PART III: CRITICAL SOCIAL AND ECONOMIC ISSUES OF DEVELOPMENT AND
              HUMAN RIGHTS.

19. Disability.

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Introduction

The accommodation of persons with disabilities in development is beginning to emerge as a salient issue for inclusive, rights-based development, particularly given the latest data showing that this segment of the global population now numbers some 1 billion individuals.[1] Commentators stress that development policies have failed to account for persons with disabilities, ambiguous domestic frameworks have not clarified the application of disability discrimination proscriptions to foreign assistance, existing standards make only passing reference to disability in a laundry list of vulnerable beneficiaries of development assistance without detailing how inclusion should happen, and finally, practical programming either does not consider disability in its implementation or reinforces segregation and harmful practices.[2] Scholars working from a human rights perspective emphasize that the invisibility of disability from development programming is antithetical to human rights principles, undermines the right to development and engenders great harm to individuals with disabilities.[3]

The Convention on the Rights of Persons with Disabilities (CRPD or Convention)[4] is serving as the impetus for the transformation of development policy through its international

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[1] *See* "World Report on Disability," World Health Organization & World Bank, accessed January 13, 2013, http://whqlibdoc.who.int/publications/2011/9789240685215_eng.pdf.

[2] *See, e.g.,* Amy T. Wilson, "The Effectiveness of International Development Assistance American Organizations to Deaf Communities in Jamaica," *American Annals of the Deaf* 150 (2005): 292-304; Janet E. Lord, Michael Waterstone, & Michael A. Stein, "Disability Inclusive Development and Natural Disasters," in *Law and Recovery From Disaster: Hurricane Katrina*, ed. Robin Paul Malloy (Burlington, VT: Ashgate Publishing Company, 2008), www.siteresources.worldbank.org/DISABILITY/Resources/PublicationsReports/Disability_and_Intl_Cooperation.pdf.; Nora Groce et al., *HIV/AIDS and Disability: Capturing Hidden Voices* (New Haven, Connecticut: World Bank Group/Yale School of Public Health, 2009), http://globalsurvey.med.yale.edu.

[3] Michael Ashley Stein, Charlotte McClain-Nhlapo & Janet E. Lord, "Disability Rights, the MDGs and Inclusive Development," in *Millennium Development Goals and Human Rights: Past, Present and Future*, ed. Malcolm Langford (Cambridge: Cambridge University Press, 2012).

[4] Convention on the Rights of Persons with Disabilities, G.A. Res 61/106, U.N. Doc A/RES/61/106 (Dec. 13, 2006).

cooperation mandate and framework for inclusion in key areas relevant for inclusive development.[5] States Parties to the CRPD, along with multilateral donors and some non-party bilateral donors, are developing disability-inclusive development policies, and are laboring to create effective operational guidelines that reveal what disability-inclusion means and how it can be achieved. Multilateral donors are likewise assessing the disability inclusiveness of their work, with the Convention triggering a mandate for all UN agencies and setting an example for other intergovernmental organizations to do so.[6] Common to these efforts is the understanding that for development assistance to align with a human rights-based approach, it must include the participation by persons with disabilities and their representative organizations throughout the development cycle. At the same time, it is well understood that persons with disabilities and their representative organizations must proactively engage in development assistance and build their capacity to be effective implementers in development projects.[7]

This chapter first reviews the emergence of a disability and development narrative in international law and policy. Second, it examines the conceptualization of disability in the context of international human rights law and development cooperation. Third, it considers bilateral development policies insofar as they address disability inclusion. The final part considers the mutually reinforcing narratives of the CRPD and the Declaration on the Right to Development[8] and concludes with thoughts on the future of disability rights-inclusive development.

Emergence of a disability and development narrative

In 1982, the launch year of the International Decade on Disabled Persons, the World Programme of Action Concerning Disabled Persons[9] was adopted by the General Assembly as a

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[5] Ibid., art. 32.

[6] Janet E. Lord et al., "Disability and International Cooperation and Development: A Review of Policies and Practices" (2010), www.siteresources.worldbank.org/DISABILITY/Resources/PublicationsReports/Disability_and_Intl_Cooperation.pdf.

[7] *See* Janet E. Lord & Michael Ashley Stein, "The Domestic Incorporation of Human Rights Law and the United Nations Convention on the Rights of Persons with Disabilities," *University of Washington Law Review* 83 (2008): 449.

[8] *See* Declaration on the Right to Development, G.A. Res. 41/128, at 183, Annex, U.N. GAOR, 41st Sess., Supp. No. 53, U.N. Doc. A/RES/41/128, Dec. 4, 1986.

