

SYMPOSIUM ON WILLIAM I. PONS, JANET E. LORD, AND MICHAEL ASHLEY STEIN,  
“DISABILITY, HUMAN RIGHTS VIOLATIONS, AND CRIMES AGAINST HUMANITY”

POTENTIAL BENEFITS AND LIMITATIONS OF THE NEW HUMAN RIGHTS  
INDICATORS FOR THE CONVENTION ON THE RIGHTS OF PEOPLE WITH  
DISABILITIES

*Arlene S. Kanter\**

The United Nations adopted the Convention on the Rights of People with Disabilities (CRPD) in 2006 to encourage the development of international and domestic legal protections for people with disabilities.<sup>1</sup> Over the past sixteen years, 184 countries have ratified the CRPD, and more than one hundred countries have submitted their country reports to the CRPD Committee for review.<sup>2</sup> The Office of the High Commissioner for Human Rights (OHCHR) recently released a set of human rights indicators to measure states parties' progress toward compliance with the CRPD.<sup>3</sup> This essay discusses the potential benefits and limitations of the new CRPD Indicators. Despite their limitations, the CRPD Indicators may become an important catalyst for states parties' compliance with the CRPD as well as a way to substantiate claims of violations of international, regional, and domestic law and crimes against humanity, such as those discussed in the lead article, *Disability, Human Rights Violations, and Crimes Against Humanity*.<sup>4</sup>

*The CRPD Indicators*

The CRPD Indicators are the first set of indicators the OHCHR has developed for an entire treaty. As part of the project known as “Bridging the Gap,” the CRPD Indicators were written to assist states parties toward compliance with the CRPD. Overall, the Bridging the Gap Project is a targeted thematic response to the CRPD's requirement of making development cooperation accessible to and inclusive of persons with disabilities.<sup>5</sup>

\* Laura J. and L. Douglas Meredith Professor of Teaching Excellence, Director, Disability Law and Policy Program, Director, International Programs, Syracuse University College of Law.

<sup>1</sup> GA Res. 61/106, [Convention on the Rights of Persons with Disabilities](#) (Dec. 13, 2006) [hereinafter CRPD]. For a discussion of the development of the CRPD, see ARLENE S. KANTER, [THE DEVELOPMENT OF DISABILITY RIGHTS UNDER INTERNATIONAL LAW: FROM CHARITY TO HUMAN RIGHTS](#) (2015).

<sup>2</sup> [CRPD](#), *supra* note 1, CRPD Committee.

<sup>3</sup> United Nations Office of the High Commissioner on Human Rights, [Human Rights Indicators on the Convention on the Rights of Persons with Disabilities in Support of a Disability Inclusive 2030 Agenda for Sustainable Development](#) [hereinafter CRPD Indicators]; *see also* Bridging the Gap, [Bridging the Gap, I](#).

<sup>4</sup> William I. Pons, Janet E. Lord & Michael Ashley Stein, [Disability, Human Rights Violations, and Crimes Against Humanity](#), 116 AJIL 81 (2022).

<sup>5</sup> [CRPD Indicators](#), *supra* note 3.

The OHCHR considers such cooperation “significant” in improving social inclusion and promoting the rights of disabled persons.<sup>6</sup>

The Indicators were developed specifically to assist states parties in incorporating the goals of the CRPD into their efforts to implement the Sustainable Development Goals. The previous 2000 Millennium Development Goals encouraged collective international action to reduce poverty, improve health outcomes, and address educational and environmental concerns, but did not mention disability. Following an outcry by the disability community, the Sustainable Development Goals pledged to “leave no one behind,” including disabled people. The OHCHR developed the CRPD Indicators in response to this pledge.<sup>7</sup> The Indicators are the product of consultations with a range of stakeholders, including members of the CRPD Committee, the special rapporteur on the rights of persons with disabilities, representatives of United Nations agencies, civil society organizations, academics, and national human rights institutions. The Indicators will be used by the CRPD Committee in its review of country reports as well as by the CRPD Committee and other international bodies to compare progress within and among countries, and across time.

