

Protective Obligations Owed by States to Persons with Disabilities under
International Human Rights Law, Before, During and After Situations of
Armed conflicts.

Mugabi.K. Ivan

A thesis submitted to Cardiff University, School of law and Politics,
in fulfilment of the requirements for the Degree of a Master of Philosophy in
Law.
on
14/January /2019.

PREFACE
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This work has not been submitted in substance for any other degree or award at this or any other university or place of learning, nor is being submitted concurrently in candidature for any degree or other award.

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List of Abbreviations

ACDR: Armed Conflict Disability Relationship
ACHPR: The African Charter on Human and Peoples' Rights
ACRWC: African Charter on the Rights and Welfare of the Child
ADP: African Disability Protocol
AIDS: Acquired immune deficiency syndrome
APM: Antipersonnel mines
ARI: African Rehabilitation Institute
AU: African Union
BCODP: British Council of Organizations of Disabled People
BFEBAH: Burkinabè Federation of the Associations of the Disabled
BRHC: Benghazi Rehabilitation and Handicap Centre
CAT: Convention Against Torture
CBR: Community-Based Rehabilitation
CEDAW: Convention on Elimination of All Forms of Discrimination against Women
CERD: Convention against Racial Discrimination
CESCR: Committee on Economic Social and Cultural Rights
CRC: Committee on the Rights of the Child
CRPD: Convention on Rights of Persons with Disabilities
CRPD: The Convention on Rights of Persons with Disabilities
CTBSGs: Committees of Treaty Bodies for Special Groups
DAICMA: Department for Comprehensive Action Against Antipersonnel Mines
DRC: Democratic Republic Congo
ECOSOC: Economic and Social Council
EMRO: Eastern Mediterranean Regional Office
EOC: Equal Opportunities Commission (Uganda)
FP: Focal Point
FSC: Saldarriaga-Concha Foundation (Colombia)
GPID: Guiding Principles on Internal Displacement
HRC: Human Rights Committee

HRW: Human Rights Watch

IACrHR: Inter-American Court of Human Rights

ICCPR: The International Covenant on Civil and Political Rights

ICESCR: The International Covenant on Economic Social and Cultural Rights

ICF: International Classification of Functioning

ICIDH: International Classification of Impairments Disabilities and Handicaps

ICRC: International Committee of the Red Cross

IEDs: Improvised explosive devices

IHL: International Humanitarian Law

IHRL: International Human Rights Law

LDA: Lunatics Detention Act (The Gambia)

LNI-OD: Lesotho National Federation of organisations of the Disabled

MENA: Middle East and North Africa

Mine Explosive Remnants (MER)

MPW: Maputo Protocol for Women

NCIDMC: Norwegian Refugee Council's Internal Displacement Monitoring Centre

NFLSAW: Nairobi Forward-looking Strategies for the Advancement of Women

NUDIPU: National Union of Disabled Persons of Uganda

OAS: Organisation of American States.

OAU: Organisation of African Unity

OCHA: Office for the Coordination of Humanitarian Affairs

OHCHR: Office of the High Commissioner for Human Rights

OPAC: Optional Protocol on the Involvement of Children in Armed Conflict

OPDs: Organisation of Persons with Disabilities

PAICMA: Presidential Program for Comprehensive Action against Antipersonnel Mines

PCAS: Post-Armed Conflict African States

PCR: Post-conflict rehabilitation

PRIO: Peace Research Institute Oslo

PRP: Physical Rehabilitation Programme

PTSD: Post-traumatic stress disorders

PWDs: Persons with Disabilities

RHRTSs: Regional Human Rights Treaty Systems

SDH: Social Determinants of Health

TWAIL: Third World Approaches to International Law

UARV: Unit for Attention and Reparation of Victims

UCDP: Uppsala Conflict Data Program

UNDP: United Nations Development Programme

UNHCHR: United Nations High Commissioner for Human Rights

UNHRTBs: United Nations Human Rights Treaty Bodies

UPIAS: Union of the Physically Impaired Against Segregation

UXO: Unexploded ordnance

WENA: Western European and North American States

WHO: World Health Organisation

Abstract

models of disability that UN Human Rights Treaty Bodies (UNHRTBs) and Regional Human Rights Systems (RHRs) apply in relation obligations of protecting persons with disabilities before during and after situations of armed conflict. (the three-stage cycle) are examined by this research. That is important in establishing if those models of disability used for disability vary across the three-stage cycle. The three-stage cycle relates to situations before, during and after armed conflict. Such a transition relates to how the protection of persons with disabilities changes from the perspective of a peaceful State, to that of an armed conflict affected State.

The thesis uses UNHRTBs and RHRs as global and regional mechanisms by investigating models of disability that those mechanisms use to guide and direct States through elaborating obligations that States use towards persons with disabilities at the different phases of the three-stage cycle. The research uses models of disability to identify the possible causes of discrepancies in the protection of persons with disabilities such as an increase in their vulnerability. In addition to the limited availability of State resources that compromises the capability of a State to execute the obligations envisioned by UNHRTBs and RHRs especially during the armed conflict and post conflict stages of the cycle.

Main Sections of the Thesis

1. THE INTRODUCTION AND THEORETICAL FRAMEWORK

CHAPTER 1- Introduction and Background

CHAPTER 2- Models of disability as a Theoretical Framework for Understanding Disability and examining Disability related Obligations.

2. UN HUMAN RIGHTS TREATY BODIES AND THEIR APPROACH TO DISABILITY IN PEACETIME AND POST-CONFLICT CONTEXTS.

CHAPTER 3-The ICCPR and the ICESCR and Approach to Disability from Peacetime to Post-Conflict Contexts.

CHAPTER 4- Treaty Bodies for Special Groups and Approach to Disability in Peacetime and Post-Conflict Contexts. (CRC, CEDAW and CRPD).

3. REGIONAL HUMAN RIGHTS TREATY SYSTEMS AND APPROACH TO DISABILITY IN PEACETIME AND POST-CONFLICT CONTEXTS.

CHAPTER 5- African RHRS and Approach to Disability in Peacetime to Post-Conflict Contexts.

CHAPTER 6- Inter American RHRS and Approach to Disability in Peacetime and Post-Conflicts.

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Chapter 1

1.1. Introduction

This research shall link sociological theories relating to models of disability from disability studies in terms of how specific UN and regional human rights institutions dealing with international human rights law institutions are applying approaches of those models. In this regard, the sociological aspect this thesis advances the work of Berghs which extrapolates aspects of disability in post conflict settings.¹ However it must be pointed out that Vic Finkelstein's concepts of capitalism and neoliberalism which constitute an integral feature of Bergh's work are excluded from this study. Similarly the study shall use the models of disability in advancing Bergh's concept of humanism in terms of how that concept can be inclusive of persons with disabilities.² In the same accord, the study is synonymous with existing knowledge from the work of Busige.³ That examines how concepts of rights and protection of persons with disabilities should extended from times of peace to situations of armed conflict and those of post conflict settings.

This research is expounding on the already pre-existing body of knowledge from exploring how ideas of the social, medical and individual models are being applied by specific UN and regional human rights institutions dealing with aspects of international law before, during and after situations of armed conflict. Therefore the thesis uses UNHRTB and RHRS as the global and regional mechanisms for investigating the protection of persons with disabilities that systems to guide and direct States when elaborating obligations that States use towards persons with disabilities at different phases of the three-stage cycle. The research uses models of disability to identify possible causes of variances in understanding the protection of persons with disabilities in post conflict settings. This thesis goes an extra mile in examining how human rights systems are addressing issues of disability in post conflict context make this research a building block on the work of Habasch and Nagata that use war-torn Lebanon as a case study in constructing the right based

¹ M. Berghs, 'Radicalising 'disability' in conflict and post-conflict situations', *Disability & Society*, (2015) 30 (5) pp. 743–758, at 744. See also. M. Berghs and N. Kabbara, *Disabled People in Conflicts and Wars*. In *Disability in the Global South: the Critical Handbook*. S. Grech and K. Soldatic, (eds.) (London, Springer, 2016) pp. 269-285.

² M. Berghs, 'Disability and displacement in times of conflict: Rethinking migration, flows and boundaries', *Disability and the Global South*, (2015) 2 (1) pp. 442-459.

³ P. Busige, 'Disability and armed conflict: A quest for Africanising disability in Uganda *Disability and the Global South*, (2016) 3(1) pp. 816-842.

concept of disability.⁴ In the same ethos this research advances the work of Kabbara and Nagata.⁵

Additionally, the thesis shall be relevant in advancing considerations for Third World Approaches of International Law (TWAIL) especially in the context of extending the protection of persons with disabilities in post conflict societies. Considering that a substantial number of armed conflicts affected States and post conflict are mainly that are situated in regions of the Global South States. This is vital in the context of protecting persons with disabilities with armed conflict and post conflict settings, the thesis shall advance the work of other scholars like Anghie, et al,⁶ whose work mainly concentrates on third world approaches to international order although without a disability centred focus.

This thesis explores what may be an appropriate model of disability for strengthening the protection that post-conflict States render to persons with disabilities before, during and in the aftermath of experiencing situations of armed conflict. The suitability of the models applied by UNHRTBs and RHRs, shall be evaluated by considering the competence of those respective models in approaching disability related problems in ways that consider the varied needs and problems of persons with disabilities, before, during and after situations of armed conflict.

In achieving this objective, it shall be of interest to establish how the changing context of those situations (before, during and after situations of armed conflict) has implications on the model and approach to disability that UNHRTBs and RHRs could apply in framing obligations owed to persons with disabilities in the aftermath of armed conflicts.⁷ This research examines models of disability that UN Human Rights Treaty Bodies (UNHRTBs) and Regional Human Rights Systems (RHRs)

⁴ N. Kabbara and K. K. Nagata, 'Is the "Rights Model of Disability Valid in Post-conflict Lebanon? A Participatory Pilot Survey in Beirut', *A Review of Disability Studies, An International Journal*. 2014 (5) 3

⁵ K. K. Nagata, 'Disability and Development: Is the Rights Model of Disability Valid in the Arab Region? An Evidence Based Field Survey in Lebanon and Jordan', *Asia Pacific Disability Rehabilitation Journal* (2008) 19 (1) pp. 60, 78.

⁶ A. Anghie, B.S. Chimni, K. Mickelson and O. Okafor, (eds.) in 'The Third World and International Order: Law, Politics and Globalization, (Brill Academic Publishers, 2004). See also. Berger, 'The End of the Third World', *Third World Quarterly* (1994) 15 (2) pp. 257,275.

⁷ M. dos Santos-Zingale and M. Ann McColl, 'Disability and Participation in Post-conflict Situations: The case of Sierra Leone, *Disability & Society*, (2006) 21:3, pp. 243-257. See also. I. B. Portero and T. G. B. Enríquez, 'Are Persons with Disabilities included in the Colombian Peace Process?', *Disability & Society* (2018) 33 (4) (2018) 3 (33) pp. 487-491.

apply in relation obligations of protecting persons with disabilities before during and after situations of armed conflict. (the three-stage cycle). That investigation is important in establishing if those models of disability used for disability vary across a three-stage cycle. The three-stage cycle relates to situations before, during and after the existence armed conflict. Such a transition relates to how the protection of persons with disabilities changes from the perspective of a peaceful State, to that of an armed conflict affected State.

The absence of enough studies exploring the model and approach to disability that UNHRTBs and RHRs should apply, may account for any likely ambiguities as to whether the protective obligations of peaceful and post-conflict States should be underpinned by the same models of disability, used in relation to duties owed to persons with disabilities. Thus, this thesis might also be useful in revealing appropriate models of disability to raise the importance of disability related duties in armed conflict States as they change to post-conflict States. Special attention shall be given to post-conflict States, the likelihood of similarities regarding the needs and problems of persons with disabilities in States undergoing armed conflict, as well as post-conflict States. The similarities in environments of these is a justification for exploring suitable models of disability that UNHRTBs and RHRs should apply for a better understanding of the changing context of the obligations that armed conflict States could have to persons with disabilities.

This study shall investigate whether the models and approaches upon which UNHRTBs and RHRs protect persons with disabilities and address their problems in contexts of a peaceful State (before armed conflict), are appropriate for contexts of States experiencing armed conflicts and post-conflict.⁸ Thereafter, the thesis shall also establish if armed conflict related disabilities within post-conflict States, might have impacts and implications that could cast doubts on the practicability of a single model and approach to disability by UNHRTBs and RHRs.⁹ Thereafter, the thesis shall also establish if challenges of post-conflict States, such as the heightened toll of persons with related disabilities, might have impacts and implications on the

⁸A. S. Kanter, 'The Development of Disability Rights under International Law: From Charity to Human Rights', Routledge, 2015) New York, NY, USA, pg. 12. See also. A. S. Kanter, 'The Globalisation of Disability Right Law', Syracuse Journal of International Law and Commerce (2003) 30 pp. 241, 269.

⁹ R. Habasch, 'Is the Rights Model of Disability Valid in Post-conflict Lebanon? A Participatory Pilot Survey', Journal of Palestine Studies (1997) 27 (1) pp. 126,135.

viability of a universal model and approach to disability by UNHRTBs and RHRs. Therefore, bearing the above challenges of post-conflict States in mind, this will be a key feature in identifying the models and approaches to disability that might be less popular for UNHRTBs and RHRs to frame State obligations in peacetime, while more popular when those institutions frame obligations of post-conflict States under international disability law.¹⁰ For example, persons with related disabilities in post-conflict States make it logical for such States to prioritise models of disability that emphasise post-conflict rehabilitation and other related protection that persons with disabilities may specifically require, particularly in settings of post-conflict States.¹¹

1.2. Justification of the Research

This thesis is intended to identify the most suitable models of disability that UNHRTBs and RHRs must apply in relation to disability obligations of armed conflict and post-conflict states. The above issue is significant for the following reasons:

Firstly, there is a need to ensure a much better understanding of how theory from disability studies might improve the means through which UNHRTBs and RHRs develop obligations of States for persons with disabilities.¹² This is particularly relevant in terms of the above institutions expounding on ways in which States must respond to situations found to increase the vulnerability of persons with disabilities.¹³ There is growing global attention on the defencelessness of persons with disabilities that has been raised as a key concern during several meetings of the different human rights institutions of the United Nations. Some of those instances include; concerns raised by the Security Council¹⁴ and the Committee on the Rights

¹⁰ M. Turmusani, 'Disability and Development in Kosovo: The Case for CBR Approach, Asia Pacific Disability and Rehabilitation Journal (2002) 13 (1) pp. 19-28.

¹¹ M. Priestly, 'Introduction the global context of disability', in *Disability and the life course discourse: Global perspective*, M. Priestly (ed.) (Cambridge University Press, 2001) pg. 8.

¹² See, A/HRC/37/75, Human Rights Council, 'Human rights situation in Palestine and other Occupied Arab territories: Human rights situation in Palestine and other occupied Arab territories since 1967', Thirty-seventh Session, 26 February–23/March/2018, Paragraphs 60-64.

¹³ UN Human Rights Council, 'The right of persons with disabilities to live independently and be included in the community on an equal basis with others', Resolution adopted by the Human Rights Council, 8/April/2015, A/HRC/RES/28/4. Paragraph 16.

¹⁴ The Security Council referred to persons with disabilities explicitly in its Resolution on, 'Protection of Civilians in Armed Conflict', (SC 1894).

of Persons with Disabilities in May 2015.¹⁵ In April 2015, the Human Rights Council voiced its discontent with the inadequate attention offered by States to protect persons with disabilities.¹⁶ Additionally, another report from the Office of the United Nations High Commissioner for Human Rights (hereafter the OHCHR) dealt with this by expounding ways to enhance protection of persons with disabilities (30 November 2015).¹⁷ Most recently, this problem has also appeared in the report of the special Rapporteur of March 2018, in relation to human rights in the occupied Palestinian territories.¹⁸ In the same spirit, media in the Middle Eastern regions has also increasingly paid attention to this problem by illustrating ways in which various armed conflict related engagements form the extent of protection rendered to persons with disabilities.¹⁹ Although this research shall use tables in subsequent discussions on UNHRTBs and RHRs to examine the models used for rendering needs and support for persons with disabilities, these might vary depending on whether those persons had either been disabled before armed conflicts, or during, and after situations of armed conflict.²⁰

Secondly, there has been growing criticism, mainly from proponents of the Third World Approaches to International Law (TWAIL).²¹ Some advocates of this trend, are in support of developing contemporary regimes of public international law, in ways that are more inclusively representative of States with the African, Asian and Middle Eastern contexts. Otherwise, overlooking this consideration leaves international disability laws to be framed upon models of disability with obligations

¹⁵ CRPD/C/14/R.1, General Comment on Article 6: Women with disabilities, 22 May 2015, 14th Session of Committee on the Rights of Persons with Disabilities, Paragraph 42.

¹⁶ A/HRC/RES/28/4.

¹⁷ A/HRC/31/30, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General 30/November/2015. Paragraph 40-49.

¹⁸ A/HRC/37/75, Human Rights Council, '*Human rights situation in Palestine and other Occupied Arab territories: Human rights situation in Palestine and other occupied Arab territories since 1967*', Thirty-seventh Session, 26 February–23/March/2018, Paragraphs 30-31–60-64.

¹⁹ J. Moussa, '*Elderly, Handicapped under Shelling in Old Aleppo*', (Broadcasted on Al-Aan TV 8/December/2012). Available at <<https://www.youtube.com/watch?v=54ysGTi9Tzo>> (accessed 12/ March/2015).

²⁰ Y. Knell, '*Israeli strike on disability shelter in Gaza's Beit Lahiya*' (BBC News website, 12 July 2014) Available at <<http://www.bbc.co.uk/news/world-middle-east-28275837>> (accessed 13 July/2016).

²¹ D. P. Fidler, 'Revolt against or from within the West-TWAIL, the Developing World, and the Future Direction of International Law', *Chinese Journal of International law* (2003) 2 (29) pp. 29, 76. See also. B.S. Chimni, 'Third World Approaches to International Law: A Manifesto', *International Community Law Review* (2006) 8, pp. 3–27 at 4. See also. A. Anghie, B.S. Chimni, K. Mickelson and O. Okafor, (eds.) in '*The Third World and International Order: Law, Politics and Globalization*, (Brill Academic Publishers, 2004). See also. Berger, '*The End of the Third World*', *Third World Quarterly* (1994) 15 (2) pp. 257,275.

that lack room to accommodate differences associated with the Global-North and Global-South divide.²² Scholars from the TWAIL School of legal jurisprudence, and those of the Global-North and Global-South divide, seem to query the unbalanced composition of the various institutions forming the UNHRTBs.²³ Those scholars attribute the above problem of unbalanced UN institutions, to the historical weaknesses in the League of Nations, which was mainly comprised of Western states which were considered as more influential and superior.²⁴ That legacy might have led to the continuity of framing human rights obligations in a way that is conventionally inclined towards experiences of Western European and North American States (WENA).²⁵ Note that WENA States, or States of the Global North, are less proportionally affected by the armed conflict-disability relationship.²⁶ Thus, they might be justified in disregarding armed conflict-disability related concerns. Meanwhile, armed conflict-disability remains a key component for developing models of international disability law, for many post-conflict Sub Saharan African States, and Middle Eastern, and North African States (MENA) States.²⁷

Furthermore, this research seeks to address the unfilled gap under the Convention on Rights of Persons with Disabilities (CRPD), in terms of the model of disability that post-conflict States should apply in a *jus post-bellum* context. In which case, the framing of State obligations, engraved in Article 11 of the CRPD, seems

²² J. Ravenhill, 'The North-South Balance of Power', *International Affairs* (1990) 66 (4), pp. 731. See also. S. Grech, 'Disability and Poverty in the Global South: Renegotiating Development in Guatemala, (Palgrave Macmillan, 2015) pp. 20-30. See also. S. Grech, 'Disability and Development: Critical Connections, Gaps and Contradictions', in *Disability in the Global South: the Critical Handbook*, S. Grech and K. Soldatic (eds.) (Springer, 2016) pp. 3-19.

²³ A. Anghie, B.S. Chimni, K. Mickelson and O. Okafor, (eds.) in 'The Third World and International Order: Law, Politics and Globalization, (Brill Academic Publishers, 2004). See also. Berger, 'The End of the Third World', *Third World Quarterly* (1994) 15 (2) pp. 257,275.

²⁴ UN Doc. S/2004/616 (23/August/2003), '*The Role of law and transitional Justice in Conflict and post-conflict Societies*', Report by the Secretariat. Paragraphs 9-10.

²⁵ T. Degener, *International Disability Law; A New Legal Subject on the Rise: The Interregional Experts' Meeting in Hong Kong, December 13-17, 1999*, *Berkeley journal of International Law*, (2000) 18, pp. 180, 195.

²⁶ N. Kabbara and J.A. Khalli, 'The July-August war in Lebanon impact on persons with disabilities', In *Crises Conflict and Disability: Ensuring Equality*, D. Mitchel and V. Karr (Eds.) (Routledge Taylor and Francis Group: Abingdon-on-Thames, UK, 2014) pp. 218-223

²⁷ T. Degener, *A New Legal Subject on the Rise: The Interregional Experts' Meeting in Hong Kong, December 13-17, 1999*, *Berkeley journal of International Law*, (2000) 18, pp. 180, 195 at pg. 183-84.

clearer in assigning duties to States during their involvement in armed conflicts.²⁸

Article 11 of the CRPD provides that;

“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.”²⁹

The way this obligation is perceived, has also been central in influencing the Sendai Framework for Disaster Risk Reduction 2015–2030.³⁰ The Sendai Framework is based on measures which must be undertaken by a State that has suffered natural disasters, in order to integrate persons with disabilities in disaster protective strategies.³¹

Nevertheless, Article 11 of the CRPD seems almost vague in terms of clarifying disability related obligations, which are strictly assignable to post-conflict States in the aftermath of armed conflicts.³² Firstly, the above omission could make the obligations associated with Article 11 of the CRPD limited, and possibly inadequate, in terms of clarifying the suitable models or approaches to disability that might support States in releasing varied thresholds of protective obligations for persons with disabilities before, during, and after situations of armed conflict. This lacuna indicates a problem, as armed conflict could impact persons with disabilities by aggravating their vulnerability, in addition to increasing the number of persons with disabilities as consequence of such conflict and the harmful nature of their

²⁸ CRPD Article 11. See also. UN Human Rights Council, ‘The right of persons with disabilities to live independently and be included in the community on an equal basis with others: resolution adopted by the Human Rights Council, 8/April/2015, A/HRC/RES/28/4, Paragraph. 16.

²⁹ Ibid. Article 11.

³⁰ The Sendai Framework for Disaster Risk Reduction 2015-2030 was adopted at the Third UN World Conference in Sendai, Japan, on 18/ March/2015. United Nations Office for Disaster Reduction, published in Geneva, Switzerland.

³¹ CRPD/C/NPL/CO/1, ‘Concluding Observations on the initial Report of Nepal’, 16/April/2018.

³² Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa, adopted at the 19th Extra-Ordinary Session of the African Commission on Human and Peoples' Rights held between 16-25/February/2016, Article 7 (a) (b) highlights one element of a post-conflict duty by obliging states to ensure that persons with disabilities are consulted on all aspects of implementing post-conflict reconstruction and rehabilitation.

surroundings.³³ Secondly, this lacuna could also account for the ambiguities regarding situations of peacetime, armed conflict and post-conflict (illustrated in the previous diagram), which could necessitate placing special emphasis on certain disability related obligations. Obligations that are underpinned by the investigated models of disability, will be regarded by this study as especially appropriate to address the different problems of persons with disabilities in each of those respective circumstances.

Therefore, this research matters because there are still gaps in clarifying the most appropriate models of disability that UNHRTBs and RHRs might apply when framing disability related obligations to address the varied needs and protective concerns of persons with disabilities within peaceful and post-conflict States. This gap might be partly attributable to this unidentified lack of clarity, when coming to terms with definite models of disability to understand the varied context of protective obligations for post-conflict States, prior to armed conflict, during armed conflict and in the aftermath of those conflicts.³⁴

Therefore, this research is particularly important when considering the looming uncertainty in relation to models and approaches to disability which UNHRTBs and RHRs apply, when monitoring disability duties of post-conflict States.³⁵ There is a special interest in establishing if those institutions apply the same, or different models of disability to post-conflict States, before the armed conflict, during the conflict and in the aftermath of the conflict.³⁶

1.3. The Structure of the Thesis

In terms of structure, this thesis is formed of four parts. Part one includes Chapters 1 and 2. As perhaps noted, the former sets out the context of the thesis, while the latter provides explanation of models and approaches to disability. The

³³ BBC News, 'War leaves some 800,000 people disabled in Afghanistan', reported by K. Zarindast. On 26/January/2012 and Video produced by BBC Persian's A. Salimi. Available at <<https://www.bbc.co.uk/news/world-asia-16722788>> Accessed on 23/June 2017).

³⁴ UN Doc. S/2004/616 (23 August 2003), 'The Role of law and transitional Justice in Conflict and post conflict Societies', Report by the Secretariat, New York USA, paragraphs 9–10.

³⁵ D. Rietiker, 'Humanization of Arms Control: Paving the Way for a World Free of Nuclear weapons (2018, Routledge Tylor and Francis Group) New York, NY, pg. 59.

³⁶ See, A/HRC/37/75, Human Rights Council, 'Human rights situation in Palestine and other Occupied Arab territories: Human rights situation in Palestine and other occupied Arab territories since 1967', Thirty-seventh Session, 26 February–23/March/2018, Paragraphs 60-64.

second part of the thesis, Chapters 3 and 4, shall explore the models of disability applied by UNHRTBs. Accordingly, Chapter 3 examines and establishes the model and approach of disability that the Human Rights Committee, and the Committee on Economic Cultural and Social Rights, apply in their understanding of the problems of persons with disabilities. Although, for the ICESCR, the adequacy of relevant General Comments on this treaty body shall be considered, more than the State reports. Both sections shall rely on models of disability as a means to establish the redress which the UN mechanisms apply to problems of persons with disabilities in peacetime, and in post-conflict settings.

Chapter 4 explores the models and approaches to disability that informs the conceptualisation of disability, and consequently influences the understanding of disability related obligations by UNHRTBs for specialised groups. The three specialised treaty bodies examined are; the Committees for; the UN Convention on Rights of Children (hereafter the CRC), the UN Convention on the Elimination of all forms of Discrimination Against Women (hereafter the CEDAW), and perhaps the most important, the Committee for UN Convention on Rights of Persons with Disabilities (hereafter the CPRD). Chapter 4 aims to examine the approach of issue specific UNHRTBs to identify their conceptualisation of disability and disabling environments. Part 2 shall use issue specific UNHRTBs to establish the models of disability that Committees of respective UN human treaties apply when framing the presently vague, and almost certainly inadequate *jus post bellum* obligations of post conflict States, in protecting persons with disabilities. The models and approaches to disability that shall be commended, will be considered more appropriate for protecting persons with disabilities from problems associated with the impacts and implications of the armed conflict-disability relationship which characterises features of disability and nature of disabling environments in post-conflict States. These features, and the circumstances leading to the characteristics of disabling environments, are useful for this study given their role in identifying an appropriate model and approach for framing disability related obligations that post-conflict States ought to prioritise in the transition period.

Part Three comprises of Chapters 5 and 6. These relate to the model and approach that RHRs apply in expounding disability related duties of post-conflict States. Chapter 5 considers the model and approach which the African human rights

regional system applies in this situation, and post-conflict Northern Uganda acts as a suitable representation of a post-conflict case study in this regional system. Chapter 6 establishes the models of disability which the Inter-American RHRs has applied in dealing with disability related issues for its post-conflict States. Colombia is identified as a representative case study of a post-conflict State under the Inter-American RHRs. These Chapters also establish if RHRs are replicating the same models of disability as those adopted by UNHRTBs. Part four of the thesis includes Chapter 7, which encompasses final recommendations and lessons from the study. Those recommendations clarify the most suitable model and approach to disability, which UNHRTBs and might consider for obligations enshrined under human rights treaties, as appropriate for encouraging post-conflict States to improve their protection of persons with disabilities. The Chapter also demonstrates why this study is key in extending the protective ambit of international disability law to persons with disabilities before, during, and after situations of armed conflicts.

Chapter 2

2.0. Introduction

In recent years, the advancement of various models of disability have proved a useful tool in studying and understanding different aspects of disability.³⁷ This advancement has led to an increasing growth in relying on a social model for identifying and addressing the problems persons with disabilities face, rather than a medical or an individual model of disability. This advancement also justifies a need to investigate the model of disability through which UNHRTBs and RHRs are approaching the protective obligations that post-conflict States have to persons with disabilities. This concern is important in improving the understanding of the ways in which models of disability applied by UNHRTBs and RHRs to frame disability related obligations are changing, in the context of the three-stage cycle.

It is important to examine different documents such as; Concluding Observations and General Comments which are produced by UNHRTBs, and documents from RHRs to investigate and examine their perspective towards persons with disabilities. For example, an understanding of the different models of disability, enables clarity in establishing where regional and UNHRTBs are applying the same or different models of disability in peacetime and post-conflict. It might be of interest to scrutinise the documents produced by the UNHRTB and RHRs to ascertain when these institutions apply the social model's outward looking approach of fixing external surroundings, rather than the medical model's inward-looking approach which supports the idea of repairing the impaired body.³⁸ Post-conflict contexts are beneficial in establishing whether UNHRTBs and RHRs, are unwilling to apply a single model or a hybrid of models in framing disability related obligations during peacetime, armed conflict and post conflict situations. By this section

³⁷ R. Traustadottir, 'Disability Studies, the Social Model and Legal Developments' in *The UN Convention on the Rights of Persons with Disabilities European and Scandinavian Perspectives*, O. Arnadottir, M. and Quinn, G. (eds.) (Martinus Nijhoff Publishers, 2009) pp. 1-16.

³⁸ T. Degener, 'Disability in a Human Rights Context', in *The Special Issue Disability Human Rights Law*, A. Arstein-Kerslake (ed.) *Laws* (2016) 5(3), pg. 2, 35; doi: 10.3390/laws5030035. See also. T. Degener and Y. Koster-Dreese, 'Human rights and disabled persons: Essays and relevant human rights instruments' (1995). See also. A. Lawson, 'The United Nations Convention on the Rights of Persons with Disabilities: A New Era or False Dawn?' *Syracuse Journal of International Law and Commerce*, (2007) 34, pp. 563, 618.

explaining the different models, it also clarifies reasons as to why this thesis would support attempts by UNHRTBs and RHRs to apply a model, or an amalgam of models, with a strong rehabilitation approach, while contributing to disability related obligations during, and after situations of armed conflicts. Models with a rehabilitation approach, may ensure that States enhance the needs of rehabilitating persons with disabilities that have been impaired, amputated, mutilated and impacted during and after situations of armed conflict.³⁹ However, before probing the models that are being used by UNHRTBs and RHRs, the discussions in the subsequent section shall clarify why models are used for this analysis, and what models are being used. Their approaches shall constitute the ongoing investigation of disability related obligations before, during and after situations of armed conflict.

2.1. Models as a Theoretical Framework

The term 'model' can mean a conceptual framework. In a more, specific context, a model may relate to a descriptive account that is useful in examining or interpreting another a set of complex entities.⁴⁰ A model might be distinguishable from the real world, but it is also a close representation of its theoretical construction.⁴¹ That theoretical construction is therefore a useful means of studying contemporary trends in the functioning of world systems or institutions.⁴²

Different scholars have advocated or relied on models as useful theoretical designs for investigating research questions. These scholars shall be discussed in the subsequent literature review to using models as a research theoretical framework.

2.1.1. Models or Approaches to Disability

Firstly, for purposes of clarifying the meaning of a 'model or approaches to disability', it is worthwhile reiterating that the understanding of models or approaches

³⁹ T.B. Staats, 'The Rehabilitation of the Amputee in the Developing World: A review of the Literature', *Prosthetics and Orthotics International*, (1996) 20, pp. 45, 50.

⁴⁰ The Encarta World English Dictionary (Bloomsbury Publishing, 1999) pg. 1215. See also. *Oxford Large Print Dictionary*, (Oxford University Press, 2007) pg. 696.

⁴¹ *Cambridge International Dictionary of English*, (Cambridge University Press, 1995) pg. 910.

⁴² F. R. Spellman and M. L. Stoudt, 'Environmental Science: Principles and Practices', (Scarecrow Press, 2013) pp. 16-20. See also. J.A. Maxwell, 'Qualitative Research Design: An Interactive Approach', 3rd ed. (Sage, Publishers, 2013) pg. 49.

to disability might vary under different international and regional contexts.⁴³ However, for purposes of this thesis, a ‘model of disability, or approaches to disability’, demonstrate a wide range of perspectives to ‘disability’ that will be used in tracing how ‘disability’, and elements of the environment of disability, are conceptualised by various UNHRTBs and RHRS. Approaches to disability are vital to understand the nature of disabling factors, and the subsequent protection provided through obligations enshrined in UNHRTBS or RHRS.⁴⁴ Hence, ‘approaches to disability’ are a suitable means to research the perspectives to disability that underpin the conceptualisation of obligations enshrined in UN and RHRS towards persons with disabilities.⁴⁵

It is imperative to note that the term ‘persons with disabilities’ is used rather than ‘disabled people’ for the purposes of this study since the former is a more contemporary term than the latter. Though, some materials from UNHRTBs and RHRSs use the term ‘disabled people’ instead of ‘persons with disabilities’. Expressions for identifying this group of people are an important aspect given that the sensitivity of those expressions either symbolises labelling or represents the mislabelling of persons with disabilities. Nevertheless, in terms of substance, the change in disability related obligations as perceived by UNHRTBs and RHRSs along the three-stage cycle (before, during and after situations of armed conflict) is unlikely to be influenced by the use of either expressions but those expressions are a symbolic representation of the model of disability applied at a specific time.

Another vital feature of models of disability lies in their ability to act as a means of understanding the likely relationships of divergences, convergence and complementarity that could subsist in the application of varied approaches to disability for obligations owed to persons with disabilities from either a regional or global perspective.⁴⁶ For example, through understanding and relying on theory relating to models, this research will be in a position to establish if UNHRTBs and RHRSs are applying disability models whose approaches are appropriate for

⁴³ R.B. Darling and D. A. Heckert, ‘Activism Models, Identities and Opportunity: A Preliminary Test of a Typology of Disability Orientation’, in *Disability as a Fluid State, Research in Social Science and Disability*, S. N. Barnartt and B. M. Altman (eds.) (Emerald Group 2010) pp. 203-230.

⁴⁴ T. Degener, ‘Disability in a Human Rights Context’, *Laws*, in *Disability Human Rights Law*, A. Arstein-Kerslake (ed.) (MDPI, 2017) pp. 5, 35.

⁴⁵ Ibid.

⁴⁶ H. Gardner, *The Minds* New Science (New York, Basic Books, (1985). pg. 8

prioritising disability related obligations of rehabilitating persons, regardless of whether their disabilities are war related or non-war related in nature. That is not to suggest disregarding situations where varied needs and circumstances of persons with disabilities might necessitate fractionising them, based on whether disabilities are either war related, or non-war related in nature. This is especially pertinent during, and after a situation of an armed conflict where supporting the varied needs of persons with disabilities as categorised in the subsequent tables of this thesis, mean they are more likely to benefit from disability related obligations that are underpinned by distinctive models of disability.⁴⁷ In that regard, understanding the composition of models or approaches to disability becomes key to examine how UNHRTB and RHRS are using these models in their response to issues of disability before, during, and after the occurrence of armed conflict.

This thesis presents models of disability as a framework for studying and investigating why there is a need for institutions shaping obligations under international disability law, to apply models with varied approaches to disability rights in specific local environments before, during and after a situation of armed conflict.⁴⁸ This research will use the causal relation of armed conflict and disability to assert that a model, or an approach to disability that is inappropriate in a peaceful State of a particular RHRS, might be appropriate or limited in addressing concerns of disability in an armed conflict or post conflict State, within the same regional system.⁴⁹

In this sense, the use of models of disability shall provide this study with the means of examining the approaches that are used by UNHRTBs and RHRSs.⁵⁰ As such, these approaches shall be useful for identifying the most appropriate model of disability through which the UNHRTBs and RHRSs must respond to the concerns of persons with disabilities, during and after, armed conflicts (*jus post- bellum*) settings.⁵¹

⁴⁷ Ibid. pg. 8.

⁴⁸ M. Johnston, 'Models of disability', *The Psychologist*, (May 1994), pp. 205-212.

⁴⁹ H. Gardner, *The Minds New Science* (New York, Basic Books, (1985). pg. 8

⁵⁰ Hart, Naomi and Crock, Mary Elizabeth and McCallum, Ronald and Saul, Ben, *Making Every Life Count: Ensuring Equality and Protection for Persons with Disabilities in Armed Conflicts* (14/December/2014). *Monash University Law Review*, 40 (1) pp. 148-174. See also. M. dos Santos-Zingale and M. Ann McColl, 'Disability and participation in post-conflict situations: the case of Sierra Leone', *Disability & Society*, (2006) 21:3, pp. 243-257.

⁵¹ A/HRC/31/30, pg. 3 Paragraph 3.

The critics of models of disability claim that able-bodied academics are using research on models, as a means of advancing their scholarly interests while overlooking the best interests of persons with disabilities.⁵² Thus urging that such a weakness in models of disability makes them a weak tool for advancing the best interests of persons with disabilities.⁵³ Other critics are sceptical of the growing tendency for models of disability to solely rely on right -based instruments, due to problems associated with the State-centric nature of those instruments. For instance, such reliance leads to a limitation in extending obligations that are framed upon models of disability to regulate the conduct of non-state actors in spite of their activities, impacting the protection of persons with disabilities during the armed conflict situation of the three-stage cycle.⁵⁴ Those critics are of the view that models of disability attain their practical significance based on the assertive language of rights-based ideas.⁵⁵

Although instruments from Laws of Armed Conflict (LOAC), such as the Geneva Conventions of 1949 and their Additional Protocols of 1979 that apply to both States and non-State actors during situations of armed conflict, have incorporated obligations underpinned by the medical model rather than the social model.⁵⁶ Bearing in mind that obligations from instruments of LOAC are only limited to situations of armed conflict, there is a need to investigate models or approaches to disability that institutions of UNHRTBs and RHRs must apply to non-State actors to make them address disability related concerns of armed conflict that arise in post-conflict States subjected to such actors.⁵⁷ The likelihood of having an internationally conclusive definition of disability seems rather remote. For example, the contents of

⁵² V. Finkelstein, 'Disability a social challenge or administrative responsibility', in *Disabling barriers*, V. Finkelstein, S. French and M. Oliver (eds.) (Sage Publishers, 1993) pg. 56

⁵³ B. M Altman, 'Disability definitions, models, classifications scheme and applications', in *Handbook of Disability: Disability studies*, G. L Albrecht, K. D. Seelman and M. Bury (eds.) (Sage Publishers, 2001) pp. 97-121.

⁵⁴ R. Habasch, 'Is the Rights Model of Disability Valid in Post-conflict Lebanon? A Participatory Pilot Survey', *Journal of Palestine Studies* (1997) 27 (1) pp. 126,135. See also. N. Kabbara and K. K. Nagata, 'Is the Rights Model of Disability Valid in Post-conflict Lebanon? A Participatory Pilot Survey in Beirut', United Nations Development Cooperation Branch. See also. M. Turmusani, 'Disability and Development in Kosovo: The Case for CBR Approach', *Asia Pacific Disability and Rehabilitation Journal* (2002) 13 (1) pg. 19-28.

⁵⁵ T. Degener, 'Disability in a Human Rights Context', *Laws*, in *Disability Human Rights Law*, A. Arstein-Kerslake (MDPI, 2017) pp. 5, 35.

⁵⁶ General comment No. 31 (2004), Paragraph8. A. Clapham, 'Human rights obligations of non-State Actors in conflict situations', *International Review of the Red Cross* (2006) 863 (88) 491, 523. See also. P. W. Singer, 'War, profits, and the Vacuum of Law: Privatized Military Firms and International Law', *Columbia Journal of Transnational Law*, (2004) 42, pp. 521-549, pp. 537-538.

⁵⁷ M. Johnston, 'Models of disability', *The Psychologist*, May, (1994) pp. 205-212.

such a definition may differ depending on the differing contexts of professional backgrounds and the purpose of defining disability.

2.3. Relevant Models of Disability for the Analysis

2.3.1. The Individual Model

Historically, the individual model commonly used physical and mental impairments for grouping persons with disabilities under one identity. The concept of impairment shall be examined further in relation to the medical model of disability that is found to be similarly reliant on physical categorisations of disability. The approach of the individual model is inclined to focus attention on abnormal bodies and conduct as the main problem of persons with disabilities. It envisages disability as a condition, produced by the tragic malfunctioning of persons with disabilities.⁵⁸

This approach is known for presenting the appearance, behaviour, and conduct of persons with disabilities, as tragedies, the cause of the problem being a significant characteristic for the model.⁵⁹ The approach of this model presupposes that the problems persons with disabilities experience are a consequence of having disfigured bodies.⁶⁰ The bodies are disfigured due to sickness,⁶¹ disease, and injuries, affecting one or more parts of the body, hence deforming the body physically, mentally or intellectually.⁶² The physical, mental or intellectual impairments result in bodily malfunctioning of one, or more, biological systems, hence causing problems to the affected individual.⁶³

⁵⁸ Ibid. 205-212.

⁵⁹ Ibid. pp. 205-212.

⁶⁰ A.J. Sameroff, The social context of development, in *Becoming a Person* M. Woodhead, R. Carr and P. Light (Eds.) (London, Routledge with The Open University Press, 1991).

⁶¹ J. Overboe, 'Theory Impairment and Impersonal Singularities: Deleuze, Guattari and Agamben', in *Disability and Social Theory: New Developments and Directions*, D. Goodley, B. Hughes and L. Davis (Eds.) (Palgrave Macmillan, 2012) pp. 112-126.

⁶² M. Oliver, 'Understanding disability from Theory to Practice', (Palgrave Publishers, 1996) pp. 30-42. See also. A. Stein and P.J.S. Stein, 'Disability, Development, and Human Rights: A Mandate and Framework for International Financial Institutions', University of California, Davis (2014) 47, pp. 1237, 1278.

⁶³ T. Titchkasky and R. Michalko, 'The Body Has the Problem of Individuality: A Phenomenological Disability Studies Approach', in *Disability and Social Theory: New Developments and Directions*, D. Goodley, B. Hughes and L. Davis (Eds.) (Palgrave Macmillan, 2012) pp. 127-142.

The approach of this model also describes persons with disabilities using the allegedly outdated language of 'lame', 'handicapped' or 'crippled' individuals,⁶⁴ in contrast with the approach of the social model that conceives of disability in the form of exclusionary tendencies in the external environments of persons with disabilities.⁶⁵

It is imperative to note, that the approach upon which ideologies of the individual model are framed, manifests acute contrasts with those of a social model that shall be discussed in much more details in subsequent sections of this chapter. For instance, the individual model reiterates ideas of treating biological deficiencies of an individual or preventing impairments that cause the suffering of a person with disabilities.⁶⁶ It maintains fixing the supposedly sick, and allegedly injured and problematic body of the individual.⁶⁷

In contrast, the social model, if applied with ideas of a rights-based approach, tends to focus on fixing the problematic nature of external environments that tend to discriminate against persons with disabilities.⁶⁸ According to the individual model, causes of suffering by the individual, tend to be attributable to their physical, mental and intellectual state.⁶⁹ In that context, the attitude underpinning the conceptualisation of disability in this model is anatomically preventing the condition that results in bodily problems to the affected individuals, hence making them problematic to themselves, and to the general public.⁷⁰

⁶⁴ D. Reeve, 'Cyborgs, Cripples and iCrip: Reflection on the Contribution of Haraway to Disability Studies', in *Disability and Social Theory: New Developments and Directions*, D. Goodley, B. Hughes and L. Davis (Eds.) (Palgrave Macmillan, 2012) pp. 91-111.

⁶⁵ M. Oliver and B. Sapey, 'Social work with disabled people', 3rd Ed. (Palgrave Macmillan, 2006) pp. 29-33. See also. A. Officera and N. E. Groceb, 'Key concepts in disability', (2009) 9704 (374) *The Lancet* www.thelancet.com, pp. 1795-1796.

⁶⁶ A. Officera and N. E. Groceb, 'Key concepts in Disability', (2009) 9704 (374) *The Lancet* www.thelancet.com, pp. 1795-1796.

⁶⁷ M. A. Stein and P.J.S. Stein, 'Disability, Development, and Human Rights: A Mandate and Framework for International Financial Institutions', *University of California, University of California Davis Law Review* (2014) 47, pg. 1239, 1278.

⁶⁸ W. Kalin, 'Examination of State Reports', in *UN Human Rights Treaty Bodies: Law and Legitimacy*, L. Grover (ed.) Cambridge University Press, 2012) pp. 16-72 at pg. 57.

⁶⁹ A. Stein and P.J.S. Stein, 'Disability, Development, and Human Rights: A Mandate and Framework for International Financial Institutions', *University of California Davis Law Review* (2014) 47, pg. 1239, 1278.

⁷⁰ M. Oliver, 'The social model in action: if I had a hammer', in *Implementing the social model of disability: Theory and research* C. Barnes and G. Mercer (eds.) (The Disability Press, 2004) pp. 19-47.

The model is also compatible with the approach of the medical model, upon which its aspirations could attract scholarly credibility.⁷¹ For example, there is a likelihood for relatives of an amputated patient to seek medical advice with a view to establish whether such an individual would need a wheelchair or prosthesis in case of perpetual immobility. In this instance, the relatives would expect the medical expert to undertake accurate clinical diagnosis upon which they can be advised on suitable alternative mobility aids.

(i) The Background of the Individual Model

The individual model originates from a wide range of approaches known for portraying disability as a problem, caused by the body of an impaired individual.⁷² The approach of the medical model continues to underpin perspectives upon which some establishments attempt to understand persons with disabilities and the causes of disability. Unfortunately, the approach of the individual model has had a tendency to represent persons with disabilities as 'irritating subjects'. In so doing, the model problematises the identity of persons with disabilities.⁷³

The approach of this model also shifts persons with disabilities from the paradigm of people with healthy bodies, to representing their bodies as a symbol of sickness.⁷⁴ Given this view of disability, it is almost certain that the approach of the individual model is, in some respects, representing disability as a medical problem, which is solely resolvable through medical prevention.⁷⁵ The individual model uses standards for all individuals, to justify the rating of persons with disabilities as having relatively lower standards of physical, intellectual and mental capabilities,⁷⁶ thus

⁷¹ Ibid. pp. 19-47.

⁷² P. Abberley, 'The concept of oppression and the development of a social theory of Disability', (1987) 2(1) *Disability, Handicap and Society*, pp. 5-19

⁷³ M. Oliver, 'Understanding disability from Theory to Practice', (Palgrave Publishers, 1996) pp. 30-42

⁷⁴ Ibid. pp. 30-42

⁷⁵ M. Johnston, 'Models of disability', *The Psychologist*, (1994) pp. 205-212.

⁷⁶ R. Mallett and K. Runswick-Cole, 'Commodifying Autism: The Cultural Context of Disability', in *Disability and Social Theory: New Developments and Directions*, D. Goodley, B. Hughes and L. Davis (Eds.) (Palgrave Macmillan, 2012) pp. 33-51. See also. T. Titchkasky and R. Michalko, 'The Body Has the Problem of Individuality: A Phenomenological Disability Studies Approach', in *Disability and Social Theory: New Developments and Directions*, D. Goodley, B. Hughes and L. Davis (Eds.) (Palgrave Macmillan, 2012) pp.127-142.

relating problems and causes of disability to the alleged anatomical deformity of an individual's disfigured body.⁷⁷

However, critics contesting the above view, contend that if persons with disabilities were sick patients, then it would be impossible for them, even with the provision of reasonable adjustments, to participate in normal activities. The above contention is clearly disapproving the seemingly predominant approach of associating the identity of persons with disabilities with ideas of sickness and illness. In addition, the idea of fixing a deformed individual seems useful in exposing some of the overlaps that exists between the individual model and the medical model,⁷⁸ by presenting disability as a consequential outcome from experiencing sickness, and impairments that must be prevented.⁷⁹ Accordingly, this model embraces approaches of eradicating the alleged sickness that is blamed as the cause of the disability, by deforming the individual.

(ii) The Approach of Rehabilitating the Individual

Although many scholars in disability studies tend to describe rehabilitation as a separate model,⁸⁰ for the purposes of this research it will suffice to explain rehabilitation under this section, by suggesting it as part of the approach of the individual model. It is notable that rehabilitation focuses on individual problems of persons with disabilities. In dealing with those individual problems, special rehabilitation measures ought to be undertaken by the individual as a means of normalising their body. Therefore, it is contended that impaired or disabled bodies are hindrances to the individual's ability to meet the average intellectual, mental and physical standards.⁸¹ Consequently, disability related obligations which are framed upon this approach, base their rationale on the view that problems of persons with

⁷⁷ Ibid. pp. 205-212.

⁷⁸ D. Goodley, et al. 'Introducing Disability and Theory', in *Disability and Social Theory: New Developments and Directions*, D. Goodley, B. Hughes and L. Davis (Eds.) (Palgrave Macmillan, 2012) pp. 1-16.

⁷⁹ B. Hughes, 'Civilising Modernity and the Ontological Invalidation of Disabled People', in *Disability and Social Theory: New Developments and Directions*, D. Goodley, B. Hughes and L. Davis (Eds.) (Palgrave Macmillan, 2012) pp. 17-32. See also. Titchkasky and R. Michalko, 'The Body Has the Problem of Individuality: A Phenomenological Disability Studies Approach', in *Disability and Social Theory: New Developments and Directions*, D. Goodley, B. Hughes and L. Davis (Eds.) (Palgrave Macmillan, 2012) pp. 127-142.

⁸⁰ T. Shakespeare N. Watson, 'The social model of disability: an outdated ideology? In *Exploring theories and expanding methodologies: Where we are and where we need to go*', 20/June/2001 (pp. 9-28). Emerald Group Publishing Limited.

⁸¹ T. Shakespeare, 'The social model of disability. *The Disability Studies Reader*. 2006 Aug 15; 2:1, pp. 97-204.

disabilities are a consequential outcome of their impaired bodies, hence necessitating the need for such individuals to undergo rehabilitation.⁸² It is imperative to reiterate that some models, such as the medical and individual, are asymmetrical to the approach of rehabilitating the individual.

2.3.2 The Medical Model of Disability Its Inward-Looking Approach

(i) The Inward-Looking Approach of the Medical Model

The medical model is popular for reproducing a clear-cut margin between able-bodied persons and those with physical disabilities.⁸³ The approach of the medical model might seem synonymous with certain ideas of religious centred approaches that represent persons with disabilities as having abnormal impairments.⁸⁴ Similarly, their temperament tends to be associated with bitterness and threatening behaviour to public order.⁸⁵ In light of those confinements, it is highly probable that society is unlikely to provide for the inclusive participation of persons with disabilities in normal civic activities, such as rights to education, or justice.⁸⁶ The medical model is likely to exaggerate a person with disabilities as 'heroic' for achieving an everyday task that under normal circumstances people without disabilities would easily perform. This suggests that a medical approach might contribute to attitudinal prejudices in relation to the hopes and expectations of persons with disabilities, as demonstrated in the figure below.⁸⁷

⁸² World Report on Disability 2011, pg. 95-133 (WHO and World Bank). Available at http://www.who.int/disabilities/world_report/2011/report.pdf accessed on 25/August/2018.

⁸³ J. Sameroff, The social context of development, in: M. Woodhead, *Becoming a Person* R. Carr and P. Light (Eds.) (London, Routledge with The Open University Press, 1991).

⁸⁴ M. Oliver, 'Understanding disability from Theory to Practice', (Macmillan Press, 1996) pg. 30. See also. M. Oliver, 'Defining impairment and disability: Issues at stake', in *The library of essays on equality and anti-discrimination law*, E. F. Emens and M. A. Stein (eds.) (Ashgate Publishing Ltd, 2013) pg. 40. See also. A. Stein and P.J.S. Stein, 'Disability, Development, and Human Rights: A Mandate and Framework for International Financial Institutions', *University of California Davis Law Review* (2014) 47, pp. 1237, 1278.

⁸⁵ *Ibid.* pg. 41.

⁸⁶ Security Council Resolution. S/2004/616 Adopted on 23/August/2003, *The Role of Law and Transitional Justice in Conflict and Post-Conflict Societies*, Report by the Secretariat. Paragraphs 9-10.

⁸⁷ M. A. Stein and P.J.S. Stein, 'Disability, Development, and Human Rights: A Mandate and Framework for International Financial Institutions', *University of California Davis Law Review* (2014) 47, pp. 1237, 1278.

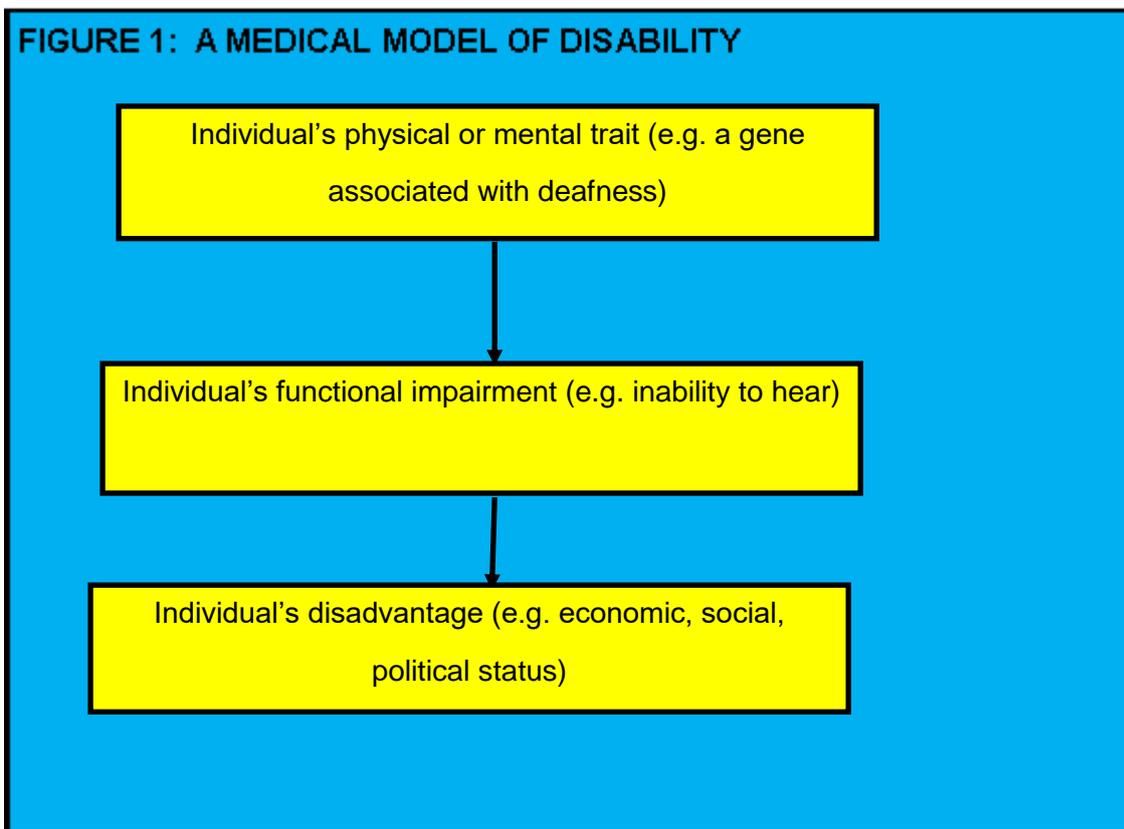


Figure 1 Shows the reasons which the medical model relies upon in attributing the individual's social economic and political limitation to their impairments.

The diagram demonstrates how the inward looking approach of the medical model blames disability on the individual's physical or mental genetic deficiencies.⁸⁸ This therefore causes functional impairments that economically, socially and politically disadvantage the affected individual.⁸⁹ The approach of the medical model also represents persons with disabilities as a medical 'tragedy' with problems that need 'fixing' by medical experts.⁹⁰ It is apparent that this model represents persons with disabilities as sickly patients. The inward looking approach of the medical model also tends to exclude persons with disabilities from the considerations of individuals living normal lives with an inherent human interest in having interactions or social relationships through, for example, marriage or work.⁹¹ Given such a perspective and its dominance in historical approaches to issues of disability, it is hardly surprising that most people would have felt troubled if they developed any kind a disability.

⁸⁸ A. Samaha, 'What good is the social model of disability', (University of Chicago Public Law & Legal Theory Working Paper No. 166, 2007). pg. 8

⁸⁹ Ibid pg. 8.

⁹⁰ M. Johnston, 'Models of disability', *The Psychologist*, (1994) pp. 205-212.

⁹¹ Ibid pp. 205-212.

Conventionally the medical and individuals models were more popular than the social model in influencing how most societies had perceived disability.⁹² Hence those models of disability label persons with disabilities as a representation of failure.⁹³ In this context, persons with disabilities become objects and permanent reminders of individuals whose bodies symbolise a historical struggle of unending failure.⁹⁴ The limitations in the inward looking approach of the medical model stems from its tendency to blame the problems of persons with disabilities for body defects that are purported to inhibit their ability to perform everyday tasks.⁹⁵ Based on this approach, it is unsurprising that the medical model resorts to medical professionals when explaining possible causes and solutions for the allegedly problematic abnormalities that are impairing bodies of persons with disabilities.⁹⁶ The protagonists of this model perceive professionals as the individuals equipped with the skills of treating physical, mental and intellectual disabilities for purposes of preventing or assisting the affected persons from the suffering attributed to their impairments.⁹⁷

Theoretically, the perspective of this model presents persons with disabilities as patients with infirmities who could be burdensome and troublesome individuals.⁹⁸ This perspective perceives persons with disabilities as harmful to public order, especially those associated with mental or intellectual disabilities. The approach of the medical model appears to represent persons with disabilities as dependants on charitable deeds, as opposed to being holders or bearers of rights.⁹⁹ This view highlights a major weakness of the medical model in its approach to disability through an inward-looking perspective. Such an approach is based on the tendency

⁹² R. Kayess and P. French, 'Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities.' *Human Rights Law Review*, (2008) 8, pp. 1-34.

⁹³ T. Shakespeare, 'Disability, identity and difference. Exploring the divide', (1996): pp. 94-113.

⁹⁴ I.K. Zola Self-identity and the naming question: reflections on the language of disability. *Social Science of Medicine* 1993; 2: pp. 167-173.

⁹⁵ *Ibid.* 21.

⁹⁶ B. Hughes, 'Disability and the Body', in *Disability Studies Today* C. Barnes, M. Oliver and L. Barton (eds.) (Polity Press, 2002) pg. 58.

⁹⁷ A. S. Kanter, *The Development of Disability Rights under International Law: From Charity to Human Rights*, (Routledge, 2015) pp. 7-8.

⁹⁸ UN Office of the High Commissioner for Human Rights (OHCHR), '*Professional training series no. 17: Monitoring the Convention on the Rights of Persons with Disabilities: Guidance for Human Rights Monitors*', April/2010, [hereafter HR/P/PT/17].

⁹⁹ *Ibid.* See also. A. Stein and P.J.S. Stein, 'Disability, Development, and Human Rights: A Mandate and Framework for International Financial Institutions', *University of California, University of California, Davis Law Review* (2014) 47, pp. 1239, 1278.

of associating disability with sickness.¹⁰⁰ Consequently, the above views compromise the inability of the medical model to protect and respect the dignity and integrity of persons with disabilities.¹⁰¹

Similarly, in some respects, the medical model portrays persons with disabilities as subjects upon which medical aids must be applied, rather than subjects with health rights that must be respected and recognised. Hence, the approach of the medical model, is criticised for running the risk of disregarding the importance of protecting certain rights of persons with disabilities, such as consenting to medical treatment.¹⁰² It must be emphasised how this model rationalises acts of deprivation subject to the instructions of experts or professionals which have resulted in the confinement of persons with disabilities in inhumane and degrading conditions.¹⁰³

Additionally, the medical model limits the required response to concentrating on medically oriented measures preventing conditions that contribute to disabilities.¹⁰⁴ This approach is contrastable with approaches known for concentrating on environmental and attitudinal barriers as causes of disability. Hence, the social model, which is discussed later, concentrates on external factors by representing disability as a societal problem rather than simply a physical one.¹⁰⁵ Therefore, the approach of the medical model could have some similarities with those of the charity model, a detailed account of which is contained in a subsequent section of this study.

The approach of the medical model of disability could, in some cases, be applied to persons with age-related disabilities.¹⁰⁶ Perhaps the relationship between

¹⁰⁰ CRPD/C/THA/Q/1, Paragraph 16-19 and Paragraph 43-49.

¹⁰¹ S. Burkhardt, 'Diversity and disability', in A. F. Rotatori et al (eds.) *Special Education International Perspectives: Biopsychosocial, cultural and disability aspects: Advances in Special Education*, (2008) 27, pg. 33.

¹⁰² Human Rights Watch, 'Visit to Hargeisa Group Hospital mental health ward, Hargeisa', 26/January/2015. See also. Human Rights Watch, 'Chained like Prisoners: Abuses against People with Psychosocial Disabilities in Somaliland', 25/October/2015, pp. 31, 36.

¹⁰³ Human Rights Watch, 'Living in hell: Abuses against People with Psychosocial Disabilities in Indonesia', 20/March/2016, pg. 45.

¹⁰⁴ A. S. Kanter, *The Development of Disability Rights under International Law: From Charity to Human Rights*, (Routledge, 2015) pp. 7-8. See also. A. Stein and P.J.S. Stein, 'Disability, Development, and Human Rights: A Mandate and Framework for International Financial Institutions', *University of California, University of California Davis Law Review* (2014) 47, pp. 1237, 1278.

¹⁰⁵ *Ibid.* pp. 7-8.

