Towards Inclusive Justice: Addressing Persons with Disabilities in the Convention on the Prevention and Punishment of Crimes against Humanity

Initiative for Disability Inclusion in the Convention on Crimes against Humanity

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I. Introduction: Persons with Disabilities and Crimes against Humanity

The *Convention on the Prevention and Punishment of Crimes against Humanity*, to be elaborated upon and concluded by an international conference of plenipotentiaries, should appropriately account for crimes against persons with disabilities and their rights to equal recognition before the law, protection under the law, and access to justice. Lack of express inclusion of persons with disabilities and their rights in the forthcoming Convention will have reverberating effects in the legal recognition and redress for serious crimes targeting and impacting persons with disabilities, leading to continued invisibility of victims and impunity and lack of accountability for perpetrators.[1]

Serious crimes targeting persons with disabilities, as individuals and as a group, on account of their disability and the disproportionate impact serious violations have on persons with disabilities, have been and remain a fixture within and outside of armed conflict.[2] Reporting shows that persons with disabilities are regularly victims of targeted killings, forced sterilization, involuntary medical and scientific experimentation, torture and other ill-treatment, sexual violence, and enforced disappearance.[3] Despite widespread documentation of these crimes, legal redress and recognition that such acts targeting persons with disabilities can and do rise to the level of a crime against humanity remain elusive.[4]

The current text of the draft articles neither directly recognizes "disability" as an identifiable group or collectivity against whom persecution can be considered a crime against humanity, nor does it mainstream disability inclusion in its wider sense.[5] This ignores the historical jurisprudence of International Military Tribunals at Nuremburg,[6] the legal obligations established by the UN Convention on the Rights of Persons with Disabilities (CRPD),[7] and the unique harm faced by persons with disabilities that continues to be overlooked in the prosecution of crimes against humanity.

CRPD Article 11 establishes the complementarity and co-applicability of the treaty to discrete areas of international law, including international criminal law.[8] This requirement of a transversal reading of the human rights protections of the CRPD into international legal obligations writ large supports the conclusion that States are obligated to seek accountability for perpetrators of serious violations of international law specifically targeting persons with disabilities. While international criminal law and international human rights law address different forms of criminal responsibility, it is clear that international criminal law is protective of human rights, as evidenced by the jurisdiction of international criminal courts over genocide, crimes against humanity, and war crimes.[9]

This protection of human rights by international criminal law is best demonstrated by the definition of crimes against humanity codified within Article 7 of the Rome Statute of the International Criminal Court[10] and Article 5 of the Ljubljana-The Hague Convention[11] and further reinforced by the definition of the term 'persecution.'[12] The complementarity and co-applicability is finally solidified by the requirement that the International Criminal Court's "application and interpretation of law . . . must be consistent with internationally recognized human rights, and be without any adverse distinction found

on grounds such as gender, age, race, colour, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status," with disability falling within the 'other status' category.[13] The legal obligation and relevance of the rights and protections found in the CRPD to international criminal law has additionally been recognized and reaffirmed by UN Security Council resolution 2475 (2019), Sustainable Development Goal 16, and by the UN Special Rapporteur on the Rights of Persons with Disabilities.[14]

This policy paper provides concrete recommendations to ensure that persons with disabilities and their rights are explicitly recognized and meaningfully included in the future Convention, and that it is in full alignment with contemporary human rights law and standards to ensure justice for all victims of crimes against humanity.

Participation of Persons with Disabilities Within the Treaty Negotiation

More than a billion people worldwide have a disability,[15] yet they and their representative organizations have often been excluded from the development of international legal and regulatory frameworks.[16] It is, therefore, essential that the negotiation of the future Convention be inclusive of and accessible to persons with disabilities and their representative organizations and that the procedural framework around the negotiations guarantees their full and effective participation. Measures necessary to ensure inclusion and meaningful participation include transparency of the consultation process, the dissemination of information related to the negotiations in accessible formats, the provision of appropriate procedural accommodations, and the provision of reasonable accommodations where required. Such actions are mandated by the principles and obligations of the CRPD and UN Security Council resolution 2475 (2019).

Recommended Amendments and Additions to the Draft Articles

The undertaking to develop a *Convention on Prevention and Punishment of Crimes against Humanity* presents an exceedingly rare opportunity to make a significant stride toward ensuring that the interpretation and application of international criminal law is consistent with the CRPD. Having disability explicitly recognized in the treaty would establish a strong legal foundation for future advocacy on the further recognition and inclusion of the rights of persons with disabilities within international criminal law.[17]

Therefore, the following amendments and additions to the existing draft articles are recommended:

II. Proposed Provisions for Inclusion of Disability in the Future Convention on Prevention and Punishment of Crimes against Humanity

A. Article 2(1)(h) – Persecution

Persons with disabilities have been and continue to be victims of all the enumerated crimes in the current draft articles. However, there is no explicit mention of persons with disabilities or disability within article 2 or any of its sub-provisions.

