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DIFFERENCES OF PROTECTIVE CHALLENGES POSED BY NATURAL AND ARTIFICIALLY MOTIVATED ENVIRONMENTAL HAZARDS TO OBLIGATIONS IN ARTICLE 11 OF THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

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ABSTRACT

In recent years, mankind has seen horrific incidents of natural and man made disasters causing forced migration and internal displacement. Examples of those natural environmental disasters to mankind include: earthquakes, floods, storms, hurricanes, landslides among many others. Man made disastrous include armed conflict violence. Both of these situations are symboling examples of incidents that constitute humanitarian emergencies which more than often attract humanitarian attention through triggering humanitarian aid and humanitarian intervention for rescue or call for different forms of life saving measures. This paper is evaluating why reaction, how the responsiveness, conduct and the accountability of states parties may vary in the event of dealing with natural environmental disasters in comparison to mankind disasters such as civil wars. That is from being reactive to and becoming passive actors in some of the situations envisaged under Article 11 of the CRPD. This piece also notes attempts of the Human Rights Council to give some explanatory clarity to the above Article on 30 November 2015 under A/HRC/31/30. The paper concludes by making recommendations in terms of improving the better protecting of vulnerable groups such as persons with disabilities, in the event of forced migrations triggered by natural and man made environmental emergencies.

Key Words : Disability, Natural, Humanitarian emergencies, Forced migration, Armed conflict

Abbreviations

Int.J.L.C : International Journal of the Law in Context
 A.J.I.C.L : African Journal of International and Comparative Law
 E. L. R : Environmental Law Review
 H. J. R. L. : Hague Journal on the Rule of Law
 E. J. I. L. : European Journal of International Law
 I. C. L. Q. : International and Comparative Law Quarterly
 P. L. : Public Law
 C. L. J. : Construction Law Journal

non-state actors to behave differently in relation the duty of protecting and respecting obligations under Article 11. In this context there are two types of situations that are referred to in Article 11 of the CRPD. The work already done reveals that on one hand those situations can result from natural calamities which are driven by natural occurrences. For example even though activities of mankind such as deforestation would contribute to flooding and massive erosion, in terms the actual flooding action, the impact would never involve the direct physical involvement of mankind in such cases. On other hand man made disasters such as armed conflicts that are also destructive in their nature to the environment, mankind is directly and physically involved in the actual

INTRODUCTION

This paper seeks to explain why the differences in nature of situations envisaged by Article 11 might tend to make state and

activities by using various means and methods of warfare to conduct armed hostilities. Those circumstances are simultaneously captured by the drafting of Article 11 of the CRPD.¹

Article 11 (CRPD) is to the effect that

Situations of risk and humanitarian emergencies states parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.²

This research appreciates that the obligation in the above provision envisioned the duty of the state parties to protect the rights of persons with disabilities in such occurrences. Research notes that the involvement of mankind would in symbolic represent the involvement of state agencies in the latter activities rather than the latter. That raises questions of the extent to which that involvement impacts aspects of impartiality, neutrality or even objectivity in executing the above obligations by the same agencies of the State that are also relied upon.

AIMS AND OBJECTIVES

The essay is aimed at identifying the likely impacts of the differences and similarities in the nature of situations that are referred to under Article 11 of the Conventions on Rights of Persons with Disabilities.

METHODOLOGY

Comparative research method is adopted through reflexive based analysis. Textual and context based analysis are also applied in that context. Qualitative methods have been more often used in this piece than the quantitative.

Archival based research : This method indeed predominantly relied on desktop research to undertake a careful scrutiny of the different aspects and perspectives that relate to the numerous attributes that were dealt with.

Radom case study method of study design was also applied. This was required in order to ensure that special attention is afforded to geographical localities in places that exemplify one or both of the situations that

are envisaged in the context of Article 11 above of the CRPD.

