

9-1-2010

Women with Disabilities: The Forgotten Peace Builders

Stephanie Ortoleva
BlueLaw International

Recommended Citation

Stephanie Ortoleva, *Women with Disabilities: The Forgotten Peace Builders*, 33 Loy. L.A. Int'l & Comp. L. Rev. 83 (2010).
Available at: <http://digitalcommons.lmu.edu/ilr/vol33/iss1/4>

This Symposium is brought to you for free and open access by the Law Reviews at Digital Commons @ Loyola Marymount University and Loyola Law School. It has been accepted for inclusion in Loyola of Los Angeles International and Comparative Law Review by an authorized administrator of Digital Commons@Loyola Marymount University and Loyola Law School. For more information, please contact digitalcommons@lmu.edu.

Women with Disabilities: The Forgotten Peace Builders

STEPHANIE ORTOLEVA *

INTRODUCTION

Women across the world are standing their ground against political exclusion, but more must be done to ensure that a gender-sensitive approach is used, that all women have the opportunity to participate in building the rule of law and strengthening democracy, and that all women have a voice in decision-making processes post-conflict.

* Stephanie Ortoleva is an attorney with expertise in international human rights law and U.S. civil rights law. Currently, she is the Senior Human Rights Legal Advisor with the leading international human rights law firm BlueLaw International, where she focuses on disability rights, women's rights, and rule of law issues, with concentrations on human rights programming in developing, transition, and post-conflict countries. Ms. Ortoleva also is an Adjunct Professor at American University School of International Service and will be a Visiting Scholar at the University of Hawai'i in Spring 2012. She is the founding Co-Chair of the American Society for International Law's International Disability Rights Interest Group. Previously, Ms. Ortoleva served as an Attorney and Human Rights Officer at the U.S. Department of State, where she participated in the negotiations of the UN Convention on the Rights of Persons with Disabilities, serving on the United States governmental delegation, as well as worked extensively at the United Nations and Organization of American States on international disability rights and women's rights, including women's role in peace building and post-conflict resolution. She was given the prestigious U.S. Department of State Franklin Award in 2009 for her outstanding work on human rights matters and was the featured Department employee for women's history month in 2009. She is a frequent speaker at conferences and other events and has numerous publications on women's rights, disability rights, and multilateral diplomacy, including *Inaccessible Justice: Persons with Disabilities and the Legal System*, International Law Society of America, *Journal of International and Comparative Law*, Spring 2011; a Chapter in "Lawyers, Lead On," American Bar Association Publishing, March 2011; among others. She developed the website www.WomenEnabled.org to bring attention to the urgent need to include women and girls with disabilities in international resolutions, policies, and programs. She graduated from Hofstra University School of Law with outstanding honors and is admitted to practice before the U.S. Supreme Court.

The author wishes to thank her research assistants Lisa M. Coleman, Andrea Lindemann, and Shivani Honwad for their outstanding and creative assistance; Akiko Ito, Chief Secretariat for the United Nations Convention on the Rights of Persons with Disabilities for her commitment to the rights of women with disabilities; and Frank Della-Penna, her ever-supportive husband and life partner, for his patience and assistance.

Sustainable peace requires the inclusion of all groups affected by conflict at all stages in the peace-building process. Some progress has been made through a series of United Nations Security Council Resolutions, beginning with Resolution 1325 in 2000,¹ to give women a place at the table in post-conflict peace building and reconciliation; however, women with disabilities have not had a role in these processes, either in practice or formally through the various United Nations resolutions and policy documents.

Women with disabilities face unique challenges and offer unique perspectives. They have the capacity to make important contributions to the peace-building process and must be included to ensure that their needs and concerns are addressed and effectively represented. Emancipatory gender politics entails considering disability, along with ethnic origin, sexual orientation, and other identities. Groups which have traditionally been excluded, such as women with disabilities, deserve special attention: bringing their varied backgrounds, perspectives, and skills to the negotiating table and playing an important role in formulating and implementing policies that will affect society as a whole after conflict. This approach also strengthens democracy and fosters inclusive political participation. Therefore, existing programs, institutions, and mechanisms at all levels must strive to include the voices of women with disabilities, as resolutions, recommendations, and guidelines are drafted, as programs are designed and implemented on the ground, and as peace processes proceed.

Part I describes the situation of women with disabilities generally and in the conflict environment. Numerous issues affect women with disabilities disproportionately when compared to men with disabilities and women without disabilities. These include health, education, employment, violence, family rights, marriage, housing, and participation in public life, all of which are exacerbated by war and observed globally. Also, the impact of gender stereotyping and the double discrimination women with disabilities face—due to both their gender and their disability—are discussed. War and conflict increase the incidence of disability for women in general, and women with disabilities often develop additional or more severe disabilities as a result.² In addition to experiencing greater violence in general, women with disabilities also experience higher rates of gender-based violence

1. S.C. Res. 1325, U.N. Doc. S/RES/1325 (Oct. 31, 2000).

2. See WORLD BANK ET AL., SOCIAL ANALYSIS AND DISABILITY: A GUIDANCE NOTE 12–13, 25 (2007), available at <http://siteresources.worldbank.org/EXTSOCIALDEV/Resources/3177394-1175102311639/3615048-1175607868848/SocialAnalysis&Disability-Full.pdf>.

during conflict, which could result in increased HIV infection and psychological trauma. Furthermore, refugee camps demonstrate the additional burdens these women may face due to the violence in these situations; although the women flee their homes and leave support systems behind, the facilities are rarely accessible and the programs are never designed to meet their specific needs.³ Justice and post-conflict reconciliation activities generally do not include women with disabilities, nor are such programs made accessible to them or designed to include their concerns.⁴ Although data on the situation of women with disabilities is referenced, there is a clear need for more detailed, standardized, and global data on these issues in order to more effectively address them.

Part II then reviews the evolution and legal framework of the United Nations Women, Peace and Security strategy, beginning with the post-World War II peace framework and outlining the genesis of the various United Nations resolutions. These include the conclusions of the Beijing Declaration progress review in 2000 (Beijing + 5), which highlighted the urgent need to include women in peace-keeping operations and peace-building activities.⁵ Later in 2000, the groundbreaking United Nations Security Council Resolution 1325 was adopted by the United Nations Security Council, celebrating its tenth anniversary in 2010.⁶ Despite the fact that Beijing + 5 pointed out the importance of including women with disabilities in these resolutions, a point which had been made in the original Beijing Declaration itself, women with disabilities were not referenced in Resolution 1325 or its various succeeding resolutions.⁷ Furthermore, the strongly gender-sensitive approach outlined in the Resolution 1325 indicators, which are used internationally and nationally to assess whether the objectives of the resolution are being met, do not mention women with disabilities,

3. See Special Rapporteur on Violence Against Women, *Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, Including the Question of the Programme and Methods of Work of the Commission; Alternative Approaches and Ways and Means Within the United Nations System for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms, Comm'n on Human Rights*, ¶¶ 162, 209–11, U.N. Doc. E/CN.4/1998/54 (Jan. 26, 1998) (by Radhika Coomaraswamy) [hereinafter *Further Promotion and Encouragement of Human Rights and Fundamental Freedoms*].

4. See *id.* ¶ 112.

5. *Five-year Review of the Implementation of the Beijing Declaration and Platform for Action (Beijing + 5) Held in the General Assembly, 5–9 June 2000*, U.N. ENTITY FOR GENDER EQUALITY & THE EMPOWERMENT OF WOMEN, <http://www.un.org/womenwatch/daw/followup/beijing+5.htm> (last visited Oct. 15, 2011).

6. See S.C. Res. 1325, *supra* note 1.

7. See *id.*

nor do they include any measure of whether the gender-specific needs of women with disabilities are being satisfied during or after conflict.⁸ When this issue is examined both generally and during conflict in particular, these deficits become even starker.

Part III further explores the intersection of the United Nations Convention on the Rights of Persons with Disabilities (CRPD),⁹ the United Nations Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW),¹⁰ and the United Nations Women, Peace and Security framework.¹¹ Both the CRPD and the CEDAW enumerate respectively the disability and gender impacts of war and conflict.¹² The CRPD has a strong gender focus and, in addition to a specific article on women, also weaves gender issues throughout its provisions.¹³ In addition, the CRPD and the CEDAW both expand on the importance of understanding the negatives of stereotyping.¹⁴ Several provisions, elaborated in both the CRPD and the CEDAW, are particularly relevant to peace-building programs (e.g., legal capacity, access to justice, and participation in political and public life).¹⁵ Both the CRPD and the CEDAW also have strong monitoring mechanisms. For example, the United Nations itself has recognized the urgency of incorporating disability issues into all of its work following the adoption of the CRPD and has established the inter-agency support group to ensure such inclusion.¹⁶ When all of the above are considered together, it becomes clear that women with disabilities must be included in peace-building efforts.

8. U.N. Secretary-General, *Women and Peace and Security: Report of the Secretary-General*, ¶¶ 12–20, U.N. Doc. S/2010/173 (Apr. 6, 2010) [hereinafter *Women and Peace and Security*].

9. Convention on the Rights of Persons with Disabilities, G.A. Res. 61/611, U.N. Doc. A/RES/61/611 (Dec. 6, 2006) [hereinafter CRPD].

10. Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, U.N. Doc. A/RES/34/180 (Dec. 18, 1979) [hereinafter CEDAW].

11. See S.C. Res. 1325, *supra* note 1; S.C. Res. 1820, U.N. Doc. S/RES/1820 (June 19, 2008); S.C. Res. 1888, *pmb.*, ¶¶ 10–11, 21, U.N. Doc. S/RES/1888 (Sept. 30, 2009); S.C. Res. 1889, U.N. Doc. S/RES/1889 (Oct. 5, 2009); S.C. Res. 1894, U.N. Doc. S/RES/1894 (Nov. 11, 2009); S.C. Res. 1960, U.N. Doc. S/RES/1960 (Dec. 16, 2010).

12. See CRPD, *supra* note 9, *pmb.*, (u), art. 11; Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 19 on the Convention on the Elimination of All Forms of Discrimination Against Women in its Eleventh Session (1992), <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm> [hereinafter General Recommendations].

13. See CRPD, *supra* note 9, arts. 6, 16, ¶ 5, 28, ¶ 2(b).

14. CRPD, *supra* note 9, art. 8, ¶ 1(b); CEDAW, *supra* note 10, arts. 5(a), 10(c).

15. See CRPD, *supra* note 9, arts. 12–13; CEDAW, *supra* note 10, art. 15.

16. See *Inter-Agency Support Group*, U.N. ENABLE, <http://www.un.org/disabilities/default.asp?navid=43&pid=323> (last visited Oct. 15, 2011).

Part IV outlines current practices on the international, national, and regional levels to integrate women with disabilities into peace-building and development programs and also addresses whether a gender-sensitive approach has been utilized. Some positive steps for inclusion are explored and disparities between policies and practice are highlighted. Although the international community has addressed disability issues several times in the past, perhaps the most significant instance was when the World Programme of Action concerning Disabled Persons (World Programme of Action)¹⁷ and the Standard Rules on the Equalization of Opportunities for Persons with Disabilities¹⁸ were developed. Although both of these instruments were primarily voluntary guidelines, each sought to achieve the equalization of opportunities for persons with disabilities and took a preventive and rehabilitative approach.¹⁹ Moreover, it was not until the CRPD that the human rights of persons with disabilities were recognized, moving away from the long-standing view that disabled persons should garner pity and provoke charitable impulses, and thus moving towards the view that existing human rights principles apply to them as well. The CRPD encompasses specific substantive rights, including civil, political, economic, social, and cultural rights, placing persons with disabilities squarely within the international human rights framework.²⁰ Nonetheless, persons with disabilities are often ignored in development programs despite these advances.²¹ Most significantly, the Millennium Development Goals (MDG), adopted by the international community as guidelines for development in the twenty-first century,²² fail to mention persons with disabilities and also leave out women with disabilities in the specific goal focused on women.²³ Some inclusive guidelines have been circulated, but as demonstrated in Part I, women with disabilities have still failed to emerge from poverty and obtain educations (among

17. G.A. Res. 37/52, U.N. Doc. A/RES/37/52 (Dec. 3, 1982) [hereinafter World Programme of Action].

18. Standard Rules on the Equalization of Opportunities for Persons with Disabilities, G.A. Res. 48/96, U.N. Doc. A/RES/48/96 (Dec. 20, 1993) [hereinafter Standard Rules].

19. See *id.* ¶¶ 22–23; World Programme of Action, *supra* note 17, pmbl.

20. CRPD, *supra* note 9, art. 4, ¶ 2.

21. S.C. Res. 1325, *supra* note 1, ¶ 1.

22. *Millennium Development Goals*, WORLD BANK, <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK:20104132~menuPK:250991~pagePK:43912~piPK:44037~theSitePK:29708,00.html> (last visited Oct. 15, 2011).

23. See UNITED NATIONS, THE MILLENNIUM DEVELOPMENT GOALS REPORT (2010), available at <http://www.un.org/millenniumgoals/pdf/MDG%20Report%202010%20En%20r15%20-low%20res%2020100615%20-.pdf> [hereinafter MILLENNIUM DEVELOPMENT GOALS REPORT].

other indices of development). Again, although some limited guidelines do exist, women with disabilities are generally absent from the United Nations' Women, Peace and Security programs; their needs during conflict, in refugee camps, and after conflict are not met, and they are rarely part of any peace-building activities shaping their society post-conflict.²⁴ There are a few studies, however, of the participation of persons with disabilities in actual peace building that provide many lessons directing future research needs.²⁵

Part V then recommends a detailed strategy for changing policy and practice. Some suggestions for modifications to Resolution 1325 are discussed, and some revised Resolution 1325 indicators are proposed as an impetus for future thought. Specific suggestions are made to increase the role of various United Nations entities, so that they more fully address issues concerning women with disabilities. One of these entities includes the recently established entity, U.N. Women. Furthermore, to address the fact that women with disabilities have rarely had access to post-conflict reconciliation and justice, this article suggests an increase in the awareness of prosecutors, courts, and post-conflict tribunals on the judicial system's accessibility—with respect to physical facilities and communication—to women with disabilities. Of course, work in this area of gender-sensitive peace building must incorporate the CRPD Empowerment and Social Models²⁶ and Reasonable Accommodation and Accessibility Standards.²⁷ These must be developed in order to address the significant gaps in data and field-tested inclusive strategies and resources. If such changes are adopted, women with disabilities will have a greater opportunity to ensure that their needs are met and that societies are more inclusive and respectful of human rights post-conflict.

Finally, drawing on the rationale for the development of the United Nations Women, Peace and Security framework, as well as the information and analysis in this article, this article also highlights what will be lost if women with disabilities are not included in peace building. The objective is to ensure that society post-conflict is more inclusive of women with disabilities, that barriers are removed, and that

24. See G.A. Res. S-23/3, ¶ 16, U.N. Doc. A/RES/S-23/3 (Nov. 16, 2000).

25. See, e.g., Pearl Praise Gottschalk, "How Are We in This World Now?": Examining the Experiences of Persons Disabled by War in the Peace Processes of Sierra Leone lii (2007) (unpublished M.A. dissertation, University of Victoria), available at http://siteresources.worldbank.org/DISABILITY/Resources/News---Events/463933-1184017167861/3975400-1229373211417/Gottshalk_Full.pdf.

26. See CRPD, *supra* note 9, pmbi., (e), arts. 1, 3, 6, ¶ 2.

27. See *id.* arts. 3, 9, 14, ¶ 2, 24, ¶ 2(c), 27, ¶ 1(i).

human rights of women with disabilities are assured. A truly gender-sensitive peace process must include all women, which dictates that women with disabilities must be a part of such processes.

I. THE SITUATION OF WOMEN WITH DISABILITIES INTERNATIONALLY
AND IN CONFLICT ENVIRONMENTS

A. *Background Disability and Gender Data*

There are approximately one billion persons with disabilities in the world, or fifteen percent of the global population, and this number is increasing²⁸ due to population growth, aging of the population,²⁹ and war and conflict.³⁰ On June 9, 2011, the World Health Organization and the World Bank released a ground-breaking report entitled “World Report on Disability” noting a dramatic increase in estimates of the number of persons with disabilities worldwide.³¹ About fifteen percent of the world’s population lives with some form of disability, of whom two to four percent experience significant difficulties in functioning.³² Meanwhile, “[t]he global disability prevalence is higher than previous World Health Organization estimates, which date from the 1970s and suggested a figure of around 10%.”³³ The report found that this global estimate for disability is on the rise due to population aging³⁴ and the rapid spread of chronic diseases,³⁵ as well as improvements in the methodologies used to measure disability.³⁶

A significant difference exists between the prevalence of disability (defined as “significant difficulties in their everyday lives”) in men and women: the male disability prevalence rate is twelve percent and the female disability prevalence rate is 19.2%, in both developing and more developed countries.³⁷

An estimated 80 per cent of . . . persons [with disabilities] live in developing countries, many in conditions of poverty. In both developed and developing countries, evidence suggests that persons

28. WORLD HEALTH ORGANIZATION & WORLD BANK, WORLD REPORT ON DISABILITY xi (2011), available at http://whqlibdoc.who.int/publications/2011/9789240685215_eng.pdf [hereinafter WORLD REPORT ON DISABILITY].