Draft Article: "persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph;"

Proposal: "persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, ***disability*** or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph;"

This proposal is made in addition to the one made by some observers and states related to the removal of the expression 'in connection with any act referred to in this paragraph', contained in Draft Article 2(1)(h). The crime against humanity of persecution should be an autonomous, standalone crime, independent of any other crime against humanity.[18]

Rationale: Disability is implicitly recognized as a ground for persecution through the use of the phrase "other grounds," but explicit inclusion within the definition of persecution is lacking. The explicit inclusion restores the jurisprudence of the International Military Tribunals at Nuremberg which concluded that the systematic targeting of a civilian population on the basis of their disability constitutes a crime against humanity.[19] Explicit inclusion also recognizes the research and reporting that persons with disabilities are generally the first victims of and disproportionately impacted by serious violations.[20] The jurisprudence of the International Criminal Tribunal for the former Yugoslavia (ICTY) also highlights these patterns of targeting of[21] and disproportionate impact[22] on persons with disabilities during the commission of serious violations, and notes that persons with disabilities constitute a specifically protected category.[23]

Importantly, explicit inclusion of disability directly and meaningfully addresses the continued dearth of accountability for crimes against humanity targeting and disproportionately impacting persons with disabilities by recognizing the specific inequalities, injustices, and harms faced by persons with disabilities.[24]

The CRPD, like the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of Discrimination Against Women (CEDAW), has been designated by the Office of the High Commissioner for Human Rights as a core human rights instrument that establishes rights and protections for a group—persons with disabilities—that has been disadvantaged and is at high risk

of discrimination and persecution.[25] It is accepted practice that the interpretation and application of international criminal law must be done in a manner consistent with international human rights—which includes the CRPD—without adverse distinction or discrimination based on an individual's attributes.[26]

B. Article 2(2)(j) – Enforced sterilization

The current draft articles contain the crime of enforced sterilization, but without a corresponding definition of the crime. It is therefore recommended that a definition for enforced sterilization is added. Along those lines, the text below provides an example of a possible definition that is inclusive of persons with disabilities and their lived experiences.

Potential Definition of Enforced Sterilization article 2(2)(j): "'enforced sterilization' means a specific form of reproductive violence whereby a perpetrator irreversibly deprives a person of their reproductive capacity without their free and informed consent."

Rationale: Forced sterilization is a specific form of reproductive violence that impacts both men and women with disabilities, particularly those with intellectual disabilities.[27] Women with intellectual disabilities are at heightened risk of being victims of such violence based on the intersectionality between disability and gender, often being forced to undergo sterilization or terminate wanted pregnancies.[28] International instruments have recognized that forced sterilization of persons with disabilities is a form of violence and discrimination, and constitutes torture and other cruel, inhumane or degrading treatment.[29] Therefore, a clear definition of what constitutes enforced sterilization, that reflects the accepted understanding of this specific form of gender-based violence, is necessary to ensure full and equal protection of victims and accountability for such actions.

C. Article 3 – General Obligations

Article 3 should include the obligation to ensure equal access to justice for and the effective participation of persons with disabilities within all processes, mechanisms, and procedures developed by States in regard to the implementation of this Convention. This can be achieved by the following addition:

Proposed Addition article 3(4): "Each State shall ensure equal and effective access to justice for all individuals by providing procedural and reasonable accommodations that are gender, age, and disability sensitive in the implementation of this Convention."

Rationale: To ensure equal and effective participation of persons with disabilities and prevent their discrimination and exclusion from justice and investigative mechanisms, particularly for women, children, older persons with disabilities, as well as persons with intellectual and psychosocial disabilities, both procedural and reasonable accommodations that are age-, gender-, and

disability-appropriate must be provided.[30] Procedural accommodations should not be conflated with reasonable accommodations.[31] A procedural accommodation is any measure needed to allow persons with disabilities to exercise their legal capacity and access justice, and requires making all appropriate and necessary modifications and adjustments, in a particular case, regardless of whether such actions may cause a disproportionate or undue burden.[32] A reasonable accommodation, is any appropriate and necessary adjustment and modification, that does not impose a disproportionate or undue burden, made to ensure that each person with disabilities can exercise or enjoy their rights on an equal basis with others.[33]

D. Article 11 – Fair treatment of the alleged offender

Proposed Addition article 11(2)(d): "to be provided with procedural and reasonable accommodations that are age-, gender-, and disability-appropriate, including being provided with accessible and understandable information about their rights."

Rationale: Persons with disabilities are not only victims of crimes, but can also be perpetrators.[34] To guarantee due process and equal protection under the law for alleged offenders with disabilities also requires that both procedural and reasonable accommodations that are age-, gender-, and disability-appropriate be made to allow them to effectively and meaningfully participate within the investigation and judicial proceedings.[35] Procedural accommodations should not be conflated with reasonable accommodations.[36] A procedural accommodation is any measure needed to allow persons with disabilities to exercise their legal capacity and access justice, and requires making all appropriate and necessary modifications and adjustments, in a particular case, regardless of whether such actions may cause a disproportionate or undue burden.[37] A reasonable accommodation, is any appropriate and necessary adjustment and modification, that does not impose a disproportionate or undue burden, made to ensure that each person with disabilities can exercise or enjoy their rights on an equal basis with others.[38]

E. Article 12 – Victims, witnesses and others

Owing to an outdated and entrenched understanding of disability, persons with disabilities have been and continue to be denied equal recognition before the law and access on an equal basis with others to justice mechanisms and procedural safeguards.[39] However, within article 12 or any of its sub-provisions, there is no express prohibition against discrimination on the basis of disability or any requirement to provide equal participation and access for persons with disabilities.

