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MINING THE INTERSECTIONS: ADVANCING THE RIGHTS OF WOMEN AND CHILDREN WITH DISABILITIES WITHIN AN INTERRELATED WEB OF HUMAN RIGHTS

Rangita de Silva de Alwis[†]

Abstract: This article argues that disability rights are a powerful lens through which to address the multiple forms of discrimination and subordination that women and children with disabilities face. A shift in the human rights paradigm that enables the different human rights treaties affecting women and children with disabilities to be implemented together, within an interlocking web of the human rights framework, will provide the necessary safeguards against multiple and cross cutting forms of discrimination against women and children with disabilities. At the same time, different social movements must come together at these points of intersection in order to create a more inclusive form of human rights practice that is sensitive to the multiple identities of women and children with disabilities and the different challenges that complicate those identities.

I. INTRODUCTION

This article advances an intersectional analysis of the rights of persons with disabilities and focuses on the multiple forms of human rights violations against women and children with disabilities. By doing so, this article urges a more holistic form of human rights practice that fosters a deeper conceptual understanding of how these categories of rights overlap, intersect, and mutually reinforce each other.

Women and children are, more often than men, disadvantaged and the victims of poverty and as a result are more vulnerable to abuses of their rights. The disadvantages women and children with disabilities face are often amplified by multiple factors such as race, poverty, minority status, and social status. Women with disabilities face discrimination on a daily basis in every country in Asia. This includes discriminatory enforcement of laws, denial of equal opportunity in education and employment, exclusion from political representation, deprivation of reproductive rights, imposition of negative stereotypes (often reinforced by cultural and social norms), and

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subjection to physical violence (often directed at children as well). Two articles of the new International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities (“CRPD”) recognize that women and children living with disabilities face multiple forms of discrimination on the bases of their gender, age, disability and other identities.¹

The term “intersectionality” was first introduced in the 1990s by critical race feminists, whose seminal works introduced the “intersectionality” model to illustrate the inadequacies of “essentialism”² and to show that we all stand at multiple intersections of identity. The anti-essentialist critique argues that women cannot be defined by one single identity but rather that their identity is shaped by multiple characteristics and experiences.³ The concept of multiple forms of discrimination has now entered the lexicon of United Nations (“UN”) pronouncements.⁴ However, more has to be done to integrate this concept of intersectionality into the work of the human rights bodies of the UN.⁵ This article argues that an intersectionality discourse can enrich the landscape of human rights by advancing beyond the compartmentalization of treaties. While the CRPD is a much anticipated and enormously important treaty with powerful

¹ International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49, art. 6 (“Women with Disabilities”), art. 7 (“Children with Disabilities”), (May 3, 2008), available at <http://www1.umn.edu/humanrts/instree/disability-convention2006.html> [hereinafter CRPD]. The Convention also discusses multiple discrimination in its Preamble.

² See e.g. Kimberlè Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 42 STAN. L. REV. 1241 (1991); Laura M. Padilla, *Intersectionality and Positionality: Situating Women of Color in the Affirmative Action Dialogue*, 66 FORDHAM L. REV. 843 (1997); Johanna E. Bond, *International Intersectionality: Theoretical and Pragmatic Exploration of Women's International Human Rights Violations*, 52 EMORY L. J. 71 (2003); see also Darren Lenard Hutchinson, *Identity Crisis: “Intersectionality,” “Multidimensionality,” and the Development of an Adequate Theory of Subordination*, 6 MICH. J. RACE & L. 285 (2001). Essentialism is the concept that a single woman’s, or any group’s, experience can be isolated from another aspect of that person’s identity, independently of other reality of experience. See Trina Grillo, *Anti-Essentialism and Intersectionality: Tools to Dismantle the Master’s House*, 10 BERKELEY WOMEN’S L.J. 16 (1995); see also Jane Wong, *Anti-Essentialism v. Essentialism Debate in Feminist Theory: The Debate and Beyond*, 5 WM. & MARY J. WOMEN & L. 273 (1999).

³ *Id.*

⁴ The intersectionality of multiple forms of discrimination was acknowledged at the UN Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance in 2001. Mary Robinson, the then UN High Commissioner for Human Rights stated: “You are also, I know, aware of the intersectionality of multiple forms of discrimination—how gender intersects with race, how sexual orientation intersects with race, how poverty intersects with race. This is a dimension which is deservedly receiving particular attention at this Conference.” See Mary Robinson, Address of UN High Commissioner for Human Rights (Aug. 28, 2001), available at http://www.un.org/WCAR/pressreleases/ngo_forum.htm.

⁵ See, e.g. Margaret Satterthwaite, *Crossing Borders, Claiming Rights: Using Human Rights Law to Empower Women Migrant Workers*, 8 YALE HUM. RTS. & DEV. L.J. 1 (2005).

transformative potential, the rights of women and children with disabilities are best protected when the CRPD is read together with the panoply of guarantees set out in other treaties, including the Convention on the Elimination of Discrimination against Women (“CEDAW”) and the Convention on the Rights of the Child (“CRC”) guaranteeing the rights of women and children. The CEDAW and CRC can also be invoked on behalf of women and children with disabilities and to push the frontiers of the human rights agenda by locating the myriad and intersecting experiences of multiply situated people within such a framework. This article reconceptualizes the human rights framework to address these multiple forms of discrimination. It also explores various conceptual and programmatic ways to galvanize an intersectional human rights analysis that accommodates different identities based on gender, age and ability.

II. IDENTIFYING THE INTERSECTIONALITIES THROUGH THE LENSES OF WOMEN AND CHILDREN

Part II of this article reflects briefly on the complex forms of discrimination women and children with disabilities face. Women and children are more likely to experience multiple forms of discrimination, which shape and construct their experience of discrimination. The examples examined below explore how women and children are specifically vulnerable to discrimination and disability and how discrimination on the grounds of disability, gender, age, and minority status converge and intersect in the areas relating to gender-specific violence, traditional practices, war and crisis, and in trafficking of women and children with disabilities.

Numerous aspects of the modern world contribute to women and children being more vulnerable to causes of disabilities, and disabled women and children also suffer a disproportionate amount of discrimination and violence. Poverty, the politics of gender, conflict tactics, the sex trade, and other forms of abuse all specially impact women and children. These forces combine to make many women and children the subject of an intersection of rights violations.

Of the approximately 300 million women living with disabilities world wide, eighty-two percent live in the developing world.⁶ Women and children with disabilities are more vulnerable to poverty, violence, and social

⁶ ASSOCIATION FOR WOMEN’S RIGHTS IN DEVELOPMENT, DISABLED PEOPLES’ INTERNATIONAL—BEIJING + 10: POSITION PAPER ON WOMEN WITH DISABILITIES (2005), <http://www.awid.org/eng/Issues-and-Analysis/Library/Disabled-Peoples-International-Beijing-10-Position-Paper-on-Women-with-Disabilities/%28language%29/eng-GB> (last visited Dec. 2, 2008) (reporting that 82% of disabled women live in developing countries).

exclusion and are more at risk than men to develop disabilities because they are often last in line to access food, education, and health care.⁷ Women also tend to be the caregivers of family members with disabilities.⁸ While men with disabilities, such as schizophrenia, are commonly cared for by their wives, women with similar disabilities are often abused or deserted by their husbands.⁹

Research reveals that psychosocial disorders are more common in women than men. Socioeconomic disadvantages, income inequality, disproportionate care-giving responsibilities, gender-based domestic and sexual violence, hormonal changes following child birth, and other factors all raise women's risk of depression.¹⁰ According to World Health Organization ("WHO") findings, because of their high vulnerability to sexual violence, women are the group most affected by post-traumatic stress disorder.¹¹ Women with disabilities are uniquely vulnerable to discrimination and exploitation; including the imposition of social stereotypes of asexuality and passivity, acceptance of abuse as normal behavior, isolation in the home, and dependence on perpetrators of abuse for personal assistance.¹² Studies in Asia, including China, suggest that gender-specific events, such as arranged marriages, unwanted abortions, and forced nurturing roles exacerbate psychological disorders among women.¹³

⁷ See United Nations Educational, Scientific and Cultural Organization [hereinafter UNESCO], *Gendered Outcomes in Education: Why Are Girls Still Held Back?*, in EDUCATION FOR ALL GLOBAL MONITORING REPORT 2003/4 115 (2003), available at http://www.unesco.org/education/efa_report/chapter3.pdf.

⁸ PEOPLE SCHOOL—COMMUNICATION FOR INCLUSION, MANUAL ON DISABILITIES AND INCLUSIVE DEVELOPMENT FOR THE MEDIA AND SOCIAL COMMUNICATIONS PROFESSIONALS (Feb. 2, 2005), <http://siteresources.worldbank.org/DISABILITY/Resources/280658-1177002005679/ManualonDisVernecc.doc> (last visited Dec. 2, 2008) (citing a recent study done in Nicaragua reporting that such caregiving can take up to 10 hours a day).

⁹ WORLD HEALTH ORGANIZATION, GENDER AND MENTAL HEALTH 3 (2002), http://www.who.int/gender/other_health/en/genderMH.pdf (last visited Dec. 2, 2008) [hereinafter GENDER AND MENTAL HEALTH] (referencing a study done in India that showed that men with psycho-social disabilities are more likely to be cared for by their wives while women with similar disabilities are either deserted or abused by their husbands prior to separation).

¹⁰ WORLD HEALTH ORGANIZATION, GENDER AND WOMEN'S HEALTH, http://www.who.int/mental_health/prevention/genderwomen/en/print.html (last visited Nov. 3, 2008) [hereinafter GENDER AND WOMEN'S HEALTH].