29. *Id.*

30. *Id.* at 34.

31. *See id.* at xi.

32. *Id.* at 29.

33. *Id.* at 261.

34. WORLD REPORT ON DISABILITY, *supra* note 28, at xi.

35. *Id.* at 44.

36. *Id.* at 29–30.

37. *See id.* at 28.

with disabilities are disproportionately represented among the world's poor and tend to be poorer than their counterparts without disabilities. It is estimated that of the world's poorest people, meaning those who live on less than one dollar a day and who lack access to basic necessities such as food, clean water, clothing and shelter, 1 in 5 is a person with disabilities. Given that persons with disabilities represent such a significant portion of the population, and are more likely to live in poverty than their peers without disabilities, ensuring that they are integrated into all development activities is essential in order to achieve international development goals.³⁸

Persons with disabilities are the world's largest minority.³⁹ Women are certainly at least half of the human population, and women with disabilities comprise at least a similar proportion of persons with disabilities.⁴⁰ According to those who led the effort to ensure that the rights of women with disabilities were incorporated into the CRPD:

Gender is one of the most important categories of social organisation, and patterns of disadvantage are often associated with the differences in social position of women and men. These gendered differences are reflected in the different life experiences of women with disabilities and men with disabilities. While women with disabilities have much in common with men with disabilities, women with disabilities have to face multiple discrimination in many cases, so that they are often more disadvantaged than men with disabilities in similar circumstances.⁴¹

B. Gender Stereotyping and Women with Disabilities

Women with disabilities experience both the stereotypical attitudes toward women and persons with disabilities. In the groundbreaking book, *Gender Stereotyping: Transnational Legal Perspectives*, Rebecca J. Cook and Simone Cusack define stereotyping as “a generalized view or preconception of attributes or characteristics possessed by, or the

38. U.N. Secretariat, *Mainstreaming Disability in the Development Agenda: Note by the Secretariat*, ¶ 2, U.N. Doc. E/CN.5/2008/6 (Nov. 23, 2007) [hereinafter *Note by the Secretariat*].

39. *Factsheet on Persons with Disabilities*, U.N. ENABLE, <http://www.un.org/disabilities/default.asp?id=18> (last visited Oct. 15, 2011).

40. SIGRID ARNADE & SABINE HAEFNER, GENDERING THE DRAFT COMPREHENSIVE AND INTEGRAL INTERNATIONAL CONVENTION ON THE PROTECTION AND PROMOTION OF THE RIGHTS AND DIGNITY OF PERSONS WITH DISABILITIES 7 (2006), available at http://www.dpi.org/files/uploads/publications/gendering_convention/DPI_Gendering_UN_Convention_Jan_2006.pdf.

41. *Id.*

roles that are or should be performed by, members of the particular group (e.g., women, lesbians, adolescents).”⁴²

Both the CEDAW and the CRPD recognize the role of stereotypes in the denial of human rights to women with disabilities. Article 5 of the CEDAW requires States to take all appropriate measures “[t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”⁴³

Moreover, the CRPD takes the CEDAW provisions one step further by recognizing that, in the case of women with disabilities, gender stereotypes can coincide with disability stereotyping to harm and discriminate against individuals in compounded ways.⁴⁴ The CRPD therefore recognizes the intersection of both gender and disability stereotypes in the case of women with disabilities; Article 8 requires States to undertake to adopt immediate, effective, and appropriate measures “[t]o combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life.”⁴⁵

For those advocating for a separate article on women with disabilities and the inclusion of a gender perspective throughout the CRPD, the recognition of this compounded discrimination was crucial: “In addition to the multiple discrimination women with disabilities have to experience, they face the problem of a double invisibility as women and as disabled persons.”⁴⁶

Michelle Fine and Adrienne Asch, authors of *Disabled Women: Sexism Without the Pedestal*, recognize the significant impact of these stereotypical views of women with disabilities and discuss the important function of social roles: “Rolelessness, the absence of sanctioned social roles and/or institutional means to achieve these roles, characterizes the circumstances of disabled women in today’s society The absence of sanctioned roles can cultivate a psychological sense of invisibility[,] . . . self-estrangement, and/or powerlessness.”⁴⁷ Nonetheless, the authors

42. REBECCA J. COOK & SIMONE CUSACK, GENDER STEREOTYPING: TRANSNATIONAL LEGAL PERSPECTIVES 9 (2010).

43. CEDAW, *supra* note 10, art. 5(a).

44. See CRPD, *supra* note 9, art. 7.

45. *Id.* art. 8.

46. ARNADE & HAEFNER, *supra* note 40, at 10.

47. Michelle Fine & Adrienne Asch, *Disabled Women: Sexism Without the Pedestal*, 8 J. SOC. & SOC. WELFARE 233, 239 (1981).

strongly note that we should not “see disabled women as neither helpless nor hopeless victims unwilling to change their circumstances.”⁴⁸ Thus, these stereotypes of women with disabilities would certainly contribute to understanding why women with disabilities are virtually absent from peace building, except when they are occasionally seen as victims.

C. Impact of Double Discrimination on Women with Disabilities

Numerous issues affect women with disabilities more disproportionately than they do men with disabilities and women without disabilities. These global issues include “health, education, employment, violence, family rights and participation in public life,”⁴⁹ as well as marriage and housing,⁵⁰ all of which are exacerbated by war.⁵¹

Although the literacy rate for adults with disabilities is three percent, only a meager one percent of women with disabilities are literate.⁵² Additionally, women with disabilities have few opportunities for vocational training,⁵³ which, of course, makes it even more difficult for them to participate in peace-building activities and to advocate for their own rights. For this and many other reasons, women with disabilities have low employment rates, experience discriminatory hiring and promotion, do not receive equal pay for equal work, and are frequently steered into segregated and less remunerative occupations.⁵⁴ Credit and other productive resources are often denied to them. All of these factors contribute to the high poverty rates of women with disabilities and increase their marginalization.⁵⁵

48. *Id.* at 241.

49. ARNADE & HAEFNER, *supra* note 40, at 12.

50. See Kozue Kay Nagata, *Gender and Disability in the Arab Region: The Challenges in the New Millennium*, 14 ASIA PAC. DISABILITY REHABILITATION J. 10 (2003); Daniel Stubbs & Sainimili Tawake, PACIFIC SISTERS WITH DISABILITIES: AT THE INTERSECTION OF DISCRIMINATION 24, 29 (2009), available at http://www.undppc.org/fj/_resources/article/files/Final%20PSWD%20BOOKLET.pdf.

51. See CRPD, *supra* note 9, pmb1., (u), art. 11.

52. See Harilyn Rousso, Education for All: A Gender and Disability Perspective 3 (2003) (unpublished background paper) (on file with UNESCO), available at <http://unesdoc.unesco.org/images/0014/001469/146931e.pdf>.

53. See *id.* at 23.

54. Arthur O'Reilly, *The Right to Decent Work of Persons With Disabilities* 4, 32 (IFP/Skills Working Paper No. 14, 2003), available at http://staging2.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_bk_pb_93_en.pdf.

55. See LEANDRO DESPOUY, SPECIAL RAPORTEUR OF THE SUB-COMM'N ON PREVENTION OF DISCRIMINATION AND PROT. OF MINORITIES, HUMAN RIGHTS AND DISABLED PERSONS, ¶ 18, U.N. Sales No. E.92.XIV.4 (1988), available at <http://www.un.org/esa/socdev/enable/dispaperdes0.htm>.

Inaccessible health care services are also a significant barrier for women with disabilities, with respect to physical inaccessibility of facilities, staff who lack the skills to communicate with women with various disabilities, and those who view them as asexual when it comes to the provision of sexual and reproductive health care services.⁵⁶ Moreover, gender-based discrimination, sexual and other forms of violence, poverty, armed conflict, dislocation, and other forms of social isolation and violence contribute to an increased risk of physiological and social disabilities among women.⁵⁷ All of these health care deficits are amplified when women with disabilities are subject to gender-based and other forms of violence.⁵⁸

In addition, women with disabilities face significant barriers in accessing adequate housing services and, in conflict situations, scarce housing further exacerbates this problem for women with disabilities.⁵⁹

D. Increased Incidence of Disability for Women in Conflict Situations

“Girls and women are more likely to become disabled as a result of violence, armed conflicts, aging and gender-biased cultural practices.”⁶⁰ This limits “their access to food, shelter, health care, safe working environments, marriage and social integration.”⁶¹ These consequences can be seen pre-conflict, during conflict, and post-conflict.⁶² Similarly, conflict situations cause more disability among women directly with injury through land mines, bombs, combat, and other factors incident to conflict.⁶³ Furthermore, a recent innovative and rigorous analysis of the impact of armed conflict on female life expectancy—relative to that of males—found that over the entire conflict period, interstate and civil wars, on average, affect women more adversely than men.⁶⁴ In

56. Special Rapporteur on Econ., Soc. & Political Rights, *The Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health: Report of the Special Rapporteur Submitted in Accordance with Commission Resolution 2002/31*, Comm’n on Human Rights, ¶¶ 59, 65, 67, U.N. Doc. E/CN.4/2003/58 (Feb. 13, 2003) (by Paul Hunt).

57. *See id.*

58. *See, e.g.*, Rousso, *supra* note 52, at 11.

59. *See* Special Rapporteur on Econ., Soc. & Political Rights, *Women and Adequate Housing: Report by the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context*, Comm’n on Human Rights, ¶ 31, U.N. Doc. E/CN.4/2006/118 (Feb. 27, 2006) (by Miloon Kothari).

60. WORLD BANK ET AL., *supra* note 2, at 32.

61. *Id.*

62. *See id.* at 8, 13.

63. *See id.* at 32.

64. *See* Thomas Plümper & Eric Neumayer, *The Unequal Burden of War: The Effect of Armed Conflict on the Gender Gap in Life Expectancy*, 60 INT’L ORG. 723, 723–24 (2006).

peacetime, however, women generally live longer than men.⁶⁵ Therefore, the study concluded that armed conflict tends to shrink the gap between female and male life expectancy.⁶⁶ The authors challenged “policymakers and international and humanitarian organizations to develop policies” that tackle the indirect and long-term health impacts of armed conflicts.⁶⁷ For example, “[f]or every child killed in warfare, three are injured and acquire a permanent form of disability.”⁶⁸ Although entire communities suffer the consequences of armed conflict, women and girls are particularly affected in conflict situations, based on the compounded double discrimination they face due to their disabilities and gender.⁶⁹

Additionally, conflict situations increase the vulnerability of women and girls who are already disabled because they may be forced to leave their wheelchairs, medications, assistive aids and animals, and prosthetics behind. Females with disabilities may lack family and community support, educational opportunities, and any activities engaged in before the conflict, since the conflict may have caused the breakdown of economic structures, health care institutions, housing, transportation, and other infrastructures. “While those injured as a result of the disaster or conflict may be very visible, it is important to remember that many other people living in the affected areas may already be disabled, and may then become further marginalized and excluded on the basis of their disability in the aftermath.”⁷⁰

“Persons with disabilities, especially women and children, are particularly vulnerable to violence, exploitation and sexual abuse in such situations. Anyone affected by disasters or conflict is more vulnerable to mental health and psychological problems – which may result in misunderstandings and further isolation and social exclusion from families and communities.”⁷¹

65. *See id.* at 723.

66. *See id.* at 747.

67. *Id.* at 748.

68. *Factsheet on Persons with Disabilities*, *supra* note 39.

69. *See* RANGITA DE SILVA DE ALWIS, *DISABILITY RIGHTS, GENDER, AND DEVELOPMENT: A RESOURCE TOOL FOR ACTION 10* (2008), *available at* <http://www.un.org/disabilities/documents/Publication/UNWCW%20MANUAL.pdf> [hereinafter *DISABILITY RIGHTS, GENDER, AND DEVELOPMENT*].

70. *INT’L FED’N OF RED CROSS & RED CRESCENT SOCIETIES, WORLD DISASTERS REPORT: FOCUS ON DISCRIMINATION 88* (2007), *available at* <http://www.ifrc.org/Global/Publications/disasters/WDR/WDR2007-English.pdf>.

71. *Id.* at 91.

In addition, landmine removal is also a physical risk that may result in disabilities.⁷² Although men are generally more involved in landmine removal, women also engage in this dangerous line of work. For example, “[a]ll-female demining teams are becoming increasingly prevalent—there have been successful teams in Cambodia, Croatia, Kosovo, the Lao People’s Democratic Republic and Lebanon” and “one Muslim territory in Somaliland.”⁷³ The Beijing Platform for Action of 1995 “recognizes that women and children are particularly affected by the indiscriminate use of anti-personnel landmines.”⁷⁴

The ravages of war can also clearly increase psycho-social disabilities. For example, the Cambodian civil war is documented to have caused mental disabilities among women.⁷⁵ As a result of the civil war, Cambodia has one of the world’s highest ratios of persons with disabilities.⁷⁶

Furthermore, girls often serve as child soldiers, and some estimate that as many as one-third of child soldiers are girls.⁷⁷ They serve as “fighters, cooks, porters, messengers, medics, spies, lookouts, raiders, and domestic and agricultural labor,” and even “sexual slaves to numerous males in forces, or, they may be given to one male for his exclusive use as a captive ‘wife.’”⁷⁸ Such experiences often result in the development of multiple physical and psychosocial disabilities.⁷⁹

72. U.N. Dep’t for Disarmament Affairs, *Gender Perspectives on Landmines*, in GENDER PERSPECTIVES ON DISARMAMENT 1, 3 (2001), available at <http://www.un.org/disarmament/HomePage/gender/docs/note5.pdf>.

73. Rachel Canfield & Chad McCoull, *Gender in the Mine-Action Community*, 12.2 J. ERW & MINE ACTION (2008), <http://maic.jmu.edu/Journal/12.2/focus/canfield/canfield.htm>.

74. UNITED NATIONS, REPORT OF THE FOURTH WORLD CONFERENCE ON WOMEN, ¶ 143(e), U.N. Doc. A/CONF.177/20, U.N. Sales No. 96.IV.13 (1996) [hereinafter REPORT OF THE FOURTH WORLD CONFERENCE ON WOMEN].

75. See DISABILITY RIGHTS, GENDER, AND DEVELOPMENT, *supra* note 69, at 64–65.

76. *Id.* at 64.

77. See *Global Appeal: No Use of Child Soldiers*, RED HAND DAY, <http://www.redhandday.org/index.php?l=en&view=about> (last visited Oct. 15, 2011).

78. Div. for the Advancement of Women & UNICEF, Elimination of All Forms of Discrimination and Violence Against the Girl Child ¶ 80 (unpublished report), available at http://www.un.org/womenwatch/daw/egm/elim-disc-viol-girlchild/EGM%20Report_FINAL.pdf.

79. See *id.* ¶ 81; *Global Appeal: No Use of Child Soldiers*, *supra* note 77; see also Optional Protocols to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict and on the Sale of Children, Child Prostitution and Child Pornography, G.A. Res. 54/263, pmb., U.N. Doc. A/RES/54/263 (Mar. 16, 2001) (“Convinced of the need to strengthen . . . the physical and psychosocial rehabilitation and social reintegration of children who are victims of armed conflict”). See generally *The Situation of Girls in War*, OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR CHILDREN & ARMED CONFLICT, <http://www.un.org/children/conflict/english/girlsinwar.html> (last visited Oct. 15, 2011) (recognizing the need to provide “special advocacy, attention and protection” to children who are victims of war).

Generally, their needs are not met and they do not have the opportunity to participate in reintegration programs once the conflict situation is no longer present.⁸⁰

Thus, because of the increase in their number during the ravages of war, women with disabilities must be included in post-conflict peace building, both as a matter of equity and also to ensure that their needs are met in the post-conflict legal and societal structures.