[9] World Programme of Action Concerning Disabled Persons, G.A. Res. 37/52, at 185, U.N. GAOR, 37th Sess., Supp. No. 51, U.N. Doc. A/RES/37/52, Dec. 3, 1982.

means of encouraging national level programs to achieve equality for people with disabilities.[10] The World Programme, among other things, urges organizations within the UN system to "explore, with the Governments to which they are accredited, ways of adding to existing or planned projects in different sectors, components that would respond to the specific needs of disabled persons."[11] Among its core objectives is to ensure the full participation of persons with disabilities in social life and national development.[12] Although many of its paragraphs reflect an outmoded and paternalistic disability perspective that has been superseded by the socio-contextual understanding of disability and rights-based orientation expressed in the CRPD, the Programme signals an early nod to incorporating a disability perspective into international development.

The adoption of the World Programme was followed by the 1993 adoption of the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities by the General Assembly.[13] This instrument was designed to serve as a blueprint for policy-making and provide a basis for technical and economic cooperation among states.[14] Rule 21 of the Standard Rules specifically addresses the responsibility of States in the realm of technical and economic cooperation and thus may be regarded as an important antecedent to Article 32 of the CRPD. In addition, Rule 22 specifies the need for States to participate actively in international cooperation concerning policies for the equalization of opportunities for persons with disabilities.[15] The

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[10] Ibid., 87-90 (providing, *inter alia*, that "Member States should urgently initiate national long-term programmes to achieve the objectives of the World Programme of Action; such programmes should be an integral component of the nation's general policy for socio-economic development.").

[11] United Nations General Assembly, Resolution 47/3, "International Day of Disabled Persons," ¶ 173, Oct. 14, 1992, http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/47/3&Lang=E&Area=RESOLUTION (emphasis added).

[12] Ibid., 170-183. Its three chapters provide an analysis of principles, concepts and definitions relating to disabilities; an overview of the world situation regarding persons with disabilities; and set out recommendations for action at the national, regional and international levels. It makes reference to the human rights of persons with disabilities and also contains detailed provisions on technical and international cooperation, including development assistance and regional and bilateral assistance.

[13] See United Nations General Assembly, "UN Standards Rules for the Equalization of Opportunities for Persons with Disabilities," 85th Plenary Meeting, ¶ 1, Part IV, A/Res/48/96, Dec. 20, 1993, http://www.un.org/documents/ga/res/48/a48r096.htm.

[14] Ibid., ¶ 1, Part IV. The Standard Rules provide general guidance on how to take into account the disability dimension in technical and economic cooperation and, while non-binding, the Standard Rules represented a significant step in outlining a comprehensive framework for addressing the rights of persons with disabilities. The Standard Rules reaffirm the principle of inclusive policies, plans and activities and specify: "The needs and concerns of persons with disabilities should be incorporated into general development plans and not be treated separately." Ibid., Rule 9.

[15] Ibid., Rule 22.

Standard Rules, while non-binding, nevertheless served to inform State policies and practices and, in some instances, provided the framework for bilateral donor policies on disability.[16]

Notwithstanding the recursive relationship between disability and poverty and the apparent recognition of this linkage by the international community in international instruments, States did not include disability in the framework of the Millennium Development Goals (MDGs).[17] This lacuna exists despite evidence-based research indicating that the MDGs cannot and will not be achieved without including disabled populations.[18] In December 2008, the UN General Assembly adopted a resolution, *Realizing the Millennium Development Goals for persons with disabilities through the implementation of the World Programme of Action concerning Disabled Persons and the Convention on the Rights of Persons with Disabilities.*[19] This was followed by a Report of the Secretary-General in July 2009.[20] The report focuses on the situation of persons with disabilities with respect to the realization of the MDGs and on lessons learned and synergies and complementarities achieved, based on the implementation of the World Programme of Action, the Standard Rules and the CRPD. The UN Secretariat for the CRPD[21] in collaboration with the WHO organized the *Expert Group Meeting on Mainstreaming Disability in MDG Policies, Processes and Mechanisms: Development for All.*[22] The meeting

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[16] See, e.g., GTZ. "Disability and Development: A Contribution to Promoting the Interests of Persons with Disabilities in German Development Cooperation." 2 (2006). Accessed January 13, 2013. http://www2.gtz.de/dokumente/bib/06-0868.pdf.

[17] See: Millennium Development Goals," United Nations Development Programme, accessed January 13, 2013, http://www.undp.org/content/undp/en/home/mdgoverview.html.

