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Submission to the Committee on the Rights of Persons with Disabilities regarding

Article 11 of the Convention

February 15, 2023

# Introduction

The Harvard Law School Project on Disability (HPOD) welcomes this opportunity to provide inputs to the Committee on the Rights of Persons with Disabilities (the “Committee”) for its day of general discussion on Article 11 of the Convention on the Rights of Persons with Disabilities (CRPD).[[1]](#footnote-1) This submission aims to summarize the Committee’s current approach to holding States parties accountable for their climate-related obligations under the CRPD through its concluding observations, in order to identify ways that the Committee may provide states parties more robust normative guidance relating to these obligations in the form of a future general comment on Article 11.[[2]](#footnote-2)

# Statement of Interest

HPOD is a global center on disability rights law and policy based at the Harvard Law School in Cambridge, MA, USA, that has worked in some forty-four countries by providing technical support to public and private actors and by producing leading academic scholarship on the CRPD. Deeply concerned by the existential threat posed by climate change, HPOD has increasingly focused on the moral and legal imperative for disability-inclusive climate action. HPOD’s scholarship, which includes recent publications in *Nature*, *The Lancet*, and *Human Rights Quarterly*,[[3]](#footnote-3) and a forthcoming symposium,[[4]](#footnote-4) as well as its advocacy, which include a September 2022 convening of climate researchers as well as collaboration with organizations of persons with disabilities (OPDs) on climate action,[[5]](#footnote-5) among other activities, have informed the present submission.

# Content of Article 11

The wide-ranging effects that climate change portends for the liberty, health, and economic, food, and personal security of persons with disabilities would make climate change an issue that the Committee could address across multiple CRPD articles. However, the Committee has largely addressed climate-related issues within the remit of Article 11. Article 11 requires States parties to “take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.”[[6]](#footnote-6) As such, the Committee has a long track record of addressing disaster risk reduction under Article 11.[[7]](#footnote-7)

Although, as described below, the Committee has recognized a link between climate change and natural disasters in its recent concluding observations, climate change portends myriad adverse effects on persons with disabilities beyond climate change-induced disasters. For example, elevated ambient temperatures negatively impact the health of people with conditions such as albinism, spinal cord injuries, and multiple sclerosis. Individuals with albinism are at heightened risk of skin cancer due to harmful ultraviolet radiation and inequality in accessing healthcare and indoor employment opportunities.[[8]](#footnote-8) Thermoregulation is affected synergistically in people with spinal cord injury by the decentralized autonomic nervous system, disrupted hypothalamus input, and medication.[[9]](#footnote-9) Between 60-80% of multiple sclerosis patients have been reported to have exacerbated symptoms with higher ambient temperatures or elevated core body temperature due to exercise,[[10]](#footnote-10) and during periods of unusually warm weather or high humidity, individuals with multiple sclerosis have a greater likelihood of seeking emergency room or inpatient visit care.[[11]](#footnote-11) Last, having a psychosocial disability triples the risk of mortality during heatwaves, potentially due to medications such as antipsychotics, antidepressants, and neuroleptics that affect thermoregulation used by some persons with mental disabilities.[[12]](#footnote-12)

Thus, it is critical that the Committee respond to growing evidence of the broad-based effects of climate change on persons with disabilities[[13]](#footnote-13) by strengthening its current approach to climate change, as discerned from its concluding observations on States parties’ reports.

# Limitations in the Committee’s Observations

The Committee has a mixed record on addressing the disproportionate effects of climate change on persons with disabilities in its concluding observations on States parties’ report, a critical mechanism for monitoring CRPD implementation. While in recent years the Committee has more frequently addressed these effects in its concluding observations on the reports of states parties, it has done so with a limited focus on disaster risk reduction, inconsistently, with a narrow focus on procedural gaps, and without specificity. These limitations in the Committee’s approach to monitoring states parties’ climate-related CRPD obligations may have the effect of limiting the role of the Committee in promoting disability-inclusive climate action.

## Focus on Disasters

First, as mentioned above, the Committee has generally focused on the narrower thematic area of disaster risk reduction in its Article 11 observations, rather than the broader implications of climate change.[[14]](#footnote-14) But failure to address climate change outside the context of natural disasters risks ignoring the myriad other negative effects of climate change, such as the deleterious effects of rising temperatures on thermoregulation and mental health. Similarly, the Committee’s frequent reference to the Sendai Framework for Disaster Risk Reduction in its recommendations to States parties under Article 11 risks conveying that States parties may fulfill their climate-related CRPD obligations through adopting Sendai Framework-compliant measures. By contrast, the Committee has less frequently referenced international norms that addresses climate change beyond the narrow context of disaster risk reduction. For example, in the five-year period spanning its 17th to 27th sessions, the Committee has referenced Sustainable Development Goal 13 five times[[15]](#footnote-15) and the Paris Agreement only once.[[16]](#footnote-16) Moreover, these references are limited to recommendations that States parties undertake disability-inclusive disaster reduction measures that align with these norms, even though these norms encompass a broader range of climate action.