E. Violence Against Women with Disabilities

Of course, violence, especially in times of war, often contributes to the incidence of disability among women and girls. Both “[m]en and women with disabilities are more vulnerable to physical, psychological, sexual or financial violence, and in particular, they are vulnerable to neglect, entrapment, and degradation.”⁸¹ Youth and women with disabilities “are especially at higher risk of being mentally or physically abused. They are generally more likely to experience abuse over a longer period and to suffer more severe injuries as a result of the violence.”⁸²

In addition, “disabled women are twice as likely to experience domestic violence as non-disabled women” and “their abuser may also be their caregiver, someone that the individual is reliant on for personal care or mobility.”⁸³ Domestic violence is also “a significant cause of physical and mental disabilities in women.”⁸⁴ Unfortunately, “[a]buse by household members often remains unreported to avoid further stigmatization,” and people with disabilities (especially women with disabilities) “tend to lack access to legal protection.”⁸⁵

Although there is limited statistical data on sexual and gender-based violence against women with disabilities, these women themselves frequently report experiencing high rates of such violence

80. For an example of a reintegration program in which women with disabilities were actually able to participate, see Rosemarie McNairn, *Building Capacity to Resolve Conflict in Communities: Oxfam Experience in Rwanda*, 12 GENDER & DEV. 83 (2004).

81. WORLD BANK ET AL., *supra* note 2, at 12.

82. *Id.*; see also MARY ELLSBERG & LORI HEISE, RESEARCHING VIOLENCE AGAINST WOMEN: A PRACTICAL GUIDE FOR RESEARCHERS AND ACTIVISTS 8–33 (2005), available at http://www.path.org/files/GBV_rvaw_front.pdf; JANE MAXWELL ET AL., A HEALTH HANDBOOK FOR WOMEN WITH DISABILITIES 49–69 (2007), available at http://hesperian.info/assets/wwd/Women_with_Disabilities_Full_Book.pdf (describing mental health issues that women with disabilities may face and advice for treatment).

83. WORLD BANK ET AL., *supra* note 2, at 12–13.

84. *Id.* at 13.

85. *Id.*

and abuse.⁸⁶ Depending on their disability, some women may be unable to defend themselves, may not be able to flee the site of violence, or may not know how to report such incidents of violence.⁸⁷ In fact, women and girls with disabilities are also not privy to the same information available to non-disabled females, even though this information is necessary to recognize and address violence, including sexual violence.⁸⁸ Finally, the police and law enforcement community may not respond appropriately to reports of violence against women and girls with disabilities.⁸⁹

F. Gender-Based Violence as an Act of War

Of course, no discussion of violence against women during war would be complete without exploring the use of gender-based violence as a tactic of war.⁹⁰ Indeed, this was the basis for a series of United Nations resolutions on “Women, Peace and Security,” especially United Nations Security Council Resolution 1820, which links the prevention of sexual violence with the maintenance of peace and security,⁹¹ and United Nations Security Council Resolution 1888, which requires peacekeeping missions to protect women and girls from sexual violence during armed conflict.⁹² Although neither of these resolutions recognizes the actual violence that women with disabilities experience,⁹³

86. See MARIT HOEM KVAM & STINE HELM BRAATHEN, VIOLENCE AND ABUSE AGAINST WOMEN WITH DISABILITIES IN MALAWI 11 (2006), available at <http://www.sintef.no/upload/Helse/Levek%C3%A5r%20og%20tjenester/AbuseMalawi.pdf>; Rosemary Okello, *Cultural Stigma and Myth: Disabled Women in Kenya Are Vulnerable to Sexual Violence*, WOMEN'S INT'L PERSP. (Mar. 4, 2009), http://thewip.net/contributors/2009/03/cultural_stigma_and_myth_disab.html; see also DISABILITY RIGHTS, GENDER, AND DEVELOPMENT, *supra* note 69, at 124 (describing the limited reporting of violence against women); Canfield & McCoull, *supra* note 73. See generally DOMESTIC VIOLENCE INITIATIVE FOR WOMEN WITH DISABILITIES, <http://www.dviforwomen.org> (last visited Oct. 15, 2011) (reporting that women with disabilities are more likely to be abused than women without disabilities, but that “[w]omen with disabilities are less likely to report abuse because they often have limited job opportunities and lack the means with which to support themselves independently”).

87. DISABILITY RIGHTS, GENDER, AND DEVELOPMENT, *supra* note 69, at 119, 124, 128.

88. *See id.* at 12, 63.

89. *See id.* at 129.

90. See “Women Protected Under International Humanitarian Law,” available at <http://www.icrc.org/eng/war-and-law/protected-persons/women/overview-women-protected.htm> (last visited Oct. 15, 2011) (noting that despite the pervasive gender-based violence during armed conflict, women play an integral role in rebuilding efforts after the conflict has subsided).

91. See S.C. Res. 1820, *supra* note 11, pmbl.

92. See S.C. Res. 1888, *supra* note 11, pmbl., ¶¶ 10–11, 21.

93. See Charlotte Lindsey, *Women Facing War*, International Committee for the Red Cross, October 2001 (this comprehensive ICRC Handbook pays little attention to working with women with disabilities in the conflict environment).

a 2010 Resolution of the United Nations Human Rights Council does recognize that women with disabilities are subject to gender-based violence, that services must be accessible to them, and that women with disabilities must be included in data on the prevalence of gender-based violence.⁹⁴

Parties in conflict situations often rape women, sometimes using systematic rape as a tactic of war.⁹⁵ Other forms of gender-based violence include murder, sexual slavery, child prostitution, forced pregnancy, forced sterilization, acid burnings, and so-called “honor killings.”⁹⁶ In addition, the state itself, administrative systems and authorities, armed combatants, military forces, and peacekeeping forces all have committed acts of sexual and other forms of violence.⁹⁷

Thus, as previously discussed, women with disabilities face higher levels of gender-based violence, and this appears to be no different in times of war. For this reason, women with disabilities must be included in the United Nations Security Council resolutions on “Women, Peace and Security,” as well as the programs used to implement these resolutions.

G. Women with Disabilities, HIV, and Violence

Because women with disabilities are at increased risks of sexual abuse and assault, especially during conflict situations, they are also more vulnerable to HIV infection.⁹⁸ Limited data, however, is available on the incidence of HIV infection among persons with disabilities.⁹⁹ Strategies and programs fail to adequately address how disability affects men and women differently, and persons with disabilities “have often been ignored in HIV interventions that provide prevention, treatment, care, support and impact mitigation.”¹⁰⁰ Furthermore,

94. See Human Rights Council Res. 14/12, Res. of the Human Rights Council, 14th Sess., May 31, 2010–June 18, 2010, ¶¶ 5, 16, U.N. Doc A/HRC/RES/14/12 (June 23, 2010).

95. REPORT OF THE FOURTH WORLD CONFERENCE ON WOMEN, *supra* note 74, ¶ 135.

96. See U.N. OFFICE ON DRUGS & CRIME, HANDBOOK ON EFFECTIVE POLICE RESPONSES TO VIOLENCE AGAINST WOMEN 6, 8, 10, 12–13, 15 (2010), available at http://www.unodc.org/documents/justice-and-prison-reform/hb_eff_police_responses.pdf.

97. See, e.g., SUK CHUN & INGER SKJELSBÆK, SEXUAL VIOLENCE IN ARMED CONFLICTS (2010), available at http://www.peacewomen.org/assets/file/Resources/Academic/vaw_sexual_violenceinarmedconflicts_prio_jan2010.pdf.

98. See Nora E. Groce & Reshma Trasi, *Rape of Individuals with Disability: AIDS and the Folk Belief of Virgin Cleansing*, 363 LANCET 1663, 1664 (2004).

99. *HIV and Disability*, U.S. DEP'T OF HEALTH & HUMAN SERVS., http://www.hhs.gov/od/about/fact_sheets/hivanddisability.html (last visited Oct. 15, 2011).

100. Press Release, Disability & HIV Task Team, Disability, a New Field in HIV and AIDS Programming (July 21, 2010), available at http://www.usicd.org/index.cfm/news_Press%20Release%20from%20the%20Disability%20and%20HIV%20Task%20Team.

[i]n addition to myths about their behavior and life experiences, the failure to distinguish between the different needs of different impairments, the inaccessibility of health information and services, insufficient training and negative attitudes of health professionals, as well as the social isolation of persons with disabilities has all had a negative impact on their ability to access HIV-related health care. This further increases the vulnerability of persons with disabilities to HIV infection and also increases the impact of HIV and AIDS on their lives once infected or affected by HIV and AIDS.¹⁰¹

H. The Situation in Refugee Camps

The situation of women and girls with disabilities in refugee camps is dire because of many factors, including dislocation and inaccessible facilities and programs. A groundbreaking report by the Women's Refugee Commission, entitled *Disabilities among Refugees and Conflict-Affected Populations*, notes serious problems with the physical layout and infrastructure of refugee camps.¹⁰² These problems create the lack of services—including toilets, shelters, and health facilities—accessible to people with disabilities.¹⁰³ In general, no special accommodations are made for refugees to access the food and supplies they need on a daily basis.¹⁰⁴ In addition, because camps and facilities are generally inaccessible, most persons with disabilities are forced to remain in their shelters.¹⁰⁵ Not surprisingly, then, their voices go unheard in decision-making activities for their communities.

This report also reveals disparities between refugee camps and urban areas, concluding that there is greater awareness of the needs of persons with disabilities in the camps.¹⁰⁶ Moreover, the report found that in urban environments, refugees with disabilities are unable to access services offered by the host government, and virtually no one is providing special assistance to them.¹⁰⁷ The Women's Refugee Commission also found that persons with psycho-social disabilities did not receive any services, as most programs that did any work with

101. *Id.*; see *HIV/AIDS and Disability Global Survey, About Us*, YALE CTR. FOR INTERDISCIPLINARY RESEARCH ON AIDS, http://cira.med.yale.edu/globalsurvey/about_us.html (last modified Feb. 20, 2004).

102. WOMEN'S REFUGEE COMM'N, *DISABILITIES AMONG REFUGEES AND CONFLICT-AFFECTED POPULATIONS 3* (2008), available at http://womensrefugeecommission.org/reports/doc_download/104-disabilities-among-refugees-and-conflict-affected-populations.

103. *See id.* at 3, 16–17, 22.

104. *Id.* at 18.

105. *See id.* at 22.

106. *See id.* at 11.

107. *See id.* at 12.

persons with disabilities tended to focus on those with physical disabilities.¹⁰⁸

Furthermore, women are generally at a greater risk for violence and abuse in refugee camps.¹⁰⁹ Those who do escape and seek asylum rarely benefit from social services or educational programs, because most States receiving immigrants do not address the unique needs of women and girls with disabilities.¹¹⁰ Finally, many are denied asylum solely because of their disability.¹¹¹

I. Access to Justice Post-Conflict

A legal framework is essential

for victims and witnesses to be able to approach law enforcement officials in safety and to be able to give evidence without fear of either retaliation or social or familial ostracism. There is little advantage in developing jurisprudence . . . if onerous procedural rules inhibit women from testifying, or if stereotypes are used to discredit their testimony.¹¹²

Even during more peaceful times post-conflict, women with disabilities also face increased vulnerability because of the risk of physical and sexual abuse, especially when they leave their villages to travel to sites where they can participate in the peace processes.¹¹³ Without courts and judicial systems accessible to these women that address their unique concerns, such processes do not provide them redress for the violations of their human rights.¹¹⁴

A 2010 Human Rights Watch comprehensive report, “*As If We Weren’t Human*”: *Discrimination and Violence against Women with Disabilities in Northern Uganda*, brings several of the factors above into clear focus.¹¹⁵ The report is based on interviews with sixty-four women and girls with a wide range of disabilities—some caused by diseases like polio, and others by landmines or gunshot wounds

108. See WOMEN’S REFUGEE COMM’N, *supra* note 102, at 12.

109. See *Further Promotion and Encouragement of Human Rights and Fundamental Freedoms*, *supra* note 3, ¶ 209.

110. WOMEN’S REFUGEE COMM’N, *supra* note 102, at 12.

111. See Nora E. Groce, *People with Disabilities*, in SOCIAL INJUSTICE AND PUBLIC HEALTH 145, 154 (Barry S. Levy & Victor Sidel eds., 2006).

112. Christine Chinkin & Hilary Charlesworth, *Building Women into Peace: The International Legal Framework*, 27 THIRD WORLD Q. (SPECIAL ISSUE) 937, 948–49 (2006).

113. Gottschalk, *supra* note 25, at lii.

114. See *id.* at xli–xliii.

115. HUMAN RIGHTS WATCH, “AS IF WE WEREN’T HUMAN”: DISCRIMINATION AND VIOLENCE AGAINST WOMEN WITH DISABILITIES IN NORTHERN UGANDA (2010), available at http://www.hrw.org/sites/default/files/reports/uganda0810webwcover_0.pdf.

received during the protracted conflict in Uganda.¹¹⁶ The report states that it is essential to address the needs of women with disabilities through specific programs in post-conflict development planning.¹¹⁷ It also calls for access to mainstream programs, particularly those addressing sexual and gender-based violence, reproductive health problems, and HIV.¹¹⁸ Humanitarian aid organizations are encouraged to partner with organizations representing persons with disabilities, especially those representing a significant number of women.¹¹⁹ Furthermore, the report points to the urgent need for data so that more inclusive programs for women with disabilities can be developed.¹²⁰ Although this excellent report discusses the fact that some women with disabilities have held positions in the national parliament and local governing bodies, it is still unclear whether women with disabilities have had any role in the peace-building process itself, or in the development of reforms or programs.¹²¹ Nonetheless, the report makes a significant contribution to the literature on women with disabilities in the post-conflict environment because it plainly brings to our attention the horrific plight of women with disabilities.

Despite all the negative impacts of war on women with disabilities, these women should not be viewed solely as victims of war. Women with disabilities often “assume the key role of ensuring family livelihood in the midst of chaos and destruction, and are particularly active in the peace movement at the grassroots level, cultivating peace within their communities.”¹²² Women with disabilities should therefore have the opportunity to engage actively in the development of strategies and programs that meet their needs, as well as the development of government institutions and policies post-conflict; they should not be viewed as passive recipients of development programs and assistance.

116. *Id.* at 6 (discussing how women with disabilities are subject to isolation and abuse as their needs are rarely met).

117. *See id.* at 12, 68.

118. *See id.* 10, 68–69 (citing the extremely high maternal mortality rate, and how small changes in health care and planning can make a huge difference)

119. *See id.* at 71.

120. *Id.* at 33, 45–46, 68, 71 (noting that data collection is needed for the types of disabilities women suffer and how effective current programs for women with disabilities are).

121. *See id.* at 17, 65.

122. *Fact Sheet No. 5, Women and Armed Conflict*, DIV. FOR THE ADVANCEMENT OF WOMEN, DEP'T OF ECON. & SOC. AFFAIRS, <http://www.un.org/womenwatch/daw/followup/session/presskit/fs5.htm> (last visited Oct. 15, 2011).

II. THE EVOLUTION OF GENDER-SENSITIVE PEACE BUILDING

At the early stages of the search for international mechanisms to promote peace, instruments designed to foster peace, establish mechanisms to prevent war, and limit the disastrous impact of war on society significantly left out the concerns of women. Beginning in 2000, however, through a series of United Nations Security Council Resolutions on “Women, Peace and Security,” these omissions have begun to be addressed.¹²³ Nonetheless, within this structure of succeeding resolutions, women with disabilities have still been generally ignored, leaving their needs unmet.¹²⁴ To ensure that the needs of all women are addressed in the context of these instruments, the issues of women with disabilities should be specifically included, and programs must address these important omissions as well.

A. Evolution of Post-World War II United Nations Peace Institutional Structure

Following the end of World War II in 1945, the United Nations Charter was negotiated with the overarching goal of “saving succeeding generations from the scourge of war.”¹²⁵ The Charter was signed that same year, based on the post-World War II desire to create an institution promoting security, fundamental human rights, and peace.¹²⁶ Among other things, the Charter provides the operational structure and purpose of the United Nations.¹²⁷ It also highlights its commitment to human rights and fundamental freedoms in the “Purposes and Principles.”¹²⁸

The Universal Declaration of Human Rights (UDHR), passed by the United Nations in 1948, reinforces this commitment, stating:

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and

123. See, e.g., S.C. Res. 1325, *supra* note 1, ¶ 1; S.C. Res. 1820, *supra* note 11, pmb., ¶ 1; S.C. Res. 1888, *supra* note 11; S.C. Res. 1889, *supra* note 11, pmb., ¶¶ 1–3; S.C. Res. 1894, *supra* note 11; S.C. Res. 1960, *supra* note 11.

124. See S.C. Res. 1325, *supra* note 1; S.C. Res. 1820, *supra* note 11; S.C. Res. 1888, *supra* note 11; S.C. Res. 1889, *supra* note 11; S.C. Res. 1894, *supra* note 11; S.C. Res. 1960, *supra* note 11.

125. United Nations, *Charter of the United Nations*, pmb., ¶ 1 (1945).

126. See *U.N. Charter Introductory Note*, available at <http://www.un.org/en/documents/charter/intro.shtml> (last visited Oct. 15, 2011).