¹¹ *Id.*

¹² Margaret Nosek et al., *Abuse of Women with Disabilities: Policy Implications*, 8 J. OF DISABILITY POL'Y STUD., 157, 158 (1997). See HARILYN ROUSSO, EDUCATION FOR ALL: A GENDER AND DISABILITY PERSPECTIVE (2003), <http://unesdoc.unesco.org/images/0014/001469/146931e.pdf> (last visited Dec. 2, 2008).

¹³ GENDER AND MENTAL HEALTH, *supra* note 9, at 2.

Poverty is both a cause and consequence of disability. Poverty increases the risk of disability,¹⁴ and disability increases the risk of poverty.¹⁵ Unsurprisingly, women with disabilities are disproportionately poorer than their male counterparts.¹⁶ Understanding the role that gender plays in the subordination of women and girls with disabilities and the different risks of disability that women often face will result in more thoughtful policy that minimizes both the gender-based potential for disability and the gendered nature of discrimination against persons with disability.

Gender-specific violence and traditional practices are also often a cause—and consequence—of disability. The abandonment of special needs children, honor crimes,¹⁷ acid burnings,¹⁸ kitchen “accidents,” and stove burnings that take place in the context of dowry related or familial violence¹⁹ are all gender-related acts of violence that sacrifice women on the altar of family honor. These examples, practices most common in Asia, illustrate in a powerful way how violence against women is both a cause and consequence of various forms of disability. Other traditional practices from Asia, such as child marriage, cause mental, physical and psychosocial

¹⁴ See ANN ELWAN, POVERTY AND DISABILITY—A SURVEY OF LITERATURE 21-23 (1999), available at <http://siteresources.worldbank.org/INTPOVERTY/Resources/WDR/Background/elwan.pdf>. The UN Children’s Fund lists various causes of child disability, including: insufficient nutrition of mothers and children, vitamin deficiencies, and abnormal pre-natal or peri-natal events. *Id.* at 17. The World Health Organization reports that impairments in intellectual development in children are also linked to malnutrition. *Id.* at 18.

¹⁵ *Id.* at 24.

¹⁶ Disabled women working full-time earned only 56% as much as disabled men with full-time jobs. *Id.* at 29.

¹⁷ See Human Rights Watch, Oral Intervention at the 57th Sess. of the UN Commission on Human Rights, Item 12—Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women and “Honor” Crimes (Apr. 5, 2001), available at <http://hrw.org/english/docs/2001/04/06/global268.htm>. Human Rights Watch has defined honor crimes as “acts of violence, usually murder, committed by male members of the family against female family members who are perceived to have brought dishonor to the family.” *Id.* The triggering events for these acts of violence include attempting to marry a person not approved by the family or clan, seeking a divorce, and premarital or extramarital sex. *Id.* In some cases the triggering event is something much less definite like an act of perceived immodesty. *Id.*

¹⁸ SALMA ALI & BANGLADESH NATIONAL WOMEN LAWYERS ASSOCIATION, VIOLENCE AGAINST WOMEN IN BANGLADESH 2002 26 (2003). Acid violence involves throwing acid at a person’s body to disfigure and scar the person for life. *Id.* Acid attacks are primarily used against women. *Id.*

¹⁹ UNICEF describes bride burning as when “husbands engineer an ‘accident’ (frequently the bursting of a kitchen stove) when they feel the obligatory marriage dowry (gifts from in-laws) is not enough.” UNICEF, *UNICEF Executive Director Targets Violence Against Women*, UNICEF NEWSLINE, Mar. 7, 2000, <http://www.unicef.org/newsline/00pr17.htm> (last visited Dec. 2, 2008). See also BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, *COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: PAKISTAN* (Feb. 25, 2004), <http://www.state.gov/g/drl/rls/hrrpt/2003/27950.htm> (last visited Dec. 2, 2008).

disabilities among women and girls. Child marriage can also result in early pregnancies, which may result in death or disability.²⁰

Just as women and children are more vulnerable to disabilities, women and children with disabilities are much more likely to be targets of violence, abuse, and exploitation. An example of the way in which discrimination on the grounds of disability and gender can result in the violation of the right to life is seen in the shocking phenomenon of “ghost wives” in China’s hinterlands. The practice involves the abduction and murder of women to become “wives” for dead men.²¹ This custom, which traces back to the Ming dynasty, has reared its ugly head once again in recent times as bachelors are married posthumously and buried together with dead women in the belief that the journey to the next world needs to be accomplished with a companion. The brides in these cases are often women with disabilities who are murdered and buried with the corpse.²² At least one recent study showed that severely abused women are ten times more likely to suffer from psychosocial disorders than women without exposure to abuse.²³ Similarly, gang rape and rape as a tool of war in countries such as Burma have resulted in physical, mental, and psychosocial disabilities. “License to Rape,” the groundbreaking report on the Burmese military regime’s use of sexual violence in the ongoing war, documents in heartbreaking detail the manner in which the Burmese troops’ license to practice sexual violence against local ethnic women has resulted in physical and mental disabilities.²⁴ Gendered forms of violence were the hallmark of the Gujarat communal riots between Muslims and Hindus in 2002 in India, where scores of Muslim girls and women were brutally raped, maimed, disabled, and killed. The Gujarat atrocities were tragically reminiscent of the horrors of the “Rape of Nanking,” in 1937, where between 20,000 and 80,000 Chinese women were raped, maimed, disabled, and/or killed.²⁵

²⁰ See RANGITA DE SILVA-DE-ALWIS, CHILD MARRIAGE AND THE LAW 35 (Jan. 2008) (working paper), available at http://www.unicef.org/policyanalysis/files/Child_Marriage_and_the_Law.pdf.

²¹ Antoaneta Bezlova, *China’s Grave Offense: Ghost Wives*, ASIA TIMES ONLINE, June 29, 2007, <http://www.atimes.com/atimes/China/IF29Ad02.html> (last visited Dec. 2, 2008). In an interview with Beijing’s *Xinjingbao* newspaper, one of those responsible for this outrageous custom described how he targeted the mentally retarded and single migrant women. Of these mentally disabled women the man said: “They are muddle-headed and never put up too much of a fight.” *Id.*

²² *Id.*

²³ GENDER AND MENTAL HEALTH, *supra* note 9, at 2.

²⁴ See SHAN HUMAN RIGHTS FOUNDATION & SHAN WOMEN’S ACTION NETWORK, LICENSE TO RAPE: THE BURMESE MILITARY REGIME’S USE OF SEXUAL VIOLENCE IN THE ONGOING WAR IN SHAN STATE (2002), <http://www.shanland.org/resources/bookpub/humanrights/LtoR> (last visited Dec. 3, 2008).

²⁵ See IRIS CHANG, THE RAPE OF NANKING (1997).

The sex industry and human trafficking provide additional examples of intersectionality in the lives of women and children. Specific studies also show that ninety percent of girls and women with intellectual impairments experience sexual abuse at some point in their life.²⁶ The sex industry and trafficking in women and children has played a role in the spread of HIV in Nepal, India, Iran, Pakistan, Afghanistan, and increasingly in China and Vietnam.²⁷ HIV is poised to have significant human and development consequences.²⁸ The UN Population Fund (“UNFPA”) also notes that it is likely that septic abortion contributes significantly to illness and death among Burmese and Thai sex workers.²⁹ The specific use of deaf children as sex workers is another troubling phenomenon that leads to greater discrimination and disability. A recent UNICEF report indicates that, in Taiwan, the proportion of child sex workers with mild developmental disabilities was six times that found in the general population.³⁰ Emotional, physical, and sexual abuse of women and children with physical disabilities is a problem largely unrecognized by rehabilitation providers that reintegrate trafficked women and children back into society.³¹

Children are specifically vulnerable to disability-causing trauma. The WHO estimates that ten percent of the world’s children are born, or become, disabled.³² Violence against children is often more severe in families with children with disabilities and institutions for children with disabilities. UNICEF’s current research indicates that violence against disabled children occurs at annual rates at least 1.7 times greater than their non-disabled peers in families, in custodial and institutional settings, in school, and in travel to school.³³ Studies show that children with disabilities are also vulnerable to physical, sexual, emotional, and/or verbal abuse, and neglect in both the private and public spheres.³⁴ Children in communities and homes where resources are scarce are often victims of neglect and often last in line for

²⁶ UNITED NATIONS CHILDREN’S FUND, *VIOLENCE AGAINST DISABLED CHILDREN 5* (2005), available at http://www.unicef.org/videoaudio/PDFs/UNICEF_Violence_Against_Disabled_Children_Report_Distributed_Version.pdf [hereinafter UN CHILDREN’S FUND].

²⁷ Donald McNeil, Jr., *Sex Slavery Leads to Increase in AIDS*, INT’L HERALD TRIB., Mar. 1, 2007, available at <http://www.iht.com/articles/2007/08/01/healthscience/aids.3-107269.php>.

²⁸ JANAT MUKWAYA, *THE AIDS EMERGENCY. COMMENTARY: THE TOLL ON WOMEN AND CHILDREN 4* (1999), http://www.unicef.org/pon99/pon99_4.pdf (last visited Dec. 3, 2008).

²⁹ Chris Beyrer & Julie Stachowiak, *Health Consequences of Trafficking of Women and Girls in South East Asia*, 10 BROWN J. WORLD AFF. 105, 106 (2003).

³⁰ UN CHILDREN’S FUND, *supra* note 26, at 20.

³¹ In discussion with UNICEF personnel.

³² See UN CHILDREN’S FUND, *supra* note 26.

³³ *Id.* at 5; see also Committee on Child Abuse and Neglect and Committee on Children with Disabilities, *Assessment of Maltreatment of Children with Disabilities*, 108 PEDIATRICS 508 (2001).

