

Constitutional Rights of Persons with Disabilities: An Analysis of 193 National Constitutions

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This article examines the extent to which all 193 UN member states guarantee the rights of persons with disabilities in their national constitutions based on fundamental human rights outlined in the Convention on the Rights of Persons with Disabilities. As of May 2014, constitutions most commonly explicitly guarantee rights to persons with disabilities in education (28%), health (26%), and overall equity (24%). Fewer constitutions specifically guarantee the right to work or non-discrimination at work (18%), political rights (21–22%), or civil rights (9%) to persons with disabilities. Additionally, many constitutions permit denials of the right to liberty (19%) and political rights (22%–31%) for persons with mental health conditions. Although constitutional guarantees of rights for persons with disabilities are present in only a minority of constitutions, we find a significant increase in the inclusion of relevant provisions in constitutions adopted more recently, particularly those adopted in 2010 or later, across all regions.

INTRODUCTION

A substantial proportion of the world's population—sixteen percent according to recent estimates from the World Health Organization and the World Bank—is affected by some form of disability.¹ This prevalence is expected to rise due to global increases in life expectancy and advancements in medical treatments.²

Over the past several decades, the disability rights movement has made important strides in advancing recognition of the human rights and fundamental freedoms of persons with disabilities. This is reflected in a marked shift from the medical model of disability to the social model of disability in societies around the world, which gained momentum in the 1980s and informed major national reforms, including the Americans with Disabilities

1. WORLD HEALTH ORG. & WORLD BANK, WORLD REPORT ON DISABILITY 27–28 (2011), available at http://whqlibdoc.who.int/publications/2011/9789240685215_eng.pdf?ua=1.

2. WORLD HEALTH ORG., Disability and Health, Fact Sheet No.352 (2014), available at <http://www.who.int/mediacentre/factsheets/fs352/en/> (last visited Feb. 21, 2015).

Act (ADA), in the following decade.³ The medical model regards disability as a defect in need of cure or treatment and special protection, often resulting in socially imposed restrictions, whereas the social model focuses on modifying the constraints that limit the full participation of persons with disabilities in society.⁴

In 2006, the global community formally recognized the importance of advancing the human rights of persons with disabilities through the United Nations Convention on the Rights of Persons with Disabilities (CRPD). This landmark agreement, which opened for signature in March of 2007, emerged following decades of advocacy by the community committed to equal rights for persons with disabilities including state-based efforts, with academic and NGO engagement and efforts by disabled peoples organizations (DPOs).⁵

As of January 2015, 151 countries had ratified the CRPD, making it one of the most rapidly ratified human rights treaties in history.⁶ The CRPD outlines the legal duties of states to ensure the full enjoyment of a wide range of economic, social, civil, and political rights specifically by individuals with disabilities. Among its key commitments are the responsibility to ensure equality and non-discrimination on the grounds of disability (Article 5) and equality before the law (Article 12); as well as to guarantee the rights to liberty (Article 14), freedom of movement (Article 18), freedom of expression (Article 21), education (Article 24), the highest attainable standard of health and access to medical services (Article 25), work (Article 27), and participation in political life (Article 29) for persons with disabilities on an equal basis with others.⁷

3. See Michael L. Perlin, "A change is gonna come": *The implications of the United Nations Convention on the Rights of Persons with Disabilities for the domestic practice of constitutional mental disability law*, 29 N. ILL. U. L. REV. 483–98 (2008); Christian Courtis, *Disability rights in Latin America and international cooperation*, 9 SW. J.L. & TRADE AM. 109–30 (2002); Michael Ashley Stein, *Disability Human Rights*, 95 CALIF. L. REV. 75–121 (2007).

4. See Courtis, *supra* note 4; See also Paul Harpur & Richard Bales, *The positive impact of the Convention on the rights of persons with disabilities: A case study on the south pacific and lessons from the US experience*, 37 N. KY. L. REV. 363–88 (2010); Frédéric Mégret, *The disabilities convention: Towards a holistic concept of rights*, 12 INT'L J.L. HUM. RTS. 261–77 (2008); Arlene S. Kanter, *The globalization of disability rights law*, 30 SYRACUSE J. INT'L L. & COM. 241–63 (2003).

5. See, e.g., NAT'L COUNCIL ON DISABILITY, UNDERSTANDING THE ROLE OF AN INTERNATIONAL CONVENTION ON THE HUMAN RIGHTS OF PEOPLE WITH DISABILITIES (2002), available at <http://www.ncd.gov/publications/2002/May232002>; Janet E. Lord, David Suozzi & Allyn L. Taylor, *Lessons from the experience of U.N. Convention on the Rights of Persons with Disabilities: Addressing the democratic deficit in Global Health Governance*, J. L. MED. & ETHICS 564–79 (2010); see also Paul Harpur, *Embracing the new disability rights paradigm: the importance of the Convention on the rights of persons with disabilities*, 27 DISABILITY & SOC'Y 1–14 (2011).

6. See, e.g., U.N. ENABLE, <http://www.un.org/disabilities/> (last visited Sep. 25, 2014); see also U.N. Office of the High Comm'r for Human Rights, *Disability rights: Major milestone as ratification of UN convention reaches 150 states* (Sep. 15, 2014), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15029>; Janet E. Lord, *The U.N. Disability Convention: Creating Opportunities for Participation*, 19 BUS. L. TODAY, NO.5, 23 (2010).

7. Convention on the Rights of Persons with Disabilities, G. A. Res. 61/106, U.N. Doc. (Dec. 13, 2006) available at <http://www.un.org/disabilities/convention/conventionfull.shtml>.

While earlier treaties, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, established universal rights that cover all people, including persons with disabilities, the CRPD is the first binding UN human rights treaty to specifically and comprehensively address the equal rights of individuals specifically with respect to disability status. The Convention on the Rights of the Child (CRC) is the only UN treaty preceding the CRPD that explicitly referenced disability.⁸ Article 2 of the CRC calls on states to prohibit discrimination on the grounds of disability, and Article 23 requires states to address the specific needs of children with disabilities, including the provision of special care, access to health care services, and education. However, CRC Article 23 also includes qualifying language—“subject to available resources,” “whenever possible”—that limits the strength of these guarantees.⁹ Still, the CRC as a precursor to the CRPD signals the importance of addressing disability explicitly, rather than presuming that broad anti-discrimination provisions will be sufficient, for furthering equity.

Ultimately, while the explicit recognition of the rights of persons with disabilities in international conventions is a crucial first step, the impact of these agreements is contingent on individual countries’ actions. Critically, to realize the objectives of the CRPD, States parties must embed its principles in national law. Yet, to our knowledge, there are currently no studies that assess on a global scale to what extent countries address the rights of persons with disabilities in their laws or constitutions.

Responding to this gap in the literature, this study provides an initial global overview of the extent to which 193 UN member states guarantee the rights of persons with disabilities in their national constitutions. As nations’ foundational texts, constitutions are ideal instruments for formally recognizing and strengthening human rights norms such as equality before the law and extending rights to historically marginalized members of the population. Moreover, because constitutions are typically more difficult to amend than legislation, constitutional rights create particularly enduring and meaningful guarantees. Throughout this article we use the term “persons with disabilities,” in which we include individuals with long-term physical, mental, intellectual or sensory impairments, in line with the definition provided by the CRPD.

8. See, e.g., Esther van Weele, *The UN Convention on the Rights of Persons with Disabilities in the Context of Human Rights Law*, in *DISABILITY AND UNIVERSAL HUMAN RIGHTS: LEGAL, ETHICAL, AND CONCEPTUAL IMPLICATIONS OF THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES* 11, 9–30 (Joel Anderson & Jos Philips eds., 2011), available at <http://sim.rebo.uu.nl/wp-content/uploads/2013/10/SIMspecial35.pdf>.

9. Convention on the Rights of the Child, G. A. Res. 44/25, *Treaty Series*, vol. 1577, at 3 (Nov. 20, 1989) available at <https://treaties.un.org/doc/Publication/UNTS/Volume%201577/v1577.pdf>.

Barriers Facing Persons with Disabilities

Evidence from around the world shows that individuals with disabilities still face a range of barriers to exercising their fundamental rights on an equal basis with others. While social and cultural factors contribute to these barriers, inadequate legal rights often form the foundation of inequality. This understanding has informed the adoption of four other international human rights treaties that explicitly guarantee the rights of members of historically marginalized groups.¹⁰

One crucial area of concern is disproportionately lower access to education for persons with disabilities in nations around the world, resulting in lack of schooling and lower adult literacy rates.¹¹ Findings from a WHO Health Survey in fifty-one countries showed that respondents with disabilities reported lower rates of primary school completion compared to individuals without disability: 50.6% of males and 41.7% of females with a disability completed primary school compared to 61.3% and 52.9% of males and females without a disability, respectively.¹² Furthermore, evidence from individual countries shows large gaps in enrollment for children with disabilities, particularly in low-income countries. For example, a study based on household surveys in thirteen developing countries shows significant gaps in school attendance rates between disabled and non-disabled six to eleven year old children (ranging from 10% in India to 59% in Indonesia).¹³ Finally, studies from several individual regions show gaps in the integration of children with disabilities into mainstream education systems in addition to access gaps.¹⁴

10. These treaties are the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; and the International Convention on the Protection of All Rights of Migrant Workers and Members of Their Families.

11. See, e.g., UNESCO, INCLUSIVE EDUCATION: THE WAY OF THE FUTURE, Final Report, International Conference on Education, 48th session (2008), available at http://www.ibe.unesco.org/fileadmin/user_upload/Policy_Dialogue/48th_ICE/ICE_FINAL_REPORT_eng.pdf; see also Trynie Boezaart, *The children's act: A valuable tool in realizing the rights of children with disabilities*, 74 J. CONTEMP. ROMAN-DUTCH L. 264–79 (2011); U.N., *From exclusion to equality: Realizing the rights of persons with disabilities* (2007), available at <http://www.un.org/disabilities/documents/toolaction/ipubh.pdf>.

12. Similarly, respondents with a disability experienced fewer mean years of education: males and females with a disability reported 5.96 and 4.98 mean years of education, compared to 7.03 and 6.26 mean years of education among males and females without a disability, respectively (World Health Organization and World Bank, *World Report on Disability*, WHO, Geneva, 2011, p. 206–8, available at http://whqlibdoc.who.int/publications/2011/9789240685215_eng.pdf?ua=1 (accessed August 14, 2014)).

13. Among 12 to 17 year olds, significant gaps in school attendance rates between children with and without disabilities range from 15% in Cambodia to 58% in Indonesia. Dean Filmer, *Disability, Poverty, and Schooling in Developing Countries: Results from 14 Household Surveys*, 20:1 THE WORLD BANK ECON. REV. 141–63 (2008).

