

Executive Summary

Problem Statement, Objectives, Research Plan, Hypotheses and Research Methods

The impact of armed conflict on persons with disabilities is a much-overlooked topic. Awareness raising as well as legal and policy guidance to increase implementation of the rights and protections of persons with disabilities living in situations of armed conflict is needed, as such this project had two key objectives to raise awareness of the topic and to provide the aforementioned legal and policy guidance. To achieve these objectives, the project tested three hypotheses:

Hypothesis One (conduct of hostilities)

During armed conflict, in the conduct of hostilities (meaning when targeting and selecting the methods and means of warfare), states and armed non-state actors (ANSAs) are not meeting their obligations under international humanitarian law (IHL) and international human rights law (IHRL) to protect persons with disabilities, in part due to ignorance of the legal framework (the UN Convention on the Rights of Persons with Disabilities (CRPD) in particular) and lack of international pressure to comply.

Associated research questions:

1. Under IHL and IHRL, what are the obligations and duties of states and ANSAs towards persons with disabilities during the conduct of hostilities?
2. Are there examples in a selection of case studies (Democratic Republic of the Congo (DRC), Colombia, Palestine and Ukraine) of state and/or ANSAs that are not meeting these obligations and duties? What are the reasons for this? What have been the national and international responses, if any, to these incidents (including NGO and media responses, resolutions, United Nations (UN) commission of inquiry reports, general comments, jurisprudence and press releases from UN mechanisms)?

Hypothesis Two (protection and assistance)

States and ANSAs, as well as humanitarian organizations, are not meeting their obligations under IHL and IHRL, to protect and assist persons with disabilities during armed conflict and in its aftermath (whether pre-existing or caused by the armed conflict), owing, among other reasons, to: lack of awareness and understanding of the scale and plight of those with disabilities in armed conflict; entrenched stigma and discrimination towards those with disabilities; lack of political will and resource allocation; lack of policy frameworks and tailored

practice; and/or lack of awareness among rights-holders and their representatives of the rights of persons with disabilities during armed conflict and in its aftermath.

Associated research questions:

3. What obligations and/or duties do states, ANSAs and humanitarian organizations have under IHL and IHRL to protect and assist persons with disabilities during and in the aftermath of armed conflict? Is this legal framework sufficient and what, if any, protection gaps exist within it?
4. What disability inclusive data exists on the impact of armed conflict? Are any groups disproportionately affected, such as children or those with a particular pre-existing disability?
5. If/where states, ANSAs and humanitarian organizations are not meeting their obligations/duties towards persons with disabilities in armed conflict, what are the reasons for this? Do such reasons include: lack of awareness and understanding by states, ANSAs and humanitarian organizations of the impact of armed conflict on persons with disabilities; entrenched stigma and discrimination towards persons with disabilities; lack of political will and resource allocation; lack of humanitarian aid and international assistance; lack of inclusive policy frameworks and tailored practice; and/or lack of awareness among rights-holders and their representative organizations of the rights of persons with disabilities during armed conflict?

Hypothesis Three (adoption and implementation of tailored laws and policies)

States, ANSAs and humanitarian organizations will be better able to implement their obligations and duties toward persons with disabilities during armed conflict if they adopt informed and tailored laws and policies, aligned with the CRPD, and implement these in practice.

Associated research questions:

6. What laws, policies and/or practices – whether at international and/or domestic levels – do states, ANSAs and humanitarian organizations have in place to protect and assist persons with disabilities during and in the aftermath of armed conflict? Are these laws, policies and/or practices compliant with the CRPD?
7. What laws, policies and/or practices need to be put in place and/or amended by states, ANSAs and humanitarian organizations to better meet their specific obligations to protect and assist persons with disabilities during and in the aftermath of armed conflict?

Methodology

The project adopted several research methods, each tailored to the nature of the research questions and the relevant hypothesis. Research methods included a combination of: desk research; structured interviews with persons with disabilities and their representative organizations, NGOs and humanitarian personnel; and field workshops through which feedback was sought on discrete issues.

The first stage of the project was to undertake desk research to map the obligations, protections and duties contained in IHL and IHRL, specific to states, ANSAs and humanitarian organizations with regard to persons with disabilities in armed conflict. In doing so, an evaluation was undertaken of: (a) how these bodies of law relate to one another and interact; and (b) whether this legal framework is sufficient or, alternatively, whether protection gaps exist within the legal framework.