[18] United Nations, "Disability and the Millennium Development Goals, Expert Group Meeting on Mainstreaming Disability in Millennium Development Goals (MDGs) Policies, Processes and Mechanisms: Development for All" (WHO, Geneva, April 14-16, 2009), http://www.un.org/disabilities/default.asp?id=1470; United Nations General Assembly, Resolution 63/150, "Realizing the Millennium Development Goals for Persons with Disabilities Through the Implementation of the World Programme of Action Concerning Disabled Persons and the Convention on the Rights of Persons with Disabilities Resolution," Dec. 18, 2008, http://www.un.org/disabilities/default.asp?id=1463; United Nations General Assembly, Document A/64/180, "Preparations for the Twelfth United Nations Congress on Crime Prevention and Criminal Justice," Mar. 26, 2010, http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/64/180.

[19] GA Res A/RES/63/150, Dec. 18, 2008.

[20] Report of the Secretary-General, Realizing the Millennium Development Goals for Persons with Disabilities through the implementation of the World Programme of Action concerning Disabled Persons and the Convention on the Rights of Persons with Disabilities, A/64/180, July 2009 [MDG Report], http://www.dcdd.nl/data/1252922862208_MDG%20and%20Disability%2064.pdf.

[21] The Secretariat is jointly staffed by of the United Nations Department of Economic and Social Affairs (UNDESA) and the Office of the United Nations High Commissioner for Human Rights (OHCHR).

[22] See United Nations, "Disability and the Millennium Development Goals, Expert Group Meeting on Mainstreaming Disability in Millennium Development Goals (MDGs) Policies, Processes and Mechanisms: Development for All" (WHO, Geneva, April 14-16, 2009), http://www.un.org/disabilities/default.asp?id=1470.

reviewed existing policy frameworks, resources and tools, and mechanisms for mainstreaming disability in MDG processes and provided policy recommendations. While many of the conclusions of the Expert Group meeting remain valid, the policy framework for the post-2015 development agenda will be Sustainable Development Goal, as proposed following a three-year process that began with the Rio+20 Conference in 2012 and concluded with the proposals of the Working Group of the General Assembly, submitted in July 2014 [TEXT TO BE ADDED IF AND WHEN THE RESOLUTION IS ADOPTED: and adopted by the General Assembly in its resolution 69/ … of … 2015]. Among the 17 sustainable development goals for 2015 to 2030 proposed by the Working Group, disabilities are referred to in the context of those relating to equal access to all levels of education and vocational training, full and productive employment and decent work, reduction of inequalities through social, economic and political inclusion, safe and sustainable cities and human settlements, and capacity building in developing courtiers.23

Disability and development in the CRPD framework

On December 19, 2001, the UN General Assembly, with resolution 56/168, established an Ad Hoc Committee "to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities," and further, such proposals were to be "based on the holistic approach in the work done in the fields of social development, human rights and non-discrimination."[24] The work of the Ad Hoc Committee resulted in the adoption of the CRPD by the UN General Assembly on December 13, 2006 and the CRPD entered into force on May 3, 2008. The CRPD drafters sought to account for the absence of persons with disabilities and their representative organizations or Disability People's Organisations (DPOs) in development policies and processes by inserting language into the treaty mandating the inclusion of persons with disabilities in international cooperation activities, development programs, and poverty reduction schemes.[25]

Understanding disability beyond medical or charitable perspectives

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[23] Report of the Open Working Group of the General Assembly on Sustainable Development Goals, UN Doc. A/68/970, 12 August 2014, goals 4, 8. 10, 11 and 17.

[24] Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities, Third Committee, 56 Sess., Agenda Item 119(b), U.N. Doc. A/C.3/56/L.67/Rev.1 (28 Nov. 2001) [emphasis added].

[25] CRPD, *supra* note 4 at arts. 4, 28 & 32.

The CRPD was drafted from the perspective of a socio-contextual understanding of disability, according to which disability is understood not as individual deficit and pathology but as systemic or societal deficit.[26] In other words, disability as contextualized within the CRPD exposes the barriers that restrict the participation of persons with disabilities in society, barriers that are, according to this perspective, socially constructed. The text of the CRPD thus describes disability "as an evolving concept" that "results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others," and not as an inherent characteristic.[27] This understanding supports the recognition of persons with disabilities as human rights subjects, active agents and equal holders of rights.[28]

The significance of the shift from understanding disability as medical pathology or charitable concern to a human rights issue is important for the purposes of reorienting attention to the fulfillment of all rights – whether civil, political, economic, social and cultural. Charitable impulses rooted in pity as opposed to rights and active agency likewise predominant in the work of too many development and humanitarian programming organizations, including the faith-based variety that rely on poster-child, pity-inspired imaging and sob stories to drive their fund raising efforts for disability-related and indeed other types of programming.[29] The shift in perspective reflected in the CRPD makes salient the experience of persons with disabilities as legitimate stakeholders in participatory processes, including in development. It also helps to expose institutional and political bias against persons with disabilities as a form of discrimination. As such, this perspective supports the broad conceptualization of marginalized groups, including persons living in poverty, as active agents in the process of development.