³⁴ See ROUSSO, *supra* note 12.

nutrition and care.³⁵ Children with disabilities are also used in the harshest forms of child labor, and some communities maim and disable children for use in begging.³⁶ UNICEF also notes that, around the world, one-third of all street children are children with disabilities.³⁷ Dangerous traditional practices of witchcraft and exorcism are sometimes used to rid the child of the disability, which may cause the disability to get worse.³⁸ Children with disabilities are more susceptible to violence because they frequently lack full capacity to flee the site of violence, defend themselves, or find recourse to justice.

Furthermore, the gendered aspect of disability often surfaces in childhood. Data collected by UNESCO suggests that ninety percent of children with disabilities in the developing world do not attend school,³⁹ and girls with disabilities are less likely to attend than boys with disabilities.⁴⁰ The literacy rate for disabled women is estimated at one percent compared to three percent for all people with disabilities.⁴¹ Disabled children are vulnerable to infanticide and mercy killings.⁴² In such cases, a female child with disabilities is at greater risk than a male child with disabilities.⁴³

Post-conflict Cambodia is a case study that demonstrates the intersections of conflict, disability, poverty, and gender. Emerging from a civil war, Cambodia has one of the world's highest ratios of disabled persons. The United Nations Economic and Social Commission for Asia and the Pacific ("UNESCAP") reports that "Cambodia's tragic and recent history of war has left it with the highest proportion of disabled people in the world."⁴⁴ Similarly, the Committee for the CRC, in reviewing Cambodia's most recent report to the Committee, expressed its deep concern that, as a result of the prolonged armed conflict there, the state party had one of the highest levels of disability in the world.⁴⁵ One legacy of the armed conflict

³⁵ *Id.*

³⁶ See UN CHILDREN'S FUND, *supra* note 26.

³⁷ *Id.* at 5.

³⁸ *Id.* at 18.

³⁹ See UNESCO, *supra* note 7, at 132.

⁴⁰ World Vision reports that girls with disabilities attend school less frequently than boys with disabilities. WORLD VISION, NURTURING GIRLS—NURTURING CHANGE, <http://www.worldvision.com.au/learn/schoolResources/files/girls.pdf> (last visited Dec. 3, 2008).

⁴¹ See UNESCO, *supra* note 7, at 132.

⁴² ANN ELWAN, *supra* note 14, at 6.

⁴³ *Id.* at 6-7.

⁴⁴ UN Economic & Social Committee for Asia and the Pacific, *Pathfinders: Towards Full Participation and Equality of Persons with Disabilities in the ESCAP Region*, 15, ST/ESCAP/2170 (2002), available at <http://www.unescap.org/esid/psis/publications/spps/02/spps02.pdf>.

⁴⁵ Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Cambodia*, ¶ 48, U.N. Doc. CRC/C/15/Add.128, (2000), available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.128.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.128.En?Opendocument).

is that a disproportionate number of households are headed by women. Yet, women with disabilities are often the last in line for help. The births of children with disabilities are often not registered, and both disabled women and children are at risk of abandonment by the men in the family. Apart from the general devaluation and subordination of women, the stigma attached to disability causes further isolation of women with disabilities and creates multiple grounds of discrimination in Cambodia.

The general lack of awareness of the gendered nature of disability demands greater attention to the risks of violence, abuse, and exploitation that women and children with disabilities face. Increased sensitivity to the plight of these vulnerable groups will help to develop laws, policies, programs, and facilities that address these threats. Three key international Conventions attempt to protect the human rights of women and children: CEDAW, CRC, and CRPD. The ways in which these three treaties overlap and reinforce each other can be used to increase the awareness and protection of human rights for women and children with disabilities.

III. FINDING THE INTERSECTIONALITIES IN THE CEDAW, CRC, AND CRPD

“[C]ategories of discrimination may overlap, . . . individuals may suffer historical exclusion on the basis of both race and gender, age and physical handicap, or some other combination.”⁴⁶

An intersectional approach recognizes that people experience stereotyping and discrimination based on a combination of gender, race, ethnicity, and ability, and that these forms of multiple discrimination or bias are distinct from any one form of discrimination.⁴⁷ Kimberlé Crenshaw has defined intersectionality as a way of conceptualizing a problem in a way that captures the dynamics of the interplay between two or more axes of subordination.⁴⁸ This definition was expanded at the UN Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance at Durban, South Africa, in 2001. At that conference, the UN High Commissioner for Human Rights stated: “You are also, I know, aware of the intersectionality of multiple forms of discrimination—how gender intersects with race, how sexual orientation intersects with race, how poverty intersects

⁴⁶ Canada v. Mossop, [1993] S.C.R. 554, ¶ 153 (Can.) (L'Heureux-Dubé, J., dissenting).

⁴⁷ See Julissa Reynosa, *Perspectives on Intersections of Race, Ethnicity, Gender, and Other Grounds: Latinas at the Margins*, 7 HARV. LATINO L. REV. 63 (2004).

⁴⁸ Kimberlé Crenshaw, *Gender-Related Aspects of Race Discrimination*, 7, U.N. Doc. EGM/GRD/2000/WP.1 (2000).

with race. This is a dimension which is deservedly receiving particular attention at this Conference.”⁴⁹

However, the human rights framework and the truncated structure of human rights organizations and institutions within the UN, which divide responsibility for addressing human rights along rigid lines, do not provide sufficient space for an analysis and practice of intersectionalities.⁵⁰ The normative framework of the human rights treaties and organizational structure of the human rights framework must be reconceptualized to allow a more nuanced human rights analysis that accounts for multiple forms of human rights abuses.

A normative examination of the CEDAW, CRC, and CPRD reveals the ways in which the rights guarantees interface and overlap. This intersectional analysis of the interface of some of the substantive provisions of the treaties helps to identify the relevant entry points for collaborative action at the international level by treaty bodies as well as for coalition building by social movements and civil society at the local, domestic, and regional levels.

A. *Examining the Convention on the Elimination of All Forms of Discrimination against Women*

The overarching principles of nondiscrimination in CEDAW, including the emphasis on the equality of women both in the public and private spheres, and the sanctioning of “temporary special measures,” or affirmative action policies, have special significance for women with disabilities. CEDAW also contains several provisions specific to women with disabilities. General Recommendation No. 18 of CEDAW recommends that states party to CEDAW take measures to provide women with disabilities equal access to education, employment, health services, and social services and to ensure their participation in all areas of political, social, and cultural life.⁵¹ CEDAW General Recommendation No. 24 analyzes the right to health in the context of women with disabilities and acknowledges that cultural or traditional practices carry a high risk of

⁴⁹ Mary Robinson, Address of UN High Commissioner for Human Rights, ¶ 18, (Aug. 28, 2001), available at http://www.un.org/WCAR/pressreleases/ngo_forum.htm. See generally, ONTARIO HUMAN RIGHTS COMMISSION, AN INTERSECTIONAL APPROACH TO DISCRIMINATION: ADDRESSING MULTIPLE GROUNDS IN HUMAN RIGHTS CLAIMS (2001), available at http://www.ohrc.on.ca/en/resources/discussion_consultation/DissIntersectionalityFtns/pdf.

⁵⁰ See Bond, *supra* note 2.

⁵¹ Committee on the Elimination of Discrimination against Women, *General Recommendation No. 18—Disabled Women*, A/46/38 (Apr. 1, 1991), available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom18> (general comments).

causing discrimination.⁵² The CEDAW Committee has also recommended that State parties, in their reports to the Committee, describe the progress made in ensuring that women with disabilities enjoy their human rights in full.⁵³

Apart from these specific provisions, four main values inherent in CEDAW have specific relevance to women and girls with disabilities. First, CEDAW is unique in that it was the first human rights convention to address both public and private acts, thereby dismantling the artificial construct between the two spheres that had been reinforced by previous treaties and national laws in general.⁵⁴ Human rights law traditionally addressed abuses that were presumed to take place within the public sphere by state actors against individuals. State accountability to the private sphere was expanded only when the international human rights community recognized violence against women, including domestic violence, as a form of human rights

⁵² Committee on the Elimination of Discrimination against Women, *General Recommendation No. 24—Article 12: Women and Health*, A/54/38 (Feb. 2, 1999), available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24> (general comments).

⁵³ See, e.g., *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Cambodia*, U.N. Doc. CEDAW/C/KHM/CO/3 (2006), available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CEDAW.C.KHM.CO.3.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CEDAW.C.KHM.CO.3.En?Opendocument) [hereinafter CEDAW Concluding Observations: Cambodia]; *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Indonesia*, U.N. Doc. CEDAW/C/IDN/CO/5 (2007), available at http://www.un.org/womenwatch/daw/cedaw/cdrom_cedaw/EN/files/cedaw25years/content/english/CONC_LUDING_COMMENTS_ENGLISH/Indonesia/Indonesia%20-%20CO-5.pdf [hereinafter CEDAW Concluding Observations: Indonesia].

⁵⁴ See Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, at 193, UN Doc. A/34/46, entered into force Sept. 3, 1981, available at <http://www2.ohchr.org/english/law/cedaw.htm> [hereinafter CEDAW]. In Article 2(e), the CEDAW dismantles the traditional public and private divide and covers discriminatory acts both in the public and private sphere “by any person, organization of enterprises.” See *id.* art. 2. Traditionally, human rights were seen as tools that governed state action and acts in the public sphere. This provision suggests that both public and private acts in the workplace, schools, public spaces, and the family and home can be regulated by the CEDAW. The CEDAW can also be used against “enterprises,” such as industries, thereby broadening and extending the traditional ambit of a convention to cover both state and “non-state parties.” See *id.* art. 2. Article 5 also directs State parties to take all steps to “modify the social and cultural patterns of conduct of men and women” and to eliminate “stereotyped roles for men and women.” See *id.* art. 5. This Article clearly allows the modification of cultural and traditional conduct that reinforces patriarchy. See *id.* art. 5. In 1993, the UN General Assembly adopted the UN Declaration on the Elimination of Violence Against Women, which declared that State parties are obliged to “[e]xercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.” See Declaration on the Elimination of Violence Against Women, art. 4, G.A. Res. 48/104, at 217, U.N. Doc. A/48/49 (1993). The CRPD too dismantles the private/public distinction in Article 4(b) when it instructs States “to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities.” CRPD, *supra* note 1, art. 4.

abuse.⁵⁵ CEDAW supported feminist critiques that helped dismantle the dichotomy between the “public” and “private” realms.⁵⁶ These critiques have broadened notions of state accountability for human rights violations to include violations committed by private actors, such as family members or non-state actors.