¹⁰⁶ I.K. Zola, 'Ageing and disability: Toward a unifying agenda', *Educational Gerontology* 1988 (14) pp. 365-387.

aging and disability could necessitate studies correlating approaches of how models of disability might be influencing the aspirations and rendering of support for persons under elderly care.¹⁰⁷ Though social care is not a primary aspect of this research, its relevance is strictly limited to demonstrating how models of disability are applied. The medical model might also be a driving force for mobilising charitable and welfare support systems.¹⁰⁸ For example, medical facilities could be used to justify why a charity for veterans needs to use before and after pictures of amputees in conveying such a message.¹⁰⁹

2.3.3. The Social Model

(i) The Background of the Social Model

In terms of background, the work of Rannveig might be worthwhile considering as one of the authoritative accounts in explaining the development of the social model.¹¹⁰ He contends that the disability approaches of the social model are comprised of three varied approaches, namely the British social model of disability,¹¹¹ the Nordic relational approach¹¹² and the North American minority group approach.¹¹³ In the context of this project, the British model of disability shall suffice in demonstrating key characteristics that could in many respects identify the social model. The idea of disability emancipation appears as an overarching characteristic that underpins the outward looking approach of a social model as applied by the

¹⁰⁷ M. A. Malek and M. A. Razzak, 'Rights of the elderly: an emerging human rights discourse', 2017, 59(2), pp. 284, 302.

¹⁰⁸ A. S. Kanter, 'The Development of Disability Rights under International Law: From Charity to Human Rights', Routledge, 2015 pg. 12. See also A. S. Kanter, 'The Globalisation of Disability Right Law', *Syracuse Journal of International Law and Commerce* (2003) 30 pp. 241, 269.

¹⁰⁹ S. Meyers, 'Wounded Warriors or One of the Crowd? Civil War, Citizenship and Disability in Nicaragua, Disability Studies and Ability Studies: Two Lenses to Investigate', *Peace Studies Journal* (2013) 6 (4) pp. 22, 36. See also. Priestly, 'Introduction the global context of disability', *Disability and the life course discourse: Global perspective*, M. Priestly (ed.) (Cambridge university Press, 2001) pg. 8.

¹¹⁰ R. Traustadottir, 'Disability Studies, the Social Model and Legal Developments' in *The UN Convention on the Rights of Persons with Disabilities European and Scandinavian Perspectives*, O. M. Arnadottir, and G. Quinn, (eds.) (Martinus Nijhoff Publishers, 2009) pp. 3-16.

¹¹¹ Ibid. pg. 9.

¹¹² Ibid. pg. 12.

¹¹³ Ibid. pg. 14. See also. UN Commission on Human Rights, Rights of persons belonging to national, ethnic, religious and linguistic minorities. 21/February/1992, [hereafter E/CN.4/RES/1992/16]. Paragraphs 2-3.

British Council that mobilises Organizations of Persons with disabilities (BCODP).¹¹⁴ This approach is aimed at enhancing ideas of independence amid environments of disability. These ideas of independence seem to differ, depending on whether the environments around disability are observed in relation to peaceful States or post-conflict States.

Some of the key founders of the social model include Duckworth and Massie, who advocated for the introduction of the social model across the UK.¹¹⁵ The 'Union of the Physically Impaired Against Segregation' (UPIAS) has also been instrumental.¹¹⁶ Most importantly, this Union reconstructed the definition of disability as a,

“[...] disadvantage or restriction of activity caused [because of] a contemporary social organisation which takes no or little account of people who have [...] impairments and thus excludes them [those with disabilities] from mainstream social activities.”¹¹⁷

In the above context, disability is conceived of as a consequence of societal, attitudinal and environmental barriers which restrict such persons from maximising their participation in society.¹¹⁸ In this context, the global impact of disability studies on aspects of International disability law, becomes apparent in terms of redefining disability through applying approaches of the social model.¹¹⁹

It should be noted that most of the founders whose experiences influence this model, tend to originate from disability movements located in developed countries, in particular, mostly WENA States. That raises a question of how universally applicable the approach of the social model would be via the UN.

¹¹⁴ M. Oliver, *Understanding Disability from Theory to Practice*, (Palgrave Publishers, 1996) pp. 30-42. See also. D. Fina, 'International cooperation: Article 32', in *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary*, V. D. Fina, et al. (ed)(Springer, 2017) pg. 570- 588 at pg. 572.

¹¹⁵ Ibid pp. 30-42.

¹¹⁶ R. Lang, 'The development and critique of the social model of disability', Overseas Development Group, (University of East Anglia, 2001) pp. 7-9. See also A. Samaha, 'What good is the social model of disability', (University of Chicago Public Law & Legal Theory Working Paper No. 166, 2007. pp. 33-35.

¹¹⁷ C. Thomas, 'Disability Theory: Key ideas, Issues and Thinkers', in *Disability Studies Today* C. Barnes, M. Oliver and L. Barton (eds.) (Polity Press, 2002) pp. 38-54. See also. M. Oliver, 'Defining impairment and Disability: Issues at Stake', in *the library of essays on equality and anti-discrimination law*, C. Barnes, M. Oliver and L. Barton (eds.) (Ashgate Publishing Ltd, 2013) pg. 41.

¹¹⁸ C. Thomas, 'Disability theory: Key Ideas, issues and thinkers', in *Disability Studies Today*, C. Barnes, M. Oliver and L. Barton (eds.) (Polity Press, 2002) pp. 38-54.

¹¹⁹ M. Oliver, 'Understanding disability from Theory to Practice', (Palgrave Publishers, 1996) pp. 30-42

The diagram below demonstrates the social model and its outward looking approach. The illustration also compares aspects of the social model on the left, with those of the medical model, on the right.

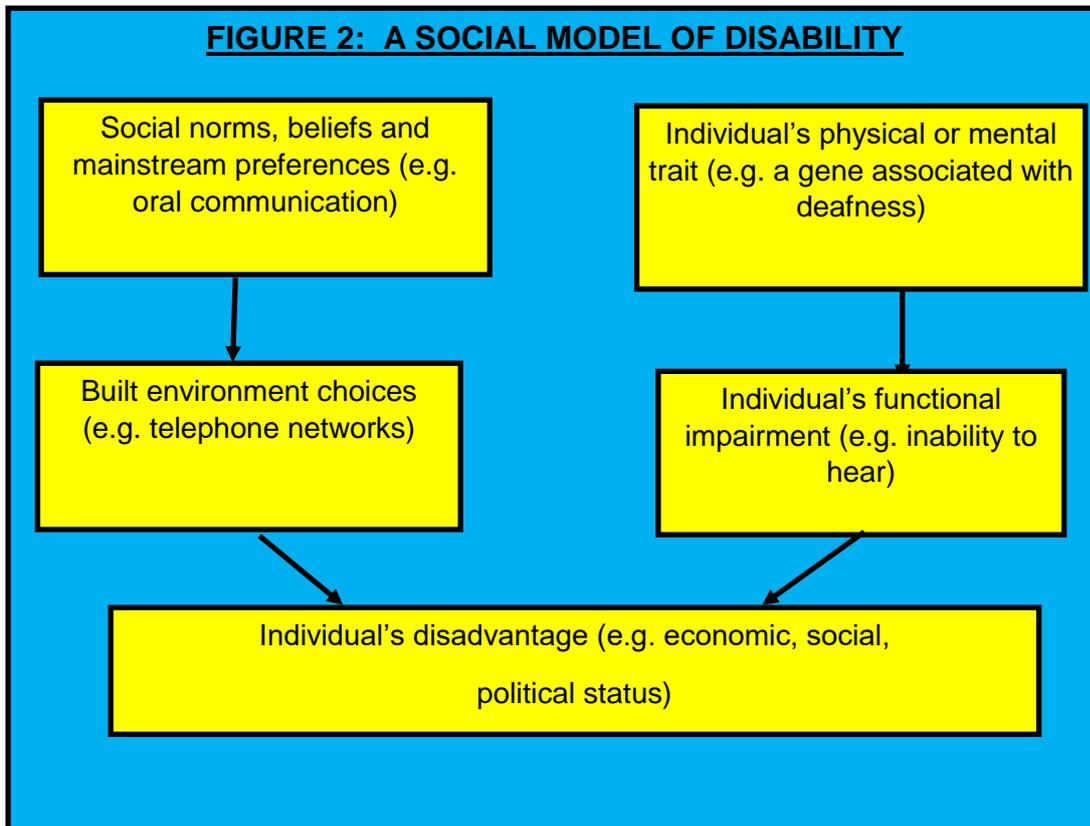


Figure 2 demonstrates the Social Model and its contrast with the medical model in figure 1 above.

It is imperative to note that the approach of the social model shifts the understanding of disability to be represented as a social construct that results from the exclusionary nature of inbuilt environments, as per figure 2 above. This model asserts that it is the exclusionary nature of those environments that disadvantage a person with disabilities, on the social, economic and political fronts.¹²⁰ Therefore, disability is portrayed as a consequential outcome of the outward state of social, economic and political environments which are neither adopted nor designed to integrate and accommodate capabilities of persons with disabilities.¹²¹

(ii) The Social Model and the Rights-Based Approach

¹²⁰ A. Samaha, 'What good is the social model of disability', (University of Chicago Public Law & Legal Theory Working Paper No. 166, 2007). pg. 8.

¹²¹ Ibid. pg. 8.

In recent times, the social model has evolved faster than the medical model through a rights-based approach, hence gaining greater popularity. Such popularity is also attributable to the UPIAS' influence in associating the approach of the social model with the human rights language of entitlements, and consequently portraying it as a better possible emancipatory tool for persons with disabilities. The popularity which the social model obtained, led to its modification into a social rights-based approach which has underpinned the evolution of a "disability rights model".¹²²

The above modification may account for the similarities between the social model and the British Council of Organizations for Persons with Disabilities (BCODP) in the application of an outward looking approach to redefine disability and blame it on environments which are socially, economically and politically less adopted for integrating persons with disabilities.¹²³ It is imperative to note that the BCODP is an organisation that reconceptualised disability using the approach of a social model analogous to that of many other Western European and North American States (WENA),¹²⁴ through the organisation of the National Council of Handicapped.¹²⁵ Those movements from WENA regions appear to have wrongly assumed global homogeneity and hence used their Western and European experiences for determining the global problems of persons with disabilities and their models of disability. Consequently, this research uses situations during, and after armed conflict, to examine if the ideal of assuming or encouraging a universally dominant model should have any place in the conceptualisation of disability related obligations.¹²⁶

It is also worthwhile highlighting that some of the ideas propagated by supporters of this model, suffer from the conventional difficulties of crystallising

¹²² A. Lawson, 'The United Nations Convention on the Rights of Persons with Disabilities: New Era or False Dawn?', *Syracuse Journal of International Law and Commerce*, (2007) 34, pp. 563 - 619. See also. T. Degener, 'A New Human Rights Model of Disability', in *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary*, V. D. Fina, et al. (Eds.) (Springer, 2017) pg. 42-57.

¹²³ C. Thomas, 'Disability theory: Key ideas, issues and thinkers', *Disability Studies Today*, C. Barnes, M. Oliver and L. Barton (eds.) (Polity Press, 2002) pp. 38-54.

¹²⁴ T. Degener, 'A New Human Right Model of Disability', in *the United Nations Convention on the Rights of Persons with Disabilities: A Commentary*, V. D. Fina, et al. (Eds.) (Springer, 2017) pp. 42-57. See also. T. Degener, 'Disability in a Human Rights Context', in *the Special Issue Disability Human Rights Law*, A. Arstein-Kerslake (ed.) *Laws* (2016) 5(35), pp. 2, 24.

¹²⁵ K. Schriener and R. Scotch, 'The ADA and the Meaning of Disability', in *Backlash against the ADA: Reinterpreting Disability Rights*, L. H. Krieger (ed.) Michigan University Press, 2003) pp. 164-188.

¹²⁶ T. Degener, 'A New Human Right Model of Disability', in *the United Nations Convention on the Rights of Persons with Disabilities: A Commentary*, V. D. Fina, et al. (eds.) (Springer, 2017) pp. 42-57.

concepts from civil rights movements into State obligations, for example; their lack of a binding effect on non-state entities.¹²⁷ Therefore, most movements that succeed in using the vertical effect of human rights obligations to champion the empowerment of marginalised groups, such as children or women, often rely on language of rights whose functioning thrives under the presence of a functioning State mechanism.¹²⁸ However, this thesis perceives efforts of disability movements that emphasizes a rights-based approach which is dependent on State focused obligations as flawed and deficient. This is particularly true if construed across the different levels of accountability, across different legal regimes, and different actors who could be involved in specific undertakings before, during and after situations of armed conflict.¹²⁹

The evolutionary nature of the social model through a rights-based approach has also undergone modification through importing concepts of equality and those of reasonable adjustments.¹³⁰ Concepts of equality under the rights-based approach are similar to situations of gender equality in which policies can be enacted to ensure a friendly environment for breastfeeding women.¹³¹ This thereby creates external environments for encouraging such women to exercise their unrestricted liberty of breastfeeding in public spaces.¹³² Under the rights-based approach, advocates for gender empowerment tend to promulgate that equality must imply equal rights for men and women before the law. Therefore, the law must prohibit hostile attitudes, unfriendly gestures, and exclusionary environments mirroring the freedoms enjoyed by breastfeeding women.¹³³

In the context of disability, approaches of the social model seem to expect ideas of equality to be a means of instilling attitudes and behaviour environments

¹²⁷ R. Kayess and P. French, 'Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities.' *Human Rights Law Review*, (2008) 8, pp. 20, 34.

¹²⁸ T. Shakespeare, 'Disabled people's self-organisation: a new social movement?' , *Disability, Handicap & Society*, (1993) 8 (3) pp. 249,264.

¹²⁹ *Ibid.* pp. 249,264.

¹³⁰ A. Samaha, 'What good is the social model of disability', (University of Chicago Public Law & Legal Theory Working Paper No. 166, 2007). pg. 8.

¹³¹ *Ibid.*

¹³² A. L. Nemece, 'What Can Disability Learn from the Breastfeeding Wars?', (2011) 2(31)

¹³³ *Ibid.*

that are disability friendly and able to accommodate persons with disabilities.¹³⁴ Notably, such an outward-looking approach of the social model,¹³⁵ is contrastable with the inward-looking approach of the individual and medical models.¹³⁶ These models concentrate on treating the bodies of individuals that are inwardly impaired, instead of associating their priorities with designing external surrounding that are accessible and accommodative to persons with disabilities.¹³⁷ Therefore, according to the social model, disability is a problem that is created by the inaccessible state of facilities constituting the outward environment.¹³⁸

(iii) The Right-Based Approach in the Context of a Social Model:

The integration of the rights-based approach to the social model of disability affords it a novel perspective that is demonstrated through its aspirations for persons with disabilities. It is essential to expand on some of those approaches. Firstly, the approach of the social model is founded on aspirations of promoting the socioeconomic autonomy of persons with disabilities.¹³⁹ Approaches of promoting independence would, in this context, imply a range of aspects. Imperatively, the model reveals that independent living means more work is required on the external environment to ensure freedom of movement, such as creating laws to make lift facilities a part of built structures.¹⁴⁰ The social model has also aspired to illustrate that the absence of such structures mirrors architecture based on outmoded perceptions of disability. Arguably, the approach of the social model must be accredited with demonstrating the interdependent nature of independent living with the inaccessibility and invisibility of persons with disabilities.¹⁴¹

¹³⁴ R. Traustadottir, 'Disability Studies, the Social Model and Legal Developments' in *The UN Convention on the Rights of Persons with Disabilities European and Scandinavian Perspectives*, O. M. Arnadottir, and G. Quinn, (eds.) (Martinus Nijhoff Publishers, 2009) pp. 34-40.

¹³⁵ L. O. Oyaro, 'Africa at Crossroads: The United Nations Convention on the Rights of Persons with Disabilities', *American University International Law Review*, (2015) (30) 2 pp. 349,376.

¹³⁶ *Ibid.* pg. 349.

¹³⁷ P. Abberley, 'The concept of oppression and the development of a social model of disability', (1987) 2 (1) *Disability Handicap & Society*, pg. 5.

¹³⁸ A. S. Kanter, 'The Development of Disability Rights under International Law: From Charity to Human Rights', Routledge, 2015 pg. 12.

¹³⁹ C. Thomas, 'Disability theory: Key ideas, issues and thinkers', C. Barnes, M. Oliver and L. Barton (eds.) *Disability Studies today* (Polity Press, 2002) pp. 38-54.

¹⁴⁰ R. Lang, 'The development and critique of the social model of disability', Overseas Development Group, (University of East Anglia, 2001) pp. 7-9

¹⁴¹ *Ibid.* pp. 7-9

It should also be noted, that the approach of this model earmarked a positive and emancipatory representation of persons with disabilities as participants in everyday life. The approach of the model is designed to challenge negative attitudes associated with having a disability with a sickness that leads to a loss of performance and participation in activities in most societies and states.¹⁴² In this regard, the approach of this model is held in high esteem for aspiring to change demeaning attitudes towards persons with disabilities through promoting positive representation. For example, the approach supports the inclusive participation of persons with disabilities, as opposed to exclusion from public life. In this context, the social rights-based model is associated with approaches that aspire to ensure active participation, rather than the passive representation of persons with disabilities.

(iv) Criticisms of the Social Model

The application of the social model faces three challenges. Firstly, some proponents contest the social model's notion of having reasonable adjustments as unsustainable given the likely increase in persons with disabilities that would imply increasing the threshold of those adjustments.¹⁴³ Although Grech has rightly noted that in developed States of the Global North, or WENA regions, attitudes of imposing excessive control on persons with disabilities by institutionalising them, seem to characterise what is understood as the external causes of disability.¹⁴⁴ In some developing States of the Global South, it is almost unreasonable to discuss characteristics of disability without dealing with concerns of armed conflict-related disabilities such as post-conflict amputees.¹⁴⁵ The above variances in characteristics

¹⁴² B. A. Thyer and M. Pignotti, 'Science and Pseudoscience in Development in Disabilities' in *Controversies and Disputes in Disability and Rehabilitation*, R. Meinert and F. Yuen (Eds.) (Routledge, 2012) pp. 31-41. See also T. Titchkasky and R. Michalko, 'The Body Has the Problem of Individuality: A Phenomenological Disability Studies Approach', in *Disability and Social Theory: New Developments and Directions*, D. Goodley, B. Hughes and L. Davis (Eds.) (Palgrave Macmillan, 2012) pp. 127-142. See also S. Grech, 'Disability and the Majority World: A Neo-colonial Approach', in *Disability and Social Theory: New Developments and Directions*, D. Goodley, B. Hughes and L. Davis (Eds.) (Palgrave Macmillan, 2012) pp. 52-69.

¹⁴³ I.K. Zola, 'Ageing and disability: toward a unifying agenda.' *Educational Gerontology* (1988) 14 pp. 365-387.

¹⁴⁴ S. Grech, 'Disability and the Majority World: A Neo-colonial Approach', in *Disability and Social Theory: New Developments and Directions*, D. Goodley, B. Hughes and L. Davis (Eds.) (Palgrave Macmillan, 2012) pp. 52-69 at pg. 52. See also S. Grech, *Disability and Poverty in the Global South: Renegotiating Development in Guatemala*, (Palgrave Macmillan, 2015) pg. 20-30. See also S. Grech, 'Disability and Development: Critical Connections, Gaps and Contradictions', in *Disability in the Global South: the Critical Handbook*, S. Grech and K. Soldatic (eds.) (Springer, 2016) pp. 3-19.

¹⁴⁵ Ibid. See also Spaaij, J. Magee and R. Jeanes, 'Sport and Social Exclusion in Global Society', (Routledge, 2014) pp. 14-17.

of disabling environments of States in the Global North, or WENA regions, with those in the Global South, should be considered as a wakeup call to re-examine and understand the implications of those variances on models of disabilities applied by international and regional institutions. For example, armed conflict affected States of the Global South regions, the majority of which are located in the Sub Saharan Africa or Middle Eastern and North African regions, would benefit greatly if models underlying disability related obligations are reconsidered before, during and after situations of armed conflicts. Accordingly, this thesis shall bear the above observation in mind, in furthering the study on models of disability as applied by UNHRTBs and RHRs in addressing problems of persons with disabilities that arise and differ before, during and after situations of armed conflict. For example, does the problem of varied levels of increased vulnerability for persons with disabilities, alongside their compromised protection before, during and after situations of armed conflict, apply the same or different models of disability regarding disability related obligations?

Secondly, the approach of the social model has proved troubling and demotivating, particularly to those professionals that assist State authorities in administering rehabilitation programmes, or funding disability charities.¹⁴⁶ Moreover assistance from medical professionals, like those from the Red Cross, remain indispensable for rendering specific needs of persons with disabilities during, and after situations of armed conflict.¹⁴⁷ This criticism is attributable, in particular, to the predisposition of the social model's outward looking approach, disagreeing with the medical's inward looking approach. Contrastingly, the social model counters the medical model by supporting environments that are adapted or designed to accommodate persons with disabilities as the required means of safeguarding their empowerment.

Relating to the first criticisms, the social model has also been discredited because its outward-looking approach makes it incompatible with most characteristics and manifestations of disability issues in States of the developing

¹⁴⁶ R. Lawthom and T. Chataika, 'Lave and Wenger, Communities of Practice and Disability and Disability in *Disability and Social Theory: New Developments and Directions*, D. Goodley, B. Hughes and L. Davis (Eds.) (Palgrave Macmillan, 2012) pp. 233-251.

¹⁴⁷ M. Oliver, *Understanding disability from Theory to Practice*, (Palgrave Publishers, 1996) pp. 30-42

World.¹⁴⁸ In this regard, the social model has been condemned for its failure to relate fairly well with aspects of poor health, high levels of poverty, civil wars and many other relevant characteristics constituting the greater manifestation of problems encountered by persons with disabilities, especially in Sub-Saharan Africa as well as Middle Eastern and North African States (MENA).¹⁴⁹ Therefore, it is unsurprising that extending the evolutionary application of the social model through a rights-based approach has attracted questions relating to its suitability, credibility and practicability during, and after situations of armed conflict.¹⁵⁰ The thesis shall expound this concern further in Chapters 5 and 6.

Habasch, Kabbara and Nagata seem to suggest that some of the disability related obligations that evolved through applying the social model to the rights-based approach should neither be ignored nor underestimated.¹⁵¹ That presupposition is based on the possibility that some of the disability related obligations which are relevant to States undergoing peacetime, are equally relevant when such States undergo situations of armed conflict. Consequently, in post-conflict and armed conflict settings, there is a possibility for the different categories of persons with disabilities to benefit from varied disability related obligations. Some of those obligations could be underpinned by both the inward-looking approach of the medical model, and others may be underpinned by the outward-looking approach of the social model. Thus, in some respects, it is highly possible that the medical model would be applied alongside the social model.¹⁵² In that regard, this analysis shall differ from Habasch, Kabbara and Nagata in considering the absence of a distinction between their explanation of a rights-based model of disability, and disability as an

¹⁴⁸ R. Lawthom and T. Chataika, 'Lave and Wenger, Communities of Practice and Disability and Disability in *Disability and Social Theory: New Developments and Directions*, D. Goodley, B. Hughes and L. Davis (Eds.) (Palgrave Macmillan, 2012) pp. 233-251.

¹⁴⁹ S. Grech, 'Disability and the Majority World: A Neo-colonial Approach', in *Disability and Social Theory: New Developments and Directions*, D. Goodley, B. Hughes and L. Davis (Eds.) (Palgrave Macmillan, 2012) pp. 52-69 at pg. 61.

¹⁵⁰ R. Habasch, 'Is the Rights Model of Disability Valid in Post-conflict Lebanon? A Participatory Pilot Survey', *Journal of Palestine Studies* (1997) 27 (1) pp. 126,135. See also. N. Kabbara and K. K. Nagata, 'Is the Rights Model of Disability Valid in Post-conflict Lebanon? A Participatory Pilot Survey in Beirut', United Nations Development Cooperation Branch. See also. K. K. Nagata, 'Disability and Development: Is the Rights Model of Disability Valid in the Arab Region? An Evidence Based Field Survey in Lebanon and Jordan', *Asia Pacific Disability Rehabilitation Journal* (2008) 19 (1) pp. 60, 78. See also M. Turmusani, 'Disability and Development in Kosovo: The Case for CBR Approach, *Asia Pacific Disability and Rehabilitation Journal* (2002) 13 (1) pp. 19-28.

¹⁵¹ *Ibid.*

¹⁵² CRPD Article 16(4), 26 (1) (a).

emerging branch of international law with distinct State obligations that are monitored through regional and international institutions. Their reference to a rights-based model of disability could obstruct an understanding of how rights remain an overarching element, which could aid the application of different models through creating binding obligations on State mechanisms.¹⁵³

Arguably, Habasch, Kabbara and Nagata seem to reduce the representation of rights to a 'rights model of disability' and seem to blur the differences between rights, obligations, models and approaches to disability. As a matter of fact, disability rights, as well as their resultant obligations, are of distinct nature and have a completely different role to play from models of disability and their respective approaches.¹⁵⁴ The scholars' narrow minded understanding of the different generation regimes of rights-based ideas, is exemplified by limiting their tendency to place them under one category of a 'rights model of disability'. The perspective could also account for the tendency to limit the importance and the value of rights-based ideals of disability, and related rights, to concepts of the social model, whilst overlooking the importance of rights-based concepts in relation to enabling disability rights concerning rehabilitation. For instance, the rehabilitation right is a typical example of a disability related obligation that evolves from a medical model of disability.¹⁵⁵ Thus, such an obligation leads to an enabling right, which may enhance the participation of States in safeguarding the rehabilitation of persons with disabilities who might have suffered amputation and mutilation during, and after the armed conflict.¹⁵⁶ Similarly, that rehabilitation would be combined with personnel mobility habitation to enable civilians and combatants with war-related disabilities to

¹⁵³ R. Habasch, 'Is the Rights Model of Disability Valid in Post-conflict Lebanon? A Participatory Pilot Survey', *Journal of Palestine Studies* (1997) 27 (1) pp. 126,135. See also. N. Kabbara and K. K. Nagata, 'Is the Rights Model of Disability Valid in Post-conflict Lebanon? A Participatory Pilot Survey in Beirut', United Nations Development Cooperation Branch. See also. K. K. Nagata, 'Disability and Development: Is the Rights Model of Disability Valid in the Arab Region? An Evidence Based Field Survey in Lebanon and Jordan', *Asia Pacific Disability Rehabilitation Journal* (2008) 19 (1) pp. 70, 78.

¹⁵⁴ R. Habasch, 'Is the Rights Model of Disability Valid in Post-conflict Lebanon? A Participatory Pilot Survey', *Journal of Palestine Studies* (1997) 27 (1) pp. 126,135. See also. K. K. Nagata, 'Disability and Development: Is the Rights Model of Disability Valid in the Arab Region? An Evidence Based Field Survey in Lebanon and Jordan', *Asia Pacific Disability Rehabilitation Journal* (2008) 19 (1) pp. 60, 78.

¹⁵⁵ M. A. Cementwala, '*Rehabilitation International's position paper on the Right to [Re]habilitation*', available at <<https://www.un.org/esa/socdev/enable/rights/ahc3ri.pdf>> (accessed on 25/August/2018).

¹⁵⁶ CRPD Article 26 and Article 20. See also. C. Rothman, 'The Challenge of Disability and Access: Reconceptualising the Role of the Medical Model', in *Controversies and Disputes in Disability and Rehabilitation*, R. Meinert and F. Yuen (Eds.) (Routledge, 2012) pp. 126-154.

obtain a right to accessibility in post-conflict settings.¹⁵⁷ This perspective also symbolises an individual or medical model.¹⁵⁸ The idea of rehabilitation is contrastable with the social model that applies disability related obligations associated with consequential disability rights. Such a family of disability rights only became realised after removing attitudinal barriers and improving external environments to make them accessible.¹⁵⁹ Note that the social model could be complementary to the medical model, especially if its aspects of adaptability and accessibility are perceived in conjunction and compatibility with making people and places supportive in accommodating rehabilitated individuals with disabilities.¹⁶⁰

In summary, the criticism of Habasch, Kabbara and Nagata ought to have been clearer and more helpful if it had gone further to highlight the model or models of disability that are considered appropriate to protect and provide varied needs of persons with disabilities, before, during and after situations of armed conflict.¹⁶¹ Nonetheless, the work of Habasch, Kabbara and Nagata remains important, especially in relation to the reasons highlighted as limitations of the social model for dealing with problems faced by persons with disabilities in post conflict States. Most of these States are situated in the Sub-Saharan African, Middle Eastern and North African (MENA) regions, and might be transitioning from a peaceful state to an

¹⁵⁷ CRPD Article 26 and Article 20. See also S. Meyers, 'Wounded Warriors or One of the Crowd? Civil War, Citizenship and Disability in Nicaragua, Disability Studies and Ability Studies: Two Lenses to Investigate', *Peace Studies Journal* (2013) 6 (4) pp. 22, 36. See also. Neloufer de, 'Playing Disability, Performing Gender: Militarised Masculinity and Disability Theatre in the Sri Lankan War and Its Aftermath', in *Disability in the Global South: the Critical Handbook*. S. Grech and K. Soldatic (eds.) (Springer, 2016) pp. 99-116. See also. A. Dayaratne, 'Sri Lanka: Disabled veterans battle high cost of prosthetics, unemployment. (Colombo, 12/July/2007).

¹⁵⁸ J. C. Rothman, 'The Challenge of Disability and Access: Reconceptualising the Role of the Medical Model', in *Controversies and Disputes in Disability and Rehabilitation*, R. Meinert and F. Yuen (Eds.) (Routledge, 2012) pp. 126-154.

¹⁵⁹ Food and Agriculture Organization of the United Nations, 'Putting ability before disability in Thailand and Cambodia', Available at <<http://www.fao.org/english/newsroom/highlights/2000/001106-e.htm>> (Accessed on 17/October /2017).

¹⁶⁰ J. C. Rothman, 'The Challenge of Disability and Access: Reconceptualising the Role of the Medical Model', in *Controversies and Disputes in Disability and Rehabilitation*, R. Meinert and F. Yuen (Eds.) (Routledge, 2012) pp. 126-154.

¹⁶¹ R. Habasch, 'Is the Rights Model of Disability Valid in Post-conflict Lebanon? A Participatory Pilot Survey', *Journal of Palestine Studies* (1997) 27 (1) pg. 126,135. See also. N. Kabbara and K. K. Nagata, 'Is the Rights Model of Disability Valid in Post-conflict Lebanon? A Participatory Pilot Survey in Beirut', United Nations Development Cooperation Branch. See also. M. Turmusani, 'Disability and Development in Kosovo: The Case for CBR Approach, Asia Pacific Disability and Rehabilitation Journal (2002) 13 (1) pg. 19-28.

armed conflict State, before becoming post-conflict States, as illustrated in the diagram enclosed in chapter 1.

Related to the above criticism, is the work of Goodley (2011 to 2018) which comprises of literature explaining the social models of disability, nonetheless, most of that literature demonstrates neither the models of disability applied by United Nations Treaty Bodies, nor those adopted by Regional human Rights treaty mechanisms.¹⁶² Therefore, Goodley is less helpful in clarifying whether those institutions of international law are inclined to apply the same or different models of disability during the three-stage cycle. This lack of clarity can also apply to Degener,¹⁶³ although some of Degener's work is relevant for the purposes of this thesis in two particular aspects. Firstly, for explaining why models of disability in WENA States differ from those appropriate for States in the Sub-Saharan Africa and MENA regions. Secondly, for elucidating why armed conflict as a Global South problem, constitutes a factor that must be recognised in the context of framing regimes of international disability that can respond to issues of third World states, occasionally referred to by studies on Third World Approaches to international law (TWAIL). In fact, Habasch concludes that armed conflicts are one of those occurrences that justify a further inquiry in extending a human rights-based model of disability to post-conflict settings.¹⁶⁴ His contention must be perceived as a call to

¹⁶² D. Goodley, *Disability Studies: An Interdisciplinary Introduction*, London, Sage Publications; (2011) pp. 1-21. See also. Goodley, B. Hughes and L. Davis, 'Introducing Disability and Theory', in *Disability and Social Theory: New Developments and Directions*, D. Goodley, B. Hughes and L. Davis (Eds.) (Palgrave Macmillan, 2012) pp. 1-16. See also. D. Goodley and L. Swatz, 'Place of Disability', in *Disability in the Global South: The Critical Handbook*, S. Grech and K. Soldatic (eds.) (Springer International Publishing, 2016) pp. 69-84.

¹⁶³ T. Degener, 'A New Human Right Model of Disability', in the *United Nations Convention on the Rights of Persons with Disabilities: A Commentary*, V. D. Fina, et al. (Eds.) (Springer, 2017) pp. 42-57. See also. T. Degener, 'Disability in a Human Rights Context', in *The Special Issue Disability Human Rights Law*, A. Arstein-Kerslake (ed.) *Laws* 2016, 5(3), pp. 19, 24. See also. T. Degener, 'International Disability Law; A New Legal Subject on the Rise: The Interregional Experts' Meeting in Hong Kong, December 13-17, 1999', *Berkeley journal of International Law*, (2000) 18, pp. 180, 195. See also. T. Degener, and G. Quinn. 'A Survey of International, Comparative and Regional Disability Law Reform', in *Disability Rights Law and Policy*, M. L. Breslin and S. Yee. (Eds.) (Transnational, 2002) pp. 3-128. See also. T. Degener and Y. Koster-Dreese, 'Human rights and disabled persons: Essays and relevant human rights instruments' (Dordrecht: Martinus Nijhoff, 1995). See also. T. Degener. '*Personal assistance services and laws: A commentary.*', Paper presented at International, Symposium on Personal Assistance Models at the World Institute on Disability and Rehabilitation International, Oakland, 1991.

¹⁶⁴ R. Habasch, 'Is the Rights Model of Disability Valid in Post-conflict Lebanon? A Participatory Pilot Survey', *Journal of Palestine Studies* (1997) 27 (1) pp. 126,135. See also. N. Kabbara and K. K. Nagata, 'Is the Rights Model of Disability Valid in Post-conflict Lebanon? A Participatory Pilot Survey in Beirut', United Nations Development Cooperation Branch. See also. K. K. Nagata, 'Disability and Development: Is the Rights Model of Disability Valid in the Arab Region? An Evidence Based Field Survey in Lebanon and Jordan', *Asia Pacific Disability Rehabilitation Journal* (2008) 19 (1) pp. 70, 78.

revisit the increasing universalisation of the social model in the framing of the rights-based obligations that are owed by States to persons with disabilities.

2.4. Final Reflections on Models of Disability

In summary, people with disabilities have historically, culturally and socially been subjected to several models of disability in different contexts. Some models present people with disabilities as biologically defective: physically or mentally incapable hence fundamentally incompetent to be entrusted with socioeconomic responsibilities. Reconsidering the understanding of disability, by disassociating it with attitudes and beliefs that are disadvantageous to persons with disabilities, has emerged as an important component of the twenty-first century in reconstructing the contemporary awareness of disability, or disablement as key elements of external environments.

This research will use the ideas explained concerning the theory and approaches to models of disability, to provide an analytical framework for this study. As aforementioned, the originality of this study shall be based on using different models of disability for demonstrating and understanding the protection afforded to persons with disabilities under UNHRTBs and RHRs, with a view to identifying the most suitable model of disability to apply in situations of armed conflict and post-conflict settings.

Accordingly, the different models of disability are important for analysing the ways through which UNHRTBs and RHRs are perceiving issues of disability. Therefore, investigating the nature of interactions existing between models of disability that UNHRTBs and RHRs use during, or after armed conflict, shall be the overarching concept through which this study analyses the problems of persons during the three-stage cycle. It must be borne in mind that those treaties are part of the various sources of laws useful for protecting persons with disabilities and the most vulnerable groups during times of armed conflict.

Another reason as to why models of disability have been considered as a key component for this study, lies in the ability of these models to act as lenses for

exploring the various approaches through which aspects of disability can be perceived. In so doing, models of disability shall be a useful source of analytical themes. The themes are important in exposing whether models that are applied by UNHRTBs and RHRs to the problems of persons with disabilities, might inform or misinform perspectives in the case of applying those treaties after situations of armed conflict.

Through reliance on models as a theoretical framework, different disciplines have found them to be useful analytical tools to investigating research questions. However, there are rarely studies that have used models of disability, or their approaches, as a means of investigating the approaches applied by UNHRTBs and RHRs in their conceptualisation of obligations owed to person with disabilities in peacetimes, armed conflict and towards the post-conflict period. Perhaps the need to consider the vagueness of models of disability that should apply to obligations of post-conflict situations of previous armed conflict States, is long overdue. This is important in protecting and providing needs of persons with disabilities that might vary before, during, and after situations of armed conflict.¹⁶⁵

The subsequent section, Part Two, shall investigate the model and approach to disability that UNHRTBs are applying in their concretisation of disability related obligations. This part will identify the models often relied upon by specific UNHRTBs and whether these models of disability tend to change or remain the same in the event of UNHRTBs addressing disability matters in the context of armed conflict situations and post-conflict States. That analysis is instrumental in elucidating if the problems of persons with disabilities which are envisioned in situations of armed conflicts, referred to by Article 11 of the CRPD, could imply framing disability related obligations by either centring on a specific model of disability, or applying a hybrid of particular models of disability.

¹⁶⁵ R. Traustadottir, 'Disability Studies, the Social Model and Legal Developments' in *The UN Convention on the Rights of Persons with Disabilities European and Scandinavian Perspectives*, O. M. Arnadottir and G. Quinn, (eds.) (Martinus Nijhoff Publishers, 2009) pg. 10.

UN HUMAN RIGHTS BODIES AND MODELS OF DISABILITY AS APPLIED IN POST CONFLICT STATES

Chapter 3

The ICESCR and the ICCPR and Models/Approach to Disability

3.1. Introduction

The first Chapter in this part of the thesis examines the models of disability applied by two UNHRTBs. These are the Human Rights Committee (hereafter the HRC/the Committee) on one hand, and on the other hand the Committee on Economic Social and Cultural Rights (hereafter the CESCR).¹⁶⁶ The UN is entrusted with the implementation of the International Covenant on Civil and Political Rights (hereafter the ICCPR),¹⁶⁷ whereas the CESCR is entrusted with the International Covenant on Economic Social and Cultural Rights (hereafter the ICESCR).¹⁶⁸ This Chapter shall seek to identify models of disability applied by the above UNHRTBs. Initially the discussion will examine the models of disability applied at the time of the drafting of the ICCPR and ICESCR, and then proceed to analyse the models of disability underpinning their contemporary conceptualisation of disability. To be in position to undertake this task, this Chapter shall rely on the *travaux préparatoires* of the ICESCR and ICCPR. Given the breadth of materials that are produced in relation to these two UNHRTBs, only the General Comments from the CESCR and the HRC are examined under the subsequent sections. General Comments are considered because they are produced by the CESCR and the HRC respectively. In most cases the General Comments are elaborate in nature to reflect interpretations of UNHRTBs on various aspects such as disability. General Comments are subject to revision which can be helpful in understanding traces of evolutionary trends that might suggest a changing perspective over time.¹⁶⁹

¹⁶⁶ UN Website for Human Rights Treaty Collection, Available at <<https://www.ohchr.org/en/hrbodies/Pages/HumanRightsBodies.aspx>> (Accessed 17/June/2017)

¹⁶⁷ Ibid. See also. H. Keller and G. Ulfstein, 'Introduction', in *UN Human Rights Treaty Bodies: Law and Legitimacy*, L. Grover (ed.) Cambridge University Press, 2015) pp. 1-15.

¹⁶⁸ Ibid. See also. U. Khaliq and R. Churchill, 'The protection of Economic Social rights a particular challenge', in *UN Human Rights Treaty Bodies: Law and Legitimacy*, L. Grover (ed.) Cambridge University Press, 2015) pp. 199-260.

¹⁶⁹ See UN Human Rights Committee (HRC), CCPR General Comment No. 4: Article 3 (Equal Right of Men and Women to the Enjoyment of All Civil and Political Rights), adopted on the 30/July/1981. Replaced by General Comment No. 28: Article 3 (The Equality of Rights between Men and Women), adopted on 29/March/2000, CCPR/C/21/Rev.1/Add.10. Paragraph. 1.

3.2. The ICESCR and the ICCPR Treaty Bodies and Models of Disability

3.2.1. The Drafting History of the ICESCR and the ICCPR.

This section considers the *travaux preparatoires* of the ICCPR and the ICESCR with specific interest centred on establishing models of disability that underpin the conceptualisation of disability and frame obligations owed to persons with disabilities. This is important in understanding how different actors who were involved in the drafting of the ICESCR and the ICCPR conceptualised disability and understood components of an environment of disability. Equally important is an understanding of the legal history which is vital in identifying any variances in the original and modern models of disability. This analysis also establishes if those variances envisaged the requirement of changing models of disability to match with the fluctuating threshold in protective requirements of States before, during and after situations of armed conflict. Additionally, the importance of revisiting the *travaux preparatoires* is also vital in facilitating a better understanding of the legal history upon which current obligations for UNHRTBs are derived. Understanding of such legal history is key in establishing the roots and the evolutionary processes that influenced the models of disability that UNHRTBs are applying in their contemporary perspective of protective state obligations as owed by States to persons with disabilities.

In terms of analysing the models applied during the drafting of ICESCR and the ICCPR, it is imperative to reiterate that those two UN Human Rights Treaties were conventionally intended to stipulate human rights obligations that State parties owed to individuals in times of peace, rather than armed conflicts.¹⁷⁰ Note that in the context of post-conflict States, the categorisation of State obligations would imply that some human rights obligations are in jurisdictions of States in the armed conflict stage of the three-stage cycle.¹⁷¹ Consequently, there rules concerning derogating from some of

¹⁷⁰ M. Milanovic, 'UK to Derogate from the ECHR in Armed Conflict', Published on October/5/2016, The European Journal of International Law Available at <<https://www.ejiltalk.org/uk-to-derogate-from-the-echr-in-armed-conflict/>> Accessed on 15/August/2017.

¹⁷¹ Al-Waheed V. Ministry of Defence [2017] 2 W.L.R. 327. See also A V. United Kingdom, Application No.3455/05, (2009) 49 E.H.R.R. 29. See also. M. Amrei, 'Limitations to and Derogations from Economic, Social and Cultural Rights', Human Rights Law Review 9:4(2009), pp. 557,601 at pg. 558.

the human rights obligations in jurisdictions of post-conflict States during the armed conflict.¹⁷² However, in relation to disability during and after situations of armed conflict, there is an absence of certainty as to whether the same model of disability should be applied to human rights obligations for which State derogation is permitted, and those for which such State derogation is impermissible. Subsequent sections of this thesis will examine the consequential aspects of this problem in much more details.

Additionally, both the ICESCR and the ICCPR entered into force in 1976.¹⁷³ In the drafting of those treaties, the delegation from the United Kingdom was of the view that the Commission on Human Rights had previously considered most social and economic rights. However, the Commission had relied on international specialised agencies as the means to attain the international recognition of those rights.¹⁷⁴ In this regard, the examples of those specialised agencies that also participated in the process of drafting the ICESCR and the ICCPR included; the World Health Organisation (WHO), the International Labour Organisation (hereafter the ILO) in addition to the United Nations Education Scientific and Cultural Organization (hereafter the UNESCO).¹⁷⁵

It must be noted that some of the participants of specialised agencies such as, the WHO, applied their medical model of disability, to guide opinions of States towards persons with disabilities.¹⁷⁶ It is important to bear in mind that States have a tendency of attaching importance to views of experts who contribute to the work of the specialised agencies, such as the WHO. This tendency is shown by the attention that States afford to the submissions of Dr. Dorolle on matters of global health.¹⁷⁷ It must be noted that Dr. Dorolle headed the delegation that represented the WHO when

¹⁷² UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), 20 January 2003, E/C.12/2002/11. Paragraph. 40. See also. UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights, E/C.12/2005/4. Paragraph. 17. Cf. UN Human Rights Committee (HRC), CCPR General Comment No. 5: Article 4 (Derogations), 31 July 1981. Paragraphs. 1-3.

¹⁷³ A/RES/21/2200, Twenty-first Session of the General Assembly held on 16/December/1966.

¹⁷⁴ Ibid.

¹⁷⁵ E/CN.4/SR.203 of the Commission of Human Rights (CHR), Seventh Session at the 203rd Meeting held on 24/April/1951) see also B. Saul (ed.) 'The International Covenant on Economic, Social and Cultural Rights: *Travaux Préparatoires*, 1948-1966, Volume 1 (Oxford University, Press, 2016) pg. 273.

¹⁷⁶ Ibid. pg. 273

¹⁷⁷ E/CN.4/SR.203 of the Commission of Human Rights (CHR), Seventh Session at the 203rd Meeting held on 24/April/1951).

negotiating the constituent embodiments of the right to health.¹⁷⁸ This observation is particularly important, as mentioned in Chapter Two of this thesis, where the conceptualisation of disability by the WHO is seen as playing an incidental role in supporting the application of the medical model and its inward-looking approach. The classification of functioning, disability and health (ICF), also tends to underpin the manner in which the approach adopted by the WHO is framing the representation of disability.¹⁷⁹ Accordingly, relying on the above idea of ICF, the WHO demonstrates its perspective of disability as a health-related impairment, then its participation in the drafting would neither acknowledge nor leave room for the social model of disability.¹⁸⁰ Although it is undeniably true that the manner in which the WHO uses the medical model may have credibility with reference to problems of global health, and the likelihood of overlaps between health and disability. In this case, lack of good health could cause some disabilities and, healthcare itself, could represent an inaccessible public right to persons with disabilities.¹⁸¹ However, the manner in which the WHO applies the medical model would be less helpful in understanding health as an inaccessible public right to persons with disabilities, particularly during and after situations of armed conflict.

It is also imperative to note that persons with disabilities are mentioned neither in the drafting of the ICESCR, nor in that of the ICCPR, especially in more explicit terms. Occasionally there is a remote contemplation of disability using the inward-looking perspective, possibly due to the prevailing influence of medical model. For instance, when contemplating the right to social security, the Commission received a disability-associated communication from the delegation of New Zealand.¹⁸² The delegation was of the view that,

“Everyone has the right to social security in respect of sickness, disability [...] to the extent to which the resources of the state or community can provide it.”¹⁸³

¹⁷⁸ B. Saul (ed.) Volume. 1 pg. 268.

¹⁷⁹ World Health Organization ‘*International Classification of Impairments, Disabilities, and Handicaps A manual of classification relating to the consequences of disease*’, Published in accordance with resolution WHA29. 35 of the Twenty-ninth World Health Assembly, 3-21/May/1976.

¹⁸⁰ Ibid. pg. 277-278.

¹⁸¹ A. S. Kanter, ‘The Development of Disability Rights under International Law: From Charity to Human Rights’, (Routledge, 2015) Pp.11-12.

¹⁸² UN Economic and Social Council Adopted during the Third Session on the 16/April/1948 [hereafter E/CN.4/82/Add. 12] pg. 25.

¹⁸³ Ibid. pg. 25.

Although, the delegation is referring to disability in the above context, its framing of disability applies underpinnings of the medical model of disability in the following ways: firstly, through misrepresenting disability as a bodily condition, rather than a representation of an ostracised group. Hence this provides a possible explanation for the low likelihood for the delegation of New Zealand to make an explicit reference to persons with disabilities. Secondly, the medical model of disability is also applied by the delegation tending to limit its conceptualisation of disability as equitable to other listed examples of undesirable phenomenon that constitute the basis of entitlement to social security provision.¹⁸⁴

New Zealand's conceptualisation of disability is also important in elucidating the social security welfare context of disability. That context constitutes a manner through which the inward-looking approach of the medical model has continued to manifest in Western European and North American (hereafter WENA) States.¹⁸⁵ Particularly WENA States rely on medical assessments for ascertaining disability identity.¹⁸⁶ That makes the rendering of disability welfare support dependent on recommendations from those medical assessments.¹⁸⁷ In some cases, WENA States have applied the medical model and its body fixed inward-looking approach to institutionalise persons with disabilities.¹⁸⁸ Conceivably, in most WENA States, institutionalisation forms a fundamental part of debates on the welfare and wellbeing of persons with disabilities. Consequently, social welfare institutions remain a means of providing social security resources by most WENA States.¹⁸⁹ A related point concerns the vulnerability of social security welfare institutions to attacks, which increases during armed conflict.¹⁹⁰ This

¹⁸⁴ *Ibid.* pg. 25.

¹⁸⁵ L. Tamara, 'Proving disability and reasonable adjustments, A worker's guide to evidence under the Equality Act 2010', 5th edition, (Law Centre, 1/April/2014, Central London, London UK) pg. 51.

¹⁸⁶ *Ibid.* pg. 51.

¹⁸⁷ Office for Disability HM government, Equality Act 2010 Guidance, Guidance on matters to be taken into account in determining questions relating to the definition of disability Office for Disability Issues, London, UK, May 2011.

¹⁸⁸ T. F. Allen, R. Traustadottir and L. Spina, 'Six years in the Institution', in *Deinstitutionalization and People with Intellectual Disabilities: In and Out of Institutions*, K. Johnson and R. Traustadottir. (Eds.) (Jessica Kingsley Publishers, 2005) pp 30-49. See also. A. Hunter and B. Murfin-Veitch, 'I've been in the hospital all my life', in *Deinstitutionalization and People with Intellectual Disabilities: In and Out of Institutions*, K. Johnson and R. Traustadottir (Eds.) (Jessica Kingsley Publishers, 2005) pp 85-92

¹⁸⁹ J. Walmsley Institutionalisation: A historical Perspective in *Deinstitutionalization and People with Intellectual Disabilities: In and Out of Institutions*, K. Johnson and R. Traustadottir (Eds.) Jessica Kingsley Publishers, 2005) pp 50-65.

¹⁹⁰ J. Moussa, 'Elderly, Handicapped under Shelling in Old Aleppo', (Broadcasted on Al-Aan TV 8/December/2012). Available at <<https://www.youtube.com/watch?v=54ysGTi9Tzo>> (accessed 12/March/2015).

is mostly in armed conflict affected MENA States that have developed a trend to misuse such institutions as military bases, instead of using them to provide social security facilities to persons with disabilities.¹⁹¹ Similarly post- conflict States are unlikely to have resources for investing in the social security welfare system of persons with disabilities. This last concern shall be expanded further in relation to the role of the charity approach, as a resource centred alternative for funding disability initiatives in post-conflict States.

During its 184th meeting in Laker district, USA, the Commission on Human Rights approved the draft, which specified that,

"Everyone has the right to social security and to safeguards against absence of livelihood caused [...] illness or disability, old age or other factors beyond his control."¹⁹²

Similar to the earlier discussion, this perspective exposes tendencies of associating disability with other unattractive conditions such as illnesses or ageing that are purportedly beyond the ability of the affected persons to overcome. Comparatively, by categorising disability in the same context as illness or aging, this submission has two implications. Firstly, such a categorisation seeks to create an impression which portrays disability as a body condition as opposed to a human identity. Furthermore, the above categorisation of disability also signifies attitudes of labelling disabilities as consequential circumstances that are nothing more than symptoms of diseases. In this context, the medical and the individual models seem to play a key role in illustrating that a causal relationship could, in some cases, subsist between lack of good health and disability. Analogously, this thesis contends a similar causal relationship seems to occur between occurrences of armed conflict and the prevalence of disabilities. Therefore, this thesis argues that the above relationship also presents an interesting perspective that makes models of disability of fundamental importance in helping the Human Rights Commission to develop a better understanding of legal duties owed to persons with disabilities in a *jus post-bellum* context.

¹⁹¹ Protocol Additional to the Geneva Conventions of 12/August/1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. Article 52 (1). See also Y. Knell, 'Israeli strike on disability shelter in Gaza's Beit Lahiya', (BBC News website, 12/July/2014) Available at <<http://www.bbc.co.uk/news/world-middle-east-28275837>> (accessed 13/July/2016).

¹⁹² Ibid. pg. 25. See also. UN Economic and Social Council adopted 22/March/1950, during the Sixth Session in New York [hereafter E/CN.4/ 365] pg. 77 and pg. 82.

Related to the above, during the drafting of the two UNHRTBs, representatives from the United Kingdom and Belgium, supported the maintaining of certain legal restrictions that exclude persons with mental disabilities from enjoying socioeconomic rights.¹⁹³ Those legal restrictions, imposed on persons with mental disabilities, resulted from depriving them of legal capacity through national laws regarding persons of unsound mind.¹⁹⁴ In fact, the delegation from the United Kingdom was strongly opposed to extending a considerable set of rights to persons with mental disabilities.¹⁹⁵ Such legal exclusions from enjoying certain of rights, symbolises the inward-looking approach of the medical and individual models. It is vital to note that in addition to those models opposing the legal capacity of persons with disabilities, they also tend to support the confinement of such individuals in care home facilities.¹⁹⁶ However, as already noted those facilities have been reported to endanger the safety of persons with disabilities in the event of being targeted during, and in the aftermath of, armed conflicts.¹⁹⁷

Resolution 30/3447 also indicates the application of the medical and individual models in certain documents adopted by UN chartered bodies.¹⁹⁸ For example, Resolution 30/3447 defined the term 'disabled', as referring to any person unable to guarantee by himself or herself, wholly or partly, necessities of a normal social life because of a deficiency in their physical or mental capabilities.¹⁹⁹ Notwithstanding the fact that such a deficiency could either be congenital in its nature, or a consequence

¹⁹³ UN Economic and Social Council adopted 19/May/1950, during the Sixth Session in New York [hereafter E/CN.4/SR.184]. pg. 13 Paragraph 45. Paragraph 40. See also. E/CN.4/365, pg. 82.

¹⁹⁴ UN Convention on the rights of Persons with Disabilities, 'A major step forward in promoting and protecting rights', World Health Organization, Geneva Switzerland, 2007, Available at <http://www.who.int/mental_health/policy/services/en/index.html> (accessed 20/November/2017)

¹⁹⁵ E/CN.4/365 pg. 77 and pg. 82.

¹⁹⁶ T. F. Allen, R. Traustadottir and L. Spina, 'Six years in the Institution', in *Deinstitutionalization and People with Intellectual Disabilities: In and Out of Institutions*, K. Johnson and R. Traustadottirpp. (Eds.) Jessica Kingsley Publishers, 2005) pp 30-49. See also. A. Hunter and B. Murfin-Veitch, 'I've been in the hospital all my life', in *Deinstitutionalization and People with Intellectual Disabilities: In and Out of Institutions*, K. Johnson and R. Traustadottirpp. (Eds.) Jessica Kingsley Publishers, 2005) pp 85-92.

¹⁹⁷ *Richmond Hill v. United States*, Case 9213, Report No. 3/96, Inter-Am.C.H.R., OEA/Ser.L/V/II.91 Doc. 7 at 201 (1996). Paragraph IV. See also. Y. Knell, 'Israeli strike on disability shelter in Gaza's Beit Lahiya' (BBC News website, 1/July/2014) Available at <<http://www.bbc.co.uk/news/world-middle-east-28275837>> (accessed 13 July 2016; J. Moussa, 'Elderly, Handicapped under Shelling in Old Aleppo', (Broadcasted on the Al-Aan TV on 8/December/2012). Available at <<https://www.youtube.com/watch?v=54ysGTi9Tzo>> (accessed 7/March/2015).

¹⁹⁸ Declaration on the Rights of Disabled Persons, Adopted by General Assembly Resolution 3447 (XXX) [hereafter A/RES/30/3447] on 9th/December/1975. Paragraphs 1 and 6.

¹⁹⁹ *Ibid.* A/RES/30/3447, Paragraph 1.

of other causes.²⁰⁰ In that regard, two points are worthwhile highlighting regarding Resolution 30/3447. Firstly, it exemplifies a conceptualisation of disability upon medical/individual models by limiting its perspective on the causes of disability to body impairments whilst, simultaneously, underestimating socioeconomic environments that are neither adapted nor adjusted, for accommodating the abilities of persons with disabilities. Secondly, it has a broader perspective by showing awareness that causes of disabling deficiencies are not limited to congenital factors. Therefore, this leaves room for arguing that situations of armed conflict are one of the factors likely to cause some individuals to suffer bodily deficiencies, especially in the event of amputations.

The CESCR uses General Comment No. 3 to expound that the principal result of the obligation reflected in article 2 (1) is to take steps “with a view to progressively achieving the full realization of the rights recognized” in the Covenant.²⁰¹ The CESCR also identifies that there are various language specific interpretations of the phrase “to take steps”:²⁰² in French it is translated as “to act” “s’engage à agir” and in Spanish “to take steps” means “to adopt measures” “a adoptar medidas”.²⁰³ Coincidentally, reliance on mainly Eurocentric versions of these expressions is an implicit gesture that the CESCR continues to rely on WENA States to approach, illustrate and interpret obligations under the ICESCR. The failure to make even a single reference to any of the none-Western languages such as Arabic, Chinese or Swahili shows the unbalanced illustration and interpretation of the obligations to take steps under article 2 (1) of the ICESCR by the CESCR. Regardless of whether translations of those languages would lead to the same understanding in French and Spanish, the act of mentioning them would be symbolic of inclusive representation and hence increasing the possibility for States from Africa, Asian and Arabic regions to better question the credibility of the CESCR.²⁰⁴

²⁰⁰ Ibid. A/RES/30/3447, Paragraph 1.

²⁰¹ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, 14 December 1990, [hereafter E/1991/23] Paragraph. 1. See also. Article 4(2) UN General Assembly, Convention on the Rights of Persons with Disabilities, 13 December 2006, A/RES/61/106, Annex I [hereafter CRPD].

²⁰² Ibid. E/1991/23 Paragraph. 2.

²⁰³ Ibid. E/1991/23 Paragraph. 2.

²⁰⁴ K. Mechlem, ‘Treaty Bodies and the Interpretation of Human Rights’, *Vanderbilt journal of transnational law* (2009) 42 pp. 905-946. pg. 932. See also. M. Bódig ‘The Patterns of Doctrinal Development in the Jurisprudence of the UN Committee on Economic, Social and Cultural Rights on State Obligations’, July/11/2012, University of Aberdeen, pg. 17.

It is imperative to note that the above trend of the CESCR to focus on social concerns, such as the varied linguistic versions, seems symbolic of ordinary social problems that would be more relatable to contexts of peaceful States than armed conflict and post conflict States. Arguably, the CESCR's trend of focusing on language expressions from the largely peaceful WENA States, accounts for its lack of attention to the three-stage cycle (of before, during and after armed conflict). This leads to inconsistencies in capabilities and maintenance of the attained achievements of States to take steps for progressively achieving the full realization of the rights.²⁰⁵ A similar obligation is seen in the upholding of connected rights of persons with disabilities under Article 4(2) of the CRPD.²⁰⁶ However, in relation to Article 2 of the ICESCR, the changing models of disability must sustain the fluctuating capabilities of States. Thereafter that sustainability must strengthen the progressive realisation of envisaged rights during the three-stage cycle.

The period before the occurrence of the armed conflict, the States have a higher capability to take steps to progressively achieve the full realization of the rights envisaged by this research in times of peace. In this regard, before an occurrence of an armed conflict, it is much easier for a State to take steps such as the collection and allocation of resources that are essential for the full realization of the rights. This is partly because a State would have the political stability that is paramount to plan, collect, and allocate resources, for the economic, social and cultural rights of individuals through means that are respectful to marginalised groups, such as persons with disabilities. In essence, during peacetime, there is a greater possibility for the machinery of a State to function more efficiently, due to having a favourable working environment for addressing concerns of inaccessibility to education,²⁰⁷ health,²⁰⁸ work and housing to persons with disabilities.²⁰⁹ Of course, in peacetime, there is a

²⁰⁵ ICESCR Article 2.

²⁰⁶ CRPD Article 4(2).

²⁰⁷ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education* (Art. 13 of the Covenant), 8 December 1999, E/C.12/1999/10. Paragraphs 16 (e) and 36. See also. UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 5: Persons with Disabilities*, 9 December 1994, E/1995/22, Paragraph 35. Cf. *General Comment No. 6: Paragraphs 36-42*.

²⁰⁸ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 5: Persons with Disabilities*, 9 December 1994, E/1995/22, Paragraph 34. See also. *General Comment No. 14: The Right to the Highest Attainable Standard of Health* (Art. 12 of the Covenant), 11 August 2000, E/C.12/2000/4. Paragraphs. 26 and 12 (b) (i).

²⁰⁹ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 12: The Right to Adequate Food* (Art. 11 of the Covenant), 12 May 1999. Paragraph 5. See also. Security Council Resolution.

reasonable expectation for States to use the available resources to maintain and improve the existing education, health and other related structures used to progressively achieve the full realization of economic social and cultural rights.²¹⁰ Some of those resources are probably devoted to modifying the external environments in order to adapt amenities to enable them to accommodate persons with disabilities.²¹¹ Consequently, peacetime is normally favourable for States to amass resources and plan necessary adjustments to progressively achieve the full realization of economic, social, and cultural rights for persons with disabilities.²¹² The social model supports obligations that modify external environments to adapt and adjust them for the capabilities of persons with disabilities. Ideas from this model, however, must not be overemphasized to avoid diminishing the importance of the medical model. A sole reliance on the social model's adaption of external environments is unlikely to advance the progressive realisation of economic, social and cultural rights without physical accessibility.²¹³ Such accessibility requires mobility facilities, such as crutches, that are grounded upon ideas of the medical model.

The occurrence of armed conflict undermines the ability of States to take steps to progressively achieve the full realization of rights.²¹⁴ During this stage, it is much harder for a State to take steps, such as the collection and allocation of resources, which are indispensable to progressing towards the anticipated rights. Moreover, during armed conflict, it is highly unlikely that a State machinery will normally completely lose its ability to maintain the existing education, health and other related structures, in spite of the likely growth in numbers of civilian and combatant populations that might suffer from war-related disabilities or post-traumatic stress

S/2004/616 Adopted on 23/August/2003, 'The Role of Law and Transitional Justice in Conflict and Post-Conflict Societies', Report by the Secretariat. Paragraphs 9-10.

