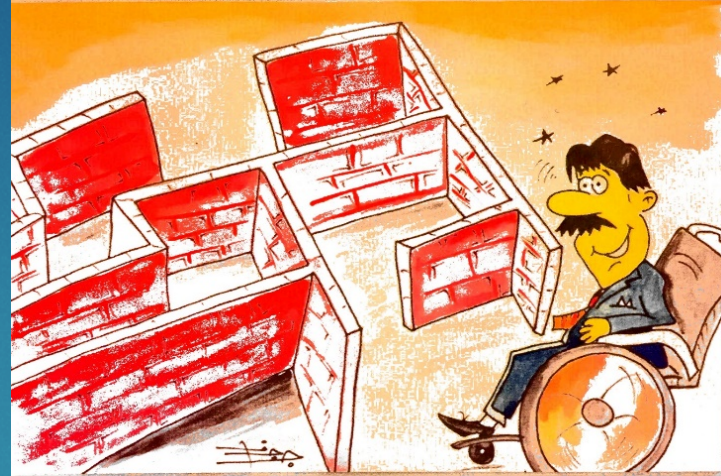


# Disability and Development: A Rights- Based Approach

Professor Michael Stein, Visiting Professor, Harvard Law School & Executive  
Director, Harvard Law School Project On Disability

Janet E. Lord, Senior Fellow, Harvard Law School Project On Disability



# Learning Objectives

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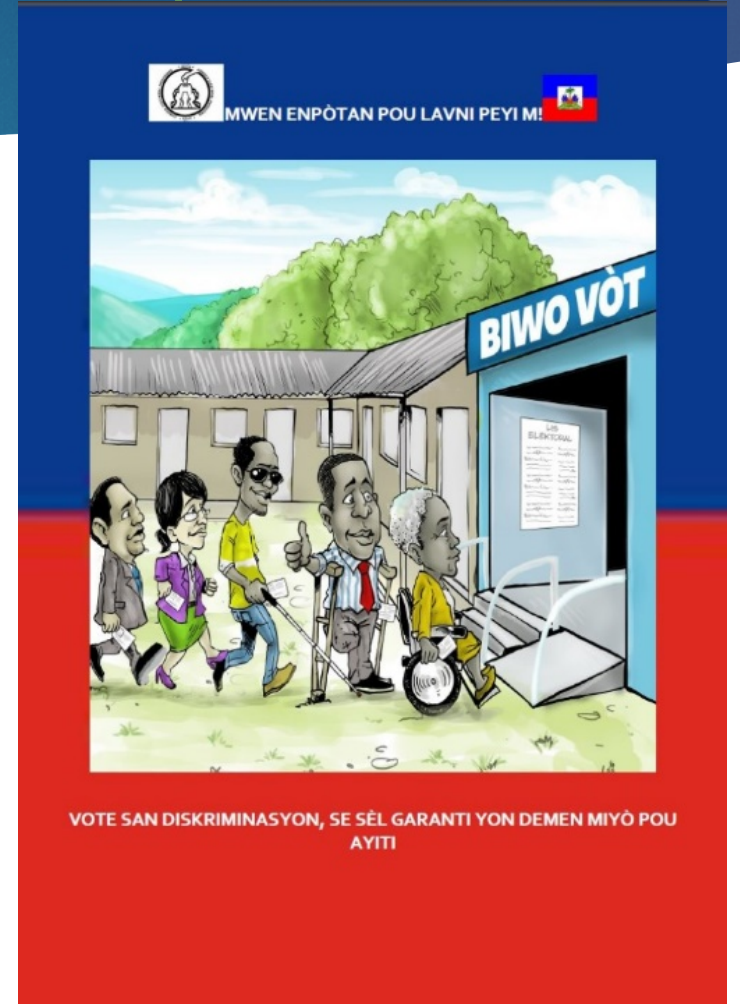


- ▶ Understand the framing of disability in human rights law and in development policy & how disability rights are reflected in international standards to inform inclusive development.
- ▶ Identify the challenges and barriers persons with disabilities commonly face in claiming their human rights and the benefits of development in particular, and using an intersectional lens.
- ▶ Apply key concepts and principles to assess development projects and their disability impacts



# Discussion: Can we define disability?

- ▶ Who is disabled?
- ▶ Does the CRPD define disability?

