

# *The Right of People with Disabilities to Participate in Cultural Life: Is Cinderella Going to the Ball?*

Delia Ferri\* and Ann Leahy\*\*

**Abstract:** Article 30 of the UN Convention on the Rights of Persons with Disabilities (CRPD) requires States Parties to ensure accessibility of cultural materials, activities and heritage. It also obliges them to ‘enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential’, highlighting the need for appropriate policies to enhance cultural participation of persons with disabilities. The chapter argues that Article 30 CRPD plays a pivotal role in the realization of the ‘human rights model of disability’ embedded in the Convention. By examining States Parties’ reports, related Lists of Issues and Concluding Observations of the Committee on the Rights of Persons with Disabilities, the chapter detects trends, challenges, and gaps in States’ approaches to cultural rights of persons with disabilities. It then discusses new paths to operationalizing the human rights model of disability in the cultural field.

**Keywords:** Article 30 CRPD, right to participate in cultural life, human rights model of disability, human dignity, accessibility, cultural policies

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# ***The Right of People with Disabilities to Participate in Cultural Life: Is Cinderella Going to the Ball?***

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## **<a> INTRODUCTION**

The right to participate in cultural life is deeply rooted in international human rights law, albeit being described as the ‘Cinderella of human rights’ because of them being neglected and lacking enforceability (Xanthaki, 2015). Article 27 of the Universal Declaration of Human Rights (UDHR) states that ‘everyone has the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits’. Article 15(1)(a) of the International Covenant on Economic Social and Cultural Rights (ICESCR) recognizes ‘the right of everyone to take part in cultural life’ (O’Keefe, 1998, p.904). Other international provisions guarantee, to various extents, the right to cultural participation (Stamatopolou, 2007), and articulate collective rights of minorities and indigenous peoples (Kymlicka, 2008). The content of the right to participate in cultural life ‘remains contested’ (Bantekas et al., 2018, p. 865), but it is generally considered as encompassing a twofold individual dimension and a collective aspect (European Parliament Research Service (EPRS), 2017). The twofold individual dimension entails the right to access cultural activities, goods and services (Romainville, 2015) and the right to active involvement in culture, including engagement in the creation of cultural products. The collective aspect refers to cultural communities being recognized and enabled to enjoy their cultural expressions.

Article 27 UDHR and Article 15 ICESCR do apply to persons with disabilities<sup>1</sup> without discrimination, but they failed to address their specific needs. This gap has been filled by Article 30 of the UN Convention on the rights of Persons with Disabilities (CRPD), which articulates the right of persons with disabilities to participate in cultural life, sport, leisure, and recreation. This provision has the merit of shedding light on the need for appropriate policies that enhance cultural participation of people with disabilities. However, it is one of the least studied CRPD provisions. While there are some legal commentaries on Article 30 CRPD (Banktekas et al., 2018; Manca, 2017), little scholarship addresses cultural participation (Tatic, 2015), compared to other areas covered in Article 30 (i.e. sports and tourism).

With a view to filling a gap in literature, this chapter argues that Article 30 plays a pivotal role in the realization of the human rights model of disability embedded in the CRPD by emphasising the inherent dignity accorded to people through participation in cultural life (Degener, 2016). It critically discusses the implementation of this provision across several sample countries. While acknowledging the broad scholarly understanding of culture (Williams, 1981) which underpins human rights law, as the ‘set of distinctive spiritual, material, intellectual and emotional features of society or a social group’ (UNESCO, 2001, para. 5 of the preamble), this chapter focuses on arts practices and heritage (Caust, 2019). After this introduction, the second section outlines the methodology, while the third one discusses the right to participate in cultural life and embeds it in the human rights model of disability. The chapter goes on to analyze emerging trends, challenges and gaps in the way States Parties to the CRPD approach the implementation of Article 30 CRPD, before providing concluding remarks.

## **<a> METHODOLOGY**

This chapter presents a cross-country analysis of the implementation of Article 30 based on an examination of reports of States Parties to the CRPD, as well as Lists of Issues (LIs) and Concluding Observations (COs) made in respect of those reports by the UN Committee on Rights of Persons with Disabilities (CRPD Committee). The qualitative document analysis (Bowen, 2009) identified common themes, divergences and trends related to the legal obligations laid out in this provision. Furthermore, we interpreted those themes, divergences and trends through the lens of the human rights model of disability. The chapter adopts a socio-legal approach and is informed by the study of relevant legal and disability studies literature.

The 36 countries selected include 25 Member States of the EU that, at the time of writing this chapter, have filed reports with the CRPD Committee,<sup>2</sup> and Argentina, Australia, Azerbaijan, Brazil, Canada, India, Mexico, Philippines, South Africa, Tunisia, and the United Kingdom (UK). While the analysis of EU Member States and the UK is part of a larger pan-European research project,<sup>3</sup> the selection of other non-EU countries is premised on the idea of maintaining a geographical balance and including countries that are part of the ‘Global South’ (Grech & Soldatic, 2016). Such a selection is based on two criteria. First, we considered States Parties that ratified the CRPD at least ten years ago, in order to be able to evaluate trends in the implementation of Article 30 across a relatively long time-span, and to access cycles of all documents related to the reporting process under the CRPD. Secondly, we selected States with different legal systems (e.g. federal systems such as India, Australia, as well as unitary states such as Tunisia) and diverse legal traditions, as well as States that present different economic contexts (Mitra, Posarac & Vick, 2013). This choice supports the goal of considering to what extent there are common trends in the way Article 30 is implemented that are independent of constitutional guarantees with respect to disability (World Policy Analysis Center, 2021), and of legal and contextual differences.

