

# Disability Inclusion in Human Rights and Development

Harvard Law School Project on Disability  
Summer Session 2017



# Agenda

- Background: Disability Inclusive Development
- Conceptual Framework & Points of Departure
- Current Approaches: Disability Inclusion in Development & Disability Inclusion in Humanitarian Action
- Discussion



# Threshold Questions

- ▶ What is disability?
- ▶ Who is a person with a disability?
- ▶ What is the relationship between development and disability?

# Key Concepts

- ▶ “Persons with disabilities” include individuals “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.”
- ▶ Recognizes that disability is not a narrowly defined medical issue as traditionally emphasized, but a manifestation of social and environmental barriers that inhibit full inclusion and participation, including in development.
- ▶ Diversity of disability recognizes that disability is not restricted to one type of impairment, such as physical disability. Disability is heterogenous and persons with disabilities have differentiated needs in relation to barrier-free access.
- ▶ Disability is intersectional.
- ▶ Source: Convention on the Rights of Persons with Disabilities, art. 1. See *also* World Report on Disability (2011)

# Background on Disability Inclusive in Development: The Broad Context

- ▶ 15% of the world's population have a disability – most of them live in developing countries. Disability is diverse NOT homogenous.
- ▶ Persons with disabilities face higher rates of poverty compared to other persons.
- ▶ Significant over-representation among extreme poor.
- ▶ Persons with disabilities face serious obstacles in attaining the benefits of economic development and escaping poverty on account of:
  - ▶ discrimination in employment;
  - ▶ limited access to transport; and
  - ▶ lack of access to the resources that can facilitate self-employment and livelihoods.

# Broad Law and Policy Context for Disability Inclusive Development

- ▶ Convention on the Rights of Persons with Disabilities, Art. 5 (Non-discrimination); Art. 32 and related articles
  - ▶ Impetus for bilateral donors to adopt disability policies, guidelines strategies, frameworks
    - ▶ USAID Disability Policy (2004) and currently under review
    - ▶ DFID Disability Framework
    - ▶ DFAT Strategy for Disability Inclusive Development
    - ▶ BMZ Strategy Paper
    - ▶ Italian Cooperation
  - ▶ Impetus for multilateral donors to adopt disability policies, guidelines strategies, frameworks
    - ▶ UN Development Group Guidelines on Disability Inclusion
    - ▶ UNDP (Independent Evaluation Office Global Assessment on Disability Inclusive Development)
    - ▶ IASC (UNICEF & HI) Task Team for Development of Guidelines on Disability Inclusion in Humanitarian Action



# Disability Inclusion in the Sustainable Development Goals



- ▶ Disability inclusion on the 2015-2050 Development Agenda
- ▶ 7 targets address persons with disabilities in education, accessible schools, employment, accessible public spaces and transport, empowerment and inclusion, and data disaggregation.
- ▶ 6 targets refer to persons in vulnerable situations, which are understood to include persons with disabilities.
- ▶ Universal targets must also be achieved for persons with disabilities.
- ▶ 2 other targets address discrimination, a major cause of inequality and unequal access to opportunities and services for persons with disabilities

[http://www.un.org/disabilities/documents/sdgs/disability\\_inclusive\\_sdgs.pdf](http://www.un.org/disabilities/documents/sdgs/disability_inclusive_sdgs.pdf)

# Disability Inclusion and the World Bank

- ▶ Supporting the mainstreaming of disability in WB activities:
  - ▶ Including disability in the Bank's policies, operations and analytical work
  - ▶ Building internal capacity to support clients in implementing inclusive development programs
- ▶ Twin-track approach to disability-inclusion:
  - ▶ Ensuring that persons with disabilities participate in and benefit from operations and projects across the WB in general
  - ▶ Promoting targeted projects responding to specific sectors and gaps directly related to persons with disabilities

# Disability Inclusion in the ESF & Directive

- ▶ The ESF and Directive:
  - ▶ Strengthen the Bank's commitment to the identification of vulnerable and disadvantaged groups as part of environmental and social assessment with **specific recognition of persons with physical, mental or other disabilities.**

