

LIBERTY AND JUSTICE FOR ALL: THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

*Esmé Grant and Rhonda Neuhaus**

I.	INTRODUCTION.....	348
	A. <i>Background on the CRPD</i>	348
	B. <i>What is Access to Justice?</i>	351
	C. <i>Background in the Drafting of Article 13</i>	353
	D. <i>How Does Access to Justice Impact People with Disabilities?</i>	355
II.	COMMITTEE REVIEW OF ARTICLE 13 AND ACCESS TO JUSTICE	357
	A. <i>Committee Report on China and Article 13</i>	358
	B. <i>Other Article that Crossover (Articles 12/24)</i>	360
	1. Committee Reports on Articles Related to Access to Justice.....	361
	2. References to the Importance of an Accessible Judicial System.....	364
III.	LEGISLATIVE AND GOVERNMENTAL ACTION ON ACCESS TO JUSTICE 365	
	A. <i>Israel</i>	366
	B. <i>India</i>	368
	C. <i>Brazil</i>	369
	D. <i>Cambodia</i>	370
	E. <i>Australia</i>	371
IV.	ACCESS TO JUSTICE PROGRAMS LED BY PEOPLE WITH DISABILITIES AND DISABILITY ORGANIZATIONS IN IMPLEMENTATION OF THE CRPD ARTICLE 13	373
	A. <i>Access to Free Legal Aid and the Uganda Case Study</i>	373
	B. <i>Women with Disabilities in Bangladesh</i>	374
	C. <i>DPO in Bangladesh</i>	376
	D. <i>Disability Rights Fund (DRF) Projects Globally</i>	376
V.	CONCLUSION	377

I. INTRODUCTION

At the heart of every just society are mechanisms that ensure full inclusivity of citizenry, equal rights to both representation and reparation, and impartial judgment. These components are all parts of access to justice. For people with disabilities, access to justice is broad, complex, and overwhelmingly important to ensure equality within society.

This paper will briefly explore emerging international law around the development of legislation and policy regarding access to justice for people with disabilities. Specifically, this paper will analyze the International Disability Treaty, the Convention on the Rights of Persons with Disabilities (CRPD), and the impact this Treaty has had on emerging disability rights law. The CRPD specifically addresses Access to Justice in its Article 13 and sets a framework for “States Parties” to the Treaty to follow in order to afford equal rights to its citizens with disabilities.¹ The first section of this paper will provide a brief background on what the CRPD is and how access to justice affects people with disabilities. Then it will explore how countries that have ratified the CRPD are fairing in ensuring access to justice by examining the CRPD Committee’s concluding observations. Finally, this article will discuss model legislation and policies that have emerged in the wake of the CRPD that will play an essential role in the implementation of this important treaty.

A. Background on the CRPD

The CRPD is the first treaty to impact disability rights exclusively and globally.² Previous to the CRPD, which was officially adopted by the United Nations (U.N.) in 2006, the U.N. had taken major actions to signal that its members viewed disability rights as a critical part of a just society.³ In 1976, the U.N. declared 1981 as the International Year of Disabled

* Esmé Grant is the Disability Rights Program Manager at the U.S. International Council on Disabilities and Rhonda Neuhaus is the Policy Analyst for Government Affairs at the Disability Rights Education and Defense Fund. Together they are educating and advocating for the U.S. ratification for the CRPD in Washington, DC. Esmé dedicates this article to Chanmeet Singh Grewal for being an endless inspiration and tremendous pillar of support. Rhonda dedicates this article to her Aunt, Jill Golden, who represented those in need and provided her the model for the advocate she is today.

2. *The Inter-American Convention for the Elimination of all forms of Discrimination against Persons with Disabilities (CIADDIS)*, OAS.ORG, Feb. 7, 2013, available at http://www.oas.org/en/sedi/ddse/pages/index-4_convention.asp (last visited Feb. 7, 2013).

3. Press Release, U.N.: Rights of Persons with Disabilities in Force; U.N. Press Release (May 5, 2008), available at <http://www.scoop.co.nz/stories/WO0805/S00048.htm> (last visited Feb. 23, 2013).

Persons.⁴ This year challenged member nations to determine ways to improve the rights of persons with disabilities around the world. An outcome of the International Year of Disabled Persons was the World Programme of Action (WPA) Concerning Disabled Persons, which was adopted by the General Assembly in 1982.⁵ The WPA presented a plan for how member nations could achieve the full integration and equality of its citizens with disabilities.⁶ It also laid a blueprint for the CRPD and what was to trigger one of the fastest ratification rates of any human rights treaty in the world.⁷ Before emerging into a binding treaty, the WPA inspired the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (a summary of the WPA's goals).⁸ The Standard Rules were adopted by the General Assembly in 1993, and although not legally binding, the Rules set the expectation that member nations would incorporate the Standard Rules' human rights approach when handling issues pertaining to people with disabilities.⁹

Around the same time that the Standard Rules were being introduced at the U.N., the United States and other countries were beginning to adjust to new and innovative national legislation and policies that protected the rights of people with disabilities.¹⁰ The United States led this movement with the Americans with Disabilities Act, which linked a human and civil rights approach with the technical guidance required to enforce these rights.¹¹ The world community took notice of the excitement around disability rights and the need for greater change, and in 2001, the Mexican

4. *The International Year of Disabled Persons*, UN.ORG, General Assembly Resolution 2003–2004, available at <http://www.un.org/esa/socdev/enable/disiydp.htm> (last visited Feb. 7, 2013).

5. World Programme of Action Concerning Disabled Persons, (1981) <http://www.un.org/esa/socdev/enable/disiydp.htm> (last visited Feb. 7, 2013).

6. *Human Rights of Persons with Disabilities*, HREA.ORG, available at http://www.hrea.org/index.php?doc_id=416#top (last visited Feb. 23, 2013).

7. *Keeping Up with the CRPD?*, ATPROGRAMNEWS.COM, June 12, 2012, available at <http://www.atprogramnews.com/2012/06/keeping-up-with-the-crp.html> (last visited Feb. 23, 2013).

8. The Standard Rules on the Equalization of Opportunities for Persons with Disabilities, (Dec. 20, 1993) <http://www.un.org/esa/socdev/enable/dissre00.htm> (last visited Feb. 7, 2013).

9. *Id.*

10. John R. Vaughn, *Finding the Gaps: A Comparative Analysis of Disability Laws in the U.S. to the U.N. Convention on the Rights of Persons with Disabilities*, NCD.GOV, May 12, 2008, available at <http://www.ncd.gov/publications/2008/May122008> (last visited Feb. 23, 2013).

11. Arlene Mayerson, *The History of the ADA: A Movement Perspective*, DREDF.ORG, 1992, available at http://dredf.org/publications/ada_history.shtml (last visited Feb. 23, 2013).

delegation to the U.N. requested that member states begin drafting a treaty that dealt exclusively with the rights of persons with disabilities.¹²

The U.N. drafting process began in 2001 and the Treaty was adopted in 2006.¹³ Unique to the drafting process of the CRPD was significant participation by civil society, particularly groups focused on issues of disability or Disabled Peoples Organizations (DPOs) themselves.¹⁴ This was new for the development of any U.N. treaty, and what makes this Treaty so reflective of the needs and desires of people with disabilities around the world allowing them to live full participatory lives in society. Following eight *ad hoc* sessions of negotiations, the Treaty was adopted and then opened for signature in March 2007, ultimately coming into force in May 2008.¹⁵ As of April 2013, the Treaty has been ratified by 129 nations and the European Union, and has been signed by 154 nations.¹⁶

The CRPD represents a paradigm shift from a medical and charitable model to a social model, meaning it embraces the right of people with disabilities to be included in the community, and to be independent and productive citizens.¹⁷ The fifty articles of the Treaty cover issues from education to employment and respect for the home and family, all with the general focus of non-discrimination and equality of treatment.¹⁸ Each

12. Other human rights treaties developed by the United Nations including the International Covenant on Civil and Political Rights is applicable to disability rights in a broader context but did not exclusively focus on disability rights issues or mention the term "disability." See *The International Covenant on Civil and Political Rights (ICCPR)*, OHCHR.ORG, Mar. 23, 1976, available at <http://www2.ohchr.org/english/law/ccpr.htm> (last visited Feb. 7, 2013).

13. *The U.S. Ratification of the Convention on the Rights of Persons with Disabilities Fact Sheet*, BRCCENTER.ORG, available at http://brccenter.org/lib/lib_pdf/CRPDToolkit.pdf (last visited Feb. 23, 2013).