To facilitate equal recognition, access, and protection of persons with disabilities by the future Convention, and their meaningful participation as victims and witnesses, the following amendments and additions should be made to article 12.

**Note: the rationale for the proposed changes is provided collectively at the end given that the basis for the amendments and additions is interrelated and overlapping.*

a) Article 12 (1)(a)

Draft Article: "any person who alleges that acts constituting crimes against humanity have been or are being committed has the right to complain to the competent authorities;"

Proposal: "any person who alleges that acts constituting crimes against humanity have been or are being committed has the right***, regardless of age, gender or disability status,*** to complain to the competent authorities ***and to be provided with procedural and reasonable accommodations in order to make such a complaint***;"

b) Article 12(1)(b)

Draft Article: "complainants, victims, witnesses, and their relatives and representatives, as well as other persons participating in any investigation, prosecution, extradition or other proceeding within the scope of the present draft articles, shall be protected against ill-treatment or intimidation as a consequence of any complaint, information, testimony or other evidence given. Protective measures shall be without prejudice to the rights of the alleged offender referred to in draft article 11."

Proposal: "complainants, victims, witnesses, and their relatives and representatives, as well as other persons participating in any investigation, prosecution, extradition or other proceeding within the scope of the present draft articles, ***regardless of age, gender or disability status,*** shall be protected against ill-treatment or intimidation as a consequence of any complaint, information, testimony or other evidence given, ***and shall not be prevented from testifying or being considered a competent complainant, victim or witness on the basis of their disability.*** Protective measures shall be without prejudice to the rights of the alleged offender referred to in draft article 11."

c) Article 12(2)

Draft Article: "Each State shall, in accordance with its national law, enable the views and concerns of victims of a crime against humanity to be presented and considered at appropriate stages of criminal proceedings against alleged offenders in a manner not prejudicial to the rights referred to in draft article 11."

Proposal: "Each State shall, in accordance with ~~its national law~~ ***applicable national and international law, including human rights law and international humanitarian law, ensure effective access to justice by providing procedural and reasonable accommodations to*** enable the views and concerns of victims of a crime against humanity to be presented and considered at appropriate stages of criminal proceedings against alleged offenders in a manner not prejudicial to the rights referred to in draft article 11."

d) Article 12(3)

Draft Articles: "Each State shall take the necessary measures to ensure in its legal system that the victims of a crime against humanity, committed through acts attributable to the State under international law or committed in any territory under its jurisdiction, have the right to obtain reparation for material and moral damages, on an individual or collective basis, consisting, as appropriate, of one or more of the following or other forms: restitution; compensation; satisfaction; rehabilitation; cessation and guarantees of non-repetition."

Proposal: "Each State shall take the necessary measures to ensure in its legal system that the victims of a crime against humanity, committed through acts attributable to the State under international law or committed in any territory under its jurisdiction, have the right***, regardless of age, gender or disability status,*** to obtain ***prompt, full, effective and accessible*** reparation***, including through administrative or other reparation programs,*** for ~~material and moral damages~~ ***any physical, mental, moral, material, legal or other harm,*** on an individual or collective basis, consisting, as appropriate, of one or more of the following or other forms: restitution; compensation; satisfaction; rehabilitation; cessation and guarantees of non-repetition."

Rationale: Equal recognition before and protection under the law are essential to the enjoyment and fulfilment of all other rights, and are fundamental principles of international law.[40] Relatedly, access to justice is also essential to the enjoyment and fulfilment of all other rights.[41] Underpinning the fulfilment of these rights are the principles of equality and non-discrimination, which hold all people to be equal in dignity and rights, and prohibit any distinction, exclusion, or restriction of rights on the basis of an individual's personal characteristics (e.g., gender, age, disability, race, religion, sexual identity, political opinion or affiliation, language, ethnicity, indigenous or social origin, nationality, and economic status).[42]

Discrimination on the basis of disability is "any distinction, exclusion, or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms . . . including denial of reasonable accommodation."[43] Disability is only one personal characteristic of persons with disabilities, with other characteristics intersecting with disability to establish the individual's complete identity. While the intersection of disability with all other personal characteristics is essential to the lived experiences of persons with disabilities, it also brings with it 'intersectional' and 'multiple' forms of discrimination that prevent the equal exercise and enjoyment of their rights, which can occur as direct or indirect discrimination.[44]

Persons with disabilities are the group that is most commonly denied their legal capacity, whether by guardianship, substitute decision-making, or functional/mental status assessments.[45] This denial of legal capacity and by extension denial of access to justice, is particularly acute for women, children, and older persons with disabilities, and especially for persons with cognitive or psychosocial disabilities.[46] Women, children, and older persons with disabilities are among the groups of persons with disabilities who most often face multiple and intersectional discrimination

preventing exercise of their legal capacity and access to justice.[47] The concept of mental and legal capacity are regularly mixed, leading to persons with cognitive or psychosocial disabilities being disproportionally denied their legal capacity, and having their autonomy and legal personhood replaced with substitute decision-making regimes or denial of access to justice based on flawed functional/ mental status assessments.[48]

Safeguards, supports, and procedural and reasonable accommodations that are age-, gender-, and disability-appropriate, are therefore essential to overcome intersectional and multiple discrimination to ensure the equal recognition, protection, and access for all persons with disabilities.