14. See Lee Ann Basser, *Justice for all? The challenge of realizing the right to education for children with disabilities*, 8 J. GENDER RACE & JUST. 531–59 (2005); Natalie Drew, Michelle Funk, Stephen Tang, Jogannath Lamichhane, Elena Chávez, Sylvester Katontoka, Soumitra Pathare, Oliver Lewis, Lawrence Gostin & Benedetto Saraceno, *Human rights violations of people with mental and psychosocial disabilities: an unresolved global crisis*, 378 THE LANCET 1664–75 (2011); Vanessa Torres Hernandez, *Making good on the*

Studies have also shown that persons with disabilities experience marginalization in work, including in the areas of hiring, remuneration, and access to equal opportunities.¹⁵ While the availability of systematic data on employment rates for persons with disabilities in individual countries is limited, the WHO World Report on Disability reports lower employment rates of persons with disabilities relative to individuals without disabilities across 18 countries from different regions. Based on the report, employment rates for persons with disabilities ranged from 12.4% in South Africa (vs. 41.1% for the overall population) to 38.1% in the US (vs. 73.2% for the overall population), and 62.2% in Switzerland (vs. 76.6% for the overall population). Based on findings from the World Health Survey, which draws on data from fifty-one countries, employment rates are 52.8% for men with disabilities (compared to 64.8% for non-disabled men) and 19.6% for women with disabilities (compared to 29.9% for non-disabled women).¹⁶ Furthermore, Drew et al. (2011) studied the experience of 51 individuals with mental and psychosocial disabilities from 18 low-income and middle-income countries and identified denial or restriction of employment rights as one of the most commonly reported human rights violations.¹⁷ In addition to the importance of work for individuals' economic security, social integration, and realization of rights, workplace participation is also valuable as a means to "[break] down deeply entrenched stereotypes that act as formidable barriers to social equity."¹⁸

Further studies highlight inadequate access to health care services for persons with disabilities, especially mental health services and coordinated care that adequately addresses individuals' needs.¹⁹ Barriers to education and to employment, as well as inequalities in access to health care services,

promise of international law: the convention on the rights of persons with disabilities and inclusive education in China and India, 17 PAC. RIM L. & POL'Y J. 497–527 (2008); Seema Shah, *Canada's implementation of the right to education for students with disabilities*, 57 INT'L J. DISABILITY DEV. & EDUC. 5–20 (2010).

15. See Mégret, *supra* note 8; Cerise Fritsch, *Right to work? A comparative look at China and Japan's labor rights for disabled persons*, 6 LOY. U. CHI. INT'L L. REV. 403–20 (2008); Biljana Chavkoska, *The implementation of the convention on the rights of the persons with disabilities – new challenge for raising the living standards in the time of transition*, in 2ND INTERNATIONAL SCIENTIFIC CONFERENCE ON ECONOMIC DEVELOPMENT AND STANDARD OF LIVING – “EDASOL 2012 – ECONOMIC DEVELOPMENT AND STANDARD OF LIVING”, 87–97 (Zorka Grandov & Sanel Jakupovic eds., 2012) available at http://www.edasol-au.com/linkovi/EDASO_2012_ZBORNIK_RADOVA.pdf.

16. WHO, *supra* note 1.

17. See Drew, *supra* note 23.

18. Jody Heymann, Michael Ashley Stein & Gonzalo Moreno, *Disability, Employment, and Inclusion Worldwide*, in DISABILITY AND EQUITY AT WORK 1–22 (Jody Heymann, Michael Ashley Stein & Gonzalo Moreno eds., 2014).

19. See Drew, *supra* note 23; Elizabeth Evans, Sophie Howlett, Thea Kremser, Jim Simpson, Rosemary Kayess & Julian Trollor, *Service development for intellectual disability mental health: a human rights approach*, J. INTELL. DISABILITY RES. 56, Part II, 1098–109 (2012); Michael Ashley Stein, Penelope J.S. Stein, Dorothy Weiss & Raymond Lang, *Health Care and the UN Disability Rights Convention*, 374 THE LANCET 1796, 1797 (2009); Hasheem Mannan, Shahla ElTayeb, Malcolm MacLachlan, Mutamad Amin, Joanne McVeigh, Alister Muntali & Gert Van Rooy, *Core concepts of human rights and inclusion of vulnerable groups in the disability and rehabilitation policies of Malawi, Namibia, Sudan and South Africa*, 23 J. DISABILITY POL'Y STUD. 67–81 (2012); see also Elizabeth H. Morrison, Valerie George & Laura Mose-

are important contributors to the well documented link between disability and poverty.²⁰

Finally, individuals with disabilities disproportionately experience civil rights violations, including restrictions on their rights to exercise legal capacity, to vote, and to marry or have children.²¹ Access to political rights for persons with disabilities is particularly critical as political participation is considered to be “one of the key avenues through which marginalized groups most effectively seek equality.”²²

In addition and related to the experience of these inequalities, many individuals with disabilities and their families struggle with social isolation and associated psychological difficulties.²³ This evidence only scratches the surface of a large body of quantitative and qualitative studies that indicate exclusion of persons with disabilities from basic human rights.

The Role of Constitutions

While the widespread adoption of the CRPD represents important progress for persons with disabilities, the ongoing barriers facing this population further underscore why national legal measures, in conjunction with effective implementation thereof, are necessary to move from theory to action. Countries’ constitutions are an important place for such provisions.

As the foundational texts of nations, constitutions establish both the fundamental rights of a country’s citizens and the principles and regulatory frameworks for the development of its laws and policies. Constitutions are also typically more difficult to amend than statutes or administrative code, and provide the basis for challenging and overturning discriminatory legislation. Further, constitutional provisions play an important role in civil rights litigation and can be used to leverage the promotion of equal rights in courts (for a more detailed discussion of the significance of constitutional

queda, *Primary Care for Adults With Physical Disabilities: Perceptions From Consumer and Provider Focus Groups*, 40 CLINICAL RES. & METHODS 645–51 (2008).

20. See Courtis, *supra* note 4; see also Kanter, *supra* note 9; Hernandez, *supra* note 24; Fritsch, *supra* note 27; Chavkoska, *supra* note 28; SOPHIE MITRA, ALEKSANDRA POSARAC & BRANDON VICK, WORLD BANK SOC. PROT. & LABOUR UNIT, *DISABILITY AND POVERTY IN DEVELOPING COUNTRIES: A SNAPSHOT FROM THE WORLD HEALTH SURVEY* (2011), available at <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Disability-DP/1109.pdf>; Ulrike Buschbacher Connelly, *Disability rights in Cambodia: Using the convention on the rights of people with disabilities to expose human rights violations*, 18 PAC. RIM L. & POL’Y J. 123–53 (2009).

21. See, e.g., Drew, *supra* note 23; see also Marcus Redley, Esther Maina, Amanda Keeling & Prabhudas Pattani, *The voting rights of adults with intellectual disabilities: reflections on the arguments, and situation in Kenya and England and Wales*, 56 J. INTELL. DISABILITY RES. 1026–35 (2012).

22. János Fiala-Butora, Michael Ashley Stein & Janet E. Lord, *The Democratic Life of the Union: Toward Equal Voting Participation for Europeans with Disabilities*, 55 HARV. INT’L L. J., 71–104 (2014).

23. ANDREW SOLOMON, *Disability*, in FAR FROM THE TREE: PARENTS, CHILDREN AND THE SEARCH FOR IDENTITY, 355–404 (2012).

rights, see Heymann & McNeill, 2013; Cassola, Raub, Foley & Heymann, 2014).²⁴

The fact that international human rights law increasingly influences the development of constitutions underlines their potential for the alignment of countries' legal systems with international treaty obligations.²⁵ In this regard, Lord and Stein (2008) have highlighted the relevance of incorporating provisions from international human rights treaties, such as the CRPD, in countries' constitutional frameworks for the disability community: "Such processes [constitutional-reform] are as important for their visibility-enhancing and constituency-broadening potential as for their capacity to lay the foundation for a solid legal framework for disability rights work."²⁶ The CRPD provides an operative global standard of the rights of persons with disabilities. This article reveals the extent to which the constitutions of all 193 UN member states incorporate provisions for persons with disabilities in line with fundamental human rights established by the convention.

While there is consensus in the literature that constitutional provisions on their own are unlikely to be sufficient for change, numerous authors have emphasized the notion that an adequate fundamental legal structure is the starting point for states' effective promotion and realization of rights of individuals with disabilities.²⁷ Furthermore, as many scholars have theorized, both domestic laws and international treaties have an "expressive" function that promotes certain values on behalf of the state.²⁸ By ratifying a human rights treaty, a government publicly signals support for its principles. Similarly, by embodying these principles in domestic law, a nation expresses approval of the underlying norms. Constitutions can thus not only have a material impact, but also "shape or reinforce social norms, social forms, or social practices."²⁹ This opinion is supported by evidence from

24. See, e.g., Jody Heymann & Kristen McNeill, *Children's Chances: How Countries Can Move from Surviving to Thriving 197–200* (2013); see also Adele Cassola, Amy Raub, Danielle Foley & Jody Heymann, *Where do Women Stand? New Evidence on the Presence and Absence of Gender Equality in the World's Constitutions*, 10 *POL. & GENDER* 200–35 (2014).

25. See, e.g., Brun-Otoo Bryde & Michael Ashley Stein, *General provisions dealing with equality*, in *ROUTLEDGE HANDBOOK OF CONSTITUTIONAL LAW 287* (Mark Tushnet, Thomas Fleiner & Cheryl Saunders eds., 2013).

26. Janet E. Lord & Michael Ashley Stein, *The Domestic Incorporation of Human Rights Law and the United Nations Convention on the Rights of Persons with Disabilities*, 83 *WASH. L. REV.* 449–79 (2008).

27. See Bassler, *supra* note 22; See also Chavkoska, *supra* note 28; Mannan, *supra* note 35; Helen Dagut & Ruth Morgan, *Barriers to justice: Violations of the rights of deaf and hard-of-hearing people in the South African justice system*, 19 *AFR. J. ON HUM. RTS.* 27–56 (2003); Lyusyena Kirakosyan, *Disability policies and politics: A new perspective for Brazilian disability citizenship?* (unpublished manuscript) available at http://www.academia.edu/6326261/Disability_Policies_and_Politics_A_New_Perspective_for_Brazilian_Disability_Citizenship (last visited Jan. 26, 2015).

28. See, e.g., Elizabeth S. Anderson & Richard H. Pildes, *Expressive Theories of Law: A General Restatement*, 148 *U. PA. L. REV.* 1503 (2000); Cass R. Sunstein, *On the Expressive Function of Law*, 144 *U. PA. L. REV.* 2021 (1996); Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 11 *YALE L.J.* 1936 (2002).

29. Matthew D. Adler, *Expressive Theories of Law: A Skeptical Overview*, 148 *U. PA. L. REV.* 1363, 1498–99 (2000).

around the globe showing that constitutional provisions have led to legal and cultural changes in societies in favor of recognition of the rights of persons with disabilities.