14. Katherine Guernsey, Marco Nicoli, and Alberto Ninio, *Convention on the Rights of Persons with Disabilities: Its implementation and relevance for the World Bank*, WORLDBANK.ORG, (2007), available at <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Disability-DP/0712.pdf> (last visited Feb. 23, 2013).

15. *The U.S. Ratification of the Convention on the Rights of Persons with Disabilities Fact Sheet*, *supra* note 12, at 2.

16. Scott Rains, *US Access Board Issues Supplemental Rule to Address Access to Shared Use Paths*, ROLLINGRAINS.COM, Jan. 23, 2013, available at <http://www.rollingrains.com/leadership/> (last visited Feb. 23, 2013).

17. Francisco J. Bariffi, *Implementing the UN Convention on Disability in the European Union and Member States: A Review of Substantive Obligations and Examples of Good Practices*, ERA-COMM.EDU, available at http://www.era-comm.eu/dalaw/kiosk/documentation/UNCRPD/2011_05%20Bariffi%20presentation%20paper.pdf (last visited Feb. 23, 2013).

18. See *Convention on the Rights of Persons with Disabilities (CRPD)*, Dec. 6, 2006, available at <http://www.un.org/disabilities/convention/conventionfull.shtml> (last visited Feb. 23, 2013).

article lays out broad recommendations and technical guidance and requirements for how a ratifying party can achieve each specific right that has historically been challenging for the disability community.¹⁹

Key to the success of the CRPD has been its implementation by its ratifying parties. On the one hand, nations have been eager for a global treaty on disability rights.²⁰ On the other hand, the Chief of the Secretariat for the CRPD has suggested that many nations lack the technical expertise to even begin developing an implementation strategy.²¹

Therefore, the Committee on the Rights of Persons with Disabilities (CRPD Committee or Committee), established by Article 34 of the Treaty, plays an essential role in identifying where state parties should focus their attention and what they can seek to achieve as their ratification of the Treaty matures.

The CRPD Committee, composed of disability experts from ratifying countries, is meant to provide an international forum for the sharing of ideas. Although treaty-imposed limitations ensure that the body is merely advisory, the expertise on the Committee is of great value to other countries seeking professional guidance on approaches to implementation. As this paper will continue to explore, the Committee plays a particularly important role in identifying barriers to access to justice and counsel as to how to overcome them.

B. *What is Access to Justice?*

The U.N. has historically held that access to justice is a human right.²² In the Universal Declaration of Human Rights (UDHR), Articles 6 through 11 cover the issue of access to justice such as equality before the law and the right to be presumed innocent.²³ Similarly, human rights treaties emerging out of the UDHR carry the same theme. For instance, the International Covenant on Civil and Political Rights echoed many of the

19. *Id.*

20. *Keeping Up with the CRPD?*, *supra* note 7.

21. Following the 5th Session of the Committee on the Rights of Persons with Disabilities this April, Akiko Ito, Chief of the Secretariat for the CRPD within DESA, noted that “while there is an increase in number of ratifications . . . the lack of expertise in how to plan and execute government policies and strategies remains a major challenge.” See *Advancing the Rights of Persons with Disabilities*, DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS: UN.ORG, Apr. 18, 2011, available at <http://www.un.org/en/development/desa/news/social/disability-rights.html> (last visited Feb. 23, 2013).

22. *International Day for the Eradication of Poverty*, OHCHR.ORG, October 17 2012, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12670&LangID=E> (last visited Feb. 23, 2013).

23. See Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

statements from the UDHR and also specifically addressed issues of right to representation and *ex post facto*.²⁴

As declared by the World Health Organization in July of 2011, there are one billion people with disabilities around the world.²⁵ As the world's largest minority, people with disabilities are categorically susceptible to barriers to justice.²⁶ In addition, people with disabilities have a higher degree of vulnerability to victimization.²⁷ The Bureau of Justice Statistics has cited that the violent crime rate in the United States was double that for people with disabilities than people without disabilities.²⁸ Considering that eighty percent of the world's people with disabilities live in developing countries,²⁹ the global rate of victimization is potentially even greater.

Access to justice for people with disabilities includes being treated equally and having access to general court services.³⁰ It also means having full access to the environment of a court, which may include providing physical access or interpretation services. What is strikingly different about disability rights as compared to the human rights of other populations is that inclusive policies and actions are typically not the final step in achieving equality. People with disabilities have a range of accommodation requirements that make ensuring their access to justice all the more complex. The CRPD embraces this complexity and introduces a cross-disability approach to Article 13, providing a broad overview of what parties that have ratified the Act should achieve.³¹

Article 13—Access to Justice:

24. See *International Covenant on Civil and Political Rights*, Article 14–16, OHCHR.ORG, Mar. 23, 1976, available at <http://www2.ohchr.org/english/law/ccpr.htm> (last visited Feb. 7, 2013).

25. See *Media Centre: Disability and Health*, WORLD HEALTH ORGANIZATION INTERNATIONAL, Nov. 2012, available at <http://www.who.int/mediacentre/factsheets/fs352/en/index.html> (last visited Feb. 7, 2013).

26. *Disability Stats and Facts*, DISABILITYFUNDERS.ORG, available at <http://www.disabilityfunders.org/disability-stats-and-facts> (last visited Feb. 23, 2013).

27. Erika Harrell & Michael Rand, *Crime Against People with Disabilities, 2008*, BUREAU OF JUSTICE, Dec. 9, 2010, available at <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2019> (last visited Feb. 7, 2013).

28. *Id.*

29. See *Factsheet on Persons with Disabilities*, UN.ORG, available at <http://www.un.org/disabilities/default.asp?id=18> (last visited Feb. 7, 2013).

30. Stephanie Ortoleva, *Inaccessible Justice: Human Rights, Persons with Disabilities and the Legal System*, 17 ILSA J. INT'L & COMP. L. 281, 285–86 (2011).

31. *The UN Convention on the Rights of Persons with Disabilities*, INCLUSIONEUROPE.COM, available at <http://inclusion-europe.org/en/rights/crpd-general> (last visited Feb. 23, 2013).

- 1) States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
- 2) In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.³²

Although brief in content, Article 13 effectively communicates the keys to effective access to justice practices for people with disabilities.³³ First, it states that accommodations can facilitate equal access.³⁴ Article 13 also confirms that establishing a policy is simply not enough, but that trainings are a key component to accomplishing access to justice.³⁵ As this paper will demonstrate, other articles outside of Article 13 also touch upon the development of human rights practices that impact the rights of people with disabilities. Overall, the values of access to justice throughout the Treaty will play an important role in molding the just environment for people with disabilities in a ratified nation.

Importantly, this human rights treaty was negotiated by a significant amount of input by the disability community itself. Although not stated directly in Article 13, paramount to the success of the Treaty is the inclusion of people with disabilities at all levels. As this paper will explore, not incorporating the perspective of people with disabilities may result in barriers to justice and failing mechanisms to achieve a justice system that is fair and accessible to all.

C. *Background in the Drafting of Article 13*

The preparatory papers to the CRPD include limited guidance on the evolution of Article 13. The access to justice movement began in the United States in the 1960s.³⁶ The concept arose in the era of the welfare state and growing rights consciousness, usually identified with committing

32. *Convention on the Rights of Persons with Disabilities (CRPD)*: Article 13, UN.ORG, available at <http://www.un.org/disabilities/convention/conventionfull.shtml> (last visited Feb. 7, 2013) [hereinafter *CRPD: Article 13*].

33. *Id.*

34. *Id.*

35. *Id.*

36. M.A. NOONE S. TOMSEN, *LAWYERS IN CONFLICT* 38–39 (1995).

a state to increased social services. In the drafting, participants incorporated a varied and broad definition of access to justice.

By January and February of 2005, many states had voiced support for access to justice and the court system as well as the right to an effective remedy against discrimination for people with disabilities.³⁷ During the discussion of what was then Draft Article 9 in early 2005, it was evident that “considerable support was expressed for the inclusion in the convention of language that would guarantee persons with disabilities access to justice.”³⁸ In these beginning stages, the article was entitled “equal recognition as a person before the law.”³⁹ Access to justice was regarded as so important that, although there were differing views on what kind of framework should be adopted, “[m]ost delegations supported the inclusion of the language in a separate article.”⁴⁰

Article 13 was developed towards the end of the drafting negotiations, somewhat as a necessary add-on to the other components of the Treaty, as it did not appear in the original Working Group draft.⁴¹ However, there was little to no objection or lobbying required for its inclusion. It was necessary for Article 13 to be included in the Treaty for a variety of reasons. Access to justice as a concept impacts many discrete areas. Since there are a variety of administrative and judicial procedures that affect access to justice, as this paper will highlight in Section II, full implementation of this issue will take quite a long time. For example, physical access to courthouses, courtrooms, and witness stands have just been initiated in many ratified nations. This is the start for the justice system to become fully available to, and inclusive of, people with a wide range of disabilities.

