

**Submission**  
**to the Department of Children, Equality, Disability,**  
**Integration and Youth on the Consultation on the Draft Initial**  
**State Report under the United Nations Convention on the**  
**Rights of Persons with Disabilities**

**Prof. Delia Ferri**

**Dr. Ann Leahy**

**Dr. Neža Šubic**

**Ms Léa Urzel**

**Department of Law – ALL Institute**  
**Maynooth University, Maynooth, Co. Kildare**

**[Delia.Ferri@mu.ie](mailto:Delia.Ferri@mu.ie)**

**\*\*\***

**7 April 2021**

## Table of Contents

1. Introduction .....	3
1.1. This Submission .....	3
1.2. The Authors .....	4
1.3. Focus and Structure of this Submission .....	5
2. Cross-Cutting Issues .....	7
2.1. Engagement with the Human Rights Model .....	7
2.2. The Relevance of EU Law and Policy .....	9
2.3. OHCHR Human Rights-Based Indicators .....	10
3. The Right to Participate in Culture of Persons with Disabilities.....	11
3.1. Accessibility of Cultural Venues, Goods, Services, Activities .....	12
3.2. Participation in Culture: Barriers and Facilitators .....	14
3.3. Sign Language and Deaf Culture .....	15
3.4. Commitment towards Mainstreaming.....	15
4. Concluding Remarks.....	16
5. Selected Bibliography.....	17

## 1. Introduction

### 1.1. This Submission

In compliance with Article 35 of the UN Convention on the Rights of persons with Disabilities (CRPD), which lays out the reporting obligations of States Parties, Ireland is currently drafting its Initial State Report to be submitted to the Committee on the Rights of Persons with Disabilities (hereinafter 'the CRPD Committee'). The Initial State Report must comprehensively illustrate the measures adopted to implement the CRPD and the progress made in that regard. The *Guidelines on treaty-specific document to be submitted by states parties under Article 35, paragraph 1, of the Convention on the Rights of Persons with Disabilities* (hereinafter 'the Guidelines'), released by the CRPD Committee in 2009, also indicates that 'States should consider the reporting process, including the process of preparation of their reports, not only as a means to ensure compliance with their international obligations, but also as an *opportunity to take stock of the state of human rights protection within their jurisdiction for the purpose of more efficient policy planning and implementation of the Convention*'.<sup>1</sup> In line with Article 4(3) and 35(4) CRPD, these Guidelines indicate that 'States Parties should encourage and facilitate the *involvement of nongovernmental organizations, including organizations of persons with disabilities in the preparation of reports*'.<sup>2</sup> Furthermore, they suggest that '[s]uch *constructive engagement* on the part of these organizations will enhance the quality of reports as well as promote the enjoyment by all of the rights protected by the Convention'.

The CRPD Committee, in its General Comment No. 7 on Article 4(3) and 33(3) on the participation of persons with disabilities in the implementation and monitoring of the Convention, also highlights that civil society organisations have a role to play in supporting and monitoring the implementation of the Convention.<sup>3</sup> In doing so, it indicates that civil society organisations must be understood as including 'research organizations/institutes, organizations of service providers and other private stakeholders'.<sup>4</sup>

In compliance with the text of the Convention and with the abovementioned Guidelines, prior to the finalisation and submission of the report, the Department of Children, Equality, Disability, Integration and Youth (hereinafter 'DCEDIY') has engaged in a wide process of consultation of interested stakeholders and members of the public on the Draft Initial Report. This consultation process was announced by the Minister of State with responsibility for Disability, Ms. Anne Rabbitte T.D., on 3 December 2021. The objective of this consultation is to ensure that the input of key stakeholders, in particular persons with disabilities and their representative organisations, is captured and accounted for in the final document. We acknowledge that the Irish Government has also provided funding to establish a Disability Participation and Consultation Network, comprised mainly of organisations of persons with

---

<sup>1</sup> UN Committee on the Rights of Persons with Disabilities, *Guidelines on treaty-specific document to be submitted by states parties under article 35, paragraph 1, of the Convention on the Rights of Persons with Disabilities*, 18 November 2009, CRPD/C/2/3, available at: <https://www.refworld.org/docid/4eef08452.html> para. 3 (emphasis added).

<sup>2</sup> Ibid.

<sup>3</sup> UN Committee on the Rights of Persons with Disabilities, *General comment No. 7 (2018) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention* CRPD/C/GC/7 (9 November 2018) available from <https://www.ohchr.org/en/hrbodies/crpd/pages/gc.aspx>

<sup>4</sup> Ibid. para. 14.

disabilities, recognising the key and vital role of organisations of persons with disabilities in the implementation of the CRPD and in the advancement of disability rights.<sup>5</sup> We welcome this commitment of the DCEDIY to engage in and organise this consultation process.

In line with the CRPD Committee's approach, we also welcome the opportunity offered by this process to participate with a **research-informed submission**. This submission has been prepared by Prof. Delia Ferri, in conjunction with Dr. Ann Leahy, Dr. Neža Šubic and Ms Léa Urzel. It has been developed within the remit of a large-scale project entitled *Protecting the Right to Culture of Persons with Disabilities and Enhancing Cultural Diversity through European Union Law: Exploring New Paths* (DANCING), as part of the commitment to contribute to policy processes and to the advancement of disability rights. The DANCING Project is funded by the European Research Council (ERC) Consolidator, under Grant No. 864182, with Prof. Delia Ferri as the Principal Investigator. The submission is made by the authors in a personal capacity and not on behalf of the Department of Law of Maynooth University (MU), or the MU Assisting Living & Learning (ALL) Institute. The views and opinions expressed in this submission are those of the authors and do not necessarily reflect the official policy of MU.

## 1.2. The Authors

Prof. Ferri, Dr. Leahy, Dr. Šubic and Ms Urzel have distinguished expertise on disability rights (and, more broadly, on human rights), as well as on equality, intersectionality, and inclusion.