Constitutional amendments providing social security benefits for persons with disabilities in Brazil, for example, preceded legislation and policies that strengthened this source of support, and played an important role in mobilizing civil society as well as promoting political action around disability rights.³⁰ Similarly, in Germany and Japan, constitutional amendments provided the basis for legislative changes promoting the rights of persons with disabilities in the areas of labor and welfare.³¹ A study focusing on the historic development of the rights of persons with intellectual disabilities highlights the role constitutions played in prioritizing the rights of persons with disabilities on the global human rights agenda throughout the second half of the twentieth century.³² For example, in 2013, the Latvian parliament amended provisions of the civil code after they were deemed unconstitutional by the constitutional court, replacing restrictions of individuals' legal capacity with forms of supported or partly substituted decision-making.³³ In Zambia, advocacy efforts by the disability movement resulted in greater involvement of DPOs in legal and policy reform processes, including the drafting of its new constitution which began in December 2011. As part of the constitutional review process, DPOs provided numerous suggestions for changes to a constitution in line with the CRPD, such as the inclusion of equal recognition before the law of persons with disabilities, and changes to stipulations pertaining to legal capacity and decision making. This example highlights a promising approach of assigning greater involvement and empowerment to DPOs in the establishment of fundamental laws.³⁴ Moreover, as foreign legal systems are increasingly interconnected (through a process Slaughter has referred to as "judicial globalization"), human rights norms can transition across national borders. For example, constitutional judges from different countries "in-

30. See Kirakosyan, *supra* note 56.

31. See Katharina Heyer, *Rights or quotas? The ADA as a Model for Disability Rights*, in HANDBOOK OF EMPLOYMENT DISCRIMINATION RESEARCH, 227–57 (Laura Beth Nielsen & Robert L. Nelson eds., 2008).

32. See István Hoffman & György Könczei, *Legal regulations relating to the passive and active legal capacity of persons with intellectual and psychosocial disabilities in light of the convention on the rights of persons with disabilities and the impending reform of the Hungarian civil code*, 33 LOY. L.A. INT'L & COMP. L. REV. 143–72 (2010).

33. See E.U. AGENCY FOR FUND. RTS. LEGAL CAPACITY OF PERSONS WITH INTELLECTUAL DISABILITIES AND PERSONS WITH MENTAL HEALTH PROBLEMS 28 (2013), available at <http://fra.europa.eu/sites/default/files/legal-capacity-intellectual-disabilities-mental-health-problems.pdf>.

34. See Janet Lord & Michael Ashley Stein, *Prospects and practices for CRPD implementation in Africa*; Magdalona BIRTHA, 'Nothing about CRPD monitoring without us': A case study on the involvement of the disability movement in policy-making in Zambia, at 109–10, 131 African Disability Rights Yearbook Vol. 1. (2013).

creasingly cite one another's decisions on issues from free speech to privacy rights."³⁵

This study examines the extent to which all 193 UN member states guarantee the rights of persons with disabilities in their fundamental legal documents. We investigate the existence and strength of constitutional provisions for over fifteen individual rights within the thematic areas of education, work, health, and political participation for all nations with constitutions in force and as amended to May 2014. We also examine how constitutions define persons with disabilities, and differences in rights associated with distinct disabilities.

Methods

To examine the quality of the rights of persons with disabilities enshrined in national constitutions, we created and analyzed a database of constitutional rights in all 193 UN member states across the spheres of civil, economic, social, and political rights as well as general equity and non-discrimination. We assessed both the current status of rights in constitutions as of May 2014 and differences by year of constitutional adoption to reveal how constitutional provisions for persons with disabilities have changed over time.

Data Source

A quantitative database of constitutional rights was created to assess provisions for persons with disabilities. This database is based on the review of the national constitutions and amendments of all 193 UN member states with constitutions in force and as amended to May 2014. Constitutional texts were read in their entirety by a coding team fluent in several UN languages. Provisions were classified into individual right categories by at least two team members to ensure consistency.

Constitutions were obtained from official government websites, and supplemented if documents were unavailable with relevant constitutional texts from three additional global compendiums: *Constitutions of the Countries of the World Online*,³⁶ HeinOnline's *World Constitutions Illustrated*,³⁷ and *Constitutions Finder*,³⁸ a database of global constitutions established by the University of Richmond. When constitutions specified that certain legislation was also treated as if it were constitutional, we obtained and reviewed those

35. ANNE-MARIE SLAUGHTER, A NEW WORLD ORDER 3 (2004); see also Anne-Marie Slaughter, *Judicial Globalization*, 40 VA. J. INT'L L. 1103, 79–81 (2000).

36. CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, VOL. 18 (Albert P. Blaustein & Gisbert H. Flanz eds., 2007).

37. *HeinOnline*, World Constitutions Illustrated, <http://heinonline.org/HOL/COW?collection=cow> (last visited May 30, 2014).

38. *Constitutions Finder*, U. RICHMOND SCH. L., <http://confinder.richmond.edu/index.html> (last visited May 30, 2014).

texts as well.³⁹ For countries that did not have written codified constitutions or had several constitutional documents (for example, the United Kingdom, Canada, New Zealand, and Israel), we reviewed all laws considered to have constitutional status.⁴⁰ While we believe that our search process enabled us to locate all constitutional and amending texts; amendments may have been missed if these were not well-documented.

Analyzing Disability Terminology in Constitutions

Terms used for disability in general or particular types of disability vary widely among constitutions. In an attempt to capture important distinctions while ensuring that data would be comparable across countries, we used three categorizations of persons with disabilities: general disabilities, physical disabilities, and mental disabilities. We considered the following terms in constitutional provisions as referring to persons with disabilities: “disability,” “disabilities,” “disabled,” “handicapped,” “special needs,” or “impaired.” We separately categorized terms specific to persons with physical disabilities⁴¹ and those specific to persons with mental disabilities.⁴²

In cases where constitutions granted a right to health, education, work, or civil rights to everyone and specified that persons with disabilities enjoy constitutional rights, we considered the right to be granted specifically to persons with disabilities. For example, a constitution that states that “citizens enjoy equal human rights regardless of disability,” and guarantees in a subsequent section on human rights that “everyone has the right to education,” would be considered to offer the same access to the rights as a provision that states, “everyone has the right to education regardless of disability.”

Constitutional Rights Analyzed

We examined constitutions for the rights to which states committed to in the CRPD, including: general equity and non-discrimination; civil rights; social and economic rights; and political rights. Our examination of

39. Austria’s Federal Constitutional Law, for example, states: “In addition to the present law, the following laws, with the modifications necessitated by this law, shall within the meaning of Art. 44 para. 1 be regarded as constitutional law: . . .” (Federal Constitutional Law of Austria, 1920).

40. We determined that a law had “constitutional status” if it was so designated by the constitutional repositories we consulted.

41. Constitutional provisions for persons with physical disabilities include the following terms: “physical disability,” “physically disabled,” “physically handicapped,” “physical handicap,” “blind,” “deaf-mutes,” “physical condition,” “physical limitations,” “physical state,” “physical capacity,” “physical impairment,” “physical or sensory condition/illness/impairment,” or “physically incapacitated.”

42. Constitutional provisions for persons with mental disabilities include the following terms: “mental disability,” “psychological disability,” “unsound mind,” “mentally incompetent,” “defect or disease of the mind,” “psychic problems,” “mental limitations,” “mental patients,” “mental condition,” “mental state,” “mentally disabled,” “intellectual disability,” “psychic limitation,” “psychological condition/illness/impairment,” “mentally incapacitated,” “psychiatric illness,” or “psychologically impaired,” and reference to a “mental, emotional, psychic or nervous handicap.”

equity and non-discrimination included the right to equality, the right to equality before the law, equality of rights, or prohibitions of discrimination. For social and economic rights, we looked separately at rights in the spheres of education, health, and work. For civil rights, we examined constitutional guarantees of the right to liberty, freedom of movement, and freedom of expression. Finally, we assessed three aspects of equity in political rights: the right of political association, eligibility to vote, and eligibility to hold legislative office.

Analyzing Strength and Approach to Rights

In order to understand and compare the strength of constitutional rights for persons with disabilities globally, we recorded the nature of the language used to grant rights in constitutions. Based on the wording of provisions, we categorized rights into the following groups: guaranteed rights, aspirational rights, quotas, exceptions, denials, and affirmative measures.

Guaranteed Rights

Constitutional articles that unambiguously granted a right or phrased it as a duty or obligation of the state were classified as “guaranteed” rights. When constitutions declared violations of particular rights to be illegal, we also consider that a guarantee of the respective right. For example, Angola’s constitution states: “No-one may be discriminated against, privileged, deprived of any right or exempted from any duty on the basis of . . . disability.”⁴³

Aspirational Rights

Rights phrased in non-authoritative language or listed as non-enforceable goals were categorized as aspirational rights. Provisions fell under this category when a constitution granted a right using terms like “promote,” “endeavors to,” or “directs its policy towards.” Rights were also considered aspirational when the enforcement of the right was stated as subject to the state’s abilities or resources, or when the constitution contained an article that stated that particular rights were non-enforceable.⁴⁴ Provisions that outlined measures to ensure equal access, such as the provision of special education or special ballots for the blind, were also considered to be aspirational if they did not also explicitly guarantee equal rights.

Exceptions

When the constitution allowed or intimated that a right may be restricted based on disability, we separately captured possible exceptions. In each table, we present these exceptions separately from guarantees of rights. Accordingly, constitutions that guaranteed a right to persons with disabili-

43. CONSTITUTION OF THE REPUBLIC OF ANGOLA, 21 JAN. 2010, art. 23.

44. If the constitution granted a right in the preamble, but did not specify that the preamble was an integral part of the constitution, we also coded the right as an aspirational right.

ties and additionally permitted exceptions to the enjoyment of that right appear in the tables as guaranteeing the right to persons with disabilities and as permitting exceptions. For example, the constitution of Timor-Leste stipulates that “[a] disabled citizen shall enjoy the same rights and shall be subject to the same duties as all other citizens, except for the rights and duties which he or she is unable to exercise or fulfil due to his or her disability.”⁴⁵ Those that guaranteed a right universally but permitted exceptions to persons with disabilities appear as granting the right universally as well as permitting exceptions.

Denials

We also captured constitutional clauses that either explicitly denied rights to persons with disabilities or stated that a right can be denied for persons with disabilities. In all cases, these denials were restrictions on civil and political rights for persons of “unsound mind” or “infirmity.” To precisely classify countries that broadly protect the civil and political rights of persons with disabilities while also allowing for restrictions on the right to liberty or to vote in cases of mental insanity, we present denials separately from guarantees of rights.

Affirmative Measures

When constitutions promoted or mandated positive measures for persons with disabilities to exercise a right, or permitted positive discrimination in favor of the group, we separately captured these provisions as “affirmative measures.” For example, Spain’s constitution contains an affirmative measure and states that: “*The public authorities shall carry out a policy of preventive care, treatment, rehabilitation and integration of the physically, sensorially and mentally handicapped by giving them the specialized care they require, and affording them special protection for the enjoyment of the rights granted by this Part to all citizens.*”⁴⁶ Measures that only enable equal access for persons with disabilities, such as the provision of special education or requirements that special ballots be provided for the blind, were not considered to be affirmative measures.

Quotas

Quotas may be considered as a specific type of affirmative measure or a category unto themselves. When the constitution specified that a minimum number of legislative seats should be reserved for persons with disabilities, we captured these separately as a quota.