Johanna Bond argues that, as a result of the feminist critique of current human rights practice, there has been a gradual erosion of the public/private dichotomy and the extension of state responsibility for gender-based abuses occurring in the private sphere. She argues:

Because a necessary element of many of the violations enumerated in UN human rights documents was the participation or acquiescence of a public official, the definition of a human rights violation became synonymous with state-sponsored “public” acts. The UN system did not consider so-called “private” acts—acts perpetrated by “private” actors and that take place in traditionally private spheres such as the home—to be human rights violations; this determination had discernibly negative effects on women's abilities to seek redress for the gender-specific abuses that they suffered. The system's focus on protecting civil and political rights emphasized an individual's relationship with the state over that individual's relationships with family members and the broader social community.⁵⁷

Secondly, the CEDAW is revolutionary in that, in Article 5, it condemns traditional and cultural practices that amount to discrimination against women and girls.⁵⁸ Article 5 asserts the right of women and children

⁵⁵ See *Velásquez-Rodríguez v. Honduras*, 1988 Inter-Am Ct. H.R. (ser. C) No. 4 (July 29, 1988). This case is legal precedent for holding a state accountable for the actions of a private person. The court in this case held that:

An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it *Id.* at ¶ 172.

⁵⁶ See Hilary Charlesworth, Christine Chinkin, & Shelley Wright, *Feminist Approaches to International Law*, 85 AM. J. INT'L L. 613 (1991); Hilary Charlesworth & Christine Chinkin, *The Gender of Jus Cogens*, 15 HUM. RTS. Q. 63 (1993) [hereinafter Charlesworth et al., *Feminist Approaches*]. Charlesworth et al. argue that the public/private divide “makes it possible to maintain repressive systems of control over women without interference from human rights guarantees, which operate in the public sphere.” Charlesworth et al., *Feminist Approaches*, *supra* note 56, at 629.

⁵⁷ Bond, *supra* note 2, at 89-90.

⁵⁸ CEDAW, *supra* note 54, art. 5. Article 5 of the CEDAW obliges State parties to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of

with disabilities to be free from harmful traditional practices and even the mere threat of such practices. Examples of harmful traditional practices include Sati (widow burning), Devadasi (the offering of women in sexual service to temples), and Chaupadi (where menstruating or lactating women are asked to sleep outside the home).

Thirdly, CEDAW is unique in that several of its articles address women's civil and political rights as well as economic, social and cultural rights and understands these rights to be indivisible. Once again, the CEDAW proves to be a radical statement of rights in that it breaks down the separation of civil and political rights and economic, social and cultural rights. CEDAW presents these rights as interdependent. The full realization of one right is dependant on the actualization of the other.

Finally, the call for affirmative action policies or temporary special measures in Article 4 of the CEDAW allows for preferential access for girls and women to education and work programs.⁵⁹

B. *Examining the Convention on the Rights of the Child*

The CRC was the first Convention to mention disability, and it enshrined the rights of children with disabilities.⁶⁰ The anti-discrimination clause of Article 2 of the CRC clearly establishes the equal rights of all children, including children with disabilities.⁶¹ The anti-discrimination clause of the CRC complements the equality provision of the CEDAW. Implicit in Article 2 of the CRC is the concept of an affirmative obligation on the State to take all appropriate measures to protect against discrimination against the child.⁶² Similarly, Article 5(4) of the CRPD builds on this notion and obliges governments to provide "specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities"⁶³ Article 18 of the CRC relates specifically to children with disabilities and

prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women" *Id.*

⁵⁹ *Id.* art. 4.

⁶⁰ See Convention on the Rights of the Child, G.A. Res. 44/25, Annex, at 167, UN Doc. A/44/49 (Nov. 20, 1989), *entered into force* Sept. 2, 1990, *available at* <http://www1.umn.edu/humanrts/instreet/k2crc.htm> [hereinafter CRC]. The CRC presents three distinct themes. First, parents have primary responsibility to raise children. *Id.* art. 18(1). Second, the state has special responsibilities to children, to intervene and protect them. *Id.* arts. 19, 20. Third, children as people have rights of their own and have rights as individuals in relation to the family and in relation to the state. See, e.g., *id.* arts. 6, 10, 12, 30. More comprehensive than child protection, this human rights formulation underscores that the absence of rights exposes children to risks of abuse both by their parents and by government actors such as teachers, social workers, and judges. See generally *id.*

⁶¹ *Id.* art. 2.

⁶² *Id.* art. 2.

⁶³ CRPD, *supra* note 1, art. 5.

advances the rights of children with mental or physical disabilities to participate actively in the community, to be given special care, and to have their parents provided with the necessary support in the care of the child.⁶⁴ Article 23 also ensures the child's effective access to education, training, health care services, rehabilitation services, and preparation for employment and recreation.⁶⁵ Article 18(4) calls for international cooperation between states to promote discussion to prevent disabilities and promote the treatment of disability.⁶⁶

The Committee on the Rights of the Child has fleshed out the CRC with comments and other interpretive guidance. A Day of General Discussion in 1997 on the rights of the children with disabilities resulted in fourteen recommendations that have guided the Committee's work over the past years.⁶⁷ The General Comment No. 9 on the Rights of Children with Disabilities acknowledges the special vulnerability of children who are at risk of multiple forms of discrimination based on a combination of factors, and it notes in particular the girl child with disabilities, indigenous girls with disabilities, and children with disabilities living in rural areas.⁶⁸ It also acknowledges that "poverty is both a cause and consequence of disability."⁶⁹

The CRC, too, expands its reach to both the public and private spheres and thus parallels CEDAW in a core principle. Thus reading the CEDAW and the CRC with the CRPD will have greater resonance to address abuse, exploitation and discrimination against women and children that takes place in the family as well by state and non-state actors.

⁶⁴ *Id.* art. 18.

⁶⁵ *Id.* art. 23.

⁶⁶ *Id.* art. 18(4). Other relevant articles are present in regional treaties. See, e.g., Organization of American States, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador"), art. 18, *opened for signature* Nov. 17, 1988, O.A.S.T.S. No. 69, (*entered into force* Nov. 16, 1999), *available at* <http://www.oas.org/juridico/English/treaties/a-52.html> (containing an article on the protection of the handicapped that does not specifically address children); African Charter on Human and Peoples' Rights, *adopted* June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), art. 18(4) (*entered into force* Oct. 21, 1986), *available at* <http://www1.umn.edu/humanrts/instrree/zlafchar.htm> (stating that the aged and disabled have the right to protection).

⁶⁷ See Committee on the Rights of the Child, *General Day of Discussion on "Children with Disabilities,"* CRC/C/66 (1997), *available at* <http://www.unhcr.ch/html/menu2/6/crc/doc/days/disabled.pdf>.

⁶⁸ The General Comment calls for, among other things, National plans of action and policies; data and statistics; budget; coordination body: "focal point for Disabilities"; international cooperation and technical assistance; independent monitoring of the situation of children with disabilities; street children; and better attention to children in armed conflict. Committee on the Rights of the Child, *General Comment No. 9 (2006): The Rights of Children with Disabilities*, at 5-8, CRC/C/GC/9 (2006), *available at* <http://www.unicef.org/malaysia/CRC.C.GC.9.pdf>.

⁶⁹ *Id.* at 2.

C. *Examining the Convention on the Rights of Persons with Disabilities*

The CEDAW and CRC address issues of concern to children and women whereas the CRPD read alone is more general. For example, the CRPD does not focus on specific risk factors and causes leading to disability, including child marriage, malnutrition, inequality in health care, and trafficking in children. These factors both cause disability in children and place children with disabilities in even more vulnerable situations. These areas can be more effectively addressed through a joint analysis of the CEDAW, CRC, and CRPD.

Given that the CRPD recognizes that women and children are some of the primary victims of discrimination and exploitation,⁷⁰ other international legal instruments, such as the CEDAW⁷¹ and CRC,⁷² which address both gender-based and age-based violations, must be read together with the CRPD. Also, in the absence of “Concluding Observations,”⁷³ as yet, for the CRPD, the interpretation and the domestic application of the CRPD will benefit from the jurisprudence of the CEDAW and CRC treaty bodies.

The CRPD provides a number of entry points for intersectional analysis. In addition to Articles 6⁷⁴ and 7,⁷⁵ which address the rights of

⁷⁰ See CRPD, *supra* note 1.

⁷¹ See CEDAW, *supra* note 54.

⁷² See CRC, *supra* note 60.

⁷³ The implementation of the core human rights treaties is monitored by committees of independent experts known as treaty monitoring bodies, created under the auspices of the United Nations. Each of the major human rights treaties has its own monitoring body which meets regularly to review State Party reports and to engage in a constructive dialogue with governments on how to live up to their human rights obligations. Based on this dialogue, the Committee publishes its concerns and recommendations, referred to as “Concluding Observations.” Concluding Observations can carry considerable weight with both governments and nongovernmental actors and much depends on how these comments are used in advocacy platforms.

⁷⁴ CRPD, *supra* note 1, art. 6 (“Women with Disabilities”). The text of Article 6 in relevant part reads:

1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

Id.