²¹⁰ Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 3: The Nature of States Parties' Obligations*, 14 December 1990, E/1991/23. Paragraph. CRPD Article 4 (2).

²¹¹ UN Committee on Economic, Social and Cultural Rights Committee on Economic, Social and Cultural Rights (CESCR), *General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, 2 July 2009, E/C.12/GC/20. Paragraph. 9.

²¹² CRPD Article 4(2).

²¹³ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, 2 July 2009, E/C.12/GC/20.

²¹⁴ M. Amrei, *The Relationship between Economic, Social and Cultural Rights and International Humanitarian Law: An Analysis of Health Related Issues in Non-International Armed Conflict* (Martinus Nijhoff 2013) pg. 67–109. See also. M. Amrei, 'Limitations to and Derogations from Economic, Social and Cultural Rights', *Human Rights Law Review* 9:4(2009), pp. 557,601 at pg. 558.

disorders.²¹⁵ Such disabilities and disorders make the inward looking approach of the medical and individual models worth prioritising at this stage, since they have the ability to facilitate medical rehabilitation for persons with war-related disabilities.²¹⁶ There are also limited available resources devoted to modifying environments of public facilities using reasonable adjustments. It is unclear whether the charity approach to disability may be useful at this stage of the cycle, considering that an armed conflict would undermine the capabilities of the State machinery in executing its duties. It would affect modifications, adaptations and adjustments that are essential for ensuring that the stated obligation is also extended to persons with disabilities.

In the post-conflict stage there would be a need for international cooperation and international assistance to support a state working towards achieving rights for the disabled.²¹⁷ The possibility of securing such support makes the likelihood of fully securing these rights, more realistic in a post-conflict State than in an armed conflict affected State that is experiencing the second phase of the three-stage cycle. Unlike States undergoing situations of armed conflicts, for post conflict States, it is easier for a State to resume the undertaking of steps aimed at securing resources for reconstruction, rehabilitation and rebuilding processes. The consideration of persons with disabilities in processes of reconstruction, rehabilitation, and rebuilding should be considered vital for achieving their full progressive realization of economic, social and cultural by rights post-conflict States.²¹⁸ For example, in post-conflict Colombia, the

²¹⁵ M. Schauer and E. Schauer, 'Trauma-focussed Public Health Interventions. A Paradigm Shift in Humanitarian assistance and Aid Work', in *Trauma Rehabilitation after War and Conflict: Community and Individual perspectives*, E. Martz (ed.) (Springer, 2010) pp. 389-428. See also. S. Zanskas, 'A systems Approach to Post Conflict Rehabilitation', in *Trauma Rehabilitation after War and Conflict: Community and Individual perspectives*, E. Martz (ed.) (Springer, 2010) pp. 133-158.

²¹⁶ A. Dayaratne, 'Sri Lanka: Disabled veterans battle high cost of prosthetics, unemployment. (Colombo, 12/July/2007). See also See also. S. Meyers, 'Wounded Warriors or One of the Crowd? Civil War, Citizenship and Disability in Nicaragua, Disability Studies and Ability Studies: Two Lenses to Investigate', *Peace Studies Journal* (2013) 6 (4) pg. 22, 36.

²¹⁷ CESCR *General comment No. 22* (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights) E/C.12/GC/22, adopted on 01/May/2016. Paragraph. 59. See also. CESCR, *General comment No. 23* (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights) E/C.12/GC/23, adopted on 26/ April/2016. Paragraph 70. Cf. CRPD Article 32(1).

²¹⁸ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 30* on women in conflict prevention, conflict and post-conflict situations, 1 November 2013, CEDAW/C/GC/30. Paragraph. 11. See also. *General Comment No. 22* (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights) E/C.12/GC/22, adopted in 01 May 2016. Paragraph. 59. See also. CESCR, *General comment No. 23* (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights) E/C.12/GC/23, adopted on 26/ April/2016. Paragraph 70.

peaceful building and reconstruction has considered the inclusion of persons with disabilities.²¹⁹ This is partly because a post-conflict State is more likely to have some individuals in its population with war-related disabilities. Henceforth, there is a greater need for considering the importance of the medical and individual model for those individuals through planning and allocation of resources for State rehabilitation, reconstruction, rebuilding and remedial reparation. Considering that most post-conflict states might continue experiencing the limited availability of resources, support from international charities can be important²²⁰ because it is highly unlikely sole reliance on their own apparatus can meet the growing demand for basic needs of persons with disabilities,²²¹ in addition to renovating education, health and other related structures.

The last stage is the transition to peacetime and the ability of a State to take steps to achieve the full realization of rights. This stage is a phase of ultimate recovery and complete restoration of the State machinery from armed conflict's disabling impacts. In this respect, the State institutions and infrastructural facilities that are restored to minimise consequences of the armed conflict and resume the normal progression of economic, social and cultural rights. Of course, it must be appreciated that in terms of development, the occurrence of the armed conflict would have relegated the functions and activities of social, economic and cultural establishments thus destroying progress made towards to full realisation of rights, as well as impeding further progress in the positive direction of economic, social and cultural rights.²²² At this stage, there is total recovery and functioning of relevant institutions such as school, hospital, airports as well as communication and transport networks. Obligating post-conflict State to comply with a duty to consider the integration of persons with

²¹⁹ L. Correa-Montoya and M. C. Castro-Martínez, 'Disability and Social inclusion in Colombia', Saldarriaga-Concha Foundation (FSC), Alternative Report to the Committee on the Rights of Persons with Disabilities. Saldarriaga-Concha Foundation Press. Bogotá D.C., (2016). Colombia. pg. 12. See also. X. C. M. Balanta, 'Victims and Reparations Limitations and Challenges Colombia Victims Law (Act 1448 of 2011)', International Journal of Humanities and Social Science (2014) 4 (1) pg. 152, 164.

²²⁰ ICRC, Physical Rehabilitation Programme Annual Report 2013, International Committee of the Red Cross, Geneva, Switzerland. See also. ICRC, 'The CRC supports new rehabilitation centre in Sudan', Geneva, Switzerland, 11/August/2016.

²²¹ BBC News, 'War leaves some 800,000 people disabled in Afghanistan', Reported by K. Zarindast. On 26/January/2012 and Video produced by BBC Persian's A. Salimi. Available at <<https://www.bbc.co.uk/news/world-asia-16722788>> (Accessed on 23/June/2017). See also. S. Meyers, 'Wounded Warriors or One of the Crowd? Civil War, Citizenship and Disability in Nicaragua, Disability Studies and Ability Studies: Two Lenses to Investigate', Peace Studies Journal (2013) 6 (4) pp. 22, 36.

²²² T. Bundschuh, 'Economic, Social, and Cultural Rights in Armed Conflict', Nordic Journal of Human Rights, (2017) 35 (1) pg. 74-79. See also E. Schmid, 'United Nations publication underscore that shift: Taking Economic, Social and Cultural Rights Seriously in International Criminal Law in (Cambridge University Press 2015) pg. 300.

disabilities in rebuilding and reconstruction might ease and increase inclusive integration and restoration to a peaceful State. By this stage, the shift is to applying the social model rights-based ideas as useful concepts that can shape external environments to advance the full progressive realisation of economic social and cultural rights.²²³ In this respect, the charity-based approach, medical and individual models of disability could become secondary and complementary to the social rights-based model of disability.

3.2.2. General Comments from the CESCR and Discernible Models of Disability.

The subsequent investigation will use General Comments adopted under the auspices of the HRC and CESCR to establish the models of disability applied to conceptualise disability by respective UNHRTBs. Review of these General Comments is important in enabling subsequent Chapters to develop the nature of models of disability during, or after situations of armed conflict. This analysis will use examples of the General Comments to illustrate the change in approach from the (inward-looking) medical model, to the (outward-looking) social model. The analysis is important for discussing the varied vulnerability and protective concerns of persons with disabilities before, during and after situations of armed conflict in order to contest the inappropriateness of changes that appear to promote the universalisation of a social model, as a result of the influence of the social rights-based ideas. This research is set to promulgate the idea that disability law might lack the international element in case documents from the HRC and the CESCR and continue to depend heavily on the social model which has attracted criticism for failing to suitably address the problems associated with the armed conflict-disability relationship that usually arise during and after situations of armed conflict.

General Comment No. 5 of the CESCR is specifically intended for persons with disabilities.²²⁴ It claims that the drafting of the ICESCR happened at the time when the

²²³ General Comment No. 5, E/1991/23, paragraph. 15.

²²⁴ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 5: *Persons with Disabilities*, 9 December 1994, [hereafter E/1995/22] Paragraph 6.

awareness associated with having fixed obligations regarding matters of disability was insufficient.²²⁵

“The absence of an explicit, disability-related provision in the Covenant can be attributed to the lack of awareness of the importance of addressing this issue explicitly [...] at the time of the drafting of the Covenant over a quarter of a century ago.”²²⁶

Even though this research acknowledges the absence of a definite, disability-related provision in the ICSECR, it nonetheless attributes the absence of such a provision to the less developed prominence of the social model more a quarter of a century ago, the time when the drafting of rights-based ideas of this Covenant happened. Consequently, an exclusive reliance on the inward looking medical and individual models might have hindered awareness and the importance of addressing matters of persons with disabilities explicitly. This argument, however, is not implying that the CESCRC and the HRC should resort exclusively to the social model in their promotion of rights-based disability-related obligations. It should be considered that the inward-looking approach of the medical and individual models are more appropriate for supporting persons with disabilities, during and after, armed conflict. This implies that in the event of the CESCRC and the HRC becoming exclusively dependant on the social model, then, they might stand a risk of encouraging its universal applicability, whereas compromising the medical and individual models that seem more effective in obligating States to prioritise the medical-centred rehabilitation of persons with disabilities during and after armed conflict.

Additionally, according to General Comment No. 5, the CESCRC also reiterates that

“disability is closely linked to economic and social factors and that conditions of living in large parts of the world are so desperate that the provision of basic needs for all - food, water, shelter, health protection and education - must form the cornerstone of national programmes”²²⁷

In view of the above, it is self-evident that the CESCRC is enhancing its framing of disability based on an outward-looking, rights-centred approach of the social model.

²²⁵ Ibid. E/1995/22, Paragraph 6.

²²⁶ Ibid. E/1995/22, Paragraph 6.

²²⁷ Ibid. E/1995/22, Paragraph 1.

That is exemplified by the above perspective where the CESCR is recognising the importance of closely linking the causes of disability to economic and social factors that constitute the less adapted and less adjusted external environments in ways that accommodate persons with disabilities.²²⁸ That perspective of disabling environments is also used by the CESCR as a rationale for having disability related obligations aimed at obliging States to ensure that external environments are adapted and adjusted in ways that facilitate capabilities of persons with disabilities. This reaffirms that CESCR is paying attention to the social model's outward-looking approach in its framing of rights-based obligations.²²⁹ However, in this context it is worth noting that the CESCR gives a generic account of problems of disability without clarifying if the social model is applicable.²³⁰ If applicable, is the manner in which the model is applied the same before, during and after situations of conflict? These unsettled questions make the manner in which the CESCR applies models of disability in General Comment No. 5 problematic in expounding obligations owed to persons with disabilities during the three-stage cycle.

Furthermore, General Comment No.5 suggests that the CESCR is a typical example of a UNHRTB that underestimates the significance of armed conflict-related derogations from positive obligations, on which its social model hinges disability rights.²³¹ This point also leads to the related problem of the omission in the CESCR to use General Comment No.5 to credit the significance of the charity-based approach in post-conflict States because these States are prone to encounter greater restraints to ensure the progressive realisation of their obligations, as their resources are often constrained by the armed conflict.²³²

²²⁸ Ibid. E/1995/22, Paragraph 1.

²²⁹ Ibid. Paragraph 6.

²³⁰ A. Toritsyn and A. H. M. Kabir, 'Promoting the Human Rights of Persons with Disabilities in Europe and the Commonwealth of Independent States: Guide, UNDP Regional Centre for Europe and the CIS. UNDP, 2013, pp. 28 and 30.

²³¹ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 15: The Right to Water* (Arts. 11 and 12 of the Covenant), 20 January 2003, E/C.12/2002/11. Paragraph. 40. See also. UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights*, E/C.12/2005/4. Paragraph. 17. Cf. UN Human Rights Committee (HRC), *CCPR General Comment No. 5: Article 4 (Derogations)*, 31 July 1981. Paragraphs. 1-3.

²³² Ibid. See also. M. Amrei, 'Limitations to and Derogations from Economic, Social and Cultural Rights', *Human Rights Law Review* 9:4(2009), pp. 557,601 at pg. 558.

The growing popularity of the social model rights-based approach, as applied in peaceful States, tends to overshadow the perspective upon which the CESCR understands disability in General Comment No.5. This observation might also explain the inability of the CESCR to appreciate the importance of charities and international NGOs as stakeholders in supporting access to socioeconomic rights of persons with disabilities during and after situations of armed conflict.²³³ The CESCR, moreover, condemns the medical model where it urges States in General Comment No.5, to maximise their protection of persons with disabilities, while discouraging negative attitudes that are ordinarily associable with the inward-looking approach of focusing on treating and preventing disability.²³⁴ Therefore, according to General Comment No.5, the CESCR is basing its understanding of disability, and conceptualisation of disabling environments, on a social rights-based model, rather than a medical model.

Accordingly, recent General Comments indicate an increasing preference for the social model approach by the CESCR through promoting inclusive accessibility,²³⁵ reasonable accommodation,²³⁶ ensuring the right to participate in making decisions,²³⁷ enhancing the right to work through ensuring work places adapted for disability,²³⁸ or taking persons with disabilities into consideration when offering job promotions.²³⁹ A contrastable feature in light of these developments, is the growing unpopularity of the individual and medical models, especially in disability related agendas of peaceful States. Perhaps this is due to the inward-looking approach of these models, attributing problems of limited accessibility to the, supposedly, deformed bodies of persons with disabilities.²⁴⁰

²³³ UN Committee on the Rights of the Child (CRC), *General comment No. 9 (2006): The rights of children with disabilities*, 27/February/2007, [hereafter CRC/C/GC/9] Paragraph 2.

²³⁴ *Ibid.* E/1995/22, Paragraph 6.

²³⁵ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 18: The Right to Work (Art. 6 of the Covenant), 6/February/2006, [hereafter E/C.12/GC/18] Paragraph 17.

²³⁶ *Marie-Louise Jungelin v. Sweden*, Communication No. 5/2011, CRPD/12/D/5/2011.

²³⁷ Council of Europe: Commissioner for Human Rights, *'Persons with mental disabilities should be assisted but not deprived of their individual human rights'*, 21/September/2009.

²³⁸ E/C.12/GC/18 Paragraph 17.

²³⁹ *Ibid.* Paragraph 17.

²⁴⁰ M. Oliver, 'Defining impairment and disability: issues at stake', in *The library of essays on equality and anti-discrimination law*, E. F. Emens and M. A. Stein (eds.) (Ashgate Publishing Ltd, 2013) pg. 39. See also. T. Degener and Y. Koster-Dreese, *'Human rights and disabled persons: Essays and relevant human rights instruments'* (1995) pp. 1-2.

The Convention on Rights of Person with Disabilities (CRPD) is another aspect that is playing a role in influencing the growing application of the social model.²⁴¹ This aspect takes into account the similarity in conceptualising disability and disability related obligations in General Comments of the CESCR and several obligations of the CRPD. Both have a trend of conceptualising disability, and disability related duties, in a manner that could perhaps universalise the application of the social rights-based model.²⁴²

Related to this, according to General Comment No. 20, the CESCR also applies the social model for incorporating the same definition of discrimination as that of the CRPD.²⁴³ The CESCR might also claim that it is adopting a broader and more inclusive approach in its understanding of discrimination.²⁴⁴

This trend of emulating the CRPD, seems to expose the CESCR to the same weaknesses as those of the CRPD. For instance, the CRPD has been criticised for representing a UNHRTB whose obligations reflect an inclination of disability to circumstances of WENA States.²⁴⁵ This explains why some obligations of the CRPD approach characteristics of disability based on the idea of liberation and independent control of social welfare institutions of WENA States.²⁴⁶ Although, in the disability context of Third World Approaches to International Law (TWAAIL), the liberation from such institutions is less of a problem, and therefore likely to attract as much priority as the urgency of addressing the lack of adequate financial means to afford a prosthesis by persons with disabilities in post-conflict States of the Global-South.

²⁴¹ T. Degener and A. Begg, 'From Invisible Citizens to Agents of Change: A short history of the struggle for recognition of rights of persons with disabilities', in *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary*, V. D. Fina, et al. (Springer, 2017) pp. 1-38

²⁴² T. Degener, 'Disability in a Human Rights Context', in the Special Issue Disability Human Rights Law, A. Arstein-Kerslake (ed.) *Laws* (2016) 5(35), pg. 17, 24.

²⁴³ *Ibid.* Paragraph 7.

²⁴⁴ M. Oliver, 'Defining impairment and disability: Issues at stake', in *The library of essays on equality and anti-discrimination law*, E. F. Emens and M. A. Stein (eds.) (Ashgate Publishing Ltd, 2013) pg. 40.

²⁴⁵ R. Traustadottir, 'Disability Studies, the Social Model and Legal Developments', in *The UN Convention on the Rights of Persons with Disabilities European and Scandinavian Perspectives*, O. M. Arnadottir, and G. Quinn, (eds.) (Martinus Nijhoff Publishers, 2009) pp. 34-40

²⁴⁶ S. Grech, 'Disability and the Majority World: A Neo-colonial Approach', in *Disability and Social Theory: New Developments and Directions*, D. Goodley, B. Hughes and L. Davis (Eds.) (Palgrave Macmillan, 2012) pp. 52-69.

Therefore, although emulation of the CRPD definition and its model by the CESCO is well-intended, its capabilities seem more likely to address concerns of persons with disabilities in peacetime.

The evolution in the growing application of the social model is worth contrasting with the medical/individual models that seem predominant in the history of drafting the ICESCO and the ICCPR. For example, the increasing urge by the CESCO to replace the medical model with the social rights-based model, also accounts for the contrasting tradition upon which the CESCO interprets embodiments of disablement from the manner in which those aspects were construed according to the drafting of the ICESCO. For example, the CESCO asserted that States must,

“[...] contribute to the activities which will make it possible for all those who are disabled to take part in society, since they will have learned to overcome the frailty of their bodies or minds and without looking back on the past will have fashioned a future in keeping with their hopes.”²⁴⁷

The above conceptualisation of disability, which focusses on bodies of persons with disabilities, appears to influence the drafting history of human rights Covenants.²⁴⁸ Recently, however, the growing influence of the social rights-based model is attributable to increasing international attention on the activities of disability movements, which are customarily located in WENA States. Most members of these disability movements, however, are unlikely to have experienced characteristics of disability in the context of Global-South States of the Sub-Saharan Africa and MENA regions. It appears that TWAIL would develop disability related obligations in ways that explore models of disability in Global-South States from the Sub-Saharan Africa and MENA regions.²⁴⁹ This could elucidate why models of disability for addressing varied needs of persons with disabilities before, during and after States have experienced armed conflicts, is generally disregarded by the perspective of disability movements.

This inadequate exposure to awareness of the characteristics of disabling surroundings associated with armed conflict, is also illustratable by the lack of attention

²⁴⁷ UNGA/35 Session of the 92nd Plenary Meeting of 19/December/1980, Report of the Secretary-General, Agenda item 79, *on the International Year of Disabled Persons*: pg. 1626. Paragraph 451.

²⁴⁸ Ibid. Paragraph 451.

²⁴⁹ M. Berger, 'The End of the Third World', *Third World Quarterly* (1994) 15 (2) pg. 257,275. See also. K. Mickelson, 'Rhetoric and Rage: Third World Voices in International Legal Discourse', (1998) 16(2) *Wisconsin International Law Journal* pg.353-419.

that disability movements afford to the importance of the medical and individual models, regardless of their role in rehabilitating persons with disabilities during and after situations of armed conflict. Arguably, if some members of disability movements were from territories that had experienced characteristics of disability in situations of armed conflict, then, there is a greater likelihood that members would have envisaged that the medical and individual model are essential for a state mainly during, and after, situations of armed conflict. The CESCR could urge such States to prioritise disability related obligations based on those models by extending protection to persons with disabilities. This also call for a revisit of appropriate models for rendering disability related obligations to persons with disabilities, not just before, but also during and after armed conflict.

Another example where the CESCR applies the social model, is evidenced in General Comment No.6.²⁵⁰ This deals with rights of persons with disabilities and rights of older persons respectively.²⁵¹ Accordingly, the passage below illustrates the CESCR applying the social model in elaborating how States should take persons with disabilities into consideration when observing the obligations connected to socioeconomic and cultural rights. According to General Comment No.6 the CESCR calls upon States,

“[...] to overcome negative stereotyped images of older persons as suffering from physical and psychological disabilities, incapable of functioning independently and having neither role nor status in society.”²⁵²

In this regard, the CESCR condemns stereotypical images, the deprivation of independence, and denying status to persons due to disabilities. The CESCR manifests a growing reliance on the social model by attributing the problems of persons with disabilities to societal factors. The CESCR is also influencing States to apply the same social model in their understanding of disability-related rights based on obligations enshrined under the ICESCR. It is imperative to note that this trend indicates the CESCR as an example of a UNHRTB that is increasingly applying the social model in most of its recent General Comments on persons with disabilities.

²⁵⁰ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 6: The Economic, Social and Cultural Rights of Older Persons, 8/December/1995, [hereafter E/1996/22] Paragraph 41-42.

²⁵¹ Ibid. E/1996/22 Paragraph 41.

²⁵² Ibid. E/1996/22 Paragraph 41.

The social model is also applied by the CESCR in General Comment No. 20 to illustrate the importance of non-discriminative facilitations that accommodate persons with disabilities in overcoming inequalities while promoting socioeconomic growth.²⁵³ Accordingly, this General Comment, also incorporates the social model as a basis for developing the concept of disability-based discrimination.²⁵⁴ This obligation has been extending from peacetime to situations of armed conflict through requiring State and non-State actors to ensure that evacuation procedures should be disability inclusive to ensure that persons with disabilities are neither discriminated nor left behind in regions under armed attacks.²⁵⁵

Additionally, the CESCR also faintly indicates the likelihood of having a hybrid model comprising of both the medical and social models.²⁵⁶ This implies there might be cases where these contrastable models complement each other hence facilitating disability related obligations to overcome problems of persons with disabilities. The CESCR demonstrates complementarity in the conceptualisation of disability rights, articulated under General Comment No.5.²⁵⁷ Bear in mind that the social model represents persons with disabilities as individuals whose problems are an outcome of unchallenged environmental and attitudinal social barriers. As such, those barriers are resolvable by applying a medical model of disability to avail mobility devices to strengthen the accessibility and adaptability of persons with disabilities in peacetimes, and in times of armed conflict. Consequently, the social model could ensure that external environments are designed in ways that are taking persons with disabilities into consideration.²⁵⁸ Contrastingly, it is appropriate to highlight that, instead of

²⁵³ UN Committee on Economic, Social and Cultural Rights Committee on Economic, Social and Cultural Rights (CESCR), *General comment No. 20: Non-discrimination in economic, social and cultural rights (article. 2, paragraph. 2, of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/GC/20, adopted on 2/July/2009, Paragraph 9.

²⁵⁴ T. Degener, 'A New Human Rights Model of Disability', in *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary*, V. D. Fina, et al.(Eds.) (Springer, 2017) pp. 42-57. See also. A. Lawson, 'The United Nations Convention on the Rights of Persons with Disabilities: New Era or False Dawn?' *Syracuse Journal of International Law and Commerce*, (2007) 34, pp. 563 - 619.

²⁵⁵ N. Hart, M. Crock, R. McCallum and B. Saul, 'Making Every Life Count: Ensuring Equality and Protection for Persons with Disabilities in Armed Conflicts', (Sydney Law School, 2014) Legal studies research paper, No 14/106, <<http://ssrn.com/abstract=2538249>> accessed on 29 December 2016.

²⁵⁶ E/1995/22. Paragraph 7.

²⁵⁷ *Ibid.* Paragraph 6.

²⁵⁸ T. Degener, 'A New Human Right Model of Disability', in *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary*, V. D. Fina, et al. (eds.) (Springer, 2017) pp. 42-57. See also. T. Degener, 'Disability in a Human Rights Context', in *The Special Issue Disability Human Rights Law*, A. Arstein-Kerslake (ed.) *Laws* (2016) 5(35), pp. 2, 24.

ignoring the medical model due to its weaknesses, it might be logical to complement the medical model with the social rights-based approach. This, consequently, enables persons with disabilities to take advantage of the social model to reform their external environment and also benefit from the rehabilitation amenities of the medical model.²⁵⁹

The CESCRC also adopts inclusive ideas of the social model for illustrating the importance of the Millennium Development Goals (MDGs).²⁶⁰ The MDGs are currently referred to as the Sustainable Development Goals (SDGs). Although the SDGs are neither binding, nor directly associable with situations of armed conflict, nevertheless they seem important for implementing some of the rights enshrined under the ICESCR in post-conflict period.²⁶¹ Similarly, a more equitable approach in the implementation of disability related rights derived from the ICESCR, tends to apply the social model.²⁶² This makes the manner in which the CESCRC applies ideas of the social model is important in supporting equitable, and indiscriminate distribution, of post conflict resources.²⁶³ In reality, however, there are few armed conflict related cases during which the CESCRC has applied the social model to demonstrate ideas of inclusion of persons with disabilities when designing facilities associable with SDGs, during and after, situations of armed conflict. An example is the need to ensure equal accessibility in camps used to house displaced civilians,²⁶⁴ for persons with disabilities.²⁶⁵

In light of this, during the 63rd session of the United Nations departments, the CESCRC urged various agencies of UNHCR to streamline their MDGs related policies, to be in accordance with the aspirations of the World Programme of Action concerning persons with disabilities.²⁶⁶ These developments must take into consideration the role

²⁵⁹ C. J. Goodwill and M.A. Chamberlain (eds.) *Aims of rehabilitation*. In *Rehabilitation of the Physically Disabled Adult*. London: Chapman & Hall Medical, 1981. pp. 80-81.

²⁶⁰ E/1995/22, Paragraph 1-2. See also. E/1996/22.

²⁶¹ T. Degener, 'A New Human Right Model of Disability', in *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary*, V. D. Fina, et al. (eds.) (Springer, 2017) pg. 42-57. See also T. Degener, 'Disability in a Human Rights Context', in *The Special Issue Disability Human Rights Law*, A. Arstein-Kerslake (ed.) *Laws* (2016) 5(35), pp. 2, 24.

²⁶² E/1995/22, Paragraphs 1-2.

²⁶³ A/RES/63/150.

²⁶⁴ Rift Valley Institute (RVI), *Mobility and crisis in Gulu: Drivers, dynamics and challenges of rural to urban mobility*, February 2018. Pp. 6-9.

²⁶⁵ Internal Displacement and Monitoring Centre (IDMC), *Azerbaijan IDPs Still Trapped in Poverty and Dependence a Profile of the Internal Displacement Situation*, 14 July 2008. Available online: <http://www.internal-displacement.org/assets/library/Europe/Azerbaijan/pdf/Azerbaijan-Overview-Jul08.pdf> (accessed on 1 July 2017)

²⁶⁶ *Ibid.* Paragraph 2.

of the social model as it underpins conceptualisation of disability and disabling environments as construed by the World Programme of Action. That claim shall be explained in detail under the subsequent sections of this Chapter. This Human Rights Treaty Body is perceiving the social model as suitable for encouraging the inclusion of persons with disabilities in the MDGs.²⁶⁷

However, there is a criticism that UNHRTBs are implementing MDGs, or the current SDGs some of which are framed upon the social model of disability, as applied in WENA States, instead of post-conflict and developing States.²⁶⁸ Such a weakness justifies the importance of relying on the MDGs, or current SDGs with caution, given the likelihood of inconsistency with the socioeconomic problems of post-conflict States.²⁶⁹ An example of these inconsistencies, is the disabling environments of armed conflicts in relation to the lack of efforts under the SDGs of UNHRTBs to identifying a suitable model of disability that should be applied to conceptualise disability duties as they should apply to post-conflict States under international law.²⁷⁰ This weakness might be a consequence of UNHRTBs overlooking characteristics of disabling environments as they manifest in post-conflict States. In fact, only a proposed African regional disability Protocol is currently illustrating the application of the inward-looking approach from the medical/individual models to frame disability related obligations that post-conflict States must prioritise in relation to persons with disabilities in *jus post-bellum* contexts.²⁷¹ A further analysis of the above-proposed Protocol is contained in Chapter Five.

²⁶⁷ Ibid. Paragraph 2.

²⁶⁸ C. E. Brolan, 'A Word of Caution: Human Rights, Disability, and Implementation of the Post-2015 Sustainable Development Goals', *Laws* 2016 (5) 22; Available At<www.mdpi.com/journal/laws>pg. 3.

²⁶⁹ The Department of Economic and Social Affairs of the United Nations Secretariat Disability and the Millennium Development Goals, 'A Review of the MDG Process and Strategies for Inclusion of Disability Issues in Millennium Development Goal Efforts', N.E. Groce (ed.) New York, 2011, pgs. 17, 25, 26; See also. N.E. Groce, and J.F. Trani, 'Millennium Development Goals and people with disabilities', *The Lancet* 2009 (374) 9704: pg. 1800.

²⁷⁰ D. Osborn, A. Cutter and F. Ullah (eds.) 'Universal Sustainable Development Goals: Understanding the Transformational Challenge for Developed Countries', A Study by Stakeholder Forum, May 2015; D. Mulligan and K. Gooding, 'The Millennium Development Goals and People with Disabilities', Policy briefing. UK: Sights avers International.

²⁷¹ Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa, (adopted at the 19th Extra-Ordinary Session of the African Commission on Human and Peoples' Rights held between 16-25/February/2016 in The Gambia, Available at <<http://www.achpr.org/news/2016/04/d216>> (Accessed 6/June/2017) Article 7(b).

This developing urge to apply the social model, accounts for the failure to clarify whether the CESCR, the HRC and Committees of other UNHRTBs, must apply the same model of disability in responding to socioeconomic concerns of persons with disabilities before armed conflicts, during and after situations of armed conflict. This point calls for special considerations of the potential implications of disabling environments of armed conflict situations on post-conflict Member States to the ICESCR.²⁷² As noted in earlier discussions, States are exempt from some of the rights owed to individuals during times of armed conflicts, unlike in peacetime when States cannot invoke any derogations.²⁷³ This red flags the requirement of considering possible practical limitations that UNHRTBs are likely to face in extending the social model to environments of armed conflict and post-conflict States.

This study advances a view that derogation from some of the rights enshrined in the ICESCR and the ICCPR, constitutes a basis for UNHRTBs to reconsider the practicality of applying the same, increasingly popular social model, especially when interpreting obligations that States have to persons with disabilities, during and after, situations of armed conflict. Conceivably, the above position perceives a sole reliance on the social model to be inappropriate and unreliable, and therefore unpopular to be given as much priority as the medical model in framing of disability related obligations of persons with disabilities owed by armed conflict and post-conflict States. Similarly, in a properly developed peaceful state, the medical model is unlikely to gain as much popularity as the social model among activists of disability movements. Therefore the rights-based ideas of the social model, rather than the medical model, should underpin disability related obligations that are prioritised by UNHRTBs. It is vital to bear in mind the impacts that armed conflicts on post-conflict States, thus, subsequent Chapters revisit the manner in which such States must conceptualise their changing context of disability obligations or disabling surroundings.

²⁷² E/1995/22, Paragraph 1.

²⁷³ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR (Supp. No. 16) at 52, U.N. Doc. A/6316 (16/December/1966), 999 U.N.T.S. 171, entered into force 23/March/1976, Article 4(1). See also. The European Convention for the Protection of Human Rights and Fundamental Freedoms, 213, U.N.T.S. 221, entered into force 4/November/1950 [hereinafter the ECHR], Article 15 (derogation in time of emergency). See also. American Convention on Human Rights]. Pact of San Jose, Costa Rica O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force 18/July/1978 [hereinafter the ACHR], Article 27.

Given the disabling impacts of the armed conflict surroundings on resources of post-conflict States,²⁷⁴ UNHRTBs could recommend specialised international bodies such as the International Committee for the Red Cross (ICRC) to apply the medical model in meeting the rehabilitation needs of persons with disabilities during and after, situations of armed conflict.²⁷⁵ This recommendation should happen notwithstanding the growing unpopularity of this model in relation to disability movements and NGOs from WENA States that spearhead disability based agendas of UNHRTBs.²⁷⁶ In the present case, it is undisputable that the medical model continues to thrive in armed conflict affected States, which are normally supported by specialised agencies such as the ICRC, because it has a higher likelihood of reintegrating persons with disabilities into employment.²⁷⁷ This minimises the magnitude of consequential problems, such as income inequalities, that could result from lack of post-conflict employment among persons with disabilities.²⁷⁸

Therefore, the medical model that the ICRC applies in its activities, appears as a demonstrative gesture of the need to apply different models of disability for framing obligations owed to persons with disabilities before, during and after situations of armed conflict. This shall aid UNHRTBs in dealing with the unique and rampant trends of armed conflict and post-conflict disability related issues within affected States which are mostly located in Sub-Saharan Africa, Latin America, Middle East and North Africa.²⁷⁹ Thus, this observation seeks to guide UNHRTBs on a model that could be

²⁷⁴ K. K. Nagata, 'Disability and Development: Is the Rights Model of Disability Valid in the Arab Region? An Evidence Based Field Survey in Lebanon and Jordan', *Asia Pacific Disability Rehabilitation Journal* (2008) 19 (1) pp. 61, 78. See also. R. Habasch, 'Is the Rights Model of Disability Valid in Post-conflict Lebanon? A Participatory Pilot Survey', *Journal of Palestine Studies* (1997) 27 (1) pp. 126-135.

²⁷⁵ International Committee of the Red Cross *Physical Rehabilitation Programme Annual Report 2014*. See also *Physical Rehabilitation Programme Annual Report 2013* and *ICRC Humanity in Action Annual Review 2016*, Geneva, Switzerland. See also. HQ/PEC/ERM/SCT/2015.9/PHRA, from the, '*Humanitarian Crisis in Libya Public Health Risk Assessment and Interventions*', (WHO, 2015) pp. 12, 15. See also. International Committee of the Red Cross, '*Humanity in Action*' Annual Review 2016, Geneva, Switzerland. pp. 1-19.

²⁷⁶ M. Priestly, 'Introduction the global context of disability', M. Priestly (ed.) *Disability and the life course discourse: Global perspective*, (Cambridge University Press, 2001) pg. 8.

²⁷⁷ Khaama Press, '*Most of 800,000 People with Disabilities in Afghanistan are uneducated and unemployed*', Reported by A. Mirwais, on 03/February/2013, available at <<https://www.khaama.com/most-of-800000-people-with-disabilities-in-afghanistan-are-uneducated-and-unemployed-7854325/>> Accessed on 23/June 2017).

²⁷⁸ Resolution adopted by the General Assembly on 18/December/2008, Paragraph 12.

²⁷⁹ B.S. Chimni, 'Third World Approaches to International Law: A Manifesto', *International Community Law Review* (2006) (8) pp. 3-27 at pg. 4. See also. See also. K. Mickelson, 'Rhetoric and Rage: Third World Voices in International Legal Discourse', (1998) 16(2) *Wisconsin International Law Journal* pg.353-419.

encouraged to enhance the protection of persons with disabilities, during and after, situations of armed conflict.²⁸⁰

Additionally, the growing popularity of the social model is further demonstrated by the approach that the CESCR adopts in conceptualising disabling environments under General Comment No. 21, explaining cultural rights under the ICESCR.²⁸¹ In this regard, the CESCR urges State Parties to respect their obligation to protect the enjoyment of cultural rights for persons with disabilities.²⁸² Accordingly, the Committee identifies the seven principle elements deemed necessary for this participation. These seven elements sound farfetched for post-conflict States, given the deteriorating rate of State capabilities in the *jus post-bellum* period. Among the principles which the Committee outlined include: availability, accessibility, acceptability, adaptability, and appropriateness.²⁸³ It was reinstated that;

“Accessibility also includes the right of everyone to seek, receive and share information on all manifestations of culture in the language of the person’s choice, and [...] means of expressions and dissemination.”²⁸⁴

It must be noted in this context, that the social model is compatible with the conceptualisation of disabling surroundings, as those surroundings interact with the exercise of cultural rights in peaceful States, compared with the interactions that the exercise of such rights have with armed conflict affected States. Additionally, consider that the principle of derogating certain rights will have enabled post-conflict States to be exempted from upholding obligations on cultural rights during armed conflicts. Upholding obligations related to such rights, seems more readily associated with applying the outward conceptualisation of disabling surroundings based upon the social model, with duties that will have been a matter of derogation to a post-conflict State at its time of applying *jus in bello* norms, as they apply to situations of armed conflict. Hence, highlighting that problem casts doubts on the suitability of over-

²⁸⁰ Draft African Disability Protocol, Article 10(2) (e). See also. A. H. Eide, ‘Community-based Rehabilitation in Post-Conflict and Emergency Situations’, in *Trauma Rehabilitation after War and Conflict: Community and Individual Perspectives*, E. Martz (ed.) (Springer, New York, NY 2010) pp. 97-110. Cf.

²⁸¹ UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights)*, 21/ December/2009, [hereafter E/C.12/GC/21], Paragraph 15.

²⁸² Ibid. E/C.12/GC/21, Paragraph 15.

²⁸³ Ibid. E/C.12/GC/21, Paragraph 15.

²⁸⁴ Ibid. E/C.12/GC/21, Paragraph 30-31.

reliance on the social model, in relation to those duties owed to persons with disabilities in the *jus post-bellum period* of post-conflict States.

Furthermore, the CESCR also applies the social model in expounding the obligation of the State to ensure that environments are accessible.

“It is essential [...] that access for older persons and persons with disabilities, as well as for those who live in poverty, is provided and facilitated.”²⁸⁵

In this context, the CESCR applies the social model, by deconstructing the conventional understanding of disability as consequence of body impairment, to an outcome of external environments that exclude rendering considerations to persons with disabilities, when designing rights that are incidental to overcoming poverty.²⁸⁶ Nevertheless, considerations of the social model seem inappropriate, if, for example, applied to a maimed amputee in armed conflict Southern Sudan who is incapable of accessing crutches or a prosthesis.²⁸⁷ This, approach is worth contrasting with the approach of using experiences from WENA States to spearhead the application of the social model that informs modern understandings of disability related obligations and disability rights. However, rights-based ideas framed upon the conceptualisation of the social model of disability are unsuitable for armed conflict experiences of post-conflict States.

The right to work is another an example of a duty that is explained by the CESCR its General Comment No.18 on the right to work.²⁸⁸ The Committee applied the social model in elaborating the interpretation of the right to work as enshrined under the ICESCR.²⁸⁹ Under General Comment 18, the Committee urges State Parties to undertake measures meant for employing and retaining persons with disabilities in their occupation fields.²⁹⁰ Arguably, this approach applies inclusivity and reproduces

²⁸⁵ Ibid. Paragraph 30-31.

²⁸⁶ C. Nyombi and A. Kibandama, ‘Access to Employment for Persons with Disabilities in Uganda’, *Labour Law Journal*, 2014, pp. 248-258 at pg. 250.

²⁸⁷ P. Businge, ‘Disability and armed conflict: A quest for Africanising disability in Uganda Disability and the Global South’, (2016) 3(1) pg. 816, 842. See also. D. P. Fidler, ‘Revolt against or from within the West-TWAIL, the Developing World, and the Future Direction of International Law’, *Chinese Journal of International law* (2003) 2 (29) pp. 29, 76.

²⁸⁸ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 18: The Right to Work (Art. 6 of the Covenant)*, 6/February/2006, [hereafter E/C.12/GC/18], Paragraph 17, 12 (b) (i) (ii) and 17

²⁸⁹ Ibid. Paragraph 17.

²⁹⁰ Ibid. Paragraph 17. See also. UN High Commissioner for Refugees (UNHCR), *UNHCR Policy on the Employment of Persons with Disabilities*, November 2008. See also. R. V. Burkhauser, A. J. Houttenville and D.

the conceptualisation of disability based on the social model. Bear in mind that obligation of the State to protect and promote the right to work, constitutes one of the derogated State obligations in times of armed conflict which, consequently, raises more questions on the inappropriateness of its social model to illustrate obligations of post-conflict States experiencing the disabling environments of armed conflicts.²⁹¹ This unsuitability may be attributable to the tendency to limit disabling environments to attitudinal barriers, and to outward working environments which exclude workers with disabilities.²⁹²

Additionally, the approach of the outward looking, social rights-based model also implies that some UNHRTBs perceive that facilitating inclusiveness for persons with disabilities, as a useful concept for their socioeconomic integration and reintegration in society.²⁹³ In most cases, a social model and ideas of employment sounds rational in terms of peaceful States, but subsequent Chapters shall use the 'armed-disability relationship' to question the suitability of this model, in terms of the *jus post-bellum* obligations of post-conflict States, or States recovering from such conflict.

The CESCR also exemplifies the social model in General Comment No. 4 in which it elaborates the right to housing and adequate standard of living.²⁹⁴ General Comment No. 4 explains housing as an embodiment of adequate standards of living that forms a socioeconomic right under the ICESCR.²⁹⁵ Although, during situations of armed conflict, States are unable to ensure progressive realisation of the right to housing, when undergoing reconstruction in the post-conflict period. Those States could be required to apply the social model through making reasonable adjustments

C Wittenburg, 'A user's guide current statistics on employment Persons with Disabilities', *The Decline in Employment of People with Disabilities: A Policy Puzzle* in D. C. Stapleton (ed.) (Upjohn institute for employment research, 2003) pp. 23-58.

²⁹¹ W. Boyce, 'Adaptation of community based rehabilitation in areas of armed conflict', *Asia Pacific Disability Rehabilitation Journal* (2000) 1 (11). See also. A. H. Eide, 'Community Based rehabilitation in Post-conflict and Emergency Situations', in *Trauma Rehabilitation after War and Conflict: Community and Individual Perspectives*, E. Martz (ed.) (Springer, 2010) pp. 97-110.

²⁹² T. Degener and Y. Koster-Dreese, '*Human rights and disabled persons: Essays and relevant human rights instruments*' (1995) pg. 2.

²⁹³ HR/P/PT/17.

²⁹⁴ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 4: The Right to Adequate Housing (Article. 11 (1) of the Covenant)* Adopted at the Sixth Session of the Committee on Economic, Social and Cultural Rights, adopted on 13/December/1991 [hereafter E/1992/23], Paragraph 2.

²⁹⁵ Ibid. E/1992/23], Paragraph 2.

that mirror rights-based concepts of accommodating persons with disabilities.²⁹⁶ Apart from a State undergoing armed conflict, post conflict and peacetime, it might benefit persons with disabilities if the right to adequate housing, is framed upon a social model. The classification of a state's capacities to support persons with disabilities, appears logical since in the absence of shootings or attacks, it is highly probable that a State could have the resources, and most importantly, the stability to design houses in order to adapt them for persons with disabilities. Therefore, the context of States obligations in peacetime, and post-conflict settings, are appropriate to oblige States to ensure progressive realisation of inadequate surroundings and adapt accommodation for persons with disabilities.²⁹⁷ Although, in post-conflict settings, the social model should simply complement the medical model since rights-based ideas of the latter are indispensable for the rehabilitation of persons with war-related disabilities.²⁹⁸

Additionally, the concept of calling for a right to public housing, is more of a common characteristic in WENA States that have resources to construct such public housing facilities.²⁹⁹ Thus, WENA States seem to have used disability movements to shape the representation of disabling environments, and that has led to prioritising the social model by UNHRTBs. Contrastingly, in many *jus post-bellum* periods of post-conflict States, there is hardly a lower likelihood that persons with disabilities, such as those that might have lost a limb due to landmines, would attribute the same importance to problems of inaccessible housing, as to the State's duty to provide disability mobility rehabilitation amenities.³⁰⁰ This is partly due to the subordinate nature of housing rights, compared to the principal nature of rights concerning mobility rehabilitation in *jus post-bellum* disabling environments of most post-conflict States.³⁰¹ The situation is aggravated by the scarcity of resources amongst many post-conflict

²⁹⁶ Ibid. E/1992/23, Paragraph 8(e).

²⁹⁷ Ibid. Paragraph 8(e).

²⁹⁸ BBC News, 'War leaves some 800,000 people disabled in Afghanistan', Reported by K. Zarindast. On 26/January/2012 and Video produced by BBC Persian's A. Salimi. Available at <<https://www.bbc.co.uk/news/world-asia-16722788>> (Accessed on 23/June/2017). See also A. Dayaratne, 'Sri Lanka: Disabled veterans battle high cost of prosthetics, unemployment. (Colombo, 12/July/2007).

²⁹⁹ European Commission Press release Commission presents the European Pillar of Social Rights Brussels, 26/April/2017.

³⁰⁰ D. Osborn, A. Cutter and F. Ullah (eds.) 'Universal Sustainable Development Goals: Understanding the Transformational Challenge for Developed Countries', A Study by Stakeholder Forum, May 2015. See also. D. Mulligan and K. Gooding, 'The Millennium Development Goals and People with Disabilities', Policy briefing. UK: Sight savers International

³⁰¹ Ibid.

States, which makes housing more of a private affair than a prioritised obligation of States. Consequently, in most *jus post-bellum* settings, the provision of housing is within the ambit of families with persons of disabilities.³⁰²

Furthermore, the CESCR has relied on the social model to elaborate its conceptualisation of the right to social security.³⁰³ This is illustrated by the Committee under its General Comment No.19 on the right to social security.³⁰⁴ There is a possibility that the close proximity in time of proclaiming General Comment 19, and the period of adopting the international treaty on disability (CRPD), could partly explain the similarity in the social model of disability. General Comment No.19 and the CRPD, attribute disabling to the lack of inclusiveness and adoptability in the external environments. The declaration of Comment No. 19 on 23 November 2007 occurs closer to adopting the CRPD and is examined further in subsequent sections of this thesis.³⁰⁵ These developments are important in correlating the relationship between the growing trend of prioritising the social model when framing obligations owed due to disability, and the legitimisation of entitlements to socioeconomic rights. Such a trend is leading to the increased unpopularity of the medical and individual models, hence accounting for the declining importance which the ICESCR Committee attributes to disability related obligations founded upon such models. Contrastingly, that trend is paving the way for conceptualising disability and disabling environments more often based on ideas of the social model. However, as already noted, it is the social model and most rights associated with it, which is more suitable for peaceful States. This is also true for the characterisation of disabling environments in WENA States, as opposed to the armed conflict-disability relationship of post-conflict States.³⁰⁶

³⁰² Ibid.

³⁰³ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 19: *The right to social security* (Art. 9 of the Covenant), 4/February/2008, [hereafter E/C.12/GC/19], Paragraphs 20, 28, 29

³⁰⁴ Ibid. Paragraphs 20, 28, 29

³⁰⁵ General Assembly Resolution Adopting the Convention on the Rights of Persons with Disabilities on 13/December/2006 during the Sixty-first, Session [hereafter A/RES/61/106] Annex I.

³⁰⁶ R. Habasch, 'Is the Rights Model of Disability Valid in Post-conflict Lebanon? A Participatory Pilot Survey', *Journal of Palestine Studies* (1997) 27 (1) pp. 126,135. See also. K. K. Nagata, 'Disability and Development: Is the Rights Model of Disability Valid in the Arab Region? An Evidence Based Field Survey in Lebanon and Jordan', *Asia Pacific Disability Rehabilitation Journal* (2008) 19 (1) pp. 60, 78. See also. M. Berghs and N. Kabbara, 'Disabled People in Conflicts and Wars', *In Disability in the Global South: the Critical Handbook*. S. Grech and K. Soldatic, (eds.) (London, Springer, 2016) pp. 269-285.

The Concluding Observations are also another source of evidence which could be used to investigate, and affirm, a change in approach of the ICESCR, from models whose perspectives encourage exclusion of persons with disabilities, to those that support considerations for inclusively protecting the rights of persons with disabilities, within specific situations. Subsequently, Concluding Observations from the Human Rights Committee, have occasionally condemned instances where States have limited the CRPD, and the underpinnings of its social model for their citizens. Such States might be exonerated from executing obligations of the social model in situations where they address concerns of non-nationals with disabilities, such as persons with disabilities brought under the state's control through foreign occupation.³⁰⁷ This category may also include refugees or asylum seekers with disabilities,³⁰⁸ whom a host State has received from another States affected by armed conflict.³⁰⁹ A classic example of this, is exemplified when the CESCR condemns Australia for discriminating against persons with disabilities, by enacting asylum law. This enabled Australia to exonerate itself from obligations owed to persons with disabilities, because of persons with disabilities being refugees and asylum seekers.³¹⁰ Consequently, the Committee recommended that Australia should harmonise the Migration Act with its Disability Discrimination Act of 1992.³¹¹ Those recommendations portray the Committee as a supporter of the social model with an outward-looking approach. The Committee also recommended undertaking necessary measures to protect persons with disabilities which are neither discriminating, nor excluding to persons with disabilities, because of their nationality. Notably, in 2016 the Committee suggested that disability could result from external state acts of discrimination to certain factions of those with disabilities, because of the status ascribed to them as either refugees or asylum seekers. Thus,

³⁰⁷ A/HRC/37/75, Human Rights Council, 'Human rights situation in Palestine and other Occupied Arab territories: Human rights situation in Palestine and other occupied Arab territories since 1967', Thirty-seventh Session, 26/February/2018–23/March/2018, Paragraphs 60-64.

³⁰⁸ UN committee on the Rights of Persons with Disabilities, 'The forgotten victims' of Syria's conflict', Available at <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13736&LangID=E>> (accessed on 30/December/2014).

³⁰⁹ M. Crock, C. Ernest and R. McCallum, 'Where disability and displacement intersect: Asylum seekers and refugees with Disabilities', International Journal of Refugee Law, (2012) 24, pp.735, 741.

³¹⁰ UN Human Rights Council, 'The right of persons with disabilities to live independently and be included in the community on an equal basis with others', Resolution adopted by the Human Rights Council, 8/April/2015, A/HRC/RES/28/4. Paragraph 16.

³¹¹ United Nations High Commissioner for Refugees (UNHCR), 'Strengthening protection of persons with disabilities in forced displacement The situation of refugees and internally displaced persons (IDPs) with Disabilities in Ukraine', A. Ormonova (Ed.) April 2016. Kyiv, Ukraine.

use of the social model would improve the impression created by Australia, and the enactment of its laws regarding external environments, by extending protection to refugees and asylum seekers with disabilities, regardless of their nationality or status.

On the contrary, the only room for discrimination would arise if the Committee tried to understand situations in which a peaceful state, hosting refugees, might be justified in prioritising the application of disability related obligations, underpinned by the inward-looking approach of the medical model.³¹² This would be for purposes of rehabilitation of refugees and asylum seekers with disabilities that resided in States affected by armed conflict.³¹³ The problems of disabled refugees fleeing from armed conflict, might, be more suitably addressed, by emulating the same medical model and its inward-looking approach to disability, like that which the IHL has allegedly applied. Therefore, there is logic in asserting that the model of, and approach to disability, similar to that of the IHL, might be worth emulating when addressing problems of persons with disabilities. This is attributable to the correlations between disability, and refugees or asylum seekers that have experienced armed conflict environments.³¹⁴

This change from the individual and medical models, to the social model of disability, was possibly caused by the need for models that are inclusive of persons with disabilities in interpreting the duties of State Parties to protect economic, social and cultural rights. In the same way, the transition from the medical model, to a social model, across the modern landscape of human rights, could be a reminder that treaties of international human rights law are living instruments that respond to the new ways of presenting disability to UNHRTBs. In this context, the contemporary inclusion of persons with disabilities, in interpreting treaties, is typical of the treaties' reactivity to previously overlooked challenges.

3.2.3. General Comments from the HCR and Discernible Models of Disability

³¹² J. Schlund-Vials 'Prosthetic Ecologies (Re)membering Disability Rehabilitating "Laos's Secret War" in *Disability Studies and the Environmental Humanities: Toward an Eco-Crip Theory* S. J. Ray. and J. Sibara (Eds.) (University of Nebraska Press, 2017) Nebraska. pp. 305.

³¹³ L. Smith-Khan, M. Crock, B. Saul and R. McCallum. 'The legal protection of refugees with disabilities', (Edward Elgar publishers, 2017, Cheltenham) pp. 2-3.

³¹⁴ M. Crock et al., '*Protection of refugees with disabilities: Uganda fieldwork report, August-September 2013*', University of Sydney, Available at <https://www.researchgate.net/publication/281853774_Protection_of_Refugees_with_Disabilities_Uganda_Fieldwork_Report_August-September_2013>(accessed 6 March 2017)

This section is examining the models of disability that the HRC tends to apply in its General Comments when discussing how matters of disability should be conceived in relation to the rights comprised under the ICCPR. The General Comments considered, have been identified through textual analysis that established documents where the HRC either articulates its understanding of disabling environments, or elaborates its conceptualisation of disability, with respect to specific rights.

The HRC, in its General Comment No. 25, reiterates the right to vote.³¹⁵ This General Comment is based on a right that is enshrined under Article 25 of the Covenant, which obligates the duty of States to recognize, and protect, the right of every citizen to take part in the conduct of public affairs, the right to vote, and to be elected, and the right to access public service.³¹⁶ In relation to supporting voting rights of persons with disabilities, the Committee condemns using disability as a justification for disfranchising voters.³¹⁷ It also stated that,

“Assistance provided to the disabled, blind or illiterate should be independent. Electors should be fully informed of these guarantees.”³¹⁸

The Committee, remains largely silent on the appropriate model of disability that could enable marginalised minorities, such as persons with disabilities, to realise the right vote. Views of the HRC are too generalised to be post-conflict specific, and thus do not enable comprehension of the varied limitations of the right to vote, before, and after armed conflicts. That makes this General Comment more useful as a resource for furthering models of disability for voting rights of persons with disabilities, before armed conflict, but of limited help in appreciating the appropriate models to establish disability related measures that post-conflict States can use to promote the realisation of voting-related rights, to persons with disabilities. It appears prioritisation of post-conflict rehabilitation for those with limbs amputated, by providing them with prosthesis, would enhance their ability to access voting sites. This demonstrates the importance of disability related obligations that are framed upon the medical model, in supporting voting rights of individuals with disabilities in a post-conflict period.

³¹⁵ UN Human Rights Committee (HRC), CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, 12 July 1996, (hereafter General Comment No. 25, CCPR/C/21/Rev.1/Add.7) paragraphs. 1, 10 and 21.

³¹⁶ ICCPR Article 25.

³¹⁷ General Comment No. 25, CCPR/C/21/Rev.1/Add.7, paragraph 9.

³¹⁸ Ibid. paragraph. 21

Exploring models of disability that should underpin this right during situations of armed conflict, appears pointless, due to the possibility of exercising State derogation.

Furthermore, according to General Comment No. 20 on the prohibition of torture, or other cruel, inhuman or degrading treatment or punishment,³¹⁹ the HRC applies the social model, by reiterating the obligation of the State to seek consent from persons with disabilities, rather than compelling them to participate in medical experiments.³²⁰ Medical professionals are also reminded that, such compulsion breaches Article 7 of the ICCPR.³²¹ In this case, the HRC is challenging attitudes of medical professionals by applying the outward-looking approach of the social model, for example, in the context of the US as a typical, peaceful state. In this case, persons with mental disabilities are perceived as a vulnerable group.³²²

General Comment No.28 of the HCR, deals with the issue of equality between men and women.³²³ Articles 2 and 3 mandate States parties to take all steps necessary, including the prohibition of discrimination on the grounds of sex, to put an end to discriminatory actions, both in the public, and the private sector, which impair the equal enjoyment of rights.³²⁴ In this case, the HRC takes into consideration the important influence of Article 3 on the enjoyment of human rights by women, protected under the Covenant. The HRC highlights the importance of permitting reasonable adjustments and affirmative action, such as legislative measures, aimed at enabling women to enjoy the rights enshrined in the ICCPR, in their totality, the same as men.³²⁵

Although this General Comment details in a generalised context equality, it lacks specific consideration of disability in its illustration of discriminative grounds.³²⁶ Nevertheless, its approach is useful in furthering some analogies with the characteristics of external exclusion, upon which disability movements advanced their social model justifications for reasonable adjustments, adaptations and modifications

³¹⁹ HRC, *General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 10/March/1992, Paragraph 7 pg. 31.

³²⁰ *Ibid.* Paragraph. 7 pg. 31.

³²¹ *Ibid.* Paragraph 7 pg. 31.

³²² *Ibid.* Paragraph 7 pg. 31.

³²³ HRC, *CCPR General Comment No. 28: Article 3 (The Equality of Rights between Men and Women)*, 29/March/2000, [hereafter *CCPR/C/21/Rev.1/Add.10.*] Paragraph 1.

³²⁴ *Ibid.* paragraph 3.

³²⁵ *Ibid.* paragraph 2.

³²⁶ *Ibid.* paragraph 4.

that would ensure environments considered the capabilities of person with disabilities. The General Comment uses the concept of discouraging inequality, to condemn historical attitudinal barriers that hampered women from equal enjoyment of the protected rights.³²⁷ Analogous reference to attitudinal barriers against persons with disabilities, remains a common argument which enables disability movements in WENA States to demonstrate the barriers that thrive alongside the institutionalisation of persons with disabilities. Such institutionalisation is a feature of the medical model and is condemned by contemporary disability movements because institutionalisation of persons with disabilities is associated with holding people in low esteem by society and the State, hence providing a reasonable excuse to keep them together, but separate, from the so-called normal public. The ideas of this General Comment are underpinned by the social model's outward looking perspective of disability.

In General Comment No. 25, the HRC explains the right to vote at elections and referenda.³²⁸ Disability is taken into account on two occasions under this General Comment. On the first occasion, General Comment No. 25, links disability to the right to vote and be voted.

“The right to vote at elections and referenda must be established by law and may be subject only to reasonable restrictions [...]. It is unreasonable to restrict the right [...] on the ground of physical disability or [...]”.³²⁹

In the above context, the HCR is clearly supporting the exercise of the right to vote with respect to persons with a physical disability, through reiteration of the role of the law, together with the objective and reasonable criteria for determining the legitimacy of exercising the right envisaged in General Comment No. 25. However, examining models of disability applied in the above context, must be correlated with views of the HRC on rights of persons with mental disabilities. Accordingly, the HRC also promulgates that,

“The exercise of these rights by citizens may not be suspended or excluded except on grounds [...] established by law [...] which are objective and

³²⁷ Ibid. paragraph 4.

³²⁸ HRC, General Comment No. 25 - The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25) CCPR/C/21/Rev.1/Add.7. Paragraph 1.

³²⁹ Ibid. Paragraph 10.

reasonable. For example, established mental incapacity may be a ground for denying a person the right to vote or to hold office.”³³⁰

The HCR concedes that persons with established mental disabilities must be restricted from exercising the right to vote at elections, referenda and the right to hold office.³³¹ These rights should be exercised by persons whose disabilities are of a purely physical nature.³³² This idea of condemning the objective and reasonable criteria indicates the following disability related implications.

Firstly, the criteria leaves room to permit a State to apply rights-based ideas constructed on different models of disability, depending on the person’s disability classification. For example, a medical model can be used to establish that a person has a mental disability. A social model can be used for persons with physical disabilities, insofar as inclusiveness, and exercise of the right to vote is concerned.³³³ A social model would not only discourage negating voting-related rights, but would also go some way to encourage a State to undertake positive obligations to ensure that voting procedures are inclusive, and accessible to persons with different, rather than specific disabilities.³³⁴ Regrettably, a State might misuse the objective and reasonable criteria used to rationalise the application of the social model’s rights-based ideas for persons with physical disabilities, whilst compromising the entitlement of rights-based ideas from such models, to persons with mental disabilities. General Comment No.25 is manifestly obliviousness of persons with intellectual disabilities. Consequently demonstrating the problems attributable to ‘fractionalising persons’ with disabilities, and conceptualising entitlement to civil and political rights, based on the type of disability.

The inability to recognise persons with intellectual disabilities also indicates the HRC’s obliviousness to complications that might be consequential to tendencies

³³⁰ Ibid. Paragraph 4.

³³¹ Ibid. Paragraph 4.

³³² Ibid. Paragraph 10.

³³³ V. Atkinson et al, “Disability Rights and Election Observation: Increasing Access to the Political Process’, *Nordic Journal of Human Rights*, (2017) 35 (4) pp. 375-391 at pg. 378.

³³⁴ Association of Southeast Asian Nations (ASEAN) *Disability Access and Inclusion in the Political Processes of Four Southeast Asian Countries*, (February/2016) pg. 23. See also. B. Virendrakumar, et. al, ‘Disability inclusive elections in Africa: a systematic review of published and unpublished literature’, *Disability & Society*, (2018) 33 (4) pp. 509-538.

to divisively fragment persons with disabilities.³³⁵ Contrastingly, Article 5 of the CRPD enshrines equal treatment of all persons with disabilities, rather than special treatment for specific groups of persons with disabilities.³³⁶ Such equality ensures that the social model applies with regard to diversity, and celebrates the heterogeneity of persons with disabilities.³³⁷

Secondly, the failure by the HRC to shed light on the intended constituents of the objective and reasonable criteria, indicates that there are neither safeguards, nor a clear sense of direction as to the required evidence and procedures of this approach.³³⁸ Consequently, States and their agencies are left with unfettered discretion in determining the evidence, and medical procedures that they should choose to apply, in the case of an individual's mental incapacity.³³⁹ Subsequently, there might be a possibility of excluding persons with intellectual disabilities from exercise of the rights articulated under General Comment 25. Arguably, this unfettered discretion leaves room for some of the States to use the objective, and reasonable criteria, in an arbitrarily subjective and politically-biased manner, to unjustly lead to deprivation of voting and political rights for some individuals.³⁴⁰

Voting rights are more feasible in peacetimes rather than the armed conflict phase of the cycle. Considering that neither elections, nor referendums, are likely to be arranged in situations of armed conflicts, the right to vote is highly unlikely amidst such situations. However, in a post-conflict setting, the voting rights are highly desirable, as noted by Dutton.³⁴¹ In the post-conflict period, the social model could be applied alongside the medical model, to support the inclusion of persons with

³³⁵ European Union Agency for Fundamental Rights, 'The Right to Political Participation for Persons with Disabilities: Human Rights Indicators' (2014) Available at <<http://fra.europa.eu/en/publication/2014/right-political-participation-persons-disabilities-summary>> (accessed 20/January/2018). See also.

