

SYMPOSIUM ON WILLIAM I. PONS, JANET E. LORD, AND MICHAEL ASHLEY STEIN,  
“DISABILITY, HUMAN RIGHTS VIOLATIONS, AND CRIMES AGAINST HUMANITY”

UNCHAINING DISABILITY LAW: GLOBAL CONSIDERATIONS, LIMITATIONS AND  
POSSIBILITIES IN THE GLOBAL SOUTH AND EAST

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Pons, Lord, and Stein’s article entitled “Disability, Human Rights Violations, and Crimes Against Humanity,”<sup>1</sup> offers a timely and comprehensive analysis of the necessity to legally frame and approach crimes against persons with disabilities across the globe as crimes against humanity (CAH). National public inquiries examining the systematic violations against persons with disabilities repeatedly demonstrate how, despite efforts to report such heinous crimes, these violations remain largely ignored and nearly always unprosecuted.<sup>2</sup> In the Global South and East, violations may be accentuated as complex historical, economic, (geo)political, cultural, ideological, spiritual, and even religious beliefs come into play alongside shifting landscapes of civil unrest, war, and state militarization. Within such contexts, legal measures for the protection of persons with disabilities, particularly for minority communities, meet extraordinary barriers. In this essay, we identify a number of core issues that constrain the possibilities of investigation and prosecution of CAH committed against persons with disabilities living in the Global South and East. Even though such laws are largely grounded in practices and institutions of the Global North, this essay emphasizes the need to ensure that accountability efforts for CAH perpetrated against persons with disability are rigorous in their design, robust in their application, and recognize the heterogeneity of persons with disability on a global scale.

*Disability, Poverty, and Minority Communities in the Global South and East*

The barriers to implementing and enforcing disability laws are complex, multiple, and profoundly dense in any given context. Implementing and upholding rights and providing resources to human rights institutions to ensure effective and timely mechanisms of redress are particularly problematic under broad structures of severe poverty and socioeconomic inequality.<sup>3</sup> Poverty, marginalization, and exclusion are experienced most significantly by persons with disabilities, who in the Global South and East are among the poorest within their national contexts.<sup>4</sup> However, they form part of a broader pool of poor peoples, collectively experiencing profound exploitation,

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<sup>1</sup> See William Pons, Janet Lord & Michael Ashley Stein, *Disability, Human Rights Violations, and Crimes against Humanity*, 116 AJIL 58 (2021).

<sup>2</sup> Disability Royal Commission, *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (2021).

<sup>3</sup> See THOMAS POGGE, *FREEDOM FROM POVERTY AS A HUMAN RIGHT: WHO OWES WHAT TO THE VERY POOR?* (2007).

<sup>4</sup> See Karen Soldatić & Shaun Grech, *Transnationalising Disability Studies: Rights, Justice and Impairment*, 34 DISABILITY STUD. Q. 744 (2014).

violation, and oppression.<sup>5</sup> Deep structural poverty is in itself a human rights violation.<sup>6</sup> Extreme poverty disempowers the poor from claiming their rights and, more specifically, taking action to seek redress and reparatory justice for rights violations, particularly against well-resourced powerful actors, institutions, organizations, and states. Disability is also often the direct outcome of the human rights violations that arise from extreme forms of poverty and inequality.<sup>7</sup> Access to state social protection, financial transfers, and household and community financial support, is also critically scarce.<sup>8</sup> Low levels of personal and household financial assets mean that poor people are too busy trying to satisfy basic needs.<sup>9</sup> And claiming rights is far from costless, including not only direct costs such as lodging claims, legal fees, and travel costs to recognized courts, but also opportunity costs such as the value of lost labor in seeking legal assistance or sustaining a prolonged human rights court case.

Moreover, crimes against the poor, minority groups, and persons with disabilities are often dismissed or poorly investigated. Police may be absent, corrupt, or even feared and not trusted, and impunity may be the norm. Seeking police intervention and protection against rights violations and crimes for many persons with disabilities, especially those who are poor, can result in further violations by institutions supposed to protect them. The combination of minority persecution, poverty, and disability compounds susceptibility to everyday forms of violent crimes, extreme rights violations, and, at times, death, with limited to no opportunity for recourse because of the combined minority, disability, and/or poverty status.

Distinguishing these various markers of difference, and their inter-relationship, requires unique, nuanced training to distill when they may ground a claim for CAH persecution. For example, is it possible to decipher whether it was only persons with intellectual disabilities from a minority community who were targeted, or instead all persons with intellectual disabilities targeted in this particular context? Without rigorous democratic human rights institutions that are disability accessible, free, and proven to be safe for minority groups who have experienced extensive and long-standing persecution and communal violence, it becomes difficult to determine the basis on which a prosecution for CAH may be sought.