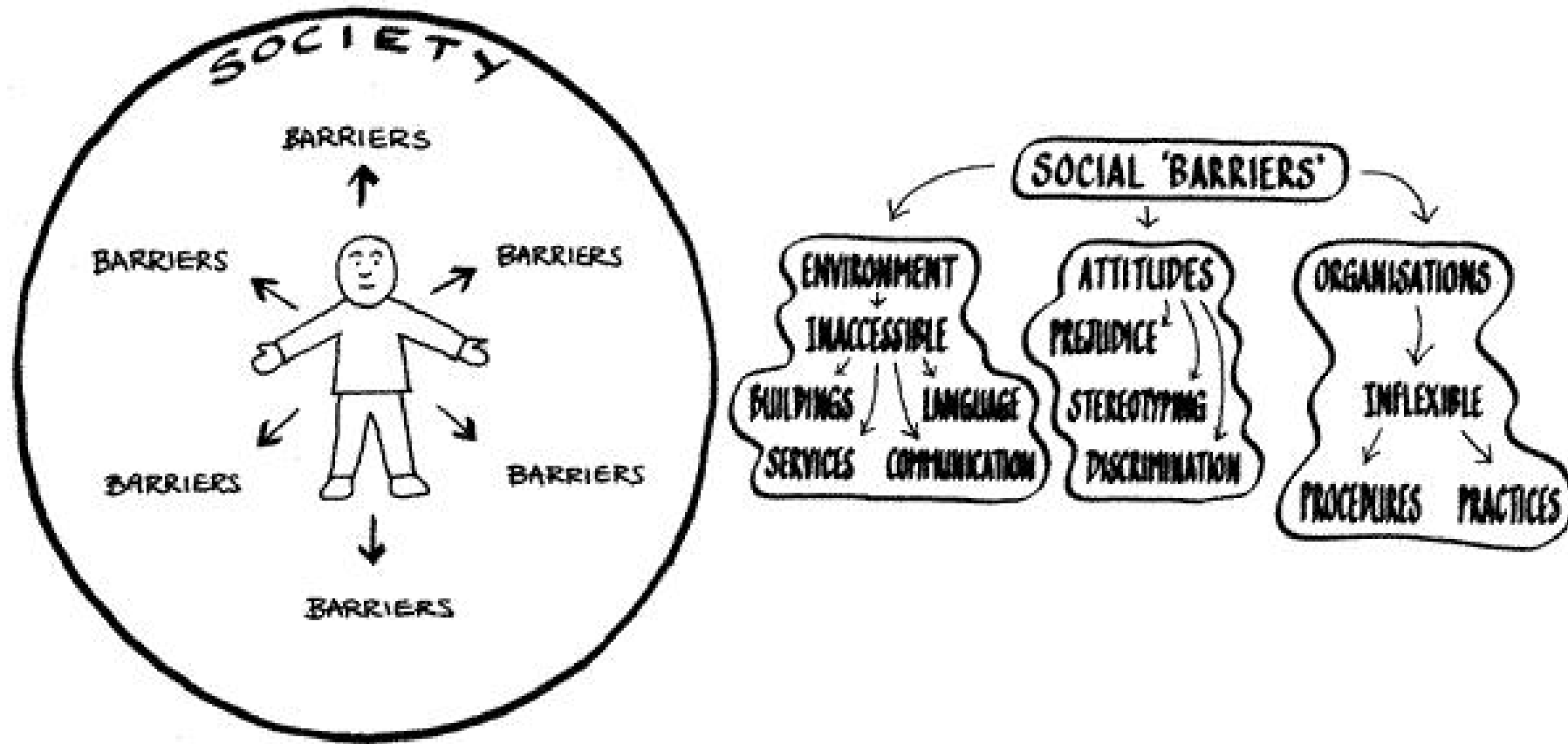


# Discussion: Myths and Stereotypes about Different Types of Disadvantage

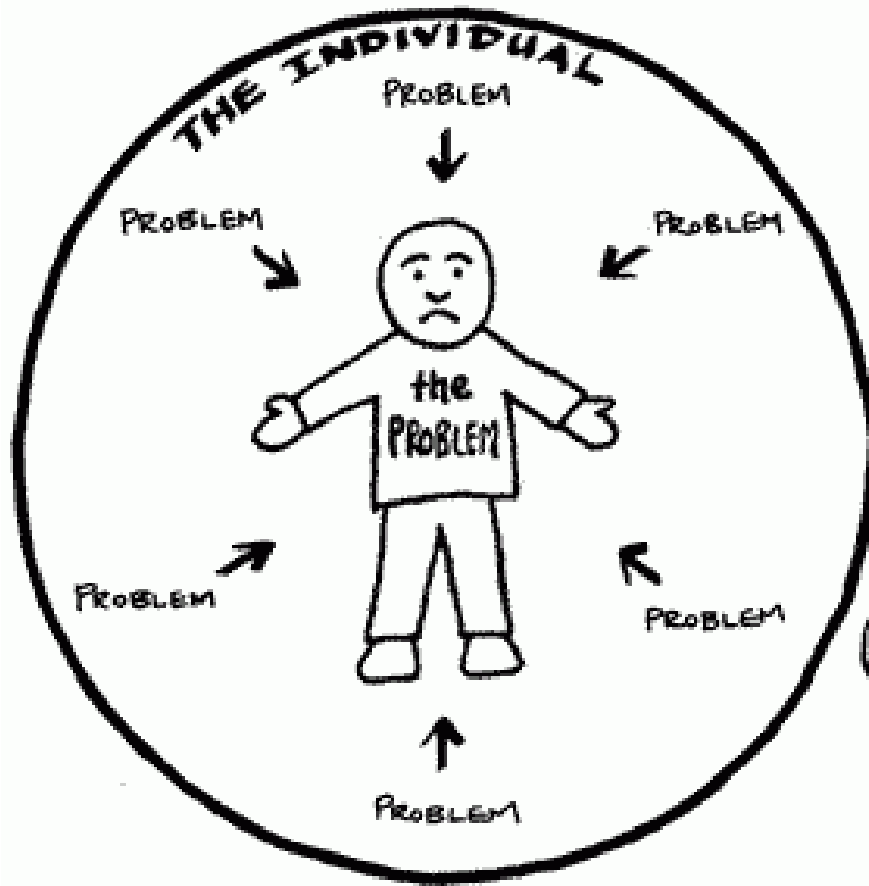
- ▶ **What myths or stereotypes are associated with...**
- ▶ Disability? Persons with disabilities? Persons with different types of disability? Women? Men? Girls? Boys?
- ▶ **What impact do these perspectives have on inclusion in development?**
- ▶ For persons with disabilities?

What are the framings of disability in conversation? In the media? In law and policy?

