

An analysis of reporting and monitoring in relation to the United Nations Convention on the Rights of Persons with Disabilities, the Right to Participation in Cultural Life and intellectual property

1. Introduction

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD, 2008) is an international treaty which aims to shape law and policy to achieve equality for disabled people. It contains innovative bridging provisions that seek to support States Parties, the countries and organisations who have agreed to its provisions, in the implementation of its measures. These can be found in Article 33 which outlines the need to ‘designate one or more focal points within government for matters relating to the implementation of the present Convention’. Furthermore, there is an overarching obligation on States Parties ‘to promote, protect and monitor implementation of the present Convention’ (Art 33(1)). The UNCRPD itself was drafted in a unique, collaborative manner that facilitated and financed the participation of disabled people throughout all negotiations (Justesen and Justesen, 2007). The Convention enshrines this approach in its Article 33(3) which requires that States Parties ensure that disabled people are involved in the development of national implementation measures.

Writing in 2014, the Invisible Difference team concluded that in relation to the Convention’s Article 30 Participation in Cultural life, the UK’s implementation of the Convention ‘did little to address the richness of the potential in the CRPD’ (Harmon et al, 2014). This chapter examines the approach taken to the Convention’s Article 30 by analysing States Parties’ Reports to the oversight Committee (UNCRPD 2015a) and tracking its responses. The research undertaken for this chapter took place in August 2015. The aim will be to highlight examples of good practice and to provide further recommendations as to how the reporting and monitoring process could be revised in order to bring about tangible change and improve participation in disabled dance.

2. The Right to Participation in Cultural Life

The Universal Declaration of Human Rights (1948) in its Article 27 (1) enshrines The Right to Participate in Cultural Life stating: ‘everyone has the right freely to participate in the cultural life of the community’. This right has subsequently been referenced in international instruments (ICEAFRD, 1963; CEDAW, 1979). In relation to disability rights, the gap in disability-specific provisions was initially addressed by The Standard Rules on the Equalization of Opportunities for Persons with Disabilities, adopted in 1993. This non-binding, policy shaping instrument in its Rule 10 upholds culture as a target area for equal participation and calls upon States to ensure that disabled people are given the opportunity to achieve their ‘creative, artistic and intellectual potential’. This equality is deemed not only to be of benefit to disabled people but to the wider community as a whole, and dance is specifically given as an example of a relevant activity alongside ‘music, literature, theatre, plastic arts, painting and sculpture’. These targets were crucial in the shaping of many national provisions and provided a starting point for the negotiations that ultimately led to the drafting of the UNCRPD (ENABLE, 2015). While the Rules separated ‘Culture’ from ‘Recreation and Sport’, the Convention enshrines in its Article 30 a right to equal participation in cultural life, recreation, leisure and sport. In its paragraph 2 it creates a duty on States Parties to:

take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.

Shava and Sganga (2009) believe that the use in international provisions of the term ‘cultural life’ represents a desire not just to encompass existing, traditional culture but all manner of human creative expression. In this way it will be able to evolve to apply to new cultural manifestations, such as those developed with or enhanced by new technologies. Harmon, et al (2015) strongly highlight the importance of dance, and particularly disabled dance, within cultural life. However, they identify a gap in that guidance and information does not exist in the area of intellectual property issues in relation to disabled creation and ownership of dance. In this way, Article 30’s scope has been diminished by a failure to provide required supportive and regulatory measures.

In general, the approach taken to intellectual property issues and disability usually relates strongly to the accessing of cultural works rather than post-creation protection. For example, intellectual property and access for disabled people have been given recent international legal prominence through the development of the Marrakesh Treaty (2013) which focuses on providing access to published works. This builds upon Article 30 (3) of the UNCRPD:

States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.

The Marrakesh Treaty has heralded a new shift in the approach of the international copyright regime towards redressing key power imbalances between rights holders and society. However, these developments will only have their desired impact if supported with political commitment backed up by tangible action and strategy (Harpur and Suzor, 2013). This chapter seeks to examine the role of dance as part of Article 30’s right to cultural life, building upon the following observations of the Invisible Difference team:

It is disappointing to note...that the initial report of the United Kingdom submitted in 2013 did not engage adequately with participation and elite participation by artists with different bodies (Brown and Waelde, 2015:581).