Outside of the Global North, persons with disabilities largely live within minority communities, notably in rural areas, and may well be caught up in gross violations as victims of either a single act, or extensive targeted programs of communal and state ethnic, religious, racialized, caste-based, homo/transphobic, or disability-specific violence. The relationship between long-standing minority persecution, intergenerational poverty, and discrimination in health systems suggests that the prevalence of disability is likely to be higher and/or compounded in these communities.<sup>10</sup>

Questions such as how CAH can be prosecuted on the grounds of disability are important when such vicious attacks are frequent and targeted at poor, minority communities, as well as persons with disabilities that are a result of extreme marginalization and poverty. How can disability CAH prosecution be a strategy for inter-group solidarity, particularly in contexts where persons with disabilities are often likely to be members of other persecuted groups as well?

<sup>5</sup> See SHAUN GRECH, [DISABILITY AND POVERTY IN THE GLOBAL SOUTH: RENEGOTIATING DEVELOPMENT IN GUATEMALA](#) (2015).

<sup>6</sup> *Id.* at 3.

<sup>7</sup> See Marianne Hedlund, *The Fight to Be Steadfast: Bolivian Disability Activists*, in [GLOBAL PERSPECTIVES ON DISABILITY ACTIVISM AND ADVOCACY: OUR WAY](#) (Karen Soldatić & Kelley Johnson eds., 2020).

<sup>8</sup> See Katja Hujo, [Social Protection and Inequality in the Global South: Politics, Actors and Institutions](#), 41 CRITICAL SOC. POL'Y 343 (2021).

<sup>9</sup> POGGE, *supra* note 3, at 5.

<sup>10</sup> See Nikesh Parekh & Tamsin Rose, [Health Inequalities of the Roma in Europe: A Literature Review](#), 19 CENTRAL EUR. J. PUB. HEALTH 139 (2021).

*Geographies of Violence and Implications for Disability CAH*

Feminist geographers have been at the forefront of identifying marginalized communities' unique vulnerabilities to violence. Importantly, this work draws out the "relationship between interpersonal violence and systematic, institutionalized forms of violence and inequality."<sup>11</sup> Issues such as the design of the streetscape, where one lives, with whom one lives, to name a few spatial dimensions, all shape one's vulnerability to violence, since these spatial dimensions are often associated with differences in inequality, marginality, and minority status. Drawing on this work, disability feminist geographers have begun to highlight the specific vulnerabilities that result in the disproportionate levels of violence for persons with disabilities.<sup>12</sup> In line with feminist geographers, the important dimensions of place and space can be scaled, from micro forms of violence in everyday life through to structural relations of global power. This relational understanding of place, space, disability, and CAH has particular resonance for persons with disabilities within the Global South and Global East, due to the positionality of bodies, peoples, communities, their relationship to the nation state, and broader geopolitics.<sup>13</sup>

Efforts to investigate and prosecute CAH on the grounds of disability require acute attention to cultures of impunity that are shaped by the context in which they occur. Contextual dynamics not only make persons with disabilities easily identifiable, but also often result in very specific forms of disability CAH.<sup>14</sup> On a global scale, persons with disabilities are disproportionately segregated, incarcerated, and detained in discrete, often carceral and carceral-like centers, including within immigration detention centers, for indefinite periods.<sup>15</sup> Many of these segregated spaces operate as total institutions, enclosing every aspect of a person's lifeworld.<sup>16</sup>

While it may appear that persons with disabilities may experience similar forms of violence as other confined and detained persons, the location of violence against persons with disabilities often means the CAH is discrete, hidden, and targeted explicitly at behaviors that are causally related to one's impairment<sup>17</sup>—to force upon the person, new, ableist norms of behavior.<sup>18</sup> Wadiwel suggests that such segregated residential settings are better characterized as "black sites" given the everyday levels of violence persons with disabilities experience with the professional administration of behavioral interventions.<sup>19</sup>

The context and location in which persons with disabilities live can also augment commonly held normative assumptions that persons with disabilities can be dangerous and in need of confinement.<sup>20</sup> For persons with disabilities from Indigenous backgrounds, the context of disability, Indigeneity, and CAH are situated within the

<sup>11</sup> Jennifer L. Fluri & Amy Piedalue, *Embodying Violence: Critical Geographies of Gender, Race and Culture*, 24 GENDER, PLACE & CULTURE 534 (2017).

<sup>12</sup> Claire Edwards & Nicola Maxwell, *Disability, Hostility and Everyday Geographies of Un/Safety*, SOCIAL & CULTURAL GEOGRAPHY (2021).