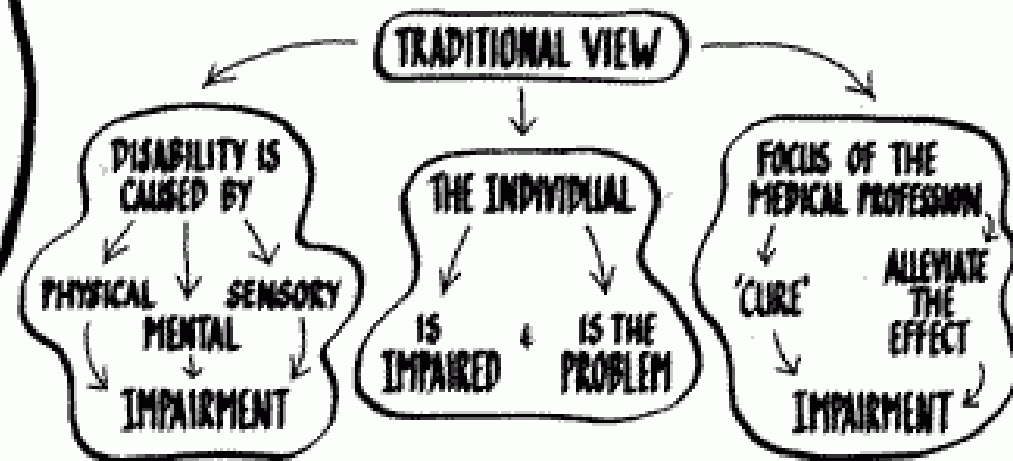
# THE SOCIAL MODEL OF DISABILITY



# THE MEDICAL MODEL OF DISABILITY



IMPAIRMENTS AND CHRONIC ILLNESS  
OFTEN POSE REAL DIFFICULTIES BUT  
- THEY ARE NOT THE MAIN PROBLEMS





# What Model of Disability?

From electoral legislation:

**Example 1:**

“Where no accessible location is available to serve as a polling place, a political subdivision must provide an alternate means of casting a ballot on the day of the election.”