Furthermore, attention will be paid to the Article 33 provision relating to implementation and monitoring:

33(3) Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.

This is in order to probe ways in which the Convention could be implemented to give more weight to the voice of disabled people in, for example, addressing the position of dance in cultural heritage. It is accepted that the research undertaken in this chapter will merely provide a snapshot of on-going reporting and monitoring, but key trends can be identified which could shed light on how the Convention’s implementation can be improved to move towards greater equality. There is a need to translate this legal framework into tangible measures which lead to support for disabled dance at all levels. These need to be adequately funded and can include strategies such as promoting and marketing disabled and integrated dance initiatives; funding workshops, events and conferences on disabled and integrated

dance; facilitating networking; providing supported qualifications in integrated dance; and establishing national training programmes and mentoring.

3. Reporting, monitoring and the Convention on the Rights of Persons with Disabilities

Under Article 35, States Parties are required to submit a ‘comprehensive’ report to the Convention’s Committee within two years of it coming into force in the relevant jurisdiction. This is followed by reports submitted every four years, or more frequently if the Committee requests, and these, expressly, need not repeat information already contained in the initial report. It is open to States Parties to highlight any reasons for impeded progress in the achievement of the Convention’s obligations. Importantly, this reporting Article also references Article 4(3) which calls for the need for the involvement and consultation of disabled people and groups of disabled people in the implementation of the Convention and related decision-making processes.

The Committee has the power to make suggestions and general recommendations, with the States Parties being given the opportunity to respond with further information (Art 36 (1)). Transparency is a key factor, with the UN Secretary-General tasked with making the reports available to all States Parties (Art 36 (3)), and the States Parties themselves called upon to disseminate them as widely as possible (Art 36 (4)). The reports are made available on the website of the Office of the High Commissioner for Human Rights (OHCHR, 2015a), as are the List of Issues raised by the Committee (OHCHR, 2015b) and the Committee’s Concluding Observations (OHCHR, 2015c). These are the resources that have been analysed in order to shed light upon the position of disabled dance within the States Parties’ implementation measures and the extent to which disabled people have been consulted and given the opportunity to be heard within the implementation and reporting process.

3.1 States Parties Reports (Table 1)

There are 84 reports of States Parties available on the website and they were published from 2010 to 2015. Of these, eight¹ could not be fully accessed due to technical issues or the need for further translation. The reports were analysed to determine the approach taken to the Article 30 right to cultural life, the Article 33(3) relating to civil society participation and the approach, if any, taken to intellectual property. These results are summarised in Table 1.

The notion of ‘cultural life’ is a wide one and, as highlighted earlier, the Convention’s drafters chose to align this with recreation, leisure and sport. There is potentially a risk that the reports will prioritise sport at the expense of culture, so a decision was made to note the frequency of references to sport. Reference to access to cultural performances and venues was recorded separately from the facilitation of participation in cultural performances. Furthermore, specific references to dance were recorded. In relation to intellectual property, references to measures to facilitate access to works were recorded separately from those relating to ownership of intellectual property by disabled people.

Finally, the inclusion of measures to address the Article 33(3) involvement of disabled people in policy-making was recorded. This was approached on a wide basis, as there are a number of ways of facilitating participation; where there were no acceptable measures but work was being undertaken to put these in place a P for pending was included in this column.

¹ Jordan, Morocco, Oman, Mexico, Morocco, Russia, Saudi Arabia, Sudan

3.2 List of Issues (Table 2)

Analysis was made of the 38 available Lists of Issues raised by the Committee in response to the reports. References to the need to address access to and participation in sports were recorded, as was reference to the need to increase access to and participation in cultural activities, as broadly defined. Any comment related to intellectual property was recorded, as was any specific reference to the need to improve civil society participation as held in Article 33(3).

