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Michael Ashley Stein

Janet E. Lord

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ENABLING REFUGEE AND IDP LAW AND POLICY: IMPLICATIONS OF THE U.N. CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

Michael Ashley Stein* & Janet E. Lord**

I. INTRODUCTION

Some 40 million persons with disabilities worldwide are refugees or internally displaced within their own countries.¹ Already highly marginalized within their communities before forced migration,² persons with disabilities are exposed to increased hazards during and following flight. Nevertheless, recent humanitarian crises demonstrate that assistance operations neither foresee nor react to the specific needs of persons with disabilities.³ The adoption of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol⁴ has highlighted disability inclusion as a human rights issue

* Executive Director, Harvard Law School Project on Disability; Visiting Professor, Harvard Law School; Cabell Research Professor of Law, William & Mary Law School.

** Senior Partner, BlueLaw International, LLP; Research Associate, Harvard Law School Project on Disability.

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1. *Report by the Director of UNHCR New York Office: Conference of the States Parties to the Convention on the Rights of Persons with Disabilities* (Sept. 3, 2010), www.un.org/disabilities/documents/COP/COP3/Presentation/JanzSep3-2010.doc (by Udo Janz). Although different legal frameworks and state obligations apply to the needs of refugees and internally displaced persons, we have conflated these two categories for the purposes of discussing equal access to various services and processes.

2. For more on the human rights of persons with disabilities generally, see *Human Rights and Persons with Disabilities*, UN ENABLE, www.un.org/esa/socdev/enable/rights/humanrights.htm (last visited Dec. 31, 2011); David W. Anderson, *Human Rights and Persons with Disabilities in Developing Nations in Africa* (Paper presented at the Fourth Annual Lilly Fellows Program National Research Conference, Nov. 13, 2004), available at http://www4.samford.edu/lillyhumanrights/papers/Anderson_Human.pdf.

3. See generally Janet E. Lord, Michael Waterstone & Michael A. Stein, *Disability Inclusive Development and Natural Disasters*, in *LAW AND RECOVERY FROM DISASTER: HURRICANE KATRINA 71* (Robin Paul Malloy ed., 2008).

4. Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, U.N. Doc. A/RES/61/106 (Dec. 13, 2006) [hereinafter CRPD]; Optional Protocol to the Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, Annex II, U.N. Doc. A/RES/61/106 (Jan. 24, 2007) [hereinafter Optional Protocol]. Within the human

in situations of risk that often lead to displacement, including natural disasters and armed conflict.⁵ Notably, the treaty's Preamble acknowledges that "the observance of applicable human rights instruments are indispensable for the full protection of persons with disabilities, in particular during armed conflicts and foreign occupation."⁶ However, protecting persons with disabilities in humanitarian responses requires concrete and operational guidance that takes general legal standards of the sort typically found in treaties and applies them with particularity and effect to field operations.⁷

Human rights-based protection for refugees and internally displaced persons (IDPs) with disabilities is a challenge of acute global interest.⁸ Forced migration from and within conflict-affected countries (whether Iraq or Sudan) and between neighboring states experiencing natural disasters (for instance, Bangladesh and Myanmar) underscores the exceedingly vulnerable position of persons with disabilities even within an already precariously situated population. Following the adoption of the CRPD, a handful of studies analyzed the disability dimension of the 2004 Asian tsunami⁹ and the 2010 Haitian earthquake.¹⁰ Yet almost no additional research has been conducted on refugees and IDPs with disabilities.¹¹ This lacuna is particularly salient for women with disabilities who

rights system, a number of other treaties have optional protocols for the specific purpose of mandating treaty body review of individual (and sometimes) group complaints as well as procedures of inquiry for investigating treaty violations.

5. See CRPD, *supra* note 4, art. 11 (addressing situations of risk).

6. *Id.* pmb. (u).

7. See generally Janet E. Lord & Michael Ashley Stein, *Ensuring Respect for the Rights of People with Disabilities*, in *THE HUMAN IMPACT OF NATURAL DISASTERS: ISSUES FOR THE INQUIRY-BASED CLASSROOM* 77 (Valerie Ooka Pang et al. eds., 2010). The CRPD provides a more particularized framework for addressing the rights of persons with disabilities, including disabled refugees and IDPs; if applied correctly, that is, it would ensure that its general obligations and articles of transversal application are used to inform its specific substantive rights with attendant monitoring.

8. See generally Michael Ashley Stein & Janet E. Lord, *Human Rights and Humanitarian Assistance for Refugees and Internally Displaced Persons with Disabilities*, in *ASPECTS OF DISABILITY LAW IN AFRICA* 31 (Ilze Grobbelaar-du Plessis & Tobias Van Reenen eds., 2011); Aleema Shivji, *Disability and Displacement: A Shared Vision*, 35 *FORCED MIGRATION REV.* 4, 4 (2010); Rachael Reilly, *Disabilities and Displacement: Disabilities Among Refugees and Conflict-affected Populations*, 35 *FORCED MIGRATION REV.* 8, 8 (2010).

9. See, e.g., INT'L DISABILITY RIGHTS MONITOR, CTR. FOR INT'L REHABILITATION, DISABILITY AND IDRM EFFORTS IN INDIA, INDONESIA AND THAILAND (2005) [hereinafter CIR STUDY], available at www.ideanet.org/cir/uploads/File/TsunamiReport.pdf.

10. See, e.g., Sue Eitel, *Haitians Cope with Disabilities, Before and After Quake*, *FRONTLINES* (USAID), Sept. 2010 at 5, available at www.usaid.gov/press/frontlines/fl_sep10/p05_haiti100910.html.

11. For two rare exceptions, see WOMEN'S COMM'N FOR REFUGEE WOMEN & CHILDREN, *DISABILITIES AMONG REFUGEES AND CONFLICT-AFFECTED POPULATIONS* (2008) [hereinafter WOMEN'S COMM'N REP.]; WOMEN'S COMM'N FOR REFUGEE WOMEN &

are subjected to an additional discriminatory burden in the form of social stigma and culturally construed caretaker duties.¹² The dearth of disability-related analysis is remarkable in light of vigorous and univocal support by government delegations during the CRPD negotiations—including many from developing parts of the world—for clear CRPD obligations intended to protect persons with disabilities exposed to situations of risk.¹³ While there is trace evidence of attention paid to persons with disabilities in refugee and IDP contexts, it occurs within sweeping and vacuous undertakings to ensure the protection of an unascertained “vulnerable” mass.¹⁴ Such commitments, which treat all at-risk populations as a unitary whole, fail to disaggregate many and varied discrete needs of particular identity groups and provide no helpful guidelines on how to reach those individuals, address their protection needs, or otherwise ensure that their human rights are respected during humanitarian crises.

Part II of this Article assesses the impact of forced displacement on persons with disabilities and draws attention to their specific protection needs. Next, Part III examines the international law framework as it relates to the particular situation of refugees and IDPs with disabilities, identifying shortcomings and gaps in the protection framework. Part IV outlines the CRPD’s mandate for ensuring that individuals with disabilities can access human rights-based response services and suggests ways to use its framework to design more disability-inclusive strategies for refugees and IDPs in situations of risk. Thereafter, Part V examines two case studies of forced migration, drawing attention to the particular impact of displacement on persons with disabilities in distinct contexts. The first case study concerns the Asian tsunami of 2004, and the second considers the Bihari minority living in Bangladesh. We conclude by considering the implications of the CRPD for enhancing the protection framework for persons with disabilities who are either refugees or IDPs.

CHILDREN, DISABILITIES AMONG REFUGEES AND CONFLICT-AFFECTED POPULATIONS: RESOURCE KIT FOR FIELD WORKERS (2008). Although the existence of this work is a step in the right direction, it does not consistently adhere to disability rights-based notions or terminology.

12. See generally HUMAN RIGHTS WATCH, AS IF WE WEREN’T HUMAN (2010), available at www.hrw.org/en/reports/2010/08/26/if-we-weren-t-human.

13. See, e.g., Sebenzile Matsebula, Office on the Status of Disabled Persons in the Presidency of South Africa, Statement of the Second Session of the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights of Persons with Disabilities (June 16–27, 2003), www.un.org/esa/socdev/enable/rights/contrib-safrica.htm (“The impact of dual or multiple discrimination faced by individuals such as, women, children, refugees, minorities or persons with multiple and or severe disabilities or other status should also be included.”).

14. See *infra* Part III.

II. HOW FORCED MIGRATION IMPACTS PERSONS WITH DISABILITIES

Forced migration impacts individuals with disabilities in myriad ways.¹⁵ Often the circumstances surrounding involuntary movement are themselves disabling and can generate secondary impairments for persons with existing disabilities.¹⁶ Flight is typically marked by chaos. Even when persons with disabilities are not abandoned, they frequently find themselves displaced from support networks of family, friends, and community.¹⁷ Assistive devices, such as prosthetic limbs and hearing aids, as well as necessary medications, may be lost or left behind. The devastating impact of flight on the psychosocial well-being of the fleeing population is also a major risk factor. Health, rehabilitation, and transportation infrastructure can be destroyed during conflict or other emergencies, with serious consequences. Moreover, inadequate general medical care can increase the likelihood of disablement in the midst of these crises. To formulate effective disability-inclusion strategies, the specific needs of refugees and IDPs with disabilities must be appreciated, and, critically, persons with disabilities and their representatives organizations must be consulted and take part in the development of inclusive responses.¹⁸

A. Physical Security and Accessibility

Never ideal locations, refugee and IDP camps teem with risk for individuals with disabilities. Physical insecurity is further amplified in this context because of stereotypes casting persons with disabilities as weak and vulnerable, which enhances the likelihood of exploitation. Sexual violence—a prevalent problem for displaced women and girls generally—may become even more of a threat for women and girls with disabilities because of overall insecurity in displacement camps.¹⁹ Pointedly, a Human Rights Watch report on persons

15. See generally Stein & Lord, *supra* note 8.

16. Persons fleeing conflict or natural disaster often experience dangerous conditions that threaten their health and well being, from exposure to landmines, to adverse weather conditions from which they may have little protection, to exposure to other trauma that can create or exacerbate psychosocial conditions. See UNITED NATIONS DECADE OF DISABLED PERSONS, 1983–1992: WORLD PROGRAMME OF ACTION CONCERNING DISABLED PERSONS, ¶¶ 45–51 (1983), available at www.leeds.ac.uk/disability-studies/archiveuk/united%20nations/world%20programme.pdf.