# ESF Vision Statement on Inclusion & Legal Framework for Disability Inclusion

- ▶ Inclusion means empowering all people to participate in, and benefit from, the development process.
- ▶ Inclusion encompasses policies to promote equality and nondiscrimination.
- ▶ Inclusion as improving the access of all people to services and benefits such as education, health, social protection, infrastructure, affordable energy, employment, financial services and productive assets.
- ▶ *ESF. A Vision for Sustainable Development, para. 3.*
- ▶ Full and effective participation & inclusion in society.
- ▶ Identify and modify or abolish laws & practices that constitute disability discrimination.
- ▶ Consultation and active involvement of persons with disabilities in decision-making.
- ▶ Access, on an equal basis with others, to the physical environment, to transportation, to information and communications, and to other facilities and services open or provided to the public, both in urban and in rural areas. This includes the identification and elimination of obstacles and barriers to accessibility.
- ▶ *Convention on the Rights of Persons with Disabilities, arts. 3, 4, 5, 9*



# ESS1 – Discrimination as Social Risks and Impacts

- ▶ Social risks and impacts under ESS1 include “any **prejudice** or **discrimination** towards individuals or groups in providing **access to project benefits**, particularly in the case of those who may be disadvantaged or vulnerable.”

# Directive – Explicit Recognition of Persons with Disabilities

- ▶ Persons with disabilities fall within the parameters of individuals or groups who may be:  
“disadvantaged or vulnerable.”

- ▶ World Bank Directive, Addressing Risks and Impacts on Disadvantaged or Vulnerable Individuals or Groups, August 4, 2016.

# Borrower Guidance on Disability Discrimination

- ▶ It prohibits both intentional and overt (direct) discrimination and non-intentional (indirect) discrimination or exclusion on the basis of disability.
- ▶ Indirect discrimination arises from practices which are neutral in nature but discriminatory in effect. Usually, these practices are embedded in institutional policies, norms and standards.
- ▶ Persons associated with persons with disabilities, such as family caregivers or children who have parents with disabilities, are protected from discrimination on the basis of disability on the basis that the CRPD protects against “all forms of discrimination.”

# Borrower Guidance on Non-discrimination & Disability in Environmental and Social Assessments

- ▶ The **duty to provide reasonable accommodation** means an essential practice to alleviate the disadvantage that may arise for people with disabilities in the application of conventional requirements or systems.
- ▶ Reasonable accommodation aims to bring about **adaptation and change of the environment** in order to remedy or mitigate the detriment associated with the interaction between environment and impairment.
- ▶ Reasonable accommodation is an individual measure.
- ▶ Other **positive measures** associated with ensuring non-discrimination include **accessibility** measures, or “**universal access**” in the ESF.



# ESS1 & Directive



- ▶ TOR Review
- ▶ Identification: Who in the project context? How to identify? What barriers to identification?
- ▶ Risk Analysis: What risks? What risk factors?
- ▶ Differentiated measures: What types of measures in relation to persons with disabilities? What reasonable accommodations? What accessibility considerations? What other supports and positive measures?

# Mitigation Hierarchy

- ▶ (1) Anticipate and avoid risks and impacts;
- ▶ (2) Where avoidance is not possible, minimize or reduce risks and impacts to acceptable levels;
- ▶ (3) Once risks and impacts have been minimized or reduced, mitigate; and
- ▶ (4) Where significant residual impacts remain, compensate for or offset them, where technically and financially feasible.

## Infrastructure & Physical Barriers

**Identify potential hazards or inaccessible design dimensions.**

**Address hazards/alter design to minimize risk.**

**Introduce safety measures/accessibility options.**

**Offer alternatives/compensate.**

# Transport – Rio City Project & Lima Metro Project



- ▶ 1994 - Rio City Project 1 initiated. DPO lobbied for changes to address accessibility issues.
- ▶ Project adopted a Universal Design principle, contracted Independent Living Center of Rio de Janeiro (CVI-Rio), with significant experience in addressing accessibility, to assist with the project (e.g., constructed ramps at sidewalks to facilitate movement for people with disabilities, and for those pushing baby carriages and grocery carts. Texture coded pathways were constructed for visual impaired road users. Street fixtures, such as lamp posts, sign posts, litter baskets, benches, etc., were repositioned and resized to meet accessibility standards).
- ▶ Rio City Project 2 used the experience in addressing universal accessibility to better incorporate accessibility issues at design stage.