3.3 Concluding Comments (Table 3)

The 33 available Concluding Comments reports were analysed. Record was made of any reference to Article 30 and the specific point made was recorded in the table. Any reference for the need to accede to or implement the Marrakesh Treaty was recorded. Finally any specific mention to the need to increase the participation of disabled people as enshrined in Article 33(3) was recorded. Those highlighted in the table are the relevant specific comments as the following general comment is included in each report:

The Committee strongly encourages the State party to involve civil society organizations, in particular disabled persons' organizations, in the preparation of its second periodic report.

4. Results

This research aimed to evaluate the extent to which the UNCRPD reporting process can support disabled dance, including at an elite level. It is accepted that in relation to dance the term 'elite' is contested. While it can be used as a substitute for 'professional', the use of the term in this chapter is wider in scope and encompasses Privette's (1981) characteristics of peak performers: high level performance; clear focus; spontaneity; expression of self; and a fascination with the task. The aims of the research were achieved through an examination of the position of dance in the reports alongside an analysis of the approach taken to the protection of intellectual property.

4.1 Dance and Article 30

The comprehensive initial reports of the States Parties tend to approach the reporting process on an Article by Article basis. The decision to include 'recreation, leisure and sport' alongside cultural life in Article 30 immediately was seen to have an impact on reporting as, often, much, if not all, of the content reported has a focus on sporting activities. This was an on-going theme, with seven of the reports giving extensive information on access to sport and leisure while failing even to address culture. Conversely, there were a number of reports that only outlined issues relating to cultural life without covering sport, but this was often in the context of a very brief treatment of the Article as a whole. This could be a reflection of the in-depth expansion given on participation in recreational, leisure and sporting activities provided in paragraph 5 of the article. Indeed, on inspection, the reports tend to mirror the format of the articles and give more in-depth information in relation to the components of the Article for which greater detail is provided.

Another striking issue is the wide range of activities and services that can fall into the category of ‘cultural life’. This includes, as expanded upon in the article itself, access to books and libraries, audio-described television, access to tourist sites and museums, and access to and participation in theatre, music and the visual arts. This leads to a situation in which dance, even at a basic level, is competing with a wide range of activities that fall under this very widely drafted article.

In 20 of the 76 reports there is a specific reference to dance. Of these, the following outline initiatives that are aimed solely at children and young people: Mongolia’s ‘Child World’ event, the Czech Republic’s ‘Programme for the Support of Non-Professional Artistic Initiatives’ which has events and activities aimed at encouraging participation in ‘all types of dancing from folklore up to stage and modern dance’, Peru’s Marinera dance performances in Lima, the Cyprus Youth Organisation’s ‘Youth in Action’ free dance workshops, Montenegro’s two workshops including modern dance sessions for children, and Latvia’s youth dance collective. In a similar manner, the approach of Argentina and Spain to dance is to refer to it in relation to educational programmes. These initiatives are all positive developments as they support the experience of dance at a young age and, in this way, could nurture talent and lead to a lifelong interest and potential careers in dance. However, there is the risk that these States Parties could see their duty to support dance as discharged when a person leaves childhood. This approach does not facilitate a transition to elite participation and ownership in dance for adults. This can become particularly problematic when the transition to elite for disabled artists does not mirror provisions to support such transition for non-disabled artists.

In a similar manner, some States Parties’ reference to dance link it back to its health and therapeutic benefits, rather than its position as art. This can be seen in Cuba’s provision of dance therapy and the Philippines ‘care giving services’ with dance-based modules. The benefits of dance therapy for some groups of disabled people have been proven (Sandhal and Auslander, 2008:6) and these initiatives are positive. However, these States Parties have taken an approach that deems dance a part of treatment rather than an art form in its own right.

In relation to initiatives to support dance as an art form that goes beyond childhood, there was a number of differing approaches. These included: India’s Mahatma Gandhi Institute which provides resources free of charge to NGOs to deliver dance training, a folkdance performance in Ecuador which included the participation of 20 disabled people, and Macedonia’s training of dance groups.

A small number of references were made to adult, potentially elite, dance. The report from China holds that:

there are already 195 performing art troupes of persons with disabilities, who are supported by government departments in their cultural visits and exchanges in many countries. Some artists with disabilities have become household names in China.

