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Disability, Development, and Human Rights: A Mandate and Framework for International Financial Institutions

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Disability, Development, and Human Rights: A Mandate and Framework for International Financial Institutions

Michael Ashley Stein^{†*} & Penelope J.S. Stein^{**}

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INTRODUCTION

More than one billion people have a disability, many of whom are impoverished.¹ Notably, persons with disabilities account for twenty percent of all individuals living below the global poverty line of one dollar a day.² The phenomena of disability and poverty are recursive and cumulative, with one circumstance heightening the probability that the other will also occur. Inaccessible environments, cultural attitudes, lack of education and employment opportunities, as well as additional costs resulting from disability, each contribute to the elevated worldwide poverty rate among individuals with disabilities. The reasons that the poor are at significantly greater risk of disablement are equally apparent: malnutrition, inadequate medical care, limited education, and physically dangerous living and working conditions. The disability-poverty cycle leads initially to transitory poverty, and potentially to chronic and intergenerational poverty.³

Given the dire status of the globe's "largest minority,"⁴ development aid schemes logically should include people with disabilities, a fact noted over a decade ago by then World Bank president James Wolfensohn.⁵ Nevertheless, individuals with disabilities remain among the most neglected persons living in poverty. To illustrate, the central aim of the United Nations Millennium Development Goals ("MDGs") is to halve the world's poverty.⁶ Nonetheless, the MDGs neither reference disability nor monitor their impact on persons with disabilities.⁷ International development assistance programs —

¹ See WORLD HEALTH ORG. [WHO] & THE WORLD BANK, WORLD REPORT ON DISABILITY, at xi (2011), available at http://whqlibdoc.who.int/publications/2011/9789240685215_eng.pdf.

² Cf. *Factsheet on Persons with Disabilities*, UNITED NATIONS ENABLE 18, <http://www.un.org/disabilities/default.asp?navid=34&pid=18> (last visited Dec. 22, 2013) (estimating that 20% of world's poorest have some type of disability).

³ See generally POVERTY AND DISABILITY (Tanya Barron & Jabulani Manombe Ncube eds., 2010).

⁴ *Some Facts About Persons with Disabilities*, UNITED NATIONS ENABLE: INT'L CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (2006), <http://www.un.org/disabilities/convention/facts.shtml>.

⁵ See James D. Wolfensohn, Editorial, *Poor, Disabled and Shut Out*, WASH. POST, Dec. 3, 2002, at A25 ("Unless disabled people are brought into the development mainstream, it will be impossible to cut poverty . . .").

⁶ The MDGs were derived from the United Nations Millennium Declaration, G.A. Res. 55/2, U.N. Doc A/RES/55/2 (Sept. 8, 2000). For the eight goals, eighteen targets, and forty-eight indicators of the MDGs, see *Goals, Targets and Indicators*, UNITED NATIONS MILLENNIUM PROJECT, <http://www.unmillenniumproject.org/goals/gti.htm> (last visited Jan. 2, 2014).

⁷ See JANET E. LORD & KATHERINE N. GUERNSEY, INT'L DISABILITY & DEV.

whether focused on poverty alleviation, health care access, HIV and AIDs programming, employment opportunities, infrastructure construction, or dispensing humanitarian relief — have likewise historically excluded the disability population from their purview.⁸

Disability rights advocates have called for equal inclusion within the global development agenda repeatedly since the 1980s.⁹ In response, international development agencies have generated policy statements that rhetorically support disability in development but do not require its implementation by matching those plans with enforcement mechanisms, and by sponsoring a small percentage of disability-specific projects.¹⁰ For instance, the United States Agency for International Development (“USAID”) issued path-breaking guidelines in 1997 indicating its commitment to disability-inclusive development.¹¹ These became policy in 2004, but USAID has yet to enforce them. Along similar lines, despite publishing comprehensive toolkits on how to achieve inclusive-development,¹² barely more than

CONSORTIUM TASK FORCE, INCLUSIVE DEVELOPMENT AND THE COMPREHENSIVE AND INTEGRAL INTERNATIONAL CONVENTION ON THE PROTECTION AND PROMOTION OF THE RIGHTS AND DIGNITY OF PERSONS WITH DISABILITIES 6-9 (2005), available at <http://www.un.org/esa/socdev/enable/rights/ahc5docs/ahc5iddc.doc> (discussing the link between the MDGs and disability issues).

⁸ See Michael Ashley Stein et al., *Education and HIV/AIDS: Disability Rights and Inclusive Development*, in THE MILLENNIUM DEVELOPMENT GOALS AND HUMAN RIGHTS: PAST, PRESENT AND FUTURE 274, 274-75 (Malcolm Langford et al. eds., 2013) [hereinafter *Education and HIV/AIDS*]. For specific topic area examples, see INT’L DISABILITY RIGHTS MONITOR, DISABILITY AND TSUNAMI RELIEF EFFORTS IN INDIA, INDONESIA AND THAILAND, at xiv (2005), available at www.ideanet.org/cir/uploads/File/TsunamiReport.pdf; WOMEN’S COMM’N FOR REFUGEE WOMEN & CHILDREN, DISABILITIES AMONG REFUGEES AND CONFLICT-AFFECTED POPULATIONS, available at <http://www.womenscommission.org/programs/disabilities/52-disabilities> (last visited Jan. 29, 2013) (refugee and IDP assistance); Nora E. Groce, *HIV/AIDS and Individuals with Disability*, 8 HEALTH & HUM. RTS. 215, 215-16 (2005) (HIV/AIDs awareness and prevention schemes).

⁹ See Akiko Ito, *International Legal and Policy Framework on Disability*, 93 AM. SOC’Y L. & INT’L PROC. 334, 334 (1999). Ms. Ito is the chief of CRPD Secretariat within the United Nations Department of Economic and Social Affairs (“DESA”), an agency tasked with MDG implementation, development assistance, and various disability-related and other matters.

¹⁰ See, e.g., REBECCA YEO & DISABILITY KNOWLEDGE & RESEARCH, DISABILITY, POVERTY AND THE NEW DEVELOPMENT AGENDA 5-6 (2005), available at <http://hpod.org/pdf/Developmentagenda.pdf> (citing World Bank, Asian Development Bank, USAID, FINNIDA, JICA, and DFID documents).

¹¹ See U.S. AGENCY INT’L DEV., USAID DISABILITY POLICY PAPER 2 (1997), available at <http://hpod.pmhclients.com/pdf/USAID-Disability-Paper.pdf>.

¹² See, e.g., KATHERINE GUERNSEY ET AL., WORLD BANK, MAKING INCLUSION OPERATIONAL: LEGAL AND INSTITUTIONAL RESOURCES FOR WORLD BANK STAFF ON THE

six percent of World Bank projects contain a disability component.¹³ Hence, only a tiny fraction of the nearly one hundred billion dollars spent annually on development and humanitarian schemes around the world reaches persons with disabilities.¹⁴ Eliding the disability population from these programs significantly and deleteriously impacts their lives by increasing the equality gap relative to non-disabled citizens and distancing them further from mainstream society.

Some of the harmful neglect towards persons with disabilities in development programming has been addressed as a legal matter by the Convention on the Rights of Persons with Disabilities (“CRPD”), which entered into force in May 2008.¹⁵ Notably, Article 32(a) of the treaty requires all international assistance, including development aid, to “be inclusive of and accessible to persons with disabilities.” Acknowledging this duty, States Parties — including the European Union which ratified the CRPD as a regional entity and is the world’s largest development donor — are evolving disability-inclusive aid initiatives.¹⁶ At the same time, international financial institutions (“IFIs”) such as the International Monetary Fund (“IMF”), the Asian Development Bank — and especially the World Bank — continue to assert that their status as non-state actors insulates them from international human rights law obligations.¹⁷ An infamous exemplar of

INCLUSION OF DISABILITY ISSUES IN INVESTMENT PROJECTS (2006), *available at* http://siteresources.worldbank.org/INTLAWJUSTICE/Resources/LDWP1_Disability.pdf (providing clear guidance for World Bank personnel on how to make all their sponsored schemes disability-inclusive).

¹³ See JEANINE BRAITHWAITE ET AL., *DISABILITY & DEVELOPMENT IN THE WORLD BANK: FY2000–2007*, at 3 (2008), *available at* <http://siteresources.worldbank.org/DISABILITY/Resources/Publications-Reports/0808.pdf> (“During FY2002–2007 6.70 percent of World Bank projects by number and 6.65 percent of new lending commitments mentioned disability, although a specific amount dedicated to specific disability aspects could not be determined.”).

¹⁴ See THE WORLD BANK, *GLOBAL DEVELOPMENT FINANCE: EXTERNAL DEBT OF DEVELOPING COUNTRIES 1, 4* (2011), *available at* <https://openknowledge.worldbank.org/bitstream/handle/10986/8132/588410PUB0Glob10ID1187630BOX353816B.pdf?sequence=1> (reporting that official grants to developing countries in 2009 totaled \$95 billion, of which \$17.7 billion came from the World Bank).

¹⁵ See 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].

¹⁶ See generally JANET LORD ET AL., *DISABILITY AND INTERNATIONAL COOPERATION AND DEVELOPMENT: A REVIEW OF POLICIES AND PRACTICES* (2010), *available at* http://siteresources.worldbank.org/DISABILITY/Resources/Publications-Reports/Disability_and_Intl_Cooperation.pdf (cataloguing guidelines on disability-inclusive development).

¹⁷ Although this Article references IFIs generally, when appropriate the World Bank or the IMF are singled out for their influence or because they issued clear

this posture was the IMF and World Bank continuing activities in Apartheid-era South Africa in the face of egregious human rights violations and General Assembly sanctions.¹⁸

This Article makes the legal and ethical case that IFIs should abide by the CRPD's inclusive-development mandate. In doing so, it argues that customary international law, human rights treaty obligations, IFI internal governance mandates, fiduciary duties, and ethical obligations require IFIs to ensure equal access for persons with disabilities to their development schemes. The Article also explicates what a comprehensive and disability human rights-based approach to development entails procedurally, substantively, and culturally. Such guidance is crucially needed if IFIs (as well as state and other non-state actors) are to effectively implement their programming. Practical guiding principles are likewise necessary to honor the CRPD's requirements — regardless of whether IFIs formally concede these obligations. The Article thus makes novel legal arguments and provides important functional guidance on IFI inclusive-development responsibility, while contributing to a growing literature regarding the human rights obligations of non-state actors.¹⁹

Part I describes the evolution of a disability rights-based approach within international human rights law, culminating in the CRPD and its impact on state-sponsored development practices. Next, Part II moves beyond the provenance of state actors and argues that legal and ethical considerations mandate IFIs to be inclusive of persons with disabilities in their development schemes. Part III makes concrete those arguments by setting forth a comprehensive procedural and substantive framework of what a disability human rights approach to development would entail, and what institutional changes should occur within IFIs to ensure its effective implementation. The Article concludes with observations on the transformative effect that disability-inclusive development schemes engender for individuals with disabilities in both the developing and the developed world.

positions on general human rights obligations.

¹⁸ See James S. Henry, *Even if Sanctions Are Lifted, Few Will Rush to South Africa*, N.Y. TIMES, Oct. 28, 1990, at A5.

¹⁹ See, e.g., ANDREW CLAPHAM, HUMAN RIGHTS OBLIGATIONS OF NON-STATE ACTORS (2006) (examining current legal protection of human rights when threat to those rights arises from private actors); NON-STATE ACTORS AND HUMAN RIGHTS (Philip Alston ed., 2005) (exploring obligations of non-state actors, such as corporations, under international human rights legal doctrines).

I. THE EVOLVING DISABILITY HUMAN RIGHTS PARADIGM

Historically, disability has been conceptualized under a medical/charity model, with that notion reflected in human rights instruments and development programming. This perspective has shifted over the last two decades towards a rights-based model of disability that the CRPD firmly cements into place. Due to the CRPD's inclusive-development mandate, states are revising their development and humanitarian aid schemes to provide equal access for persons with disabilities.

A. *From a Medical to a Social Model of Disability*

A medical model of disability views individuals with disabilities as impaired by inherent biological limitations and incapable of performing routine societal functions.²⁰ In consequence, individuals with disabilities worldwide have been systemically excluded from social opportunities, such as being isolated in social “care” institutions, or have been accorded limited participation, for example by having their education circumscribed to separate schools.²¹ In contrast to this historically prevalent medical pathology, disability rights advocates have advanced a social model of disability.²² This approach views the externally constructed environment, and the attitudes that drive its formation, as central in determining how “disabled” any individual will be from functioning in a given society.²³ A clear illustration is the impact that an arbitrary decision to build a

²⁰ See Kenny Fries, *Introduction*, in *STARING BACK: THE DISABILITY EXPERIENCE FROM THE INSIDE OUT* 1, 6-7 (Kenny Fries ed., 1997) (noting that “this view of disability . . . puts the blame squarely on the individual”).

²¹ See Michael Ashley Stein et al., *Disability*, in *2 THE OXFORD INTERNATIONAL ENCYCLOPEDIA OF LEGAL HISTORY* 334, 335 (Stanley N. Katz et al. eds., 2009).

²² Some originate the social model theory with MICHAEL OLIVER & BOB SAPEY, *SOCIAL WORK WITH DISABLED PEOPLE* 29 (Jo Campling ed., 3d ed. 2006) (noting that the social model is “nothing more or less fundamental than a switch away from focusing on the physical limitations of particular individuals to the way the physical and social environments impose limitations upon certain groups or categories of people”). For a history of the social model's development as an advocacy tool, see Michael Ashley Stein & Penelope J.S. Stein, Symposium, *Beyond Disability Civil Rights*, 58 *HASTINGS L.J.* 1203, 1206-08 (2007).

²³ See, e.g., Anita Silvers, *Formal Justice*, in *DISABILITY, DIFFERENCE, DISCRIMINATION: PERSPECTIVES ON JUSTICE IN BIOETHICS AND PUBLIC POLICY* 13, 74-75 (1998) (tracing the source of disabled peoples' relative disadvantage to the existence of a hostile environment that is “artificial and remediable” as opposed to “natural and immutable”).

public office building with stairs but without an elevator has on wheelchair users who otherwise have no difficulty mobilizing.²⁴

Beginning in the 1970s, the global disability rights movement advanced the social model and progressively influenced international instruments towards its viewpoint.²⁵ Several international declarations evidencing a shift from a medical to a social model of disability were adopted during the 1970s,²⁶ yet each persisted to maintain that individuals are disabled due to “special” medical problems and dependent on social services and institutions.²⁷ The following decade, however, “marked an irreversible shift” to a social rights model of disability.²⁸ Acting on the aphorism “[f]ull participation and equality,” the United Nations proclaimed 1981 as the International Year of the Disabled,²⁹ with the succeeding period named the International Decade of Disabled Persons.³⁰ More significantly, 1982 also witnessed enactment of the World Programme of Action Concerning Disabled Persons.³¹

²⁴ See SUSAN WENDELL, *THE REJECTED BODY: FEMINIST PHILOSOPHICAL REFLECTIONS ON DISABILITY* 39 (1996) (representing that “the entire physical and social organization of life” has been created with the able-bodied in mind).