## Inconsistency

In the five-year period spanning its 17th to 27th sessions, the Committee has adopted concluding observations for 61 States parties, but has mentioned “climate change” in only 7 of them: Japan, Laos, and Singapore in 2022; Australia in 2019; Seychelles in 2018; Panama and Honduras in 2017.[[17]](#footnote-17) Also, it has conspicuously not mentioned “climate change” in its concluding observations for some notably climate change-affected countries, such as Vanuatu in 2019 and the Philippines in 2018.[[18]](#footnote-18) Similarly, in its observations for Bangladesh, the Committee mentioned “climate change” only in the context of citing the full name of the Paris Climate Accords.[[19]](#footnote-19) Thus, the Committee to date has not consistently raised the implications of climate change for persons with disabilities in its concluding observations, thereby missing opportunities to monitor States parties’ fulfillment of climate-related CRPD obligations. While to a certain extent the Committee’s inconsistency may reflect a lack of focus by States parties and civil society organizations on climate change, the Committee’s current approach risks signaling that only certain States parties have climate-related obligations under the CRPD, while others do not.

## Procedural Focus

The Committee’s recommendations have focused on procedural justice concerns in States parties’ development of disaster risk reduction and climate change policies and plans. To illustrate, in its most recent session, the Committee expressed by concern at a lack of consultation with OPDs in Japan, Laos, and Singapore. With slight variations in its language, the Committee recommended that each States party ensure the effective involvement of OPDs in designing and implementing disaster risk reduction plans and strategies and policies on climate change at all levels are formulated together with persons with disabilities.[[20]](#footnote-20) By contrast, the Committee does not allude to the substantive content of these plans, strategies, and policies. It recommends, for instance, that Japan ensure they “explicitly respond to [persons with disabilities’] specific needs in all situations of risk” and that Singapore ensure they are “comprehensive.”[[21]](#footnote-21) Its most clear substantive recommendation for the content of climate plans, strategies, and policies is found in its 2018 observations for Seychelles, where it recommended that the States party ensure that persons with disabilities have “a single point of contact in situations of emergency and disasters.”[[22]](#footnote-22) Thus, despite the importance of procedural justice in the development and implementation of climate measures, where the Committee addresses the effects of climate change on persons with disabilities in its concluding observations, it provides only limited guidance on the substantive content of States parties’ plans, policies, and strategies, which risks blunting the impact of its recommendations.

## Lack of Specificity

Last, where the Committee addresses gaps in States parties’ climate-related plans, policies, and strategies, it only rarely does so with specificity. For example, the Committee’s observations on Seychelles include its lone reference to a States party’s climate-related policy by name. The Committee was concerned by “the lack of inclusion of a disability perspective in the Disaster Risk Management Act (2014) and the absence of participation of persons with disabilities through their representative organizations in the design and implementation of laws, strategies and plans relating to climate change and situations of risk.”[[23]](#footnote-23) In a similar vein, the Committee specifically mentioned “National Disaster Prevention and Control Committee” as a relevant authority where OPD representation is needed as part of its recommendation that Laos ensure OPDs’ involvement in designing and implementing climate-related policies.[[24]](#footnote-24) The Committee’s specific references to relevant Seychelles’ legislation and Laos’ policy-making body likely will help clarify to those States parties how their CRPD obligations map onto their domestic law and policy frameworks. However, by generally failing to use this degree of specificity in its other climate change-related observations, the Committee risks giving States parties too much leeway to identify themselves which plans, policies, and strategies require modification.

# Contents of the Article 11 General Comment

The development of a general comment on Article 11 presents the Committee an important opportunity to strengthen its current approach to States parties’ climate-related obligations under the CRPD, as discernible in its concluding observations. The Committee should seize this opportunity to shore up each of the above-mentioned limitations in its current approach, by clarifying that States parties’ climate-related CRPD obligations extend beyond disaster risk reduction; affirming that all States parties have such obligations; articulating substantive guidelines and indicators for fulfilling these obligations; and identifying specific measures that States parties must amend or adopt to satisfy their obligations.