F. Article 13 (11) – Extradition

Draft Articles: "Nothing in the present draft articles shall be interpreted as imposing an obligation to extradite if the requested State has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's gender, race, religion, nationality, ethnic origin, culture, membership of a particular social group, political opinions or other grounds that are universally recognized as impermissible under international law, or that compliance with the request would cause prejudice to that person's position for any of these reasons."

Proposal: "Nothing in the present draft articles shall be interpreted as imposing an obligation to extradite if the requested State has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's gender, race, religion, nationality, ethnic origin, culture, membership of a particular social group, political opinions***, disability status*** or other grounds that are universally recognized as impermissible under international law, or that compliance with the request would cause prejudice to that person's position for any of these reasons."

Rationale: This addition is recommended to ensure that the future Convention is consistent with the obligations of the Ljubljana-The Hague Convention on the International Cooperation in the Investigation and Prosecution of the Crimes of Genocide, Crimes against Humanity, War Crimes, and other International Crimes (Ljubljana-The Hague Convention), which permits the refusal of extradition if there are "substantial grounds for believing the request has been made for the purpose of prosecuting or punishing a person on account of that person's . . . mental or physical disability."[49]

III. Conclusion

We strongly encourage the incorporation of disability-specific provisions, as well as age-, gender- and disability-appropriate safeguards and procedural and reasonable accommodations, to guarantee the equal recognition, protection, and access for all persons with disabilities within the future Convention. This will serve to recognize the disproportionate impact that serious crimes have on persons with disabilities, uphold their rights, and ensure accountability and redress.

IV. Endorsements

Organizations endorsing (in alphabetical order):

CBM Christoffel-Blindenmission Christian Blind Mission e.V.	
Civitas Maxima	
Disability Rights International	
Fight For Right	
Global Rights Compliance	
Heba Hagrass, Special Rapporteur on the rights of persons with disabilities	
Institute for International Law of Peace and Armed Conflict	
International Disability Alliance	
International Refugee Assistance Project	
Validity Foundation	
World Institute on Disability	

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Endnotes

[1] "The decision not to expressly include disability as one of the grounds of prohibited persecution in the draft articles is regrettable—it is a missed opportunity to overtly ensure more inclusive justice . . . [T]he negotiation of a CAH Convention presents a genuine opportunity to explicitly recognize and enforce accountability for disability-based crimes in-line with the protections envisioned by and provided to other marginalized groups by international criminal law." William I. Pons, et. al., *Disability, Human Rights Violations, and Crimes Against Humanity*, 116 AMERICAN JOURNAL OF INTERNATIONAL LAW 58-95, at pg. 85 (2022).

[2] Statement by the Committee on the Rights of Persons with Disabilities, *Palestinians with disabilities subject to unbearable consequences of the ongoing hostilities and violence in OPT* (27 May 2024); Committee on the Rights of Persons with Disabilities, *Guidelines on deinstitutionalization, including in emergencies*, CRPD/C/5, paras. 2-13 (10 Oct. 2022); Organization for Security and Co-operation in Europe, *Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes against Humanity*, pgs. 80-81 (12 April 2022); Alice Priddy, *Academy Briefing #14: Disability and Armed Conflict*, Geneva Academy (2019); Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of Colombia*, CRPD/C/COL/CO/1, para. 24 (30 Sept. 2016); UN Commission of Inquiry on Human Rights in the DPRK, *Report of the Detailed Findings of the Commission of Inquiry on Human Rights in the DPRK*, A/HRC/25/CRP.1, paras. 321–29 (7 Feb. 2014); Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/HRC/22/53, paras. 57-70 (1 Feb. 1, 2013); Report of the Special Rapporteur on Violence against Women, *Violence against Women with Disabilities*, A/67/227, paras. 12-69 (3 Aug. 2012); Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/HRC/7/3, para. 38 (15 Jan. 2008); and Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/63/175, (28 July 2008).

