the enforcement of the Convention. These included suggestions for having the entirety, majority, and/or Chair and leadership of the Committee be persons with disabilities. These innovative proposals arose during a time when a general atmosphere of reform and a desire to respond to critiques of human rights treaty monitoring were underway at the United Nations. Ultimately, the CRPD Committee’s structure was resolved during the seventh AHC session with the determination that it would be substantially similar to existing treaty body committees, including the requirement that the appointed expert members be geographically and culturally representative. Arguably, a person cannot be an expert on global disability rights unless they have some understanding of how disability is experienced by persons with disabilities around the world. Accordingly, the CRPD provides a participatory framework through which the views of Global South persons with disabilities can directly influence the CRPD Committee and the development of global disability norms.

II. GLOBAL SOUTH INTERESTS ARE MINIMIZED AT THE AD HOC COMMITTEE

The influence and presence of Global South DPOs diminished over the five years of the AHC drafting process. The concurrent dominance of Global North DPOs manifested in their successful agenda on independent living, which prioritized deinstitutionalization and deemphasized the role of family. Meanwhile, developed states had little interest in advancing WASH rights, and largely ignored the disabling impact of landmines.

A. The Declining Influence of Global South Disabled Peoples’ Organizations

Eight full AHC sessions were held in New York from 2002 to 2006, with each session lasting two weeks. Throughout the negotiations, state


75. See Stein & Lord, supra note 74, at 701-04.

76. Id. at 692.


78. CRPD, supra note 1, at art. 34(4) (mandating that “consideration being given to equitable geographical distribution, representation of the different forms of civilization.”).

79. The exceptions to an annual two-week-long AHC convening were that two sessions were held in both 2005 and 2006, and a Working Group session was held in 2004. In addition, and not often noted in the literature, a one-day ninth AHC session was convened in December 2006 to formally approve the final CRPD text. See U.N. DEPT’T ECON. & SOC. AFFAIRS, Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and United Nations Enable, Promotion of the Rights and Dignity of Persons with Disabilities, https://www.un.org/development/desa/disabilities/resources/ad-hoc-committee-on-a-comprehensive-and-integral-international-convention-on-the-protection-and-promotion-of-the-rights-and-dignity-of-persons-with-disabilities.html.
representatives relied heavily on DPOs for technical and practical information about the lived experiences of persons with disabilities. This reliance enabled DPOs to help make the CRPD text relevant to the persons with disabilities they represented.  

However, resource limitations curtailed the participation of DPOs generally and had a significantly detrimental impact on those from the Global South. In contrast to U.N. Member States, which have permanent delegations based in New York, most DPOs had to make a concerted effort to travel to participate. Unsurprisingly, DPOs from the Global South lacked the financial resources and state support of their Global North counterparts and often had greater relative participation costs. In response, the General Assembly established a voluntary fund to support DPO involvement from less developed countries. The fund partially sponsored the participation of nineteen Global South delegates from twelve states to attend the third AHC session. Although this was a positive development, the inadequacy of the financial support was noted by the chairs of both the fourth and sixth AHC sessions. These participation barriers were even more prohibitive for persons with disabilities with intersecting attributes. For some groups, these intersecting attributes transformed the AHC process. For example, advocates promoting the interests of indigenous persons with disabilities reported that they lacked support from their national governments, failed to secure other funding, and as a consequence were largely absent during most of the AHC sessions. Ultimately, these  

80. See Stein & Lord, supra note 12, at 27, 34.  
81. Among required expenses were hotel or other accommodation costs, plus travel and living costs, for two weeks in New York.  
82. An economy class flight from the South Pacific to New York, for example, can be five times more expensive than one from the United Kingdom, and six times more expensive than one from Canada.  
83. G.A. Res. 57/22 (Dec. 18, 2002).  
84. The delegates who received funding were nationals of Argentina, Colombia, Costa Rica, Ecuador, Guinea, India, Jamaica, Lebanon, the Philippines, South Africa, the United Republic of Tanzania, and Uganda. See Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, Use of the United Nations Voluntary Fund on Disability to Support the Participation of Non-governmental Organizations and Experts, U.N. Doc. A/AC.265/2004/3 (May 17, 2004).  
85. See U.N. DEP’T OF ECON. & SOC. AFFS., Ad Hoc Committee, Daily Summary of Discussion at the Fourth Session of the U.N. Convention on the Human Rights of People with Disabilities Ad Hoc Committee, Vol. 5, no. 10 (Sept. 3, 2004), https://static.un.org/esa/socdev/enable/rights/ahc4sum03sep.htm (noting by the Chair that the Voluntary Fund was “totally depleted.”); U.N. DEP’T OF ECON. & SOC. AFFS., Daily Summary of Discussion at the Sixth Session of the U.N. Convention on the Human Rights of People with Disabilities Ad Hoc Committee, Vol. 7, No. 1 (Aug. 1, 2005), https://static.un.org/esa/socdev/enable/rights/ahc6sum1Aug.htm (urging by the Chair that the Convention be drafted as quickly as possible “not only to save resources for the organizations involved, but also to enshrine the rights of people with disabilities as soon as possible. Continuity, participation, and institutional knowledge may be lost if negotiations continue for too long.”).  
86. Harpur & Stein, supra note 45, at 1 (analyzing the experiences of indigenous persons with disabilities during the AHC). Persons with intersecting attributes can find that the presence of disability and another marginalized attribute, such as race, sex, national, ethnic, indigenous or social origin, or age, can lead to compounding and heightened inequalities. At the same time, the presence of disability means that the person has different experiences than those with other marginalized attributes without a disability. Further, the intersecting inequalities associated with these attributes can result in heightened vulnerabilities.  
circumstances contributed to the CRPD failing to appropriately address the intersecting vulnerabilities associated with indigeneity or the different ways in which such cultures respond to diversity. To note three examples, Article 12 (equal recognition before the law), Article 24 (education), and Article 30 (participation in cultural life, recreation, leisure, and sport) contain no references, respectively, to highly salient issues of indigenous notions relating to property and its ownership and disposal; the use of language in education; and culture in all its myriad aspects.

Thus, although Global South DPOs, and notably India, were predominant in the first AHC session,88 the tide soon reversed, such that by the third AHC, many Global South states had no DPO representation89 and the majority of participants came from the Global North.90 At the same time, developed states increasingly sponsored their own national DPOs,91 a circumstance that in and of itself was a positive development but that further skewed the representative imbalance.

B. Power of Global North Disabled Peoples’ Organizations: Deinstitutionalization over Families

Powerful lobbying by well-resourced DPOs from the developed world ultimately shaped Article 19 of the CRPD in favor of deinstitutionalizing persons with disabilities from congregate settings (a Global North priority) over focusing on family-based support (a Global South reality).

Historically, states across the globe have removed, isolated, dehumanized, and warehoused persons with disabilities—and especially those with intellectual and psychosocial disabilities—in a range of large congregate settings, under different euphemisms, collectively referred to as “institutions.”92 Once

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90. Id.


92. Among these euphemisms are psychiatric hospitals, day care centers, orphanages, old age homes, and social welfare homes. One scholar refers to these entities as “the disability gulag.” Liat Ben-Moshe, *The Institution Yet to Come: Analyzing Incarceration Through a Disability Lens*, in *THE DISABILITY STUDIES READER* 132 (Lennard J. Davis ed., 4th ed. 2013). Most of the respective populations do not empirically fit the nomenclature. For example, the vast majority of children with disabilities in orphanages have parents. See Eric Rosenthal, *The Right of All Children to Grow Up with a Family under International Law: Implications for Placement in Orphanages, Residential Care, and Group Homes*, 25
involuntarily admitted, persons with disabilities are separated from their families and communities and systematically and continually abused to a level that the U.N. has categorized as torture and inhuman treatment. To illustrate, Disability Rights International (DRI) reports that in Mexico, survivors from institutions have been trafficked for sex and used as forced labor. In Ukraine, persons with disabilities are sold from orphanages to trafficking rings, used for organ harvesting, and forced into child pornography and prostitution. And in Guatemala, female psychiatric hospital patients are repeatedly raped and forced into drug and alcohol trafficking.

Institutionalization is a concern worldwide, yet economics and culture translated into the warehousing of persons with disabilities both initially, as well as more systemically, in the Global North. In response, organized resistance to congregate care arose in the developed world, where these warehouses proliferated—first in the form of the deinstitutionalization movement, then through the Independent Living Movement, with both of these movements originating in the United States.

The deinstitutionalization movement was precipitated by parents advocating on behalf of their children with disabilities parallel to self-advocacy groups comprising individuals with intellectual and psychiatric disabilities campaigning on their own behalf. Parents of people with intellectual disabilities living in institutions pressured states to provide humane living options for their loved ones through advocacy and lawsuits, several of which

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98. See, e.g., Kieran Murphy & Eleanor Bantry-White, Behind Closed Doors: Human Rights in Residential Care for People with an Intellectual Disability in Ireland, 36 DISABILITY & SOC’Y 750 (2020).