³³⁶ CRPD Article 5 (a)

³³⁷ CRPD Article 3 (d)

³³⁸ See Concluding Observations: Norway (CCPR/C/NOR/CO/6, 2011), paragraph. 12-13. See also. HRC, General Comment No. 35- Article 9 (Liberty and security of person) CCPR/C/GC/35. Paragraph 9.

³³⁹ Ibid HRC, General Comment No. 35- Article 9 (Liberty and security of person) CCPR/C/GC/35. Paragraph 9.

³⁴⁰ V. Atkinson et al, "Disability Rights and Election Observation: Increasing Access to the Political Process", *Nordic Journal of Human Rights*, (2017) 35 (4) pp. 375-391 at pg. 378.

³⁴¹ L. A. Dutton, 'Evaluating the Criteria for Successful Elections in Post-Conflict Countries: A Case Study including Iraq, Sierra Leone, and Bosnia and Herzegovina', (Indiana University 2014).

disabilities,³⁴² considering the prevalence of persons with war-related disabilities.³⁴³ It is unrealistic, however, for General Comment 25 to limit the social model's inward looking rights-based ideas to person with specific types of disabilities. Otherwise, if that was an appropriate approach, then it is highly unlikely that the rights under the CRPD would have ignored persons with mental disabilities.³⁴⁴ Additionally, the HRC might consider collaborating with International Election Observation Missions (IEOMs),³⁴⁵ to develop procedural guidelines on how to minimise the unexposed situations where States arbitrarily misuse the so-called objective, and reasonable criteria, to declare their opponents mental incapacitated, and hence deprive them of the right to political participation.

The HRC addresses matters of persons with disabilities under several paragraphs of General Comment No.35.³⁴⁶ It reiterates that persons with disabilities are some of those envisaged in the State's duty to protect a person, that encompasses freedom from injury to the body, the mind, or bodily and mental integrity.³⁴⁷ Consequently, the HRC specifically urges States to consider persons with disabilities, among others, when devising appropriate responses to aspects of violence.³⁴⁸ The HRC shows consideration to persons with disabilities, by appealing to state parties to make available adequate, community-based alternatives, to social-care services for persons with psychosocial disabilities, with a view to promote a reliance on alternatives associated with less restrictive confinement.³⁴⁹ Conceivably, the HRC perceives disability through the social model, by portraying law as a means by which by States can discourage negative attitudes that manifest of violence to persons with disabilities.

³⁴² National Democratic Institute for International Affairs (NDI). (2008) NDI final report on Sierra Leone's 2007 elections. Washington, DC. Available at <<https://www.ndi.org/sierra-leone>> (Accessed on 15/August/2017). pp. 27-29. See also. L. A. Dutton, 'Evaluating the Criteria for Successful Elections in Post-Conflict Countries: A Case Study including Iraq, Sierra Leone, and Bosnia and Herzegovina', (Indiana University 2014), pg. 61.

³⁴³ BBC News, 'War leaves some 800,000 people disabled in Afghanistan', Reported by K. Zarindast. On 26/January/2012 and Video produced by BBC Persian's A. Salimi. Available at <<https://www.bbc.co.uk/news/world-asia-16722788>> (Accessed on 23/June/2017). See also. S. Meyers, 'Wounded Warriors or One of the Crowd? Civil War, Citizenship and Disability in Nicaragua, Disability Studies and Ability Studies: Two Lenses to Investigate', *Peace Studies Journal* (2013) 6 (4) pp. 22, 36.

³⁴⁴ CRPD Article 29. See also. B. Virendrakumar, et. al, 'Disability inclusive elections in Africa: a systematic review of published and unpublished literature', *Disability & Society*, (2018) 33 (4) pp. 509-538 at pg. 510.

³⁴⁵ V. Atkinson et al, "Disability Rights and Election Observation: Increasing Access to the Political Process", *Nordic Journal of Human Rights*, (2017) 35 (4) pp. 375-391 at pg. 378.

³⁴⁶ HRC, General Comment No. 35- Article 9 (Liberty and security of person) CCPR/C/GC/35. Paragraph 3.

³⁴⁷ Ibid. Paragraph 3.

³⁴⁸ Ibid. Paragraph 9. See also. Concluding Observations: Norway (CCPR/C/NOR/CO/6, 2011). Paragraph. 10.

³⁴⁹ Ibid. Paragraph 19. See also. Concluding Observations: Latvia (CCPR/C/LVA/CO/3, 2014). Paragraph 16.

The social model is also evidenced through problems of disability, in the context of WENA States, where the history of mental health, and social care homes is more prevalent. In this regard, the social rights-based ideas tend to empower persons with disabilities by minimising chances of detention and confinement, whilst maximising the possibility of promoting liberty.

3.3. Is the HRC and the CESCR Changing their Models in Post-Conflict Contexts?

Conventionally, both the HCR and the CESCR are concerned with UNHRTBs, whose obligations are mainly aimed at States in peacetime. It is crucial to explain how these Committees envisage the suitable models of disability to frame protective obligations of post-conflict States. Although, under normal circumstances, there is neither an exclusive obligation, nor any preferential attention specifically attributable to being a post-conflict State, nevertheless, this analysis shall give special attention to those States because of the following reasons:

Firstly, as there is a logical presumption that all post-conflict States are likely to face an increase in numbers of their nationals with disabilities as a consequence of war related disabilities, these States are particularly relevant in relation to the models through which disability, and duties owed to persons with disabilities, are understood.

This consideration makes such States suitable for examination in order to ascertain if there is a possibility, or necessity, for the HRC and ESCR, to change the model of disability that they apply when framing rights-centred obligations towards persons with disabilities. This makes post-conflict States a model example for questioning the emerging tendencies of using WENA centred ideas, which dominate the contents of disability studies, to influence the manner in which the HRC and the CESCR portray the universalisation of the social rights-based model through a number of their General Comments.³⁵⁰ This trend also reduces future scope to apply

³⁵⁰ T. Degener, 'A New Human Right Model of Disability', in the *United Nations Convention on the Rights of Persons with Disabilities: A Commentary*, V. D. Fina, et al. (eds.) (Springer, 2017) pg. 42-57. See also. T. Degener, 'Disability in a Human Rights Context', in *The Special Issue Disability Human Rights Law*, A. Arstein-Kerslake (ed.) *Laws* 2016, 5(3), pg. 19, 24. See also. T. Degener, *International Disability Law; A New Legal Subject on the Rise: The Interregional Experts' Meeting in Hong Kong, December 13-17, 1999*, *Berkeley Journal of International Law*, (2000) 18, pp. 180, 195. See also. T. Degener, and G. Quinn. 'A Survey of International, Comparative and Regional Disability Law Reform', In *Disability Rights Law and Policy*, M. L. Breslin and S. Yee.

the medical model which attributes disability to the impairments of bodies of individuals.³⁵¹ However, in a post-conflict context, the framing of disability related duties in the medical model, might be appropriate for addressing problems of disability. Simply because of its ability to prioritise medical and rehabilitation needs that would be required by a considerable number of persons with war-related disabilities. Therefore, Committees ought to encourage the prioritisation of disability related duties that are framed upon the application of the medical model when assisting post-conflict States in devising response measures to impacts encountered in the aftermath of armed conflict.

In terms of demonstrating the change in approach of the CESCR, Mr Leandro Despouy, promulgates the earliest evidence of the changing disability perspectives of UNHRTBs: from the medical models to the social model.³⁵² In his submissions, Despouy gives an account of the historical unawareness of persons with disabilities.³⁵³ There is a high likelihood, that at the time of giving the above explanation in 1992,³⁵⁴ the social model had assumed international recognition by influencing the conceptualisation of rights-based obligations owed to persons with disabilities.³⁵⁵

Furthermore, the earliest General Comments from the HRC, pronounced in 1980, indicated the HRC's history of applying the medical model when conceptualising the entitlements of persons with disabilities by the time of commencing its operations in the late 1970s. However in its more recent General Comment No.35 of the HRC is applying the social model and its rights-based ideas, in approaching causes of disability and rights of persons with disabilities, The best example of this development

(Eds.) (Transnational, 2002) pp. 3-128. See also. T. Degener and Y. Koster-Dreese, 'Human rights and disabled persons: Essays and relevant human rights instruments' (Dordrecht: Martinus Nijhoff, 1995). See also. T. Degener. 'Personal assistance services and laws: A commentary.', Paper presented at International, Symposium on Personal Assistance Models, World Institute on Disability and Rehabilitation International, Oakland, 1991.

³⁵¹ UNGA/35 Session of the 92nd plenary meeting of Thursday, 2/December/1980, Report of the Secretary-General, Agenda item 79, on the International Year of Disabled Persons: pp. 1626, Paragraphs 451.

³⁵² E/CN.4/RES/1992/48, Paragraph 1.

³⁵³ Ibid. E/CN.4/RES/1992/48, Paragraph 1.

³⁵⁴ Ibid. E/CN.4/RES/1992/48, Paragraph 1.

³⁵⁵ S. Grech, 'Disability and the Majority World: A Neo-colonial Approach', in *Disability and Social Theory: New Developments and Directions*, D. Goodley, B. Hughes and L. Davis (Eds.) (Palgrave Macmillan, 2012) pp. 52-69 at pg. 61.

is demonstrated in relation to the Committee's changing view of the Right to liberty and security of persons that has been amended by replacing General Comment No. 8 adopted on 30,June/1982 with General Comment No. 35 adopted on 16/December/2014 ,³⁵⁶ Although both General Comments are expounding the same right to liberty and security of persons, the social model is present in the former, adopted on the 16/December/2014,³⁵⁷ whilst absent in the latter, adopted on the 30/June/1982.³⁵⁸ That explains why, in General Comment 35, the HRC dissociates itself with outdated laws that encouraged arbitrary deprivation of liberty on the basis of certain disabilities. The HRC urges State to revise those laws. This idea is contrastable with the HRC's views of thirty years ago, when it was always willing to permit accept such arbitrary deprivations of liberty, as long as these were supported by law. The social model has reformed the law by portraying it as one of the cases of disablement. The right to liberty is vital in a post-conflict context, especially in relation to extending a judicial guarantee to prisoners of war, some of whom are more likely to be veterans with disabilities.³⁵⁹ In this case, post-conflict justice must be made to persons with disabilities in detention,³⁶⁰ through ensuring the courts or tribunals are designed in ways that are supportive to persons with disabilities.

3.3.1. Final reflections on ICCPR and ICESCR and Models

Therefore, this part argues that the model and approach to disability applied by UNHRTBs in framing disability related obligations of post-conflict States, ought to consider the distinctiveness of disabling environments in peacetime, compared to post-conflict States, in response to protective challenges resulting across the transition

³⁵⁶ UN Human Rights Committee (HRC), *CCPR General Comment No. 8: Article 9 (Right to Liberty and Security of Persons)*, 30 June 1982, No. 8.

³⁵⁷ UN Human Rights Committee (HRC), General comment no. 35, Article 9 (Liberty and security of person), 16 December 2014, *CCPR/C/GC/35*. Paragraphs. 3, 9, 19.

³⁵⁸ UN Human Rights Committee (HRC), *CCPR General Comment No. 8: Article 9 (Right to Liberty and Security of Persons)*, 30 June 1982, No. 8.

³⁵⁹ . S. Meyers, 'Wounded Warriors or One of the Crowd? Civil War, Citizenship and Disability in Nicaragua, Disability Studies and Ability Studies: Two Lenses to Investigate', *Peace Studies Journal* (2013) 6 (4) pp. 22, 36. See also. A. Dayaratne, 'Sri Lanka: Disabled veterans battle high cost of prosthetics, unemployment. (Colombo, 12/July/2007).

³⁶⁰ X. C. M. Balanta, 'Victims and Reparations Limitations and Challenges Colombia Victims Law (Act 1448 of 2011)', *International Journal of Humanities and Social Science* (2014) 4 (1) pg. 152, 164.

from *jus in Bello* via the *jus post-bellum* to a peaceful period (demonstrated in figures 3 and 4 in the appendix section).

In more recent general comments and concluding observations, socioeconomic and cultural rights are increasingly evolutionary in using the social model and its outward-looking approach to encompass persons with disabilities in the enjoyment of specific rights. However, the view of socioeconomic and cultural rights is changing in armed conflict settings, since States are often permitted to derogate from them during armed conflicts.³⁶¹ This is due to the scarcity of resources in *jus post-bellum* contexts, coupled with the progressive realisation of socioeconomic and cultural rights.³⁶² Those features make the nature of disability related duties a remote priority for post-conflict States.

³⁶¹ UN Human Rights Committee (HRC), CCPR General Comment No. 29: Article 4: *Derogations during a State of Emergency*, 31/August/2001, CCPR/C/21/Rev.1/Add.11. See also. H. Keller and L. Grover, 'General Comments of Human Rights', in *UN Human Rights Treaty Bodies: Law and Legitimacy*, L. Grover (ed.) Cambridge University Press, 2015) pp. 116- 198.

³⁶² U. Khaliq and R. Churchill, 'The protection of Economic Social rights a particular challenge', *UN Human Rights Treaty Bodies: Law and Legitimacy*, L. Grover (ed.) Cambridge University Press, 2015) pp. 199-260 at pg. 221 and 210.

Chapter 4

Considering that the ICCPR and ICESCR are unlikely to clarify how protection of persons with multiple vulnerabilities changes across States in the three stage cycle, the presence of special UNHRTBs that devoted to specific groups must be given some attention. Therefore the subsequent Chapter considers the model of disability used in approaching disability by UNHRTBs for special groups across the three stage cycle. The UNHRTBs comprised in Chapter 4 shall include the CRC in relation children with disabilities, the CEDAW in relation to girls and women with disabilities and the CRPD in relation to persons with disabilities.

4.1. Treaty Bodies for Special Groups and Models of Disability

The chapter of this part is to identify models and approaches to disability that are applied by respective Committees that monitor the Convention on Rights of the Child (CRC), as well as the Covenant on Elimination of all forms of Discrimination Against Women (hereafter the CEDAW). The subsection analyses the models of disability underpinning the CRC and the CEDAW, to establish if their contemporary models of disability are similar to models of disability applied by the CRPD.

Tables are used for illustrating the models and approaches to disability that Committees of Treaty Bodies for Special Groups (CTBSGs) apply to protect persons with disabilities. The duties related to disability are suitable for rendering the protection needed for addressing impacts of the armed conflict–disability relationship in the post conflict setting.

Disability problems in post-conflict settings are used to appreciate the limitations of universalising the application of the social model and its inward-looking approach, when framing human rights duties that are owed by States to persons with disabilities. This trend of universalisation is vital in tracing a changing trend in recent models of disability that are used by UNHRTBs in approaching disability. The models of disability underpinning the drafting period shall be compared with models underpinning the conceptualisation of disability by UNHRTBs after the CPRD. Therefore, the timing of the issue of the Concluding Statements, State Reports and General Comments is important in deducing if UNHRTBs favour a model of disability that is more suitable for

characterising a disability environment in the largely peaceful States than in armed conflict and post conflict States.

4.1.1. The CRC and Models of Disability

This section highlights disability related provisions in the CRC, after which examines models of disability exhibited in its General Comments of the Committee on the Rights of the Child (hereafter the CRC Committee). The second part of the analysis addresses whether the CRC Committee tends to change these models of disability in relation to children with disabilities during and after situations of armed conflict. In this case a table is used for illustrating the varied disability related impacts of the armed conflict on children with disabilities before, during and after situations of armed conflict.

The CRC was the primary human rights treaty that included a specific reference to disability (under Article 2 on non-discrimination) after its adoption on the 20/November/1989.³⁶³ The aforesaid Article 2 demands that:

“States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's [...] disability, birth or other status”³⁶⁴

Consequently, from the time when the CRC came into force, its obligations attended to disability centred discrimination.³⁶⁵ This trend contrasts with other UNHRTBs that simply implied disability based discrimination under ‘other status’ with regards to matters of non-discrimination.³⁶⁶ Additionally, the CRC also devoted the entire of Article 23 to the rights and needs of children with disabilities.³⁶⁷ Accordingly, Article 23 obliged State Parties to:

³⁶³ Article 2, UN General Assembly, Convention on the Rights of the Child (hereafter the Convention on the Rights of the Child), came into force on 2/September/1990 and Adopted 20/November/1989, United Nations, Treaty Series, vol. 1577, p. 3. See also. M. A. Stein and J.E Lord, ‘Future Prospects for The UN Convention on the Rights of Persons with Disabilities’, in *The UN Convention on the Rights of Persons with Disabilities European and Scandinavian Perspectives*, O. M. Arnadottir, and G. Quinn, (eds.) (Martinus Nijhoff Publishers, 2009) pp. 17-39 at pg. 20.

³⁶⁴ Article 2 (1) of the Convention on the Rights of the Child. See also. Committee on the Rights of the Child, General Comment No. 9 (2006): The rights of children with disabilities, CRC/C/GC/9, adopted on 27/February/2007. Paragraph. 8.

³⁶⁵ CRC/C/GC/9, adopted on 27/February/2007. Paragraph 2. See also. General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights, CRC/C/GC/16, adopted on 17/April/2013. Part 3, Paragraph A.

³⁶⁶ Ibid. Paragraph. 2.

³⁶⁷ Article 3, the Convention on the Rights of the Child. See also.

“[...] recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance [...]”³⁶⁸

The CRC Committee monitors the implementation of the Convention on the Rights of the Child by its State parties.³⁶⁹ It is comprised of eighteen independent experts and it also monitors the implementation of both Optional Protocols to the Convention: the Optional Protocol on the Involvement of Children in Armed Conflict (OPAC) and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.³⁷⁰ The CRC Committee affords special consideration to issues of disability since children with disabilities constitute 150 million of the projected world population of 500-650 million persons with disabilities.³⁷¹ Although the CRC Committee reports that 80% of disabled persons live in developing countries,³⁷² it barely clarifies the percentage of children with disabilities. Nonetheless, Combrinck claims that 98% of this 80% are children with disabilities.³⁷³ These figures can suffice in explaining why both the Convention on the Rights of the Child and the CRC Committee manifested an interest in disabilities long before promulgating a special Convention of Right of Persons with Disabilities.

The CRC Committee has applied the social model to elaborate special measures that States could adopt in their juvenile justice systems to incorporate Article 23 of the Convention on the rights of the Child in their procedures. Subsequently, in General Comment No.9, the CRC Committee States urges to consider measures such as using languages understood by children with

³⁶⁸ Ibid. 23(2). See also. M. A. Stein and J.E Lord, ‘Future Prospects for The UN Convention on the Rights of Persons with Disabilities’, in *The UN Convention on the Rights of Persons with Disabilities European and Scandinavian Perspectives*, O. M. Arnadottir, and G. Quinn, (eds.) (Martinus Nijhoff Publishers, 2009) pp. 17-39 at pg. 20.

³⁶⁹ The Office of the High Commissioner for Human Rights (OHCHR), Available at

<<https://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>>(Accessed on the 17/April/2017).

³⁷⁰ Ibid. See also. J. Josefsson, ‘Children at the Borders’, TEMÅ, the Department for Thematic Studies, Linköping University, 2016) pg. 24. See also. S.E. Mace, ‘Global Threats to child safety’, in *Clinics Review Articles Our Shrinking Globe: Implications for Child Safety, An Issue of Paediatric Clinics of North America*, S. Avinash and F S. Bonita. (Eds.) pp.19-36 at pg. 31.

³⁷¹ CRC/C/GC/9, adopted on 27/February/2007. Paragraph. 1.

³⁷² Ibid. Paragraph. 1. See also. D. Goodley, *Disability Studies: An Interdisciplinary Introduction*, London, Sage Publications; (2011) pp. 1-21 at pg. 1.

³⁷³ H. Combrinck, ‘The hidden ones: Children with Disabilities in African and the Right to Education’, in *Children’s Rights in Africa: A Legal Perspective* Julia Sloth-Nielsen (Ed.) (Routledge 2016) pp. 299-322 at 299.

disabilities³⁷⁴, and using alternatives whose nature is sufficiently flexible to be adjustable to the individual abilities and capabilities of children with disabilities.³⁷⁵ These measures promote external environments of juvenile justice systems to integrate modifications and reasonable adjustments meant for accommodating abilities of person with disabilities. This affirms that the CRC Committee is also tending towards the rights-based approach of the social model. The occurrence of armed conflict is more likely to compromise aspects of juvenile justice, hence making this concept more realistic before and during the occurrence of the armed conflict.

The CRC Committee applies the medical model under General Comment No.9,³⁷⁶ especially where it seeks to exemplify instances that require international cooperation and technical assistance.³⁷⁷ The first instance relates to where the CRC Committee reiterates the obligation under Article 23 (4) for States Parties to engage in sharing of knowledge,³⁷⁸ through encouraging States Parties to exchange information on management and rehabilitation of children with disabilities.³⁷⁹ The HCR recognises the problem of inadequate resources in developing States that hampers them in preventing disability and rehabilitating children with disabilities.³⁸⁰ Consequently, the CRC Committee has appealed for international cooperation and technical assistance as a means of attracting alternative funding for developing States to rehabilitate children with disabilities.³⁸¹ To that end, the CRC Committee applauds the UNICEF and the World Health Organization (WHO) for rendering international assistance to developing States in such cases.³⁸²

The CRC Committee also applies the medical model where it sheds light on post conflict problems of child disablement. The CRC Committee illustrates the high cost of mine clearance from sites with remnants of land mines and unexploded

³⁷⁴ CRC/C/GC/9, adopted on 27/February/2007. Paragraph. 74 (a)

³⁷⁵ Ibid Paragraph. 74 (b)

³⁷⁶ Committee on the Rights of the Child, *General Comment No. 9* (2006): The rights of children with disabilities, CRC/C/GC/9, adopted on 27/February/2007 [hereafter CRC/C/GC/9]. See also. Committee on the Rights of the Child, *General Comment No. 9* (2006): The rights of children with disabilities, CRC/C/GC/9/Corr.1 adopted on 13/November/2007.

³⁷⁷ Ibid. CRC/C/GC/9, adopted on 27/February/2007. Paragraph. 22-23.

³⁷⁸ Article 23 (4) of the Convention on the Rights of the Child. See also. CRC/C/GC/9, adopted on 27/February/2007. Paragraph. 3.

³⁷⁹ CRC/C/GC/9, adopted on 27/February/2007. Paragraph. 22.

³⁸⁰ CRC/C/GC/9, adopted on 27/February/2007. Paragraph. 23.

³⁸¹ Ibid. Paragraph. 23.

³⁸² Guidance Including children with disabilities in humanitarian action, Preparedness, Response and early recovery, Recovery and reconstruction, United Nations Children's Fund (UNICEF), June 2017. pg.62.

ordnance planted during the armed conflict.³⁸³ On this occasion, the CRC Committee approaches disability from a perspective of demonstrating how acts done during armed conflicts lead to injury and death among children both during and after situations of armed conflict. In terms of framing obligations related to disability prevention in this context, the CRC Committee acknowledges that:

“States parties are often not privy to plans of the sites where the land mines and unexploded ordnance were planted and the cost of mine clearance is very high.”³⁸⁴

The CRC Committee articulates that such post conflict States would benefit from international co-operation under the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction.³⁸⁵ This would enable them to seek and receive assistance, where feasible, from other States Parties in removing remnants of landmines and unexploded ordnance.³⁸⁶ It is worthwhile mentioning that the above Convention on the Prohibition of Anti-Personnel Mines, shows considerable reliance on the inward-looking medical model of rehabilitation, suggesting the relevance of this model in relation to post conflict issues of disability. The CRC Committee applies the medical model in urging States Parties to closely cooperate in completely removing all landmines and unexploded ordnance in areas of armed conflict and previous armed conflict.³⁸⁷

In General comment No. 15, the CRC Committee identifies that disabilities could be prevented if resources are allocated to the application of knowledge and technologies to prevent, treat and care for those with disabilities.³⁸⁸ This reflects a situation in which the CRC Committee applies the medical model in portraying disability as a preventable bodily impairment. The CRC Committee also applies the social model in a manner that portrays as a benefitting from the medical model. In this regard the Committee recognizes the medical model as a prerequisite for

³⁸³CRC/C/GC/9, adopted on 27/February/2007. Paragraph. 23.

³⁸⁴ Ibid. Paragraph. 23.

³⁸⁵ Article 6, United Nations, Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, adopted 18/September/1997, entry into force 1/March/1999

³⁸⁶ Ibid. Article 6 (1)

³⁸⁷ CRC/C/GC/9, adopted on 27/February/2007. Paragraph. 23.

³⁸⁸ UN Committee on the Rights of the Child (CRC), General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), CRC/C/GC/15 adopted 17/April/2013. Part 1 Paragraph 2.

realising the social model's idea of physical accessibility for children with disabilities.³⁸⁹ The view of applying both models as complementing each other is scarcely elucidated by the CRC Committee to strengthen protection in armed conflict and in post conflict contexts. However complementarity is important for enhancing obligations of rehabilitating children with disabilities in armed conflicts and in the post conflict stages of the cycle.

In General Comment 1,³⁹⁰ the CRC Committee considers disability when enlarging the right of the child with respect to access to education.³⁹¹ In its utterances, the CRC Committee draws on the social model by attributing the limited access of children with disabilities to formal and informal education to the discriminative nature of learning environments.³⁹² Note that the CRC Committee is neither attributing blame to the body's impairment, nor condemning the individuals as burdensome when considering failure to integrate in environments of formal and informal education. This perspective on disability is a classic manifestation of the social model.

In summary, the CRC Committee tends to apply both the social and the medical model concurrently. In some cases, emphasis is placed on the medical model, especially where rehabilitation of children with disabilities is required. In cases where modifying external environments of juvenile justice is needed for protecting children with disabilities, the social model is applied. This suggests some complementarity in the models, although there is little clarity as to how and when these models apply to situations of armed conflict and instances of post conflict. Moreover, where both the medical and social model are used under various General Comments of the CRC Committee, there is neither clarity nor any certainty as to which model applies. Perhaps it is time to consider if these models of disability ought to change during and after armed conflicts. This calls for a chronological sequence

³⁸⁹ Ibid. Paragraph E (2) b. See also. A. Samaha, 'What good is the social model of disability', (University of Chicago Public Law & Legal Theory Working Paper No. 166, 2007). pg. 8

³⁹⁰ UN Committee on the Rights of the Child (CRC), *General Comment No. 1* (2001), Article 29 (1), the aims of education, CRC/GC/2001/1, adopted 17/April/2001, Paragraphs. 6, 10.

³⁹¹ Ibid. Paragraph. 10.

³⁹² Ibid. Paragraph. 10. See also. H. Combrinck, 'The hidden ones: Children with Disabilities in African and the Right to Education', in *Children's Rights in Africa: A Legal Perspective* J. Sloth-Nielsen (Ed.) (Routledge 2016) pp. 299-322 at pg. 299.

in elucidating how the models could apply when framing obligations to children with disabilities during and after situations of armed conflict.

4.1.2. Is the CRC Changing Models of Disability in Post Conflict Contexts?

Table 1 uses a hypothetical Child A to demonstrate some of the dangers that the CRC Committee envisions in the aforementioned General Comment 9. Limiting the problem to injuries is an understatement since research indicates that such injuries lead to more children with disabilities after armed conflict.³⁹³

Table 1 Mapping the Trajectory of the armed conflict-disability and why its impacts should be considered when the CRC Committee is framing disability related owed to children with Disabilities Before, during and after Situations of Armed Conflict.

Disability and categories of Individuals before, during and after the armed conflict	BEFORE Armed conflict. Since Birth/childhood Model underpinning CRC+CRPD obligations relating to disability in Peacetimes.	DURING Armed conflict IHL <i>Jus in bello</i> Model underpinning CRC+ CRPD Obligations relating to disability during Armed conflicts.	AFTER Armed Conflict. Model underpinning CRC+ CRPD Disability related obligations in the Aftermath/Post-conflict period/ <i>jus post-bellum</i> .	Entitled to disability rights (before and after Armed Conflict) assuming State was already party to the CRPD Convention on	CRC Convention on Rights of the Child.
Child A (i) Girl Child (ii) Boy Child	(Stage 1) A boy/girl without disabilities before Armed Conflict	(Stage 2) A boy/girl Permanent or long-term disability due to anti-personnel landmine, amputee, suffered PTSD, slight loss, among other impairments	(Stage 3) A Child (boy/girl)with disabilities as a consequence of the armed conflict and its disabling environments	Before conflict: NO After conflict: YES Enabling rights CRPD Articles 7+11+20+26+16(4)= Resulting rights. More Independence Accessibility	General Comment 9 Paragraphs 22, 23,78 Convention Article 2 + 23+38(4) What Special considerations are needed for boys and girls with War-related disabilities? What models? Does gender matter?
Child B (i) Girl Child (ii) Boy Child	(Stage 1) A boy/girl with No disabilities	(Stage 2) Not disabled during the armed conflict	(Stage 1) A boy/girl without disabilities	Before conflict: NO After conflict: NO	CRC Generalised obligations
Child C (i) Girl Child (ii) Boy Child	(Stage 1) A boy/girl with disabilities	(Stage 1) More vulnerable to abuse	(Stage 1) A boy/girl with disabilities.	Before: YES CRPD Articles 7+11+20+26+16(4) After: YES	What Special Considerations are needed for boys and girls with disabilities

³⁹³ UN Committee on the Rights of the Child (CRC), *General Comment No. 9* (2006): The rights of children with disabilities, CRC/C/GC/9, adopted on 27/February/2007. Paragraphs 79.

The above table identifies some challenges that the CRC Committee highlights in General Comment No.9 with a view to using models in a systematic manner to improve the protection rendered to children with disabilities during and after armed conflicts. Two questions arise as a means of rethinking possible solutions, relating firstly to the priority accorded to different models, and secondly to the relevance of a child's gender.

Question 1: Should some models of disability be afforded more priority in determining the protection and best interests of children with disabilities before, during and after situations of armed conflict?

This question is complicated by the fact that situations during and after situations of armed conflict might lead to the creation of a subgroup of disabled children with explicitly war-related disabilities.³⁹⁴ Here, the medical model takes primacy since medical needs would be of greater immediate importance for the rehabilitation of children suffering disabilities as a result of armed conflicts than the social model's idea of social re-integration.³⁹⁵ However, the social model should also play some role as a secondary model consequential in its role and hence complementary in framing post conflict disability-related obligations of States. In addition, the CRC Committee obligates States Parties to take all reasonable measures to ensure protection and care of children affected by armed conflict.³⁹⁶ The obligation in Article 38(4) could be emphasised for States during and after situations of armed conflict for the period illustrated by the two blue columns of the table 1 above. Interpretation of this obligation in conjunction with paragraph 78 of General Comment 9 indirectly indicates the willingness of the CRC Committee to apply the social model as secondary and the medical model as primary. For instance, the CRC requires a State's recovery from armed conflict *before* social re-integration of children who suffer disabilities as a result of armed conflicts.³⁹⁷ This order of reference clearly applies the medical model upon which recovery is founded and only then undertakes measures intended for social integration. The CRC Committee reminds States Parties to explicitly exclude children with disabilities from

³⁹⁴ CRC/C/GC/9, adopted on 27/February/2007. Paragraph. 78.

³⁹⁵ Ibid. Paragraph. 78.

³⁹⁶ Article 38 (4) the Convention on the Rights of the Child.

³⁹⁷ CRC/C/GC/9, adopted on 27/February/2007. Paragraph. 78.

conscription in armed forces and enact legislative and other measures to fully implement this prohibition. Special attention is also given to obligations of States under Optional Protocol on the involvement of children in Armed Conflict (OPAC). Note that the interconnectedness in the rights of the child should be a basis for complementarity in models of disability although this must be done in a correct and systematic manner.³⁹⁸

Additionally, in its General Comments, the CRC Committee is concerned with how international cooperation could assist in removing land mines and unexploded ordnance to prevent the likelihood of injuries.³⁹⁹ Considering the entry into force of the CRPD, the CRC should take Article 7 of the CRPD and related General Comments in advancing special needs of children with disabilities, paying attention to children disabled during armed conflict as a consequence of injuries from remnants of unexploded ordnance.⁴⁰⁰ Engaging Article 32 of the CRPD with Article 11 of the CRPD will link international cooperation to State obligation in order to protect children with disabilities during and after situations of armed conflict. In this case, the medical model deserves recognition in framing obligations regarding rehabilitation of children with disabilities. In fact, the medical model underpins activities of non-state actors like UNICEF with its Mine Explosive Remnants (MER) of war risk education,⁴⁰¹ the ICRC with its Physical Rehabilitation Programme (PRP),⁴⁰² and the World Health Organization (WHO) with its Social Determinants of

³⁹⁸UN Committee on the Rights of the Child (CRC), General Comment No. 1 (2001), Article 29 (1), the aims of education, 17/April/2001, CRC/GC/2001/1. Paragraph. 6.

³⁹⁹ CRC/C/GC/9, adopted on 27/February/2007. Paragraph. 23.

⁴⁰⁰ CRPD Article 7 in conjunction with Article 11 of the CRPD.

⁴⁰¹ Guidance Including children with disabilities in humanitarian action, Preparedness, Response and early recovery, Recovery and reconstruction, United Nations Children's Fund (UNICEF), June 2017. pg.62.

⁴⁰² Guinea-Bissau, post-conflict physical rehabilitation programme run by the International Committee of the Red Cross (ICRC), '*Sport helping to rehabilitate victims of war and armed violence*', published on 16/September/2016 available at <<https://www.icrc.org/en/document/sport-helping-rehabilitate-victims-war-and-armed-violence>> (Accessed 30/August/2017). Note Guinea-Bissau ratified the ACHPR in 04/12/1985 but experienced an armed conflict 1998-1999. See also. UN Peace Building Commission Guinea-Bissau, available at <http://www.un.org/en/peacebuilding/doc_guinea-bissau.shtml> (Accessed 30/August/2017)

Health (SDH) in countries in conflict and crises,⁴⁰³ where those actors are rendering support to children with disabilities during, and after situations of armed conflict.⁴⁰⁴

Given the higher likelihood of children with disabilities after rather than before the armed conflict, the urgency of the medical model would be expected to be much greater than the social model in framing the protection and best interests of children with disabilities. This trend must be considered by the CRC Committee to ensure that it can apply the medical model and its right based obligations as primary while complementing it with the social model as secondary. Otherwise, the CRC Committee might misunderstand or ignore the protection and care of children who are affected by an armed conflict, such as those with war related disabilities during and after conflict,⁴⁰⁵ if post conflict States devote their resources to building an inclusive juvenile justice system instead of first addressing pressing medical need, such as through the purchase of an artificial limb.⁴⁰⁶

Question 2: Does gender have some implications for the model of disability that must apply to establish the protection and best interests of children with disabilities before, during and after situation of armed conflict?

In a post conflict State, an adolescent girl who, for example, has lost her sight or hearing due to unexploded landmines, is entitled to non-discriminatory access to sexual and health related information on reproductive rights.⁴⁰⁷ However, accessibility may be impeded unless such information is conveyed in a manner that a girl with disabilities is able to understand.⁴⁰⁸ It is highly unlikely that such a girl would have the private resources to afford access⁴⁰⁹, and a post-conflict State would also be challenged to find sufficient resources to ensure access. Therefore,

⁴⁰³ Commission on Social Determinants of Health, Social determinants of health in countries in conflict: A perspective from the Eastern Mediterranean Region, WHO Regional Office for the Eastern Mediterranean, (WHO Regional Publications, Cairo, 2008). pg. 12. See also. S. Watts, at el. 'Social Determinants of Health in Countries in Conflict and Crises', Eastern Mediterranean Regional Office, World Health Organization, Cairo, 2007). Pp. 19-20.

⁴⁰⁴ CRC/C/GC/9, adopted on 27/February/2007. Paragraph. 23.

⁴⁰⁵ Ibid. 78.

⁴⁰⁶ Ibid. 74.

⁴⁰⁷ UN Committee on the Rights of the Child (CRC), General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), 17 April 2013, CRC/C/GC/15, Part II paragraph. B.

⁴⁰⁸ UN Committee on the Rights of the Child (CRC), General Comment No. 12 (2009): The right of the child to be heard, 20 July 2009, CRC/C/GC/12. Paragraph. 75. UN Committee on the Rights of the Child (CRC), General Comment No. 1 (2001), Article 29 (1), the aims of education, 17 April 2001, CRC/GC/2001/1. Paragraph. 10.

⁴⁰⁹ Ibid.

international cooperation and technical assistance is required to fill these gaps. Gender related questions matter during, and after armed conflict, and must not be underestimated.

Intertwining should also be given consideration. As seen in the table 1 above, CRPD obligations could be applied alongside those of the Convention on the Rights of the Child. However, in cases of intertwining of these obligations, Committees may diverge in their priorities through emphasis on disability related obligations that apply completely different models of disability. There must be some consensus as to when, how and why these treaty bodies apply a medical or social model on a given occasion.

4.1.3. The CEDAW

This subsection is interested in instances during which disability has been afforded attention by the CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women) Committee (hereafter the CEDAW Committee).⁴¹⁰ The CEDAW Committee comprises of twenty-three experts on rights of women that are entrusted with monitoring the implementation of the Convention.⁴¹¹ The sources used in this discussion include General Recommendations from the CEDAW Committee. These are discussed due to their usefulness in highlighting the models of disability applied by CEDAW in interpreting disability obligations in peacetime, armed conflicts and post conflict situations.

4.1.4. The CEDAW Committee and Discernible Models of Disability

The CEDAW Committee has dealt with aspects of disability in several General Recommendations, in order to expound obligations that States have to women with disabilities in peacetime. In each of those General Recommendations, the Committee tends to apply one or more models of disability, as discussed in the following sections.

⁴¹⁰ Office of the High Commissioner for Human Rights (OHCHR) Available at <<https://www.ohchr.org/EN/HRBodies/CEDAW/pages/cedawindex.aspx>> (Accessed on/15 August/2018).

⁴¹¹ Ibid.

General Recommendation No.18 (1991) on disabled women predates the disability treaty and highlights the problem of limited information on women with disabilities in more than 60 periodic reports of States parties.⁴¹² The Recommendation earmarks the earliest hallmarks of the social model in the way the CEDAW Committee approaches matters of disability. To that end, the CEDAW Committee affords special consideration to the Nairobi Forward-looking Strategies for the Advancement of Women (NFLSAW), which specifically identify women with disabilities as a category of a more vulnerable group.⁴¹³ In addition, it approves the World Programme of Action concerning Disabled Persons (1982).⁴¹⁴ The use of the term 'disabled women' (replaced by 'women with disabilities' in subsequent General Recommendations), indicates features of the medical model that underpinned the CEDAW Committee's approach to disability from its time of commencement.

In General Recommendation No. 24 the CEDAW Committee elaborates obligations associated with Article 12 of the Convention.⁴¹⁵ The Committee urges States to pay special attention to health needs and rights of women with disabilities as constituting a more vulnerable and disadvantaged group.⁴¹⁶ There is a likelihood that 'health needs' encompass medical requirements that depend upon the medical model, while 'health rights' suggest a more assertive rhetoric of special measures for enhancing the access to health services through concepts of the social model. For example, the social model is exemplified by the requirement of the CEDAW Committee to have appropriate measures that make environments for health services physically accessible to women with disabilities of all ages and respectful to their dignity.⁴¹⁷ At the same time, the Committee accepts the medical model to the extent that osteoporosis, dementia, handicaps and other disabilities associated with ageing women could be addressed through health services.⁴¹⁸

⁴¹² UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 18 (Disabled women) Tenth session (1991). Paragraph. 2.

⁴¹³ UN General Assembly, Implementation of the Nairobi Forward-looking Strategies for the Advancement of Women: resolution / adopted by the General Assembly, 13/December/1985, A/RES/40/108 UN General Assembly (40th session 1985-1986). Paragraph 296.

⁴¹⁴ General Recommendation No. 18 (Disabled women). Paragraph. 5.

⁴¹⁵ UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health), 1999, A/54/38/Rev.1, chap. I.

⁴¹⁶ Ibid. Paragraph 6.

⁴¹⁷ Ibid. Paragraph 25.

⁴¹⁸ Ibid. Paragraph 24.

The CEDAW Committee also pronounced on disability under General Recommendation No. 27 on protection of older women and their human rights.⁴¹⁹ Older women with disabilities are specifically identified as a more vulnerable group.⁴²⁰ The CEDAW Committee gives emphasis to the social model by representing the problems of women with disabilities as a consequence of societal tendencies such as gender stereotyping and outmoded habitual practices.⁴²¹ Such stereotypes and practices have aggravated the deprivation of women with disabilities to their right to education and consequently many of them receive inadequate education.⁴²²

The CEDAW Committee also notes that older women with disabilities experience double stereotyping based on both disability and aging making them twice as exposed to employment related discrimination as other women.⁴²³ Considering that the social protection from pensions is linked to a person's earnings while in work, then women with disabilities face a higher likelihood of ending up with much lower pensions than other women.⁴²⁴ The social model is also used by the Committee to suggest a number of recommendations such as increasing the accessibility and availability of legal services,⁴²⁵ paying consideration to older women with disabilities when devising policies to reform societal and cultural behavioural patterns unfavourable and dangerous to minorities.⁴²⁶ The approach of the social model is also apparent where the CEDAW Committee recommends enacting protective laws for older women with disabilities.⁴²⁷ Most of the WENA States have a comparatively larger percentage aging population than regions of the Global South, with older women with disabilities being more prevalent in WENA States. This indicates the concentration of the CEDAW Committee on features of disability in WENA States. Nevertheless, it is clear there are many older women with disabilities in regions of the Global South such as Sub-Saharan African and MENA States, and

⁴¹⁹ UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 27 on older women and protection of their human rights, 16/December/2010, CEDAW/C/GC/27.

⁴²⁰ Ibid. Paragraph 16.

⁴²¹ Ibid. Paragraph 16.

⁴²² Ibid. Paragraph 19.

⁴²³ Ibid. Paragraph 20.

⁴²⁴ Ibid. Paragraph 20.

⁴²⁵ Ibid. Paragraph 33.

⁴²⁶ Ibid. Paragraph 36.

⁴²⁷ Ibid. Paragraph 37.

that women in several States in Sub-Saharan African are more prone to war-related disabilities

Even though provisions of the CEDAW are completely silent on whether States have specific duties of protecting women with disabilities during and after situations of armed conflict, the CEDAW Committee uses General Recommendation No. 30 on women in conflict to make specific consideration for women with disabilities. This General Recommendation shall be expounded further under a different section of this thesis. However, it suffices to note that international cooperation is supported, and the medical model seems evident.

General Recommendation No. 32 is concerned with gender-based dimensions of refugee status, asylum, nationality and statelessness of women.⁴²⁸ The CEDAW Committee proposes establishing adequate early screening mechanisms for identifying women asylum seekers with disabilities that might require specific protection and assistance needs.⁴²⁹ The CEDAW Committee applies the medical model by emphasising needs from those screening mechanisms rather than the rights of women asylum seekers with disabilities. Needs could be physical, medical, and economic amongst others.

General Recommendation No. 33 concerning women's access to justice relies on the social model by blaming physical barriers for the inaccessibility of courts and tribunals to women with disabilities.⁴³⁰ The CEDAW Committee neither blames impairments nor focuses on treatment of deformities as responsible for denying women with disabilities access to courts and tribunals. The social model also accounts for the Committee's recommendation urging States to give special attention to the availability of and accessibility to justice systems by women with disabilities.⁴³¹

In General Recommendation No. 34 on the rights of rural women the CEDAW Committee notes that rural settings present unique challenges to women with

⁴²⁸ UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, 5/November/2014, CEDAW/C/GC/32. Paragraph.

⁴²⁹ Ibid. paragraph 46.

⁴³⁰ UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 33 on women's access to justice, CEDAW/C/GC/33 3/August/2015. Paragraph. 13.

⁴³¹ Ibid. Paragraph 17 (g)

disabilities.⁴³² The CEDAW Committee applies the social model by reminding States of the need to facilitate modifications and adjustments that make environments of rural settings adopted to accommodating women with disabilities.⁴³³ For example, the CEDAW Committee obliges States to promote the accessibility of rural infrastructures and services to women with disabilities.⁴³⁴ Similarly, the trend of a social model is evidenced by condemning attitudinal barriers as the cause of limited access to sexual and reproductive health care among women with disabilities as a marginalised minority.⁴³⁵ Support for increasing the accessibility and affordability of education for rural women and girls with disability is also highlighted, especially the requirement to offer education on good hygiene and allocate resources for menstrual hygiene.⁴³⁶ It is evident that these obligations would seem more practical for a State in times of peace. Firstly, it is highly unlikely that in a situation of armed conflict, a State could successfully execute its role of rendering health related information. Secondly, the resource constraints in Global South States make some of the ideas suggested in this recommendation - such as free education to girls with disabilities - impractical even in peacetime, hence making international cooperation and assistance under Article 32 of the CRPD a necessary obligation.

General Recommendation No. 35, relates to gender-based violence against women through which the CEDAW Committee updated General Recommendation 19.⁴³⁷ The Committee calls upon States to repeal laws of customary, religious and indigenous nature, that permit performance of medical procedures on women with disabilities without their informed consent,⁴³⁸ as well as laws intended to deny women with disabilities the means to prevent or report acts of gender-based violence by depriving them of legal capacity to institute claims by restricting their ability to testify as competent witness in courts of law.⁴³⁹ The social model is symbolised in

⁴³² UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW, General Recommendation No. 34 on the rights of rural women, 63rd session, CEDAW/C/GC/34, 7/March/2017. Paragraph 14.

⁴³³ Ibid. Paragraph 14.

⁴³⁴ Ibid. Paragraph 15.

⁴³⁵ Ibid. paragraph 37. UN Committee on the Rights of Persons with Disabilities (CRPD), General Comment No. 3 (2016), Article 6: Women and girls with disabilities, 2 September 2016, CRPD/C/GC/3, Paragraphs 28-46.

⁴³⁶ Ibid. paragraph 42(h).

⁴³⁷ UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW, General Recommendation No. 35, of the 67th session on gender-based violence against women, CEDAW/C/GC/35, 26/ July/2017. Paragraphs. 1-2.

⁴³⁸ Ibid. Paragraph 29(c) (i).

⁴³⁹ Ibid. Paragraph 29(c) (iii).

resolutions of the CEDAW Committee where it suggests modifications to make complaint mechanisms more accessible and appropriate for supporting women with disabilities. A case in point is where this Committee suggests the removal of communication barriers to victims with disabilities as a means of protecting and assisting women complainants or witnesses to gender-based violence during legal proceedings.⁴⁴⁰ The CEDAW Committee identifies women with disabilities as a group prone to intersecting forms of discrimination hence needing special consideration when disseminating information of legal sources and compensation availed.⁴⁴¹

The CEDAW Committee uses General Recommendation No. 36 for expounding the right of girls and women to education.⁴⁴² Ensuring inclusive education for all and promoting lifelong learning is a matter of urgency of Sustainable Development Goal 4 (SDG).⁴⁴³ It expects States to eliminate gender inequalities in education through promotion of equal access to education and vocational training to persons with disabilities at all levels.⁴⁴⁴ The CEDAW Committee also calls upon States to undertake proactive measures to eradicate various forms of educational discrimination against girls and women through addressing the problem of gender stereotyping. Special consideration to women and girls from minority groups such as women and girls with disabilities could benefit from ensuring that the media projects constructive and non-sexual representations of women.⁴⁴⁵ The CEDAW Committee observes that according to UNESCO⁴⁴⁶ a third of out-of-school children worldwide are children with disabilities, and several factors accounting for this trend are illuminated by the Committee such as inaccessibility⁴⁴⁷ and the unwillingness by teachers to accommodate students with disabilities.⁴⁴⁸ The high prevalence of violence to girls with disabilities is noted as another that justifies affording them

⁴⁴⁰ Ibid. Paragraph 31(a) (ii).

⁴⁴¹ Ibid. Paragraph 31(d).

⁴⁴² UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW, General Recommendation No. 36, 68th session, on the right of girls and women to education, CEDAW/C/GC/36, 27/November/2017. Paragraph 3.

⁴⁴³ Ibid. Paragraph 3.

⁴⁴⁴ Ibid. Paragraph 27.

⁴⁴⁵ Ibid. Paragraph 27(e).

⁴⁴⁶ Ibid. Paragraph 43.

⁴⁴⁷ Ibid. Paragraph 44.

⁴⁴⁸ Ibid. Paragraph 46.

better protection.⁴⁴⁹ The education rights discussed under this General Recommendation apply to states in peacetime and these in post conflict, although the medical is hardly emphasised in relation to this right.

Furthermore, in General Recommendation No. 37 the CEDAW Committee explains the Gender-related Dimensions of Disaster Risk Reduction in the context of Climate Change as a human caused problem,⁴⁵⁰ noting that situations of crisis worsen gender inequalities faced by women with disabilities.⁴⁵¹ Gender-sensitive measures should therefore be used when undertaking measures for disaster preparation.⁴⁵² The social model is applied by requiring communication of external disaster to be adjusted in ways that make the warning signs as accessible as possible to women with disabilities.⁴⁵³ There is a higher vulnerability of women with disabilities to violence and sexual abuse due to physical limitations, barriers to communication, and the inaccessibility of basic services and facilities. The social model concepts of developing protective legal regimes are used by the Committee, where equality and non-discrimination is vital in developing protection for women in disaster related situations.⁴⁵⁴

In Joint General Recommendation No. 31 of the CEDAW Committee and General comment No. 18 of the Committee on the Rights of the Child on harmful practices, the Committee expresses discontent with harmful practices that it attributes to stereotypes.⁴⁵⁵ A suggestion to ensuring the availability of this joint recommendation in formats that are accessible to persons with disabilities is encouraged by the Committee. This focus indicates that the Committee is strongly interested in ways of changing external environments to adapt them to the abilities of women with disabilities.

4.1.5. Is the CEDAW changing Models of Disability in Post Conflict Contexts?

⁴⁴⁹ Ibid. Paragraph 66.

⁴⁵⁰ UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW, General Recommendation No. 37, 69th session, on Gender-related dimensions of disaster risk reduction in the context of climate change, CEDAW/C/GC/37, 13/March/2018. Paragraph 1.

⁴⁵¹ Ibid. Paragraph 2.

⁴⁵² Ibid. Paragraph 4.

⁴⁵³ Ibid. Paragraph 5.

⁴⁵⁴ Ibid. Paragraph 26(a).

⁴⁵⁵ Ibid. Paragraph 9.

This section is useful for investigating if the models of disability used by the CEDAW for problems of women with disabilities in peacetime, are the same as those which it applies to their problems during, and after, situations of armed conflicts.

Even though provisions of the CEDAW are completely silent on whether States have specific duties to protect women with disabilities in situations of armed conflict, the Committee uses General Recommendation No. 30 on women in conflict, to justify special considerations for women with disabilities during and after situations of armed conflict.⁴⁵⁶ In this regard, special attention must be particularly drawn to paragraphs 11, 36-36, 51 and 57 of General Recommendation No. 30 - these models of approach to disability are examined in the subsequent discussion.

The CEDAW Committee highlights the importance of international cooperation as an extraterritorial obligation of States when protecting women and girls with disabilities.⁴⁵⁷ The Committee demonstrated the vulnerability of women with disabilities, which it attributes to the increase in cases of sexual violence.⁴⁵⁸ It further reinstates that conflict-related, gender-based violence results in a range of physical and psychological consequences to women, for example, injuries and disabilities, heightened dangers of HIV infection and risks of pregnancy as a consequence of sexual violence.⁴⁵⁹ The CEDAW Committee urges States to prioritise the reintegration of women with disabilities during armed conflict, and in post-conflict settings without discrimination.⁴⁶⁰ In the aftermath of armed conflict, the medical model is paramount in rehabilitating women and girls that have been traumatised by instances of sexual violence during armed conflict. This model also enhances the reintegration of women and girls with war related disabilities, through consideration of their challenges, as illustrated in the table below.

Table 2 demonstrates that impacts of the armed conflict-disability relationship, justify the CEDAW Committee in taking into account the variances in problems, and disability related duties. Arguably, it implies that this Committee should neither

⁴⁵⁶ UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, 1/November/2013, CEDAW/C/GC/30. Paragraphs. 11, 36-36, 51 and 57.

⁴⁵⁷ Ibid. Paragraph 11.

⁴⁵⁸ Ibid. Paragraph 37.

⁴⁵⁹ Ibid. Paragraph 37.

⁴⁶⁰ Ibid. Paragraph 51

overlook, nor ignore the legal implications of differences in the post-conflict problems impacting of individuals represented by category A from those of individuals represented by category B and C. The CEDAW Committee must perceive post-conflict problems, and the disabling characteristics of the armed conflict-disability relationship, as a probable benchmark to models and approaches to disability which it must apply when identifying and framing disability related duties in ways that address concerns of women and girls with disabilities under the different stages of post-conflict States.⁴⁶¹

Disability and categories of Individuals before, during and after the armed conflict	BEFORE Armed conflict. Since Birth/childhood Model underpinning CEDAW+ CRPD obligations relating to disability in Peacetimes.	DURING Armed conflict IHL <i>jus in bello</i> Model underpinning CEDAW+ CRPD Obligations relating to disability during Armed conflicts.	AFTER Armed Conflict. Model underpinning CEDAW+ CRPD Disability related obligations in the Aftermath/Post-conflict period/ <i>jus post-bellum</i> .	Entitled to disability rights (before and after Armed Conflict) assuming State was already party to the CRPD and CEDAW
Mrs/Miss. A Woman or girl	(Stage 1) A woman or girl without disabilities	(Stage 2) A woman or girl with permanent disability due to anti-personnel landmine, amputee, suffered PTSD, slight loss, other impairments	(Stage 3) A woman or girl with disabilities as a result of experiencing the armed conflict and its disabling environments	Before conflict: NO After conflict: YES Enabling rights CRPD Articles 6+11+20+26+16(4)= Resulting rights. More Independence Accessibility
Mrs/Miss. B Woman or girl	(Stage 1) A woman or girl without disabilities	(Stage 2) A woman or girl not disabled during the armed conflict	(Stage 3) A woman or girl without disabilities	Before conflict: NO After conflict: NO
Mrs/Miss. C Woman or girl	(Stage 1) A woman or girl with disabilities	(Stage 2) More vulnerable to abuse	(Stage 3) A woman or girl with disabilities	Before: YES CRPD Articles 6+11+20+26+16(4) After: YES

Table 2: The trajectory of the armed conflict-disability relationship and why its impacts could inform the model approach through which the CEDAW Committee is framing and contextualising disability related obligations of post-conflict States towards Women with Disabilities.

According to this table, it is noticeable that as far as post-conflict States are concerned, the CEDAW Committee must acknowledge that the aftermath of the armed conflict-disability relationship, justifies ensuring that appropriate models and

⁴⁶¹ Ibid. pg. 105.

approaches to disability are applied. This is especially true for models and approaches that are well-suited to address the disabling environments from the armed conflict-disability relationship, and likely obligations to the individual categories of women with disabilities.⁴⁶² Studying and understanding the armed conflict-disability relationship is also a key factor in assisting the Committee to appreciate the likely implications from the impacts of determining and prioritising protective duties for women with disabilities in post-conflict States.⁴⁶³ For example, while there might be an urgent need to support a considerable number of women in the category of Mrs/Miss A with mobility rehabilitation through rendering prosthesis,⁴⁶⁴ that need is unlikely to be a priority to Mrs/Miss C, especially if she had a wheelchair or some form of mobility supportive measures, prior to the occurrence of the armed conflict.

Therefore, CEDAW should realise that in post-conflict States, the armed conflict-disability relationship leads to a complex state of armed conflict orientated heterogeneity among women with disabilities. That armed conflict orientated heterogeneity should enlighten the Committee on the appropriateness of the social model, and its disability related obligations that post-conflict States ought to prioritise in the aftermath of armed conflicts.

The CEDAW Committee has also made references to post-conflict Northern Uganda.⁴⁶⁵ According to its recommendations, the Committee tends to conceptualise disability through the social model of disability and its outward-looking approach.

“The Committee also expresses its serious concern at reports that women with disabilities, especially in Northern Uganda, face stigma and isolation, gender-based violence, and obstacles to accessing justice. The Committee is further concerned that sexual and reproductive health and rights of women with disabilities are not promoted and protected.”⁴⁶⁶

⁴⁶² S. R. Barrig (ed), ‘As if we weren’t humans: Discrimination against women with disabilities in Northern Uganda’, (Human Rights Watch, 2010) 350 Fifth Avenue, 34th Floor Available at <https://www.hrw.org/sites/default/files/reports/uganda0810_brochure_low.pdf> (accessed/20 June/2016).

⁴⁶³ C. Kathleen, ‘Doubly protected and doubly discriminated: The paradox of women with disabilities after Conflict’, (2013) 19(105) William & Mary Journal of Women and the Law, pp. 120, 136.

⁴⁶⁴ The international Committee for Red Cross (ICRC) ‘How law protects persons with disabilities in armed conflict published on 13/December/2017’, Available at <<https://www.icrc.org/en/document/how-law-protects-persons-disabilities-armed-conflict>> (Accessed on 3/ January/2018)

⁴⁶⁵ CEDAW/C/UGA/7, 22/October/2010, 47th session.

⁴⁶⁶ Ibid p. 28, Paragraph 45

Through these recommendations, the CEDAW Committee are affording some special attention to the situation in Northern Uganda.⁴⁶⁷ It is highly probable that by prioritising sexual and reproductive health and rights, the Committee is applying the social model and its outward-looking approach. However, this approach might be incapable of addressing problems of women with disabilities, that are characteristics of disabling features, and consequential to circumstances of post-conflict States. It is worthwhile bearing in mind, that disabling features are post-conflict characteristics, attributable to the armed conflict-disability relationship. A relationship, the implications of which, have impacts on women with disabilities prior to the occurrence of armed conflicts (such as Mrs/miss C), combined with disabling more women who then also become identifiable as women with disabilities in the post-conflict period (as represented by category A in table 2).⁴⁶⁸ In a post-conflict setting, most women in the category of Miss. and Mrs. A, are affected by either suffering from post-traumatic stress disorders or injuries from the consequences of antipersonnel landmines.⁴⁶⁹ Henceforth, post-conflict States might have a number of women with disabilities after experiencing armed conflict.⁴⁷⁰ Bearing in mind that the lack of data during the armed conflict,⁴⁷¹ in the post conflict period, leaves uncertainty as to the extent to which such an armed conflict increases the population of women with disabilities in Northern Uganda.

The changing trends of the CEDAW could be attributed to Article 6 of the CRPD that is vital in understanding the models of disability, as applied in relation to situations

⁴⁶⁷ Office of the United Nations High Commissioner for Human Rights, *'Making peace our own Victims'* Perceptions of Accountability, Reconciliation and Transitional Justice in Northern Uganda', United Nations 2007, pg. 15.

⁴⁶⁸ Department of Economic and Social Affairs, Global Status Report on Disability and Development Prototype United Nations, New York, 2015 pg. 183-185.

⁴⁶⁹ . I. B. Portero and T. G. B. Enríquez, 'Are Persons with Disabilities included in the Colombian peace process?', *Disability & Society*, (2018) 3 (33) pp. 487-491. Correa-Montoya and M. C. Castro-Martínez, 'Disability and Social inclusion in Colombia', Saldarriaga-Concha Foundation (FSC), Alternative Report to the Committee on the Rights of Persons with Disabilities. Saldarriaga-Concha Foundation Press. Bogotá D.C., (2016). Colombia. pg. 12.

⁴⁷⁰ United Nations OCHA and IRIN Report, *When the Sun Sets We Begin to Worry*, Office for the coordination of humanitarian affairs (OCHA) Regional Support Office for Central and East Africa and Integrated Regional Information Networks (IRIN), United Nations OCHA and IRIN Publications(November 2004). pg. 15.

⁴⁷¹ J. Osori, *'Numbers under Fire: the challenges of gathering quantitative data in highly violent settings'*, John Jay college of Criminal Justice, City University of New York, Social Science Research Council working papers, September/2014. New York. See also. Social Science Research Council (SSRC) in partnership with UNICEF, *Workshop on Data Collection on the Impact of Armed Conflict on Children: Displacement and Recruitment of Children'*, Angola, Colombia, Democratic Republic of Congo and Sri Lanka, May/2004, New York.

of intersecting discrimination.⁴⁷² The social model can depend upon the concept of special consideration in accessing information on reproductive health. On the contrary, the medical model seems limited in encouraging inclusive accessibility of information on reproductive health, with a view to minimising cases of health inequality.⁴⁷³

The argument of policies that are inclusive, rather than exclusive of women and girls with disabilities, is important in identifying relevant models of disability. The social model has approaches aimed at adopting and promoting inclusive environments in all aspects of health planning. However, the attitudes of some medical practitioners have continued handling disability through the lens of the medical model.⁴⁷⁴

Therefore, though the improvement in embracing ideas of inclusiveness are important developments, failure to challenge attitudinal stereotypes of humanitarian experts providing health facilities, might compromise this inclusiveness. Accordingly, post conflict contexts might need to import policies and plans on disability awareness which could be useful in overcoming stereotyping attitudes.⁴⁷⁵ In this way, laws and policies will be more effective in imparting models of disability which can address attitudinal barriers to persons with disabilities in a *jus post-bellum* period.