## Clarify That States Parties’ Climate-Related CRPD Obligations Extend beyond Natural Disasters

The Committee should expand on its current approach to climate change, which merely acknowledges climate change’s connection to natural disasters. As mentioned above, the Committee only recently has made this linkage in a handful of concluding observations. Trenchantly, the Committee’s narrow focus on natural disasters prevents it from addressing the far-reaching effects of climate change beyond disaster scenarios. One way that the Committee may justify a broader approach to climate change under the aegis of Article 11 is to clarify that the phrase “situations of risk” encompasses the effects of climate change beyond natural disasters. Although Article 11 does expressly mention natural disasters as one example of a situation of risk covered by Article 11, nothing in the plain language of this article limits the Committee to addressing only the three kinds of situations described therein. By clarifying, for example, that slow-onset effects of climate change, including elevated temperatures or rising sea levels, may qualify as “situations of risk,” the Committee could justify addressing a broader range of climate impacts under Article 11, thereby providing a strong normative rationale for more comprehensive vigilance of States parties’ climate-related CRPD obligations.

## Consistently Affirm That All States Parties Have Climate-Related CRPD Obligations

Given the existential threat that climate change poses around the world, the Committee should take care to alert States parties of its intention to address climate change consistently in its future monitoring and oversight activities. For example, the Committee should commit to addressing climate change in all its lists of issues and concluding observations, irrespective of whether States parties or civil society submissions themselves broach this issue. Furthermore, in contrast to its current tendency to raise climate-related issues in its concluding observations for States parties facing immediate climate risks, the Committee should also consider clarifying that climate-related CRPD obligations are not limited to those States parties that might be most greatly affected by climate change. Indeed, the Committee might consider broadening the scope of its guidance to address the climate-related CRPD obligations of States parties who disproportionately contribute to climate change through consumption and production of fossil fuels. Such an approach would only further strengthen the Committee’s engagement on the outsized effects of climate change on persons with disabilities.

## Articulate Substantive Climate-Related CRPD Obligations

While the Committee has focused on climate-related procedural justice in its concluding observations, it has done little to articulate States parties’ substantive climate-related CRPD obligations. As the Committee recommended that Seychelles provide a single point of contact in disaster and emergency situations, it should also develop a series of *de minimis* measures that all States parties should undertake under Article 11, as well as other CRPD articles. For example, beyond adopting disability-inclusive disaster risk reduction measures militated by the Sendai Framework, the Committee might consider recommending that States parties establish cooling centers to assist persons with disabilities affected by elevated temperatures; provide access to alternative medications, therapies, and other health care services to persons with disabilities experiencing thermo-dysregulation; design social assistance and vocational programs to identify and support persons with disabilities whose livelihoods are endangered by climate change; and create equitable pathways for persons with disabilities residing in coastal areas to relocate, among many other possible concrete measures. Also, in articulating a clearer vision of the substantive measures that States parties must take to fulfill their climate-related CRPD obligations, given the cross-cutting effects of climate change, the Committee might also consider clarifying the implications of climate change on States parties’ obligations under the Article 9 right to accessibility, Article 25 right to health, and the Article 28 right to adequate standard of living and social protection, among other pertinent articles.

## Identify Specific Ways for States Parties to Fulfill Their Climate-Related CRPD Obligations

As mentioned above, in isolated instances the Committee has demonstrated its capacity to recommend that States parties adopt specific provisions to fulfill their climate-related CRPD obligations. While the Committee has generally instructed States parties to refer to the Sendai Framework to ensure their disaster risk reduction measures are disability inclusive,[[25]](#footnote-25) the Committee should reference measures that States parties should take in conjunction with other climate-related international norms, such as the Paris Agreement.[[26]](#footnote-26) To this end, the Committee might consider referencing nationally determined contributions or other measures that either ease the climate burden of persons with disabilities, promote their participation in sustainable employment and economic empowerment activities that promote climate resilience, such as climate-sensitive agriculture and related activities that promote food security, or promote their equitable transition into “green jobs” that facilitate decarbonization. The Committee might also make direct references to good practices identified in certain States parties that may be worthy of replication. Last, the Committee might specifically recommend measures aimed at combating perceptions that persons with disabilities are inherently vulnerable to climate risks and demonstrating the many ways that persons with disabilities are climate actors capable of meaningfully contributing to the global climate crisis.

# Conclusion

HPOD greatly appreciates the Committee members’ time and consideration regarding this submission and looks forward to future opportunities to inform the Committee’s important work in this critical area.