100. See generally ALLISON C. CAREY, PAMELA BLOCK & RICHARD K. SCOTCH, ALLIES AND OBSTACLES: DISABILITY ACTIVISM AND PARENTS OF CHILDREN WITH DISABILITIES (2020). See also Robinsue Frohboese & Bruce Dennis Sales, Parental Opposition to Deinstitutionalization, 4 LAW & HUM. BEHAVIOR 1, 1-2 (1980) (noting the momentum for the deinstitutionalization movement emanated in large part from parental advocates).
were adjudicated in their favor by the U.S. Supreme Court.\textsuperscript{101} This pressure, in combination with advocacy by persons with intellectual disabilities seeking to be freed from institutions\textsuperscript{102} and high-profile journalistic exposés of the horrors of Willowbrook and other institutions, led to the reform and closing of many of these congregate care places.\textsuperscript{103}

Beginning in the 1970s, people who had been institutionalized due to psychiatric diagnoses joined forces to advocate for mental health-based human rights, coming to refer to themselves as psychiatric survivors.\textsuperscript{104} Within this movement, institutions and psychiatric treatment were cast as abusive, and political pressure was focused on liberating individuals from confinement in mental health facilities and transitioning them into community-based living arrangements.\textsuperscript{105} The psychiatric survivor movement was enabled by the 1980s-era economic theory, endorsed by the Reagan administration, that it was less expensive to have these individuals living in the community than in asylums; consequently, many people were released, sometimes without community-based support and to disastrous effect.\textsuperscript{106}

The Independent Living Movement began in 1972 as an initiative by Berkeley students with physical disabilities to enable them to attend university without living in institutional settings.\textsuperscript{107} The subsequent, formalized Center for Independent Living provides peer support and training for support workers and serves individuals with all manner of disabilities.\textsuperscript{108} With its leadership, the Independent Living Movement concept spread across the United States.


\textsuperscript{106} See generally Anne E. Parsons, From Asylum to Prison: Deinstitutionalization and the Rise of Mass Incarceration After 1945 (2018) (arguing that moving people from asylums without adequate support led to radical increases in jail populations, especially among people of color); George Paulson, Closing the Asylums: Causes and Consequences of the Deinstitutionalization Movement (2012) (arguing that closing asylums precipitously without adequate community-based support caused more harm than good).


hence to Canada,109 Europe (via Sweden),110 and Japan.111

However, due to both cultural and economic differences, the Independent Living Movement has not gained much purchase in the Global South.112 Hence, at the AHC, Global North advocates focused on deinstitutionalization, independent living, and individual autonomy, while Global South advocates adopted a more collective approach.113 The interdependent focus in African cultures, which shifts how disablement is culturally understood, illustrates this conceptual divide.114 While there is great diversity among African states and cultures, families are generally more important than individuals, and how individuals interact within the family unit is an important consideration.115 Thus, an African understanding of disability “is concerned with the meaning that biological deviations have for society, and for the family.”116 Put another way, African understandings of disability incorporate Ubuntu (solidarity), which elevates care and interdependency over individual agency.117

In contrast to the collective Global South approach, the AHC drafting process around the right to live independently was heavily influenced by the Global North’s history and experience of independent living. This was particularly true of the effective activism of the World Network of Users and Survivors of Psychiatry (WNUSP), an organization of psychiatric survivors.118 Their efforts in shaping an article on independent living (and, inter alia, on psychiatric deinstitutionalization) were championed by Tina Minkowitz,119 who


111. See Reiko Hayashi & Masako Okuhira, The Independent Living Movement in Asia: Solidarity from Japan, 23 DISABILITY & SOC’Y 417 (2008).

112. Shoji Nakanishi, DPI ASIA-PACIFIC CAPACITY BUILDING SEMINAR Independent Living Movement in Developing Countries, (2004), http://www.dpiap.org/national/doc/IL_in_developing_country.doc (noting that the independent living movement has struggled to gain traction in developing countries); Joshua T. Malanga, The African View of Independent Living, INDEP. LIVING INST. (2003), https://www.independentliving.org/docs6/malanga2003.html (noting that, unlike Western countries, where there are welfare and services, conditions in Africa lead to a very different independent living movement).

113. Faye Ginsburg & Rayna Rapp, Family, in KEYWORDS FOR DISABILITY STUDIES 81 (Rachel Adams ed., 2015) (arguing that interdependence is a primary focus of many DPOs in the Global South).


118. WORLD NETWORK OF USERS AND SURVIVORS OF PSYCHIATRY (date), http://wnusp.net/.

119. For an autobiographical account, see Tina Minkowitz, CRPD AND TRANSFORMATIVE EQUALITY, 13 INT’L J.L. CONTEXT 77 (2017).
also co-chaired the International Disability Caucus, an alliance of DPOs at the AHC speaking with “one voice” on behalf of the global disability rights community.  

WNUSP’s advocacy began well before the first AHC session at an expert meeting in Mexico City to discuss the potential for drafting a convention. This advocacy persisted via numerous written submissions and oral interventions at AHC sessions and has continued throughout the CRPD’s implementation.  

WNUSP critically influenced the CRPD process as a means of liberating “our people from institutions.”

The Global North’s individual rights focus clashed with the Global South’s communal and family focus at the AHC. As DPOs from the developing world became less present, Global South states increasingly represented the views of persons with disabilities—and their jointly held culture—from their jurisdictions. Developing states repeatedly underscored their desire to distinguish between the notion of living independently and the model of the Independent Living Movement put forward by Global North DPOs. For example, Thailand stated in the third, fourth, and fifth AHC sessions that it supported a right to live independently, but that it was not endorsing any particular movement. This position was supported by other states such as Costa Rica, which regarded independent living as a “lifestyle and not referring to the ‘Independent Living Movement.’”

Kenya expressed a preference for using broader terminology that did not “apply only to certain places or regions,” and South Africa concurred. In the fifth AHC session, the coordinator confirmed that there was consensus that the right in the CRPD drew from discussions in the sessions and was not an endorsement of the Independent Living Movement.

Likewise, the Global North and Global South disagreed on whether institutionalization was ever excusable. Global North DPOs firmly took the view that all persons with disabilities should have a right to be politically empowered


122. Id. at 11.

123. OCHE ONAZI, AN AFRICAN PATH TO DISABILITY JUSTICE 45-53 (2020) (noting the distinction between African notions of community living and the independent living movement, which emerged from the United States).


125. Daily Summary of Discussion at the Fourth Session, supra note 124.

126. Id.

127. Id.

128. Daily Summary of Discussion at the Fifth Session, supra note 124.
to control where they live and what services they receive, and that the existence of institutions was a per se denial of rights, even if persons with disabilities are not forced to live in them. Where Global North DPOs argued that institutionalization was almost certainly a breach of human rights, a less hostile view of institutions was adopted by some Global South DPOs. Disabled Peoples’ International Latin America asked, if “society cannot protect its disabled children, then who can it protect?” The submission went on to explain that, “in developed countries institutionalization should be eliminated. But for families living in remote areas of developing countries like the rain forest or the Andes, their economic situation is such that children with disabilities will be abandoned or cannot survive, and institutionalization may be the only option for a better standard of living.”

Ultimately, the CRPD text focuses on individual living rights. Article 3 acknowledges “the freedom to make one’s own choices” and “full and effective participation and inclusion in society.” Article 19 entitles persons with disabilities to live independently in the community as autonomous agents who possess the right to decide where and with whom they wish to live. When persons with disabilities elect to live with their families, Article 28 requires that states parties ensure they have an adequate standard of living and, in situations of poverty, to provide assistance with disability-related expenses. Because most families seek more than adequacy and avoidance of poverty, Article 28 falls short of helping realize equality in the lived experiences of persons with disabilities who live with their families.

C. Neglecting WASH

Humans require clean water to sustain healthy lives. Absent appropriate sanitation, disease flourishes and water supplies are contaminated. United
Nations Water reports that 2 billion people lack access to safely managed drinking water services, that 3.6 billion people lack safely managed sanitation services, and that almost all of these individuals are in developing countries. The global consequences are dire: over 800,000 people die each year from unsafe water and sanitation, with the World Health Organization observing that the “mortality rate in the African Region due to unsafe WASH services is four times the global rate.” By contrast, WASH is rarely a concern in the Global North.

Persons with disabilities are more likely to have their WASH rights denied. While accurate figures on the percentage of individuals with disabilities denied access to clean water or sanitation are not available, research demonstrates that this group frequently is less able to access WASH than are others in their communities and is thus more likely to acquire additional impairments or die. Similarly, a report by an independent U.N. expert found that a range of minority groups, including persons with disabilities, experience discrimination that reduces sanitation access. This disproportionate impact is well illustrated in the context of refugees with disabilities. Field studies uniformly confirm that they are not accommodated in terms of food distribution, equitable access to water, and other necessities, especially when living in camp settings.