²⁵ See generally Michael Ashley Stein, *Disability Human Rights*, 95 CALIF. L. REV. 75 (2007) [hereinafter *Disability Human Rights*] (exploring theoretical approaches utilized by United Nations in structuring disability related programs).

²⁶ See, e.g., Declaration on the Rights of Disabled Persons, G.A. Res. 3447 (XXX), U.N. GAOR, 30th Sess., Supp. No. 34, U.N. Doc. A/10034, at 88 (Dec. 9, 1975) (discussing the imperative of protecting mentally and physically disadvantaged persons and the need to promote their integration); Declaration on the Rights of Mentally Retarded Persons, G.A. Res. 2856 (XXVI), U.N. GAOR, 26th Sess., Supp. No. 29, U.N. Doc. A/8429, at 93 (Dec. 20, 1971) (emphasizing “the necessity of assisting mentally retarded persons to develop their abilities in various fields of activities and of promoting their integration as far as possible in normal life”).

²⁷ See, e.g., G.A. Res. 3447, *supra* note 26, at ¶ 8 (underscoring the needs of disabled persons to “special” services); G.A. Res. 2856, *supra* note 26, at pmb. (emphasizing the need to protect disabled persons and their access to segregated services).

²⁸ GERARD QUINN ET AL., *HUMAN RIGHTS AND DISABILITY: THE CURRENT USE AND FUTURE POTENTIAL OF UNITED NATIONS HUMAN RIGHTS INSTRUMENTS IN THE CONTEXT OF DISABILITY* 30 (2002), available at <http://www.ohchr.org/Documents/Publications/HRDisabilityen.pdf>.

²⁹ G.A. Res. 77, U.N. Doc. A/RES/36/77 (Dec. 8, 1981) (internal quotation marks omitted).

³⁰ See G.A. Res. 53, ¶ 11, U.N. Doc. A/RES/37/53 (Dec. 3, 1982).

³¹ G.A. Res. 37/52, U.N. GAOR, 37th Sess., Supp. No. 51, U.N. Doc. A/37/51 (Dec. 3, 1982). Although this resolution reiterated two medicalized goals of preventing and rehabilitating disability, it also initiated a shift towards the social model by advocating the equalization of opportunities for persons with disabilities. See *World Programme of Action Concerning Disabled Persons*, UNITED NATIONS ENABLE, <http://www.un.org/>

The 1990s “[were] a banner decade for disability law,” with sustained momentum for adopting the social model into international legal instruments.³² In 1993, the General Assembly issued the Standard Rules on the Equalization of Opportunities for Persons with Disabilities,³³ still the most significant soft law relating to people with disabilities.³⁴ The Vienna Declaration and Programme of Action was adopted that same year.³⁵ Finally, passage of the Americans with Disabilities Act in 1990 bears noting.³⁶ Steeped heavily in the social model of disability, that statute spurred analogous legislation and influenced key concepts in the European Union’s Framework Employment Directive, and ultimately, the CRPD.³⁷

B. The CRPD

The CRPD is the first international human rights instrument applicable to, and legally enforceable by, individuals on the basis of their disability status. Until its adoption, people with disabilities were theoretically, but not practically, protected by United Nations human rights treaties.³⁸ Each prior treaty contains legal obligations that can be

disabilities/default.asp?id=23 (last visited Jan. 8, 2014). This last aspiration was defined as “the process through which the general system of society, such as the physical and cultural environment” is rendered accessible. See *Disability-Specific Instruments*, UNITED NATIONS ENABLE, <http://www.un.org/esa/socdev/enable/rights/wgrefa3.htm> (last visited Jan. 8, 2014).

³² Theresia Degener, *International Disability Law — A New Legal Subject on the Rise: The Interregional Experts’ Meeting in Hong Kong, December 13–17, 1999*, 18 BERKELEY J. INT’L L. 180, 184 (2000).

³³ G.A. Res. 48/96, U.N. GAOR, 48th Sess., Supp. No. 49, (Vol. I), U.N. Doc. A/48/49 (Vol. I), at 202 (Dec. 20, 1993).

³⁴ Monitored by a Special Rapporteur, the Standard Rules build on the World Programme of Action by emphasizing disabled persons equality and defining disability as a by-product of the socially constructed environment. See *id.* at Rules 1, 4, 15.

³⁵ See World Conference on Human Rights, June 14–25, 1993, *Vienna Declaration and Programme of Action*, ¶ 37, U.N. Doc. A/CONF. 157/23 (July 12, 1993). Although not directed specifically towards disability, it accelerated the trend towards a social model of disability by maintaining that disabled persons “should be guaranteed equal opportunity through the elimination of all socially determined barriers” among which it included any “physical, financial, social or psychological” obstacles that “exclude or restrict full participation in society.” *Id.* ¶ 64.

³⁶ 42 U.S.C. § 12101 (2012).

³⁷ See Michael Ashley Stein & Janet E. Lord, *The Law and Politics of U.S. Participation in the UN Convention on the Rights of Persons with Disabilities*, in HUMAN RIGHTS IN THE UNITED STATES: BEYOND EXCEPTIONALISM 199, 206–07 (Shareen Hertel & Kathryn Libal eds., 2011) [hereinafter *Law and Politics of U.S. Participation*].

³⁸ See generally QUINN ET AL., *supra* note 28 (offering a comprehensive review of the United Nations system and its lack of interaction with disability).

applied to persons with disabilities, either because they are universal in scope or because they target a characteristic that persons with disabilities also possess (such as migrant status),³⁹ but were not applied in practice.⁴⁰ At the same time, General Assembly resolutions and declarations explicitly referencing disability are not enforceable because of their soft law status.

The CRPD's adoption signaled a dramatic sea change from the 1993 unheeded caution of a United Nations Special Rapporteur that, absent specific treaty protection, human rights abuses against persons with disabilities would likely continue without redress.⁴¹ In December 2001, the General Assembly established an Ad Hoc Committee to consider the development of a disability-based human rights instrument.⁴² This action followed previous but unsuccessful state proposals,⁴³ and was facilitated by increasingly positive attitudes globally towards people with disabilities and their ability to participate in and contribute to society. United Nations action was also precipitated by advocacy around the absence of disability-specific references in the MDGs.⁴⁴ Significantly, most of the co-sponsors of Mexico's resolution for a disability rights convention were likewise

³⁹ The Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, (Vol. I), U.N. Doc. A/44/49 (Vol. I), at 161 (Nov. 20, 1989), alone among these identity-specific treaties, contains a distinct disability-related article. See *id.* at art. 23(1).

⁴⁰ To illustrate, "in the decade 1994–2003, seventeen disability-related complaints were asserted under the [then-seven] core United Nations instruments, but thirteen were declared inadmissible by their respective monitoring committees." Michael Ashley Stein & Janet E. Lord, *Future Prospects for the United Nations Convention on the Rights of Persons with Disabilities*, in *THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES: EUROPEAN AND SCANDINAVIAN PERSPECTIVES* 17, 18 n.9 (Oddný Mjöll Arnardóttir & Gerard Quinn eds., 2009) [hereinafter *Future Prospects*].

⁴¹ See LEANDRO DESPOUY, *HUMAN RIGHTS AND DISABLED PERSONS* ¶¶ 280-81 (Human Rights Studies Series, No. 6, Centre for Human Rights: Geneva 1993).

⁴² See Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities, G.A. Res. 56/168, ¶ 1, U.N. Doc. A/RES/56/168 (Feb. 26, 2002).

⁴³ Italy proffered a convention draft during the forty-second session of the General Assembly in 1987, see G.A. Res. 3/42, ¶¶ 7-8, U.N. GAOR, 42d Sess., U.N. Doc. A/C.3/42/SR.16 (Oct. 19, 1987), and Sweden did the same two years later at the General Assembly's forty-fourth session. See G.A. Res. 3/44, ¶¶ 8-11, U.N. GAOR, 44th Sess., U.N. Doc. A/C.3/44/SR.16 (Oct. 24, 1989).

⁴⁴ A detailed description of the political process behind the United Nations decision to go forward with a disability human rights convention is set forth in the (United States) National Council on Disability newsletter. See *UN Disability Convention — Topics at a Glance: History of the Process*, NAT'L COUNCIL ON DISABILITY, <http://www.ncd.gov/publications/2003/Oct2003> (last visited Jan. 3, 2014).

from developing countries and continued to play an important role throughout the negotiations.⁴⁵

Treaty negotiations occurred in eight two-week Ad Hoc sessions over the period 2002–2006, making the CRPD “one of the fastest treaties ever negotiated” in United Nations history.⁴⁶ The speed and efficiency of these negotiations were due in large measure to the treaty process being the first to involve meaningful and active participation by all stakeholders.⁴⁷ Persons with disabilities, their representative organizations (“DPOs”), National Human Rights Institutions (“NHRIs”), specialized United Nations agencies such as the World Bank, and the International Labour Organization took part in the negotiations alongside government delegations. Of signal importance, people with disabilities were present within numerous state and non-state delegations and DPOs were permitted to speak during Ad Hoc sessions, including the final negotiations.⁴⁸ States were thus well informed as to the views of people with disabilities from developing and developed countries. Additionally, both government and civil society developed a sense of ownership in the CRPD.⁴⁹

The resulting document is a comprehensive human rights treaty covering all aspects of the life cycle of persons with disabilities in fifty articles ranging from education, participation in political life, employment, legal capacity, and adequate standard of living.⁵⁰ Before the drafting process, it was decided that any resulting treaty would not create new human rights.⁵¹ Instead, modeled after the Convention on

⁴⁵ See Michael Ashley Stein & Janet E. Lord, *Forging Effective International Agreements: Lessons from the UN Convention on the Rights of Persons with Disabilities*, in *MAKING EQUAL RIGHTS REAL: TAKING EFFECTIVE ACTION TO OVERCOME GLOBAL CHALLENGES* 27, 29 (Jody Heymann & Adele Cassola eds., 2012) [hereinafter *Forging Effective International Agreements*].

⁴⁶ *From Concept to Reality: Promoting Universal Human Rights of Persons with Disabilities*, UNITED NATIONS ENABLE (May 12, 2008), <http://www.un.org/disabilities/default.asp?id=474>.

⁴⁷ See Michael Ashley Stein & Janet E. Lord, *Jacobus tenBroek, Participatory Justice, and the UN Convention on the Rights of Persons with Disabilities*, 13 *TEX. J. C.L. & C.R.* 167, 175-80 (2008) [hereinafter *Jacobus tenBroek*].

⁴⁸ See *id.* at 177.

⁴⁹ See Stefan Trömel, *A Personal Perspective on the Drafting History of the United Nations Convention on the Rights of Persons with Disabilities*, in 1 *EUR. Y.B. DISABILITY L.* 115, 117-18 (Gerard Quinn & Lisa Waddington eds., 2010).

⁵⁰ See CRPD, *supra* note 15, at arts. 24-30.

⁵¹ See Michael Ashley Stein & Janet E. Lord, *The United Nations Convention on the Rights of Persons with Disabilities as a Vehicle for Social Transformation*, in *NATIONAL MONITORING MECHANISMS OF THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES* 109, 112 (Comisión Nacional de los Derechos Humanos de México ed.,

the Rights of the Child, the CRPD elucidates existing human rights obligations towards persons with disabilities.⁵² At the same time, in a more integrated fashion than its predecessors, the CRPD encompasses civil and political, as well as economic, social, and cultural rights in a holistic manner.⁵³

The CRPD was adopted by general consensus by the United Nations on December 13, 2006, and opened for signature and ratification on March 30, 2007, becoming the first human rights treaty of the twenty-first century. Eighty-two countries, a record number, signed the Convention on the opening day, reflecting the success of the negotiation process. To date, over 125 states (and the European Union) have ratified the CRPD, which went into operation on May 3, 2008.⁵⁴

C. Inclusive-Development

Unique among United Nations human rights treaties, the CRPD includes a specific, inclusive-development provision.⁵⁵ Specifically, Article 32 (International cooperation) governs the activities of States Parties in cooperative efforts with each other, international and regional organizations, and civil society — especially DPOs. Among the enumerated measures is a directive that States Parties engaging in international cooperation efforts ensure that all programs are “inclusive of and accessible to persons with disabilities.”⁵⁶ Article 32 likewise calls upon States Parties to facilitate and support capacity-building activities such as: training programs; sharing information and

2008) [hereinafter *Vehicle for Social Transformation*].

⁵² One example of this approach is Article 26 (Habilitation and rehabilitation), which enables connected provisions in Article 24 (Education), Article 27 (Work and employment), and Article 25 (Health). See Michael Ashley Stein & Janet E. Lord, *The United Nations Convention on the Rights of Persons with Disabilities: Process, Substance, and Prospects*, in INTERNATIONAL PROTECTION OF HUMAN RIGHTS: ACHIEVEMENTS AND CHALLENGES 495, 502 (Felipe Gomez Isa & Koen De Feyter eds., 2008).

⁵³ To cite one instance, discrimination against persons with disabilities is prohibited in the employment sphere, while at the same time vocational training may also be needed.

⁵⁴ The U.N. Enable website containing information on the CRPD, including a negotiation archive, up-to-date lists of States Parties, and work by relevant U.N. bodies, is available at <http://www.un.org/disabilities/>.

⁵⁵ Other human rights treaties make passing reference to international cooperation, yet the CRPD is the only treaty with a detailed provision specifically referencing inclusive development. See Stein & Lord, *Law and Politics of U.S. Participation*, *supra* note 37, at 205.

⁵⁶ CRPD, *supra* note 15, at art. 32(1)(a).

best practices; facilitating cooperative research and access to technical and scientific information; appropriately providing economic and technical assistance; and sharing and transferring technologies.⁵⁷

Other provisions in the CRPD expressly or implicitly reference the right of persons with disabilities to be included in development, poverty reduction, and humanitarian schemes. The Preamble explicitly acknowledges the links between poverty and disability.⁵⁸ Article 4 (General obligations), as a cross-cutting provision, requires States Parties to consider promoting disability-related human rights in all policies and programs; Article 11 (Situations of risk and humanitarian emergencies) requires that provision be made for protecting and safeguarding individuals with disabilities in humanitarian assistance contexts; Article 12 (Equal recognition before the law) ensures equal access to loans and other financial instruments such as micro-finance schemes; Article 27 (Work and employment) envisions persons with disabilities as autonomous and equal social participants; and Article 28 (Adequate standard of living and social protection) references social welfare programs. The right to equal participation in development schemes as a means of social inclusion must also be considered in view of the especially vulnerable situation of women with disabilities (Article 6), children with disabilities (Article 7), and indigenous disabled populations (Preamble).⁵⁹

Developed countries were concerned that Article 32 would aid legal recognition of the Right to Development,⁶⁰ yet all government delegations joined in adopting the Article. During the negotiation sessions leading to the CRPD's adoption, several states including China, Chile, Cuba, and India clearly acknowledged the notion that achieving the human rights of persons with disabilities is inherently linked to improving their lives through development schemes.⁶¹

⁵⁷ See *id.* at art. 32(1)(a)-(d).