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3. Penelope J.S. Stein & Michael Ashley Stein et al., *The role of the scientific community in strengthening disability-inclusive climate resilience*, Nature Climate Change (2023), <https://doi.org/10.1038/s41558-022-01564-6>; Penelope J.S. Stein & Michael Ashley Stein, *Climate Change and the Right Health of People with Disabilities*, 10 The Lancet Glob. Health E25 (2022), <https://doi.org/10.1016/S2214-109X(21)00542-8>; Penelope J.S. Stein & Michael Ashley Stein, *Disability, Human Rights, and Climate Justice*, 44 Hum. Rts. Quarterly 81 (2022), <https://doi.org/10.1353/hrq.2022.0003>. [↑](#footnote-ref-3)
4. *Disability and Climate Change: Call for Digital Symposium Submissions*, HPOD.org (Nov. 10, 2022), <https://hpod.law.harvard.edu/news/entry/climate-change-call> (co-organized with the Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics at Harvard Law School and the Disability-Inclusive Climate Action Research Programme at McGill Law Faculty). [↑](#footnote-ref-4)
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6. G.A. Res. 61/106, *supra* note 2, at Art. 11. [↑](#footnote-ref-6)
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14. Motz, *supra* note 6, at 333 n.152 (collecting examples). [↑](#footnote-ref-14)
15. Comm. on the Rights of Persons with Disabilities, Concluding observations on the initial report of Indonesia, ¶ 27, U.N. Doc. CRPD/C/IDN/CO/1 (Oct. 12, 2022), <http://undocs.org/CRPD/C/IDN/CO/1>; Comm. on the Rights of Persons with Disabilities, Concluding observations on the initial report of Bangladesh, ¶ 24, U.N. Doc. CRPD/C/BGD/CO/1 (Oct. 11, 2022), <http://undocs.org/CRPD/C/BGD/CO/1>; Comm. on the Rights of Persons with Disabilities, Concluding observations on the initial report of Singapore, ¶ 22(b), U.N. Doc. CRPD/C/SGP/CO/1 (Oct. 5, 2022), <http://undocs.org/CRPD/C/SGP/CO/1>; Comm. on the Rights of Persons with Disabilities, Concluding observations on the initial report of Jamaica, ¶ 21(b), U.N. Doc. CRPD/C/JAM/CO/1 (May 20, 2022), <http://undocs.org/CRPD/C/JAM/CO/1>; Comm. on the Rights of Persons with Disabilities, Concluding observations on the initial report of Vanuatu, ¶ 21(b), U.N. Doc. CRPD/C/VUT/CO/1 (May 13, 2019), <http://undocs.org/CRPD/C/VUT/CO/1>. [↑](#footnote-ref-15)
16. Comm. on the Rights of Persons with Disabilities, Concluding observations on the initial report of Bangladesh, ¶ 24, U.N. Doc. CRPD/C/BGD/CO/1 (Oct. 11, 2022), <http://undocs.org/CRPD/C/BGD/CO/1>. [↑](#footnote-ref-16)
17. Comm. on the Rights of Persons with Disabilities, Concluding observations on the initial report of Japan, ¶¶ 25(c) & 26(e), U.N. Doc. CRPD/C/JPN/CO/1 (Oct. 7, 2022), <http://undocs.org/CRPD/C/JPN/CO/1>; Comm. on the Rights of Persons with Disabilities, Concluding observations on the initial report of the Lao People’s Democratic Republic, ¶¶ 18(c) & 19(c), U.N. Doc. CRPD/C/LAO/CO/1 (Sept. 30, 2022), <http://undocs.org/CRPD/C/LAO/CO/1>; Comm. on the Rights of Persons with Disabilities, Concluding observations on the initial report of Singapore, ¶¶ 21(b) & 22(b), U.N. Doc. CRPD/C/SGP/CO/1 (Oct. 5, 2022), <http://undocs.org/CRPD/C/SGP/CO/1>; Comm. on the Rights of Persons with Disabilities, Concluding observations on the combined second and third report of Australia, ¶ 21, U.N. Doc. CRPD/C/AUS/CO/2-3 (Oct. 15, 2019), <http://undocs.org/CRPD/C/AUS/CO/2-3>; Comm. on the Rights of Persons with Disabilities, Concluding observations on the initial report of Seychelles, ¶¶ 22 & 23, U.N. Doc. CRPD/C/SYC/CO/1 (Apr. 16, 2018), <http://undocs.org/CRPD/C/SYC/CO/1>; Comm. on the Rights of Persons with Disabilities, Concluding observations on the initial report of Panama, ¶ 29(b), U.N. Doc. CRPD/C/PAN/CO/1 (Sept. 29, 2017), <http://undocs.org/CRPD/C/PAN/CO/1>; Comm. on the Rights of Persons with Disabilities, Concluding observations on the initial report of Honduras, ¶ 26, U.N. Doc. CRPD/C/HND/CO/1 (May. 4, 2017), <http://undocs.org/CRPD/C/HND/CO/1>. [↑](#footnote-ref-17)
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25. Motz, *supra* note 6, at 333 n.156 (collecting examples). [↑](#footnote-ref-25)
26. *See, e.g.*, Comm. on the Rights of Persons with Disabilities, *supra* note 14, at ¶ 24. [↑](#footnote-ref-26)