⁷⁵ *Id.*

art. 7 (“Children with Disabilities”). The text of Article 7 in relevant part reads:

1. States Parties shall 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.

2. In all actions concerning children with disabilities, the best interest of the child shall be a primary consideration.

women and children with disabilities, Article 8 requires States to “combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life.”⁷⁶ Article 16 provides for freedom from exploitation, violence, and abuse and refers to the gender-based aspects of these violations.⁷⁷ Article 24 addresses access to education for children and adults with disabilities, erects safeguards against the exclusion of children with disabilities from free and compulsory education, and guarantees that education for persons with disabilities, especially children who are “blind, deaf or deaf/blind,” is conducted in an environment that maximizes “academic and social development.”⁷⁸

Although the CEDAW and CRC make specific reference to the rights for women and children with disabilities,⁷⁹ few state party reports or shadow reports focus on the double discrimination faced by women with disabilities. The CPRD provides a natural entry point for textual analysis of the linkages and a real opportunity for collaboration among women’s rights, children’s rights, and disability rights advocates.

IV. EFFECTIVE TRANSFORMATIONAL DEVICES: INTEGRATING HUMAN RIGHTS MECHANISMS TO REFLECT INTERSECTIONALITY

Hopefully, intersectional analysis will change the paradigm in both the theoretical and institutional frameworks of human rights practice. This Part will look at ways in which the intersectional critique can be realized in actual practice in numerous human rights arenas, such as human rights organizations, domestic legislation, human rights litigation, and UN-specific procedures like reporting and commenting.

3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

Id.

⁷⁶ *Id.* art. 8.

⁷⁷ *Id.* art. 16.

⁷⁸ *Id.* art. 24.

⁷⁹ General Recommendation No. 18 of the CEDAW relates to women with disabilities and requests State parties to include information on women with disabilities in the periodic reports. Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 18*, U.N. Doc. A/46/38, at 3 (1991).

A. *Organizing as a Valuable Tool: Mainstreaming a Gender Perspective into Mobilizing Movements and Galvanizing Action on Disability Rights*

The CRPD provides real opportunities for normative connections among different rights agendas and collaboration among and between women's rights, children's rights, and disability rights advocates. Such collaboration will help to address multiple discrimination and the stigmas that disability can bring, and will foster alliances among advocates who have traditionally represented different constituencies. For the most effective realization of the guarantees for women and children with disabilities, an urgent need exists for a greater level of collaboration, coalition building, and coming together between women's rights, children's rights, and disability rights advocates in support of such synergistic action by local and national actors.

The CRPD also expands the transnational spaces in which activists work⁸⁰ and accelerates the transmission of ideas from the local level to the global. The interaction of the global with the local helps strengthen and grow social movements. Social movements shape as much as they are shaped by international norms. The CRPD, which is the culmination of more than two decades of struggle by the disability movement, is a testament to how social movements inform international norm creation.⁸¹

Given the way the rights guaranteed by the CRPD, CRC, and CEDAW intersect, civil society organizations and movements must form alliances and come together on law and policy making, litigation, reporting under the different treaty bodies, awareness building, and education. A gender-based approach and a child-rights perspective require linking together groups and individuals already working on the rights of women and children with groups and individuals working on disability rights. This

⁸⁰ There are many regional disability rights organizations. One example is the Network of South Asian Women with Disabilities. Network of South Asian Women with Disabilities, <http://nsawwd.org> (last visited Oct. 11, 2008) [hereinafter NSAWWD].

⁸¹ This is an example of transnational social movements driving global norm creation. Balakrishnan Rajagopal argues:

concerted social movement action has driven several recent international legal developments (including the Ottawa Convention on Anti-Personnel Landmines, the establishment of the World Bank Complaints Panel, the establishment of the World Commission on Dams, the Doha Declaration regarding the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights and Public Health, an advisory opinion of the International Court of Justice regarding the threat or use of nuclear weapons) and the emergence of new soft law standards for corporate social responsibility.

Balakrishnan Rajagopal, *International Law and Social Movements: Challenges of Theorizing Resistance*, 41 COLUM. J. TRANSNAT'L L. 397, 399 (2003).

collaboration should include strategic partnerships among human rights groups to draw attention to the interfaces of these rights; the ratification and implementation of the CRPD as a way to strengthen the rights of women and children; the promotion of intersectoral and interagency cooperation to bring disability into the mainstram of national gender policies; and the emphasis of the rights of those who are most marginalized, such as indigenous and minority women and children with disabilities.

A. *Integrating International Human Rights Norms into National Laws*

Numerous countries now use international norms in interpreting human rights provisions of their national law, and thus an understanding of the intersectionality of those human rights is necessary on the global scale if it is to filter into national regimes. Such intersectional awareness is needed as numerous domestic rights laws are as compartmentalized as the Conventions. Integrating a disability rights perspective into the broader legislative and policy agendas concerning women, children and minorities remains an important step towards mainstreaming and normalizing disability. In this context, the goal should be to ensure that the disability agenda is not a “stand-alone” human rights issue, but built into the legal system. In doing so, effective training programs must be developed to raise awareness of, and sensitivity to, disability rights with law enforcement and the judiciary so that laws and policies are interpreted effectively. Similar training programs should be developed for service providers who coordinate domestic violence shelters. Yet, at the center of such reforms must stand legislation.

The Vienna Convention established that once a state ratifies a convention, the state becomes a party to that convention and has corresponding obligations under that treaty.⁸² Thus, drafting enabling legislation in compliance with the ratified treaty is one of the most powerful forms of translating international norms into domestic applications. Several countries have incorporated international treaties in their Constitutions.⁸³

⁸² Vienna Convention on the Law of Treaties art. 26, May 23, 1969, 1155 U.N.T.S. 331.

⁸³ For example, the Argentine Constitution reads:

The Congress shall have the power . . . [t]o approve or reject treaties entered with other nations and with international organizations, and concordats with the Holy See. Treaties and concordats have a higher standing than laws . . . [T]he following [international instruments] under the conditions under which they are in force, stand on the same level as the Constitution, [but] do not repeal any article in the First Part of this Constitution, and must be understood as complementary of the rights and guarantees recognized therein: the American Declaration of Right and Duties of Man; the Universal Declaration of Human Rights; the American Convention on Human Rights; the International Covenant on Civil and Political Rights and its Optional

For example, the South African Constitution mandates that international law must be used to guide the interpretation of its law, and that comparison with foreign law may be used as an interpretive tool.⁸⁴ Thus, upon ratification, the CRPD could become an interpretive tool in South Africa. Similarly, laws in the Philippines that relate to women and children invoke the CEDAW and CRC in their preambles.⁸⁵ Now that the Philippines has ratified the CRPD, this treaty should also be invoked in the preambles to all laws affecting the rights of persons. Constitutional provisions on equality must also be revised to include disability as prohibited grounds for discrimination.⁸⁶

In addition to Constitutions, national laws should adopt a less compartmentalized approach to human rights and be revised to reflect the intersectionalities of discrimination and identity. Very few national laws focus on the rights of women with disabilities. For example, Japan's Basic Law for Persons with Disabilities, amended in 2004,⁸⁷ and the Indian Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Protection) Act, 1995,⁸⁸ do not focus on the gendered aspects of disability. Likewise, few laws dealing with women and children make reference to the rights of women and children with disabilities.

While a women's rights and children's rights perspectives must be brought to bear on any lawmaking on disability, it is equally important to

Protocol; the [International] Convention on the Prevention and Punishment of Genocide; the International Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Elimination of all Forms of Discrimination Against Women; the Convention Against Torture and other Cruel, Inhuman or Degrading Treatments or Punishment; the Convention on the Rights of the Child.

CONST. ARG. art. 75.

⁸⁴ S. AFR. CONST., 1996 art. 39.

⁸⁵ Some legislation also establishes that the spirit of the CEDAW and other international instruments guide the interpretation of the law. For example, the newly drafted gender equality law of Vietnam sets out in Article 3 that, in case of conflict, international treaties on gender equality shall supersede national laws, thus establishing the supremacy of international human rights norms and ensuring that the international norms can be used to fill in gaps and clarify any ambiguity in interpreting national norms. Law on Gender Equality art. 3, No. 51/2001/QH10 (Dec. 25, 2001) (Vietnam). Similarly, the Australian Sex Discrimination Act states that the objects of this Act include "to give effect to certain provisions of the Convention on the Elimination of All Forms of Discrimination against Women." Sex Discrimination Act, 1984, s. 3(a) (Austl.).

⁸⁶ The Canadian Charter also states in Section 15(2) that "[s]ubsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national origin, color, religion, sex, age or mental or physical disability." Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982, ch. 11 (U.K.).

⁸⁷ See The Basic Law for Persons with Disabilities, Law No. 84 of 1970 (Japan), available at <http://www8.cao.go.jp/shougai/english/law/no84.html>.

⁸⁸ See Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Protection) Act, 1995, No. 1 of 1996 (India), available at <http://www.disabilityindia.org/pwdacts.cfm>.

mainstream a disability rights perspective into the areas of the law that address women and children's rights law and policymaking. For example, Taiwan's law on gender equality in education fails to address the issue of the rights of children with disabilities, especially girls with disabilities to education.⁸⁹ It is also important to bring a disability perspective to combat trafficking and sexual slavery of women and children. The use of the CRPD will enhance the repertoire of tools available to challenge trafficking and abuse of women and children with disabilities.