We reviewed the initial reports of all the countries selected, and combined 2<sup>nd</sup>/3<sup>rd</sup> reports of 14 countries which were available up until May 2021 (Argentina, Australia, Austria, Azerbaijan, Belgium, Denmark, Germany, Hungary, Lithuania, Mexico, Slovakia, Spain, Sweden and Tunisia). There were COs filed for 33 countries, and COs on combined 2<sup>nd</sup>/3<sup>rd</sup> reports for two State Parties (Australia and Spain). The CRPD reports cited in the chapter were accessed at the CRPD Committee’s website,<sup>4</sup> through multiple searches conducted between October 2020 and May 2021.

**Table 1 - CRPD Reports Reviewed**

EU Countries (those that have submitted reports to the CRPD Committee)				
		Reports of State Parties	List of Issues (LIs)*	Concluding Observations (COs)**
1.	<b>Austria</b>	2	2	1
2.	<b>Belgium</b>	2	2	1
3.	<b>Bulgaria</b>	1	1	1
4.	<b>Croatia</b>	1	2	1
5.	<b>Cyprus</b>	1	1	1
6.	<b>Czechia</b>	1	2	1
7.	<b>Denmark</b>	2	2	1
8.	<b>Estonia</b>	1	1	1
9.	<b>Finland</b>	1	0	0
10.	<b>France</b>	1	1	0

11.	<b>Germany</b>	2	2	1
12.	<b>Greece</b>	1	1	1
13.	<b>Hungary</b>	2	2	1
14.	<b>Italy</b>	1	1	1
15.	<b>Latvia</b>	1	1	1
16.	<b>Lithuania</b>	2	1	1
17.	<b>Luxembourg</b>	1	1	1
18.	<b>Malta</b>	1	1	1
19.	<b>Netherlands</b>	1	0	0
20.	<b>Poland</b>	1	1	1
21.	<b>Portugal</b>	1	1	1
22.	<b>Slovakia</b>	2	2	1
23.	<b>Slovenia</b>	1	1	1
24.	<b>Spain</b>	2	2	2
25.	<b>Sweden</b>	2	2	1
<b>Sub-total (EU)</b>		<b>34</b>	<b>33</b>	<b>23</b>
<b>Selected Non-EU Countries</b>				
26..	<b>Argentina</b>	2	1	1
27.	<b>Australia</b>	2	2	2
28.	<b>Azerbaijan</b>	2	2	1
29.	<b>Brazil</b>	1	1	1
30.	<b>Canada</b>	1	2	1
31.	<b>India</b>	1	1	1
32.	<b>Mexico</b>	2	2	1
33.	<b>Philippines</b>	1	1	1
34.	<b>South Africa</b>	1	1	1
35.	<b>Tunisia</b>	2	2	1
36.	<b>UK*</b>	1	1	1
<b>Sub-total (Non-EU)</b>		<b>16</b>	<b>16</b>	<b>12</b>
<b>Total</b>		<b>50</b>	<b>49</b>	<b>35</b>

\* With the LIs, the CRPD Committee seeks further information from States Parties and highlights specific gaps in State Parties' reports.

\*\* With its COs, the CRPD Committee formulates concerns and provides general recommendations on State Parties' reports.

#### <a> THE RIGHT TO PARTICIPATE IN CULTURAL LIFE AND ITS ESSENTIAL ROLE IN REALIZING THE HUMAN RIGHTS MODEL OF DISABILITY

The first sub section will outline the core tenets of Article 30, while the second subsection will highlight the role of this provision in realizing the human rights model of disability and in affirming the inherent dignity of persons with disabilities.

#### <b> The Right to Participate in Cultural Life in Article 30 CRPD

Article 30 CRPD provides *inter alia* for the right to participate in cultural life, which is the focus of this chapter,<sup>5</sup> and articulates a range of obligations that are detailed in their normative content.

Article 30(1) protects and promotes the right of persons with disabilities to participate in cultural life, in its twofold individual dimensions. As noted by Bantekas et al. (2018, p. 876) “[t]he emphasis on ‘participation’ implies that the right to take part in cultural life is not confined to the freedom to enjoy (read: ‘consume’) culture, but also the freedom to pursue and contribute to every aspect of cultural life”. It requires States Parties to take all appropriate measures to ensure that people with disabilities have access to cultural materials, television programmes, films, theatre and other cultural activities, as well as to places where cultural performances are held, and to monuments and sites. This provision, echoing Article 9 CRPD, recognizes that accessibility is a precondition to ensuring cultural participation, as highlighted by the CRPD Committee in its General Comment No. 2 (CRPD Committee, 2014). It must be read in conjunction with Article 21 CRPD, which requires States Parties to provide information in accessible formats, to recognize and promote the use of sign languages, as well as to facilitate communication in Braille.