Thus, this discussion notes the high likelihood of relying on the social model of disability for purposes of encouraging post-conflict reintegration of women or children with disabilities. This observation casts some doubts on the practicability of applying the social model for ensuring that post-conflict States undertake rehabilitation and, bearing in mind, that disability related issues tend to arise following the disabling impacts of armed conflict.

The CEDAW Committee changes its model of conceptualising disability related duties for post-conflict States. It disregards the likelihood of peculiar problems associated with the presence of the armed conflict-disability relationship, and that tend to exclusively impact persons with disabilities in these States.

⁴⁷² CRPD Article 6, See also. Dowse, C. Frohmader, and A. Didi, 'Violence against disabled women in the global south: Working locally, acting globally', *International Perspectives on Social Policy, Administration, and Practice Disability in the Global South: The Critical Handbook*, (Springer, 2016) pg. 324.

⁴⁷³ CRPD/C/GC/3, Paragraphs 28-46.

⁴⁷⁴ UN World Health Organization (WHO), 'World Report on Disability', 2011', pg. 2

⁴⁷⁵ CRPD Articles 8(1) (b).

Considering the trends of its General Recommendations from 1990 to date,⁴⁷⁶ it appears that there is an increasing tendency to rely upon the social model of disability, in relation to approaches of the CEDAW Committee. In General Recommendation No. 30 on women in conflict,⁴⁷⁷ the CEDAW Committee makes specific considerations for women with disabilities where it applies the social model to emphasise the duties owed to persons with disabilities in post-conflict contexts. Arguably, as far as protecting women with disabilities is concerned, the CEDAW Committee evades demands for post-conflict and armed conflict affected States to fulfil their disability obligations using the same models of disability as those it applies in peaceful States.

It should be noted, however, that since the adoption of the CEDAW, and across the different years of its existence, it has changed its model of disability to largely a social rights-based approach. This changes in its perspective, from the medical to largely a social model, present the CEDAW as questionable in addressing problems faced by women with disabilities, during and after, armed conflict. The changing perspectives in models of disability that underpin State duties of this treaty body, are more inclined to mainstream debates of international developments that preoccupy disability studies in WENA States. For example, disability movements in WENA States spearheaded the declaration of the period 1983 to 1992 as the United Nations Decade of Disabled Persons. A declaration that predates the proclamation of more recent General Comments, which are analysed further under the subsequent sections of this thesis.⁴⁷⁸ Similarly, the World Programme of Action called upon the General Assembly and the Economic and Social Council (ECOSOC), during their 37th session to adopt the Standard Rules on Persons with Disabilities.⁴⁷⁹ Consequently, in December 1993, there was a General Assembly resolution affirming the adoption of these rules.

⁴⁷⁶ UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 18 (Disabled women) Tenth session (1991). Paragraph. 2.

⁴⁷⁷ UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, 1 November 2013, CEDAW/C/GC/30. Paragraphs. 11, 36-36, 51 and 57.

⁴⁷⁸ A/RES/45/91, Paragraph 1. Resolution adopted by the General Assembly, 14/December/1990,

⁴⁷⁹ A/RES/48/96, Paragraph 10-12. UN General Assembly, adopting *Standard rules on the equalization of opportunities for persons with disabilities*: in December 1993,

According to the CEDAW Committee's General Recommendations No.18,⁴⁸⁰24,⁴⁸¹ 27,⁴⁸² 30,⁴⁸³ 31,⁴⁸⁴ 32,⁴⁸⁵33,⁴⁸⁶ 34,⁴⁸⁷ 35,⁴⁸⁸ 36 and 37,⁴⁸⁹ the CEDAW is another example of a UNHRTB that depicts trends of inclining more towards the social rights-based model in elaborating obligations of States to persons with disabilities. For instance, this can be seen in the change in language of the Committee from "disabled women", as used in General Recommendation No.18 of 1991, to "women with disabilities", that is used in its General Recommendation No.37 of 2018.⁴⁹⁰ Note that the former expression is usually linked with the medical model, while 'women with disabilities' is often associated with the social rights-based model by supporters of people-first language.⁴⁹¹ The CEDAW exhibits growing preference for the social model in most General Recommendations of the CEDAW Committee, although this has been criticised by some proponents as problematical, considering the unlikelihood of the

⁴⁸⁰ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 18 (Disabled women)* Tenth session (1991). Paragraph. 2.

⁴⁸¹ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 24: on Women and Health*, Article 12 of the Convention, 1999, A/54/38/Rev.1, chap. I.

⁴⁸² UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 27 on older women and protection of their human rights*, 16 December 2010, CEDAW/C/GC/27.

⁴⁸³ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations*, 1/November/2013, CEDAW/C/GC/30. Paragraphs. 51 and 57(a).

⁴⁸⁴ Joint General Recommendation No. 31 fifty-ninth session, 2014 of the *Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices*, CEDAW/C/GC/31-CRC/C/GC/18, adopted 14/November/2014. Paragraphs. 9 and 88.

⁴⁸⁵ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women*, 5/November/2014, CEDAW/C/GC/32. Paragraphs 46.

⁴⁸⁶ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 33 on women's access to justice*, CEDAW/C/GC/33, 3/August/2015. Paragraph. 13.

⁴⁸⁷ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW, General Recommendation No. 34 on the rights of rural women*, 63rd session, CEDAW/C/GC/34, 7/March/2017. Paragraph 14.

⁴⁸⁸ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW, General Recommendation No. 35, on gender-based violence against women*, 67th session CEDAW/C/GC/35, 26/ July/2017. Paragraphs. 1-2.

⁴⁸⁹ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW, General Recommendation No. 36, on the right of girls and women to education*, 68th session, CEDAW/C/GC/36, 27/November/2017. Paragraph 3.

⁴⁹⁰ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW, General Recommendation No. 37, on Gender-related dimensions of disaster risk reduction in the context of climate change*, 69th session, CEDAW/C/GC/37, 13/March/2018. Paragraphs 26 (a) and 54 (c). See also UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 18 (Disabled women) Tenth session* (1991). Paragraphs 1-6.

⁴⁹¹ Disability Language Style Guide at The National Centre on Disability and Journalism, Arizona State University, Walter Cronkite School of Journalism and Mass Communication, USA. Available at <<http://ncdj.org/style-guide/>>accesed>(accessed 16/September/2018).

social model to address difficulties of women with disabilities in post-conflict States.⁴⁹² Similarly, there is the risk for the CEDAW to universalise the social rights-based model that may be unsuitable for disability in TWAIL context.⁴⁹³

4.2. Convention on Rights of Persons with Disabilities (CRPD)

This section shall determine the models of disability applied by the CRPD, and if the models tend to change before, during, and after situations of armed conflict. It might also be worthwhile establishing if the models applied by the CRPD have influenced the manner in which earlier UNHRTBs are approaching matters of disability. General Comments from the CRPD Committee are examined. They are considered because of their suitability in determining the model of disability applied by this Human Rights Treaty Body in the understanding of any obligations owed to persons with disabilities before, during and after situations of armed conflict. Seven General Comments of the CRPD have, so far, been adopted by the Committee on the Rights of Persons with Disabilities (CRPD), from 2014 to date (as of August 2018).⁴⁹⁴ Six out of those seven General Comments are used in this thesis to examine the models of disability through which the Committee frames obligations owed to persons with disabilities, before and during situations of armed conflict. The General Comments considered include: General Comment No. 2 on the right to accessibility contained in Article 9 of the CRPD,⁴⁹⁵ General Comment No. 3 concerned with rights of Women and girls with disabilities in Article 6 of the CRPD,⁴⁹⁶ General Comment No.

⁴⁹² R. Habasch, 'Is the Rights Model of Disability Valid in Post-conflict Lebanon? A Participatory Pilot Survey', *Journal of Palestine Studies* (1997) 27 (1) pp. 126,135. See also. N. Kabbara and K. K. Nagata, 'Is the Rights Model of Disability Valid in Post-conflict Lebanon? A Participatory Pilot Survey in Beirut', United Nations Development Cooperation Branch. See also. K. Nagata, 'Disability and Development: Is the Rights Model of Disability Valid in the Arab Region? An Evidence Based Field Survey in Lebanon and Jordan', *Asia Pacific Disability Rehabilitation Journal* (2008) 19 (1) pp. 60, 78.

⁴⁹³ M. Fagbongbe, 'The Future of Women's Rights from a TWAIL Perspective', *International Community Law Review* (2008) 10 pp. 401–409 at pg. 402. See also. H. Lewis, 'Transnational Dimensions of Racial Identity: Reflecting on Race, the Global Economy, and the Human Rights Movement', *Maryland Journal of International Law*, (2009)24(296) pp. 296-308 pg. 300.

⁴⁹⁴ Office of the High Commissioner for Human Rights (OHCHR) Available at <<https://www.ohchr.org/EN/HRBodies/CRPD/Pages/GC.aspx>>(Accessed on 15/August/2018).

⁴⁹⁵ UN Committee on the Rights of Persons with Disabilities (CRPD), *General Comment No. 2 on accessibility*, Article 9: (Adopted 11/April/2014). Paragraph 36. [Hereafter CRPD General Comment No. 2.]

⁴⁹⁶ UN Committee on the Rights of Persons with Disabilities (CRPD), *General Comment No. 3 on women and girls with disabilities*, Article 6:(Adopted/26/August/2016) [hereafter CRPD General Comment No. 3] Paragraphs 49-50.

4 pertaining to the right to inclusive education in Article 24,⁴⁹⁷ General Comment No. 5 illustrating the right to independent living, enshrined in Article 19 of the CRPD,⁴⁹⁸ General Comment No. 6 in which the Committee elaborates duties concerning equality and non-discrimination that are provided for in Article 5 of the CRPD,⁴⁹⁹ and, finally, General Comment No.7 regarding the rights of persons with disabilities to participate in the implementation and monitoring of the Convention, as per Article 4 (3) and Article 33 (3) of the CRPD.⁵⁰⁰ The selection of these General Comments is based on the consideration they give to explaining the duty of protecting persons with disabilities, before and during situations of armed conflict. Individual complaints also examined shall include *X v. Argentina*,⁵⁰¹ and *Marie-Louise Jungelin v. Sweden*.⁵⁰² There is an absence of any individual complaints or General Comments of the CRPD concerning Article 11 of the CRPD. For the time being, an overview on the background of the CRPD shall be elucidated, and thereafter the analysis shall proceed to examine the General Comments in the subsequent subsections.

4.2.1. Background of the CRPD and its Limitations in Post-Conflict States.

The CRPD is an international instrument that encompasses the rights for persons with disabilities, drafted by an Ad hoc committee. This Committee was tasked with drafting a text that would guarantee that persons with disabilities are fully and effectively enjoying all human rights enumerated in previously existing human rights conventions.⁵⁰³ The Ad Hoc Committee held its fifth meeting shortly after a Tsunami had hit Indonesia.⁵⁰⁴ Possibly, at the time with the devastating impacts of the Tsunami

⁴⁹⁷ UN Committee on the Rights of Persons with Disabilities (CRPD), *General Comment No. 4 right to inclusive education*, Article 24: (Adopted 26/August/2016) [hereafter CRPD General Comment No. 4] Paragraph 14.

⁴⁹⁸ UN Committee on the Rights of Persons with Disabilities (CRPD), *General Comment No. 5 on the right to independent living*, Article 19:(Adopted 31/August/2017)[hereafter CRPD General Comment No. 5]Paragraph 79.

⁴⁹⁹ UN Committee on the Rights of Persons with Disabilities (CRPD), *General Comment No 6, equality and non-discrimination*, Article 5: (Adopted 9/March/2018) [hereafter CRPD General Comment No. 6] Paragraph 33.

⁵⁰⁰Committee on the Rights of Persons with Disabilities (CRPD), *Draft General Comment No. 7 the participation of persons with disabilities in the implementation and monitoring of the Convention*, Article 4 and Article 33 in relation to. 27/August/2018) Paragraph 59.

⁵⁰¹ *X v. Argentina*, Communication No. 8/2012, [CRPD/C/11/D/8/2012](#). Paragraphs 9-10

⁵⁰² *Marie-Louise Jungelin v. Sweden*, Communication No. 5/2011, CRPD/12/D/5/2011.

⁵⁰³ *Ibid.* Paragraph 1.

⁵⁰⁴ The Sendai Framework for Disaster Risk Reduction 2015-2030 was adopted at the Third UN World Conference in Sendai, Japan, on 18/ March/2015. United Nations Office for Disaster Reduction, published in Geneva, Switzerland.

fresh in their minds, the Costa Rican delegation received overwhelming support on proposing the inclusion of a separate provision for persons with disabilities in relation to situations that would escalate their vulnerability.⁵⁰⁵

To this end, Article 11 of the CRPD, requires State Parties to act,

“[...] in accordance with their obligations under international law, including [...] 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.”⁵⁰⁶

It is worth noting that even though the above obligation of the CRPD appears silent in terms of the appropriate models of disability that the CRPD Committee must apply in the above contexts, two issues are of significant importance:

Firstly, the above obligation mostly concentrates on the duties of States amidst the occurrence of situations of risks, humanitarian emergencies and armed conflicts, rather than clarifying special duties which those States have after such situations. At the moment there are limited sources concerning Article 11 where the Committee has paid special attention to armed conflict related post-conflict obligations to persons with disabilities. The elaboration of Article 11, in most currently available resources, tends to give greater attention to the protection of persons with disabilities in situations of natural disasters.⁵⁰⁷ This is regardless of disparities in the impartiality of States in situations of natural disasters, and those of armed conflicts. Consider also, that States are more likely to be directly involved in situations of armed conflicts as one of the parties, which is never the case in situations of natural disasters.⁵⁰⁸ That distinction might lead to a reluctance by some States, to execute protective obligations with required impartiality in both situations.⁵⁰⁹ This thesis argues for the CRPD Committee

⁵⁰⁵ UN Doc A/RES/56/168. Paragraph 2.

⁵⁰⁶ CRPD Article 11, See also. UN Human Rights Council, *Thematic study on the rights of persons with disabilities under article 11 of the Convention on the Rights of Persons with Disabilities, on situations of risk and humanitarian emergencies*, 30/November/2015, [hereafter A/HRC/31/30], Paragraphs 3-4.

⁵⁰⁷ Statement by the Committee on the Rights of Persons with Disabilities, The situation of persons with disabilities affected by disasters in Peru, Ecuador and Colombia Adopted during the Committee's seventeenth session, held from 20 March to 12 April 2017 in Geneva. See also. The Sendai Framework for Disaster Risk Reduction 2015-2030 was adopted at the Third UN World Conference in Sendai, Japan, on 18/ March/2015. United Nations Office for Disaster Reduction, published in Geneva, Switzerland.

⁵⁰⁸ Mugabi. I. K, '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. *Journal of Environmental Research and Development* (2016) 11 (2), pp. 439-449 at pg. 441.

⁵⁰⁹ *Ibid.* pg. 441.

to assist in identifying the duties of States in the aftermath of armed conflicts, it has to engage more with the problematic relationship between situations of armed conflicts and issues of disability. That is important to comprehend how that relationship impacts and informs the models of disability that are applied, while framing disability related obligations, that States ought to give priority to, before, during and after situations of armed conflict.

Secondly the obligation illustrates fascinating developments in functions of UNHRTBs as important players in monitoring the implementation of obligations enshrined in human rights instruments, in a complementary fashion, to those of IHL. Article 11's trend of simultaneously applying human rights obligations, alongside those of IHL, makes the CRPD Committee another example of a Human Rights Treaty Body which could enforce an armed conflict related provision. Analogous to that, could be the enforcement by the CRC Committee, through Article 38(1) of the CRC Article 38(1) of the CRC, which requires State parties:

“[...] to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child’. It also limits the recruitment of child soldiers and demands that state parties ensure ‘protection and care of children who are affected by an armed conflict.’⁵¹⁰

Table below illustrates the impacts if the three stage cycle of the context of disability and its characteristics in peacetime and post conflict contexts.

⁵¹⁰ CRC Article 38(1).

Disability and categories of Individuals before, during and after the armed conflict	BEFORE Armed conflict. Since Birth/childhood Model underpinning CRPD obligations relating to disability in Peacetimes.	DURING Armed conflict IHL <i>Jus in bello</i> Model underpinning CRPD obligations relating to disability during Armed conflicts.	AFTER Armed Conflict. Model underpinning in the Aftermath Disability related obligations in the Post-conflict period/ <i>jus post-bellum</i> .	Entitled to disability rights (before and after Armed Conflict) assuming State was already party to the CRPD
Mr/Miss. A	(Stage 1) No disability	(Stage 2) Permanent or long-term disability due to anti-personnel landmine, amputee, suffered PTSD, slight loss, among other impairments	(Stage 3) A person with disabilities that are war-related in nature. Both civilian and combatants.	Before conflict: NO After conflict: YES Enabling rights CRPD Articles 11+20+26+16(4)= Resulting rights. More Independence More Access to health
Mr/Miss. B	(Stage 1) No disability	(Stage 2) Not disabled during the armed conflict	(Stage 3) A person without disability	Before conflict: NO After conflict: NO
Mr/Miss. C	(Stage 1) Has a disability	(Stage 2) More vulnerable to abuse	(Stage 3) A person with disabilities	Before: YES After: YES

Table 3: Maps the trends of the armed conflict-disability relationship and why its impacts could inform the model through which the CRPD Committee is framing/contextualising disability related obligations of post conflict States to Persons with Disabilities.

 - Underpinnings of the social model are suitable for identifying disabling environments in the understanding of obligations owed by peaceful States to persons with disabilities.

 - Underpinnings of the Medical/ individual model are more suitable for identifying disabling environments and understanding of obligations owed by post-conflict states to persons with disabilities

Table 3 illustrates why the CRPD Committee should reframe disability-related obligations through which post-conflict States protect persons with disabilities by applying different models, suitable for obligations of those States, before and after, armed conflicts. However, the social model applied by the CRPD, make the treaty

body seem more orientated to addressing problems of persons with disabilities before, rather than during or after armed conflicts.⁵¹¹

Unlike the ICCPR and other treaties with derogation provisions in situations of emergencies,⁵¹² the CRPD lacks such a clause. Instead this UNHRTB insists on upholding the protection of persons with disabilities, amid situations of armed conflicts.⁵¹³

There is a good possibility that since its enactment, the CRPD has emerged as a UNHRTB which signposts the model for approaching problems of persons with disabilities, applied by older UNHRTBs. Consequently, given the intersections that persons with disabilities have with general and specialised rights that are protected by older UNHRTBs, the CRPD plays a role in extending its model of disability as a universal representation of obligations owed to persons with disabilities.⁵¹⁴ Subsequently, before situations of armed conflict, the social model is applied by the CRPD Committee, by representing problems of persons with disabilities as consequential to the inaccessibility of the outward surroundings.⁵¹⁵ Therefore, such inaccessibility is resolvable through assertiveness of rights-based obligations to improve the availability, accessibility, acceptability and adaptability of surroundings to persons with disabilities.⁵¹⁶ In peaceful States, the CRPD is appropriately applying rights-based ideas, which are underpinned by the social model, to liberate persons with disabilities.⁵¹⁷ This discourages the tendency to portray bodies of persons with disabilities as in need of 'normalising', by using medical treatment.⁵¹⁸ In times of

⁵¹¹ R. Habasch, 'Is the Rights Model of Disability Valid in Post-conflict Lebanon? A Participatory Pilot Survey', *Journal of Palestine Studies* (1997) 27 (1) pp. 126-135. See also. P. Businge, 'Disability and armed conflict: A quest for Africanising disability in Uganda Disability and the Global South, (2016) 3(1) pp. 818, 842.

⁵¹² ICCPR, Article 4 (1) on taking measures derogating: See also. The ECHR, Article 15 on derogation in times of emergency, the ACHR Article 27 on suspension of guarantees.

⁵¹³ CRPD Article 11 See also. UN Human Rights Council, 'The right of persons with disabilities to live independently and be included in the community on an equal basis with others: resolution adopted by the Human Rights Council, 8/April/2015, A/HRC/RES/28/4. Paragraph. 16.

⁵¹⁴ CRPD/C/THA/Q/1. Paragraph 16-19 and Paragraphs 43-49

⁵¹⁵ Committee on the Rights of Persons with Disabilities (CRPD), General Comment No. 2 Article 9: Accessibility (Adopted 11 April 2014). Paragraphs. 6-8. See also. Committee on the Rights of Persons with Disabilities (CRPD), General Comment No. 3 Article 6: Women and girls with disabilities (Adopted 26 August 2016) 17 (d)

⁵¹⁶ UN Committee on the Rights of Persons with Disabilities (CRPD), General Comment No. 4, Article 24: Right to inclusive education (Adopted 26/August/2016) [hereafter CRPD General Comment No. 4] Paragraph 20.

⁵¹⁷ T. Degener, and G. Quinn. 'A Survey of International, Comparative and Regional Disability Law Reform', in *Disability Rights Law and Policy*, M. L. Breslin and S. Yee. (Eds.) (Transnational, 2002) pp. 3-128;

⁵¹⁸ UN Committee on the Rights of Persons with Disabilities (CRPD), General Comment No 6, Article 5: Equality and non-discrimination (Adopted 9/March/2018) [hereafter CRPD General Comment No. 6] Paragraph 2.

peace, the CRPD advocates a revolutionary development that applies the social model, rather than the medical model, in the approach of international human rights.⁵¹⁹ However, there is need to establish how the CRPD treaty has dealt with the problems of persons with disabilities, during and after situations of armed conflict.

4.2.2. CRPD and Models of Disability During and After Armed Conflict

The subsequent section contains a comprehensive analysis of models of disability and evidence of the CRPD extending its obligations to protect persons with disabilities in armed conflict and post-conflict States. This section returns to General Comments of the CRPD Committee that have specially dealt with concerns of disability, during and after armed conflict, to examine the models of disability, and ascertain if these change from peacetime to situations of armed conflict.

In terms of models of disability in General Comments:

According to General Comment No. 2, the CRPD Committee applies the social model by contending that, unless emergency services take the accessibility of persons with disabilities into consideration, it is highly unlikely that their lives would be saved or that they would benefit from welfare systems.⁵²⁰

“In situations of armed conflict, the emergency services must be accessible to persons with disabilities, or their lives cannot be saved, or their well-being protected (art. 11).”⁵²¹

The Committee also reinstates the importance of ensuring that post-reconstruction measures are disability-inclusive, with a view to minimise the risks and problems that persons with disabilities tend to face because of inaccessibility.⁵²² It is evident that in this case, the social model is demonstrated by a shifting trend of attributing the problems of persons with disabilities to their bodily impairment rather than the inaccessibility of emergency services. Subsequently, the Committee bases the solution upon the need to ensure that those services are more accessible and inclusive of persons with disabilities.

⁵¹⁹ D. Wasserman, 'Philosophical issues in the definition and social response to disability', in *The library of essays on equality and anti-discrimination law*, E. F. Emens and M. A. Stein (eds.) (Ashgate Publishing Ltd, 2013) pp. 220-225.

⁵²⁰ CRPD General Comment No. 2. (Adopted 11/April/2014). Paragraph 36.

⁵²¹ Ibid. Paragraph 36.

⁵²² Ibid. Paragraph 36.

Furthermore, under General Comment No. 3, it must be noted that the Committee heavily relies on accessibility as constituting a key component of the social model, on this occasion the two models are used to complement each other. For example, the Committee envisages that the obligation of ensuring disability accessibility is useful for rehabilitation services.⁵²³ In a disability context, such services apply concepts of the medical or individual model. The Committee also articulates access to relief and humanitarian aid, as part of the problems that girls and women with disabilities are bound to face in situations of armed conflict.⁵²⁴ Inclusive access to humanitarian aid and relief services for females with disabilities, would enable those with war related disabilities (that are illustrated by Miss/Mrs A in the table), to secure their medical needs. They would be accessible as part of relief services, ensuring the availability, or affordability of a prosthesis or related needs, when allocating humanitarian aid to girls and women with war-related disabilities.⁵²⁵

This indicates that the CRPD Committee remotely applies the medical model, during and after, situations of armed conflict. This is a trend contrary to the conventional norm of asserting that it is exclusively dependent on the approaches of the social rights based model, and opposed to other models.⁵²⁶ General Comment No. 3 also addresses another peripheral aspect of access to health systems by women refugees or asylum seekers with disabilities.⁵²⁷ These groups are a peripheral aspect of this research, since armed conflicts would cause some of them to flee in search of safety in peaceful regions or States.⁵²⁸ Authorities are also reminded to ensure that refugee camps contain child protection mechanisms which support children with disabilities.⁵²⁹ In addition, it is necessary to facilitate the accessibility and availability of sanitation facilities by ensuring that hygienic menstrual management assistance is afforded special considerations to girls and women with disabilities, hence reducing their exposure to instances of physical and

⁵²³ CRPD General Comment No. 3. (Adopted 26 August 2016). Paragraphs 49-50.

⁵²⁴ Ibid. Paragraph 49.

⁵²⁵ Ibid. Paragraph 50.

⁵²⁶ CRPD General Comment No. 6. (Adopted 9/March/2018) Paragraph 2.

⁵²⁷ CRPD General Comment No. 3. Adopted (Adopted 26 August 2016). Paragraph 49.

⁵²⁸ UN Commission on Human Rights, Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination /submitted by Commission resolution 1995/5 and Commission decision 1997/120, E/CN.4/1998/31, adopted 27/January/1998 paragraphs 29-30.

⁵²⁹ CRPD General Comment No. 3. Paragraph 50.

sexual violence.⁵³⁰ In this case, the Committee demonstrates how the medical model can be supplemented by the concept of inclusive accessibility of the social model. Other important armed conflict related obligations identified by the Committee include; making distribution points that are physically accessible to girls and women with disabilities, and prioritising single mothers with disabilities during evacuation of civilian populations on receiving warning of military attacks.⁵³¹

It is apparent that General Comment No. 3 is tailor-made to exemplify how disability related obligations tend to change during situations of armed conflicts. The resource related limitations of armed conflict and post-conflict State must be broadly perceived to be of equal relevance in guiding disability related duties of non-State humanitarian actors which operate in post-conflict States, or States undergoing situations of armed conflicts. It must also be mentioned that under this General Comment, the CRPD committee endeavours to highlight the problems of girls and women with disabilities in the Global South regions of some Sub-Saharan African and MENA States by considering the uniqueness in manifestations of disability related challenges in the post-conflict context of such States. Therefore, this context is relevant in advancing the narrative of disability obligations in the purview of TWAIL.⁵³²

Additionally, the CRPD Committee has relied the social model in General Comment No. 4 to advance the cause for inclusive education in situations of armed conflict.⁵³³ The CRPD Committee urges States to devise educational strategies which are disability-comprehensive in nature, by considering these learners in school safety and security measures.⁵³⁴ The social model is supportive of the Committee's view of urging States to ensure that temporal education facilities are accessible to persons with disabilities. Disability inclusiveness is demonstrated by the measures that are

⁵³⁰ Ibid. Paragraph 50.

⁵³¹ Ibid. Paragraph 50.

⁵³² M. Fagbongbe, 'The Future of Women's Rights from a TWAIL Perspective', *International Community Law Review* (2008) 10 pp. 401–409 at pg. 402. See also. D. P. Fidler, 'Revolt against or from within the West-TWAIL, the Developing World, and the Future Direction of International Law', *Chinese Journal of International Law* (2003) 2 (29) pp. 29, 76. See also. B.S. Chimni, 'Third World Approaches to International Law: A Manifesto', *International Community Law Review* (2006) 8, pp. 3–27 at 4. See also. A. Anghie, B.S. Chimni, K. Mickelson and O. Okafor, (eds.) in 'The Third World and International Order: Law, Politics and Globalization, (Brill Academic Publishers, 2004). See also. Berger, 'The End of the Third World', *Third World Quarterly* (1994) 15 (2) pp. 257,275.

⁵³³ CRPD General Comment No. 4 (Adopted 26/August/2016) Paragraph 14.

⁵³⁴ Ibid. Paragraph 14

suggested in this General Comment. Such measures include; accessible educational materials, school facilities, counselling and access to training in the local sign language for deaf learners.⁵³⁵ Learning environments should guarantee the safety of girls with disabilities, given their heightened vulnerability to instances of sexual violence, during and after, situations of armed conflict. The Committee asserts that the reluctance to permit the inclusion of learners with disabilities in education facilities due to the idea that this group are burdensome to evacuate in armed conflict and other situations of humanitarian emergencies, should be condemned, and provisions for reasonable accommodation must be made. It must be appreciated that most of these education considerations could be useful obligations in the context of reconstruction and rebuilding education systems in post-conflict systems. Education should be given attention, considering the likelihood of children suffering war related disabilities, during and after, situation of armed conflict. Most of these children would need disability related rights, such as education, from their childhood to adulthood. This war-related manifestation of disabilities is contrastable with the earlier discussion of the CEDAW Committee on older women with disabilities. In this second category the focus is on the disability possibilities after motherhood or fatherhood, as well as retirement from working life. There is a remote likelihood that those with aging related disabilities, would need education related disability considerations, as much as a five-year-old girl with war related disabilities needs it. Therefore, these differences are important in prioritising needs and applying modes of disability appropriately.

General Comment No. 5 is related to General Comment No. 4 since the Committee uses the social model in presenting the problems of persons with disabilities as an outcome of a failure to support, or facilitate, the enjoyment of living independently for persons with disabilities, during and after, situations of armed conflict.⁵³⁶

“States parties must take into account in advance the obligation to provide support services to persons with disabilities in (art. 11) [to] make sure that they are not left behind or forgotten.”⁵³⁷

⁵³⁵ Ibid. Paragraph 14.

⁵³⁶ General Comment No. 5, (Adopted 31/August/2017) Paragraph 79.

⁵³⁷ Ibid. Paragraph 79.

In General Comment No. 5, the Committee alludes to a post-conflict disability consideration, where it restates that in the case barriers to persons with disabilities have been removed, they must not be reconstructed after situations of armed conflict. Post-conflict reconstruction projects undertaken must pay special attention to full accessibility of persons with disabilities, to enhance the independence of their lives in, and after situations of armed conflict. Although the social model is manifested through advocating the permanent removal of barriers during, and after armed conflicts, it is highly unlikely that the mere removal of a barrier would suffice for those with war-related disabilities, without availing them of physical rehabilitations programmes, similar those of the ICRC.⁵³⁸

General Comment No. 6 highlights that organisation for 'victims of armed conflicts' should be part of the Organisation of Persons with Disabilities (hereafter OPDs) envisaged under Article 4 (3) and Article 33 (3) of the Convention. Those Articles emphasise the important role that OPDs must play in the implementation and monitoring of the CRPD. 'Victims of armed conflicts' could be conceived as encompassing OPDs of persons with war related disabilities. However, such entities tend to be exclusively restricted to combatants or veterans with disabilities, rather than civilians. Moreover, OPDs victims of armed conflicts tend to be more organised and prominent among injured combatants of WENA States, and less popular among combatants and civilians of post-conflict States of the Global South. Therefore, the global imbalance in the involvement of OPDs for victims of armed conflicts, needs to be addressed further, since they are marginal to this research.

Related to General Comment No.6, is the draft General Comment No. 7 which underscores the obligation to promote the participation and involvement of persons with disabilities when devising post-conflict considerations.⁵³⁹ This concept is typical of the social model that attributes the problem of persons with disabilities to attitudinal barriers and stereotypes which disregard the capacity of persons with disabilities from being involved in decision making processes. In putting this duty into action, the Committee suggests policy maker consult with representative from OPDs,

⁵³⁸ International Committee of the Red Cross (ICRC) Physical Rehabilitation Unit ICRC Report Support for life physical rehabilitation programme ICRC, (July/2012) Available at <<https://www.icrc.org/eng/assets/files/publications/icrc-002-4160.pdf>> (accessed 5/January/2016).

⁵³⁹ Draft General Comment No. 7 (Draft Availed 16/March/2018) Paragraph 59.

in order to ensure that views of persons with disabilities are heard and valued by problem solving mechanisms.⁵⁴⁰ The idea of participation resonates with the motto of “nothing about us without us” that some OPDs use for their activism.⁵⁴¹

In addition to the General Comments of the CRPD, its models can also be traced from the selective redefining of disability in the standard rules, which is one of the legislative changes that spearheaded novel approaches to issues of disability.⁵⁴² The model of disability, used by this UN Human Rights Treaty, is reflected in its steps to revise the definition of disability and use inclusive, participative and representative expressions when referring to persons with disabilities. In this case, the terms the CRPD carefully scrutinised to change the approaches on disability, included ‘impairment’, ‘disability’ and ‘handicap’.⁵⁴³ The Standard Rules restated the definition of the term ‘disability’ and is worthwhile reconsidering.

“[...] a great number of different functional limitations occurring in any population in [...]. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness.”⁵⁴⁴

The Standard Rules also noted the term ‘handicap’ might have some disguised meaning of blaming the failure of persons with disabilities for difficulties in participation in community and public life, on their impairments, rather than the inaccessibility of surroundings.⁵⁴⁵

In the above context, it is apparent that even though the rules pointed out how disability can be attributable to results of a medical condition or a bodily illness,⁵⁴⁶ they sought to change that attitude by presenting it as a product of externally disabling environments. In other words, it is understandable that, in the latter context, disability is admittedly an outcome of environments that had rejected the identity of persons with

⁵⁴⁰Ibid. Paragraph 59.

⁵⁴¹ J. I. Charlton, *‘Nothing about us without us: Disability oppression and empowerment’*, (California University Press, 2000) pg. 5.

⁵⁴²A/RES/48/96. Paragraphs 17-21.

⁵⁴³ Ibid. Paragraph 17-21. See also. M. Oliver, ‘Defining impairment and disability: Issues at stake’, *The library of essays on equality and anti-discrimination law* E. F. Emens and M. A. Stein (eds.) (Ashgate Publishing, 2013) pg. 41.

⁵⁴⁴ Ibid. Paragraph 17.

⁵⁴⁵ Ibid. Paragraph 18.

⁵⁴⁶ E/1995/22. Paragraphs 3-4.

disabilities as comprising part of the recognised factions of human diversity.⁵⁴⁷ In fact, changing that perspective was among the contributions of movements of disability activists in WENA regions, which backed the social model in 1980s.⁵⁴⁸ That perception has had a remarkable influence in reshaping the approaches apparently applied to the understanding of persons with disabilities, and subsequently, has affected the development of international laws and domestic policies in the area.⁵⁴⁹

A peripheral aspect to the CRPD is the advancement of ideas of diversity to be inclusive of disability.⁵⁵⁰ The CRPD Committee has used various organisations that represent the different fractions of persons with disabilities, to demonstrate the role of diversity in advancing contemporary matters of disability.⁵⁵¹ As expected, the CRPD enhanced the approaches of social rights models by aspiring to reproduce the society and the environment, as perpetrators of disability tendencies.⁵⁵²

The CRPD also internationalised the application of a social model of disability in relation to multiple vulnerabilities. This point might also account for the role of the CRPD in promoting the application of a social model in relation to specific groups, by advancing a view that barriers in external environments are making children and women with disabilities, more exposed to intersectional discrimination, rather than just their bodily impairments.⁵⁵³ This explains why UNHRTBs deal with concerns of special groups like the CRC and the CEDAW, and consequently might exhibit trends of

⁵⁴⁷ S. Burkhardt, 'Diversity and disability', in *Special Education International Perspectives: Biopsychosocial, cultural and disability aspects: Advances in Special Education*, A. F. Rotatori, J. P. Bakken and et al. (eds.) Emerald Group Volume 27 Publishing Limited, pp. 33, 52.

⁵⁴⁸ T. Degener and A. Begg, 'From Invisible Citizens to Agents of Change: A short history of the struggle for recognition of rights of persons with disabilities', in *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary*, V. D. Fina, et al. (Springer, 2017) pp. 1-38 at pg. 4-6. See also. R. Lang, 'The development and critique of the social model of disability', Overseas Development Group, (University of East Anglia, 2001) pp. 7-9. See also. A. Samaha, 'What good is the social model of disability', (University of Chicago Public Law & Legal Theory Working Paper No. 166, 2007). pp. 33-35.

⁵⁴⁹ A/34/3/Rev.1, Thirty-Fourth Session Supplement No.3, decision 1979/24 with reference to Declaration on the Rights of Deaf-Blind Persons, pg. 7. See also UNGA/35 Session of the 92nd plenary meeting of Thursday, 2 December/1980, Report of the Secretary-General, Agenda item 79, on the International Year of Disabled Persons: pp. 1626, Paragraphs 450-451.

⁵⁵⁰ S. Burkhardt, 'Diversity and disability', in *Special Education International Perspectives: Biopsychosocial, cultural and disability aspects: Advances in Special Education*, A. F. Rotatori et al. (eds.) Emerald Group Volume 27 Publishing Limited, pp. 33, 52.

⁵⁵¹ UN Committee on the Rights of Persons with Disabilities (CRPD), General Comment No 6, Article 5: Equality and non-discrimination (Adopted 9/March/2018) [hereafter CRPD General Comment No. 6] Paragraph 33.

⁵⁵² CRPD/C/THA/Q/1, Paragraphs 16-19 and Paragraphs 43-49. See also. CRPD/C/UGA/Q/1, Paragraphs 5 and 9. See also. UN CRPD/C/ESP/CO/1, Paragraphs 133-171. See also .UN CRPD/C/SVK/Q/1, Paragraph 3 and 11.

⁵⁵³ CRPD/C/14/R.1. Paragraphs 8-10. CRPD/C/GC/3, Paragraphs 2-3.

change towards prioritising a globalised application of a social model in understanding disabling causes and suitable redress to problems of women with disabilities and children (as examined in the subsequent sections of this chapter). It appears that advocates for prioritising the internationalised application of the social model of the CRPD, claimed the models which UNHRTBs had previously applied, had overlooked ways in which children with disabilities and women face multiple discrimination.⁵⁵⁴ As a result, it contended that the application of a social model is ideal for asserting an entitlement to inclusive and accessible environments that can overcome that multiple discrimination by enhancing disability empowerment.⁵⁵⁵

Arguably, it could be asserted that Articles 6 and 7 of the CRPD could be a means through which the CRPD treaty used the intersections which disability tends to have with children and women, by promoting the universalisation of its model across the CRC and the CEDAW. The idea of universalising the model of disability is also advanced by the tendencies to prepare joint General Comments on Articles 6 and 7 of the CRPD with Committees of the CRC and CEDAW.⁵⁵⁶ However, the varied problems of persons with disabilities, and characteristics of disability between WENA States and those of post-conflict Sub-Saharan Africa, must make TWAIL scholars scrutinise the universalising of the social model with scepticism.⁵⁵⁷

It is important to acknowledge the remote evidence of approaches of other models, applied by the CRPD. Thus, in addition to the considerable underpinnings of the social model, there are other models of disability that could be notable. Those examples account for cases in which approaches other than those of the social rights model, are useful in complementing obligations of the CRPD. The CRPD recognises the duty of providing rehabilitation related rights and facilitating the individual mobility of persons with disabilities.⁵⁵⁸ In this case, Article 25 of the CRPD, could be claimed

⁵⁵⁴ T. Degener, 'Disability in a Human Rights Context', in the Special Issue Disability Human Rights Law, A. Arstein-Kerslake (ed.) *Laws* (2016) 5(35), pg. 17, 24.

⁵⁵⁵ ICESCR Article 2(2), See also. E/C.12/GC/20. Paragraph 17.

⁵⁵⁶ Joint General Recommendation No. 31 fifty-ninth session, 2014 - of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices, CEDAW/C/GC/31-CRC/C/GC/18, adopted 14/November/2014. Paragraphs. 9 and 88.

⁵⁵⁷ M. Fagbongbe, 'The Future of Women's Rights from a TWAIL Perspective', *International Community Law Review* (2008) 10 pp. 401–409 at pg. 402. See also.

⁵⁵⁸ A. H. Eide, 'Community Based rehabilitation in Post-conflict and Emergency Situations', *Trauma Rehabilitation after War and Conflict: Community and Individual Perspectives*, E. Martz (ed.) (Springer, 2010) pp. 97-110.

to apply to the inward-looking approach of the medical model, which seems suitable for post-conflict States affected by the armed conflict's disabling environments.⁵⁵⁹

Additionally, the usefulness of the medical model remains significant during, and after, situations referred to under Article 11.⁵⁶⁰ A different section of this study shall cover some of those situations by giving an account of legal regimes precisely applied for regulating non-State Actors who take part in those situations. More importantly, it will establish if the models of disability through which the treaties of armed conflict perceive persons with disabilities, suggest a shift to an inclusive model in the aftermath of adopting the CRPD.⁵⁶¹

The rights enshrined in the CRPD oblige states to take persons with disabilities into account when rendering rehabilitation amenities.⁵⁶²

“[...] rehabilitation services should be made available in an accessible and culturally adequate fashion for persons with disabilities. Access to medical intervention, regular medication and treatment of chronic illnesses should be granted on an equal basis to others, [...]”⁵⁶³

Another related concept is the term ‘community-based rehabilitation’ that has links with reinforcing medical and individual models for rehabilitating the individual's body. This component of the inward-looking approach has been applied in decisions relating to individual complaints of this UN treaty body. For example, in *X v. Argentina*, the CRPD Committee is noted as deciding that Argentina had breached its duty to render rehabilitation. Supposedly the above decision, was based on the fact that rehabilitation facilities could have been available during home arrest, though they were unlikely to be accessed by X from prison.⁵⁶⁴ Likewise, conceptualisation based on the inward-looking approach of using a hydrotherapy pool to rehabilitate those with

⁵⁵⁹ CRPD Article 25. See also A/HRC/31/30 Paragraph 11. See also CRPD/C/SRB/1, Paragraph 288-295. cf., CRPD/C/UGA/1, Paragraphs 192–200.

⁵⁶⁰ UN Human Rights Council, ‘Thematic study on the rights of persons with disabilities under article 11 of the Convention on the Rights of Persons with Disabilities, on situations of risk and humanitarian emergencies’, 30 November 2015, A/HRC/31/30, Paragraphs 3-4.

⁵⁶¹ P. Businge, ‘Disability and armed conflict: A quest for Africanising disability in Uganda’, (2016)3 (1) Disability and the Global South, pg. 816-842. See also. M. Berghs and N. Kabbara, ‘Disabled People in Conflicts and Wars’, in *Disability in the Global South: the Critical Handbook*, S. Grech and K. Soldatic (eds.) (Springer, 2016) pg. 280. See also. Institute for war and peace reporting, ‘Tajikistan: disabled orphans face double burden’, 11/ August/2016, RCA 793.

⁵⁶² CRPD Article 26 (1) (2) (3). See also CRPD/C/ESP/CO/1, Paragraphs 133-171. See also. CRPD/C/SRB/1. Paragraphs 288-295: CRPD/C/UGA/1 Paragraphs 201-216.

⁵⁶³ A/HRC/31/30 Paragraph 32. See also. CRC/C/GC/9. Paragraphs 51-52.

⁵⁶⁴ *X v. Argentina*, Communication No. 8/2012, [CRPD/C/11/D/8/2012](#). Paragraphs 9-10

disabilities, are recognised in *Marie-Louise Jungelin v. Sweden*.⁵⁶⁵ The Committee decided that the refusal by the local authority to grant the planning approval, amounted to a violation of the applicant's right to rehabilitation.⁵⁶⁶

The evidence of the complaints and decisions of the CRPD Committee, based on the failure of States to either fulfil, or protect the right to rehabilitation, indicates the amalgamation of an inward-looking approach from the medical model, with concepts of rights-based ideas to enhance rehabilitation. Most protagonists argue that the duty to protect and respect persons with disabilities is attainable by this Human Rights Treaty Body by prioritising the outward-looking approach of the social model aimed at inclusive participation in all aspects of public life.⁵⁶⁷ From the increasing influence of the social model in several CRPD Committee decisions, it is apparent that the decisions of the CRPD Committee still apply rehabilitation and habitation methods, hence indicating the inward-looking approach of the medical and individual models.⁵⁶⁸ It should be noted, however, that neither *X v. Argentina* decision, nor that of *Marie-Louise Jungelin v. Sweden* deals with an armed conflict affected State, or a post-conflict States. This shows a limitation of this research in terms of decisions on Article 11 of the CRPD that would have made individual complaints, and the decisions from CRPD Committee, useful in developing disability jurisprudence of *jus post-bellum* settings of post-conflict States.

4.3. Conclusion

For purposes of summarising the observations made regarding models of disability applied by UN Treaty Bodies, it appears that the CRPD has been of significant importance in influencing the empowerment of persons with disabilities, based upon the outward-looking approach of conceptualising disability on the social model. In this

⁵⁶⁵ *Marie-Louise Jungelin v. Sweden*, Communication No. 5/2011 [CRPD/C/12/D/5/2011](#), 18/February/2011. Paragraphs 4.1-4.3 and Paragraphs 7.3-7.6.

⁵⁶⁶ *Ibid.* Paragraphs 7.3-7.6

⁵⁶⁷ CRPD Article 29 (a). See also. M. Wickenden and J. Elphick, 'Don't forget us, we are here too! Listening to disabled children and their families living in poverty', in *International Perspectives on Social Policy, Administration, and Practice Disability in the Global South: The Critical Handbook*, S. Grech and K. Soldatic (eds.) (Springer, 2016), pg. 167.

⁵⁶⁸ P. Kuipers and L. P. Sabuni, 'Community-based rehabilitation and disability-inclusive development: On a winding path to an uncertain destination', in S. Grech and K. Soldatic (eds.) *International Perspectives on Social Policy, Administration, and Practice Disability in the Global South: The Critical Handbook*, (Springer, 2016) pg. 453. International Committee of the Red Cross (ICRC), ICRC supports new physical rehabilitation centre in Sudan, 11/August/2016.

context, General Comments No. 2, 3,4,5,6 and 7 of the CRPD Committee indicate that there has been a growing trend to replicate models which underpin the CRPD by the earlier UNHRTBs. It therefore follows, that on the basis of the above view, the require UNHRTBs for women and children should understand the role and position of both the medical and social models in framing protection of women and children with disabilities across the three stage cycle.

Although the CRPD Committee has barely promulgated many General Comments, in most of the current General Comments, there is a growing application of the social model. Although in situations of armed conflict, where the medical model has been used, it is complemented by the social model. Therefore rights-based ideas of the social model, tend to be applied alone, while those of the medical model are only applied to complement the social model.

In many respects, the CRPD from the Committee have unsystematically meddled obligations, during, and after armed conflict in the same context, this makes the CRPD inadequate in addressing concerns of persons with disabilities in *jus post-conflict* contexts. The Committee assumes that other situations of humanitarian emergencies, such as earthquakes, can be equated to those of armed conflict. Such a perspective is flawed since it underestimates the legal implications of armed conflicts, as situations to which a separate regime of State obligations might be applied (IHL), bearing in mind that the IHL is connected with the medical model.⁵⁶⁹ The ambiguities regarding protection before, during and after situations of armed conflict, makes the need for a General Comment on Article 11 of the CRPD, long overdue.

Therefore, a fresh perception to models should be applied to disability related obligations of States and must take into consideration the changing conceptualisation of disabling environments before, during and after situations of armed conflict,⁵⁷⁰ when reframing obligations owed to persons with disabilities by post-conflict States. The absence of an appropriate model of disability to bridge the transition from the *jus in bello* across the *jus post-bellum* and back to normal situations of peace, might partially

⁵⁶⁹ UN Human Rights Council, Thematic study on the rights of persons with disabilities under Article 11 of the Convention on the Rights of Persons with Disabilities, on situations of risk and humanitarian emergencies, 30/November/2015, A/HRC/31/30. Paragraph 16.

⁵⁷⁰ The Appendix section of this thesis illustrates how models underpinning disability related obligations could perceivably change, as an armed conflicted state becomes a post conflict State on its way to peacetimes.

explain the lack of individual claims being lodged before the CRPD Committee for acts of violation of Article 11 of the CRPD, especially in the *jus post-bellum* context of post-conflict States.

The above state of affairs might be a result of framing rights-based ideas of persons with disabilities, upon disabling experiences in WENA States.⁵⁷¹ However, the suitability of rights-based concepts framed upon underpinnings of that social model, are contestable for their context of post-conflict and armed conflicted States. The study will reflect on where and how the above UNHRTBs deal with investigating the unsuitability of the model in addressing concerns of persons with disabilities situated in those States.

The subsequent section of this thesis sets out to explore the models of disability applied by RHRS. Chapter 5, in particular, examines the African RHRS.

⁵⁷¹ M. Berghs and N. Kabbara, 'Disabled People in Conflicts and Wars', in *Disability in the Global South: The Critical Handbook*, S. Grech and K. Soldatic (eds.) (Springer, 2016) pg. 269.

Chapter 5

5.1. The African Regional Human Rights System and Disability

The African RHRS comprises of human rights treaties adopted under the Organisation of African Unity (hereafter the OAU), or African Union (hereafter AU).⁵⁷² Compared to other RHRs, the African RHRS, is also, the most recent. This RHRS is also associated with the African Charter on Human and Peoples' Rights (hereafter the ACHPR), an instrument that lacks a clause allowing its State Parties to derogate from human rights obligations in times of armed conflicts. The lack of such a derogation clause is counterintuitive, since a substantial number of States that comprise this RHRS, are usually involved in situations of armed conflict, during which the capability of those States to be accountable for relevant obligations becomes untenable.

This part commences with the background of the African RHRS from 1985 to 2000, which shall examine regional agreements,⁵⁷³ instruments,⁵⁷⁴ and declarations,⁵⁷⁵ concerning disability, and the models of disability through which these sources respond to concerns of persons with disabilities across the three-stage cycle. The next section focusses on recent perspectives, from 2000 to 2016, that examine models of disability, and regional sources, which contextualise obligations owed to persons with disabilities across the three-stage cycle.⁵⁷⁶ It shall be noted that post-conflict States are given more attention in this section because of the following considerations. Firstly, there are neither General Comments nor General Recommendations from institutions of this RHRS that explain obligations

⁵⁷² Secretariat of the African Decade of Persons with Disabilities: The Architecture for an African Disability Rights Mechanism (2011) pg. 20.

⁵⁷³ Agreement for Establishing of the African Rehabilitation Institute (1985),

⁵⁷⁴ African Charter on the Rights and Welfare of the Child (1990)

⁵⁷⁵ The 1999 Grand Bay (Mauritius) Declaration and Plan of Action.

⁵⁷⁶ The 2003 Kigali Declaration Adopted on 11 July 2000, entered into force on 26/May/2001, African Union, Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, 11 July 2003 (Maputo Protocol of Women's Rights in Africa), African Charter on Democracy, Elections, and Governance (2007), Resolution 118 of November 2007 on the Establishment and Appointment of a Focal Point (FP) on the Rights of Older Persons in Africa, Resolution 143 of May 2009 on Transformation of the Focal Point on the Rights of Older Persons in Africa into a Working Group on the Rights of Older Persons and People with Disabilities in Africa, Resolution 305 August 2015 of the Commission on accessibility for persons with disabilities, Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa, February 2016 Commonly known as African Disability Protocol (hereafter, ADP).

owed to Africans with disabilities in provisions of regional instruments. Secondly, there are State reports, which post-conflict States have submitted to institutions of this RHR, where institutions have clarified disability related obligations of States. The African Commission on Human and Peoples' Rights (hereafter the African Commission), and the African Rehabilitation Institute (ARI), are the key institutions of this RHR whose models of response to disability during the three-stage cycle are examined. These institutions are important in establishing if the African RHR applies a specific model, or a combination of different models of disability, in guiding obligations owed to persons with disabilities by a post-conflict State, as it experiences a cycle from armed conflict to becoming a peaceful State.

In this subsection, periodically submitted State reports to the African Commission are vital in demonstrating the distinctiveness of problems that persons with disabilities face in post-conflict African States. State reports that have been attained from the online archives of this RHR, especially those submitted in the post-conflict period of Northern Uganda, are an example of useful sources to illustrate the distinctive problems of persons with disabilities, during and after, armed conflicts. The consideration of the post-conflict situation in Northern Uganda, and the State's capability to reflect these issues in the available State reports, made Uganda a suitable representative case study for models of disability for post-conflict State Parties of the RHR. The case study is also important to examine if the disabling nature of the armed conflict's environments, influences the models of disability applied by the African RHR to conceptualise disability related obligations of post-conflict States. Furthermore, this analysis considers Resolutions from the African Commission, and regional instruments, like the draft African Disability Protocol of 2016, with special attention to whether their models of disability could change, as the cycle changes the framing of disability related obligations.

5.1.1. The 1985 Establishment of the African Rehabilitation Institute (ARI)

The African RHR manifests its earliest approval of the medical and individual models with the establishment of the African Rehabilitation Institute (hereafter the ARI) in 1985. The inauguration of the ARI is a symbolic representation of protective duties owed to persons with disabilities, based on an inward-looking approach of addressing the impairment of the individual through assistance with their

rehabilitation and medical needs.⁵⁷⁷ From the time of adopting the ARI, a considerable number of African States have experienced periods of armed conflicts, whilst other States have undergone post-conflict periods of the three-stage cycle. They are therefore likely to benefit, in the case that the ARI has resources to coordinate measures for regional rehabilitation.⁵⁷⁸ Nonetheless, the ARI has continued to support the medical model of disability in its ideas of facilitating rehabilitation, by encouraging the prevention of disability among African State Parties.⁵⁷⁹ The ARI has upheld a tendency of conceptualising disability, and disabling environments based upon the inward-looking approach of the medical and individual models,⁵⁸⁰ similar to those of the International Committee for the Red Cross (hereafter ICRC).⁵⁸¹ This also makes the manner in which the ARI approaches disability, analogous to disability programmes that the ICRC is administering to several African States.⁵⁸² Subsequently, the ARI and its guidance to African States, reveals a divergence in models of disability applied,⁵⁸³ especially by institutions of the African RHRS, from the rights-based ideas of the social model that UNHRTBs appear to universalise (in Chapters 3 and 4).

⁵⁷⁷ Agreement for Establishing of the African Rehabilitation Institute (1985), available at www.au.int/en/treaties accessed 21 May 2017, (Hereafter, ARI Agreement). See also. F. Abbay, 'An evaluation of disability human rights under the African regional human rights system', *African Journal of International and Comparative Law*, (2015) 23 (3) pg. 478.

⁵⁷⁸ P. Chabal, 'Revolutionary democracy in Africa: the case of Guinea-Bissau', in *Political domination in Africa: reflections on the limits of power* P. Chabal, (ed.) African Studies Series 50, Cambridge 1986, pp. 84-108. See also. UCDP/PRIO Armed Conflict Dataset v. 4-2015, 1946 – 2014, www.pcr.uu.se/research/ucdp/datasets/ucdp_prio_armed_conflict_dataset (accessed 10/July/2018), overlain with United Nations Development Programme (UNDP).

⁵⁷⁹ *Supra*, Agreement for Establishing of the African Rehabilitation Institute, Article 1 Paragraph 1. See also F. Abbay, 'An evaluation of disability human rights under the African regional human rights system', *African Journal of International and Comparative Law*, (2015) 23 (3) pp. 488, 502.

⁵⁸⁰ *Disability and International Cooperation and Development: A review of Policies and Practices*, Janet Lord, Aleksandra Posarac, Marco Nicoll, Karen Peffley, Charlotte McClain-nhlapo and M. Keogh, (Eds.) May 2010.

⁵⁸¹ International Committee of the Red Cross (ICRC) Physical Rehabilitation Unit ICRC Report Support for life physical rehabilitation programme ICRC, (July/2012) Available at <https://www.icrc.org/eng/assets/files/publications/icrc-002-4160.pdf> (accessed 5/January/2016).

⁵⁸² Guinea-Bissau, post-conflict physical rehabilitation programme run by the International Committee of the Red Cross (ICRC), '*Sport helping to rehabilitate victims of war and armed violence*', published on 16/September/2016 available at <https://www.icrc.org/en/document/sport-helping-rehabilitate-victims-war-and-armed-violence> (Accessed 30/August/2017). Note Guinea-Bissau ratified the ACHPR in 04/12/1985 but experienced an armed conflict 1998-1999. See also. UN Peace Building Commission Guinea-Bissau, available at http://www.un.org/en/peacebuilding/doc_guinea-bissau.shtml (Accessed 30 August 2017).

⁵⁸³ H. Combrinck, 'Regional Developments: Disability rights in the African Regional Human rights System during 2011 and 2012 African Disability Rights Yearbook (2013) 1 pg. 363. See also. Abbay, 'An evaluation of disability human rights under the African regional human rights system', *African Journal of International and Comparative Law*, (2015) 23 (3) pg. 478.

The application of the medical model, by the ARI and the ICRC, in rehabilitating persons with disabilities, especially those in post-conflict African States, reveals the importance of this model in responding to problems of this group, during or after, situations of armed conflict.⁵⁸⁴ However, the prevalence of armed conflicts in this RHRS,⁵⁸⁵ coupled with the growing criticism that UNHRTBs associate with the medical model,⁵⁸⁶ accounts for the discontent that some Global South disability scholars have conveyed in relation to current trends of international disability law.⁵⁸⁷

Following from the above observations, perhaps it is time for UNHRTBs to learn a lesson from disability approaches of the ARI, in order to ensure that the models of disability are given more attention in the framing of disability related obligations of post-conflict States, in the three-stage cycle. The change in models of disability must be inclined towards directing greater efforts to enable the rehabilitation of persons with disabilities, during and after, situations of armed conflicts. Consequently, the medical model seems more likely to emphasise the need to access rehabilitation and medical needs. These are requisites for persons with disabilities in order to exercise secondary/consequential rights advanced by the social rights-based model, such as mobility for freedom of movement, and the liberty associated with the freedom from confinements.

Further advancements in the African RHRS in 1990, foresaw the adoption of the African Charter on the Rights and Welfare of the Child (hereafter the ACRWC).⁵⁸⁸ Article 13 of the ACRWC specifically obligates State Parties:

“Every child who is mentally or physically disabled shall have the right to special measures of protection in keeping with his physical and moral needs and under conditions which ensure his dignity, promote his self-reliance and active participation in the community to provide physical and moral needs of handicapped children.”⁵⁸⁹

⁵⁸⁴ Agreement for Establishing of the African Rehabilitation Institute, Article 1 Paragraph 1

⁵⁸⁵ UCDP/PRIO Armed Conflict Dataset v. 4-2015, 1946 – 2014, www.pcr.uu.se/research/ucdp/datasets/ucdp_prio_armed_conflict_dataset (accessed 10 July 2018), overlain with United Nations Development Programme (UNDP).

⁵⁸⁶ UN Committee on the Rights of Persons with Disabilities (CRPD), General Comment No 6, Article 5: Equality and non-discrimination (Adopted 9/March/2018) Paragraph 2.

⁵⁸⁷ P. Businge, ‘Disability and armed conflict: A quest for Africanising disability in Uganda Disability and the Global South’, (2016) 3(1) pp. 816-842. M. Berghs and Kabbara, N. Disabled People in Conflicts and Wars’, *In Disability in the Global South: the Critical Handbook.*, S. Grech and K. Soldatic, (eds.) London, (Springer. 2016)

⁵⁸⁸ African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990).

⁵⁸⁹ *Ibid* Article 13 (a). See also. Abbay, ‘An evaluation of disability human rights under the African regional human rights system’, *African Journal of International and Comparative Law*, (2015) 23 (3) pp. 477, 502.

Note, the use of the expression “handicapped”, in conjunction with the provision of physical and moral needs in the context of the ACRWC, indicates a trend of approaching disability based on concepts of the medical model. The impression of the ACRWC, further subjects the above provision of physical or moral needs to the availability of resources.⁵⁹⁰ This right of African children with disabilities to the provision of needs, also demonstrates characteristics of the individual model in the language of the ACRWC. Essentially, because ‘needs’ depicts a tendency of limiting rights of these African children to the mere provision of material objects when resources permit, rather than a much broader view of disability rights encompassing the duty of African States to promote adaptability, inclusiveness, acceptability and accessibility of children with disabilities.

Article 11 of the ACRWC, enshrines the obligation of African States to protect children in situations of armed conflict. According to Article 11,

“States Parties to this Charter shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child.”⁵⁹¹

This duty provides for the generalised protection of African children during situations of armed conflict. This also reveals the deficiency of lacking an armed conflict disability-related obligation that is specifically meant for protecting African children, regardless of their intensified vulnerability compared to other children.⁵⁹² The limitation is analogous to that concerning the protection of women with disabilities, in situations of armed conflict, which is examined in subsequent sections.⁵⁹³ Considering that IHL is envisaged during armed conflicts, that points to a reliance on the medical model which uses IHL to apply to disability.⁵⁹⁴ The ACRWC is also silent on protective obligations, owed by post-conflict African States, to children with disabilities. Consequently, the model of disability for framing disability-related obligations, post-conflict, is also unclear.

⁵⁹⁰ Ibid Article 13 (b).

⁵⁹¹ Ibid Article 11 (b).

⁵⁹² Committee on the Rights of the Child, General Comment No. 9 (2006): The rights of children with disabilities, CRC/C/GC/9, adopted on 27/February/2007 [hereafter CRC/C/GC/9]. See also. Committee on the Rights of the Child, General Comment No. 9 (2006): The rights of children with disabilities, CRC/C/GC/9/Corr.1 adopted on 13/November/2007. Paragraph 22-23.

⁵⁹³ Maputo Protocol of Women’s Rights in Africa, Articles 23 and 11.

⁵⁹⁴ UN Human Rights Council, *Thematic study on the rights of persons with disabilities under article 11 of the Convention on the Rights of Persons with Disabilities, on situations of risk and humanitarian emergencies*, 30/November/2015, A/HRC/31/3+0. Paragraph. 3.