[3] *See* Validity Foundation, *Written submission to the United Nation Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concerning global trends and developments on torture* (9 May 2025); Bel Trew, *Investigation: The Independent reveals hundreds of Ukrainians with disabilities vanished into Russia* (3 May 2024); Amnesty International, *Persons with Disabilities in Situations of Risk and Humanitarian Emergencies: Submission to the Committee on the Rights of Persons with Disabilities on Article 11* (2023); Office of the Special Representative of the Secretary-General for Children and Armed Conflict, *Towards Greater Inclusion: A Discussion Paper on the CAAC Mandate and Children with Disabilities in Armed Conflict* (Dec. 2023); International Disability Alliance, *The situation of persons with disabilities in the context of the war of aggression by Russia against Ukraine* (24 Apr. 2023); Human Rights Watch, *Gaza: Israeli Restrictions Harm People with Disabilities* (3 Dec. 2020); Human Rights Watch, *Living in Chains: Shackling of Persons with Psychosocial Disabilities Worldwide* (2020); Michael Robertson, Astrid Ley and Edwina Light, *The First into the Dark: Nazi Persecution of the Disabled* (2019); Report of the Special Rapporteur on the Rights of Persons with Disabilities, *Sexual and reproductive health and rights of girls and young women with disabilities*, A/72/133, (14 July 2017); Committee on the Rights of Persons with Disabilities, *Guidelines on the right to liberty and security of persons with disabilities*, A/72/55 Annex, (2015); Janos Fiala-Butora, *Disabling Torture: The Obligation to Investigate Ill-treatment of Persons with Disabilities*, 45 COLUM. HUM. RTS. L. REV. 214, 219–40 (2013); P.W. Masakhwe, *The Disabled and the Rwanda Genocide: The Untold Story*, 23 Disability World (Apr.–May 2004); Arthur Blaser, *From the Field–People with Disabilities and Genocide: The Case of Rwanda*, 22 Disability Stud. Q. 53 (2002); Arthur Blaser, *Always the First to Go?: People with Disabilities and Genocide*, in Anatomy of Genocide: State-Sponsored Mass-Killings in the Twentieth Century 78 (Alexandre Kimenyi & Otis Scott

eds., 2001); Deutsche Presse Agentur, *U.N. Team Arrives in Cambodia to Investigate Khmer Rouge Genocide,* LexisNexis® Academic Universe (14 Nov. 1998).

[4] *See* William I. Pons, et. al., *Disability, Human Rights Violations, and Crimes Against Humanity*, 116 AMERICAN JOURNAL OF INTERNATIONAL LAW 58-95, (2022); *see also* William I. Pons, et. al., *Addressing the accountability void: War crimes against persons with disabilities,* 105 INTERNATIONAL REVIEW OF THE RED CROSS 465–483 (2023).

[5] While disability is implicitly included in the draft articles' definition of persecution found in article 2(1)(h) via the phrase "other grounds," explicit inclusion of disability as an identifiable group or collective and the mainstreaming of disability inclusion through the draft articles and the final text of the future Convention is required by the General Principles (Art. 3) and General Obligations (Art. 4) established by UN Convention on the Rights of Persons with Disabilities (CRPD) that require 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 UN Security Council resolution 2475 para. 2 noting "the need for States to end impunity for criminal acts against civilians, including those with disabilities, and to ensure that such persons have access to justice and effective remedies and, as appropriate, reparation".

[6] The indictments and convictions of three individuals for crimes against humanity in the Doctors Trial/ Medical Case was based on their involvement in the Aktion T4 program (a.k.a. 'euthanasia' program), which was the systematic killing of babies, youth, adults, and older persons with disabilities. Nuremberg Military Tribunals, *Case No. 1 Indictments* pgs. 6-11, https://tile.loc.gov/storage-services/service/ll/llmlp/NT_Indictments/NT_Indictments.pdf; and Trial of War Criminal before the Nuremberg Military Tribunals, *The Medical Case, Vol. II*, pgs. 189-97, 277-81, and 26-90, https://digirepo.nlm.nih.gov/ext/dw/01130400RX2/PDF/01130400RX2.pdf; Wilhelm Frick, during the Nazi Leadership Trial, was indicted and convicted of crimes against humanity for his oversight of the nursing homes, hospitals, and asylums where the killing of persons with disabilities took place as part of the Aktion T4 program and the fact that he took no action to stop the systematic murder. The Trial of German Major War Criminals, *Proceedings of the International Military Tribunal sitting at Nuremberg, Germany*, Part 22, Judgement of 1 October 1946, pgs. 500-501 https://crimeofaggression.info/documents/6/1946_Nuremberg_Judgement.pdf.

[7] CRPD Arts. 3, 4, 5, 11, 12, and 13.

[8] "Article 11 explicitly states the complementarity of the Convention with all other international law regimes. The Security Council has authoritatively reiterated the importance of article 11 in bridging the Convention with situations of armed conflict and post-conflict." Special Rapporteur on the rights of persons with disabilities, *Peacebuilding and the inclusion of persons with disabilities*, A/78/174 (13 July 2023). *See also* William I. Pons, et. al., *Disability, Human Rights Violations, and Crimes Against Humanity*, 116 AMERICAN JOURNAL OF INTERNATIONAL LAW 58-95 (2022); Alice Priddy, *Academy Briefing #14: Disability and Armed Conflict*, Geneva Academy (2019); International Committee of the Red Cross, *How law protects persons with disabilities in armed conflict* (13 Dec. 2017); and Office of the High Commissioner for Human Rights, *Report on the rights of persons with disabilities under article 11 of the CRPD relating to situations of risk and humanitarian emergencies* (30 Nov. 2015).

[9] *See* Thomas Marguerite, *International Criminal Law and Human Rights,* in Routledge Handbook of International Criminal Law 435, 436 (William Schabas & Nadia Bernaz eds., 2013).

[10] Persecution "on grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court," will be considered a crime against humanity. Rome Statute of International Criminal Court, Art. 7(1)(h), 2187 UNTS 38544 (July 17, 1998).

[11] Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of Genocide, Crimes against Humanity, War Crimes and other International Crimes, Art. 7.