**Delia Ferri** is a Professor of Law at Maynooth University and co-Director of the ALL Institute. She is affiliated researcher at the DIRPOLIS Institute (Institute of Law, Politics and Development) of Scuola Superiore Sant'Anna (Italy) within the research cluster on social rights, social inclusion and disability, and a fellow at the Burton Blatt Institute of Syracuse University (USA). Since 2018, she has been a member of the Royal Irish Academy (RIA) Standing Committee in International Affairs (SCIA). Delia is Principal Investigator (PI) of the project [\*Protecting the Right to Culture of Persons with Disabilities and Enhancing Cultural Diversity through European Union Law: Exploring New Paths \(DANCING\)\*](#), for which she was awarded an ERC Consolidator grant of €2 million. She is also co-investigator in the project [\*SHAPES\*](#), funded by the EU Horizon 2020 programme and led by the ALL Institute. Her research in this project focuses on regulatory frameworks to support independence and enhanced quality of life for older people, in particular older people with disabilities. She also holds a position of co-investigator in the project [\*Rethinking Digital Copyright Law for a Culturally Diverse, Accessible, Creative Europe \(ReCreating Europe\)\*](#), led by Scuola Superiore Sant'Anna Pisa, and funded by the EU Horizon 2020 programme. Within this project, Delia investigates access to digital cultural goods for people with disabilities, from an intersectional perspective. Moreover, since 2004, Delia has authored [several academic publications](#) and taken part in policy-oriented studies on the rights of persons with disabilities, participatory processes and cultural diversity.

**Ann Leahy** is a Postdoctoral Researcher with the DANCING project. Her PhD, completed at the Department of Sociology of Maynooth University, was an interdisciplinary study of the

---

<sup>5</sup> <http://www.justice.ie/en/JELR/Pages/PR20000172>

intersection between disability and ageing. She is the author of a book on that subject (forthcoming from Policy Press), the writing of which was supported by a prestigious Irish Research Council Postdoctoral Fellowship. She worked for many years in the voluntary sector in Ireland including at Age & Opportunity (where she was Assistant CEO) and at Social Justice Ireland (where she was an Irish Research Council Scholar). In those roles she contributed to many policy and research processes in a range of areas of social policy including ageing, disability, poverty and health. She has served on many inter-agency committees and consultative fora. She has a background in law and worked as a solicitor early in her career.

**Neža Šubic** is a Postdoctoral Researcher with the DANCING project. Neža is specialised in EU law and in human rights law. She has taught in the area of EU law both at UCD and at Maynooth University, and has published in the fields of EU law and human rights law in both Irish and international journals. Prior to commencing her PhD studies, Neža worked as an assistant lawyer at the European Court of Human Rights (ECtHR) in Strasbourg, and completed traineeships at various Slovene national courts, and at the Legal Service of the European Commission in Brussels. Neža holds an LL.B. from the University of Ljubljana, and an LL.M. from the University of Edinburgh. In 2017, she passed the Slovene State Examination in Law.

**Léa Urzel** is a PhD candidate with the DANCING project. Her PhD research, at the Department of Law, Maynooth University, investigates the disability dimension of cultural production in the European Union. She has completed traineeships at the Office of the Special Rapporteur on the Rights of Persons with Disabilities, and at the NGO Humanity & Inclusion. Prior to starting her PhD studies, she also joined the Directorate-General for Employment, Social Affairs and Inclusion of the European Commission as a trainee. Léa holds an LL.B. from the University of Nantes, and studied European and International Law at the University of Helsinki. In 2018, she completed a LL.M. in International and Comparative Disability Law and Policy at the National University of Ireland, Galway.

#### Contact Details

<b>Name</b>	<b>Prof. Delia Ferri</b>
Personal/Organisation’s Address	<b>Department of Law New House – South Campus Maynooth University Maynooth, Co. Kildare</b>
Phone number	<b>01 474 7210</b>
Email address	<a href="mailto:Delia.ferri@mu.ie">Delia.ferri@mu.ie</a>

#### *1.3. Focus and Structure of this Submission*

This submission aims to **support the drafting** of the Initial State Report and to provide **constructive feedback** from a policy research perspective on the draft that has been

published (hereafter, the Draft Initial Report). With this in mind, this **research-led contribution** is divided into two main sections followed by brief concluding remarks.

**Section 2** highlights some **cross-cutting issues that should be considered in the finalisation of the Initial State Report**, providing comparative insights. In particular, it emphasises the necessity to engage further with the human rights model of disability that underpins the CRPD. It also suggests that the Initial State Report might engage more with relevant European Union (EU) law, as well as EU funds available to Ireland, tallying with the information provided by the EU itself in its own report to the CRPD Committee<sup>6</sup>. It then argues that engagement with human rights indicators would greatly enrich the report. **Section 3** provides constructive feedback on how **participation in cultural life of persons with disabilities** is dealt with in the Draft Initial Report. It deliberately focuses on cultural issues emerging under Articles 9, 21 and 30 CRPD. Section 3 is informed by the view that culture is essential to end the marginalisation of persons with disabilities and to facilitate full participation in the life of communities.<sup>7</sup> The importance of culture in approaches to disability is reflected in the statement of the then Special Rapporteur on the rights of persons with disabilities, Catalina Devandas-Aguilar, that ‘neither awareness-raising programmes nor the generalization of anti-discrimination measures will alone suffice’ for disability to be embraced as part of human diversity and that ‘what is needed is a cultural transformation of the way society relates to the difference of disability’.<sup>8</sup> This is consistent with the focus within the field of disability studies in recent decades on culture, on the potential of people with disabilities to influence it, and on disability as a lens with potential for reinterpretation and transformation of mainstream culture.<sup>9</sup> Furthermore, as we contend in the DANCING Project, the loss of opportunities to participate in cultural life for people with disabilities also entails a loss for the society as a whole because of the lack of cultural diversity resulting from such an inaccessible and exclusionary cultural realm.