17. See GLEN W. WHITE ET AL., RESEARCH & TRAINING CTR. ON INDEP. LIVING, FINAL REPORT: NOBODY LEFT BEHIND 5 (2007), available at www.nobodyleftbehind2.org/~rrtcpbs/findings/Final%20Report%20NLB%20July%202007.pdf (discussing how people with disabilities feel that they are “left behind” during evacuations after natural disasters).

18. See CRPD, *supra* note 4, art. 4(3).

19. NORA GROCE, HIV AND DISABILITY: CAPTURING HIDDEN VOICES 10 (2004), available at http://globalsurvey.med.yale.edu/capturing_hidden_voices_english.pdf.

with disabilities in Northern Uganda documented instances of physical and sexual violence against women refugees with disabilities, the husband of one refugee with a disability reporting:

I can't stay away from home. I heard there was food at another camp . . . I went there, but that place was far, and I stayed for a night. [My] neighbor came back [before me] and raped my wife.²⁰

The physical layout and infrastructure of camps for the displaced also are difficult to traverse for wheelchair and crutch users, and for people whose brain injuries compromise their balance. For instance, the refugee settlement areas in Dadaab, Kenya, are located in a sandy river delta that presents considerable mobility challenges for many persons with disabilities.²¹ To address this issue, one humanitarian assistance organization with expertise in designing and distributing assistive devices introduced specially designed wheelchairs with tires that could navigate the terrain.²² Too often, however, humanitarian responders lack the expertise to counter such disabling environmental factors. Further, urban communities where refugees and IDPs with disabilities seek refuge may be even less welcoming due to historically inaccessibly built environments. Yet studies indicate that the prevalence of refugees and IDPs moving to urban areas is on the rise.²³

B. Freedom of Movement

Refugees and IDPs with disabilities are frequently hampered in their ability to realize their right to freedom of movement and choice of residence, reinforcing vulnerability and eroding their security and well-being. Where persons with disabilities are not left behind during flight, they are often severely impacted following flight, which inhibits efforts to find durable solutions for displacement.²⁴ Abandonment during flight is, however, the stark reality for persons with disabilities in humanitarian crisis situations. This was demonstrated most poignantly in New Orleans during Hurricane Katrina, where many disabled

20. HUMAN RIGHTS WATCH, *supra* note 12, at 34.

21. WOMEN'S COMM'N REP., *supra* note 11, at 17.

22. *Id.*

23. See ELIZABETH COKER ET AL., HEALTH EDUCATION FOR URBAN REFUGEES IN CAIRO: A PILOT PROJECT WITH YOUNG MEN FROM SIERRA LEONE AND LIBERIA 4 (2003), available at www.aucegypt.edu/GAPP/cmrs/reports/Documents/Andrea.pdf; see also United Nations High Commissioner for Refugees [UNHCR], *Evaluation and the Implementation of UNHCR's Policy on Refugees in Urban Area*, at 3–4, U.N. Doc. EPAU/2001/10 (Dec. 2001) (by Naoko Obi & Jeff Crisp).

24. See WHITE ET AL., *supra* note 17, at 5.

persons were left behind and died, and in Northern Uganda, where Human Rights Watch reported that women with disabilities who were unable to flee rebel forces were subjected to disability-based abuse and persecution on account of stigma and discrimination.²⁵ Weakened support systems further compound freedom of movement. Restrictions on movement, for example, arbitrarily and unlawfully imposed detention, can disproportionately impact persons with disabilities for whom access to necessary support and accommodations is crucial to well-being and may not be provided in detention situations.²⁶

C. Family and Caregiver Support

During flight, refugees and IDPs with disabilities lose their support systems when families are broken up, resulting in separation from caregivers.²⁷ Subsequent reunification with family members and friends at borders and at refugee and IDP camps is even more difficult for persons with mobility and visual disabilities because of physical barriers. Communication barriers similarly cause difficulties for individuals with intellectual disabilities and deaf persons to make their needs known as they endeavor to locate caregivers. Heightened stress or lack of medication also can trigger affects for persons with psychosocial disabilities, resulting in social stigma that bars effective assistance. Humanitarian workers generally focus on a vague and aggregate assemblage of “the most vulnerable” as the result of not being trained or prepared to help beneficiaries with disabilities. Consequently, women, children, and elderly persons are their primary focus, while persons with disabilities are neglected.

25. See Michael H. Fox et al., *Disaster Preparedness and Response for Persons with Mobility Impairments: Results from the University of Kansas Nobody Left Behind Study*, 17 J. DISABILITY POL'Y STUD. 196, 196–205 (2007) (reporting on persons with disabilities being abandoned during Hurricane Katrina); DAVE EGGERS, ZEITOUN (2009) (relating a true account of a Syrian-American who witnessed—and experienced—the devastating consequences of poor disaster preparedness, including abandonment of persons with disabilities during Hurricane Katrina). For an account of violence against women with disabilities in the context of conflict-affected Northern Uganda, see HUMAN RIGHTS WATCH, *supra* note 12.

26. For a discussion of the conditions and barriers of detention for asylum seekers, see Int'l Detention Coalition, *Detention of Refugees, Asylum Seekers & Migrants: Position of the International Detention Coalition*, at 3 (2006), www.rcusa.org/uploads/pdfs/IDC%20Position%20on%20Detention,%204-1-09.pdf; *Freedom of Movement*, HUMAN RIGHTS EDUC. ASSOCS., www.hrea.org/index.php?doc_id=409 (last visited Dec. 31, 2011).

27. See WHITE ET AL., *supra* note 17, at 5; see generally Lord, Waterstone & Stein, *supra* note 3.

D. Basic Necessities

Historically, inadequate access to relief aid, cash assistance, and health care has been provided to persons with disabilities living in poverty through humanitarian programming.²⁸ Field studies uniformly confirm that refugees with disabilities are not accommodated in terms of food distribution, equitable access to water, and other necessities. Thus, according to a report from the Women's Commission for Refugee Women and Children:

In all the refugee camps, participants in the field studies pointed out that the food distribution systems were not suited to refugees with disabilities. Food distribution points were frequently far from refugees' homes and they had to line up for long periods, or try to push their way through large crowds, to receive their food—which was difficult for many.²⁹

Disabled persons are forced to go a long way to obtain necessities, wait in long lines, and fight through crowds. These prospects are more daunting or even impossible when people with disabilities are separated from family and peer support who would otherwise perform important roles in food preparation and other tasks. Gendered expectations for women to feed and care for their families present additional obstacles for women with disabilities.³⁰

E. Adequate Food and Nutrition

The provision of adequate food is clearly a major component of ensuring that the basic needs of refugees and IDPs are met as part of humanitarian response. Accommodations for persons with disabilities in the realm of access to food and nutrition can take various forms, including additional or targeted and prioritized rations. In Nepal, special rations of vitamin-enriched milk were distributed to refugee camps, which resulted in marked health improvements for children with disabilities.³¹ In some instances, the United Nations High Commission for Refugees (UNHCR) has worked to broker arrangements with the World Food Programme to prioritize food distribution to persons with

28. The work of Handicap International is well known in this regard. See HANDICAP INT'L, www.handicap-international.us (last visited Dec. 31, 2011).

29. WOMEN'S COMM'N REP., *supra* note 11, at 18.

30. For an excellent examination of the interface between gender and disability, see GENDERING DISABILITY (Bonnie G. Smith & Beth Hutchison eds., 2004); Jenny Morris, *Gender and Disability*, in ON EQUAL TERMS: WORKING WITH DISABLED PEOPLE 207 (Sally French ed., 1994).

31. WOMEN'S COMM'N REP., *supra* note 11, at 18.

disabilities.³² Another strategy is to use mobile units to distribute food to individuals who are unable to collect the rations themselves, thereby responding to transport and other barriers for disabled people, older persons, and others.³³

F. Clean Water and Sanitation

Around the world, clean water and safe sanitation may be generally accessible to the public, but not to persons with disabilities.³⁴ This circumstance is compounded for disabled refugees and IDPs, particularly for those living in a camp setting. Numerous obstacles prevent ready access to clean water and sanitation facilities. Physical barriers include the placement of latrines at considerable distance from camp living spaces, and infrastructure with narrow entrances or steps, slippery floors, lack of inside space, and an absence of grab bars to assist with balance.³⁵ Latrine location also can mean the difference between safety and sexual violence for women and girls with disabilities if the latrines are remote and lack lighting.³⁶ Likewise, the positioning of clean water distribution centers impacts women and girls with disabilities whose family task it is to carry water.³⁷

Water and sanitation providers have a key role in reducing physical and infrastructural barriers in the environment, and disabled people often need only minor changes to be made to enable them to be included in ordinary water and sanitation service provisioning. Experience in West Africa, for example,

32. *Id.*

33. *Id.* Notably, the revised Sphere Standards of 2011 specifically recognize that persons with disabilities “need access to appropriate food and nutritional support.” See THE SPHERE PROJECT, HUMANITARIAN CHARTER AND MINIMUM STANDARDS IN DISASTER ASSISTANCE 141 (2011) [hereinafter SPHERE STANDARDS, 2011].

34. See generally HAZEL E. JONES & BOB REED, WATER AND SANITATION FOR DISABLED PEOPLE AND OTHER VULNERABLE GROUPS: DESIGNING SERVICES TO IMPROVE ACCESSIBILITY (2005), available at wedc.lboro.ac.uk/docs/research/WEJFK/Cambodia_WEDC_watsan_for_disabled_report.pdf; see also WELL, *Briefing Note 12: Why Should the Water and Sanitation Sector Consider Disabled People?*, at 1 (2005), available at www.wsscc.org/sites/default/files/publications/well_why_should_the_watsan_sector_consider_disabled_people_bn12_2005.pdf; WaterAid *Briefing Note: All People, One Goal, All Access: Water and Sanitation Access for People with Disabilities*, at 1 (July 2007), available at www.wateraid.org/documents/plugin_documents/all_people_one_goal_all_access.pdf; WaterAid *Briefing Note 9: Equal Access For All - 2: Water and Sanitation Access for People With Motor Disabilities*, at 1 (Dec. 2006), available at http://www.wateraid.org/documents/plugin_documents/briefing_note_disability.pdf.