⁵⁸ See *id.* at pmb. (noting “the fact that the majority of persons with disabilities live in conditions of poverty” and the “critical need to address the negative impact of poverty on persons with disabilities”).

⁵⁹ See generally Stein et al., *Education and HIV/AIDS*, *supra* note 8 (discussing relationship between disability, poverty, and development).

⁶⁰ See Michael Ashley Stein & Janet E. Lord, *The Normative Value of a Treaty as Opposed to a Declaration: Reflections from the Convention on the Rights of Persons with Disabilities*, in *IMPLEMENTING THE RIGHT TO DEVELOPMENT: THE ROLE OF INTERNATIONAL LAW* 27, 29 (Stephen P. Marks ed., 2008) [hereinafter *Normative Value of a Treaty*].

⁶¹ See *Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities*, UNITED NATIONS ENABLE, <http://www.un.org/esa/socdev/enable/rights/adhoccom.htm> (last visited Jan. 29, 2013).

Indeed, a major point of discussion during the first two Ad Hoc meetings was whether a potential treaty would focus on human rights as expressed through a non-discrimination lens, or instead be directed toward development schemes and attendant economic, social, and cultural rights.⁶² It was decided that the putative treaty would holistically encompass both.⁶³ As stated by the African caucus, to be morally valid and practically sustainable the CRPD must “be premised on the principles of development, poverty reduction and a rights-based approach.”⁶⁴

The response by states to Article 32 — both those that ratified the CRPD as well as those that have yet to do so — has been relatively quick and far-reaching. Traditionally well-funded international development agencies in states such as Australia, Finland, Germany, Italy, Japan, and the United Kingdom are in the process of developing programming and implementation guidelines to ensure disability-inclusive development.⁶⁵ These frameworks vary in the types and priorities of the approaches utilized, but all work from the baseline premise that persons with disabilities must be meaningfully incorporated into international cooperation and development aid schemes. As a notable example, AusAID has structured its call for project proposals to alter traditional power hierarchies so that DPOs are allowed to create and lead their own missions, with development firms and academic experts permitted as supportive of these efforts.⁶⁶ Of course, no guidelines are perfect and each must be evaluated over time on whether they accomplish their aspirations for inclusion. Even so, the trend toward CRPD inclusive development compliance through active participation by DPOs is clearly prevailing, with the norm of

⁶² See Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities: Position Paper by the European Union, Ad Hoc Comm., 1st Sess., July 29–Aug. 9, 2002, U.N. Doc. A/AC.265/WP.2 (Aug. 9, 2002), available at <http://www.un.org/esa/socdev/enable/rights/adhocmeetac265w2e.htm>.

⁶³ See Stein, *Disability Human Rights*, *supra* note 25, at 91.

⁶⁴ Final Statement of the Disability African Regional Consultative Conference, Ad Hoc Comm., 2d Sess., June 16–27, 2003, U.N. Doc. A/AC.265/2003/CRP/11 (June 27, 2003), available at http://www.un.org/esa/socdev/enable/rights/a_ac265_2003_crp11.htm.

⁶⁵ See LORD ET AL., *supra* note 16, at 18-27.

⁶⁶ See AUSAID, DEVELOPMENT FOR ALL: TOWARDS A DISABILITY-INCLUSIVE AUSTRALIAN AID PROGRAM 2009–2014, at 18-19 (2008), available at www.ausaid.gov.au/Publications/Documents/dev-for-all.pdf; see also *id.* at 14 (“The design and approach to implementation will vary depending on context, needs and priorities and will be determined jointly with the leadership of the national partner country, national DPOs and in consultation with other key stakeholders, including donor partners involved in this area.”).

equal involvement by persons with disabilities viewed as the new default understanding regulating international development aid.

Thus, Article 32's requirement that technical assistance, development aid, and humanitarian efforts by States Parties conform to the rest of the treaty's principles is compelling great strides towards making the socially constructed environment more accessible to individuals with disabilities in developing countries. Nevertheless, IFIs continue to resist the CRPD's disability-inclusive development mandate. The next Part of this Article argues that legal and ethical and considerations require IFIs to alter their approach to development.

II. LEGAL AND ETHICAL MANDATES FOR DISABILITY-INCLUSIVE DEVELOPMENT

In stark contrast to a CRPD-driven movement by states towards disability-inclusive development aid, IFI practices continue to exclude persons with disabilities from their schemes. While a general shift exists towards recognizing the human rights obligations of IFIs as non-state actors, it is customary international law, human rights treaty obligations, international governance, as well as ethical and fiduciary obligations that most significantly impel IFIs toward disability-inclusive development.⁶⁷

A. *Legal Duties*

An increasing trend views non-state actors as obligated by international law to obey human rights treaties. The three most pertinent and legally recognized obligations for IFIs as non-state actors to abide by human rights obligations arise, respectively, from customary international law, human rights treaties themselves, and international governance directives. These legal arguments are conceptually undergirded by the normative view that actors, whether non-state or state, are no longer wholly independent agents free to choose what international duties with which to comply. Rather, in an ever more globalized and interrelated world, the boundaries are

⁶⁷ For recent academic treatments (none of which reference disability) on the general human rights obligations of IFIs, see MAC DARROW, *BETWEEN LIGHT AND SHADOW: THE WORLD BANK, THE INTERNATIONAL MONETARY FUND, AND INTERNATIONAL HUMAN RIGHTS LAW* (2003); BAHRAM GHAZI, *THE IMF, THE WORLD BANK GROUP, AND THE QUESTION OF HUMAN RIGHTS* (2005); INTERNATIONAL FINANCIAL INSTITUTIONS AND INTERNATIONAL LAW (Daniel D. Bradlow & David B. Hunter eds., 2010); SIGRUN I. SKOGLY, *THE HUMAN RIGHTS OBLIGATIONS OF THE WORLD BANK AND THE INTERNATIONAL MONETARY FUND* (2001).

increasingly blurred between categories of entities who act across state borders, both as to their rigid identity types and in the activities in which they engage.⁶⁸

1. Non-State Actor Duties

International law does not categorically require non-state actors, including IFIs, to heed established human rights obligations for the simple and circular reason that they are not States Parties to those instruments.⁶⁹ Nonetheless, commentators increasingly argue that because of the global reach and interconnectedness of activities between non-state actors and states,⁷⁰ non-state actors ought generally to be seen as holding state-like duties and be held responsible for human rights violations formally considered exclusively within state purview.⁷¹

Scholars also justify this extension of liability on the ground that states inadequately police the actions of non-state actors, or even condone those actions in order to achieve particular goals,⁷² and that the logical outcome of the general principle that “human rights are entitlements to be enjoyed by everyone and to be respected by everyone” is that everyone, including non-state actors, must abide by

⁶⁸ See *Economic Globalization: An Appraisal*, CTR. ON L. & GLOBALIZATION, http://clg.portalxm.com/library/keytext.cfm?keytext_id=32 (last visited Jan. 3, 2014).

⁶⁹ See Smita Narula, *International Financial Institutions, Transnational Corporations and Duties of States* 7 (N.Y.U. Pub. Law & Legal Theory Working Papers, Working Paper No. 298, 2011), available at http://lsr.nellco.org/nyu_plltwp/298 (“[N]on-State actors . . . are not legal subjects of international human rights law.”). See generally GUERNSEY ET AL., *supra* note 12 (avoiding explicit reference to the World Bank as an actor bound by international law, though supporting international human rights projects through States Parties).

⁷⁰ See, e.g., David Weissbrodt, *Non-State Entities and Human Rights Within the Context of the Nation-State in the 21st Century*, in *THE ROLE OF THE NATION-STATE IN THE 21ST CENTURY: HUMAN RIGHTS, INTERNATIONAL ORGANISATIONS AND FOREIGN POLICY* 175 (Monique Castermans-Holleman et al. eds., 1998) (discussing changing norms of how society views State versus non-State actors).

⁷¹ See, e.g., CLAPHAM, *supra* note 19, at 4-18 (describing globalization, privatization, fragmentation and feminization as reasons for the rise of power and influence of non-State actors); Philip Alston, *The “Not-a-Cat” Syndrome: Can the International Human Rights Regime Accommodate Non-State Actors?*, in *NON-STATE ACTORS AND HUMAN RIGHTS*, *supra* note 19, at 6-11 (describing the overlapping of public and private function in the modern era).

⁷² Some scholars argue the inverse, namely, that non-State actors themselves violate human rights norms. See, e.g., Scott Leckie, *Another Step Towards Indivisibility: Identifying the Key Features of Violations of Economic, Social and Cultural Rights*, 20 *HUM. RTS. Q.* 81, 112 (1998) (citing IFIs as primary violators of ESC rights).

human rights norms.⁷³ Recent assertions of non-state actor responsibility for human rights violations include “conflict diamonds” traded by factions and militia groups rather than by recognized entities like governments;⁷⁴ German corporations for crimes against peace, crimes against humanity, and war crimes perpetrated during World War II;⁷⁵ and oil companies for corruption and exploitation of Nigerian resources,⁷⁶ among others.⁷⁷

The most readily acknowledged human rights obligations of non-state actors arise presently through voluntary compliance, for instance, the over seventy-two international corporations and businesses that have entered into the United Nations Secretary-General’s Global Compact, a voluntary initiative that requires entities to respect the protection of human rights and ensure they are not complicit in their violation.⁷⁸ Otherwise, the stance of both the United Nations and

⁷³ One could also argue that IFIs are drawn in by obligations as diverse as fostering democratic values, or assuring international peace and security. The authors would not disagree with those arguments but limit the scope of this Article to more commonly recognized duties. For well-considered arguments in favor of a general right to development, which in turn would encompass non-State actors, see MARGOT E. SALOMON, *GLOBAL RESPONSIBILITY FOR HUMAN RIGHTS: WORLD POVERTY AND THE DEVELOPMENT OF INTERNATIONAL LAW* (2007). For a collection of assertions on the origin and extent of duties to eliminate global poverty, see *FREEDOM FROM POVERTY AS A HUMAN RIGHT: WHO OWES WHAT TO THE VERY POOR?* (Thomas Pogge ed., 2007).

⁷⁴ The United Nations is working to combat the conflict diamond trade by targeting sanctions against rebels in Sierra Leone, Angola, and most recently Liberia. See *Conflict Diamonds — Sanctions & War*, HERKIMER DIAMOND QUARTZ (Mar. 23, 2013), <http://www.herkimerdiamondquartz.com/blog/2013/03/23/conflict-diamonds-sanctions-war/>.

⁷⁵ The cases were brought by the governments of the United States and United Kingdom. See Steven R. Ratner, *Corporations and Human Rights: A Theory of Legal Responsibility*, 111 *YALE L.J.* 443, 477-78 (2001).

⁷⁶ See EUROPEAN INV. BANK, *BUSINESS AND HUMAN RIGHTS: SUMMARY PROCEEDINGS OF THE DEBATE 7-8* (2010), available at www.eib.org/attachments/documents/eib-human-rights-report.pdf (reporting on Nigerian-based cases applying the African Charter on Human and Peoples’ Rights to oil companies).

⁷⁷ United States-based litigants have increasingly invoked the Alien Tort Statute as a means of remedying human rights violations by non-State actors in U.S. courts for issues ranging from oil company complicity with the Nigerien military and ensuing atrocities, to citizens of Papua New Guinea against a military contractor for 15,000 deaths of people revolting against the regime in power.

⁷⁸ See *Overview of the UN Global Compact*, UNITED NATIONS GLOBAL COMPACT, <http://www.unglobalcompact.org/AboutTheGC/index.html> (last visited Jan. 3, 2014). The Global Compact aligns like-minded businesses willing to adhere to ten specific principles related to areas such as human rights, labor, anti-corruption, and the environment, and to eventually help work to further the MDGs. The Compact is voluntary but very popular. In addition to the seventy-two global business entities, the Compact has over 10,000 corporate participants. *Id.*

private initiatives is vague, stressing responsibility while remaining equivocal regarding liability.⁷⁹

As far as the World Bank is concerned, its general aversion to adopting a human rights agenda can be traced to two restrictions in its Articles of Agreement.⁸⁰ Article IV § 10 permits “[o]nly economic considerations” in decision-making, and prohibits interference in or influence by “the political affairs” of states; Article III § 5(b) stipulates that when determining loans, Bank staff may only pay attention to “considerations of economy and efficiency and without regard to political or other non-economic influences or considerations.”⁸¹ Historically, the Bank’s legal department has viewed human rights protection as falling squarely within “political considerations,”⁸² although, as discussed below in Part III.B, a somewhat controversial opinion by its general counsel in 2006 opened up space within which to argue that the Bank views itself as potentially bound by human rights obligations.⁸³ The IMF, relying upon its own internal charter, has taken a similar view to that of the Bank.⁸⁴

⁷⁹ See, e.g., U.N. Subcomm. on the Promotion & Prot. of Human Rights, *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003) (stressing the obligations and responsibilities of corporations while acknowledging that States bear primary accountability for violations); Int’l Law Comm’n, *Articles on the Responsibility of States for Internationally Wrongful Acts*, U.N. Doc. A/56/10, 53d Sess., Supp. No. 10 (2001) (containing language that rights can accrue against actors or entities that are not States, but also indicating that they are not intended to be binding on non-State actors).

⁸⁰ Articles of Agreement, July 22, 1944, 60 Stat. 1440, 2 U.N.T.S. 134.

⁸¹ *Id.* at arts. III § 5(b), IV § 10.

⁸² See, e.g., IBRAHIM F.I. SHIHATA, *THE WORLD BANK IN A CHANGING WORLD: SELECTED ESSAYS* 67-79 (Franziska Tschofen & Antonio R. Parra eds., 1991) [hereinafter *WORLD BANK IN A CHANGING WORLD*] (opinion by then-World Bank General Counsel that the institution must remain politically impartial and only focus on economic considerations).

⁸³ See Galit A. Sarfaty, *Why Culture Matters in International Institutions: The Marginality of Human Rights at the World Bank*, 103 AM. J. INT’L L. 647, 663-66 (2009). See generally DARROW, *supra* note 67 (arguing that although IFIs cannot affirmatively interfere in politics, that restriction does not absolve them from honoring their human rights obligations).

⁸⁴ See, e.g., FRANÇOIS GIANVITI, *ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND THE INTERNATIONAL MONETARY FUND* 10, 43, available at <http://www.imf.org/external/np/leg/sem/2002/cdmfl/eng/gianv3.pdf> (finding that, even though the IMF does not have obligations as a party to the ESCR treaty, they still endeavor to adhere to its tenets); see also CLAPHAM, *supra* note 19, at 140 (quoting a speech by former IMF general counsel G.B. Taplin).