45. CONSTITUIÇÃO DA REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE, 22 MAR. 2002, art. 21.

46. CONSTITUCIÓN ESPAÑOLA, 31 OCT. 1978, *as amended*, Sept. 27, 2011, art. 49.

Data Analysis

We examined changes in the prevalence of rights for persons with disabilities over time to determine whether constitutional rights for persons with disabilities have become more prevalent as support in international law has grown. The past forty years have witnessed significant action at the international level, beginning with the 1975 Declaration on the Rights of Disabled Persons, followed by the United Nations' proclamation of the International Year of the Disabled in 1981 and adoption of the World Programme of Action Concerning Disabled Persons (WPA) in 1982, then the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities in 1993, and, finally, the CRPD in 2006. Because there was a series of movements pushing for increasing recognition of the rights of persons with disabilities, we analyze trends by decade rather than focusing on a single year or event. Specifically, we examine rights guarantees by year of constitutional adoption in the following periods: before 1990, 1990-1999, 2000-2009, 2010-2014, and combined across all years. Year of constitutional adoption is used instead of year of most recent amendment to assess change over time because most constitutional rights are added at the time of first passage and constitutions vary as to difficulty of amendment.

In order to assess the extent to which the CRPD has been a culminating event for rights of persons with disabilities and assess how it has influenced constitution-building thus far, we also analyzed the presence of guarantees to equity and non-discrimination for persons with disabilities in constitutions in place in 2007 (the year CRPD opened for signature) compared to 2014.

Results

General Equity and Non-Discrimination

Article 5 of the CRPD commits states' parties to "prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds" as well as to provide "reasonable accommodation" in order to "promote equality and eliminate discrimination."⁴⁷ We examined whether constitutions guarantee equity for persons with disabilities in four distinct, but closely related, ways: (1) by guaranteeing general equality or equal opportu-

47. Convention on the Rights of Persons with Disabilities, *supra* note 16, art. 5.

nity,⁴⁸ (2) by ensuring equality before the law,⁴⁹ (3) by granting equal rights,⁵⁰ and (4) by prohibiting discrimination.⁵¹

Globally, 24% of countries take at least one approach to guaranteeing general equity and non-discrimination for persons with disabilities in their constitutions. The constitution of the Dominican Republic for example, states: “Persons are born free and equal before the law, {they} receive the same protection and treatment from the institutions, authorities and other persons and enjoy the same rights, freedoms and opportunities, without any discrimination for reasons of . . . disability.”⁵² Despite overall low levels of explicit constitutional guarantees to general equity and non-discrimination for persons with disabilities, the inclusion of these types of rights in constitutions has increased over time. Sixty-eight percent of constitutions adopted between 2010 and May 2014 include explicit guarantees of equity to persons with disabilities compared to 43% of constitutions adopted in the 2000s, 23% of constitutions adopted in the 1990s and only 11% of constitutions adopted before 1990.

TABLE 1: CONSTITUTIONAL RIGHTS TO EQUITY AND NON-DISCRIMINATION BY TYPE OF DISABILITY

	Any constitutional mention of disability	General disability (language not specific to physical or mental)	Specifically for physical disabilities	Specifically for mental disabilities
Constitution does not include any relevant provisions	20 (10%)	21 (11%)	22 (11%)	22 (11%)
Constitution guarantees equity and non-discrimination for citizens generally	119 (61%)	128 (66%)	152 (78%)	153 (79%)

48. Broad references to equality or articles that guaranteed equal opportunities to persons with disabilities were included under this right. When a provision guaranteed equal opportunities for persons with disabilities in a specific sphere, such as education, these protections were captured under other right-specific variables.

49. Our second measure of constitutional protection included references to equal protection of, or equal treatment under, the law. If a constitution guaranteed the equal protection of the law without discrimination based on physical or mental disability, we considered both prohibition of discrimination and equality before the law to be protected for persons with disabilities.

50. Equal rights clauses specified that everyone enjoys the same rights regardless of disability or that persons with disabilities are broadly entitled to enjoy all rights.

51. Our prohibition of discrimination variable encompassed the right to be protected from discrimination. When constitutions stated that persons with disabilities enjoy rights without distinction or discrimination, we considered them to both prohibit discrimination and protect equal rights.

52. CONSTITUCIÓN DE LA REPÚBLICA DOMINICANA, 26 JAN. 2010, art. 39.

	Any constitutional mention of disability	General disability (language not specific to physical or mental)	Specifically for physical disabilities	Specifically for mental disabilities
Constitution aspires to equity and non-discrimination in at least one way for group	7 (4%)	7 (4%)	3 (2%)	3 (2%)
Constitution guarantees equity and non-discrimination in at least one way for group	47 (24%)	36 (19%)	16 (8%)	15 (8%)
Constitution allows for exceptions to equity and non-discrimination for group	5 (3%)	3 (2%)	2 (1%)	1 (1%)
Positive action may be taken to promote equity for group	25 (13%)	18 (9%)	9 (5%)	8 (4%)

TABLE 2: CONSTITUTIONAL RIGHTS TO EQUITY AND NON-DISCRIMINATION BY YEAR OF CONSTITUTIONAL ADOPTION

	All years	Before 1990	1990 – 1999	2000 – 2009	2010 – 2014
Constitution does not include any relevant provisions	20 (10%)	17 (19%)	3 (5%)	0 (0%)	0 (0%)
Constitution guarantees equity and non-discrimination for citizens generally	119 (62%)	57 (63%)	44 (72%)	12 (52%)	6 (32%)
Constitution aspires to equity and non-discrimination in at least one way for persons with physical disabilities	7 (4%)	6 (7%)	0 (0%)	1 (4%)	0 (0%)
Constitution guarantees equity and non-discrimination in at least one way for persons with disabilities*	47 (24%)	10 (11%)	14 (23%)	10 (43%)	13 (68%)
Constitution allows for exceptions based on physical disability	5 (3%)	2 (2%)	0 (0%)	2 (9%)	1 (5%)

	All years	Before 1990	1990 – 1999	2000 – 2009	2010 – 2014
Constitution allows for exceptions based on mental disability	4 (2%)	1 (1%)	0 (0%)	2 (9%)	1 (5%)
Positive action may be taken to promote equity for persons with disabilities	23 (12%)	9 (10%)	5 (8%)	3 (13%)	6 (32%)

*One constitution (Thailand) only prohibits discrimination against persons with physical disabilities and does not mention mental disabilities.

While more constitutions have explicitly guaranteed equity to persons with disabilities over time, more constitutions have also included exceptions to these rights. Specifically, 9% of constitutions adopted in the 2000s and 5% of constitutions adopted in 2010 or later allow exceptions to equity for persons with disabilities, compared to none in the 1990s and only 2% before 1990. An example of a constitution simultaneously guaranteeing rights and allowing exceptions is Angola's, which stipulates that "*{d}isabled citizens shall fully enjoy the rights and be subject to the duties enshrined in the Constitution, without prejudice to any restrictions on the exercise or fulfilment of rights and duties they are unable, or not fully able, to enjoy or carry out.*"⁵³ In contrast, Ireland's constitution does not guarantee equity and non-discrimination for persons with disabilities and allows for exceptions to equity and non-discrimination for persons with physical disabilities without mentioning mental disabilities. It states that "*{a}ll citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function,*"⁵⁴ which could be interpreted as grounds for restrictions of the rights of persons with physical disabilities.

Overall, 12% of countries permit, encourage, or mandate positive measures to address equity for persons with general, physical, or mental disabilities in their constitutions. For example, Canada's constitution stipulates that prohibition of discrimination "*does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of . . . mental or physical disability.*"⁵⁵

Constitutional rights for persons with disabilities have increased significantly since the CRPD. Little time has passed since the CRPD opened for signature in March 2007, but more recent constitutions already reflect changes indicating a greater recognition of the rights of persons with disabilities. Specifically, 24% of constitutions in place in 2014 guarantee eq-

53. CONSTITUIÇÃO DA REPÚBLICA DE ANGOLA, 21 Jan. 2010, art. 83.

54. CONSTITUTION OF IRELAND, 1 JULY 1937, *as amended* Nov. 1, 2013, art. 40.

55. CANADA, THE CONSTITUTION ACT, 17 APRIL 1982, art. 15.

uity and non-discrimination for persons with disabilities compared to 16% of constitutions in place in 2007. The majority of this change (88%) comes from the adoption of new constitutions, including the Maldives' 2008 constitution, which is the first in South Asia to guarantee equity and non-discrimination for persons with disabilities. Only Guyana and the United Kingdom introduced guarantees of equity and non-discrimination for persons with disabilities via amendment during this time period. Constitutions in place in May 2014 are also more likely to include provisions allowing positive measures to promote equity for persons with disabilities (12% vs. 8% of constitutions in place in 2007).

TABLE 3: CONSTITUTIONAL RIGHTS TO EQUITY AND NON-DISCRIMINATION IN THE YEAR OF THE CRPD AND 7 YEARS LATER

	Constitutions in place in 2007	Constitutions in place in 2014
Constitution does not include any relevant provisions	27 (14%)	20 (10%)
Constitution guarantees equity and non-discrimination for citizens generally	126 (66%)	119 (62%)
Constitution aspires to equity and non-discrimination in at least one way for persons with physical disabilities	7 (4%)	7 (4%)
Constitution guarantees equity and non-discrimination in at least one way for persons with disabilities*	31 (16%)	47 (24%)
Constitution allows for exceptions based on physical disability	4 (2%)	5 (3%)
Constitution allows for exceptions based on mental disability	3 (2%)	4 (2%)
Positive action may be taken to promote equity for persons with disabilities	15 (8%)	23 (12%)

*Two constitutions (Zimbabwe and Thailand) in 2007 only prohibit discrimination against persons with physical disabilities and does not mention mental disabilities. Zimbabwe's new constitution prohibits discrimination against persons with disabilities without specifying type of disability.

Equity in Social, Economic, and Cultural Rights

We examined three fundamental aspects of social, economic, and cultural rights for persons with disabilities: the right to education, the right to health, and the right to work.

Right to Education

Article 24 of the CRPD recognizes the “right of persons with disabilities to education. With a view to realizing this right without discrimination

and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning.”⁵⁶ We considered constitutions to grant the right to education to children with disabilities if they explicitly guarantee the right to education, the right to free education, or the right to compulsory education to children with disabilities, or prohibit discrimination in education on the basis of disability.⁵⁷ In addition to the right to education, we captured references to prohibition of unequal or differential treatment in the classroom; guarantees of equitable access to, or equal opportunities in, education; and the right to education without distinction or discrimination based on disability.

Globally, only 28% of countries provide some type of constitutional guarantee of educational rights for children with disabilities. These include both explicit constitutional guarantees of educational rights for children with disabilities (18%) and general guarantees of the right to education to citizens with broad prohibitions against discrimination based on disability (10%).