Addressing disability inclusion in development

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[26] See CRPD, *supra* note 4 at preamblular para. (e). On the social model of disability see generally Michael Oliver, *Understanding Disability: From Theory to Practice* (Basingstoke: McMillan, 1996); Carole Thomas, *Female Forms: Experiencing and Understanding Disability* (Buckingham: Open University Press, 1999); Tom Shakespeare, *Disability Rights and Wrongs* (London: Routledge, 2006); and Mairian Corker and Sally French (eds), *Disability Discourse* (Buckingham: Open University Press, 1999).

[27] See CRPD, *supra* note 4 at pmbl. (e).

[28] Ibid., pmbl. & art. 1. There is a parallel with the Declaration on the Right to Development. That instrument positions poor countries not as pathological, but rather being subjected to a global economic system that impedes their ability to claim their rights.

[29] Disability studies scholars have thoughtfully analyzed charitable campaigning that invokes paternalism and pity.

The CRPD, in contrast to other instruments on disability or human rights, recognizes that people with disabilities often face the risk of poverty and that many of them experience multiple forms of discrimination based on economic or other status.[30] It underscores "the critical need to address the negative impact of poverty on persons with disabilities."[31] Article 32 requires States Parties to the Convention to cooperate internationally through partnerships with other States and/or with relevant international and regional organizations and civil society in support of national measures to give effect to the CRPD.[32] Further, Article 32 makes it clear that all international cooperation efforts, including international development programmes, should be accessible and fully inclusive of people with disabilities from design through implementation.[33]

In light of the foregoing, Article 32, together with the articles of general application relevant for the interpretation of Article 32 and specific provisions in the areas of education,[34] employment,[35] living in the community,[36] accessibility,[37] health,[38] access to justice,[39] among others,[40] have important implications, not only for States Parties and their international donor agencies, but for implementing partners of foreign assistance programs as well. These CRPD provisions provide a framework for international development programs to further advance the rights set forth in the CRPD and to promote best practice models on inclusive development programming.

By ratifying State Parties are legally bound to implement the CRPD,. The monitoring and implementation framework of the CRPD is an important vehicle for assessing and following closely the inclusive development vision of the Convention. The Committee on the Rights of Persons with Disabilities is the body of independent experts that monitors implementation of the

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[30] Ibid., preamblular ¶ (p).
[31] Ibid., preamblular ¶ (t).
[32] Ibid., art. 32(1).
[33] Ibid., art. 32.
[34] Ibid., art. 24.
[35] See CRPD, *supra* note 4, at art. 27.
[36] Ibid., art. 19.
[37] Ibid., art. 9.
[38] Ibid., art. 25.
[39] Ibid., art. 13. Justice sector training, therefore, must have a disability component: "In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff." *Ibid.,* art. 13(2).
[40] See CRPD, *supra* note 4, at art. 8-30.

Convention by States Parties. The Conference of States Parties (COSP),[41] created within the framework of the CRPD, meets regularly to facilitate its implementation and serves as a forum for dialogue and sharing best practices.[42]

The CRPD expressly recognizes that international cooperation supports national efforts to effectively implement States Parties' obligations.[43] States Parties are to cooperate internationally through partnerships with other States, and/or with relevant international and regional organizations and civil society in support of national measures to give effect to the CRPD. Specifically, Article 32 identifies a range of measures that States can take within the framework of international cooperation which include *inter alia*: (1) "capacity building, including through the exchange and sharing of information, experiences, training programs and best-practices"; (2) research programs and the facilitation of access to scientific knowledge; and (3) technical and economic assistance, including the facilitation of access to accessible and assistive technologies. In addition, Article 32 also states, "International cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities," thus Article 32 has important provisions not only for State Parties, but also for bilateral and multilateral development partners.

Derived from the CRPD, disability-inclusive development may be defined as development that meaningfully includes persons with disabilities as both actors and beneficiaries, and accommodates the diversity of disability through reasonable accommodation and accessibility modifications. Disability-inclusive development can be achieved by disability-specific initiatives, by adding disability-specific components to development programs, by fully inclusive

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[41] Ibid., art. 40.