2. Customary International Law

Customary international law reflects what states understand the law to be as comprised through practice and juridical opinions (*opinio juris*), and how they conduct themselves to reflect that belief.⁸⁵ Among the nearly universally accepted content is the United Nations Charter, the Universal Declaration of Human Rights (“UDHR”), subsequent core human rights treaties, and the norms that collectively flow from them.⁸⁶

In the context of IFIs and their human rights obligations, the UDHR’s Preamble announces that “Member States have pledged themselves to achieve the promotion of universal respect for and observance of human rights and fundamental freedoms”⁸⁷ This mission extends to “every individual and every organ of society,” charging them with the task of striving to secure universal and effective recognition and observance.⁸⁸ IFIs, as international actors involved in many activities across states⁸⁹ (even, at times, contributing major segments of national-level budgets),⁹⁰ are within the definition of an “organ of society” and thus ought to be viewed as bound by customary international law.⁹¹

⁸⁵ See generally THE NATURE OF CUSTOMARY LAW: LEGAL, HISTORICAL AND PHILOSOPHICAL PERSPECTIVES (Amanda Perreau-Saussine & James B. Murphy eds., 2007) (giving a background of customary law and noting its importance in international law).

⁸⁶ See, e.g., HENRY J. STEINER & PHILIP ALSTON, INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS 143 (2d ed. 2000) (noting the relationship between the UDHR and the ICCPR, and arguing that though the UDHR is not a treaty, it is often treated as binding).

⁸⁷ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, pmb., U.N. Doc. A/810 (III), at 71 (Dec. 10, 1948).

⁸⁸ *Id.* (“[T]herefore, The General Assembly, Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.”).

⁸⁹ For more on the evolution of international financial institutions and their relationships across states, see Douglas W. Arner & Ross P. Buckley, *Redesigning the Architecture of the Global Financial System*, 11 MELBOURNE J. INT’L L. 185 (2010).

⁹⁰ For example, one-half of Uganda’s budget is derived from foreign aid. See ANDREW MWENDA, CATO INSTIT., FOREIGN POLICY BRIEFING NO. 88, FOREIGN AID AND THE WEAKENING OF DEMOCRATIC ACCOUNTABILITY IN UGANDA 4 (2006), available at <http://www.cato.org/sites/cato.org/files/pubs/pdf/fpb88.pdf>.

⁹¹ Rebecca M. Bratspies, “Organs of Society”: A Plea for Human Rights

3. Human Rights Treaties

Human rights treaties create or codify prevailing customary norms. The United Nations system traces the origin of human rights initially to the Charter, thereafter to the UDHR, and finally to the succession of international covenants and instruments.⁹² The latter, which include the CRPD as a core human rights treaty, are considered as having binding legal effect on international organizations (including IFIs), as was noted by the Secretary-General.⁹³ This is because the human rights provisions of the Charter are seen as being given further expression in subsequent instruments, such that the CRPD (and other treaties), which are therefore viewed as authoritative interpretations of the Charter's own human rights provisions.⁹⁴ General Assembly resolutions are also seen as quasi-judicial acts that collectively legitimize positions. They are used to express international society's stance on certain issues, as well as its values.⁹⁵ Thus, IFIs cannot reject their human rights obligations on the ground that member states are not themselves honoring international standards. IFIs are independent subjects of international law and they are part of the system. As such, they bear their own share of responsibility.⁹⁶

Further, and in theory dispositive, the World Bank and the IMF are United Nations specialized agencies and therefore required to adhere to United Nations rules and norms, and to abide by its instruments, most notably the constitutive instrument and, in particular, the Charter's human rights provisions.⁹⁷ These also include human rights

Accountability for Transnational Enterprises and Other Business Entities, 13 MICH. ST. J. INT'L L. 9, 14 (2005), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=692202 ("The term 'organs of society' is left undefined, but obviously refers to entities not captured by the terms 'individuals' or 'states.'").

⁹² See *Human Rights and the United Nations*, UNITED NATIONS CYBERSCHOOLBUS, <http://www.un.org/cyberschoolbus/humanrights/about/history.asp> (last visited Jan. 3, 2014).

⁹³ See *What Is the CRPD?*, REHABILITATION INT'L, <http://www.riglobal.org/resource-center/convention-on-the-rights-of-persons-with-disabilities/what-is-the-the-crpd/> (last visited Jan. 3, 2014).

⁹⁴ See THOMAS BUERGENTHAL ET AL., *INTERNATIONAL HUMAN RIGHTS IN A NUTSHELL* 27-36 (4th ed. 2009).

⁹⁵ See generally Oscar Schachter, *The Quasi-Judicial Role of the Security Council and the General Assembly*, 58 AM. J. INT'L L. 960 (1964) (discussing role interpretation plays on obligations imposed by the U.N. Charter).

⁹⁶ See CLAPHAM, *supra* note 19, at 138 ("It is quite clear that the objectives of an institution such as the World Bank include, in a general way, the realization of human rights.").

⁹⁷ This argument is made forcefully by SKOGLY, *supra* note 67, at 93-109. See generally *International Norms and Standards Relating to Disability*, UNITED NATIONS

treaties that, as noted above, add content to the human rights provisions of the Charter. Once United Nations human rights treaties are adopted, as in the case of the CRPD, they trigger a mandate for all its agencies, as evidenced in the disability context by the creation of an Inter-Agency working group on the CRPD open to all United Nations agencies and focused on implementing the treaty across United Nations programming.⁹⁸ Thus, the two largest and most significant IFIs are not excluded from international human rights obligations by virtue of being non-state actors.⁹⁹

Moreover, conventional norms apply to states in all activities, whether within or outside their status as IFIs, and should reflect their compliance with these human rights obligations.¹⁰⁰ IFIs are routinely invited to participate in the drafting of human rights treaties.¹⁰¹ Hence, the argument that as non-state actors they are removed from honoring the duties contained therein is less than persuasive.¹⁰² In the context of the CRPD, this is especially true for the World Bank, which played an active and vocal part in the treaty's negotiation.¹⁰³

Finally, the concept of an international community is especially powerful when considering human rights obligations of IFIs. Law's shifted focus from enabling co-existence (by invoking negative rights

(2003), <http://www.wvda.org.au/internorms1.pdf> (discussing UN's principles that seek to promote rights of persons with disabilities).

⁹⁸ See *Inter-Agency Support Group for the Convention on the Rights of Persons with Disabilities*, UNITED NATIONS ENABLE, <http://www.un.org/disabilities/default.asp?navid=45&pid=323> (last visited Jan. 3, 2013) (reporting on the agenda of the Inter-Agency Support Group on the CRPD and its members, including the World Bank).

⁹⁹ See CLAPHAM, *supra* note 19, at 151 ("The international financial institutions can therefore be said to have obligations, not only to respect human rights, but also to protect and even fulfil[] human rights . . .").

¹⁰⁰ See *What Are Human Rights?*, U.N. HUMAN RTS.: OFFICE OF THE HIGH COMM'R FOR HUMAN RTS., <http://www.ohchr.org/en/issues/Pages/WhatareHumanRights.aspx> (last visited Jan. 3, 2014) ("All States have ratified at least one, and 80% of States have ratified four or more, of the core human rights treaties, reflecting consent of States which creates legal obligations for them and giving concrete expression to universality. Some fundamental human rights norms enjoy universal protection by customary international law across all boundaries and civilizations.").

¹⁰¹ See, e.g., Adam McBeth, *A Right by Any Other Name: The Evasive Engagement of International Financial Institutions with Human Rights*, 40 GEO. WASH. INT'L L. REV. 1101, 1107 (2009) (describing how IFIs were invited to participate in drafting the ICESCR).

¹⁰² See *id.* at 1111.

¹⁰³ See Katherine Guernsey et al., *Convention on the Rights of Persons with Disabilities: Its Implementation and Relevance for the World Bank*, WORLD BANK: SOC. PROT. 3-4 (June 2007), <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Disability-DP/0712.pdf>.

to prevent interference) to facilitating cooperation (whereby positive collaborative duties are raised) is especially pertinent in view of globalization.¹⁰⁴ This principle of international cooperation is clearly evident in a number of areas, and notably international environmental law. Significantly, Article 28 of the UDHR maintains that “[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”¹⁰⁵ Such a circumstance can only be obtained if the international community, including IFIs, functions as a single entity that lends its best efforts to achieve common goals.¹⁰⁶ This is an especially relevant normative goal for the fields of human rights and development, and is very much in harmony with the concepts of *erga omnes* obligations and global cooperative duties.¹⁰⁷

4. International Governance

In the context of the international system, it is extremely rare to find problems that stand in isolation. Likewise, political and social problems affecting the economy and finances are interrelated. Over time, IFIs have gradually acknowledged the effect on any given state’s economic and financial stability caused by armed or political conflict, social unrest, and absence of democratic norms or bad governance.¹⁰⁸ Civil participation, non-discrimination, health, and education are

¹⁰⁴ Compare Richard Jolly, *The UN and Development Thinking and Practice*, F. FOR DEV. STUD. (June 2005), http://www.unhistory.org/reviews/FDS_Jolly.pdf (demonstrating that the UN and IFIs worked independently), with *Tilburg Guiding Principles on World Bank, IMF and Human Rights*, in WORLD BANK, IMF AND HUMAN RIGHTS 249 (Willem van Genugten et al. eds., 2003) (declaring that “[a]s international legal persons, the World Bank and the IMF have international legal obligations to take full responsibility for human rights respect in situations where the institutions’ own projects, policies or programmes negatively impact or undermine the enjoyment of human rights”).

¹⁰⁵ G.A. Res. 217 (III) A, *supra* note 87, at art. 28.

¹⁰⁶ For an overview of communitarianism, see Amitai Etzioni, *The Responsive Community: A Communitarian Perspective*, 61 AM. SOC. REV. 1 (1996). The international community fits Etzioni’s definition of “community,” the bodies through which this cooperative mechanism are realized. *Id.* at 5.

¹⁰⁷ See Marjan Ajeveski, *Serious Breaches, the Draft Articles on State Responsibility and Universal Jurisdiction*, 2 EUR. J. LEGAL STUD. 12, 43 (2008), available at <http://www.ejls.eu/4/51UK.pdf>.

¹⁰⁸ See McBeth, *supra* note 101, at 1119 (“Since the advent of the Poverty Reduction Strategy in concert with the World Bank, the practical approach of the IMF has progressed to the point that ‘social concerns’ . . . are legitimate considerations in determining how to direct spending and domestic economic policy in borrowing countries.”).

similarly viewed as within the fiscal purview of state well-being. Accordingly, the concept of “good governance” has shifted the position within IFIs of the range of acceptable activities viewed as pertinent to enjoying selected human rights.¹⁰⁹

Within the World Bank, a 1989 study of governance concluded that its authority extended to “the exercise of political power to manage a nation’s affairs.”¹¹⁰ This analysis was followed by a 1990 memo from general counsel Ibrahim Shihata, indicating that, in his view, the Bank’s Articles of Agreement required a policy of non-interference in the political affairs of states, but that violations of political rights could reach proportions so as to become a Bank concern due to the direct economic effects of poor governance.¹¹¹ Subsequently, the Bank intensified its focus on judicial reform programs, with loans issued to Venezuela, Argentina, and Tanzania.¹¹² The IMF joined the Bank’s preoccupation with governance following corruption scandals linked with some of its loans.¹¹³ In 1997, it issued a “Guidance Note on Governance” that recognized the importance of good governance for macroeconomic stability and growth, and called for a more proactive approach in crafting policies to promote good governance.¹¹⁴ IFI recognition of their role in governance arises, at a basic level, from an understanding that Banks are no freer to set their own policies for rule of law than for projects or programs dealing with the ozone layer or climate stability.¹¹⁵

¹⁰⁹ See LINDA C. REIF, *THE OMBUDSMAN, GOOD GOVERNANCE AND THE INTERNATIONAL HUMAN RIGHTS SYSTEM* 335-50 (2004) (describing the systems IFIs have put in place to uphold a concept of good governance that includes human rights).

¹¹⁰ THE WORLD BANK, *SUB-SAHARAN AFRICA: FROM CRISIS TO SUSTAINABLE GROWTH: A LONG-TERM PERSPECTIVE STUDY* 60 (1989), available at <http://documents.worldbank.org/curated/en/1989/11/439705/crisis-sustainable-growth-sub-saharan-africa-long-term-perspective-study>.

¹¹¹ See Ibrahim F.I. Shihata, *Issues of “Governance” in Borrowing Members — The Extent of their Relevance Under the Bank’s Articles of Agreement*, in *THE WORLD BANK LEGAL PAPERS* 245, 248-49 (2000) (reproducing a legal memorandum by the General Counsel issued on Dec. 21, 1990).

¹¹² See *World Bank Group Historical Chronology: 1990–1999*, WORLD BANK, <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/EXTARCHIVES/0,,contentMDK:20035664~menuPK:56319~pagePK:36726~piPK:437378~theSitePK:29506,00.html> (last visited Jan. 9, 2014).

¹¹³ See Juan Carlos Linares, *After the Argentine Crisis: Can the IMF Prevent Corruption in Its Lending? A Model Approach*, 5 *RICH. J. GLOBAL L. & BUS.* 13, 29-30 (2005).

¹¹⁴ See *IMF Adopts Guidelines Regarding Governance Issues*, News Brief No. 97/15, INT’L MONETARY FUND (Aug. 4, 1997), <http://www.imf.org/external/np/sec/nb/1997/nb9715.htm>.

¹¹⁵ See Daniel D. Bradlow, *The Reform of the Governance of the IFIs: A Critical*

The collective IFI definition of governance does not explicitly include human rights, but they are closely linked to governance concepts. For example, IFIs regularly support programming that strengthens judicial systems and the rule of law. These programs tie into a range of human rights, including freedom of information and expression; freedom of association; participation in public life, government, and free elections; a free and fair judiciary; enforcement of the rule of law (and, inter alia, the right to life, freedom from torture and arbitrary arrest, legal capacity, and equality before law); as well as rights involving working conditions and standards, labor unions, education, culture, health, and social security.¹¹⁶ Furthermore, many academics and advocates note that human rights violations are now viewed as an essential matter of international concern.

Indeed, the interrelationship between development and human rights axiomatically recognized by the United Nations system¹¹⁷ and by academics¹¹⁸ recognizes that human rights are an integral part of sustainable development¹¹⁹ as well as MDGs-implementation.¹²⁰ This is particularly true for the context of poverty alleviation, to which IFIs have devoted increasing attention.¹²¹ Freedom from poverty is

Assessment, in 3 THE WORLD BANK LEGAL REVIEW: INTERNATIONAL FINANCIAL INSTITUTIONS AND GLOBAL LEGAL GOVERNANCE 37, 46-49 (Cissé et al. eds., 2012) (“All the IFIs are formal international organizations created by treaties. Consequently, they are subjects of international law and should comply with applicable international legal principles.”).

¹¹⁶ See International Covenant on Civil and Political Rights, G.A. Res. 2200 (XXI) A, U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316, at 52 (Dec. 16, 1966) (entered into force Mar. 23, 1976).

¹¹⁷ See generally Vienna Convention on the Law of Treaties, Jan. 27, 1980, 1155 T.S. No. 332 (finding that the treaty should be guided by “the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force and of universal respect for, and observance of, human rights and fundamental freedoms for all”).