Numerous obstacles prevent ready access to WASH. Physical barriers include the placement of latrines at considerable distance from camp living spaces and the use of infrastructure with narrow entrances or steps, slippery floors, lack of inside space, and an absence of grab bars to assist with balance. Latrine location also can mean the difference between safety and sexual violence for women and girls with disabilities if the latrines are remote or lack lighting. Likewise, the

water_sanitation_health/publications/drinking-water-quality-guidelines-4-including-1st-addendum/en/.  
143. Jacqueline Noga & Gregor Wolbring, The Economic and Social Benefits and the Barriers of Providing People with Disabilities Accessible Clean Water and Sanitation, 4 SUSTAINABILITY 3023, 3023 (2012) (noting that access to clean water and sanitation is “a major challenge faced by disabled people around the world, although concrete numbers do not exist”).  
149. See Michael Ashley Stein & Janet E. Lord, Human Rights and Humanitarian Assistance for Refugees and Internally Displaced Persons with Disabilities, in ASPECTS OF DISABILITY LAW IN AFRICA
positioning of clean water distribution centers disproportionately impacts women and girls with disabilities due to gendered expectations that they should feed and care for their families. These encumbrances are more daunting when people with disabilities are separated from family and peers who would otherwise perform important support roles.

Individuals with disabilities encountering these issues overwhelmingly live in the developing parts of the world. Thus, although WASH rights are equally essential to people worldwide, the need for rights protection and intervention is dramatically greater in the Global South. Despite the substantial lack of WASH across the developing world, as well as the precedents and innovations that could have been cited, Global South states (and, for that matter, DPOs) surprisingly gave almost no emphasis to WASH during the AHC negotiations.

The right to water was not raised during the initial session of the AHC, nor in the submitted documents. And, although the Bangkok Recommendations—which included a universal right to water—were presented to the second session of the AHC, and again included in the list of documents in the Working Group Session that transpired between the second and third AHC sessions, this strong position was never again raised, and thus gained no traction. Instead, the Working Group’s draft included an equal right to water. This remained the standard, with Argentina, Chile, South Africa and Vietnam each supporting the equal-access approach during the third AHC Session. Opposition to a general (rather than an equal) right to clean water was prominent from Japan, and jointly from Ireland and the European Union. By the seventh AHC session, the discussion had shifted from whether a right to water should be included to where an equal right to access water should appear in the text. Moreover,

150. See Stein & Lord, supra note 149, at 407-08.
152. See, e.g., Rachel Roche, Robert Bain & Oliver Cumming, A Long Way to Go—Estimates of Combined Water, Sanitation and Hygiene Coverage for 25 Sub-Saharan African Countries, 12 PLOS ONE 1, 1 (2017) (reporting that an estimated 921 million people lacked basic water, sanitation, and hygiene coverage).
154. Id.
157. Id. (arguing, erroneously, during the third session that a general right to water should not be included in a treaty because “this would be the first time this language appears in any [human rights] Convention”).
158. Id. (supporting mistakenly “deleting ‘access to clean water’” on the ground that “the ICESCR does not address clean water”).
despite the intimate linkage between clean water and sanitation, India was the only Global South country to raise a right to sanitation, arguing that “so much of disability is related to malnutrition, infectious diseases, poor sanitation, [and] poor delivery practices.”¹⁶⁰

Ultimately, the totality of WASH rights was inserted into Article 28, which addresses adequate standards of living and social protection, and requires that states “ensure equal access by persons with disabilities to clean water services.”¹⁶¹

D. Ignoring Landmines

Landmines used in armed conflict and war pose a significant threat of disablement or death to people in the Global South.¹⁶² The production of landmines continues in the Global North.¹⁶³ Public relations and security risks reduce the visibility of the trade in landmines, but public procurements illustrate

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¹⁶¹ CRPD, supra note 1, art. 28(2)(a); see also Kevin Cremin, Article 28: Adequate Standard of Living and Social Protection, in THE U.N. CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES: A COMMENTARY supra note 15, at 808, 818 (noting that “the right to water was not explicitly included in Article 25, which focuses on health, but, as a compromise, access to clean water services was included instead” in Article 28).

¹⁶² Martin Barber, Dir. of U.N. Mine Action Serv., Dep’t of Peacekeeping Operations, Statement at the Second Session of the Ad Hoc Comm. on a Comprehensive and Integral Int’l Convention on Protection and Promotion of the Rights of Persons with Disabilities (June 16-27, 2003), https://static.un.org/esa/socdev/enable/rights/contri20mbias.htm (noting that from Afghanistan to Yemen, most landmine survivors lack access to adequate medical care, rehabilitation services, trauma care, and employment opportunities. Even when physical rehabilitation needs are “fairly well covered,” as is the case, for example, in Cambodia—one of the most highly landmine-contaminated countries in the world and one with a very long mine action history—discrimination or other limitations can utterly impede the social and economic reintegration of survivors. In Cambodia, only twenty percent of persons with disabilities enjoy a satisfactory economic situation. What they need most are jobs.). See also International Campaign to Ban Landmines, Why Landmines Are Still a Problem, http://www.icbl.org/eng/prob/problem/why-landmines-are-still-a-problem.aspx (“The biggest stockpiles of antipersonnel landmines are held by: Russia, Pakistan, India, China, and the United States.”). Global North countries hold some of the largest stock piles of landmines, whereas almost every country impacted by landmines is in the Global South. See International Campaign to Ban Landmines, Complete Mine Clearance, http://www.icbl.org/eng/finish-the-job/clear-mines/complete-mine-clearance.aspx (“The following States Parties to the Mine Ban Treaty were confirmed to be mine affected as of January 2018: Afghanistan, Angola, Argentina, Bosnia and Herzegovina, Cambodia, Chad, Chile, Colombia, Croatia, Cyprus, DRC, Ecuador, Eritrea, Ethiopia, Iraq, Jordan, Mauritania, Niger, Nigeria, Oman, Palau, Peru, Senegal, Serbia, Somalia, South Sudan, Sudan, Tajikistan, Thailand, Turkey, Ukraine, United Kingdom, Yemen, and Zimbabwe.”).

the billion-dollar nature of the landmines trade. Because almost every country impacted by landmines is in the developing world, these anti-personnel devices are an area where the interests of the Global North and Global South are at opposite ends.

The advocates who successfully lobbied for the adoption and signing of the Mine Ban Treaty turned their efforts to having landmine prevention included in the CRPD. Janet Lord, for example, was heavily involved in negotiating the Mine Ban Treaty and afterwards became a crucial advocate during AHC sessions. Even though the Landmine Survivors Network did not obtain consultative status, it provided financial and advocacy support by having experts and disability advocates come to New York to participate in the AHC process. Consequently, this issue was present from the early stages of the CRPD negotiations.

Early proposed drafts of the CRPD included references to landmines. For example, the submission by Venezuela to the second AHC session adopted a strong preventative approach to landmines, providing that “[s]tates parties shall take measures to prevent and reduce the incidence of disability.” Along the same lines, Eritrea called for the concept of prevention to be included, so that the CRPD would cover disabling situations like landmines and armed conflict.


165. See Kenneth Anderson & Monica Schurtman, The United Nations Response to the Crisis of Landmines in the Developing World, 36 HARV. INT’L L. J. 359, 361 (1995) (noting that landmines are a problem in approximately 60 countries and almost all of these are in the Global South). Similarly, thirty States Parties to the Mine Ban Treaty have indicated that they have significant numbers—hundreds or thousands—of landmine survivors for which they must provide care. With a few exceptions, these are Global South States. See AP MINE BAN CONVENTION, Assisting the Victims, https://www.apminebanconvention.org/status-of-the-convention/assisting-the-victims/.


169. Id.


Despite the lobbying by the Landmine Survivors Network and some Global South states, there was insufficient support to have landmines included in the CRPD. Instead, Article 11, which addresses situations of risk and humanitarian emergencies, generally requires proactive conduct by states parties to identify what measures are necessary to protect persons with disabilities in high-risk situations and to implement such schemes. While this is important, it is limited to preventing persons with disabilities from acquiring additional injuries during times of risk, and not in their day-to-day lives.

III. THE CRPD COMMITTEE AND THE GLOBAL SOUTH

Global South states numerically dominate the CRPD Committee and COSP, both of which have directives to realize disability and geographical representation. Yet the CRPD Committee’s efforts to make the rights to independent living, WASH, and landmine removal more responsive to the developing world have been tentative and uneven. To honor its institutional duties, the Committee must use its procedural and judicial authority to better empower the rights of the 800 million persons with disabilities living in the Global South.

