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*“The risks are greater just because you have a disability:” Exploring the Right to an Accessible and Healthy Environment for Children with Disabilities Internally Displaced by Climate Disasters*

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## Abbreviations Page

ACHR	American Convention on Human Rights
CEDAW	Convention on the Elimination of All Discrimination against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CCRI	The Children's Climate Risk Index
CSR	Convention Relating to the Status of Refugees
CWD(s)	Children with Disabilities
DRR	Disaster Risk Reduction
ECHR	European Convention on Human Rights
GBV	Gender-based Violence
GC(s)	Geneva Convention(s)
GHG	Greenhouse Gas(es)
HI	Humanity & Inclusion/Handicap International
HRL	Human Rights Law
IAC	International Armed Conflict
IASC	Inter-Agency Standing Committee
ICERD	International Covenant for the Elimination of all forms of Racial Discrimination
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICRC	International Red Cross and Crescent
ICT	International Communication Technology
IDP(s)	Internally Displaced Person(s)
IDRL	International Disaster Relief Law
IESCR	International Covenant on Economic, Social, and Cultural Rights
IHL	International Humanitarian Law
IHRL	International Human Rights Law
IPCC	Intergovernmental Panel on Climate Change
NIAC	Non-International Armed Conflict
NRC	Norwegian Refugee Council
OPD(s)	Organisation(s) of Persons with Disabilities
PTSD	Post-traumatic Stress Disorder
PWD(s)	Persons with Disabilities
SDG(s)	Sustainable Development Goal(s)
SFDRR	Sendai Framework on Disaster Risk Reduction

TTY	Teletypewriter
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDRR	United Nations Office of Disaster Risk Reduction
UNCRC	United Nations Committee on the Rights of the Child
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
VCLT	Vienna Convention on the Law of Treaties
WHSS	World Humanitarian Summit Secretariat
WB	World Bank
WCDRR	World Conference on Disaster Risk Reduction
WHO	World Health Organisation

# 1 Introduction

*“However you look at it, the risks are greater just because you have a disability.”*

*-Nujeen Mustafa<sup>1</sup>*

*“I want you to act as you would in a crisis. I want you to act as if our house is on fire. Because it is.”*

*Greta Thunberg<sup>2</sup>*

The evidence is irrefutable: the most recent report published by the Intergovernmental Panel on Climate Change (IPCC) declared many effects of human activity on the climate “irreversible”<sup>3</sup> and “unequivocal.”<sup>4</sup> Greenpeace UK’s chief scientist admonished that “this is not the first generation of world leaders to be warned by scientists about the gravity of the climate crisis, but they’re the last that can afford to ignore them.”<sup>5</sup> The United Nations (UN) Secretary General, António Guterres, called this a “code red for humanity,” with greenhouse gas (GHG) emissions from the burning of fossil fuels and heavy deforestation “choking our planet and putting billions of people at immediate risk.”<sup>6</sup> Mary Robinson, a former UN High Commissioner for Human Rights, labelled global heating “the greatest threat to human rights in the twenty-first century.”<sup>7</sup> Over the course of writing this thesis, there have been forest fires in Siberia,<sup>8</sup> Greece,<sup>9</sup> Australia;<sup>10</sup> floods in Germany,<sup>11</sup> the Netherlands,<sup>12</sup> Belgium,<sup>13</sup> Bangladesh,<sup>14</sup> Australia<sup>15</sup> ...and typhoons are increasing in The Philippines and elsewhere in South-east Asia.<sup>16</sup>

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<sup>1</sup> Mustafa (Self-advocate), (2019), ‘*You Can and Should Do More*’

<sup>2</sup> Thunberg (Climate Activist), (2019) speaking at the World Economic Summit in Davos, Switzerland

<sup>3</sup> IPCC, (2022), ‘*IPCC 2022 Summary for Policy Makers*,’ p. 18

<sup>4</sup> Masson-Delmotte, (2021), ‘*IPCC 2021 Summary for Policy Makers*,’ p. 4

<sup>5</sup> Cited in Sullivan, (2021) ‘*Code red for humanity*’

<sup>6</sup> Cited in Harvey, (2021), ‘*Major climate changes inevitable and irreversible- IPCC’s starkest warning yet*’

<sup>7</sup> Cited in Bodansky, (2015), ‘*9 Intersections between International Climate Change Law and Other Areas of Law*,’ p. 295

<sup>8</sup> France-Presse, (2021) ‘*Smoke from Siberia wildfires reaches north pole in historic first*’

<sup>9</sup> The Independent, (2021) ‘*Massive forest fire in Greece still going for the 7<sup>th</sup> day*’

<sup>10</sup> Mao, (2021) ‘*Bushfires in Australia make you realise climate change is real*’

<sup>11</sup> BBC, (2021) ‘*Germany floods: Where are the worst hit areas*’

<sup>12</sup> RT, (2021) ‘*Southern Netherlands ravaged by floods*’

<sup>13</sup> The Guardian, (2021), ‘*Car swept away as Belgian town is hit by the worst flood in decades*’

<sup>14</sup> Aljazeera, (2021), ‘*Through refugee eyes*’

<sup>15</sup> BBC, (2022), ‘*Australian floods cut off outback and major supply routes*’

<sup>16</sup> Bocanegra, (2022), ‘*As the Philippines faces a rise in deadly super typhoons*’

Though the past year has shown that no geographical area is immune; the effects of global heating will not be evenly distributed.<sup>17</sup> In 2019, the Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston, warned of the ever-present development of a “climate apartheid” disproportionately affecting those with “the least capacity to protect themselves” from its direct and indirect effects.<sup>18</sup>

In 2019, natural disasters—one of the severest and most immediate consequences of global heating were responsible for the displacement of 24.9 million people around the world.<sup>19</sup> Disasters—in their summoning of fierce competitions over limited resources—serve as barometers for ingrained attitudes towards the “devalued, ostracized, or excluded.”<sup>20</sup>

Children constitute “the largest segment of populations affected by disasters,”<sup>21</sup> with at least 60’000 children losing their lives in the Indian Ocean tsunami,<sup>22</sup> 370’000 children forced to relocate and live without a school in Hurricane Katrina of 2005,<sup>23</sup> 23’000 children killed and 67 schools destroyed by the 2008 floods in Nepal.<sup>24</sup> Despite this vulnerability, they are often excluded from disaster risk reduction (DRR) planning<sup>25</sup> and lack the agency to decide whether to move.<sup>26</sup> Although children are often forgotten, there is a sub-group that is even more marginalised: CWDs.

During a disaster, PWDs face inaccessible evacuation routes,<sup>27</sup> difficulties in understanding or obtaining warning signs,<sup>28</sup> possible displacement of mobility or sensory aids (such as wheelchairs, crutches, white canes, and hearing aids),<sup>29</sup> being left behind,<sup>30</sup> and loss of sup-

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<sup>17</sup> This thesis will employ the phrase ‘global heating’ throughout as we are beyond a time of climate change.

<sup>18</sup> Alston, (2019) ‘*UN expert condemns failure to address impact of climate change*’

<sup>19</sup> Colon, (2020) ‘*Climate Mobility and Children: A Virtual Symposium*’, p. 7

<sup>20</sup> Mitchell (2014), ‘*Crises, conflict, and disability*,’ p. 232; Committee on the Rights of Persons with Disabilities (2016), ‘*Statement of the CRPD on disability Inclusion for World Humanitarian Summit*,’ p. 2

<sup>21</sup> Anderson, (2000); De Waal et al, (2003), Gordon, et al, (1999), Ariyabandu, (2000), Jabry, (2005)

<sup>22</sup> Oxfam International, (2005), ‘*Back to Work*’

<sup>23</sup> Wachtendorf, (2008), ‘*Big bird, disaster masters, and high school students taking charge*’, p. 456

<sup>24</sup> Dennison, (2009) ‘*Flooding and the health consequences*’

<sup>25</sup> Babugura, (2008), ‘*Vulnerability of children and youth in drought disasters*,’ p. 127; Muvenda-Mudavanhu, (2016), ‘*A review of children’s participation in DRR*,’ p. 1

<sup>26</sup> Colon, *supra* FN 19, p. 13

<sup>27</sup> HRC, (2017) ‘*Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child*’, p. 8

<sup>28</sup> Battle, *supra* FN 26, p. 232

<sup>29</sup> Committee on the Rights of Persons with Disabilities (2016), ‘*Statement of the CRPD on disability Inclusion for World Humanitarian Summit*,’ p. 3

<sup>30</sup> Stough, (2015), ‘*Sendai Framework for Disaster Risk Reduction and Persons with Disabilities*,’ p. 142

port networks.<sup>31</sup> In the aftermath, PWDs are at higher risk of losing property,<sup>32</sup> death,<sup>33</sup> and injury,<sup>34</sup> susceptibility to disease,<sup>35</sup> vulnerability,<sup>36</sup> abuse, neglect, and abandonment,<sup>37</sup> oversight in disaster registration systems,<sup>38</sup> disrupted or lost networks of support,<sup>39</sup> and loss of shelter.<sup>40</sup> In an environment turned upside down and hastily recreated, PWDs can experience heightened psychological stress.<sup>41</sup>

Though a pressing issue, there has been a dearth of scholarship on child migration impacted by climate change. Children—and particularly CWDs—remain a legal and policy "blind spot"<sup>42</sup> or "legal hotspot."<sup>43</sup>

This thesis views global warming as a "force"<sup>44</sup> or "impact multiplier,"<sup>45</sup> increasing the frequency and severity of natural disasters and preying upon existing vulnerabilities within regions and populations.<sup>46</sup> The acceleration and increased frequency of climate-induced natural disasters calls for a fresh climate- and disability-lens in the examination of the existing legal frameworks.

In the absence of an international framework specifically focused on children displaced due to the effects of climate change and much less for CWDs, this thesis examines soft and binding law which can be cumulatively applied to form international disaster response law (IDRL).<sup>47</sup> In the absence of the political will to draft a more specific binding document,<sup>48</sup> it is important

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<sup>31</sup> Karanja, (2009), *'Disability in contexts of displacement'*

<sup>32</sup> Van Willigen, (2002), *'Riding out the storm,'* p. 98

<sup>33</sup> Aldrich, (2008), *'Disaster preparedness and the chronic disease needs of vulnerable older adults,'* p. 9

<sup>34</sup> Wisner, (2002), *'Disability and disaster,'* p. 8

<sup>35</sup> HRC, *supra* FN 98, p. 8

<sup>36</sup> Phibbs, (2015), *'Emergency preparedness and perceptions of vulnerability among disabled people following the Christchurch earthquakes,'* p. 38

<sup>37</sup> HRC, *supra* FN 98, p. 8

<sup>38</sup> Ito, (2014), *'Disability, natural disasters, conflict, humanitarian emergencies,'* p. 19

<sup>39</sup> Schulte, (2019), *UN Climate Resolution Emphasizes Protection of Disability Rights'*; Karanja, *supra* FN 101; Battle, *supra* FN 26, p. 234

<sup>40</sup> HI, (2015), *'Disability in humanitarian contexts,'* p. 14

<sup>41</sup> HRC, *supra* FN 98, p. 8

<sup>42</sup> Colon, *supra* FN 19, p. 17-19; Chazalnoel, (2021) *'Children on the Move,'* p. 4; Ruppel-Schlicting, (2013) *'Climate Change and Children's Rights,'* p. 352

<sup>43</sup> Ruppel-Schlicting, *supra* FN 42, p. 367

<sup>44</sup> Gueterres (2008), *'Millions Uprooted: Saving Refugees and the Displaced'*; Colon, *supra* FN 19, p. 7

<sup>45</sup> UNCHR (2011), *'Summary of Deliberations on Climate Change and Displacement'*

<sup>46</sup> Colon, *supra* FN 19, p. 7

<sup>47</sup> Ferris, (2020), *'Securing the Rights and Protection of Children on the Move,'* p.4; Colon, *supra* FN 19, p. 8

<sup>48</sup> *Ibid*, p.5

to piece together already enshrined protection obligations. Further, interviews conducted with practitioners and advocates help analyse the robustness of existing legal tools and expose the “significant gap” between the aspiration and application of these documents.<sup>49</sup>

Through the piecing together of IDRL, this thesis will argue for the right to a safe and accessible environment for internally displaced CWDs who risk being left behind.<sup>50</sup>

## 1.1 Thesis Overview

*“Adapting to the new and unfamiliar is challenging for anyone. But when speaking to people with disabilities in humanitarian settings..., it brings home their added difficulties if our responses fall short... Our response also becomes more effective as we give voice to the voiceless and leave no one behind.”*

*-Mark Lowcock.<sup>51</sup>*

By examining legal gaps, the thesis explores which existing frameworks can most effectively protect CWDs displaced by climate-induced or -exacerbated disasters.<sup>52</sup> Anchored in insights from disability self-advocates and humanitarians, it will enliven and crystallise legislative provisions.

To map trends in CWD protection, the thesis will analyse key soft law tools before drawing on three primary bodies of law: International Humanitarian Law (IHL), International Environmental Law (IEL), and International Human Rights Law (IHRL). IHL will be examined for parallels as it does not apply to non-human-induced disasters. IEL offers the right to a safe and healthy environment. IHRL contains the two most applicable Conventions: The Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD) containing the CRC’s cornerstone<sup>53</sup> of ‘best interests of the child’ and the CRPD’s ‘accessibility and reasonable accommodation.’

The thesis will argue that accessibility and reasonable accommodation embedded within the CRPD provide more robust tools for protection as “incidental rights”<sup>54</sup>—or enablers of other rights—for CWDs displaced by climate-induced or -exacerbated natural disasters when compared with ‘best interests of the child.’ Further, IEL’s right (*in fieri*) of a healthy and safe envi-

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<sup>49</sup> Ferris, *supra* FN 44, p.4

<sup>50</sup> Battle, *supra* FN 26, p. 232

<sup>51</sup> (Under-Secretary General for Humanitarian Affairs and Emergency Relief Coordinator) cited in IASC, (2019) ‘*Guidelines Inclusion of Persons with Disabilities in Humanitarian Action*,’ p. 7

<sup>52</sup> Ferris, *supra* FN 54, p.7

<sup>53</sup> Fortin, (2005) ‘*Children’s Rights and the Developing Law*,’ p. 37

<sup>54</sup> Harpur, (2012), ‘*Embracing the new disability rights paradigm*,’ p. 2

ronment with CRPD's right to accessibility should be combined as the most potent tools for a safe and accessible environment in the aftermath of a disaster and for CWDs' planetary future.

## 1.2 Hydrometeorological Change

Due to their correlation with global heating,<sup>55</sup> this thesis will focus on forms of hydrometeorological change, including cyclones (typhoons and hurricanes), thunderstorms, hailstorms, tornados, blizzards, heavy snowfall, avalanches, coastal storms surges, floods, drought, heatwaves, and cold spells.<sup>56</sup> Hydrometeorological change encompasses phenomena concerning the occurrence, motion, and changes of the state of atmospheric water.<sup>57</sup> Other disasters (volcanic activity or earthquakes) are called 'geophysical hazards'—not correlated with global heating.<sup>58</sup>

The primary focus will be on sudden-onset disasters, defined "triggered by a hazardous event that emerges quickly or unexpectedly" described above rather than slow-onset disasters, such as "drought, desertification, sea-level rise, epidemic disease."<sup>59</sup>

Disaster will be defined broadly as "social disruption"<sup>60</sup> or a phenomenon exacerbating a discrepancy between resources and needs.<sup>61</sup>

## 1.3 Internal Displacement

Migration is one of the many indirect effects of climate change-related disasters<sup>62</sup> and does not always result in cross-border movement.<sup>63</sup> The continents most at risk of the impacts of global warming are hosting the highest percentages of youth migrants.<sup>64</sup>

Displacement will be defined as "*the movement of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters.*"<sup>65</sup> This thesis will focus exclusively on

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<sup>55</sup> Currie, *supra* FN 8, p. 5

<sup>56</sup> HI, (2018) 'Disability and Climate Change', p. 5

<sup>57</sup> *Ibid*, p. 10

<sup>58</sup> *Ibid*, p. 11

<sup>59</sup> *Ibid*, p. 13

<sup>60</sup> Havidan, *Handbook of Disaster Research: Handbooks of Sociology and Social Research*, p. 7

<sup>61</sup> Keim, (2008), 'Building Human Resilience', p. 510.