# Resettlement



- ▶ (1) Anticipate and avoid risks and impacts;
- ▶ (2) Where avoidance is not possible, minimize or reduce risks and impacts to acceptable levels;
- ▶ (3) Once risks and impacts have been minimized or reduced, mitigate; and
- ▶ (4) Where significant residual impacts remain, compensate for or offset them, where technically and financially feasible.

## Resettlement

**Identify affected persons with disabilities/families and risks and impacts. (Anticipate challenges in identification)**

**Plan and consult with affected households to minimize risk. (Anticipate the need for measures to facilitate communication where required)**

**Provide specific measures to mitigate risks to households. (e.g., Accessibility planning)**

**Compensate to cover extra resource needs (accessibility measures in new housing, costs related to making new environment accessible).**



# ESS10 - 3 Domains of inclusive engagement

- ▶ **Disclosure:** Receiving information on an equal basis with others, including by **providing information in accessible formats and technologies** appropriate to different kinds of disabilities in a **timely manner** and without additional cost; accepting and **facilitating the use of sign languages, Braille, augmentative and alternative communication.**
- ▶ **Stakeholder engagement:** Designing and implementing processes that are **accessible** to stakeholders with disabilities; anticipating and taking mitigating measures to avoid barriers; identification & removal of barriers to participation.
- ▶ **Grievance redress:** Non-discrimination and equality of access requires Borrowers to ensure that persons with disabilities have **access to all phases of the grievance** process in a timely fashion. It further requires that such **access not be disproportionately delayed** relative to others, for instance in order to receive reasonable accommodations.

## Topic 2 - Disability Inclusion in Humanitarian Action

# Background on Disability Inclusion in Humanitarian Action

- ▶ Persons with disabilities face higher rates of poverty compared to other persons.
- ▶ Significant over-representation of persons with disabilities among the extreme poor.
- ▶ Stigma and discrimination writ large – lack of participation
- ▶ Disproportionately impacted by personal violence
- ▶ Inaccessibility of health and rehabilitation services
- ▶ Serious obstacles in attaining the benefits of economic development and escaping poverty on account of:
  - ▶ discrimination in education and employment;
  - ▶ limited access to transport; and
  - ▶ lack of access to resources that facilitate self-employment & livelihoods.

▶ **Risks are reinforced during humanitarian crisis.**

# Accounting for Persons with Disabilities in IHL

## Law of the Hague

- ▶ Early IHL instruments prohibiting certain weaponry on the basis of unnecessary suffering - Left out attention to supporting survivors.
- ▶ Later gave way to treaties that couple Hague prohibitions with protections and support for survivors, along with access to information (e.g. mine risk education) that can prevent traumatic injury – Mine Ban Treaty (6.3)

## Law of Geneva

- ▶ Persons with disabilities are recognized as a specifically protected group in IHL
- ▶ Recognizes that special respect and protection are to be accorded to persons with disabilities (and other vulnerable or disadvantaged groups)
- ▶ Language used to describe disadvantage on the basis of disability is not uniform and, not surprisingly generally depart from modern conceptualizations of disability under human rights law.




# Other CRPD Antecedents to Disability Inclusion in Situations of Risk

- ▶ World Programme of Action concerning Disabled Persons (1982)
- ▶ Disability and IHL in Customary International Law (ICRC)
- ▶ Domestic standards and guidelines (not much)



# CRPD and Post-CRPD Developments

- ▶ CRPD adoption (2006)
- ▶ European Parliament Resolution, 4 September 2007 on natural disasters, art. 19, stressing: "The need to take special care in cases of natural disasters of the specific needs of people with disabilities in all actions undertaken using the Civil Protection Mechanisms."
- ▶ IASC Operational Guidelines (2006) and Field Manual on Human Rights Protection in Situations of Natural Disaster (2008)
- ▶ Sphere Project, Humanitarian Charter and Minimum Standards in Humanitarian Response (2011)
- ▶ Charter on Inclusion of Persons with Disabilities in Humanitarian Action (2015)
- ▶ Sendai Framework for Disaster Risk Reduction) Action Plan (2015)
- ▶ UNICEF, General Guidance: Including Children with Disabilities in Humanitarian Action (2017) (part of 6 part series)



How to account for  
enhanced risk to persons  
with disabilities in  
humanitarian crises?