#### *Potential Benefits of the New CRPD Indicators*

The CRPD Indicators, as a whole, are impressive. They call for the collection of an enormous amount of data, disaggregated by disability status. They are designed to track outcomes, structural developments, and progress by states parties toward compliance with the CRPD. For each article of the CRPD, there are “structural” indicators that assess the formal efforts of the state through internal legislation or policies; “process” indicators that assess a state’s efforts to realize its commitments; and “outcome” indicators that assess the actual impact of laws and policies. Use of these indicators will make monitoring of the CRPD more transparent, accessible, and evidence-based.<sup>8</sup>

States parties are encouraged to use the Indicators to evaluate the impact of the CRPD on state practices. As such, the CRPD Indicators are a valuable tool to assess progress in states parties’ compliance with the CRPD. In those countries that have taken steps to implement the CRPD, the Indicators will document their progress. In other countries, which have made little, if any, progress toward implementation, it is hoped that the Indicators will provide a catalyst for state action, especially if the CRPD Committee had previously identified lack of progress in its responses to the states parties’ country reports.

The CRPD Indicators may also support claims of violations of human rights and humanitarian laws as well as crimes against humanity. For example, an “Outcome” Indicator for Article 11 focuses on disabled people at risk by identifying complaints of violence and discrimination against them, including in conflict and post-conflict or emergency situations. According to this Indicator, the data should be disaggregated by disability status, and include the numbers of dead or missing persons, or persons otherwise affected by such disasters and humanitarian emergencies.<sup>9</sup> Similarly, the Indicator for Article 15, which addresses the rights of disabled people to be free from torture and inhuman or degrading treatment or punishment, calls for information about the “number of reported cases of torture and ill-treatment against persons with disabilities, including the denial of reasonable

<sup>6</sup> *Id.*

<sup>7</sup> See UN Dep’t of Econ. and Soc. Affairs, [UN Disability and Development Report: Realizing the Sustainable Development Goals by, for and with People with Disabilities](#) (2019).

<sup>8</sup> For a discussion of indicators, generally, see, e.g., [THE QUIET POWER OF INDICATORS: MEASURING GOVERNANCE, CORRUPTION AND RULE OF LAW](#) 4 (Sally Engle Merry, Kevin E. Davis & Benedict Kingsbury eds., 2015).

<sup>9</sup> See [CRPD Indicators](#), *supra* note 3, Art. 11, 11.12; see also *id.* Arts. 15, 16.

accommodations in detention, disaggregated by sex, age, disability, context of the violation.”<sup>10</sup> To the extent these indicators will reveal patterns and practices of violations of the CRPD as well as other international, regional or domestic laws, they may provide support for individual as well as group claims for violations of human rights and humanitarian laws and crimes against humanity.<sup>11</sup>

### *Limitations of the CRPD Indicators*

Despite the potential benefits of the CRPD Indicators, they have limitations, especially if they are not embraced by states parties. If a state party is dissatisfied with what the Indicators show about its performance, the state may attack the Indicators as invalid rather than change its conduct to comply with the CRPD. Further, disabled people’s organizations (DPOs), which would likely support the Indicators’ focus on the collection of disaggregated disability data, may still dismiss the overall utility of the Indicators if they do not support their own policy goals. For example, if an Indicator reveals a small disabled population within a given country, DPOs may fear that the state will deem insignificant their claims for new legal protections and resources. On the other hand, if an Indicator reveals a high percentage of its population as disabled, DPOs may feel justified in increased demands on their governments, which, in turn, may be unwilling to cooperate due to the potential impact of these new demands on their state budgets.

Second, as discussed above, the CRPD Indicators were developed to assist states parties in incorporating the goals of the CRPD into their Sustainable Development Goals implementation efforts. The Sustainable Development Goals focus on improving a country’s economy, which should necessarily benefit non-disabled and disabled citizens, alike. However, the prioritization of economic growth in the Sustainable Development Goals, as a way to achieve their targets, risks subordinating the goals of the CRPD as the price of incorporating them. In this way, the Indicators may result in disabled people being dismissed as financial burdens, public health problems, and economic liabilities, and being “left increasingly further behind[.]”<sup>12</sup>