<sup>62</sup> HI, *supra* FN 58, p. 16

<sup>63</sup> *Ibid*, p. 25

<sup>64</sup> Chazalnoel, *supra* FN 42, p. 4

<sup>65</sup> Colon, *supra* FN 19, p. 5

internal displacement as a frequently "over-looked" aspect of the link between climate and mobility.<sup>66</sup>

#### 1.4 Disability at a Glance

*"It is not our disability that is the problem, but the lack of accessibility and support services which makes life difficult."*

*-Abner Manlapaz<sup>67</sup>*

*"I want to be educated, strong, and independent; live my life and be happy... That is what disability means to me."*

*-Mia Farah<sup>68</sup>*

Though disproportionately absent from discussions surrounding global warming, PWDs constitute a significant portion of the global population. More than one billion individuals have a disability of some kind,<sup>69</sup> equating to roughly 15% of the world's population.<sup>70</sup> Of these, between 120 and 150 million are children.<sup>71</sup> One-fifth of the estimated total live with "significant disabilities."<sup>72</sup>

Though disability is not synonymous with vulnerability, PWDs are more likely to live in poverty<sup>73</sup>, have received less education,<sup>74</sup> and be less able to secure resources than people without a disability. Most causes of disabilities such as war, illness, and poverty are preventable and that secondary impacts of disabilities can be significantly reduced or prevented through early and timely intervention often available in more affluent regions.<sup>75</sup> Factors such as poverty can be cyclical "cause and consequence" of disability.<sup>76</sup> This vulnerability is a "relational" in that

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<sup>66</sup> Ibid, p. 7

<sup>67</sup> [Interview with the author] Co-founder of Life Haven Center for Independent Living in the Philippines, Core member of Philippine Coalition on UNCRPD, Disability Rights Activist, and wheelchair user.

<sup>68</sup> Farah (self-advocate), (2011), *'That is What Disability Means to Me,'* in Inclusion International Self-Advocates Contributions to the WHO Report on Disability.

<sup>69</sup> WB, (2021), *'Disability Inclusion'*

<sup>70</sup> Ibid

<sup>71</sup> Bacigalupo, (2009), *'One Billion Forgotten'*, p. 8

<sup>72</sup> WB, (2021), *'Disability Inclusion'*

<sup>73</sup> CRPD, Preamble, recital 20; The Charter on the Inclusion of Persons with Disabilities in Humanitarian Action, Art. 1.8; Alexander, (2012), *'Disability and Disaster,'* p. 415

<sup>74</sup> UNCRC, General Comment No. 9 (2006), para. 1

<sup>75</sup> Ibid, para. 1

<sup>76</sup> Ibid, para. 3

is “manifestly dependent on the cooperation of others” and a surrounding environment.<sup>77</sup> Disability is, thus, not homogeneously distributed geographically.

Disability is not a monolith,<sup>78</sup> taking on a myriad of forms according to the definition employed. To “enumerate” could be detrimental to a comprehensive inclusion of disabilities understood in particular contexts.<sup>79</sup> PWDs are “diverse in experience”, facing different “attitudinal, physical and communication barriers” to participation and inclusion in humanitarian action, and in their identity, including their “age, gender, ethnicity, location, and race.”<sup>80</sup> Disability never exists in isolation and should not be taken as the defining feature of identity. It is the *intersection* of disability with other identity facets and the environment that contributes to greater marginalisation and discrimination.<sup>81</sup>

Disability "is part of being human" as everyone, "particularly when growing older" is likely to experience functioning difficulties.<sup>82</sup> Some are more noticeable—such as sensory or motor disabilities; others are less visible and sometimes called “invisible disabilities”—such as communication impairments, hearing loss, cognitive impairments.<sup>83</sup>

The most recognised definition of disability defines PWDs as “includ[ing]”—but not limited to—those 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.*”<sup>84</sup>

There are a few elements to highlight. Firstly, PWDs are recognised as having an impairment of significant duration, but not permanence. Secondly, disability is not viewed in a vacuum, but comes into existence in an inaccessible or poorly designed environment. This definition does not depict disability as “a defect or something that needs to be fixed.”<sup>85</sup> The emphasised interaction shifts the onus from the individual to integrate society to the State as a whole to *include*. Thirdly, the end goal is of participation ‘on an equal basis with others.’ This inclusive

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<sup>77</sup> Borges, (2015) ‘*International Law and Environmental Displacement: Towards a New Human Rights-Based Protection Paradigm*’, p. 44

<sup>78</sup> CRPD, Preamble, para. i

<sup>79</sup> Lord, (2018), ‘*Preamble*’ in *The UN Convention on the Rights of Persons with Disabilities: A Commentary*, p. 18

<sup>80</sup> IASC, *supra* FN 54, p. 2

<sup>81</sup> *Ibid*, p. 2

<sup>82</sup> WHO (2021), ‘*WHO Policy on Disability*’, para. 6

<sup>83</sup> Battle, *supra* FN 26, p. 232; UNDP, (2018), ‘*Disability Inclusive Development in UNDP: Guidance and entry points*’, p. 17

<sup>84</sup> CRPD, Art. 1

<sup>85</sup> Nifosi-Sutton, (2017) *The Protection of Vulnerable Groups under International Human Rights Law*, p. 42

definition indicating a shared responsibility and the objective of equal access will set an aspirational foundation for international protection of CWDs in disasters.

The Convention on the Rights of Persons with Disabilities (CRPD) contributed to a paradigm shift in the definition of disability by transitioning from “a charitable and medical approach to one based on rights.”<sup>86</sup> This flexibility tethered disability to a “social-contextual frame,”<sup>87</sup> defining disability “as an evolving concept.”<sup>88</sup> This same view is echoed in the Charter on Inclusion of Persons with Disabilities in Humanitarian Action.<sup>89</sup> Disability, needs to be observed in its value and vulnerability—acknowledging the range of needs, accommodation, and gifts this entails.<sup>90</sup>

### 1.5 Hydrometeorological Disasters and Disability

*“If you have an intellectual or psychosocial disability, leaving what is familiar behind can be very confusing and a source of great anxiety.*

*Nujeen Mustafa”<sup>91</sup>*

Disasters reveal and exacerbate pre-existing vulnerabilities.<sup>92</sup> In hydrometeorological disasters, PWDs face a “double-burden” as they experience the same hazardous event and must operate in a “disrupted and resource-limited context with a disability” in the aftermath.<sup>93</sup>

Disability and disaster form a cyclical relationship, with disasters increasing the percentage of people with physical disabilities.<sup>94</sup> Up to 25% of disabilities result from war- or disaster-related injuries, such as body amputations or disfigurement, brain or spinal injuries, sensory impairments linked to vision or hearing and post-traumatic stress disorder (PTSD).<sup>95</sup>

In 2019, the United Nations Human Rights Council adopted a resolution on climate change and the rights of PWDs, finding that they will disproportionately feel the impacts of climate

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<sup>86</sup> IASC, *supra* FN 54, p. xiii

<sup>87</sup> Lord, *supra* FN 78, p. 11

<sup>88</sup> CRPD, Preamble, para. e

<sup>89</sup> Charter on Inclusion of Persons with Disabilities in Humanitarian Action, Art. 1.3

<sup>90</sup> Pearce, (2012), ‘*Refugees and displaced persons with disabilities- from 'forgotten' to vulnerable' to 'valuable'*’

<sup>91</sup> Mustafa, *supra* FN 1

<sup>92</sup> Alston, *supra* FN 18

<sup>93</sup> IPCC, (2014), ‘*Climate Change 2014*,’ p. 6; HI, *supra* FN 133, p. 6

<sup>94</sup> WHO, (2013) ‘*Guidance Note for Disability and Emergency Risk Management for Health*,’ p. 9-10; The Charter on the Inclusion of Persons with Disabilities in Humanitarian Action, Art. 1.8

<sup>95</sup> Battle, *supra* FN 26, Battle, p. 232-233

change.<sup>96</sup> This was the first time that the Council explicitly linked the rights of PWDs to the rapidly changing effects of climate change.<sup>97</sup>

## 1.6 Hydrometeorological Disasters and Children

*"We know that children and future generations are likely to be on the move even more due to climate change, so decision-makers have a duty to pre-empt this."*

*Anja Nielsen<sup>98</sup>*

Children—defined as anyone under the age of 18<sup>99</sup>— in the concurrent loss of their immediate and planetary home, face problems including trauma,<sup>100</sup> loss of life,<sup>101</sup> separation (and separation anxiety) from family members and caregivers, vulnerability to various forms of abuse, inability to obtain or loss of identification document,<sup>102</sup> early child marriage and lack of sexual and reproductive health and rights information<sup>103</sup> and vicious cycles of poverty that predate and follow a natural disaster,<sup>104</sup> air pollution augmenting respiratory issues (such as asthma), vector-borne and infectious diseases,<sup>105</sup> water scarcity and food insecurity.<sup>106</sup>

Further consequences linked to climate-induced migration specifically include sexual abuse and trafficking<sup>107</sup>, neglect, abrupt shifts to or lack of schooling,<sup>108</sup> child labour, insufficient infrastructure, and continued environmental risks.<sup>109</sup> Thus, in post-disaster setting, "nearly all rights of children are implicated," from survival to education.<sup>110</sup>

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<sup>96</sup> Schulte, *supra* FN 110

<sup>97</sup> *Ibid*

<sup>98</sup> UNICEF UK representative cited in Colon, *supra* FN 19, p. 18

<sup>99</sup> CRC, Art. 1

<sup>100</sup> Ruppel-Schlicting, *supra* FN 42, p. 354; HRC, *supra* FN 98, p. 4-6.

<sup>101</sup> HRC, *supra* FN 98, p. 4

<sup>102</sup> Taylor, (2014), 'Current measures to address the social vulnerability of children in disaster risk reduction-- Exploring the European Union's DRR strategy', p. 77; HRC, *supra* FN 98, p. 6

<sup>103</sup> Chazalnoel, *supra* FN 42, p. 7

<sup>104</sup> Muvenda-Mudavanhu, *supra* FN 38, p. 2

<sup>105</sup> Currie, *supra* FN 8, p. 4

<sup>106</sup> *Ibid*, p. 4

<sup>107</sup> Chazalnoel, *supra* FN 42, p. 7; Ruppel-Schlicting, *supra* FN 42, p. 368

<sup>108</sup> Currie, *supra* FN 8, p. 4

<sup>109</sup> Ruppel-Schlicting, *supra* FN 42, p. 349-378; HRC, *supra* FN 98, p. 4

<sup>110</sup> Todres, *supra* FN 88, p. 1233

## 2 Methodology

*“People with disabilities...seem to be an afterthought”*

-Mustafa<sup>111</sup>

*“In many communities, children with disabilities are hidden away and it is hard to get a hold of them because [the community] would rather not talk about them... They are often hidden behind closed doors.”*

-Stener Voigt<sup>112</sup>

This thesis seeks to avoid the ‘piecemeal’ or ‘issue-by-issue’ methodology of human rights<sup>113</sup> by examining a group in its complexity of needs and desires: CWDs displaced by disasters.

Though arguable that “law that has lost its autonomy ceases to be law,”<sup>114</sup> “good scholarship ...takes insight from elsewhere on board while retaining its own disciplinary character.”<sup>115</sup> This thesis will draw from a positivist approach to the law. It will use the main sources of international law: conventions, customary law, general principles of law, and “judicial decisions”, “teachings of...publicists,”<sup>116</sup> and will apply the Vienna Convention on the Law of Treaties when interpreting treaty texts.<sup>117</sup>

International law does not operate in a vacuum and emergencies do not strip a situation of pre-existing perspectives, agendas, and purposes. As such this thesis takes also draws inspiration from Social Anthropology’s ethnographic method of contextual conversations that reveal both the need for and impact of existing legislation.

As part of this thesis, I interviewed eleven practitioners who work with CWD in a disaster context. Interviewees were selected for their advocacy or legal protection positions within organisations at the forefront of disability activism in emergency and relief settings. They represent mainly Humanity and Inclusion, Norwegian Refugee Council, Inclusion International, and USAID. Once a list was identified, other interviewees were selected through ‘snowballing’ referrals. All participants signed consent forms before the interviews. For a complete list of the 11 interviewees, see **Annex 1**.

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<sup>111</sup> Mustafa, *supra* FN 1

<sup>112</sup> [Interview with the author] Child Protection Facilitator with the Norwegian Refugee Council. Voigt admonished that “*In a foreign country, the community and the family are the specialists; I am the facilitator.*”

<sup>113</sup> Alston, *supra* FN 18

<sup>114</sup> Klabbbers, (2004) ‘*The Relative Autonomy of International Law or the Forgotten Politics of Interdisciplinarity*’, p. 35.

<sup>115</sup> *Ibid*, p. 45.

<sup>116</sup> ICJ, Art. 38(1)

<sup>117</sup> VCLT, Art. 31(1)

Three of the 11 self-reported a having a disability and spoke primarily as self-advocates for people facing similar challenges rather than as representatives of their organisations. The interview format was adapted around the busy schedules of advocacy. Interviews were conducted over Zoom, Google hangouts to permit audio captions, or by email to allow a pool of experts to draft their responses as a unified organisational whole.

The Norwegian Centre for Research Data (NSD) approved both the methodology, timeframe, and ethics. For ethical concerns, no children under the age of 18 were interviewed for this research. For COVID safety and geographical reasons, all of the interviews were conducted virtually. The Informed Consent Form Template signed by all participants is provided in **Annex**.

The words of these interviewees are included throughout this thesis to strengthen what is primarily a legal thesis. In the words of these practitioners, we explore disability inclusion as "meaningful" participation of people with disability "in all their diversity, the promotion and mainstreaming of their rights."<sup>118</sup>

The quotes at the beginning of this section illustrate that CWDs are rarely given a voice. Unfortunately, I was not able to speak to CWDs as part of the research for this thesis for ethical concerns, and this analysis therefore lacks the authorship perspective of a CWD displaced or facing internal displacement. However, during my research as an able-bodied individual, I tried to embrace the motto of nothing about us without us—*nihil de nobis sine nobis*,<sup>119</sup>—by using case studies and interviews to introduce and centre each topic.

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<sup>118</sup> WHO, *supra* FN 81, p. 10

<sup>119</sup> IASC, *supra* FN 54, p. 6

### 3 Legal Protection Gaps for CWDs in Disasters

*“The issue with early warning systems is accessibility. For instance, sounding the siren. Deaf people will not hear the sound of the siren. Maybe, I as a wheelchair hear it but do not have a wheelchair, so I cannot leave with the sound that I need to evacuate myself. If I have a wheelchair, can I leave the house with no assistance of not. Many persons with disability with a wheelchair still cannot get out of their house. Because the door or alley is narrow. So how can we save their lives if they have to wait for other people to help them? (...)”*

*-Manlapaz<sup>120</sup>*

The following section will examine how soft law maps a trend of accessibility as a right and “a means to enjoy other rights.”<sup>121</sup> This will root an analysis of IEL, IHL, and IHRL. From this anchoring, I will explore a combined right to an accessible and safe environment stemming from within IEL and the CRPD.

### 4 Soft Law

*“Instead of creating new [legal tools], maybe we need to build upon existing national and regional tools and best practices...enhance what's already out there...”*

*-Juan Carlos Mendez<sup>122</sup>*

Though the following key elements of soft law depend on “voluntary compliance,”<sup>123</sup> a this analysis of the non-binding matrix of international disaster relief law (IDRL) strengthens aspirations contained in IHL, IEL, and IHRL. It also ensures that the community “gets the most out of existing law,”<sup>124</sup> by composing “the piecemeal of non-binding legislation.”<sup>125</sup>

#### 4.1 Sendai Framework for Disaster Risk Reduction (2015-2030)

This framework is the pre-eminent guide for DRR that places an “all society approach” at its core. This framework was adopted in 2015, at the Third UN World Conference on Disaster Risk Reduction in Sendai, Japan and replaced its successor—the Hyogo Framework for Action covering 2005-2015, which did not mention PWDs, accessibility, inclusion, or universal design.<sup>126</sup> The Hyogo Framework for Action incorporated inclusion, mainly concerning education and curriculum, but omitted disability as grounds for vulnerability.<sup>127</sup> However, it provided a comprehensive definition of vulnerability as the conditions determined by physical,

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<sup>120</sup> Manlapaz, *supra* FN 66

<sup>121</sup> UNDP (2018), *'Disability Inclusive Development in UNDP: Guidance and entry points'*, p. 19

<sup>122</sup> (Representative for Platform on Disaster Displacement) in Colon, *supra* FN 19, p. 28

<sup>123</sup> Todres, *supra* FN 88, p. 1246

<sup>124</sup> *Ibid*, p. 1246

<sup>125</sup> *Ibid*, p. 1245

<sup>126</sup> Stough, *supra* FN 101, p. 142

<sup>127</sup> *Ibid*, p. 142

social, economic, and environmental factors increasing the “susceptibility of a community to the impact of hazards,”<sup>128</sup> echoing themes in its successor, the Sendai Framework, and the CRPD.