The project focused on the situation of persons with disabilities in five states experiencing different levels of armed conflict or its aftermath (the DRC, Colombia, Palestine, Ukraine and Vietnam). Field research was undertaken in each of these five states, and was centred on confidential, structured interviews with stakeholders (including state officials, armed-non state actors, persons with disabilities and their representative organizations, international organizations, local NGOs, academics and journalists).

During the second stage of the project reports were drafted on each state based on research gathered during our field trips. The reports provide an overview of the conflict and the situation of persons with disabilities within each state as well as any relevant trends; and they identify gaps in the implementation of states' and non-state actors' obligations and duties.

The five state reports formed the basis of workshops that were carried out in the field to further test as well as disseminate our findings among a wide range of stakeholders. Workshops in Gaza, the West Bank and Kiev were undertaken in partnership with OHCHR. Our partner in Vietnam, Association for Empowerment of Persons with Disabilities, hosted the Vietnam workshop. In total, approximately 200 people participated in the field workshops, including state authorities, local NGOs, local ODPs, IGOs, various UN agencies, academics and journalists.

In the final stage of the project, Alice Priddy drafted the Academy Briefing, Disability and Armed Conflict, which is the final output of the project and brings together our legal mapping, undertaken in the first stage of the project, and the field research. It sets out legal and policy analyses as the basis for overarching findings and recommendations that would be applicable to any armed conflict setting.

Results Obtained and Associated Recommendations

Eight key findings and associated recommendations (included below) were identified through our research. Overall, it is clear that states, armed non-state actors, as well as humanitarian organizations are failing to recognize the impact of armed conflict on persons with disabilities and are not implementing their IHL and IHRL obligations in an

inclusive manner. This finding was expected at the beginning of our research. Several reasons why persons with disabilities remain the forgotten victims of armed conflict and their rights are still to be realized, were identified through the course of the research including a lack of disaggregated data, too greater focus on physical impairments owing to a lack of understanding on the diversity of disability and an incorrect focus on prevention of disability, rather than implementation of the rights of persons *with* disabilities.

The results obtained enabled the project team to make practical recommendations to states, armed non-state actors and humanitarian actors as to how to ensure that they are implementing their IHL and IHRL obligations in a inclusive manner. These recommendations formed the basis of in-state workshops and are contained in the Academy Briefing, Disability and Armed Conflict that is to be widely disseminated to stakeholders.

Eight Key Findings and Recommendations

One. Armed conflict has a devastating and disproportionate impact on persons with disabilities

Persons with disabilities are at increased risk of acute harm at all phases of an armed conflict; at least in part because they are denied the rights and protections they are entitled to under both IHRL and IHL. Persons with disabilities are the subject of targeted killings, used as human shields and at increased risk of sexual and gender based violence. They are more likely to be killed or injured as a result of inaccessible emergency information, evacuation procedures and shelters. Refugee and displacement camps and facilities lack comprehensive procedures to identify refugees and internally displaced persons with disabilities, and consequently fail to ensure they have equal access to essential services including food, water, shelter and medical care. In the aftermath of conflict, persons with disabilities are routinely denied access to justice, including remedies and reparation, for violations carried out during the conflict.

Two. Persons with disabilities remain the forgotten victims of armed conflict

The impact of armed conflict on persons with disabilities remains a largely ignored topic, by all actors. There are at least 1 billion people with a disability in the world, a large number of whom live in conflict-affected states. Despite this, and the disproportionate impact that conflict has on persons with disabilities, disability is widely regarded as a niche issue within the conflict setting. As a result, IHL provisions that serve to minimize the impact of armed conflict are not being applied in a disability inclusive manner. Mainstream humanitarian services and programmes, run by states as well as humanitarian organizations, are not fully and equally accessible to all persons with disabilities. Services that target, and are specific to the needs of, persons with disabilities are not being developed. In the post-conflict setting, persons with disabilities are not given equal access to full participation in peace processes and transitional justice mechanisms, and their role and potential contribution to conflict prevention and resolution is yet to be realized. Failure to ensure equal access to IHL protections, humanitarian services and transitional justice mechanisms may amount to discrimination on the basis of disability and violations of associated rights and protections.