RESULTS AND DISCUSSION

Differences in the challenges of persons with disabilities situations under 11

Possibility of causing more disabilities

The occurrence of disabilities is a likely consequence of the weapons and methods of warfare that are used in the course of armed conflicts. In this case it must be noted that there is a causal relationship between the presence of the armed and cases of disabilities. For example considerable of people lost their limbs following the presence of the use of antipersonnel landmines in the course of trying the achievement lawful military objectives. Throughout 2012 it contributed to the rehabilitation of nearly 15,000 people worldwide, which included the fitting of 6,276 prostheses and 10,957 orthoses.³ The centres supported by the Fund also distributed 307 wheelchairs and 5,918 pairs of crutches to people with disabilities. Of the total number of prostheses provided by Fund-assisted centres, 23% were supplied to mine survivors.⁴

Natural calamities and environmental disasters on the other hand are the type of disasters that tend to result from purely natural factors. For example the occurrence of floods could submerge roads, housing infrastructure and other forms of facilities.⁵ The likelihood and risk of the affected community becoming disabled is relative low as compared to the situation of armed conflict. Instead of causing destruction it is rather apparent the parties involved are unlikely to be affected by sustaining disabilities. For in both cases there might be destruction from these occurrences on 2 May 2008. The Cyclone Nargis made landfall in Myanmar, crossing the south of the country over two days, and devastating the Ayeyarwady Delta region.⁶ According to official figures, 84,500 people were killed and 53,800 people were reported to have gone missing.⁷ In this case it must appreciate that the nature and the level of protection that is rendered in these cases will be different depending on the laws that regulate situations of armed conflicts are classifying the person with disabilities. In this case it must be

highlighted that persons with law tends to assume that the nature of problems that are faced persons with disable.

A special legal regime applied in determining the obligations

A special law has always been applied situations of armed conflicts by ensuring that the actions of the individuals involved in conducting the armed hostilities do are not affecting other civilian individuals that are not involved as combatants as note by the Human Rights Council, November 2015 A/HRC/31/30,⁸ this law is also ensuring that the actions of the combatants involved try to minimise cases of unnecessary suffering.⁹ Therefore in this case in addition to those obligations that States have to people with disabilities in times of peace, the obligations based on a field of International Humanitarian Law (IHL) called jus in Bello are therefore addition.

In comparison, the occurrence of an earth quake or flood alone in the absence of the armed conflict by, tend to be classed as a time of peace. Traditionally the law which is applied to these trends situations has been determined based on whether the situation is classed as a time of armed conflicts or a time peace.¹⁰

Distinctions in the extent of state protection afforded to the affected populations

In this context it must appreciated that the nature and the level of protection that is rendered in cases of armed conflicts might different depending on laws regulating situations of armed conflicts as well as the category under which the compliant was legally classified in respect of persons with disabilities.¹¹ In this case it must be highlighted that the standards of protection are lowered though not done away with if the persons with disabilities is identified as a combatant than a civilian. In that case common article three only applies if such persons are for instance been disabled by a landmine and they subsequently surrender from engaging in further fighting against the opponents. It is imperative to note that such an opponent might be a member of armed forces of the State of part of the militia in accordance with Article 4A Geneva

Convention 3.¹² Law tends to assume that the nature of problems that are faced persons with disabilities.

In contrast, the effects of natural disasters are likely to attract the same level protection across all the affected victims.¹³ This implies that the law of peace tends to apply special obligations to more affected groups in time of peace imply the affected individuals are attracting the same levels of protection although with special attention to Children Convention, Women based on the Convention for eliminating all forms of discrimination against women.¹⁴ In this case it must be appreciated that the distinctions of basing the nature of protection on whether individuals are children, women or disabled might be more emphatically and appropriately in the attained in traditional peacetimes. Notably the duties are basically expected to remain fully and largely binding on the State authorities during the occurrence of earthquakes or floods of due to the normative discourses that are a result of applying the law of armed conflicts.