The Sendai Framework (SFDRR)’s guiding principles call for a “*broader and more people-centred preventative approach to disaster risk*” and a greater engagement of stakeholders and governments with PWDs.<sup>129</sup> Among its most inclusive contribution is the “infusion of disability-related terms,” like accessibility, inclusion, and universal design throughout the document.<sup>130</sup> One of its guiding principles requires an “all-of-society engagement and partnership” and an “inclusive, accessible and non-discriminatory participation.”<sup>131</sup> The framework calls on PWDs to “*lead...equitable and universally accessible response, recovery, rehabilitation and reconstruction approaches.*”<sup>132</sup> These steps marked a transition of PWDs from a role of “passivity” to that of “partner” and “stakeholder.”<sup>133</sup>

In the SFDRR, equity of PWDs is not only “an equity goal; it is a pragmatic goal.”<sup>134</sup> This principle is reiterated in calling for PWDs and OPDs to “assess” DRR plans and design according to universal design principles.<sup>135</sup> This concept was developed by architect and wheelchair user, Mace, with the objective that environments be designed for all without requiring further or specialised adaptation or specialisation—firmly rooted in the belief that accessibility benefit all, not just PWDs.<sup>136</sup> This accessibility of services not requiring further specialisation ties DRR to the people it serves.<sup>137</sup>

The first requirement of these principles is the right to *access* the services and participate in the DRR planning preceding disaster adaptation and response. The right to access could effectively advocate for the additional support permitting DRR strategies to equally serve all—the crux of the Sendai Framework’s mission.

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<sup>128</sup> Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters, *Preamble*, para 1 (footnote).

<sup>129</sup> Sendai Framework, (2015), para. 7

<sup>130</sup> Stough, *supra* FN 101, p. 141

<sup>131</sup> Sendai Framework, (2015), para. 19(d)

<sup>132</sup> *Ibid*, para. 32

<sup>133</sup> Stough, *supra* FN 101, p. 148

<sup>134</sup> *Ibid*, p. 143

<sup>135</sup> Sendai Framework, (2015), para. 36(a)(iii)

<sup>136</sup> Mace et al (1991), ‘*Accessible environments: Toward universal design*,’ p. 156.

<sup>137</sup> CRPD, Art. 2

The SFDRR depicts an accessibility that transcends physical access to include “services and resources,” meaning it encompasses how wheelchair users use transport or access public buildings, but also how people who are blind or deaf access public disaster messaging.<sup>138</sup> Accessibility as a fusion of physical access and communications permeates recent soft and binding law on disability.<sup>139</sup>

## 4.2 2030 Sustainable Development Goals

*“We need accessible bathrooms for persons in wheelchairs or those of limited height. We need accessible shelters and roads for persons in wheelchairs or those on crutches.”*

PWD from Indonesia.<sup>140</sup>

An exploration of SDGs—the 15-year plans and international calls to action—are useful barometers of evolving legal priorities. This tool includes an international commitment “to leave no one behind”—also underpinning the CRPD<sup>141</sup> and the Charter on the Inclusion of PWDs.<sup>142</sup> Disability inclusion was tied to sustainable development in the preamble, accentuating that disability mainstreaming was indispensable to long-term development.<sup>143</sup> This link is reprised in the Sendai Framework for Development, the New York Declaration, and the SDGs.<sup>144</sup>

The world ‘disability’ is uncharacteristically mentioned eleven times in the SDGs in reference to the “respect, protect[ion], and promot[ion]” of human rights and fundamental freedoms without distinction;<sup>145</sup> the higher likelihood of PWDs living in poverty and the need to be empowered;<sup>146</sup> the commitment to “inclusive and equitable quality education”<sup>147</sup> and “lifelong learning opportunities for all;”<sup>148</sup> in the goal of ensuring “equal access;”<sup>149</sup> and sensitivity in the construction of “safe,” “non-violent,” “effective,” and “inclusive” educational facilities.<sup>150</sup>

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<sup>138</sup> Stough, *supra* FN 101, p. 143

<sup>139</sup> *Ibid*, p. 146-147

<sup>140</sup> HI, *supra* FN 111, p. 16

<sup>141</sup> IASC, *supra* FN 54, p. 7

<sup>142</sup> The Charter on the Inclusion of Persons with Disabilities in Humanitarian Action, Art. 1.6

<sup>143</sup> CRPD, Preamble, para. g

<sup>144</sup> Lord, *supra* FN 78, p. 17

<sup>145</sup> 2030 SDGs, Preamble, para 19

<sup>146</sup> *Ibid*, para 23

<sup>147</sup> *Ibid*, para 25

<sup>148</sup> *Ibid*, Goal 4

<sup>149</sup> *Ibid*, Goal 4.5

<sup>150</sup> *Ibid*, Goal 4.a

Disability is mentioned in reference to “full and productive” and “decent” employment, “social, economic, and political inclusion;” “access to safe, affordable, accessible, and sustainable transport systems;” “safe, inclusive, and accessible green and public spaces,” and in disaggregated data collection.<sup>151</sup>

Concern for future generations “is already at the heart of the SDGs.”<sup>152</sup> In the numerous acknowledgements of disability, we see a growing commitment to incorporate disability access in widely recognised goals. The explicit naming of disability categories points to the fact that the current legal and political landscape does not automatically prioritise disability access in recognised rights and responsibilities, calling for the strengthening of accessibility—the right enabler.<sup>153</sup>

### 4.3 Agenda for Sustainable Development

The SDGs were embedded in an Agenda adopted at the United Nations General Assembly in 2015. Of particular importance is the Agenda’s elaboration of the affirmation of the need to promote “peaceful and inclusive societies,” “justice for all,” and accountable institutions.<sup>154</sup> This goal is divided into objectives of developing “effective, accountable and transparent institutions at all levels;”<sup>155</sup> ensuring “public access to information and protect[ing] fundamental freedoms;”<sup>156</sup> and enforcing “non-discriminatory laws and policies for sustainable development.”<sup>157</sup>

The echoes of inclusion and access are apparent in goal 11.b, which seeks to increase the number of cities and settlements implementing and creating plans towards “inclusion, resource efficiency, mitigation, and adaptation to climate change, resilience to disasters, defined as the “ability to anticipate, prepare for, and respond to hazardous events, trends, or disturbances related to climate.”<sup>158</sup> Goal 13 entrenches this objective in requiring States to “take urgent action to combat climate change and its impacts,”<sup>159</sup> in particular by strengthening “resilience and adaptive capacity to climate-related hazards and natural disasters in all countries.”<sup>160</sup>

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<sup>151</sup> Ibid, Goals 8.5, 10.2, 11.2, 11.7, 17.18

<sup>152</sup> Clark, (2020), ‘A future for the world’s children? A WHO-UNICEF-Lancet Commission’, p. 4

<sup>153</sup> UNDP, *supra* FN 149, p. 19

<sup>154</sup> UNGA, A/RES/70/1, Goal 16

<sup>155</sup> Ibid, Goal 16.6

<sup>156</sup> Ibid, Goal 16.10

<sup>157</sup> Ibid, Goal 16.b

<sup>158</sup> Colon, *supra* FN 19, p. 5

<sup>159</sup> UNGA, A/RES/70/1. Goal 13

<sup>160</sup> Ibid, Goal 13.1

The marriage of words like inclusion and resilience in goals about adapting to natural disasters creates a strong foundation to argue the necessity of right to access for PWDs. This need clearly rings out in the pledge that “no one will be left behind.”<sup>161</sup> Both the SDGs and their framing Agenda mention access and its respective adjective explicitly and create momentum for an inclusion stemming from access and accessibility.

#### 4.4 The Sphere Handbook

The Sphere Handbook, consisting of a Humanitarian Charter and Minimum Standards of practice for humanitarian actors has become one of the "most widely referenced humanitarian resources globally."<sup>162</sup> Distinctively to other legal instruments, this resource was conceived for the advocacy and practice purposes of humanitarian actors rather than States.<sup>163</sup> The Humanitarian Charter provides the "cornerstone" of the Handbook, enshrining the common conviction that people affected by crisis have "a right to receive protection and assistance" in "basic conditions for life with dignity."<sup>164</sup> It is this dignity that should anchor all policy-related decisions surrounding internally displaced CWDs.<sup>165</sup> As such, it provides the "ethical and legal backdrop" for the Handbook and expands the 1994 Code of Conduct for the ICRC. Complementarily, the Protection Principles provide "a practical translation" of the legal principles contained in the Charter.<sup>166</sup>

The Charter enshrines three common principles, rights, and duties: "the right to live with dignity," "the right to receive humanitarian assistance," and "the right to protection and security."<sup>167</sup> Though these rights do not appear verbatim elsewhere in international law, they are the amalgam of international legal sources and give "fuller substance to the humanitarian imperative."<sup>168</sup> The first is seen as the combination of the right to life<sup>169</sup>—viewed to have acquired *jus cogens* status<sup>170</sup>—, freedom from torture<sup>171</sup>, and adequate standard of living.<sup>172</sup>

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<sup>161</sup> Ibid, preambular recital, para. 2

<sup>162</sup> *Sphere Association* (2018) *The Sphere Handbook: Humanitarian Charter and Minimum Standards in Humanitarian Response*, p. 4

<sup>163</sup> Ibid, p. 4

<sup>164</sup> Ibid, p. 5

<sup>165</sup> Chazalnoel, *supra* FN 42, p. 12

<sup>166</sup> *Sphere Association*, *supra* FN 181, p. 5

<sup>167</sup> *Sphere Association* (2018) 'The Humanitarian Charter', p. 29

<sup>168</sup> Ibid, p. 30

<sup>169</sup> ICCPR, Art. 6; ECHR, Art. 2; ACHR, Art. 4

<sup>170</sup> Gormely, (1987) '*The Right to Life in International Law*,' p. 193

<sup>171</sup> ICCPR, Art. 7; ECHR, Art. 3; ACHR, Art. 5

Of particular significance to CWDs is the definition of dignity advanced in the Charter which transcends “physical well-being” to demand respect “for the whole person”—including values, beliefs, and human rights.<sup>173</sup> This definition follows the CRPD’s agentic and social definition of disability. Infused with the principle of dignity, the Handbook calls for the removal of "physical, communication and attitudinal barriers" that impact the "access and participation" of PWDs.<sup>174</sup>

The most applicable principle for CWDs is to "*ensure people's access to impartial assistance, according to need and without discrimination.*"<sup>175</sup> This principle echoes right to accessibility and to reasonable accommodation fused within the principle of non-discrimination, explored in a subsequent section. Crucially, the Handbook defines barriers to access: "landmines, blockades, checkpoints," any entities that "restrict access by certain groups and individuals resulting in inequitable assistance" and information not in an accessible format that might prohibit "hidden at risk groups," such as PWDs from accessing them.<sup>176</sup>

This expansive view of a barrier and access as changing pieces of an environmental puzzle or "matrix"<sup>177</sup> will be taken as benchmarks throughout the thesis.

#### **4.5 Charter on the Inclusion of Persons with Disabilities in Humanitarian Action**

The Charter on the Inclusion of Persons with Disabilities in Humanitarian Action, developed ahead of the World Humanitarian Summit in 2016 in Istanbul, has been widely endorsed by states, regional and UN bodies, and NGOs.<sup>178</sup>

This Charter reaffirms the commitment to “*take all steps to meet [PWDs’] needs*” in times of humanitarian or natural disasters.<sup>179</sup> This commitment is “without discrimination”<sup>180</sup> at all phases of DRR: “*from preparedness and crisis onset throughout transition into recovery.*”<sup>181</sup>

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<sup>172</sup> UDHR, Art. 25; IESCR, Art. 11

<sup>173</sup> *Sphere Association* (2018) 'The Humanitarian Charter', p. 29

<sup>174</sup> *Sphere Association*, supra FN 181, p. 14

<sup>175</sup> *Sphere Association*, (2018) 'Protection Principles,' p. 40

<sup>176</sup> *Ibid*, p. 41

<sup>177</sup> *Todres*, supra FN 88, p. 1244

<sup>178</sup> Humanitarian Disability Charter, 'About,'

<sup>179</sup> The Charter on the Inclusion of Persons with Disabilities in Humanitarian Action, Art. 1.1

<sup>180</sup> *Ibid*, Art. 1.2

<sup>181</sup> *Ibid*, Art. 1.4

In this Charter, accessibility’s associated verb, nouns, and adjective are mentioned nine times. Access becomes a necessary enabler for the key commitments of “non-discrimination;”<sup>182</sup> “participation” of PWDs and representative organisations in all phases of DRR;<sup>183</sup> inclusive State policies and disaggregated data collection;<sup>184</sup> service delivery and design;<sup>185</sup> and “cooperation and coordination” between relevant authorities and humanitarian actions to strengthen inclusive response.<sup>186</sup>

#### 4.6 Guiding Principles on Internal Displacement

The Guiding Principles on Internal Displacement, often called the ‘Deng Principles’ after Francis Deng—the first Special Rapporteur on the Human Rights of Internally Displaced Persons (IDPs), who was instrumental in their creation. Anchored in existing, international law they are intended as guidelines for practitioners.<sup>187</sup> Though not binding, this instrument is “consistent” with IHL and IHRL and “analogous” with refugee law.<sup>188</sup> Forty countries have adopted analogous laws on IDPs, reaching partial implementation.<sup>189</sup>

CWDs displaced internally by natural disasters fall squarely within the Guiding Principles’ definition of IDPs “*who have been forced or obliged to flee or to leave their homes or places of habitual residence... as a result of or in order to avoid...natural or human-made disasters who have not crossed an internationally recognized State border.*” This definition is broader than the Convention on the Status of Refugees (CSR)’s for the absence of the “alienage”<sup>190</sup> (cross-border requirement) and because of the wider scope of possible—not exhaustive—causes for movement, such as natural disasters.<sup>191</sup>

The Deng Principles “shall be applied without discrimination of any kind, such as...disability”<sup>192</sup> and stipulate that IDPs with disabilities “shall be entitled” to required “pro-

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<sup>182</sup> Ibid, Art. 2.1

<sup>183</sup> Ibid, Art. 2.2

<sup>184</sup> Ibid, Art. 2.3

<sup>185</sup> Ibid, Art. 2.4

<sup>186</sup> Ibid, Art. 2.5

<sup>187</sup> De Mello, (2004) ‘*In Memoriam: Foreward to the Guiding Principles by Under-Secretary-General for Humanitarian Affairs, Mr. Sergio Viera de Mello*’, p. 3

<sup>188</sup> Deng, (2001), ‘*Introductory note by the Representative of the Secretary-General on Internally Displaced Persons, Mr Francis,*’ p. 4

<sup>189</sup> Orchard (2018), *Protecting the Internally Displaced: Rhetoric and Reality*

<sup>190</sup> Grahl-Madsen, (1997), ‘*Commentary on Articles 2-14 of the CSR*’

<sup>191</sup> CSR, Art. 1(2) lists five exhaustive protected grounds of race, religion, nationality, membership of a particular social group or political opinion for a “well-founded fear of being persecuted.”

<sup>192</sup> Deng Principles, (2001), Principle 4(1)

tection and assistance” and to “treatment which takes into account their special needs.”<sup>193</sup> This merges the principle of non-discrimination with positive steps towards needs-based equity. They call for medical care “to the fullest extent practicable and with the least possible delay,” with no distinction not based on medical grounds. This encompasses psychosocial and social service provision.<sup>194</sup> Though peppered with superlative prepositional qualifiers— ‘to the fullest extent possible’, ‘with the least possible delay’—and clauses—‘when possible’, this article brims with strong obligations for indispensable care. These guiding principles advance a high standard of equitable care for CWDs in natural disasters, particularly regarding medical care and rehabilitation.

Though not explicitly tied to natural disasters, of particular significance are the call for safeguarding of freedom of movement,<sup>195</sup> knowledge of the fate of missing relatives,<sup>196</sup> voluntary family reunification,<sup>197</sup> and “an adequate standard of living.”<sup>198</sup> The latter is of critical importance for displacement and encompasses “at minimum” “essential food and potable water, basic shelter and housing, appropriate clothing, and essential medical services and sanitation.”<sup>199</sup> Regrettably, this provision fails to mention the service accessibility and communication thereof, mobility and sensory aids, and multi-media Multi-Hazard Early Warning Systems.<sup>200</sup> This could be argued to be contained implicitly in “medical services” and the obligation for “communication in a language that they understand,”<sup>201</sup> but would need to be made explicit to extol the rights of CWDs.