Revising national laws to harmonize their provisions with the core values of the CRPD, CEDAW, and CRC is essential. Best practices must be identified and exchanged widely by states in order to raise awareness. For example, the Korean Constitution provides a model example of where a specific "right to work" is expanded to define this right with regard to people with disabilities.⁹⁰ This kind of right, which acknowledges and protects people with disabilities, needs to be replicated in other constitutional or legislative reform efforts. Similarly, some of the new gender equality laws in Europe provide for a shared responsibility of mothers and fathers in child rearing, and certain laws allow for parental leave in the care of a child with disabilities.⁹¹ These laws could serve as models for the development of laws and policies on disability in Asia. Thus it is important to review the legal system as a whole and identify laws and policies on anti-discrimination, access to education, vocational services, health care services, and transport to ensure that all benefits are extended to all women and children with disabilities. It is also important to identify customary laws and practices that discriminate against women with disabilities in relation to their rights to marry; to bear children and found a family; to have custody of their children; and to inherit and own property.

⁸⁹ Gender Equity Education Act, (2004) (Taiwan).

⁹⁰ The South Korean Constitution reads: "Citizens who are incapable of earning a livelihood due to a physical disability, disease, old age or other reasons shall be protected by the State under the conditions as prescribed by law." HUNBUP [SOUTH KOREAN CONST.] art. 34(5), *reprinted in* CONSTITUTIONAL COURT OF KOREA, THE CONSTITUTION AND THE CONSTITUTIONAL COURT ACT 11 (2000).

⁹¹ The law in Finland states that an employee who has the responsibility of caring for children has the right to a leave-of-absence to provide essential supervision of the child when the child is ill. Employment Contracts Act, ch. 2(3) (2001) (Finland). This right to leave-of-absence extends until the child's tenth birthday. *Id.* The Kosovo law provides for parental leave in the event of sickness of the child. Law on Gender Equality in Kosovo s.13, Law No. 2004/2 (2004). It is permitted to extend the mother's maternity leave by up to two months due to a serious illness suffered by her in connection with the birth. *Id.* Similarly, the recently passed Vietnam Gender Equity Law of 2006 allows for parental leave in the case of a child's sickness. Law on Gender Equality art. 18(3), No. 51/2001/QH10 (Dec. 25, 2001) (Vietnam) ("Wife and husband are equal in discussing, deciding to choose and use appropriate family planning measures and use their leave to take care of their sick children according to regulations of laws.").

International norm transformation can take place at different points in the domestic legal system and not just via enabling legislation. Litigation can be used to adjust international norms when courts use international norms to adjudicate the issue. “[C]ourts are . . . talking to one another, . . . [n]either the speaking nor the listening court is bound by a treaty structure or any other direct and formal links.”⁹² In courts around the world, judges have invoked international law as a creative strategy to vindicate rights. Reliance on international law and comparative legal analysis also reveals a concern for universalizing human rights values and a desire for a cross-fertilization of ideas. In the past few years, courts have increasingly transcended national boundaries to embrace a more universal commitment to human rights.

The invocation of international norms in judicial decision-making has the potential to transform the disability rights movement. It can help facilitate the localization of human rights norms through the mutually enforcing processes of internal persuasion and international pressure. An examination of leading cases across jurisdictions reveals interesting insights into how international human rights norms can support domestic human rights claims and provide a forum for the enforcement of international instruments.

In South Asia, international human rights norms have been used as interpretive tools to fill in gaps in domestic laws, clarify ambiguities in local laws, to broaden the interpretation of domestic laws, and to seek compliance with international human rights norms.⁹³ In India, the Indian Supreme Court has ruled that it must interpret language of its Constitution in light of the UN Charter and solemn declarations subscribed to by India, and “to construe [its] Legislation so as to be in conformity with international law and not in conflict with it.”⁹⁴ Further, the Indian Supreme Court has ruled that any ambiguity in national law must be interpreted in accordance with the State’s international obligations.⁹⁵ The CRC and CEDAW were cited in a groundbreaking case that galvanized the passage of the anti-child marriage law,⁹⁶ and it was a catalyst for the Anti-Child Marriage Bill that was

⁹² Anne Marie Slaughter, *A Typology of Transjudicial Communication*, 29 U. RICH. L. REV. 99, 118 (1994).

⁹³ See Sheetal B. Shah, Note, *Illuminating the Possible in the Developing World: Guaranteeing the Human Rights to Health in India*, 32 VAND. J. TRANSNAT’L L. 435 (1999).

⁹⁴ *Kesavananda Bharati v. Kerala*, (1973) Supp. S.C.R. 1, ¶ 165.

⁹⁵ *Id.*

⁹⁶ In April 2003, the Forum for Fact Finding, Documentation and Advocacy (“FFDA”), a human rights NGO, filed a public interest case seeking strict implementation of the Child Marriage Restraint Act of 1929. *Forum for Fact Finding Documentation and Advocacy (FFDA) v. Union of India*, W.P. (Civ.) No. 212 of 2003 (Supreme Court of India, Apr. 25, 2003) [hereinafter “FFDA petition”]. The FFDA petition

introduced in December 2006.⁹⁷ India's *Vishaka* case⁹⁸ and the *Apparel Export Promotion Council v. A.K. Chopra*⁹⁹ are further innovative examples of how the CEDAW and other international human rights norms have been used to broaden the interpretation of national laws and provide remedies for rights violations when none existed in domestic laws. The CEDAW in both these cases provided the language to articulate gender crimes that would otherwise have been hidden.

In Nepal, the CEDAW was used to broaden the interpretation of the rape laws to include marital rape.¹⁰⁰ Further, in the *Meera Dhungana*¹⁰¹ case, the Nepalese Supreme Court resorted to the CEDAW to strike down gender discriminatory inheritance laws.

cited several international conventions, including the CEDAW and the CRC. AVANI MEHTA SOOD, LITIGATION REPRODUCTIVE RIGHTS: USING PUBLIC INTEREST LITIGATION AND INTERNATIONAL LAW TO PROMOTE GENDER JUSTICE IN INDIA 73 (2006). The petition stated that that by being a party to this treaty, India had committed herself to protecting and ensuring child rights and had agreed to hold her Government accountable for this commitment before the international community. *Id.* The FFDA requested that the Indian Supreme Court issue a writ directing the respondent states to: a) to require police officials to prevent child marriage from taking place; to hold government officials who fail to prevent child marriage liable; ensure that the Child Marriage Restraint Act is implemented; and to engage NGOs in reporting on the implementation of court directives. *Id.* In February 2005, the Indian Supreme Court issued an interim order noting that the Prevention of Child Marriage Bill, which had been introduced in parliament, was pending passage, and the Indian Supreme Court would therefore refrain from ruling. *Id.* However, the Indian Supreme Court stated that, "We . . . hope and trust that in the meantime the . . . States shall make endeavor to prevent child marriages as far as possible and preferably in cases where mass marriages take place." *Id.*

⁹⁷ *Id.*

⁹⁸ *VishakaVisakha v. Rajasthan*, (1997) VII AD S.C.R. 53, available at <http://openarchive.in/judis/13856.htm>. In *Vishaka*, the Indian Supreme Court interpreted the Constitution of India in accordance with the spirit of the CEDAW to protect the rights of women to a safe working environment free from sexual harassment and abuse. *Id.*

⁹⁹ *Apparel Export Promotion Council v. Chopra*, (1999) 1 S.C.C. 759 (India), available at <http://openarchive.in/judis/17025.htm>. In this case, the Indian Supreme Court ruled that the International Labor Organization had recognized that sexual harassment in the workplace was a form of gender discrimination against women and that the CEDAW and the Beijing Declaration direct all state parties to respond appropriately to prevent all forms of discrimination against women. *Id.* Further, the Indian Supreme Court stated that Article 7 of the International Covenant on Social, Economic and Cultural Rights in 1966 recognized the right of women to fair conditions of work. *Id.* The court held that the spirit of these instruments was to guide the State to make their laws gender-sensitive and to allow courts to give them effect wherever possible. *Id.*

¹⁰⁰ See also *Nurhatina Hasibuan v Pt. Indonesia Toray Synthetics*, No. 651/PDT/1988/PT.DK1 (1988), reprinted in *ASIAN PACIFIC FORUM ON WOMEN AND LAW AND DEVELOPMENT, A DIGEST OF CASE LAW ON THE HUMAN RIGHTS OF WOMEN (ASIA PACIFIC)* 14 (Christine Forster et al. eds., 2003) (representing an example of how the CEDAW was used in litigation challenging gender discrimination in employment).

¹⁰¹ *Meera Dhungana vs. HGM/Nepal*, Writ No. 110/059 (June 29, 2004), reprinted in *FORUM FOR WOMEN, LAW AND DEVELOPMENT, AN UPDATE OF DISCRIMINATORY LAWS IN NEPAL AND THEIR IMPACT ON WOMEN: A REVIEW OF THE CURRENT SITUATION AND PROPOSALS FOR CHANGE* 5 (Sapana Pradhan-Malla ed., 2006).

Intersectionality, as a jurisprudential method, must be adopted into the anti-discrimination theory and discourse, and this can be best done through anti-discrimination litigation that will address the convergence of both gender and disability and its resultant multiplicity of subordination. Not only is public interest litigation a potentially powerful transformative tool to translate the CRPD into domestic application, but equality as a cross-cutting issue can be best initiated within an interlocking human rights framework by a plaintiff who represents the way in which gender, disability, and ethnicity often create multiple grounds of discrimination. Challenging discrimination against women and children with disabilities also gives rise to interesting and complex litigation. Most constitutions define discrimination to include that which occurs on the basis of gender, race, ethnic origin, ancestry or place of origin, disability, and sexual orientation. Litigation that can show how these grounds sometimes connect and intersect can have a greater impact on the courts.

V. RECOMMENDED ACTIONS FOR UN FUNCTION TO IMPLEMENT AN INTERSECTIONAL APPROACH

The intersectionality critique has been extended to rethink rights at the international level and to think through UN structures. Still, analysis of the implementation of intersectionality discourse is lacking. An understanding of intersecting forces of discrimination requires reconceptualizing these rights and rethinking UN institutional and organizational arrangements. The recent UN reforms, calling for the harmonizing of UN reporting under the core human rights treaties, make the conceptual linking of overlapping areas and collaboration among different stake holders even more relevant and urgent.¹⁰² The proposed changes provide a historic opportunity to reflect on the work of the human rights treaty bodies so as to capture a more complex and fluid understanding of identity.