[12] Which is defined as the "intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity." Rome Statute of International Criminal Court, at Art. 7(2)(g).

[13] Rome Statute of International Criminal Court, at Art. 21 (3).

[14] UNSC resolution 2475 (2019), S/RES/2475 (2019), para. 2; UN Dept. of Economic and Social Affairs, Goal 16, available at https://www.un.org/development/desa/disabilities/envision2030-goal16.html; and Report of the UN Special Rapporteur on the Rights of Persons with Disabilities, A/76/146, paras. 92-94.

[15] World Health Organization, *Fact Sheet: Disability* (7 Mar. 2023) available at: https://www.who.int/news-room/fact-sheets/detail/disability-and-health.

[16] *See* e.g., African Disability Forum, *Global Disability Movement Demands Seat at the "COP Table,"* (10 Sept. 2024) available at: https://africandisabilityforum.org/global-disability-movement-demands-seat-at-the-cop-table/; European Disability Forum, *COP28: persons with disabilities still excluded from climate change solutions,* (28 Nov. 2023) available at: https://www.edf-feph.org/cop28-persons-with-disabilities-still-excluded-from-climate-change-solutions/; Janine Natalya Clark, "Transitional Justice and Inclusiveness: Where Does Disability Fit In?" *Journal of Intervention and Statebuilding*, *18*(2), 139–160 (2023); Sean Molloy, *Peace Agreements and Persons with Disabilities*, PA-X Research Report (2019); and Geneva Academy, *Disability and Armed Conflict: Field Trip to Colombia,* (27 Mar. 2017) available at: https://www.geneva-academy.ch/news/detail/37-improving-the-protection-of-persons-with-disabilities-during-armed-conflict-field-trip-to-colombia.

[17] This is precisely the position taken by the ICC in the articulation of its child policy. See International Criminal Court Office of the Prosecutor, Policy Paper on Children, para. 2 (2016). The touchstone for the application of the principle of adverse distinction under IHL to the attribute of disability is the non-discrimination provision of CRPD Article 5 in combination with protection mandated in Article 11. *See* CRPD, arts. 5 and 11.

[18] *See*, Amnesty International, *A Convention on Prevention and Punishment of Crimes against Humanity: Further Recommendations*, 20 Oct. 2025, available at: https://www.amnesty.org/en/documents/IOR40/0303/2025/en/; Amnesty International, *The problematic formulation of persecution under the Draft Convention on crimes against humanity*, 30 Oct. 2018, available at: https://www.amnesty.org/en/documents/ior40/9248/2018/en/; Finland (Statement on behalf of the Nordic countries), April 2024, available at: https://www.un.org/en/ga/sixth/78/pdfs/statements/cah/39mtg_nordic_2.pdf; Malta, 2 April 2024 available at: https://www.un.org/en/ga/sixth/78/pdfs/statements/cah/40mtg_malta_2.pdf; Brazil, 1 April 2024, available at: https://www.un.org/en/ga/sixth/78/pdfs/statements/cah/40mtg_brazil_2.pdf; Colombia, 2 April 2023, available at: https://www.un.org/en/ga/sixth/78/pdfs/statements/cah/40mtg_colombia_2.pdf.

[19] For additional details see *supra*, note 6; *see also* Emmeline Burdett, *Disability, Nazi Euthanasia, and the Legacy of the Nuremberg Meical Trial* (2024); and Michael Robertson, Astrid Levy and Edwina Light, *The First into the Dark: Nazi Persecution of the Disabled* (2019).

[20] *See generally, supra*, note 3; *see specifically* P.W. Masakhwe, *The Disabled and the Rwanda Genocide: The Untold Story*, 23 Disability World (Apr.–May 2004); Arthur Blaser, *From the Field–People with Disabilities and Genocide: The Case of Rwanda*, 22 Disability Stud. Q. 53 (2002); Arthur Blaser, *Always the First to Go?: People with Disabilities and Genocide*, in Anatomy of Genocide: State-Sponsored Mass-Killings in the Twentieth Century 78 (Alexandre Kimenyi & Otis Scott eds., 2001).

[21] "Stanko Mitrović, nicknamed Čane, who was physically and mentally handicapped . . . was beaten on a daily basis . . . on his way to the toilet and specifically targeted his disabled limbs. The Trail Chamber concludes that the treatment of Stanko Mitrović while detained at the Building is serious enough to amount to cruel treatment and that it was inflicted with the required intent." ICTY, Prosecutor v. Naser Oric, Case No. IT-03-68-T, paras. 466-467 and 469 Judgement (Trail Judgement), 30 June 2006; "A mentally retarded Bosnian Muslim man was taken from bus and murdered." ICTY, *Prosecutor v. Blagojevic and Jokic*, Case No. IT-02-60-T, para. 280, 17 Jan. 2006); During testimony a witness notes the targeting killing and beating of "mentally handicapped people" and "a deaf/mute person," as well as inhumane detention conditions for "mentally-ill people" leading to the deterioration of their health. ICTY, *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25, Testimony of Witness FWS-111, pgs. 1218-1220 and 1230, 27 Nov. 2000.