This submission is informed by the human rights model of disability enshrined in the CRPD. It takes into account relevant international law, as well as EU law, and relies on well-established disability law scholarship and disability studies literature. It is also informed by a wide-ranging review that we have undertaken in recent months of documents available from the CRPD Committee’s website, including reports that have been submitted by EU countries that are parties to the CRPD up until January 2021. We reviewed reports of States Parties to the CRPD for all 25 EU countries that have submitted reports, plus the UK and the EU, as well

---

<sup>6</sup> Initial report of States parties due in 2012 European Union. Distr.: General 3 December 2014. CRPD/C/EU/1

<sup>7</sup> Council of Europe (CoE), *Human Rights: A Reality for All. Strategy on the Rights of Persons with Disabilities 2017-2023*. (2017) Available at <https://www.coe.int/en/web/disability/strategy-2017-2023>; Damjan Tatic, *Access for People with Disabilities to Culture, Tourism, Sports and Leisure Activities: Towards Meaningful and Enriching Participation* (2015). Council of Europe Disability Action Plan. Available at: [https://rm.coe.int/16805a2a23%20\(2017](https://rm.coe.int/16805a2a23%20(2017)

<sup>8</sup> Catalina Devandas-Aguilar, *Rights of Persons with Disabilities. Report of the Special Rapporteur on the rights of persons with disabilities* (A/HRC/43/41) (2019), 75. Available from <https://undocs.org/en/A/HRC/43/41>

<sup>9</sup> See, for example, Tanya Titchkosky, *Disability, self, and society* (University of Toronto Press 2003); Dan Goodley, *Disability studies: An interdisciplinary introduction* (SAGE 2011); and Anne Waldschmidt, ‘Disability–Culture–Society: Strengths and weaknesses of a cultural model of dis/ability’ (2018) 12(2) *ALTER* 65.

as Lists of Issues and Concluding Observations issued by the CRPD Committee in response to them (92 documents in total, including 33 country reports).<sup>10</sup>

This submission uses people-first language ('persons/people with disabilities'), in line with the language used in the CRPD and with the CRPD's understanding of disability.

## 2. Cross-Cutting Issues

We suggest that the Initial State Report addresses a number of cross-cutting issues, thereby engaging with the human rights model of disability that underpins the CRPD, and also with relevant EU law as well EU funds available to Member States of the EU. We also recommend that the Initial State Report refers to human rights indicators as point of reference for the implementation of the CRPD in domestic policies. These cross-cutting issues affect all aspects of Ireland's obligations under the CRPD, and should be considered when dealing specifically with every article of the Convention, and when providing, in line with the abovementioned Guidelines of the CRPD Committee, 'a detailed analysis of the impact of legal norms on persons with disabilities' factual situation and the practical availability'.<sup>11</sup>

### 2.1. Engagement with the Human Rights Model

The CRPD embodies a 'paradigm shift' away from a social welfare response to disability to a rights-based approach. This is linked to the shift from perceptions of persons with disabilities as 'objects' of charity and from the medical model, towards viewing persons with disabilities as holders of rights. The human rights model of disability builds on the social-contextual model of disability<sup>12</sup> in that it recognises that 'disability is a social construct'.<sup>13</sup> However, it goes further in the sense that it conceives of disability as 'one of several layers of identity'.<sup>14</sup> We note that the Irish Draft Initial Report as a whole does not engage with the human rights model of disability, nor with the paradigm shift (which is, for instance, mentioned in the Initial Report of Germany<sup>15</sup>).

In the introductory statement of the Draft Initial Report, it is indicated that Ireland has 'put in place new laws to protect the rights of people with disabilities' (para. 4). Under Arts 1-4 of CRPD the Draft Initial Report makes various references to human rights, and (at para. 10), it is stated that '[t]he Government attaches great importance to the protection and promotion of human rights in framing legislation. All draft legislation in Ireland is examined by the Office

---

<sup>10</sup> We reviewed 33 reports of States Parties (including initial reports for 26 countries plus the EU and subsequent reports for Austria, Denmark, Germany, Hungary, Spain, and Sweden); 35 Lists of Issues; 24 Concluding Observations.

<sup>11</sup> UN Committee on the Rights of Persons with Disabilities, *Guidelines on treaty-specific document to be submitted by states parties under article 35, paragraph 1, of the Convention on the Rights of Persons with Disabilities*, 18 November 2009, CRPD/C/2/3, para. A4.2. Available at: <https://www.refworld.org/docid/4eef08452.html>

<sup>12</sup> The social-contextual model is a more refined elaboration of the 'pure' social model. See Andrea Broderick and Delia Ferri, *International and European Disability Law and Policy: Text, Cases and Materials* (Cambridge University Press, 2019).

<sup>13</sup> UN Committee on the Rights of Persons with Disabilities, General Comment No. 6 on Equality and Non-Discrimination, UN Doc. CRPD/C/GC/6, 26.04.2018, para. 9. Available from: <https://digitallibrary.un.org/record/1626976?ln=en>

<sup>14</sup> Theresia Degener, 'A New Human Rights Model of Disability', in V. Della Fina, R. Cera and G. Palmisano (eds.), *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary* (Springer, Cham, 2017, pp. 41-60).