35. JONES & REED, *supra* note 34, at 36.

36. Reilly, *supra* note 8, at 8. See generally JULIE A. MERTUS, WAR’S OFFENSIVE ON WOMEN: THE HUMANITARIAN CHALLENGE IN BOSNIA, KOSOVO, AND AFGHANISTAN (2000) (providing analysis of ways in which citizens, humanitarian organizations, and international legal institutions address the impact of war on women).

37. JONES & REED, *supra* note 34, at 36.

demonstrates that accessibility to sanitation facilities for persons with disabilities can be enhanced through small and low-cost changes and disability awareness training.³⁸ Principles of universal design—the concept expressing the idea that the design of products, environments, programs, and services should be usable by all, to the greatest degree possible, without adaptation or specialized design—has clear application to making water and sanitation facilities more accessible and of benefit to everyone in a refugee community, including elderly persons, youth, and persons who are ill.³⁹ Looking at the complete domestic water cycle (drawing transporting, and storing water, and household use for bathing, and washing clothes and dishes) along with access and entry, support railing, seating, and usability, as well as the service delivery components of ensuring access, is essential in order to arrive at an inclusive response.⁴⁰

G. Shelter

Accessible shelter during times of humanitarian crises is often hard to come by and presents serious challenges, especially for persons with physical disabilities. The experience of Hurricanes Katrina and Rita in the United States disclosed the inadequacy of accessible shelter for persons with disabilities when it was discovered that trailers provided by the Federal Emergency Management Agency were inaccessible.⁴¹ Similarly, studies of shelter provided for survivors of the Asian tsunami revealed similar problems.⁴² These failures clearly illustrate the need to take accessibility into account during emergency preparedness and further underscore the importance of including disabled peoples organizations in such processes so that access is seamlessly woven into the design phase.

38. See *WaterAid Briefing Note 9*, *supra* note 34, at 3–4; *WaterAid Briefing Note*, *supra* note 34, at 5–6 (adaptations of latrines for persons with visual impairments).

39. The CRPD incorporates the principle of universal design and promotes its application to all contexts covered by the treaty. See CRPD, *supra* note 4, art. 4(1)(f).

40. See JONES & REED, *supra* note 34.

41. See NAT'L COUNCIL ON DISABILITY, EFFECTIVE EMERGENCY MANAGEMENT: MAKING IMPROVEMENTS FOR COMMUNITIES AND PEOPLE WITH DISABILITIES 127 (2009), available at <http://www.ncd.gov/publications/2009/Aug122009> (“Research on the Katrina shelters indicates that both traditional and emergent shelters experienced considerable problems and challenges in accommodating people with disabilities and individuals with medical needs.”).

42. CIR STUDY, *supra* note 9, at 6 (noting that “temporary shelters were not constructed in a way that made them accessible to people with physical disabilities”).

H. Essential Health and Rehabilitation Services

The many obstacles faced by individuals with disabilities when accessing health and rehabilitation services⁴³ are intensified following forced migration. Physical barriers to service facilities exclude wheelchair and cane users, the absence of facilitators can preclude intellectually disabled persons from receiving treatment, public health education campaigns are often visual and thus not accessible to blind people, and radio-based education campaigns do not reach deaf individuals.⁴⁴

Because humanitarian health access programming historically has not been disability inclusive, the specific health and rehabilitation needs of disabled refugees and IDPs are especially challenging.⁴⁵ To illustrate, a health education project for post-conflict Liberia and Sierra Leone refugees living in Cairo noted that they faced barriers to health maintenance “relating to the specific situation of the refugee population in question, including gender, age, religion, educational level, knowledge of the host-country language, the loss of important social supports and many more.”⁴⁶ The project did not identify any barriers experienced by disabled refugees within this population, and thus failed to recommend any solutions. Worse, the project recognized the relevance of mental health concerns arising from trauma experienced by the same refugees from civil wars in their own countries but did not respond to their concerns.⁴⁷ Many other post-conflict refugees are similarly overlooked.⁴⁸

Research on HIV/AIDS and disability suggests that disabled persons are likewise neglected due to patently false assumptions of sexual inactivity and equally wrong ideas about their low risk for sexual abuse or drug usage.⁴⁹ In consequence of these unfounded notions and despite contrary empirical

43. See, e.g., Michael Ashley Stein et al., *Health Care and the UN Disability Rights Convention*, 374 LANCET 1796 (2009); Janet E. Lord et al., *Lessons from the Experience of the UN Convention on the Rights of Persons with Disabilities*, 38 J.L. MED. & ETHICS 564 (2010).

44. Kristi L. Kirschner & Raymond H. Curry, *Educating Health Care Professionals to Care for Patients with Disabilities*, 302 J. AM. MED. ASS’N 1334, 1334–35 (2009).

45. See Michael A. Stein, Janet E. Lord & Dorothy Weiss Tolchin, *Equal Access to Health Care under the UN Disability Rights Convention*, in *MEDICINE AND SOCIAL JUSTICE: ESSAYS ON DISTRIBUTION AND CARE* (Rosamond Rhodes et al. eds., forthcoming May 2012).

46. COKER ET AL., *supra* note 23, at 5.

47. *But see* RICHARD F. MOLLIKA, *HEALING INVISIBLE WOUNDS: PATHS TO HOPE AND RECOVERY IN A VIOLENT WORLD* (2008).

48. See COKER ET AL., *supra* note 23, at 4; *see also* Florence Baingana et al., *Mental Health and Conflicts: Conceptual Framework and Approaches Health* 40–43 (Health, Nutrition and Population Discussion Paper, Feb. 2005).

49. GROCE, *supra* note 19, at 3; Nora E. Groce & Reshma Trasi, *Rape of Individuals with Disability: AIDS and the Folk Belief of Virgin Cleansing*, 363 LANCET 1663, 1663–64 (2004).

evidence,⁵⁰ public sexual and reproductive health programs for refugees and IDPs have disregarded disabled populations. This exclusion has had a severely disparate impact on women and adolescent girls with disabilities.⁵¹

I. Education

People with disabilities are far less likely to be literate than their non-disabled peers; they face numerous barriers in accessing mainstream education systems and, as a result, very often have little or no education.⁵² Obstacles experienced by people with disabilities in accessing their right to education include physical, information, and communication barriers, and attitudes.⁵³ Deeply entrenched misperceptions about persons with disabilities and their alleged limitations are difficult to displace, even among educators and policy makers in this field.⁵⁴ Exclusion from education results in life-long hindrances to meaningful employment, health, civic, and political participation and many other spheres of life. The barriers to education that persist throughout the world present challenges for children and adult refugees and IDPs with disabilities. There is some evidence to suggest that efforts to introduce inclusive education in refugee settings can take hold, as the report by the Women's Commission illustrates.⁵⁵

Studies suggest that persons with disabilities have difficulty accessing education and indicate that their global literacy rate is as low as three percent, and for women with disabilities, it is as low as one percent.⁵⁶ Humanitarian relief programs understandably focus on feeding and providing health care to a population before turning to education. Nonetheless, humanitarian guidelines emphasize that the return of children, whether displaced or not, to schooling should be facilitated as early and as quickly as possible after a humanitarian

50. GROCE, *supra* note 19, at 3.

51. Kathryn Fleming et al., Am. Insts. for Research, *Vulnerability for Households With Persons With Disabilities and HIV/AIDS in Chongwe, Zambia*, at 6–7 (2010), available at www.air.org/files/Vulnerability_for_Households_w_Disability_and_HIV_in_Chongwe_Zambia_Final.pdf.

52. World Conference on Education for All Meeting Basic Learning Needs, Jomtien, Thailand, Mar. 5–9, 1990, *World Declaration on Education for All*, pmbl. (Mar. 9, 1990), available at http://www.unesco.org/education/pdf/JOMTIE_E.PDF.

53. See Response by the National Centre for Human Rights of Jordan, National Implementation of the Convention on the Rights of Persons with Disabilities, (Sept. 15, 2010), available at <http://www2.ohchr.org/english/issues/disability/docs/study/NCHRJordan.pdf>.

54. Peg Nosek et al., Indep. Living Research Utilization Project, *A Philosophical Foundation for the Independent Living & Disability Rights Movements*, at 40 (1982), available at www.bcm.edu/ilru/html/publications/ilru/general_philosophical_foundation3.pdf.

55. WOMEN'S COMM'N REP., *supra* note 11, at 2.

56. GROCE, *supra* note 19, at 10.

crisis.⁵⁷ Access to education must observe the principle of non-discrimination; children with disabilities are entitled to equal access to education.⁵⁸ Notwithstanding worldwide shortcomings in making educational systems accessible to children with disabilities, there are some positive models on which to draw in the refugee context. Refugee camps in Kenya, Thailand, and Nepal, for instance, all disclosed that well-trained, inclusive education staff, teacher training, and support to accommodate children with disabilities led to positive results.⁵⁹

J. Livelihoods and Work

Meaningful and non-exploitative work is elusive for persons with disabilities, and even more so when they are also refugees and IDPs. In developing countries, eighty to ninety percent of persons with disabilities of working age are unemployed, compared with fifty to seventy percent in industrialized countries. World Bank estimates disclose that “leaving people with disabilities outside the economy translates into a forgone GDP of about 5–7 percent.”⁶⁰ Employment schemes frequently are inaccessible.⁶¹ Access to the finance needed to start a business is severely restricted for persons with disabilities generally, with studies suggesting that a substantial percentage of the unbanked poor are persons with disabilities.⁶² Microfinance initiatives historically have neglected persons with disabilities as potential participants.⁶³ The barriers are often greater for refugees with disabilities as well as IDPs. Refugees and IDPs often find their movement restricted to camps as a consequence of local laws that

57. See INTER-AGENCY STANDING COMM. [IASC], PROTECTING PERSONS AFFECTED BY NATURAL DISASTERS: IASC OPERATIONAL GUIDELINES ON HUMAN RIGHTS AND NATURAL DISASTERS 26 (June 2006), available at http://www.brookings.edu/~media/Files/rc/reports/2006/11_natural_disasters/11_natural_disasters.pdf [hereinafter IASC OPERATIONAL GUIDELINES].

58. CRPD, *supra* note 4, art. 24.

59. WOMEN’S COMM’N REP., *supra* note 11, at 23–26.

60. Anne Leymat, Inclusive Microfinance: Reaching Disabled People Through Partnership Development, www.gre.ac.uk/__data/assets/pdf_file/0005/451976/6_Leymat_FullPaper.pdf; see also HERVÉ BERNARD ET AL., HANDICAP INT’L, GOOD PRACTICES FOR ECONOMIC INCLUSION OF PEOPLE WITH DISABILITIES 17 (2006), available at www.handicap-international.org/uploads/media/goodpractices-GB-2coul.PDF.