Third, the CRPD Indicators present certain challenges that human rights indicators for other treaties do not. Unlike other treaties, the CRPD addresses the rights of a diverse group of people whose very membership in the group is based on a contested term—disability. The drafters of the CRPD themselves recognized the fluidity of the term disability and chose not to include a definition of disability in the CRPD. Instead, the CRPD adopts the social model of disability which focuses on the barriers experienced by disabled persons rather than on an individual person’s medical diagnosis or impairment.<sup>13</sup> The social model recognizes that disabled people are a vastly diverse group with differing needs and experiences, and with intersectional identities, who face stigma, exclusion, and discrimination based on disability as well as race, gender, sexuality, age, religion, national origin, or some, or all, of these identities. Moreover, unlike other groups, disabled children and adults often remain hidden due to the threat of violence or stigma that still attaches to the label of disability in many countries today. Therefore, unlike indicators for other treaties, the potential impact of the CRPD Indicators on the Sustainable Development Goals may be limited because simply knowing who and where children and adults with disabilities are, not to mention what they may want and need, will be difficult, if not impossible, particularly in those countries with a long history of segregation, exclusion, and mistreatment of disabled people.

<sup>10</sup> *Id.* Art. 15.

<sup>11</sup> Pons, Lord & Stein, *supra* note 4.

<sup>12</sup> Nora Groce, Maria Kett, Raymond Lang & Jean-Francois Trani, *Disability Poverty: The Need for a More Nuanced Understanding of Implications for Development Policy and Practice*, 32 *THIRD WORLD Q.* 1493, 1494 (2011).

<sup>13</sup> See KANTER, *supra* note 1, at 1, 8, 49.

A fourth limitation of the CRPD Indicators is common to all indicators. Indicators have been developed to assist states parties in treaty implementation. But not all states parties are committed to implementation of the treaties they ratify.<sup>14</sup> While some states parties may choose to comply with the CRPD, others will not, resisting changes in their domestic laws and policies to conform to the CRPD. Thus like all efforts to use indicators to encourage compliance, use of the CRPD Indicators will remain a challenge in those countries that are not fully committed to the CRPD, and especially where disability-based violence and inequality continues, with or without domestic legal protections.

A fifth limitation of the Indicators is that they do not include any measures regarding the quality of life for disabled people, which one may expect since they are human rights indicators and not social indicators. However, the purpose of the CRPD is to remove barriers that prevent disabled people from living their lives on an equal basis with others, wherever they may live. The CRPD's vision of a good life for disabled people requires more than accessible buildings or accommodations at work and in school. It envisions meaningful personal relationships, dignity, and the opportunity to make one's own decisions and realize one's goals and aspirations. To achieve a "good life" for disabled people, therefore, means not only changing international, regional, and domestic laws, but also changing attitudes, which requires more than adopting a set of Indicators.

Finally, even if the CRPD Indicators result in encouraging greater compliance with the CRPD, there remains the risk that a focus on the Indicators themselves may divert attention away from changing the underlying situation the Indicators seek to improve. As one scholar has observed, indicators focus "only on what can be (easily) measured at the expense of what may be other important matters."<sup>15</sup> Focusing on the CRPD Indicators runs the risk of transforming the implementation of the CRPD into a "technical exercise."<sup>16</sup> Although this risk can be minimized by a commitment of states parties to implement the CRPD with the active participation of disabled people, improving the lives of disabled people, as envisioned in the CRPD, will remain a challenge, even with the new CRPD Indicators.

### *Nothing About Us Without Us*

A necessary step to address these limitations is the inclusion of people with all types of disabilities in the operationalization of the CRPD Indicators. Disabled people must be consulted about which indicators to use and how to use them. They must be asked if they are aware of the CRPD, and if so, how they understand and wish to exercise the rights it seeks to protect; and if not, how best to inform them of those rights. The active participation of people with disabilities is not only desirable, it is necessary, as one of the fundamental principles of the CRPD.<sup>17</sup>

People with disabilities must also be included in identifying what conduct or activities constitute a violation of international, regional, and domestic law, in the first instance. Although the CRPD has resulted in efforts to include disability within mainstream international human rights initiatives, "abuses against persons with disabilities remain largely unaddressed by international, regional, and national fact-finding bodies and tribunals, and have usually been

<sup>14</sup> See Arlene S. Kanter, *Do Human Rights Treaties Matter: The Case for the United Nations Convention on the Rights of People with Disabilities*, 52 VAND. J. TRANSNAT'L L. 577, 584–90 (2019).

<sup>15</sup> David Nelken, *Contesting Global Indicators*, in *THE QUIET POWER OF INDICATORS*, *supra* note 8.