A. Good Governance and Global South Perspectives

The structure and mandate of the CRPD promotes geographical representation and hence responsiveness to those individuals’ concerns. The CRPD Committee has a wide ambit in managing its own affairs. It is empowered to decide on guidelines applicable to the content of state reports and to establish and issue its own procedural rules. The procedural rules in fact help promote geographical representation. For example, Rule 5 requires that the

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172. Early proposed drafts of the Convention addressed landmines. For example, the submission by Venezuela for the second AHC session adopted a strong preventative approach to landmines. Daily Summary of Discussion at the Fourth Session, supra note 171. Article 9 of this draft convention provided that “States parties shall take measures to prevent and reduce the incidence of disability.” Id. Along the same lines, Eritrea called for the concept of prevention to be included so that the CRPD also covers situations that cause disability, such as landmines. Id. Relatedly, the Beirut Recommendations reference the impact of armed conflict more generally on causing disablement. While not specifically referencing landmines, the Recommendations draw attention to the fact that a number of difficulties continue to escalate within world societies and more specifically within Arab societies, including continuous wars and increasing poverty. Ad Hoc Comm. on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities, Beirut Declaration and Recommendations on the Elaboration of a Comprehensive and Integral Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities, Outcome of the Arab Regional Conference on Norms and Standards Related to Development and the Rights of Persons with Disabilities Held in Beirut from 27- 29 May 2003, U.N. Doc A/AC 265/CRP/12 (June 16-27, 2003), https://www.un.org/esa/socdev/enable/rights/a_ac265_2003_crp12.htm.

173. For an analysis of Article 11, see Stein & Lord, supra note 149, at 426 (“Failures in ensuring that humanitarian response and assistance to refugees and IDPs take the needs of disabled persons into account prompted the drafters of the CRPD to include a provision on protection in times of risk, including armed conflict and natural disasters.”).

174. Id., at art. 35(3).

175. CRPD, supra note 1, art. 34(10).

five-member Pre-Sessional Working Group be made up of members that reflect an equitable jurisdictional spread across the globe.\textsuperscript{177}

The importance of geographical representation is also reflected in the COSP, the CRPD body which elects members to the CRPD Committee.\textsuperscript{178} States who have either acceded to or ratified the CRPD are eligible to participate in the COSP.\textsuperscript{179} In every election to the CRPD Committee, the Global South has had a larger voting block than the Global North. The initial election commenced in October 2008 during the first COSP,\textsuperscript{180} at which time thirty-four Global South states had acceded to or ratified the CRPD (only eight states from the Global North had).\textsuperscript{181} This trend has continued through the thirteenth COSP session (delayed until December 2020 by the COVID-19 pandemic), at which point fifty-two Global North states and 107 Global South states had acceded to or ratified the CRPD.\textsuperscript{182}

Numerical dominance by developing nations at the COSP, where CRPD Committee Members are elected, has translated into representation on the Committee. This is in accord with CRPD Article 34(3)’s requirement that the Committee reflect an “equitable geographical distribution.”\textsuperscript{183} Beginning in 2008, when an initial twelve members were elected\textsuperscript{184}—of whom eight came from the Global South, and four from the Global North\textsuperscript{185}—the CRPD Committee has been dominated by members from the developing world. The Committee’s membership increased to eighteen\textsuperscript{186} in time for the third COSP’s elections, which resulted in a treaty body of eleven members from the Global South and seven from the Global North.\textsuperscript{187} The margin remained similar—ten to eight in favor of developing nations—following each of the 2012, 2014, 2016,

\textsuperscript{177} Id. at Rule 5.
\textsuperscript{178} CRPD, supra note 1, at art. 34(5).
\textsuperscript{179} Id., at art. 34(4).
\textsuperscript{180} See CRPD, supra note 1, at art. 34(6) (requiring the initial election to the CRPD Committee to occur no later than six months after the date of the treaty’s entry into force). The CRPD became operational on May 3, 2008. CRPD, supra note 1.
\textsuperscript{182} Id.
\textsuperscript{183} CRPD, supra note 1, at art. 34(2).
\textsuperscript{186} CRPD, supra note 1, at art. 34(3).
and 2018 elections. The 2020 elections increased the Global South Committee Members’ majority to twelve, in contrast to six from the Global North. Hence, the CRPD’s mandate for geographical representation has been manifested in practice in terms of CRPD Committee membership.

Despite this numerical advance, geographical representation does not guarantee that the interests of those with intersecting attributes are represented or that members understand and represent all issues impacting persons with disabilities within those states. Thus, although it is important for CRPD Committee membership to be broad, it also needs to be adequately resourced in order to draw upon DPOs and other experts to help inform their work on creating a more inclusive world.

B. The CRPD Committee’s Tentative and Uneven Approach to Global South Perspectives

The CRPD Committee’s Concluding Observations (COs) have been tentative and uneven regarding the rights to independent living, WASH, and landmine removal. These COs could have been more responsive to the Global South perspectives.

i. Independent Living

In relation to Article 19, the CRPD Committee has preferred to promote Global North independent living options and has been inconsistent, and even reluctant, to promote options involving persons with disabilities living with their families. This stands in contradiction to the CRPD Committee’s own recognition, in General Comment 5, that the right to independent living “reflects the diversity of cultural approaches to human living and ensures that its content is not biased towards certain cultural norms and values.” Moreover, the “right
must be effectively realized in different economic, social, cultural, and political contexts."\(^{191}\) That such diversity includes a right to live with family is recognized through General Comment 5’s requirements that states parties ensure that families are empowered to support family members with disabilities,\(^{192}\) ensure that housing is available for persons with disabilities living with their families,\(^{193}\) and provide support to families who care for persons with disabilities.\(^{194}\) General Comment 5 also notes that, similar to other caregivers or government agencies, families “sometimes exercise control and restrict an individual’s choices by acting as substitute decision makers.”\(^{195}\)

When the CRPD Committee’s COs are compared against General Comment 5, they evince greater reluctance to promote family living arrangements. Whereas the CRPD Committee has consistently addressed the right to live independently in the community in each one of its ninety-three COs relating to Article 19, except for that of Tunisia,\(^{196}\) it has addressed families in only twenty-six of these COs.\(^{197}\) Moreover, despite significant differences in how families operate in the Global North and Global South, the CO on Mexico is the only one to reference cultural diversity in its application of Article 19.\(^{198}\) Overall, the CRPD Committee has shown an uneven approach to Article 19, at times progressively maintaining that states empower persons with disabilities to live with their families, at times cautioning about the influence of families, and at other times issuing recommendations that reflect notions of the Independent Living Movement rather than Global South perspectives.

Several COs have made strong statements in favor of persons with disabilities’ rights to live with their families. The best example is the CO on Jordan, in which the CRPD Committee called upon that state to convey “information to persons with disabilities and their families on how to access support services and assistance that would enable them to live independently in accordance with their own choice and as part of the community and the family.”\(^{199}\) Similarly, the Committee expressed concern in the CO on Mauritius,

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191. Id.
192. Id. at ¶ 55.
193. Id. at ¶ 59.
194. Id. at ¶ 67.
195. Id. at ¶ 26.
196. See Concluding Observations of the Committee on the Rights of Persons with Disabilities, Tunisia, U.N. Doc. CRPD/C/TUN/CO/1 (April 15, 2011). At the time, Tunisia was in a transitional period following major civil unrest.
197. The CRPD Committee’s COs can be referenced at OHCHR, U.N. Treaty Body Database, Human Rights Bodies, CRPD, https://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx [hereinafter CRPD Committee COs].
198. Comm. on the Rights of Persons with Disabilities, Concluding Observations of the Committee on the Rights of Persons with Disabilities, Mexico, ¶ 44, U.N. Doc. CRPD/C/MEX/CO/1 (Oct. 3, 2014) [hereinafter CO on Mexico] (advising the state party to adopt “legislative, financial and other measures to ensure that persons with disabilities may live autonomously in the community...be culturally appropriate, enable beneficiaries to choose their lifestyle and place of residence and express their preferences and needs”).
pointing out that families, who were often the “sole base of support for persons and children with disabilities,” were given inadequate assistance and had their disabled members removed and placed in inappropriate living arrangements.”

The COs on the Republic of Korea, Senegal, and Vanuatu likewise recommended support to enable persons with disabilities to live with their families. In the COs on Ecuador, El Salvador, and Oman, the CRPD Committee recommended those states to facilitate family and social networks to support persons with disabilities in the exercise of their Article 19 rights.