61. See generally *id.*; Sarah Dyer, Paper Presentation, *The Inclusion of Disabled People in Mainstream Micro Finance Programmes*, at the Leonard Cheshire International’s Staying Poor: Chronic Poverty and Development Policy Conference (Apr. 7–9, 2003); Joshua Goldstein, *A New Financial Access Frontier: People with Disabilities* (June 2010) (concept paper); Cindy Lewis, *Microfinance from the Point of View of Women with Disabilities: Lessons from Zambia and Zimbabwe*, 12 GENDER & DEV. 28 (2004).

62. BERNARD ET AL., *supra* note 60, at 37 (finding that clients with disabilities currently account for no more than one half of one percent of total microfinance institution clients worldwide).

63. See Goldstein, *supra* note 61, at 5.

restrict the movement of refugees outside of the camps.⁶⁴ Moreover, legal limits on the right to work, and stigma and discrimination grounded in the false belief that persons with disabilities are incapable of work or financial decision-making reinforce poverty among disabled refugees and IDPs. However, while opportunities for disabled refugees to earn a living is severely restricted, pilot projects in Ethiopia and Uganda disclose the utility of teaming disabled persons organizations with mainstream microfinance institutions to enhance access to services.⁶⁵

K. Resettlement and Refugee Status

Because records are lost or abandoned during flight, refugees and IDPs frequently require assistance in obtaining documentation needed to claim refugee status, receive humanitarian assistance, access government services such as health care and education, find employment, and realize other fundamental human rights such as the right to participate in political affairs (e.g., the right to vote).⁶⁶ For individuals with disabilities, cultural stereotypes often add additional barriers to acquiring official records. They may never have had documentation in the first place due to poverty, illiteracy, or social stigma resulting in either not being registered at birth or being denied documentation later on in life. Or, they may have once had such documentation, but absent appropriate accommodations cannot communicate sufficient information to receive meaningful assistance.⁶⁷

III. INTERNATIONAL STANDARDS ON PROTECTION IN SITUATIONS OF RISK

International standards on protection in situations of risk have evolved in significant ways during the past fifty years, in large part as a necessary response to ever-changing refugee and IDP challenges and humanitarian needs.⁶⁸ The 1951

64. See Abebe Feyissa & Rebecca Horn, *There is More Than One Way of Dying: An Ethiopian Perspective on the Effects of Long-Term Stays in Refugee Camps*, in REFUGEE RIGHTS: ETHICS, ADVOCACY AND AFRICA 13 (David Hollenbach ed., 2008).

65. Leymat, *supra* note 60, at 7; Roy Mersland et al., *Access to Mainstream Microfinance Services for Persons with Disabilities: Lessons Learned from Uganda*, 29 DISABILITY STUD. Q., no. 1, 2009, available at www.dsqrds.org/issue/view/8.

66. See IASC OPERATIONAL GUIDELINES, *supra* note 57, at 30–32.

67. See generally WOMEN'S COMM'N REP., *supra* note 11 (providing a resource kit for fieldworkers assisting displaced persons with disabilities).

68. See generally REFUGEE PROTECTION IN INTERNATIONAL LAW (Eriak Feller et al. eds., 2003) (providing commentary on the 1951 Convention Relating to the Status of Refugees and the challenges the document addresses).

Convention Relating to the Status of Refugees (1951 Convention)⁶⁹ and the 1967 Protocol to the Convention⁷⁰ reflect an age-old practice of providing safe passage and sanctuary to persons at risk and in need of protection.⁷¹ The impetus for the development of this framework in its modern form was the massive refugee flow resulting from World War II and its aftermath.⁷² Its subsequent extension beyond the immediate post-War refugee crisis in Europe reflects the ongoing need for a framework of protection for refugees around the world.⁷³

The applicable legal standards are not confined to the 1951 Convention, and there are other relevant standards set forth in international humanitarian law⁷⁴ as well as an ever-increasing body of international human rights law that applies to refugees and also IDPs.⁷⁵ Adding to the complexity of this system, a deeper understanding of specific country conditions and a more nuanced appreciation of the particular application of human rights standards to vulnerable groups experiencing persecution present a challenge: to what extent can the existing refugee and IDP law framework respond to and grapple with shared understandings about the nature, impact, and consequences of persecution, especially in relation to historically disadvantaged groups such as women, children, and persons with disabilities? The sections that follow outline the existing refugee and IDP framework of protection and situate that framework within the broader human rights system where disability rights are now firmly and specifically rooted.

A. 1951 Convention

Refugee protection ostensibly triggers universality of application, at least in the sense that the term “refugee” applies under the 1951 Convention to “any person” provided the other elements of the definition are met.⁷⁶ Notably, however, disability is not an explicitly recognized ground of persecution in the

69. Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137, 19 U.S.T. 6259 [hereinafter 1951 Convention].

70. Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267, 19 U.S.T. 6223.

71. Volker Türk & Frances Nicholson, *Refugee Protection in International Law: An Overall Perspective*, in REFUGEE PROTECTION IN INTERNATIONAL LAW 3 (Eriak Feller et al. eds., 2003).

72. Marilyn Achiron, *A ‘Timeless’ Treaty Under Attack*, 2 REFUGEES, no. 123, at 6 (2001).

73. UNHCR, STATE OF THE WORLD’S REFUGEES 2006 (Nada Merheb et al. eds., 2006), available at www.unhcr.org/4a4dc1a89.html.

74. See generally INGRID DETTER, THE LAW OF WAR 315–36 (2000) (providing an overview of the substance of international humanitarian law).

75. For a helpful overview, see JULIE A. MERTUS, THE UNITED NATIONS AND HUMAN RIGHTS SYSTEM: A GUIDE FOR A NEW ERA (2005).

76. 1951 Convention, *supra* note 69, art. I.

1951 Convention; Article I applies the term “refugee,” among other things, to a person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.⁷⁷

Under the existing definition, a person with a disability can claim refugee status on the basis of a claim of persecution by falling within the category of “social group.” Grounding a successful claim, therefore, hinges on an understanding of the socially constructed nature of disability, a perspective that does not always exist among immigration officials and judges, nor within refugee assistance agencies. While the refugee definition can and should encompass disability-based claims of persecution, greater awareness is required of how disability can influence the type of persecution or harm experienced and the reasons for this treatment. Clearly a precondition to improving refugee and IDP response for persons with disabilities is enhancing awareness of disability and the specific needs of disabled refugees and IDPs.

The Refugee Convention sets out the rights to which individuals are entitled once they have been recognized as refugees. The 1951 Refugee Convention, however, references disability only in the context of a provision on labor legislation and social security, and simply affirms that refugees are entitled to the same social-security rights as citizens of the country.⁷⁸ The ability of refugees with disabilities to realize these rights is seriously undermined in view of the fact that the vast majority of countries in the world have underdeveloped disability-rights law and policy frameworks. The 1951 Convention provides that all refugees must be granted identity papers and travel documents that allow them to travel outside the country, a right that may be compromised for refugees with disabilities because they may have no birth registration or other documentation or because they are denied the right to obtain travel documentation on account of their disabilities.⁷⁹ While the Convention requires that refugees must receive the same treatment as nationals of the receiving country with regard to a range of rights—such as free access to the courts, including legal assistance; access to

77. *Id.*

78. Office of the United Nations High Commissioner for Human Rights [OHCHR], Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Convention Relating to the Status of Refugees, art. 24 (Dec. 14, 1950), <http://www2.ohchr.org/english/law/refugees.htm>.

79. 1951 Convention, *supra* note 69, arts. 27–28.

elementary education; and access to public relief and assistance—in practice, multiple barriers prevent persons with disabilities access to these rights generally, irrespective of their immigration status.⁸⁰

Likewise, the emerging protection regime for IDPs, including the Guiding Principles on Internal Displacement (Guiding Principles),⁸¹ is not particularly disability inclusive; however, there are signs of hopeful progress. The Guiding Principles do recognize that persons with disabilities are entitled to protection and assistance.⁸² Article 9 of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa likewise calls on States Parties to accord special protection to internally displaced persons with disabilities.⁸³ Other components of the evolving protection framework for IDPs also make reference to persons with disabilities, including the revised Framework on Durable Solutions⁸⁴ and the Inter-Agency Standing Committee's Operational Guidelines on Human Rights and Natural Disasters.⁸⁵ These highly influential documents emphasize the principle of nondiscrimination in relation to persons with disabilities and highlight the need to take specific protection measures in respect of IDPs with disabilities.

The foregoing developments lay out the evolving international legal regime for the protection of refugees and IDPs and, in particular, the protection of refugees and IDPs with disabilities. Notwithstanding progressive developments, including the adoption of the CRPD, it remains the case that the overall protection framework for both refugees and IDPs has not adequately facilitated disability inclusion in practice, on the ground. The section that follows addresses the extent to which humanitarian responders have incorporated and rendered operational disability-specific standards to guide their work in the field.

B. Humanitarian Assistance Standards and Guidelines

As noted in the preceding section, international legal standards—both obligations set forth in international treaties⁸⁶ as well as principles constituting

80. *Id.* arts. 16, 22–23.

81. UNHCR, *The Guiding Principles on Internal Displacement*, UN Doc. E/CN.4.1998/53/Add.2 (1998), reprinted as OCHA/IDP/2004/01 (Sept. 1, 2004).

82. *Id.* princ. 4(1)–(2).

83. African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa [Kampala Convention], art. 9, Oct. 23, 2009, 49 I.L.M. 86.

84. See U.N. Secretary-General, *Framework on Durable Solutions for Internally Displaced Persons, Addendum to the Report of the Rep. of the Secretary-General on the Human Rights of Internally Displaced Persons*, U.N. Doc. A/HRC/13/21/Add.4 (Dec. 29, 2009).

85. See IASC OPERATIONAL GUIDELINES, *supra* note 57.

86. The Third and Fourth Geneva Conventions recognize special respect and protection to be accorded to persons with disabilities in the context of evacuation and the treatment of persons deprived of their liberty. See Geneva Convention Relative to the

customary international law⁸⁷—underscore the obligation to provide protection and assistance to affected populations in times of humanitarian crisis, including persons with disabilities.⁸⁸ While recognition that persons with disabilities are a particularly at-risk population in emergency crises is reflected in international instruments, this has rarely given rise to specific policies and practices or effective field-level interventions that seek to ensure that the needs of persons with disabilities are addressed.