[22] "In most instances, the victims were unarmed civilians completely unprepared for what was to occur in the Bosnian Krajina; the victims included elderly people, women and children and disabled persons." ICTY, *Prosecutor v. Radoslav Brdjanin*, Case No. IT-99-36-T, para 1106 (1 Sept. 2004); "The Trial Chamber is s satisfied that non-Serb males from Foca and its environs were imprisoned indiscriminately . . . and there was a substantial group of ill, wounded,

physically handicapped and mentally disturbed persons among the detained men." ICTY, *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-T, para. 118, Judgement (Trial Chamber), 15 Mar. 2002.

[23] "[T]he case-law of the Tribunal has consistently considered the special vulnerability of certain categories of victims, such as disabled people, children or the elderly, as an aggravating factor." ICTY, *Prosecutor v. Ivica Rajic, aka Viktor Andric*, Case No. IT-95-12-S, para. 117, 8 May 2006.

[24] The anonymous amalgamation of non-enumerated groups ignores the specific inequalities, injustice, and harms faced by highly at-risk groups. This has been the rationale for including an explicit reference to gender and age, and is the same reasoning for the inclusion of persons with disabilities given their international recognition as forgotten victims and the near-universal ratification of the CRPD; s*ee* Report of the Special Rapporteur on the rights of persons with disabilities, A/78/174, (13 July 2023) https://www.ohchr.org/en/documents/thematic-reports/a78174-peacebuilding-and-inclusion-persons-disabilities-report-special.

[25] *See,* Office of the High Commissioner for Human Rights, *The Core International Human Rights Instruments and their monitoring bodies*, https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies (last visited 28 July 2025).

[26] International Criminal Court Office of the Prosecutor, *Policy Paper on Children*, para. 2 (2016). The touchstone for the application of the principle of adverse distinction to the attribute of disability is the non-discrimination provision of CRPD Article 5 in combination with protection mandated in Article 11. *See* CRPD, arts. 5 and 11.

[27] World Health Organization, *Eliminating forced, coercive and otherwise involuntary sterilization: An interagency statement*, p. 6 (2014).

[28] Report of Special Rapporteur on Violence Against Women, A/67/227, para. 36 (3 Aug. 2012); and Committee on the Elimination of Discrimination against Women, *General Comment 19: Violence against Women*, contained in document A/47/38, para. 22 (30 Jan. 1992).

[29] Report of the Special Rapporteur on the Rights of Persons with Disabilities, *Sexual and reproductive health and rights of girls and young women with disabilities*, A/72/133, paras. 12, 17 and 30 (14 July 2017); Report of the Committee on the Elimination of Discrimination against Women, *Concluding Observations on the report submitted by the Czech Republic*, CEDAW/C/CZE/CO/5, paras. 34, 35, and 37 (10 Nov. 2010); and Report of Special Rapporteur on Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, A/63/175, paras. 40-41 (28 July 2008).

[30] Committee on the Rights of Persons with Disabilities, *General Comment No. 6 on equality and non-discrimination*, paras. 23-27 and 51-55 (26 April 2018); Committee on the Rights of Persons with Disabilities, *General Comment No. 1 on equal recognition before the law*, paras. 35-36 (19 May 2014).

[31] Office of the UN High Commissioner for Human Rights, *Equality and non-discrimination under article 5 of the Convention on the Rights of Persons with Disabilities*, A/HRC/34/26, para. 35 (9 Dec. 2016); and Committee on the Rights of Persons with Disabilities, *General Comment No. 6 on equality and non-discrimination*, para. 25 (d) (26 Apr. 2018).

[32] Procedural accommodations are required "when facilities and services fail to ensure access to the existing physical environment, transportation, information and communications for persons with disabilities," preventing the equal and effective participation of persons with disabilities in all legal proceedings. Procedural accommodations include "all the necessary and appropriate modifications and adjustments needed in a particular case, including intermediaries or facilitators, procedural adjustments and modifications, adjustments to the environment and communication support," in order to prevent discrimination and allow for the full and equal access to justice and exercise of their legal capacity. Special Rapporteur on the Rights of Persons with Disabilities, *International Principles and Guidelines on Access to Justice for Persons with Disabilities*, Principles 2 and 3 (Aug. 2020). Examples of procedural accommodations can include, but are not limited to the adaptation of the venue, pace of proceedings, method of questioning, alternatives to complex questions, providing of assistive listening systems and devices, open, closed, and real-time captioning, screen reader software, video description, etc. For more details and further examples please reference *International Principles and Guidelines on Access to Justice for*

Persons with Disabilities, (Aug. 2020) available at: https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2020/10/Access-to-Justice-EN.pdf.

[33] "'Reasonable accommodation' means 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." CRPD, Art. 2.

[34] "Persons with a physical or a mental disability represent a significant proportion of the prison population worldwide and are reported to be overrepresented in all types of custodial settings." Association for the Prevention of Torture, *Detention Focus Database: Persons with disabilities*, available at: https://www.apt.ch/knowledge-hub/dfd/persons-disabilities (last accessed 1 Sept. 2025).

[35] Special Rapporteur on the Rights of Persons with Disabilities, *International Principle and Guidelines on Access to Justice for Persons with Disabilities*, Principle 5, p. 19 (Aug. 2020); see also *supra,* note 30.