TABLE 4: CONSTITUTIONAL RIGHTS TO EDUCATION FOR CHILDREN WITH DISABILITIES BY YEAR OF ADOPTION

	All years	Before 1990	1990 - 1999	2000 - 2009	2010 - 2014
Constitution does not include any relevant provision	42 (22%)	34 (38%)	7 (11%)	1 (4%)	0 (0%)
Constitution guarantees education rights to citizens	92 (48%)	40 (44%)	35 (57%)	11 (48%)	6 (32%)
Constitution aspires to education rights for children with disabilities	6 (3%)	3 (3%)	2 (3%)	0 (0%)	1 (5%)
Constitution prohibits discrimination against children with disabilities broadly and guarantees education rights to citizens	19 (10%)	4 (4%)	7 (11%)	3 (13%)	5 (26%)
Constitution guarantees education rights to children with disabilities	34 (18%)	9 (10%)	10 (16%)	8 (35%)	7 (37%)

56. Convention on the Rights of Persons with Disabilities, *supra* note 16, art. 24.

57. The right to vocational or other training was not considered equivalent to the right to education.

	All years	Before 1990	1990 - 1999	2000 - 2009	2010 - 2014
Constitution allows for exceptions to education rights based on disability or prohibition of discrimination based on physical disability	6 (3%)	3 (3%)	0 (0%)	2 (9%)	1 (5%)
Positive action may be taken to promote the full exercise of education rights for children with disabilities	16 (8%)	7 (8%)	3 (5%)	4 (17%)	2 (11%)

The constitutional right to education for children with disabilities has steadily increased over time. Only 14% of constitutions adopted before 1990 include some type of guarantee of education rights to children with disabilities compared to 27% of constitutions adopted in the 1990s, 48% of constitutions adopted in the 2000s, and 63% of constitutions adopted in 2010 or later. Three percent of constitutions allow for exceptions to the right to education for persons with disabilities. While the majority of these broadly allow for exceptions to the rights of persons with disabilities, New Zealand's constitution allows for exceptions specific to the right to education. Specifically, it prohibits discrimination in education, including on the basis of disability in section 57, but also states that “*{n}othing in section 57 applies to a person whose disability is such that that person requires special services or facilities that in the circumstances cannot reasonably be made available.*”⁵⁸

Across all years, 8% of constitutions include specific measures to promote the full exercise of educational rights for children with disabilities. For example, the constitution of Bolivia guarantees that: “*The State shall promote and guarantee the continuing education of children and adolescents with disabilities . . . under the same structure, principles and values of the educational system, and shall establish a special organization and development curriculum.*”⁵⁹ Thailand includes measures to support education for all children with disabilities, stating that: “*The indigent, the disabled, persons of infirmity or persons suffering a state of difficulty shall be accorded the right under paragraph one and entitled to such support from the State as to enable them to receive education comparable to that received by other persons.*”⁶⁰

Right to Health

Article 25 of the CRPD calls on member states to “recognize that persons with disabilities have the right to the enjoyment of the highest attain-

58. NEW ZEALAND, NZ HR ACT, 10 Aug. 1993, sec. 57.

59. REPUBLICA DE BOLIVIA, CONSTITUCIÓN POLÍTICA DEL ESTADO, 25 Jan. 2009, art. 85.

60. CONSTITUTION OF THE KINGDOM OF THAILAND, 24 Aug. 2007, *as amended*, Mar. 3, 2011, ch. 3, sec. 49.

able standard of health without discrimination on the basis of disability” and to “[p]rovide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons.”⁶¹ We assessed whether persons with disabilities are guaranteed the right to health or the right to medical services. The right to health includes the right of persons with disabilities to physical or overall wellbeing, health protection, health security, or a life free of illness or disease.⁶² The right to medical services captures references to the state’s commitment to cure, restore or rehabilitate health; to ensure adequate health facilities for the population; or to provide access to healthcare services, curative services, medical aid, medical assistance or treatment to persons with disabilities.⁶³

Overall, 26% of constitutions grant the right to health to persons with disabilities by guaranteeing the right to free medical services specifically to persons with disabilities (10%); by guaranteeing health rights to persons with disabilities (9%); or by broadly prohibiting discrimination against persons with disabilities and guaranteeing health rights to citizens (7%). Montenegro’s constitution explicitly guarantees free health care services, stating that “*a person with disability shall have the right to health protection from public revenues.*”⁶⁴ Similarly, Spain’s constitution states: “*The public authorities shall carry out a policy of preventive care, treatment, rehabilitation and integration of the physically, sensorially and mentally handicapped by giving them the specialized care they require.*”⁶⁵ An additional 4% of constitutions include provisions for potential positive action by states to promote health for adults with disabilities. Brazil does not specifically guarantee the right to health for persons with disabilities, but does for “children and adolescents”, including for the “*creation of preventive and specialized care programmes for the physically, sensorially or mentally handicapped.*”⁶⁶

61. Convention on the Rights of Persons with Disabilities, *supra* note 16, art. 25.

62. We did not consider references to specific areas of health, such as occupational health or sexual health, to be equivalent to a right to health.

63. Provisions that were not considered equivalent to a right to medical care include a state’s guarantees of access to specific kinds of treatment, but not treatment overall.

64. CONSTITUTION OF THE REPUBLIC OF MONTENEGRO, 19 Oct. 2007, *as amended*, Sep. 27, 2013, art. 69.

65. CONSTITUCIÓN ESPAÑOLA, *supra* note 70, art. 49.

66. CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL, 5 Oct. 1988, *as amended*, Feb. 11, 2014, art. 227.

TABLE 5: CONSTITUTIONAL RIGHTS TO HEALTH FOR PERSONS WITH DISABILITIES BY YEAR OF ADOPTION

	All years	Before 1990	1990 - 1999	2000 - 2009	2010 - 2014
Constitution does not include any relevant provision	80 (41%)	61 (68%)	15 (25%)	3 (13%)	1 (5%)
Constitution guarantees health rights to citizens	54 (28%)	20 (22%)	22 (36%)	7 (30%)	5 (26%)
Constitution aspires to health rights for persons with disabilities	9 (5%)	3 (3%)	4 (7%)	1 (4%)	1 (5%)
Constitution prohibits discrimination against persons with disabilities broadly and guarantees health rights to citizens*	14 (7%)	1 (1%)	4 (7%)	3 (13%)	6 (32%)
Constitution guarantees health rights to persons with disabilities	17 (9%)	3 (3%)	6 (10%)	3 (13%)	5 (26%)
Constitution guarantees free medical services to citizens or specifically to persons with disabilities	19 (10%)	2 (2%)	10 (16%)	6 (26%)	1 (5%)
Positive action may be taken to promote health for persons with disabilities	8 (4%)	3 (3%)	1 (2%)	1 (4%)	3 (16%)

*One constitution (Thailand) only prohibits discrimination for persons with physical disabilities and does not mention mental disabilities.

There has been a marked shift over time in guarantees of a constitutional right to health for persons with disabilities: while only 6% of constitutions adopted prior to 1990 guarantee some form of these rights for individuals with disabilities, 33% of constitutions adopted in the 1990s, 52% of constitutions adopted in the 2000s, and 63% of constitutions adopted in 2010 or later guarantee some aspect of health rights to persons with disabilities. Thus, while overall guarantees of the right to health for persons with disabilities are low, constitutions that were adopted more recently more frequently include relevant provisions, indicating that the importance of this right may have received greater recognition over the past fifteen years.

Four percent of constitutions also allow for positive measures to promote health for persons with disabilities. These measures have also increased over time with 16% of constitutions adopted in 2010 or later including these measures compared to 3% of those adopted before 1990, 2% of those

adopted in the 1990s, and 4% adopted in the 2000s. Ecuador's constitution outlines a wide range of measures to support health for persons with disabilities, stating that:

Persons with disabilities are recognized the following rights: 1. Specialized attention in public and private entities that provide healthcare services for their specific needs, which shall include the free provision of medicines, especially for those persons that require lifetime treatment. 2. Integral rehabilitation and permanent assistance, which shall include the corresponding technical aids 9. Free psychological care for persons with disabilities and their families, in particular in the case of intellectual disabilities.⁶⁷

Right to Work

Article 27 of the CRPD instructs states to “recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.”⁶⁸ Individuals’ right to work was considered to be granted if the constitution states that persons with disabilities have the right to be employed, the right to labor, the right to secure a means of livelihood, or similar terminology. We also examined prohibitions against discrimination in employment. These include general prohibitions of discrimination in work, specific prohibitions in discrimination in hiring⁶⁹ and promotions,⁷⁰ and guarantees of equal pay for equal work.⁷¹

Overall, only 18% of constitutions guarantee the right to work to adults with disabilities by either explicitly guaranteeing the right to work or prohibiting discrimination in work (11%), or by guaranteeing the right to work to citizens and broadly prohibiting discrimination against persons with disabilities (7%). Venezuela’s constitution, for example, guarantees the right to work to persons with disabilities by stipulating the following:

Any person with disability or special needs has the right to the full and autonomous exercise of his or her abilities The State . . . guarantees them respect for their human dignity, equality of opportunity and satisfactory working conditions, and shall promote their training, education

67. CONSTITUCIÓN DEL ECUADOR, 20 Oct. 2008, *as amended*, July 13, 2011, art. 47.

68. Convention on the Rights of Persons with Disabilities, *supra* note 16, art. 27.

69. A country was considered to protect individuals with disabilities against discrimination in hiring if the constitution mentioned that jobs were open to all under equal conditions regardless of disability or persons with disabilities were equally admissible to employment.

70. Protection from discrimination in promotion includes clauses that banned limitations in access to any professional category, mandated equal treatment in promotion, or prohibited discrimination in access to positions, levels, or categories of work on the basis of disability.

71. The right to equal pay for equal work was captured if the constitution stated that persons with disabilities should receive the same remuneration or pay without discrimination or that everyone was entitled to equal pay for equal work regardless of disability.

*and access to employment appropriate to their condition, in accordance with law.*⁷²

Some constitutions include prohibitions against discrimination of persons with disabilities in a certain aspect of work. For instance, Malawi's constitution stipulates that: "Every person shall be entitled to fair wages and equal remuneration for work of equal value without distinction or discrimination of any kind, in particular on basis of gender, disability or race."⁷³

TABLE 6: CONSTITUTIONAL RIGHTS TO WORK FOR ADULTS WITH DISABILITIES BY YEAR OF ADOPTION

	All years	Before 1990	1990 - 1999	2000 - 2009	2010 - 2014
Constitution does not include any relevant provision	77 (40%)	48 (53%)	23 (38%)	6 (26%)	0 (0%)
Constitution guarantees or aspires to guarantee the right to work to "able-bodied" citizens or those "capable of working"	5 (3%)	3 (3%)	2 (3%)	0 (0%)	0 (0%)
Constitution guarantees work rights to citizens	68 (35%)	25 (28%)	27 (44%)	10 (43%)	6 (32%)
Constitution aspires to work rights for adults with disabilities	7 (4%)	4 (4%)	1 (2%)	0 (0%)	2 (11%)
Constitution prohibits discrimination against persons with disabilities broadly and guarantees work rights to citizens	14 (7%)	4 (4%)	3 (5%)	1 (4%)	6 (32%)
Constitution guarantees work rights to adults with disabilities	22 (11%)	6 (7%)	5 (8%)	6 (26%)	5 (26%)
Constitution allows for general exceptions to equal rights based on abilities	5 (3%)	2 (2%)	0 (0%)	2 (9%)	1 (5%)
Positive action may be taken to promote the full exercise of work rights for adults with disabilities	18 (9%)	9 (10%)	5 (8%)	1 (4%)	3 (16%)

72. CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA, 30 Dec. 1999, *as amended*, Feb. 15, 2009, art. 81.

73. THE REPUBLIC OF MALAWI (CONSTITUTION) BILL, 16 May 1994, *as amended*, July 29, 2010, art. 31.

Over time, progress has been made in guarantees to this right. Eleven percent of constitutions adopted before 1990 guarantee work rights to adults with disabilities, compared to 13% of constitutions adopted in the 1990s, 30% of constitutions adopted in the 2000s, and 58% adopted in 2010 or later.