In other COs, the CRPD Committee has made more limited recommendations on families. In the COs on Guatemala, Morocco, and South Africa, for example, the Committee recommended that grants and support be provided to families of children with disabilities and parents with disabilities to help avoid children being institutionalized. While these limited suggestions are critical, the COs should have provided more wide-ranging recommendations on living with families. The current COs would support neither persons with adult children nor persons with disabilities who had no children in their families. Further, in the COs on the Cook Islands, Niger, the Russian Federation, Turkey, and the United Arab Emirates, the CRPD Committee did not directly address financial support for families. Instead, these COs explained that persons with

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201. Comm. on the Rights of Persons with Disabilities, Concluding Observations of the Committee on the Rights of Persons with Disabilities, Republic of Korea, 40, U.N. Doc. CRPD/C/KOR/CO/1 (Oct. 3, 2014) (recommending that South Korea base the amount of payment for personal assistant services on the characteristics, circumstances and needs of the persons with disabilities); Comm. on the Rights of Persons with Disabilities, Concluding Observations of the Committee on the Rights of Persons with Disabilities, Senegal, 34(a), U.N. Doc. CRPD/C/SEN/CO/1 (April 5, 2019) (calling for adoption of “concrete measures to promote the right of persons with disabilities to live independently and be included in the family and community”) [hereinafter CO on Senegal]; Comm. on the Rights of Persons with Disabilities, Concluding Observations of the Committee on the Rights of Persons with Disabilities, Vanuatu, 33(a), U.N. Doc. CRPD/C/VUT/CO/1 (April 5, 2019) (calling for the allocation of “adequate resources to provide support, including personal assistants and social protection, for persons with disabilities and their families to enable them to live independently in the community”).


disabilities should be provided support regardless of their living arrangements. The COs could be read to include families in their recommendations, but the resources required differ between these types of living arrangements. It would have been useful for the Committee to have explained in greater detail how the state should have responded.205

In nine other COs, the CRPD Committee seemed to promote regulatory responses which favor independent living over family living arrangements. The CO on the Cook Islands, for example, noted with concern that “families are the sole base of support for persons with disabilities.”206 The CO then recommended that support be provided to persons with disabilities to live in the community, making no reference to those living with families. These reforms were recommended to be made with the “active participation of organizations of persons with disabilities.”207 Neither persons with disabilities nor their families were empowered to be directly involved.

Further, instead of recommending that families were resourced, the COs on Niger, the Russian Federation, Turkey, and the United Arab Emirates required states parties to provide information to persons with disabilities and their families about how they might apply for support.208 The CO on Qatar recommended the provision of information, stating that the state must provide information to persons with disabilities and their families on how to “claim support services and assistance that would enable them to live independently in accordance with their own choice and as part of the community.”209 While the need to provide financial support can be inferred from these COs, the CRPD Committee should also have ensured that the support provided is sufficient to enable persons with disabilities to live with their families.

More significantly, the COs on Iran, Nepal, and Rwanda raised a range of concerns about persons with disabilities being isolated from their families or depending on them for support.210 While this might not seem hostile to families, the COs did not make any recommendations that would enable persons with disabilities to remedy their situations in ways that would enable them to easily live with their families. Indeed, the recommendation in the CO on Nepal seemed to suggest the opposite—enabling persons with disabilities to avoid living with

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205. For example, providing concrete guidance on types and extents of support. See generally RIMMERMAN, supra note 138 (examining and comparing various state supports to families of persons with disabilities).
206. CO on the Cook Islands, supra note 204, at 39.
207. Id. at 40.
208. CO on Niger, supra note 204, at 32(a); CO on the Russian Federation, supra note 204, at 41; CO on Turkey, supra note 204, 43 (d); CO on the United Arab Emirates, supra note 204, at 38.
their families.\footnote{CO on Nepal, supra note 210, at 30 (“The Committee also recommends that the State party ensure that persons with disabilities who live with or are dependent on their families receive appropriate support to enable them to live independently in the community.”).} One interpretation of this recommendation is that persons with disabilities would only get support if they decided to live independently in the community, and not with their families. Yet if the CRPD Committee wanted to ensure that persons with disabilities were supported to live with their families, and not in segregated domiciles, then it would have been helpful to expressly articulate how this could be achieved and funded in a culturally appropriate way. It demonstrated its capacity to do so in the CO on Turkey,\footnote{CO on Turkey, supra note 204.} but has declined to follow suit in other COs.

In at least one CO, the CRPD Committee has focused on the risks posed by families to persons with disabilities’ living arrangements and has not proposed strategies to support collective living. The CO on Gabon noted that persons with disabilities were abandoned by their families and placed in institutional-like arrangements known to as “cités.”\footnote{Comm. on the Rights of Persons with Disabilities, Concluding Observations on the Initial Report of Gabon, 44, U.N. Doc. CRPD/C/GAB/CO/1 (Sept. 4, 2015).} The CRPD Committee did not suggest means of supporting families to reduce the abandonment rate, but instead recommended that Gabon “adopt the necessary measures to prevent isolation or segregation of persons with disabilities from the community by being hidden in the family.”\footnote{Id. at 45.} To stop this situation, the Committee recommended that the state take the “necessary measures to prevent” this breach of human rights from occurring,\footnote{Id.} including community-based measures that should be developed with persons with disabilities and their representative organizations.\footnote{Id. (applying General Comment 5, supra note 190, at 14).} Families, which are noted twice in the CO as potentially harmful to persons with disabilities, were omitted from this recommendation.

Finally, despite the majority of COSP states representing the Global South, the right to live independently and in the community has not attracted significant attention during discussions at the annual COSP meetings. A notable exception that has not garnered subsequent discussion or programing was a background document posing eight questions that was presented to states parties prior to the third COSP.\footnote{Background Paper (submitted by the International Disability Alliance), Round Table 1: Inclusion and living in the community (Article 19 of the CRPD), Third Session of the Conference of States Parties to the Convention on the Rights of Persons with Disabilities, U.N. Doc. CRPD/CSP/2010/CRP.3 (Sept. 1-3, 2010), http://www.un.org/disabilities/documents/COP/COP3/crpd_csp_2010_crp_19_round1.doc.} The fourth of these questions asked states to comment on whether they delivered “adequate support provided to families, considering that families remain the main provider of support services.”\footnote{Id.} While not all state responses to this note addressed families (and at times raised other arrangements),\footnote{See, e.g., U.N. DEP’T OF ECON. & SOC. AFFS., Contribution by the Italian Ministry of Foreign Affairs General Directorate for Development Cooperation, http://www.un.org/disabilities/documents/COP/COP3/best%20practices/italy-%20Italian%20Development%20Cooperation.doc} other
states discussed support to facilitate such living arrangements. From the
Global South, Mauritius explained that it supported persons with disabilities to
live in the community through measures including incentives to “encourage
family members to look after their severely disabled relatives” and respite care
programs to help families of children with disabilities. Neither the CRPD
Committee nor COSP have acted consistently to develop an approach to living
with families in a manner responsive to Global South perspectives.

ii. WASH

In seven COs, the CRPD Committee has progressively applied the CRPD
to the WASH needs of persons with disabilities in the Global South. Most COs,
however, have been silent as to WASH, and thus eschew opportunities for
increasing the relevance of the CRPD to developing states and the disabled
persons living in those countries.

The CO on Haiti is a prominent illustration of how WASH rights can be
progressively articulated by the CRPD Committee. At the time of Haiti’s state
report in February 2018, the country was one of the world’s poorest, heavily
dependent on development support, and still reeling from the mass destruction
caused by the 2010 Port-au-Prince earthquake. The lives of Haitians with
disabilities were especially challenging. Recognizing the need for society-
wide interventions, the CRPD Committee recommended that Article 28 be
applied to empower and promote the economic inclusion of all persons, irrespective of disability status. It then made a wide range of society-wide
recommendations, underscoring that all Article 28 measures must also include
“a disability perspective in programmes to promote an adequate standard of
living, including programmes to increase access to safe and affordable drinking

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220. See, e.g., DEN. MINISTRY OF SOC. AFFS., Background Information on Best Practices on the
disabilities/documents/COP/COP3/best%20practices/denmark-20Best%20practice.doc (explaining that
if help is normally provided by a relative at home, the state can offer a substitute in-home caregiver or a
temporary relief placement in a nursing home as part of a relief scheme).

221. Republic of Mauritius, Country Report to the Third Conference of State Parties to the U.N.

222. Id.


224. See generally, Michael D. Landry et al., Post-earthquake Haiti: The Critical Role for
Rehabilitation Services Following a Humanitarian Crisis, 32 DISABILITY & REHAB. 1616 (2010) (noting
the extent of the disaster and need for development); Janet E. Lord, Disability-inclusive Disaster
Preparedness and Response: Challenges and Opportunities for Reconstruction in Haiti, 104
PROCEEDINGS OF THE ASIL ANNUAL MEETING 118 (2010) (noting the impact on persons with disabilities);
Giuseppe Raviola et al., Development of a Comprehensive, Sustained Community Mental Health System
in Post-Earthquake Haiti, 2010-2019, 7 GLOB. MENTAL HEALTH 1 (2020) (analyzing the challenges of
delivering mental health in Haiti following the earthquake).