Additionally, the 1999 Grand Bay (Mauritius) Declaration, and Plan of Action, illustrates characteristics that make medical and individual models appropriate for conceptualising disability in the African context.⁵⁹⁵ For example, the Mauritius Declaration notes that disability in this RHRS is characterised by various causes, such as the underperformance of most States in preventing diseases and involvement in armed conflicts.⁵⁹⁶ In which case, the prevalence of armed conflicts has not only left a number of Africans (both civilians and combatants) with war-related disabilities, but it could also lead to a considerable increase in numbers of displaced refugees or asylum seekers with disabilities. The Declaration reiterates that these Africans with disabilities comprise some of the most vulnerable individuals of displaced populations.⁵⁹⁷ By way of contrast with disability in WENA contexts, it is highly unlikely that armed conflicts would be highlighted as one of the main factors causing the characteristics of disability among Europeans, as it seems to be in the African context.⁵⁹⁸ The implications of the above regional variances in causal characteristics of disability, should neither be overlooked, nor underestimated by UNHRTBs, given their importance in depicting international disability law in ways that focuses attention on relevant aspects of TWAIL.⁵⁹⁹ Unfortunately, the Declaration shows deficiencies in terms of clarity, on whether African States should respect specific obligations owed to persons with disabilities, during and after situations of armed conflict. It is equally unclear if models of disability for framing obligations of

⁵⁹⁵ Grand Bay (Mauritius) Declaration and Plan of Action, Adopted at Grand Bay, Mauritius on 16/April/1999, by the OAU Ministerial Conference on Human Rights in Mauritius, Africa.

⁵⁹⁶ Ibid.

⁵⁹⁷ Ibid. See also. S. Grech, 'Disability and the Majority World: A Neo-colonial Approach', in *Disability and Social Theory: New Developments and Directions*, D. Goodley, B. Hughes and L. Davis (Eds.) (Palgrave Macmillan, 2012) pp. 52-69 at pg. 61. See also. S. Grech, 'Disability and Development: Critical Connections, Gaps and Contradictions', in *Disability in the Global South: the Critical Handbook*, S. Grech and K. Soldatic (eds.) (Springer, 2016) pp. 3-19.

⁵⁹⁸ M. Berghs, 'Radicalising 'disability' in conflict and post-conflict situations', *Disability and Society*, (2015) 30:5, pp. 743-758. See also. M. Berghs, 'Disability and displacement in times of conflict: Rethinking migration, flows and boundaries', *Disability and the Global South*, (2015) 2 (1) pp. 442-459.

⁵⁹⁹ D. P. Fidler, 'Revolt against or from within the West-TWAIL, the Developing World, and the Future Direction of International Law', *Chinese Journal of International Law* (2003) 2 (29) pp. 29, 76. See also. B.S. Chimni, 'Third World Approaches to International Law: A Manifesto', *International Community Law Review* (2006) 8, pp. 3-27 at 4. See also. A. Anghie, B.S. Chimni, K. Mickelson and O. Okafor, (eds.) in 'The Third World and International Order: Law, Politics and Globalization, (Brill Academic Publishers, 2004). See also. Berger, 'The End of the Third World', *Third World Quarterly* (1994) 15 (2) pp. 257,275.

those African States, ought to change with the varied vulnerability and challenges of persons with disabilities across the three-stage cycle.⁶⁰⁰

Therefore, the background of this RHRS suggests that the medical and individual models are applied under the ARI, the ACRWC, and the Mauritius Declaration, in the framing of disability related obligations owed to persons with disabilities in peacetime. The above sources acknowledge the prevalence of armed conflict as a characteristic of disability in this RHRS, and support upholding the protection provided under IHL in situations of armed conflict. The emphasis these give to IHL, indicates the medical model as the intended model for dealing with issues of persons with disabilities by post-conflict States. However, apart from relying on IHL, none of the above sources elucidates what specific obligations African States should consider for persons with disabilities during situations of armed conflict. There is little clarity as to whether the models of disability for framing those obligations, ought to vary with the differences in the vulnerability and challenges of persons with disabilities, across the three-stage cycle.

5.2. Recent Perspectives to Disability in the African Regional System

This section is interested in disability developments within the African RHRS in the period after 2000. This timeframe is important to establish if there is an indication of an emerging trend, suggesting that the African RHRS is emulating the same social model of disability as that of UN human rights treaties, discussed in the previous chapters. As mentioned, the sources examined deal with aspects of protecting Africans with disabilities and these shall include; Declarations, Charterers, Resolutions and Protocols through which the African RHRS uses particular models of disability to elaborate the obligations that African States must render to persons with disabilities.

⁶⁰⁰ T. Chataika, F. Kallon and G. Mji, 'African Policy on Disability and Development (A-PODD) *project in Sierra Leone*', (The Global Health Press, October 2011) pp. 3, 8. See also. UN Commission on Human Rights, *Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination* /submitted by Commission resolution 1995/5 and Commission decision 1997/120, E/CN.4/1998/31, adopted 27/January/1998 paragraphs 29-30.

The ACHPR provides for preparation of special agreements and Protocols, wherever such developments are deemed essential for supplementing its current provisions.⁶⁰¹ Consequently, in the previous thirty years, the OAU and, subsequently, the AU (its successor), have adopted at least four Protocols based on the mandate given under Article 66 of the ACHPR. Examples of these Protocols include: Protocol to the ACHPR on the Establishment of an African Court on Human and Peoples' Rights;⁶⁰² Protocol to the ACHPR on the Rights of Women in Africa (also commonly known as the Maputo Protocol);⁶⁰³ Protocol on the Statute of the African Court of Justice and Human Rights;⁶⁰⁴ and the Protocol to the ACHPR on the Rights of Older Persons in Africa.⁶⁰⁵ For the purposes of this study, it shall be equally important to examine the models of disability used by each of these Protocols where they tackle matters of persons with disabilities under the regional system.

5.2.1. The 2003 Kigali Declaration

Although the Kigali Declaration is non-binding, nonetheless it is a source worth mentioning since it contains important statements concerning the rights of persons with disabilities.⁶⁰⁶ The many instances during which situations of armed conflicts are affecting States in the African RHRs, could possibly explain why the Declaration recognises that armed conflict-related aspects of disability should have protective implications when framing the obligations of post-conflict Member States. Arguably, such obligations are better understood by relating the different models and approaches underpinning the protective duties owed to populations of persons with disabilities, and then, correlating the suitability of the protection envisaged through those duties, by addressing *jus post-bellum* problems of persons with disabilities in situations of a post-conflict State.

⁶⁰¹ ACHPR Article 66.

⁶⁰² Adopted on 11 July 2000, entered into force on 26/May/2001, Available at <<http://www.achpr.org/instruments/courtestablishment/>> (Accessed 30/June/2017).

⁶⁰³ Adopted on 7 November 2003, entered into force on the 20 November 2005, Available at <<http://www.achpr.org/instruments/womenprotocol/>> (Accessed 30 /June/2017).

⁶⁰⁴ Adopted on (27/June/2014) Available at <<http://www.au.int/en/treaties/protocol-amendments-protocol-statute-african-court-justice-andhuman-rights>> (Accessed 30/June/2017).

⁶⁰⁵ Adopted by the Assembly of the African Union in Addis Ababa, Ethiopia, at its 26th Ordinary Session held on 30-31/January/2016, Available at <http://www.au.int/en/sites/default/files/decisions/29514-assembly_au_dec_588_-_604_xxvi-e.pdf> (Accessed 30/June/2017).

⁶⁰⁶ Kigali Declaration, Adopted at Kigali, Rwanda on 8 May/2003 Available at www.achpr.org/instruments/ (accessed 21/June/2017).

Furthermore, the Kigali Declaration also reiterates that some of the international obligations relating to duties of States, are founded on IHL that uses the Geneva Conventions of 1949 and Additional Protocols of 1979 in applying the medical model of disability in the framing of disability related obligations.⁶⁰⁷ Therefore those obligations of IHL are exclusively limited to apply during situations of armed conflict - *jus in bello*, but barely envisioned for situations after armed conflicts - *jus post-bellum*.⁶⁰⁸ It seems apparent here, that the Declaration is referring to obligations under IHL, which seem to depict some degree of similarity with contemporary disability related obligations, such as rehabilitation, which is also underpinned by the inward-looking approach of the medical model.⁶⁰⁹

The high occurrences of armed conflict in several Member States, could be justification for obliging all post-conflict Member States to cooperate, coordinate, and undertake rehabilitation of the ARI and the ICRC.⁶¹⁰ That could, perhaps, imply special training on measures to rehabilitate the several individuals with disabilities experiencing situations like those of Mr/Mrs A, as demonstrated in the table below, on post-conflict States of the African RHRS.⁶¹¹ Certainly, such an assertion implies that the inherently disabling nature of the armed conflict's environment, is a key factor that justifies the continued focus on rehabilitating individuals with disabilities by post-conflict Member States of the ACHPR, instead of focusing on other disability related obligations in reliance with the social model and its inward-looking approach.

Recently, the philosophy underpinning most concepts of the rights-based pattern, has manifested a tendency towards the social model, but at the expense of the *jus post-bellum* role that would be played by disability related obligations framed

⁶⁰⁷ UN Human Rights Council, 'Thematic study on the rights of persons with disabilities under article 11 of the Convention on the Rights of Persons with Disabilities, on situations of risk and humanitarian emergencies', 30/November/2015, [hereafter A/HRC/31/30], Paragraphs 3-4.

⁶⁰⁸ Ibid. Paragraph 20.

⁶⁰⁹ Ibid. Paragraph 20. See also. Geneva Convention Relative to the Treatment to Prisoners of War, 12/August/1949, 75 United Nations Treaty Series 135, 136 [hereinafter III] Article 30

⁶¹⁰ International Committee of the Red Cross Physical Rehabilitation Programme, Annual Report 2013 Switzerland. See also. International Committee of the Red Cross (ICRC) Physical Rehabilitation Programme Annual Report (July 2012) Support for life ICRC, Physical Rehabilitation Unit ICRC Report Available at <<https://www.icrc.org/eng/assets/files/publications/icrc-002-4160.pdf>> (accessed 5/January/2017). See also. International Committee of the Red Cross, 'Humanity in Action' Annual Available at <<https://shop.icrc.org/humanity-in-action-annual-review-2016.html?store=default>> (accessed 5/January/2017).

⁶¹¹ African Federation of Orthopaedic Technologists, 'Disability and Technologies Analysis of the Situation and Appropriate Development in African Countries', 5th International Seminar of FATO, Tunisia, 27 to 30/April/2009. See also. African Union Commission, Department of Social Affairs, and 'Continental Plan of Action for the African Decade of Persons with Disabilities 2010–2019. Addis Ababa Ethiopia.

upon the medical model.⁶¹² For example, obligations framed upon the social model might imply: inclusive education and independent living. These duties are unlikely to directly engage with *jus post-bellum* obligations of disability rehabilitation. This also makes the social model inadequate in promoting the involvement of post-conflict African Member States in rehabilitating individuals such as ‘Mr/Miss/Mrs A’. This, however, should not imply that the social model lacks application in this regional system. Nonetheless, those observations might imply minimising the extent to which the social model, and its outward-looking approach, is influencing the understanding of post-conflict duties owed to persons with disabilities by African States during their *jus post-bellum* period.

5.2.2. The 2003 Maputo Protocol for Women (MPW)

As noted in Chapter Three, the Maputo Protocol for Women (hereafter the MPW) obligates African States to protect women’s rights in Africa.⁶¹³ The MPW specifically provides for special protection of women with disabilities (Article 23) and the protection of women in armed conflicts in Articles 11.⁶¹⁴ This analysis shall commence by explaining the models of disability underpinning Article 23, and thereafter proceed to use Article 11 to explain how the obligations envisaged could change across the three-stage cycle.

Article 23 comprises of protective obligations that are contained in two distinct paragraphs. According to which, States Parties are expected to:

“ensure the protection of women with disabilities and take specific measures commensurate with their physical, economic and social needs to facilitate their access.”⁶¹⁵

In the above context, needs are construed in spite of the possibility of being part of the problems of women with disabilities. This is because the provision of physical, economic and social needs, is reflected as an enabling means for women with disabilities to access employment, educational training and participate in decision-

⁶¹³ African Union, Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa, 11 July 2003 (Maputo Protocol of Women’s Rights in Africa)

⁶¹⁴ Ibid. Articles 23 and 11

⁶¹⁵ Ibid. Article 23 paragraph 1.

making.⁶¹⁶ The context of such an obligation represents women with disabilities as people in need, and it changes the attention of the narrative from protecting their rights, to protecting their needs. Consequently, the needs-based argument validates a better understanding of the needs for women with disabilities. Applying the medical and individual models may be a means of establishing the medical needs devising monetary means, and identifying experts required to address physical, economic and social difficulties of the allegedly ‘needy women with disabilities’. It can therefore be seen that the medical and individual models underpin this argument. In the same ethos, Article 23 has elements of the social model. The second paragraph of Article 23 requires African States to,

“ensure the right of women with disabilities to freedom from violence, including sexual abuse, discrimination based on disability and the right to be treated with dignity”⁶¹⁷

In this obligation, the focus shifts from scrutinising women with disabilities themselves, to their treatment and the misconduct by other individuals in societal settings, in which those women live. It expects States to rely on ideas of rights and laws, as means for regulating human conduct, by prohibiting actions that mistreat women because of their disabilities. The rights-based ideas of the social model are incorporated in this obligation to protect women with disabilities from attitudinal barriers of the society.

Article 11 of the MPW requires States Parties to respect the rules of IHL, applicable in armed conflict situations, which particularly relate to women.⁶¹⁸ This duty provides for generalised protection of African women during situations of armed conflict. This also exposes the deficiency of an armed conflict disability-related obligation that is specifically meant to protect African women with disabilities, due to their intensified vulnerability compared to other women.⁶¹⁹ This limitation of the African RHRS, is analogous to that concerning the protection of children with disabilities in situations of armed conflict, identified in the earlier section.⁶²⁰ Article 11

⁶¹⁶ T. Shakespeare, ‘Disability Rights and Wrongs Revisited’, 2nd Edition (Routledge, Tylor and Francis, 2014) pp. 29-30. See also. T. McNeese, ‘Disability Rights Movement’, Library for Social Change (Abdo Publishing, 2014)

⁶¹⁷ Maputo Protocol of Women’s Rights in Africa, Article 23 paragraph 2.

⁶¹⁸ Ibid. Article 11 paragraph 1.

⁶¹⁹ UN Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, 1 November 2013, CEDAW/C/GC. Paragraph. 40.

⁶²⁰ The ACRWC, OAU Doc. CAB/LEG/24.9/49 (1990). Article 11 paragraph. 1

of the MPW envisages the application of obligations from IHL during armed conflicts, which designates a reliance on the medical model, that IHL is known to apply to disability.⁶²¹

5.2.4. Resolutions: 118, 143, 305 of the Commission and Models of Disability

Resolution 118 of the African Commission, establishes Focal Point (hereafter FP) on the Rights of Older Persons from November 2007.⁶²² This Resolution also authorised the FP to convene a meeting of experts comprising of members of the African Commission, experts from Member States of the AU, and civil society organisations, to discuss a way forward for regional disability instruments.⁶²³ In the course of those meetings, there were several attempts to support the approach of a social model, particularly where the FP contends that Africans with disabilities suffer from discrimination due to the social structures in their societies, because of prejudice and ignorance.⁶²⁴ Consequently, those experts represented disability as a product of a lack of accessible and inclusive social structures of opportunities in this RHRS.⁶²⁵ However, it must be highlighted that the likelihood, or unlikelihood, of change in disability related obligations across the three-stage cycle, is difficult to envisage and therefore barely present in this Resolution.

Related to the above, is Resolution 143 of May 2009, that consists of the great strides made by the working group in developing the Protocol on the Rights of Older Persons and People with Disabilities in Africa.⁶²⁶ The working group make an important observation that,

⁶²¹ UN Human Rights Council, 'Thematic study on the rights of persons with disabilities under article 11 of the Convention on the Rights of Persons with Disabilities, on situations of risk and humanitarian emergencies', 30/November/2015, A/HRC/31/30. Paragraph. 3.

⁶²² Resolution on the Establishment and Appointment of a Focal Point (FP) on the Rights of Older Persons in Africa ACHPR/Res.118 (XXXII) 07 (2007), Available at <www.achpr.org/sessions/42nd/> (accessed 21/June/2017).

⁶²³ Ibid.

⁶²⁴ Ibid.

⁶²⁵ Ibid.

⁶²⁶ Resolution on the Transformation of the Focal Point on the Rights of Older Persons in Africa into a Working Group on the Rights of Older Persons and People with Disabilities in Africa, ACHPR/Res.143 (XXXV) 09 (2009), Available at <www.achpr.org/sessions/45th/> (accessed 21/July/2017).

“[...] people with disabilities, many people are disabled in Africa due to [...] civil conflict and war.”⁶²⁷

It was also noted that, persons with disabilities must be afforded the same rights as those of the traditionally marginalised individuals.⁶²⁸ The approach of the working group accurately recognises that the prevalence of armed conflicts is an important feature, the impact and implications of which are worth considering in relation to disability related obligations of States in the African RHRS.⁶²⁹ The consideration of this impact, might explain why the present draft of the forthcoming African Disability Protocol, seems to be the only international instrument with a disability related obligation that is specifically directed to States in a post-conflict stage of the three-stage cycle.⁶³⁰ Moreover, that obligation applies a medical model, although complements it with the social model in its approach to problems of disability. Therefore, despite attempts to emulate the social model, there is evidence of drawing upon ideas of the ARI by the working groups and the Commission that symbolise the role of the individual/medical models in facilitating the rehabilitation of individuals with disabilities.⁶³¹

Additionally, there is evidence of national legislation being identified in State reports from post-conflict States, suggesting a high possibility of responding to post-conflict impacts by designing disability related obligations upon ideas of the medical and individual models.⁶³² These obligations would encompass treating, preventing and rehabilitating persons with disabilities, rather than the social model approach of

⁶²⁷ Draft Report of Commissioner Y. K. J. Yeung Sik Yuen, ‘Chairperson of the Working Group on the Rights of Older Persons and People with Disabilities in Africa’, Inter-Session period, November/2009.pg.7 Paragraph 29.

⁶²⁸ Ibid pg. 7 Paragraph 30. See also. L. Chenwi, ‘Protection of Economic Social and Cultural Rights of Older Persons and Persons with Disabilities’, in *the Protection of Economic, Social and Cultural Rights in Africa: International Regional and National Perspectives*, D. M. Chirwa and L. Chenwi (eds.) (Cambridge University Press, 2016.) Cambridge UK. pp. 118-211 at pg. 205.

⁶²⁹ Ibid pg. 7 Paragraph 30.

⁶³⁰ Ibid pg. 7 Paragraph 30.

⁶³¹ Resolution 6 of Windhoek Declaration on Social Development adopted at Windhoek, Namibia on 27th - 31st October 2008 by AU ministers in Charge of Development. Paragraph 38.

⁶³² T.A. Campbell, T.E. Picket and R.E. Yoash-Grant, ‘Psychologic Rehabilitation of US Veterans’, in *Trauma Rehabilitation after War and Conflict: Community and Individual perspectives*, E. Martz (ed.) (Springer, 2010) pp.159-176.

promoting inclusive architectural designs, that are more associated with peacetime or WENA States.⁶³³

This approach to disability can be attributed to situations of armed conflict being a leading cause of post-conflict disabilities,⁶³⁴ as a consequence of landmines, antipersonnel missiles, and other explosives that are prevalent during, and after, such situations.⁶³⁵ Taking measures to avoid those disabling consequences in a post- conflict context, while increasing the relevance of the inward-looking approach and the medical model, promotes post-conflict reintegration through treatment and rehabilitation of persons with disabilities.⁶³⁶ It is imperative to note that many of those disabled by mutilation or amputation, could be in their childhood, youthful or of working age, as compared to the slightly different circumstances of aging and elderly related disabilities in the peaceful settings of WENA States.⁶³⁷

The above differences between developing and developed countries, partly account for a distinctive feature in the context of persons with disabilities.⁶³⁸ They also demonstrate the variances in the patterns of rights between peaceful and armed conflict-affected States. There is uncertainty whether the ADP could be used as an exemplary instrument for signposting post-conflict States towards the medical models of disability, in rehabilitating persons with disabilities.⁶³⁹ For example, post-

⁶³³ R. Traustadottir, 'Disability Studies, the Social Model and Legal Developments' in *The UN Convention on the Rights of Persons with Disabilities European and Scandinavian Perspectives*, O. M. Arnadottir, and G. Quinn, (eds.) (Martinus Nijhoff Publishers, 2009) pp. 34-40.

⁶³⁴ Office of the United Nations High Commissioner for Human Rights, 'Making peace our own Victims' Perceptions of Accountability, Reconciliation and Transitional Justice in Northern Uganda', United Nations 2007, pg. 5.

⁶³⁵ T.A. Campbell, T.E. Picket and R.E. Yoash-Grant, 'Psychologic Rehabilitation of US Veterans', in *Trauma Rehabilitation after War and Conflict: Community and Individual perspectives*, E. Martz (ed.) (Springer, 2010) pp.159-176.

⁶³⁶ A. Maedl, E. Schauer and et al., 'Psychological Rehabilitation of Ex. Combatants in Non-Western Post Conflict Settings', in *Trauma Rehabilitation after War and Conflict: Community and Individual perspectives*, E. Martz (ed.) (Springer, 2010) pp.177-124. See also. McDonald, 'Psychosocial Rehabilitation of Civilians in Conflict affected settings', in *Trauma Rehabilitation after War and Conflict: Community and Individual perspectives*, E. Martz (ed.) (Springer, 2010) pp. 215-246.

⁶³⁷ R. Traustadottir, 'Disability Studies, the Social Model and Legal Developments' in *The UN Convention on the Rights of Persons with Disabilities European and Scandinavian Perspectives*, O. M. Arnadottir, and G. Quinn, (eds.) (Martinus Nijhoff Publishers, 2009) pp. 34-40.

⁶³⁸ K. K. Nagata, 'Disability and Development: Is the Rights Model of Disability Valid in the Arab Region? An Evidence Based Field Survey in Lebanon and Jordan', *Asia Pacific Disability Rehabilitation Journal* (2008) 19 (1) pp. 71, 78. See also. T. Chataika, M. Mulumba and et al., '*The African Policy on Disability and Development (A-PODD) project in Uganda.*' (The Global Health Press, October 2011) pg. 4. See also. W. Boyce, 'Adaptation of community based rehabilitation in areas of armed conflict', *Asia Pacific Disability Rehabilitation Journal* (2000) 1 (11).

⁶³⁹ African Disability Protocol Article 10(2) (e) and 7 (b).

conflict States should play a role in facilitating availability of prosthesis and services for post-traumatic stress disorders to combatants and civilians with disabilities.⁶⁴⁰ At the commencement of the post-conflict period, there is a high likelihood for African States at this stage of the cycle to have a considerable number of individuals, with war-related disabilities that are also represented by category A in the table below, who would be the ultimate beneficiaries of such protection.⁶⁴¹ In post-conflict settings, these persons with disabilities would benefit in the event of different actors emphasising duties, framed upon the medical model.

The evidence of the regional Protocol on disabled and elderly persons, has been echoed by the chairperson of the working group when he lamented the absence of a concrete instrument under the African Human Rights System, seeking to protect the rights of older persons, and people with disabilities, in this human rights regional system.⁶⁴²

Furthermore, the models of disability can be identified from Resolution 305 of August 2015 on Disability and Accessibility. This Resolution followed the African Commission's meeting at its 18th Extraordinary Session held in Nairobi.⁶⁴³ The Resolution also calls upon State Parties, the AU and its organs, to take immediate and effective measures to ensure that all facilities and services are openly accessible to persons with disabilities.⁶⁴⁴

This view indicates that the Commission is encouraging African State Parties to construe disability as a consequential outcome of the inaccessible nature of facilities and services which depicts a social model. Although that model might seem rational in peacetime, it remains far from adequate in addressing the problems many victims with war-related disabilities have suffered, for example following the armed

⁶⁴⁰ M. Schauer and E. Schauer, 'Trauma-focussed Public Health Interventions. A Paradigm Shift in Humanitarian assistance and Aid Work', in *Trauma Rehabilitation after War and Conflict: Community and Individual perspectives* E. Martz (ed.) (Springer, 2010) pp. 389-428.

⁶⁴¹ BBC News, 'War leaves some 800,000 people disabled in Afghanistan', Reported by K. Zarindast. On 26/January/2012 and Video produced by BBC Persian's A. Salimi. Available at <<https://www.bbc.co.uk/news/world-asia-16722788>> (Accessed on 23/June/2017).

⁶⁴² Resolution 305, on accessibility for persons with disabilities -ACHPR/Res.305 (EXT.OS/XVIII) 2015 available at www.achpr.org/sessions/45th/ (accessed 21/July/2017).

⁶⁴³ Ibid. Paragraph 39.

⁶⁴⁴ Ibid. Paragraph 39.

conflict in Northern Uganda where many suffered amputations due to landmines.⁶⁴⁵ Most of those disabled by landmines, or explosives remnants, are unlikely to benefit from ideas of accessibility during and after armed conflicts, without collaborative endeavours to secure medical and rehabilitation needs from the ICRC, and deliver a physical disability rehabilitation programme.⁶⁴⁶ This is of relevance in warning the African Commission to take extra care when emulating the social model of disability.⁶⁴⁷ For example, the social model appears to preoccupy views of experts constituting the disability-working group, where they insist on reminding State Parties to ratify the Marrakesh Treaty to ensure access to published works among persons who are blind and visually impaired.⁶⁴⁸ In this regard, facilitating access might seem inconsistent with the major problems of the armed conflict-disability relationship, whose disabling characteristics have been experienced, and continue to be evident in a considerable number of post-conflict African Member States.⁶⁴⁹

5.2.5. The 2016 Draft African Disability Protocol (ADP)

The African Commission adopted the draft African Disability Protocol (ADP) during its 19th extraordinary session in February 2016.⁶⁵⁰ However, there is increasing criticism against the African RHRS for its continued reliance on

⁶⁴⁵ Office of the United Nations High Commissioner for Human Rights, *'Making peace our own Victims'* Perceptions of Accountability, Reconciliation and Transitional Justice in Northern Uganda', United Nations 2007, pg. 15

⁶⁴⁶ International Committee of the Red Cross Physical Rehabilitation Programme, Annual Report 2013 Switzerland. See also. International Committee of the Red Cross (ICRC) Physical Rehabilitation Programme Annual Report (July/2012) Support for life ICRC, Physical Rehabilitation Unit ICRC Report <<https://www.icrc.org/eng/assets/files/publications/icrc-002-4160.pdf>> (accessed 5/January/2017). See also. International Committee of the Red Cross, *'Humanity in Action'* Annual Review 2016, Geneva, Switzerland. pp. 18-19.

⁶⁴⁷ Resolution 305, on accessibility for persons with disabilities -ACHPR/Res.305 (EXT.OS/XVIII) 2015.

⁶⁴⁸ Marrakesh Treaty to *Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled* adopted on June/27/2013, Available at <<http://www.wipo.int/wipolex/en/details.jsp?id=13169>> (Accessed 27/December/2017).

⁶⁴⁹ T. Chataika, F. Kallon and G. Mji, 'African Policy on Disability and Development (A-PODD) project in Sierra Leone', (The Global Health Press, October 2011) pp. 3, 8. See also. M. dos Santos-Zingale and M. Ann McColl, 'Disability and Participation in Post-conflict Situations: The case of Sierra Leone, *Disability & Society*, (2006) 21:3, pp. 243-257. See also. See also. International Committee of the Red Cross (ICRC), 'ICRC supports new physical rehabilitation centre in Sudan', 11/August/2016.

⁶⁵⁰ Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa, (hereafter African Disability Protocol) adopted at the 19th Extra-Ordinary Session of the African Commission on Human and Peoples' Rights held between 16-25 February 2016 in The Gambia, Available <<http://www.achpr.org/news/2016/04/d216>> (Accessed 6/June/2017).

rehabilitation centred disability duties,⁶⁵¹ bearing in mind that such a duty echoes an individual model of disability, as already noted in earlier discussions. To that end, the current provisions under the ADP, apply State obligations based on ideas of the individual model with an explicit reference to a post-conflict rehabilitation duty.⁶⁵² The ADP provides for,

“[...] ensuring that persons with disabilities are consulted in all aspects of planning and implementation of post-conflict rehabilitation.”⁶⁵³

The ADP is impliedly framing the above obligation in a *jus post-bellum* context with a view of obliging States to consider persons with disabilities in the course of planning, and implementing measures, for post-conflict rehabilitation. Perhaps the above obligation of the ADP tries to address some of the *jus post-bellum* concerns highlighted by scholars such as; Habasch,⁶⁵⁴ Kabbara and Nagata,⁶⁵⁵ and Businge,⁶⁵⁶ whose question the developing trend of using UNHRTBs as a means of internationalising the application of a social rights model, because of its incompatibility in responding to the salient nature of problems faced by persons with disabilities, within post-conflict States.⁶⁵⁷

The draft ADP also applies the individual model of disability by alluding to community-based rehabilitation (CBR) and clarifying its importance in post-conflict

⁶⁵¹ S.A. D. Kamga, 'A call for a Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa', *African Journal of International Comparative Law* (2013) 21 pp. 219, 249. See also. F. Abbay, 'An evaluation of disability human rights under the African regional human rights system', *African Journal of International and Comparative Law*, (2015) 23 (3) pp. 477, 502. See also, H. Combrinck, 'Regional Developments: Disability rights in the African Regional Human rights System during 2011 and 2012', *African Disability Rights Yearbook* (2013) 1 pp. 363, 368.

⁶⁵² African Disability Protocol Article 7(b).

⁶⁵³ Ibid. Article 7(b).

⁶⁵⁴ R. Habasch, 'Is the Rights Model of Disability Valid in Post-conflict Lebanon? A Participatory Pilot Survey', *Journal of Palestine Studies* (1997) 27 (1) pp. 126,135.

⁶⁵⁵ K. K. Nagata, 'Disability and Development: Is the Rights Model of Disability Valid in the Arab Region? An Evidence Based Field Survey in Lebanon and Jordan', *Asia Pacific Disability Rehabilitation Journal* (2008) 19 (1) pp. 60, 78. See also. M. Berghs and N. Kabbara, *Disabled People in Conflicts and Wars. In Disability in the Global South: the Critical Handbook*. S. Grech and K. Soldatic, (eds.) (London, Springer, 2016) pp. 269-285.

⁶⁵⁶ P. Businge, 'Disability and armed conflict: A quest for Africanising disability in Uganda Disability and the Global South', (2016) 3(1) pp. 816-842.

⁶⁵⁷ W. Boyce, 'Adaptation of Community Based Rehabilitation in areas of armed conflict', *Asia Pacific Disability Rehabilitation Journal* (2000) 1 (11). See also. A. H. Eide, 'Community Based rehabilitation in Post-conflict and Emergency Situations', in *Trauma Rehabilitation after War and Conflict: Community and Individual Perspectives* E. Martz (ed.) (Springer, 2010) pp. 97-110.

States such as; Angola,⁶⁵⁸ Ethiopia,⁶⁵⁹ Libya,⁶⁶⁰ among other States in this RHR. It is important to remember that this is a human rights system where several communities have experienced the impact of armed conflicts and its disabling consequences. This informs the model and approach through which the African Commission frames and contextualises the most important duties of post-conflict African States. The African Commission seems to implicitly undertake the above role through the ADP, where it provides that State Parties shall have a duty;

“[...] ensuring that CBR services are provided in ways that enhance the participation and inclusion of persons with disabilities in the community.”⁶⁶¹

This is, in many respects, similar to Boyce’s argument of advocating for CBR in post-conflict contexts.⁶⁶² Eide reinstates the importance of approaching disability based upon CBR,⁶⁶³ especially if such an obligation is given to States Actors that also involve communities which deal with problems of post-conflict disabilities.⁶⁶⁴

The individual and medical models of disability have continued to be applied by the proposed obligations of the ADP. More important than the aspect of assigning duties to post-armed conflict States, however, is to clearly address the novel

⁶⁵⁸ P. J. Gomes and J. Clover, ‘The Peace dividend in Angola: Strategic Implications for Okavango Basin Cooperation’, in *Transboundary Rivers, Sovereignty and Development: Hydropolitical drivers in the Okavango River Basin*, A. Turton, P. Ashton and E. Cloete (Eds.) African, (Water Issues Research Unit and Green Cross International African Water Issues Research Unit and Green Cross International, 2003) pp. 65-82 at pp. 72 · See also. Human Rights Watch, ‘*Forgotten Fighters: Child Soldiers in Angola April*’, (2003) 15 10 (A) pg. 7.

⁶⁵⁹ M. Plant, ‘Towards a cold peace? *The outcome of the Ethiopia-Eritrea war of 1988 - 2000*’, Review of African Political Economy, (2001). 28 (87) pp. 126, 129. See also. Ploughshares Project, ‘*Armed Conflicts Report Ethiopia-Gambella*’, Waterloo, Ontario, January/2009.

⁶⁶⁰ HQ/PEC/ERM/SCT/2015.9/PHRA, from the, ‘*Humanitarian Crisis in Libya Public Health Risk Assessment and Interventions*’, (WHO, 2015) pp. 12, 15. See also. A. Lere, ‘Libya’s Implosion and its Impacts on Children’, *Journal of International Women’s Studies*, 14(5), pp. 67, 79. Available at: <http://vc.bridgew.edu/jiws/vol14/iss5/5>. (Accessed 12/August/2016).

⁶⁶¹ Draft African Disability Protocol , Article 10(2)(e)

⁶⁶² W. Boyce, ‘Adaptation of Community Based Rehabilitation in areas of armed conflict’, *Asia Pacific Disability Rehabilitation Journal* (2000) 1 (11).

⁶⁶³ A. H. Eide, ‘Community-based Rehabilitation in Post-Conflict and Emergency Situation’, in E. Martz (ed.) *Trauma Rehabilitation after War and Conflict: Community and Individual Perspectives* (Springer, New York, NY 2010) pp. 97-110.

⁶⁶⁴ T.A. Campbell, T.E. Picket and R.E. Yoash-Grant, ‘Psychologic Rehabilitation of US Veterans’, in *Trauma Rehabilitation after War and Conflict: Community and Individual perspectives* E. Martz (ed.) (Springer, 2010) pp.159-176. See also. A. Maedl, E. Schauer and et al., ‘Psychological Rehabilitation of Ex. Combatants in Non-Western Post Conflict Settings’, in *Trauma Rehabilitation after War and Conflict: Community and Individual perspectives*, E. Martz (ed.) (Springer, 2010) pp.177-124. See also. McDonald, ‘Psychosocial Rehabilitation of Civilians in Conflict affected settings’, in *Trauma Rehabilitation after War and Conflict: Community and Individual perspectives*, E. Martz (ed.) (Springer, 2010) pp. 215-246.

approach of the ADP by demonstrating how the armed conflict, and the characterisation of its disabling situations, would necessitate placing slightly more emphasis on the approach of rehabilitating individuals. This novel approach of the ADP is distinguishable from that of the CRPD, because Article 11 remains largely unclear on models for conceptualising *jus post bellum* obligations associated with disability. The obligation of post-conflict rehabilitation, if well monitored, might be important in reminding post-conflict African States, such as Uganda, of their rehabilitation duties to 'Mr/Miss A' in the tables illustrated under the previous section of this chapter.

5.3. Post-conflict State Reporting and Models of Disability

Among the main obligations of State Parties is the submission of State reports on legislative, or other measures, undertaken with the aim of giving effect to the rights and freedoms recognised and guaranteed through the ACHPR.⁶⁶⁵ The submission of State reports happens twice annually. Although current obligations under the ACHPR are scarcely spelt out explicitly, there is a difference in the model of disability that its Member States should apply when accounting for their post-conflict disability related obligations in these reports. The subsequent discussion shall contain an account of State reports on their disability duties to this RHRS.

In terms of internationalising the application of a social model of disability, it is apparent from some State reports, such as Ghana's, that disability is constitutionally perceived as a problem, created through external environments and attitudes which act as barriers to aspirations of persons with disabilities. Unlike post-conflict States such as Northern Uganda, a Member State like Ghana has largely been a peaceful State for quite a while. In such a scenario, the ideas of the social rights model, well known for representing external barriers and attitudes as the causes of disabling environments, might be perceived as farfetched, inappropriate and irrational to States in the post-conflict stage with many individuals such as those represented by

⁶⁶⁵ ACHPR Article 63. See also. Viljoen, 'State Reporting under the African Charter on Human and Peoples' Rights: A Boost from the South', (2000) 44 pp. 110, 118.

category A in the table below- are directly disabled during the armed conflict period of the three-stage cycle.⁶⁶⁶

Additionally, the tendency to rely on the social model is indicative of Ghana's attempts to respond to more recent models of disability that are applied in the Resolutions of the African Commission, examined in this Chapter.⁶⁶⁷ The Resolutions of the Commission reflect a trend of emulating the internationalised application of the social model and its outward-looking approach. This accounts for the presence of the model in shaping and framing approaches, upon which Ghana, and other State Parties to the ACHPR, might start representing and reporting the measures undertaken in protecting persons with disabilities.

Nevertheless, post-conflict State Parties must have a special emphasis on the individual and medical models of disability, considering that the application of those models will enhance more suitable, and more protective obligations, which are founded upon rehabilitating individuals with physical and psychological disabilities, during and after situations of armed conflict. This issue shall be explored further in the subsequent section relating to State reports made to the Commission by Post-conflict Northern Uganda, given that Uganda is a State party in this regional system. The reasons why post-conflict Uganda is a representative example of State Parties demonstrating the disabling surroundings of armed conflicts which characterises disability in many post-conflict African States, shall be detailed in subsequent discussions of each State.

5.3.1. Post-conflict Northern Uganda and State Reports from Uganda

In this section, the membership of Uganda to the African RHRS, shall be examined, before giving an account of its post-conflict experiences. Special interest is paid to how post-armed conflict experiences are informing, and influencing, the model through which the northern communities of Post-conflict Northern Uganda

⁶⁶⁶ R. Habasch, 'Is the Rights Model of Disability Valid in Post-conflict Lebanon? A Participatory Pilot Survey', *Journal of Palestine Studies* (1997) 27 (1) pp. 126,135. See also. Businge, 'Disability and armed conflict: A quest for Africanising disability in Uganda Disability and the Global South, (2016) 3(1) pp. 818, 842.

⁶⁶⁷ Resolution on the Establishment and Appointment of a Focal Point (FP) on the *Rights of Older Persons in Africa*, ACHPR/Res.118 (XXXXII) 07 (2007). See also. Resolution on the Transformation of the Focal Point on the *Rights of Older Persons in Africa into a Working Group on the Rights of Older Persons and People with Disabilities in Africa*, ACHPR/Res.143 (XXXXV) 09 (2009). See also. Resolution 305, *on accessibility for persons with disabilities* -ACHPR/Res.305 (EXT.OS/XVIII) 2015.

tend to conceptualise disability.⁶⁶⁸ This is in addition to the ways in which witness reports from impacted communities of Uganda could perceive the armed conflict as the only cause of disabling environments in post-conflict settings of present Northern Uganda.⁶⁶⁹ This kind of analysis is vital for identifying the most suitable model and approach to disability, upon which post-conflict disability related obligations of States should be framed, and understood during the *jus post-bellum* period.

Uganda ratified the ACHPR 10 May 1986.⁶⁷⁰ Since then, both prior and subsequent to the armed conflict in its northern region, it has submitted its periodic reports. At the time of undertaking this study, three State reports have been submitted by Uganda to the African Human Rights Commission, and of those, only two are publicly accessible on the website of the Commission. The two reports are deemed sufficient for the purposes of investigating the models of disability. The fourth and fifth periodic State reports cover the periods 2008-2010,⁶⁷¹ and 2010–2012 respectively.⁶⁷²

Kanter notes in her recent work, that 1.2 percent of the Ugandan population are persons with disabilities.⁶⁷³ Those characteristics make Uganda a good example of a post-conflict African State Party, which is suitable for investigating the disabling impacts of armed conflict situations, as a key factor influencing the models of disability applied in the African RHRS.

In the Ugandan context, a rebel group, the Lord's Resistance Army (hereafter LRA), was involved in an internal armed conflict with the Uganda Peoples' Defence

⁶⁶⁸ C. Mbazira, 'Uganda's Hybrid Constitutional Protection of Social Economic and Cultural Rights', In *the Protection of Economic, Social and Cultural Rights in Africa: International Regional and National Perspectives*, D. M. Chirwa and L. Chenwi (eds.) (Cambridge University Press, 2016.) Cambridge, UK. pp. 447-475.

⁶⁶⁹ United Nations OCHA and IRIN Report, *When the Sun Sets We Begin to Worry*, Office for the coordination of humanitarian affairs (OCHA) Regional Support Office for Central and East Africa and Integrated Regional Information Networks (IRIN), United Nations OCHA and IRIN Publications(November/2004). pg. 15. See also. S. R. Barrig (ed.), *As if we weren't humans: Discrimination against women with disabilities in Northern Uganda*, (Human Rights Watch, 2010) 350 Fifth Avenue, 34th Floor Available at <https://www.hrw.org/sites/default/files/reports/uganda0810_brochure_low.pdf> (accessed/20/June 2016).

⁶⁷⁰ Available at <<http://www.achpr.org/instruments/achpr/ratification/>> (accessed 15/June/2017).

⁶⁷¹ The Republic of Uganda Periodic Report by the Government of Uganda to the African Commission on Human and Peoples' Rights Presented at the 49th Ordinary Session Banjul, The Gambia 28th April to 12th/May/2011.

⁶⁷² The Republic of Uganda Periodic Report by the Government of Uganda to the African Commission on Human and Peoples' Rights Presented at the 54th Ordinary Session Held in Banjul, the Gambia from 22nd/October/2013 to 5th/November/2013.

⁶⁷³ A. S. Kanter, 'The Development of Disability Rights under International Law: From Charity to Human Rights', (Routledge, 2015) London, UK. pg. 27.

Forces in the northern region for more than twenty years.⁶⁷⁴ The current state of affairs in Northern Uganda make this State a typical example of a region in a post-armed conflict period, with several reports from human rights organisations about the armed conflict's disabling aspects. Unlike the proposed African Disability Protocol,⁶⁷⁵ the ACHPR has been less focused on the individual model of rehabilitating individuals as the most appropriate model of disability that Member States with post-conflict communities ought to consider when accounting for their disability protection.

In illustrating the problems and causes of persons with disabilities as a consequence of activities during the armed conflict phase of the three-stage cycle, the trends of disability in post-conflict Northern Uganda portray peculiar features. These features are demonstrated in post-conflict State reports from Uganda to develop a better understanding of why models of disability, applied to the framing of disability related obligations, could change during the armed conflict period of the three-stage cycle. The comparatively higher degree of vulnerability faced by persons with disabilities due to armed conflict violence, the high likelihood of this group being left behind in the event of a need to save lives, and the fact that those with disabilities are more prone to injuries, during and after situations of armed conflict, should also be noted. These factors could disproportionately impact or increase the number of persons with disabilities. Witness statements from reports of international organisations, have been identified to document the vulnerabilities of persons with disabilities in northern Uganda. Such witness statements are valuable to this research, given their usefulness in representing the armed conflict stage as a factor that causes disabilities, but also impacts persons with disabilities. Hence the need to consider special disability related obligations, and an appropriate model of disability for African States in these situations. The final section will advance an argument that in the event of applying ACHPR disability related obligations to post-conflict Member States, there shall be a need to identify the interdependence in obligations framed upon the inward looking (medical and individual) models approach, with obligations

⁶⁷⁴ Office of the United Nations High Commissioner for Human Rights, *'Making peace our own Victims'* Perceptions of Accountability, Reconciliation and Transitional Justice in Northern Uganda', United Nations 2007, pg. 15.

⁶⁷⁵ Draft Protocol to the African Charter on Human and Peoples' *Rights on the Rights of Persons with Disabilities in Africa, (African Disability Protocol)* adopted at the 19th Extra-Ordinary Session of the African Commission on Human and Peoples' Rights held between 16-25 February 2016 in The Gambia, Article 7(b) and 10(2)(e).

based upon the outward looking social approach. The argument supports convergence and enables complementarity in addressing consequences of armed conflict as period of the three-stage cycle that impacted persons with disabilities, and caused more disabilities in Northern Uganda.

Following a victim follow-up report from the Office of the United Nations High Commissioner for Human Rights (UNHCHR),⁶⁷⁶ a victim of violence in the Pader district of Acholi land located in Northern Uganda recollected;

“My husband was killed and my child was shot in the legs. His legs had to be amputated.”⁶⁷⁷

Additionally, the above report reveals an account of the experience of another female victim of physical violence in the Amuru district of Northern Uganda.⁶⁷⁸ She remarks that,

“A number of women have mental illnesses as a result of the torture and beatings we suffered when we were abducted by the LRA. Most of us have physical disabilities and this has affected our capacity, so much so that our lives at some level have less meaning.”⁶⁷⁹

The same UNHCHR report also recognised that individuals from State Parties experiencing armed conflicts are susceptible to becoming directly disabled as a result of mutilation, maiming, wounding from gunshots and other physical disabilities sustained in the armed conflict.⁶⁸⁰ As a result, it is highly probable that a considerable number of individuals from such States would be disabled, to the extent of being unable to participate in numerous community activities.⁶⁸¹

In addition to the 2007 report of the UNHCHR, another report from 2010 by Human Rights Watch (HRW), has also exemplified the armed conflict-disability

⁶⁷⁶ Office of the United Nations High Commissioner for Human Rights, *‘Making peace our own Victims’ Perceptions of Accountability, Reconciliation and Transitional Justice in Northern Uganda*, United Nations 2007, pg. 15. See also. United Nations OCHA and IRIN Report, *When the Sun Sets We Begin to Worry*, Office for the Coordination of Humanitarian Affairs (OCHA) Regional Support Office for Central and East Africa and Integrated Regional Information Networks (IRIN), OCHA and IRIN Publications (November 2004).

⁶⁷⁷ Ibid. pg. 15.

⁶⁷⁸ Ibid. pg. 19

⁶⁷⁹ Ibid. pg. 15.

⁶⁸⁰ Ibid. pg. 5.

⁶⁸¹ Ibid. pg. 5.

relationship in Northern Uganda.⁶⁸² HRW takes a gender-based theme in describing the armed conflict experiences of women with disabilities in Northern Uganda.⁶⁸³ The report is fairly comprehensive since it relates to both women who had disabilities before the war, as well as those disabled as a result of the conflict.⁶⁸⁴ The report contended that women with disabilities are experiencing stigma and isolation,⁶⁸⁵ sexual and gender-based violence,⁶⁸⁶ and obstacles to accessing justice.⁶⁸⁷ HRW also reported inequalities in terms of accessing rehabilitation care,⁶⁸⁸ maternal health,⁶⁸⁹ family planning,⁶⁹⁰ and reproductive health,⁶⁹¹ including HIV testing,⁶⁹² treatment and prevention.⁶⁹³

Although HRW seems to encourage the prioritisation of the CRPD and CEDAW's social model of disability,⁶⁹⁴ as expected, the social model asserts a misplaced approach of emphasizing rights-centred ideas of family planning, reproductive health, and justice services accessible in a war-torn area such as Northern Uganda.⁶⁹⁵ It seems unreasonable to universalise and prioritise social rights based ideas of reproduction and HIV testing, particularly in armed conflict affected regions like Northern Uganda, where the training of professionals that can provide prosthesis to aid mobility seems ideal for rehabilitating a significant number

⁶⁸² S. R. Barrig (ed.), 'As if we weren't humans: Discrimination against women with disabilities in Northern Uganda', (Human Rights Watch, 2010) 350 Fifth Avenue, 34th Floor, Available at <https://www.hrw.org/sites/default/files/reports/uganda0810_brochure_low.pdf> (accessed 20/June/2016).

See also. C. Kathleen, 'Doubly protected and doubly discriminated: The paradox of women with disabilities after Conflict', (2013) 19(105) William & Mary Journal of Women and the Law, pp. 120, 136.

⁶⁸³ Ibid. pg. 7.

⁶⁸⁴ Ibid. pg. 7.

⁶⁸⁵ Ibid. pg. 9.

⁶⁸⁶ Ibid. pg. 10

⁶⁸⁷ Ibid. pg. 13

⁶⁸⁸ Ibid. pg. 13

⁶⁸⁹ Ibid. pg. 4, 14

⁶⁹⁰ Ibid. pg. 14

⁶⁹¹ Ibid. pg. 4, 14, 18

⁶⁹² Ibid. pg. 16

⁶⁹³ Ibid. pg. 13

⁶⁹⁴ Ibid. pg. 17

⁶⁹⁵ R. Habasch, 'Is the Rights Model of Disability Valid in Post-conflict Lebanon? A Participatory Pilot Survey', *Journal of Palestine Studies* (1997) 27 (1) pp. 126,135. See also. N. Kabbara and K. K. Nagata, 'Is the Rights Model of Disability Valid in Post-conflict Lebanon? A Participatory Pilot Survey in Beirut', United Nations Development Cooperation Branch. See also. K. Nagata, 'Disability and Development: Is the Rights Model of Disability Valid in the Arab Region? An Evidence Based Field Survey in Lebanon and Jordan', *Asia Pacific Disability Rehabilitation Journal* (2008) 19 (1) pp. 60, 78.

of women that would become persons with disabilities in the aftermath of armed conflicts.

Therefore, it is clearly impossible to agree with the approach of the HRW report, as the social model appears unlikely to address the peculiar nature of problems met by women in regions that face the impact of the armed conflict-disability relationship. Although ideas of reproductive health and HIV testing will be important in the long term, in the short-term ideas of community-based rehabilitation (CBR) and physical rehabilitation,⁶⁹⁶ associated with the prioritisation of the medical and individual model of disability, should be applied.⁶⁹⁷

Furthermore, a report from the Norwegian Refugee Council on internal displacement also indicates that during armed conflicts like that experienced in Northern Uganda,⁶⁹⁸ persons with disabilities encountered mobility limitation⁶⁹⁹ during internal or cross-border displacement.⁷⁰⁰ Of course, it should be noted that such displacement problems apply to people disabled during the course of the armed conflict in Northern Uganda, inasmuch as it does to the elderly and people disabled before the occurrence of the armed conflict, as demonstrated by individuals represented as 'Mr/Miss/Mrs A,B and C' in the table below.

⁶⁹⁶ Proposed African Disability Protocol, Article 7(b) and 10(2) (e).

⁶⁹⁷ W. Boyce, 'Adaptation of community based rehabilitation in areas of armed conflict', *Asia Pacific Disability Rehabilitation Journal* (2000) 1 (11) pp. 2-3. See also. A. H. Eide, 'Community-based Rehabilitation in Post-Conflict and Emergency Situation', in *Trauma Rehabilitation after War and Conflict: Community and Individual Perspectives* E. Martz (ed.) (Springer, New York, NY 2010) pp. 97-100.

⁶⁹⁸ Rift Valley Institute (RVI), *Mobility and crisis in Gulu: Drivers, dynamics and challenges of rural to urban mobility*, February/2018. pp. 6-9.

⁶⁹⁹ Norwegian Refugee Council's Internal displacement monitoring centre, '*Global Report on Internal Displacement; New Displacements by Conflict and Disaster in 2016*', Available from <<http://www.internal-displacement.org/global-report/grid2017/pdfs/2017-GRID.pdf>> (accessed 12/May/2017), pg. 58.

⁷⁰⁰ Rift Valley Institute (RVI), *Mobility and crisis in Gulu: Drivers, dynamics and challenges of rural to urban mobility*, February 2018. pp. 6-9. See also. Article 11 CRPD, M. Burke and L. P. Vicentic, 'Protecting persons with disabilities in armed conflicts', in *The War Report: Armed Conflict in 2013*, S. C. Maslen (ed.) (Oxford University Press, 2014) Oxford, pg. 402. See also. N. Hart, M. Crock, R. McCallum, 'War law and Disability; Ensuring Humanity in Situations of Crisis', D. Mitchel and V. Karr, (Eds.) *Crises Conflict and Disability: Ensuring Equality* (Routledge Taylor and Francis Group, 2014) Abingdon-on-Thames, UK, pp.12-13

Likely categories of Individuals in State parties affected by situations of armed conflicts.	Before armed conflict in Northern Uganda. Armed conflict. Since Birth/childhood Model underpinning obligations relating to disability in Peacetimes.	During armed Conflict Northern Uganda 1986-2010 IHL (Medical model) <i>Jus in Bello</i>	After the armed Conflict in Northern Uganda Aftermath/post-conflict period/ <i>jus post-bellum</i>	Entitlement to obligations associated with disability (before and after the Armed Conflict in Northern Uganda Armed Conflict) assuming State was already party to relevant instruments
'Mr/Miss/Mrs A'	(Stage 1) No disability Identity	(Stage 2) Permanent disability due to anti-personnel landmine, amputated, suffered Post Traumatic Stress Disorder (PTSD), permanent sight loss, among other impairments, mutilated, maimed,	(Stage 3) A person with disability - (Disabled) - a survivor but persons with disabilities -A victim of armed conflict but a person with disabilities. -A man/veteran but a person with disabilities.	<i>Before conflict: NO</i> <i>After conflict: YES</i> -ACHPR 18(4) Persons with Disabilities Act 2006, Section 9, Para. f. -Proposed Disability Protocol (Adopted January 2018) Approach rehabilitation Individual or medical Models
"Mr/Miss/Mrs B'	(Stage 1) No disability Identity	(Stage 2) Not disabled during the armed conflict	(Stage 3) A person without disability	<i>Before conflict: NO</i> <i>After conflict: NO</i>
"Mr/Miss/Mrs C'	(Stage 1) Has a disability Identity	(Stage 2) More vulnerable to abuse, hardships during displacement	(Stage 3) A person with disabilities	<i>Before conflict: YES</i> <i>After conflict: YES</i>

Table 4: Mapping the Disabling trends of the armed conflict-disability relationship and why its impacts can inform the model/approach through which the African Regional Human Rights System frames disability related duties of post conflict African States

 - The social model and its outward-looking approach are applied for identifying disability and the understanding of peacetime disability related obligations that States or parts of the State in the peaceful phase should be rendering to persons with disabilities. For example parts such as Central and Western Uganda.

 -The Medical/ individual model and their inward-looking approach are more suitable for understanding of post-conflict State obligations the Uganda owes to persons with disabilities of the Northern region in the aftermath of the armed conflict (*jus post-bellum* context). (Emphasize enabling rights)

Before the armed conflict in Northern Uganda. Stage one of the cycle.

In the table above, the generic individuals represented by category A, represent a northern Ugandan of any age, gender, race, tribe and religious political affiliation without disabilities at the commencement of the armed conflict. This implies that before the armed conflict the individuals represented by this category would have neither the needs envisaged under obligations in Article 18 of the ACHPR, nor envisaged in the legal considerations under the Persons with Disabilities Act 2006.⁷⁰¹

Additionally, in stage one of the cycle, Generic individuals represented by category B are comprised of a population without disability as those represented by category A. Having no disabilities before the armed conflict/ in the peaceful stage of the cycle constitutes the major similarity between individuals represented by both categories A and B. The legal obligations owed to persons with disabilities would neither apply, nor be attributed to individuals represented by both of these categories before the occurrence of the armed conflict.

The generic person in category C, represents individuals that are persons with disabilities before the commencement of the armed conflict in northern Uganda. These individuals would not be entitled to the needs envisaged under obligations in Article 18 of the ACHPR nor legal protection under the Persons with Disabilities Act 2006.⁷⁰²

During the armed conflict that also represents the second stage of the cycle, the generic individual previously presented by category A: This category of northern Ugandans suffers amputation, slight loss or hearing impairment and post-traumatic stress disorder during the armed conflict. This makes stage two of the cycle a point of divergence in disability status of those individuals in the category of Mr/Miss/Mrs A, from those in the category of Mr/Miss/Mrs B. The occurrence of war-related disabilities to the individuals represented by Mr/Miss/Mrs A, gives them in the same disability status as that of individuals in the category C of generic individuals above. Accordingly, during the armed conflict stage, the prevalence of war-related disabilities makes individuals in category A obtain the disability identity as that of category C. During the continuation of this armed conflict stage, these individuals

⁷⁰¹ Persons with Disabilities Act 2006, Section 9

⁷⁰² Ibid. Section 9

would be disproportionately impacted by this stage due to their limited accessibility and heightened level of vulnerability.

The post conflict stage also designates the period after the armed conflict. During this stage of a post conflict State, there is a likelihood of assuming that persons with disabilities represented by the categories of individual in A (exclusively war-related disabilities) and those in Mr/Miss/Mrs C could be treated as a homogenous group at least in post-conflict literature.⁷⁰³ That presumption hinders the possibility of realising the likely differences in the nature of disability related obligations, and possible variances in models that a post-conflict State must apply to these two categories of persons with disabilities. Acknowledging the armed conflict centred dimension of disability diversity is vital in supporting the post-conflict integration, and inclusion, of persons with war-related disabilities. The new disability demands differ from those of individuals that might have lived with disabilities many years before the occurrence of the armed conflict.

Combatants/veterans are more likely to fall under the categories for 'Mr/Miss/Mrs A' and 'B'. It should also be noted that most States seem unlikely to allow individuals represented by category C, to take armed roles as combatants.⁷⁰⁴

In theory, the post-conflict duty of administering rehabilitation, is supposed to be rendered to persons with disabilities in an indiscriminative manner. However, in the *jus post-bellum* context, post-conflict State Parties have a tendency of rendering great attention to their disability related duties, like post-conflict mobility rehabilitation, to their so-called armed conflict heroic survivors (Mr/Miss/Mrs A).⁷⁰⁵ Whereas, post conflict-States, may devote less attention to their disability related duties to individuals with disabilities in category of Mr/Miss/Mrs A, that might have

⁷⁰³ I. B. Portero and T. G. B. Enríquez, 'Are Persons with Disabilities included in the Colombian peace process?', *Disability & Society*, (2018) 33 (3) pp. 487-491. See also. L. Correa-Montoya and M. C. Castro-Martínez, '*Disability and Social inclusion in Colombia*', Saldarriaga-Concha Foundation (FSC), Alternative Report to the Committee on the Rights of Persons with Disabilities. Saldarriaga-Concha Foundation Press. Bogotá D.C., (2016). Colombia. pg. 12.

⁷⁰⁴ See Reservations made on Article 27 CRPD employment of individuals in category of Mr. and Miss C. into armed forces. Although there are cases where *Mr. /Miss C* might be classed as combatants if they choose to fight of non-State actors before the occurrence of conflict.

⁷⁰⁵ K. K. Nagata, 'Disability and Development: Is the Rights Model of Disability Valid in the Arab Region? An Evidence Based Field Survey in Lebanon and Jordan', *Asia Pacific Disability Rehabilitation Journal* (2008) 19 (1) pp. 71, 78.

acquired their disabilities whilst supporting a defeated opponent or party to the armed conflict.⁷⁰⁶

Additional to the nuance and uniqueness of disability patterns that emerge from the presence of the armed conflict-disability, relationships tends to be illustrated in the operations and annual reports of the International Committee for the Red Cross (ICRC), in connection to the disability work undertaken in Northern Uganda.⁷⁰⁷ It is worthwhile pointing out that most of the ICRC operation centres are rehabilitating individuals disabled by armed conflict.⁷⁰⁸ These problems appear peculiar to the nature of the armed conflicts and their disabling environments, which constitute a major characteristic of disability in a State such as Northern Uganda, especially in the aftermath of armed conflict.⁷⁰⁹ Perhaps that justifies Businge's idea of insisting on the importance of 'Africanising' disability rights.⁷¹⁰ In this context, the 'Africanising' of disability rights should be construed to encompass the consideration of disability related obligations and models that are considerate of the characterisation and manifestation of disabilities among African societies of the Global South.

These observations are important in terms of models of disability in some of the recommendations given by non-government organisations such as Human Rights Watch.⁷¹¹ A report from HRW illustrates armed conflict disabling

⁷⁰⁶ S. Meyers, 'Wounded Warriors or One of the Crowd? Civil War, Citizenship and Disability in Nicaragua, Disability Studies and Ability Studies: Two Lenses to Investigate', *Peace Studies Journal* (2013) 6 (4) pg. 22, 36. See also M. Neloufer de, 'Playing Disability, Performing Gender: Militarised Masculinity and Disability Theatre in the Sri Lankan War and Its Aftermath', *In Disability in the Global South: the Critical Handbook*. (eds.) S. Grech and K. Soldatic (Springer, 2016) pg. 99-116.

⁷⁰⁷ International Committee for the Red Cross, *Physical Rehabilitation Programme Annual Report 2013*, International Committee of the Red Cross 19, Switzerland, pg. 8.

⁷⁰⁸ International Committee of the Red Cross *Physical Rehabilitation Programme Annual Report 2014*, *Physical Rehabilitation Programme Annual Report 2013* and *ICRC Humanity in Action Annual Review 2016*, Switzerland.

⁷⁰⁹ P. Businge, 'Disability and armed conflict: A quest for Africanising disability in Uganda Disability and the Global South', (2016) 3(1) pp. 817, 842.

⁷¹⁰ *Ibid.* pp. 818, 842.