More clarity would be needed to determine whether or not this is a segregated approach which separates disabled and able-bodied performers but the language used appears to indicate a segregated approach. In South Africa the African Sinakho Arts Group is a touring company that comprises more than 300 disabled performers alongside able-bodied

performers. The language used in the report from Sweden is succinct and demonstrates a high level of elite integration:

It is becoming increasingly common for professional theatre and dance groups to include actors and dancers both with and without disabilities.

However, it is the approach taken by New Zealand that stands out with its strategy created by Dance Aotearoa New Zealand (2010) entitled: ‘Would You Like This Dance?’ This is a comprehensive, strategic approach with themes and actions to be taken as part of a wide-ranging plan to promote what it terms ‘integrated dance’. Aim 2.1, for example, is to achieve a position in which ‘Integrated dance is a career option within the dance and recreation industry’ and this is followed by clearly defined objectives such as improving access to qualification schemes and developing networks to support elite disabled dance. The strategy demonstrates a strong commitment to long-term development of disabled dance at all levels. The creation of artistic works is addressed within the section on resources with its aim 5.4 to: ‘Develop a wider range of funding for disabled people to develop their own dance DVDs, books and dance material’. However, even in this detailed approach to disabled dance, as so often in dance practices, the issue of ownership and intellectual property is not tackled.

Within the Committee’s List of Issues and Concluding Comments there are no express references to dance. Perhaps due to many of the States Parties’ in-depth treatment of access to and participation in sport, there were many more issues raised in relation to cultural access and participation (sixteen) than to those relating to sports (three). Within the final Concluding Comments eight of the 33 reports refer to the need to address measures relating to Article 30. Of these, six highlight the need to increase access and two relate to the need to increase cultural participation.

4.2 Intellectual property

As outlined above, the UNCRPD in Article 30 (3) addresses intellectual property rights in terms of the elimination of unreasonable or discriminatory barriers in relation to access to cultural materials. There is no reference to the need to support ownership of artistic creation. On examining the reports, only eighteen of the 76 specifically reference measures taken to use intellectual property law to facilitate access to cultural materials for disabled people. This is despite it being an express provision in Article 30. The majority of the reports highlight existing domestic legal provisions that either already enable access to cultural works for disabled people, or outline steps taken to amend existing legislation. Examples of this include Hungary’s Copyright Law which states that ‘people living with disabilities can have free access to all copyright contents’ and an amendment to the Intellectual Property Code of the Philippines to allow exemptions for ‘reproduction or distribution of published articles or materials in a specialized format exclusively for the use of the blind, visually and reading impaired persons’. The European Union’s response outlines the nature of the Copyright Directive’s (2001/29/EC) exceptions allowing access for disabled people and highlights its role and negotiations in relating to the drafting of the Marrakesh Treaty. In a similar manner, the UK outlines its role in a pre-Marrakesh dialogue with the World Intellectual Property Organisation to improve access to artistic works for blind and visually impaired people. An interesting example of the Convention being used to shape legislative change can be found in the Cook Islands’ response which acknowledges that it did not, at the time of reporting, have an intellectual property law framework at all but, following Article 33 (3), states that it will involve disabled people in the consultation process to develop one.

Only three of the 76 reports include any reporting that may be seen to outline an approach that addresses ownership of intellectual property by disabled people. In a statement without further detail or an outline of implementation measures, Ecuador and Mauritius' reports hold that creator and authorship rights are to be given to all people, regardless of disability. The relevant section in the Ukraine's report merely restates Article 54 of its Constitution which enshrines that all citizens have a right to intellectual property protection. It does not go further to address issues specific to ownership and disabled people and, in this way, may just be a simple restatement of the relevant domestic law without any tailoring to the nature of the Convention. None of the States Parties, therefore, have adequately outlined any existing regulatory or legal changes relating to the unique position of disabled people and copyright ownership.

Within the List of Issues, ten of the 38 reports refer to intellectual property but all of these focus solely on the Marrakesh Treaty and the need either to accede, ratify or implement its measures. This trend is followed in the Concluding Comments with 22 of the 33 reports specifically referencing the Marrakesh Treaty with no other mention of intellectual property.