225. CO on Haiti, supra note 223, at 51.
water and sanitation and initiatives to that end in rural and remote areas.\textsuperscript{226} The CRPD Committee’s recommendation was universal, demonstrating a willingness to apply Article 28 broadly to include WASH rights for disabled and non-disabled alike. It is also notable for linking its call for universal WASH rights to wider objectives found under target 10.2 of the Sustainable Development Goals.\textsuperscript{227}

Also positively, the CRPD Committee at times has read a right to sanitation as part of the implementation of Articles 28 and 11. Specifically, an obligation to provide sanitation services as part of Article 28 obligations has been asserted by identifying that an “adequate standard of living”\textsuperscript{228} or a “decent standard of living”\textsuperscript{229} cannot be achieved unless sanitation is present.

The CRPD Committee has otherwise been inconsistent regarding WASH rights. WASH practitioners have explained that interventions must ensure access in personal spaces, such as the home; in community spaces, such as public markets, water points, and locations where community meetings and information exchanges take place; and in institutional settings, such as schools, healthcare facilities, hospitals, and prisons.\textsuperscript{230} Nevertheless, the CRPD Committee has failed to read Article 28 to ensure that WASH is provided in these settings. The CO on the Philippines, for example, focuses only on “clean water” in housing\textsuperscript{231} and ignores the fact that persons with disabilities also require access to water in public spaces and institutions. Similarly, the initial CO on El Salvador requires the state to ensure the availability of “drinking water and sanitation in rural and remote areas,” but is silent on ensuring WASH in other circumstances.\textsuperscript{232}

In other COs, the CRPD Committee has identified WASH concerns but failed to recommend that they be addressed. This can be observed in the COs on Guatemala and Mexico.\textsuperscript{233} These COs respectively raise concerns about the exclusion and lack of access to drinking water and sanitation experienced by indigenous persons with disabilities.\textsuperscript{234} The CO on Guatemala calls on the state

\textsuperscript{226} Id. at 51(c).
\textsuperscript{227} Id. at ¶ 51.
\textsuperscript{232} Initial CO on El Salvador, supra note 228, at ¶ 58.
\textsuperscript{233} CO on Guatemala, supra note 203; CO on Mexico, supra note 198.
\textsuperscript{234} CO on Guatemala, supra note 203, at ¶ 65; CO on Mexico, supra note 198, at ¶ 53.
to mainstream disability in its programs, but remains silent as to WASH.\textsuperscript{235} Meanwhile, the CO on Mexico makes a general recommendation that the state “ensure” the needs of indigenous persons with disabilities, but is equally quiet as to WASH.\textsuperscript{236} The CRPD Committee has also been inconsistent in other applications of WASH rights. For example, it has interpreted Article 11 to require both Iran and Kenya to provide access to clean water and sanitation for persons with disabilities who are internally displaced or living in refugee camps,\textsuperscript{237} but not in other contexts. Similarly, the COs on Greece and Iraq ordered those countries to provide sanitation services to protect persons with disabilities in refugee camps, but did not extend this obligation to also provide clean water services.\textsuperscript{238}

The Committee has not made sufficient efforts to link WASH to Convention articles beyond Article 11 and has missed the opportunity to enhance the exercise of rights to clean water services and sanitation. Because the treaty’s provisions are interrelated, a range of CRPD articles exist for which WASH is critical to implementation. For example, the impact on children with disabilities of being unable to access restrooms at schools is magnified for girls with disabilities, because they must either not access toilets during the school day and thereby risk urinary tract infections, or render themselves vulnerable to sexual violence by accessing toilets in locations away from the school.\textsuperscript{239}

\textit{iii. Landmine Removal}

To bridge disciplinary silos and to increase the relevance of the CRPD to states that are affected by landmines, the CRPD should provide a framework to increase communication between disability- and landmine-focused initiatives. The CRPD Committee has made specific reference to landmines when addressing Article 11 in a CO, for Colombia, expressing concern at the existence of landmines and the need for comprehensive and accessible services for landmine survivors.\textsuperscript{240} Despite recommending extensive support for survivors of landmines, the CRPD Committee did not go so far as to comment on the detection and removal of landmines in the state. Considering the disabling impacts of landmines on individuals with and without disabilities, it would have been helpful for the CRPD to have praised Colombia on its ratification of the Mine Ban Treaty in 2000 and further encouraged the state to expedite the

\textsuperscript{235} CO on Guatemala, \textit{supra} note 203, at ¶ 66(a).
\textsuperscript{236} CO on Mexico, \textit{supra} note 198, at ¶ 54(a).
clearance of mines.\textsuperscript{241}

The COs on the states parties to the Anti-Personnel Mine Ban Convention do not mention landmines when referencing Article 32.\textsuperscript{242} The fact that the CRPD Committee has not included reference to landmines in the CO on Belgium is unfortunate,\textsuperscript{243} since Belgium referred to landmines in its report to the CRPD, arguing that it had fulfilled its Article 32 obligation on international cooperation by supporting the detection of landmines in Mozambique.\textsuperscript{244}

The CRPD Committee should use existing national synergies between landmine survivor and disability-focused initiatives. This is likely to be especially successful in states with existing initiatives targeting landmine survivors and persons with disabilities, such as Afghanistan and Cambodia.\textsuperscript{245}

IV. EMPOWERING THE GLOBAL SOUTH

As mandated in CRPD Article 4(3) and reinforced by General Comment 7, states must empower persons with disabilities and DPOs to be able to meaningfully participate in transforming their societies in culturally nuanced ways. The participatory paradigm likewise requires that persons with disabilities and DPOs are given leadership roles on disability issues, as well as in society. The gathering and dissemination of data and statistics is critical to realizing participation. The CRPD Committee could be transformational, but it must reach out to other treaty bodies to inform its activities and to ensure that disability is mainstreamed across international frameworks.

A. Empowering Persons with Disabilities and DPOs

The CRPD Committee has a role in ensuring that every person with a disability across the world has the capacity to contribute, directly or through DPOs, to the development, implementation, and monitoring of local, national, and international disability norms. The CRPD was founded on the moral principle that those who are impacted by decisions have a right to be represented.

\textsuperscript{241} AP MINE BAN CONVENTION, States Parties to the Convention: Colombia, https://new.apminbanconvention.org/en/states-parties/colombia/ (observing that Colombia’s mine clearance deadline under the Mine Ban Treaty was extended in 2010 to 2021).


\textsuperscript{243} CO on Belgium, supra note 242, at ¶¶ 46-47.


and included in the determination of those decisions.\textsuperscript{246} The Convention’s participatory dynamic is a cross-cutting ethos, and thus a broad application of representation is required.\textsuperscript{247} The empowerment of the disability voice through the CRPD has ushered in a new politics, whereby persons with disabilities have a right under international human rights laws to be actively involved with the development, implementation, and monitoring of laws and policies that affect their lived experiences.\textsuperscript{248} This participatory dynamic is “one of the most progressive developments in human rights law provided by the CRPD.”\textsuperscript{249} Because the CRPD Committee is charged with leading the interpretation of disability-related human rights, it is critical that it be geographically representative of, and responsive to, the majority of the globe’s disability population living in the Global South.

The Convention requires states parties to actively consult persons with disabilities and their DPO representatives and to include them fully in the treaty’s monitoring and implementation.\textsuperscript{250} As noted by General Comment 7, this requirement empowers persons with disabilities and DPOs to demand full consultation across the legal and policy cycle,\textsuperscript{251} including at the local, national, regional, and international levels.\textsuperscript{252} Nor is this participatory right subject to progressive realization; having been interpreted as a civil and political right, it is accorded “immediate application.”\textsuperscript{253}

The CRPD further requires states to provide persons with disabilities and their DPOs appropriate, nonconditional, sufficient funding and resources to enable full and effective participation in the monitoring framework, as well as in the process of drafting and implementing laws and policies concerning all persons with disabilities.\textsuperscript{254} This financing also extends to helping develop DPOs and supporting them in their activities.\textsuperscript{255} Unfortunately, the absence of strong

\textsuperscript{246} Laufey Løve, Rannveig Traustadóttir, Gerard Quinn & James Rice, \textit{The Inclusion of the Lived Experience of Disability in Policymaking}, 6 LAWS 4, 33 (2017) (arguing that the CRPD reflects the fundamental principle that stakeholders have the right to participate in decisions impacting them).


\textsuperscript{248} Harpur, supra note 11.

\textsuperscript{249} Stein & Lord, supra note 74, at 698.

\textsuperscript{250} CRPD, supra note 1, at arts. 4(3), 33(3).

\textsuperscript{251} General Comment 7, supra note 73, at ¶¶ 18-23

\textsuperscript{252} Id.

\textsuperscript{253} Id. at ¶ 28.

\textsuperscript{254} Id. at ¶¶ 39, 46, 60, 63 (interpreting the obligations created by CRPD Articles 33.3 read in conjunction with Article 4.3).