37. U.N. Chairperson, Update on the Fifth Session UN Convention on the Rights of People with Disabilities (Mar. 17, 2005), <http://www.ncd.gov/publications/2005/09262005> (last visited Aug. 3, 2013).

38. *Remarks on Promoting The Rights of Persons With Disabilities: Full Participation and Equality In Social Life and Development*, (Feb. 4, 2005), www.un.org/esa/socdev/enable/rights (last visited Aug. 3, 2013).

39. U.N. General Assembly, Report of the Ad Hoc Committee on A Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities on Its Fifth Session, https://docs.google.com/viewer?a=v&q=cache:Txam6dWkmtYJ:www.un.org/esa/socdev/enable/rights/ahc5docs/ahc5reporte.doc+&hl=en&gl=us&pid=bl&srcid=ADGEESjRXuaeBHVQWPE1MD8r9_7bATnFtDxIyoSVr8ClyEq-fN47UzDG_SnhrWBFkAc3hZBy7bc5oENT19a_ahNh0Qr-xEQbuIxpOFKHUVAPdYkrBWNHxWGEMwRjFF7JQ_awn89d7QT&sig=AHIEtbQp4twDHtUYaa8sSZwxvK17kiDICg (last visited Aug. 3, 2013).

40. *Id.*

41. Convention on the Rights of Persons with Disabilities (CRPD): Article 13, *supra* note 32; also Draft Article 13: Freedom of Expression and Opinion, and Access to Information, UN.ORG, available at <http://www.un.org/disabilities/convention/conventionfull.shtml> (last visited Feb. 7, 2013).

Projects exist around the world broadly on access to Justice for marginalized populations, but they are often not well defined for people with disabilities, leaving them as an area in greater need for examination.

D. How Does Access to Justice Impact People with Disabilities?

For an equal, just and non-discriminatory system to exist, justice systems must be accessible to all marginalized groups, including people with disabilities. For countries to implement the CRPD, legal systems must continue to develop. Agencies must work together with judicial systems and legal assistance programs to improve justice delivery systems for all.

When we speak of access to justice for people with disabilities, one can refer to a wide range of services and activities that go beyond the expected. It includes effective access to the systems, procedures, information, and locations used in the administration of justice. In addition to being frequently denied access to fair and equal treatment before courts, tribunals, law enforcement officials, and prison systems, people with disabilities are often unable to rise in the legal profession, judiciary, and other positions within the judicial system.⁴² People with disabilities are often unable to serve as witnesses or jurors, thus barring them from contributing to the functioning under the system in which they live. This bilateral impediment and discrimination not only inhibits persons with disabilities from utilizing the systems of justice, but also contributes to the lack of administration of justice and to the community at large.⁴³ Seeing the person with a disability as an active participant in society is a manifestation of the social model of disability that underlies the CRPD, specifically Article 13.

Access to justice in disability inclusion widely includes the following: physical inaccessibility, communication barriers (i.e., American Sign Language, availability of materials in alternative formats like Braille, large print, etc.), blocks to the legal and judiciary as a profession, improving access to dispute resolution mechanisms (i.e., mediation, arbitration, negotiation options), inaccessible police stations, awareness of attorneys and other professionals in the judicial system.⁴⁴ There is also quite often limited education and outreach to the disability community on their rights in this area (i.e., how to file a complaint and that they have the ability to take action/participate to begin with).

42. Ortoleva, *supra* note 30, at 285–86.

43. *Id.*

44. *Id.*

The concept of access to justice is not a simple one in application. It is an over-arching human right and incorporates many of the rights enumerated in the CRPD. These rights include the right to education, employment, and several others.⁴⁵ These rights must also be kept in mind as we analyze and think through implementation of Article 13. For example, if a person is denied the right to education,⁴⁶ they may wish to seek a remedy through the judicial system. This may also apply with a person denied the right to work.⁴⁷ Similarly, a person who is a victim of a crime may wish to report that crime to the police.⁴⁸ A person with a disability may not be able to access the transportation necessary to independently travel to a police station, courthouse, or other locality where justice is administered. In the larger picture, an educated person is more likely to better understand how to utilize the justice system itself. Without such an education, people with disabilities are unable to run for office, vote, run accessible electoral processes, or participate in political advocacy activities; this would be their right under the CRPD⁴⁹ as it is available to all citizens. However, if the person is denied physical access, communication barriers exist, or information is not understandable, then that person cannot exercise their rights.⁵⁰

People with disabilities also have a need like all citizens to be able to access lawyers, courts, and dispute resolution venues. If unable to pay, attorneys need to be provided through legal aid mechanisms. Court and dispute resolution services should incorporate accessible and appropriate technology (i.e., materials in alternate formats including large print, Braille, hearing amplification devices, etc.) when necessary for the equal participation and treatment in the process.⁵¹

45. Convention on the Rights of Persons with Disabilities (CRPD), *supra* note 18.

46. *Convention on the Rights of Persons with Disabilities (CRPD): Article 24*, OHCHR.ORG, available at <http://www2.ohchr.org/english/law/disabilities-convention.htm> (last visited Feb. 7, 2013).

47. *Convention on the Rights of Persons with Disabilities (CRPD): Article 27*, OHCHR.ORG, available at <http://www2.ohchr.org/english/law/disabilities-convention.htm> (last visited Feb. 7, 2013).

48. *Convention on the Rights of Persons with Disabilities (CRPD): Articles 15–16*, OHCHR.ORG, available at <http://www2.ohchr.org/english/law/disabilities-convention.htm> (last visited Feb. 7, 2013).

49. *Convention on the Rights of Persons with Disabilities (CRPD): Article 29*, OHCHR.ORG, available at <http://www2.ohchr.org/english/law/disabilities-convention.htm> (last visited Feb. 7, 2013).

50. Ortoleva, *supra* note 30, at 286.

51. See Frances Gibson, *Article 13 of the Convention on the Rights of Persons with Disabilities—A Right to Legal Aid?*, 15 AUSTL. J. OF HUM. RTS. 123 (2010) available at http://www.academia.edu/207906/Article_13_of_the_Convention_on_Rights_of_Persons_with_Disabilities_-_A_Right_to_Legal_Aid (last visited Feb. 11, 2013).

Training and education must occur for all involved. Lawyers, law schools, police officers, and court officers must be educated as to the CRPD and domestic disability legislation, where existing. They must also be educated on a wide range of issues related to the inclusion and accommodation of people with disabilities in the carrying out of justice. Legal capacity⁵² may be questioned for those with intellectual, developmental, or psychiatric disabilities. CRPD's Article 8 raises awareness and states that a precondition to legal empowerment is the battle of the stigma that seeds discrimination.⁵³ Under Article 8, awareness must be brought to all personnel, policies, practices and procedures, as well as inaccessible public information about courts and court services.⁵⁴

A final overlapping concern addresses the need for election access. Accessible polling locales are limited for persons with physical disabilities. Materials are rarely provided in alternate formats and the same concerns raised above regarding legal capacity are of serious concern. Finally, electoral complaint systems also need to have a spotlight provided on disability access to electoral rights.

Each of these barriers to justice are in and of themselves complex to address. However, they must be examined wholistically in order for us to create a world where all individuals, including people with all disabilities, have access to create the society in which we live. Access to justice and the impediments to its participation are critical in enforcing all of the other rights that people with disabilities fight for daily but which most people in society take for granted. These connections are what we hope readers will begin to think about when Article 13 or access to justice issues for people with disabilities are raised.

II. COMMITTEE REVIEW OF ARTICLE 13 AND ACCESS TO JUSTICE

The CRPD Committee is composed of eighteen independent disability rights experts who oversee implementation of the CRPD.⁵⁵ They are elected every four years by the States Parties to the Treaty.⁵⁶ States Parties

52. Legal capacity is addressed in CRPD Article 12, *Equal Recognition Before the Law*; See *Convention on the Rights of Persons with Disabilities (CRPD): Article 27*, OHCHR.ORG, available at <http://www2.ohchr.org/english/law/disabilities-convention.htm> (last visited Feb. 7, 2013).

53. Janet E. Lord, Deepti Samant Raja, & Peter Blank, *Beyond the Orthodoxy Rule of Law and Justice Sector Reform*, in 4 THE WORLD BANK LEGAL REVIEW 45, 50 (Matthew Moorhead, Ed., 2013); available at <http://issuu.com/world.bank.publications/docs/9780821395066/9> (last visited Feb. 7, 2013).

54. *Id.* at 100.

55. *Questions and Answers*, OHCHR.ORG, available at <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/QuestionsAnswers.aspx> (last visited Feb. 23, 2013).