4.3 Civil society monitoring

The Convention requires disabled people and groups of organisations to be involved in the on-going monitoring of its implementation. This is crucial, as failing to address the voice of disabled people can give rise to a paternalistic approach which leads to further discrimination. In the States Parties' reports, 46 demonstrate a level of engagement with civil society at differing levels. These range from liaison with representative groups on an ad hoc basis to the establishment and funding of committees, such as Brazil's National Council for the Protection of the Rights of People with Disabilities (CONADE), which liaises with law and policy makers on an on-going basis.

Four States Parties acknowledge the lack of civil society monitoring but indicate that measures will be implemented to address this as, for example, Gabon's report states:

A national committee for the integration of persons with disabilities shall be established, comprising the relevant ministerial departments, non-governmental organizations and associations of persons with disabilities.

In the List of Issues and Concluding Comments a number of States Parties are singled out by the Committee to address the strategies relating to civil society monitoring. These responses range from clarification of the nature of the monitoring or of the composition of named groups, through to the blunt statement directed at the Cook Islands:

The Committee is concerned at the absence of an independent monitoring framework and the lack of civil society involvement.

A number of the reports refer to civil society involvement in the creation of a shadow or alternative report, drafted by civil society. These are not available directly alongside the list of official reports but, as part of the Convention monitoring process are submitted as 'Information from Other Sources'. A good example is the European Disability Forum's Alternative Report (2015) which takes an in-depth and comprehensive approach to each article, although it does not address ownership of intellectual property.

An innovative approach was taken in the Austrian formal report which expressly incorporates the civil society shadow commentary. This allows for a voice that directly contradicts with the official response with, for example, the statement in relation to Article 30 that:

For civil society organisations, the services offered in this field are not satisfactory. They consider that a lack of funding and a lack of awareness are responsible for this situation.

This response also raises the issues that:

Civil society organisations have pointed out what they view as an unsatisfactory situation regarding the implementation and monitoring of the Convention in the Länder [States of Austria] as well as a general lack of information. They also criticise the fact that the national monitoring committee has too little funding and that its work is carried out in a purely honorary (non-remunerative) capacity.

This approach is to be lauded and adds further weight to the implementation of Article 33 (3). A fully amalgamated official report into which the civil society voice has been incorporated through negotiation may give less emphasis to the voice of disabled people, whereas the civil society input into the Austrian submission is independent and strong, highlighting the need for change.

5. Analysis

The States Parties' reports outline a range of legal measures and provisions to meet duties under the Article 30 Right to Participate in Cultural Life. There is a wide disparity in the level of engagement with this provision with some reports providing no information and others giving extensive, detailed reviews of on-going strategies backed up by funding. In general, the approach to reporting on the Article is one which, firstly, deals with the sport, leisure and recreation aspects before addressing others. As outlined above, this may be due to the greater detail given to the areas of sports and recreation in paragraph (5) or it may be due to the potentially wide notion of 'cultural life'. Furthermore, there is a great emphasis on access to culture rather than actual participation and again, this may be due to paragraph (1)'s emphasis on access to specific aspects of cultural life.

In 2009, General Comment 21 of the UN Economic and Social Council provided further detail on article 15(1)(a) of the International Covenant on Economic, Social and Cultural Rights, the Right of everyone to take part in cultural life. In its paragraph 15 it defines participation as comprising three interrelated components: participation, access and, crucially, contribution. Contribution includes as right to be 'involved in creating the spiritual, material, intellectual and emotional expressions of the community'. Harmon et al (2014) highlight that this, in turn, leads to the UNCRPD Article 30 enshrining a 'right to participate in cultural performance'. Inspection of the State Parties reports and Committee responses highlights that measures to ensure this are, in the main, missing from the reporting and monitoring procedures, with the predominant focus being given to access.

While there are still wide-ranging improvements that need to be made to enable access, real emancipatory equality will only be achieved when participation is achieved on an equal basis. There is an argument that States Parties need to enable access as a base line before

developing further, but if the Committee's responses do not emphasise improvements to be made in participation then progress in this area will be slow or overlooked completely. The Committee needs to provide more nuanced responses which indicate how change can be achieved that reaches further than addressing minimum standards of access.