\textsuperscript{255} CRPD, supra note 1, at arts. 33(2) (requiring states parties to “maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the Convention”), 32(1) (requiring states parties “to undertake appropriate and effective measures” to use international cooperation to promote CRPD compliance “among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities”).
DPO voices from the Global South remains a concern.\textsuperscript{256} Both scholars\textsuperscript{257} and advocates\textsuperscript{258} trenchantly critique the manner in which the CRPD’s mechanisms and processes inadequately involve DPOs from the developing world. The CRPD Committee must urgently advocate for disability representation in the Global South so that these perspectives can contribute to a more culturally relevant and informed global disability agenda.

B. Persons with Disabilities as Leaders of the Community

The participatory justice paradigm requires that persons with disabilities advocate on their own behalf and represent their communities. Key to this advocacy is ensuring that persons with disabilities are in leadership positions in governance structures that affect their equal participation across all aspects of society.\textsuperscript{259} The participatory paradigm is not limited to states simply offering leadership positions to persons with disabilities. Instead, it requires states to ensure that persons with disabilities can assume such positions. As a group in society, persons with disabilities are only able to take up leadership positions when they have benefited from education and have various rights protected, including their economic rights to work and employment and their right to engage in public affairs. This way, they can exercise their other human rights, empowering them to be full and equal actors in society. The participatory paradigm therefore forms part of an interconnected framework that is focused on enabling persons with disabilities to operate as full and equal citizens.

During the AHC sessions, DPOs argued that persons with disabilities should have enhanced participation in the CRPD Committee and advocated in favor of the requirements that the body be composed entirely of persons with disabilities, that the Chair be a person with a disability, and that the majority of the membership have a disability.\textsuperscript{260} Although none of these proposals were adopted, the COSP has almost exclusively elected CRPD Committee members with disabilities. For much of history, persons with disabilities have been

\textsuperscript{256} Faraz Mahomed, Janet E. Lord & Michael Ashley Stein, Transposing the Convention on the Rights of Persons with Disabilities in Africa: The Role of Disabled Peoples’ Organisations, 27 Afr. J. INT’L & COMP. L. 335, 354 (2019) (observing that “slow progress in the designation or formation of Article 33(2) mechanisms that incorporate civil society is a significant barrier to the full realisation of the CRPD in Africa”).
\textsuperscript{258} During the seventh COP, for example, Risnawati Utami of Indonesia (then a DPO representative, and a CRPD Committee Member since 2011), noted that organizations from the global South “continued to be absent from a global disability forum such as at the United Nations.” Report on the Seventh session of the Conference of States Parties to the Convention on the Rights of Persons with Disabilities, (June 10-12, 2014), U.N. DESA, http://www.un.org/disabilities/documents/COP/COP7/CRPD_CSP_2014_E.doc at Annex II, para. 4.
\textsuperscript{259} See Stein & Lord, supra note 12, at 36 (discerning from the CRPD a legal obligation for including persons with disabilities in governance structures).
silenced, controlled, or represented by their families, medical professionals, and the state. Powerfully, the COSP has rejected these disempowering paradigms and provided persons with disabilities the right to represent their own interests.

The COSP election process requires potential treaty body members to provide biographical data, including questions on their disability status, experience, and expertise.\(^{261}\) The biographical data forms of prospective members are submitted to the Office of the U.N. High Commissioner for Human Rights and are available on its website.\(^{262}\) A review of the biographical data forms of the nine elected CRPD Committee Members from the thirteenth COSP in 2020 reveals this dynamic in practice: three have physical disabilities,\(^{263}\) three have sensory disabilities,\(^{264}\) and one has an intellectual disability with secondary hearing and physical disabilities (the first and only U.N. human rights treaty body member with an intellectual disability).\(^{265}\) The other two elected members are parents of adult persons with disabilities.\(^{266}\) Thus, the “nothing about us without us” mantra central to the CRPD\(^ {267}\) has progressed into a “nothing about us unless it is led by us” approach in the context of the creation and enforcement

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262. Elections 2020, supra note 189.


267. See Harpur, supra note 11 (observing that the involvement of DPOs in the Ad Hoc Committee illustrated that those in charge of drafting the convention heard “the clarion call ‘nothing about us without us’ both during the debates and in the formation of a convention that continues the voice of persons with disabilities”); see also supra notes 11-12.
of disability rights by states and supranational bodies.268

CRPD Committee members have the mandate and opportunity to ensure that persons with disabilities and DPOs lead national and international disability rights efforts. In addition to addressing disability leadership in COs, General Comments, and rulings, the Committee can request that any CRPD-related consultations include persons with disabilities in order to have those views represented.269 When the CRPD Committee meets with government delegations to review periodic state reports, for example, the members can recommend that persons with disabilities be represented during the interactive dialogue that ensues and can also encourage DPOs to provide communications—ranging from interventions for the list of issues to be discussed to full-blown shadow reports— as part of that process.270

C. A Culturally Nuanced Approach

The Committee must adopt a more culturally nuanced approach when determining who can represent and advocate for persons with disabilities. While the CRPD Committee soundly reinforced the participatory justice paradigm in General Comment 7,271 it should do more by recognizing a broader notion of who can represent the disability community. The General Comment anticipates involvement by non-DPOs, specifically “[o]rganizations[,] including family members and/or relatives of persons with disabilities, which are pivotal in facilitating, promoting and securing the interests and supporting the autonomy and active participation of their relatives,” and calls for their inclusion in “consultation, decision-making and monitoring processes.”272 This proclamation is positive, as parents are critical to the lives of many persons with disabilities worldwide. Indeed, in many parts of the globe, people live in larger family groupings, making it inaccurate to conceptualize the family unit as consisting only of parents and their biological children.273 Hence, it would be helpful to expressly acknowledge other family groupings that can represent persons with

268. See Stein & Lord, supra note 12 at 32-33 (describing the ethics of persons with disabilities leading policy reform and programming).

269. Specifically, the CRPD Committee can require that the independent monitoring framework, created under CRPD Article 33, ensures the full involvement and participation of persons with disabilities and their representative organizations in all areas of its work. Committee Rules of Procedure, supra note 176, Annex, ¶ 20.

270. See id., at ¶ 46 (empowering the CRPD Committee to make general recommendations based on information received during the reporting process found in CRPD Articles 35 and 36).

271. See, e.g., General Comment 7, supra note 73, at ¶ 22. General Comment 7 explains that the consultation process “includes the right of organizations of persons with disabilities, to be consulted timely, with guarantees of accessibility, including to all relevant information, and reasonable accommodation when required, such as the provision of sign language interpreters and Easy Read text and language, Braille and tactile communication.” Id.

272. Id. at ¶ 12(d).

273. See, e.g., Tsitsi Chataika & Judy McKenzie, Considerations of an African Childhood Disability Studies, in DISABLED CHILDREN’S CHILDHOOD STUDIES 153 (Tilie Curran & Katherine Runswick-Cole eds., 2013) (Global South cultures have a concept of an extended family group or tribe and regard the concept of the nuclear family as a colonial import); Faye Ginsburg & Rayna Rapp, Family, in KEYWORDS FOR DISABILITY STUDIES 81 (Rachel Adams et al. eds., 2015) (noting that interdependence is a primary focus of many in the Global South).
disabilities; for example, tribal or broader community groups that ensure greater representation of the views of indigenous persons with disabilities.\textsuperscript{274}

Many long-standing beliefs on disability in the Global South are arguably more progressive than those in the Global North. Some colonized cultures, such as the Maori in New Zealand, had a more inclusive approach to ability diversity prior to Christian missionaries’ introduction of the idea that disability was associated with sin.\textsuperscript{275} The process of rendering the CRPD more culturally salient in practice could therefore result in upstream benefits.

\textbf{D. The Importance of Data}

While the CRPD Committee can and should address barriers to Global South participation, it also can employ its mandate to enhance the ability of persons with disabilities to advocate for themselves. The gathering and dissemination of data and statistics is critical to realizing participation. The Convention acknowledges this necessity in Article 31,\textsuperscript{276} and to its credit, the Committee has addressed Article 31 in each of its ninety-three COs.\textsuperscript{277} Nevertheless, the members could be more active when requiring states to provide data and statistics on the barriers to participation. They could do so by applying Article 31 to require states parties to collect and provide data, which could demonstrate how CRPD processes are impacting persons with disabilities and then create benchmarks for improvement.\textsuperscript{278} For example, the CRPD Committee could ask what percentage of materials hosted on state websites meet web accessibility guidelines, what percentage of books and documents held in state libraries or educational facilities meet access standards, and what percentage of state agencies have disability-inclusive procurement practices. Relatedly, the CRPD Committee could direct states parties to gather and distribute data on how they are implementing the participatory justice paradigm; it has previously and occasionally done so, and that practice should be part of a continuing mandate.\textsuperscript{279}

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\textsuperscript{274} Because disability is socially constructed, persons with disabilities among various indigenous cultures are not automatically construed as different or divergent or entitled to support. This has led groups, such as First Peoples Disability Network, to call for investment in building the capacity of communities and individuals to understand their rights and entitlements. See First Peoples Disability Network, \textit{Ten Priorities to Address Disability Inequity}, https://fpdn.org.au/ten-priorities-to-address-disability-inequity/ For Global North perspectives on the disability as difference or deficit debate, see \textit{DISABILITY, LAW, HEALTH, AND BIOETHICS} (I. Glenn Cohen, Carmel Shachar, Anita Silvers & Michael Ashley Stein eds. 2020).