Three percent of constitutions allow for exceptions to work rights for persons with disabilities. While most of these provisions may broadly limit the rights of persons with disabilities as discussed above, New Zealand includes an exception specific to work. New Zealand's Human Rights Act of 1993 prohibits general discrimination at work against persons with disabilities, but also allows that: "*Nothing in section 22 of this Act shall prevent different treatment based on disability where {t}he position is such that the person could perform the duties of the position satisfactorily only with the aid of special services or facilities and it is not reasonable to expect the employer to provide those services or facilities.*"⁷⁴ An additional 3% of constitutions limit the right to work to "able-bodied" citizens, those "able to work," or those "capable of working," leaving room for discrimination when adults with disabilities try to claim their right to work. Three of these constitutions were adopted prior to 1990 (in 1814, 1953, and 1976) and perhaps reflect more antiquated language. However, two of the constitutions were adopted in the 1990s. Saudi Arabia's constitution states: "*The state shall provide job opportunities to all able-bodied people,*"⁷⁵ and Switzerland's constitution declares: "*The Confederation and the Cantons seek to ensure that . . . all people capable of working can sustain themselves through working under fair and adequate conditions.*"⁷⁶

Ten percent of constitutions include provisions for positive action that may be taken to promote the full exercise of work rights for adults with disabilities. Bulgaria's constitution, for example, stipulates that "*{t}he state shall create conditions conducive to the exercising of the right to work by the physically or mentally handicapped.*"⁷⁷ El Salvador's constitution states that "*{t}he State . . . shall promote the work and the employment of people with physical, mental or social limitations or disabilities.*"⁷⁸

Equity in Civil Rights

We examined three fundamental civil rights for persons with disabilities that are specified by the CRPD: the right to liberty, the right to freedom of movement, and the right to freedom of expression.

74. NEW ZEALAND, NZ HR ACT, *supra* note 77, art. 29.

75. CONSTITUTION OF SAUDI ARABIA, 1 Mar. 1992, art. 28.

76. THE FEDERAL CONSTITUTION OF THE SWISS CONFEDERATION, 18 Apr. 1999, *as amended*, May 18, 2014, art. 41.

77. CONSTITUTION OF THE REPUBLIC OF BULGARIA, 13 July 1991, *as amended*, Feb. 6, 2007, art. 48.

78. CONSTITUCIÓN DE LA REPÚBLICA DE EL SALVADOR, 20 Dec. 1983, *as amended*, May 9, 2012, art. 37.

Right to Liberty

Article 14 of the CRPD instructs States parties to guarantee people with disabilities the “right to liberty and security of person.”⁷⁹ We considered the right to liberty to be guaranteed to persons with disabilities if they were explicitly granted the right to freedom or liberty.⁸⁰

Globally, only 9% of constitutions explicitly guarantee the right to liberty to persons with disabilities. However, 19% of constitutions specify that the right to liberty can be denied to persons with mental health conditions. Many of the former Commonwealth countries use language similar to Nauru’s constitution, which states:

*No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases . . . in the case of a person who is, or is reasonably suspected to be, of unsound mind . . . for the purpose of his care or treatment or the protection of the community.*⁸¹

In some cases, the wording indicates specific conditions under which rights can be abridged. Cape Verde, for example, states that:

*{T}here may be deprivation of liberty, for the time and within the conditions determined by law, in any of the following cases: (i) Confinement of the carrier of a mental disability in an adequate institution, whenever he or she, due to his or her behaviour, proves to be dangerous and is decreed or confirmed as such by competent judicial authority.*⁸²

However, other constitutions with similar provisions lack specification of the circumstances that would justify the limitation of the right to liberty for persons with mental disabilities. For example, Cyprus’ constitution stipulates: “No person shall be deprived of his liberty save in the following cases when and as provided by law . . . the detention of persons for the prevention of spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants.”⁸³ The vagueness of such provisions creates the potential for unfair restrictions of this right for persons with disabilities. Furthermore, 2% of constitutions allow for exceptions to overall rights for persons with disabilities, as discussed in the previous section, that could be used to limit the right to liberty. Currently, no constitution explicitly allows for denials of the right to liberty based on physical disability.

79. Convention on the Rights of Persons with Disabilities, *supra* note 16, art. 14.

80. We did not include the right to freedom from arbitrary arrest without a more general guarantee of liberty.

81. THE CONSTITUTION OF NAURU, 31 Jan. 1968, *as amended*, May 17, 1968, art. 5.

82. CONSTITUIÇÃO DA REPÚBLICA CABO VERDE, 25 Sept. 1992, *as amended*, May 3, 2010, art. 29.

83. THE CONSTITUTION OF THE REPUBLIC OF CYPRUS, 16 Aug. 1960, *as amended*, July 17, 2013, art. 11.

TABLE 7: CONSTITUTIONAL GUARANTEES TO CIVIL RIGHTS
FOR PERSONS WITH DISABILITIES

	Right to liberty	Right to freedom of movement	Right to freedom of expression
Constitution does not include any relevant provisions	17 (9%)	25 (13%)	7 (4%)
Constitution guarantees the right to citizens generally	158 (82%)	150 (78%)	168 (87%)
Constitution aspires to the right for persons with disabilities	0 (0%)	0 (0%)	0 (0%)
Constitution guarantees the right for persons with disabilities	18 (9%)	18 (9%)	18 (9%)
Constitution allows for general exceptions to equal rights based on abilities	4 (2%)	4 (2%)	4 (2%)
Constitution allows for denial of right based on mental health conditions	37 (19%)	4 (2%)	0 (0%)
Constitution allows for denial of right based on physical disability	0 (0%)	0 (0%)	0 (0%)

Right to Freedom of Movement

Article 18 of the CRPD guarantees people with disabilities the right “to liberty of movement, to freedom to choose their residence . . . on an equal basis with others.”⁸⁴ We captured the right to freedom of movement when persons with disabilities were granted the right to migrate within a country, the right to move into and out of a country, or both the right to travel and the right to residency.⁸⁵

Similar to the right to liberty, the majority of constitutions grant citizens the right to freedom of movement (78%), but very few countries (9%) explicitly guarantee the right to freedom of movement to persons with disabilities. Two percent of countries allow for denials of this right for persons of unsound mind. The constitution of Barbados, for example, guarantees freedom of movement to citizens but also states that individuals can be “*detained for care or treatment in a hospital or other institution in pursuance of a law . . . relating to persons suffering from defect or disease of the mind.*”⁸⁶ Guyana’s constitution contains a similar provision. Two countries allow for the right to freedom of movement to be restricted “*to prevent the leaving of a minor or a*

84. Convention on the Rights of Persons with Disabilities, *supra* note 16, art. 18.

85. Protection from exile or the right to re-enter one’s own country were not considered equivalent to the right to freedom of movement.

86. THE CONSTITUTION OF BARBADOS, 22 Nov. 1966, *as amended*, June 3, 2007, art. 22.

person of unsound mind without supervision” (Estonia),⁸⁷ or allow detention of persons of “*unsound mind*” (Samoa).⁸⁸

Right to Freedom of Expression

In Article 21, the CRPD requires States Parties to “take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive, and impart information and ideas on an equal basis with others and through all forms of communication of their choice.”⁸⁹ We examine the extent to which constitutions grant each of these rights to persons with disabilities by capturing constitutional provisions that address the rights of persons with disabilities to freedom of speech, to express opinions, or to express convictions.⁹⁰

The right to freedom of expression is only explicitly guaranteed to persons with disabilities in 9% of constitutions. Examples include Fiji’s constitution which guarantees the right to freedom of expression to all citizens (Article 17) and prohibits discrimination against persons with disabilities (Article 26); in addition, the constitution stipulates “*{a} person with any disability has the right . . . to use sign language, Braille or other appropriate means of communication.*”⁹¹

Equity in Political Rights

In order to assess equity in political rights, we examined constitutional provisions for the right of political association, right to vote, and right to hold legislative office for persons with disabilities.

Right of Political Association

Article 29 of the CRPD addresses political participation and requires states to “guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others.” Specifically, Article 29 of the CRPD asserts that persons with disabilities should be able to participate “in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties.”⁹² The right of political association for persons with disabilities is captured when constitutions guarantee the right to join political parties, the right to form political parties, and the right to associate for political purposes.

87. THE CONSTITUTION OF THE REPUBLIC OF ESTONIA, 28 June 1992, *as amended*, July 22, 2011, art. 22.

88. THE CONSTITUTION OF THE INDEPENDENT STATE OF SAMOA, 28 Oct. 1960, *as amended*, June 25, 2013, art. 13.

89. Convention on the Rights of Persons with Disabilities, *supra* note 16, art. 21.

90. The right to freedom of opinion was not included unless there was also a mention of the right to express those opinions.

91. CONSTITUTION OF THE REPUBLIC OF FIJI, 7 Sept. 2013, art. 17, 26, 42.

92. Convention on the Rights of Persons with Disabilities, *supra* note 16, art. 29.

As of May 2014, the majority of constitutions (58%) guarantee the right to freedom of political association to citizens generally, but do not mention persons with disabilities specifically. Only 7% of constitutions guarantee this right to persons with disabilities, the majority of which were adopted in 2000 or later. The Sudanese constitution, for example, guarantees the right to freedom of association and peaceful assembly as well as “*the right to form or join political parties, associations and trade or professional unions*”⁹³ and specifies that “*{t}he State shall guarantee to persons with special needs the enjoyment of all the rights and freedoms set out in this Constitution.*”⁹⁴

TABLE 8: CONSTITUTIONAL RIGHT OF POLITICAL ASSOCIATION FOR ADULTS WITH DISABILITIES BY YEAR OF ADOPTION

	All years	Before 1990	1990 - 1999	2000 - 2009	2010 - 2014
Constitution does not include any relevant provisions	69 (36%)	52 (58%)	11 (18%)	4 (17%)	2 (11%)
Constitution guarantees the right to freedom of political association to citizens generally	111 (58%)	37 (41%)	49 (80%)	13 (57%)	12 (63%)
Constitution aspires to the right to freedom of political association for persons with disabilities	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Constitution guarantees the right to freedom of political association for persons with disabilities	13 (7%)	1 (1%)	1 (2%)	6 (26%)	5 (26%)
Constitution allows for general exceptions to equal rights based on abilities	4 (2%)	1 (1%)	0 (0%)	2 (9%)	1 (5%)

Two percent of constitutions allow for exceptions to the rights of persons with disabilities that could be used to limit the right of political association.