**Example 2:**

“The right to vote shall be denied to:

...

4) One who is insane or retarded”

From electoral legislation:

Exercising political rights shall be suspended for the following persons:

...

(2) Those who are being treated for mental illnesses and for the period of their treatment.

From international document:

Disability is an evolving concept. 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.



# Global Response

- ▶ Convention on the Rights of Persons with Disabilities – negotiated between 2002-2006
- ▶ Adopted in 2006
- ▶ More than 800 representatives from disability organizations around the world participated in drafting process.

# CRPD Overall Structure

- ▶ Preamble
- ▶ Introductory articles (Articles 1 & 2)
- ▶ Articles of general application (Articles 3-9)
- ▶ Specific articles (Articles 10-30)
- ▶ Implementation and monitoring measures (Articles 31-40)
- ▶ Final articles (Articles 41-50)

# CRPD Content & Issues

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- A “core” international human rights treaty
- Legally binding
- New paradigm – social model of disability
- Comprehensive content
- Elaborates existing human rights in the context of disability - does not create new or “special” rights for people with disabilities – intention was to situate the human rights of persons with disabilities within the existing human rights framework comprised of the UDHR, ICCPR, ICESCR

# Progressive development of human rights law

- ▶ General principles (Art 3) & Art. 4(3)
- ▶ Right of equality & non-discrimination (Art 5) together with the duty to provide reasonable accommodation to persons with disabilities (necessary and appropriate adjustments not imposing a undue burden) (Art 5 & 2)
- ▶ Awareness raising (Art 8)
- ▶ Accessibility (Art 9)
- ▶ Legal capacity (Art. 12)
- ▶ Others....Art. 21, 24, etc



# CRPD Drafting Process



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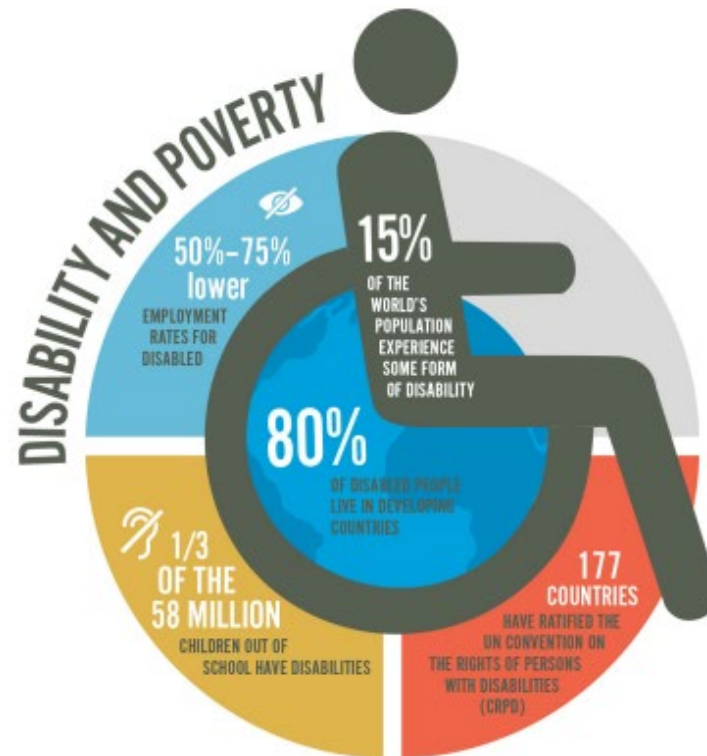


# Current status

14

- 20 States Parties for entry into force
- May 3 CRPD & OP entered into force (2008)
- CRPD Signatories: 161  
CRPD Ratifications/Accessions: **177**
  - **includes EU**
- Op Proto. Signatories: 92
- Op. Prot. Ratification/Accessions: **92**

# Setting the Broad Context for Thinking about Exclusion in Development on the Basis of Disability



## What the research tells us...

- ▶ 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.