[42] Thus, for example, the Mine Ban Treaty implementation process includes regular meetings of States Parties which have provided an important forum for the reporting on and sharing of best practices in Mine Ban Treaty implementation, including, for example, programming and expenditures for landmine survivors assistance. United Nations, "Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, at art. 9, 2056 U.N.T.S. 241, 36 I.L.M 1507 (1997) Sept. 18, 1997, http://www.unog.ch/80256EDD006B8954/(httpAssets)/8DF9CC31A4CA8B32C12571C7002E3F3E/$file/APLC+English.pdf.

[43] Ibid., art. 32(1) ("States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities.").

programming, designed to include disability concerns into all development processes, or by a combination of these approaches.

Monitoring disability inclusion under the CRPD

The CRPD stands out among core human rights conventions for its inclusion of a specific provision on data and statistics. Article 31 on disability data and statistics serves as an implementation facilitator insofar as it requires a State Party to collect data for the express purpose of implementing the rights set forth in the Convention. Furthermore, its monitoring mechanism reinforces the importance of civil society participation as an element of monitoring at the national level. Article 33 creates a tri-partite system of monitoring at the national level that accords roles to government, independent national human rights institution(s) and civil society.

Bilateral policies of disability inclusive development

As international disability instruments started to reflect a disability sensibility within the context of international cooperation and development assistance, in some instances, bilateral development agencies, particularly those with developed disability law and policy frameworks, began to address disability inclusion.[44] The US Agency for International Development (USAID) was among the first bilateral donors to adopt a disability-specific policy.[45] In 1997, USAID issued *USAID Disability Policy Paper*, a non-binding guidance note[46] that had, as its objective, the avoidance of "discrimination against people with disabilities in programs which USAID funds and to stimulate an engagement of host country counterparts, governments, implementing organizations and other donors in promoting a climate of nondiscrimination against and equal opportunity for people with disabilities."[47] It further sought "to promote the inclusion of people with disabilities both within USAID programs and in host countries where USAID has programs."[48]

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[44] *See* Lord, *supra* note 6.

[45] "Disability Policy:, USAID, http://transition.usaid.gov/about_usaid/disability/policies.html, last visited Jan. 13, 2013). This was prompted by pressure from two reports that detailed failures in disability inclusion in U.S. foreign assistance. General Accounting Office, GAO/ NSIAD-91-82 Foreign Assistance: Assistance to Disabled Persons in Developing Countries (February 15, 1991), http://pdf.usaid.gov/pdf_docs/PCAAA224.pdf.

[46] "USAID Disability Policy Paper," USAID, (Sept. 12, 1997), http://pdf.usaid.gov/pdf_docs/PDABQ631.pdf.

[47] Ibid.

[48] Notably, the 1997 Policy Paper takes the position that: "While the ADA applies to U.S. citizens (including USAID employees) overseas, it does not apply to non-U.S. citizens, who are the primary beneficiaries of USAID

The 1996 NCD report was followed by a subsequent NCD review in 2003, *Foreign Policy and Disability: Legislative Strategies and Civil Rights Protections to Ensure Inclusion of People with Disabilities.*[49] In November 2004, USAID made the 1997 Disability Guidelines part of USAID policy.[50] The specific objectives of the USAID Disability Policy are: (1) to advance United States foreign assistance program goals by promoting the participation and equalization of opportunities of people with disabilities in USAID policy, country and sector strategies, activity designs and implementation; (2) to increase awareness of disability issues within USAID programs and in host countries; (3) to engage other U.S. Government agencies, host country counterparts, governments, implementing organizations and other donors in fostering a climate of nondiscrimination against people with disabilities; and (4) to support international advocacy for people with disabilities.[51]

The AusAID approach to disability and development, articulated in *Development for All: Towards a Disability-Inclusive Australian Aid Program 2009-2014*,[52] is the newest among bilateral donors and is the most detailed. The process by which it was developed was purposefully participatory, including consultation not only within and among the Australian disability community, but also including the participation of people with disability and other stakeholders in developing countries where AusAID works.[53] AusAID established a Disability Reference Group to provide ongoing strategic guidance to the Australian aid program on

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programs. The USAID disability policy is thus in part an effort to extend the spirit of the ADA in areas beyond the jurisdiction of U.S. law." Ibid., 2.

[49] "Foreign Policy and Disability: Legislative Strategies and Civil Rights Protections to Ensure Inclusion of People with Disabilities," National Council on Disability, accessed January 13, 2013, http://www.ncd.gov/publications/2003/Sept92003.