The nature of disability models that is often applicable to each situation

In times of armed conflict, there is often high likelihood that presence of the armed tends to create a situation in which in which more persons are likely to become injured. This creates the presumption that men, women as well children could become persons with disabilities through wounding, injuries and amputation. In such a context in has been increasingly common for persons with disabilities especially those with war related disabilities to be prescribed as either having sickness, illness.¹⁵ The medicalization discourses and narratives are founded upon the notions of restoring the abilities of that have been lost as a result the destructive effects of armed conflict thus leading bodily anomalies.¹⁶

In the case of problems that are caused by situations of emergencies, there is an increasing tendency of using ideological and theoretical concepts of the social-rights based approach. This is done with a view of ensuring that persons with disability are included in the evacuation and displacement plans for disaster and risk management

strategies. The fact that the objective of natural catastrophes is far from causing bodily incapacitation as a means of achieving a lawful goal or legitimate advantage, the medical treatment theory of prosthesis are barely part of the rehabilitation schemes in the aftermath. It must be contrastingly highlighted that armed conflicts on the other hand could perceive targeting that might in several cases lawfully incapacitate combatants a legitimate aim of engaging in situations of armed conflict.

Post recovery challenges social justice issues

It is almost certain that the Extent of disunity and politicisation impacting or influencing resource and disability rehabilitation allocation aftermath of both situations is most cases distinctive and potentially divergent.

The period in the aftermath of armed conflict could lead to factions especially based on theories of heroism, patriots that could in some cases be veterans with disabilities. In essence, the ideological and philosophical perspectives have impact of the manner in which State and non-State actors might allocate social welfare support among persons with disabilities.¹⁷ Although article 11 of the CRPD proposed even protection of rehabilitation, health and support to accessing mobility aids, in the context of armed conflict the aftermath tends to see State actors perceiving veterans with war related disabilities are a superior class of persons in relation to other persons with disabilities.¹⁸ For example the interim government of Afghanistan created special rehabilitation programmes for the disabled combatants which in some of the literature are featuring as Martyrs. Likewise the Gulf war in Iraq saw the mushrooming of a number of charities and support schemes that were aimed at specifically protecting veterans with disabilities as seen in the USA.¹⁹ Although the objective of protection driven by the ideologies have been strongly criticised and condemned as promoting the tendency of distorting rights based approach by assuming disabled people are potentially a product or an outcome of armed conflict disabling bodies of armed combatants disabled and making them

incapable of continuing to undertake their army roles. The view that disabilities make such bodies not only incapable but militarily unproductive makes State and non-State actors render than support. This also partly accounts for the unwillingness of armed forces to train and recruit persons with disabilities into armed forces. Perhaps that is reconcilable with the idea of linking disabilities to being militarily unproductive.

Contrastingly, the aftermath of natural calamities is unlikely to result into situations that might distort or distract the practical ideologies and discourses upon which the edifice of disability protection is founded. For examples it is possibly very unlikely that the aftermath of the armed conflict will lead to another group of person that are associated with political related notions of heroism, nationalism or patriotism due their roles either leading to disabilities or their nature of professional exposing them to direct engagement in actions that facilitate the occurrence of such natural situations. Accordingly there is a tendency that States and no-state actors (civil society organisations) are unlikely to design schemes in the aftermath of these situations are especially meant to help persons based on their relationship, connection or association with these type of situations. For example during the earth quakes in Japan all the affected communities were afforded the necessary protection without devoting special attention to some groups because they are martyrs or heroes.²⁰ Similarly during the landslides or floods such as those that inflicted some parts of Nepal, the humanitarian support was directed to all members within the affected regions.²¹ In this context it is almost certain that there is hardly impact from the situations itself that might directly influencing the manner in which the state are allocating the available supportive resources require by persons with disabilities.