In a reflection of the situation relating to non-disabled dance, the need to shape intellectual property law to encourage creation and ownership of elite disabled dance is, sadly, missing in both the Convention's reporting and the monitoring processes. The sole reference in the Convention itself to intellectual property relates to access and none of the reports outline any specific measures relating to authorship. Even New Zealand's wide-ranging strategy fails to tackle this issue; this is particularly surprising in the light of the well-developed approach to intellectual property and cultural heritage in this jurisdiction (Frankel and Drahos, 2012).

The Committee's responses only reference intellectual property in relation to the Marrakesh Treaty. This treaty was signed in June 2013 and as of February 2016, 14 of the 82 signatories had ratified the instrument, falling short of the 20 ratifications it needs to come into effect. The Treaty aims to increase the amount and range of books that are made openly accessible to visually impaired and print disabled people. This will be achieved through the use of new technology and agreements made in relation to the position of rights holders. Harpur and Suzor (2013) see the Marrakesh Treaty as heralding a fundamental shift in copyright law, as it goes against opposition to the imposition of maximum standards of protection and creates what they see as a 'ceiling' to the strength of intellectual property protections. Crucially, they see the inter-operation of the UNCRPD with this Treaty as fundamental to its impact and the 'paradigm inversion' it has created.

The Marrakesh Treaty has a specific focus on increasing access to literary works and is a positive development, although it will need a high level of monitoring for it to have the widest possible reach and to ensure that domestic regulators and rights holders comply with the new duties. On examining the UNCRPD Committee's responses, all the statements provided which related to the need to address intellectual property refer to the Marrakesh Treaty. In this way, there is a danger that the Marrakesh Treaty could be seen to fulfil all required intellectual property revisions and regulations needed to ensure the equality of disabled people. Legal measures that go beyond charitably providing access to works and actually empower disabled people to have control and power over the artistic works they create need to be a further focus of States Parties' reporting and the Committee's responses.

While the Marrakesh Treaty is narrow in its focus, it has the potential to provide a framework for those wishing to press for global intellectual property law reform relating to disabled people's ownership of works. Its existence has given the UNCRPD Committee's an easily recognisable international set of rights and duties that can be given strength by the monitoring provisions of the Charter. It is accepted that the Marrakesh Treaty was the culmination of years of negotiation and international collaboration but, further measures need to be taken in order to avoid a situation where it becomes the only normative instrument in the shaping of the Charter's intellectual property law provisions. The Committee on the Rights of Persons with Disabilities has, to date, made two General Comments under Article 39 (OHCHR, 2015d), these relate to equal recognition before the law and to accessibility. A comment on women with disabilities is currently being drafted (OHCHR, 2015e). A recommended move for the Committee would be to work towards a general comment on Article 30. This would address much needed issues of clarity in relation to further definition of the importance of cultural life, in the face of States Parties' emphasis on sports and recreation. It could also

highlight the need to ensure that the article is used to shape States Parties' law and regulation to facilitate and support participation, creation and ownership of cultural performance.

Throughout the reports there are varying degrees to which the Article 33 (3) duty to involve civil society is tackled. These often relate to the establishment, and sometimes the funding, of a liaison body that works with a group or groups of disabled people. However, despite the reports holding forth a variety of measures to increase participation, the voice of disabled people does not come across as central to the Convention's implementation. Furthermore, in relation to the Committee itself, Quinn highlights that, although innovation was recommended in civil society monitoring, in relation to the Committee 'they in fact reverted to a very traditional model' (Quinn, 2009 p252). An example of good practice is to be found in Austria's approach, which directly incorporated a civil society response in its formal report that often runs contrary to the official State position. In turn, the Committee could introduce some innovation into its reporting by directly addressing the points raised by civil society in its concluding comments. This approach, with practical suggestions from civil society to bridge the gap between the law and the realities of experience could mitigate the 'typically political response' identified in the UK Government's answer to charges (Harmon et al, 2014) that it was not deemed to fulfil Convention obligations in relation to participation in cultural performance.