Article 30(2) obliges States Parties to take appropriate measures to enable persons with disabilities to develop their creative, artistic and intellectual potential. This encompasses the obligation to set up ‘specialized forms of training’ (Bantekas et al, 2018, p. 886). Furthermore, Article 30(3) requires States to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to the access of people with disabilities to cultural materials. The latter obligation relates primarily to copyright, which may constitute a barrier preventing cultural materials in accessible formats from being made available to people with disabilities (Sganga, 2015). In that regard, the CRPD is complemented by another international treaty aimed at ensuring access to printed materials for people with disabilities - the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (Marrakesh Treaty), adopted by the World Intellectual Property Organization in 2013.

Article 30(4) provides for the recognition and support of the specific cultural and linguistic identity of people with disability, including sign languages and Deaf culture. It complements Article 21(e) CRPD, which, as noted above, requires States Parties to take measures ‘recognizing and promoting the use of sign languages’, and Article 24 CRPD addressing the linguistic identity of Deaf persons in the context of education (Murray et al., 2018). In particular, Article 24 provides for education to be inclusive and States Parties ‘are mandated to “facilitate and promote the linguistic identity” of [D]eaf persons on an equal basis, whereas Article 30(4) provides an *individual entitlement* to “recognition and support”’ (Bantekas et al., 2018, p. 909; emphasis added). Article 30(4) does not explicitly conceptualize Deaf people as a linguistic minority, even though it acknowledges the existence of Deaf culture. Ball (2011, p.785) argues that ‘an essential feature of the CRPD’s model is the emphasis on balancing the preservation of the Deaf individual’s linguistic identity while achieving accessibility to public services for sign language’. Article 30(4) CRPD mandates State Parties to recognize the individual identity of Deaf persons, and leaves the door open to the recognition of Deaf communities as cultural minorities, but does not impose it. Notably, Article 30(4) does not use the terms ‘disability culture’ or ‘disability identity’ as ‘these terms remain controversial, including among the members of the disability community’ (Bantekas et al., 2018, p. 899; Johnson, 2020), but refers to cultural identity, which encompasses the manifold layers of a disabled individual’s identity.

## **<b> The Role of Article 30 CRPD in the Realization of the Human Rights Model of Disability**

The CRPD is said to encompass a social-contextual understanding of disability (Broderick, 2015), in which disability is understood as an interactive process between people with impairments and societal barriers, and, as such, is considered to be a more refined elaboration of the ‘pure’ social model (Ferri & Broderick, 2019). Furthermore, it is considered to embed the human rights model of disability (Degener, 2017; Lawson & Beckett, 2020), or to endorse a human rights approach to disability (Skarstad & Stein, 2018). Without engaging in a discussion of the various models of disability (Mitra, 2006), we limit ourselves to recalling some of the core tenets of the human rights model, by referring to one of its most authoritative proponents, Teresia Degener (2016; 2017), and to the CRPD Committee (2018a). Degener argues that this model does not focus purely on social and environmental barriers, but emphasizes the inherent human dignity of persons with disability, and ‘encompasses both sets of human rights, civil and political as well as economic, social and cultural rights’ (Degener, 2017, p. 44). She suggests that the human rights model values impairments as part of human diversity, pays attention to intersectional discrimination (Degener, 2017, p. 47, 49), offering ‘room for minority and cultural identification’ (Degener, 2016, p. 9). Consistent with this, the CRPD Committee in its General Comment No. 6 (2018a) acknowledges that disability is a social construct, and conceives of it as ‘one of several layers of identity’.

The recognition of the inherent dignity of people with disabilities is pivotal in the elaboration of the concept of inclusive equality embodied in the human rights model. Inclusive equality, as articulated by the CRPD Committee (2018a), embraces four intertwined dimensions: a fair redistributive dimension, which refers to the need to address socioeconomic disadvantages; a recognition dimension, which requires stigma to be combatted and respect for dignity and intersectionality; a participative dimension, which necessitates appreciation for the social nature of people with disabilities as members of society; and an accommodating dimension, which entails making space for difference as a matter of human dignity (CRPD Committee, 2018a). The latter dimension is underpinned by the idea of the diversity of individuals with disabilities from one another. It also refers to reasonable accommodation, which is any ‘necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms’ (Article 2 CRPD). This fourth dimension may also be linked with accessibility as a pre-condition for the effective implementation and the full enjoyment of all the rights set out in the CRPD.