Many international humanitarian assistance organizations (including United Nations specialized agencies and large private voluntary organizations) do characterize their work variously as protection-oriented, “rights-based,” and, in particular, addressing the needs of the most vulnerable and at-risk populations. The United Nations High Commissioner for Refugees, for example, embraces the rights of refugees within an international protection framework, underlining the reality that refugees, by definition, do not enjoy the protection of their home countries, and thus its mandate is to provide international protection and promote durable solutions to their problems.⁸⁹ UNHCR belongs, for example, to the Inter-Agency Task Force on the CRPD; nonetheless, it has no disability-specific policy as yet.⁹⁰

The Danish Refugee Council (DRC), to cite another example, has as its mandate the “[p]rotection and promotion of durable solutions to refugee and displacement problems, on the basis of humanitarian principles and human rights” and draws on numerous international standards and guidelines to inform its approach.⁹¹ The DRC likewise has no disability policy per se; rather, it embraces an approach that is aimed at capturing the most vulnerable in need of assistance.

Treatment of Prisoners of War, arts. 16, 30, 44–45, 49, 110, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, arts. 16–17, 21–22, 27, 85, 119, 127, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287. The Fourth Geneva Convention also provides that such persons “shall be the object of particular protection and respect.” *Id.* art. 16(1).

87. Rule 138 of the International Committee of the Red Cross commentary on customary international humanitarian law provides that the elderly, persons with disabilities, and infirm people affected by armed conflict are entitled to special respect and protection as a rule of international humanitarian law. Jean-Marie Henckaerts & Louise Doswald-Beck, *Rule 138: The Elderly, Disabled and Infirm Affected by Armed Conflict Are Entitled to Special Respect and Protections*, 1 CUSTOMARY INT’L HUMANITARIAN L. 489, 489–91 (2005).

88. Portions of this section are drawn from Lord, Waterstone & Stein, *supra* note 3.

89. See *Protection*, UNHCR, www.unhcr.org/protect.html (last visited Dec. 31, 2011).

90. See generally Brendan Joyce, *The Case for a Conclusion*, 35 FORCED MIGRATION REV. 44 (2010).

91. The mandate was approved by the Executive Committee of the Danish Refugee Council in 2004 and is restated in its May 2005 DRC Comprehensive Framework for Assistance (unpublished documents, on file with authors).

As such, the implicit claim is that the needs of all—including affected people with disabilities—are addressed in humanitarian and relief programming at all stages.

The Sphere Project's *Humanitarian Charter and Minimum Standards in Disaster Response* (Sphere Standards) represents an ongoing effort to develop an operational framework for accountability in disaster response.⁹² Initial iterations of the Sphere Standards provided little to no guidance on how the needs of persons with disabilities may be accommodated in the sector-specific indicators for water, food security, shelter, and health, nor did they recognize the specific issues associated with psychosocial disability in the humanitarian context.⁹³ This is consistent with other protection documents in which programmatic policies and guidelines rarely do more than identify disability in a laundry list of groups requiring protection and in which references to disability-specific information in indicators and guidance notes are scant.⁹⁴ The Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief (Code),⁹⁵ for example, underscores the principles driving humanitarian assistance efforts, including the mandate to “alleviate human suffering amongst

92. THE SPHERE PROJECT, HUMANITARIAN CHARTER AND MINIMUM STANDARDS IN DISASTER ASSISTANCE 141 (2004) [hereinafter SPHERE STANDARDS, 2004]. This initiative was established in 1997 by a group of humanitarian NGOs and the Red Cross and Red Crescent Movement, and it resulted in the framing of a Humanitarian Charter and the identification of Minimum Standards to be followed in disaster assistance in five sectors (water supply and sanitation, nutrition, food aid, shelter, and health services). The publication of the first Sphere handbook was in 2000.

93. *Id.* intro., ch. 4 (Minimum Standards in Water Supply, Sanitation, and Hygiene Promotion).

94. *Id.* annex 1 (Health Services Assessment Checklist). The commitment to beneficiary accountability is reflected in various other initiatives to make humanitarian assistance organizations more accountable to those they serve. Thus, the Humanitarian Accountability Partnership was founded in 2003 as an effort to improve the accountability of humanitarian action to intended beneficiaries through self-regulatory initiatives and compliance verification. HUMANITARIAN ACCOUNTABILITY PARTNERSHIP, THE HUMANITARIAN ACCOUNTABILITY REPORT 2005, AT 11–13 (2005), *available at* www.hapinternational.org/pool/files/hap-annual-report-2005-lite.pdf. Other similar initiatives that are responsive to the crisis of quality and accountability in humanitarian action include ALNAP, Compas Qualité, and People in Aid. For a brief overview of the development of accountability initiatives within the humanitarian assistance community, see *id.* at 7–13.

95. Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief (1995), *available at* <http://www.ifrc.org/Docs/idrl/I259EN.pdf> (prepared jointly by the International Federation of Red Cross and Red Crescent Societies and the International Committee of the Red Cross and sponsored by the following relief organizations: Caritas, Catholic Relief Services, the International Federation of Red Cross and Red Crescent Societies, International Save the Children Alliance, Lutheran World Federation, Oxfam, the World Council of Churches, and the International Committee of the Red Cross).

those least able to withstand the stress caused by disaster.”⁹⁶ The provision of aid is to be provided on the basis of nondiscrimination; that is, “regardless of the race, creed or nationality of the recipients and without adverse distinction of any kind.”⁹⁷ Aid, where possible, is to be based on a thorough assessment of the needs of disaster victims and the local capacities already in place to meet those needs, and embrace the principle of beneficiary participation in humanitarian assistance.⁹⁸ While the Code thus provides a point of departure for ensuring that the rights of persons with disabilities are protected in the context of humanitarian action, the failure to meaningfully differentiate disability and the protection needs of persons with disabilities from that of other vulnerable groups is not particularly illuminating.

Responding to critiques regarding gaps in the Sphere Standards, a redrafting effort culminated in the 2001 adoption of a major revision reflecting some significant and progressive changes. The newly revised Sphere Standards⁹⁹ identify nine cross-cutting issues that require horizontal application across all sectors. They add as cross-cutting issues the impact of climate change, disaster risk reduction, and psychosocial issues, and they strengthen seven additional cross-cutting issues, including children, elderly, gender, HIV and AIDS, people with disabilities, protection, and the environment.¹⁰⁰ Accordingly, the revisions do highlight disability as an issue requiring specific attention, and specific references to disability inclusion are made at various points across the new edition. Still, the tension between protection as paternalism and protection as empowered agency is all too apparent and unresolved.¹⁰¹ Appropriate implementation will require building the capacity of humanitarian agency

96. *Id.* princ. 1.

97. *Id.* princ. 2.

98. The Code states that “[w]ays shall be found to involve programme beneficiaries in the management of relief aid” and further provides that “[d]isaster response assistance should never be imposed upon the beneficiaries” and “[e]ffective relief and lasting rehabilitation can best be achieved where the intended beneficiaries are involved in the design, management and implementation of the assistance programme.” *Id.* princ. 7.

99. See generally SPHERE STANDARDS, 2011, *supra* note 33 (providing the text for these issues).

100. *Id.*

101. The following excerpt reveals that tension:

Special care must be taken to protect and provide for all affected groups in a nondiscriminatory manner and according to their specific needs. However, disaster-affected populations must not be seen as helpless victims, and this includes members of vulnerable groups. They possess, and acquire, skills and capacities and have structures to cope with and respond to a disaster situation that need to be recognized and supported.

Id. at 9.

personnel, including accountability staff, to discern the varying needs of beneficiaries and assess in a meaningful way the extent to which the specific requirements of vulnerable populations are being reached and served. Moreover, effective processes will have to be put in place to ensure that stakeholder consultations can effectively impact operations in the field.

An initiative funded by the United States Agency for International Development (USAID) sought to address the integration of disability issues into the programming of large humanitarian assistance organizations. This builds on USAID's incremental efforts to integrate a disability dimension in its foreign-assistance programming.¹⁰² Oregon-based Mobility International USA,¹⁰³ a disability and development organization specializing in education exchange programming and women's leadership, implemented the three-year project, which aimed to support members of InterAction, the coalition of some 160 humanitarian organizations working on disaster relief, refugee assistance, and sustainable development worldwide. The project sought to increase participation by people with disabilities, especially women and girls with disabilities, in InterAction member agencies as volunteers, trainers, field staff, policy makers, administrators, and beneficiaries and to improve implementation of the Disability Amendments to the InterAction Private Voluntary Organizations Standards¹⁰⁴ in organizational governance, management, and programs. The amended Standards provide, among other things, that each member "develop a written policy that affirms its commitment to the inclusion of people with disabilities in organizational structures and in staff and board composition" and further provide that the disability policy "should be fully integrated into an organization's plans and operations, in a manner consistent with its mission and the constituency it serves."¹⁰⁵ The organizations with whom Mobility International partnered include American Friends Service Committee,¹⁰⁶ Church World Service,¹⁰⁷ Holt

102. See U.S. AGENCY FOR INT'L DEV., USAID DISABILITY POLICY PAPER (1997), available at http://pdf.usaid.gov/pdf_docs/PDABQ631.pdf; see also U.S. AGENCY FOR INT'L DEV., *USAID Disability Policy—Assistance* (2004), available at http://www.usaid.gov/about_usaid/disability; U.S. AGENCY FOR INT'L DEV., *USAID Acquisition and Assistance Disability Policy Directive* (2004), www.usaid.gov/about_usaid/disability/; U.S. AGENCY FOR INT'L DEV., *USAID Acquisition and Assistance Policy Directive* (Disability Policy on New Construction) (2005), www.usaid.gov/about_usaid/disability/.

103. See MOBILITY INT'L USA, www.miusa.org (last visited Dec. 31, 2011).

104. InterAction PVO Standards, §§ 2.6.3, 6.4.3, 6.4.3.1, 7.4, 7.6, 7.9.15, available at www.interaction.org/document/interaction-pvo-standards.

105. *Id.* § 2.0 (Governance).