<sup>15</sup> Initial reports of States parties. Germany. [19 September 2011] CRPD/C/DEU/1 (Introduction, para. 2).

of the Attorney General to ensure that it is, *inter alia*, compliant with the human rights provisions of the Constitution and international human rights obligations, including the Convention on the Rights of Persons with Disabilities (CRPD). Under Article 5 (para. 22), it is indicated that 'Ireland has robust equality legislation and a significant legal framework to protect human rights. These are detailed in Ireland's Common Core Document'. However, those references are in our opinion insufficient. We contend that the introductory part of the Initial State Report should discuss the extent to which Irish policies have embraced, and will embrace in the future, a human rights approach to disability. We note that the 'National Disability Inclusion Strategy 2017 – 2021 (NDIS) which, alongside the Comprehensive Employment Strategy for People with Disabilities 2015-2024 (CES)' are defined as the 'key framework for policy and action to address the *needs* of persons with disabilities' (para 11). The reference to *needs*, rather than rights, suggests that Ireland has not yet embedded a human rights approach in its disability policies. This tallies with the harsh criticism raised on the CES by some scholars<sup>16</sup> for its conservative approach, and with the critical voices that have stated that a paternalistic and charitable discourse in the Irish government's understanding of disability is still present.<sup>17</sup>

We also note that the Draft Initial Report limits itself to reporting legislative definitions of disability, without indicating the extent to which those definitions focus on the interaction between impairments and external barriers (also acknowledging that references to barriers are included under various Articles).<sup>18</sup> We point out that other States have opted for a more explicit engagement with the conceptualisation included in Article 1(2) CRPD. For example, the initial report from Finland explicitly indicates that disability arises 'from interaction between barriers in the environment and the individual'.<sup>19</sup>

We also note that, in the Draft Initial Report, there is no reference to the concept of 'paradigm shift' and how/whether this has occurred in Irish policy and legislation. We highlight that the concept of 'paradigm shift' has been used by the CRPD Committee in its Concluding Observations to some countries, often, but not exclusively, in respect of Article 8 CRPD (Awareness Raising).<sup>20</sup> We note instead that, under Article 8, the Draft Initial Report only places a strong emphasis on equality and refers to the NDIS, including measures around fostering disability awareness and competence in voluntary, sporting, cultural and other organisations. While this is undoubtedly commendable, it would be appropriate for the Initial State Report to refer to the concept of paradigm shift.

---

<sup>16</sup> Jennifer Van Aswegen, 'Disabling discourses and charitable model of disability: labour market activation for people with disabilities, Ireland – a critical policy analysis' (2017) 35(3) *Disability & Society* 435.

<sup>17</sup> Ibid. See also Jennifer Van Aswegen, David Hyatt and Dan Goodley, 'A critical discourse problematization framework for (disability) policy analysis' (2019) 19(2) *Qualitative Research Journal* 185. However, for a more positive assessment of the CES, see Geraldine Scanlon, Annelise Kamp and Andy Cochrane, 'Transition(s) to work: the experience of people with disabilities in Ireland' (2020) 35(1) *Disability & Society* 1556.

<sup>18</sup> We also note that when referring to 'long-lasting' conditions in the context of the Census 2016, the Draft Initial Report does not explain the meaning of the term. This is explicitly indicated in the CRPD Committee, *Guidelines on treaty-specific document to be submitted by states parties under article 35, paragraph 1, of the Convention on the Rights of Persons with Disabilities*, 18 November 2009, CRPD/C/2/3, page 7.

<sup>19</sup> Initial report submitted by Finland under article 35 of the Convention, due in 2018, CRPD/C/FIN/1, para. 17.

<sup>20</sup> For example, the Concluding Observations on the Austrian initial report highlight how Austrian society has not seen 'a complete understanding of the paradigm shift created by the human rights-centred approach in the Convention' and recommend awareness-raising 'to effectively transform the old-fashioned charity model of disability'. Concluding Observations: Distr.: General 30 September 2013 (CRPD/C/AUT/CO/1: paras 21-2).



## 2.2. The Relevance of EU Law and Policy

EU disability law and policy are extremely relevant to Irish people with disabilities, given that the implementation of the CRPD is also happening at the EU level,<sup>21</sup> and that several fields are regulated, partially or entirely, by the EU. This could be better highlighted in the finalised Initial State Report.

The Draft Initial Report, as it stands, contains only scant references to EU law and policy, and would benefit from a more solid approach to this area. We contend that the report could be improved by recognising the important role of EU law and policy in shaping the overall Irish legal and policy framework for the protection and promotion of the rights of people with disabilities.

We note that Ireland's Common Core Document includes a very general statement on the fact that '[a]s a Member State of the European Union, Ireland is bound by the Charter of Fundamental Rights of the European Union. The Charter recognises specific rights, freedoms and principles (economic and social as well as civil and political), to which EU citizens are entitled when the institutions of the Union and the Member States are implementing Union law. In December 2009, with the entry into force of the Treaty of Lisbon, the Charter was given binding legal effect equal to that of the EU Treaties'.<sup>22</sup> However, we contend that the Initial State Report to the CRPD Committee should also include a specific reference to the EU Charter, in particular to the principles of equality and non-discrimination (Article 21 of the Charter) and of integration of persons with disabilities (Article 26 of the Charter), under Articles 1-4 and /or Article 5. The EU Charter rights and principles should be a point of reference for Irish policies, at present and for the future, as Ireland is bound by them when implementing EU law.<sup>23</sup>

The Draft Initial Report does not mention the European Disability Strategy 2010–2020 (EDS),<sup>24</sup> which has provided the framework for EU action in the area of disability during the last decade. Similarly, no reference is included to its recently announced successor, the Strategy for the Rights of Persons with Disabilities 2021-2030,<sup>25</sup> or to the European Pillar of Social Rights.<sup>26</sup> We believe that those could also be mentioned in the Initial State Report (in particular under Articles 1-4), given their relevance in orientating and supporting current and future Irish disability policies.

The EU has also adopted a number of legislative measures which concern the rights of persons with disabilities, and that have been transposed, or will have to be transposed, into the Irish legal framework. We acknowledge that the Draft Initial Report mentions, at various

---

<sup>21</sup> Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities [2010] OJ L23/35.

<sup>22</sup> Common core document forming part of the reports of States parties: Ireland, HRI/CORE/IRL/2019, para. 99

<sup>23</sup> Charter of Fundamental Rights of the European Union (2012/C 326/02) Article 51(1).

<sup>24</sup> Commission, 'European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe' COM(2010) 636 final.

<sup>25</sup> Commission, 'Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030' COM(2021) 101 final.