56. *Id.*

are required to submit their initial report on how they are implementing the Treaty within two years of ratification, and every four years thereafter.⁵⁷ The Committee reviews the reports and then issues its concluding observations, which include suggestions and recommendations for how the State Party can continue to implement the Treaty to its fullest potential.⁵⁸

The Committee, which meets biannually, issued its first concluding observations for Tunisia in April 2011.⁵⁹ As of November 2012, the Committee has issued concluding observations for Argentina, Spain, Hungary, Peru, and China as well.⁶⁰ Before issuing its concluding observations, the Committee may pose specific questions to a State Party about the implementation and then review the State Party's responses.⁶¹ For purposes of this research, the focus will be on the ultimate concluding observation reports, which set the expectations for the State Party's compliance in its next reporting stage.

A. Committee Report on China and Article 13

Initial Committee reports demonstrate that the intention of the CRPD is to make genuine changes in the rights of people with disabilities around the world. China's report, which is the only report to reference Article 13 directly, sets the tone for how the Committee interprets success in implementing the Treaty's understanding of the right of Access to Justice.⁶²

57. *Id.*

58. *Id.*

59. United Nations Convention on the Rights of Persons with Disabilities, Comm. on the Rights of Persons with Disabilities, 5th Sess., Apr. 11-Apr. 15, 2011, U.N. Doc. /C/TUN/CO/1, available at <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Session5.aspx> (last visited Aug. 3, 2013) [hereinafter CRPD Tunisia].

60. United Nations Convention on the Rights of Persons with Disabilities, Comm. on the Rights of Persons with Disabilities, 8th Sess., Sept. 17–Sept. 28, 2012, U.N. Doc. /C/CHN/CO/1, available at <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Session8.aspx> (last visited Aug. 3, 2013) [hereinafter CRPD China]. United Nations Convention on the Rights of Persons with Disabilities, Comm. on the Rights of Persons with Disabilities, 6th Sess., Sept. 19–Sept. 23, 2011, U.N. Doc. /C/ESP/CO/1, available at <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Session6.aspx> (last visited Aug. 3, 2013) [hereinafter CRPD Spain]. United Nations Convention on the Rights of Persons with Disabilities, Comm. on the Rights of Persons with Disabilities, 7th Sess., Apr. 16–Apr. 20, 2012, U.N. Doc. /C/PER/CO/1, available at <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Session7.aspx> (last visited Aug. 3, 2013) [hereinafter CRPD Peru]. United Nations Convention on the Rights of Persons with Disabilities, Comm. on the Rights of Persons with Disabilities, 8th Sess., Sept. 17–Sept. 28, 2012, U.N. Doc. /C/ARG/CO/1, available at <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Session8.aspx> (last visited Aug. 3, 2013) [hereinafter CRPD Argentina].

61. Office of the United Nations High Commissioner for Human Rights, Human Rights Treaty Bodies, <http://www2.ohchr.org/english/bodies/treaty/glossary.htm>.

62. CRPD China, *supra* note 60.

The Committee's critique of China's implementation of Article 13 illustrates that pathways to implementation must be meaningful and effective, and that the pure existence of a policy or program is not enough to meet compliance. Real, meaningful change must be effected. Further, since China is the first country to be guided on implementation of Article 13, the Committee provides an important understanding that it is not only developing countries that struggle with creating access to justice. In fact, the criticism of China's lack of access to justice includes an observation that the country is withholding existing resources. Therefore, a more developed country is just as susceptible to the deprivation of justice if it is not allocating resources properly to ensure its programs are being administered effectively. This concept of sufficient resource dedication, when extrapolated across all articles of the CRPD, could have a significant implication on the enforcement of rights and move the implementation forward with greater effectiveness.

The China report suggests that although legal centers for people with disabilities exist, they do not follow the human rights framework that the CRPD holds as pertinent to achieving permanent change. The Committee states:

While appreciating the establishment of legal aid service centres for persons with disabilities, the Committee notes that these service centres often lack the necessary resources and do not operate on an independent basis. The Committee is concerned that neither the criminal nor the civil procedure laws in China are accessible for the use of persons with disabilities on an equal basis with others, and, instead, patronizing measures are put into place, such as the designation of public defenders that treat the person concerned as if they lacked legal capacity.⁶³

Key to the Committee's recommendations to China is the provision of trainings. Later in this paper is a discussion of model legislation and policies that directly insert a training model into countries seeking to implement this Treaty. Specifically, the Committee recommends the following:

[That] the State Party allocate the necessary human and financial resources to the legal aid service centres. It asks the State party to ensure that these centres safeguard the access to justice of persons with disabilities independently and in practice, including below the county level. The Committee suggests that the State party reviews its procedural civil and criminal laws in order to

63. *Id.*

make mandatory the necessity to establish procedural accommodation for those persons with disabilities who intervene in the judicial system can do it as subject of rights and not as objects of protection.⁶⁴

The Committee notably references to a review of civil and criminal laws that do not currently provide full access to the judicial system by people with disabilities in China. This is also raised under Article 5 (Equality and non-discrimination) where the Committee expresses concern about “contradictions between many local law regulations and the national law with regard to prohibition of discrimination.”⁶⁵ This review should include, as the Committee points out, a definition of reasonable accommodation that is similar to the understanding of this definition in the CRPD.

Although the Committee commends China for other areas where it has accomplished achievements in advancing disability rights, its serious criticism of China’s implementation of Article 13 sets an important precedent that laws and policies related to access to justice will not be taken lightly.⁶⁶ It is clear that the CRPD’s Committee of experts will not support antiquated methods or non-inclusive strategies that create additional barriers to access in the judicial system for people with disabilities.⁶⁷

B. Other Articles that Crossover (Articles 12/24)

Although the only direct reference to Article 13 in the Committee’s concluding observations is in the most recent report of China, references to Access to Justice do arise in other ways throughout the other five concluding observation reports of Tunisia, Hungary, Peru, Spain, and Argentina that directly correlate to access to justice.⁶⁸ There are two separate ways that these references are relevant to access to justice. Either the Committee made recommendations under another Article on a topic that impacts access to justice (like Article 9 on Accessibility) or the Committee highlighted situations of hardships that people with disabilities face.

64. *Id.*

65. *Id.*

66. CRPD China, *supra* note 60.

67. *Id.*

68. *Id.*; *see generally*, CRPD Spain, *supra* note 60; *see generally*, CRPD Peru, *supra* note 60; *see generally*, CRPD Argentina, *supra* note 60; CRPD Tunisia, *supra* note 59; Committee on the Rights of Persons with Disabilities, 8th Session (17–28 September 2012), Hungary concluding observations, available at <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Session8.aspx> (last visited Aug. 3, 2013) [hereinafter CRPD Hungary].

1. Committee Reports on Articles Related to Access to Justice

Due to the crossover of issues of access to justice into other Articles of the CRPD previously mentioned, the Committee may reference access to the judicial system in its concluding observations without referencing Article 13. For each of the five reports where this is the case, common themes emerge including the lack of policies and legislation that allow for people with disabilities to access remedies in a court of law. Further, there are more specific themes such as the deprivation of identity cards for institutionalized citizens.

In Spain, the first state party to submit its initial report, the Committee focuses on the need for greater awareness in accessing the judicial system.⁶⁹ For instance, under the CRPD's Article 5 (Equality and non-discrimination), the Committee recommends that Spain create greater awareness and training to ensure a better understanding of the concept of reasonable accommodations.⁷⁰ Developing a concept of reasonable accommodations is essential to achieving access to justice in order to provide a remedy for people with disabilities to use the court systems when they have been discriminated against or face inequality. It also creates the basis for which people with disabilities may access the judicial system. The "provision of procedural and age-appropriate accommodation"⁷¹ is vital to the effectiveness of Article 13. Without a clear definition of reasonable accommodations, people with disabilities have no expectation of access to the judicial process, and are at risk at being completely barred.

The concluding observations for Spain also urge the State Party, under Article 8 (Awareness-raising), to create better awareness of the CRPD and its Optional Protocol—particularly among the judiciary and legal profession.⁷² While ratification of the Treaty is the final formal step in acceding to a treaty, implementation of the Treaty and its human rights framework is highly dependent on awareness-raising. Article 13 cannot be fully implemented without mindfulness of the Treaty, particularly by the members of the legal profession who manage and monitor the administration of justice.