The CRPD Committee and Degener do not directly articulate the right to participate in cultural life when elaborating on the human rights model of disability. Nonetheless, we argue that this right is encompassed by, and essential for the realization of, such a model in three respects. First, culture is the expression of human nature. Hence, the recognition of the right to access cultural activities on an equal basis is linked to respect for the inherent dignity of persons with disabilities. The freedom of creative activity implies the expression of everyone’s ‘layered’ identity. Secondly, and from a different yet interconnected perspective, cultural representations of disability have historically been negative (Shakespeare, 1994; 2014). Thus, the contribution of artists with disabilities is indispensable to the recognition of the inherent dignity of all disabled people. Smith and Stein (2020, p.286) recall that, ‘[i]f fully harnessed, Article 30(2) CRPD (2006) will afford powerful opportunities for persons with intellectual disability to “[c]onfront the passivity that paternalistic and non-participatory models of disability typically evoke”’. Jakubowicz and Meekosha (2003, p.190) suggest that disability culture seeks to revalorize disability experiences and affirms ‘different embodiments through literature,

drama, sport and music'. Literature on artistic participation by people with disabilities stresses how this can lead to the articulation of identities and experiences that are otherwise overlooked (Saur & Johansen, 2013; Taylor, 2005). Relatedly, we contend that cultural participation is indispensable to combatting stigma and realizing the recognition dimension of inclusive equality. Thirdly, enjoying culture is a vital part of being a member of society, and it is indispensable to achieving the participative dimension of inclusive equality. As noted by Smith and Stein (2020, p.287), 'Article 30's implementation plays a vital role in furthering the CRPD's transformative vision of persons with disabilities' full-fledged membership in an inclusive society'. This, however, can be actualized only when accessibility of culture is ensured and when the diversity of persons with disabilities is accommodated.

We will not delve into a discussion of whether the human rights model of disability represents a development of the social model (Degener, 2017), or whether the two are complementary (Lawson & Beckett, 2020). We, however, embrace the view that the human rights model has a prescriptive nature, and 'sets out standards of behaviour expected of States and institutions to ensure basic social justice for disabled people' (Lawson & Beckett, 2020, p. 21). Thus, it is an apt tool to assess disability policies in the cultural field.

#### <a> EMERGING TRENDS, CHALLENGES AND GAPS IN THE IMPLEMENTATION OF ARTICLE 30 CRPD

In our analysis of States Parties' reports, we identified divergences, general convergent trends, and efforts at realizing the human rights model of disability in relation to the implementation of Article 30 CRPD.

##### <b> Divergences and General Trends

States Parties' reports of the sample countries reviewed deal with Article 30 in different ways, and vary in the degree of attention that they give to it. Some State Parties, such as Argentina (CRPD/C/ARG/1), focus mostly on participation in sports, while other countries, such as Australia, Bulgaria, Brazil or South Africa, discuss the implementation of Article 30 quite broadly (CRPD/C/AUS/1; CRPD/C/BGR/1; CRPD/C/BRA/1; CRPD/C/ZAF/1). The degree of thoroughness in dealing with this provision does not appear to be linked to a particular legal system or tradition. Furthermore, a lengthy response is not necessarily representative of a thoroughgoing, systematic approach to addressing cultural participation. Among the countries considered, the Australian report was notable in its reference to a comprehensive cultural policy plan related to people with disabilities. The *National Arts and Disability Strategy* 'focuses on access and participation of persons with disabilities, barriers which prevent emerging and professional artists and arts workers with disabilities from realising their ambitions, and audience development' (CRPD/C/AUS/1, para. 186; see also the 'Action Plan' referenced in the initial Danish report, CRPD/C/DNK/1, para. 334). In general, while some States Parties' reports refer to strategies within particular sectors or to digitization strategies<sup>6</sup>, under Article 30 they could outline in more detail to what extent cultural participation is addressed in them and in national disability strategies. However, some of the countries considered include culture as a priority field of action in their overall domestic disability strategy. For example, the Bulgarian National Strategy for Equal Opportunities for Disabled People 2008-2015 and the subsequent National Strategy 2016-2020 included among its specific objectives that of providing equal

opportunities for sports, recreation, tourism and participation in cultural life (Bulgarian Government, 2008; 2016).

Several reports tend to list single initiatives that possibly entail good practices, but do not provide strong evidence of a systematic approach to the implementation of Article 30 and seem to signal the lack of a comprehensive policy approach. For instance, there are quite a few initiatives referred to in the initial reports of India (CRPD/C/IND/1) and of Croatia (CRPD/C/HRV/1). The degree to which these initiatives might represent a strategic approach to meet the obligation provided in Article 30 remains unclear, and, in fact, in the case of those two countries, subsequent COs from the CRPD Committee express concern about levels of participation in cultural life (CRPD/C/IND/CO/1, paras. 62-3; CRPD/C/HRV/CO/1, paras. 47-8).

Given that Article 30(3) explicitly obliges States Parties to ‘take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials’, the majority of the States Parties’ reports reviewed included a reference to copyright laws and/or to ratification of the Marrakesh Treaty. Correspondingly, a focus on copyright issues is a feature of several LIs and COs. Thus, where a recommendation under Article 30 is made in the COs, it frequently concerns ratifying or implementing the Marrakesh Treaty. This trend had been already observed by Bantekas et al. (2018).