#### **4.7 The Peninsula Principles**

Born out of The Climate Displacement Law Initiative, the Peninsula Principles provides a rare “comprehensive normative framework” for a climate-induced displacement that will largely “occur within State borders.”<sup>202</sup> In its principles focusing on the planning for displacement, it calls for PWDs to be able to participate in an “adequate, timely, and effective” manner “in all

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<sup>193</sup> Ibid, Principle 4(2)

<sup>194</sup> Ibid, Principle 19

<sup>195</sup> Ibid, Principles 14-15

<sup>196</sup> Ibid, Principle 16

<sup>197</sup> Ibid, Principle 17

<sup>198</sup> Ibid, Principle 18

<sup>199</sup> Ibid, Principle 18, 2(a-d)

<sup>200</sup> World Humanitarian Summit Secretariat, (2015), ‘*Restoring Humanity*’, p, 86

<sup>201</sup> Deng Principles, (2001), Principle 22(e)

<sup>202</sup> Peninsula Principles, p. 8

stages of policy development,”<sup>203</sup> for a disability-inclusive lens in PWD protection, and for a continuous information exchange with PWDs in all stages from pre- to post-displacement.<sup>204</sup>

In addition to a disability lens to disaster preparation, it also presents the caveat that all humanitarian assistance be “age- and gender-sensitive,” including emergency and humanitarian services, medical assistance, evacuation, shelter, food, drinking water, and “measures necessary for social and economic inclusion.”<sup>205</sup> Most crucially, the soft law instrument highlights the importance of “accessibility” and “non-discriminatory access to basic services” in the indispensable “right to adequate housing.”<sup>206</sup> This marks a key trend in soft law of emphasising access and accessibility as a right enhancer in times of displacement and disaster.

#### **4.8 Soft Law Summary**

This section has mapped trends towards accessibility as a right enabler in its articulations of dignity, minimum ‘adequate standards of living,’ and strides towards universal DRR design and implementation. However, the protection bar must be set higher to include CWDs in DRR design and implementation. The anchoring principles of “humanity” and “impartiality”<sup>207</sup> must transcend a negative obligation to encourage the positive obligations required of an equitable and inclusive response.

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<sup>203</sup> Peninsula Principles, Principle 7(d)

<sup>204</sup> Ibid, Principles 7(d), 7(e), 13(b)(iii)

<sup>205</sup> Ibid, Principle 14(c)

<sup>206</sup> Ibid, Principle 15(a)

<sup>207</sup> Ibid, Principle 24(1)

## 5 Hard Law: IHL and IEL

*“I acquired my disability when I was a teenager. (...) Then I experienced these different hardships: cannot use transport, cannot use the sidewalk, cannot enter many establishments... I know about those things, but I never really had the realisation that my rights were being violated”*

*-Manlapaz<sup>208</sup>*

There is no body of law that directly applies to PWDs in the context of natural disasters and "international disaster relief law is in a nascent stage."<sup>209</sup> This section will point to a need for an "intersection"<sup>210</sup> of three main bodies of law: IHL, IEL, IHRL (the CRC and the CRPD) to advocate for a safe and accessible environment.

### 5.1 Regional Law: The Kampala Convention

The principles contained in the 'Deng Principles' were strengthened by the regional African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (“The Kampala Convention”), which defines internal displacement as “*the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognized state borders.*”<sup>211</sup> This is binding for ratifying parties within the African Union and contains child-related provisions mainly concerning the prohibition of child recruitment, sexual slavery and kidnapping.<sup>212</sup>

Its strengths include the focus on non-discrimination in rights and assistance<sup>213</sup> and its obligation on States to protect and assist IDPs fleeing “natural or human made disasters, including climate change.”<sup>214</sup> Though the link between displacement to climate change is made explicit, the specific measures are not defined. Similarly, the obligation to “devise early warning systems” and “immediate protection and assistance,”<sup>215</sup> do not voice the obligation of accessibility required by CWDs in natural disasters. A further strength is this Convention’s extension to “international organizations and humanitarian agencies” operating in States Parties of ratification.<sup>216</sup> This is of particular pertinence in times of natural disaster when humanitarian organisations often assume a state-like role.

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<sup>208</sup> [Interview with the author] *supra* FN 66

<sup>209</sup> Todres, *supra* FN 88, p.1235

<sup>210</sup> HRC, *supra* FN 98, p. 13

<sup>211</sup> Kampala Convention (2009), Art. 1 (1.)

<sup>212</sup> *Ibid*, Art. 7(5)(e)-(f)

<sup>213</sup> *Ibid*, Art. 3(1)(d); Art. 5(1); Art. 9(1)(a)

<sup>214</sup> *Ibid*, Art. 5(4)

<sup>215</sup> *Ibid*, Art. 4(2)

<sup>216</sup> *Ibid*, Art. 6

Accessibility could be encompassed in the obligation to “*take necessary measures to ensure that IDPs are received, without discrimination of any kind and live in satisfactory conditions of safety, dignity and security*”<sup>217</sup> and the provision of “adequate humanitarian assistance,” including water, medical care, shelter, sanitation, social services to the “fullest extent practicable and with the least possible delay.”<sup>218</sup> The harmony of “satisfactory conditions” provided “without discrimination” lay the foundation for access but lack the backbone of an obligation to incorporate PWDs into service design. The latter is weakened by the adverbial phrase “where appropriate” and the qualified superlatives “fullest...practicable” and “least possible... delay.” PWDs could fall into the protection gaps of the ‘practicable’, ‘possible’, and ‘appropriate.’

Disability is mentioned in relation to “special measures,” though these are not defined and risk, falling into the same ambiguity as the statements above.<sup>219</sup> Of particular note are the encouragement to devote resources to family reunification,<sup>220</sup> the “fair compensation” and “forms of reparations” to IDPs for damage “incurred as a result of displacement,”<sup>221</sup> even in the “event of natural disasters” when the State “refrains from protecting and assisting IDPs.”<sup>222</sup> This liability in the case of neglect or inaction in the aftermath of natural disasters could be modelled in other Conventions and is invaluable in ever increasing natural disasters.

This Convention links displacement to natural disasters and delineates high standards of service in their aftermath, but does not explicitly advocate for disability access.

## **5.2 International Humanitarian Law (IHL)**

As IHL is only applicable in the event of an armed conflict, it can be applied to those affected by natural disasters "only by analogy" with "limited utility."<sup>223</sup> The parallels are rich in the "ruptures" that both natural disasters and human-inflicted harm can cause.<sup>224</sup>

IHL’s cornerstone Geneva Conventions and Additional Protocols contain common Article 3, in which all individuals not involved in conflict “shall in all circumstances be treated humane-

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<sup>217</sup> Ibid, Art. 9(2)(a)

<sup>218</sup> Ibid, Art. 9(2)(b)

<sup>219</sup> Ibid, Art. 9(2)(c)

<sup>220</sup> Ibid, Art. 9(2)(h)

<sup>221</sup> Ibid, Art. 12(2)

<sup>222</sup> Kampala Convention (2009), Art. 12(3)

<sup>223</sup> Todres, *supra* FN 88, p.1241

<sup>224</sup> Ibid, p. 1241

ly, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.”<sup>225</sup> Though disability is not explicitly mentioned it can be encompassed in ‘birth,’ if acquired at birth and persistent through development or ‘similar criteria’<sup>226</sup> if developed later in life. This particular provision requires that “food, water, health care, rehabilitation and shelter be available and accessible to persons with disabilities.”<sup>227</sup> This sometimes leads to prioritisation in times of, for instance, evacuation.<sup>228</sup> Thus, the article is tethered to a positive obligation to render services accessible,<sup>229</sup> also mandated in the CRPD.<sup>230</sup>

The GCs have been interpreted from purely “prohibition of adverse treatment... to [the need] to take specific measures to do so.”<sup>231</sup> An IHL analysis is crucial, firstly, as natural disasters rarely occur in isolation and sometimes add “a major new shock to existing situations of conflict,” greatly affecting a State’s ability to prepare for a natural disaster.<sup>232</sup> Secondly, the law of (human) disaster is legally binding in the tumult of war; while human rights law’s obligations—widely— are “tied to available resources” and subject to “progressive realisation.”<sup>233</sup> This reading would be linked to the challenge of natural disasters putting a strain on and depleting pre-existing resources and its acceptance would mean that a State would have less duty to ensure rights when children needed it the most. A parallel reading of IHRL and IHL within the context of natural disaster reveals that this progressive realisation is in contradiction with IHRL’s objectives and must be understood as a spur to the maximum possible action.<sup>234</sup>

### 5.3 International Environmental Law Parallels

Human rights are not as “absolutist” as assumed—with both human rights and environmental law leaving ample room for “balancing tests,” “discretion,” and liberally interpreted “minimum thresholds.”<sup>235</sup> A main comparison between the two bodies of law between which natural disaster-displaced CWDs fall, is that IHRL focuses on the obligations of States towards *individuals*, whereas environmental law focuses on obligations *between* States and hinges on

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<sup>225</sup> Geneva Convention (I-IV), Art. 3(1)

<sup>226</sup> GCs *supra* FN 252, Art. 3(1)

<sup>227</sup> IASC, *supra* FN 54, p. 7

<sup>228</sup> *Ibid*

<sup>229</sup> IASC, *supra* FN 54, p. 7

<sup>230</sup> CRPD, Art. 9, 11

<sup>231</sup> *Ibid*

<sup>232</sup> WHSS, *supra* FN 234, p. 76

<sup>233</sup> Todres, *supra* FN 88, p. 1242-3

<sup>234</sup> *Ibid*, p. 1244

<sup>235</sup> Bodansky *supra* FN 7, p. 298

reciprocity.<sup>236</sup> As seen in the previous section, a crucial pitfall is that derogation from some human rights is permitted in times of emergency.<sup>237</sup> A general difficulty of the application of IHRL to a climate-induced emergency is that a human rights violation occurs when there is an identified duty breached by a duty-holder. This becomes murkier in the context of a climate emergency<sup>238</sup> and, as seen, benefits from a parallel reading of IHL.

The UNFCCC and the Kyoto Protocol do not explicitly mention rights beyond the right to sustainable development.<sup>239</sup> They do not contain specific provisions regarding children.<sup>240</sup> However, the UNFCCC contains the protection principle of "*the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capacities.*"<sup>241</sup> This instils a principle of "inter- and intra-generational equity."<sup>242</sup> This is also contained in the Paris Agreement reaffirming climate change as a "common concern of humankind" in which States should consider their "respective obligations on children" and "intergenerational equity."<sup>243</sup>

A similar provision is contained in two elements of IEL soft law. The Rio Declaration on Environment and Development and the Vienna Declaration and Programme of Action both state that the "*right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations*"<sup>244</sup> It is the commitment to present and future generations that infuses IEL with the principle of intergenerational equity when addressing global heating.<sup>245</sup> Though softened in the UNFCCC and Paris Agreement, with the concession of differentiated responsibilities and respective capacities, this creates the impetus to consider children in decisions regarding avoiding and adapting to global heating.

The Cancun Agreements urge States to "fully respect human rights" in climate-related actions.<sup>246</sup> They are the first UN instrument to mention "climate-induced displacement, migration, and planned relocation," calling for "understanding, coordination, and cooperation" with

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<sup>236</sup> Ibid, p. 298, *my emphasis*

<sup>237</sup> Ibid, p. 299; ICCPR, Art. 4(2) clarifies which rights allow for no derogation in any circumstances.

<sup>238</sup> Ibid, p. 299

<sup>239</sup> UNFCCC, Art. 3.4

<sup>240</sup> Ruppel-Schlicting, *supra* FN 42, p. 363

<sup>241</sup> UNFCCC, Art. 3(1)

<sup>242</sup> Ruppel-Schlicting, *supra* FN 42, p. 363

<sup>243</sup> Paris Agreement (2015), Preambular Recital 11

<sup>244</sup> Rio Declaration on Environment and Development (1992), Principle 3; Vienna Declaration and Program of Action (1993), Art. 11

<sup>245</sup> HRC, *supra* FN 98, p. 9

<sup>246</sup> Cancun Agreements LCA, para. 8

the unfortunate qualifier "*where appropriate*."<sup>247</sup> A noticeable gap in this advancement is the requirement to act and the identification of development countries for higher levels of responsibility.<sup>248</sup>

In its preambular recital, the Paris Agreement calls for the “rights of persons with disabilities and...in vulnerable situations” and “intergenerational equity” to be considered in actions addressing global heating.<sup>249</sup> This meaty, yet toothless provision is the only mention of PWDs throughout the agreement and contains the weaker modal auxiliary—should. However, this link to IHRL and specific mention of PWDs and persons in vulnerable situations—in which CWDs displaced by disasters fall—is significant for recognition of a disability lens in future climate action. This principle was reaffirmed—but not expanded—in COP26, in Glasgow.<sup>250</sup>

Accessibility is not referenced in the ways conceptualised in the CRPD.<sup>251</sup> The UNFCCC refers to developing countries’—not individuals— access to resources and data about climate change or adaptation.<sup>252</sup> Similarly, the Paris Agreement cites to access to "sustainable development and eradication of poverty,"<sup>253</sup> widely highlighted<sup>254</sup> climate finance,<sup>255</sup> and technology.<sup>256</sup>

However, the most fascinating development within IEL is the nascent right to a healthy environment, steeped in the principles of intergenerational equity. Yet to be contained in an internationally binding document, this is encompassed in the Constitution of Bolivia as "*the right to a healthy, protected and balanced environment to enable the development of individuals and collectives of present and future generations*"<sup>257</sup> and Azerbaijan as the assurance of protection to children affected by natural disasters and redress for environmental damages.<sup>258</sup> There are cases of environmental litigation on this basis, namely in the Philippines in *Minors Oposa v. Secretary of the Department of Environmental and Natural Resources* in which the

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<sup>247</sup> Ibid, para. 14(f)

<sup>248</sup> Bodansky *supra* FN 7, p. 239

<sup>249</sup> The Paris Agreement, preambular recital 11

<sup>250</sup> COP26, ‘*Glasgow Climate Pact*’; Mountford (2021), ‘*COP26: Key Outcomes From the UN Climate Talks in Glasgow*’

<sup>251</sup> CRPD, Art. 9

<sup>252</sup> UNFCCC, Art. 5(b), 6(a)(ii)

<sup>253</sup> Paris Agreement, preambular recital 8

<sup>254</sup> Colon, *supra* FN 19, p. 35

<sup>255</sup> Ibid, Art. 9(9), 11

<sup>256</sup> Ibid, Art. 10(5)

<sup>257</sup> The Constitution of the Plurinational State of Bolivia, Art. 33

<sup>258</sup> The Constitution of Azerbaijan, Art. 30, 38

Supreme Court of the Philippines ruled in favour of minors citing the State's *intergenerational* responsibility to offer a clean environment.

Further, the San Salvador Protocol—ratified by 18 States,<sup>259</sup> mandates “the right to live in a healthy environment” and “have access to basic public services,” putting the right to a healthy environment and access on equal footing.<sup>260</sup> It has also been recognised in an Advisory Opinion to the Inter-American Court on Human Rights as “an autonomous right” with implications for individuals and collectives and of “universal interest,” owed to “present and future generations.”<sup>261</sup> This was viewed as a “necessary precondition” for the enjoyment of rights, a “minimum environmental quality,”<sup>262</sup> and a “fundamental right for the existence of humanity.”<sup>263</sup> Finally, its “nexus with other rights,”<sup>264</sup> such as the “rights to life, personal integrity, private life, health, water, food, housing, participation in cultural life, property and the right not to be forcibly displaced.”<sup>265</sup> Thus, as ‘preconditions’ and rights enhancers, the right to a healthy environment and intergenerational equity provide a strong foundation for national integration of commitments to children in the face of global warning and associated disasters.<sup>266</sup>

The subsequent section will reveal strong parallels between the emerging right to a healthy environment and the enshrined right to accessibility as right *enablers*—necessary for and linked to the promotion of other indispensable rights. In these rights lie the greatest protection capacity for CWDs displaced by climate disasters. However, in the absence of an international instrument recognising the right to a safe and healthy environment, accessibility is the more robust enabler in the interim.