<sup>13</sup> *Id.* at 11.

<sup>14</sup> *Id.* at 3.

<sup>15</sup> See Karen Soldatić & Lucy Fiske, *Bodies "Locked Up": Intersections of Disability and Race in Australian Immigration*, 24 DISABILITY & SOC'Y 289 (2009). See Maria Pisani & Shaun Grech, *Disability and Forced Migration: Critical Intersectionalities*, 2 DISABILITY & GLOB. SOUTH 421 (2016).

<sup>16</sup> See Isabel Karpin & Karen O'Connell, *Disability, Gender and Institutions: An Examination of Australian Cases Involving Personality Disorders*, in *THE LEGACIES OF INSTITUTIONALISATION: DISABILITY, LAW AND POLICY IN THE "DEINSTITUTIONALISED COMMUNITY"* (Claire Spivakovsky, Linda Steele & Penelope Weller eds., 2020).

<sup>17</sup> See Dinesh Wadiwel, *Disability and Torture: Exception, Epistemology and "Black Sites,"* 31 CONTINUUM 388 (2018).

<sup>18</sup> See Dinesh Wadiwel, *Electric Torture: Rationalities of Violence Across Disability and Animality* (The Australian Sociological Association Thematic Week, Paper Presentation, 2021).

<sup>19</sup> *Id.* at 15.

<sup>20</sup> *Id.*

broader biopolitics of settler colonial racialization and dispossession.<sup>21</sup> For example, Indigenous persons with cognitive impairments are extremely vulnerable to the indefinite detention which occurs when people are unable to plead due to a “lack of capacity.” This vulnerability is magnified by overrepresentation in all aspects of the justice process and a lack of legislative options to manage the interaction of the unfitness to plead and the risk of harm to others.<sup>22</sup>

Further, within the Global South, Indigenous persons predominantly live in geographically isolated locations with rough terrain, requiring expensive transport.<sup>23</sup> Combined with restricted access to assistive devices such as wheelchairs and prostheses, mobilizing for fair, reparatory justice against state or communal violence is arduous for persons with disabilities, prohibitively expensive, and in many instances, a direct threat to their own lives.<sup>24</sup> Further, human rights organizations are under-resourced and predominantly urban-based with limited staffing capacity with the required expertise, making it difficult for persons with disabilities to enlist their assistance in seeking justice.

Locational and contextual dynamics that lead to and heighten gross human rights violations also differentially impact women with disabilities and sexually and gender diverse women with disabilities.<sup>25</sup> The prevalence of violations against this population is higher and more frequent than—and the violence they experience is distinct from—that of their able-bodied sisters.<sup>26</sup> The gendered dynamics of disability CAH also generate unique spatial patterning for women with disabilities. Located within disability institutions, women with disabilities are, first, easily identifiable to external sexual predators and, second, more likely to be targets of sexual violence by “care” staff and male co-residents; both kinds of crime are rarely investigated.<sup>27</sup> Outside of institutional life, the intersectionality of poverty, gender, and disability shapes unique gender-disability life course trajectories.<sup>28</sup> Women with disability are pushed to reside in under-resourced and over-policed peripheral locations<sup>29</sup> and the rural distribution of disability accessible gendered violence response services is largely non-existent, notwithstanding extensive global development investment.<sup>30</sup>

In transitional landscapes, CAH prosecution requires rigorous examination of the gender-disability nexus, particularly for minority women with disabilities, to facilitate fair, just, and non-discriminatory access to human rights institutions and judicial systems. Women experience additional stigma where gendered acts of violence result in debilitating conditions, impairment and/or markings on the body as a targeted act in civil unrest and war. Disability in such instances becomes more than a personal historical memory; it also outwardly identifies women with disability with the minority group to which they belonged. The long-term impact of such targeted

<sup>21</sup> See Patrick Keyzer & Darren O’Donovan, *Imprisonment of Indigenous People with Cognitive Impairment: What Do Professional Stakeholders Think? What Might Human Rights-Compliant Legislation Look Like?*, 8 INDIGENOUS L. BULLETIN 17 (2016).

<sup>22</sup> *Id.* at 23.

<sup>23</sup> *Id.* at 5.

<sup>24</sup> *Id.* at 7.

<sup>25</sup> See Tammy Bernasky, *Working to End Gender-Based Violence in the Disability Community, Practical Action* (2022, forthcoming).

<sup>26</sup> See Leanne Dowse, Carolyn Frohmader & Aminath Didi, *Violence Against Women in the Global South: Working Locally, Acting Globally*, in *DISABILITY IN THE GLOBAL SOUTH: THE CRITICAL HANDBOOK* (Shaun Grech & Karen Soldatić eds., 2016).