Overall, States Parties’ reports did engage with the right to participate in cultural life somewhat signalling that this right is no longer a ‘Cinderella’, and is engaged with by certain countries in some detail.. In some instances, where a second/third report is available, it is possible to note a developing engagement with Article 30 CRPD in the subsequent report. For example, the 2<sup>nd</sup>/3<sup>rd</sup> report from Mexico (CRPD/C/MEX/2-3) deals with Article 30 at length. It lists a series of examples of arts/culture events – such as accessible films, an adapted dance programme, an accessibility programme at museums in Mexico City and a programme (*SensibilizArte*) ‘which promotes artistic development and coordinates guided tours and workshops for persons with disabilities’ (para. 285).

### **<b> A Slow Move towards Meaningful Participation in Culture and Recognition of Inherent Dignity**

The analysis of the reports shows that States Parties to the CRPD may be starting to view cultural participation as a facilitator of self-expression for people with disabilities, underpinning an affirmation of their dignity. For example, the Latvian report (CRPD/C/LVA/1, para. 370) mentions various opportunities for Deaf people, citing ‘a variety of creative self-expression measures’. The Lithuanian report refers to ‘artistic ability development classes’ (CRPD/C/LTU/1, para. 305) and the Brazilian report indicates cultural activities aimed at the ‘development of skills for the expression of creativity and perception’ (CRPD/C/BRA/1, para. 247). The Slovakian report mentions the availability of ‘active and passive culture’ (CRPD/C/SVK/1, para. 390); likewise, the 2<sup>nd</sup>/3<sup>rd</sup> report of Tunisia refers to people with disabilities benefitting from cultural activities ‘as both recipients and participants’ (CRPD/C/TUN/2-3, para. 204).

States Parties’ reports show less awareness of people with disabilities as professional creators of culture in their own right. Nonetheless, some of them are explicit about professional participation or refer to arts organizations that include disabled and non-disabled artists side-by-side. For example, the initial report from Australia mentions the need to address barriers faced by professional artists



and arts workers. It also references programmes that support production of art by disabled people (CRPD/C/AUS/1, paras 186-188). The initial report from Sweden recognizes both ‘personal creation’ and contributing to ‘professional artistic creation’ (CRPD/C/SWE/1, para. 282). That report also states that professional theatre and dance groups may increasingly ‘include actors and dancers both with and without disabilities’ (para. 289). The initial report of South Africa mentions the *Performing Arts Policy* requiring that 5% of performers ‘contracted for celebration and/or commemoration of national days should be disabled’ (CRPD/C/ZAF/1, para. 354).

While disability arts are no longer seen as needing to engage exclusively with disability issues (Solvang, 2012) or to be about educating others, in some States Parties’ reports, cultural participation of persons with disabilities is linked to the idea of combating stigma. For example, the initial report from Croatia includes a reference to support both for people with disabilities who are artists and to events that seem to aim at educating others. It mentions financial support for projects ‘...that sensitise the public for artistic work of persons with disabilities and specific theatres of persons with disabilities’ (CRPD/C/HRV/1, para. 217). The initial report from India (CRPD/C/IND/1, para. 263) states (albeit using outdated language) that, in order ‘to safeguard and recognize the interests of the person with disabilities’, the Central Board of Film Certification uses a set of guidelines, one of which ‘mandates that while granting certificates to films, the Board must ensure that scenes showing abuse or ridicule of physically and mentally “handicapped” persons are not presented needlessly’.

### **<b> Accessibility of Cultural Goods and Services and Awareness of Accommodating Human Diversity**

Accessibility of cultural knowledge depends on the complex interplay between a specific person’s individual characteristics and the environment (Mastrogiuseppe et al., 2020). States’ reports often focus not just on physical accessibility, but also on accessibility of content of arts, cultural and heritage products designed to be inclusive. Many reports refer to an array of sectoral legislation, policies, funding tools, and specific initiatives designed to make cultural products like films, audio-visual products, theatres, exhibitions or content of libraries, museums or heritage sites accessible. In the case of cultural venues, the report from Czechia states that museums progressively ‘make all expositions and exhibitions accessible’ (CRPD/C/CZE/1, para. 449). That report also instances a venue with a tactile exposition, the digitalization of content, and a festival where Deaf people are said to constitute over half of participants (CRPD/C/CZE/1, paras. 456-60). Other examples are seen in the initial report of Australia, which refers to the NSW Government’s cultural institutions incorporating multi-sensory and tactile features into exhibition design, the provision of sensory tours, interpreted tours in Auslan and Braille guides (CRPD/C/AUS/1, para. 187). The Estonian report mentions theatres using text strips and sign language interpretation, loop systems, subtitling of films and inclusivity of cultural sites, museums and galleries (CRPD/C/EST/1, paras 220-28; see also the Latvian report, CRPD/C/LVA/1, paras. 365-70).

Some reports refer to libraries specifically for blind and visually impaired people. For example, the Danish report mentions a state-owned library producing audio books, e-books and Braille for visually impaired and dyslexic people (CRPD/C/DNK/1, para. 337; see also the initial report of South Africa, CRPD/C/ZAF/1, para. 355). Less common are references to Sign Language libraries, but the Finnish report mentions one (CRPD/C/FIN/1, para. 444) and the 2<sup>nd</sup>/3<sup>rd</sup> report from Mexico refers to a ‘Mexican Sign Language room’ at one library which, *inter alia*, ‘offers reading in sign language’ (CRPD/C/MEX/2-3, para. 287). Also unusual were references to visual arts being

made accessible for visually impaired people. However, the report from Estonia mentions improvements to the accessibility of the Art Museum of Estonia for mobility, visual, hearing and intellectually disabled people (CRPD/C/EST/1, para. 224).