[50] See "Disability Policy," USAID, http://transition.usaid.gov/about_usaid/disability/policies.html (last visited January 13, 2013). USAID also established two Acquisition and Assistance Policy Directives (AAPDs) in support of implementing its disability policy. See USAID, AAPD 04-17 USAID Acquisition and Assistance Disability Policy Directive: Supporting USAID's Disability Policy in Contracts, Grants, and Cooperative Agreements [AAPD 04-17] (Dec. 17, 2004), http://www.usaid.gov/business/business_opportunities/cib/pdf/aapd04_17.pdf (requiring USAID contracting officers (COs) and agreement officers (AOs) to include a standard provision in all solicitations and in the resulting awards for contracts, grants, and cooperative agreements); USAID, AAPD 05-07 USAID Acquisition and Assistance Disability Policy Directive: Supporting USAID's Standards for Accessibility for the Disabled in Contracts, Grants and Cooperative Agreements [hereinafter AAPD 05-07] (June 16, 2005).

[51] Ibid.

[52] AusAID. "Development for All: Towards a Disability-Inclusive Australian Aid Program 2009-2014 (2008)." [hereinafter AUSAID Disability Strategy]. Accessed January 13, 2013. http://www.ausaid.gov.au/Publications/Pages/8131_1629_9578_8310_297.aspx.

[53] *See* Kristen Pratt, "AusAID – Inclusive Development: A New Era in Consultation," *Development Bulletin* 23 (2009): 22.

implementation of the strategy.[54] Notably, the Australian strategy is the only disability and development policy to explicitly indicate the availability of the document in accessible formats, including large print, audio, acre reader and Braille, in keeping with the spirit of Articles 21 and 49 of the CRPD. The strategy identifies a number of barriers to the inclusion of disability in development, among them, the fact that disability issues are not explicitly included in the MDGs, that there is often a lack of institutional support for disability inclusion in development, that staff may be resistant on account of lack of knowledge or skills and concerns over added workload, lack of resources or seed funding, or that inclusive programs and monitoring and lack of accountability mechanisms.[55]

Other bilateral aid programs have similarly worked to ensure that their programming is accessible to persons with disabilities. The Finnish Development Policy Programme recognizes persons with disabilities as one of the most vulnerable groups and, in 2007, made the promotion of their rights and opportunities as one of the cross-cutting objectives of all Finnish development cooperation,[56] stating that disability is a cross-cutting theme "supported throughout all Finnish development policy" and that "promotion of the rights of groups that are easily excluded, particularly children, persons with disabilities, indigenous people and ethnic minorities, and the promotion of equal opportunities for participation."[57] In 2012, the Norwegian Agency for Development Cooperation (NORAD), a directorate under the Norwegian Ministry of Foreign Affairs (MFA),[58] published *Mainstreaming disability in the new development paradigm Evaluation of Norwegian support to promote the rights of persons with disabilities,* which affirms "[d]uring the last decade the approach to disability has changed from a medical approach to a social and a human rights-based approach where focus is on removing barriers in society.[59]

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[54] For more on the Reference Group, including its Terms of Reference, see
Reference Group. "AusAID Disability-Inclusive Development Reference Group: Terms of Reference," Accessed January 13, 2013. http://www.ausaid.gov.au/Publications/Pages/drg-terms.aspx.
[55] AusAID Disability Strategy, *supra* note 51 at p 36.
[56] Ministry for Foreign Affairs of Finland. "Development Policy Programme 2007: Towards a More Sustainable and Just World Community" 2007. Accessed January 13, 2013.
http://formin.finland.fi/public/download.aspx?ID=24014&GUID={41C62727-0F60-4794-B744-F40E9460D79F}.
[57] Ibid., 16.
[58] *See generally* Norad. "NORAD.". http://www.norad.no/en/front-page;jsessionid=C72D6735AF0B36A67655B5CBE27719FC. Accessed 29 January 2015.
[59] Nordic Consulting Group *Mainstreaming disability in the new development paradigm Evaluation of Norwegian support to promote the rights of persons with disabilities*, Oslo: NORAD, March 2012, accessed January 29, 2015 http://www.norad.no/en/tools-and-publications/publications/evaluations/publication?key=389256. In 2002 NORAD

Other bilateral donors are similarly reviewing their policies for disability inclusion and are, in such cases, utilizing the CRPD as some sort of measure for their assessment.

The CRPD and the right to development as mutually reinforcing narratives

Beyond triggering a disability sensibility in bilateral and multilateral donor development initiatives, the disability inclusive narrative in the CRPD affirms – and enriches – the conceptualization of equitable development ion the Declaration on the Right to Development (DRD).[60] Both the CRPD and DRD instruments may be regarded as mutually reinforcing, and have the potential to progressively develop the understanding of both disability inclusive development and, more generally, equitable development that benefits all vulnerable groups.