\textsuperscript{275} See, e.g., Hickey, supra note 50, at 84-85.

\textsuperscript{276} See CRPD, supra note 1, at art. 31; Mads Pedersen, Federico Ferretti & Stephanie Motz, \textit{Article 31: Statistics and Data Collection, in THE U.N. CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES} 924, 933 (Ilias Bantekas, Michael Ashley Stein & Dimitris Anastasiou eds., 2018) (observing that Article 31 is foremost a measure for CRPD implementation).

\textsuperscript{277} See CRPD Committee COs, supra note 197.

\textsuperscript{278} See CRPD, supra note 1, at art. 31.

\textsuperscript{279} When addressing Article 31, the CRPD Committee has required states to consult with persons with disabilities and their representative bodies during the planning and design stages of data collection processes. See Comm. on the Rights of Persons with Disabilities, Concluding Observations on the Initial Report of Algeria, ¶ 53(a), U.N. Doc. CRPD/C/DZA/CO/1 (June 27, 2019); CO on Niger, supra note 204, at 51; CO on Turkey, supra note 204, at 63(b).
E. The Importance of Cooperation with Other Treaty Bodies

The CRPD Committee’s eighteen experts are not resourced to be continually updated on all the myriad activities of other international law regimes or other specialized agencies that may impact persons with disabilities. Nevertheless, the CRPD text contains a novel provision empowering the Committee to reach out to specialized U.N. organs for reports, data, and other information, and the Committee could leverage this power in support of Global South priorities. The CRPD Committee could request, for example, that the U.N. Children’s Fund (UNICEF) provide it with statistics regarding the number of children with disabilities excluded from education or living in poverty; solicit disaggregated information from the World Health Organization regarding access to health by persons with disabilities; or request data from the U.N. Department of Economic and Social Affairs regarding the specific implementation of the Sustainable Development Goals.

Encouragingly, the Committee has liaised with other treaty bodies on specific areas of disagreement, notably with the Human Rights Committee (in relation to the latter’s proposed and eventual revision of its General Comment 35 on the liberty and security of persons) and with the Committee on the Rights of the Child (on its jurisprudence regarding the institutionalization of children with disabilities). Also positively, the CRPD Committee is beginning to collaborate with the Mine Ban Treaty Committee—resulting in the chair of the Committee on Victim Assistance encouraging the CRPD Committee to develop a General Comment on Article 11 to “strengthen synergies” between international humanitarian law and the CRPD. These are precedents that ought

280. See generally, e.g., Smith & Stein, supra note 46, at 147-83 (analyzing how an approach in the Inter-American Court of Human Rights is progressive and could help inform the CRPD Committee).

281. Consider, for example, the progress toward disability-inclusive programming at the World Bank, a U.N. chartered special agency. See Stein & Stein, The New Disability-Inclusive Development Agenda, supra note 10.

282. CRPD, supra note 1, at art. 38(b); see also Ilias Bantekas, Article 38: Relationship of the Committee with Other Bodies, in THE U.N. CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES: A COMMENTARY supra note 15, at 1105, 1115 (noting that the “invitation” for additional information in most cases is achieved through a general invitation announced by the Committee on its website).

283. The CRPD Committee advocated, with moderate success, for a revision that would hew to its position on these issues as expressed in General Comment 1. See Gerald Neuman, DIVERGENT HUMAN RIGHTS APPROACHES TO CAPACITY AND CONSENT, in MENTAL HEALTH, LEGAL CAPACITY, AND HUMAN RIGHTS (Michael Ashley Stein, Faraz Mahomed, Vikram Patel & Charlene Sunkel eds., forthcoming 2021).

284. The CRPD met with resistance on this issue, with the CRC Committee upholding the use of “temporary” care institutions that did not involve family-based support. For a biting critique, see Rosenthal, supra note 92, passim.


to be followed and expanded upon; one could imagine, for instance, the Committee cooperating with the Committee on Economic, Social, and Cultural Rights to address issues related to housing, standards of living, or any number of other social rights issues salient to persons with disabilities living in the developing world. The Committee could also support and participate in collaborative efforts involving agencies, states, DPOs, and academics—such as the collaboration between the anti-landmines and disability rights movements. The Committee could easily do so by establishing subsidiary bodies to engage on such issues.

The CRPD Committee should also support Global South priorities at the COSP. The COSP addresses issues that are highly relevant to the Global South. For example, the COSP has a long and sustained involvement in using the CRPD to advance a development and poverty reduction agenda. As part of its

 rights-of-persons/ (describing meeting with the CRPD Committee as “part of the Victim Assistance Committee’s mandate to ‘seek areas guaranteeing the rights of landmine victims in broader domains such as disability rights.’”)


289. See Committee Rules of Procedure, supra note 176, at ¶ 54 (empowering the CRPD Committee to set up ad hoc subsidiary bodies and to define their compositions and mandates).

development and poverty reduction efforts, WASH rights have been addressed by high profile individual speakers in the eighth,\textsuperscript{291} ninth,\textsuperscript{292} and tenth sessions.\textsuperscript{293} The importance of WASH in the CRPD was highlighted by the Secretariat in consultation with U.N. entities, representatives of civil society, and other relevant stakeholders in a note prepared for the twelfth COSP.\textsuperscript{294} This note facilitated the roundtable discussion on the “[s]ocial inclusion and the right to the highest attainable standard of health” and recognized the importance of WASH for the realization of health.\textsuperscript{295} The CRPD Committee could and should take a leadership role in ensuring these COSP deliberations provide tangible benefits to the majority of persons with disabilities living in the Global South.

Finally, the CRPD Committee could utilize its inquiry power against states parties to the Optional Protocol to the Convention on the Rights of Persons with Disabilities (Optional Protocol)\textsuperscript{296} by focusing on developing states. The Committee is empowered with an inquiry procedure in response to grave or systematic violations of CRPD rights.\textsuperscript{297} Thus far, inquiries have been directed at Hungary (voting), Spain (education), and the United Kingdom (social welfare benefits), each of which raised laudable issues within those middle- and high-income countries.\textsuperscript{298} Grave and systematic violations of disability rights that are equally critical exist in the Global South. The CRPD Committee has itself noted,
for example, that “the right to life of persons with albinism in [Rwanda] and in the East African region[,] in general is under threat due to myths and false beliefs and practices.” 299 Similarly, in the CO on Kenya, the Committee was “concerned by different forms of violence against persons with albinism[,] in particular girls, including kidnap[ing]s, killings and attacks for the purpose of witchcraft practices, and the absence of measures to protect victims and to prosecute and convict perpetrators.” 300 The CRPD Committee raised equally serious violations against people with albinism in the COs on Ethiopia, Senegal, and South Africa. 301 While Ethiopia and Kenya have not acceded to or ratified the Optional Protocol, Rwanda, Senegal and South Africa have. 302 By focusing attention on an issue such as violence against persons with albinism (or other regional or prevalent issues such as poverty), the Committee could impact the lives of persons with disabilities across several countries within the Global South.

CONCLUSION

The metropoles of North America and Western Europe have dominated international law making and interpretation since the colonial era. The drafting and implementation of the CRPD had the potential to be different: the Convention’s drafting process was initially championed by Global South states. But the power of Global South participants in the AHC, especially DPOs, diminished during the drafting process. At the same time, Global North states and DPOs became more active. This resulted in the developing world dominating the negotiations with their own priorities and perspectives.

Yet, even though the Global South’s voice was diminished in the latter stages of the CRPD drafting, the Convention includes governing mechanisms that are empowering to states and persons with disabilities in the developing world. The CRPD Committee has a textual mandate and the institutional capacity to be geographically representative, promote the participatory justice paradigm, and create a more representative disability rights agenda. Despite this potential, the Committee has been uneven in the way it has responded to Global South interests. The Committee should take further steps to recognize a more culturally nuanced approach to Convention rights and do more to make the treaty empowering to the majority of persons with disabilities in the world—a population that happens to live culturally and geographically far from the U.N.’s locations in New York and Geneva.

299. CO on Rwanda, supra note 210, at 19.
300. CO on Kenya, supra note 237, at 19.