The Convention itself was negotiated and drafted using a ground-breaking participatory model, as Justesen and Justesen (2007:43-44) write:

This process required a level of transparency, cooperation, self-restraint, and consensus unmatched in human rights treaty drafting and allowed civil society to monitor, participate in, and influence all decision-making discussions... This process required a level of transparency, cooperation, self-restraint, and consensus unmatched in human rights treaty drafting and allowed civil society to monitor, participate in, and influence all decision-making discussions.

This initial transformative zeal appears to have been lost in the more mundane realities of on-going monitoring and reporting. It needs to be rejuvenated through a more engaged dialogue with civil society in order for the Convention to achieve not only minimum standards of access but true equality in relation to equal participation and, in turn, ownership of cultural creation.

6. Conclusion

Through an examination of the States Parties' reports it can be seen that while some measures are in place to support dance, there are still many areas in which progress needs to be made. At a basic level, dance is lost within the wide reach of Article 30, with just over a quarter of the reports (as outlined in Table One) referring to it specifically. This gives scope for reports to go into great detail in relation to certain areas, with sport and recreation being prominent, while overlooking others. A recommendation in relation to this would be to require, perhaps through a template, the reports to address each sphere of participation in cultural life independently. This would provide more transparency in relation to what is lacking, as an empty space or column would reveal a failure to implement measures in key areas. It would also make it easier for the Committee and other interested parties to analyse the reports themselves. In turn, if such an approach were taken to Committee's List of Issues and Concluding Comments then key sectors would not be overlooked.

The analysis of the reports demonstrates a worrying approach to intellectual property rights. The introductory text of the Convention strongly highlights that it heralds a move away from charity and medical models that treat disabled people as passive, towards a more rights-based framework through which disabled people are treated as ‘active members of society’. However, in relation to intellectual property issues, Table One shows that while the majority of States Parties referenced the Marrakesh Treaty on access to works, only three reference intellectual property in relation to creation. This may be due to the existence of the Marrakesh Treaty, a specific legal instrument against which to measure progress but it also shows a passive approach of ‘allowing access’ for disabled people rather than providing support to be active, creative and assertive of rights of ownership. As outlined above, a General Comment from the Committee on the area of intellectual property could provide a much-needed wider focus here.

Finally, given the wider emancipatory aims of the Convention, civil society participation is crucial and, while there are some initiatives to include disabled people in the monitoring process, these often do not go far enough to place the voice of disabled people at its heart. The development of civil society shadow commentary reports does draw attention to certain issues not raised by the States Parties but, by its very nature, this split approach can be marginalising. While it might take more time and effort on the part of States Parties, there is a need to include direct input from civil society groups in all official reports. This should be supported by a strong requirement from the Committee to the extent that the reports are only valid if they include direct participation.

The Invisible Difference team (Brown and Waelde, 2015) has highlighted a number of areas for improvement in relation to the development of and ownership of disabled dance. The UNCRPD provides a framework to facilitate these changes but, as demonstrated from an analysis of the reporting procedures, dance and intellectual property ownership have been side-lined. Intrinsically linked is the piecemeal nature in which measures to ensure civil society participation are addressed. Given the need to empower and achieve a true rights-based approach, there is a need for the Committee, and in turn States Parties, to engage with disabled dancers, record their concerns formally and implement tangible measures to achieve equality.

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TABLE 1: References to specific spheres in States Parties' reports