⁷¹¹ S. R. Barrig (ed), '*As if we weren't humans: Discrimination against women with disabilities in Northern Uganda*', (Human Rights Watch, 2010) 350 Fifth Avenue, 34th Floor, Available At <https://www.hrw.org/sites/default/files/reports/uganda0810_brochure_low.pdf> (accessed 20/June/2016). See also. United Nations OCHA and IRIN Report, *When the Sun Sets We Begin to Worry*, Office for the coordination of humanitarian affairs (OCHA) Regional Support Office for Central and East Africa and Integrated Regional Information Networks (IRIN), United Nations OCHA and IRIN Publications(November2004). pg. 15. See also. Office of the United Nations High Commissioner for Human Rights, '*Making peace our own Victims*' Perceptions of Accountability, Reconciliation and Transitional Justice in Northern Uganda', United Nations 2007, pg. 15.

environments as a characterisation of disabilities in *jus post-bellum* surroundings of a post-conflict African State like northern Uganda,⁷¹² depending on the perspective across the three-stage cycle. The report also highlights problems of persons with disabilities that arise in post-conflict settings. In these situations, the impact might be mitigated by giving special consideration to disability related duties framed upon approaches of the medical model which assists post-conflict States in upholding their protective duties towards persons with disabilities.⁷¹³

Of course, the social model and disability related duties, underpinned by its outward looking approach, might also have an influence on categories of persons with disabilities shown in the table above. This would be in the event of applying those duties to an armed conflict affected region, such as northern Uganda. Subsequently, the extent of emphasis associated with disability related duties of the social model, should be more appropriate for addressing problems of persons with disabilities in peaceful regions of Uganda,⁷¹⁴ than conflict affected region of northern Uganda. The nature of problems in Northern Uganda makes prioritisation of the medical and individual models of disability more appropriate in addressing the needs of persons with disabilities, especially in a State party with regions undergoing a post-armed conflict (*jus post-bellum*) period such as present Northern Uganda.⁷¹⁵ A male youth from Lira district, Lango, points out that,

“The Government needs to lend victims such as the bereaved and victims of landmines some support through livelihood [and disability rehabilitation] projects that can help them heal from what happened and so they can cope with life.”⁷¹⁶

In essence, the problems contained in the witness reports of HRW, and UNHCR on individuals impacted by the armed conflict-disability relationship, are far from being solved by solely legislating in support of accessible transport or inclusive employment. Although such laws are likely to be practical in relation to pre-conflict

⁷¹² Ibid pp. 7-11.

⁷¹³ Ibid. pp. 7-11.

⁷¹⁴ C. Nyombi and A. Kibandama, ‘Access to Employment for Persons with Disabilities in Uganda’, *Labour Law Journal*, 2014, pp. 248, 258.

⁷¹⁵ W. Boyce, ‘Adaptation of community based rehabilitation in areas of armed conflict’, *Asia Pacific Disability Rehabilitation Journal* (2000) 1 (11) pp. 1-3.

⁷¹⁶ Office of the United Nations High Commissioner for Human Rights, ‘*Making peace our own Victims*’ Perceptions of Accountability, Reconciliation and Transitional Justice in Northern Uganda’, United Nations 2007, pg. 15

accessibility concerns for persons with disabilities in the category of Mr/Miss/Mrs C, those laws are unlikely to address the peculiar problems of war-disabled individuals in the post-armed conflict regions of Northern Uganda.⁷¹⁷ This is unless the State, reassessing its priorities in relation to persons with disabilities in Northern Uganda, prioritises allocation of resources for procuring a prosthesis and other rehabilitation mobility aids,⁷¹⁸ rather than simply enacting laws and policies to increase the accessibility of polling stations.⁷¹⁹ Moreover, the Uganda government pledged to adopt a progressive national policy to render assistance, protection and rehabilitation of Internally Displaced Persons (IDPs) in February 2005,⁷²⁰ and it had reportedly failed to allocate any budgetary resources to implement it, as of March 2006.⁷²¹ The 2011 report, the focus of which was mainly on education in the post-conflict period, identifies the problem of poor performance of education institutions in the region.⁷²² Currently (2018), the report demonstrates that resources in this post-conflict region have been constrained further by a recent influx of Sudanese refugees fleeing from the ongoing armed conflict in Southern Sudan (Uganda's neighbouring country in the north).⁷²³

The disabling trend of armed conflicts calls for applying human rights obligations on either the basis of a medical model, or an individual model of

⁷¹⁷Office of the United Nations High Commissioner for Human Rights, *'Making peace our own Victims'*, Perceptions of Accountability, Reconciliation and Transitional Justice in Northern Uganda', United Nations 2007, pg. 15. See also. United Nations OCHA and IRIN Report, *'When the Sun Sets We Begin to Worry'*, Office for the coordination of humanitarian affairs (OCHA) Regional Support Office for Central and East Africa and Integrated Regional Information Networks (IRIN), UN OCHA and IRIN Publications (November 2004). See also. S. R. Barrig (ed), *'As if we weren't humans: Discrimination against women with disabilities in Northern Uganda'*, (Human Rights Watch, 2010) 350 Fifth Avenue, 34th Floor, Available at <https://www.hrw.org/sites/default/files/reports/uganda0810_brochure_low.pdf> (accessed 20/June/2016).

⁷¹⁸ Ibid.

⁷¹⁹ International Committee of the Red Cross Physical Rehabilitation Programme Annual Report 2014, *Physical Rehabilitation Programme Annual Report 2013* and ICRC *Humanity in Action Annual Review 2016*, Switzerland.

⁷²⁰Internal Displacement Monitoring Centre & Refugee Law Project, *'Only Peace Can Restore the Confidence of the Displaced'*, Update on the Implementation of the Recommendations made by the UN Secretary-General's Representative on Internally Displaced Persons following his visit to Uganda, at 18-19 (March 2006) [hereinafter IDMC Uganda Update]. See also. Fisher, *'The Right to Humanitarian Assistance in Studies in Transnational Legal Policy Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges'*, W. Kalin, C. W. Rhodri, K. Koser, and A. Solomon, (eds.) *The American Society of International Law*. pp. 43-128.

⁷²¹ Ibid.

⁷²² Internal Displacement Management Centre (IDMC) and Norwegian Refugee Council (NRC), *'Unprepared for peace Education in northern Uganda in displacement and beyond'*, Case study on education and internal displacement (June/2011) pg. 15

⁷²³ Internal Displacement Management Centre (IDMC) and Norwegian Refugee Council (NRC), *Global Report on Internal 2018 Displacement'*, (May/2018) pg. 13.

disability. Such application may enhance the cooperation of State Actors by cooperating with international and regional humanitarian organisations, as advanced by Fisher.⁷²⁴ Perhaps that might also imply interpreting Article 18 of the ACHPR in light of Article 11 of CRPD, and, alongside Article 26 of the CRPD.⁷²⁵ Recommending the suitability of applying those models, lies in their ability to ensure that an armed conflict affected State party, complies with its rehabilitation obligations towards the significant numbers of persons with war-related disabilities in the aftermath of armed conflicts.

Another important source for this part is the Concluding Observations of the African Human Rights Commission on Uganda. Is the model of disability, through which the Commission approaches disability, effective in responding to disability problems characterised by armed conflict in this State party? During its 57th Ordinary Session in November 2015, the Concluding Observations and recommendations were made following on the 5th Periodic State Report of the Republic of Uganda (2010–2012).⁷²⁶

The Concluding Observations of the African Human Rights Commission contained the following matters that Uganda is expected to address in its response to protection of Older Persons and Persons with Disabilities:

Firstly, the Commission required Uganda to intensify its efforts in providing reasonable accommodation for persons with disabilities and ensure equal access to public services.⁷²⁷ Secondly, the Commission reminded Uganda to take necessary measures in relation to its National HIV Prevention Strategy and pay special attention to the needs of persons with disabilities.⁷²⁸ Lastly, in its subsequent periodic report that Uganda last submitted to the Commission on 30 April 2017 this State party details an account of activities

⁷²⁴ D. Fisher, *The Right to Humanitarian Assistance in Studies in Transnational Legal Policy Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges*, W. Kalin, C. W. Rhodri, K. Koser, and A. Solomon, (eds.) *The American Society of International Law*. pg. 43-128.

⁷²⁵ ACHPR Article 18, in the context of Article 11 and Article 26(2) (3) of the CRPD.

⁷²⁶ Concluding Observations and Recommendations on the 5th Periodic State Report of the Republic of Uganda (2010 – 2012) 57th Ordinary Session from 4/November/2015 to 18/November/2015, Banjul, The Gambia.

⁷²⁷ *Ibid.* pg. 17. Paragraph 118.

⁷²⁸ *Ibid.* pg. 17. Paragraph 119

which had been undertaken by its department for the disabled and elderly, in partnership with the National Council for Older Persons.⁷²⁹

In this regard, it becomes of fundamental importance to explore models of disability underpinning Uganda's State Reports of to the African Commission. Although Uganda's 2011 report is silent on measures being taken in terms of applying suitable approaches to rehabilitating individuals in the North, nonetheless its domestic laws display some efforts in this direction. The African Commission is equally interested in the importance of domestic laws, as it gives credit to Uganda for the positive measures it has taken in solving matters of persons with disabilities,⁷³⁰ as outlined in its report presented at the 49th Ordinary Session.⁷³¹

Conversely, the Commission commends the State Party for the enactment of national disability equality laws, such as the Ugandan Constitution of 1995,⁷³² and the Persons with Disabilities Act (PWDA) 2006.⁷³³ The Act approaches issues of disability through the medical and individual models of disability.⁷³⁴ Most importantly, the PWDA of 2006, reflects the inward-looking approach of the medical and individual models of disability, as being more appropriate in responding to the consequences of the armed-disability relationship that are a peculiar characteristic of State Parties whose societies have been impacted by the armed conflict's disabling environments.⁷³⁵

⁷²⁹ Ibid pg. 19 Paragraph 120.

⁷³⁰ Ibid pg. 19. Paragraph 120.

⁷³¹ Concluding Observations of the African Commission on Human and Peoples' Rights, '*The 4th Periodic Report of the Republic of Uganda*', Presented at 49th Ordinary Session to the African Commission on Human and Peoples' Rights held in the Gambia from 28/April/2011 to 12/May/2011, Paragraph 9.

⁷³² Republic of Uganda's 1995 Constitution, Articles 21 and 32. See also. Concluding Observations of the African Commission on Human and Peoples' Rights on The 4th Periodic Report of the Republic of Uganda Presented at the 49th Ordinary Session of the African Commission on Human and Peoples' Rights held in Banjul, the Gambia from 28/April/2011 to 12/May/2011 Paragraph 8.

⁷³³ See Persons with Disabilities Act (PWDA) 2006 Sections 9 and 10

⁷³⁴ Ibid Sections 9 and 10.

⁷³⁵ A. H. Eide, 'Community-based Rehabilitation in Post-Conflict and Emergency Situations', in *Trauma Rehabilitation after War and Conflict: Community and Individual Perspectives* (Springer, New York, NY 2010) pp. 97-110. See also. R. Habasch, 'Is the Rights Model of Disability Valid in Post-conflict Lebanon? A Participatory Pilot Survey', *Journal of Palestine Studies* 27, no. 1 (1997) pp. 126-135. See also. N. Kabbara and K. K. Nagata, 'Is the Rights Model of Disability Valid in Post-conflict Lebanon? A Participatory Pilot Survey in Beirut', United Nations Development Cooperation Branch. See also. K. K. Nagata, 'Disability and Development: Is the Rights Model of Disability Valid in the Arab Region? An Evidence Based Field Survey in Lebanon and Jordan', *Asia Pacific Disability Rehabilitation Journal* (2008) 19 (1) pp. 60, 78.

As part of disability related post-armed conflict duties, the Ugandan PWDA of 2006, provides for strengthening its programmes of clearing landmines with a view to protect against injuries.⁷³⁶ Such an obligation is certainly useful for preventing disability, especially if the concept of disabling environments is to be understood in the context of States with post-conflict areas, such as Northern Uganda which has been affected by the disabling trends of the armed conflict.⁷³⁷ The State report also indicated that its Constitution provides for the establishment of an Equal Opportunities Commission (EOC), to safeguard the rights of the marginalised groups on the basis of gender, age, disability.⁷³⁸ The medical model also encourages a post-conflict Uganda which could identify and remove remnants of antipersonnel landmines. For example, Uganda's PWDA provides for the removal of mines to eradicate the armed conflict's remnants of disablement, and rehabilitate people who have been disabled due to amputations, and mutilations, during the armed conflict.⁷³⁹ From a macro point of view, the perspective of exclusively applying disability related obligations framed upon ideas of a social model, seems hardly reconcilable with disabling environments of an armed conflict, and thereafter post-conflict, African States.⁷⁴⁰ Therefore, for improvement to be attained in protecting populations of persons with disabilities in Northern Uganda, it might call for the African Commission to start prioritising disability related duties, the framing of which is founded on models and approaches to disability which are appropriate for addressing the impacts and problems of the armed conflict-disability relationship, as highlighted in previous reports.⁷⁴¹

⁷³⁶ Persons With Disabilities Act 2006, Section 9. Paragraph f.

⁷³⁷ Ibid. Section 9. Paragraph g.

⁷³⁸ The Republic of Uganda: *Periodic Report to the African Commission on Human and Peoples' Rights* Presented at the 54th Ordinary Session Held in Banjul, the Gambia 22nd/October2013– 5th/November/2013. pp. 25.

⁷³⁹ United Nations OCHA and IRIN Report, '*When the Sun Sets We Begin to Worry*', Office for the coordination of humanitarian affairs (OCHA) Regional Support Office for Central and East Africa and Integrated Regional Information Networks (IRIN), UN OCHA and IRIN Publications (November 2004). See also. S. R. Barrig (ed.), '*As if we weren't humans: Discrimination against women with disabilities in Northern Uganda*', (Human Rights Watch, 2010) 350 Fifth Avenue, 34th Floor, Available at https://www.hrw.org/sites/default/files/reports/uganda0810_brochure_low.pdf (accessed 20/June/2016).

⁷⁴⁰ P. Businge, 'Disability and armed conflict: A quest for Africanising disability in Uganda Disability and the Global South, (2016) 3(1) pp. 816-842. See also. T.B. Staats, 'The Rehabilitation of the Amputee in the Developing World: A review of the Literature', *Prosthetics and Orthotics International*, (1996) 20, pp. 45, 50.

⁷⁴¹ Office of the United Nations High Commissioner for Human Rights, '*Making peace our own Victims*' Perceptions of Accountability, Reconciliation and Transitional Justice in Northern Uganda', United Nations 2007, pg. 15. See also. United Nations OCHA and IRIN Report, '*When the Sun Sets We Begin to Worry*', Office

5.4. Reflections on the African Regional Human Rights and Disability

The background sources on evolution of disability protection under the African RHRS, showed features of the medical model. This model is evidenced in the manner the sources such as the ARI of 1985, the ACRWC of 1990 and Mauritius declaration, present the framing of disability related obligations. They give greater attention to rehabilitating impairments of Africans by making reasonable adjustment that increase accessibility. The 2003 Kigali Protocol, and the MPW, have similar approaches.

During situations of armed conflict, the MPW and the ACRWC, avail generalised protection to African women and children under this RHRS. However, those generalised obligations are problematic since they symbolise a failure by both bodies to oblige African States to extend special protection to women and children with disabilities, during this second phase of the three-stage cycle. Although this weakness might be addressed by the proposed ADP.

Records on most recent resolutions from working groups of the African Commission, tend to emulate the application of the same model of disability (social rights model) as UNHRTBs that have been previously examined in Chapters Three and Four of this thesis.

Therefore, the African Commission is still applying an individual model of disability, especially when addressing post-conflict disability concerns. It appears logical to initially rehabilitate the body of an individual amputated during the armed conflict, and afterwards undertake adjustment in their external environments to adapt it for the disability. It would be useful for the intended African Protocol on persons with disabilities to form a hybrid, with the social model and medical models of disability allowing for adaptations and modifications, and complementarity to be applied, especially in African States that have been affected by the three-stage cycle. In the last two decades, a considerable number of States in Sub-Saharan African, and MENA States, have experienced situations of war-related disabilities,

for the coordination of humanitarian affairs (OCHA) Regional Support Office for Central and East Africa and Integrated Regional Information Networks (IRIN), UN OCHA and IRIN Publications (November 2004).

leading to questions regarding the appropriacy of the Protocol in strengthening the obligations of protecting persons with disabilities contained in Article 11 of the CRPD.

Given the scarce resources in post-conflict States, there is a lesser likelihood of emphasising the progressive realisation of socioeconomic rights, especially in a *jus post bellum* context. However, even where socioeconomic rights are considered, the inward-looking approach seems more prominent given the role of rehabilitation in enhancing post-conflict mobility and eventual enjoyment of liberty among the increased number of persons with disabilities in regions such as Northern Uganda. This observation on progressive realisation and increased number of armed conflict disabilities, casts doubts on the practicability of applying the same model of disability, to frame socioeconomic rights, as well as civil and political rights, owed by peaceful States and post-conflict States, to persons with disabilities.

In terms of the emerging discourse on the possible models of disability for the African RHRs, to a small extent, this analysis concludes that there might be need for an amalgam of the medical and social model to create a multidimensional model. This research advances a divergent view from that of Abbay, Kamga, Combrink, Mute and Kalekye who condemn the application of an individual model in support of a social rights-based model. The views of these scholars are seen to be embracing the universalism of the social rights-based model that has gained considerable popularity from UNHRTBs. However, this research thinks complementarity and interconnectedness are vital. The chronological sequence for the application of models should start with the medical model, during and after armed conflict, before applying the social model for accessibility, adaptability and the mobility requirements of African with disabilities.

To that end, perhaps the aforementioned scholars are correct with respect to recommending that the ADP of this regional system must adopt aspects of the social model of disability. Nonetheless, the differing view of this thesis from the above protagonists originates in relation to the adoption of a social model to encompass post-armed conflict Member States, in which a social model seems insufficient due to the risk of misdirecting the priorities of State obligations in relation to thousands of

individuals under the category of 'Mr/Miss/Mrs A' in the tables above. In essence, it appears the above scholars have overlooked the implications and impacts of an armed conflict- disabling relationship that makes the medical and individual models essential in post-conflict settings.

Accordingly, this analysis agrees with the valuable observations of opposing scholars such as Habasch,⁷⁴² Kabbara and Nagata,⁷⁴³ Priestly,⁷⁴⁴ and Businge,⁷⁴⁵ who are more inclined to support the medical and the individual model as a better benchmark for guiding the disability related obligations of State Parties in the aftermath of armed conflicts. This proposition is well supported by several human rights reports related to a number of post-armed conflict African States.⁷⁴⁶ The reports illustrate how the consequential problems from armed conflicts' disabling environments are best suited for applying the individualised model of rehabilitation the affected individuals.⁷⁴⁷

By now, it should be evident how this research has noted that although African RHRs have continued to apply the individual model of disability, they have lately succumbed to the global trend of prioritising the social rights model. Although the social model might have its merits, it is sometimes insufficient, and inappropriate, in instructing and guiding aspects upon which the obligations of post-armed conflict State Actors should be constructed. This issue is vital in the context of the African regional system, given the illustrated cases of the armed conflict's disabling environment which continue to manifest itself among several Member States to the ACHPR. That observation, is that the application of the medical and individual

⁷⁴² R. Habasch, 'Is the Rights Model of Disability Valid in Post-conflict Lebanon? A Participatory Pilot Survey', *Journal of Palestine Studies* (1997) 27 (1) pp. 126,135.

⁷⁴³ K. K. Nagata, 'Disability and Development: Is the Rights Model of Disability Valid in the Arab Region? An Evidence Based Field Survey in Lebanon and Jordan', *Asia Pacific Disability Rehabilitation Journal* (2008) 19 (1) pp. 60, 78. See also. M. Berghs and N. Kabbara, *Disabled People in Conflicts and Wars. In Disability in the Global South: The Critical Handbook*, S. Grech and K. Soldatic, (eds.) (London, Springer, 2016) pp. 269-285.

⁷⁴⁴ M. Priestly, 'Introduction the global context of disability', *Disability and the Life Course Discourse: Global perspective*, M. Priestly (ed.) (Cambridge university Press, 2001) pg. 8.

⁷⁴⁵ P. Businge, 'Disability and armed conflict: A quest for Africanising disability in Uganda Disability and the Global South', (2016) 3(1) pp. 816-842.

⁷⁴⁶ Office of the United Nations High Commissioner for Human Rights, '*Making peace our own Victims*' Perceptions of Accountability, Reconciliation and Transitional Justice in Northern Uganda', United Nations 2007, pg. 15. See also. United Nations OCHA and IRIN Report, '*When the Sun Sets We Begin to Worry*', Office for the coordination of humanitarian affairs (OCHA) Regional Support Office for Central and East Africa and Integrated Regional Information Networks (IRIN), United Nations OCHA and IRIN Publications (November 2004).

⁷⁴⁷ Ibid.

module, should be merited rather than discouraged by this RHRS, in order to enhance a conducive atmosphere for the development of TWAIL specifically in the context of international disability law.

Perhaps contemporary problems and impacts of the armed conflicts' disabling consequences are calling for the application of disability related duties, framed upon the medical or individual models of disability. Protecting persons with disabilities is strengthened if regional human rights systems consider models of disability that LOAC and the ICRC apply to disability related obligations of those States, during and after, situations of armed conflict. Such an understanding should be attentive to disabling problems, and impacts of an armed conflict's environments, to develop a prototype of TWAIL which would benefit indicators of disablement that are predominant in Global South States of this regional human rights system.

Chapter 6

6.0. The Inter-American Regional Human Rights System

Similar to Chapter Five which concentrated on the African RHRS, this Chapter constitutes the second of part 3. This section comprises of Chapter six that focuses on the Inter-American regional human rights system that governs the Organisation of American States (hereafter OAS). This Chapter examines the African RHRS, with a view to establishing each of the following aspects:

Firstly, the models of disability applied to conceptualise disability issues and disabling environments by the RHRS.

Secondly, the models or approaches to disability underpinning the conceptualisation of disability related State obligations, applied by the RHRS in the event of responding to disability issues arising within post-conflict Member States.⁷⁴⁸

It is imperative to emphasize that this part of the thesis seeks to understand the models of disability that the OAS uses when framing its *jus post bellum* obligations for post-conflict States, while dealing with disability related problems of the armed conflict-disability relationship. Chapter two of this thesis, detailed several models or approaches to disability. Those models or approaches shall remain a means and a tool for analysing the way in which this RHRS frames its conceptualisation of disability, its understanding of what constitutes disabling environments, and consequently, its prioritisation of disability related obligations by its post-conflict States.

Primarily, this RHRS comprises of the Inter-American Convention on Human Rights (hereafter IACHR), that provides for permitting its State parties to derogate from some of their human rights obligations in times of emergencies, or armed conflicts.⁷⁴⁹ However, this section is more interested in identifying the model of disability that this

⁷⁴⁸ D. Weissbrodt and B. Andrus, 'Right to Life during Armed Conflict: *Disabled Peoples' International v. United States*', 29 Harvard International Law Journal (1988) pp. 59,84.

⁷⁴⁹ The American Convention on Human Rights, Article 27(1) of. See also. AS doc. OEA/Ser.K/XVI/1.2, Conferencia Especializada Interamericana sobre Derechos Humanos, San José, Costa Rica, 7-22/November/1969, Actas y Documentos, OAS, Washington D.C., p. 22. See also. Article 15(1) European Convention for the Protection of Human Rights and Fundamental Freedoms, 213, U.N.T.S. 221, entered into force 4/November/1950. [Hereafter ECHR]. See also. The ICCPR 171, entered into force 23/March/1976 [hereinafter ECHR], Article 4(1).

human rights system applies to conceptualise violations, and the subsequent protection of persons with disabilities and examines cases where matters concerning disability have appeared before its regional human rights court and human rights Commission.

This research had initially considered reports of several State Parties such as; Venezuela,⁷⁵⁰ Guatemala,⁷⁵¹ Honduras,⁷⁵² Bolivia⁷⁵³ and Colombia.⁷⁵⁴ Apart from State reports and recommendations in relation to Colombia, reports from all the above member States have eventually been abandoned because of their limited availability, combined with the unsuitability of highlighting issues of post conflict-disability, when compared with those of Colombia.⁷⁵⁵ Thus, making Colombia the most suitable case study of a post-conflict State, whose reports are useful for examining how the inter-American RHRS conceptualises the violation, and post-conflict protection, of persons with disabilities. This examination is aimed at establishing the model of disability through which the regional system responds to disability related challenges that normally arise in its post-conflict States, during and after, situations of armed conflict.

⁷⁵⁰ OEA/Ser.L/V/II.118, doc. 4 rev.2, 'Report on the Situation of Human Rights in Venezuela', 29/December/2003. Available at <<http://www.cidh.org/countryrep/Venezuela2003eng/toc.htm>> (accessed/30/August/2017) Paragraph 533. See also. Ser.L/V/II. Doc. 54, 'Inter-America Commission on Human Rights: Democracy and Human Rights in Venezuela', 30/December/2009. Available at <<http://www.cidh.org/pdf%20files/VENEZUELA%202009%20ENG.pdf>> (accessed 30/August/2017) Paragraph 116.

⁷⁵¹ OEA/Ser.L/V/II. Doc. 43/15, Inter-American commission on human rights Situation of Human Rights in Guatemala: *Diversity, Inequality and Exclusion*, 31/December/2015. Paragraph. 345

⁷⁵² OEA/Ser.L/V/II. Doc. 55, 'Inter-America Commission on Human Rights, *Honduras: human rights and the Coup D'état*', 30/December/2009. Available at <<http://www.cidh.org/pdf%20files/HONDURAS2009ENG.pdf>> (accessed 22/August/2017). Paragraphs 253-261.

⁷⁵³ OEA/Ser.L/V/II. Doc. 34, 'Access to Justice and Social Inclusion: The Road Towards, Strengthening Democracy in Bolivia', 28/June/2007. Available at <<http://cidh.org/pdf%20files/BOLIVIA.07.ENG.pdf>> (accessed /30/August 2017).

⁷⁵⁴ OEA/Ser.L/V/II. Doc. 49/13, 'Inter-America Commission on Human Rights: *Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*', 31/December/2013. Available at:

<<http://www.oas.org/en/iachr/reports/pdfs/Colombia-Truth-Justice-Reparation.pdf>> (accessed 30/August/2017). Paragraph 100. See also. Constitutional Court, Order No. 006 of 2009, 'Protection of displaced disabled persons in the context of the unconstitutional state of affairs', declared in Judgment T-025 of 2004). See also. OEA/Ser.L/V/II. Doc. 67, OAS, Inter-American Commission on Human Rights, 'Violence and Discrimination of against Women in the Armed Conflict in Colombia. 18/October/2006, Paragraph. 58.

⁷⁵⁵ OEA/Ser.L/V/II. Doc. 67, OAS, Inter-American Commission on Human Rights, 'Violence and Discrimination of against Women in the Armed Conflict in Colombia', 18/October/2006, Paragraph. 58.

6.1.2. Background of Disability Duties in the Regional Human Rights system

This RHRS declared the period from 2006 to 2016 as the Decade of the Americas for the Rights and Dignity of Persons with Disabilities.⁷⁵⁶ Relying on the theme 'Equality, Dignity, and Participation', the RHRS adopted a regional disability protocol (the Inter-American Disability Protocol) more than ten years ago.⁷⁵⁷ In its preamble, the Inter-American Disability Protocol enlists relevant international guiding instruments that predated its promulgation, and act as the basis upon which the RHRS might have adopted its construction of disability, and conceptualisation of disabling surroundings.

It is worth listing some of the international guiding instruments below, since some of them may have played a key role in influencing the model of disability underpinning the regional Disability Protocol of the Inter-American Human Rights system. Those international instruments and their influences in terms of the approach to disability of this RHRS include;

The 1983 agreement of the International Labour Organisation on the vocational rehabilitation and employment of disabled persons,⁷⁵⁸ imports the social model in General principles under Article 3, where effective participation and inclusion in society is portrayed as the solution to problems of persons with disabilities.⁷⁵⁹ The inter-America disability Protocol adopts the same view of supporting the full integration of persons with disabilities into society under Articles 1, 2 and 3.⁷⁶⁰ This integration is based upon undertaking necessary adjustments or modifications that enable accommodating persons with disabilities and this argument is founded upon aspects of the social model. However, there is limited clarity as to

⁷⁵⁶ Information on the OAS disability activities is Available at: <[www.oas.org/DIL/persons with disabilities.htm](http://www.oas.org/DIL/persons%20with%20disabilities.htm)> (accessed /16/September/2017). G. Quinn, 'A Short Guide to the United Nations Convention on the Rights of Persons with Disabilities, 1 European Year Book Disability (2009) pp. 89, 90.

⁷⁵⁷ Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities Adopted at Guatemala City, at the twenty-ninth regular session of the General Assembly of the OAS, AG/RES. 1608, 7/June/1999.

⁷⁵⁸ Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) Convention concerning Vocational Rehabilitation and Employment (Disabled Persons) (Entry into force: 20/June/1985). See also. Preamble of the Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities.

⁷⁵⁹ Ibid

⁷⁶⁰ Article I(2) b, II and III (1)

when, and how, the different models of disability should be applied to promote integration across the three-stage cycle.

The Declaration of the Rights of Mentally Retarded Persons,⁷⁶¹ an instrument where the influence is exemplified by applying rights-based ideas of the social model to ensure that mentally retarded persons enjoy a decent standard of living by providing equal rights to perform productive work, or to engage in any other meaningful occupation, to the fullest possible extent of their capabilities⁷⁶². The influence of this declaration on the approach of this RHRS, is evidenced by the special consideration afforded to persons with mental disability as one of the categories of persons entitled to equal rights under the provisions regional disability.

In The Declaration on the Rights of Disabled Persons,⁷⁶³ there are features of the medical models, where treating the impairment is conceived as redress to the problems of disability.⁷⁶⁴ The treatment approach is also applied by the Inter-American disability Protocol to redress the problems of person with disabilities.⁷⁶⁵

The World Programme of Action concerning Disabled Persons,⁷⁶⁶ recognises the importance of resources in enhancing the implementation of disability rights. This inter-American disability Protocol also emphasises the importance of resources as a prerequisite for making reasonable adjustments for the social model. The absence of resources in the armed conflict and post conflict stages of the cycle, leads to limitations in fulfilling certain duties of the State.

The Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights, occasionally referred to as Protocol of San Salvador, is another document cited under the Inter-American Disability Protocol.⁷⁶⁷ Article 9 of the Protocol of San Salvador states that,

⁷⁶¹ UN General Assembly Resolution 2856 (XXVI) of 20/December/1971.

⁷⁶² Ibid. Paragraph 3.

⁷⁶³ UN General Assembly resolution 3447 (XXX) of 9/December/1975.

⁷⁶⁴ Ibid paragraph 6.

⁷⁶⁵ Article III (2) (b)

⁷⁶⁶ UN General Assembly resolution 37/52 of 3/December/1982.

⁷⁶⁷ Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights (Protocol of San Salvador) Adopted at the 18th Regular Session of the General Assembly in San Salvador on 17/November/1988, entered into force 16/November/1999 when eleven states have deposited their respective instruments of ratification or accession, in accordance with article xxi of the Protocol. OAS, Treaty Series, No. 69.

“Everyone shall have the right to social security protecting him from the consequences of old age and of disability which prevents him, physically or mentally, from securing the means for a dignified and decent existence.”⁷⁶⁸

This duty manifests that in times of peace, the above Protocol attributes the problems of persons with disability to physical and mental impairment. Therefore, attention is centred on disability prevention through the inward- looking approach of the medical model. The Inter-American Disability Protocol alludes to similar views on preventing such impairments, as part of the obligations which its States have to persons with disabilities.⁷⁶⁹

More instruments on disability related duties include; the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care,⁷⁷⁰ the Declaration of Caracas of the Pan American Health Organization,⁷⁷¹ the situation of Persons with Disabilities in the American Hemisphere, the Standard Rules on the Equalization of Opportunities for Persons with Disabilities,⁷⁷² the 1993 December Declaration of Managua and the Vienna Declaration and Programme of Action.⁷⁷³

Sources used under this RHRS include; decisions from the inter-American regional court dealing with aspects of disability, recommendations and Advisory Opinions from the Inter-American human rights commission on disability related aspects, and two State reports from post-conflict Colombia dealing with disability. Attention is given to models of disability through which this RHRS frames its disability related obligations. Close attention is paid to whether those obligations, and their models of disability, change across the three-stage cycle in the event of dealing with problems of heightened vulnerability faced by persons with disabilities in post-conflict States of this RHRS.

Additionally, this RHRS has Member States such as Canada and the US, that belong to the Global North on one hand. On the other hand, the Inter-American RHRS is also comprised of Members States such as Colombia and Guatemala

⁷⁶⁸ Ibid. Article 9.

⁷⁶⁹ Inter-American Disability Protocol Articles 3 (2) (a) and 4 (2) (a).

⁷⁷⁰ UN General Assembly resolution 46/119 of 17/December/1991.

⁷⁷¹ Resolution AG/RES. 1249 (XXIII-O/93).

⁷⁷² UN General Assembly Resolution 48/96 of 20/December/1993.

⁷⁷³ Adopted by the UN World Conference on Human Rights (157/93) by Resolution AG/RES. 1356 (XXV-O/95).

which are characterised by features of disability that make them identifiable as Global South States.

Consequently, States of this RHRS that are associable with the Global North, have a stronger likelihood of framing disability related obligations, and representing obligations owed to persons with disabilities, through models based on a peacetime perspective, rather than a post-conflict perspective. They are more heavily associated with peaceful Western European and North American (WENA) States. In times of peace, the vulnerability of persons with disabilities to sexual, physical and physiological violence is lower. Those varied vulnerabilities apply to experiences of persons with disabilities at distinctive phases of the three-stage cycle, and are worth considering when framing a better understanding of the differences in the nature (in terms of models), and contents (in terms of duties), of State obligations⁷⁷⁴

Arguably, it is highly unreasonable to frame disability related obligations founded on characteristics of disability from the peaceful WENA States of the Global North. It would be more appropriate to develop special obligations that States affected by armed conflict, and post-conflict States in the Global South, ought to extend towards persons with disabilities. For example, in post-conflict Colombia, persons with disabilities are twice as vulnerable to being entrapped in rubble and denied access to escape routes by falling debris. This State may have been influenced in its conceptualisation of disabling surroundings, in ways that are similar to those of Global South States that are post-conflict African States.⁷⁷⁵ In this context, the 'Global South' denotes variances in the environment, which characterises the causes and manifestation of disability. The three-stage cycle is part of the environment which characterises the impacts, and causes of disabilities, that developing States should consider when adopting models of disability.⁷⁷⁶ However, they are unlikely to be a major problem in those regions that some scholars describe

⁷⁷⁴ Ibid pp. 3-4.

⁷⁷⁵ 2011/ED/EFA/MRT/PI/35, 'Paper commissioned for the EFA Global Monitoring Report 2011, *The hidden crisis: Armed conflict and education*', T. Tamashiro (ed.) June 7, 2010. pg.8.

⁷⁷⁶ T. Chataika, F. Kallon and G. Mji, 'African Policy on Disability and Development (A-PODD) project in Sierra Leone', (The Global Health Press, October 2011) pg. 3.

as the WENA.⁷⁷⁷ The majority of States experiencing disabling environments of the Global South are in the Inter-American and African RHRS respectively.⁷⁷⁸

This thesis draws upon observations from disability studies which identify differences in issues of disability, based on variances in the characteristics and contexts of disabling environments affecting communities of States in the Global North, from those impacting communities of States in the Global South.⁷⁷⁹ Chapter two of the thesis examines the detailed views of such protagonists as Tsitsi,⁷⁸⁰ Grech,⁷⁸¹ and Meyers,⁷⁸² among others.

In fact, some of the above proponents have relied on variances in disability, and disabling characteristics, between societies in the Global South, and those in the Global North, to explain factors that might justify the importance of accommodating the different approaches to issues of disability in developed and developing States. A case in point is Grech's critique,⁷⁸³ in which he notes that the social model is disengaged from the historical, socioeconomic,⁷⁸⁴ and political context of several disabling factors, hence leading to a distinctiveness in the approaches to disability in

⁷⁷⁷ T. Chataika and R. Lawthom, 'Lave and Wenger, Communities of Practice and Disability and Disability in *Disability and Social Theory: New Developments and Directions*, D. Goodley, B. Hughes and L. Davis (Eds.) (Palgrave Macmillan, 2012) pp. 233-251.

⁷⁷⁸ See The Finance Centre for South-South Cooperation Available at <http://www.fc-ssc.org/en/partnership_program/south_south_countries> (accessed on 20/December/2017). See also. The Global North/South Divide of the Royal Geographical society. Available at <<https://www.rgs.org/schools/teaching-resources/60-second-guide-to-global-north-south-divide/>> (accessed on 20/March/2017).

⁷⁷⁹ T. Chataika and R. Lawthom, 'Lave and Wenger, Communities of Practice and Disability and *Disability and Social Theory: New Developments and Directions*, D. Goodley, B. Hughes and L. Davis (Eds.) (Palgrave Macmillan, 2012) pp. 233-251. See also. T. Titchkasky and R. Michalko, 'The Body Has the Problem of Individuality: A Phenomenological Disability Studies Approach', in *Disability and Social Theory: New Developments and Directions*, D. Goodley, B. Hughes and L. Davis (Eds.) (Palgrave Macmillan, 2012) pp. 127-142.

⁷⁸⁰ Ibid. pp. 233-251.

⁷⁸¹ S. Grech, 'Disability and the Majority World: A Neo-colonial Approach', in *Disability and Social Theory: New Developments and Directions*, D. Goodley, B. Hughes and L. Davis (Eds.) (Palgrave Macmillan, 2012) pp. 52-69 at pg. 61. See also. Grech, *Disability and Poverty in the Global South: Renegotiating Development in Guatemala*, (Palgrave Macmillan, 2015) pp. 20-30. See also. S. Grech, 'Disability and Development: Critical Connections, Gaps and Contradictions', in S. Grech and K. Soldatic (eds.) *Disability in the Global South: the Critical Handbook*, (Springer, 2016) pp. 3-19.

⁷⁸² S. Meyers, 'Wounded Warriors or One of the Crowd? Civil War, Citizenship and Disability in Nicaragua, Disability Studies and Ability Studies: Two Lenses to Investigate', *Peace Studies Journal* (2013) 6 (4) pp. 22, 36.

⁷⁸³ S. Grech, 'Disability and the Majority World: A Neo-colonial Approach', in *Disability and Social Theory: New Developments and Directions*, D. Goodley, B. Hughes and L. Davis (Eds.) (Palgrave Macmillan, 2012) pp. 52-69 at pg. 61.

⁷⁸⁴ T. Chataika, M. Mulumba and et al., '*The African Policy on Disability and Development (A-PODD) project in Uganda*', (The Global Health Press, October 2011) pp. 3.

a number of States in the Global South. Tsitsi and Lawthom have highlighted factors that are associable with the characteristics of disability in the Global South.

Examples of such factors include inadequate health services,⁷⁸⁵ and high levels of poverty,⁷⁸⁶ similar to those observed in Guatemala by the recent work of Grech.⁷⁸⁷

Other examples include armed conflicts, as demonstrated in Meyer's analysis of approaches to disability matters in post-conflict Nicaragua.⁷⁸⁸ Tsitsi concurs with Sliver by reinstating the proposition of the latter that most of these perspectives tend to predominantly characterise disability, as well as disabling features, in developing States, most of which are geographically situated in areas of the Global South.⁷⁸⁹

However, this study is substituting the Global South and Global North classification for RHRs, such as the Inter-American RHR. The three-stage cycle is considered, given its disproportionate impact on persons with disabilities within States of these RHRs. The research examines models of disability upon which this RHR frames disability related obligations or conceptualises disability for its State Parties across the three-stage cycle. The aim is to establish if the models of disability change to suit concerns that are likely to arise in post-conflict States.

The above observations have relevant lessons that this thesis will either commend or reject, after investigating the models or approaches to disability that underpin the contemporary perspectives of the Inter-American RHR. It is imperative to point out that the geopolitical occurrence and prevalence of these factors, tend to have a causal or consequential relationship to disability. This relationship impacts, informs, and influences the manner in which disabilities are conceived, and the subsequent models or approaches that are deemed suitable for approaching this phenomenon in such regions.

⁷⁸⁵ Ibid. pp. 233-251.

⁷⁸⁶ C. Nyombi and A. Kibandama, 'Access to Employment for Persons with Disabilities in Uganda', *Labour Law Journal* 2014, pp. 248-258.

⁷⁸⁷ Grech, *Disability and Poverty in the Global South: Renegotiating Development in Guatemala*, (Palgrave Macmillan, 2015) pp. 20-30. See also. Also S. Grech, 'Disability and Development: Critical Connections, Gaps and Contradictions', in *Disability in the Global South: the Critical Handbook*, S. Grech and K. Soldatic (eds.) (Springer, 2016) pp. 3-19.

⁷⁸⁸ S. Meyers, 'Wounded Warriors or One of the Crowd? Civil War, Citizenship and Disability in Nicaragua, Disability Studies and Ability Studies: Two Lenses to Investigate', *Peace Studies Journal* (2013) 6 (4) pp. 22, 36.

⁷⁸⁹ S. Grech, 'Disability and the Majority World: A Neo-colonial Approach', in *Disability and Social Theory: New Developments and Directions*, D. Goodley, B. Hughes and L. Davis (Eds.) (Palgrave Macmillan, 2012) pp. 52-69 at pg. 61.

Weissbrodt and Andrus examine a case in which the IACHR deals with the alleged US violation of the right to life of sixteen Grenadian disabled nationals during an armed attack in October 1985.⁷⁹⁰ The subsequent section is a more detailed analysis of the disability models that stem from the facts and decisions of the Grenadian case. Nonetheless, for the time being, it suffices to say the discussion of Weissbrodt and Andrus, is important in comprehending the disabling surroundings of the inter-American regional human rights system in the following ways:

Firstly, their work demonstrates the facts of a case in which disability is characterised and conceptualised through the medical model by institutionalising and confining the sixteen individuals with mental disabilities in a mental home.⁷⁹¹ As a result of such institutionalised confinement, those sixteen individuals were all killed inside the care home during the armed conflict (as explained further in subsequent sections).

The described institutional confinement of persons with disabilities, reveals that inward-looking approaches of the individual model have been practised, and facilitated by Member States in the inter-American RHRs.⁷⁹² Arguably, that exclusion is even more problematic in the event of an armed conflict, since it can be asserted that confinement could, in itself, pose a barrier to self-defence by depriving residents of an opportunity to escape easily, and placing their lives at a greater risk than persons that are in position to flee battlefield areas.

This case exposes the dangerous risks that can be associated with locating mental care homes in close proximity to military bases. This indicates the damaging nature of relationships based on institutional approaches, in part due to the denial of the right to exercise choice regarding where to live, especially for those with mental disabilities. This denial of choice is worsened by the tendency of the medical model

⁷⁹⁰ D. Weissbrodt and B. Andrus, 'Right to Life during Armed Conflict: Disabled Peoples' International v. United States', *Harvard International Law Journal* (1988) 29, pp. 59, 84.

⁷⁹¹ P. E. Acuna, 'The Institutionalization of People with Mental Disabilities: Comparative Analysis between Its Treatment under the Inter-American and European System of Human Rights', *Inter-American & European Human Right Journal* (2012) 5 pp. 72, 89 at pg. 78.

⁷⁹² *Ibid* pg. 79.

to accommodate persons with mental disabilities in risky situations, and in conditions of poor hygiene.⁷⁹³

Supposedly, some institutions for persons with disabilities are in the most undesirable locations, such as those closest to military bases. In contrast, the social model would discourage such attitudinal and environmental barriers by bearing in mind the imminent risk to life of such locations.⁷⁹⁴ This would provide residents with disabilities many opportunities to be at the frontline of decision-making processes, such as regarding being located close to a military base.⁷⁹⁵ It is highly improbable that the medical and individual models, which are solely interested in fixing impairments, would portray persons with mental disabilities as individuals worthy of benefiting from such participation in decision making processes.

Furthermore, the work of Weissbrodt and Andrus constitutes a case comment that elucidates some of the models underpinning the approach through which the Commission conceptualises, and addresses matters of disability, especially within an armed conflict context.⁷⁹⁶ The subsequent sections explain the decision and its models of disability.

The work of Weissbrodt and Andrus, underlines the limitations of controlling non-State Actors, such as rebel groups, whose activities impact persons with disabilities in the armed conflict phase of the three-stage cycle.⁷⁹⁷ In this case, the scholars examine the jurisdictional nature of some State obligations treaties that are enshrined in international human rights law. This limits duties to compliance with the obligations underpinned by those models inside the jurisdiction.

Contreras-Garduno and Fraser are comparing the Inter-American Court on Human rights (IACtHR) with the International Criminal Court (ICC).⁷⁹⁸ Their

⁷⁹³ Letter from Disabled Peoples' International to the Inter-American Commission on Human Rights 4/February/1986 pp. 5

⁷⁹⁴ *Ituango Massacres v. Colombia*, Judgment of 1/July/2006 (preliminary Objections, Merits, Reparations and Cost) Paragraph125(37)

⁷⁹⁵ J. I. Charlton, *'Nothing about us without us: Disability oppression and empowerment'*, (California University Press, 2000) pg. 5.

⁷⁹⁶ D. Weissbrodt and B. Andrus, 'Right to Life during Armed Conflict: Disabled Peoples' International v. United States', *Harvard International Law Journal* (1988) 29, pp. 59, 84.

⁷⁹⁷ *Ibid.* pg. 59, 84

⁷⁹⁸ D. Contreras-Garduno and J. Fraser, 'The Identification of Victims before the Inter-American Court of Human Rights and the International Criminal Court and Its Impact on Participation and Reparation: A Domino Effect', *Inter-American and European Human Rights Journal* (2014) 7, pp. 174, 203

comparison is aimed at demonstrating how differently these courts use the idea of “victims”, in defining who should enjoy the right to participation in post-conflict justice proceedings for reparations, as well as using post-conflict disabilities as symbolic evidence of representing who must be entitled to reparations.⁷⁹⁹

In this context, the IACtHR is applying the inward-looking approach of the individual/medical models, by representing persons with disabilities as wounded survivors of post-conflict disabilities.⁸⁰⁰ Such a perspective also seems to rationalise the tendency for recognising persons with disabilities as one of those vital groups that must be considered in contemporary decisions of the IACtHR, framing remedial measures for post-conflict reparations, especially among post-conflict States. This is commendable, considering that a significant number of persons with disabilities in post-conflict States might have been injured by the impact of the armed conflict-disability relationship.⁸⁰¹

Consequently, the absence of precision on the suitable model and approach to disability that must be applied by courts, might explain why people with disabilities receive rehabilitation costs as part of their reparations. This is particularly aggravated by situations in which agencies of post-conflict States, have indulged themselves in carrying out activities known to cause the disabling surroundings of the armed conflict-disability relationship.⁸⁰² This suggests that applying the individual and medical models of disability, might be relevant in extending the post-conflict duty of rehabilitating persons with disabilities, to State Parties in the post-conflict period.⁸⁰³ Therefore, reports and literature should perceive the inclusive reparations in the post-conflict context as a duty of the State, to remedy, and to promote the rehabilitation of individuals.⁸⁰⁴

⁷⁹⁹ Ibid. pg. 175.

⁸⁰⁰ Ibid. pg. 175.

⁸⁰¹ J.M. Pasqualucci, ‘The Practice and Procedure of the Inter-American Court of Human Rights’, (Cambridge University Press, 2013), p. 189.

⁸⁰² Ibid.

⁸⁰³ T.B. Staats, ‘The Rehabilitation of the Amputee in the Developing World: A review of the Literature’, *Prosthetics and Orthotics International*, (1996) 20, pp. 45, 50. See also. International Committee of the Red Cross (ICRC), ‘*Physical Rehabilitation Unit ICRC Report Support for life physical rehabilitation programme*’, (July/2012) Available at <<https://www.icrc.org/eng/assets/files/publications/icrc-002-4160.pdf>> (accessed 5/January/2017)

⁸⁰⁴ R. Habasch, ‘Is the Rights Model of Disability Valid in post-conflict Lebanon? A Participatory Pilot Survey’, *Journal of Palestine Studies* (1997) 27 (1) pp. 126,135. See also. N. Kabbara and K. K. Nagata, ‘Is the Rights Model of Disability Valid in post-conflict Lebanon? A Participatory Pilot Survey in Beirut’, United Nations Development Cooperation Branch. See also. M. Turmusani, ‘Disability and Development in Kosovo: The Case for CBR Approach’, *Asia Pacific Disability and Rehabilitation Journal* (2002) 13 (1) pp. 19-28.

6.2. OAS Institutions and Discernible Models of Disability

In the subsequent sections, the regional human rights institutions that will be considered include those institutions that have dealt with aspects of disability in the context of peaceful and post-conflict States. The above institutions are vital in identifying if there are differences in models and approaches to disability, that are applied to the conceptualisation of disability related duties of post-conflict States in the Inter-American human rights system. The following institutions shall be taken into consideration in furthering this analysis:

The Inter-American Court on Human Rights (IACtHR), in relation to its decisions and advisory opinions on disability while examining the model and approach to disability that are applied to frame disability related duties of its States and post-conflict States, in more specific terms.

The decisions and recommendations of the inter-American commission on Human Rights (IACHR), and the model and approach it is applying in relation to disability related obligations of States in general, with special attention to a post-conflict State.

State reports submitted with special interest to disability matters arising from the reports of Colombia as a representative case study of post-conflict State Parties under the Inter-American system. The rationale for choosing Colombia is explained in a latter subsection of this chapter.

6.2.1. The Inter-American Human Rights Court and Models of Disability

This section shall examine the models and approaches of disability which underpin the decisions of individual complaints and Advisory Opinions of the IACtHR. Individual complaints are examined first before commencing on the second part which comprises of a much smaller section on the advisory opinions of the IACtHR and its models of disability.

In terms of the model of disability used in decisions for individual complaints, there are several decisions made by the IACtHR. However, particular decisions are analysed in establishing the models of disability underpinning the conceptualisation of disability issues by the IACtHR. Among others, the decisions that shall be of

special interest in the subsequent sections include; (i) *Ituango Massacres v. Colombia*,⁸⁰⁵ *Plan de Sánchez v. Guatemala*, and (iii) *Mapiripán Massacre v. Colombia*.⁸⁰⁶

Although the armed conflicts and post-conflict settings remain the basis of this study, some of the cases used shall also relate to massacres, given the similarities of their disabling characteristics with those of post-conflict surroundings. This implies that the same inward-looking approach and model of disability that is identified for post-conflict States, might be equally applicable for framing disability related obligations of States experiencing post-conflict massacres and coup d'état situations.

Firstly, models of disability applied by the regional court are identifiable from the *Ituango Massacres case*.⁸⁰⁷ The case relates to a paramilitary group that invaded the family of Mr. Adán Enrique Correa. During the armed attacks one Héctor Hernán Correa García died following the multiple bullet injuries that had been inflicted on him.⁸⁰⁸ In terms of examining the vulnerability of the victim in the post-massacre proceedings, the court took judicial notice of Hector's identity as a person with a mental disability at the time of death.⁸⁰⁹ The court recognised that the death of Héctor caused his family great anguish, obliging them to relocate to a different part of the country. Hence the court took judicial notice of Hector's disability as admissible evidence for proving that deceased belonged to a vulnerable group.⁸¹⁰

The court found a violation of the right to life, and subsequently, granted compensation. It must be appreciated that the social model could be inferred from ideas of the equal value that the family, the Commission and the court attached to the implications of Hector's death. In this case, the court's willingness to afford inclusive consideration to Hector's disability using a positive tone, signifies the social model of disability. Bearing in mind that the social model is based on highlighting the

⁸⁰⁵ *Ituango Massacres v. Colombia*, Judgment of 1/July/2006 (preliminary Objections, Merits, Reparations and Cost) Paragraph 125 (35) see also *Plan de Sánchez Massacre v. Guatemala*, Judgment of Inter-American Court of Human Rights 29/April/2004 (Merits).

⁸⁰⁶ *Mapiripán Massacre v. Colombia*, Judgment of Inter-American Court of Human Rights, Judgment of September 15, 2005, (Merits, Reparations, and Costs).

⁸⁰⁷ *Ituango Massacres v. Colombia*, Judgment of July 1, 2006 (preliminary Objections, Merits, Reparations and Cost) Paragraph 125

⁸⁰⁸ *Ibid.* Paragraph 125 (35).

⁸⁰⁹ *Ibid.* Paragraph 125 (35).

⁸¹⁰ *Ibid.* Paragraph 125 (35).

humanity that should be attached to the value of Hector's presence to his family, rather than disregarding him because of his mental disability. Therefore, the court and Commission tend to apply the social model as a means of imparting a sense of disability inclusiveness when considering possible legal rights and remedies.⁸¹¹

Secondly, the *Plan de Sánchez Massacre v. Guatemala* judgement of 2004 is another post-conflict decision in which the Inter-American Court of Human Rights applied the medical and individual models. There was an internal armed conflict in Guatemala that lasted between 1962 and 1996.⁸¹² As predictable, that internal armed conflict had far-reaching repercussions on humanity, State institutions and the country's infrastructural fabric.⁸¹³ The State authorities in Guatemalan invoked the so-called "Doctrine of National Security", as a response to actions of the insurgent movement.⁸¹⁴ That situation of armed conflict might have resulted in the creation of an environment where the alleged human rights violations were committed.⁸¹⁵ The court found Guatemala to be in breach of its obligations during the internal armed conflict.⁸¹⁶

In which case, there is a possible inference of disability approaches that are associated with the individual model from the petition filed by the Commission. This is evidenced especially where the Commission and court advance the idea of individual reparations,⁸¹⁷ which is broadly extended to encompass the individual rehabilitation of survivors disabled during the massacres,⁸¹⁸ and constituted an integral component of the armed conflict.⁸¹⁹ The characteristics of the individual model are associable with individual rehabilitation. Although, in this case, those ideas are remotely demonstrated, there is a strong possibility of applying them through identifying the individual victims with disabilities, while considering

⁸¹¹ *Ximenes-Lopes v. Brazil*, Paragraph 125 (35).

⁸¹² *Mapiripán Massacre v. Colombia*, Judgment of Inter-American Court of Human Rights, Judgment of 29/April/2004, (Merits). Paragraph 42 (1).

⁸¹³ *Ibid.* Paragraph 42 (1).

⁸¹⁴ *Ibid.* Paragraph 42 (2).

⁸¹⁵ *Ibid.* Articles 5 (liberty), 8(1) (Right to Fair Trial); 11 (Right to Privacy); 12(2) and 12(3) (Freedom of Conscience and Religion) 13(2) paragraph a and 13(5) (Freedom of Thought and Expression), 16(1) (Freedom of Association), 21(1) and 21(2) (Right to Property), 24 (Right to Equal Protection) and 25 (Right to Judicial Protection) of the American Convention on Human Rights.

⁸¹⁶ *Ibid.* Paragraph 54.

⁸¹⁷ *Plan de Sánchez Massacre v. Guatemala*, Judgment of 19/November/2004, (Reparations). Para 27-29.

⁸¹⁸ *Ibid.* Paragraph 90(1) and 92 (b).

⁸¹⁹ *Ibid.* Paragraphs 32 (c) and 38 (a)

rehabilitation-orientated reparations or compensation to individual victims or survivors, some of whom are persons with disabilities.

Ultimately, it is true that the possibility of relying on the inward-looking ideas of the individual model, appear to be demonstrable in the armed conflict case of *Plan de Sánchez Massacre v. Guatemala*.⁸²⁰ The individual/medical model and inward-looking approach is identifiable in the subsequent armed conflict decision of *Mapiripán Massacre v. Colombia*.⁸²¹

Mapiripán Massacre v. Colombia, is another case in which the Inter-American court applies models with the inward-looking approach in response to problems of the Colombian armed conflict, and consequences of its disabling relationship. The case of *Mapiripán Massacre v. Colombia*, arises from a sequence of incidents described as massacres which happened in July 1997.⁸²² Those incidents amounted to a violation of several rights under the Inter-American Convention.⁸²³ Purportedly, the massacres were perpetrated by approximately 100 members of the rebel group called *Autodefensas Unidas de Colombia (FARC)*, in collaboration with the Colombian armed forces.⁸²⁴ The massacres left many Colombians with permanent disabilities and led to the death of at least 49 civilians,⁸²⁵ after which the perpetrators attempted to destroy evidence by hurling their bodies into the river Guaviare.⁸²⁶ The nature of post-massacre disabilities is elucidated by Sara in testifying to the court about the circumstances of her sister (Luz Mery). Luz lost everything, from her husband to all her brothers, while economically she was left with almost nothing. It is also imperative to observe that during the hearing, the testimony from Sara, narrates the disabling characteristics that this incident inflicted on her sister (Luz), in the aftermath of the massacre.⁸²⁷ Consequently, Sara explained that post-massacre disabilities due to the insurgency, led to Luz becoming very discreet and withdrawn

⁸²⁰ *Plan de Sánchez Massacre v. Guatemala*, Judgment of Inter-American Court of Human Rights, 29/April/2004 (Merits, Reparations, and Costs) Paragraphs 2 and 9 (3).

⁸²¹ *Mapiripán Massacre v. Colombia*, Judgment of Inter-American Court of Human Rights, Judgment of 15/September/2005, (Merits, Reparations, and Costs). Paragraph 291 (h) viii. The Guardian, 'Former Colombian general jailed for role in Mapiripán massacre', published on Thursday 26/November/ 2009.

⁸²² Ibid. Paragraph 2. See also D. Ogden, 'Mapiripán Massacre v. Colombia', A. Rutherford, (Ed.) in Loyola of Los Angeles International and Comparative Law Review, [2015] 37 pp 1675-1698 at 1676.

⁸²³ Ibid. Paragraphs 242-256.

⁸²⁴ Ibid. Paragraphs 235.

⁸²⁵ Ibid. Paragraphs 96.39-96.48.

⁸²⁶ Ibid. Paragraphs 96.36, 130, 228, 305.

⁸²⁷ Ibid. Paragraph 75 (c)

in her relationships with people. Luz also suffered from disabilities, such as thrombosis and facial paralysis.⁸²⁸

The horrific scenes were also contained in affidavits and testimonial evidence from the main witnesses such as Sara Paola Pinzón López,⁸²⁹ a sister to Jorge. Pinzón Lopez, who is named as one of the victims at river Guaviare.⁸³⁰ After witnessing the above disabling incidents at the river, Sara and her mother, left for Villavicencio,⁸³¹ where they held a joint meeting before leaving for Bogotá.⁸³² The relocation from Villavicencio to Bogotá had transpired partly because of the army alleging that the population that had been displaced, and possibly disabled, during the massacres at Guaviare River, would have remained troublesome to activities of the army and the police.⁸³³

The court considered the above testimonial evidence from Sara as next of kin and compensated her according to Article 63 (1) of the ACHR. Note that such an account indicated an understanding of disability conceptualised upon the inward-looking perspective of the medical model, since the court tends to place more emphasis on the impairment when describing something that appeared wrong with the body of the complaint's sister. Such a descriptive account of disability, indicates an individual model of disability. It is imperative to observe that the need for remedial measures, such as compensation or the restoration of already violated rights, seemed to be the reason for lodging this claim. It appears that the court has hardly made any decisions to restore the right to be rehabilitated due to mental, physical or intellectual disabilities suffered during or after the different massacres. This gap in application of the individual model might be attributed to the absence of rights-based ideas in the disability context under the American Charter, unless its provisions are applied alongside rehabilitation rights enshrined in the 1991 Disability Protocol.

⁸²⁸ Ibid. Paragraph 75 (c)

⁸²⁹ Ibid. Paragraph 75 (c) Statements rendered as testimony before a notary public (affidavits) by Sara Paola Pinzón López, on 4/February/2005.

⁸³⁰ Ibid. Paragraph 75 (c)

⁸³¹ Ibid. Paragraph 75 (c)

⁸³² Ibid. Paragraph 75 (c)

⁸³³ Ibid. Paragraph 75 (c)

Additionally, models of disability used by ACHR are inferable from the decision of *Guatemalan Street Children Case*.⁸³⁴ This case relates to families of victims who filed a petition with the IACHR, seeking redress against members of the security forces in the State of Guatemala who kidnapped and tortured four minors (leading to their deaths) and the murder of a fifth one in 1990.⁸³⁵

The Commission submitted the case to the Inter-American Court of Human Rights which found that the State had been responsible for the deaths of the children and stressed the fundamental nature of the right to life⁸³⁶ as enshrined in the American Convention on Human Rights. The issue of the right to life makes the decision in this case, distinguishable from that of the decision in *Disabled Peoples' International (DPI) v. United States*.⁸³⁷ The DPI case related to the US violation of the right to life, during an armed conflict in which the victims also belonged to a vulnerable group.⁸³⁸ In the Guatemala Street Children case, the contravention of the right to life occurred to a vulnerable group, but during a time of peace.⁸³⁹ This difference implies that the court invoked solely human rights obligations and excluded ideas from the laws of armed conflict, whilst in the DPI case, the laws of armed conflict were as relevant as human right obligations in analysing the approaches which underlined the obligations of States to matters of disability.⁸⁴⁰

Furthermore, the contravention of the right to life by the US, occurs from outside the jurisdiction of the US - to Grenadian nationals with a disability. In this case, the security forces of Guatemala had violated rights in relation to Guatemalan children inside the jurisdiction of Guatemala.⁸⁴¹ Nonetheless, these distinctions are important in a regional context because of their ability to reveal situations in which a

⁸³⁴ *Guatemalan Street Children Case/ Street Children* [(Villagrán-Morales et al.) v. Guatemala] Judgment comment of 19/November/1999.

⁸³⁵ *Ibid.* Paragraph 191.

⁸³⁶ *Ibid.* Paragraph 191.

⁸³⁷ *Disabled Peoples' International v. United States*, Case 9213 (United States), Inter-American Commission on Human Rights OAS Doc. OEA/ser.L.IV/II.67, doc. 6 (1986).

⁸³⁸ D. Weissbrodt and B. Andrus, 'Right to Life during Armed Conflict: *Disabled Peoples' International v. United States*', *Harvard International Law Journal* (1988) 29, pp. 59, 84.

⁸³⁹ R. J. Wilson and J. Perlin, 'The Inter-American Human Rights Systems: Activities During 1999 Through October 2000', *American University International Law Review*, (2000) 16 (2) pp. 315-352 at 327-331.

⁸⁴⁰ D. Weissbrodt and B. Andrus, 'Right to Life during Armed Conflict: *Disabled Peoples' International v. United States*', *Harvard International Law Journal* (1988) 29, pp. 59, 84.

⁸⁴¹ R. J. Wilson and J. Perlin, 'The Inter-American Human Rights Systems: Activities During 1999 Through October 2000', *American University International Law Review*, (2000) 16 (2) pp. 315-352 at 327-331.