Holistic implementation of rights

Both the DRD and the CRPD reflect in their respective texts the holistic implementation of civil, political, economic, social, and cultural rights. In so doing, each instrument serves to advance the idea set forth in the Declaration adopted by the World Conference on Human Rights in Vienna in 1993 [61] that rights are to be understood in interrelationship with each other and consistent with notions of indivisibility and interdependence. Notably, the rights articulated in the CRPD are not disaggregated by rights category and, further, many of the barriers that confront persons with disabilities when attempting to access their rights impinge on the enjoyment of numerous rights, making holistic implementation of all rights an imperative. Similarly, the DRD emphasizes the holistic implication of rights, civil and political as well as economic, social and cultural. The concept of development articulated recognizes the interdependence of both classes of rights and the necessity of both sets of rights for development that is meaningful to the population concerned.

Implications regarding the nature of equitable development

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had published, "The Inclusion of Disability in Norwegian Development Cooperation," accessed January 13, 2013, http://www.norad.no/en/front-page;jsessionid=C72D6735AF0B36A67655B5CBE27719FC.
[60] DRD, supra note 8.
[61] Vienna Declaration and Programme of Action, Part 1,¶¶. 1-10.
http://www.unhchr.ch/huridocda/huridoca.nsf/(symbol)/a.conf.157.23.en.

The concept of development articulated in the DRD focuses on what people are capable of doing and is consistent with a social model of disability insofar as it implicitly recognizes that the resources required to achieve given capabilities differs across contexts and that various barriers substantially limit such capabilities. Both instruments seek to reassert the agency of persons in order to empower individuals to claim their rights and be heard in decision-making processes.

Also in alignment with the CRPD and its general principles is the DRD's view of development as an inclusive and participatory process. The DRD upholds participatory development as a continuous process directed at improving the well being of all people. As applied to persons with disabilities, both instruments support the idea that development policies, programs and practices be designed that specifically foster the well-being of persons with disabilities and with the full and meaningful participation of persons with disabilities. The explicit emphasis on ensuring a "fair" distribution of the benefits of development, coupled with the view of development as the improvement in well-being argues for a concept of equity focused on equality of capability rather than equality of income. This recognizes that the income and other inputs required to achieve a given level of well-being differs across persons. Thus, fairness is consistent with allocating substantial resources to remove barriers confronting persons with disabilities or providing relatively more income or other supports to persons with disabilities, since these actions work to ensure equality of capability. As such, the focus on equity in outcomes at both the national and international level calls on states in both their national and international dealings to allocate resources in a manner that fully accounts for the extra barriers people with disabilities confront, and accordingly, the extra resources required to achieve a given level of well-being. In a parallel manner, the DRD calls on states to recognize, at the national level, the extra barriers people in poor countries and indeed marginalized groups in poor countries face in their efforts to claim their human rights, and to devote resources to removing these barriers; in the international context, it calls on states to recognize the additional barriers poor states confront and devote extra resources to removing them.

Finally, both the CRPD and the DRD reflect a notion of fair and equitable distribution. The ideas evoked in the DRD on equality of capabilities mirror the CRPD's approach to securing substantive equality. In both instruments, an emphasis is placed on identification and removal of

barriers to full participation for individuals and groups left out of decisional processes. The CRPD's primary means of imparting fairness and equity is its requirement of equality and non-discrimination, which is linked to a reasonable accommodation duty, whether in the context of education, employment, adequate standard of living, or any other context. The DRD's primary means of imparting fairness and equity is its requirements that domestic institutions and policies foster the advancement of marginalized groups and peoples within the country, that international institutions and policies be designed to accelerate the development of poor countries and ensure equity in the distribution of both the benefits and costs of global development.

Conclusion

The adoption and entry into force of the CRPD makes the consideration of inclusive practices particularly pertinent at a time when donors are taking steps to revise or to develop and implement disability-inclusive development programming and practices and when the international community is adopting the post-2015 development agenda. Currently, practice is trending towards the explicit referencing of disability inclusion in donor policies, UN resolutions, national action plans and other national, regional and international instruments. The implications of disability-inclusive development for achieving the MDGs and the post-2015 sustainable development goals (SDGs) are likewise manifest in a number of instruments, notwithstanding the absence of any explicit reference in the MDG documents to disability. As noted above in relation to the development narrative, the successor sustainable development goals for 2015-2030, as proposed by the Open Working Group of the General Assembly, refer to disability in relation to education, growth and employment, inequality, accessibility of human settlements, and data collection and monitoring but not as a separate goal.[62]