Similar to Spain, Tunisia's concluding observations suggest greater awareness-raising of the concept of reasonable accommodations particularly by the judiciary under Article 5 (Equality and non-

69. CRPD Spain, *supra* note 60.

70. *Id.*

71. CRPD Article 13, *supra* note 32.

72. CRPD Spain, *supra* note 60

discrimination).⁷³ The review of Tunisia by the Committee came immediately in the aftermath of Tunisia's overthrow of their government. For this reason, the Committee understood the importance of the country to "act with urgency" and "make greater efforts to raise awareness on non-discrimination among members of the legal profession" to ensure that the new government immediately embraced an accessible judicial system.⁷⁴

Hungary's concluding observations highlight an important aspect of access to justice: accessibility. Under Article 9 (Accessibility), the Committee urges Hungary to meet its own deadlines for barrier removal.⁷⁵ The physical component of access to justice is unique to people with disabilities. For a person who uses a wheelchair or has another physical impairment, a physical barrier like stairs can completely bar them from judicial services.⁷⁶ Accessibility should exist for the client, the juror, the judge, and the attorney. The serious ramifications of physical barriers create an urgency, which the Committee has called upon Hungary to respond to.⁷⁷ The Committee also expresses concern about withdrawing consent from people with disabilities under Article 12 (Equal Recognition Before the Law) and encourages Hungary to and also provide training for judges on legal capacity and create legislation that allows people with disabilities to give informed consent for access for justice purposes.⁷⁸

The Committee's concluding observations for Peru, under Articles 1–4, again point to similar themes of requesting clearer definitions of reasonable accommodations and discrimination based on disability, as well as encouraging greater accessibility under Article 9.⁷⁹ However, the report of Peru introduces another obstacle that people with disabilities face in terms of access to justice. Under Article 12 (Equal Recognition Before the Law), the Committee notes that many people with disabilities either in rural or institutional settings do not have identity cards, and, in some cases, do not have a name.⁸⁰ This unique circumstance creates an incredible barrier, not only procedurally, but risks creating an understanding by these undocumented individuals that the protection and services of the judicial system do not apply to them because they are not officially recognized by the State.

73. CRPD Tunisia, *supra* note 59.

74. *Id.*

75. CRPD Hungary, *supra* note 68.

76. *See generally, id.* art. 23.

77. *Id.* art. 9.

78. *Id.* art. 12.

79. CRPD Peru, *supra* note 60.

80. *Id.*

Under Article 5 (Equality and Non-Discrimination), the Committee notes in Argentina's concluding observations a concern for the lack of judicial remedies for persons with disabilities and recommends creating measures that recognize discrimination.⁸¹ Related to this, under Article 12 (Equal Recognition Before the Law), the Committee recommends greater training for judges, particularly on the human rights model of disability.⁸² The Committee also recommends that judicial trainings incorporate the participation of organizations of people with disabilities.⁸³ As aforementioned, key to the CRPD is the involvement of people with disabilities at all levels.⁸⁴ The theme and rallying cry of the disability movement—"nothing about us without us"—should be incorporated into the trainings that can effectively translate how a person with a disability interacts with the judicial system. Argentina's concluding observations also take note of due process concerns under Article 12 (Equal Recognition before the Law), as well as concerns about restrictions of legal capacity to authorize medical procedures under Article 25 (Right to Health).⁸⁵

The Committee's issued reports reveal that although the concluding observations of a State Party may not directly reference Article 13, they will likely draw on issues that impact access to justice.⁸⁶ The analysis of access to justice in the Committee reports illustrates how State Parties share similar issues in the full implementation of the Treaty such as awareness-raising with judicial administrators and establishment of anti-discrimination laws that create pathways to remedies. It also demonstrates how State Parties have their own unique barriers to implementation such as accessibility or granting of identity cards. What is most apparent from the reports, however, is that improvements to access to justice are suggested within each of the six country reports regardless of whether Article 13 was directly referenced.⁸⁷

81. CRPD Argentina, *supra* note 60.

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. See generally CRPD Spain, *supra* note 60; see generally CRPD Peru, *supra* note 60; see generally CRPD Argentina, *supra* note 60; see generally CRPD Tunisia, *supra* note 59; see generally CRPD Hungary, *supra* note 68; see generally CRPD China, *supra* note 60.

87. See generally CRPD Spain, *supra* note 60; see generally, CRPD Peru, *supra* note 60; see generally CRPD Argentina, *supra* note 60; see generally CRPD Tunisia, *supra* note 59; see generally, CRPD Hungary, *supra* note 68.

2. References to the Importance of an Accessible Judicial System

Another interesting aspect of the concluding observations in terms of access to justice is that, in addition to identifying concerns and creating suggestions to issues that impact access to justice, the Committee acknowledges areas of concern that inherently emphasize the importance of having a strong judicial system in place.⁸⁸

For example, referring back to Spain's concluding observations, the Committee acknowledges its concern under Article 7 (Children with Disabilities) at the "reportedly higher rates of abuse of children with disabilities in comparison with other children."⁸⁹ Tunisia's concluding observations under Article 16 (Freedom from Exploitation, Violence and Abuse) also mentions concern "at the situation of violence that women and children with disabilities might face."⁹⁰ Hungary's concluding observations under Article 16 note that "women, men, girls and boys with disabilities continue to face violence, abuse and exploitation," regardless of some policies in place to prevent this abuse.⁹¹ That people with disabilities face higher rates of violence emphasizes need for a strong judicial system that provides accommodations and access that this population requires in order to discourage growing violence and to remedy existing abuse.

The Committee highlights another area of concern in its concluding observations for Peru.⁹² Under Article 5 (Equality and Non-Discrimination), the Committee urges Peru to develop policies and programs for indigenous and minority persons with disabilities, and in particular, women and children who live in rural areas and persons of African descent.⁹³ The Committee recognizes that people with disabilities can face multiple forms of discrimination. These features can make it more difficult for these individuals to participate on an equal basis in society, including within the judicial system.

The concluding observations for Argentina touch back on previously mentioned issues of violence; under Article 6 (Women with Disabilities), however, the Committee confronts the larger issue of mainstreaming

88. See generally CRPD Spain, *supra* note 60; see generally CRPD Peru, *supra* note 60; see generally CRPD Argentina, *supra* note 60; see generally CRPD Tunisia, *supra* note 59; see generally CRPD Hungary, *supra* note 68; see generally CRPD China, *supra* note 60.

89. CRPD Spain, *supra* note 60.

90. CRPD Tunisia, *supra* note 59.

91. CRPD Hungary, *supra* note 68.

92. See generally CRPD Peru, *supra* note 59.

93. *Id.*

disability and gender in legislation and programs.⁹⁴ The Committee specifically references access to justice under Article 6 as being an issue if the consideration of women with disabilities is not fully addressed.⁹⁵

References throughout the concluding observations of all of the reports demonstrate that there is a strong understanding that crimes against people with disabilities exist at higher rates than for people without disabilities.⁹⁶ In addition, characteristics like race and gender can contribute to further discrimination against persons with disabilities. The undertone in the Committee's reports of the greater susceptibility of people with disabilities to being violated reaffirms the need for a stronger and more just system of law to be in place for this community.

III. LEGISLATIVE AND GOVERNMENTAL ACTION ON ACCESS TO JUSTICE

As of April 2013, 154 countries have signed and 129 have ratified the CRPD.⁹⁷ As an aspirational document, Article 4 of the CRPD sets forth the need for the CRPD to be carried out through national law, policy, and programming in consultation with persons with disabilities.⁹⁸ Stakeholders in the disability community must be involved in this process, mirroring the CRPD development process itself, "nothing about us without us." However, many countries are finding the reality of implementation to be challenging because of the disempowering social contexts and underdeveloped legal systems.⁹⁹ There are also issues raised regarding implementation based on a country's developed or developing status and capacity.¹⁰⁰

Although enabling legislation and policies themselves do not assure full CRPD implementation, they are necessary to facilitate change and to comply with their obligations under Article 4 of the CRPD. Laws developed or expanded should "aim at eliminating barriers to access that constitute both formal and substantive discrimination, attribute obligations

94. CRPD Argentina, *supra* note 60.

95. *Id.*

96. *See generally* CRPD Spain, *supra* note 60; *see generally* CRPD Peru, *supra* note 60; *see generally* CRPD Argentina, *supra* note 60; *see generally* CRPD Tunisia, *supra* note 59; *see generally* CRPD Hungary, *supra* note 68; *see generally* CRPD China, *supra* note 60.

97. Convention on the Rights of Persons with Disabilities, U.N. Doc. A/RES/61/106 (Dec. 13, 2006), http://treaties.un.org/Pages/ViewDetails.aspx?mtmsg_no=IV-15&chapter=4&lang=en (last visited Aug. 3, 2013).

98. Convention on the Rights of Persons with Disabilities (Dec. 13, 2006) <http://www.un.org/disabilities/convention/conventionfull.shtml> (last visited Aug. 3, 2013).