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<sup>259</sup> San Salvador Protocol, Art. 11(1-2)

<sup>260</sup> *Ibid*, Art. 11(1)

<sup>261</sup> Advisory Opinion OC-23/17, para. 55

<sup>262</sup> IACtHR (2018) 'Advisory Opinion OC-23/17,' para. 49

<sup>263</sup> *Ibid*, para. 55

<sup>264</sup> *Ibid*, para. 55

<sup>265</sup> *Ibid*, para. 66

<sup>266</sup> HRC, *supra* FN 98, p. 17

## 6 Hard Law: the CRC and the CRPD

*"[Participation of children should resemble] inclusiveness, in legislation and policy—not only in terms of mainstreaming children on the move because of climate change, but also ensuring that they have adequate attention, precisely because of their vulnerabilities."*

*Cecilia Jimenez Damary*<sup>267</sup>

### 6.1 Convention on the Rights of the Child (CRC)

The CRC is a human rights-based Convention, advocating for the analysis of "obligations, inequalities, and vulnerabilities" and "discriminatory practices and unjust distributions of power."<sup>268</sup> The CRC "holistic[ally]" recognises its rights as "indivisible and interrelated"<sup>269</sup> as well as "inalienable and universal."<sup>270</sup>

Ratified by more governments than any other IHRL convention (all except Somalia and the United States of America),<sup>271</sup> the CRC followed the League of Nations Declaration of the Rights of the Child and preceded the International Covenant on Civil and Political Rights (ICCPR), also containing child-specific provisions.<sup>272</sup> It strengthens the IESCR and the IC-CPR—to bolster the rights to life, survival and development,<sup>273</sup> family life and not being separated from parents against a child's will,<sup>274</sup> an advancement of an adequate standard of living,<sup>275</sup> the highest attainable standard of health,<sup>276</sup> education,<sup>277</sup> freedom from violence and exploitation,<sup>278</sup> and enjoyment of a child's own culture.<sup>279</sup>

The Convention defines a child as any person under the age of 18, unless "*under the law applicable to the child, majority is attained earlier.*"<sup>280</sup> Its milestone achievement was the principle that "*children are entitled to be listened to and taken seriously in all matters that con-*

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<sup>267</sup> (UN Special Rapporteur for IDPs) in Colon, *supra* FN 19, p. 24

<sup>268</sup> HRC, *supra* FN 98, p. 9

<sup>269</sup> Ruppel-Schlicting, *supra* FN 42, p. 359

<sup>270</sup> HRC, *supra* FN 98, p. 9

<sup>271</sup> Santos Pais, (2006), '*Overview and implementation of the UN Convention on the Rights of the Child,*' p. 689

<sup>272</sup> ICCPR, Art. 14(1), 23(4), 24

<sup>273</sup> CRC, Art. 6

<sup>274</sup> *Ibid*, Art. 9-10

<sup>275</sup> *Ibid*, Art. 27

<sup>276</sup> *Ibid*, Art. 24

<sup>277</sup> *Ibid*, Art. 28

<sup>278</sup> *Ibid*, Art. 19, 32, 34-36

<sup>279</sup> *Ibid*, Art. 30

<sup>280</sup> CRC, Art. 1

cern them.”<sup>281</sup> Scholars have defined the aim of the CRC as protection from “violence, abuse, neglect or exploitation”<sup>282</sup>—broadly conceived as in the home,<sup>283</sup> workplace,<sup>284</sup> when deprived of liberty<sup>285</sup> or a family environment,<sup>286</sup> for special needs relating to cross-border movement,<sup>287</sup> or disability.<sup>288</sup> The Convention binds both parent and State parties<sup>289</sup> to prioritise the “best interests,”<sup>290</sup> life,<sup>291</sup> “survival and development”<sup>292</sup> of the child. The CRC’s four main areas of focus are “survival, development, protection, and participation,” with the latter<sup>293</sup> being the least supported and respected.<sup>294</sup>

Though it lacks a court mandated with Convention enforcement, States are obligated to submit regular reports reciprocated with concluding observations<sup>295</sup> to CRC-mandated UN treaty body.<sup>296</sup> In the CRC, children transcend the role of beneficiaries to that of rights-holding beings capable of making demands<sup>297</sup> and offers them the opportunity to be heard directly in any judicial or administrative proceeding regarding them.<sup>298</sup> Though the CRC lacks an individual complaints mechanism, the Optional Protocol to the CRC establishes a complaints mechanism for child’s rights violations.<sup>299</sup> However, the lack of an individual complaints mechanism mandated by the CRC or a supervisory body for Convention enforcement are one of the “most serious weaknesses” of the Convention.<sup>300</sup>

This section will explore how the use of the backbone of the CRC—the best interests of the child consideration—is often at odds with the Conventions’ tenets of family unity, child participation and view expression, and enjoyment of a child’s own culture. Interviewed practi-

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<sup>281</sup> Landsdown, (2006), ‘*Children’s right to express views and have them taken seriously*’, p. 690

<sup>282</sup> Tobin, (2020), ‘*Thirty years of the CRC: Child protection progress, challenges and opportunities*’, p. 2

<sup>283</sup> CRC, Art. 19

<sup>284</sup> Ibid, Art. 32

<sup>285</sup> Ibid, Art. 37, 40

<sup>286</sup> Ibid, Art. 21

<sup>287</sup> Ibid, Art. 22

<sup>288</sup> Ibid, Art. 23

<sup>289</sup> Ibid, Art. 18(1-3)

<sup>290</sup> Ibid, Art. 3

<sup>291</sup> Ibid, Art. 6(1)

<sup>292</sup> Ibid, Art. 6(2)

<sup>293</sup> Ibid, Art. 12

<sup>294</sup> Muvenda-Mudavanhu, *supra* FN 38, p. 2

<sup>295</sup> Tobin, *supra* FN 302, p. 5

<sup>296</sup> CRC, Art. 43-44

<sup>297</sup> Tobin, *supra* FN 302, p. 3

<sup>298</sup> Ibid, Art. 12(2)

<sup>299</sup> HRC, *supra* FN 98, p. 17

<sup>300</sup> Ruppel-Schlicting, *supra* FN 42, p.363

tioners claim that a case-by-case ‘best interest’ consideration is too often invoked to separate and alienate children. Subsequently, I will continue to argue that the rights enablers of a safe and healthy environment and accessibility provide the best option for young IDPs with disabilities.

### 6.1.1 CRC and Global heating

The Committee on the Rights of the Child identified four principles meant to guide a child rights-based approach to climate change: "non-discrimination; the best interests of the child; the child's right to life, survival and development; and the child's right to express his or her own views."<sup>301</sup> To anchor the analysis of the CRC, it is useful to consider that the issues of a child-centred climate change policy are four-fold: children will feel the majority of the mental and physical repercussions of a changing environment, they will feel "a disproportionate share of the burden," the weakest institutions in developing countries will experience the great risks,<sup>302</sup> and that the benefits of policies now will have future pay-off.<sup>303</sup>

Of the most pertinent articles linked to protection children's rights in the face of global heating's effects are Article 2—the right not to be discriminated; Article 3—the best interests of the child, Article 6—the right to life, survival and development, Article 12—the right to child participation, Article 24—the right to the highest attainable standard of health, Article 29—the right to education.<sup>304</sup>

### 6.1.2 CRC on CWDs

*“CWDs have exactly the same needs as other children. In DRR settings, the main issues for CWDs are accessibility of information, inclusive emergency /evacuation plan, provision of lost assistive devices/medicine, support to access all other rights/services for children (food, family reunification etc.), possibly the fact that often they have no birth certificate/official documents which might complicate the procedures, and also lack of data on CWDs...”*

*HI Pool of Experts*<sup>305</sup>

The CRC was the first human rights treaty that specifically referenced disability, in both article 2 on non-discrimination and article 23, focusing specifically on the needs of CWDs.<sup>306</sup>

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<sup>301</sup> CRC, Art. 12; HRC, *supra* FN 98, p. 9; General Comment No. 5 (2003), ' *General measures of implementation of the Convention*, ' para 12.

<sup>302</sup> Hanna, *supra* FN 41, p. 117

<sup>303</sup> Currie, *supra* FN 8, p. 4

<sup>304</sup> Ruppel-Schlichting, *supra* FN 42, p. 363

<sup>305</sup> [Interview with the author] HI Pool of Experts, (2021)

<sup>306</sup> UN Committee on the CRC, General Comment No.9 (2006), para. 3

The CRC mentions disability six times. Firstly, the CRC provides the obligation of States to "respect and ensure rights" without discrimination "irrespective of disability, birth or other status."<sup>307</sup> The addition of disability as a prohibited ground for discrimination was unique for a human rights treaty and was linked to the fact that CWDs "belong to one of the most vulnerable groups of children" and face multiple forms of discrimination.<sup>308</sup> Of note is that the first mention of disability is in reference to the child's own or (biological) guardian's disability.<sup>309</sup> This wide interpretation of discrimination for individual or associated disability is crucial for intergenerational disability, with children inheriting or mirroring physical or mental disabilities of their parents.

Article 23 is a four-pronged article contains five references to disability appear, with the first paragraph considered the "leading principle for the implementation of the Convention" respect with to CWDs for its core message that CWDs should be active and included members of society.<sup>310</sup> Further, no reservations or declarations have been entered specifically to article 23.<sup>311</sup>

The first provision "recognises" that a "*mentally or physically disabled child should enjoy a full and decent life in conditions ensuring dignity, self-reliance and participation.*"<sup>312</sup> This provision *recognises* rather than enshrines a positive obligation and employs the modal auxiliary 'should.' The enjoyment of a full and decent life is considered preferable and necessary, though not an explicit State obligation. The article also contains a proviso to "*encourage and ensure the extension [of special care]*"<sup>313</sup> caveated with the child's condition, and the circumstances of her guardians.<sup>314</sup> The third proviso obligates States to "*provide [assistance] free of charge*" to CWDs, conditional on the financial resources of the parents or guardian.<sup>315</sup> The same clause contains a positive obligation in the design of assistance, ensuring the disabled child "has effective access to and receives" education, training, health care, rehabilitation, preparation for employment, recreation in "a manner conducive to the child's achieving the fullest possible social integration and individual development."<sup>316</sup> The force of the obligation of inclusive design of assistance derives from the modal auxiliary 'shall' and the superla-

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<sup>307</sup> CRC, Art. 2(1)

<sup>308</sup> UNCRC, *supra* FN 337, para. 8

<sup>309</sup> CRC, Art. 2(2)

<sup>310</sup> UNCRC, *supra* FN 337, para.11

<sup>311</sup> UNCRC, *supra* FN 337, para. 4

<sup>312</sup> CRC, Art. 23(1)

<sup>313</sup> *Ibid*, 23(2)

<sup>314</sup> *Ibid*, 23(2)

<sup>315</sup> *Ibid*, 23(3)

<sup>316</sup> *Ibid*, 23(3)

tive adjective ‘fullest’ (possible social integration and individual development). In this provision we see the most effective obligation for States to ensure "effective access" to other rights and the "fullest possible" development of CWDs.

The final sub-article contains a proviso to “promote” the exchange of “health care, medical, psychological and functional treatment” of CWDs. This includes information regarding rehabilitation, education, and vocational services. The sub-article contains a second proviso to consider “*the needs of developing countries.*”<sup>317</sup> Similarly to Article 23, this article could apply to disaster in the provision of accessible information about danger and services available.

This is supported by a call by the Committee on the Rights of Children to create legislation and national plans of action that place the inclusion of CWDs at their core.<sup>318</sup> However, these provisions are anchored by weaker verbs of ‘recognising’ and ‘encouraging’ and limited with the adjective and adverbial phrases such as “available resources” and “wherever possible.” Though the Committee deems special care and assistance “a matter of high priority” and “to invest the maximum extent of available resources” in the elimination of discrimination against CWDs for maximum inclusion,<sup>319</sup> this qualification provides flexibility in phenomena occurrences warranting additional assistance: natural disasters. The Committee calls for funds to be “sufficient” and “earmarked” for PWDs, though the CRC does not specify certain amounts or percentages.<sup>320</sup>

Though it is challenging to “attribute causality to a single Convention,”<sup>321</sup> from the widely ratified CRC, we can unpack four main provisions for inclusive disaster relief: the indiscriminate respect for rights irrespective of individual or associated disability, the obligation for inclusive design, the proviso to promote the exchange of information, and—a provision we will examine shortly—the ‘the best interests of the child.’ In sum, the CRC enshrines protection not as a "luxury or privilege", but an "entitlement to be satisfied by the State in light of its available resources"<sup>322</sup>

The CRC does not advocate full equality between children and adults.<sup>323</sup> It rather depicts children as "rights-holders" rather than "charitable exercises."<sup>324</sup> Though CRC provides "a solid

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<sup>317</sup> Ibid, 23(4)

<sup>318</sup> UNCRC, *supra* FN 337, para. 17-19

<sup>319</sup> UNCRC, *supra* FN 337, para. 14

<sup>320</sup> CRC, Art. 4

<sup>321</sup> Santos Pais, *supra*, p. 689

<sup>322</sup> Tobin, *supra* FN 302, p. 5

<sup>323</sup> Todres, *supra* FN 88, p. 1259

framework" to safeguard children's rights, risks still remain, not solely because of the absence of "effective enforcement mechanisms."<sup>325</sup>

### 6.1.3 Best Interests of the Child

*"The best interest of CWDs has been used for a long time to justify why PWDs should have a guardian, be institutionalised, or attend a special school. All the exclusion of PWDs has been justified because of their best interest... it has been overused and not served the disability community at all. So when it comes to children, we try to be careful and avoid using 'the best interest of the child... Best interest of the child should never be something that excludes a CWD from being in an inclusive environment.'"*

-Mhiri <sup>326</sup>

*"The biggest challenge with this phrase is who is responsible for determining the "best interest of the child"? Too often this phrase relies on local authorities to make this determination without the direct consult of the children themselves. This is especially true when others decide "best interest" for CWDs..." [In]... post-conflict or post-disaster settings, [the phrase] unfortunately leaves too much room for, at best, ineffective protection practices but many times detrimental decision making on the part of governments under distress or de facto authorities. However, it is important to think about what is in the best interest for the child, as opposed to the easiest/most cost effective/typical course of action, where the child's interests may not even be considered at all."*

-HI Pool of Experts <sup>327</sup>

"Best interests of the child" chime six times in the CRC.<sup>328</sup> Its definition has evolved to "ensuring that what actions take place or what plans are made places the most importance on the needs of a child and their welfare"<sup>329</sup> and the "primary factor in decisions about the child's future"<sup>330</sup> The UNCHR Guidelines on the 'best interests' in the CRC depicts this as "broadly" "the well-being of a child."<sup>331</sup> The latter is seen as the culmination of "individual circumstances" (age, maturity level, absence or presence of parents and guardians, environment, and previous experiences).<sup>332</sup> However, it lacks an undisputed and codified definition.

The Committee on the Rights of the Child has given four articles<sup>333</sup> the status of "general principles" and fundamental for global heating.<sup>334</sup> The best interest of the child is considered

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<sup>324</sup> Ibid, p. 1261

<sup>325</sup> Ruppel-Schlicting, *supra* FN 42, p. 374

<sup>326</sup> [Interview with the author] Mhiri, Advocacy Officer for Inclusion International

<sup>327</sup> HI Pool of Experts, *supra* FN 336

<sup>328</sup> CRC, Art. 3(1), 9(1&3), 18(1), 20(1), 21(1)

<sup>329</sup> Delaney, (2012), 'Rebuilding the future: Terre Des Hommes International Federation'

<sup>330</sup> OHCHR (2017), 'Analytical Study of the Relationship between Climate Change and the Full Effective Enjoyment of the Rights of the Child'

<sup>331</sup> UNCHR (2008) ' UNCHR Guidelines on Determining the Best Interests of the Child,' p. 14

<sup>332</sup> Ibid, p. 14

<sup>333</sup> CRC, Art. 2, 3, 6, 12

<sup>334</sup> Ruppel-Schlicting, *supra* FN 42, p. 360

the provision "underpinning all other provisions" even though the four principles should be on equal footing.<sup>335</sup>

Its first appearance is perhaps the most crucial in that it calls "*in all actions concerning children*" undertaken by "*public or private social welfare institutions, courts of law, administrative authorities or legislative bodies*" to make the best interests of the child "*a primary consideration*."<sup>336</sup> A further sub-article elaborates the intended meaning of 'best interests of the child' by referring to the "*protection and care...necessary for his or her well-being*", taking into account parental and guardian rights.<sup>337</sup> This proviso ("*undertake to ensure*"<sup>338</sup>) remains tempered, requiring States to "*take all appropriate legislative and administrative measures*."<sup>339</sup> This proviso calls on all State Parties to make children's best interests a priority in their legislation and administration. This forms a solid foundation on which to ground disability-sensitive emergency response.