To remedy some of the abuses faced by persons with disabilities in the conflict setting, these persons must be recognized and empowered to act as agents of change and given equal access to fully and meaningfully participate in humanitarian policy design, implementation and monitoring, as well as peace processes and transitional justice mechanisms. UN agencies and humanitarian organizations must ensure that their services are fully accessible to all persons, including persons with disabilities, and, where necessary, develop specific services that respond to the humanitarian needs of persons with disabilities. UN-mandated commissions of inquiry and UN agency reports should include a disability analysis of armed conflict. The UN General Assembly, Security Council and Human Rights Council should consider the adoption of resolutions dedicated to addressing the disproportionate impact that armed conflict has on persons with disabilities to galvanize attention towards this issue, and call on states, non-state actors and humanitarian actors to take a disability inclusive approach to their law, policy and practice.

Militaries should receive training on disability rights and the diversity of disability, and should consider the impact of their law of armed conflict policies and practices on persons with disabilities. Humanitarian organizations that engage in training ANSAs should ensure that this training includes disability rights and the inclusion of persons with disabilities in the application of the law of armed conflict.

Three. Reliable, comprehensive and disaggregated data is needed

There is an acute lack of reliable and comprehensive quantitative and qualitative data on the impact of armed conflict on persons with physical, sensory, psychosocial and/or intellectual disabilities. Because persons with disabilities are not a homogenous group, data disaggregated by age and gender, as well as other identities as appropriate, is needed to understand the intersectional and multidimensional discrimination they may face. Where data sets do exist, they are often under-inclusive, relying on a narrow, medical-model understanding of disability that excludes psychosocial and/or intellectual impairments. Reliance on poor, under-inclusive data sets to justify budget allocations and develop policy exacerbates the exclusion of certain groups of persons with disabilities and leads to further discrimination.

Only once comprehensive datasets are available, reflecting the lived experiences of persons with disabilities in the conflict setting and the multidimensional discrimination that they face, can advocacy, resources, policy and practice be developed to respond to their lived experience and overcome the barriers faced in accessing their human rights and IHL protections. Nevertheless, we cannot afford to wait for such data to be available. In the interim, whilst we wait for data to be gathered, the well-founded minimum estimate that 15 per cent of every population will be made up of persons with a range of disabilities should steer resource allocation, advocacy and the development of disability inclusive policy and practice.¹

States Parties to the CRPD should ensure they are meeting their commitment to collect data and statistical research to enable them to formulate and implement the policies

¹ WHO, *World Report on Disability*, supra fn 35, p 29.

necessary to give effect to the CRPD.² However, it is not just states that bear the responsibility for data collection. All humanitarian agencies need to ensure that their policies, services and practices in the conflict setting are accessible to persons with disabilities, and should therefore also be collecting data to test the accessibility of their services. To adequately collect such data, personnel should be given specialist training on disability inclusive data collection, data collection ethics as well as the rights of persons with disabilities and the diversity of disability.

Four. The CRPD continues to apply during armed conflict, alongside IHL, and may inform the content of the legal regulation of the given situation. Where a state party is engaged in armed conflict abroad, its CRPD obligations follow it.

The CRPD affirms that the rights of persons with disabilities continue to apply during armed conflict. These rights include the right to equal access and the right to non-discrimination, including through the provision of reasonable accommodation. The extent to which the CRPD applies to any given armed conflict will be context dependent and influenced by who the actors are, the territory on which the acts take place, the rights engaged and the IHL norms that are applicable.

States Parties take their CRPD obligations with them when they act outside of their territory, including in the conduct of military operations where they exercise de facto effective control over a geographical area (the spatial model of jurisdiction), or when there is authority and control over an individual or individuals (the personal model of jurisdiction). States' extraterritorial obligations under the CRPD might not apply to the same extent as within their own territory, and some obligations may not apply at all, or at least not in their entirety. The extent to which the CRPD applies will be dependent on the degree of authority and control the state has over the geographical area or the individual(s), how long it has had such control, the rights engaged, the application of IHL provisions and whether or not it has the power to guarantee the right or provision in question.

Five. Prevention of primary impairment is confused with disability rights.

Prevention of primary impairment, through mine-ban campaigns for example, is part of the rights to life and to attainment of the highest standard of health, applicable to all persons equally. Such prevention is not part of disability rights and is thus not an implementing measure under the CRPD. The two are often confused by all actors, resulting in resources and financing being dedicated to prevention initiatives and strategies at the expense of giving effect to disability rights. Although primary prevention policies and practices are not part of the rights of persons with disabilities, all prevention policies, for example mine warning signs and mine awareness campaigns, should be equally accessible to all persons, including those with disabilities.