127. See U.N. Charter, *supra* note 125, arts. 1–105.

128. *Id.* arts. 1–2.

the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people . . .¹²⁹

Furthermore, the United Nations Charter stipulates that the threat or use of force against other States is unlawful, except in the case of self-defense.¹³⁰ Drafted after World War II, the Geneva Conventions of 1949, along with their two Additional Protocols of 1977, further limit the means of warfare and provide protections to non-combatant civilians and prisoners of war.¹³¹

Written in the aftermath of the atrocities of the Holocaust, the Genocide Convention of 1948 outlaws acts carried out with the intention of destroying a particular group.¹³² In addition to these conventions, international humanitarian law has been developed and refined through statutes, precedents laid down by international war tribunals, and advisory opinions written by the International Court of Justice, which was set up to address such violations.¹³³

To work with States during and after conflict, the United Nations embarked on a series of peace-building efforts. United Nations Secretary-General Boutros Boutros-Ghali defined the concept of peace building in 1993 as an “action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict,”¹³⁴ i.e., “disarming the previously warring parties and the restoration of order, the custody and possible destruction of weapons, repatriating refugees, advisory and training support for security personnel, monitoring elections, advancing efforts to protect human

129. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, pmb., ¶¶ 1–2, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

130. U.N. Charter, *supra* note 125, art. 51.

131. See Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, 1125 U.N.T.S. 17512; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), June 8, 1977, 1125 U.N.T.S. 17513.

132. Convention on the Prevention and Punishment of the Crime of Genocide, G.A. Res. 3/260, art. 2(a), U.N. Doc. A/RES/3/260 A (Dec. 9, 1948).

133. See, e.g., U.N. Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, Italy, July 15–17, 1998, *Rome Statute of the International Criminal Court*, U.N. Doc. A/CONF.183/9 (July 17, 1998), available at <http://untreaty.un.org/cod/icc/statute/rome.htm>. [hereinafter *Rome Statute of the International Criminal Court*].

134. U.N. Secretary-General, *An Agenda for Peace, Preventive Diplomacy, Peacemaking and Peacekeeping: Report of the Secretary-General*, ¶ 21, U.N. Doc. A/47/277-S/24111 (June 17, 1992) [hereinafter *Preventive Diplomacy, Peacemaking and Peace-Keeping*]; see Chinkin & Charlesworth, *supra* note 112, at 938.

rights, reforming or strengthening governmental institutions and promoting formal and informal processes of political participation.”¹³⁵

In 1998, United Nations Secretary-General Kofi Annan added additional objectives, including “the creation or strengthening of national institutions, monitoring elections, promoting human rights, providing for reintegration and rehabilitation programmes, and creating conditions for resumed development.”¹³⁶ Thus, post-war development of an area of conflict could occur (e.g., rebuilding, re-establishing government services, etc.), which “encompassed socio-political and economic reconstruction of society, including power sharing, establishing constitutional, administrative and legal structures and determining resource allocation,” as well as “physical reconstruction.”¹³⁷

B. United Nations and “Women, Peace and Security”

A glaring omission from the above discussions is the impact on women and their role in the process of peace building. In 2000, the Special Session of the United Nations General Assembly, reviewing the progress of the outcomes of the Fourth World Conference on Women, Beijing + 5, emphasized the need to ensure women’s participation throughout “all levels of decision-making and implementation in development activities and peace processes.”¹³⁸

This report observed:

The contribution of women in the areas of peace-building, peacemaking and conflict resolution is being increasingly recognized. Education and training in non-violent conflict resolution have been introduced. Progress has been made in the dissemination and implementation of the guidelines for the protection of refugee women, and in addressing the needs of displaced women. Gender-based persecution has been accepted as a basis for refugee status in some countries. There is recognition by governments, the international community and organizations, in particular the United Nations, that women and men experience humanitarian emergencies differently, and there is a need for a more holistic support for refugee and displaced women, including those who have suffered all forms of abuse, including gender-specific abuse, to ensure equal access to

135. *Preventive Diplomacy, Peacemaking and Peace-Keeping*, *supra* note 134, ¶ 55.

136. U.N. Secretary-General, *The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa: Report of the Secretary-General*, ¶ 63, U.N. Doc. A/52/871-S/1998/318 (Apr. 13, 1998) [hereinafter *The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa*].

137. Chinkin & Charlesworth, *supra* note 112, at 938.

138. G.A. Res. S-23/3, *supra* note 24, ¶ 86(b).

appropriate and adequate food and nutrition, clean water, safe sanitation, shelter, education, social and health services, including reproductive health care and maternity care. There is greater recognition of the need to integrate a gender perspective in the planning, design and implementation of humanitarian assistance and to provide adequate resources.¹³⁹

Despite these advances, this report highlighted the dramatic impact of the failure to more effectively include women in peace building, peacemaking, and conflict resolution, and also pointed to the necessity for change. As the report noted, “The underrepresentation, at all levels, of women in decision-making positions, such as special envoys or special representatives of the Secretary-General, in peacekeeping, peace-building, post-conflict reconciliation and reconstruction, as well as lack of gender awareness in these areas, presents serious obstacles.”¹⁴⁰

The report recommended that peace-building efforts “[e]nsure and support the full participation of women at all levels of decision-making and implementation in development activities and peace processes, including conflict prevention and resolution, post-conflict reconstruction, peacemaking, peacekeeping and peace-building, and in this regard, support the involvement of women’s organizations, community-based organizations and nongovernmental organizations.”¹⁴¹

In 2000, the value of women’s participation in the prevention and resolution of conflicts and in peace building was further recognized and reinforced in United Nations Security Council Resolution 1325 (UNSCR 1325) on “Women, Peace and Security.”¹⁴²

UNSCR 1325 outlines the critical rationale for the inclusion of women in peace building, peacemaking, and conflict resolution as follows:

Expressing concern that civilians, particularly women and children account for the vast majority of those adversely affected by armed conflict, including as refugees and internally displaced persons, and increasingly are targeted by combatants and armed elements, and recognizing the consequent impact this has on durable peace and reconciliation is essential,

Reaffirming the important role of women in the prevention and resolution of conflicts and in peace-building, and *stressing* the importance of their equal participation and full involvement in all

139. *Id.* ¶ 15.

140. *Id.* ¶ 16.

141. *Id.* ¶ 86(b).

142. S.C. Res. 1325, *supra* note 1, ¶ 5.

efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution,

Reaffirming also the need to implement fully international humanitarian and human rights law that protects the rights of women and girls during and after conflicts,

Emphasizing the need for all parties to ensure that mine clearance and mine awareness programmes take into account the special needs of women and girls,

Recognizing the urgent need to mainstream a gender perspective into peacekeeping operations, and in this regard *noting* the Windhoek Declaration and the Namibia Plan of Action on Mainstreaming a Gender Perspective in Multidimensional Peace Support Operations (S/2000/693),

Recognizing also the importance of the recommendation contained in the statement of its President to the press of 8 March 2000 for specialized training for all peacekeeping personnel on the protection, special needs and human rights of women and children in conflict situations,

Recognizing that an understanding of the impact of armed conflict on women and girls, effective institutional arrangements to guarantee their protection and full participation in the peace process can significantly contribute to the maintenance and promotion of international peace and security,

Noting the need to consolidate data on the impact of armed conflict on women and girls.¹⁴³

The provisions also set out a recommendation for consultation with women's groups on a local and international level and encourages the Secretary-General to conduct a study on the impact of armed conflict on women and girls, the role of women in peace building, and the gender dimensions of peace processes and conflict resolution would identify problems and solutions.¹⁴⁴

UNSCR 1325 also outlines proactive steps, which:

Requests the Secretary-General to provide to Member States training guidelines and materials on the protection, rights and the particular needs of women, as well as on the importance of involving women in all peacekeeping and peacebuilding measures, *invites* Member States to incorporate these elements as well as HIV/AIDS awareness training into their national training programmes for military and civilian police personnel in preparation for deployment, and *further requests* the Secretary-General to ensure that civilian personnel of

143. S.C. Res. 1325, *supra* note 1, pmb1., ¶¶ 15–16.

144. *Id.*

peacekeeping operations receive similar training. . . [and] [*i*]nvites the Secretary-General to carry out a study on the impact of armed conflict on women and girls, the role of women in peace-building and the gender dimensions of peace processes and conflict resolution, and *further invites* him to submit a report to the Security Council on the results of this study and to make this available to all Member States of the United Nations.¹⁴⁵

Thus began the first of a series of six United Nations Security Council resolutions on Women, Peace and Security:

- UNSCR 1325 (2000) called for the ensured participation of women in peace processes and called for improved protection of women in conflict zones.¹⁴⁶
- UNSCR 1820 (2008) reaffirmed commitment to 1325 and linked the prevention of sexual violence with the maintenance of peace and security.¹⁴⁷
- UNSCR 1888 (2009) mandated peacekeeping missions to protect women and girls from sexual violence in armed conflict.¹⁴⁸
- UNSCR 1889 (2009) strengthened the participation of women at all stages of the peace process, focusing on the period after peace agreements have been reached.¹⁴⁹
- UNSCR 1894 (2009) called for the protection of civilians in armed conflict and for assistance with the social reintegration of victims of armed conflict, including persons with disabilities.¹⁵⁰ This was the first UNSCR to mention women with disabilities.
- UNSCR 1960 (2010) reaffirmed the commitment to fulfill UNSCR 1325 and is also the second UNSCR to mention women with disabilities.¹⁵¹

Resolution 1894 specifically “[e]ncourages the international community . . . to provide assistance for the care, rehabilitation and economic and social reintegration of victims, including persons with disabilities.”¹⁵² While Resolution 1960 “[r]eaffirm[s] the importance for States, with the support of the international community, to increase

145. *Id.* ¶¶ 6, 16.

146. *Id.* ¶¶ 2, 10.

147. *See* S.C. Res. 1820, *supra* note 11, pmb., ¶ 1.

148. *See* S.C. Res. 1888, *supra* note 11, ¶¶ 10, 21, 26.

149. *See* S.C. Res. 1889, *supra* note 11, ¶ 1.

150. *See* S.C. Res. 1894, *supra* note 11.

151. *See* S.C. Res. 1960, *supra* note 11.

152. S.C. Res. 1894, *supra* note 11, para 29.

access to health care, psychosocial support, legal assistance, and socio-economic reintegration services for victims of sexual violence, in particular in rural areas, and taking into account the specific needs of persons with disabilities.”¹⁵³ These are the only resolutions in the series addressing conflict that specifically reference persons with disabilities, but only with regard to the impact of armed conflict on persons with disabilities.¹⁵⁴ Furthermore, this groundbreaking series of resolutions regrettably did not reference the importance of including women with disabilities in these processes, except for a few brief references in UNSCR 1894 and 1960, which mainly concerned protection rather than participation in peace building.¹⁵⁵ The rationale for the inclusion of women in peace building (as enumerated in UNSCR 1325), and keeping women with disabilities in mind, makes it clear why this inclusion is necessary,¹⁵⁶ especially when combined with an understanding of the double discrimination women with disabilities face.

C. “*Women, Peace and Security*” Indicators: *Women with Disabilities Not Included*

The United Nations Secretary-General has submitted to the Security Council

for consideration, a set of indicators for use at the global level to track implementation of its resolution 1325 (2000), which could serve as a common basis for reporting by relevant United Nations entities, other international and regional organizations, and Member States, on the implementation of resolution 1325 (2000) in 2010 and beyond.¹⁵⁷

In monitoring the implementation of UNSCR 1325, “[i]ndicators are signposts of change; a means for determining the status quo and the progress towards intended results. Indicators are critical for effective monitoring and evaluation,” and they also serve as mechanisms for accountability to all stakeholders by demonstrating progress.¹⁵⁸ According to the United Nations, the indicators were developed “through a consultative process.”¹⁵⁹ The indicators address several areas: the prevention of violence against women and girls, including gender-

153. S.C. Res. 1960, *supra* note 11, pmb1.

154. *See id.*; S.C. Res. 1894, *supra* note 11, pmb1. para 29.

155. *See id.*

156. *See* S.C. Res. 1325, *supra* note 1, ¶¶ 2, 6.

157. *Women and Peace and Security*, *supra* note 8, ¶ 3.

158. *Id.* ¶ 4.

159. *Id.* ¶ 7(d).

based violence; the promotion and support for women's participation in peace processes; the promotion and protection of human rights of women and girls, in addition to mainstreaming "a gender perspective into the legal and institutional reforms"; and the assurance of women's and girls' access to relief and recovery activities.¹⁶⁰

There is no indication, however, that the consultative process included women with disabilities, organizations of persons with disabilities, or experts on issues of concern to women with disabilities in peace-building processes, as required by the CRPD.¹⁶¹ Furthermore, the indicators themselves do not include factors to measure the inclusion of women with disabilities, nor the issues concerning them.¹⁶² Assessment of the implementation's progress with respect to women with disabilities "is constrained by an absence of baseline data and specific, measurable, achievable, relevant and time-bound indicators."¹⁶³ Without such indicators, the different experiences of women with disabilities will not be reflected in reporting and, indeed, this has been the case in such reports to date. On October 26, 2010, the Security Council supported "taking forward" these indicators and requested the Secretary-General to develop them further; however, there was no reference to women with disabilities.¹⁶⁴

In two important Statements of the President of the U.N. Security Council, one in 2004¹⁶⁵ and another in 2005,¹⁶⁶ S/PRST/2004/40 and S/PRST/2005/52, respectively, the Security Council called on Member States to apply UNSCR 1325 domestically by developing national action plans (NAPs) or other national-level strategies encompassing the goals of UNSCR 1325.¹⁶⁷ In these statements, the Security Council called on Member States to continue to implement UNSCR 1325 through the development of NAPs or other national-level strategies.¹⁶⁸ The creation of an action plan provides an opportunity to initiate strategic actions, to outline priorities, to identify the levels and sources of fiscal and other resources necessary to implement the plan, to

160. *Id.* ¶ 9(a)–(d).

161. *See* CRPD, *supra* note 9, pmb., (o), arts. 3, 6.

162. *See* S.C. Res. 1325, *supra* note 1.

163. *Id.* ¶ 53.

164. U.N. Security Council, Oct. 26, 2010, <http://www.un.org/News/Press/docs/2010/sc10071.doc.htm>.

165. U.N. President of the S.C., Statement dated Oct. 28, 2004 by the President of the Security Council, U.N. Doc. S/PRST/2004/40 (Oct. 28, 2004) [hereinafter 2004 Statement].

166. U.N. President of the S.C., Statement dated Oct. 27, 2005 by the President of the Security Council, U.N. Doc. S/PRST/2005/52 (Oct. 27, 2005) [hereinafter 2005 Statement].

167. 2004 Statement, *supra* note 165, at 2; 2005 Statement, *supra* note 166, at 2.

168. 2004 Statement, *supra* note 165, at 2; 2005 Statement, *supra* note 166, at 3.

determine and assign the responsibilities for implementation, and to establish realistic and achievable benchmarks and timeframes.¹⁶⁹ The whole process of developing a plan is also a process of awareness-raising and capacity-building in both the government and civil society, in order to overcome gaps and challenges to the full implementation of UNSCR 1325.¹⁷⁰

There are currently thirty-two countries that have adopted such policy plans at the national level, and others are forthcoming,¹⁷¹ including one under development by the United States.¹⁷² However, few UNSCR 1325 NAPs include any references to the issues of concern to women with disabilities, either in plans by developing and/or occupied countries (either actively facing armed conflict or in post-conflict reconstruction), or in plans by developed and/or occupier nations.¹⁷³ Furthermore, based on the limited references to women with disabilities in the U.N. Security Council Resolutions on Women, Peace and Security, even the scant coverage of women and girls with disabilities in a few UNSCR 1325 National Action Plans tends to focus on protection, rehabilitation and victimization, rather than seeing women with disabilities as engaged in peace building and post-conflict national institution and societal development.¹⁷⁴

169. Women's Int'l League for Peace and Freedom, *About 1325 National Action Plans* (NAPs), PEACEWOMEN, <http://www.peacewomen.org/pages/about-1325/national-action-plans-naps> (last visited Oct. 15, 2011).

170. *Id.*

171. *Id.*

172. Hillary R. Clinton, U.S. Secretary of State, Remarks at the 10th Anniversary of U.N. Security Council Resolution 1325 on Women, Peace and Security (Oct. 26, 2010), *available at* <http://www.state.gov/secretary/rm/2010/10/150010.htm> (last visited Oct. 15, 2011).