The statements from practitioners above echo preoccupations of what scholars have called the "paternalism" of who "imposes" the best interest of the child, through a system of Foucauldian "productive power."<sup>340</sup> This is a paternalism defined as "an imposition in the name of a particular set of best interests."<sup>341</sup> Any humanitarian intervention requires a degree of "control over the lives of others," regardless of intentions and high standards and objectives of care.<sup>342</sup> The danger of care arises when this tips into the realm of control, revealing "the negative face of humanitarianism."<sup>343</sup> The question at the crux of the slipperiness of best interests of the child is summarised as follows: "are we advocating for the right to protect or the right for protection?"<sup>344</sup> The former justifies *intervention* and the latter on behalf of a child as "an autonomous being."<sup>345</sup> For its cornerstone, the CRC has been accused of "reinforc[ing] power relations, of adults over children, of Western over non-Western nations."<sup>346</sup> Some scholars have labelled the CRC a tool in the toolkit of a "misanthropy without borders" that "legitimizes an

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<sup>335</sup> Fortin *supra* FN 56, p. 37

<sup>336</sup> CRC, Art. 3(1)

<sup>337</sup> Ibid, Art. 3(2)

<sup>338</sup> Ibid, Art. 3(2)

<sup>339</sup> Ibid, Art. 3(2)

<sup>340</sup> Vella, (2016) '*Power, paternalism and children on the move*', p. 2

<sup>341</sup> Ibid, p. 10

<sup>342</sup> Barnett, (2010), '*Humanitarianism, paternalism, and the UNCHR*'; Barnett (2011), *Empire of Humanity*

<sup>343</sup> Vella, *supra* FN 378, p. 2; Barnett, (2010) *supra* FN 380; Barnett (2011), *supra* FN 380

<sup>344</sup> Vella, *supra* FN 378, p. 3

<sup>345</sup> Ibid, p. 3

<sup>346</sup> Gadda, (2008) '*Rights, Foucault and Power: a critical analysis of the United Nations Convention on the Rights of the Child*', p. 31

unequal international order.”<sup>347</sup> This results from the inherent idea of speaking as an eyewitness to (child) vulnerability and imposition of a universal idea of childhood.<sup>348</sup> Participation in DRR for children does not require adult-like treatment, but rather distances aid from “structural measures” that reinforce “the aid dependency syndrome.”<sup>349</sup> The true aim should be to ensure participation in a way that “respects dignity and autonomy” of the CWD rather than isolates through external imposition.<sup>350</sup>

#### 6.1.4 A Safe Environment

Parallely to IEL, in the CRC, the argument for a safe environment can already be viewed as a cumulative right deriving from the right to be free from exploitation,<sup>351</sup> physical and mental abuse, violence, and neglect,<sup>352</sup> and to the highest attainable standard of health.<sup>353</sup> In this combination we can advocate for the “group rights” of children in an environment built and with them in mind.<sup>354</sup> An analogous argument can be made for a safe and healthy environment (as well as the explicitly mentioned access) as an enabler of other rights or ‘incidental right.’<sup>355</sup>

In sum, in the CRC, the greater hope for CWDs lies not in the ‘best interests of the child’, but in the assurance of “effective access” and a safe and healthy environment seen as a cumulative right or implicit enabler. Access and the right to a safe and healthy environment spurs inclusive and dignified development while the former has often been invoked to remove agency from a parent, caregiver, community, NGO, or the international system. The next section explores the idea of accessibility and a safe and healthy environment within the CRPD.

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<sup>347</sup> Pupuvac, (2001), ‘*Misanthropy without borders: the international children’s rights regime*,’ p. 95-112

<sup>348</sup> Vella, *supra* FN 378, p. 9

<sup>349</sup> Muvenda-Mudavanhu, *supra* FN 38, p. 6

<sup>350</sup> [Interview with the author] *supra* FN 329

<sup>351</sup> CRC, Art. 32, 34, 35, 36

<sup>352</sup> *Ibid*, Art. 4

<sup>353</sup> *Ibid*, Art. 24, 28

<sup>354</sup> Todres, *supra* FN 88, p. 1250

<sup>355</sup> Harpur, *supra* FN 57, p. 2

## 6.2 Convention on the Rights of Persons with Disabilities

*Author: How often do you find yourself using the CRPD as a tool in your advocacy work?*

*Mhiri: Every day, every hour. It is a common language for disability advocacy.*<sup>356</sup>

*"HI refers more often to CRPD, due to its specific focus on disability. Within the CRPD, there are a multitude of references to the rights of CWDs, which is built directly off of the Convention on the Rights of the Child. Without the Conventions on the Rights of the Child, we would not have the CRPD."*

*Humanity and Inclusion Pool of Experts.*<sup>357</sup>

*I: How often do you use the CRPD?*

*AN: Never—the US is not a signatory. It is not that I wouldn't like to.*

*Allen Neece*<sup>358</sup>

With its 182 ratifications and 164 signatories, the CRPD is the most widely adopted Convention enshrining the rights and obligations of States towards PWDs<sup>359</sup> and the latest treaty advancing human rights from within the UN framework.<sup>360</sup> This instrument advocates for "inclusive development" and promotes existing rights from "a disability perspective," with the overarching goal assurance of "equality and non-discrimination."<sup>361</sup> A strength is its ability to "evolve" with the capacities and needs of CWDs.<sup>362</sup> Its Optional Protocol introduced two procedures to strengthen implementation: an individual communication procedure for individuals to make complaints against State Parties and the possibility of the Committee on the Rights of Persons with Disabilities to launch an enquiry.<sup>363</sup>

The CRC and the CRPD share the common conviction that vulnerability warrants specific rights that make the State "more responsive to that vulnerability."<sup>364</sup> The Preamble firmly ties the Convention to the recently examined CRC, "recognizing" that CWDs "should have full enjoyment of all humans rights and fundamental freedoms on the equal basis with other children"<sup>365</sup> Of particular note, is the caveat that "nothing in the present Convention shall affect

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<sup>356</sup> [Interview with the author] *supra* FN 329

<sup>357</sup> [Interview with the author] *supra* FN 336

<sup>358</sup> [Interview with the author] Foreign Service Officer with USAID speaking as a self-advocate

<sup>359</sup> CRPD, Preamble, recital 5.

<sup>360</sup> Nifosi-Sutton, *supra* FN 84, p. 42

<sup>361</sup> UNDP, *supra* FN 149, p. 16

<sup>362</sup> Ruppel-Schlicting, *supra* FN 42, p. 358; CRPD, Preamble, recital 5

<sup>363</sup> UNDP, *supra* FN 149, p. 20

<sup>364</sup> Fineman (2010), 'The vulnerable subject and the responsive state,' p. 256

<sup>365</sup> CRPD, Preamble, recital 18

*any provisions which are more conducive to the realisation of the rights of PWDs.*<sup>366</sup> This allows an interchangeable and iterative use of the CRC and CRPD.

The CRC and CRPD surpass the non-discrimination scope of the Convention on the Elimination on All Forms of Discrimination against Women (CEDAW) and the Convention on the Elimination of All Forms of Racial Discrimination (CERD) to enshrine human rights as “universal, indivisible and interrelated.”<sup>367</sup> Both summon a positive objective for the rights of universal delivery—not just a lack of discrimination.<sup>368</sup>

The CRPD “reaffirm[s]” the “universality, indivisibility, interdependence, and interrelatedness of human rights and fundamental freedoms,”<sup>369</sup> and “recognises” disability as an “evolving concept”, resulting from the interaction of a person with impairments and “attitudinal and environmental barriers” hindering participation “on an equal basis with others.”<sup>370</sup> As seen in the introduction, disability is not a private, personal, or immutable quality, but the “social construction”<sup>371</sup> or *interaction* of impairments with environmental barriers and societal attitudes. In an environment drastically changed and being quickly rebuilt such as in a disaster context, this takes on new meaning.

The CRPD is permeated with the principles of “dignity, individual autonomy, equality, accessibility and inclusion within society.”<sup>372</sup> This section will explore the vital themes of equality and non-discrimination (“on an equal basis with others”), interaction, “all necessary means,” accessibility, and reasonable accommodation.

### 6.2.1 Equality and Non-discrimination

*“It’s not the same for other people with disabilities. Some of them were living with relatives; others had to sleep in schoolrooms, church or mosque.*

*The most difficult thing is to wait for help from outside to eat or to have access to medicines.”*

*-Mia Farah<sup>373</sup>*

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<sup>366</sup> CRPD, Art. 4(4)

<sup>367</sup> CRPD, Preamble, para. c; Vienna Declaration (1993), para. 5

<sup>368</sup> Lord, *supra* FN 78, p. 10

<sup>369</sup> CRPD, Preamble, recital 3

<sup>370</sup> *Ibid*, recital 5; CRPD, Art. 1

<sup>371</sup> Stein, (2009), ‘*Future prospects for the United Nations Convention on disability*,’ p. 33

<sup>372</sup> Ferri, (2018) ‘*Reasonable Accommodation as a Gateway to the Equal Enjoyment of Human Rights: From New York to Strasbourg*’, p. 42

<sup>373</sup> [Interview with the author] Mia Farah, Self-Advocate for Inclusion International

The CRPD contains more dignity references than any other Convention.<sup>374</sup> Equality and non-discrimination, enshrined in the UDHR,<sup>375</sup> are the “cornerstones” of IHRL and have non-exhaustive grounds.<sup>376</sup> In the CRPD, this can be seen in the frequently repeated phrase “on an equal basis with others.”<sup>377</sup> Though equality and non-discrimination appeared in the soft law instruments of the Declaration on the Rights of Mentally Retarded Persons (1971) and the Declaration on the Rights of Disabled Persons (1975), this was inextricably linked to the medical model of disability as a curable and negative trait.<sup>378</sup> The human rights model of the CRPD advances the nuance of the “dilemmas of difference” in that true achievement equality entails “both ignoring and acknowledging difference.”<sup>379</sup> Equality and non-discrimination are both principles and rights.<sup>380</sup> As such, they are subject to immediate—not progressive realisation,<sup>381</sup> extending to the private sector.<sup>382</sup>

One of the ways that the Convention seeks to neutralize the impact of societal and physical barriers that would prevent equality and non-discrimination is a phrase tying the Convention to the CRC: “on equal basis with others.”<sup>383</sup> This phrase asks that CWDs be treated in a way comparably to other children.<sup>384</sup> In terms of equality, distinctively, the CRPD calls for “equality *under* the law” rather than the more common “equality before the law.”<sup>385</sup> This is “unique” and refers to the right “to use the law for personal benefit”—not just protection through it.<sup>386</sup> Thus, the rights of PWDs cannot be denied, restricted, or limited and must be mainstreamed into all legal instruments and processes.<sup>387</sup> Enjoying rights on an ‘equal basis’ requires States taking *positive action* that may include “accessibility, reasonable accommodation, and individual supports.”<sup>388</sup> This entails, at minimum, the elimination of barriers.<sup>389</sup>

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<sup>374</sup> CRPD, General Comment No. 6, (2018), para. 6

<sup>375</sup> *Ibid*, para. 4

<sup>376</sup> *Ibid*, para. 6

<sup>377</sup> *Ibid*, (2018), para 7; CRPD, Preamble, para. e & r, Art. 1, Art. 2, para 3-4, Art. 7(1, 3), Art. 9, Art. 10, Art. 12, Art. 13, Art. 14(1-2), Art. 15, Art. 18(1), Art. 19 (a, c), Art. 21, 22(2), 23(1), 24(2)(b),(5), Art. 27(1)(1)(b), Art. 27(1)(c),(2), Art. 29(a-b), Art. 30(1, 4, 5)

<sup>378</sup> CRPD, General Comment No. 6, (2018), para 8

<sup>379</sup> *Ibid*, para 10

<sup>380</sup> CRPD, Art. 3 and 5

<sup>381</sup> CRPD, General Comment No. 6, (2018), para 12

<sup>382</sup> CRPD, Art. 4(1)(e)

<sup>383</sup> CRPD, Preamble, para. e & r, Art. 1, Art. 2, para 3-4, Art. 7(1, 3), Art. 9, Art. 10, Art. 12, Art. 13, Art. 14(1-2), Art. 15, Art. 18(1), Art. 19 (a, c), Art. 21, 22(2), 23(1), 24(2)(b),(5), Art. 27(1)(1)(b), Art. 27(1)(c),(2), Art. 29(a-b), Art. 30(1, 4, 5)

<sup>384</sup> Nifosi-Sutton, *supra* FN 84, p. 42

<sup>385</sup> CRPD, Art. 5(1-4), *my emphasis*

<sup>386</sup> CRPD, General Comment No. 6, para. 14

<sup>387</sup> CRPD, General Comment No. 6, para. 14

<sup>388</sup> CRPD, General Comment No. 6, para. 16

Another strength of the Convention is its definition of disability-based discrimination as “any distinction, exclusion, or restriction on the basis of disability, which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.”<sup>390</sup> It is important to highlight the inclusion of the denial of reasonable accommodation as grounds for discrimination, which transcends definitions present in both CEDAW and ICERD.<sup>391</sup> The ICERD and CEDAW lack the more personalised discrimination ground of denial of reasonable accommodation and the insertion of the phrase “on equal basis with others,” which significantly raises the standard of care expected.<sup>392</sup>

General Comment No. 6 defines the forms of discrimination enumerated in the CRPD.<sup>393</sup> Direct discrimination occurs when a PWD is treated less favourably for a protected ground—by act or omission, with or without a direct comparison to others, and with or without explicit motive; and indirect discrimination includes laws or policies that “appear neutral at face value” but have “a disproportionate negative impact on a PWD.”<sup>394</sup> Of particular utility is the definition of “denial of reasonable accommodation,” which involves denying the needed appropriate measure or adjustment for equal enjoyment or exercise of the human right, given that this not impose “a disproportionate or undue burden.”<sup>395</sup> Similarly to the CRC, discrimination extends to anyone who has had or is expected to have a disability, as well as anyone associated with them.<sup>396</sup>

### 6.2.2 Shared Responsibility

*"This is not about disability; it is about language. This is something I frame in disaster response and international disability education. It is about providing access to comprehensible input via sign language (ostensibly native country or community sign language) to steer people away from the medical perspective and rather than viewing deafness as a "problem" that needs to be "fixed" to adopting the social-cultural perspective that views deaf culture as a distinct linguistic minority defined by sign language.."*

*-Neece<sup>397</sup>*

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<sup>389</sup>CRPD, General Comment No. 6, para. 16

<sup>390</sup> CRPD, Art. 2

<sup>391</sup> Ferri, *supra* FN 405, p. 41

<sup>392</sup> CRPD, General Comment No. 6, para. 17

<sup>393</sup> CRPD, Art. 5

<sup>394</sup> CRPD, General Comment No. 6, para. 18 (a,b)

<sup>395</sup> CRPD, General Comment No. 6, para. 18 (c)

<sup>396</sup> CRPD, General Comment No. 6, para. 20 (Inclusion International, 2011)

<sup>397</sup> [Interview with the author] Foreign Service Officer with USAID speaking as a self-advocate

As explored, CRPD’s definition of PWDs as the interaction between an impairment and an obstructive environment,<sup>398</sup> shifts the onus from the individual to integrate society and State as a whole to *include*. In this interaction, a shared responsibility emerges for disaster planning and protection. This inclusive definition indicating a shared responsibility and the objective of equal access will set an aspirational foundation for State protection of CWDs in disasters.

The general principles embedded in Article 3, create important ingredients for disaster response, including “*respect for inherent dignity*”, “*non-discrimination*,” “*accessibility*”, “*equality of opportunity*.”<sup>399</sup> With particular care for CWDs, the Convention enshrines the “*respect for the evolving capacities*” of CWDs and “*respect for the right of [CWDs] to preserve their identities*.”<sup>400</sup> This ensures attention to access, dignity, and opportunity in an environment and disability that is constantly evolving.

When coupled with the negative obligation (“refrain from”) “*engaging in any act or practice that is inconsistent with the present Convention*”<sup>401</sup> and the positive obligation to “*take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization, or private enterprise*,”<sup>402</sup> these principles acquire an armoured aspiration extending to individuals and private enterprises (including those operational during disasters). The Convention calls for the elimination of practice incompatible with the Convention and the future aspiration to “take all appropriate measures” to eradicate discrimination. From this provision, lack of access can be noted in reaction to a discriminatory practice or service in disaster.

A tension in these principles is the ambiguous financial translation of these principles to disaster relief. The CRPD qualifies obligations requiring States to “*undertake*” economic, social, and cultural rights measures “*to the maximum of its available resources, and where needed*.”<sup>403</sup> This, however, should be read in conjunction with Article 5(3) that “*in order to promote equality and eliminate discrimination, States shall take all appropriate steps to ensure that reasonable accommodation is provided*.”<sup>404</sup> Though representing a strong commitment, neither ‘steps’ nor ‘maximum available resources are quantified.