<sup>27</sup> See Leanne Dowse, Karen Soldatić, Aminath Didi, Carolyn Frohmader & Georgia van Toorn, *Stop the Violence: Addressing Violence Against Women and Girls with Disabilities in Australia* (Background Paper, Hobart: Women with Disabilities Australia, 2013).

<sup>28</sup> See Alexandra Gartrell & Elizabeth Hoban, *Locked in Space: Rurality and the Politics of Location*, in *DISABILITY IN THE GLOBAL SOUTH*, *supra* note 26.

<sup>29</sup> See Theresa Lorenzo & Harsha Kathard, *Negotiating Violence in Contexts of Poverty in South Africa: An Empirical Study of Disabled Women’s Stories*, in *DISABILITY, GENDER AND VIOLENCE OVER THE LIFE COURSE: GLOBAL PERSPECTIVES AND HUMAN RIGHTS APPROACHES* (Sonali Shah & Caroline Bradbury-Jones eds., 2018).

<sup>30</sup> See Alexandra Gartrell & Karen Soldatić, *Rural Women with Disabilities in Post-Conflict Zones: The Forgotten Sisters of Australia’s Disability-Inclusive Development*, 1 THIRD WORLD: TWQ J. 370 (2016).

gendered violence can impede women with disabilities' long-term capacity to gain meaningful employment, generating economic and social injustices across the life course.<sup>31</sup> Robust and informed judicial oversight in transitional landscapes to produce reparations are critical to realize gendered-disability rights in the aftermath of war and to address inequalities that emerge across the life course. Judicial oversight is also necessary to facilitate substantive equality and justice in gendered-disability inclusive development.<sup>32</sup>

The unique layering of disability location and contextualization are critical concerns on a global scale and warrant rigorous investigation to ensure just and fair prosecution and reparations.

### *Educating the Legal Profession*

International disability laws, when ratified, generally assume the existence of a legal system conversant with disability rights, violations, and targeted crimes. This is not always the case. There is also little recognition in international disability law of the heterogeneity of persons with disabilities, in addition to the complex sociocultural context and location that constructs, defines, and frames the lives of persons with disabilities in the diverse contexts of the Global South and East. Moreover, in practice, the legal profession is barely educated in disability law, particularly where concerns related to persecution on other grounds have dominated.<sup>33</sup> Issues of accessibility, and how disability intersects with other dimensions of oppression, as outlined above, garner little attention. Legal strategies seeking redress for persons with disability thus require a re-education of the legal system. This entails formal recognition of the agency of persons with disabilities as autonomous subjects, to reframe historical and cultural constructions of disabled people as vulnerable, weak, and/or dangerous.

The unique rights violations that persons with disabilities are susceptible to, and how such factors interplay with the issues outlined above such as belonging to a marginalized minority group, are critical factors in ensuring accessible investigations and prosecutions that are responsive and adaptive to local concerns whilst employing the power of international law to ensure prosecution. CAH committed against persons with disabilities are both specific and grounded contextually, in local historical cultural practices and hierarchies of power, yet often tied to global relations of power and inequality.

### *Concluding Thoughts*

Over the past years, there have been increased legal measures to protect and promote the rights of persons with disabilities. Yet there has been significantly less action in relation to direct prosecution, despite mounting global pressure from disability rights advocates. The majority of persons with disabilities continue to live on the margins of, and often outside, the law, as the law offers them little or no protection because of deep stigmatization, inequality, and marginality. Institutions designed to protect persons with disabilities in countries positioned on the “global peripheries of law” are “places in the world where it is particularly difficult to realize human rights in practice.”<sup>34</sup> In this essay, we presented some key issues that constrain the possibility and potential of investigating and prosecuting CAH in practice. Our aim was to illustrate the importance of critically engaged scholarship on violence against persons with disabilities to inform the development of disability CAH beyond Western understandings.<sup>35</sup>

<sup>31</sup> KAREN SOLDATIC & DINESHA SAMARARATNE, [WOMEN WITH DISABILITIES AS AGENTS OF PEACE, CHANGE AND RIGHTS](#) (2021).

<sup>32</sup> *Id.* at 30.

<sup>33</sup> See Anna Lawson, [Disability Law as an Academic Discipline: Towards Cobesion and Mainstreaming?](#), 27 J. L. & Soc'y 558 (2020).

<sup>34</sup> See Vera Chouinard, [Living on the Global Peripheries of Law: Disability Human Rights Law in Principle and in Practice in the Global South](#), 7 LAWS (2018).

<sup>35</sup> See Martin Müller, [In Search of the Global East: Thinking Between North and South](#), 25 GEOPOLITICS 734 (2020).