99. Lord, *supra* note 53, at 90.

100. *Id.*

to public and private actors, and introduce measures to bring about equitable access to all rights.”¹⁰¹ The CRPD has already sparked the creation of significant laws and policy shifts since its entry into force. This includes constitutional development and reform, national-level law reform and development, and targeted law reforms in specific thematic areas.¹⁰² Many other countries are creating disability action plans where none had existed previously. In the area of access to justice, some countries have taken specific steps towards legislative change—notably Israel, India, Brazil, Cambodia, and Australia.¹⁰³

A. *Israel*

Disability advocacy in a rights-based context is new in Israel. Similar to prevailing global attitudes prior to the existence of the CRPD, attitudes in Israel towards persons with disabilities were guided by a medical approach and were highly paternalistic.¹⁰⁴ The human rights discourse of the 1990s along with a more active disability movement sparked the shift in approach from welfare to rights.¹⁰⁵ In addition to the legislation described in this section, Israel has also seen the emergence of acknowledgment of victims’ rights since the 1990s (led by women and children’s movements), and has

101. *Id.*

102. *Id.*

103. See generally Neta Ziv, *Witnesses with Mental Disabilities: Accommodations and the Search for Truth—The Israeli Case*, 27 *DISABILITY STUDIES QUARTERLY*, 4 (2007), available at <http://dsq-sds.org/article/view/51/51> (last visited Aug. 3, 2013); see generally Dina Feldman, *Human Rights of Children with Disabilities in Israel: The Vision and the Reality*, 29 *DISABILITY STUDIES QUARTERLY*, No. 1 (2009) available at <http://dsq-sds.org/article/view/172/172>; see generally, The Draft Rights of Persons with Disabilities Bill, Dep’t of Disability Affairs Art. 20 § 1 (2012) available at <http://socialjustice.nic.in/pdf/draftpwd12.pdf> (last visited Aug. 3, 2013); see generally *Government of Brazil—Rights of Persons with Disabilities—Response to Questionnaire by the OHCHR*, available at www2.ohchr.org/english/issues/disability/docs/study/Brazil.doc (last visited Aug. 3, 2013); see generally, International Labor Organization *Cambodian Law on the Protection and the Promotion of the Rights of Persons with Disabilities*, (2009), available at <http://apskills.ilo.org/resources/cambodian-law-on-the-protection-and-the-promotion-of-the-rights-of-persons-with-disabilities> (last visited Feb. 7, 2013); see generally, Australia Human Rights Comm’n, *Welcome to the Disability Rights Home Page*, available at http://humanrights.gov.au/disability_rights/ (last visited Feb. 7, 2013); see generally Disability Rights Now, *Civil Society Report on the Convention on the Rights of Persons with Disabilities*, Aug. 2012, available at http://doc.afdo.org.au/CRPD_Civil_Society_Report_PDF (last visited Feb. 7, 2013); see generally, Disability Rights Now, *Civil Society Report on the Convention on the Rights of Persons with Disabilities*, Aug. 2012, available at http://doc.afdo.org.au/CRPD_Civil_Society_Report_PDF (last visited Feb. 7, 2013).

104. Ziv, *supra* note 103.

105. *Id.* at 8.

seen an increase in advocacy and legal services for victims of crimes with disabilities.¹⁰⁶

In 2006, the year the CRPD was adopted, Israel enacted a comprehensive law specifically making changes to legal policy in the area of access to justice in the Investigation and Testimony Procedural Act (Accommodations for Persons with Mental or Cognitive Disabilities) of 2005.¹⁰⁷ This law applies to police investigations and court testimony of persons with mental and cognitive disabilities, if accused or suspected of committing a crime, witnessing a crime, or as victims of a crime.¹⁰⁸ This law came about as statistics demonstrated that people with mental disabilities were more likely to become victims of crime and assault.¹⁰⁹ Subsequent statements on this bill indicate that the Israeli parliament is charged with enforcing this law, as well as Article 13 of the CRPD. The Ministry of Welfare is responsible for the implementation of these laws.¹¹⁰

An article published in the Fall 2007 Disability Studies Quarterly examined this bill for nuances on its impact on the judicial system and people with mental and psychosocial disabilities.¹¹¹ The bill outlines each element in detail, including what information might be introduced in a legal proceeding according to the bill's admissibility standards.¹¹² The bill also explores witnesses with disabilities, both as perpetrator and victim. Normatively, the person with a disability was often viewed as the perpetrator; this standard has shifted to acknowledging the testimony of people with disabilities as crime victims as well.¹¹³ Questions of witness reliability emerge and the article outlines specific ways to take evidence from a witness with a mental disability (i.e., speak slowly, use simple words, avoid yes/no answers, do not keep repeating questions, only move to new topics once an explanation is given, etc.).¹¹⁴ Finally, the law addresses police investigations, the cross examination of witnesses, accommodations affecting the credibility and meaning of testimony.

Since the development of the law, Israel has continued to show its commitment to the CRPD and disability integration through legislation,

106. *Id.* at 10.

107. Ziv, *supra* note 103, at 1.

108. *Id.*

109. *Id.*

110. Feldman, *supra* note 103.

111. Ziv, *supra* note 103, at 3.

112. *Id.*

113. *See id.*

114. *Id.* at 7.

budget, and services.¹¹⁵ That said, similar to other countries, Israel still faces the challenges of shifting to a human rights and social model of disability in all spheres.¹¹⁶

B. *India*

At the time of this writing, a draft of India's Rights of Persons with Disabilities Bill (Bill) was being considered. The Bill seeks to replace the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act of 1995, and to bring India in line with new notions of disability and the rights of persons with disabilities under the CRPD, which India has ratified.¹¹⁷ Once implemented, the Bill will begin moving towards achievement of more inclusive schools,¹¹⁸ lower unemployment rates, and more accessible infrastructure. The Ministry of Social Justice and Empowerment's Department of Disability Affairs have moved the Bill through the legislative process, which has been welcomed by the Indian disability community.

With regard to access to justice, Article 20 of India's proposed law covers the subject stating in paragraph one that people with disabilities and their representative organizations shall have the right to courts, tribunals, authorities, commissions, or any other judicial, quasi-judicial, or investigative powers.¹¹⁹ The law enumerates five sections continuing to ensure that reasonable accommodations are provided to secure persons with disabilities access to "any scheme, programme, facility or service offered by them on an equal basis with others."¹²⁰ The law continues to expand Access to Law by enumerating that testimony, opinion, or argument given by a person with a disability should be evaluated on an equal basis with others.¹²¹ Public documents, filing departments, registries, and other records, recordings, testimony, arguments, or opinion should also be

115. See generally Ziv, *supra* note 103.

116. Feldman, *supra* note 103.

117. Rahul Cherian, *The Disabilities Bill is a Mixed Bag*, THE HINDU, <http://thehindu.com/news/national/the-disabilities-bill-is-a-mixed-bag/article3927212.ece> (last visited Jan. 25, 2013).

118. As the majority of schools are inaccessible (especially due to the privatization of education, yielding much inaccessible construction).

119. The Draft Rights of Persons with Disabilities Bill, Dep't of Disability Affairs Art. 20 § 1 (2012), available at <http://socialjustice.nic.in/pdf/draftpwd12.pdf> (last visited Aug. 3, 2013).

120. *Id.* § 4.

121. *Id.* § 3.

provided in accessible formats and/or in a person's preferred language and means of communication.¹²²

The law's eighty-six pages are comprehensive and all-inclusive, including Articles in the area of Legal Capacity and Equal Recognition before the Law (Article 7); Duty to Provide Support in Exercise of Legal Capacity (Article 9); Right to Political Participation (Article 19), as well as all of the other areas covered under the CRPD.¹²³ At the time of this writing, the law is currently facing opposition from some disability organizations, which claim that the law does not address the core needs of the nation's 30 to 40 million people living with psychosocial disabilities.¹²⁴ These organizations express a desire for the law to eliminate the creation of institutions with minimal responsibility and oversight, and re-introduce safeguards for involuntary admission.¹²⁵

C. Brazil

The CRPD was incorporated into Brazilian law after the country's ratification in January 2008, and has since received constitutional status within Brazil.¹²⁶ The Brazilian government has since been working to transform the traditional model of disability into one that "also enables persons with disabilities to exercise a central role in their emancipation and citizenship, thus contributing to the development of the country."¹²⁷

On January 29, 2009, a note verbale¹²⁸ was transmitted to the U.N. on behalf of the Portuguese-speaking countries who met to discuss the CRPD.¹²⁹ Their findings were presented to the U.N. by the Permanent Mission of Brazil.¹³⁰ In their Santos Charter, participants from Brazil and seven other Portuguese-speaking countries celebrated the CRPD's entry

122. *Id.* § 5.