Right to Vote

Article 29 of the CRPD requires states to grant “the right of persons with disabilities to vote by secret ballot in elections and public referendums

93. THE INTERIM NATIONAL CONSTITUTION OF THE REPUBLIC OF THE SUDAN, 6 July 2005, art. 40.

94. *Id.* at art. 45.

without intimidation.”⁹⁵ Further, Article 12 of the Convention obliges states to “recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life” and to “take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.”⁹⁶ We considered the eligibility to vote to be granted to persons with disabilities if they are explicitly granted voting rights, the right to elect, or the right to participate in national affairs through elected representatives.⁹⁷

Overall, 22% of constitutions guarantee voting rights for persons with disabilities either by explicitly guaranteeing their right to vote or political rights (2%), or by guaranteeing citizens the right to vote and broadly prohibiting discrimination based on disability status (20%). For example, the Egyptian constitution guarantees a broad range of rights specifically to persons with disabilities and further states that “*{t}he State shall also ensure their exercise of all political rights.*”⁹⁸ Constitutional guarantees of the right to vote for persons with disabilities have increased over time with only 11% of constitutions adopted before 1990 including these guarantees compared to 18% adopted in the 1990s, 39% adopted in the 2000s, and 67% of those adopted in 2010 or later.

Ecuador is the only constitution to include provisions that allow for positive action to be taken to promote the full exercise of voting rights for persons with disabilities. Ecuador’s constitution stipulates that “*{t}he State shall adopt for the benefit of persons with disabilities measures that ensure: 1. Social inclusion, by means of coordinated state and private plans and programs that promote their political, social, educational, and economic participation.*”⁹⁹ An additional 3% of constitutions contain measures to facilitate voting for persons with disabilities or physical disabilities. The constitutions of Kenya, the Philippines, Uganda, and Zimbabwe contain provisions inclusive of all types of disabilities. For example, Uganda’s constitution states: “*Parliament shall make laws to provide for the facilitation of citizens with disabilities to register and vote.*”¹⁰⁰ Malta’s constitutional provision is narrow and only allows that when “*a person is by reason of blindness unable to mark on his ballot paper, provision may be made by law requiring that . . . adequate and special means are to be provided which will enable that person to mark on his ballot paper independently and without the need of assistance.*”¹⁰¹

95. Convention on the Rights of Persons with Disabilities, *supra* note 16, art. 29.

96. *Id.* at art. 12.

97. We also recorded instances where constitutions expressed the government’s aspiration or obligation to encourage equity in political rights, such as through special provisions to allow the blind to vote.

98. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 15 Jan. 2014, art. 81.

99. CONSTITUCIÓN DEL ECUADOR, *supra* note 84, art. 48.

100. CONSTITUTION OF THE REPUBLIC OF UGANDA, 8 Oct. 1995, *as amended*, Dec. 30, 2005, art. 59.

101. CONSTITUTION OF MALTA, 21 Sept. 1964, *as amended*, Apr. 17, 2014, art. 56.

TABLE 9: CONSTITUTIONAL RIGHT TO VOTE ACROSS DISABILITY

	All years	Before 1990	1990 - 1999	2000 - 2009	2010 - 2014
No universal suffrage	2 (1%)	1 (1%)	1 (2%)	0 (0%)	0 (0%)
Voting is not mentioned as a right, but criteria for eligibility and disqualification are outlined	14 (7%)	12 (13%)	2 (3%)	0 (0%)	0 (0%)
Guaranteed universally, without specific guarantees to persons with disabilities	132 (69%)	65 (73%)	47 (77%)	14 (61%)	6 (33%)
Constitution aspires to the right to vote for persons with physical disabilities	1 (1%)	1 (1%)	0 (0%)	0 (0%)	0 (0%)
Constitution prohibits discrimination against persons with disabilities broadly and guarantees citizens the right to vote*	39 (20%)	9 (10%)	11 (18%)	8 (35%)	11 (61%)
Specifically guaranteed for persons with disabilities	3 (2%)	1 (1%)	0 (0%)	1 (4%)	1 (6%)
Constitution allows for denial of right to vote based on “working ability”, “infirmity” or “physical or mental ineptitude”	3 (2%)	1 (1%)	1 (2%)	1 (4%)	0 (0%)
Constitution allows for denial of right to vote based on mental health conditions	43 (22%)	24 (27%)	12 (20%)	3 (13%)	4 (21%)
Positive action may be taken to promote the full exercise of voting rights for persons with disabilities	1 (1%)	0 (0%)	0 (0%)	1 (4%)	0 (0%)

*One constitution (Thailand) only prohibits discrimination for persons with physical disabilities and does not mention mental disabilities.

In contrast to provisions to promote voting rights, 22% of constitutions specify that the right to vote can be denied for persons with mental health conditions. The proportion of constitutions allowing for exceptions to the right to vote for mental illness includes 27% of constitutions adopted before 1990, 20% of constitutions adopted in the 1990s, 13% in the 2000s, and 21% of those adopted in 2010 or later. Some of the exceptions are quite limited, such as a provision within Albania’s constitution that stipulates: “*Citizens who have been declared mentally incompetent by a final court decision do*

not have the right to elect.”¹⁰² Others are far broader and do not specify a process for determining mental incapacity. For example, The Gambia’s constitution only states that “[e]very citizen of The Gambia being eighteen years or older and of sound mind shall have the right to vote.”¹⁰³ Notably, Kenya and Zimbabwe both allow for exceptions of the right to vote for persons with mental disabilities while also providing for provisions to promote voting for persons with disabilities.

Far fewer constitutions (2%) allow for denials of the right to vote based on infirmity. Uruguay’s constitution guarantees the right to vote but also states that “[c]itizenship is suspended: 1) By physical or mental ineptitude which prevents free and reflective action.”¹⁰⁴ Namibia allows voting rights to be abridged “on such grounds of infirmity”¹⁰⁵ and Serbia requires voters to be of “working ability.”¹⁰⁶

Right to Hold Legislative Office

Article 29 of the CRPD guarantees the right of persons with disabilities “to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate.”¹⁰⁷ We examine the right to hold legislative office by capturing provisions ensuring the eligibility of persons with disabilities for election to positions in the legislative branch of government. When eligibility requirements were outlined for different elected legislative bodies, we analyzed the least restrictive qualifications to be eligible for office.

Twenty-one percent of constitutions guarantee the right to hold office for persons with disabilities either through specific guarantees of political rights for persons with disabilities (2%), quotas of seats reserved in legislatures for persons with disabilities (4%), or guarantees to citizens of the right to hold office and broad prohibitions of discrimination based on disability (15%). For example, Nepal’s constitution states that “[t]he State shall have the following obligations: (dl) To have participation of . . . {the} disabled . . . in all organs of the State structure on the basis of proportional inclusion.”¹⁰⁸ Constitutional guarantees of the right to hold office for persons with disabilities have increased over time. Only 8% of constitutions adopted before 1990 included any guarantee compared to 17% adopted in the 1990s, 44% in the 2000s, and 67% adopted in 2010 or later.

102. CONSTITUTION OF ALBANIA, 21 Oct. 1998, *as amended*, Sept. 18, 2012, art. 45.

103. CONSTITUTION OF THE REPUBLIC OF THE GAMBIA, 7 Aug. 1996, *as amended*, Dec. 13, 2004, art. 39.

104. CONSTITUCIÓN DE LA REPÚBLICA DEL URUGUAY, 15 Feb. 1967, *as amended*, Oct. 31, 2004, art. 80.

105. THE CONSTITUTION OF THE REPUBLIC OF NAMIBIA, 12 Mar. 1990, *as amended*, May 7, 2010, art. 17.

106. THE CONSTITUTION OF THE REPUBLIC OF SERBIA, 30 Sept. 2006, art. 52.

107. Convention on the Rights of Persons with Disabilities, *supra* note 16, at art. 29.

108. THE INTERIM CONSTITUTION OF NEPAL, 21 Nov. 2006, *as amended*, May 28, 2011, art. 33.

TABLE 10: CONSTITUTIONAL RIGHT TO HOLD OFFICE ACROSS DISABILITY

	All years	Before 1990	1990 - 1999	2000 - 2009	2010 - 2014
Not an elected office	3 (2%)	1 (1%)	1 (2%)	0 (0%)	1 (6%)
Holding office is not mentioned as a right, but criteria for eligibility and disqualification are outlined	46 (24%)	16 (18%)	20 (33%)	6 (26%)	4 (22%)
Guaranteed universally, without specific guarantees to persons with disabilities	94 (49%)	57 (64%)	29 (48%)	7 (30%)	1 (6%)
Constitution aspires to the right to hold office for persons with physical disabilities	9 (5%)	8 (9%)	1 (2%)	0 (0%)	0 (0%)
Constitution prohibits discrimination against persons with disabilities broadly and guarantees citizens the right to hold office*	29 (15%)	6 (7%)	9 (15%)	6 (26%)	8 (44%)
Specifically guaranteed for persons with disabilities	3 (2%)	0 (0%)	0 (0%)	2 (9%)	1 (6%)
Quotas for persons with disabilities	7 (4%)	1 (1%)	1 (2%)	2 (9%)	3 (17%)
Constitution allows for denial of right to hold office based on “working ability”, “infirmity” or “physical or mental ineptitude”	3 (2%)	1 (1%)	1 (2%)	1 (4%)	0 (0%)
Constitution allows for denial of right to hold office based on mental health conditions	60 (31%)	35 (39%)	16 (26%)	5 (22%)	4 (21%)
Positive action may be taken to promote the full exercise of the right to hold office for persons with disabilities	2 (1%)	0 (0%)	0 (0%)	1 (4%)	1 (5%)

*One constitution (Thailand) only prohibits discrimination for persons with physical disabilities and does not mention mental disabilities.

Only Ecuador and Kenya’s constitutions include provisions other than quotas that may promote political representation for persons with disabilities. Kenya’s constitution specifies that “*Parliament shall enact legislation to*

promote the representation in Parliament of . . . persons with disabilities."¹⁰⁹ An additional 5% of constitutions include support for the blind or visually impaired to hold office. For example, the constitution of Botswana states requirements for English literacy will be waived if the candidate is "*incapacitated by blindness or other physical cause.*"¹¹⁰

Similar to the right to vote, far more constitutions allow for denials of the right to hold office for persons with mental health conditions than promote holding office. Thirty-one percent of constitutions state that the right to hold office can be denied to persons with mental health conditions; such provisions are included more frequently in constitutions adopted prior to 1990 (39%) than those adopted in more recent decades (26% in the 1990s, 22% in the 2000s, and 21% of those adopted in 2010 or later). Some of these restrictions are quite broad, such as a provision within Oman's constitution, which states that "*{a} candidate of Majlis Al Shura shall be . . . not suffering from a mental illness.*"¹¹¹ The three countries that also allow for denials of the right to vote for infirmity (Namibia, Serbia, and Uruguay) are the only three countries that also allow for denials of the right to hold office on that basis.

Discussion

Our review of the extent to which constitutions address fundamental human rights for persons with disabilities reveals overall low levels of constitutional guarantees to rights based on disability. However, newer constitutions were more likely to grant access to rights for persons with disabilities in all areas we examined.

As of May 2014, constitutions most commonly explicitly guarantee rights to persons with disabilities in the following domains: education (28%), health (26%), and equity and non-discrimination (24%).

The right to education is one promising area of greater guarantees of rights, which lays the foundation for equal opportunities later in life. Conversely, of particular concern are the very few countries that guarantee constitutional protections of the right to work or non-discrimination at work for adults with disabilities (18%), potentially limiting access to a decent income for adults with disabilities.