<sup>26</sup> Commission, 'Establishing a European Pillar of Social Rights' COM (2017) 250 final.

junctures, the Employment Equality Directive,<sup>27</sup> EU Web Accessibility Directive,<sup>28</sup> and other instruments. The Draft Initial Report also states that the DCEDIY ‘coordinates Government action on transposition of the European Accessibility Act’<sup>29</sup> and that ‘Ireland is participating in informal meetings organised by the European Commission, which are currently examining the Directive from a sectoral point of view’ (para. 78). However, little information is given on how and when Ireland intends to implement that Directive. Furthermore, there is no engagement with the revised Audiovisual Media Services Directive,<sup>30</sup> which Ireland has not yet transposed. On the whole, we contend that the Initial State Report could engage with EU law (and any national implementing acts) more consistently and in-depth, as it does, for example, in relation to EU legislation on Clinical Trials on Medicinal Products for Human Use (para. 189).

Finally, we argue that the Draft Initial Report could better highlight the role of EU funding, for example European Structural and Investment Funds,<sup>31</sup> in supporting the rights of people with disabilities in Ireland and in enhancing the human rights model of disability. While the Draft Initial Report refers to some EU-funded programmes, for example the Fund for Students with Disabilities and the Ability Programme, it does not always refer to the European Social Fund in this connection. For instance, it does not do so in relation to the Fund for Students with Disabilities.<sup>32</sup> In that regard, the Draft Initial Report could also be enhanced by further detailing the specific projects supported or co-funded by the EU, such as the Blossom Personal Empowerment Programme.<sup>33</sup>

### *2.3. OHCHR Human Rights-Based Indicators*

The drafting of the Initial State Report could benefit from a comprehensive use of human rights based indicators elaborated by the Office of the High Commissioner for Human Rights (OHCHR) in support of a disability inclusive 2030 Agenda for Sustainable Development.<sup>34</sup> We acknowledge that the Draft Initial Report, under Article 32, mentions ‘Ireland’s first Sustainable Development Goals National Implementation Plan (2018-2020)’ (para. 459). However, it would be worthwhile to refer throughout the Initial State Report to the OHCHR indicators, which will also aid in adopting a human rights based approach to disability and facilitating assessment of progress. We would also suggest that an explicit reference is included with regard to the possibility and/or willingness to use those indicators in the future.

---

<sup>27</sup> Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16.

<sup>28</sup> Directive (EU) 2016/2102 of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies [2016] OJ L327/1.

<sup>29</sup> Directive (EU) 2019/882 of 17 April 2019 on the accessibility requirements for products and services [2019] OJ L151/70.

<sup>30</sup> Directive (EU) 2018/1808 of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities [2018] OJ L303/69.

<sup>31</sup> On the European Structural and Investment Funds in Ireland, see <https://eufunds.gov.ie/>.

<sup>32</sup> On Ireland and the European Social Fund, see also <https://ec.europa.eu/esf/main.jsp?catId=385&langId=en>.

<sup>33</sup> For more information on this project, see <https://blossomireland.ie/>. See also Government of Ireland information: <https://eufunds.ie/portfolio/howard-davies-story/>

<sup>34</sup> The OHCHR human rights-based indicators are available here: <https://www.ohchr.org/EN/Issues/Disability/Pages/SDG-CRPDIndicators.aspx#Project>.

We highlight that these indicators encompass structural, process and outcome indicators. Structural indicators measure the acceptance, intent and commitment to human rights and enactment of legal instruments and the adoption of policies for the implementation of human rights. Process indicators measure efforts to transform commitments into desired results and assess policies and measures taken to implement commitments on the ground. Outcome indicators measure the results of efforts to further human rights. Structural indicators are key for *ex-ante* impact assessment, while process and outcome indicators should be key in *ex-post* assessment.

### **3. The Right to Participate in Culture of Persons with Disabilities**

In this section, we examine the right of persons with disabilities to participate in culture, which is the focus of our research in the DANCING Project. In particular, we aim to highlight how the Draft Initial Report could be strengthened, paying attention to the implementation of Article 30 CRPD, while also considering Articles 9 and 21 CRPD. Even though the Draft Initial Report addresses Article 30 under two headings: ‘Access to cultural materials and activities’, and ‘Tourism and sport’, this submission deliberately focuses on the first of these two areas.

As a preliminary consideration, we wish to refer to the fact that Article 30 CRPD enshrines an approach to culture that is broad. It requires States Parties to ensure access to cultural materials in accessible formats, television programmes, films, theatre and other cultural activities in accessible formats; cultural performances or services, such as theatres, museums, cinemas and libraries, and, as far as possible, monuments and sites of national cultural importance. In that regard, Article 30 CRPD also includes an explicit commitment ‘to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials’. It then requires States Parties to promote the right of people with disabilities to develop and utilise their creative, artistic and intellectual potential, as both amateur and professional artists, and to have their linguistic and cultural identities recognised and supported (with Sign language specifically mentioned).

The Draft Initial Report, under the heading ‘Access to Cultural Materials and Activities’ (paras. 413-420), refers to actions taken under the Social Inclusion and Community Activation Programme (SICAP), support for Arts and Disability Ireland through the Arts Council, and actions to make heritage sites more accessible. It also refers to relevant legislation (the Copyright and Other Intellectual Property Law Provisions Act 2019, the Irish Sign Language Act, and the EU (Marrakesh Treaty) Regulations 2018). There is also a mention of guidelines and funds to facilitate users of Irish Sign Language in relation to access to social, educational and cultural events and services. While these references are appropriate, we contend that the Initial State Report could adopt a more comprehensive and neater structure that addresses all the obligations included in Article 30 CRPD in a more detailed fashion. Furthermore, in relation to access to culture, the report might make more explicit a broad understanding of accessibility. Making cultural venues truly accessible requires actions, that could be detailed in the Initial State Report across a range of fronts. This is necessary,

because, as one commentator puts it in a discussion of museums and heritage sites,<sup>35</sup> adopting solely visual cues for navigation may lead to the exclusion of people with sight impairments; auditory only cues may lead to the exclusion of people with hearing impairments, while people with learning disabilities may experience design exclusion when wayfinding cues are complicated to follow.