106. See AM. FRIENDS SERV. COMM. [AFSC], www.afsc.org (last visited Dec. 31, 2011). In 1996, the American Friends Service Committee introduced a program in order to build upon its historic commitment to incorporate affirmative action into its work. The plan calls for involving and integrating people into the organization from four target-area groups, including third world people; women; people with disabilities; and gay, lesbian, and bisexual people. See *Affirmative Action: Implementing AA Principle Program*, AFSC,

International Children's Services,¹⁰⁸ Mercy Corps International,¹⁰⁹ and the Trickle Up Program.¹¹⁰

More recently, USAID took a proactive stance toward disability inclusion in the context of the Haitian earthquake of 2010. In the aftermath of the devastating earthquake on January 12, 2010, USAID deployed a leading disability expert from its Special Programs to Address the Needs of Survivors (SPANS) to Haiti to offer expert advice and direction to the efforts of the Injury Rehabilitation and Disability working group in Port au Prince, to provide real-time information to SPANS on disability issues in the disaster area, and to foster greater inclusion in disaster response.¹¹¹

This type of effort is desperately needed. Current approaches claiming to be "rights-based" and articulating a framework within which the needs of "vulnerable populations" are prioritized and accommodated must account for how such interests are being addressed at all stages of assistance programming. In the absence of disability-specific guidelines, opportunities are being missed to effectively and appropriately provide accommodations. Worse, such shortcomings in acute crises lead almost inevitably to long-term development failures and added barriers along with missed chances to promote inclusion in reconstruction efforts. Disability-specific guidelines and standards help set the stage for responsible and human rights-compliant programming later on, when at-risk populations take part in development and (re)construction processes. Vague frameworks purporting to address the aggregate vulnerability of all population groups, may indeed do more harm than good insofar as they create the sense that "something is being done" and fail to identify the discrete needs of different groups and individuals.

Finally, resettlement policy and process in the context of persons with disabilities requires review and analysis against the CRPD's human rights framework. This includes, for example, analysis directed at reviewing the U.N. High Commissioner of Human Rights (UNHCHR) and country resettlement policies for persons with disabilities, including prioritization programs, as well as reviewing procedures by which refugees with disabilities and their families receive appropriate disability accommodations at all stages of the resettlement process.¹¹²

www.afsc.org/affirmative-action-implementing-aa-principles-program (last visited Dec. 31, 2011).

107. See CHURCH WORLD SERV., www.churchworldservice.org (last visited Dec. 31, 2011).

108. See HOLT INT'L, www.holtintl.org (last visited Dec. 31, 2011).

109. See MERCY CORPS, www.mercycorps.org (last visited Dec. 31, 2011).

110. See TRICKLE UP, www.trickleup.org (last visited Dec. 31, 2011).

111. See SUE EITEL, HAITI MISSION REPORT, FEB. 6–MAR. 7, 2010 (2010), available at <http://oneresponse.info/Disasters/Haiti/disabilities/publicdocuments/Eitel%20Haiti%20Feb-Mar%202010%20Report%20-final%20draft.doc>.

112. See generally Mansha Mirza, *Resettlement for Disabled Refugees*, 35 FORCED MIGRATION REV. 8 (2010).

IV. THE UNITED NATIONS DISABILITY CONVENTION AS AN AGENT FOR CHANGE

The progressive development of refugee law and policy and the emergence of greater protection for IDPs should be understood in relation to general developments in international human rights law and as relevant to the interpretation of refugee law. These include, for example, instruments amplifying the rights of women and children, such as the Convention on the Elimination of All Forms of Discrimination against Women¹¹³ and its Optional Protocol,¹¹⁴ the Convention on the Rights of the Child (CRC)¹¹⁵ and its Optional Protocols on the Involvement of Children in Armed Conflict¹¹⁶ and on the Sale of Children, Child Prostitution, and Child Pornography.¹¹⁷ International criminal law has served to elevate gender-related abuse as a serious human rights issue.¹¹⁸ Asylum claims grounded in gender-based persecution have relied heavily on these instruments as have principles reflected in the CRC in relation to child claims for refugee status.¹¹⁹ The adoption of the CRPD should likewise serve to broaden the scope of protection accorded to persons with disabilities in the refugee and IDP context, much as instruments on child protection and the rights of women have advanced inclusion for those groups.¹²⁰ The section that follows considers the CRPD in specific relation to the progressive development of the refugee and IDP legal regimes.

113. Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. No. 46, U.N. Doc. A/RES/34/46 (Dec. 18, 1979)

114. Optional Protocol to the Convention on the Elimination of Discrimination against Women, G.A. Res. 54/4, 54 U.N. GAOR Supp. No. 49, U.N. Doc. A/RES/54/49 (Oct. 15, 1999).

115. Convention on the Rights of the Child, G.A. Res. 44/25, 44 U.N. GAOR Supp. No. 49, U.N. Doc. A/RES/44/49 (Nov. 20, 1989).

116. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, G.A. Res. 54/263, 54 U.N. GAOR Supp. No. 49, U.N. Doc. A/RES/54/49, Annex I (May 25, 2000).

117. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, G.A. Res. 54/263, 54 U.N. GAOR Supp. No. 49, U.N. Doc. A/RES/54/263, Annex II (May 25, 2000).

118. Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183.9, art. 7 (July 17, 1998) (“[C]rime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: . . . (h) Persecution against any identifiable group or collectively on . . . gender”).

119. See generally Alice Edwards, *Age and Gender Dimensions in International Refugee Law*, in REFUGEE PROTECTION IN INTERNATIONAL LAW 46–80 (2003).

120. *Id.*

A. The CRPD

The CRPD was adopted by the U.N. General Assembly on December 13, 2006, following some five years of work by an ad hoc committee that was tasked with first considering the need for, and then drafting, the treaty.¹²¹ It entered into force on May 3, 2008. The CRPD negotiation process was driven by a participatory dynamic that involved State representatives; people with disabilities and disabled persons organizations; and an array of non-governmental organizations.¹²²

The CRPD embraces a social model of disability that recognizes persons with disabilities as active agents and equal holders of rights.¹²³ This rights-based approach affirms that all people with all types of disabilities must enjoy all human rights and fundamental freedoms, no matter their social or economic status.¹²⁴ Consistent with the social model, the CRPD defines disability “as an evolving concept” that “results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others” and not as an inherent characteristic.¹²⁵ This approach reorients disability issues away from paternalistic and overly protective models that cast persons with disabilities as passive and helpless victims in need of charitable benevolence.¹²⁶ Significantly, the CRPD creates an additional mandate for the U.N., including UNHCHR, and the application of its provisions to U.N. programming is being facilitated and coordinated through an Inter-Agency Group.¹²⁷

121. U.N. Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities, U.N. Doc. A/RES/56/168, GAOR, 56th Sess., Supp. No. 168 (2001).

122. See Michael Ashley Stein & Janet E. Lord, *The Law and Politics of US Participation in the UN Convention on the Rights of Persons with Disabilities*, in HUMAN RIGHTS IN THE UNITED STATES: BEYOND EXCEPTIONALISM 199, 199 (Shareen Hertel & Kathryn Libal eds., 2011).

123. CRPD, *supra* note 4, pmb., art. 1

124. For an overview of the CRPD and its reflection of the social model of disability, see Rosemary Kayess & Phillip French, *Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities*, 8 HUM. RTS. L. REV. 1 (2008).

125. See CRPD, *supra* note 4, pmb. (e).

126. See Oliver Lewis, *The Expressive, Educational and Proactive Roles of Human Rights: An Analysis of the United Nations Convention on the Rights of Persons with Disabilities*, in RETHINKING RIGHTS-BASED MENTAL HEALTH LAWS 97 (Bernadette McSherry & Penelope Weller eds., 2010).

127. The Group is charged with coordinating the work of the United Nations system in support of the promotion and implementation of the Convention, which includes the development of a draft strategy and plan of action to mainstream the CRPD throughout the work of the U.N. system. For a summary of the work of the Inter-Agency Support Group, see U.N. Secretary-General, *Status of the Convention on the Rights of Persons with Disabilities: Rep. of the Secretary-General*, pt. IV(B), U.N. Doc. A/64/128 (July 7, 2009) [hereinafter *CRPD Status*].

A core mandate of the CRPD is to clarify and make applicable existing general human rights obligations to the context of the lived experiences of persons with disabilities.¹²⁸ This model served as the primary rationale for the drafting of a disability-specific treaty and arose due to the effective invisibility of disability rights, explicitly or programmatically, from the protection accorded all persons under the existing international human rights system, and indeed international refugee law and international humanitarian law.¹²⁹ While in theory applicable to persons with disabilities, these regimes unhelpfully aggregate persons with disabilities amongst a broader group of “vulnerable” or “other” persons in need of protection.¹³⁰ As such, they provide little in the way of useful guidance for States or humanitarian responders.

A central theme emerging from the CRPD and specifically reflected in its obligations is the need to ensure the full participation of people with disabilities in all spheres of life, including the development of national and international laws, policies, and programs.¹³¹ This includes ensuring the meaningful inclusion of persons with disabilities and their representative organizations in the planning, design, implementation, and evaluation of each country’s development programs in order to ensure a full success in the implementation of humanitarian and other economic and social development strategies.¹³² Participation in decision making is thus a core element of the rights-protection framework of the CRPD and is a vital precondition for inclusive programming in the refugee protection context. This mandate is reinforced through the inclusion of participation as a general principle within Article 3, a State obligation in Article 4, and as a specific substantive right in Article 29 on participation in political and public life.¹³³ Because the CRPD is a holistic human rights treaty whose obligations must be understood to run horizontally across the instrument,¹³⁴ a convincing argument

128. 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 U. WASH. L. REV. 449, 456 (2008) (noting that the “Convention sets forth a host of general obligations familiar to human rights treaties”).

129. THERESIA DEGENER & GERARD QUINN, A SURVEY OF INTERNATIONAL, COMPARATIVE AND REGIONAL DISABILITY LAW REFORM 33–34 (2002) (arguing that the lack of any binding human rights law for persons with disabilities provided the impetus for drafting an international treaty on disability).

130. Michael Ashley Stein, *Disability Human Rights*, 95 CAL. L. REV. 75, 83 (2007).

131. *See* CRPD, *supra* note 4, art. 4(3).

132. *Id.* art. 32.

133. *Id.* arts. 3, 29.