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<sup>398</sup> CRPD, Art. 1

<sup>399</sup> CRPD, Art. 3(1, 2, 3, 5)

<sup>400</sup> CRPD, Art. 3(8)

<sup>401</sup> CRPD, Art.4(1)(d)

<sup>402</sup> CRPD, Art. 4(1)(e)

<sup>403</sup> CRPD, Art. 4(2)

<sup>404</sup> CRPD, Art. 5(3)

By further exploring the phrases of "all necessary means," "accessibility," and "reasonable accommodation," we will see how the principles of equality and non-discrimination weave their way into early warning systems and assistance provision in the aftermath of a climate disaster.

### 6.2.3 All Necessary Means

*"The challenge of Article 11 is that it encompasses all other articles of the Treaty and basically say that they apply to "situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters."*  
-HI Pool of Experts <sup>405</sup>

The phrase "*all necessary means/measures*" appears frequently throughout the Convention.<sup>406</sup> When it comes to CWDs, the Convention refrains from qualification or exemption. States Parties commit to "*take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.*"<sup>407</sup> The baseline is the children's 'best interests' and the treatment other children would receive in comparable situations. The best interests of the child are presented as "*a primary consideration*" "*in all actions concerning children with disabilities*"<sup>408</sup>

The term 'all' is significant from the preamble, affirming the human rights of PWDs. The 'all' calls for all these rights to be applied "without distinction."<sup>409</sup> This was a milestone when compared to similar instruments holding some rights as contingent on ability. This word "goes to the heart of the rationale for a specific treaty on a sub-population group covered in theory but not in practice in human rights law."<sup>410</sup>

This expression is reprised in an altered form of "*all necessary measures*"<sup>411</sup> when referring to situations of risk and humanitarian emergencies. This article reaffirms a proviso to respect IHL and IHRL while setting a specific obligation to take "*all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of conflict, humanitarian emergencies and the occurrence of natural disasters.*"<sup>412</sup> Qualifications are not advanced; all necessary measures are to be summoned in natural disasters, as the

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<sup>405</sup> HI Pool of Experts, *supra* FN 336

<sup>406</sup> CPRD, Art. 7(1), Art. 10, Art. 11

<sup>407</sup> CRPD, Art. 7(1)

<sup>408</sup> CRPD, Art. 7(1)

<sup>409</sup> CRPD, Preamble, para. b

<sup>410</sup> Lord, *supra* FN 78, p. 10, *my emphasis*

<sup>411</sup> CRPD, Art. 11

<sup>412</sup> CRPD, Art. 11

provision is intended for exactly the type of emergencies that usually usher in permission for derogation.<sup>413</sup> This same obligation is referenced to ensure the “*right to life...and effective enjoyment by PWDs on an equal basis with others.*”<sup>414</sup> These two articles combined create the spine of an obligation to protect life and protect the safety of CWDs in disaster.

Crucially, ‘all necessary means’ translate to a greater percentage of budgets devoted to response capacities.<sup>415</sup> It is vital to remember that inclusion and inclusive design is something that benefits more than PWDs—it incorporates the population as a whole.<sup>416</sup> This view of inclusive rights application with “all necessary measures/means” having a universal benefit point to the right enabler of accessibility.

#### 6.2.4 Accessibility

*“When it comes to accessibility in the context of climate-induced disasters, it encompasses ensuring that all measures and mechanisms across the DRR and management cycle are inclusive and accessible; e.g. accessible early warning messaging and dissemination, inclusive contingency planning and accessible early actions ahead of disasters (for instance, pre-emptive evacuations that factor the specific needs of persons with disabilities, accessibility of evacuation routes and shelters, emergency supplies that consider the needs of persons with disabilities etc.), accessible relief operations.”*

-HI Pool of Experts<sup>417</sup>

*“The most important thing is to have information.*

*I remember that once, 60 young people with intellectual disabilities were abandoned in their institution, nobody knew about it and it was a region that was under intense bombardment.*

*- Prepare safety places and make it known.*

*- Hotline and contact with associations of people with disabilities*

*- Reference persons in the ministries.*

*- Facilitate admission to hospitals.”*

Farah<sup>418</sup>

Accessibility is of critical importance, being one of the eight principles that “enable the rights affirmed in the CRPD to be interpreted” and implemented.<sup>419</sup> This is defined in the CRPD as the right of PWDs to enjoy “*access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to*

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<sup>413</sup> Committee on the Rights of Persons with Disabilities *supra* FN 100, p. 2

<sup>414</sup> CRPD, Art. 10

<sup>415</sup> WHSS, *supra* FN 234, p. 86

<sup>416</sup> Committee on the Rights of Persons with Disabilities *supra* FN 100, p. 3

<sup>417</sup> HI Pool of Experts (2021), Interview with the Author

<sup>418</sup> [Interview with the Author] Mia Farah, Self-Advocate with Inclusion International

<sup>419</sup> IASC, *supra* FN 79, p. 8

*the public, both in urban and in rural areas.*"<sup>420</sup> Accessibility is "an end in itself as well as a means to enjoy other rights"—both a right and a facilitator of other rights.<sup>421</sup> Accessibility—relates to groups—and its partner, reasonable accommodation—is intended for a particular individual in a specific situation attempting to access to physical spaces and information.<sup>422</sup>

The CRPD was “novel” in HRL in its advancement of a right to accessibility.<sup>423</sup> The prelude to the Convention, the Ad Hoc Committee on the nascent treaty affirmed that the accessibility article of the then draft sufficed to “justify the existence of this convention.”<sup>424</sup> The World Report on Disability Summary in 2011—the largest consultation with PWDs—<sup>425</sup> stated that the built environment, transportation, information, and communication is usually inaccessible to PWDs.<sup>426</sup> These barriers are both physical and attitudinal.<sup>427</sup>

The World Health Organization reaffirms that Article 25's right to the "enjoyment of the highest attainable standard of health without discrimination"<sup>428</sup> is only possible when health systems are *accessible* and *inclusive*, "on an equal basis with other" and PWDs are considered "agents of change."<sup>429</sup> This should be read in conjunction with Article 20's call for PWDs to be awarded "*personal mobility in the manner and at the time of their choice and at an affordable cost*,"<sup>430</sup> and for "*mobility aids, devices, and assistive devices*" to be easy to access,<sup>431</sup> incorporated in training,<sup>432</sup> and produced in a way that encompasses diverse mobility needs.<sup>433</sup> The CRPD thus advocates for the "twin-track approach" of promoting inclusive design and implementation and empowerment of PWDs.<sup>434</sup>

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<sup>420</sup> CRPD, Art. 9

<sup>421</sup> UNDP, *supra* FN 149, p. 19

<sup>422</sup> *Ibid*, p. 19

<sup>423</sup> Lawson, (2018), '*Art. 9: Accessibility*' in *The UN Convention on the Rights of Persons with Disabilities: A Commentary*, p. 259

<sup>424</sup> Rehabilitation International, '*UN Convention on the Human Rights of People with Disabilities: Ad Hoc Committee—Daily Summaries*' (6th session)

<sup>425</sup> CRPD, General Comment 2, CRPD/C/GC/2, paras 1, 4, 12

<sup>426</sup> World Report on Disability Summary, (2011), p. 10

<sup>427</sup> *Ibid*, p. 10

<sup>428</sup> CRPD, Art. 25

<sup>429</sup> WHO, *supra* FN 81, para. 2

<sup>430</sup> CRPD, Art. 20(a)

<sup>431</sup> CRPD, Art. 20(b)

<sup>432</sup> CRPD, Art. 20(c)

<sup>433</sup> CRPD, Art. 20(d)

<sup>434</sup> WHO, *supra* FN 81, para. 18

The terms accessible and accessibility appear twenty-five times in the CRPD. The frequency of this term entrenches the idea that this is a condition *sine qua non* for many of the other rights extolled in the Convention. As the keystone of the Convention, it appears not only in the body but also the grounding principles of the CRPD.<sup>435</sup> It aids these building blocks “re-shape the physical and technological world” around us—not just for PWDs.<sup>436</sup> Its importance also stems from the CRPD’s definition of disability as an *interaction* with an inaccessible environment of barriers.<sup>437</sup> Another crucial advancement of the CRPD was requiring accessibility beyond the legal personality of the space or service in question: any space open to the public, whether private- or public-owned, must be accessible to all.<sup>438</sup> This is an important distinction in the humanitarian sphere where provisions will be rapid and merge private and public investment.

The difficulty of a progressive realisation of accessibility is that subsequent adaptations to buildings or information and communication, including ICT, can be costly—both for the lives of the PWDs they exclude and for private and public funders who would be expected to foot the costs.<sup>439</sup>

The latter—information and communication—is a vital concession for risk communication including early warning and evacuation procedures.<sup>440</sup> This is reprised in the CRPD Preamble, recognising the importance of “*accessibility to the physical, social, economic and cultural environment, to health and education, and to information and communication.*”<sup>441</sup> This could be interpreted to entail anything from sign language, pictures, plain language, slow speech, demonstrative actions, Braille, large print, audio, caption...”<sup>442</sup> The Committee on the Rights of Persons with Disability included in its examples of Information and Communications Technology (ICT) facilitating accessibility closed captioning on television and sign language interpretation.<sup>443</sup>

Accessibility, though not defined in the CRPD, could be depicted as universal design and unrestricted access: “PWDs and other users should be able to move in barrier-free streets, enter

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<sup>435</sup> CRPD, Art. 3(f)

<sup>436</sup> Lawson, (2018), ‘*Art. 9: Accessibility*’ in *The UN Convention on the Rights of Persons with Disabilities: A Commentary*, p. 260

<sup>437</sup> CRPD, Art. 1

<sup>438</sup> CRPD, General Comment No 2, para. 13

<sup>439</sup> CRPD, General Comment No 2, para. 15

<sup>440</sup> Battle, *supra* FN 26, p. 236

<sup>441</sup> CRPD, Preamble, recital 22

<sup>442</sup> *Ibid*, p. 236

<sup>443</sup> Committee on the Rights of Persons with Disabilities *supra* FN 100, p. 3

accessible low-floor vehicles, access information and communication, and enter and move inside universally designed buildings, using technical aids and live assistance where necessary.”<sup>444</sup> It could also be viewed, from a disability-inclusive DRR perspective, as designing natural hazard role-play and scenarios in school to allow children to have a realistic experience of disaster and evacuation procedures.<sup>445</sup>

The right to access or have access to preceded the entry into force of the CRPD. It appeared previously in the ICCPR and ICERD.<sup>446</sup> The former refers to having the “right” and “opportunity” to “have access, on general terms of equality, to public service in his country”;<sup>447</sup> the latter refers to the right of access “to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres, and parks.”<sup>448</sup> Both include the same qualification of article 9 of the CRPD of comparison of PWDS’ level of access to that of a general public. These two mentions create the precedent of the right to access as a right “per se.”<sup>449</sup> Accessibility in the CRPD, therefore, becomes the disability-specific reaffirmation of the aforementioned right to access.<sup>450</sup>

A clear tension beneath the surface of the CRPD and its General Comment No. 2 is that of lack of accessibility signalling discrimination or a moment in progressive realisation. The *travaux préparatoires* suggest that whether this article was subject to progressive realisation or whose violation should, alternatively, result in positive discrimination was hotly contested until the drafting of the article in its current form.<sup>451</sup> The question is whether any barrier threatening accessibility can be frozen into a snapshot of discrimination or whether it should be observed as an arch, from the starting point to a progressive realisation of rights.<sup>452</sup>

General Comment No 2 of the CRPD frames the importance of article 9 as a “*precondition*” for PWDs to “live independently and equally in society,” stating that without this access to “the physical environment, to transportation, to information and communication...” PWDs

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<sup>444</sup> CRPD, General Comment No 2, para. 15

<sup>445</sup> Ronoh, *supra* FN 352, p. 384

<sup>446</sup> ICCPR, Art. 25(c); ICERD, Art. 5(f)

<sup>447</sup> ICCPR, 25(c)

<sup>448</sup> ICERD, Art. 5(f)

<sup>449</sup> CRPD General Comment No 2, para 3

<sup>450</sup> CRPD General Comment No 2 (n 60), paras 1, 4

<sup>451</sup> Lawson, (2018), ‘*Art. 9: Accessibility*’ in *The UN Convention on the Rights of Persons with Disabilities: A Commentary*, p. 267.

<sup>452</sup> CRPD Committee, General Comment No 2 ‘*Article 9: Accessibility*’ UN Doc CRPD/C/GC/2 (11 April 2014) (hereafter General Comment No 2) para 24

would lack “equal opportunities for participation in their respective societies.”<sup>453</sup> The crystallising of the article as a *precondition* for independent life and equality in society highlights the “cross-cutting nature” of accessibility.<sup>454</sup> The first of this precondition is generally considered to require taking “*all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities.*”<sup>455</sup>

This part of the Convention was used in advocacy by tying accessibility as a precondition for article 13 of the Universal Declaration of Human Rights (UDHR)’s and article 12 ICCPR’s of the freedom of movement <sup>456</sup> or UDHR’s and ICCPR’s article 19 on the freedom of opinion and expression.<sup>457</sup> Advocacy predicated accessibility as the necessary *precondition* for expressing an opinion *on equal basis with others*. Furthermore, its appearance in the ICCPR to state that every citizen “*shall have the right and opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions*” to “*have access, on general terms of equality, to public service in his country*”<sup>458</sup> could advance the case of the right to access’ incorporation into the core body of human rights treaties.<sup>459</sup> It is also the precondition of many rights within the CRPD: information and communication,<sup>460</sup> education,<sup>461</sup> health, work,<sup>462</sup> an adequate standard of living and social protection,<sup>463</sup> participation in political life,<sup>464</sup> participation in cultural life and recreational activities.<sup>465</sup>

In sum, accessibility is one of the strongest tools in the CRPD and beyond for the implementation of other indispensable rights for CWDs. We turn now to its more individualised partner: reasonable accommodation.

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<sup>453</sup> Ibid, para 1.

<sup>454</sup> Lawson, (2018), ‘*Art. 9: Accessibility*’ in The UN Convention on the Rights of Persons with Disabilities: A Commentary, p. 268

<sup>455</sup> CRPD, 4(1)(b)

<sup>456</sup> UDHR, Art. 13; ICCPR, Art. 12; CRPD General Comment no. 2, (2014), para. 1

<sup>457</sup> UDHR, Art. 19; ICCPR, Art. 19, para. 2; CRPD General Comment no. 2, (2014), para. 1

<sup>458</sup> ICCPR, Art. 25(c)

<sup>459</sup> CRPD General Comment No. 2 ‘Article 9: Accessibility’ UN Doc CRPD/C/GC/2 (11 April 2014), para 2

<sup>460</sup> CRPD, Art. 9, 21

<sup>461</sup> CRPD, Art. 24

<sup>462</sup> CRPD, Art. 27

<sup>463</sup> CRPD, Art. 28

<sup>464</sup> CRPD, Art. 29

<sup>465</sup> CRPD, Art. 30; CRPD Committee, General Comment No 2 ‘Article 9: Accessibility’ UN Doc CRPD/C/GC/2 (11 April 2014), paras 34-47.

### 6.2.5 Reasonable Accommodation

*“Article 11 is not respected... Why? Because your home must be accessible. You must be able to leave your home and access your home and access your community to go to a supermarket, church, everywhere. That means if you need an assistive device, you should have it. If you need personal assistance, you should have it. If you require a sign language interpreter, you should have it. All these things need to be there. And transportation should be there, which is neglected. This is true for DRR and management.”*

-Manlapaz <sup>466</sup>

Reasonable accommodation—interchangeably called reasonable adjustment—can be defined as the duty to “remove barriers created by physical structures, traditional methods of communication and standard policies or practices where these would place a person with disability at a disadvantage when compared with a non-disabled person.” <sup>467</sup> This definition contains echoes of communication and physical access in a shroud of non-discrimination. The CRPD connects “the duty to accommodation with the principle of equality.” <sup>468</sup> It is reasonable accommodation’s emphasis on “accommodating human diversity” through “individualized support” that supplies the CRPD with its “greatest transformative modality.” <sup>469</sup>

Accessibility has been called an “*ex ante duty*”—meaning that accessibility plans must be put in place *before* any place or service admits an individual.<sup>470</sup> Reasonable accommodation, in contrast, is called an “*ex nunc duty*” in that its enforcement comes into play the moment an individual needs a certain accommodation to enjoy a right in a particular context—framing this in a moment. <sup>471</sup> Even more significantly, austerity cannot serve as an excuse for the avoidance of the gradual implementation of accessibility.<sup>472</sup> It is “unconditional” in that the “burden of providing for PWDs” cannot be cited for States to avoid providing this service. <sup>473</sup> The obligations originating from accessibility are rigid, but the debate surrounding gradual implementation or discrimination ‘in real time’ leaves standards in murkier waters.