The remainder of this section addresses various thematic issues: accessibility; barriers and facilitators to cultural participation; Sign language and Deaf culture; and mainstreaming.

### *3.1. Accessibility of Cultural Venues, Goods, Services, Activities*

Accessibility of cultural venues, goods services and activities is not addressed in the Draft Initial Report in any great detail under Article 30, although, admittedly, several relevant accessibility measures are listed under Articles 9 and 21. We would suggest a streamlining of the Initial State Report in this respect.

First, under Article 9, the Draft Initial Report outlines a list of initiatives and policies relating to accessibility of buildings, services and public space. However, we contend that physical accessibility of cultural venues should be better addressed, either under this Article, or, more appropriately, under Article 30 CRPD. Under Article 30, the Draft Initial Report makes reference to Section 29 of the Disability Act, which requires that, in as far as practicable, public bodies must ensure that the whole, or a part of a heritage site to which the public has access, is accessible to persons with disabilities and can be visited with ease and dignity' (para. 416). This reference seems in line with what is included in other States' reports to the CRPD. However, other State reports have given more detail and have often addressed how physical access to venues is ensured, and/or they indicate steps taken or being planned to address this. Our review of reports of State Parties to the CRPD Committee suggests that such references (to physical accessibility/inaccessibility of venues like museums, galleries, theatres, libraries, or heritage sites) occur in the Article 30 responses in reports from 21 countries (out of a total of 26 States that had filed reports). Furthermore, examples related to how Section 29 of the Disability Act has been implemented would improve the Draft Initial Report. We also note that some State party reports quantify the accessibility of certain types of venues in their countries. For example, the report from France states that fully accessible cinemas amount to 73%.<sup>36</sup> Including data (if available) would be important, and would support the work of the CRPD Committee.

Secondly, the Draft Initial Report also mentions the Code of Practice on Accessible Heritage Sites, which 'requires that interpretive information, where provided, should be accessible'. It also refers to the Arts and Disability Ireland 'Access Partnership initiative' having given rise to a 'local knowledge network that will foster awareness, education and share resources to improve accessibility and inclusion for persons with disabilities to the arts in Dublin'. We would suggest that the Initial State Report engages more with those aspects and provides concrete examples of how accessibility has been ensured. In that regard, our review of reports to the CRPD Committee has revealed that State reports often address access to the

---

<sup>35</sup> William Renel, 'Sonic accessibility: Increasing social equity through the inclusive design of sound in museums and heritage sites' (2019) 62(3) *Curator: The Museum Journal*:377-402, para. 383.

<sup>36</sup> Initial report submitted by France under article 35 of the Convention, due in 2012. [Date received: 8 May 2016] CRPD/C/FRA/1: para. 300.

content of cultural products – films, theatres, libraries, heritage sites, etc. For example, the initial Report from Czechia<sup>37</sup> instances a venue with a tactile exhibition, the digitalisation of content, and the Museum of Puppet Culture as enabling visitors to engage by touch; a festival of Pantomime and Motion Theatre is also referenced where Deaf or hearing-impaired people are said to constitute over half of participants. Other examples are seen in the initial report of Estonia,<sup>38</sup> which mentions theatres using text strips and sign language interpretation, loop systems, and also subtitling of films and inclusivity of cultural sites, museums and art galleries.

Thirdly, we note that the Draft Initial Report does not engage much with audiovisual services. We suggest that more emphasis on audiovisual services should be included, along with an indication of the steps to implement the most recent Audiovisual Media Services Directive (and namely Article 7 of this Directive).<sup>39</sup> We note that there is a reference to mass-media under Article 21, and that the Broadcasting Authority of Ireland (BAI) Codes & Standards, in line with the Broadcasting Act 2009, ‘develops Access Rules that determine the levels of subtitling, sign language and audio description that licensed broadcasters will be required to provide’ (para 262). This tallies with what indicated on accessibility of information during emergencies under Article 11 (para. 126). However, the report could highlight the extent to which the general scheme of the Online Safety and Media Regulation Bill<sup>40</sup> and the planned legislation intend to reinforce accessibility under Article 30.

Fourthly, we note that the Draft Initial Report includes a reference to libraries under Article 9 (para. 120). However, we suggest that this reference is moved (or expanded) to come under Article 30. In that regard, we highlight that several State reports include detailed references under Article 30 to libraries making their contents more accessible for a range of persons with disabilities (including not only people experiencing sight impairment, but also for people experiencing other impairments such as dyslexia and intellectual disability). For example, reports from Denmark (both its initial report and its combined 2<sup>nd</sup>/3<sup>rd</sup> reports<sup>41</sup>) refer to a state-owned library producing audio books, e-books and Braille for visually impaired and dyslexic people and also providing Braille music scores, books and newspapers. Furthermore, under Article 21, para. 260 of the Draft Initial Report refers to intellectual disability and to relevant public information being made available in easy-to-read formats. In this connection, the Freedom of Information Act 2014 is referenced as providing assistance to ‘requesters with disabilities’. However, nothing related to this is included under Article 30. As highlighted above, reports of other countries detail efforts made in libraries or other institutions to make easy to read information and resources available. The Irish Government might also consider highlighting how and to what extent accessibility of cultural material for people with

---

<sup>37</sup> Initial reports of States parties due in 2011. Czech Republic. [1 November 2011] CRPD/C/CZE/1: para. 456-60.

<sup>38</sup> Initial report submitted by Estonia under article 35 of the Convention, due in 2014. [Date received: 4 December 2015] CRPD/C/EST/1: paras 220-28.

<sup>39</sup> Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities [2018] OJ L303/69.