Numerous UN mechanisms could also be reconceptualized in order to incorporate intersectional understanding of human rights violations. This section summarizes how human rights reporting to some of the treaty bodies, treaty body communication, and special procedures, can be used to advance the interface between these conventions.

¹⁰² See Secretariat, Sixteenth Meeting of Chairpersons of the Human Rights Treaty Bodies, *Guidelines on an Expanded Core Document and Treaty-Specific Targeted Reports and Harmonized Guidelines on Reporting Under the International Human Rights Treaties*, HRI/MC/2004/3 (June 9, 2004); Secretariat, Seventeenth Meeting of Chairpersons of the Human Rights Treaty Bodies, *Harmonized Guidelines on Reporting under the International Human Rights Treaties Including Guidelines on a Common Core Document and Treaty-Specific Targeted Document*, HRI/MC/2005/3 (June 1, 2005).

A. *Human Rights Reporting*

To date, only the Asian countries of Bangladesh, India, the Philippines, and China have ratified the CRPD.¹⁰³ However, all Asian countries have ratified the CEDAW and the CRC.¹⁰⁴ Thus it is important to use the CEDAW and CRC as well as the CRPD read together to build greater awareness on the rights of persons with disabilities.¹⁰⁵ Given that no state party report to the CRPD has been filed, and none is expected until two years after ratification, it makes it doubly important to use the CEDAW and CRC reporting processes to highlight the rights of women and children with disabilities. As states ratify the CRPD, they will have to generate reports that reflect the initiatives, laws, policies, programs and action plans initiated during the reporting period in compliance with the treaty obligations. These reports must also point out the obstacles and challenges faced by the State in its compliance with the treaty.

The CEDAW and CRC Committees have recommended that State parties, in their reports to the Committees, report on the progress made in ensuring that women with disabilities enjoy their human rights in full. Although the CEDAW and CRC make specific reference to the rights for women and children with disabilities, few state party reports or shadow reports focus on the double discrimination faced by women with disabilities.¹⁰⁶ But these issues are not going entirely unnoticed.

The CRC Committee has expressed concern for persons with disabilities in many communications to state parties. For example, in 2000, the CRC Committee expressed its deep concern that as a result of the prolonged armed conflict in Cambodia, the State party had one of the highest levels of disability in the world.¹⁰⁷ In 2004, the need for better integration of children with disabilities in education and recreational and cultural activities

¹⁰³ States that have ratified the CRPD can be found on the UN Enable website. UN Enable, <http://www.un.org/disabilities/> (follow link to "Signatories & Ratifications") (last visited Oct. 11, 2008).

¹⁰⁴ As of today, 185 countries have ratified the CEDAW. CEDAW, *States Parties*, <http://www.un.org/womenwatch/daw/cedaw/states.htm> (last visited Nov. 3, 2008). The CRC has been ratified by 193 countries; Somalia and the U.S. are the only countries that have yet to ratify the treaty. CRC, *What Is the CRC?*, http://www.unicef.org/knowyourrights/know_crc.html (last visited Nov. 3, 2008).

¹⁰⁵ No state party report to the CRPD has yet been filed. According to Article 35 of the CRPD, each State Party shall submit to the Committee on the rights of Persons with Disabilities a comprehensive report on measures taken to give effect to its obligations under the Convention. CRPD, *supra* note 1, art. 35. Thereafter, States parties are to submit subsequent reports at least every four years and whenever the Committee so requests. *Id.*

¹⁰⁶ CEDAW, *supra* note 54 (requesting that state parties include information on women with disabilities in their periodic reports). General Recommendation No. 18 of the CEDAW relates to women with disabilities and requests state parties to include information on women with disabilities in their periodic reports.

¹⁰⁷ CEDAW *Concluding Observations: Cambodia*, *supra* note 53, ¶ 48.

was specially noted by the CRC Committee in Concluding Comments to Japan's State party report.¹⁰⁸ The CRC Committee asked for better data on children with disabilities, access to health care, education and employment services, and support for families in the Concluding Comments to the Indonesian state party report in 2004,¹⁰⁹ in the Thai report in 2006¹¹⁰ and in the Singapore report in 2003.¹¹¹ The CRC Committee's Concluding Observations to the Bangladesh report in 2003 examined societal discrimination against children with disabilities and their exclusion from formal education in Bangladesh.¹¹² Similarly, a review of the state party reports that came up for review at the 48th Session of the CRC committee from Bulgaria,¹¹³ Eritrea,¹¹⁴ Georgia,¹¹⁵ Serbia,¹¹⁶ and Sierra Leone¹¹⁷

¹⁰⁸ *Concluding Observations of the Committee on the Rights of the Child: Japan*, U.N. Doc. CRC/C/15/Add., art. 44(b) (2004).

¹⁰⁹ *CEDAW Concluding Observations: Indonesia*, *supra* note 53.

¹¹⁰ *Concluding Observations of the Committee on the Rights of the Child: Thailand*, U.N. Doc. CRC/C/THA/CO/2 (2006).

¹¹¹ *Concluding Observations of the Committee on the Rights of the Child: Singapore*, U.N. Doc. CRC/C/15/Add.220 (2003).

¹¹² *Concluding Observations of the Committee on the Rights of the Child: Bangladesh*, U.N. Doc. CRC/C/15/Add.221 (2003).

¹¹³ Committee on the Rights of the Child, *List of Issues to be Taken up in Connection with the Consideration of the Second Periodic Report of Bulgaria*, CRC/C/BGR/Q/2 (Feb. 14, 2008), available at <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.BGR.Q.2.pdf>. The questions submitted to Bulgaria require the State party to provide information on healthcare, including mental health care, programmes and services for children with disabilities; sex disaggregated data on specific numbers of children with disabilities up to the age of 18; and information on nondiscrimination in general and in particular discrimination against children with disabilities. *Id.*

¹¹⁴ Committee on the Rights of the Child, *List of Issues to be Taken up in Connection with the Consideration of the Third Periodic Report of Eritrea*, CRC/C/ERI/Q/3 (Feb. 26, 2008), available at <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.ERI.Q.3.pdf>. The CRC asked Eritrea for more information on the rights of children with disabilities, data on programs and services for children with disabilities, programmes providing the necessary services and support services and support for child victims of armed conflict, and for statistical data on children demobilized and victims of land mines. <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.ERI.Q.3.pdf>. *Id.*

¹¹⁵ Committee on the Rights of the Child, *List of Issues to be Taken up in Connection with the Consideration of the Third Periodic Report of Georgia*, CRC/C/GEO/Q/3 (Oct. 26, 2008), available at <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GEO.Q.3.pdf>. The CRC requested more information from Georgia on programmes and services for children with disabilities; and on rights of children with disabilities. *Id.*

¹¹⁶ Committee on the Rights of the Child, *List of Issues to be Taken up in Connection with the Consideration of the Initial Report of Serbia*, CRC/C/SRB/Q/1 (Feb. 14, 2008), available at <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.SRB.Q.1.doc>. Serbia was asked by the CRC Committee to provide information on healthcare for children; more information on the number of children involved in sexual exploitation who have received assistance; and on children with disabilities. *Id.*

¹¹⁷ Committee on the Rights of the Child, *List of Issues to be Taken up in Connection with the Consideration of the Second Periodic Report of Sierra Leone*, CRC/C/SLE/Q/2 (July 4, 2007), available at <http://daccessdds.un.org/doc/UNDOC/GEN/G07/428/66/PDF/G0742866.pdf?OpenElement>. More information was requested from Sierra Leone on children with disabilities including amputees, the National

reveals that the CRC Committee asked each state party to include additional and updated information on a list of issues connected to programs and services for children with disabilities.

Such opportunities to strictly evaluate state party compliance with these requests should be seized, both at Constructive Dialogues¹¹⁸ with the states party reports and in Concluding Observations issued for the States party reports. Disability rights advocacy groups must also identify and use these Concluding Observations as powerful entry points to mobilize attention on disability rights and to bolster their advocacy efforts and accountability on the part of all stake holders. An important approach is also to provide training on multiple perspectives to human rights reporting. This will not only help to harmonize the rights framework under the core human rights treaties but will also help to locate the CRPD in the web of interconnected human rights treaties as a way to mainstream disability rights awareness into the existing human rights system. In doing so, advocates for women, children, and disability rights must come together in informing party reporting under the CEDAW, CRC, and CRPD and drafting shadow reports to the three treaty bodies.

The recent UN reforms calling for the harmonizing of UN reporting under the core human rights treaties make the conceptual linking of overlapping areas and collaboration among different stake holders even more urgent.

B. Ensuring Communication and Collaboration Between the Treaty Bodies

Human rights treaty bodies periodically issue General Recommendations and General Comments as interpretive tools to guide states to operationalize specific provisions of the treaties. General Recommendations are important benchmarks to assess how states are fulfilling their obligations under the treaty. These Recommendations or Comments help bolster civil society organizations' work to hold their governments accountable to fulfill their obligations under the treaties.

Policy for the Protection of Persons with Disabilities, enrollment in schools, and the provision of adequate legal protection, care, and services. *Id.*

¹¹⁸ Committee on the Rights of the Child, *Overview of the Working Methods of the Committee on the Rights of the Child*, <http://www2.ohchr.org/english/bodies/crc/workingmethods.htm> (last visited Oct. 18, 2008). The State party report is discussed at open and public meetings of the Committee, during which both the State representatives and Committee members take the floor. The purpose of the whole process is constructive and focuses on "implementation priorities" and "future goals." This is known as a "Constructive Dialogue" with the treaty body and the state party. *Id.*

General Recommendations by the CEDAW Committee and General Comments by the CRC¹¹⁹ provide an important space for the committees to engage in intersectional analysis and can help catalyze collaboration between and across different agencies and different social movements. With this in mind, the future CRPD Committee and the existing treaty bodies of the CEDAW and CRC must be encouraged to adopt General Recommendations that recognize the intersection of gender-based discrimination and other forms of discrimination such as those based on disability.