Further confusion surrounds the duty of State to enable access to the physical environment, transportation, information and communication, and services being seen in the lens of equality

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<sup>466</sup> [Interview with the author] *supra* FN 66

<sup>467</sup> Lawson, A. ‘Disability equality, reasonable accommodation and the avoidance of ill-treatment in places of detention: The role of supranational monitoring and inspection bodies,’ p. 846

<sup>468</sup> Broderick, (2015), *The long and winding road to equality and inclusion for persons with disabilities*, p. 107

<sup>469</sup> Ngwena (2013), ‘*The human right to inclusive education: Exploring a double discourse of inclusive education using South Africa as a case study*,’ p. 478

<sup>470</sup> CRPD Committee, (2014), General Comment No 2 ‘Article 9: Accessibility’ UN Doc CRPD/C/GC/2 (hereafter General Comment No 2), para 26.

<sup>471</sup> *Ibid*, para 26

<sup>472</sup> *Ibid*, para 25

<sup>473</sup> *Ibid*, para 25

and non-discrimination.<sup>474</sup> Denial of access to any could result in disability-based discrimination, prohibited by article 5 of the CRPD.<sup>475</sup> This is a retrospective task, “*pro futuro*” accessibility can be linked to the obligation of developing “universally designed goods, services, equipment and facilities.”<sup>476</sup> This leaves unresolved tension between discrimination and the margins of progressive realisation.<sup>477</sup> This tension can be unpacked in General Comment’s as discrimination resulting in cases when the inaccessible structure was created after the CRPD was introduced or when access could have been facilitated through reasonable accommodation.<sup>478</sup> Concisely, though the CRPD allows room for progressive enactment of accessible systems, austerity cannot be named as an excuse.<sup>479</sup>

The milestone of the CRPD in terms of access has been the embedding of reasonable accommodation within the principle of non-discrimination,<sup>480</sup> acknowledging its crucial role as a “gateway to the equal enjoyment of all human rights.”<sup>481</sup> Its intersection with obligations in natural disaster through Article 11 is that emergency services must also be accessible “or their lives cannot be saved or their well-being protected.”<sup>482</sup> In its two-pronged approach, the infusion of accessibility into law entails both mainstreaming into the physical environment of construction, planning, transportation, and the societal realm of communication and equal opportunities and participation.<sup>483</sup>

In another vein, some critics argue that, as accessibility is a precondition for independent living,<sup>484</sup> denial of access to the physical environment, transportation, information and communication technologies, and facilities and services open to the public” shall be viewed as “discrimination.”<sup>485</sup> This should be further contextualised within the requirement to take “*all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities,*”<sup>486</sup> to

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<sup>474</sup> Ibid, para 34

<sup>475</sup> CRPD, Art. 5

<sup>476</sup> CRPD, Art. 4(1)(f)

<sup>477</sup> Ibid, para 29

<sup>478</sup> Ibid, para 31

<sup>479</sup> Ibid, para 25

<sup>480</sup> CRPD, Art. 2; Ferri, *supra* FN 405, p. 40

<sup>481</sup> Ferri, *supra* FN 405, p. 40

<sup>482</sup> CRPD Committee, General Comment No 2 ‘Article 9: Accessibility’ UN Doc CRPD/C/GC/2 (11 April 2014) (hereafter General Comment No 2) para 36.

<sup>483</sup> Ibid, para 29

<sup>484</sup> CRPD, Art. 19

<sup>485</sup> CRPD, General Comment No 2, para. 23

<sup>486</sup> CRPD, Art. 4(1)(b)

“prohibit discrimination on the basis of disability,”<sup>487</sup> and take “all appropriate steps to ensure that reasonable accommodation is provided”<sup>488</sup>

Reasonable accommodation has been the subject of case law further illuminating its definition. In *H.M. v Sweden* presented at the CRPD committee in 2012 provides an example of reasonable accommodation with Mrs. H.M., suffering from a chronic illness that affected her ability to walk or stand, affirming that building an indoor swimming pool despite the refused permission by urban planning. The Committee held that a pool for hydrotherapy was the sole effective means of safeguarding H.M.’s right to health and constituted a reasonable accommodation.<sup>489</sup> Of particular importance in this case was the unravelling of “unequivocal linkages between reasonable accommodation and the fundamental principle of human dignity.”<sup>490</sup>

In *X v Argentina*, the Committee referred to reasonable accommodation in detention as an indispensable gateway for the protection of dignity of PWDs. Once again, we see echoes of UDHR’s and dignity’s normative status.<sup>491</sup> In *Jungelin v Sweden*—a qualified applicant not hired by the Social Insurance Agency because of the inability of internal computer systems to be adapted to accommodate a sight impairment— and *Michael Lockrey v Australia*—a juror excluded from jury duty rather than receiving requested steno-captioning to fulfil the duty for which he was summoned— ‘reasonable’ is defined as how relevant and effective the remedy, once again tying reasonable accommodation to countering discrimination.<sup>492</sup>

Accessibility also appears in relevant case law. In *Nyusti and Takács v Hungary* (2013) and *F v Austria* (2015), article 9 of the CRPD was found to have been breached. In the former, Hungary was deemed not to have taken the adequate steps to ensure that its banks’ ATMs were accessible to persons with visual impairments.<sup>493</sup> The Committee recommended that the State Party ensure benchmarks for accessible banks and services in law and policy.<sup>494</sup> In the latter, Austria was found in breach of article 9 for failing to install live audio for tram passengers in Linz, preventing passengers who were blind from effectively accessing messaging.<sup>495</sup>

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<sup>487</sup> CRPD, Art. 5(2)

<sup>488</sup> CRPD, Art. 5(3)

<sup>489</sup> CRPD (2012) *H.M. v Sweden* (Communication No. 3/2011)

<sup>490</sup> Ferri, (2018) ‘Reasonable Accommodation as a Gateway to the Equal Enjoyment of Human Rights: From New York to Strasbourg’, p. 42

<sup>491</sup> CRPD (2014) *X v Argentina* (Communication No.8 /2012)

<sup>492</sup> CRPD (2014) *Jungelin v Sweden* (Communication No. 5/2011); CRPD (2016) *Michael Lockrey v Australia* (Communication No. 13/2013)

<sup>493</sup> CRPD (2013) *Nyusti and Takács v Hungary* (Communication No. 1/2010)

<sup>494</sup> *Ibid*, para. 10.2(a)

<sup>495</sup> CRPD (2015) *F v Austria* (Communication No. 21/2014)

This linkage to observed positive discrimination does not suffuse the tension in the progressive realisation debate. However, its link to dignity highlights accessibility's assumption of the role of right enabler.

Information-sharing and communication are also subject to barriers that could reduce the accessibility of information.<sup>496</sup> More explicit provisions are needed to ensure accessibility of early warning systems, service availability and location, and collaboration in times of natural disasters. The CRPD was the first human rights treaty to address accessibility in the times of the internet, and thus extended the right to access enshrined in the ICCPR and the ICERD to cover ICTs.<sup>497</sup> This is vital for accessibility of services and information in a disaster.

In sum, reasonable accommodation and accessibility can be seen as "incidental rights" in that they provide a gateway to vital rights on an equal basis with others.<sup>498</sup> However, reasonable accommodation is an "individualised response to the particular needs of an individual with disabilities to ensure equal opportunities"<sup>499</sup> that is invoked at the moment of a violation—not a standard, universal, and inclusive response to DRR. Furthermore, both accessibility and reasonable accommodation fall into the ambiguous waters of progressive realisation and lack of clarification of necessary earmarked resources.

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<sup>496</sup> Declaration of Principles: Building the Information Society: a global challenge in the new Millennium, World Summit on the Information Society, (2003), para. 25

<sup>497</sup> CRPD, *supra* FN 515, para. 14

<sup>498</sup> Harpur, *supra* FN 57, p. 2

<sup>499</sup> Waddington, (2017), *Promoting equality and non-discrimination for persons with disabilities*, p. 19

## 7 Conclusion

*“To cite international legal treaties is not any help in a local community. They don’t really understand what it is and it is something foreign and not theirs. But, all religions have something about caring for the disabled and I find those quotations and use them in the discussions.”*

Voigt<sup>500</sup>

The legal analysis in this thesis has demonstrated that there are strong parallels in IEL and IHRL between the emerging right to a healthy environment and the enshrined right to accessibility and reasonable accommodation as ‘incidental rights’—necessary for and linked to the promotion of other indispensable rights.

The analysis of soft law reveals the growing trend of accessibility as the foundation for other rights for CWDs. In these rights, lie the greatest protection capacity for CWDs displaced by climate disasters, as –in comparison with the observed practice of 'best interest of the child' – its primary objective is the inclusion of CWDs.

However, while promising steps being made in towards better legal protection for CWDs, my interviews with practitioners in this field provided a different perspective. Three-quarters of the interviewees questioned the true value of IL. Many had the view that the decision as to whether rely on international law concerning the rights of CWD was the product of a case-by-case analysis. Voigt, for example, explained that local communities can regard law as a foreign implant; something that is definitively ‘not theirs.’ He more often relies on the words of religious texts to aid his discussions. For Manlapaz, the CRPD was “promising”, but “very difficult to understand.”<sup>501</sup> For Allen, it was an admirable tool, but not ratified by all.<sup>502</sup> While, for Mhiri, it was a point of “reference” and “a common language” for high-level advocacy, but not necessarily for emergencies on the ground.<sup>503</sup>

These interviews revealed that law can be side-lined when the immediacy of an emergency takes precedence over a more legally-sensitive and inclusive strategy to DRR. Concerns remain from legal scholars and humanitarian practitioners around the authority of law and use of rights in the context of protection measures for CWDs in disasters.<sup>504</sup>

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<sup>500</sup> [Interview with author] *supra* FN 130

<sup>501</sup> [Interview with author] *supra* FN 66

<sup>502</sup> [Interview with the author] *supra* FN 360

<sup>503</sup> [Interview with author] *supra* FN 329

<sup>504</sup> Keeney (2019), *International analysis of human rights and social work ethics*, p. 7-14

However, in the absence of a binding international instrument recognising the right to a safe and healthy environment, accessibility is the necessary and robust enabler. Together, this right enabler and right *in fieri* provide the most hopeful tools for a safe and accessible environment in the aftermath of a disaster and for CWDs' future planetary future.

*Everything is about accessibility... Protection is supporting people to empower them to protect themselves; not to wait for some other people to do that for you."*

*-Manlapaz<sup>505</sup>*

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<sup>505</sup> [Interview with author] *supra* FN 66

## 8 ANNEX I: List of Interviews Conducted

Name	Position	Organisation	Country	Interview Date
Ben Thatcher	UKEMT Project Assistant	Humanity and Inclusion (HI)	UK	17/11/2021
Stener Voigt	Child Protection Facilitator	Norwegian Refugee Council (NRC)	Norway	30/10/2021
Abner Manlapaz	Co-founder of Life Haven Center for Independent Living; Core member of the Philippine Coalition on the UNCRPD; Disability Rights Activist and Wheelchair User	Philippine Coalition on the UNCRPD and Life Haven Center for Independent Living	Philippines	24/11/2021
Manel Mhiri	Human Rights Officer with Inclusion International	Inclusion International	Tunisia/ Switzerland	26/11/2021
Humanity and Inclusion Interview with Pool of Experts	Casey Recaberren (Inclusive Education Policy Development Officer), Julia McGeown (Inclusive Education Global Manager), Sandrine Bohan Jacquot (Inclusive Education Global Specialist in Emergency), Jennifer M'Vouma (Risk Reduction and Climate Change Adaptation Policy & Development), Elena Bertozzi (Humanitarian Advocacy Officer)	Humanity and Inclusion	Switzerland, USA, UK, Belgium, Italy	22/12/2021
Mia Farah	Self-Advocate for Inclusion International	Inclusion International	Lebanon	21/01/2022
Allen Neece	Foreign Service Officer	USAID	USA	19/01/2022

## 9 Annex 2: Informed Consent Form

**Are you interested in taking part in the research project:**

***“The obligations of States towards children with disabilities internally displaced by natural disasters”***

This is an inquiry about participation in a research project where the main purpose is to investigate and interpret current legal obligations States have to inclusively respond to natural disasters accelerated or exacerbated by global heating to protect children with disabilities. In this letter we will give you information about the purpose of the project and what your participation will involve.

### **Purpose of the project**

This research project is a legal thesis for a master’s in Public International Law that seeks to explore the following questions:

1. What current legal provisions exist to safeguard the needs of children with physical disabilities who are internally displaced by natural disasters?
2. Do these address the humanitarian needs on the ground?
3. Could phrases like ‘all necessary measures’ and ‘best interest of the child’ start to breach gaps between legal obligations and practical needs?

The data collected from this personal interview will be used in the thesis and any resulting publications. If you would like to approve individual quotations as they appear in the draft, let me know and I am happy to send you a draft of the thesis or individual quotations for approval.

### **Who is responsible for the research project?**

The University of Oslo’s Department of Law and, in particular, the master’s in Public International Law is responsible for this research project.

My studies are also being partially funded by the NORAM scholarship board.

### **Why are you being asked to participate?**

You have been selected or recommended to participate in this project due to your experience or expertise in inclusive disaster response.

### **What does participation involve for you?**

As the thesis is predominantly legal, the primary research will consist only of personal interviews conducted and recorded (with explicit verbal consent) virtually.

If you chose to take part in the project, this will involve a short virtual conversation on your preferred medium. It will take approx. 45 minutes. The interview includes questions on inclusive disaster response and possible legal underpinnings. Your answers will be recorded electronically.

The only personal information I would be including in the thesis would be your name and role within the organisation, unless you explicitly requested to be kept anonymous.

**Participation is voluntary**  
Participation in the project is voluntary. If you chose to participate, you can withdraw your consent at any time without giving a reason. All information about you will then be made anonymous. There will be no negative consequences for you if you chose not to participate or later decide to withdraw.

### **Your personal privacy – how we will store and use your personal data**

We will only use your personal data for the purpose(s) specified in this information letter. We will process your personal data confidentially and in accordance with data protection legislation (the General Data Protection Regulation and Personal Data Act).

- The only person who will have access to this data is the primary researcher and her supervisor, XXXX, a [Role].
- When storing the recorded interview, I will replace your name and contact details with a code. The list of names, contact details and respective codes will be stored separately from the rest of the collected data.
- I will store the data on a research server, which will be locked away and encrypted.
- The interview recording will be transcribed by hand by the research lead.
- The project will be undertaken as part of a master's through the University of Oslo, however, it is important to note that the supervisor, though affiliated with the university, works with the Norwegian Refugee Council.
- The lead researcher is based in the UK, but will be observing all EU guidelines for the processing of personal data.
- If you speaking in a professional capacity or representing an organisation, your name, role, and organisation will be included in the research project. If you are speaking about a personal experience of disaster-induced displacement and would like to remain anonymous, indicate this to the lead researcher and you can decide whether to use a pseudonym or a general description.

### **What will happen to your personal data at the end of the research project?**

The project is scheduled to end May 2021. Any recordings or personal data not included in the research project will be destroyed or stored anonymously on an encrypted device owned by the lead researcher for a year following the completion of the thesis.

### **Your rights**

So long as you can be identified in the collected data, you have the right to:

- access the personal data that is being processed about you
- request that your personal data is deleted
- request that incorrect personal data about you is corrected/rectified
- receive a copy of your personal data (data portability), and
- send a complaint to the Data Protection Officer or The Norwegian Data Protection Authority regarding the processing of your personal data

### **What gives us the right to process your personal data?**

We will process your personal data based on your consent.

Based on an agreement with the University of Oslo, the NSD – The Norwegian Centre for Research Data AS has assessed that the processing of personal data in this project is in accordance with data protection legislation.

### Where can I find out more?

If you have questions about the project, or want to exercise your rights, contact:

- The University of Oslo via XXXX (email) or her supervisor, XXXX (email)
- Our Data Protection Officer at ([gsansvarlig@uio.no](mailto:gsansvarlig@uio.no))
- NSD – The Norwegian Centre for Research Data AS, by email: ([personverntjenester@nsd.no](mailto:personverntjenester@nsd.no)) or by telephone: +47 55 58 21 17.

Yours sincerely,

XXXX  
Project Leader

and XXXX  
(Supervisor and [Role])

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## Consent form

I have received and understood information about the project “The obligations of States towards children with disabilities internally displaced by natural disasters” and have been given the opportunity to ask questions. I give consent:

- to participate in a personal, virtual interview
- for information about me/myself to be published in a way that I can be recognised (if the views are expressed in a professional capacity of representing a particular organisation or role)
- for my personal data to be stored after the end of the project for future resulting research publications

I give consent for my personal data to be processed until the end date of the project, approx. May 2022

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(Signed by participant, date)

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