<sup>40</sup> Government of Ireland, Online Safety and Media Regulation Bill - General Scheme (January 2020)

<sup>41</sup> Initial reports of States parties Denmark. [24 August 2011] CRPD/C/DNK/1: para. 337; Combined second and third periodic reports submitted by Denmark [Date received: 25 April 2020] Distr.: General 23 July 2020 CRPD/C/DNK/2-3: para. 172.

intellectual and/cognitive disability is considered, and constructively lay the foundations for further exploring this issue in conjunction with relevant organisations of people with disabilities.

Finally, the Draft Initial Report does not include any detailed reference to accessibility of films. We contend that a reference should be included to signal a specific commitment of the Irish Government to fully implementing Article 30 CRPD, and again examples can be provided. We note that, for instance, the second/third report from Denmark<sup>42</sup> mentions funding being made conditional on films having subtitles and an experimental scheme involving audio description. Several other State reports also highlight initiatives to support accessibility of film.<sup>43</sup>

### *3.2. Participation in Culture: Barriers and Facilitators*

We suggest that the Initial State Report places an emphasis on existing barriers and how they have been dismantled, and on what facilitators to cultural participation have been put in place. The Initial State Report could also list other actions that have supported cultural participation of people with disabilities or that will do so in the future (which are not detailed in the current Draft Initial Report). We note that several State reports discuss as facilitators of cultural participation measures providing for free or discounted entry to cultural venues or companion passes. We also note that Ireland, as yet, has not participated in the EU Disability Card pilot. However, it would be interesting to indicate whether Ireland would join this EU endeavour. For example, the initial report from Finland refers to free admission to many museums and to the EU Disability Card, enabling people with disabilities to participate more easily to cultural (and other) events.<sup>44</sup>

We also suggest that the Initial State Report adopts a more systematic approach signaling the importance of participation of persons with disabilities across all levels of consumption and production of culture. With regard to the latter, the Draft Initial Report mentions the Realise Production Award. However, the role of the Arts Council and of Arts and Disability Ireland in supporting the creative potential of persons with disabilities could be better highlighted. We note, based on our review, that there are many examples in State reports to the CRPD Committee that mention professional engagement of persons with disabilities in culture. For example, the initial report from Sweden recognises ‘personal creation’ and opportunities to share in ‘professional artistic creation’, stating that it is becoming increasingly common for professional theatre and dance groups to include actors and dancers both with and without disabilities.<sup>45</sup> It instances the National Theatre, within which a Quiet Theatre produces drama in sign language.<sup>46</sup> In a similar vein, a report from Denmark (Annex 1 to the Combined second and third periodic report)<sup>47</sup> refers to theatre initiatives

---

<sup>42</sup> Combined second and third periodic reports submitted by Denmark [Date received: 25 April 2020] Distr.: General 23 July 2020. CRPD/C/DNK/2-3: Annex 1: para. 17.

<sup>43</sup> These include the initial report of France (CRPD/C/FRA/1: para. 300), of Germany (CRPD/C/DEU/1: para. 174, 262), and of Slovakia (CRPD/C/SVK/1: paras 382-384).

<sup>44</sup> Initial report submitted by Finland under article 35 of the Convention, due in 2018 [Date received: 9 August 2019] CRPD/C/FIN/1: para. 439-440.

<sup>45</sup> Initial reports submitted by Sweden [7 February 2011] CRPD/C/SWE/1: paras. 282, 287, 289.

<sup>46</sup> Ibid.

<sup>47</sup> Combined second and third periodic reports submitted by Denmark [Date received: 25 April 2020] Distr.: General 23 July 2020. CRPD/C/DNK/2-3: Annex 1, paras 14-15.



including reference to the Glad Theatre in Copenhagen with a cast which persons with disabilities as actors. Overall, we would suggest that the Irish Government considers if the Initial State Report might refer to further initiatives (or to the intended development of them) that aim to promote participation by people with disabilities within cultural activities, and that would include consideration of pathways to development as professional artists/actors/performers for people with disabilities.

### *3.3. Sign Language and Deaf Culture*

Several references to Irish Sign Language are included throughout the Draft Initial Report. Under Article 21, at para. 263, the Draft Initial Report refers to the fact that the Irish Sign Language Act includes the recognition of Irish Sign Language (ISL) as an official language. Under Article 30, it is indicated that the 'Irish Sign Language Act makes provision for the Minister for Employment Affairs and Social Protection, with the consent of the Minister for Public Expenditure and Reform to provide funds to facilitate users of ISL in relation to access to social, educational and *cultural* events and services' (para. 419)<sup>48</sup>. We note, however, that there is no reference to Deaf culture or to the identity of Deaf people. By contrast other State reports suggest a more comprehensive engagement with recognition of sign language users as a linguistic group and/or of Deaf culture. For example, the initial report from Finland refers in its Article 21 response to sign language users as a linguistic group.<sup>49</sup> Moreover, the Draft Initial Report does not engage with promotion of Deaf culture through research and education. It is only highlighted that 'guidelines are being developed for the administration of a scheme to facilitate access to social, educational and cultural events and services by ISL users' (para. 419). In our systematic review of State reports, we found commitments to research and education on Deaf culture in several reports. For example, Denmark (Combined second and third periodic reports)<sup>50</sup> refers to universities with a focus on sign language, and to government agreeing to fund maintenance of the Danish Sign Language Dictionary. Similarly, an Austrian report (Combined second and third periodic reports)<sup>51</sup> refers to research and courses on sign language, and the history of Deaf people and their culture, the operation of an Austrian Sign Language database (LedaSila), and cooperation on international projects (such as the sign language database SpreadTheSign and the Erasmus+ project entitled Deaf Language Awareness). These are issues that we would suggest for exploration with representatives of Deaf people in Ireland, which might be followed by agreed measures to be taken and reflected in the Initial State Report.

### *3.4. Commitment towards Mainstreaming*

We suggest that the Draft Initial Report indicates a commitment towards mainstreaming the issue of disability in all cultural policies and processes, to ensure that the human right of persons with disabilities to full and equal participation is realised.