¹¹⁸ See, e.g., PETER UVIN, HUMAN RIGHTS AND DEVELOPMENT (2004) (explaining how some scholars find human rights linked with sustainable development).

¹¹⁹ See *The Human Rights Approach to Sustainable Development: Environmental Rights, Public Participation and Human Security*, UNITED NATIONS ASS'N CANADA & INT'L DEV. RES. CENTRE 1, <http://unac.org/wp-content/uploads/2013/07/HRandSD-EN-PDF.pdf> (last visited Jan. 5, 2014).

¹²⁰ See Philip Alston, *Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals*, 27 HUM. RTS. Q. 755, 755-59 (2005).

¹²¹ See McBeth, *supra* note 101, at 1120-25.

explicitly enumerated as a human right in the UDHR¹²² which, as noted above, binds IFIs.

B. Ethical Duties

Several related ethical duties militate in favor of IFIs adopting disability-inclusive programming. These arise from the baseline responsibility not to cause harm via sponsored activities and include the duty not to discriminate in programming by failing to enact safeguards; declining to apply technical expertise garnered in targeted schemes; and, in the context of the World Bank, not heeding its own general counsel's legal opinion.

As an initial matter, IFIs are mandated not to cause harm in their development activities.¹²³ For this reason, IFIs have come under severe criticism over the past decade by activists, academics, and others for harm they are alleged to have engendered through the nature of their schemes and attendant implementation.¹²⁴ The essence of these critiques is that IFIs cause harm by promulgating neoclassical economic solutions in states whose traditions, cultures, and fiscal structures are inapposite (or at least, not currently well-aligned) to the baseline values espoused.¹²⁵ Be that as it may, many of these plans do increase the annual GDP of targeted recipients, and in so doing, raise them out of impoverishment or further above the poverty line.¹²⁶ Yet, by eliding persons with disabilities from programming, development

¹²² See G.A. Res. 217 (III) A, *supra* note 87, at pmbl. (“[F]reedom from fear and want has been proclaimed as the highest aspiration of the common people . . .”).

¹²³ See *IFIs in Post-Conflict Countries: Role, Activities and Impacts (World Bank-IMF Annual Meetings 2007)*, BRETTON WOODS PROJECT (Oct. 23, 2007), <http://www.brettonwoodsproject.org/art-557993>.

¹²⁴ See, e.g., MICHAEL GOLDMAN, *IMPERIAL NATURE: THE WORLD BANK AND STRUGGLES FOR SOCIAL JUSTICE IN THE AGE OF GLOBALIZATION 5* (2005) (labeling agenda of World Bank as “laden with power” and “highly contentious”); RICHARD PEET, *UNHOLY TRINITY: THE IMF, WORLD BANK AND WTO 31-33* (2d ed. 2009) (noting the “many abuses in the exercise of power” by IMF, World Bank, and WTO); JOHN PERKINS, *CONFESSIONS OF AN ECONOMIC HIT MAN*, at ix (2006) (describing professionals who “funnel money” from foreign aid organizations, USAID, and World Bank for corporations).

¹²⁵ See Bernard Black et al., *Russian Privatization and Corporate Governance: What Went Wrong?*, 52 *STAN. L. REV.* 1731, 1734-38 (Stanford Law School, Working Paper No. 178; William Davidson Institute, Working Paper No. 269, 2000), available at http://papers.ssrn.com/paper.taf?abstract_id=181348.

¹²⁶ At least in the view of traditional economic analyses, as many question whether GDP by itself is a sufficient metric for assessing socio-economic improvement. See Marc Fleurbaey, *Beyond GDP: The Quest for a Measure of Social Welfare*, 47 *J. ECON. LITERATURE* 1029, 1029 (2009).

and humanitarian schemes increase their relative socio-economic marginalization. While the lives of members of the general population improve, the comparatively dire circumstances of persons with disabilities becomes further instantiated and they are removed one more step from an equal place in their societies. In consequence, the lived experiences of people with disabilities become more marginalized due to IFI action.¹²⁷ It would stand to reason that this form of disability discrimination must likewise be forbidden.

What is more, IFIs currently both have and apply safeguard mechanisms to ensure that human rights violations do not occur as far as women, indigenous persons, and the environment during the course of programming.¹²⁸ These safeguards, which the World Bank describes as “a cornerstone of its support to sustainable poverty reduction,” are intended “to prevent and mitigate undue harm to people and their environment in the development process.”¹²⁹ They require operations personnel to apply a checklist of protections to every project sponsored, and permit complaints to an internal review board known as an Inspection Panel.¹³⁰ Although the safeguards have been criticized by some commentators as imperfect or even in dramatic need of improvement,¹³¹ the fact remains that IFIs have promulgated and continue to implement their schemes in response to monitoring advocacy that followed the adoption of human rights treaties.¹³² It therefore begs the question of why, given the existence of

¹²⁷ The same is true for those individuals who care for people with disabilities and whose prospects are tied to them, for instance, the one-quarter of all households worldwide with a disabled member. See, e.g., QI WANG, U.S. CENSUS BUREAU, *DISABILITY AND AMERICAN FAMILIES: 2000*, at 3 (2005) (reporting that nearly 28.9% of American families have at least one member with a disability).

¹²⁸ See Kristen Lewis, *Citizen-Driven Accountability for Sustainable Development: Giving Affected People a Greater Voice — 20 Years On*, INDEP. ACCOUNTABILITY MECHANISMS NETWORK 6 (June 2012), http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/Rio20_IAMs_Contribution.pdf.

¹²⁹ *Safeguard Policies*, WORLD BANK (Oct. 22, 2012), <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTSAFEPOL/0,,menuPK:584441~pagePK:64168427~piPK:64168435~theSitePK:584435,00.html>.

¹³⁰ See *Review and Update of the World Bank's Environmental and Social Safeguard Policies Consultation Meeting at Norad, Ruseløkkv 26, 0251 Oslo, Norway*, WORLD BANK, http://siteresources.worldbank.org/EXTSAFEPOL/Resources/584434-1306431390058/FEEDBACKSUMMARY_Safeguards_Oslo_Dec2012.pdf (last visited Jan. 9, 2014).

¹³¹ See, e.g., Namita Wahi, *Human Rights Accountability of the IMF and the World Bank: A Critique of Existing Mechanisms and Articulation of a Theory of Horizontal Accountability*, 12 UC DAVIS J. INT'L L. & POL'Y 331 (2006) (discussing argument that policies of World Bank and IMF “lead to a deterioration of aggregate economic conditions in the debtor countries and the entire world economy”).

¹³² See McBeth, *supra* note 101, at 1116 (describing how the World Bank,

the CRPD, persons with disabilities do not receive similar safeguard protections, especially in view of clear empirical evidence that disability is an integral part of effective development.¹³³ This is especially so when one considers the clear mandate for adopting a human rights approach to disability programming by United Nations agencies and entities, prominently the Department of Economic and Social Affairs (which is tasked with implementing the MDGs),¹³⁴ UNICEF,¹³⁵ UNDP,¹³⁶ and the Office of the High Commissioner for Human Rights,¹³⁷ amongst others.¹³⁸ As of this writing, the Bank is in the midst of a nearly two-year-long evaluation of its current safeguards that will conclude in June 2014 following “global consultation[s]” with “interested shareholders and stakeholders.”¹³⁹

Moreover, IFIs have demonstrated both great expertise in disseminating tool kits with guidance on how to design and implement disability-inclusive development and humanitarian schemes,¹⁴⁰ and notable success when instigating their own disability-

specifically, implemented mechanisms in response to a recognition of human rights).

¹³³ Including access to inspection panel complaints at the World Bank. See *Proposed Policies at World Bank at Odds with Kim's New Vision: Civil Society Fears that World Bank Social and Environmental Policies Will Be Weakened*, INCLUSIVE DEV. INT'L (Oct. 11, 2012), <http://www.inclusivedevelopment.net/wp-content/uploads/2012/05/Proposed-Policies-at-World-Bank-at-Odds-with-Kim's-New-Vision.pdf>.

¹³⁴ See *Disability*, U.N. DEP'T OF ECON. & SOC. AFFAIRS, U.N. ECON. & SOC. COUNCIL: SOC. POL'Y & DEV. DIV., <http://undesadspd.org/Disability.aspx> (last visited Jan. 6, 2014).

¹³⁵ See *Disabilities*, UNICEF (Dec. 6, 2013), <http://www.unicef.org/disabilities/index.html>.

¹³⁶ *Inclusive Development*, U.N. DEV. PROGRAMME, http://www.undp.org/content/undp/en/home/ourwork/povertyreduction/focus_areas/focus_inclusive_development.html (last visited Jan. 6, 2014).

¹³⁷ See *Human Rights of Persons with Disabilities*, U.N. HUMAN RTS.: OFF. HIGH COMM'R FOR HUMAN RTS., <http://www.ohchr.org/EN/Issues/Disability/Pages/DisabilityIndex.aspx> (last visited Jan. 6, 2014).

¹³⁸ See, e.g., *Including the Rights of Persons with Disabilities in United Nations Programming at Country Level: A Guidance Note for United Nations Country Teams and Implementing Partners*, UNITED NATIONS DEV. GROUP / INTER-AGENCY SUPPORT GROUP FOR THE CRPD TASK TEAM 2-3 (July 2010), <http://www.undg.org/docs/11534/Disability---Guidance-note-for-UN-Country-Teams.pdf> (describing the broad scope of the inter-agency disability task force, including refugee rights, reproductive rights, rights for women and children with disabilities).

¹³⁹ *Review and Update of the World Bank Environmental and Social Safeguard Policies: Consultation Plan*, WORLD BANK 2, 5 (Dec. 22, 2012), http://consultations.worldbank.org/Data/hub/files/consultation-template/review-and-update-world-bank-safeguard-policies/en/phases/safeguardsreview_consultationplan.pdf.

¹⁴⁰ See, e.g., ASIAN DEV. BANK, *DISABILITY BRIEF: IDENTIFYING AND ADDRESSING THE NEEDS OF DISABLED PEOPLE* (2005), available at <http://www2.adb.org/Documents/>

specific targeted programming.¹⁴¹ Hence, IFI resistance to mainstreaming disability throughout their sponsored activities when they do so for other groups (much as in the case with safeguards) seems disingenuous, if not gratuitous, in view of the expertise already being utilized in existing schemes.¹⁴²

It also bears noting that the World Bank's own internal consideration of the extent to which international human rights fall within its legitimate purview has evolved over time. Initial resistance to the idea that the Bank was bound by any duty to heed human rights treaties¹⁴³ eventually morphed into a vague concession that human rights are implicitly pertinent to many of the Bank's sponsored activities.¹⁴⁴ In 2006, general counsel Roberto Daniño circulated a legal opinion summing up his efforts at encouraging the World Bank to acknowledge a greater obligation to honor human rights duties. The Memo concluded that the Bank's own Articles "permit, and in some cases require, the Bank to recognize the human rights dimensions of its development policies and activities since it is now evident that human rights are an intrinsic part of the Bank's mission."¹⁴⁵ Although Daniño did not opine categorically that the Bank was obligated to obey international law, his opinion opened up space for supporting arguments of the type set forth above that the Bank, as well as other

Reports/Disabled-People-Development/disability-brief.pdf (discussing tools for addressing needs of disabled people); Lorna Jean Edmonds, *Disabled People and Development*, ASIAN DEV. BANK: POVERTY REDUCTION & SOC. DEV. DIV.: REGIONAL & SUSTAINABLE DEV. DEP'T (June 2005), <http://www2.adb.org/Documents/Reports/Disabled-People-Development/disabled-people.pdf> (same).

¹⁴¹ See, e.g., *The World Bank's Disability Work*, WORLD BANK, <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALPROTECTION/EXTDISABILITY/0,,contentMDK:20192533~menuPK:282704~pagePK:148956~piPK:216618~theSitePK:282699,00.html> (last visited Jan. 6, 2014) (explaining that World Bank both funds development projects and works in many disability-related fields).

¹⁴² See Mac Darrow & Louise Arbour, *The Pillar of Glass: Human Rights in the Development Operations of the United Nations*, 103 AM. J. INT'L L. 446, 487 (2009) (noting the many human rights related projects on which the World Bank implicitly work).

¹⁴³ See McBeth, *supra* note 101, at 1112 (noting that in the 1950s, the prevailing interpretation of the Bank's mandate was that its policy involvement and decision-making should be strictly economic and nonpolitical).

¹⁴⁴ See SHIHATA, WORLD BANK IN A CHANGING WORLD, *supra* note 82, at 133 ("While the Bank is prohibited from being influenced by political considerations, its staff increasingly realize that human needs are not limited to the material 'basic needs' often emphasized in the 1970s. . . . [N]o balanced development can be achieved without the realization of a minimum degree of all human rights . . .").

¹⁴⁵ Sarfaty, *supra* note 83, at 663 (internal quotation marks omitted).

IFIs, must respect — if not affirmatively promote — human rights when implementing its programming.¹⁴⁶

Finally, the act/omission logic employed by IFIs must be highly questioned in view of the history of the discord with the General Assembly by the IMF and the World Bank during apartheid-era South Africa. Recall that the two IFIs, in direct opposition to General Assembly resolutions and international human rights law standards, continued to loan money to an apartheid government committing egregious human rights violations.¹⁴⁷ The basis of IFI action was declared principled adherence to their own internal governance instruments prohibiting “political” considerations, rather than yielding to the United Nations Charter and its progeny human rights treaties.¹⁴⁸ It is extraordinarily doubtful that anyone would now argue in favor of the IFI position in conflict with international human rights standards — whether manifesting in racist, sexist, or other violations. Similarly, one questions the legitimacy of IFIs citing to their Articles as a legal or ethical basis for resisting CRPD compliance.

III. A FRAMEWORK FOR ACHIEVING DISABILITY-INCLUSIVE DEVELOPMENT

Achieving disability-inclusive development requires IFIs to undergo procedural, substantive, and ultimately institutional cultural changes. Procedurally, IFIs should enable meaningful disability civil society participation throughout their work, mainstream and twin-track disability programming across all sectors, and ensure accountability for inclusion. Substantively, IFIs need to adopt a rights-based approach in which people with disabilities are meaningfully included in all sponsored development schemes. To achieve these ends, IFIs will have to acculturate the notion that including persons with disabilities is part and parcel of their international law obligations and not an element that can be added to programming when circumstances permit.

¹⁴⁶ See, e.g., DARROW, *supra* note 67, at 91-122 (arguing that IFIs must be cognizant of human rights when working in countries).

¹⁴⁷ See Henry, *supra* note 18, at A5; Gumisai Mutume, *Economy South Africa: A Tale of Two Trevors*, INTER PRESS SERVICE NEWS AGENCY (June 8, 2000), <http://www.ipsnews.net/2000/06/economy-south-africa-a-tale-of-two-trevors/> (“[D]uring those times, the IMF, the Bank and other international financial institutions were also players in the equation, fuelling the South African economy with loans that sustained it.”).