173. *See, e.g.*, FOREIGN & COMMONWEALTH OFFICE, UK GOVERNMENT NATIONAL ACTION PLAN ON UNSCR 1325 WOMEN, PEACE & SECURITY (2010), *available at* http://www.peacewomen.org/assets/file/NationalActionPlans/uk_nationalactionplan_november2010.pdf; Building Peace and Security for All: Canada's Action Plan for the Implementation of United Nations Security Council Resolutions on Women, Peace and Security (2010), *available at* http://www.peacewomen.org/assets/file/Resources/Government/canada_nationalactionplan_october2010.pdf; National Action Plan for France: Implementation of the "Women, Peace and Security" Resolutions of the United Nations Security Council (2010), *available at* http://www.peacewomen.org/assets/file/Resources/Government/canada_nationalactionplan_october2010.pdf (all failing to contain any provisions for women with disabilities).

174. *See, e.g.*, FED. MINISTRY FOR EUROPEAN AND INT'L AFFAIRS, AUSTRIA ACTION PLAN ON IMPLEMENTING UN SECURITY COUNCIL RESOLUTION 1325 (2000) 14 (2007), *available at* http://www.peacewomen.org/assets/file/NationalActionPlans/austria_nationalactionplan_august2007.pdf; National Action Plan for the Implementation of UN Security Council Resolution 1325 (2000) on Women, Peace and Security, and Related Resolutions (for the period from 2011 to 2014) 5–6 (Croat.), *available at* http://www.peacewomen.org/assets/file/NationalActionPlans/croatia_nationalactionplan_2011.pdf.

*D. Beijing Declaration and Special Rapporteur on Disability
Statements on Women with Disabilities*

The 1995 Beijing Declaration clearly recognized the need to address the concerns of women with disabilities and the correlated need to include women with disabilities in decision-making, stating that Governments should:

Strengthen and encourage the implementation of the recommendations contained in the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, paying special attention to ensure non-discrimination and equal enjoyment of all human rights and fundamental freedoms by women and girls with disabilities, including their access to information and services in the field of violence against women, as well as their active participation in and economic contribution to all aspects of society.¹⁷⁵

Drawing on the disability-inclusive nature of the original Beijing Declaration itself, the 2000 Special Session of the United Nations General Assembly, reviewing the progress of the outcomes of the Fourth World Conference on Women, also addressed the concerns and role of women with disabilities by indicating that Governments should:

Adopt and promote a holistic approach to respond to all forms of violence and abuse against girls and women of all ages, including girls and women with disabilities, as well as vulnerable and marginalized women and girls in order to address their diverse needs, including education, provision of appropriate health care and services and basic social services.¹⁷⁶

Furthermore, it also stated that Governments should:

Design and implement policies and programmes to address fully specific needs of women and girls with disabilities, to ensure their equal access to education at all levels, including technical and vocational training and adequate rehabilitation programmes, health care and services and employment opportunities, to protect and promote their human rights and, where appropriate, to eliminate existing inequalities between women and men with disabilities.¹⁷⁷

Sheikha Hessa Khalifa A. Al Thani, Special Rapporteur on Disability of the Commission for Social Development, reiterated the

175. REPORT OF THE FOURTH WORLD CONFERENCE ON WOMEN, *supra* note 74, ¶ 232(p).

176. G.A. Res. S-23/3, *supra* note 24, ¶ 69(j).

177. *Id.* ¶ 83(d).

absence of women with disabilities in discussions of women's human rights and stated:

You hardly find anything about women with disabilities in any programmes and activities. They hardly mention the specific issues linked to women with disabilities. Even after the Beijing conference, there has been hardly anything specific about women with disabilities in action plans, etc. I hear about it constantly from disabled women who are my friends. . . . I believe that women with disabilities face multiple discrimination.¹⁷⁸

She also goes on to state, “[i]n developing and poor countries, persons with disabilities lead very tough and difficult lives and this is even more true for women with disabilities.”¹⁷⁹

Thus, it is an urgent priority to address this deficit in the United Nations Resolutions on “Women, Peace and Security,” as well as its indicators and other implementation policies and programs, especially in light of the multiple forms of discrimination that women with disabilities face, compared to that of men with disabilities and women without disabilities. Given the strong statements in the Beijing documents discussed above, it is shocking that these issues were not included.

III. INTERSECTION AND SYNERGY OF THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES AND THE UNITED NATIONS CONVENTION FOR THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

A careful analysis of the intersection between the provisions of the CRPD and the CEDAW, along with various United Nation Security Council Resolutions and other reports on women, security, and peace, demonstrates the synergy that exists to foster changes in law, policy, and practice to ensure the inclusion of women with disabilities in post-conflict peace-building and reconciliation processes. The analysis below focuses on provisions in both the CEDAW and the CRPD that have specific implications for inclusion of women in peace-building processes.

178. *Interview with HRH Shiekha Hessa Khalifa A. Al-Thani*, ASSOCIAZIONE ITALIANA AMICI DI RAOUL FOLLEREAU (May 3, 2006), available at <http://www.aifo.it/english/resources/online/books/cbr/SR-interview0506.htm>.

179. *Id.*

A. The CRPD and the CEDAW on War, Conflict, and Peace

Both the CRPD and the CEDAW, respectively, recognize the impact of war, conflict, and natural disasters on persons with disabilities and on women. In addition, both the CRPD and the CEDAW, respectively, recognize the role that persons with disabilities and women must have in post-conflict situations.¹⁸⁰ The CRPD Preamble highlights “that conditions of peace and security . . . are indispensable for the full protection of persons with disabilities, in particular during armed conflicts and foreign occupation.”¹⁸¹ Situations of risk and humanitarian emergencies therefore require States to take the necessary measures to ensure the protection and safety of persons with disabilities in situations like armed conflict, humanitarian emergencies, and natural disasters.¹⁸² Moreover, the CEDAW Preamble affirms “[t]hat the strengthening of international peace and security, the relaxation of international tension . . . and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence . . . will contribute to the attainment of full equality between men and women.”¹⁸³ This treaty further states that States are convinced that the complete development of a country, the welfare of the world, and the cause of peace require the maximum equal participation of women in all fields.¹⁸⁴

Both of these CEDAW Committee Recommendations are particularly relevant to ensuring that a gender-based approach is utilized, and that women with disabilities are specifically incorporated within the United Nations “Women, Peace and Security” framework.

B. CRPD’s Gender Lens

The CRPD has adopted a gender lens in its terms and provisions, as shown in the Preamble, Article 3, Article 6,¹⁸⁵ and also throughout the CRPD provisions specifically concerning women, such as Article 8 on awareness-raising, Article 16 on freedom from exploitation, violence and abuse, and Article 25 on health.¹⁸⁶ Additionally, the CRPD and the CEDAW share many common principles.

180. See CRPD, *supra* note 9; CEDAW, *supra* note 10.

181. See CRPD, *supra* note 9, pmb., (u).

182. *Id.* at 10.

183. CEDAW, *supra* note 10, annex.

184. *Id.*

185. See CRPD, *supra* note 9, pmb., (q), (s), arts. 3, 6; see also Peter Blanck et al., *Defying Double Discrimination*, 8 GEO. J. INT’L AFF. 95, 96–97 (2007) (detailing the genesis and negotiation process for CRPD Article 6 to achieve rights for women with disabilities).

186. See CRPD, *supra* note 9, arts. 8, 16, 25.

C. *The CRPD and the CEDAW on Stereotyping*

Article 8 of the CRPD and Article 5 of the CEDAW emphasize the negative role that stereotypes can play in the lives of persons with disabilities, including women with disabilities and women in general. Under both conventions, States hold the responsibility “[t]o combat stereotypes, prejudices and harmful practices”¹⁸⁷ and to eliminate “prejudices and customary and all other practices.”¹⁸⁸ The CRPD takes the CEDAW stereotype provisions further by recognizing that gender and disability stereotypes coincide to have a compound effect on women with disabilities.¹⁸⁹

D. *The CRPD and the CEDAW on Legal Capacity and Access to Justice*

Two crucial elements of human rights, legal capacity and access to justice, are incorporated in both conventions. In the CRPD, Articles 12 and 13 address these issues, and in the CEDAW, Article 15 addresses equality before the law for both men and women.¹⁹⁰ The CRPD draws heavily on the approach taken in the CEDAW and rejects the narrower approach taken in the International Covenant on Civil and Political Rights (ICCPR).¹⁹¹

In its General Comment No. 28, the Human Rights Committee (the Committee that monitors compliance with the ICCPR) states that:

The right of everyone under article 16 to be recognized everywhere as a person before the law is particularly pertinent for women, who often see it curtailed by reason of sex or marital status. This right implies . . . that women may not be treated as objects to be given, together with the property of the deceased husband, to his family. States must provide information on laws or practices that prevent women from being treated or from functioning as full legal persons and the measures taken to eradicate laws or practices that allow such treatment.¹⁹²

Interestingly, interpretations of this provision of the ICCPR make it abundantly clear that this provision only contemplates one aspect of

187. *Id.* art 8, ¶ 1(b).

188. CEDAW, *supra* note 10, art. 5(a).

189. *See* CRPD, *supra* note 9, art. 6, ¶ 1.

190. *See id.* arts. 12, ¶¶ 1–4, 13, ¶ 1; CEDAW, *supra* note 10, art. 15.

191. *See* International Covenant on Civil and Political Rights, G.A. Res. 2200 (XXI), arts. 14–16, U.N. Doc. A/RES/21/2200 (Dec. 16, 1966).

192. Human Rights Comm., *General Comment No. 28: Equality of Rights Between Men and Women (Article 3)*, ¶ 19, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (Mar. 29, 2000).

this right—that every person is a subject, and not an object, of the law.¹⁹³ This provision does not guarantee that a person has the legal capacity to act.¹⁹⁴ On the other hand, the approach used in the provisions of the CRPD utilizes wording similar to that used in the second paragraph of Article 15 of the CEDAW.

Article 15 of the CEDAW states four provisions. First, it requires States to accord women equality with men before the law. Second, it requires States, in civil matters, to accord women a legal capacity identical to that of men, as well as the same opportunities to exercise that capacity. More specifically, States must give women equal rights to conclude contracts and to administer property, and they must also treat women equally in all stages of court and tribunal procedure. Third, States must agree that all contracts and other private legal instruments directed at restricting the legal capacity of women are deemed null and void. Fourth, Article 15 requires States to accord men and women with the same rights regarding the law relating to the movement of persons and the freedom to choose their residence and domicile.¹⁹⁵

Furthermore, Article 15 focuses on ensuring women’s legal autonomy. It confirms women’s equality with men before the law and also requires States to guarantee equal rights in areas of civil law where women have traditionally suffered discrimination.¹⁹⁶

Article 15 of the CEDAW guarantees women equal “legal capacity” with men and the same opportunities to “exercise that capacity,” drawing from the principle of autonomy or self-determination.¹⁹⁷ Each individual is presumed to be able to make life choices and to act independently.¹⁹⁸ Thus, the CRPD clearly incorporates both concepts of “capacity to be a person before the law” and “legal capacity to act,” drawing on the approach taken in the CEDAW.¹⁹⁹

193. See U.N. High Comm’r for Human Rights, Legal Capacity ¶ 14 (Aug. 2005) (unpublished background conference document) (on file with author), available at http://www2.ohchr.org/SPdocs/CRPD/DGD21102009/OHCHR_BP_Legal_Capacity.doc.

194. See *id.*

195. CEDAW, *supra* note 10, art. 15.

196. See Comm. on the Elimination of Discrimination Against Women, Report on its 13th Sess., Jan. 17–Feb. 4, 1994, ¶ 26, U.N. Doc. A/49/38 (Apr. 12, 1994).

197. CEDAW, *supra* note 10, art. 15, ¶ 2.

198. U.N. High Comm’r for Human Rights, *supra* note 193, ¶ 18.

199. See *id.* ¶ 37.

E. The CRPD and the CEDAW on Participation in Political and Public Life

Both the CRPD and the CEDAW recognize the important role that participation in political life plays in advancing human rights for persons with disabilities and for women. Article 29 of the CRPD requires States to “ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others” and gives them the right to “[form] and [join] organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.”²⁰⁰ The CEDAW also includes similar guarantees to women in Article 7, which states that States shall “eliminate discrimination against women in the political and public life of the country,” and in Article 8, which guarantees to women “the opportunity to represent their Governments at the international level.”²⁰¹

F. The CEDAW Committee and Women with Disabilities

Even before the CRPD came into force, the CEDAW Committee began to recognize that issues concerning women with disabilities played an important role in its work. For example, in its General Recommendation No. 18, the CEDAW Committee recommended that States:

provide information on disabled women in their periodic reports, and on measures taken to deal with their particular situation, including special measures to ensure that they have equal access to education and employment, health services and social security, and to ensure that they can participate in all areas of social and cultural life.²⁰²

Furthermore, in General Recommendation No. 24:

Women with disabilities, of all ages, often have difficulty with physical access to health services. Women with mental disabilities are particularly vulnerable, while there is limited understanding, in general, of the broad range of risk to mental health to which women are disproportionately susceptible as a result of gender discrimination, violence, poverty, armed conflict, dislocation and other forms of social deprivation. States parties should take appropriate measures to ensure that health services are sensitive to

200. CRPD, *supra* note 9, art. 29(a), (b)(ii).

201. CEDAW, *supra* note 10, arts. 7–8.

202. General Recommendations, *supra* note 12, No. 18.

the needs of women with disabilities and are respectful of their human rights and dignity.²⁰³

The CEDAW Committee also referenced other issues of concern in another of its General Recommendations. For instance, the CEDAW Committee recognized that societal factors may be determinative of health status, and that special attention should be given to the health needs of women with disabilities, among other vulnerable groups.²⁰⁴

G. Consent to Be Bound and Reporting

Under the CRPD's Article 43 ("Consent to be bound"), States and Regional Integration Organizations, which ratify or accede to the CRPD, agree to be bound by its terms.²⁰⁵ Furthermore, under Article 38 ("Relationship of the Committee with other bodies"), the CRPD Committee may "invite specialized agencies and other United Nations organs to submit reports on the implementation of the CRPD in areas falling within the scope of their activities."²⁰⁶

To focus on the responsibilities of the United Nations itself in adhering to the provisions of the CRPD, the United Nations Chief Executives Board (CEB) established an inter-agency support group (IASG) for the CRPD at its 12th session in September of 2006.²⁰⁷ The IASG's Joint Statement of Commitment to the CRPD describes its purpose as follows:

[I]n recognition of the commitment to the internationally agreed development goals; the need for system-wide coherence within the "delivering as one" framework; the importance of inclusion of persons with disabilities in the work of the United Nations; the need for a participatory approach; and the role of the United Nations in supporting Member States and specifically States parties, we are demonstrating our will to ensure the promotion and protection of the rights of persons with disabilities by working towards the full

203. *Id.* No. 24, ¶ 25.

204. *Id.* ¶ 6 ("While biological differences between women and men may lead to differences in health status, there are societal factors which are determinative of the health status of women and men and which can vary among women themselves. For that reason, special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups, such as migrant women, refugee and internally displaced women, the girl child and older women, women in prostitution, indigenous women and women with physical or mental disabilities.").

205. *See* CRPD, *supra* note 9, art. 43.

206. *Id.* art. 38(a).

207. *Inter-Agency Support Group*, *supra* note 16.

inclusion of persons with disabilities in the work of the United Nations.²⁰⁸

Also, the IASG includes many United Nations entities, such as the Department of Peacekeeping Operations (DPKO) and the Department of Economic and Social Affairs (DESA), both of which work on the issues raised in this paper.²⁰⁹

Both the CRPD and the CEDAW provide a significant roadmap for the inclusion of women with disabilities into peace-building activities and the United Nations “Women, Peace and Security” framework. The failure to include these women in such actions at the international and national levels runs contrary to the gender approach and other principles found in both treaties.

IV. THE UNITED NATIONS AND THE INTERNATIONAL COMMUNITY: INCLUSION OF WOMEN WITH DISABILITIES IN POST-CONFLICT PEACE- BUILDING PROGRAMMING

Over the past several years, the international community, and the United Nations in particular, has taken some preliminary steps to address the concerns of women with disabilities in the development agenda.²¹⁰ Despite the steps taken, however, progress has been slow. Significant additional work remains to eliminate the numerous barriers that women with disabilities face in society, particularly in conflict environments. Women with disabilities face double discrimination because of both their gender and their disability. Women are therefore at a greater risk of abuse, gender-based and other forms of violence, extreme poverty, poor education, lack of health care, and other factors due to this double discrimination, as discussed in Part I. Women with disabilities should be included as vital targets of both gender-sensitive development and peace-building programs.

Although some programs are beginning to target women with disabilities by using the CRPD’s social model and inclusion language, most programs do not apply it in practice. Disabled persons still tend to be lumped together under the heading of “vulnerable groups,” rather than as a group capable of agency and participation in and of itself.²¹¹

208. U.N. Inter-Agency Support Group for the Convention on the Rights of Persons with Disabilities, *Joint Statement of Commitment to the Convention* ¶ 4 (2006), available at <http://www.un.org/disabilities/documents/iasg/soc.pdf> [hereinafter *Joint Statement of Commitment to the Convention*].