134. Janet E. Lord & Michael A. Stein, *Social Rights and the Relational Value of the Rights to Participate in Sport, Recreation, and Play*, 27 B.U. INT’L L.J. 249, 281 (2009) (“The application of a holistic and integrated human rights approach as set forth in the CRPD recognizes the importance of a comprehensive rights framework, inclusive of social rights.”).

can be made for any individual Article being related to persons with disabilities when they are also refugees or IDPs.¹³⁵

Failures in ensuring that humanitarian response and assistance to refugees and IDPs take the needs of disabled persons into account prompted the drafters of the CRPD to include a provision on protection in times of risk, including armed conflict and natural disasters.¹³⁶ During the Second Ad Hoc Session, Disabled Peoples International, a network of disability organizations, contended that refugees and internationally displaced persons are a category of persons with disabilities whose rights must be further elaborated to adequately cover the spectrum of human rights.¹³⁷ In consequence, Article 11 provides:

States Parties shall 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.¹³⁸

Article 11 thus requires positive measures of protection and safety by States Parties for people with disabilities affected by situations of humanitarian emergencies and risk, including efforts directed at assisting refugees and IDPs.¹³⁹ The necessity of such provision also is recognized overtly in the CRPD's preamble¹⁴⁰ and was suggested at an African regional workshop.¹⁴¹

135. See generally World Conference on Human Rights, June 14–25, 1993, *Vienna Declaration and Programme of Action*, ¶ 5, U.N. Doc. A/CONF.157/23 (July 12, 1993) (stating that human rights are “indivisible and interdependent and interrelated”).

136. CRPD, *supra* note 4, art. 11.

137. See Ad Hoc Comm. on a Comprehensive & Integral Int'l Convention on Protection & Promotion of the Rights & Dignity of Persons with Disabilities, *Views Submitted by Governments, Intergovernmental Organizations and United Nations Bodies Concerning a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities*, U.N. Doc. A/AC.265/2003/4+A/AC.265/2003/4/Corr.1 (June 16–27, 2003). The Economic Commission for Latin America and the Caribbean also asked that consideration be given to people with disabilities when they experience discrimination as refugees and displaced persons. See Carmen Arigas, Response Submitted by the ECLAC to the Second Session, www.un.org/esa/socdev/enable/rights/uncontrib-eclac.htm (last visited Dec. 31, 2011).

138. CRPD, *supra* note 4, art. 11.

139. *Id.*

140. *Id.* pmb. (u) (underscoring that “the observance of applicable human rights instruments are indispensable for the full protection of persons with disabilities, in particular during armed conflicts and foreign occupation”).

141. Regional Workshop on Promoting the Rights of Persons with Disabilities: Towards a New UN Convention Final Declaration, Munyonyo-Kampala, Uganda ¶ 21 (June 5–6, 2003) (“A Preamble to the Convention should: . . . recognise the impact of dual

Unique, and therefore notable among the nine core United Nations human rights treaties, the CRPD also includes an inclusive development provision.¹⁴² Specifically, Article 32 governs the activities of States Parties in cooperative efforts with each other, international and regional organizations, and civil society, especially disabled persons organizations.¹⁴³ Among the enumerated appropriate measures is a directive for States Parties engaging in international cooperation efforts to ensure that these schemes, “including international development programmes, [are] inclusive of and accessible to persons with disabilities.”¹⁴⁴ This clearly applies to humanitarian emergency programs designed to reach refugees and IDPs. In addition, Article 32 calls upon States Parties to facilitate and support capacity-building activities such as training programs, and sharing information and best practices; facilitate cooperative research and access to technical and scientific information, and the appropriate provision of economic and technical assistance; and facilitate the sharing and transfer of technologies.¹⁴⁵

Other articles implicitly reference the right of persons with disabilities to be included in humanitarian efforts by States Parties and accord protection rights applicable to disabled refugees and IDPs. Article 10, for example, recognizes the inherent right to life for people with disabilities and requires States Parties to “take all necessary measures” to ensure the enjoyment of that right by disabled people, on an equal basis with others.¹⁴⁶ Article 16 of the CRPD requires States Parties to accord protection to persons with disabilities from exploitation, violence, and abuse, and to provide rehabilitation, reintegration, and protection for survivors of violence and other forms of abuse.¹⁴⁷ Article 18 recognizes the rights of persons with disabilities to liberty of movement, freedom to choose their residence, and to a nationality.¹⁴⁸ It further specifies, among other things, that persons with disabilities must not be “deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as

or multiple discrimination faced by individuals such as . . . refugees, minorities or persons with multiple disabilities or other status.”)

142. *See* CRPD, *supra* note 4, art. 32. While other human rights conventions in some instances make passing reference to international cooperation, the CRPD is the only such convention to have a detailed provision specifically referencing inclusive development. *See generally* Michael Ashley Stein, Charlotte McClain-Nhlapo & Janet E. Lord, *Disability Rights, the MDGs and Inclusive Development*, in *MILLENNIUM DEVELOPMENT GOALS AND HUMAN RIGHTS: PAST, PRESENT AND FUTURE* (Malcolm Langford et al. eds., forthcoming 2012).

143. *See* CRPD, *supra* note 4, art. 32.

144. *Id.* art. 32(1)(a).

145. *Id.* art. 32(1)(a)–(d).

146. *Id.* art. 10.

147. *Id.* art. 16.

148. *See* CRPD, *supra* note 4, art. 18.

immigration proceedings.”¹⁴⁹ Article 28 compels States Parties to ensure an adequate standard of living and social protection, including equal access to “clean water services” and “public housing programmes.”¹⁵⁰ Article 19 emphasizes the right of persons with disabilities to live independently in the community and militates against segregated living arrangements in favor of providing accommodations and support.¹⁵¹ Article 25 requires equal access to health care,¹⁵² while Article 26 makes certain the provision of habilitation and rehabilitation.¹⁵³ Article 20 facilitates access to mobility aids and training.¹⁵⁴ Also, Article 31 requires States to collect disaggregated statistical data on disability and to observe human rights and fundamental freedoms within the framework of data collection and use.¹⁵⁵

The CRPD also emphasizes the importance of accessibility in order to facilitate the right of persons with disabilities to “live independently and participate fully in all aspects of life.”¹⁵⁶ Article 9 specifically requires States Parties to undertake appropriate accessibility measures in order to ensure that persons with disabilities have equal access to the physical environment, transportation, information, and communications as well as to other facilities and services in both urban and rural areas.¹⁵⁷ In this regard, States are required to identify and then remove obstacles and barriers to accessibility, including those in buildings, roads, transportation, schools, housing, medical facilities, information, communication, and other services.¹⁵⁸ This provision has application to refugee camps as well as urban settlements, and States have a responsibility to effectively monitor the implementation of accessibility measures in these contexts.¹⁵⁹ Articles 6 and 7 compel, respectively, that women and children with disabilities enjoy the full spectrum of human rights, and, perhaps most crucially, Article 8 mandates disability rights education and awareness in order to facilitate implementation across the CRPD, including in the humanitarian assistance realm where it is sorely needed.¹⁶⁰

Previously, humanitarian assistance organizations rarely had disability inclusion policies or guidelines to assist in the design and implementation of their work, nor did they include training that addresses the specific needs of disabled

149. *Id.*

150. *Id.* arts. 28, 28(2)(a), 28(2)(d).

151. *Id.* art. 19.

152. *Id.* art. 25.

153. *See* CRPD, *supra* note 4, art. 26.

154. *Id.* art. 20.

155. *Id.* art. 31.

156. *Id.* art. 9.

157. *Id.*

158. *See* CRPD, *supra* note 4, art. 9

159. *Id.*

160. *Id.* arts. 6–7.

refugees and IDPs.¹⁶¹ Nonetheless, as will be discussed below, the ratification of the CRPD by nearly 100 States has served as an impetus for the development of disability inclusive policies by a number of major bilateral and multilateral donors.¹⁶² This, in turn, should compel similarly inclusive policy shifts by implementers of humanitarian assistance programs serving refugees and IDPs. The obligations set out in the CRPD provide a model for ensuring that such policies are put into place and that governments are carefully monitoring the policies and practices of emergency responders.

Ensuring the adequate protection of people with disabilities in humanitarian crises ultimately requires a better integrated and implemented policy approach to drive field-based solutions. Policymakers can properly target priorities and develop appropriate responses only if they first acknowledge the life experience and concerns of persons with disabilities. Ensuring that responses are appropriately contextualized and are designed to meet the real needs of persons with disabilities on the ground can be fostered through disability-specific field assessments undertaken by researchers with disability expertise, together with disabled people's organizations working on the ground. In order to build the evidence base required to design and operationalize inclusive programming, this area requires promotion and funding.

V. DISABILITY AND DISPLACEMENT CASE STUDIES

Previous sections lay out the specific issues that confront persons with disabilities who find themselves displaced, either outside their home countries as refugees or within their country as IDPs, as well as the legal framework in place that stands to support the realization of their human rights. The case studies that follow serve to highlight, within two specific contexts, the barriers confronting persons with disabilities who are displaced as a result of natural disaster or conflict. These analyses, of the Asian tsunami and Biharis in Bangladesh, respectively, disclose failures in programming and help to expose how a disability-specific lens would lead to different responses and outcomes.

161. See Maria Kett & John Twigg, *Disability and Disasters: Towards an Inclusive Approach*, in *WORLD DISASTERS REPORT 2007*, at 89 (Yvonne Klynman et al. eds., 2007); Stein, McClain-Nhlapo & Lord, *supra* note 142.

162. See generally JANET E. LORD ET AL., *DISABILITY AND INTERNATIONAL COOPERATION AND DEVELOPMENT: A REVIEW OF POLICIES AND PRACTICES* (2010), www.siteresources.worldbank.org/DISABILITY/Resources/PublicationsReports/Disability_and_Intl_Cooperation.pdf.