# Law and Policy Context for Disability Inclusive Development

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- ▶ Convention on the Rights of Persons with Disabilities, 2006, Art. 5 (Non-discrimination); Art. 32 and related articles
  - ▶ Impetus for bilateral donors to adopt disability policies, guidelines, strategies
    - ▶ USAID Disability Policy (2004) (under revision currently)
    - ▶ DFID Disability Framework
    - ▶ DFAT Strategy for Disability Inclusive Development
    - ▶ EU...and others
- ▶ Impetus for multilateral donors to adopt disability policies, guidelines, strategies
  - ▶ UN Development Group, Guidelines on Disability Inclusion
  - ▶ UNDP (Independent Evaluation Office Global Assessment on Disability Inclusive Development)
  - ▶ IASC Task Team for Development of Guidelines on Disability Inclusion in Humanitarian Action

# What Does Disability Inclusive Development Look Like in Programming??

- ▶ Democracy and Governance
  - ▶ Disability law reform, working on election access, building DPO capacity for advocacy, documenting human rights violations
- ▶ Public health
  - ▶ HIV/AIDS (World Bank/Yale School of Public Health)
- ▶ Education
  - ▶ Teacher training (Harvard Law School Project on Disability & Perkins International)
- ▶ Infrastructure
  - ▶ Water & sanitation programming (Hazel Jones, recent World Bank Guidance Note)
- ▶ Economic development
  - ▶ Microfinance
- ▶ Humanitarian aid
  - ▶ Efforts to promote inclusion in emergency response (Humanitarian Charter on Inclusion, new IASC Guidelines process on disability inclusion)



SDGs: Goals and Targets to Ensure Development Benefits All

# 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)



## Gender, Age in the Sustainable Development Goals



- The SDGs make a the commitment that "all indicators should be disaggregated by age"
- Goal 3: "ensure healthy lives and promote well-being for all at all ages".
- Goal 5 is dedicated to gender: "achieve gender equality and empower all women and girls" – and it has an age-inclusive remit, supporting both older men and women to realize their potential and, in the process, maximizing opportunities for prosperity and wellbeing for all.

# World Bank Group Environmental and Social Framework (Sept. 2018 operational)

22

# 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.

## “Disadvantaged or vulnerable” – persons with disabilities, older persons, LGBTI persons, others

- ▶ “[I]ndividuals or groups who, by virtue of, for example, their age, gender, ethnicity, religion, **physical, mental or other disability**, social, civic or **health status**, sexual orientation, gender identity, economic disadvantages or indigenous status, and/or dependence on unique natural resources, **may be more likely to be adversely affected** by the project impacts **and/or more limited than others in their ability to take advantage of a project’s benefits**. Such an individual/group is also **more likely to be excluded from/unable to participate fully in the mainstream consultation process** and as such **may require specific measures and/or assistance** to do so. This will take into account considerations relating to **age, including the elderly** and minors, and including in circumstances where they may be separated from their family, the community or other individuals upon whom they depend.”
- ▶ Source: World Bank Directive, Addressing Risks and Impacts on Disadvantaged or Vulnerable Individuals or Groups, August 4, 2016



# Guidance on “persons with disabilities”

- ▶ “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.”
  - ▶ Not exhaustive and is an “evolving concept.”
  - ▶ 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.
  - ▶ The conceptualization of disability in international instruments 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.
- ▶ Source: Convention on the Rights of Persons with Disabilities, art. 1. See also World Report on Disability (2011)

ESF Vision  
State-  
ment,  
ESS1, 2,  
10

Directive  
Section  
3, para.  
5(a)

CRPD  
Art. 5

Non-discrimination on the basis of  
disability

# 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.

# Case Studies - Introduction

# 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 are needed for persons with disabilities? For older persons? Others? What reasonable accommodations? What accessibility considerations? What other supports and positive measures?

# Specific and Differentiated Measures

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

Accessible & Inclusive Information

Accessible & Safe Site Selection

Individual Accommodations

Specific Measures

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

Action Plans

Specific compensatory plans (e.g., disability, older women)

Accessible Design

DM



## Strategies for electoral inclusion??

- What barriers?
- How to remove them?
- What framework for thinking about entry points for electoral access for persons with disabilities?







Globally, an estimated  
**1 billion** people lack an ID



Without an ID,  
people struggle to access:



*Financial services*



*Social Safety Nets*



*Health services*



*Education*



*Travel & Migration*



*Mobile services*





# Digital ID serves as a foundational platform

**INDIA:** In six years, financial inclusion increased from 35% to 80%

**PAKISTAN:** NADRA linked BISP payments to female head-of-household and had 12 female only enrollment centers; increased female enrollment by 100% from 2008-2014

**PERU:** ID verifies beneficiaries to access universal health insurance, and enables tracking of vaccines

**THAILAND:** Universal ID system enables stateless children to attend school

## Financial inclusion

- ✓ Removing barriers through eKYC
- ✓ Enabling digital payments
- ✓ Reducing risk for credit