209. *See id.*

210. *See Note by the Secretariat, supra* note 38.

211. *See infra* Part IV.C.

A. Early History of the Development of the Rights of Persons with Disabilities

Following the International Year of Disabled Persons in 1981, the World Programme was adopted by the United Nations General Assembly.²¹² The International Year of Disabled Persons and the World Programme of Action provided a strong impetus for progress on the rights of persons with disabilities.²¹³ Among the major outcomes of the Decade of Disabled Persons (1983-1992) was the adoption of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (Standard Rules) by the General Assembly on March 4, 1994.²¹⁴

The World Programme and the Standard Rules serve as guides, instruments for policy-making, and bases for technical and economic cooperation. The Standard Rules began to incorporate the human rights perspective, which was ultimately fulfilled more dynamically by the United Nations in the CRPD.²¹⁵

Both the World Programme and the Standard Rules emphasize the rights of persons with disabilities to the same opportunities as other citizens, and to an equal share in living condition improvements resulting from economic and social development.²¹⁶ The World Programme explicitly addresses the impact of war on persons with disabilities and speaks of the importance of ending war and achieving peace, mainly in that war causes disabilities.²¹⁷ The World Programme thus approaches the question of war only through the lens of prevention, rather than through an empowerment perspective concerning persons with disabilities.²¹⁸

The Standard Rules also only reference war with regard to its prevention, viewing it as a cause of disability.²¹⁹ The Standard Rules also expand on the World Programme and set out a statement of purpose as follows:

The equalization of opportunities for persons with disabilities is an essential contribution in the general and worldwide effort to mobilize human resources. Special attention may need to be directed towards

212. See World Programme of Action, *supra* note 17.

213. See Standard Rules, *supra* note 18, ¶ 6.

214. See *id.*

215. See CRPD, *supra* note 9.

216. See Standard Rules, *supra* note 18, ¶ 6.

217. *World Programme of Action Concerning Disabled Persons*, U.N. ENABLE, <http://www.un.org/disabilities/default.asp?id=23> (last visited Oct. 15, 2011).

218. See *id.*

219. See Standard Rules, *supra* note 18, ¶ 22 (defining “prevention”).

groups such as women, children, the elderly, the poor, migrant workers, persons with dual or multiple disabilities, indigenous people, and ethnic minorities. In addition, there are a large number of refugees with disabilities who have special needs requiring attention.²²⁰

Thus, we see the beginnings of efforts to address the needs of women with disabilities in the development agenda, as well as an awareness of the special issues facing refugees and others with disabilities in the conflict environment. The Standard Rules, however, are merely voluntary in nature, and take a preventive and rehabilitative approach that does not reflect the active participation approach essential to the implementation of the CRPD.²²¹

B. The Millennium Development Goals and Other International Development Programs and Their Effect on Women with Disabilities

In September 2000, world leaders adopted the United Nations Millennium Declaration, known as the MDG, committing their nations to reduce extreme poverty by 2015.²²² The third goal of the MDG specifically focuses on the promotion of gender equality and the empowerment of women. This MDG, however, as currently drafted, does not reference women with disabilities.²²³ In fact, none of the MDGs address persons with disabilities.²²⁴ In attempting to address this omission, the United Nations General Assembly passed a Resolution in December 2009 entitled “Realizing the Millennium Development Goals for persons with disabilities.”²²⁵ Neither peace building nor post-conflict resolution is mentioned, however. While the resolution focuses on people with disabilities, women with disabilities are only specifically mentioned once in a general paragraph concerning all of the goals.²²⁶ Failing to specify women with disabilities is a significant omission, since this resolution was adopted after the CRPD came into force, including its Article 6 on women,²²⁷ and since the third goal of the MDG specifically references the need to include women in development

220. *Id.* ¶ 15.

221. *See id.* ¶¶ 22–23.

222. MILLENNIUM DEVELOPMENT GOALS REPORT, *supra* note 23, at 3.

223. *See id.* at 20.

224. *See id.*

225. G.A. Res. 64/131, 1, 3, U.N. Doc. A/RES/63/150 (Feb. 3, 2010).

226. *Id.* ¶ 6.

227. CRPD, *supra* note 9, art. 6.

programs, stating: “GOAL 3: Promote gender equality and empower women.”²²⁸ The 2009 Resolution:

[C]alls upon governments to enable persons with disabilities to participate as agents and beneficiaries of development, in particular in all efforts aimed at achieving the Millennium Development Goals, by ensuring that programmes and policies, namely on eradicating extreme poverty and hunger, achieving universal primary education, promoting gender equality and the empowerment of women, reducing child mortality, improving maternal health, combating HIV/AIDS, malaria and other diseases, ensuring environmental sustainability and developing a global partnership for development, are inclusive of and accessible to persons with disabilities.²²⁹

The MDGs were under review in September 2010,²³⁰ and disability rights groups vigorously advocated for modifications to include persons with disabilities explicitly, but these efforts were unsuccessful.²³¹

There are numerous examples of partially inclusive disability development policies, although most do not specifically address post-conflict peace building and program implementation.²³² The World Bank has established policies for inclusive programming and has issued a publication that examines recent policies of major multilateral and bilateral agencies.²³³ The World Bank employed these agencies to include disability in development aid and to provide some examples of implementation.²³⁴ Unfortunately to date, it does not appear that any of

228. MILLENNIUM DEVELOPMENT GOALS REPORT, *supra* note 23, at 20.

229. G.A. Res. 64/131, *supra* note 225, ¶ 6.

230. See MILLENNIUM DEVELOPMENT GOALS REPORT, *supra* note 23, at 5.

231. See Int’l Disability Alliance, *Overcoming Invisibility: Making the MDGs Inclusive of and Accessible for Persons with Disabilities* (conference paper), available at http://www.un-ngls.org/IMG/pdf/Imed_Chaker.pdf.

232. See *Gender Analysis*, CANADIAN INT’L DEV. AGENCY, <http://www.acdi-cida.gc.ca/acdi-cida/ACDI-CIDA.nsf/eng/JUD-31194519-KBD> (last visited Oct. 15, 2011); AUSAID, AUSTRALIAN AID, *DEVELOPMENT FOR ALL: TOWARDS A DISABILITY-INCLUSIVE AUSTRALIAN AID PROGRAM 2009–2014* (2008), available at <http://www.ausaid.gov.au/publications/pdf/dev-for-all.pdf>; MINISTRY FOR FOREIGN AFFAIRS OF FINLAND, *DEVELOPMENT POLICY PROGRAMME 2007: TOWARDS A SUSTAINABLE AND JUST WORLD COMMUNITY* (2008), available at <http://formin.finland.fi/public/default.aspx?contentid=107497>.

233. See JANET LORD ET AL., WORLD BANK, *DISABILITY AND INTERNATIONAL COOPERATION AND DEVELOPMENT: A REVIEW OF POLICIES AND PRACTICES 1* (2010), available at http://siteresources.worldbank.org/DISABILITY/Resources/Publications-Reports/Disability_and_Intl_Cooperation.pdf.

234. See *id.*; U.S. INST. OF PEACE & U.S. ARMY PEACEKEEPING & STABILITY OPERATIONS INST., *GUIDING PRINCIPLES FOR STABILIZATION AND RECONSTRUCTION* (2009), available at http://www.usip.org/files/resources/guiding_principles_full.pdf; *Gender Analysis*, *supra* note 232; AUSAID, *supra* note 232, at iii–iv; MINISTRY FOR FOREIGN AFFAIRS OF FIN., *supra* note 232, at 16.

these policies have resulted in significant inclusion of women with disabilities as active participants in these entities' peace-building programs.²³⁵

C. *Programs on Conflict, Refugees, and Emergencies*

Several guidance documents on the implementation of programs in conflict situations specifically reference women and persons with disabilities. For instance, Principle 4 of the United Nations Guiding Principles on Internal Displacement requires protection and special consideration of persons with disabilities and women.²³⁶

Principle 4 states:

1. These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.
2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.²³⁷

In addition, the United States Institute of Peace and United States Army Peacekeeping and Stability Operations Institute, in the USIP Guiding Principle 10.8.16, require the inclusion of marginalized groups in reconciliation, including women and persons with disabilities.²³⁸ Throughout Section 10, the manual recognizes that persons with disabilities should have a participatory role in such processes.²³⁹

One of the biggest factors in the exclusion of persons with disabilities from many humanitarian responses is a paucity of data: as they are not 'seen', they are assumed not to be there and are not included. However, evidence from disabled people's organizations (DPOs) around the world has shown that adults and children with

235. See LORD ET AL., *supra* note 233.

236. Representative of the U.N. Secretary-General, *Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, Including the Question of the Programme and Methods of Work of the Commission Human Rights, Mass Exoduses and Displaced Persons: Report of the Representative of the Secretary-General*, principle 4, ¶ 2, U.N. Doc. E/CN.4/1998/53/Add.2 (Feb. 11, 1998).

237. *Id.* principle 4.

238. U.S. INST. OF PEACE & U.S. ARMY PEACEKEEPING & STABILITY OPERATIONS INST., *supra* note 234, § 10.8.16.

239. *Id.* § 10.

disabilities are often hidden from view, stigmatized by families and communities.²⁴⁰

The recent United Nations reports on disability and development fail to consider persons with disabilities as active participants in peace building and rather only discuss persons with disabilities as passive recipients of aid. The literature focuses on service delivery to persons with disabilities, placing them in a passive role as opposed to an active role. For example, UNESCAP's 2007 Report on the Protections of Older Persons and Persons with Disabilities discusses "the challenges which . . . persons with disabilities face in accessing protection, including assistance, in situations of displacement."²⁴¹ Specifically, it notes that Colombia incorporated "the needs of older displaced persons into national policies and response mechanisms regarding internally displaced persons."²⁴² Bangladesh and Chad "undertook a detailed assessment of the specific needs of persons with disabilities."²⁴³ This is not to say that such efforts are not essential, especially in the midst of conflicts and their immediate aftermaths, because they certainly are. Indeed, the passage of United Nations Security Council Resolution 1894 was advocated for and vigorously supported by the disability rights community.²⁴⁴ As such, this is the only resolution that specifically references persons with disabilities, although only in terms of the impact armed conflict has on persons with disabilities.²⁴⁵

UNSCR 1894, which advocates for protection of civilians in armed conflict, encourages the international community "to provide assistance for the care, rehabilitation and economic and social reintegration of victims, including persons with disabilities."²⁴⁶ Nonetheless, by operating "in a 'relief' model in conflict scenarios," relief agencies and organizations generally:

240. INT'L FED'N OF RED CROSS & RED CRESCENT SOCIETIES, *supra* note 70, at 95.

241. U.N. High Comm'r for Refugees, *The Protection of Older Persons and Persons with Disabilities*, Exec. Comm. of the High Comm'rs Programme, ¶ 1, U.N. Doc. EC/58/SC/CRP.14 (June 6, 2007), available at <http://www.unhcr.org/refworld/pdfid/4693775c1c.pdf>.

242. *Id.* ¶ 27.

243. *Id.*

244. See generally ASIA-PAC. CTR. FOR THE RESPONSIBILITY TO PROTECT, THE RESPONSIBILITY TO PROTECT AND THE PROTECTION OF CIVILIANS: ASIA-PACIFIC IN THE U.N. SECURITY COUNCIL, UPDATE NO. 2 4, 8, 13–14 (2009), available at http://www.r2pasiapacific.org/documents/asia-pacific_in_the_un_security_council_poc_update_2.pdf (noting support for UNSCR 1894 by the U.N. Security Council and other member States).

245. See S.C. Res. 1894, *supra* note 11, ¶ 29.

246. *Id.* See generally ASIA-PAC. CTR. FOR THE RESPONSIBILITY TO PROTECT, *supra* note 244, at 8 (noting the advocacy of U.N. member States to adopt S/RES/1894).

[C]onsider ‘beneficiaries’ as passive recipients of aid; this is particularly true for disabled persons [T]he relief and rehabilitation operations do not consider them to be actors for rehabilitation, development and peacebuilding Being categorized as ‘a vulnerable person’ can contribute to exclusion from empowerment opportunities, such as education and self-reliance activities, vocational training, [and other empowering activities such as the development of advocacy skills and participation in post-conflict peace building and legal institution development].²⁴⁷

D. The United Nations’ Disability-Inclusive Mandate: An Opportunity for Change

Drawing on the principles laid down in the Universal Declaration of Human Rights and other international human rights instruments, the United Nations Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among U.N. Agencies (Common Understanding), sets out its objective of ensuring that all programming incorporate a human rights-based dimension as follows:

A set of programme activities that only incidentally contributes to the realization of human rights does not necessarily constitute a human rights-based approach to programming. In a human rights-based approach to programming and development cooperation, the aim of all activities is to contribute directly to the realization of one or several human rights.²⁴⁸

This approach contains many elements relevant to a gender empowerment approach, such as the inclusion of women with disabilities in peace-building programming. Two important elements to highlight are participation and inclusion. That is, particular attention must be paid to the empowerment of vulnerable groups so that they can

247. *Empowerment: Persons with Disabilities: Persons with Disabilities & Peacebuilding Processes*, PEACEBUILDING INITIATIVE, <http://www.peacebuildinginitiative.org/index.cfm?pageId=1966> (last visited Oct. 15, 2011); see also Suzanne Williams, *Contested Terrain: Oxfam, Gender, and the Aftermath of War*, in GENDER, DEVELOPMENT, AND HUMANITARIAN WORK 19, 27 (Caroline Sweetman ed., 2001) (noting that women should not only be viewed as a vulnerable group but must also be part of national political structures and policy making); ALISON HARRIS & SUE ENFIELD, DISABILITY, EQUALITY, AND HUMAN RIGHTS: A TRAINING MANUAL FOR DEVELOPMENT AND HUMANITARIAN ORGANISATIONS 18–19 (2003), available at http://www.oxfam.org.uk/resources/downloads/disability_manual_whole.pdf (describing the exclusion of persons with disabilities from rehabilitation programs).

248. *The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among U.N. Agencies*, U.N. DEV. GRP., http://www.undg.org/archive_docs/6959-The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf (last visited Oct. 15, 2011).

claim their own rights.²⁴⁹ Additionally, such an approach sees persons as key actors rather than as passive recipients, and causes programs to be empowering rather than disempowering.²⁵⁰

Although the Common Understanding was developed before the CRPD came into force, the CRPD now serves as the important instrument for informing the programmers about a human rights-based, gender-sensitive approach, and for affirmatively working toward the inclusion of women with disabilities in all peace-building activities.

The principles in this document were re-enforced and more directly applied to persons with disabilities when the United Nations Chief Executives Board established an inter-agency support group for the Convention on the Rights of Persons with Disabilities (IASG) at its 12th session in September of 2006.²⁵¹ The IASG's Joint Statement of Commitment to the CRPD describes its purpose as follows:

[I]n recognition of the commitment to the internationally agreed development goals; the need for system-wide coherence within the "delivering as one" framework; the importance of inclusion of persons with disabilities in the work of the United Nations; the need for a participatory approach; and the role of the United Nations in supporting Member States and specifically States parties, we are demonstrating our will to ensure the promotion and protection of the rights of persons with disabilities by working towards the full inclusion of persons with disabilities in the work of the United Nations.²⁵²

The IASG includes many United Nations entities, such as the Department of Peacekeeping Operations (DPKO) and the Department of Economic and Social Affairs (DESA), both of which work on the issues raised in this paper.²⁵³

With the CRPD now in force,²⁵⁴ the establishment of an active and dynamic Secretariat for the CRPD,²⁵⁵ the creation of the IASG, and the human rights obligations of the United Nations itself under the United Nations Charter, which identifies human rights as one of the

249. *Id.*

250. *Id.*

251. *Inter-Agency Support Group*, *supra* note 16.

252. *Joint Statement of Commitment to Convention*, *supra* note 208, ¶ 4.

253. *See id.*

254. *Empowerment: Persons with Disabilities: Persons with Disabilities & Peacebuilding Processes*, *supra* note 247; *Convention on the Rights of Persons with Disabilities Opening for Signature*, <http://www.un.org/disabilities/convention/signature.shtml> (last visited Oct. 15, 2011).

255. *Secretariat for the Convention on the Rights of Persons with Disabilities*, U.N. ENABLE, <http://www.un.org/disabilities/default.asp?id=17> (last visited Oct. 15, 2011).

fundamental purposes of the Organization,²⁵⁶ there are now opportunities to bring forth changes that will result in the inclusion of women with disabilities in international, national, and non-governmental organizations' post-conflict peace-building and reconciliation policies, programs and practices. Additionally, there is an opportunity to integrate these concepts into the United Nations Resolutions on "Women, Peace and Security," as well as to the entities in the United Nations that address issues concerning women.