123. *See id.*

124. *Rights Groups Question New Disability Bill*, DECCAN HERALD, available at <http://www.deccanherald.com/content/284295/rights-groups-question-disability-bill.html> (last visited Jan. 25, 2013).

125. *Id.*

126. *Government of Brazil—Rights of Persons with Disabilities—Response to Questionnaire by the OHCHR*, available at www2.ohchr.org/english/issues/disability/docs/study/Brazil.doc (last visited Aug. 3, 2013).

127. *Id.*

128. United Nations Convention on the Rights of Persons with Disabilities, Note verbale dated Jan. 29, 2009 from the Permanent Mission of Brazil to the United Nations addressed to the Secretary-General (Jan. 2009).

129. *Id.*

130. *Id.*

into force and outlined actions that will focus on its implementation.¹³¹ They discussed the need for people with disabilities and their representative organizations to be included in all phases of the implementation. With regard to access to justice, the parties agreed to “the training of law professionals, within the Judicial System of each country, since their individual initial and continued education, for the mainstreaming of the inclusive approach on all areas of their work.”¹³²

In addition, at the 2009 CRPD Conference of States Parties, Brazil’s representative highlighted this commitment by saying that his government was facilitating a greater role for people with disabilities in the judicial system—and shared one example that the nation’s first blind judge would soon assume office.¹³³

D. Cambodia

The Law of the Protection and the Promotion of the Rights of Persons with Disabilities was adopted by the Cambodian National Assembly on May 29, 2009 and was officially signed by the King on July 3, 2009.¹³⁴ The goal was to protect and promote the rights of persons with disabilities in Cambodia.¹³⁵ As quoted the purposes of the law was to:

- 1) Protect the freedoms of persons with disabilities;
- 2) Protect the interests of persons with disabilities;
- 3) Prevent, reduce and eliminate discrimination against persons with disabilities; and
- 4) To rehabilitate physical, mentally and vocationally in order to assure that persons with disabilities are able to participate fully and equally in activities within society.¹³⁶

In the same year, a National Plan of Action for Persons with Disabilities was adopted to address the needs and provide services for

131. *Id.*

132. *Id.*

133. United Nations General Assembly, States Parties to Convention on Rights of Persons with Disabilities, 3rd meeting AM (Sept. 3, 2009), available at <http://www.un.org/News/Press/docs/2009/hr5000.doc.htm> (last visited Aug. 2013).

134. International Labor Organization, *Cambodian Law on the Protection and the Promotion of the Rights of Persons with Disabilities*, (2009), available at <http://apskills.ilo.org/resources/cambodian-law-on-the-protection-and-the-promotion-of-the-rights-of-persons-with-disabilities> (last visited Feb. 7, 2013).

135. *Id.*

136. *Id.*

persons with disabilities; however, to date, there has been no real implementation of the law.¹³⁷ That said, people have made improvements in the NGO sector with disabilities forming their own organizations.¹³⁸

Cambodia signed the CRPD in January 2007, but has yet to ratify it.¹³⁹ The emergence of their 2009 disability law following its CRPD signature, however, suggests Cambodia's eagerness to adopt the social model of disability legislation.¹⁴⁰ It is essential, though, that Cambodia ratify the CRPD to move disability into the mainstream agenda, working towards Article 13 implementation.¹⁴¹ This is necessary in Cambodia, and in other countries of the world, as disability is often overlooked in mainstream development projects. For example, the U.N. Development Program (UNDP) began an access to justice project in Cambodia, which was active between April 2006 and March 2010.¹⁴² The project worked to bridge the gap between formal and informal justice systems but focused solely on the poor, women, and indigenous people as the most marginalized groups.¹⁴³ The program focused on alternate dispute resolution as well as finding new mechanisms for accessing the formal justice system.¹⁴⁴ It included training of professionals and educated the communities involved.¹⁴⁵ None of these activities focused on people with disabilities in the community and, although an effective program, people with disabilities must nonetheless be recognized and take into account and be included within this population.

E. *Australia*

The Australian Human Rights Commission leads the implementation of the Disability Discrimination Act of 1992, which makes disability discrimination illegal and promotes rights, opportunity, and access for

137. The International and Human Rights Network, *Cambodia: Disabled People Continue to Face Poverty and Discrimination*, Mar. 30, 2011, available at <http://www.daa.org.uk/index.php?mact=Blogs,cntnt01,showentry,0&cntnt01entryid=375&cntnt01returnid=98> (last visited Feb. 7, 2013).

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. The International and Human Rights Network, *supra* note 137.

143. *Id.*

144. *Id.*

145. *Id.*

people with disabilities.¹⁴⁶ They also have a significant role regarding the implementation of the CRPD.¹⁴⁷

The Australian Shadow Report on the implementation of the CRPD was released in June 2012 as a supplemental community perspective to the government of Australia's periodic report on how the Treaty was being implemented.¹⁴⁸ The Report's findings highlight many of the concerns the authors have raised in this article. People with disabilities are "over-represented in the justice system whether as complainants, litigants, defendants, victims or other witnesses."¹⁴⁹ They also encounter significant barriers in undertaking roles as officers of the courts, such as jurors, lawyers, administrators and adjudicators."¹⁵⁰ Concerns were raised about the hostility of the legal system towards persons with disabilities,¹⁵¹ and legal services in the community need to be expanded.¹⁵² This often creates gaps in service or inadequate resources to deal with disability issues.

The Shadow Report also highlights other barriers that impede participation of people with disabilities in programs.¹⁵³ For example, there is insufficient participation among the disabled in court diversion programs,¹⁵⁴ and insufficient police and prison staff trainings on how to deal with people with disabilities.¹⁵⁵ Experience and statistics also indicate that Australia has failed to train prison system personnel and police to facilitate access to justice.¹⁵⁶ Another concern is the credibility challenges faced by people with disabilities when interacting with the justice system,¹⁵⁷ and that people with disabilities are often ineligible for jury service on the

146. Australia Human Rights Commission, *Welcome to the Disability Rights Home Page*, available at http://humanrights.gov.au/disability_rights/ (last visited Feb. 7, 2013).

147. *Id.*

148. Disability Rights Now, *Civil Society Report on the Convention on the Rights of Persons with Disabilities*, Aug. 2012, available at http://doc.afdo.org.au/CRPD_Civil_Society_Report_PDF (last visited Feb. 7, 2013).

149. *Id.*

150. *Id.*

151. *Id.*

152. National Association of Community Legal Centres *Community Legal Centres Across Australia: An Investment Worth Protecting*, 2007, available at http://www.naclc.org.au/resources/NACLCLC_fund08_CMYK.pdf (last visited Feb. 7, 2013).

153. See Disability Rights Now, *supra* note 148.

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

basis of their disability.¹⁵⁸ Finally, as stated above, people with disabilities often cannot access police or court localities and may face communication barriers when they do.¹⁵⁹

The Department of Disability Inclusive Development with the Australian Agency for International Development (AusAid), has been supportive of CRPD implementation, funding the International Disability Alliance (IDA) in their CRPD implementation activities.¹⁶⁰ As part of the funded CRPD Implementation Guidelines process, IDA will launch a journal focused on the gathering of information related to the CRPD implementation covering good practices of action.¹⁶¹ Two journals will be published annually.¹⁶² [The first topic will be on Article 29 (the Right to Vote)] and the second topic will address Article 13 (access to justice).¹⁶³ The journals will provide guidance on the specific rights and how they are all overarching and linked.¹⁶⁴

IV. ACCESS TO JUSTICE PROGRAMS LED BY PEOPLE WITH DISABILITIES AND DISABILITY ORGANIZATIONS IN IMPLEMENTATION OF THE CRPD ARTICLE 13

A. *Access to Free Legal Aid and the Uganda Case Study*

The Ugandan Disabled People's Organization, Legal Action for Persons with Disabilities (LAPD), is one of the only legal aid organizations in Africa managed by and for people with disabilities.¹⁶⁵ Their work has an impact on access to justice in the country. With support from the Disability Rights Fund,¹⁶⁶ LAPD trains local leaders, including leaders with disabilities, on how to use the CRPD to enforce the rights and protect

158. Disability Rights Now, *supra* note 148.

159. *Id.*

160. International Disability Alliance, IDA, *Towards the Full Implementation of the CRPD: Activities Undertaken within and Connected to the Project Supported by the Australian Agency for International Development*, Final Rep., AUSAID Agreement 55854, Jan. 31, 2012, available at http://www.internationaldisabilityalliance.org/sites/disalliance.e-presentaciones.net/files/public/files/Final%20Report_CRPD%20Implementation%20Guidelines%20Project_AusAID.pdf (last visited Feb. 7, 2013).