## Women's empowerment

- ✓ Direct payments & transfers to women in the household
- ✓ Enforcing child marriage laws

## Social protection

- ✓ Better targeting of beneficiaries
- ✓ Eliminating leakages 'ghosts'
- ✓ Enable digital G2P payments

## Health

- ✓ Health insurance for universal health care
- ✓ Unique ID for healthcare delivery & tracking, incl. vaccinations

## Regional integration

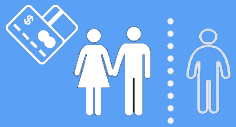
- ✓ Safe & orderly migration
- ✓ Cross-border services & payments

## Education

- ✓ Removing barriers to enrollment
- ✓ Improving EMIS

**Digital ID Platform**

# Developing countries rolling out identification systems face common challenges related to the **quality of systems & IDs**



## Low Coverage & Accessibility

- ❑ Fees, indirect costs, and convoluted processes create **barriers to accessing identification**
- ❑ Disproportionate impacts of lack of access for women, displaced persons and other **marginalized groups**



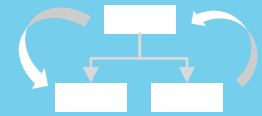
## Legal & Regulatory

- ❑ Lack legal & regulatory frameworks to cover ID agency **mandates, privacy, and data protection**
- ❑ Where frameworks are in place, they are often dated, inadequate, and face **issues with implementation**



## Technology & Infrastructure

- ❑ Prevalence of legacy **manual paper based systems**
- ❑ Where digital systems exist, increasing reliance on **smartcards** which often results in **vendor lock in** and high cost
- ❑ Lack of **connectivity** and physical **infrastructure**, e.g. in storing/managing data and in remote authentication



## Governance & Harmonization

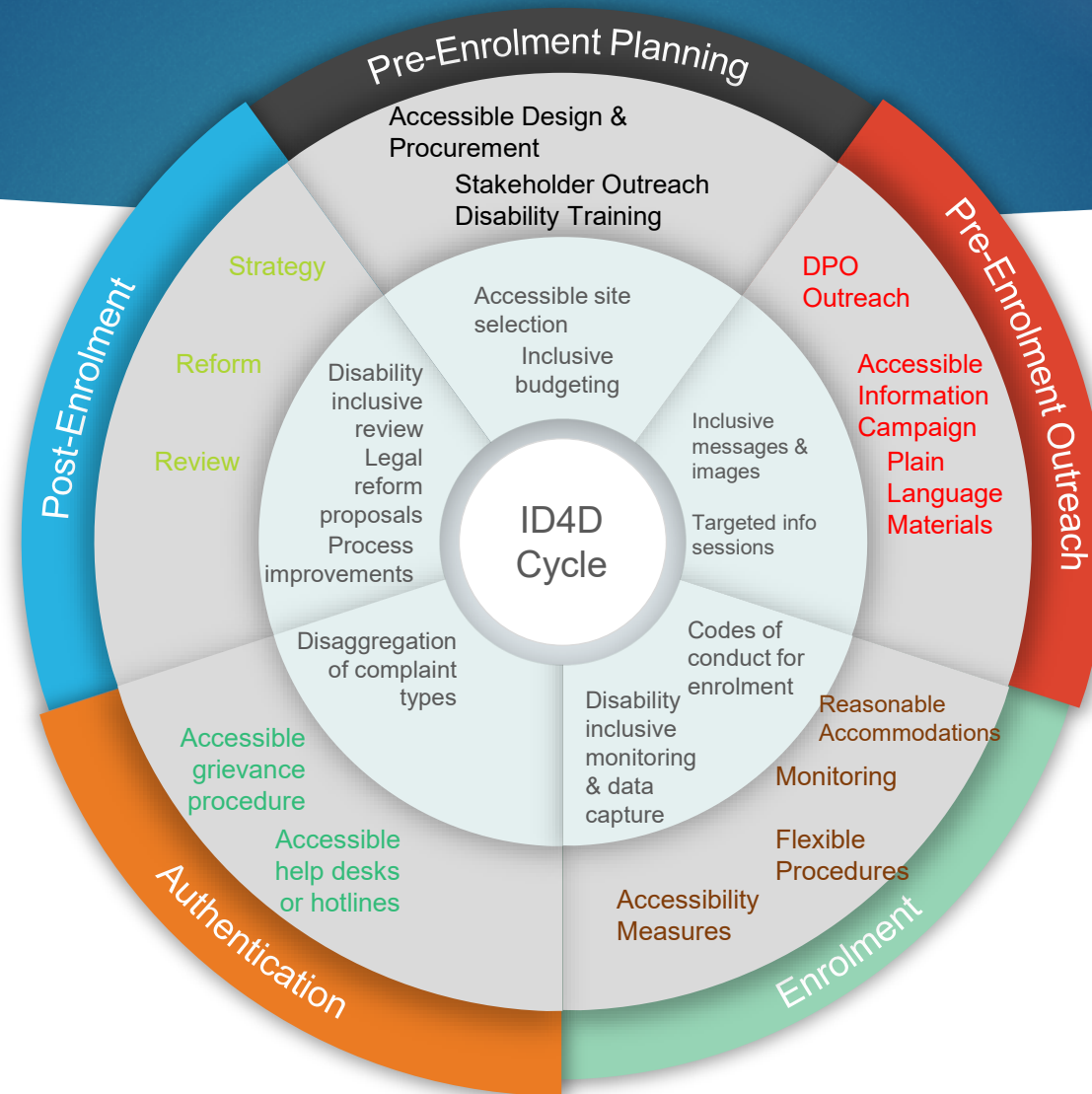
- ❑ Systems tend to be **fragmented**, with silo ministries engaging in **duplicative or one-off efforts**
- ❑ **Lack of coordination** e.g. between **civil registries** and digital identification.