E. Research on Inclusion of Women with Disabilities in Peace Building

There have been few post-conflict efforts to integrate women with disabilities (or any persons with disabilities) in peace-building and reconciliation activities. There is also limited scholarship on the experiences of persons with disabilities in such processes. One of the few examples that has been identified illustrates the significant value of engaging women with disabilities into such activities, and provides insight into the development of future policies and programming to ensure the inclusion of women with disabilities within the United Nations "Women, Peace and Security" framework.²⁵⁷ Furthermore, it is clear that additional fieldwork needs to be undertaken to assess the interrelationship between war, disability, gender, and peace building. One such study undertaken in Sierra Leone is highlighted here.

In 2007, Pearl Praise Gottschalk studied persons with disabilities in Sierra Leone after the conclusion of the "un-civil" war from 1991 to 2002, utilizing both study participant observation and qualitative interviewing.²⁵⁸ Based on her findings, she made numerous recommendations to the international community concerning the structure and conduct of future peace-building activities and the impact of such activities on persons with disabilities, especially persons disabled as a result of conflict.²⁵⁹

The study noted that:

The majority of participants with disabilities stated that their experience with inclusion and participation in decision making

256. See U.N. Charter, *supra* note 125, art. 1, ¶¶ 3–4; see also Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res. 53/144, pmb., U.N. Doc. A/RES/53/144 (Mar. 8, 1999) ("Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world").

257. See Gottschalk, *supra* note 25, at lxv–lxvi.

258. See *id.* at iii–iv.

259. See *id.* at ii.

during the peace building process, both positive and negative, was the most important issue for them For participants, inclusion generally meant the opportunity to be involved in the processes that affect their lives. The terms, *equal representation and consultation* incorporate many aspects including; equal numbers of persons with disabilities as persons without disabilities at all stages of the decision making process (male and female, educated and non); equal opportunity to attend meetings held in accessible locations and with financial aid; equal opportunity to have their unique ideas and initiatives for peace considered in the planning stages. Also, participants stated that the term accessibility includes; an accessible location, language and method of discussion (for those who may be deaf or have learning disabilities) as well as an accommodation for the inclusion and access of people living in the rural areas.²⁶⁰

In one of the most thorough efforts of its kind, a group of persons with disabilities following the war in Sierra Leone created so-called “disability checks,” which they believed should be required under international law to be applied before any peace processes begin. They also believed that these elements should be incorporated as new policies and practices by the international community are established for development and peace issues.²⁶¹ The list includes the following elements:

Has this process considered the extent to which it may further victimize persons with disabilities, particularly in the case of persons disabled by war? Could this process in any way unintentionally violate the human rights of any group of persons or perpetuate further conflict?

Has this process considered what justice means to persons disabled by war? Will this process be committed to achieving that justice?

To what extent does this process provide for equal representation and consultation for persons with disabilities? Are there special measures in place to ensure their accessibility at all levels of the project design?²⁶²

This important study also described the unique situation of women disabled by war. The female participants of the study:

[S]poke of their increased vulnerability after the disability and the risk of physical and sexual abuse that they faced in peace times, especially the danger of leaving their villages in order to travel to sites where they could participate in the peace processes. Female

260. *Id.* at xxxiv.

261. *Id.* at xlix.

262. *Id.*

participants also voiced concern over their special need for reparations or permanent social support from the government in order to care for their children as their husbands often left them once they became disabled.²⁶³

One of the most significant lessons from this study is the importance of including persons with disabilities in the design of a peace-building or reconciliation program. Participants in the study noted that the failure to include them at the early stages of design was frustrating because they felt that the approaches already developed by the disabled community were ignored. They also felt that external approaches were imposed on them,²⁶⁴ and that the approaches were ineffective²⁶⁵ or culturally insensitive. One participant in the study summarized the report findings on this issue, noting “disability was an afterthought once projects are in the works and the impacts on disabled people are not thought through ahead of time.”²⁶⁶ This view clearly calls for the participatory and inclusive approach set forth in the CRPD’s Article 32.²⁶⁷

The study poses the crucial question of the meaning of “peace” to persons with disabilities.²⁶⁸ For persons with disabilities, peace goes far beyond the ending of hostilities and results in positive conditions that can change the circumstances in which people live and ensuring that persons enjoy all their human rights.²⁶⁹ This also requires some public recognition of the situations of persons with disabilities, efforts by the society and government, and indeed the peace process itself, in order to achieve these conditions. Under the framework of the CRPD, this means promotion of all civil, political, economic, social, and cultural rights.²⁷⁰ As outlined in Part I above, the situation of women with disabilities does not accommodate changes in the circumstances of their lives.²⁷¹

Additional work of this kind is necessary to ensure that, in fact, peace-building activities are designed to integrate women with disabilities, in order to respond to issues that concern them and utilize processes with which they are comfortable.

263. Gottschalk, *supra* note 25, at lii.

264. *See id.* at xxxiv–xxxviii.

265. *See id.* at xxxviii–xl.

266. *Id.* at xlix.

267. *See* CRPD, *supra* note 9, art. 32.

268. *See* Gottschalk, *supra* note 25, at lv.

269. *See id.*

270. CRPD, *supra* note 9, pmb., (y).

271. *See id.*; *supra* Part I.

F. Why Inclusion Is Required and Why It Matters

Clearly, as shown in the previous analysis of the intersection of the CEDAW, the CRPD, and the United Nations “Women, Peace and Security” framework, the three demand the inclusion of women with disabilities.²⁷²

The fundamental points made in UNSCR 1325 clearly support this approach. UNSCR 1325 recognizes that women have an important role in the prevention and resolution of conflicts and in peace building. It also recognizes that women’s equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and their increased role in decision-making with regard to conflict prevention and resolution, are critical.²⁷³

Viewed in conjunction with both Articles 6 and 11 of the CRPD, it is clear that women with disabilities must have a role in decision-making with regards to conflict prevention and resolution.²⁷⁴

The CRPD clearly recognizes that the human rights enumerated in the CRPD must be viewed through a gender lens, that women with disabilities are subject to multiple forms of discrimination, and that their empowerment is a primary objective. The CRPD also recognizes the gender impacts of conflict when Articles 6 and 11 are read together.²⁷⁵ As clearly demonstrated in Part I above, women with disabilities have different needs before, during, and after conflict. Moreover, numerous issues affect women with disabilities disproportionately when compared to men with disabilities and women without disabilities, including several rights guaranteed by the CRPD, such as health, education, employment, violence, family rights, marriage, housing, and participation in public life.²⁷⁶

The failure to include women with disabilities in peace building can result in further marginalization of women with disabilities, reaffirming denials of their human rights and exacerbating the double discrimination they face. The ultimate objectives of peace building, as stated by United Nations Secretary-General Boutros Boutros-Ghali and United Nations Secretary-General Kofi Annan, are to establish the rule of law, to enhance human rights protection, to reform or strengthen governmental institutions, to create constitutional, administrative and

272. See *supra* Parts II–III.

273. See S.C. Res. 1325, *supra* note 1, pmb., ¶ 2.

274. See CRPD, *supra* note 9, arts. 6, 11.

275. See *id.* pmb., (s), arts. 6, 11.

276. See *id.* arts. 6, 9, 11–13, 16, 19, 23–25, 27–30; *supra* Part I.

legal structures, to strengthen democracy, to foster inclusive political participation, and to resume development.²⁷⁷

If women with disabilities are not included in these processes, and if the reforms to institutional structures, laws, and social, economic, and political systems do not include their input, the reforms that emerge after conflict will continue to marginalize women and deny them the justice that peace building is supposed to foster. The Beijing + 5 Report, UNSCR 1325, and the succeeding resolutions in the United Nation's "Women, Peace and Security" framework clearly articulate the need for a gender perspective in such efforts.²⁷⁸ Moreover, the CRPD combined with the actual life experiences of women with disabilities further demands that women have a role in these processes.²⁷⁹

V. RECOMMENDATIONS FOR ACTION

Set forth below are recommendations for action, consistent with the gender-sensitive approaches outlined in the United Nations Security Council Resolutions on "Women, Peace and Security," and with the provisions of both the CRPD and the CEDAW.²⁸⁰ These recommendations offer to improve the extent to which women with disabilities are included in the United Nations Resolutions on "Women, Peace and Security," and the methods for measuring the success of their implementation. They apply to the activities of the various United Nations entities—international, national, and non-governmental organizations' post-conflict reconciliation and peace-building programs and policies. Furthermore, the recommendations attempt to bring greater attention to these issues and provide a data-rich, resource-based framework for action on this subject.

A. Revision of United Nations Security Council Resolutions and Indicators on "Women, Peace and Security" to Include Women with Disabilities

The first recommendation is to amend UNSCR 1325 and its progeny to include women and girls with disabilities at all stages of

277. See *Preventive Diplomacy, Peacemaking and Peace-Keeping*, *supra* note 134, ¶¶ 21, 81; *The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa*, *supra* note 136, ¶¶ 63, 72–74, 77–78, 82.

278. See G.A. Res. S-23/3, *supra* note 24, ¶ 15; S.C. Res. 1325, *supra* note 1, pmb., ¶¶ 5, 8.

279. See CRPD, *supra* note 9, pmb., (s).

280. See S.C. Res. 1325, *supra* note 1; S.C. Res. 1820, *supra* note 11; S.C. Res. 1888, *supra* note 11; S.C. Res. 1889, *supra* note 11; S.C. Res. 1894, *supra* note 11; S.C. Res. 1960, *supra* note 11; CRPD, *supra* note 9, arts. 6, 9, 11–13, 16, 19, 23–25, 27–30; CEDAW, *supra* note 10, art. 5(a).

peace building, reconstruction, development, reconciliation, and transition, and to ensure that such women and girls are included in protection programs in conflict zones.²⁸¹

The following is an incomplete list of paragraphs offered for inclusion in a new resolution to ensure that women with disabilities are addressed and represented in the objectives set forth by UNSCR 1325. Similar paragraphs should be developed to address the issues covered in subsequent resolutions on “Women, Peace and Security.”

1. Include a preambular paragraph reaffirming the principles of the United Nations Convention on the Rights of Persons with Disabilities. The paragraph should particularly refer to Article 6 on women and Article 11 on situations of risk and armed conflict;²⁸²

2. Include a preambular paragraph recognizing the unique circumstances confronting women with disabilities during and after conflict;

3. Include a preambular paragraph recalling the commitments made in the Beijing Declaration and Platform for Action,²⁸³ as well as those made in the outcome document of the twenty-third Special Session of the United Nations General Assembly, entitled “Women 2000: Gender Equality, Development and Peace for the Twenty-First Century.”²⁸⁴ The paragraph should emphasize the relevant points concerning women and girls with disabilities;

4. Include a preambular paragraph, which recognizes the exclusion of women with disabilities from peace-building activities. The paragraph must communicate the valuable contributions of such women to the process of peace building and the community at large, and insist that their unique perspectives be included to ensure that their needs and concerns are effectively addressed and effectively represented;

5. Include a preambular paragraph recognizing the urgent need to incorporate a gender perspective and a human rights-centered approach towards women with disabilities, into the mainstream perception of peacekeeping and reconstruction programs;

6. Include a preambular paragraph noting the need to consolidate data on the impact of armed conflict on women and girls with disabilities;

281. See S.C. Res. 1325, *supra* note 1; S.C. Res. 1820, *supra* note 11; S.C. Res. 1888, *supra* note 11; S.C. Res. 1889, *supra* note 11; S.C. Res. 1894, *supra* note 11; S.C. Res. 1960, *supra* note 11.

282. CRPD, *supra* note 9, arts. 6, 11.

283. G.A. Res. 52/231, U.N. Doc. A/52/231 (June 17, 1998).

284. G.A. Res. S-23/3, *supra* note 24.

7. Include an action paragraph encouraging the Secretary-General to appoint experts on issues of concern to women with disabilities to any committee or task force the Secretary-General may appoint for the purposes of addressing peacekeeping and/or peace building;

8. Include an action paragraph requesting the Secretary-General to provide training to member States that address the unique concerns of women and girls with disabilities in peacekeeping, and offer guidelines and materials regarding the protection, rights, and the particular needs of such women. The paragraph must also discuss the importance of involving women with disabilities in all peacekeeping and peace-building measures;

9. Include an action paragraph, calling on all actors involved in the negotiation and implementation of peace agreements, to adopt a gender perspective, including, *inter alia*:

(a) The special needs of women and girls with disabilities during the implementation of repatriation and resettlement for purposes of rehabilitation, reintegration, and post-conflict reconstruction, bearing in mind the stigma women and girls with disabilities may face in the community;

(b) Measures supporting the inclusion of women with disabilities to local women's peace initiatives, as well as indigenous processes for conflict resolution that promote access for persons with disabilities, and to all of the implementation mechanisms of the peace agreements;

(c) Measures that ensure the protection of and respect for human rights of women and girls with disabilities, particularly as they relate to the constitution, the electoral system, the police, and the judiciary.

Concomitant with these recommendations, it is important to ensure that UNSCR 1325's implementation indicators, developed by the Secretary General for action by the Security Council, address the importance of including the voices and needs of women and girls with disabilities.²⁸⁵

In addition, below is a non-exhaustive list of possible modifications to the proposed UNSCR 1325 indicators. These modifications will ensure that women with disabilities will be included in these tools that assess the inclusion of women in peacekeeping and peace-building actions.

Indicator 1 requires measuring the incidence of sexual violence in conflict-affected countries. Data on this indicator is expected to be collected through consistent, replicable, and ethical surveys, and be

285. See generally *Women and Peace and Security*, *supra* note 8, ¶¶ 12–43 (providing indicators for measuring progress of women's and girls' rights).

disaggregated by the types of sexual violence toward the relevant vulnerable groups (internally displaced persons, returnees, refugees).²⁸⁶ It is suggested that this indicator should also include the measurement of incidents of sexual violence experienced by women and girls with disabilities.

Indicator 2 requires measuring the extent to which the United Nations peacekeeping and special political missions include information on violations of women and girls' human rights in periodic reporting.²⁸⁷ It is suggested that such reports should include violations experienced by women and girls with disabilities.

Indicator 3(b) requires that the inclusion of representatives of women and civil society organizations in the governance and leadership of human rights bodies be measured.²⁸⁸ It is suggested that whether such women civil society groups include women with disabilities be assessed.

Indicator 8 requires measuring the number and percentage of peace agreements that contain specific provisions to improve the security and status of women and girls.²⁸⁹ It is suggested that measurements should be taken to ascertain whether women and girls are included, especially in issues such as the ability to participate in elections, inclusion within constitutional provisions, and whether human rights and fundamental freedoms are ensured. Also, since women with hearing impairments may need such services as sign language interpretation, it is recommended that they be recognized as a linguistic minority.

Indicator 10 requires measuring the level of gender expertise in United Nations decision-making that involves conflict-affected countries.²⁹⁰ It is suggested to include women with disabilities who are knowledgeable in the specific issues that concern women and girls with disabilities.

Indicator 11(a) requires measuring the “[l]evel of participation of women in formal peace negotiations.”²⁹¹ It is suggested to add—to ensure that the voices of women with disabilities are heard—a measure of the extent to which they have a seat at the table and whether it includes appropriate accommodations to meet their specific needs, such as sign language interpreters and accessible facilities.

286. *See id.* ¶ 14.

287. *Id.* ¶ 15.

288. *Id.* ¶ 16.

289. *Id.* ¶ 22.

290. *Id.* ¶ 23.

291. *Women and Peace and Security*, *supra* note 8, ¶ 24.

Indicator 13 requires measuring the number and percentage of Security Council missions that address specific issues affecting women and girls in their terms of reference and the mission reports.²⁹² It is suggested here that terms of reference and similar documents address the specific needs of women and girls with disabilities.

As mentioned above, this is a non-exhaustive list of proposed modifications to the indicators, and more should be developed in the future.

B. Increasing the Role of United Nations Entities Addressing Women's Human Rights, Peace, Security, and Other Related Gender Issues with Respect to Women with Disabilities

The second recommendation offered is to urge the United Nations, governments, and various institutions involved in peace building and security, to address the rights and needs of women and girls with disabilities in their programs and reporting.²⁹³

This recommendation would ensure creation of a United Nations-based group of independent experts whose role is to advise on ways to protect women in conflict situations. To ensure that women's voices are heard in peace processes and that women are included in post-conflict reconstruction and governance structures, a member who is a woman with a disability and has expertise in the particular subject matter, would be appointed.²⁹⁴

It is also recommended to hold side events on the importance of the inclusion of women with disabilities in post-conflict peace-building and reconciliation processes. This should be done in cooperation with relevant United Nations entities and relevant governments during the United Nations Security Council's discussions on each anniversary of UNSCR 1325.²⁹⁵

292. *Id.* ¶ 26.