¹⁴⁸ McBeth, *supra* note 101, at 1108.

A. Participation

To achieve disability-inclusive development, IFIs should initiate a dramatic procedural sea change, one in which people with disabilities are respected as agents of change and enabled to participate fully in the development process, from planning and implementation, to monitoring.¹⁴⁹

Such an integrated method was utilized by the drafters of the CRPD, which became the first United Nations human rights treaty to include members of the targeted identity group in its negotiations.¹⁵⁰ The inclusion of persons with disabilities and DPOs in the CRPD's development through this "participatory dynamic"¹⁵¹ reflected the aphorism of the treaty — "nothing about us without us."¹⁵² States' representatives, through interaction with persons with disabilities, were educated about their lived experiences and learned the priorities and needs identified by the group.¹⁵³

Collaboration was essential to the ultimate text, which mandates a similarly encompassing dynamic for the CRPD's implementation.¹⁵⁴ Notably, Article 4(3) requires states, as a general obligation, to "closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations" in law and policy development and "in other decision-making processes concerning issues relating to persons with disabilities."¹⁵⁵ Similarly, Article 32 on international cooperation requires that its inclusive development mandate be formulated and realized "in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities."¹⁵⁶ More expansively, the Preamble's aspirations are worth quoting at length:

[T]hat the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms and of full participation by persons with disabilities will result in their enhanced sense of belonging and in significant

¹⁴⁹ See Stein & Lord, *Future Prospects*, *supra* note 40, at 37-39.

¹⁵⁰ See Stein & Lord, *Forging Effective International Agreements*, *supra* note 45, at 30-31.

¹⁵¹ See Stein & Lord, *Jacobus tenBroek*, *supra* note 47, at 177 n.109.

¹⁵² See Stein & Lord, *Normative Value of a Treaty*, *supra* note 60, at 28 & n.15.

¹⁵³ See Trömel, *supra* note 49, at 120-21.

¹⁵⁴ See Stein & Lord, *Vehicle for Social Transformation*, *supra* note 51, at 110, 114-15.

¹⁵⁵ CRPD, *supra* note 15, at art. 4(3).

¹⁵⁶ *Id.* at art. 32(1).

advances in the human, social and economic development of society and the eradication of poverty.¹⁵⁷

The process of making IFI development and humanitarian programming disability-inclusive can be achieved through ten procedural steps¹⁵⁸:

1. Locate DPOs with which to partner that have credibility with the local disability community. These DPOs preferably are managed by individuals with disabilities. Work towards ensuring representation by disability subgroups, including those highly marginalized like individuals with intellectual disabilities.
2. Conduct a disability-specific assessment through meetings with DPO representatives, persons with disabilities, or via survey, to identify barriers to participation and ascertain priorities for future program development. Aim for projects that respond to what the local population views as their top needs.
3. Designate a disability focal point to raise awareness of disability laws and policies, as well as the treatment of persons with disabilities within a state's specific culture. When doing so, cooperate with local DPOs to ensure participation by the local disability community in sponsored work.
4. Employ people with disabilities in part or full-time positions or as interns to enhance workplace diversity, improve relations with the local disability community, and increase program sensitivity to disability issues. Make certain that workplaces are accessible, and that accessible communication and transportation is available.
5. Ensure inclusion of the needs of persons with disabilities in project selection and documentation. Proposed schemes can be reviewed by DPOs to assure that the evaluation criteria address the needs of the disability community,

¹⁵⁷ *Id.* at pmb. (m).

¹⁵⁸ *Id.* at art. 32. When thinking through these steps, we benefited from Amy T. Wilson, *The Effectiveness of International Development Assistance from American Organizations to Deaf Communities in Jamaica*, 150 AM. ANNALS DEAF 292, 298-300 (2005).

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- remove barriers to their full inclusion, and prevent harmful practices.
6. Encourage and facilitate the participation of DPOs in developing, implementing, monitoring, and evaluating programming. This ensures the best possible outcome and provides the community with ownership of the projects. Meaningful participation should acknowledge the effect of culture and power relationships and emphasize the equal value of all stakeholders.
 7. Make sure program facilities are accessible to and inclusive of persons with disabilities by including DPOs in inspections, planning, and evaluations of events. Sign language interpretation, provision of materials in alternative formats such as Braille, large print, or on CD, and relocation to physically flat venues can provide equal access.
 8. Implement disability-inclusive projects and activities in conjunction with local DPOs. If a project is initially designed without input from persons with disabilities, their later participation can identify barriers to inclusion and methods for their removal.
 9. Enable accountability toward the disability community by involving DPOs in monitoring and evaluating programs. Assessments ought to include disability-related indicators, and can be disaggregated by gender and disability subtype.
 10. Foster collaboration and coordination on disability-related development project issues amongst local DPOs, international DPOs, local NGOs, development agents, and donors. Such collaboration may take the form of training programs, sharing best practices and technical information, collaborative research, and technology transfer.

These steps are summarized in the below table:

TEN STEPS FOR INCLUSIVE DEVELOPMENT	
1.	<i>Identify Disabled Persons Organizations (DPOs)</i>
2.	<i>Conduct a disability assessment</i>
3.	<i>Designate a disability focal point</i>
4.	<i>Employ people with disabilities</i>
5.	<i>Include the needs of persons with disabilities in project selection</i>
6.	<i>Encourage and facilitate the participation of DPOs</i>
7.	<i>Make certain facilities are accessible</i>
8.	<i>Implement disability-inclusive projects with local DPOs</i>
9.	<i>Enable accountability toward the disability community</i>
10.	<i>Foster collaboration and coordination on disability issues</i>

B. Mainstreaming via a Twin-Track Approach

Related to the process of including persons with disabilities as actors in all aspects of development programming is the process of including disability as a thematic issue across all sectors of development schemes through mainstreaming and twin-tracking. Mainstreaming a vulnerable population group means referencing and incorporating issues relating to that identity category, here persons with disabilities, across all sectors of a development agency and throughout all its programming.¹⁵⁹ Twin-tracking refers to specific targeting within development schemes of a vulnerable population group, in this case persons with disabilities, by allocating resources and schemes specifically intended for their benefit, while also mainstreaming programming.¹⁶⁰

Mainstreaming and targeting disability in development via a human rights approach is vital for developing inclusive societies and fulfilling

¹⁵⁹ For an example of mainstreaming involving other rights, see DEBBIE BUDLENDER & U.N. DEV. FUND FOR WOMEN, INTEGRATING GENDER-RESPONSIVE BUDGETING INTO THE AID EFFECTIVENESS AGENDA: TEN-COUNTRY OVERVIEW REPORT (2008), *available at* http://www.gendermatters.eu/resources_documents/UserFiles/File/Resourse/Budlender_unifemreport.pdf.

¹⁶⁰ *See id.* at 15.

the human rights of individuals with disabilities.¹⁶¹ Mainstreaming and targeted initiatives are needed because the issues faced by people with disabilities, including poverty, cut across sectors and necessitate cross-sector responses.¹⁶² In human rights terms, the indivisibility of rights necessitates mainstreaming — ad hoc approaches leave gaps in policies through implementation, and cannot achieve full enjoyment of human rights and fundamental freedoms for the targeted group. To illustrate, a child who uses a wheelchair requires clean water and sanitation, adequate food, a safe home, responsive health care, and accessible public transportation as prerequisites to gaining an education, all of which are in addition to an accessible school room and reasonable accommodations within the school.¹⁶³ If an IFI as part of a public education project focuses only on physical access to a school but neglects other interrelated components, such as access to sign language interpretation, children with aural disabilities will be excluded from educational opportunity.¹⁶⁴ Or, if an IFI in implementing an access to justice scheme duly considers the needs of only visually impaired persons to large print materials when sitting on a jury but disregards parallel reasonable accommodations, for instance facilitating the involvement of those with intellectual disabilities, then that segment of the disability population will likewise be barred from equal participation.¹⁶⁵ Hence, a comprehensive and coordinated response to disability-inclusion is required within and across institutional operations and programs, and between stakeholders.¹⁶⁶

¹⁶¹ See Bill Albert, *Briefing Note: The Social Model of Disability, Human Rights and Development*, DISABILITY KAR RESEARCH PROJECT 4 (Sept. 2004), <http://www.handicap-international.fr/bibliographie-handicap/1Handicap/ModelesComprehension/socialModel.pdf>.

¹⁶² See *id.* (“The model is so powerful because it illuminates the fact that the roots of poverty and powerlessness do not to reside in biology but in society.”).

¹⁶³ See generally UNICEF: INNOCENTI RESEARCH CENTRE, *PROMOTING THE RIGHTS OF CHILDREN WITH DISABILITIES* (2007), available at http://www.un.org/esa/socdev/unyin/documents/children_disability_rights.pdf (illustrating diverse issues children with disabilities encounter).

¹⁶⁴ Sadly, this is often the case, even through allegedly inclusive policies like UNESCO’s Education for All Program, which has excluded children with disabilities. See *Education for All Movement*, U.N. EDUC., SCI. & CULTURAL ORG., <http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/education-for-all/> (last visited Jan. 7, 2014).

¹⁶⁵ Parenthetically, one eminent philosopher argues that those individuals with intellectual disabilities functionally incapable of sitting on a jury or exerting the right to vote ought to be represented by proxy. See Martha Nussbaum, *The Capabilities of People with Cognitive Disabilities*, 40 *METAPHILOSOPHY* 331, 347 (2009).

¹⁶⁶ See BILL ALBERT ET AL., *HAS DISABILITY BEEN MAINSTREAMED INTO DEVELOPMENT COOPERATION?* 25 (2005), available at <http://dwde.co.za/site/wp-content/uploads/2010/>

Experiences from gender-inclusion and environmental sensitivity efforts in development suggest that IFIs must promulgate strategic plans that are policy-intensive and time-bound if they wish to ensure comprehensive mainstreaming of a previously excluded group.¹⁶⁷ The history of gender mainstreaming, although far from perfect, also indicates that mainstreaming can have a widespread impact on international development, and can alter the actions of international organizations.¹⁶⁸ Such detailed plans are valuable for signaling the importance of an issue internally among staff, and establishing accountability in meeting designated obligations.¹⁶⁹

As an example, people with disabilities were mainstreamed via a rights-based approach in a pilot program in Andhra Pradesh, a poor state in India, through a World Bank project.¹⁷⁰ People with disabilities held leadership positions and participated in all stages of the pilot project, beginning with the feasibility survey; because experts with disabilities led the surveys, they were able to act as role models and motivate villagers with disabilities to take part.¹⁷¹ The survey took a rights-based approach with villages determining through a participatory process how they wished to transform their world. This process led to the establishment of self-help groups at the village and district levels that empowered people with disabilities to “define their common needs and biggest barriers, and collectively take problem-

07/Has-Disability-Been-Mainstreamed-into-Development-Cooperation.pdf.

¹⁶⁷ See generally SHIREEN LATEEF, MEASURING PERFORMANCE AND GENDER EQUALITY RESULTS (2008), available at http://siteresources.worldbank.org/INTGENDER/Resources/336003-1232569275090/MOD4_GenderADB.pdf (providing information on Asian Development Bank's projects to promote gender mainstreaming); Gonzalo Griebenow & Sunanda Kishore, *Mainstreaming Environment and Climate Change in the Implementation of Poverty Reduction Strategies (Paper No. 119)*, ENV'T DEP'T PAPERS: ENVTL. ECON. SERIES 24 (2009), available at <http://eird.org/publicaciones/EDP-119-PRSP.pdf> (providing examples of countries' environmental mainstreaming projects). The Bank's own assessment is worth noting: THE WORLD BANK, INTEGRATING GENDER INTO THE WORLD BANK'S WORK: A STRATEGY FOR ACTION 1 (2002) [hereinafter INTEGRATING GENDER], available at <http://siteresources.worldbank.org/INTGENDER/Resources/strategypaper.pdf> (“Gender equality is an issue of development effectiveness, not just a matter of political correctness or kindness to women.”).

¹⁶⁸ See Hilary Charlesworth, *Not Waving but Drowning: Gender Mainstreaming and Human Rights in the United Nations*, 18 HARV. HUM. RTS. J. 1, 2-6 (2005).

¹⁶⁹ See CAROL MILLER & BILL ALBERT, MAINSTREAMING DISABILITY IN DEVELOPMENT: LESSONS FROM GENDER MAINSTREAMING 16 (2005).

¹⁷⁰ See David Werner, *The Role of Disabled Persons in Overcoming Rural Poverty in Andhra Pradesh, India*, NEWSL. FROM SIERRA MADRE #48 (HealthWrights, Palo Alto, Cal.), Dec. 2002, at 2, available at <http://www.healthwrights.org/content/newsletters/nl48.pdf>.

¹⁷¹ See *id.* at 2-3.

solving action,” and to develop new skills and a more positive social identity.¹⁷² These self-help groups, in turn, have given leadership training, organized community-based rehabilitation programs in villages, accessed micro-credit loans, undertaken income generation activities, and opened savings accounts at banks.¹⁷³

Finally, mainstreaming disability to ensure greater equality for individuals with disabilities benefits not only disabled people, but also improves the quality of life of the whole community. Equality measures based on universal design principles benefits not only people with disabilities, but a broad spectrum of the community. A ramp allows the elderly to avoid stairs and aids the movement of goods. Moreover, mainstreaming and targeting allows people with disabilities to have greater access to their communities, thereby increasing those societies’ diversity.

C. Accountability

Accountability for implementing development and humanitarian schemes is crucial for achieving IFI disability-inclusive programming, yet is currently lacking within these institutions. As a consequence, IFIs issue strongly-worded press releases or even policy statements, but then do not follow up on these commitments.

The World Bank provides a clear example of how lack of accountability to a given issue results in its neglect. The Bank itself estimates that only 6.7% of its loans contain a disability component¹⁷⁴ despite its expertise in creating and implementing schemes targeted at persons with disabilities,¹⁷⁵ in compiling data,¹⁷⁶ and disseminating technical assistance.¹⁷⁷ Nor are prospects for change likely to occur in the absence of mechanisms geared at ensuring responsibility at the Bank for excluding individuals with disabilities from programming.

¹⁷² *Id.* at 4.

¹⁷³ *See id.* at 4-7.

¹⁷⁴ *See* BRAITHWAITE ET AL., *supra* note 13.

¹⁷⁵ For more on these specific schemes, see *The World Bank’s Disability Work*, *supra* note 141.

¹⁷⁶ *See, e.g.*, Daniel Mont, *Measuring Disability Prevalence*, WORLD BANK: SOCIAL PROTECTION (Mar. 2007), <http://siteresources.worldbank.org/DISABILITY/Resources/Data/MontPrevalence.pdf> (demonstrating World Bank’s ability in collecting data).

¹⁷⁷ *See* LORD ET AL., *supra* note 16, at 13; *see also* TOM RICKERT, TECHNICAL AND OPERATIONAL CHALLENGES TO INCLUSIVE BUS RAPID TRANSIT: A GUIDE FOR PRACTITIONERS 1-2 (2010), *available at* http://siteresources.worldbank.org/DISABILITY/Resources/280658-1239044853210/5995073-1239044977199/5995074-1239045184837/5995121-1239046824546/BRT_Challenges9-10.pdf.