<sup>16</sup> See AnnJanette Rosga & Margaret L. Satterthwaite, *The Trust in Indicators: Measuring Human Rights*, 27 BERK. J. INT'L L. 253, 295 (2009). See also Sally Engle Merry, *Measuring the World: Indicators, Human Rights and Global Governance*, 52 CURRENT ANTHROPOLOGY 83, 305 (2011).

<sup>17</sup> Article 4(c) requires states parties to "ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability" and "[t]o take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes." *CRPD*, *supra* note 1.

outside the scope of Crimes Against Humanity prosecutions.”<sup>18</sup> One reason for this absence is the lack of disabled people among the decisionmakers within the tribunals, compounded by the lack of awareness, generally, about crimes against disabled people. Members of international and regional tribunals can no longer credibly claim ignorance about such crimes and violence, however. Since 2008, when the CRPD entered into force, it has established a legal duty on states parties to protect disabled persons against violence, including during wartime and conflicts.<sup>19</sup> The CRPD Indicators could be used to support efforts by victims of such offenses with data and firsthand reports to substantiate claims before domestic, regional, and international tribunals, including the International Criminal Court.

In short, the CRPD Indicators could, in the words of Pons, Lord, and Stein, “highlight the interrelationship between the [CRPD] and international criminal law and process.”<sup>20</sup> However, until people with disabilities are more widely recognized as a distinct and vulnerable group worthy of protection under international law, efforts to seek remedies for violations of law against them will remain unaddressed by the international legal system. To the extent that the CRPD Indicators will raise awareness about the crimes against humanity and violations of international as well as regional and domestic law to which disabled people are subjected, the Indicators have the potential to play an important role in efforts to remedy such violations before international, regional, and domestic tribunals as well as the International Criminal Court.

### Conclusion

There is “widespread agreement on the potential of human rights indicators in effective monitoring and promotion of human rights.”<sup>21</sup> Like other indicators, the CRPD Indicators have the potential to improve implementation of the CRPD by identifying progress as well as gaps in compliance which require state action. The Indicators will also assist the CRPD Committee in their review of states parties reports as well as facilitate the collection of data to support claims of violations of international, regional, and domestic law, and crimes against humanity.

To fully assess the effectiveness of the CRPD, however, people with disabilities must be included in all efforts to implement disability-related policies and the allocation of resources that affect them. As impressive and comprehensive as the new CRPD Indicators are, they are merely a tool to aid states parties toward CRPD compliance. Additional action will be needed to realize the CRPD’s goals of equality, dignity, accessibility, and inclusion, even by those states parties most committed to its compliance. Unless and until disabled people, themselves, are actively involved in all stages of the process of monitoring states parties’ compliance, the promise of the CRPD will remain illusory. Even the most detailed indicators cannot eliminate the ableism, stigma, and long-held practices and beliefs that leave disabled people behind and prevent them from exercising the rights which the CRPD Indicators seek to measure. Despite the difficulty of this effort, it must be made. As Kathryn Sikkink has observed, “human rights progress is always a process and never an endpoint.”<sup>22</sup> To that end, the disability community and its allies will need perseverance and continued vigilance.

<sup>18</sup> Pons, Lord & Stein, *supra* note at 4 at 7. Recent disability-focused initiatives include the 2019 UN Disability Strategy, the adoption of guidelines on disability inclusion, incorporation of detailed standards on disability for disarmament, demobilization and reintegration, consideration of CRPD Article 11 (situations of risk) in operations of the International Committee of the Red Cross, and proactive engagement on disability equality within the UN system. In addition, in 2019, the UN Security Council adopted a resolution “emphasizing the need for States to end impunity for criminal acts against civilians, including those with disabilities” and to warrant their “access to justice and effective remedies and, as appropriate, reparation.” *Id.* at 6–7.

<sup>19</sup> CRPD Indicators, *supra* note 3, Arts. 11, 15, 16.

<sup>20</sup> Pons, Lord & Stein, *supra* note 4 at 81.

<sup>21</sup> THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PEOPLE WITH DISABILITIES: A COMMENTARY 565 (Valentina Della Fina, Rachele Cera & Giuseppe Palmisano eds., 2017).

<sup>22</sup> KATHRYN SIKKINK, EVIDENCE FOR HOPE: MAKING HUMAN RIGHTS WORK IN THE 21ST CENTURY 154 (2017).