As yet, there is no coherent or consistent approach to addressing the needs of persons with disabilities within the framework of development. Instead, disability is variously described both among multilateral agencies and bilateral donors. Some approaches are articulated in formal policy documents, others are reflected in informal documents or in practices, and others are evidenced in a combination of documents and practices. The touchstone for the various approaches likewise varies, with invocations made to social exclusion, principles of non-

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[62] Open Working Group proposal for Sustainable Development Goals, UN doc. A/68/970, available at http://undocs.org/A/68/970.

discrimination or human rights generally, or to disability rights, inclusion and participation more specifically. In some instances, the approach to disability-inclusive development is anchored in specific instruments, including the CRPD and its principles, to the UN Standard Rules, non-disability specific human rights conventions, the MDGs, or regional frameworks. Often, several frameworks are utilized to inform and guide the various approaches. Disability-specific approaches guide some of these frameworks and take the form of programs targeting people with disabilities and their specific needs. In other instances, disability-specific components are appended to mainstream programs. Yet another approach seeks to include people with disabilities and their specific needs within the framework of mainstream programming and across sectors, such as the SDGs.

Some of the approaches taken by donors reflect a rights-based approach as a theoretical underpinning and political strategy that is either disability rights-specific, or informed more generally by the international and/or domestic human rights framework. With respect to implementation and practice, the prevailing trend is to incorporate both targeted, disability-specific programs and broader, inclusion-based programs. Differences in this regard seem to be a matter of degree and emphasis, not necessarily distinct approaches. Consequently, the idea that "twin-track" is a distinctive approach may well be misplaced. Rather, it would appear to be useful terminology to capture disability in development at a high level of abstraction and generality, rather than as a descriptor or analytical framework.

Even as new strategies are articulated and framed by reference to the CRPD and its principles, disability prevention still features as part of some approaches, notwithstanding its conceptual disconnect from the CRPD framework. This is so notwithstanding the fact that the CRPD makes a clear conceptual distinction – and break – between human rights protection based on disability status and public health prevention work targeting the general population. Interestingly, some disability and development policies seek to make clear that even as prevention activities fall within an overall disability strategy, as a conceptual matter, disability is framed within a rights-based, social model. It is therefore the case that prevention activities may find an institutional home within an agency's disability program, notwithstanding an explicitly acknowledged differentiation between prevention as public health programming and disability inclusive development within a rights-based, social model.

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Finally, the CRPD therefore makes a clear conceptual distinction – and break – between human rights protection based on disability status and public health prevention work targeting the general population. Even as new strategies are articulated and framed by reference to the CRPD and its principles, disability prevention still features as part of some approaches, notwithstanding its conceptual disconnect from the CRPD framework. Interestingly, some disability and development policies seek to make clear that even as prevention activities fall within an overall disability strategy, as a conceptual matter, disability is framed within a rights-based, social model. It is therefore the case that prevention activities may find an institutional home within an agency's disability program, notwithstanding an explicitly acknowledged differentiation between prevention as public health programming and disability inclusive development within a rights-based, social model.

In sum, progress in the field of disability-inclusive development requires a commitment heretofore not seen. Approaches must be anchored in the principles of the CRPD and its inclusive development mandate under Article 32. Disability inclusion in international development projects should be promoted on a consistent and ongoing basis. At present, disability inclusion as a component of project planning, implementation and evaluation is often

ad hoc, piecemeal and/or fragmented. Development donors, most of whom have signed or ratified the CRPD, should ensure the coherence of their domestic policy with their international cooperation, through effective integration of a disability dimension in their development programs, whatever the beneficiary country and the sector in question. In addition to coherent policies and action, internal policies such as recruitment of staff, coherent budget allocations and targeted lending via international cooperation should form part of an inclusive agenda. In sum, States should undertake measures to ensure that all development agencies active in their territories and all international cooperation efforts, including international development programmes, are accessible and fully inclusive of persons with disabilities, from design through implementation. DPOs on the ground, at local, national and international levels, should be the watchdogs of disability inclusive policies and practices.

Ensuring the participation of DPOs in development planning processes so that barriers are not built into the design phase of the project is a strategy in keeping with the CRPD, in particular its obligation in Article 4(3) that persons with disabilities and their representative organizations should be included in decision-making. Such inclusion represents a pragmatic approach for affordable and sustainable solutions over the long term, tailored to the specific socioeconomic and legal environments. Efforts to encourage DPO implementation in development projects should be enhanced and deepened through the fostering of partnerships between DPOs and development agencies, development donors, local and international implementing partners, consistent with Article 32 of the CPRD. Likewise, it is incumbent on DPOs – particularly international DPOs working in developing countries – to proactively educate themselves and local partners about development assistance in order to be effective partners in the development process.