Project proposals do not contain points to be awarded in their evaluations for including persons with disabilities. No safeguard policy exists, as it does in parallel for women, indigenous groups, and the environment. And currently the Bank's internal Inspection Panel does not recognize disability as a protected category under which complaints can be brought for Bank neglect.

Yet, the World Bank is well positioned to facilitate disability-inclusive practices. In addition to rectifying the above oversights, the Bank could provide grants through its Global Partnership for Disability and Development project to enable DPOs to conduct their own development evaluations and to publish monitoring reports.¹⁷⁸ Precedent for accountability on disability can be gleaned from the gender context, most specifically the Bank's 2002 Gender Mainstreaming Strategy and Operational policy, which was proclaimed as being responsive to recognition that "gender plays an important role in determining economic growth, poverty reduction, and development effectiveness, and from the less-than-systematic integration of gender concerns into the Bank's work to date."¹⁷⁹ Ironically, the World Bank has become a leading example for promoting compliance with human rights norms on non-disability issues, such as indigenous peoples and the environment, at times conditioning approval of state loans on promises by borrower countries to heed international law obligations.¹⁸⁰

In a similar vein, the Bank can build on its recently proclaimed aspiration to become the world's knowledge broker¹⁸¹ to augment disability-related empirical studies that enable development practices. Such research would be in sync with important work the World Bank has done in researching disability statistics,¹⁸² and would focus

¹⁷⁸ GPDD was established in 2003 by the World Bank as a network of disability organizations, NGOs, bilateral and multilateral development organizations, United Nation organizations, and international funding entities. See *Global Partnership for Disability and Development (GPDD)*, WORLD BANK, <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALPROTECTION/EXTDISABILITY/0,,contentMDK:21036173~pagePK:210058~piPK:210062~theSitePK:282699,00.html> (last visited Jan. 7, 2014). It works toward furthering the capacity of disability-related NGOs, raises awareness of disability-related issues, increases and focuses research initiatives, and fosters collaboration between partners.

¹⁷⁹ WORLD BANK, INTEGRATING GENDER, *supra* note 167, at 1.

¹⁸⁰ See Mac Darrow & Amparo Tomas, *Power, Capture, and Conflict: A Call for Human Rights Accountability in Development Cooperation*, 27 HUM. RTS. Q. 471, 480-81 (2005).

¹⁸¹ See *Knowledge Exchange*, WORLD BANK: WORLD BANK INST., <http://wbi.worldbank.org/wbi/about/knowledge-exchange> (last visited Jan. 7, 2014).

¹⁸² For examples of the Bank's depth of statistical gathering on disabilities, as well

attention on important issues like disability and HIV/AIDS.¹⁸³ World Bank-sponsored studies would also be useful for emphasizing the economic case for disability inclusion's relationship to effective sustainable development. For example, no study exists that details the costs and benefits of disability-related development; namely, for every dollar of cost for including persons with disabilities in programming, what are the long-term benefits of societal participation, and for every program that does not include persons with disabilities, what are the long-term costs of social exclusion?

Establishing effective accountability systems on disability is essential for ensuring that duties are fulfilled in a rights-based approach and to strengthen good governance. Any alternative approach leads to policies, however well-worded or well-intended, but without practical application. In this respect, the history of disability programming at USAID is highly illustrative. USAID was one of the earliest bilateral donor agencies to adopt disability-specific guidelines.¹⁸⁴ The guidelines were precipitated by reports detailing the exclusionary nature of American foreign assistance,¹⁸⁵ most prominently a 1996 report by the independent National Council on Disability ("NCD") that concluded "the United States does not have a comprehensive foreign policy on disability," and "neither the spirit nor the letter of U.S. disability rights laws is incorporated into the activities of the principal foreign policy agencies."¹⁸⁶ In response, USAID issued a non-binding guidance note in 1997 that intended to avoid disability-based discrimination and promote inclusion in USAID programs and in host

as links to those individual reports, see *Data & Statistics on Disability*, WORLD BANK, <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALPROTECTION/EXTDISABILITY/0,,contentMDK:21249181~menuPK:282717~pagePK:148956~piPK:216618~theSitePK:282699,00.html> (last updated Aug. 28, 2009).

¹⁸³ See, e.g., Nora Groce, *HIV/AIDS & Disability: Capturing Hidden Voices*, WORLD BANK / YALE U.: GLOBAL SURVEY ON HIV/AIDS AND DISABILITY (Apr. 2004), <http://siteresources.worldbank.org/DISABILITY/Resources/Health-and-Wellness/HIVAIDS.pdf> (providing information on HIV/AIDS and its impact on people with disabilities).

¹⁸⁴ See generally Michael Ashley Stein, *Mainstreaming and Accountability: (Really) Including Persons with Disabilities in Development Aid and Humanitarian Relief Programming*, 32 NORDIC J. HUM. RTS. 292 (2013) (discussing disability and human rights programming in response to CRPD).

¹⁸⁵ See, e.g., U.S. GEN. ACCOUNTING OFFICE, GAO/NSIAD-91-82, FOREIGN ASSISTANCE: ASSISTANCE TO DISABLED PERSONS IN DEVELOPING COUNTRIES (1991), available at http://pdf.usaid.gov/pdf_docs/PAAA224.pdf (discussing the assistance that the U.S. government gives to the disabled in developing countries).

¹⁸⁶ *Foreign Policy and Disability*, NAT'L COUNCIL ON DISABILITY (1996), <http://www.ncd.gov/newsroom/publications/1996/foreign.htm> (discussing assistance given by U.S. government to individuals with disabilities in developing countries).

countries.¹⁸⁷ Following subsequent and more detailed criticism by NCD and others,¹⁸⁸ USAID made the 1997 guidelines part of USAID policy in 2004.¹⁸⁹

However, because USAID's policy is not mandatory within the agency and lacks internal safeguards for implementation, USAID has continued to issue project solicitations that fail to incorporate the required disability policy provision, fail to reference individuals with disabilities as program participants or beneficiaries, and make no mention of guidance, budgeting, or reasonable accommodations that would enable participation by people with disabilities.¹⁹⁰ As a result of the absence of mechanisms to ensure accountability — despite repeated sincere and public representations by USAID's chief Donald Steinberg that the agency would adopt and implement a fully inclusive approach to disability¹⁹¹ — USAID continues to violate its own internal policy by excluding persons with disabilities from its general development aid and humanitarian relief programming.

D. Rights-Based Development

In the 1990s, development institutions began incorporating human rights concepts in their programming as the result of sustained

¹⁸⁷ See *USAID Disability Policy Paper*, U.S. AGENCY FOR INT'L DEV.: BUREAU FOR POL'Y & PROGRAM COORDINATION 2 (Sept. 12, 1997), http://pdf.usaid.gov/pdf_docs/PDABQ631.pdf (aspiring to “stimulate an engagement of host country counterparts, governments, implementing organizations and other donors in promoting a climate of nondiscrimination against and equal opportunity for people with disabilities”).

¹⁸⁸ See, e.g., *Foreign Policy and Disability: Legislative Strategies and Civil Rights Protections to Ensure Inclusion of People with Disabilities*, NAT'L COUNCIL ON DISABILITY (2003), <http://www.ncd.gov/publications/2003/Sept92003> (offering criticism of USAID Disability Policy in light of 1996 NCD Report *Foreign Policy and Disability*).

¹⁸⁹ *Advancing Disability-Inclusive Development*, U.S. AGENCY FOR INT'L DEV. (Sept. 20, 2013), <http://www.usaid.gov/what-we-do/democracy-human-rights-and-governance/protecting-human-rights/disability>.

¹⁹⁰ See, e.g., 674-10-0051 *Malawi Support for Integrated Service Delivery: South Africa USAID-Pretoria — Agency for International Development*, GRANTS.GOV (July 7, 2010), <http://www.grants.gov/web/grants/view-opportunity.html?oppld=55656> (includes disability policy provision, but makes no mention of people with disabilities in any other section of RFA).

¹⁹¹ See, e.g., Donald K. Steinberg, *Beyond Victimhood: The Crucial Role of Marginalized Groups in Building Peace*, U.S. AGENCY FOR INT'L DEV. (Feb. 6, 2012), <http://transition.usaid.gov/press/speeches/2012/sp120206.html> (speaking on topic of ensuring inclusive approaches). At an open meeting convened at the Department of State in May 2010 attended by one of the authors (who also spoke), Mr. Steinberg pledged to make USAID programming disability-inclusive by the time he left the agency; that promise went unfulfilled.

lobbying by NGOs and other stakeholders.¹⁹² By 2000, a new paradigm was evolving in which human rights and development schemes were considered linked: development should advance human rights, and human rights are unattainable without development.¹⁹³ Further, that development and humanitarian assistance ought to be redefined in terms of human agency. This sea change was precipitated by the influential work of Nobel Prize-winning economist Amartya Sen, who asserted that development work should focus not solely on economic growth but also on the growth of human capabilities so that people may choose “what kind of a life to lead.”¹⁹⁴ Philosopher Martha Nussbaum expanded on Sen’s capability approach by enumerating a list of “universal” capabilities that individuals should be supported toward achieving.¹⁹⁵ A disability human rights approach builds on the capability approach by removing Nussbaum’s required minimal core capabilities and recognizing that all persons are entitled to achieve their full potential.¹⁹⁶ Disability-inclusion in development and humanitarian schemes is a precondition to each of these models, as is an appreciation of disability belonging among the human rights canon.

Under a rights-based approach to development, the intent of these schemes evolves from a focus on need and charity to obligations and duties. Accordingly, the process should respect, protect, promote, and fulfill human rights through an approach to development that incorporates “transparency, accountability, equity and participation”¹⁹⁷ The United Kingdom’s Department for International Development (“DFID”) has led in developing such a rights-based approach through a “cross-cutting” principle of inclusion that fosters

¹⁹² See McBeth, *supra* note 101, at 1116, 1138.

¹⁹³ See generally UVIN, *supra* note 118 (exploring link between human rights and sustainable development).

¹⁹⁴ JEAN DRÈZE & AMARTYA SEN, INDIA: ECONOMIC DEVELOPMENT AND SOCIAL OPPORTUNITY 11 (1998).

¹⁹⁵ See MARTHA C. NUSSBAUM, FRONTIERS OF JUSTICE: DISABILITY, NATIONALITY, SPECIES MEMBERSHIP 70, 76-78, 392-401 (2007).

¹⁹⁶ See Stein, *Disability Human Rights*, *supra* note 25, at 110.

¹⁹⁷ U.N. Indep. Expert on the Right to Dev., *Study on the Current State of Progress in the Implementation of the Right to Development*, 21, C.H.R., 55th Sess., U.N. Doc. E/CN.4/1999/WG.18/2 (July 27, 1999) (by Arjun K. Sengupta). Sengupta was an accomplished activist and academic, serving in such posts as Special Secretary to the Prime Minister of India, Executive Director and Special Adviser to the Managing Director of the International Monetary Fund, India’s Ambassador to the European Union and Member Secretary of the Planning Commission. See *Arjun Sengupta*, CTR. FOR DEV. & HUM. RTS., <http://www.cdhr.org.in/Memorial.html> (last visited Jan. 9, 2014).

“socially inclusive societies.”¹⁹⁸ More globally, the Biwako Millennium Framework, a regional scheme for governmental, international, regional organizations and additional stakeholders in Asia and the Pacific, has also adopted a rights-based strategy to disability and development issues.¹⁹⁹

The disability human rights approach to development views all people with disabilities as subjects of rights rather than as objects of charity or of medical interventions. People with disabilities are viewed as claim holders who should be empowered by development to fulfill their human rights. Development institutions, in turn, are positioned as duty bearers with a responsibility for ensuring that development and the process by which it is achieved promote, respect, and fulfill those rights. Such a perspective incorporates the general principles set forth in the CRDP of autonomy, dignity, non-discrimination, effective participation and inclusion, equality of opportunity, and accessibility.

Likewise, a disability human rights perspective embraces people with disabilities as agents of change and employs their decision-making capacity on an equal basis with others. Throughout, the empowerment of and accountability toward people with disabilities are crucial, including recognition of disability-based differences “as part of human diversity and humanity.”²⁰⁰ Consequently, a disability human rights approach can assist development institutions in re-conceptualizing disability away from notions of inability, and re-envisioning their overall approach toward people with disabilities in their processes and programs. The NGO Christian Blind Mission, for instance, has shifted away from its medical pathology approach to disability to support a human rights-based approach.²⁰¹ So, too, the

¹⁹⁸ DEP’T FOR INT’L DEV., REALISING HUMAN RIGHTS FOR POOR PEOPLE: STRATEGIES FOR ACHIEVING THE INTERNATIONAL DEVELOPMENT TARGETS 7, 10 (Oct. 2000), available at http://www2.ohchr.org/english/issues/development/docs/human_rights_tsp.pdf.

¹⁹⁹ See U.N. Secretariat, U.N. Econ. & Soc. Council: Econ. & Soc. Comm’n for Asia & the Pac., *Biwako Millennium Framework for Action Towards an Inclusive, Barrier-Free and Rights-Based Society for Persons with Disabilities in Asia and the Pacific*, U.N. Doc. E/ESCAP/APDDP/4/Rev.1, at 3-4 (Jan. 24, 2003), available at http://www.un.org/en/ga/search/view_doc.asp?symbol=E/ESCAP/; U.N. Econ. & Soc. Comm’n for Asia & the Pac., *Proposal for a Comprehensive and Integral International Convention on Promotion and Protection of the Rights and Dignity of Persons with Disabilities*, UNITED NATIONS ENABLE (2004), <http://www.un.org/esa/socdev/enable/rights/uncontrib-escap.htm>.

²⁰⁰ CRPD, *supra* note 15, at art. 3.

²⁰¹ “Aiming at equal opportunities for persons with disabilities, CBM seeks to ensure that all persons with disabilities have meaningful participation, inclusion, equality, security and dignity, irrespective of nationality, race, gender, religion or age.” Vanneste et al., *CBM Disability and Development Policy*, CHRISTIAN BLIND MISSION 6

tellingly named Handicap International²⁰² and formerly named National Spastics Society.²⁰³

A pragmatic example of applying a disability human rights model to development schemes is the inclusion of persons with disabilities in the conception and implementation of Poverty Reduction Strategy Papers (“PRSPs”), the initial document put together by prospective lenders, in conjunction with IFIs, which sets out and controls eventual programming.²⁰⁴ By identifying disability as a main cause of poverty and treating it as a cross-cutting issue in PRSPs, IFI programming can fulfill their rights. But this can only occur if people with disabilities are empowered to participate in the process.²⁰⁵

Tanzania has demonstrated good practice in including people with disabilities in the PRSP creation process.²⁰⁶ Before, Tanzania’s PRSPs were formulated without the participation of disability civil society and did not consider their interests.²⁰⁷ Beginning in 2002, however, the disability umbrella organization Shivyawata and other DPOs began to make their voices heard. Shivyawata and the Information Centre on Disability completed a participatory poverty assessment.²⁰⁸ The data demonstrated that people with disabilities were “among the most vulnerable to poverty” and experienced multidimensional poverty.²⁰⁹ Subsequently DPOs participated in drafting the PRSP.²¹⁰ In consequence, the PRSP acknowledges disability as a central cause of poverty, and disability is included as a cross-cutting issue in each of

(Oct. 24, 2007), http://www.cbm.org/article/downloads/53739/Disability_and_Development_Policy.pdf.