# Framing the Legal Context for Disability Inclusive National Identification

- ▶ **Non-Discrimination and reasonable accommodation for persons with disabilities** Failing to accommodate persons with disabilities in national ID programs is discrimination.
- ▶ **Accessibility of ICT for persons with disabilities:** Accessibility to information and communication technologies is required; applies to procurement of identification technologies.
- ▶ **Recognition as a person before the law for persons with disabilities:** Article 12 mandates equal recognition before the law and legal capacity; requires that supported decision-making be provided to persons with disabilities where needed.
- ▶ **Birth registration of children with disabilities:** It is the right of every child to be registered immediately after birth. This is an important protective measure that also opens up opportunities in education, health, social protection and access to other services.
- ▶ **Identity of children with disabilities:** The CRC recognizes the right of the child “to preserve his or her identity (including nationality, name and family relations)” and, “where a child is illegally deprived of some or all of the elements of his or her identity, to provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.” This right is likewise specifically guaranteed for children with disabilities in the CRPD.
- ▶ **Other: Identity documents for refugees with disabilities and for migrants with disabilities.** Refugee Convention; Migrants Convention

# ID4D Cycle & Points of Entry for Disability Inclusion



# 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.

## Example: Infrastructure & Physical Barriers

Identify potential hazards or inaccessible design dimensions. Identify protection issues.

Address hazards/alter design to minimize risk.

Introduce safety measures/accessibility options.

Offer alternatives/compensate.



# Transport – Rio City Project & Lima Metro Project (Disability case study)



- ▶ 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 – Older persons with disabilities

- ▶ (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 older persons/families and risks and impacts. (Anticipate challenges in identification)

Plan and consult with affected households to minimize risk. (Anticipate the need for measures to support participation of older persons)

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.

# Differentiated Measures - Accessibility Considerations for Borrowers

- ▶ Consult closely with organizations of persons with disabilities to identify accessibility requirements.
- ▶ Printed materials: Ensure that materials are made available in the formats and languages that are required to ensure full participation—for example, documents in electronic format, Braille, large print, easy-to-read-and-understand formats.
- ▶ Visual aids: When using slide presentations, photographs, diagrams, maps, videotapes and other visual aids, ensure that information conveyed is communicated clearly, so that blind or visually impaired participants can follow, and in alternative formats—for example by providing text and descriptions of images displayed.
- ▶ Verbal communications: In conducting face-to-face and telephone meetings or training sessions, ensure that adequate time is allocated, and that persons who are deaf, deaf-blind, and those with intellectual disabilities understand what is being said by others and can communicate their own ideas, through arranging for sign-language interpretation, real-time captioning or communications assistants.
- ▶ Locations: In selecting venues for meetings, training sessions or other events, ensure that accessibility requirements are met.
- ▶ Transport to consultation venues: Inaccessible or expensive transport is often a barrier.