293. See CRPD, *supra* note 9, arts. 11, 31; *Joint Statement of Commitment to the Convention*, *supra* note 208, ¶ 4.

294. See, e.g., Press Release, U.N. Women, U.N. Creates New Structure for Empowerment of Women, (July 2, 2010), available at http://www.unwomen.org/wp-content/uploads/2010/07/UNWomen_PressRelease_201007021.pdf; *Civil Society Group to Help Advise U.N. on Role of Women in Peace and Security*, U.N. NEWS CTR. (Mar. 5, 2010), <http://www.un.org/apps/news/story.asp?NewsID=33992&Cr=gender+equality&Cr1> (recognizing the establishment of a group of independent experts, who will advise the United Nations on effective ways to implement Resolution 1325 regarding the protection and integration of women in conflict situations). For more information on U.N. Women, visit <http://www.unwomen.org/>.

295. See U.N. Security Council, Statement by the President of the Security Council, U.N. Doc. S/PRST/2010/8 (Apr. 27, 2010) (announcing that the Secretary-General's report regarding the implementation of S.C. Res. 1325 will be given to the U.N. body in October 2010); see also

Another recommendation is to coordinate with the newly established United Nations entity, U.N. Women, to address issues of concern to women and girls with disabilities and to encourage the entity to appoint women with disabilities to leadership positions.²⁹⁶

It would also be prudent to encourage the CRPD Committee to invite specialized agencies and other United Nations organs to submit reports on the implementation of CRPD resolutions in their activities. This should be done with respect to the incorporation of a gender-sensitive and disability-inclusive approach to include women with disabilities in peace-building programs, policies, and practices under the CRPD's Article 38.²⁹⁷

It is also recommended to work with the United Nations Special Rapporteur on Violence Against Women, currently Rashida Manjoo, to support her commitment to ensure that issues of violence against women with disabilities are addressed, and that she has sufficient resources to assess violence against women with disabilities in different countries.²⁹⁸

Lastly, it is also recommended to establish a mechanism by which the United Nations Special Rapporteur on Violence Against Women will be able to coordinate and collaborate with the United Nations Special Rapporteur on Disability, currently Shuaib Chalklen, with respect to violence against women with disabilities generally and conflict situations in particular. Here, too, it is important to ensure that the United Nations Special Rapporteur on Disability will have sufficient

Memorandum from Civil Society Advisory Group to the United Nations on Women, Peace, and Security 3–4 (June 21, 2010) (on file with Global Network of Women Peacebuilders), available at http://www.gnwp.org/wp-content/uploads/2010/04/PDF_CSAG-Updated-Recommendations-on-10th-Anniversary-of-SCR1325-June-21-2010.pdf.

*Note: On October 21, 2010, the author of these suggestions for inclusion organized such a side event that was held on October 20, 2010 at the United Nations in New York, see <http://www.forgottenpeacebuilders.org> for details on the panel discussion and other resources.

296. *In Historic Move, U.N. Creates Single Entity to Promote Women's Empowerment*, U.N. NEWS CTR. (July 2, 2010), <http://www.un.org/apps/news/story.asp?NewsID=35224&Cr=gender&Cr1>.

297. See CRPD, *supra* note 9, art. 38(a).

298. See *Violence Against Women: South African Legal Expert Takes Over as New U.N. Special Rapporteur*, U.N. HUMAN RIGHTS, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=52&LangID=E> (last visited Oct. 15, 2011) (announcing the appointment of Rashida Manjoo as the new U.N. Special Rapporteur on violence against women, its causes, and consequences); see also *Special Rapporteur on Violence Against Women, Its Causes and Consequences*, OFFICE OF THE U.N. HIGH COMM'R FOR HUMAN RIGHTS, <http://www2.ohchr.org/english/issues/women/rapporteur/> (last visited Oct. 15, 2011).

resources to visit different countries in order to assess the violence against women with disabilities.²⁹⁹

C. Raising Awareness Among Prosecutors, Courts, and Post-Conflict Tribunals About the Need to Make the Judicial System and Reconciliation Processes Accessible to Women with Disabilities

The courts, police, and prosecutors, including the International Criminal Court and other post-conflict tribunals, need to be informed and educated on how to support women and girls with disabilities who faced violence of any kind. This education includes learning about age- and disability-appropriate supports that may help women and girls with disabilities participate in legal proceedings as parties or witnesses.³⁰⁰

D. Incorporating the CRPD's Empowerment and Social Models and Reasonable Accommodation and Accessibility Standards in Gender-Sensitive Peace-Building Activities

Peace-building institutions should use empowerment perspectives as opposed to vulnerability perspectives, and also apply social models instead of medical or charity models of disability to post-conflict peace building.³⁰¹

The institutions should ensure that women with disabilities have the opportunity to have their unique ideas and initiatives for peace considered during meetings, and that these meetings are held in

299. See U.N. SPECIAL RAPporteur ON DISABILITY, <http://www.srdisability.org> (last visited Oct. 15, 2011); *The Special Rapporteur on Disability of the Commission for Social Development*, U.N. ENABLE, <http://www.un.org/esa/socdev/enable/rapporteur.htm> (last visited Oct. 15, 2011).

300. See, e.g., *Courthouse Access Advisory Committee Courtroom Mock-Up*, U.S. ACCESS BOARD, <http://www.access-board.gov/caac/mock-up.htm> (last visited Oct. 15, 2011) (illustrating a model accessible courtroom); COURTHOUSE ACCESS ADVISORY COMM., JUSTICE FOR ALL: DESIGNING ACCESSIBLE COURTHOUSES 9–10 (2006), available at <http://www.access-board.gov/caac/report.pdf>; *Rome Statute of the International Criminal Court*, *supra* note 133, art. 68; see also AUGMENTATIVE COMM'N CMTY. P'SHIPS-CANADA, COMMUNICATION ACCESS TO JUSTICE SERVICES: BUILDING CAPACITY WITHIN THE JUSTICE SECTOR TO PROVIDE SERVICES TO PEOPLE WHO HAVE COMMUNICATION DISABILITIES (2010), available at <http://www.accpc.ca/ej-calc-01.htm> (outlining strategies to make courts accessible to people using alternative communications (AAC)). See generally *Tennessee v. Lane*, 541 U.S. 509 (2004) (holding that one particular individual had a right to physically access one particular court, but leaving open the question of whether any other persons with disabilities could gain relief when denied access to other justice elements, like witnesses or jurors).

301. See, e.g., CRPD, *supra* note 9, pmb., (e), arts. 1, 3 (requiring the full integration of persons with disabilities in all segments of society, ensuring “the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities” promoting respect for their inherent dignity, and including those persons with disabilities who have “long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”).

accessible locations with appropriate accommodations for those who may have learning, hearing, visual, or other disabilities.³⁰²

Collaboration should be fostered among women's rights groups, disabled persons organizations of women with disabilities, and other organizations and institutions working for peace, with a view toward including women with disabilities in the dialogue, strategy, and institution building.³⁰³

E. Expanding Data and Developing Field-Tested Inclusive Strategies

Data collection should be improved and expanded on the national and international levels regarding women with disabilities, including issues such as violence, education, employment, and health, as well as the situation of women with disabilities in conflict environments. Global data on persons with disabilities is currently unreliable, and baseline data for many issues, especially those concerning women with disabilities, is scarce or non-existent.³⁰⁴ This paucity of data on disability remains an obstacle to the effective formulation of disability-inclusive policies and programs as well as in the monitoring and evaluation of progress.³⁰⁵

Training materials and modules should be developed in collaboration with women with disabilities to enhance their skills and the skills of their disabled persons organizations in advocacy and understanding of the peace-building process. In addition, training materials and modules should also be developed for those working in post-conflict environments, to enhance their skills and to build awareness on the importance of inclusion of women with disabilities in peace-building processes. These modules and materials should be tested

302. See *id.* arts. 3(c), (f), 9.

303. See *id.* arts. 29, 32 (requiring the active promotion of "an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs," including "[p]articipation in non-governmental organizations and associations concerned with the public and political life of the country and in the activities and administration" and requiring international and national cooperation of State Parties and civil society); see also RANGITA DE SILVA DE ALWIS, *THE INTERSECTIONS OF THE CEDAW AND CRPD: PUTTING WOMEN'S RIGHTS AND DISABILITY RIGHTS INTO ACTION IN FOUR ASIAN COUNTRIES* (2010), available at http://www.wcwonline.org/component/page,shop.product_details/category_id,389/flypage,shop.flypage/product_id,1181/option,com_virtuemart/Itemid,175/ (discussing various projects to integrate women with disabilities into legislative and policy advocacy in Bangladesh, Nepal, Cambodia, and India).

304. See INT'L FED'N OF RED CROSS & RED CRESCENT SOCIETIES, *supra* note 70, at 95; see also HUMAN RIGHTS WATCH, *supra* note 115, at 6 (describing the minimal data on women with disabilities in Uganda).

305. See CRPD, *supra* note 9, art. 31.

in post-conflict environments before final publication and distribution, ensuring that all materials incorporate an empowerment model and include information on the CRPD, the CEDAW, and the United Nations Resolutions on “Women, Peace and Security.”³⁰⁶

VI. CONCLUSION

This article has described the situation of women with disabilities generally and in the conflict environment; reviewed the development of the legal framework for gender-sensitive peace building under UNSCR 1325 and the United Nations “Women, Peace and Security” framework; explored the intersection of the CRPD, the CEDAW, and the United Nations “Women, Peace and Security” framework as a basis for including women with disabilities in that framework; outlined current practices; explored some positive steps taken for inclusion; and recommended a strategy for change in policy and practice. Although it is clear that women and girls with disabilities have unique needs in the conflict environment (and despite the mandates of the CRPD, the CEDAW, and the United Nations “Women, Peace and Security” framework’s overarching theses of inclusion and gender awareness),³⁰⁷ the United Nations “Women, Peace and Security” framework has not included women with disabilities.

Women with disabilities are a part of all societies. Hence, they need to be a part of the solution in post-conflict peace building and to be able to shape how the post-conflict situation affects their lives. The justifications for the inclusion of women with disabilities are numerous. Fairness is the most obvious: women account for more than half of the population of the world,³⁰⁸ persons with disabilities are at least ten percent of the world’s population,³⁰⁹ and women with disabilities are more than half of the population of persons with disabilities.³¹⁰ Often in conflict environments, the population of persons with disabilities is even greater than ten percent (in some cases as high as twenty percent), and women comprise an even greater proportion of the population of persons with disabilities as a direct and indirect consequence of

306. See generally *Washington Group on Disability Statistics*, U.N. STATISTICS DIV. (Mar. 22, 2010), <http://unstats.un.org/unsd/methods/citygroup/washington.htm> (promoting and coordinating international cooperation by developing sets of general disability measures suitable for use in censuses, sample based national surveys, or other statistical formats).

307. See CRPD, *supra* note 9; CEDAW, *supra* note 10; G.A. Res. S-23/3, *supra* note 24.

308. ARNADE & HAEFNER, *supra* note 40, at 7.

309. *Factsheet on Persons with Disabilities*, *supra* note 39.

310. See *id.*

conflict.³¹¹ Therefore, it is only fair that they have meaningful roles as decision makers, given how greatly women and girls with disabilities have been affected. They deserve to be heard.

A. Why Is Inclusion Important?

This article considers two elements essential to inclusion—gender and disability.

Gender Mainstreaming: Under both the CEDAW and the United Nations “Women, Peace and Security” framework (the resolutions and policies that flow from UNSCR 1325), gender is generally viewed as socially constructed roles ascribed to women and men,³¹² as opposed to biological and physical characteristics, and often flows from stereotypes of women and men. Gender is a cross-cutting issue in peace and stability operations that affect everything from building housing, schools, bridges or wells, delivering humanitarian relief, reforming the security sector, demining, instituting human rights protections, establishing the rule of law, implementing decision-making processes, setting priorities for development activities, and so on.³¹³ A gendered perspective can help identify different vulnerabilities, needs, and interests of men and women, boys and girls, can help mainstream gender into planning and decision-making processes, and can maximize contributions to the stabilization process.

Disability Mainstreaming: Under the CRPD, disability is viewed through a social model, recognized as “an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.”³¹⁴ This social model of disability has important ramifications for peace building, because the CRPD recognizes:

[The] existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities, and that the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms . . . will result in their enhanced sense of belonging and in significant advances in the human, social and economic development of society and the eradication of poverty.³¹⁵

311. *See id.*

312. *See* CEDAW, *supra* note 10, art. 5(a). *See* S.C. Res. 1325, *supra* note 1.

313. *See supra* Parts I–II.

314. CRPD, *supra* note 9, pmb., (e).

315. *Id.* pmb., (m).

This social model of disability poses an alternative to the medical model of disability, asserting that persons with disabilities are disadvantaged not because of their impairments, but as a result of the limitations imposed by social, cultural, economic, and environmental barriers.³¹⁶ The advancement of persons with disabilities can most effectively be achieved through modifications to the environment utilizing the universal design approach, which promotes the equalization of opportunities for disabled persons and which benefits the society as a whole.³¹⁷ Disability mainstreaming will afford the same benefits as gender mainstreaming and has similar implications for the various stages and elements of peace building as outlined above.

This paper argues for the use of both gender and disability mainstreaming as predominant frameworks to discuss post-conflict peace building. The use of frameworks in discussions refer to the process of assessing the implications for women and men with and without disabilities of any planned action, including legislation, policies, or programs in all areas and at all levels. It is a strategy for making the concerns and experiences of women and men with and without disabilities an integral dimension of design, implementation, monitoring, and evaluation of policies and programs in all political, economic, and societal spheres, so that women and men with and without disabilities benefit equally, without perpetuation of inequality. The ultimate goal is to achieve gender equality and equality for persons with and without disabilities. It is important to note that this mainstreaming approach does not focus solely on women with disabilities, although women with disabilities would more often than not be the focus and beneficiaries of mainstreaming practices due to their disadvantaged position in many communities.

B. What Will Be Missed If Inclusion Is Ignored?

As nations rebuild their institutional frameworks and physical environments, many elements become part of this process. These may include the following: “equal access to appropriate and adequate food and nutrition, clean water, safe sanitation, shelter, education, social and health services, including reproductive health care and maternity care,”³¹⁸ as well as construction, and/or rehabilitation of homes and shelter, provision of a transportation and communication system, and addressing violence and abuse, including gender-specific abuse.

316. *See id.* art. 1.

317. *Id.* art. 2.

318. G.A. Res. S-23/3, *supra* note 24, ¶ 15.

Throughout this paper, specific issues of concern to women with disabilities have been highlighted. Some examples of what should be a part of any peace-building process, with particular relevance to women and girls with disabilities, include the following: women with disabilities are the poorest among the poor because of discriminatory employment practices; they are denied educational opportunities because education was not provided for girls, or school facilities were not accessible to them and programs were not designed to meet their needs; they are unable to travel from place to place because of the dangers of violence, which cannot be mitigated because they cannot afford assistive devices like wheelchairs or access transportation systems; they are often the last in the family to receive food because they are viewed as useless, and because they may be too indigent to afford food; they are more likely than men with disabilities or women without disabilities to experience domestic and other forms of violence, and are unaware of helpful services, or such services are not accessible to them; they are not able to receive health care services, including reproductive health care services, because these services are not in accessible locations (due to the fact that the availability of these services are communicated in ways that are not accessible to them), and because health care providers cannot communicate with them or believe they are asexual; they are unable to access the justice system, especially for sexual violence cases, either because the police and judges cannot communicate with them or do not find their testimony credible, or because they have no information on how to access the system; and they are sometimes unwilling to return to their former home communities because of the fear of notarization based on their disability, or because the shelter in the refugee camp was slightly more accessible than their former home.³¹⁹

Therefore, as programs are developed and implemented on these issues, as laws on human and legal rights are drafted, as political processes are established and implemented, as government institutions and policies are designed, and as new buildings, systems, and facilities are constructed post-conflict, women with disabilities want to assure that their needs are met, so that in the future these barriers in society are not further entrenched, and that the concerns of all men and women with and without disabilities are addressed. As a society rebuilds itself after conflict, there are many demands and competing priorities. If women with disabilities do not have a seat at the table, their human

319. *See supra* Part I.

rights and other demands and priorities will most likely be ignored or bargained away. There is no one better than women with disabilities themselves to give voice to these issues, and they can only do so with a seat at the table. The approach outlined in this article to more specifically include women with disabilities in the United Nations “Women, Peace and Security” legal and policy framework, as well as the other institutional and process recommendations, would go a long way towards achieving the human rights of women with disabilities in post-conflict peace-building and reconciliation processes, consistent with the legal requirements and spirit of the CRPD, the CEDAW, and the United Nations Resolutions on “Women, Peace and Security.”