²⁰² See *History: 1982–2013*, HANDICAP INT’L, <http://www.handicap-international.us/hi/new/> (last visited Jan. 7, 2014) (relating the organization’s shift from an original mission of providing orthopedic care to that of access to education and recognition of rights of persons with disabilities).

²⁰³ Under the patronage of Cherie Blair, the now-named SCOPE has also changed its mission from one of charity to a blend of charity work through integrated housing and advice lines and education advocacy. See *Our History*, SCOPE, <http://www.scope.org.uk/about-us/our-history> (last visited Jan. 7, 2014).

²⁰⁴ See McBeth, *supra* note 101, at 1125-26.

²⁰⁵ See *generally Making PRSP Inclusive*, HANDICAP INT’L & CHRISTOFFEL-BLINDENMISSION (Jan. 2006), <http://siteresources.worldbank.org/DISABILITY/Resources/280658-1172608138489/MakingPRSPInclusive.pdf> (assisting DPOs with participation in the PRSP process).

²⁰⁶ See *id.* at 37-38.

²⁰⁷ See *id.* at 37.

²⁰⁸ See *id.*

²⁰⁹ *Id.* at 37-38.

²¹⁰ See *id.* at 38.

the thematic clusters and sectors.²¹¹ The PRSP process strengthened the capacity and profile of DPOs and raised awareness among government and donors on disability.²¹²

Ultimately, all sectors of society should be engaged in disability development since such an approach can potentially benefit not only people with disabilities themselves, but also the twenty-five percent of households with a family member with a disability.²¹³

E. Cultural Change

The CRPD requires States Parties to adopt a disability inclusive and rights-based approach in their development schemes, in response to which bilateral agencies are reforming their guidelines and policies.²¹⁴ The remaining challenge, as reiterated throughout this Article, is to convince IFIs to follow suit. Doing so requires an enormous shift in institutional culture.

A central hurdle for IFIs to adopt inclusive programming is a general cultural aversion, as large bureaucratic institutions, to changing the way they conduct affairs.²¹⁵ Within the specific context of disability, IFIs continue to take the attitude that disability falls outside their economic development mandate as a “special” and low priority issue that goes above and beyond what is expected in the normal course of business.²¹⁶ Thus, despite disability-inclusive

²¹¹ See *id.*

²¹² See generally *International Engagement*, INCLUSION INT’L, <http://www.inclusion-international.org/affiliation/> (last visited Jan. 7, 2014) (an internationally recognized NGO that is recognized by the United Nations and affiliated with a number of development organizations); *Who We Are*, MAKING IT WORK, <http://www.makingitwork-crpd.org/about-miw/who-we-are/> (last visited Jan. 9, 2014) (a disability advocacy group fostered and managed by Handicap International, that has raised awareness through its Make it Work plan).

²¹³ See WANG, *supra* note 127, at 3.

²¹⁴ See LORD ET AL., *supra* note 16, at 18-30 (detailing progress among bilateral state donors).

²¹⁵ See GALIT A. SARFATY, *VALUES IN TRANSLATION: HUMAN RIGHTS AND THE CULTURE OF THE WORLD BANK* 75 (2012).

²¹⁶ See Deborah Stienstra et al., *Baseline Assessment: Inclusion and Disability in World Bank Activities*, CANADIAN CENTRE ON DISABILITY STUDIES 57 (June 2002), <http://disabilitystudies.ca/wp-content/uploads/2010/08/INCLUSION-AND-DISABILITY-in-world-bank-activities.html> (“A final and most significant challenge has been the resistance of some senior Bank officials to participate in this project. The low response rate to the general survey, the decision to undertake no follow-up of that survey, the withdrawal of [several regions from any participation in the survey] are all indicators of a significant resistance to evaluating the inclusion of disability in the operations of the World Bank.”).

facilitation being shown to enhance projects (and even at times being offered by outside funders at no cost),²¹⁷ IFIs resist changing an instantiated approach. As a result, lobbying for disability-inclusive practices is required for each individual project, a rare and ad hoc practice.

Within the specific confines of the World Bank, Galit Sarfaty argues that a clash of expertise and culture exists between the economists who run the Bank and the lawyers who might be inclined to seek greater human rights commitments.²¹⁸ Further, that the conflict is invariably and inevitably won by the former, who then create incentives that do not necessarily embrace human rights compliance.²¹⁹ Sarfaty makes many valuable points, most especially regarding the internal power and culture discords between economists and lawyers within the Bank. Nevertheless, the World Bank and other IFIs have adopted human rights safeguards, awareness-raising initiatives, revised programming standards, and accountability procedures within the fields of gender, indigenous persons, and the environment, and by doing so have incrementally adopted a human rights approach. Hence, despite Sarfaty's thoughtful insight, precedent favors — and no insurmountable reason precludes — doing the same within the disability sector.²²⁰

Indeed, the brief history of the World Bank's engagement with disability-inclusion demonstrates that a strikingly different outcome is possible. Following public support by then-World Bank president James Wolfensohn,²²¹ acclaimed disability rights advocate (and non-economist) Judith Heumann²²² was appointed the Bank's Advisor on Disability and Development in 2002, and a Disability and

²¹⁷ Anecdotally, the Harvard Project on Disability supported a USAID project in which the mission in Honduras refused to ensure that their education program was inclusive of children with disabilities despite being offered both the resources and technical assistance to do this at no cost (documents on file with authors).

²¹⁸ See Sarfaty, *supra* note 83, at 676-82.

²¹⁹ See SARFATY, *supra* note 215, at 15-21; Sarfaty, *supra* note 83, at 662-76.

²²⁰ It should be noted that Sarfaty does not engage the issue of disability within her work.

²²¹ See, e.g., Wolfensohn, *supra* note 5 ("Unless disabled people are brought into the development mainstream, it will be impossible to cut poverty in half by 2015 or to give every girl and boy the chance to achieve a primary education by the same date"); see also YEO & DISABILITY KNOWLEDGE & RESEARCH, *supra* note 10, at 9-10, 13 (examples of Wolfensohn's statements in support of disability-inclusion at the Bank).

²²² Heumann now serves as the U.S. State Department's Special Advisor for International Disability Rights. Judith E. Heumann, U.S. DEP'T OF STATE, <http://www.state.gov/r/pa/ei/biog/144458.htm> (last visited Jan. 9, 2014).

Development team was formed.²²³ These changes were intended to establish the basis for “mainstreaming disability into the World Bank development agenda.”²²⁴ The team, which included several notable individuals,²²⁵ achieved early and significant success in raising disability awareness and programming within the World Bank. Perhaps most notably, the Bank estimates that, during the period of 2002–2006, four percent of all Bank projects, representing five percent of the Bank’s lending volume, encompassed disability as a component of their work,²²⁶ a considerable improvement when one considers that the Bank issues some fifty billion dollars of loans per year.²²⁷ Under subsequent World Bank president Paul Wolfowitz, the disability team was absorbed into the unit addressing vulnerable populations, but without the promulgation of enforceable mainstreaming guidelines.

The Bank’s brief interaction with disability underscores that a multifaceted approach to culture change is necessary for revising institutional norms at IFIs. Initially, pursuant to the principal-agent model of organizational theory, external pressure is necessary to press large, entrenched institutions to amend their conceptions of various issues.²²⁸ Thus, DPOs and disability rights supporters need to follow the course used by gender and environment advocates that successfully shifted IFIs from ignoring to including those human

²²³ *Id.*; *The World Bank and Disability*, BRETTON WOODS PROJECT (Nov. 23, 2006), <http://www.brettonwoodsproject.org/art-545889>.

²²⁴ Judith E. Heumann, Advisor on Disability and Development, *Disability & Development at the World Bank: Where Are We Now and Where Are We Going: An Informal Update of Activities as of February 7 2004*, http://siteresources.worldbank.org/DISABILITY/Miscellaneous/20195967/Activity_Report_IDA.pdf (addressing the letter to the World Bank).

²²⁵ Among them, former South African Human Rights Commissioner Charlotte McClain-Nhlapo, now coordinator at the Disability Development office at USAID, see Judith Heumann et al., *Human Rights at State: Promoting Access of Elections for Persons With Disabilities*, U.S. DEP’T OF STATE (Feb. 1, 2012), <http://m.state.gov/md182995.htm>, and former founder and president of the Inter-American Institute on Disability and Inclusive Development, Rosangela Berman-Bieler, now Senior Advisor of Children with Disabilities at UNICEF. Scott Rains, *Inclusion in Tourism has a New “Friend in High Places”*: *Congratulations Rosangela Berman-Bieler*, ROLLING RAINS REP. (Feb. 28, 2011), <http://www.rollingrains.com/2011/02/>.

²²⁶ *The World Bank and Disability*, *supra* note 223.

²²⁷ See Press Release, World Bank, World Bank Group Support to Promote Growth and Overcome Poverty in Developing Countries Hits Nearly \$53 Billion in 2012 (June 29, 2012), available at <http://www.worldbank.org/en/news/2012/06/29/world-bank-group-support-promote-growth-overcome-poverty-developing-countries-hits-nearly-billion-2012>.

²²⁸ See Catherine Weaver, *The World’s Bank and the Bank’s World*, 13 GLOBAL GOVERNANCE 493, 493-95 (2007).

rights issues as part of their daily activities.²²⁹ The CRPD's widespread ratification provides an opportunity for advocates to encourage, highlight, and support states requesting loans and other assistance from IFIs to meet their international commitments toward people with disabilities, and to catalyze those actors to introduce rights-based disability norms. Compliance may initially be achieved through formal naming and shaming techniques, such as issuing reports or disseminating information through the media,²³⁰ that afterwards evolves into internal norm change.²³¹

In addition, external critiques can effectively be used by internal norm entrepreneurs. Internal champions had a significant effect on the Bank's adopting a social agenda, for instance, using the claims of Oxfam and other groups in relation to the Narmada dam.²³² In addition, evidence suggests that IFIs themselves shift their cultures over time in response to the advocacy of internal advocates who become aware of and wish to reflect international norms and expectations,²³³ thereby "internalizing" good governance norms.²³⁴ At least two studies conclude this specifically to be the case at the

²²⁹ See, e.g., VALENTINE M. MOGHADAM, *GLOBALIZING WOMEN: TRANSNATIONAL FEMINIST NETWORKS* (2005) (discussing effect of transnational feminist networks' participation in international political and corporate arenas); Susan Park, *How Transnational Environmental Advocacy Networks Socialize International Financial Institutions: A Case Study of the International Finance Corporation*, 5 *GLOBAL ENVTL. POL.* 95 (2005) (demonstrating the normative shift in the IFC's environmental position from doing no harm to doing good).

²³⁰ For examples of effective use of these techniques within the disability realm, see *Our Reports and Publications*, DISABILITY RIGHTS INT'L, <http://www.disabilityrightsintl.org/work/our-reports-publications/> (last visited Jan. 9, 2014). Their reports include DISABILITY RIGHTS INT'L, *ABANDONED AND DISAPPEARED: MEXICO'S SEGREGATION AND ABUSE OF CHILDREN AND ADULTS WITH DISABILITIES* (2010); MENTAL DISABILITY RIGHTS INT'L, *TORMENT NOT TREATMENT: SERBIA'S SEGREGATION AND ABUSE OF CHILDREN AND ADULTS WITH DISABILITIES* (2007); *Foreign Policy and Disability*, NAT'L COUNCIL ON DISABILITY (2003), all available at <http://www.disabilityrightsintl.org/media-gallery/our-reports-publications/>.

²³¹ See Alex Geisinger & Michael Ashley Stein, *A Theory of Expressive International Law*, 60 *VAND. L. REV.* 77, 107-08 (2007) (describing how NGOs can change international norms).

²³² See Robert H. Wade, *Muddy Waters: Inside the World Bank as It Struggled with the Narmada Projects*, 46 *ECON. & POL. WKLY.* 44, 51, 54 (2011).

²³³ See Antje Vetterlein, *Norm Setting or Following: The World Bank and the IMF in Comparison* 19 (Mar. 26, 2008), <http://www2.warwick.ac.uk/fac/soc/csgr/events/workshops/wbblled/papers/vetterlein.pdf>.

²³⁴ Geisinger & Stein, *supra* note 231, at 116-18 (detailing the internalization process).

Bank,²³⁵ and the brief foray into disability inclusion at that IFI supports this conclusion.

Finally, culture change is best facilitated when new information and cues are introduced in a manner sensitive to the targeted environment. Thus, disability rights advocates need to strategically craft their ideas in language that is theoretically and methodologically accessible to economists.

CONCLUSION

This Article made the legal and ethical case that IFIs should abide by the CRPD's inclusive-development mandate. When doing so, it argued that customary international law, human rights treaty obligations, IFI internal governance mandates, fiduciary duties, and ethical obligations require IFIs to ensure equal access for persons with disabilities to their development schemes. The Article also explicated what a comprehensive and disability human rights-based approach to development entails procedurally, substantively, and culturally. We thus contributed novel legal arguments and provided important functional guidance on IFI inclusive-development responsibility, while adding to a growing literature regarding the human rights obligations of non-state actors.

Inclusive-development offers opportunities for IFIs (and other development sponsors and actors) to trigger the social integration of persons with disabilities into society. Experience has shown that increasing participation to the physically constructed environment, as well as to the policies and procedures that aid-sponsored programs enact, can help make persons with disabilities more visible, and thereby facilitate the enjoyment of other fundamental rights.

Using the framework provided by the CRPD, IFIs can have a transformative effect on the daily lived experiences of individuals with disabilities in both the developing and the developed world by enabling daily involvement in their communities. As argued nearly half a century ago by seminal disability rights advocate Jacobus tenBroek, nothing is “more essential to personality, social existence, economic opportunity — in short, to individual well-being and integration into the life of the community — than the physical capacity, the public approval, and the legal right to be abroad in the

²³⁵ See Daniel L. Neilson et al., *Bridging the Rationalist-Constructivist Divide: Re-Engineering the Culture of the World Bank*, 9 J. INT'L REL. & DEV. 107, 113-14 (2006), available at <http://mjtier.people.wm.edu/ntw2.pdf>; Weaver, *supra* note 228, at 493, 505.

land.”²³⁶ Inclusive-development provides an avenue for the immediate and continuing realization of human rights by the worldwide one billion persons with disabilities.

²³⁶ Jacobus tenBroek, *The Right to Live in the World: The Disabled in the Law of Torts*, 54 CALIF. L. REV. 841, 841 (1966).