Six. The CRPD calls for specific attention to be paid to the experiences of persons with disabilities within armed conflict and obligates states parties to ensure the protection and safety of persons with disabilities in situations of armed conflict in accordance with their obligations under IHL and IHRL.

² Art 31(1), CRPD.

The CRPD unifies IHL and the CRPD in the overall framework applicable in armed conflict, such that IHL norms should be applied in a manner that conforms to the fundamental rights within the CRPD, namely equal access and non-discrimination. The IHL norms of humane treatment – the meaning of which is shaped by the context and characteristics of the individual, including disability – and the prohibition of adverse distinction complement and are reinforced by the CRPD.

In accordance with IHL provisions of humane treatment and the prohibition of adverse distinction, when read in light of the rights to equal access and non-discrimination within the CRPD, persons with disabilities are entitled to the same IHL protections that are afforded to all other persons, including the rules that relate to the treatment of civilians and persons *hors de combat*, as well as rules governing the conduct of hostilities. Differential treatment, including reasonable accommodation, may be required to ensure that the applicable IHL protections are applied in a non-discriminatory manner and are accessible to all persons with disabilities.

States, to date, have paid little attention to the experiences of persons with disabilities in the conflict setting and have failed to ensure that their interpretation and application of IHL norms are not carried out in a discriminatory manner. Gathering and using disability inclusive data, increasing expertise within militaries on disability rights and the diversity of disability and routinely and meaningfully consulting with persons with disabilities and their representative organizations will aid militaries' interpretation of IHL obligations from a disability inclusive perspective.

Seven. IHL, states and humanitarian organizations approach persons with disabilities from the medical and/or charity understanding of disability – as passive recipients of medical treatment and social 'protection', and not as full and equal rights-holders whose disability is the result of discriminatory barriers and attitudes in society.

Both the medical and charity understandings of disability have been superseded by the social-model understanding and the human rights-based approach enshrined in the CRPD. The text of many IHL provisions reflect the medical and charity models of disability, framing persons with disabilities as passive, weak and vulnerable, and take a paternalistic approach to persons with disabilities. IHL practitioners and commentators need to be aware when interpreting and applying IHL norms, that the wording of these norms reflects an outdated and often discriminatory approach to disability. This is not a fatal flaw, since IHL is capable of dynamic and evolved interpretation that is reflective of changes in society and attitudes.

The medical and charity models, rather than a social-model understanding and human rights-based approach, are also reflected in the policy and practice of states and humanitarian organizations. Consequently, the vast majority of humanitarian responses to persons with disabilities in armed conflict are focused on medical services and rehabilitation. Persons with disabilities are not meaningfully consulted regarding the design, implementation and monitoring of humanitarian responses to armed conflict. Nor are persons with disabilities equally and meaningfully included in peace processes.

Eight. The Committee on the Rights of Persons with Disabilities is in a unique and important position of being mandated to review the complementarity between the CRPD and IHL

When reviewing periodic reports and considering individual communications, Article 11 of the CRPD requires the Committee to ask: is the state in question taking ‘all necessary measures’ in accordance with its obligations under IHL and the CRPD to ensure the safety and protection of persons with disabilities in armed conflict? The Committee is in the unique position of having a role to play in considering the contextual interpretation of *both* these bodies of law. To date, there remains huge potential to develop sophisticated jurisprudence concerning the implementation of both the CRPD and IHL with regard to persons with disabilities living in situations of armed conflict. To do so, the Committee must ensure it enhances its IHL capacity and, in accordance with Article 34 of the CRPD, recruit members that are experts with ‘competence and experience’ not just in disability discourse but also IHL.

Questions that merit further exploration

The project has brought up a number of questions that merit further exploration: firstly we only had the resources to look at a small selection of IHL norms from a disability perspective, a much wider survey of IHL is warranted, as is the customary IHL obligations of armed-non state actors from a disability perspective, and the obligations of humanitarian organizations such as the International Committee of the Red Cross. Secondly, it would be beneficial to undertake a review of all transitional justice mechanisms from a disability perspective.

Publications of the Research

The research is to be published as a Geneva Academy Briefing, entitled Disability and Armed Conflict, in May 2019. Further publications are envisaged including a Geneva Academy Military Manual, which will provide legal and policy guidance on the recommendations of the research targeted at militaries, in early 2020. A workshop based on the research outcomes, for ICRC staff is also anticipated for the autumn of 2019.