Likelihood for scientific predictability to determine the possibility of the situation

There is hardly a logical possibility of using scientific methods to detect that in the next few weeks or month there is a likelihood of having the armed conflict. The high levels of

unpredictability are making necessary arrangements and precautionary measures to protect the communities that might be potentially affected by the occurrence of the armed conflicts. In essence neither the occurrence of an international nor that of a non-international armed conflict could be foreseen in order to develop formulate the necessary risk managerial approaches for the more vulnerable groups in the civilian populations. Unlike like the traditional idea of expecting the official declaration of an armed conflict, it must underline that that according to the current developments in the latest sources of law suggests official declarations are irrelevant. That implies situations of armed conflicts have been occurring unexpectedly in the recent times. In these cases it must understood that political scientists human-itarian law scholars might in many cases to analyse some of these cases but at the same time make attempt to understand the extent to which social, economic and political factors are likely to escalate to situation of armed conflicts. In other cases the humanitarian laws that are related to this discipline they tend refer to another regime of law called jus called 'jus ad bellum' in terms of understanding justification for state actors resorting to armed conflict. It must reiterated that in this case that law purely a tool that is used for deciding the legality of reason for engaging into armed conflict as oppose to predicting the possibility of having an armed conflict soon or latter.

Furthermore the likelihood of using modern scientific approach with view of predicating occurrence of natural calamities must highlight and appreciated. That is irrespective of the trend that tends to combine the calamities under same protective narrative and discourses with armed conflicts. In essence the development in scientific research is increasing the possibility of forecasting the foresee ability and hence increasing the likelihood of identifying the occurrence of earthquakes, tsunamis, floods, torpedoes.²² This is making it increasing possibility to developing models of disaster and risk management that are linked to enabling persons with disabilities top copy with the

problem that have resulted from the occurrences of these disastrous instances. In the event of situations that comprising the natural calamities there is an increasing attempt for meteorologists, geologists and other disciplines of earth science and geographical are working alongside the experts in disaster management to undertake practices and policies that are inclusive of persons with disabilities. It is arguable that such predictability is instrumentally vital in understanding the variance in awareness and the available time to take into account persons with disabilities.

It must be understood that the occurrence of natural calamities is strictly expected to associate the obligations under Article 11 of the CRPD with State Actors as opposed to envisaging the direct involvement of non-State actors. That is because the international law as well as international human rights that is applicable in such times of peace of known to restrict the obligation to States that have ratified the CRPD, without imposing reservation on this Article. It must be reiterated that are basically few States that have impose restrictions to the application of the obligations that are associated with Article 11 of the CRPD namely : Azerbaijan and Mauritius. Note that non-State Actors are likely to attain responsibilities basing on the state centric nature duties that are derived from international law. Although it must be understood that Azerbaijan made a declarations that it can only undertake its duties in Nargano Karabah after the regions have been liberated from the present occupation by Armenia.²³ Although it would seem unclear but also illogical to infer that reservation and declaration made against Article 11 implies that the all other State parties to the CRPD apart from those two are expected to put persons with disabilities into consideration when planning for protecting affected households in times of floods and other related calamities.²⁴

Ability of law to regulate non-state and state

On one hand, it is arguable that from time immemorial laws have always been used in regulating actions of mankind wherever these

tend to happen. In the context of armed conflict the laws regulates the legality of targeted objects. In these cases the principles of IHL that some scholars such as Yoram give a detailed account are inevitably important.²⁵ These principles include the principle of humanity, that distinction, that of proportionality of targets, the precautionary principle and that of military necessity.²⁶ Appreciating the limitation of law is vital in terms of understanding the justification for considering different levels by which the States' functioning machinery might be compromised.

On the other hand the balancing of ecosystems,²⁷ regulating levels of global warming and climate change are direct environmental controls for the occurrence of these natural tragedies²⁸ The direct involvement of mankind in the former must mean a great deal in terms of individuals accountability of perpetrators making law to appear a more effective in regulating the inclusiveness afforded to persons with disabilities in the event of these situations.²⁹ It is apparent there hardly a law that impose a degree of responsibility the occurrence of natural calamities. In this case there is inability to directly regulate the occurrence of natural catastrophes. In the awake of a series earth quakes in Japan, international law is more likely to be proactive and reactive. This is simply because these events are in some cases untraceable. This will imply that parties that are affected could hold States responsible for failing to either react inclusively to person with disabilities or proactive respond in a reasonably timely manner.³⁰