---

<sup>48</sup> Emphasis added.

<sup>49</sup> Initial report submitted by Finland under article 35 of the Convention, due in 2018 [Date received: 9 August 2019] CRPD/C/FIN/1: paras 259-279, 444.

<sup>50</sup> Combined second and third periodic reports submitted by Denmark [Date received: 25 April 2020] Distr.: General 23 July 2020. CRPD/C/DNK/2-3, para. 169.

<sup>51</sup> Combined second and third reports submitted by Austria under article 35 of the Convention, due in 2018. [Date received: 17 October 2019]. Distr.: General 7 May 2020 CRPD/C/AUT/2-3: para. 171.

We note that there is no reference in the Draft Initial Report to ‘Culture 2025 - A National Cultural Policy Framework for Ireland’ (Culture 2025 Framework).<sup>52</sup> Culture 2025 Framework highlights that ‘providing *opportunities for wider and richer cultural and creative participation* can also contribute to community cohesion and reduce social exclusion and isolation, leading to more resilient and sustainable communities’.<sup>53</sup> In that regard, the role of this cultural policy framework in supporting the implementation of the CRPD, should be further highlighted. Drawing from our review of States’ reports, we give, as an example, the statement contained in the initial report of Sweden, which refers to people with disabilities having better opportunities to participate in cultural life, and signals a systematic approach by stating that ‘a disability perspective must be integrated in the regular granting of subsidies within the fields of culture and sport’.<sup>54</sup> Another example comes from the initial report from Denmark, which refers to the drawing up of a national cultural strategy, including an action plan for people with disabilities underpinned by a budget.<sup>55</sup> Furthermore, albeit amidst the pandemic, Galway has been the European Capital of Culture for 2020. Reference to how participation of persons with disabilities in that context should be succinctly included.

#### 4. Concluding Remarks

Welcoming this consultation, as well as the engagement of the Irish Government with the CRPD implementation, this submission has provided some feedback on the Draft Initial Report, highlighting how the report would benefit from addressing at various junctures with cross-cutting issues. Furthermore, we have suggested a more detailed reporting under Article 30 CRPD. While it might be the case that Article 30 and rights in the area of culture can be seen as less vital than in other areas, Karima Bennoune, the UN Special Rapporteur in the field of cultural rights, has recently stated that ‘[e]ven in these trying times, when more than half a million people have died from the virus, *cultural rights are not a luxury*’, and ‘are key to the overall implementation of universal human rights and a crucial part of the responses to many current challenges, from discrimination and poverty to COVID-19 itself’.<sup>56</sup> Hence, we would encourage the Irish Government to address more widely and systematically that area.

---

<sup>52</sup> Government of Ireland. *Culture 2025, A National Cultural Policy Framework to 2025* (2020).

<sup>53</sup> *Ibid.* page 10.

<sup>54</sup> Initial reports submitted by Sweden [7 February 2011] CRPD/C/SWE/1: para. 288.

<sup>55</sup> Initial reports of States parties Denmark. [24 August 2011] CRPD/C/DNK/1: para. 334.

<sup>56</sup> Karima Bennoune, ‘Culture is at the Heart of Our Response to Covid-19’ (Local and Regional Governments Day on Accelerating transformation from the ground-up in a post-Covid era, UN High Level Forum on Sustainable Development, July 2020), at 1, available at: <https://www.ohchr.org/Documents/Issues/CulturalRights/K.Bennoune-speechHLPF2020.docx>. Emphasis added.



## 5. Selected Bibliography<sup>57</sup>

- Bennoune K, 'Culture is at the Heart of Our Response to Covid-19' (Local and Regional Governments Day on Accelerating transformation from the ground-up in a post-Covid era, UN High Level Forum on Sustainable Development, July 2020), available at: <https://www.ohchr.org/Documents/Issues/CulturalRights/K.Bennoune-speechHLPF2020.docx>
- Broderick A and Ferri D, *International and European Disability Law. Text, Cases and Materials* (Cambridge University Press 2019)
- Degener T, 'A New Human Rights Model of Disability', in V. Della Fina, R. Cera and G. Palmisano (eds.), *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary* (Springer, Cham, 2017: 41-60).
- Devandas-Aguilar C., *Rights of Persons with Disabilities. Report of the Special Rapporteur on the rights of persons with disabilities* (A/HRC/43/41) (2019), 75, available from <https://undocs.org/en/A/HRC/43/41>
- Goodley D, *Disability studies: An interdisciplinary introduction* (SAGE 2011)
- Renel W, 'Sonic accessibility: Increasing social equity through the inclusive design of sound in museums and heritage sites' (2019) 62(3) *Curator: The Museum Journal*: 377-402
- Scanlon G, Kamp A and Cochrane A, 'Transition(s) to work: the experience of people with disabilities in Ireland' (2020) 35(1) *Disability & Society* 1556
- Tatic D, *Access for People with Disabilities to Culture, Tourism, Sports and Leisure Activities: Towards Meaningful and Enriching Participation* (Council of Europe 2015), available at: [https://rm.coe.int/16805a2a23%20\(2017](https://rm.coe.int/16805a2a23%20(2017)
- Titchkosky T, *Disability, self, and society* (University of Toronto Press 2003)
- Van Aswegen J, 'Disabling discourses and charitable model of disability: labour market activation for people with disabilities, Ireland – a critical policy analysis' (2017) 35(3) *Disability & Society* 435
- , Hyatt D and Goodley D, 'A critical discourse problematization framework for (disability) policy analysis' (2019) 19(2) *Qualitative Research Journal* 185
- Waldschmidt A, 'Disability–Culture–Society: Strengths and weaknesses of a cultural model of dis/ability' (2018) 12(2) *ALTER* 65

---

<sup>57</sup> The bibliography only includes academic sources. Legislation, soft law and international law documents are referred to only in footnotes.