The interface between the substantive provisions of the human rights treaties including the CRPD can be linked to concrete action on the ground through more collaborations and dialogue among the treaty bodies. This can be facilitated by both formal and informal collaboration between the Committees. For example, the Meeting of Chairpersons of the Treaty Bodies¹²⁰ can provide space for cross-treaty conversations and for cross-referencing of overlapping areas in different treaty provisions in Concluding Observations¹²¹ made by treaty bodies on each state party report. To allow for and promote more meaningful human rights analysis, training can be done for committee members from each treaty body on the substantive content of each of the other core treaties. This will help sustain a better understanding of how these categories interface and overlap.

C. *Harmonizing the Work of UN Special Procedures*

Finally, Special Rapporteurs and the Secretary General's Special Representatives can be urged to gather information about the interfaces of

¹¹⁹ The Committee on the Rights of the Child publishes its interpretations of the content of human rights provisions in the form of General Comments on thematic issues. Committee on the Rights of the Child—General Comments, <http://www2.ohchr.org/english/bodies/crc/comments.htm> (last visited Dec. 3, 2008). So far there are ten General Comments. *Id.*

¹²⁰ Office of the High Commissioner for Human Rights, Effective Implementation of International Human Rights Instruments: Annual Meeting of Chairpersons of the Human Rights Treaty Bodies and the Inter-Committee Meeting, <http://www.unhcr.ch/html/menu2/meetings.htm> (last visited Oct. 18, 2008). The annual Meeting of Chairpersons of the Human Rights Treaty Bodies provides a forum for members of the human rights treaties to discuss their work and the effectiveness of harmonizing and streamlining human rights reports, follow-up on World Conferences etc. *Id.* Since 2002, an Inter-Committee Meeting, consisting of the chairpersons plus two members of each of the committees, has also been convened to discuss these issues. *Id.*

¹²¹ Committee members of treaty bodies summarize their observations on the report and the discussion itself and may make suggestions and recommendations. The Concluding Observations usually include acknowledgment of the progress made by the State party; impediments that challenge the implementation of the treaty; and suggestions and recommendations addressed to the State party. The Concluding Observations are made public on the last day of a Committee session during the adoption of the report, of which they form a part. Once adopted, they are made available to the States parties concerned, and also issued as official documents of the Committee.

human rights abuses and the promotion of intersectional analysis as part of the UN special procedures.¹²² Joint Reports from the Special Rapporteur on issues should stress the convergence of disability, gender, and conflict.¹²³ Similarly, the work of the Special Rapporteur on the Right to Food is extremely important in the context of the growing food crisis across the world. Special attention must be paid in the Rapporteur's report to women and children with disabilities who are most often the last in line for food and are vulnerable to malnutrition. In this context, the plight of women and children with disabilities is even greater and must be addressed by the different mandates of the UN Special Procedures.

The work of the UN Secretary General's Special Representative for Children and Armed Conflict deals specifically with the maiming and disabling of children in armed conflict and the rights of children who are disabled through armed conflict.¹²⁴ The Special Representative and the Security Council Working Group on Children and Armed Conflict seek to monitor six grave offenses, including the killing or maiming of children.¹²⁵ The UN Secretary General's Special Representative for Children and Armed Conflict has noted that, "Children are the primary victims of armed conflict . . . [c]hildren are killed or maimed, made orphans, abducted, deprived of education and health care, and left with deep emotional scars and trauma."¹²⁶ The office has emphasized the gendered nature of armed conflict, where girls face additional risks, such as rape, sexual violence, sexual slavery, forced prostitution, and exploitation as child wives to

¹²² Special procedures are mechanisms used by the Commission on Human Rights to address specific human rights situations. There are two types of special procedures. A country mandate calls on the mandate holder to monitor, advise, and report on the human rights situation in a particular country. There are currently nine country mandates. A thematic mandate calls on the mandate holder to monitor, advise, and report on a human rights issue that affects the whole world. There are currently twenty-nine thematic mandates. Special procedure mandate holders can engage in a wide variety of activities to support their mandates, including investigating complaints, providing technical support, conducting studies, and promoting their mission to the public. The Office of the High Commission on Human Rights provides support to special procedure mandate holders.

¹²³ Violence perpetrated against the Chinese ethnic minority in Indonesia in 1998 is an example that illustrates poignantly the ways in which gender compounds ethnic violence. See Johanna E. Bond, *International Intersectionality: Theoretical and Pragmatic Exploration of Women's International Human Rights Violations*, 52 EMORY L. J. 71, 73 (2003).

¹²⁴ See, e.g., "Office of the Special Representative of the Secretary-General for Children and Armed Conflict, Global Youth Action Network, UNICEF, United Nations Population Fund and Women's Commission for Refugee Women and Children, *Will you listen?: Young Voices in Conflict Zones* (UNICEF 2007), available at http://www.un.org/children/conflict/_documents/pdf/Will_You_Listen_english.pdf.

¹²⁵ See S.C. Res. 1612 (2005), U.N. Doc. S/RES/1612 (July 26, 2005) (requesting the implementation of a mechanism specified by the Secretary-General in his fifth report on children and armed conflict (A/59/695-S/2005/72) to monitor and report on these six grave violations).

¹²⁶ Olara Otunnu, 2005 Sydney Peace Prize Lecture: Saving Our Children from the Scourge of War (Nov. 9, 2005), available at <http://www.usyd.edu.au/news/84.html?newsstoryid=764>.

combatants.¹²⁷ The Special Representative has remarked that “gender-based violence often leads to severe and long-lasting health problems, including early pregnancies, fistula, infections, HIV/AIDS and psychological trauma.”¹²⁸

The CRPD is of enormous relevance in the work of the Special Representative and the advancement of the CRPD must be linked to the work of the Special Representative, and her investigations and reports must be used by the disability rights, children’s rights, and women’s rights movements to protect the rights of children disabled by armed conflict as well as to safeguard the right to life, health, and security of all children.

D. *Universal Periodic Review*

In 2006, the UN General Assembly, by General Resolution 60/251, directed the Human Rights Council to undertake a Universal Periodic Review (“UPR”) of each state’s human rights obligations and commitments in order to ensure “universality of coverage and equal treatment with respect to all States”¹²⁹ At each session, representatives of sixteen countries are scheduled to come before the UPR Working Group, which comprises the entire membership of the 47-member Human Rights Council and observer States to present efforts they have made in fulfilling their human rights obligations and commitments, assessing both positive developments and identifying challenges.¹³⁰ At the UPR, three sources of information will be reviewed, including the national report prepared by the state party or any other information submitted by the state through consultation with all relevant stakeholders, materials prepared by the Office of the High Commissioner for Human Rights (“OHCHR”) on reports of treaty bodies and UN Special Procedures, and additional information by all stakeholders.¹³¹ These stakeholders include NGOs, national human rights commissions, human rights defenders, academic institutions, research institutes, regional organizations, as well as civil society representatives.

The UPR presents yet another opportunity to States parties for critical self assessment of their treaty obligations and for different stake holders to hold state parties accountable to those human rights guarantees. The UPR is

¹²⁷ *Id.*

¹²⁸ Office of the Special Representative for Children and Armed Conflict, Rape and Other Grave Sexual Violence Against Children, <http://www.un.org/children/conflict/english/sexualviolence.html> (last visited Oct. 18, 2008).

¹²⁹ See G.A. Res. 60/251.60/251, 60th Sess., U.N. Doc. A/RES/60/251 (Apr. 3, 2006).

¹³⁰ See H.R.C. Res. 5/1, 9th Mtg., U.N. Doc. A/HRC/5/L.11 (June 18, 2007).

¹³¹ See Office of the High Commissioner of Human Rights, Universal Periodic Review, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRmain.aspx> (last visited Nov. 3, 2008).

an opportunity for OHCHR and the Human Rights Council to ensure that the interfaces of the rights of women and children with disabilities under the CRPD, CEDAW, CRC, and other human rights treaties are examined and advanced.

VI. CONCLUSION

An intersectional approach to locating the rights of women and children with disabilities acknowledges the complex ways in which experiences of discrimination may be shaped by social and historical context and eschews narrow and rigid categories of identity. Most importantly, this article has tried to re-envision a human rights framework through which the confluence of grounds for discrimination can be analyzed and addressed.

On the ground, working separately on issues that are complementary creates artificial dichotomies and divisions that are untenable in law and practice. Given the way in which these rights intersect and the way in which the Conventions can be used to advance the rights of women and children with disabilities, it is important that women's groups, children's rights groups, and disability rights advocates come together to advance the intersectionalities of their interconnected rights agendas. In order to do this, norms and space must be created and capacity must be developed to make disability rights central to the women's rights and children's rights agendas. A gender-based approach and a child rights perspective require linking together groups and individuals already working on the rights of women and children with groups and individuals working on disability rights.

Moreover working collaboratively will add greater strength, credibility and legitimacy to issues than if these issues were to be presented by communities working in isolation from each other. While different movements bring to the table unique histories and traditions, each movement has much to learn from the others and could emerge from this metamorphosis to take on more complex challenges at the intersection of rights. The women's human rights community's focus on "women" to the exclusion of other identity categories, such as disability can result in a narrower understanding of women's human rights. The coming into force of the CRPD provides an opportunity to provide a more complex and nuanced understanding of human rights violations that accommodates the experience of discrimination or rights violations as a result of gender and other grounds.