With respect to political rights, 22% of constitutions explicitly guarantee the right to vote for persons with disabilities; however the same proportion allow for denials of this right based on mental health conditions and an additional 2% allow exclusion of this right based on infirmity. Similarly, while 21% of constitutions ensure access to the right to hold legislative office for persons with disabilities, 31% allow for the denial of this right

109. THE CONSTITUTION OF KENYA, 27 AUG. 2010, art. 100.

110. CONSTITUTION OF BOTSWANA, 30 SEP. 1966, *as amended*, Jan. 13, 2006, art. 61.

111. OMAN, THE BASIC STATUTE OF THE STATE, ROYAL DECREE NO. 101/96, 6 NOV. 1996, *as amended*, Oct. 16, 2011, art. 58.

based on mental health, often defined broadly, and 2% allow for denials on the grounds of infirmity. The right to freedom of political association is only explicitly guaranteed to persons with disabilities in 7% of constitutions, while 2% allow for exceptions to this right on the grounds of disability.

Provisions that ensure access for persons with disabilities to civil rights are also relatively rare in constitutions with only 9% guaranteeing the right to liberty, freedom of movement, and freedom of expression. Furthermore, 19% stipulate potential restrictions of the right to liberty for persons with mental disabilities and 2% allow for exceptions to all three civil rights based on disability.

Changes in Protections over Time

Our results indicate that while overall levels of protection are still low, there has been a significant increase in the inclusion of provisions relevant for persons with disabilities in constitutions adopted more recently, particularly for those adopted in 2010 or later. While only 11% of constitutions adopted before 1990 guarantee equity and non-discrimination to persons with disabilities, 68% of those adopted in 2010 or later guarantee these rights. Similarly, the right to education is guaranteed in 14% of constitutions that were in place before 1990 and 63% of constitutions adopted in 2010 or later. Steady increases of guarantees to persons with disabilities were also observed for the right to health (6% of constitutions in place before 1990 guarantee relevant rights compared to 16% of constitutions adopted in the 1990s and 63% of constitutions adopted in 2010 or later) and the right to work (11% of constitutions in place before 1990 guarantee relevant rights compared to 30% of constitutions in place between 2000 and 2009 and 58% of constitutions adopted since 2009).

Findings regarding the inclusion of affirmative measures over time overall reveal a greater likelihood of such provisions in more recently adopted constitutions. Specifically, provisions for positive action to promote general equity for persons with disabilities have been increasingly incorporated in constitutions (32% of constitutions adopted since 2009 include such measures relative to 10% of constitutions adopted before 1990) and similar trends were observed for positive measures to promote the full exercise of education rights for children with disabilities and health for persons with disabilities. Interestingly, affirmative measures for the right to work are included in 10% of constitutions adopted before 1990 relative to 4% of constitutions adopted between 2000 and 2009 and 16% of constitutions adopted after 2009. Across all years, few constitutions include provisions for potential positive action to promote the full exercise of the rights to vote or to hold legislative office (one and two constitutions, respectively).

Furthermore, increases in constitutional rights for persons with disabilities over time have not been limited to specific regions. As new constitu-

tions are adopted, provisions for persons with disabilities have grown stronger both in regions that historically provided minimal protection and those in which guaranteed rights were more common. For example, before the Arab Spring began in 2010, no country in the Middle East and North Africa guaranteed equity for persons with disabilities in their constitution. Three countries in this region—Egypt, Morocco, and Tunisia—now include guarantees to overall equity or prohibition of non-discrimination for persons with disabilities in the constitutions they adopted since the movement began. Similarly, the adoption of a new constitution in the Maldives in 2008 made it the first and only country in South Asia to constitutionally guarantee equity and non-discrimination for persons with disabilities. Globally, countries in Sub-Saharan Africa are the most likely to constitutionally guarantee equity and non-discrimination to persons with disabilities. Since 2007, half of the constitutions adopted in Sub-Saharan Africa have included guarantees of equity for persons with disabilities where previously there were none, as have two of the three new constitutions adopted in Europe and Central Asia.

Notably, we found no reduction over time in the prevalence of constitutional provisions establishing exceptions or denials of rights for persons with disabilities, except with respect to the right to vote and the right to hold legislative office. Specifically, 27% of constitutions adopted before 1990 allow for denials of the right to vote based on mental health relative to 21% of constitutions adopted in 2010 or later. Similarly, 39% of constitutions established before 1990 allow for denials of the right to hold office based on mental health conditions compared to 21% of constitutions adopted since 2009.

Universal v. Specific Guarantees

While it is commonly asserted that the CRPD merely clarifies existing rights protected by other human rights treaties, the CRPD's explicit application of these rights to individuals with disabilities represented an important paradigm shift for the global community.¹¹² The drafting of the Convention itself served as an acknowledgment that the broad protections of the Universal Declaration of Human Rights or the International Covenant on Civil and Political Rights, for example, "were not designed to address the specific needs and obstacles that a person with disabilities faces," and therefore were of limited utility for meaningfully furthering the social and economic participation of individuals with disabilities around the world.¹¹³ The CRPD also called on states to not only protect disabled citizens from discrimination (through so-called "negative rights"), but also to proactively assure their rights to live, work, and engage with their societies on equal terms as their non-disabled peers ("positive rights").

112. See, e.g., van Weele, *supra* note 17.

113. *Id.* at 10.

Given the intent of the CRPD's drafters to advance more express protections of the rights of persons with disabilities, it is important to examine the nuances of rights guaranteed by national governments to assess their progress toward fully implementing the CRPD's principles. In our globally comparative study of 193 UN member states, we therefore distinguished between countries that guaranteed rights universally and those that specifically extended rights to individuals with disabilities. Further, we examined not only prohibition of discrimination, but also affirmative guarantees. The results of this analysis revealed that although relatively few countries guarantee the full scope of CRPD rights to their disabled citizens through their constitutions, the proportion of those that do has been increasing over time.

Yet, more than three times as many constitutions explicitly guarantee equity and non-discrimination on the basis of gender, ethnicity, and religion compared to on the basis of disability. Moreover, explicit constitutional exceptions and limitations of the rights of persons with disabilities, particularly for mental health in civil and political rights, further call into question whether universal guarantees are likely to apply to all persons with disabilities.

The fact that constitutions have increasingly incorporated relevant provisions to ensure access to fundamental rights for persons with disabilities over the past fifteen years, as observed in this study, indicates an increased global recognition of the significance of incorporating explicit guarantees in constitutional frameworks. However, the absence of relevant provisions in the vast majority of constitutions to date also highlights the importance of putting additional legal mechanisms in place to ensure persons with disabilities have access to fundamental human rights.

The Role of Other Legal Processes and Structures

While constitutions often provide the strongest guarantees for individual rights, complementary legislation and case law that emerges from litigation are similarly important for ensuring rights are fully realized. Furthermore, ensuring that both statutes and constitutional guarantees are actually enforced is a persistent challenge for both the CRPD and all international human rights agreements.

Litigation can play an important role in creating a body of jurisprudence that can clarify ambiguities within constitutional protections and further extend rights for persons with disabilities beyond a narrow interpretation of the constitutional text.

Similarly, legislation often serves an important role in guaranteeing rights to persons with disabilities that are not reflected in national constitutions, particularly older constitutions that are difficult to amend. The Americans with Disabilities Act (ADA) of 1990, for example, set important standards of equality and non-discrimination for persons with disabilities in access to state and local government services, public accommodation, and

employment opportunities. While improvements experienced by Americans with disabilities as a result of the ADA have been inadequate in some areas, particularly access to employment, significant progress resulted overall and the law has inspired other countries to enact legislation to address the marginalization of persons with disabilities in their own nations.¹¹⁴ According to Degener & Quinn (2002), more than forty UN member states adopted anti-discrimination legislation in the two decades after 1990,¹¹⁵ while others passed landmark pieces of legislation specific to discrimination against persons with disabilities in certain contexts. Vanuatu's Education Act No. 21 of 2001, for instance, protects children from refusal of admission to education on the grounds of disability, which is an indication of progress, since laws for the promotion of rights of persons with disabilities have historically been uncommon in the region.¹¹⁶

While this examination is beyond the scope of this study, it is important to note that existing laws in conjunction with constitutional provisions need to be taken into account to fully comprehend the extent to which individuals with disabilities enjoy fundamental rights. Legislation is often critical to concretize broad constitutional provisions and thereby increase the realization of specific rights.¹¹⁷ For example, while South Africa's constitution prohibits discrimination on the grounds of disability within an article concerning overall equality,¹¹⁸ the country's Employment Equity Act both prohibits discrimination on the grounds of disability and supports affirmative action by employers to "identify and eliminate enjoyment barriers, including unfair discrimination, which adversely affect people from designated groups" and "to further diversity in the workplace based on equal dignity and respect of all people."¹¹⁹

Areas for Future Research

To situate examples of legislative changes over time in global context, more research is needed to understand whether countries with constitutional commitments to persons with disabilities have also enacted specific

114. See Heyer, *supra* note 60; NAT'L COUNCIL ON DISABILITY, THE IMPACT OF THE AMERICANS WITH DISABILITIES ACT: ASSESSING THE PROGRESS TOWARD ACHIEVING THE GOALS OF THE ADA (2007), available at <http://www.ncd.gov/newsroom/2007/07262007>.

115. See Theresia Degener & Gerard Quinn, *A Survey of International, Comparative and Regional Disability Law Reform*, in *DISABILITY RIGHTS LAW AND POLICY: INTERNATIONAL AND NATIONAL PERSPECTIVES* 3 (Mary Lou Breslin & Silvia Yee eds., 2002).

116. See Harpur, *supra* note 7.

117. By the same token, legislation can also be the source of restriction of individuals' rights. This has been the case, for example, with voting rights. According to Fiala-Butora et al. (2014), the majority of existing legal frameworks in the EU disenfranchise individuals with disabilities from their right to vote regardless of their voting capacity. Based on persisting exclusionary measures, the CRPD committee has continuously urged State Parties in its Concluding Observations "to replace regimes of substitute decision-making by supported decision-making, which respects the person's autonomy, will and preferences."

118. CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 8 MAY 1996, as amended, 1 Feb 2013, art. 9.

119. REPUBLIC OF SOUTH AFRICA, EMPLOYMENT EQUITY ACT, No. 55 of 1998, art. 15.

legislative guarantees and whether countries that lack constitutional guarantees have passed legislation to guarantee equal rights to persons with disabilities.

Given that the scope of this project included 193 countries, and that the role and strength of case law varies substantially across countries, we were unable to include an analysis of case law relevant to the rights we examined. Including case law in future analyses will be important to better understand the extent to which equal rights are protected for persons with disabilities in different countries.

Finally, additional research is also needed to examine how constitutional protections of rights for persons with disabilities translate into the realization of equal rights for people on the ground. Future research is needed to understand whether broadly written constitutional protections of equal rights across disability are equally effective at addressing the rights of persons with mental and physical disabilities as those that specify the group; how often denials and exceptions to rights for persons with disabilities curtail their fundamental rights; and what barriers exist to fully implementing constitutional equal rights for persons with disabilities.

At a time when there is an increased awareness of the rights of persons with disabilities, it is important to push not only for better outcomes at an individual level, but also for countries to provide the legal foundation for the equal rights of persons with disabilities alongside those of other women and men who have previously been marginalized by both law and practice.