Film is another area of focus in some reports. For example, the initial German report highlights that the Film Promotion Act supports audio description for visually-impaired persons and subtitling for persons with hearing disability and provides for incentives ‘for the creation of barrier-free versions of cinema films’ (CRPD/C/DEU/1, para. 262). The initial report from Australia refers to support for commercial cinema for audio description and captioning technology to improve access for people who are Deaf or blind (CRPD/C/AUS/1, 187). In most cases, it is difficult to grasp from States’ reports how effective those legislative measures or policies are in practice, but there is certainly a growing awareness of the need to take the diversity of people with disabilities into account.

An explicit aspect of recognizing and accommodating diversity is the protection of sign language afforded by Article 30(4). Though this was not universal across the reports reviewed, many countries refer to measures taken, or planned, towards recognition of sign language as an official language, or of sign language users and Deaf people as a linguistic or cultural minority (among others, reports of Argentina, CRPD/C/ARG/1, para. 279; Azerbaijan, CRPD/C/AZE/2-3, para. 37; Belgium, CRPD/C/BEL/1, para. 97; Croatia, CRPD/C/HRV/1, para. 17; Finland, CRPD/C/FIN/1, para. 259; Hungary, CRPD/C/HUN/1, para. 17; Lithuania, CRPD/C/LVA/1, para. 158). The Finnish report represents an interesting case in its level of detail, referring to sign language users as a ‘language and cultural minority’ and to different groups of sign language users (CRPD/C/FIN/1, paras 257-61). Interestingly, however, several reports to the CRPD Committee deal with sign language most extensively under the implementation of Article 21, rather than under Article 30. In this regard, sign language seems to be conceived of more as an accessibility measure, without a full awareness of Deaf culture.

### **<b> Existing Gaps and Remaining Challenges**

While, as mentioned above, some reports seem to acknowledge the dignity of people with disabilities, there are still traces of medical approaches. For example, the Polish report refers to ‘library therapy and art therapy’ for blind people (CRPD/C/POL/1, para. 514), while the combined 2<sup>nd</sup>/3<sup>rd</sup> report from Lithuania mentions NGOs offering ‘social rehabilitation services’ that involve ‘self-expression and cultural activities’ (CRPD/C/LTU/2-3, para. 248). Likewise, the report from Czechia includes reference to ‘art-therapy’ and support for projects that exploit the ‘therapeutic function of culture in order to compensate for disadvantages on account of health’ (CRPD/C/CZE/1, para. 452). In a somewhat ambiguous section, the report from the Philippines mentions ‘cultural care giving services for persons with disabilities’ (CRPD/C/PHL/1, para. 259). Other reports refer to (or imply) lack of health, or inability. For example, the initial report from Azerbaijan mentions activities aimed at ‘integration of persons with disabilities and children with impaired health to the society’, which aim to ‘equalize them with healthy persons and to reveal their talents and abilities...’ (CRPD/C/AZE/1, para. 311). The Estonian report mentions public libraries organizing home deliveries for people unable ‘to visit the library due to health reasons’ (CRPD/C/EST/1, para. 230). Thus, while the initiatives themselves may add value to the lives of the people involved, we contend that accessibility or inclusion measures seem to be understood as necessary because of the medical conditions of individuals, not in terms of the human rights approach to disability enshrined in the CRPD.

Sometimes, States' reports refer to cultural activities in terms of education about disability issues amongst the general public or people working in cultural sectors, as already mentioned. Awareness-raising initiatives may be valuable, but some of these references suggest that disability is still constituted as an individual problem requiring a charitable response. For example, Hungary's initial report mentions support for people with disabilities regarding 'public education programmes' and public education conferences are described as opportunities for people with disabilities 'to report their own problems' (CRPD/C/HUN/1, para. 236). The CRPD Committee sometimes highlights the issue of medicalization, identifying, for example, in COs for the Philippines, (CRPD/C/PHL/CO/1, para. 6) the 'prevalence of the medical and charity approaches in the State party's legislation and policies'....'overemphasizing impairment, medical treatment and social care'.

The growing awareness about accessibility shown in States' reports tallies with a range of good practices on access to cultural goods and services highlighted by grey literature (Arts & Disability Ireland, 2010) and scholarship (Arengi et al., 2016). However, this is counterbalanced by the bittersweet picture emerging from shadow reports submitted to the CRPD Committee, which, where they deal with culture, detail inadequate accessibility of cultural offerings or lack of recognition in practice of Deaf culture. An example comes from the report submitted by the coalition of civil society organizations in Denmark (Disabled People's Organisations Denmark, 2019, p. 48). This suggests that many cultural institutions, such as theatres, museums and cinemas, are not accessible either in terms of physical accessibility of buildings or digital accessibility of apps, websites or content. Furthermore, sometimes States' reports themselves refer to the views of civil society organizations that measures taken are inadequate (see initial Austrian report, CRPD/C/AUT/1, para. 340).