[36] *See, supra,* note 31.

[37] *See, supra*, note 32.

[38] *See, supra*, note 33.

[39] "While access to justice is fundamental to the fulfilment of all human rights, many barriers prevent persons with disabilities from accessing justice on an equal basis with others." UN Special Rapporteur on the Rights of Persons with Disabilities, *International Principle and Guidelines on Access to Justice for Persons with Disabilities*, pg. 6 (Aug. 2020); "Historically, persons with disabilities have been denied their right to legal capacity in many areas in a discriminatory manner under substitute decision-making regimes . . . These practices must be abolished in order to ensure the full legal capacity is restored to persons with disabilities on an equal basis with others." CRPD Committee, *General Comment No. 1 Article 12: Equal recognition before the law*, CRPD/C/GC/1, para. 6 (19 May 2014); and for examples of multiple barriers faced by persons with disabilities that prevent them from accessing justice on an equal basis with others see: International Disability Alliance, *IDA's Compilation of CRPD Committee's Concluding Observations – Article 13 CRPD (Access to Justice)*, Oct. 2022.

[40] Universal Declaration of Human Rights (UDHR), Arts. 6-7; International Covenant on Civil and Political Rights (ICCPR), Art. 4; CRPD, Art. 12; CEDAW, Art. 15; and CRC, Art. 3.

[41] UDHR, Art. 8; ICCPR, Art. 14.; CRPD, Art. 12; CEDAW, Art. 15(2); and CRC, Art. 37(d)

[42] UN Charter, Art. 1(3); UDHR, art. 1 and 2; ICCPR, Art. 2(1); International Covenant on Economic, Social and Cultural Rights (ICESCR), Art. 2(2); CEDAW, Art. 2; CRC, Art. 2(1), CPRD, Art. 5; and Convention on the Elimination of Racial Discrimination, Art. 2. The principle of non-discrimination is also found as a fundamental guarantee in international humanitarian law, referred to as the prohibition against adverse distinction. *See* International Committee of the Red Cross, *International Humanitarian Law Databases*, at Rule 88. Non-Discrimination, available at: https://ihl-databases.icrc.org/en/customary-ihl/v1/rule88

[43] CRPD, Art. 2.

[44] "'Intersectional discrimination' occurs when a person with a disability or associated to disability suffers discrimination of any form on the basis of disability, combined with colour, sex, language, religion, ethnic, gender, or other status . . . 'Multiple discrimination' according to the Committee is a situation where a person can experience discrimination on two or several grounds, in the sense that discrimination is compounded or aggravated." CRPD Committee, *General Comment No. 6 on equality and non-discrimination*, CRPD/C/GC/6, para. 19 (26 Apr. 2018); *see also* CRPD Committee, *Guidelines on deinstitutionalization, including in emergencies*, CRPD/C/5, paras. 39-41 (10 Oct. 2022); and UN Special Rapporteur on the Rights of Persons with Disabilities, *International Principles and Guidelines on Access to Justice for Persons with Disabilities*, pgs. 6-7, Aug. 2020.

[45] CRPD Committee, *General Comment No. 1 Article 12: Equal recognition before the law*, CRPD/C/GC/1, paras. 7-9 (19 May 2014).

[46] CRPD Committee, *General Comment No. 1 Article 12: Equal recognition before the law*, CRPD/C/GC/1, para. 9 (19 May 2014); and Special Rapporteur on the Rights of Persons with Disabilities, *Situation of Older Persons with Disabilities*, A/74/186 (17 July 2019).

[47] CRPD Committee, *General Comment No. 6 on equality and non-discrimination*, CRPD/C/GC/6, paras. 36 and 37 (26 Apr. 2018). Women and girls with disabilities "are denied the right more often than men with disabilities and more often than other women to exercise their legal capacity, leading to denial of access to justice, choice and autonomy." CRPD Committee, *Guidelines on deinstitutionalization, including in emergencies*, CRPD/C/5, para. 42 (10 Oct. 2022). In recognizing the developing capacities of children, in "all actions concerning children with disabilities, the best interest of the child" should be the primary consideration and the views of the child must be given due weight and consideration based on their age and maturity. CRPD Committee, *General Comment No. 1 Article 12: Equal recognition before the law*, CRPD/C/GC/1, para. 36 (19 May 2014). "Given the intersection between disability and age, older persons with disabilities experience an increased risk of limitations of their right to autonomy and on the exercise of their legal capacity." Special Rapporteur on the Rights of Persons with Disabilities, *Situation of Older Persons with Disabilities*, A/74/186, para. 29 (17 July 2019).

[48] Persons with cognitive or psychosocial disabilities are often determined to have impaired decision-making skills and consequently have had their legal capacity denied. This denial is based either on 1) a diagnosis of an impairment, 2) whether the decision made by the person will have negative consequences, or 3) whether their decision-making skills are deficient. Regardless of the approach taken, each is a "discriminatory denial of legal capacity." CRPD Committee, *General Comment No. 1 Article 12: Equal recognition before the law*, CRPD/C/GC/1, para. 15 (19 May 2014).

[49] Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of Genocide, Crimes against Humanity, War Crimes and other International Crimes, Art. 51.