Aftermath adjunction and stakeholder institutions

The situation of armed conflicts the violence inflicted by State and non-state Actors parties could make such states actionable through courts or tribunals. Note that such bodies are the custodians of justice in the context of the problems that tend to arise in the aftermath of the armed conflicts. Examples of instances where such actions have led states to be held accountable before international courts include Uganda that was summoned before the international court of justice following its

failure to uphold its responsibilities in the DRC Congo as an occupier power. In other cases international criminal law has also been applied with the motive of ensuring that individuals whose actions have led to war crimes can be prosecuted.³¹ It must be noted that such acts extend to breaches against humanity. It is clear that methods of fighting are designed to destroy the environment would be contrary principles of humanity and today such states should be called accountable.

There are environmental risk assessment analysts and disaster preparedness personnel. This might work alongside other humanitarian stakeholder organisations such as Red Cross international, Amnesty International, Doctors without Borders, World Health Organisation (WHO). It must be pointed out that the absence of a direct causal mankind related link between the activities of natural calamities and mankind seems to explain why these matters are often dealt with by completely different bodies. This implies that the occurrence of such problems is unlikely to be regulated by special legal regime such here is hardly evidence suggested.

The extent and presence of ethically driven tensions between parties

In situation of armed conflicts the presence of ethic related tensions is a likely indecent. This implies that the protection of person with disabilities is likely to be affected in these cases. For example considering the armed conflict in between Israel and Palestinians, it is highly likely that the State as well as its organs may be divided along tribal lines but at the same time they might tend to protective of their sovereignty through disputing that necessity and inevitability for humanitarian intervention.³² This is obviously contrary to protective obligations article 11 but it is reality of what will happen in the day to day situations especially in those cases where the armed leads to ethnically divided tensions and factions within the populations.³³ In the same accord in cases the armed conflict leads to religious differences based upon the Shia and Sunni sections,³⁴ it becomes likely that the religious to which a persons with disabilities

belong might affect the ability of such person to attain protection from the organs of the States.³⁵

It must be imperative to note that in cases of this nature, there is hardly a direct role of social and cultural factors such as religion, ethnicity, tribe or political movements. In this case it is worthwhile noting that occurrence of floods, landslides, tsunamis in most cases has attracted social solidarity and led to international unity through the nature of humanitarian support from State and non-State actors.³⁶ The extent of desire to work hand in hand with the authorities of the affected regions is a common phenomenon. This will imply that in these cases there will be an increased need for other States to undertake humanitarian intervention.³⁷ In these cases the effect of religion, tribal or ethnic origin is easily neutralised or minimal if any. In this case the protection of other international actors is unlikely to face resistance in relation to an armed conflict in which the State chooses or shows preference of affording more support, or devoting its resources to one group against another. Therefore the State would in this case make efforts to protect both persons based on their geographical location in the region or nearby areas that has been affected by the occurrence of the natural disaster as opposed to their social identity. This difference in the tendencies of State actors is due to the absence of effects that might either be perceived as threatening or likely to threaten the political and national interests of the regime in power. The occurrence of natural calamities is therefore a clearly different trend of circumstances and therefore States are often willing to treat or react to these situations with a considerably different attitude in view of the issues highlighted above.

The extent of the desire to protect state sovereignty

In the event of the armed conflict (especially that of non-international nature) States, have a tendency of being highly protective of their autonomy in many respects. States will try to assert their sovereignty. This could be done in various ways such as the reluctance for a State to admit that the situations have escalated

beyond their capacity to contain. For example during the armed conflict in Northern Uganda the State seemed often reluctant to admit that it needed international intervention to deal with the Lord's Resistance Army forces that waged a civil war in the northern part of the country. This implied that the State was doing its best to address the situation and possibility of bringing Joseph Kony (the rebel leader) to justice,³⁸ over 20 years this dream had been illusory although the Kony-2012 debate.³⁹ That online debate made the magnitude of this problem an international matter that led to greater strides and perhaps it became virtually certain that the State was struggling in its attempts.⁴⁰ Moreover it is almost certain in the presence of these problems the extent of publicity is usually higher due to the nature of ecological concerns and the related issues of climate change.