States' reports provide limited information about rates of cultural participation of persons with disabilities. Exceptions in this respect are the reports from Estonia and the UK, which cite surveys suggesting that the number of people with disabilities participating in culture is relatively low (CRPD/C/EST/1, para. 227; CRPD/C/GBR/1, para. 327). The Estonian report also identifies the main obstacles to participation as low incomes, poor health conditions, poor physical accessibility to venues and lack of supportive services (transportation, personal assistance service) (CRPD/C/EST/1, para. 227). The overall low cultural participation rates observed in those two reports seem, in reality, to constitute a general challenge, highlighted in range of studies and sometimes in national disability strategies (although omitted in States Parties' reports). For instance, the European Blind Union (EBU, 2012, p.7) survey on access to culture shows that people with visual impairments have poor access to culture, and maintains that '[m]ost cultural funding pays little attention to the cultural equality of people with a (visual) disability'. In a survey from the World Blind Union and American Council of the Blind (2018) almost all participants (99%) claim that audio-description (which makes visual information of media and arts more accessible) needs to be more widely available. Martínez Amador (2016), in her provocatively titled paper 'Deaf people do not go to the movies', highlights the lack of accessibility of Spanish cinemas. An Italian report shows that there is widespread exclusion of disabled people, for whom lower levels of participation in culture are recorded compared to the rest of the population (Istituto Nazionale di Statistica (ISTAT), 2019, p. 99). A study carried out in 35 European countries suggests that there is limited knowledge of artists with disabilities (British Council, 2021). Furthermore, the Dutch implementation plan of the CRPD finds that people with disabilities participate less in cultural activities (Government of the Netherlands, 2018), while the

German policy plan notes that persons with disability visit fewer cultural events than people without disabilities (Federal Government of Germany, 2018).

We contend that these challenges and gaps have not yet been adequately highlighted in COs by the CRPD Committee. The Committee consistently calls on States to improve accessibility, to enhance data collection, and to adopt an approach to disability consistent with Article 1(2) CRPD, but relatively little is recommended as to cultural participation. As yet, the most typical recommendations under Article 30 have a relatively narrow focus, on issues of copyright. The need for enhancing a range of accessible formats - sign language interpretation, Braille, subtitles, Easy to Read, augmentative and alternative modes of accessible communication for people with intellectual or psychosocial disability - is often raised by the CRPD Committee under Article 21 CRPD (dealing with freedom of expression and access to communication). In this context, the Committee has not yet focused on the recognition and accommodation of diversity, although COs for Estonia issued in May 2021 (CRPD/C/EST/CO/1, para. 43(b)) refer to the need for awareness raising about '[D]eaf culture and the Estonian sign language'. While a common recommendation concerns enhancing access to sign language interpretation, this often relates to access to justice, communication or public information, and, only rarely are there specific recommendations on access to culture (for an exception see COs for Cyprus CRPD/C/CYP/CO/1, paras 45-6).

The careful approach of the CRPD Committee in its COs seems to be an attempt to overcome the competing tensions between a growing awareness of sign language as a matter of individual identity requiring accommodation, and the appreciation of promotion-oriented minority language-type policies. This careful approach tallies with the views adopted by the CRPD Committee upon individual communications. In *J.H. v Australia* (CRPD Committee, 2018b), the failure to provide a sign language interpreter to a juror was considered. The Committee recalled that, pursuant to Article 21(b) CRPD, States Parties must take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication. Additionally, the Committee recalled Article 21(e) CRPD, which stipulates that those measures include recognizing and promoting the use of sign languages. The CRPD Committee ascertained the violation of the principle of equality and stated that the 'refusal to provide Auslan interpretation, without thoroughly assessing whether that would constitute a disproportionate or undue burden', amounted to a discrimination on the basis of disability. Further, the CRPD Committee held that 'the refusal to provide the author with the format of communication that she needed to enable her to perform jury duty, and therefore to express herself in official interactions' amounted to a violation of Article 21(b) and (e) CRPD. In its assessment, however, the CRPD Committee did not engage in any appreciation of Deaf culture. A similar approach, although in dissimilar circumstances, had already been adopted in *Beasley v Australia* (CRPD Committee, 2016a) and *Lockrey v Australia* (CRPD Committee, 2016b). A different (yet very nuanced) approach is taken in *Sahlin v Sweden* (CRPD Committee, 2020) in which the CRPD examined a refusal of sign language interpretation for a lecturer at a Swedish University. In that case, despite his qualifications, the University had annulled the recruitment process, claiming that it would be too expensive to finance sign language interpretation to guarantee the author's right to employment on an equal basis with others. The reasoning of the CRPD Committee, which, in the end, ascertains a violation of Articles 5 and 27 CRPD, revolves around the concept of reasonable accommodation and that of accommodating diversity. While neither the author of the communication nor the CRPD Committee address the issue

of identity, the Committee endorses the view of the author that Swedish authorities ‘did not take into account the positive impact that hiring a deaf lecturer could have had on the attitude of students and co-workers to promote *diversity*’ (emphasis added).