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. Disability Rights Fund, *Searching for Justice and Advancing Disability Rights*, available at http://www.disabilityrights.org/program_grantees/highlight/LAPD (last visited Feb. 7, 2013).

166. *Id.*

persons with disabilities from human rights violations.¹⁶⁷ They are also fighting against fear and prejudice by speaking out on radio and television talk shows.¹⁶⁸

LAPD's work has increased the number of cases taken by courts of human rights violations against persons with disabilities.¹⁶⁹ According to LAPD's Executive Director, Laura Kanushu, "[n]ot only has this offered relief to our clients, but it has also raised awareness about disability and justice among local officials as well as among the perpetrators of human rights violations."¹⁷⁰

LAPD's mission is to provide free legal aid to indigent persons with disabilities to create a Uganda where the rights of persons with disabilities are actualized.¹⁷¹ Ms. Kanushu states that through their work, "[w]e seek inclusive laws and practices in all areas—education, health, employment, and government services. We hope to address the needs at the grassroots and even in the camps for internally displaced persons where our legal services are in demand."¹⁷² The LAPD works especially close with women with disabilities who have been affected by conflict and are particularly vulnerable to violence.¹⁷³ According to a recent report released by Human Rights Watch:

Women with disabilities are vulnerable to such crimes because of their isolation, lack of support structures, mobility and communication barriers, and also because of myths that women with disabilities are weak, stupid, or asexual. For women and girls with disabilities, the process for reporting rape is not accessible due to such factors as long distances to travel from remote areas to police posts or lack of sign language interpreters.¹⁷⁴

B. *Women with Disabilities in Bangladesh*

The National Council of Disabled Women (NCDW), a coalition of ninety-two disabled womens' organizations in Bangladesh, is working

167. *Id.*

168. *Id.*

169. *Id.*

170. Disability Rights Fund, *supra* note 165.

171. *Id.*

172. *Id.*

173. *Id.*

174. Disability Rights Fund, *supra* note 165.

towards access to justice in their country.¹⁷⁵ They assert that female victims do not receive justice as they are not treated as complete human beings, and are thus not eligible to file a complaint, not considered eligible witnesses, and face significant social stigma.¹⁷⁶ Through funding from the Disability Rights Fund, NCDW advocates the need to protect and promote rights of women with disabilities, utilizing CRPD as the tool for their actions.¹⁷⁷ Their actions are varied:

1) At the national level, they have worked closely with the Ministry of Women and Children's Affairs and other disabled persons organizations and networks to harmonize the country's disability laws to align with the CRPD. Acknowledging that disability is a cross-cutting development issue, they also organized a national roundtable on discrimination in employment practices.

2) Operating in eight districts, one of NCDW's community activities in 2010 focused on establishing *Violence Prevention Committees* and providing training to fight violence against women with disabilities. By starting the committees, and in using the word "Violence," NCDW is sending a strong message that violence is a problem and that it is not acceptable and that women with disabilities must be included in all programs affecting women at large.

3) NCDW's work has started to change the public mindset about women with disabilities as silent victims or easy targets. On December 2, 2010, NCDW members joined a protest against sexual harassment in front of the parliament building. Through such highly public acts, the members are refusing to be invisible and are serving as role models for women who might be afraid to come forward. They are also showing women's and human rights organizations that disability is a cross-cutting issue: issues that affect other women also affect women with disabilities, sometimes even more so.¹⁷⁸

175. Disability Rights Fund, *Promoting Rights and Dignity of Women with Disabilities*, available at http://disabilityrightsfund.org/program_grantees/highlight/NCDW (last visited Feb. 7, 2013).

176. *Id.*

177. *Id.*

178. *Id.*

C. *DPO in Bangladesh*

NOWZUWAN,¹⁷⁹ a Disabled People's Organization in Bangladesh, has made strides towards Article 13 implementation since the country ratified the CRPD on November 30, 2007. A few examples of their documented actions included the following:

- 1) A visually impaired attorney was successful at obtaining a verdict on a sexual harassment case.
- 2) NOWZUWAN's representatives facilitated the inheritance of a person with disability who was being denied his parent's assets. The person with a disability was able to obtain his fair share.
- 3) NOWZUWAN sits on the district/sub-districts jail committee to be the voice towards ensuring the rights of people with disabilities and women.¹⁸⁰

In 2012, the government of Bangladesh took some strides towards this end by including people with disabilities. In their Police Reform Project, the government of Bangladesh included people with disabilities and women beginning in November 2012.¹⁸¹ This Program promotes gender sensitivity in the police force.¹⁸² Training on awareness-raising and recruitment efforts for new police officers will also work to include women with disabilities in these activities.¹⁸³

D. *Disability Rights Fund Projects Globally*

As with implementation of the CRPD, there are examples of disability organizations taking on both broad-based and article-specific implementation projects. The Disability Rights Fund (DRF)¹⁸⁴ is a collaboration between donor organizations and the disabled community to move the CRPD forward practically and actively. They have funded a variety of projects implementing Article 13, access to justice, including:

179. *Disability Resource Centre*, NOWZUWAN.ORG, <http://nowzuwan.org/disability-resource-centre-2> (last visited Feb. 7, 2013).

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. Disability Rights Fund, *Searching for Justice and Advancing Disability Rights*, available at http://www.disabilityrightsfund.org/program_grantees/highlight/LAPD (last visited Feb. 7, 2013).

- 1) Strategic case taken in Peru against justice system that disallowed blind people to be appointed as judges. This was successful as Edwin Bejar Rojas was sworn in as a judge in Cuzco, Peru in July, 2012.¹⁸⁵
- 2) Training of judges in Courts of Peace in rural areas of Peru about access to justice for people with disabilities.
- 3) Training of judges in the Supreme Court of Peru on the CRPD and the new Disability Act (the Act was developed and put before Congress via a citizen's initiative, funded by DRF).¹⁸⁶
- 4) Sign language support to deaf women victims of violence to take cases Edwin Bejar Rojas before court in Bangladesh.¹⁸⁷

V. CONCLUSION

The very first words of the CRPD's preamble read:

The States Parties to the present Convention, recalling the principles proclaimed in the Charter of the United Nations which recognize the inherent dignity and worth and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice, and peace in the world¹⁸⁸

The concept of access to justice is inherent to a historical understanding of human rights. With the development of the CRPD, disability rights have now been introduced under the human rights framework and the concept of access to justice is more meaningful than ever. It is through accessing the judicial system that people are reassured that they are equal, that they are part of society, and that their contribution to the community is valued and important. The judicial system is the heart of a just society, and access to justice must exist in order to preserve this vital organ.

The Committee's six concluding observation reports reveal that the instrument of the CRPD is actively at work, identifying where disability

185. Lucia Valdez Romero, *Abogado Invedente Edwin Bejar Rojas fue Nombardo Juez de Familia del Distrito Judicial de Cusco*, LA REPUBLICA, July 20, 2012, <http://www.larepublica.pe/11-07-2012/abogado-invidente-edwin-bejar-rojas-fue-nombrado-juez-de-familia-del-distrito-judicial-de-cusco> (last visited Aug. 3, 2013).

186. LA PRIMERA, http://www.diariolaprimeraperu.com/online/actualidad/breves_72176.html (last visited Feb. 7, 2013).

187. *Id.*

188. United Nations General Assembly, 61st Sess., Item 67(b), U.N. Doc A/61/611 (Dec. 6, 2006), available at <http://www.un.org/esa/socdev/enable/rights/convtexte.htm> (last visited Aug. 3, 2013).

rights are weak and providing recommendations and guidance for how they can be strengthened. The Committee's observations reveal the interconnectivity between different regions and cultures on disability issues, and the unique barriers that nations face in implementation. Although currently only one report explicitly mentions Article 13, this mention is in addition to related references throughout the other five concluding observation reports. This reveals that there are high expectations from Committee to ensure that access to justice is taken seriously, and that it includes people with disabilities at all levels, respecting the human rights principles on which the Treaty is based.

The authors, as members of the legal profession and the disability community, believe that the implementation of Article 13 and all of the rights associated with its complete implementation is essential towards the progression of the profession. Without access to lawyers, the rights of persons with disabilities to file a complaint, testify, become a lawyer or court officer themselves or participate in society as a protagonist in one's life will never be fully integrated into society. More exploration must be done by scholars, advocates, and countries around the world in order to combat the discrimination Article 13 was written to address. Without the ability to engage in the judicial system and all of its associated elements, our rights will never be fully recognized. We hope this article is a start to a larger conversation and longer-term awareness and action in this area.