STATE PARTY	Access to sports venues and participation	Access to cultural performances/venues	Participation in cultural performances	Specific reference to dance	Ref to IP - Access	Ref to IP- Creation	Involvement of groups of disabled people in decision-making
Algeria	X	X	X				X
Argentina	X						X
Armenia	X	X	X				
Australia	X	X					X
Austria	X	X	X	X	X		X
Azerbaijan			X				
Belgium	X	X					
Bolivia	X						X
Bosnia & Herzegovina	X	X					
Brazil	X	X	X				X
Bulgaria	X	X	X		X		X
Canada	X	X					X
Chile	X						X
China	X	X	X	X	X		
China: Hong Kong	X	X	X	X	X		
China: Macau	X	X					
Columbia	X	X	X				X
Costa Rica	X	X	X				X
Cook Islands	X						X
Croatia	X	X	X				X
Cuba	X	X	X	X			X
Cyprus		X	X	X			X
Czech Republic	X	X	X	X			P
Denmark	X	X					X
Dominican Republic			X				P
Ecuador		X	X	X		X	X
El Salvador	X	X					X
Ethiopia	X						X
European Union	X	X	X		X		X
Gabon	X		X				P
Germany	X	X	X				X
Greece	X	X					
Guatemala	X						
Haiti	X	X	X				X
Honduras	X	X					X
Hungary	X	X	X		X		P
Iran	X	X	X				X
Italy	X	X	X		X		X
Kenya	X	X					
Korea (Rep of)		X	X		X		X
Latvia	X	X	X	X			X
Lithuania			X				X
Luxembourg	X	X	X				X
Macedonia (FYR)	X	X	X	X			X
Malta	X	X					X
Mauritius			X	X		X	X
Moldova	X	X	X				X

Mongolia		X	X		X		
Montenegro	X	X	X	X	X		
Nepal	X	X	X	X			X
New Zealand	X	X	X	X	X		X
Norway	X	X					X
Panama	X						X
Paraguay	X						
Peru	X	X	X	X			
Philippines	X	X	X	X	X		
Poland	X	X	X		X		
Portugal	X						
Qatar	X						
Rwanda	X	X	X				
Senegal	X						X
Serbia			X				X
Seychelles	X		X				
Slovakia	X				X		X
Slovenia	X	X	X				X
South Africa	X	X	X				X
Spain	X	X					X
Sweden	X	X	X	X	X		X
Thailand			X				
Tunisia	X	X					
Turkmenistan	X	X	X		X		
UK	X	X	X		X		X
Ukraine						X	X
Uganda	X	X					
Uruguay	X						X

TABLE 2: References made in the Committee's List of Issues

State Party	Access/participation sports	Access/participation culture	IP-related comment: Marrakesh Treaty	Civil society participation 33(3)
Argentina				X
Austria				
Australia				X
Azerbaijan				X
Belgium				
Brazil		X		
China (HK& Macau)				X
Cook Islands		X	X	X
Costa Rica				X
Croatia		X	X	X
Czech Republic		X	X	
Denmark				X
Dominican Republic		X	X	
Ecuador		X		
European Union		X	X	X
Gabon	X			
Germany				
Hungary				
Kenya				
Korea (Rep)				X
Lithuania				
Mauritius		X		X
Mexico		X	X	
Mongolia		X	X	X
New Zealand		X	X	
Paraguay	X	X		X
Peru				X
Portugal		X	X	X
Qatar		X		
Serbia				
Slovakia				
Spain				
Sweden				X
Thailand				
Tunisia				
Turkmenistan		X	X	
Uganda	X	X		X

Ukraine				X
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TABLE 3: References made in the Committee's Concluding Comments

State Parties	Art 30	Ref to the Marrakesh Treaty	Art 33 (3) Specific concern
Argentina			
Australia			X
Austria			
Azerbaijan		X	
Belgium		X	
Brazil	Need for accessible libraries and tourism	X	
China (inc HK/Macao)			X
Cook Islands	Need for accessible travel and tourism	X	X
Costa Rica		X	
Croatia	Need to establish arts festivals	X	X
Czech Republic		X	
Denmark		X	
Dominican Republic	Access to tourist/artistic/cultural sites & promote participation	X	
Ecuador	Access to sports centres and cultural venues	X	X
El Salvador	Access to sports centres and cultural venues		
European Union		X	
Gabon		X	
Germany		X	
Hungary			X
Kenya		X	X
Korea (Rep)		X	
Mauritius	Accessible tourism needed	X	X
Mexico		X	
Mongolia			X
New Zealand	Increase audio-described TV	X	
Paraguay			
Peru			
Qatar		X	X

Spain			
Sweden		X	
Tunisia			X
Turkmenistan		X	
Ukraine		X	X