#### <a> CONCLUDING REMARKS: OPERATIONALIZING THE HUMAN RIGHT MODEL IN THE CULTURAL FIELD

The role of culture in the production of disability is acknowledged in disability studies (among others, Titchkosky, 2003; Waldschmidt, 2018). Beyond this area of scholarship, the recognition that culture plays an essential role in ending the marginalization experienced by persons with disabilities in society is more recent and has been driven by the implementation of the CRPD.

Legal and socio-legal scholarly work on Article 30 CRPD is scant, and this chapter aims to address that gap. The analysis of reports to the CRPD Committee seem to signal that the right to participate in cultural life is no longer a ‘Cinderella’, namely, State Parties’ reports engage with access to arts, and, in some instances, recognize that cultural participation is key to combating stigma and stereotypes. However, in order to fully operationalize the human rights model in the cultural field, a more consistent approach should be adopted. Comprehensive and participatory cultural policy plans related to people with disabilities could foster a systematic approach to the right to participate in cultural life in its twofold individual dimension and collective aspects. Such plans should accommodate the diversity of audiences with disability. They should also foster creation by artists with disabilities, through dedicated training and funding activities, without confining disabled people merely to amateur cultural practice or therapeutic art. This is important to challenge the assumptions that disability art is merely ‘a hobby or form of therapy’ rather than a professional endeavour (Bang & Kim 2015, p. 543). In order to effect change, inclusive cultural infrastructures and practices must be promoted by States Parties. In that connection, employment of persons with disabilities within creative industries in all roles is also imperative. Disability cultural policy plans should complement national disability strategies and employment strategies, fostering the mainstreaming approach that is mandated by Article 4 CRPD.

Finally, the role of the CRPD Committee in pointing States Parties in the right direction is important. As yet, gaps and challenges have not yet been adequately tackled by the CRPD Committee, but a more comprehensive approach is beginning to appear in COs. The human rights model is being used overtly to assess the implementation *inter alia* of Article 30. For example, the LIs on the initial report of Brazil (CRPD/C/BRA/Q/1, para. 34) from 2015 require information on ‘whether the State party has taken measures to make libraries and other cultural services accessible to all persons with disabilities’ and on ‘any measures planned *for introducing the human rights model of disability in cultural life*’ (emphasis added). The COs for the Philippines from 2018, in dealing with Article 21 CRPD, express concern with ‘lack of recognition and support of the specific *cultural and linguistic identity* of persons who are deaf through the promotion of Philippine sign language and deaf culture’ (CRPD/C/PHL/CO/1, para. 38 – emphasis added). In a similar but less explicit vein, the COs for India (CRPD/C/IND/CO/1), from 2019, include a recommendation on Article 30 CRPD that is broader than copyright issues and makes reference to the necessary recognition of ‘cultural identities’ and participation of people with disabilities in cultural performances (para. 63). It is vital for the CRPD Committee to provide clearer recommendations to States Parties beyond the issue of copyright, and to engage with the content and obligations of Article 30 in light of the human rights model to harness

the slow move towards meaningful participation in culture of persons with disabilities and the recognition of their inherent dignity and diversity. Furthermore, States Parties should collect data on cultural participation and use them to design evidence-based policy solutions and effect change. The indicators designed to monitor the CRPD (Office of the High Commissioner for Human Rights (OHCHR), 2021), and scholarly efforts to produce indicators based on national surveys (Mitra & Yap, 2021), may support data collection and effective policies.

As the metaphor used in title of our chapter aims to highlight, Cinderella has received an invitation to the ball, but it remains unclear whether she is actually participating. In other words, while there is a move towards operationalizing the human rights model of disability in the field of culture, there is still a gap between the aspirations of Article 30 and its implementation.

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<sup>1</sup> In this chapter we use person-first language in line with the CRPD (Kakoullis & Johnson, 2020; Broderick & Ferri, 2019). This terminology acknowledges individual abilities by placing the person before a disabling identifier’ (Sabatello, 2019). To align with editorial choices, we use person/people with disability. Only occasionally, to avoid repetition, we use disabled people. However, we acknowledge that, among disability groups and scholars, different terms are used.

<sup>2</sup> The chapter takes into account legal updates up until May 2021. At the time of writing this chapter, two of the 27 EU countries (Ireland and Romania) had not yet submitted initial reports.

<sup>3</sup> This research project is titled ‘Protecting the Right to Culture of Persons with Disabilities and Enhancing Cultural Diversity through European Union Law: Exploring New Paths – DANCING’ and has received funding from the European Research Council.

<sup>4</sup> <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>

<sup>5</sup> Article 30(5) CRPD focuses on the participation of people with disabilities in recreational, leisure and sporting activities, which must be ensured ‘on equal basis with others’, but the latter obligation remains outside the scope of this chapter.

<sup>6</sup> See the report from Slovakia (CRPD/C/SVK/1, para. 385), which mentions a Strategy for development of Museums and Galleries, and the initial report from Sweden which references a national strategy for digitisation, electronic access and digital curation (CRPD/C/SWE/1: para. 282).