Similarities in nature of situations envisaged in Article 11

Displacement

It must be pointed out that both situations of armed conflicts and those of natural calamities have often led to the displacement of the population affected that resides in affected localities.⁴¹

In the case of Situations of armed conflict, it must be pointed out that this type of displacement is caused by the need to enhance the safety and protection of the affected civilian populations.⁴² Moreover even the 4th Geneva Convention (GCIV) in Article 49 which is part of the law regulating these situations of armed conflicts,⁴³ clearly provides for evacuating persons (particularly) that might be affected by attacks and targeting that happens during the occurrence of these armed conflicts.⁴⁴ A more tangential issue is that such displacement is perceived as part of the precautionary measures that must be undertaken during the occurrence of the armed conflicts.⁴⁵ Such displacements will have different formations such as internal and external displacement in that case the occurrence of internal displacement has often led to the formation of the camps for internally displaced persons. For example the armed conflict in the Middle East has led to 3.4 million refugees of which 1.4 million fled to

neighbouring states in 2014. As of the end of 2014, a record-breaking 38 million people were forcibly displaced within their own country by violence, up from 33.3 million for 2013. A massive 11 million of these internally displaced people (IDPs) were newly uprooted during 2014, equal to 30,000 people a day, according to annual figures from the Norwegian Refugee Council's Geneva-based Internal Displacement Monitoring Centre (IDMC).

Situations of natural disasters have a tendency of leading to displacement of hundreds and thousands of people. It must be understood that the nature of natural calamities tend to occur and lead to the displacement of the affected population. This tends to become a major concern for the persons within regions that have been affected by the occurrence of natural calamities. In this context it was noted that the post Nargis cyclone had a remarkable impact on more than 1.5 billion people in the affected regions. Subsequently a considerable number of these occupants had to be evacuated following need to save life. However unlike armed conflict that might lead to situations of refugees that flee that country, it is also common for the displaced population to be relocated inside in other regions that are free from effect from the floods, earthquake or natural calamities. This tends to imply that affected persons are unlikely to be distributed in other part of the world following the presence of such situation. In most cases this type of displacement therefore covers relatively small regions while some of the armed conflicts might affect the entire State. For example the armed conflict in Former Yugoslavia had effect that spread to all part of the country.

Necessitating humanitarian intervention and humanitarian support

Both armed conflicts and natural disasters are known to creating situations of humanitarian emergencies. In the presence of such situations, it becomes necessary for other States to render support and assistance for mainly protecting the affected population through the humanitarian intervention. For example during the armed conflict in former

Sudan the international became increasingly concerned about the lives of the affected populations in Darfur. Accordingly other States intervened in rendering aid, support and other types of humanitarian supplies. In the same accord that republic of Sudan was placed to the task of undergoing dialogue and leading to a referendum. In this context it is imperative pointing out that similar intervention was exemplified in Libya.

In the same accord situations of natural disasters are characterised with a potentially great need for humanitarian intervention. In this context the extent of such a necessity might depend on other factors such as the resources and capacity of the State to the identified challenges. For example the earthquake in Nepal in 2015 has left many households affected. In some respects the ability to render adequate support or protection tends to be compromised by the fact that affected State a low income and developing State. This problem creates the need for humanitarian agencies and international institutions to render assistance. No wonder that a developed State would also seek humanitarian support although media coverage could choose to neither publish such facts nor point this out explicitly. The point here is the need for either humanitarian intervention or humanitarian support tends to be heightened.

CONCLUSION

This comparing and contrasting has explored the detailed complexity of Article 11. Furthermore it has made it clear that differences are a larger extent a result of human being using arms to directly taking part in armed hostilities while in the case of earthquakes, floods and other natural and environmentally undesirable phenomenon, there is a hardly a specific individual to whom the destruction can be attributed. In essence questions of rehabilitation might tend to take a slightly divergent conceptual discourse in both of these cases. This might be hardly obviously have lessons in construing the limitations of law as a regulatory tool especially in cases the obligations in these situations seems brought under the same international regime.

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