**EXISTING FRAMEWORKS**



# CRPD Article 11 – Risk & Protection Frame

- ▶ Derives from the risk management – now risk reduction – frame.
- ▶ Challenge is to inform these frames with human rights-based approaches and principles. This includes not only in process of development of guidelines, but in roll out through dissemination in accordance with the CRPD implementation and training as well.
- ▶ Full and effective participation & inclusion in society - Consultation and active involvement of persons with disabilities in decision-making.
- ▶ Identify and modify or abolish practices that constitute disability discrimination.
- ▶ Access, on an equal basis with others, to the physical environment, to transportation, to information and communications, and to other facilities and services open or provided to all in humanitarian action, both in urban and in rural areas. This includes the identification and elimination of obstacles and barriers to accessibility.



# Disability Inclusive Disaster Risk Reduction Principles

- ▶ Participation
- ▶ Accessibility and Universal Design
- ▶ Non-discrimination and Equality
- ▶ Coordination and Collaboration



# Assessing Risk



- ▶ Identification: Who needs protection? How to identify persons with disabilities at risk? What barriers to identification?
- ▶ Risk Analysis: What risks? What risk factors?
- ▶ Differentiated measures: What types of measures in relation to persons with disabilities? What reasonable accommodations? What accessibility considerations? What other supports and positive measures?
- ▶ **Non-discrimination/no adverse distinction in accessing humanitarian assistance for persons at risk**
- ▶ **Identification of barriers as a measure of mitigating adverse impacts**
- ▶ **Specific measures to avoid, minimize mitigate risks**

# Guidance on Non-discrimination & Disability in Humanitarian Action

- ▶ Operationally, the **duty to provide reasonable accommodation** is an essential practice to alleviate the disadvantage that may arise for people with disabilities in humanitarian operations.
- ▶ Reasonable accommodation aims to bring about **adaptation and change of the environment** in order to remedy or mitigate the detriment associated with the interaction between environment and impairment.
- ▶ Reasonable accommodation is an **individual** measure.
- ▶ Other **positive measures** associated with ensuring non-discrimination include **accessibility** measures, or “**universal access**” employing **Universal Design** measures.

# Specific and Differentiated Measures

**“Specific” measures may be required to facilitate participation**

Participatory  
processes with  
access measures



Accessible  
Site Selection



Individual  
Accommodations



**Differentiated measures may be required to mitigate adverse impacts.**





# Emerging Themes of Desk Review

- ▶ Discrimination/adverse distinction in accessing humanitarian assistance
- ▶ Barriers across many domains, leading to accessibility challenges
- ▶ Participation and inclusion
- ▶ Data collection challenges
- ▶ Diversity of disability
- ▶ Intersectionality presents as a challenge
- ▶ Hard to reach populations of persons with disabilities – those who face heightened risk and have elevated protection needs.
- ▶ Ongoing need for more sector specific information to increase the evidence base.
- ▶ Transition from emergency response into recovery – post conflict/post disaster
- ▶ Accounting for all those affected and at risk in the context of disability inclusion – family members, carers.

# Different Approaches in Existing Guidelines/Related Tools

## IASC GBV Guidelines

Introduction (scope of problem, international legal obligations)

Background to Thematic Area Guidance (guiding principles, approaches)

**Thematic Guidelines**

**Essential Actions**

**Assessing GBV throughout the programme cycle**

**Monitoring and Evaluation (with indicators)**

Key Resources

Additional Resources

Annexes

## UNICEF Guidance: Including Children with Disabilities in HA

Introduction

Outlining the Impacts

Identifying Exclusion

Frameworks/approaches/programmatic actions

**Preparedness**

**Response and Early Recovery**

**Recovery and Reconstruction**

Practical Tips

Glossary

Key Resources

Bibliography

## Women Facing War (ICRC)

Introduction/Background

Assessing Needs of the Civilian Population with a Focus on Women

**Overview of the Problem**

**Review of International Law**

**ICRC's Operational Response**

**Key Points**

Detention and Internment

Conclusions

# Discussion