A. Disability and Natural Disaster: Asian Tsunami

The Asian tsunami relief efforts disclosed a number of challenges related to the readiness of large-scale relief operations implemented by humanitarian assistance organizations to respond effectively to the needs of people with disabilities. The findings of early reports suggest that humanitarian organizations were largely unprepared and ill-equipped to address even the most basic needs of people with disabilities in facilitating access to shelter, food, water, and health-care services.¹⁶³

The Center for International Rehabilitation (CIR) conducted one of the first assessments of humanitarian assistance in tsunami-affected regions of India, Thailand, and Indonesia.¹⁶⁴ Their fieldwork found that the majority of temporary shelters were not accessible to people with physical disabilities and disclosed that the Indonesian government requested the International Organization for Migration to construct 11,000 semi-permanent homes and shelters for the tsunami-affected population with no instructions on accessibility.¹⁶⁵ The design could house up to seven people or be adapted for use as a medical clinic or school, yet these structures (including their latrines) were inaccessible to people with physical disabilities, and principles of universal design were evidently not considered.¹⁶⁶ Also in Indonesia, food-distribution systems relied heavily on an internal displacement camp system that was inaccessible.¹⁶⁷ Among the many health challenges throughout affected areas, there was a major shortage of assistive devices for persons with mobility impairments. Most serious was the lack of mental-health or counseling services for disaster affected populations. Where mental-health services were available, they tended to be inaccessible because of a lack of transportation options, or where physically attainable, their focus was limited to addressing shelter needs.¹⁶⁸

The CIR study indicated that reconstruction efforts in tsunami-affected areas proceeded without regard for disability-related issues, many of which could be addressed at little or no cost had they been integrated into the planning process of reconstruction.¹⁶⁹ One of the major conclusions of the report is that this absence of disability-related standards could be attributed to the failure to include

163. CIR STUDY, *supra* note 9, at 48.

164. *Id.*

165. *Id.* at 48–49.

166. *Id.* Similarly, in India, temporary shelters were barrier-free, but latrines were located far away from the shelters, thereby compromising access. *Id.* at 24. It should be noted that the CRPD emphasizes universal design as a concept to be applied across all contexts covered by the treaty, which would include all housing, including temporary shelter designed for use in humanitarian crisis contexts. See CRPD, *supra* note 4, art. 4(1)(f).

167. CIR STUDY, *supra* note 9, at 49.

168. *Id.* at 7.

169. *Id.* at 52.

persons with disabilities and their representative organizations in redevelopment planning.¹⁷⁰

B. Disability Displacement: Bihari Case Study

In October and November of 1946, widespread anti-Muslim riots rocked the present-day Indian state of Bihar and surrounding areas.¹⁷¹ Immediately following partition in the summer of 1947, many Urdu-speaking Muslims from Bihar and nearby areas migrated to East Pakistan, both to flee the religion-based violence that had prevailed since 1923 and to follow the promise of a safe haven for Muslims.¹⁷² In 1948, Urdu was declared to be the single state language of both West and East Pakistan, thereby allowing Urdu speakers a greater degree of access to government jobs and facilities than the Bengali speakers native to the region of what is present-day Bangladesh.¹⁷³ Growing resentment of cultural and linguistic repression grew among Bengalis, with the movement for linguistic and national sovereignty culminating in the 1971 Liberation War.¹⁷⁴ The prevailing perception was that the Urdu-speaking elites of West Pakistan and the Urdu speakers from India (or Biharis) who dominated the railroad and transport industries were one and the same.¹⁷⁵ Biharis became victims of persecution during and after the war, and many lost their families and possessions during the ensuing armed conflict and its aftermath. In 1973, Bangladesh adopted the Indemnity Order¹⁷⁶ granting amnesty to perpetrators of crimes against the Bihari minority. It was during this period that the International Red Cross set up a series of 116 camps throughout Bangladesh in order to provide safe housing for the Bihari minority.¹⁷⁷ People in these camps receive some benefits from the

170. *Id.* at 42.

171. See NITISH SENGUPTA, *BENGAL DIVIDED: THE UNMAKING OF A NATION (1905–1971)*, at 143 (2007).

172. *Id.*

173. See Ninette Kelley, *Law, Economics and Public Policy: Essays in Honour of Michael Trebilcock: Immigration: Ideas, Interests, and Institutions: Conceding Citizenship in Bangladesh*, 60 *UNIV. TORONTO L.J.* 349, 352 (2010).

174. *Id.* at 353.

175. *Id.* at 352–53.

176. The Indemnity Order provides that “[a] public prosecutor shall upon the Government certifying that a case against any other person for or on account of or in respect of any act done by him during the period from the 1st day of March 1971 and the 28th day of February 1972 is an act done in connection with national liberation struggle or for maintenance or restoration of order . . . shall not proceed further with the case, which shall be deemed to be withdrawn, and the accused person shall forthwith be discharged.” Bangladesh National Liberation Struggle (Indemnity) Order, President’s Order No. 16, § 3 (Feb. 28, 1973), available at http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=450.

177. Biharis living in Bangladesh do not fall within the definition of refugees under the 1951 Convention; however, they are displaced persons and are living refugee-like camp

government (i.e., the State pays the electric and water bills of residents of Geneva Camp), but the UNHCR works directly in the camps. Conditions in the camps are poor, with families of ten crowded into single-room homes. There are no formal barriers for residents to move outside the camps. Still, they are home to the majority of the estimated 300,000 Biharis living in Bangladesh.

In interviews conducted by the Harvard Law School Project on Disability in Bangladesh among displaced Biharis, numerous barriers confronted persons with disabilities living in the displacement camps.¹⁷⁸ One interviewee noted that his greatest problem was obtaining access to facilities.¹⁷⁹ Accompanied by his wife, he attempted to obtain a disability ID card three times, but they were unable to locate the office.¹⁸⁰ Others reported being denied other documentation, such as passports.¹⁸¹ Basic living conditions in the camp were very challenging. Navigating the tight grid of narrow walkways was difficult for all camp residents, but for blind persons, it was perilous; walkways were often cluttered with refuse and were very crowded at nearly all hours.¹⁸² One interviewee reported repeated accidents where he had fallen into the open sewers which laced the camp and required delicate footing to sidestep for even individuals without a visual impairment. Additionally, the public bathroom facilities were a ten-minute walk to the outer edge of the camp and required assistance for access. The same interviewee could not participate in weekly prayers at the mosque because of access issues.¹⁸³

Other participants in the study indicated that their access to humanitarian assistance was compromised, which they attributed to their disability.¹⁸⁴ One interviewee reported that the camp receives outside aid regularly, especially during Muslim festivals, but that he is often not included in distributions of food.¹⁸⁵ Moreover, information was not readily available on when and where distributions were being given to the poor, and no efforts were made for specific outreach to persons with disabilities.¹⁸⁶

conditions. See generally AHMED ILIAS, *BIHARIS: THE INDIAN EMIGRES IN BANGLADESH* (2003); Sumit Sen, *Stateless Refugees and the Right to Return: The Bihari Refugees of South Asia – Part 1*, 11 INT'L J. REFUGEE L. 625 (1999); Sumit Sen, *Stateless Refugees and the Right to Return: The Bihari Refugees of South Asia – Part 2*, 12 INT'L J. REFUGEE L. 41 (2000).

178. Matthew Smith, *Urdu-Speakers with Disabilities in Bangladesh: Case Studies from Geneva Camp in Mohammedpur, Dhaka* (Harvard Law School Project on Disability, Dec. 2010) (on file with authors).

179. *Id.* at 3.

180. *Id.*

181. *Id.* at 2.

182. *Id.* at 3.

183. Smith, *supra* note 178, at 4.

184. *Id.*

185. *Id.*

186. *Id.*

Access to livelihoods and work is likewise compromised for Biharis with disabilities living in the camps. One interviewee who lost his eyesight had no access to employment and no longer had access to the informal financial supports open to camp residents. Through informal borrowing, camp residents avoid formal lending institutions where documentation is required and discrimination likely:

[W]hen my eyes were good, if I went to someone to ask to borrow money, then he'd bring it out without hesitation. The same day that I asked for it, the other one would give me a loan. Now, because I'm disabled, if I go up to someone and say I want Tk. 200, no one would want to give it to me. They'd say, "You're disabled, how are you going to find the money [to pay me back]?"¹⁸⁷

A conclusion similar to those drawn from the experience of the Asian tsunami could well be applied to the situation facing persons with disabilities who are displaced as a consequence of conflict, such as the Biharis living in long-term encampments. In both circumstances the absence of representation—whether in disaster response (or preparedness) or in long-term humanitarian assistance—represents a barrier to equal access to basic necessities and services.

VI. CONCLUSION

International human rights, humanitarian and refugee law, along with the emerging framework on IDPs, provide a ready point of departure for disability inclusion in humanitarian response. A disability rights narrative in refugee and IDP law and policy is as yet conspicuously absent, notwithstanding the emergence of a robust disability rights dialogue in human rights brought on by the adoption of the CRPD. The consequence is an ongoing inclusion gap and a notable lack of accessible programming in refugee and IDP responses to displacement. The ratification of the CRPD in countries around the world and corresponding law and policy should, it is hoped, trigger the broadening and deepening of refugee and IDP protection for beneficiaries with disabilities. Modifications to the Sphere Project's Humanitarian Charter and Minimum Standards in Disaster Response, in particular those highlighting disability as a cross-cutting issue in humanitarian response, represent a heightened awareness of disability issues in the refugee context. Moreover, the mandate created by the CRPD for U.N. agencies, including UNHCR, should likewise foster a more inclusive approach to refugee and IDP protection.

187. *Id.*

A key component of CRPD ratification in nearly 100 countries worldwide is disability law and policy reform. Ensuring that disability inclusion is part and parcel of emergency response and the humanitarian agenda of donors is an obligation triggered not only in respect of State-delivered assistance but also in terms of the obligation to monitor disability inclusion for humanitarian assistance providers, whether public or private. Some donor agencies have committed themselves to disability-inclusive schemes in their humanitarian and disaster assistance portfolios, including, for example, the USAID and the Australian Agency for International Development.¹⁸⁸ Persons with disabilities and their representative organizations must be recognized as resources essential to the development process and, in particular, as agents in the building of inclusive societies in which rights flourish.¹⁸⁹ Emergency preparedness, whether responding to refugee or IDP flows during situations of risk, such as armed conflict or as a result of natural disaster or other emergency, must include the participation of persons with disabilities themselves. Ultimately, building an inclusive culture in humanitarian response requires cross-cultural engagement and communication between disabled persons organizations and humanitarian responders. In this regard, implementation of Article 11 of the CRPD on protection in situations of risk hinges on the effective application of the disability education and awareness-raising obligations reflected in Article 8. Informed by the normative framework provided by the CRPD, protection and assistance efforts of humanitarian organizations should result in more disability-sensitive and inclusive responses and the ability to modify programming for disability equality.



188. *Disability and Development*, USAID, www.usaid.gov/about_usaid/disability (last visited Dec. 31, 2011); see also *Disability in Australia's Aid Program*, AUSAID, www.usaid.gov/au/keyaid/disability.cfm (last visited Dec. 31, 2011).

189. See CRPD, *supra* note 4, art. 4(3).