State, that is mainly relying on the social model within its jurisdiction, might be required to extraterritorially effect post-conflict compensation or reparations arrangements which are framed upon disability related roles of the medical or individual model, in the jurisdiction of an armed conflict affected State.

In the *Guatemalan Street Children Case*, the court found that street children are victims of "double aggression."⁸⁴² The court also found violations of the rights to personal freedom and integrity, as well as of standards in the Inter-American Convention to prevent and sanction torture.⁸⁴³ The court also concluded that the State had failed to comply with its obligation to adopt special measures to protect children whose rights are under threat or violated. The court reiterated that the violated protections include; "non-discrimination,⁸⁴⁴ special assistance for those children removed from the family environment,⁸⁴⁵ the guarantee of supervision and development of the child, the right to an adequate standard of living, and the social reintegration of every child victimised by abandonment or exploitation."⁸⁴⁶ The court also recommended that for children, identified as delinquents, the State's intervention in the lives of such youthful offenders:

"Should be aimed at ensuring the strongest efforts to guarantee rehabilitation [...] in order to permit them to fulfil a constructive and productive role in society."⁸⁴⁷

In terms of analysing the models of disability in the *Guatemalan Street Children Case*, the following aspects are worth mentioning: The Inter-American Court permits applying different approaches to rehabilitating children, because they are problematic on the streets or, possibly rejected by their families who want to disassociate with the hardships of bringing up a disabled child. In other words, such

⁸⁴² *Street Children (Villagrán-Morales et al.) v. Guatemala*, Paragraph 185.

⁸⁴³ Inter-American Convention to Prevent and Punish Torture, entered into force 22/February/1987, OAS Treaty Series No. 67, reprinted in 25 I.L.M. 519 (1986) [hereinafter Inter-American Torture Convention] (noting that the treaty had been applied previously in the Paniagua Morales and Others Case

⁸⁴⁴ *Caso Villagrán Morales v Otros (Caso de los "Ninos de la Calle ")* Judgment of. 19/ November/1999, Paragraphs 163, 171

⁸⁴⁵ *Ibid.* Paragraph 197.

⁸⁴⁶ *Ibid.* Paragraph 196.

⁸⁴⁷ *Ibid.* Paragraph 197. See also. J. Wilson and J. Perlin, 'The Inter-American Human Rights Systems: Activities During 1999 Through October 2000', *American University International Law Review*, (2000) 16 (2) pp. 315-352 at pg. 329.

rehabilitation may be inclusive of children with disabilities, as long as they are identifiable as children, according to the Children's Convention.⁸⁴⁸

Secondly, the decision in this case takes into account ideas of the CRC in understanding the violated rights. The Court then invoked Articles 2, 3, 6, 20, 27, and 37 of the Children's Convention to help make the meaning of "measures of protection" required in Article 19 of the American Convention, more precise.⁸⁴⁹ It is noticeable that in the context of disability, the individual model of rendering social security needs, underpins the provisions of the CRC.

Children, as an example of a vulnerable group, are to some extent synonymous with disabled people. In this context, there is an interconnectivity between the interpretation of remedies and the idea of rights. For example, the court uses rights in its consideration that the affected victims have special groups with enhanced protection under human rights. However, in the disability context, the model of disability worth applying to rights-based ideas under different situations remains unclear.

In terms of advisory opinions on disability, in its 2002 advisory opinion on *Juridical Condition and Human Rights of the Child*,⁸⁵⁰ the Inter-American Court of Human Rights applied ideas of the social model of disability in its advice to States, on how to protect children with disabilities.⁸⁵¹ In particular, the court suggested that childhood disabilities are a consequence of failure by the States to consider adopting inclusive communication. This is evidence of tendencies in which advisory opinion attributes the causes of disabling environments to external societal environments.⁸⁵² This perspective is difficult to reconcile with the appropriate models for addressing the nature of post-conflict problems, which characterise experiences of children with disabilities, (in category A of table 1). For example, a former child soldier with war related disabilities, would be in desperate need of prioritising rehabilitation by a post-

⁸⁴⁸ Convention on the Rights of the Child, 20/November/ 1989, Article 1, U.N. Doc. A/RES/44/25, 28 I.L.M. (1989) pp./ 1457, 1459

⁸⁴⁹ R. J. Wilson and J. Perlin, 'The Inter-American Human Rights Systems: Activities During 1999 Through October 2000', *American University International Law Review*, (2000) 16 (2) pp. 315-352 at pg. 329.

⁸⁵⁰ OC-17/2002 of August 28 2002 Advisory Opinion on *Juridical Condition and Human Rights of the Child* Inter-American Court of Human Rights. pg. 48. [hereafter OC-17/2002]

⁸⁵¹ *Ibid.* OC-17/2002.

⁸⁵² *Ibid.* OC-17/2002 Paragraph. 124. pg. 48.

conflict State, as compared to rendering them with braille formats of accessible information.

In its 2003 *Advisory Opinion on the Rights of Undocumented Migrants*,⁸⁵³ the Court's perspective of disability, and its explanation of disability related obligations for its States, depicts the inward-looking approach of the individual/medical model. This is especially true where the court illustrates the right to security in the event of sickness and disability.⁸⁵⁴ The application of such models and their inward-looking approach, is exemplified where the court advocates for provision of specific material-related bodily needs to individual with disabilities, in order to alleviate the likelihood of compromising the abilities of such individuals by conditions or impairments.⁸⁵⁵ In post-conflict stage of the three stage cycle the provision of prosthesis and other artificial limbs for mobility support must be perceived as fundamental obligation that might need special attention in armed conflict and post conflict States considering the substantial number of persons with war related disabilities that are a major characteristics of those States. . The 2003 Advisory Opinion indicates that manner in which the court understands disability, is influenced by its framing of disabling environments and this informs its conceptualisation of States' corresponding obligations.

Additionally, the court's advisory opinion of 2004 relating *to guarantees of Children in Migration* also prioritises the application of the social model.⁸⁵⁶ Evidence of the social model is established where the court obliges its States to avail special affirmative measures to children with disabilities, as members of a minority group.⁸⁵⁷ Nevertheless, the advisory opinion also applies some ideas of the inward-looking approach from the medical and individual model, by reminding OAS States hosting migrant children, to pay special attention to children physical or mental disability.⁸⁵⁸

⁸⁵³ OC-18/03, the Advisory Opinion on, 'Juridical Condition and Rights of the Undocumented Migrants', Inter-American Court of Human Rights (IACrHR) 17/September/2003, [hereafter OC-18/03] Paragraph 34.

⁸⁵⁴ Ibid. OC-18/03, Paragraph 34.

⁸⁵⁵ Ibid. OC-18/03 Paragraph 34.

⁸⁵⁶ OC-21/14, Advisory Opinion, '*Rights and Guarantees of Children in the Context of Migration and/or in need of international Protection*', Requested by the Argentina, Brazil, Paraguay and Uruguay, of 19/August/2014. [Hereafter, OC-21/14].

⁸⁵⁷ Ibid. OC-21/14. Paragraph. 71.

⁸⁵⁸ OC-21/14., Paragraph 104. Cf. Committee on the Rights of the Child, *General Comment No. 9: The rights of children with disabilities*, UN Doc. CRC/C/GC/9, 27/February/2007, paragraphs. 42 and 43.

6.2.2. The Inter-American Commission and Models of Disability

The Inter-American Commission on Human Rights (hereafter the IACHR) is an autonomous organ of the Organization of American States (OAS) and has the duty of promoting respect for human rights among the OAS. The Commission derives its authority from the Charter of the Organization of American States.⁸⁵⁹ Since its inception in 1978, the IACHR governed alone across the regional system and developed procedures and mechanisms that laid out circumstances of the countries that were meant to be supervised.⁸⁶⁰ In executing its roles, the IACHR prepares reports, makes recommendations and, in some cases, it could arrange visits to OAS Member States, subject to majority votes by other Member States and prior consent of the government concerned.⁸⁶¹

In terms of models of disability, the IACHR is one of the institutions of the Inter-American Regional System whose reports contain decisions and recommendations that will assist in identifying the models or approaches to disability, through which this region conceptualises disability.⁸⁶² Unlike the African Human Rights Commission,⁸⁶³ and the CRPD Committee,⁸⁶⁴ which are more recent institutions, the IACHR has been in existence since 1959⁸⁶⁵ following its

⁸⁵⁹ Charter of the OAS, 30/April/1948, 2 U.S.T. 2394, T.I.A.S. no. 2361, 119 U.N.T.S. 3, amended by Protocol of Buenos Aires, 27/February/1967, 21 U.S.T. 607, T.I.A.S. No. 6847, 721 U.N.T.S. and the American Convention on Human Rights, 22/November/1969, articles 31-51, OAS Doc. OEA/ser.K./XVIII. 1, doc. 65 rev. I corr. 1 (1970).

⁸⁶⁰ C. Q. Medina, 'The Battle of Human Rights: Gross, Systematic Violations and the Inter-American System (Dordrecht, 1988) pg. 363. See also. Medina, 'The role of Country Reports in the Inter: American System of Human Rights', in *The Inter-American Human Rights System*, D. J. Harris and S. Livingstone (eds.) (Clarendon Press, 1998) pp 115-132 at pg. 115.

⁸⁶¹ See Original Statute of the Commission, Article 11 (c), reproduced in IACHR Basic Documents, (OEA/ER. I/V/1.4/December/1960).

⁸⁶² *Disabled Peoples' International v. United States*, Case 9213 (United States), Inter-American Commission on Human Rights OAS Doc. OEA/ser.L.IV/II.67, doc. 6 (1986). See also. Weissbrodt and B. Andrus, 'Right to Life during Armed Conflict: *Disabled Peoples' International v. United States*', *Harvard International Law Journal* (1988) 29, pp. 59, 84 at pg. 62.

⁸⁶³ Cervenka and Legum, 'A tribute to draft Report of the Rapportuer of the meeting of African Experts on the draft African Charter, Dakar in Senegal on 28/November-1979 to 8/December/1979 OAU Doc/LEG/draft/Raft. Rpt. p.2 .See also, U.O. Umzurike, 'The Africa Commission on Human and People's Rights: An introduction 1 Review of the Africa Human Right Commission on Human and People's Rights', pp. 5-15.

⁸⁶⁴ T. Degener. 'A human rights model of disability.' in *Routledge Handbook on Disability Law and Human Rights*. P. Blanck and F. Eilionoir (eds.) (Routledge, 2017) pp. 31-50. See also. Degener, 'Disability in a Human Rights Context', in *the Special Issue Disability Human Rights Law*, A. Arstein-Kerslake (ed.) *Laws* 2016, 5(3), pp. 19, 35. T. Degener and Y. Koster-Dreese, 'Human rights and disabled persons: Essays and relevant human rights instruments' (Dordrecht: Martinus Nijhoff, 1995)

⁸⁶⁵ T. Buergenthal and D. Shelton, 'Protecting Human Rights in the Americas, Cases and Materials, 4th Edition (N. P. Engel Publishers, 1997) pp. 1-44. See also. R. K. Goldman, 'History and Action: The Inter-American

pronouncement during the Fifth Meeting of the Consultation of Ministers of Foreign Affairs.⁸⁶⁶ As already noted, the IACHR had existed for quite some time without a regional disability instrument that enshrined underpinnings of its disability obligations. This occurred in 1999, when a regional Disability Protocol was instigated.⁸⁶⁷ It is worth noting that the promulgation of the regional disability protocol took effect prior to adopting the CRPD.

In tandem with the Disability Protocol and its perspectives on disability, the IACHR has occasionally pronounced on various aspects of disability, at least in some sections of its recommendations. Some recommendations from the IACHR on matters of disability, predate the pronouncement of a regional disability protocol.⁸⁶⁸

This Protocol has attracted criticism for approaching matters of disability in ways that encourage legal incapacitation⁸⁶⁹ by institutionalising individuals because of their impairments,⁸⁷⁰ thereby promoting social exclusion.⁸⁷¹ This is contrary to approaches of the social model that spearhead equality to reform exclusionary environments that appear to legitimise tendencies of institutionalised incapacitation.⁸⁷² This observation may explain why some of the models or approaches underpinning the recommendations of the IACHR, might be associated with features of medical and individual models. Nonetheless, there are several

Human Rights System and the Role of the Inter-American Commission on Human Rights', Human Rights Quarter (2009) 31 (856) pp. 856, 887. See also. D. K. King-Hopkins, 'Inter-American Commission on Human Rights: Is Its Bark Worse Than Its Bite in Resolving Human Rights Disputes', Tulsa Law Journal, (2000) 35 (2) pp. 421-444.

⁸⁶⁶ Ibid. See also. H. Hannum, S. J. Anaya and D. L. Shelton, 'International Human Rights: Problems of law, Policy, and Practice', (5th edition 2011) pp. 1-50. See also. R. B. Liluch and H. Hannum, International Human Rights: Problems of Law, Policy, and Practice, Practice, 3rd. ed. (Transnational Publishers 1995), pp. 782-83.

⁸⁶⁷ [OAS], Inter-American Convention on the Elimination of all Forms of Discrimination Against Persons with Disabilities, Article. 2, OAS Doc. AG/Res. 1608 (XXIX-O/99) (June/1999).

⁸⁶⁸ Disabled Peoples' International v. United States, Case 9213 (United States), Inter-American Commission on Human Rights OAS Doc. OEA/ser.L.IV/II.67, doc. 6 (1986).

⁸⁶⁹ I. E. Koch, 'From invisibility to Indivisibility: The International Convention on Rights of Persons with Disabilities', in The UN Convention on the Rights of Persons with Disabilities, European and *Scandinavian Perspectives*, O. M. Arnadottir, and G. Quinn, (eds.) (Martinus Nijhoff Publishers, 2009) pp. 67-76.

⁸⁷⁰ S. Grech, 'Disability and the Majority World: A Neo-colonial Approach', in *Disability and Social Theory: New Developments and Directions*, D. Goodley, B. Hughes and L. Davis (Eds.) (Palgrave Macmillan, 2012) pp. 52-69 at pg. 52. See also. Grech, *Disability and Poverty in the Global South: Renegotiating Development in Guatemala*, (Palgrave Macmillan, 2015) pg. 20-30. See also. S. Grech, 'Disability and Development: Critical Connections, Gaps and Contradictions', in *Disability in the Global South: the Critical Handbook*, S. Grech and K. Soldatic (eds.) (Springer, 2016) pp. 3-19.

⁸⁷¹ R. Spaaij, J. Magee and R. Jeanes, 'Sport and Social Exclusion in Global Society', (Routledge, 2014) pg. 30.

⁸⁷² *Ximenes-Lopes v. Brazil*, Judgment of 2005.

reports that shall be completely excluded from this study, especially reports in which aspects of disability are hardly addressed or mentioned by the IACHR.

This study has endeavoured to identify and concentrate on reports that are relevant for investigating and understanding the models and approaches underpinning the understanding of disability by the IACHR. The purpose of analysing the recommendations contained in those relevant reports, is to establish the approaches and models upon which the IACHR conceives of disability, and the constituents of the disabling environments among States of the Inter-American Human Rights System.

Subsequent to analysing general approaches to disability, a further investigation shall be undertaken to establish if there are specific recommendations and decisions intended to address disability related concerns that could occur in a post-conflict setting.

Disabled Peoples' International (DPI) v. United States,⁸⁷³ relates to a case of 25th October 1983, when the United States launched an attack on a complex located in St George's, the capital city of Grenada.⁸⁷⁴ At the time of the attack, the city included Fort Matthew which accommodated a home for residents with mental disabilities, called the Richmond Hill Insane Asylum.⁸⁷⁵ It is undisputed that US troops bombarded the mental institution while involved in an armed conflict with the Peoples' Revolutionary Army (PRA).⁸⁷⁶ However, it is also worthwhile mentioning that much of the remaining sequence of events are a great deal more unclear.⁸⁷⁷

As a result of the attack, Disabled Peoples' International (DPI), with the support of the J. Roderick McArthur Foundation,⁸⁷⁸ submitted a representative complaint to the IACHR, on behalf of unnamed and unnumbered residents, both

⁸⁷³ *Disabled Peoples' International v. United States*, Case 9213 (United States), Inter-American Commission on Human Rights OAS Doc. OEA/ser.L.IV/II.67, doc. 6 (1986). See also. *Disabled Peoples' International et al.*, Case 9213, Inter-Am. C.H.R. 184, OEA/ser. LV/II.71, doe. 9 rev. 1 (1987) (Annual Report 1986-1987).

⁸⁷⁴ D. Weissbrodt and B. Andrus, 'Right to Life during Armed Conflict: Disabled Peoples' International v. United States', *Harvard International Law Journal* (1988) 29, pp. 59, 84 at pg. 62.

⁸⁷⁵ Inter-American Commission on Human Rights, 'Inter-American Commission on Human Rights: Individual Case Resolutions', *American University International Law Review*, (1996) 10. (1) pp. 33, 331.

⁸⁷⁶ D. Weissbrodt and B. Andrus, 'Right to Life during Armed Conflict: Disabled Peoples' International v. United States', *Harvard International Law Journal* (1988) 29, pp. 59, 84 at pg. 62.

⁸⁷⁷ Letter from U.S. Dep't of State to the Inter-American Commission on Human Rights (21/September/ 1984)

⁸⁷⁸ *Supra*, D. Weissbrodt and B. Andrus, pg. 59.

living and dead, involved in the Richmond Hill Insane Asylum attack.⁸⁷⁹ In their defence, the US claimed that on 25 October 1983, the PRA was using a group of buildings located inside the battlements between Fort Frederick and Fort Matthews as one of its regional headquarters, housing armed PRA members and serving as a command post for PRA forces.⁸⁸⁰ That group of buildings was only 143 feet away from the mental institution.⁸⁸¹ DPI had also amended its petition to request compensation only for the mental and physical damage resulting from the attack.

The IACHR held the petition was admissible and that the US was in violation of its obligations under the American Declaration on Human Rights.⁸⁸² Since the time of the initial filing, the US has provided the government of Grenada with funds and materials for the care of the patients at the Richmond Hill Asylum.⁸⁸³ Furthermore, the US contributed towards the construction of a new mental care institution in 1994, using funds from the United States Agency for International Development (USAID).⁸⁸⁴

For the purposes of investigating the model or approach to matters of disability underlying the case of *Disabled Peoples' International (DPI) v. United States*, a threefold analysis shall be adopted to further a comprehensive examination.⁸⁸⁵ Consequently, the subsequent analysis aims to do the following:

It will firstly explain the models or approaches to disability underpinning the activities of the States involved in their conceptualisation of persons with disabilities at the time of the decision. Secondly, it will examine the model or approaches to disability underpinning the ideas of the DPI and the second complainant that filed the

⁸⁷⁹ Inter-American Commission on Human Rights, 'Inter-American Commission on Human Rights: Individual Case Resolutions', *American University International Law Review*, (1996) 10. (1) pp. 33, 331.

⁸⁸⁰ D. Weissbrodt and B. Andrus, pp. 61. See also. B. Marbury, 'Operation Urgent Fury: The Invasion of Grenada, 12/October/1983', (US Government Printing office Washington) pg. 7.

⁸⁸¹ See also. Adkin, 'Urgent Fury: The Battle for Grenada - The Truth behind the Largest U.S. Military Operation since Vietnam', transatlantic Publications (1989)

⁸⁸² See, Article 1 of the American Declaration of the Rights and Duties of Man Adopted at the Ninth International Conference of American States, Bogota, Colombia, 2/May/1948. See also. Inter-American Commission on Human Rights, 'Inter-American Commission on Human Rights: Individual Case Resolutions', *American University International Law Review*, (1996) 10. (1) pp. 33, 331.

⁸⁸³ Treaster, Since the Invasion, A Grenada in Flux, *New York Times*, 25/October/1987, pg. 4, at 3, col. 2 (a new mental institution has been built in Grenada with funds provided by the U.S.).

⁸⁸⁴ *Richmond Hill v. United States*, Case 9213, Report No. 3/96, Inter-Am.C.H.R., OEA/Ser.L/V/II.91 Doc. 7 at 201 (1996). Paragraph IV.

⁸⁸⁵ *Disabled Peoples' International v. United States*, Case 9213 (United States), Inter-American Commission on Human Rights OAS Doc. OEA/ser.L/II.67, doc. 6 (1986). See also. *Disabled Peoples' International et al.*, Case 9213, Inter-Am. C.H.R. 184, OEA/ser. LV/II.71, doc. 9 rev. 1 (1987) (Annual Report 1986-1987).

case. Thirdly, the analysis sets out to establish the approaches or models to disability, underpinning the final decision of the IACHR. The activities of the States involved, the U.S and Grenada, depict the following models of disability;

The medical and individual models are evidenced by Grenada's act of supporting institutionalised settings, meant for rehabilitating persons with mental disabilities, in Richmond Hill Insane Asylum as exemplified by the facts.⁸⁸⁶

It makes no difference in terms of the right that was violated, but the key observation in terms of disability in this context is mental healthcare institutionalisation. The nature of remedies that the US recognised and eventually complied with, also emphasises the idea of restoring medical facilities that may be required for enabling the institutionalisation of residents with mental disabilities.

Of course, this view of disability is inward-looking as it concentrates and promotes the role of care institutions in rehabilitating and addressing the individual's problems.⁸⁸⁷ That is contrary to the perspective of the social model that is outward-looking in its approach to challenge and reform external environments to make them adaptable to persons with disabilities.⁸⁸⁸ Therefore, before and after the occurrence of armed conflict, the medical and individual models underpin the manner in which Grenada and the US understand their roles, especially towards persons with mental disabilities.⁸⁸⁹

Additionally, there is a need to examine the model of disability underpinning ideas of the DPI and other complaints. The DPI and others conceptualise disability through the Northern American minority social model. In the above context, the DPI demonstrates this view by making a case for recognising the indiscriminate right to life for persons, by the parties conducting armed hostilities. The basis of this case tends to suggest that the social model might teach lessons to future parties in cases involving armed conflicts (especially States) with close proximity to facilities of

⁸⁸⁶ B. Marbury, 'Operation Urgent Fury: The Invasion of Grenada, October 1983', (US Government Printing office Washington) pg. 7.

⁸⁸⁷ S. Zanskas, 'A systems Approach to Post Conflict Rehabilitation', in *Trauma Rehabilitation after War and Conflict: Community and Individual perspectives*, E. Martz (ed.) (Springer, 2010) pp. 133-158. See also J. T. de Jong, 'A Public Health view on Preventing of War and its Consequences', in *Trauma Rehabilitation after War and Conflict: Community and Individual perspectives* E. Martz (ed.) (Springer, 2010) pp. 73-96.

⁸⁸⁸ A. Samaha, 'What good is the social model of disability', (University of Chicago Public Law & Legal Theory Working Paper No. 166, 2007). pp. 1-69 at pg. 8-9.

⁸⁸⁹ *Ibid* pp. 6-7.

persons with disabilities. This could be done by giving ample time to evacuate civilians with disabilities, before authorising attacks on intended military targets. Similarly, where possible, it could be done by refraining from authorising military targets, unless rivals have violated International humanitarian law (IHL) norms by converting places for civilians with disabilities into military objects.⁸⁹⁰

By affording more time, or undertaking other similar measures, it could be argued that actors involved in armed conflicts would use ideas of a social model for rethinking the ways in which they can conduct armed activities with respect to the right to life of persons with disabilities.

In terms of the approaches or models to disability underpinning the decision of the IACHR, the decision appears to support the idea of extending the respect for the right to life, to the individual residents kept inside the Richmond Hill Insane Asylum.⁸⁹¹ The approach of the social model could also be derived from the effects of this decision, whereby it avoids blaming the loss of life inflicted upon the residents as a consequence of weak or disturbed bodily conditions. It is imperative to note that the decision defers to this novel approach in the apportionment of liability, by highlighting the ways the blame is shifted onto the inability or incapacitation of the mind, from the failure by the State agencies to undertake positive, or reasonable measures, to refrain from the violation of fundamental rights.

It is, perhaps, worthwhile highlighting a few final remarks on the case of *Disabled Peoples' International vs United States*. Firstly, the difficulty in this case seems neither determining the suitability of a social model, nor understanding its application in strengthening the inclusiveness and adaptability of persons with disabilities, while developing obligations of IHL norms on principles to distinguish between civilians and combatants.

However, that exclusion calls for complementing concepts of IHL that are framed upon the medical model, with the application of the social model and its outward-looking approach, in examining the value which military operations attach to protecting the lives of persons with disabilities, in relation to the Grenadian attacks.⁸⁹²

⁸⁹⁰ Letter from U.S. Dep't of State to the Inter-American Commission on Human Rights (Sept. 21, 1984)

⁸⁹¹ Ibid.

⁸⁹² *Disabled Peoples' International et al.*, Case 9213, Inter-Am. C.H.R. 184, OEA/ser. LV/II.71, doe. 9 rev. 1 (1987) (Annual Report 1986-1987).

Noteworthy is that those 16 civilians with disabilities lost their lives, while the earlier discussions have identified similar military attacks among other armed conflicted States, such as Syria.⁸⁹³

Relatedly, the victims in this case are comparable to persons with disabilities in the category of 'Mr/Miss. C', that are demonstrated in a subsequent table under this section. Note that in this context, the presence of disability before conflict seems to raise slightly different challenges that regions with armed conflict may find problematic, while applying protection without integrating ideas from disability related theories.

Another issue from the case that could portray its decision as an opportunity by the IACHR to apply ideas of the social model in settings of armed conflict, is exemplified by the readiness of the IACHR to condemn the manner in which the USA undertook its operations at Fort Frederick and Fort Matthew. In this context, the IACHR applied the social model in finding a violation of duties by the USA, for failing to give special consideration by allowing sufficient time to enable persons with mental disabilities to flee from Richmond Hill Mental Institute, prior to launching the military attack. Although, simply permitting more time and expecting persons with disabilities to flee on their own, would seem inadequate and inappropriate. Unless disability related obligations in relation to *jus in bello* and *jus post-bellum* are made more protective to mental homes by increasing the possibility of convincing medical rehabilitation staff to remain behind, so as to assist in the removal of barriers and quicken the evacuation of persons with disabilities from areas susceptible to more aerial attacks.

Note that the medical and individual model are applied in armed conflict settings with an aim to ensure that every civilian is relocated, and no one is left behind as a means of protecting lives of persons with disabilities. Therefore, there is a need to rethink encouraging a disability approach or model, whose measures are

⁸⁹³ J. Moussa, 'Elderly, Handicapped under Shelling in Old Aleppo', Broadcasted on Al-Aan TV on 8/December/2012. Available at <<https://www.youtube.com/watch?v=54ysGTi9Tzo>> (accessed 7/March/2015). See also. Y. Knell, 'Israeli strike on disability shelter in Gaza's Beit Lahiya' (BBC News, 12/July/2014) Available at <<http://www.bbc.co.uk/news/world-middle-east-28275837>> (accessed 13/July/2016). See also. A/HRC/37/75, Human Rights Council, 'Human rights situation in Palestine and other Occupied Arab territories: Human rights situation in Palestine and other occupied Arab territories since 1967', Thirty-seventh Session, from 26/February/2018–23/March/2018, Paragraphs 60-64.

suitable for promoting and strengthening reasonable adjustments and considerations in times of armed conflict.⁸⁹⁴ This explanation is an example of adjustments and considerations which would enhance the protection of civilians with disabilities, before launching attacks on their properties. Bearing in mind that attacks on properties such as Richmond Hill Mental Institute, amount to attacking not only the shelter, but the lives of the most vulnerable civilians. Such an interpretation would also have enabled the IACHR to interpret the protection afforded as embodied in customary international law.

The subsequent discussion will focus on analysing the models of disability underpinning the recommendations of the Commission in its report of 1998. According to this report, the IACHR recommended that its Member States should take necessary measures to protect those suffering from mental or physical disabilities.⁸⁹⁵

The IACHR seems to rely on the ideas of a social model to conclude that persons suffering from mental or physical disabilities are prone to discriminative practices by having their personal freedom arbitrarily restricted, while subjecting them to inhuman and degrading treatment.⁸⁹⁶ The perspective of a social model becomes even clearer when the same report asserts that such exclusionary and isolating environments are the problem, since they are detrimental to ideas of integrating people with disabilities into society.⁸⁹⁷

The IACHR also reminded States of their obligation to protect, promote and respect those rights enshrined in the Declaration, the Convention and its Protocol, and other instruments in force, under the Inter-American System, without discrimination of any kind.⁸⁹⁸ Discrimination might be derived from positive and negative obligations that could imply excluding persons with disability. Consequently, the IACHR called upon Member States to take all legislative, or other measures

⁸⁹⁴ A/HRC/37/75, Human Rights Council, '*Human rights situation in Palestine and other Occupied Arab territories: Human rights situation in Palestine and other occupied Arab territories since 1967*', Thirty-seventh session, from 26/February/2018 to 23/March/2018, Paragraphs 60-64.

⁸⁹⁵ Inter-American Commission on Human Rights (IACHR), Recommendations of the Inter-American Commission on Human Rights: of 1997 Annual Report, 13/April/1998, OEA/Ser.L/V/II.98, available at <<http://www.refworld.org/docid/50b8bd162.html> [accessed 15/August/2017]. Paragraph 7.

⁸⁹⁶ Ibid. Paragraph 7.

⁸⁹⁷ Ibid. Paragraph 7.

⁸⁹⁸ Ibid. Paragraph 7.

necessary, to ensure that all external surroundings and social settings are constructed in ways that are accessible and inclusive for persons with physical or mental disabilities.⁸⁹⁹ Designing social settings while bearing persons with disabilities in mind, might enhance their exercise of civil and political rights, which are enshrined under the San Salvador Protocol.

In light of the recommendations contained in the 1998 report, it is evident that the IACHR seems to conceptualise its solutions to concerns of persons with disability, upon the social model, with an aim to ensure that their economic, social and cultural rights attain the degree of attention or protection they deserve.⁹⁰⁰

Furthermore, some models of disability are identifiable from the 2011 recommendations of the IACHR. In the IACHR's recommendations, in the report entitled: *Access to justice for women victims of sexual violence, Education and health*,⁹⁰¹ the following considerations of the IACHR could be relevant for identifying the models or approaches that it associates with aspects of disability.

The IACHR reiterated the need to devise laws to regulate the physician-patient relationship. As a result, some women especially those with disabilities are prone to instances of sexual violence. Perhaps the above recommendation from the IACHR in its 2011 report, indicates social model approaches by associating the solutions of persons with disabilities, with ensuring that States enact laws to regulate external environmental and attitudinal barriers existing in physician-patient relationships. That is typical of the social model, the characteristics of which are expounded in Chapter 2 of this thesis.

In the same report, recommendations of the IACHR, also perceives women and girls with disabilities as a minority group in relation to other girls and women.⁹⁰² The IACHR affirms that women with disabilities have been exposed to cases of sexual violence, due to the lack of regulation of the physician-patient relationship.⁹⁰³ For example, the report notes that in Argentina, at the Braulio A Moyano Psychiatric

⁸⁹⁹ Ibid. Paragraph 7.

⁹⁰⁰ Ibid. Paragraph 7.

⁹⁰¹ Inter-American Commission on Human Rights (IACHR), '*Access to Justice for Women Victims of Sexual Violence: Education and Health*', 28/December/2011, OEA/Ser.L/V/II. Doc. 65, available at: <<http://www.refworld.org/docid/51ff7a974.html>>(accessed 15/February/2017)

⁹⁰² Ibid. Paragraph 14.

⁹⁰³ Ibid. Paragraph 15.

Hospital (Moyano Hospital), a neuropsychiatric hospital for women in Buenos Aires was overcrowded with more than 1000 beds.⁹⁰⁴ These women suffered sexual abuse both inside and outside the institution.⁹⁰⁵

In this context, even though the IACHR approaches the problem of sexual violence as a concern likely to affect all women and girls in Member States of this RHRS, the IACHR notes a stronger possibility for women and girls with physical and mental disabilities, to be more prone to experiencing sexual violence than other women.⁹⁰⁶ This indicates aspects of the outward-looking approach of the social model.⁹⁰⁷ The IACHR on Human Rights, applies a social model in its recommendations of the 2011 report, when addressing the growing concerns of sexual violence. The IACHR noted that the approach of relying on health care institutions was inevitable for State Parties experiencing situations of armed conflicts.

Additionally, the recommendations of the 2011 report, demonstrate disability in the context of discriminative treatment in education and healthcare.⁹⁰⁸ This also shows that the IACHR tends to approach matters of disability through protection of women and girls with disabilities, from educational and health care institutionalisation. Such institutionalisation encourages environmental and attitudinal barriers, which treat the most vulnerable women and girls with disabilities, in more unequal ways than their counterparts.

In this context, it is imperative to note that perspectives of the Human Rights IACHR, tend to acknowledge the importance of the medical model of disability upon which health care institutions thrive, in States affected by armed conflict. Despite the importance of health care institutions, the IACHR appears to presuppose that State actors must ensure that the medical model used by medical institutions, could be complemented by approaches of the social model.

The aim of this presupposition might empower women with civil and political, as well as economic, social and cultural rights, as a means of using such rights to mitigate the denial of their independence. However, this seeks a solution to address

⁹⁰⁴ Ibid. Paragraph 120.

⁹⁰⁵ Ibid. Paragraph 120.

⁹⁰⁶ Ibid. Paragraphs 18-19.

⁹⁰⁷ Ibid. Paragraph 16.

⁹⁰⁸ Ibid. Paragraphs 16-18.

the problem of women being less protective towards other vulnerable women, such as women with disabilities, due to ignorance of the duties of post-conflict rehabilitation. In essence, post-conflict States must facilitate orthopaedics training and consider the importance of services associated such trainings, to alleviate the impacts of the disabling relationship between armed conflicts and disability, which characterises such States.⁹⁰⁹ By rendering orthopaedics services to provide comprehensive disability rehabilitation facilities to individuals, such as prosthesis, this improves the likelihood of post-conflict mobility for a child with disabilities. In the same way those services would enable post-conflict mobility of a woman with disabilities. The recommendation of the 2011 report, recognises the importance of medical services from such experts through health institutions.

Furthermore, the IACHR s' recommendations in its 2011 report, tend to deal with the problems of women in armed conflicts⁹¹⁰ as a distinct aspect from that of women with disabilities.⁹¹¹ This distinction is ironic for two reasons. Firstly, women with disabilities are part of the civilian population,⁹¹² and there is identified research from protagonists such as Cornelsen and organisations like the Human Rights Watch, which clarifies how the social model might play some role in considering women's roles as requiring special attention and protection.⁹¹³ Therefore, post-conflict disability rehabilitation is always a necessity for everyone impacted by disabilities such as mutilation and post-traumatic stress disorders (PTSD), amongst others.⁹¹⁴ Consequently, post-conflict duties to rehabilitate persons with disabilities using the individual model, ought to be universal, irrespective of the person's gender, during and after, the armed conflict.

⁹⁰⁹ L. Correa-Montoya and M. C. Castro-Martínez, 'Disability and Social inclusion in Colombia', Saldarriaga-Concha Foundation (FSC), Alternative Report to the Committee on the Rights of Persons with Disabilities. Saldarriaga-Concha Foundation Press. Bogotá D.C., (2016). Colombia. pg. 12.

⁹¹⁰ Ibid. Paragraphs 67-70.

⁹¹¹ Ibid. Paragraphs 62-66.

⁹¹² See, C. Kathleen, 'Doubly protected and doubly discriminated: The paradox of women with disabilities after Conflict', William & Mary Journal of Women and the Law, (2013) 19(105) pp. 120, 136.

⁹¹³ S. R. Barrig (ed.), 'As if we weren't humans: Discrimination against women with disabilities in Northern Uganda', (Human Rights Watch, 2010) 350 Fifth Avenue, 34th Floor Available at <https://www.hrw.org/sites/default/files/reports/uganda0810_brochure_low.pdf> (accessed/20 June/2016).

⁹¹⁴ J.M. Abi-Rached, 'Post-War Mental Health, Wealth, and Justice', Traumatology, (2009) 15(4), pp. 55-64.

6.3. State Reports on Human Rights and Models of Disability

State reports from Colombia to the Inter-American Human Rights Commission shall be mainly used for illustrating disability related issues likely to face most post-conflict States, because of the experience of armed conflict and its disabling environments.

In as far as the criteria for selecting Colombian state reports is concerned, it is vital to clarify that the choice of relevant States reports under this regional system, has been mainly based on meeting one or more of the following considerations;

Firstly, consideration that a State report relates to an Inter-American State that has addressed, or continues to address, problems of disability in a post-conflict/*jus post-bellum* context. Secondly, the Inter-American State in question was examined to ascertain if it was experiencing, or had experienced an armed conflict, and been impacted by its disabling environments. Armed conflicts lead to *jus post-bellum* settings, however, selecting the State reports that are pertinent for exploring models of disability worth using for enhancing protectiveness of disability related obligations for post-conflict State, was challenging. Nonetheless, the research also acknowledges that it might be beneficial in different circumstances, to explore the observations relating to the model of disability for post-conflict situations of other Inter-American States with disabling environments, similar to those of armed conflict situations. Examples of those environments shall include; coup d'état in Honduras in 2009,⁹¹⁵ and Venezuela periods of massacres among others.⁹¹⁶

6.3.1 The Inter-American RHRs and Colombian State Reports

In terms of the model of disability that the Inter-American system applies to Colombian reports, this can be traced back from the report of December 2013 entitled 'Truth, Justice and Reparation,' In this, both the IACHR and the court, reminded Colombia of its obligations under international humanitarian law (IHL), that

⁹¹⁵ Inter-American Commission on Human Rights (IACHR), *Annual Report of the Commission on Human Rights 2008*, 25/February/2009, OEA/Ser.L/V/II.134 Doc. 5, rev. 1. Paragraph 350. See also *Annual Report of the Commission on Human Rights*, 30/December/2009, OEA/Ser.L/V/II. Doc. 51 corr. 1, Paragraph 9.

⁹¹⁶ Inter-American Commission on Human Rights (IACHR), *Truth, Justice and Reparation - Report on the Situation of Human Rights in Colombia*, 31/December/2013, OEA/Ser.L/V/II. Doc.49/13. Paragraphs 8, 17.

the state must protect the civilian population under their jurisdiction, both generally and specifically.⁹¹⁷

In the 2013 report, the Commission addresses the issue of protecting persons with disabilities during the armed conflict in Colombia.⁹¹⁸ In Order 006 of 2009, the Constitutional Court of Colombia recognised the qualitative disparity and intensified impact that involuntary displacement had on this category of persons.⁹¹⁹

The court commences by applying concepts of the social model of disability through commenting on discriminative and marginalising inferences, created by various types of attitudinal, legal, and accessibility barriers that are attributable to ignorance, partiality, stigmatisation, as well as mistaken socially-constructed notions about disability.⁹²⁰ It is imperative to reiterate, that the court seems to depart from the position of many theorists who have questioned the application of disability duties, and their rights-based ideas are framed around the social model.⁹²¹ In particular, those proponents have misgivings on the inability of rights-based concepts to effectively deal with specific problems characterising features of disability in developing countries of the Global South. For example, the constitutional court underlined the fact that in situations of armed conflict, this population is at a higher risk of loss of life,⁹²² or faces a high likelihood of being victims of mistreatment, exploitation, belittling treatment or rejection.⁹²³

⁹¹⁷ OEA/Ser.L/V/II. Doc. 49/13, 'Inter-America Commission on Human Rights, *Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*', 31/December/2013. Available at <<http://www.oas.org/en/iachr/reports/pdfs/Colombia-Truth-Justice-Reparation.pdf>> (accessed/30August/2017). Paragraph 100. See also. The international Committee for Red Cross (ICRC) *'How law protects persons with disabilities in armed conflict published on 13/December/2017'*, Available at <<https://www.icrc.org/en/document/how-law-protects-persons-disabilities-armed-conflict>> (Acceded on 12/January/2018).

⁹¹⁸ Ibid .pg. 587.

⁹¹⁹ Constitutional Court, Order No. 006 of 2009 on the Protection of displaced disabled persons in the context of the unconstitutional State of affairs in Judgment T-025 of 2004), Paragraph II.2.5. See also. OEA/Ser.L/V/II. Doc. 49/13, 'Inter-America Commission on Human Rights: *Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*', 31 December 2013. Paragraph 587.

⁹²⁰ Constitutional Court, Order No. 006 of 2009, Paragraph I.3.1.

⁹²¹ T. Chataika and R. Lawthom, 'Lave and Wenger, Communities of Practice and Disability and Disability *in Disability and Social Theory: New Developments and Directions*, D. Goodley, B. Hughes and L. Davis (Eds.) (Palgrave Macmillan, 2012) pp. 233-251. See also T. Titchkasky and R. Michalko, 'The Body Has the Problem of Individuality: A Phenomenological Disability Studies Approach', *in Disability and Social Theory: New Developments and Directions*, D. Goodley, B. Hughes and L. Davis (Eds.) (Palgrave Macmillan, 2012) pp. 127-142

⁹²² OEA/Ser.L/V/II. Doc. 49/13, 'Inter-America Commission on Human Rights: *Truth, Justice and Reparation Fourth Report on Human Rights Situation in Colombia*', 31 December 2013. Paragraph 587.

⁹²³ Ibid. Paragraph 587.

The same court reminded Colombia, that persons with disabilities that had been displaced by the armed conflict, should be subjected to special protection under domestic law as a matter of Colombia's compliance with its disability related obligations.⁹²⁴ Bearing in mind the absence of a method that distinguishes disability, the court issued a sequence of specific orders aimed at alleviating this differentiated impact. Most importantly, the court emphasised that the guiding principle must be the social model, as established in the Convention on the Rights of Persons with Disabilities.⁹²⁵

Related to this is the 2006 Commission's report on Colombia, and models and approaches to disability. The rapporteur identified some of the characteristics typical of disability issues that are peculiar to settings of armed conflict-affected States during his visit to post-conflict Colombia.⁹²⁶ He noted that,⁹²⁷

"The information received during and the testimonies gathered in Bogotá, Valledupar and Quibdó reveal the physical and psychological consequences [...] on the victims. In addition to the trauma [...] it may expose women to [...] physical disability."⁹²⁸

Moving forward, the Commission confirmed the recommendations of the Pan-American Health Organization that had collaborated with a number of international agencies.⁹²⁹ These stakeholders of post-conflict reconstruction, described the various services required for Colombia's victims as follows:

"To provide integral, inter-disciplinary care. This includes medical and psychological care and support through support or self-help groups. Additionally, providers must also know about other services and resources available in their community, to be able to refer the survivor to services that are not provided at the health centre."⁹³⁰

It is apparent that the medical and individual models of disability are evident from the accounts of stakeholders in relation to the post-conflict reconstruction process of Colombia. These models are demonstrable by applying medical care and

⁹²⁴ Constitutional Court, Order No. 006 of 2009, Paragraph I.5.

⁹²⁵ Constitutional Court, Order No. 006 of 2009, Paragraph II.2.7. See also, OEA/Ser.L/V/II. Doc. 49/13, Paragraph 587.

⁹²⁶ OEA/Ser.L/V/II. Doc. 49/13, Paragraph 587.

⁹²⁷ OEA/Ser.L/V/II. Doc. 67, OAS, Inter-American Commission on Human Rights, '*Violence and Discrimination of against Women in the Armed Conflict in Colombia*', 18 October 2006, Paragraph 58.

⁹²⁸ Ibid. Paragraph 58. See also. Case of the *Ituango Massacres vs Colombia*, Series C No. 148, Inter-American Court of Human Rights, and Judgement of 1/July/2006. Paragraph 61.

⁹²⁹ Ibid. Paragraph 61.

⁹³⁰ Ibid. Paragraph 61.

psychological support to the survivors. It must be conceded, that a comprehensive review of those survivors would anticipate and include distinct support measures for survivors with disabilities, who had suffered from these disabilities even before the occurrence of an armed conflict (like 'Mr/Mrs C'). Bearing in mind that such measures might be different from those required by survivors with war related disabilities that are represented by Colombians in category A of Table 5 below.

Likely categories of Individuals in State Parties affected by situations of armed conflicts.	(Stage 3) Before armed conflict in Colombia. Armed conflict. Since Birth/childhood Model underpinning obligations relating to disability in Peacetimes.	(Stage 2) During armed Conflict Colombia IHL (Medical model)	(Stage 3) After the Colombian armed Conflict in post-conflict/ "jus post-bellum" Model underpinning obligations relating to disability in Post-Conflict times.	Entitlement to disability rights (before and after the Armed Conflict in Colombia) assuming State was already Party to relevant instruments
'Mr/Miss/Mrs A'	(Stage 1) No disability Identity	(Stage 2) Permanent or long-term disability due to antipersonnel mines (APM), amputated, suffered Traumatic Stress Disorder (PTSD), and permanent sight loss, among other impairments.	(Stage 3) A person with disability - (Disabled) Disabled survivor -Disabled victim	<i>Before conflict:</i> NO <i>After conflict:</i> YES -IACHPR Article 5(1) and Article 23(2) - Inter-American Disability Protocol (1999) North American minority and relational Approach Social model Models
'Mr/Miss/Mrs B'	(Stage 1) No disability Identity	(Stage 2) Not disabled during the armed conflict	(Stage 3) A person without disability	<i>Before conflict:</i> NO <i>After conflict:</i> NO
'Mr/Miss/Mrs C'	Has a disability Identity (Stage 1)	More vulnerable to abuse, hardships during displacement (Stage 2)	A person with disability Disabled survivor (Stage 3)	<i>Before conflict:</i> YES <i>After conflict:</i> YES

Table 5: Mapping the pattern of the armed-conflict-disability relationship and why its impacts can inform the model/approach through which the Inter-American Commission must frame/contextualise disability related duties of Post-Conflict States.

 - The social model is prioritised for understanding disability and framing disability related obligations of peaceful Colombia to persons with disabilities.

 - The Medical model is often applied to understand disability and frame disability related obligations owed to persons with disabilities by Colombia during and after armed conflict.

The table 5 details further illustrations of that dichotomy. It is of importance to emphasize that the OAS is more likely to rely on the inward-looking approach of the

medical or individual models of disability. Particularly, in terms of dealing with concerns of persons with disabilities and characteristics of disability that the State of Colombia experiences across the three stage cycle (before, during and after armed conflicts). It must be noted that during the armed conflict and post conflict phases of the cycle Colombia faces a considerable number of persons in the represented by category A.

In the subsequent discussions, the voices of victims (Mr/Miss/Mrs. A in table 5) could justify why the conceptualisation of disability through the medical and individual models, are still maintained at least within post-conflict and armed conflict affected States of this RHRS such as Colombia:

“The device that exploded in my backyard hurt my knee, my hand and my face. People are afraid of going out in that area because I ran into something that was close to my house. Just think what it is like in the fields.”⁹³¹ (Raúl, Norte de Santander)

The high prevalence of the above problems shows that the right to mobility associated with the category of Mr/Miss/Mrs. A, increases the significance of prioritising duties owed to person with disabilities related to their post-conflict disability rehabilitation. Such a duty is framed upon applying individual and medical models, with their inward-looking approach, to deal with disability.⁹³²

In Colombia witnesses also expressed concerns that,

“It’s very hard to live in panic because you don’t know when they’re coming (the armed groups) or if they leave something around.” Eduardo, Cauca.⁹³³

In view of this testimonial, in the post conflict phase of the three-stage cycle, disability related obligations must have a stronger inclination towards the approach the medical model rather than that of the social model. Therefore, the role of those models, and their inward-looking approach, is still evident in the response to the impacts of armed conflict-related circumstances, as experienced by post-conflict States of the Inter-American Regional System.

⁹³¹ International Committee of the Red Cross (ICRC), *Colombia Report: Results and perspectives, Humanitarian Challenges, March, 2017*, Available at <<https://www.icrc.org/en/document/humanitarian-challenges-2017-icrc-colombia-report>> (accessed 07/September/2017) pg. 31.

⁹³² CRPD Article 16(4), 26 (1) (a) in conjunction with Article 11.

⁹³³ Ibid. pg. 31.

The presence of several States undergoing armed conflicts in this RHRS highlights the relevance of models that conceptualise the framing of disability related obligations through the inward-looking approach of the medical model. It must be borne in mind that there is a clause allowing States to derogate from their obligations enshrined in the Inter-American Convention.⁹³⁴ This is another reason for briefly examining the conceptualisation of disability by IHL, in relation to the armed conflict-affected States of the OAS, as has been demonstrated by the compelling evidence of several disability rehabilitation centres of the ICRC in Colombia.⁹³⁵ Perhaps the prevalence of armed conflict related disabilities makes the obligations to affected persons, become as important as those obligations that are contained in the regional treaty.⁹³⁶

For the purposes of this study, it suffices to re-state that most recent UN reports have noticed that disability perspectives under IHL are built upon the underpinnings of the medical model of disability.⁹³⁷ However, modern scholars like Berghs, have innovatively associated the obligations of IHL with the idea of medical humanitarianism.⁹³⁸ In summary, it is arguable that as long as the Inter-American RHRS continues to rely on IHL, there is only a remote likelihood that its conceptualisation of disability would encourage complementarity in disability related obligations, framed on both the medical and social model.

6.4. Colombia-Post-Conflict State of the RHRS and Model of Disability

⁹³⁴ Article 27(1) of the American Convention on Human Rights, See also. AS doc. OEA/Ser.K/XVI/1.2, Conferencia Especializada Interamericana sobre Derechos Humanos, San José, Costa Rica, 22/November/1969, Actas y Documentos, OAS, Washington D.C., p. 22. See also. Article 15(1) European Convention for the Protection of Human Rights and Fundamental Freedoms, 213, U.N.T.S. 221, entered into force 4 November 1950.

⁹³⁵ International Committee of the Red Cross (ICRC), *Colombia Report: Results and perspectives, Humanitarian Challenges, March, 2017*, Available at <<https://www.icrc.org/en/document/humanitarian-challenges-2017-icrc-colombia-report>> (accessed 07/September/2017).

⁹³⁶ I. B. Portero and T. G. B. Enríquez, 'Are Persons with Disabilities included in the Colombian Peace process?', *Disability & Society* (2018) 33 (3) pp. 487-491.

⁹³⁷ UN Human Rights Council, *Thematic study on the rights of persons with disabilities under Article 11 of the Convention on the Rights of Persons with Disabilities, on situations of risk and humanitarian emergencies*, 30/November/2015, A/HRC/31/30. Paragraph 16.

⁹³⁸ M. Berghs, 'Radicalising 'disability' in conflict and post-conflict situations', *Disability & Society*, (2015) 30 (5) pp. 743–758, at 744. See also. M. Berghs, 'Disability and displacement in times of conflict: Rethinking migration, flows and boundaries', *Disability and the Global South*, (2015) 2 (1) pp. 442-459.

The subsequent section shall commence by placing aspects of the armed conflict into context. Thereafter the section proceeds to explore the model of disability that the Inter-American regional system has applied to State reports submitted by Colombia when illustrating its conceptualisation of disability related obligations or disabling environments. Such disabling environments are exclusive to State Parties of the inter-American RHRS, such as Colombia, that are experiencing either the armed conflict or post-conflict periods, in the three-stage cycle.

To that end, the internal armed conflict that affected Colombia for more than fifty years led to several consequences for persons with disabilities, whilst resulting in an increase in the number of persons with disabilities in Colombia.⁹³⁹ The increasing number of armed conflict-related disabilities can be demonstrated through massacres, which reveal the blatant violation of human rights standards.⁹⁴⁰

It is imperative to note that the State has acknowledged the disproportionate impact that the violence had on persons with disabilities, combined with the heightened risks of leading to more persons with disabilities.⁹⁴¹ The constitutional court is clearly taking a proactive role in using social model ideas, and the outward-looking approach, as a means of extending concepts of post-conflict justice to persons with disabilities and, therefore, forcing the government of Colombia to recognise aspects of disability inclusion in post-conflict justice.⁹⁴² Nevertheless, there is still some room for Colombia to strengthen institutional responsiveness to persons with disabilities, as post-conflict victims. This includes responding to post-conflict disabilities through the medical and individual models, which underpin most disability related duties of post-conflict States.⁹⁴³

⁹³⁹ X. C. M. Balanta, 'Victims and Reparations: Limitations and Challenges Colombia Victims Law (Act 1448 of 2011)', *International Journal of Humanities and Social Science* (2014) 4 (1) pg. 152, 164. See also. International Committee of the Red Cross (ICRC), 'Colombia Report: Results and perspectives, Humanitarian Challenges, March, 2017', Available at <<https://www.icrc.org/en/document/humanitarian-challenges-2017-icrc-colombia-report>> (accessed 07/September/2017).

⁹⁴⁰ *Ituango Massacres v. Colombia*, Series C No. 148, Inter-American Court of Human Rights, and Judgement of 1 July 2006. Para 125 (35). See also. *Mapiripán Massacre v. Colombia*, Judgment of Inter-American Court of Human Rights, Judgment of September 15, 2005, (Merits, Reparations, and Costs).

⁹⁴¹ I. B. Portero and T. G. B. Enríquez, 'Are Persons with Disabilities included in the Colombian Peace process?', *Disability* (2018) 33 (3) pp. 487-491.

⁹⁴² *Ibid.* pg. 487-491

⁹⁴³ A. H. Eide, 'Community-based Rehabilitation in Post-conflict and Emergency Situations', in *Trauma Rehabilitation after War and Conflict: Community and Individual Perspectives*, E. Martz (ed.) (Springer, 2010) pp. 97-110.

The need to prioritise access to comprehensive rehabilitation measures for victims of the conflict,⁹⁴⁴ as required by the CRPD, must be emphasised.⁹⁴⁵ In conjunction with the ministries of Health, Education, and Work, the Unit for Attention and Reparation of Victims (UARV) should coordinate efforts to provide victims with rehabilitation across all components, as suggested in the post-conflict alternative report of the Saldarriaga-Concha Foundation (FSC).⁹⁴⁶

This report highlights the significance of the medical and individual models as vital in post-conflict Colombia. It underlines the above characteristic, by pointing out that many individuals in post-conflict Colombia became persons with disabilities as a consequence of formerly residing in locations that were affected by the internal conflict.⁹⁴⁷ The armed conflict is known for its disabling surroundings, such as accidents associated with antipersonnel mines (APM), unexploded ordnance (UXO) or improvised explosive devices (IEDs).⁹⁴⁸

According to official figures, most victims of the armed conflict's disabling acts had subsequently acquired a disability⁹⁴⁹ (represented by "Mr/Miss/Mrs A" in table 5). Many of those victims were attended to through the Presidential Program for Comprehensive Action against Antipersonnel Mines (PAICMA, currently DAICMA).⁹⁵⁰ Colombia's post-conflict rehabilitation services are criticised for mainly focusing on functional recovery which emphasis the inward looking approach of the medical model.⁹⁵¹ The contributions of the social model, in terms of fostering the social integration of persons with disabilities in post-conflict Colombia, are overlooked.⁹⁵² Therefore, more efforts are required to foster complementarity between the medical and social models when this RHRS frames disability related

⁹⁴⁴ I. B. Portero and T. G. B. Enríquez, 'Are Persons with Disabilities included in the Colombian Peace process?', *Disability & Society* (2018) 33 (3) pp. 487-491 .

⁹⁴⁵ CRPD Article 26.

⁹⁴⁶ L. Correa-Montoya and M. C. Castro-Martínez, 'Disability and Social inclusion in Colombia', Saldarriaga-Concha Foundation (FSC), *Alternative Report to the Committee on the Rights of Persons with Disabilities*. Saldarriaga-Concha Foundation Press. Bogotá D.C., (2016). Colombia. pg. 12.

⁹⁴⁷ *Ibid.* pg. 83.

⁹⁴⁸ *Ibid.* pg. 83.

⁹⁴⁹ *Ibid.* pg. 83.

⁹⁵⁰ *Ibid.* pg. 83.

⁹⁵¹ *Ibid.* pg. 83.

⁹⁵² *Ibid.* pg. 83.

obligations of its States, as they experience the varied trends of the three-stage cycle.

Additionally, the FSC recommended in its report, that the post-conflict Colombian government should ensure distributive equity when executing its disability related obligations in the allocation of rehabilitation facilities. In the *jus post-bellum* period, the quality of rehabilitation services accessed by affected populations of civilians with disabilities, seemed considerably lower than the quality of the same services rendered to victims of the armed conflict's disabling environments, who were former members of the armed forces and subsequently identified as veterans with disabilities in the *jus post-bellum* period.⁹⁵³

Furthermore, The Commission on Human Rights also alludes to the inward-looking approach of the medical/individual models in suggesting disability recommendations to post-conflict Colombia.⁹⁵⁴ In that regard, post-conflict Colombia is urged to provide for mental needs and health care, that are necessitated by the consequences of the armed conflict.⁹⁵⁵ This view has also been supported by post conflict scholars on Colombia, such as Balanta⁹⁵⁶ He asserts that the State should deepen its analysis of the situation⁹⁵⁷ by enhancing the level of attention rendered to victims of mental disabilities suffering from traumatic stress disorders which requiring medical intervention, in the aftermath of experiencing armed conflict.⁹⁵⁸

The Individual model is applied in the domestic law of post-conflict Colombia. This is exemplified by its post-conflict legislation on reparations for victims such as the Victims Law Act (VLA) of 2011. According to the VLA of 2011:

“Victims are entitled to be [treated] properly, with a differential approach, and in a transformative and effective manner, for the damage they have suffered, including restitution, compensation, rehabilitation, satisfaction and guarantees

⁹⁵³ Ibid. pg. 83.

⁹⁵⁴ OEA/Ser.L/V/II. Doc. 49/13, 'Inter-America Commission on Human Rights, *Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*', 31/December/2013. Available at < <http://www.oas.org/en/iachr/reports/pdfs/Colombia-Truth-Justice-Reparation.pdf> > (accessed/30August/2017). Paragraphs 101 and 126.

⁹⁵⁵ Ibid. Paragraphs 101 and 126.

⁹⁵⁶ X. C. M. Balanta, 'Victims and Reparations: Limitations and Challenges Colombia Victims Law (Act 1448 of 2011)', *International Journal of Humanities and Social Science* (2014) 4 (1) pp. 152, 164.

⁹⁵⁷ Ibid. pg. 152, 164.

⁹⁵⁸ Ibid. pg. 152, 164.

of non-repetition, in its individual, collective, material, moral, and symbolic dimensions.”⁹⁵⁹

The VLA depicts the individual model through the special attention to the rehabilitation of individual Colombians with post conflict disabilities. Thus, providing a classic example of how the domestic law of a post-conflict State also tends towards models with the inward-looking approach to disability. It is imperative to note that UN proposals, which recognised rehabilitation as constituting an essential component of post-conflict remedial measures, played a role in advancing the implementation of the Act.⁹⁶⁰

Clearly, the approach of rehabilitating individuals implies a similarity to the African regional system, in aspects of disability for some State Parties of the IACHR, such as Colombia. The common issue being the presence of an armed problem, in spite of the fact that the State party belonging to a different RHRS. In this context, the implications of the armed conflict’s disabling consequences, might explain why Colombia incorporates rehabilitation in its VLA of 2011.

In the context of post-conflict Colombia, the three-stage cycle has indicated that a likelihood for a causal relationship occurs between the prevalence of war-related disabilities, and the existence of armed conflicts.⁹⁶¹ Thus, this research advocates reconsideration of an amalgam of two or more models, rather than universalising the social rights-based model of disability in post-conflict States of the Global South.⁹⁶²

6.5. Final Reflections on the Inter-American Human Rights systems.

In terms of the literature examined, a significant number of proponents interested in recent developments in disability issues across the Inter-American RHRS, reveals

⁹⁵⁹ Ibid.

⁹⁶⁰ United Nations, ‘Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law’ (Adopted and proclaimed by General Assembly resolution 60/147 of 16/December/2005), Article 18.

⁹⁶¹ Human Rights Studies Series, Number 6. Centre for Human Rights: Geneva (United Nations publication, Sales No. E.92.XIV.4).

⁹⁶² H. Meekosha, ‘Contextualizing Disability: Developing Southern/Global Theory’, Keynote paper given to 4th Biennial Disability Studies Conference at Lancaster University, UK, 4th/September/2008. pg. 13.

a growing influence by the American States of the Global North, in shaping models of disability emulated by other OAS Members in this RHRS.

This position presents a contrary stand to that of different scholars in critical disability studies, due to of the advantages of characterising disability-based upon the Global-North and the Global-South divide, being overlooked.⁹⁶³ That same influence accounts for the presence of an overarching component of using laws and rights to eliminate discrimination against persons with disabilities. Several provisions of the Inter-American Disability Protocol (IADP) have similar objectives and legal context to that of the ADA of 1990. The social model in both contexts is underpinned by ideas of the North American Minority approach, and relational approach, explained in Chapter two of this thesis. These approaches emerged as counter measures to problems institutionalising disabled people.

However, there some exceptional occasions when the Inter-American Court, the IACHR and State reporting practices, have maintained the conceptualisation of disability-based on ideas of the medical and individual models of disability. Noted examples of these exceptional occasions include:

Interpreting and applying the interdependent and complementary nature of the practical enabling rights for the ultimate enjoyment of economic, social and cultural as well as civil and political rights. For example; the rendering of facilities for rehabilitating the disabled individual to enable mobility and attain some independence. There is evidence of applying the inward-looking approach of the medical and individual models in these cases.

The conceptualisation of some legal evidence that the Inter-American Court might need to grant reparations and award compensation to injured victims has a tendency to rely on underpinnings of the medical and individual models. For example, during the trials grievous bodily harm of injured and disabled victims, have been portrayed as admissible evidence for proving that the surviving victims were entitled to compensation for the permanent damages caused during attacks. It might be asserted that during such trials, the medical and individual models of disability

⁹⁶³ D. Goodley and L. Swatz, 'Place of Disability', in *Disability in the Global South: The Critical Handbook*, S. Grech and K. Soldatic (eds.) (Springer International Publishing, 2016) pp. 69-84. See also. M. Berghe and N. Kabbara, Disabled People in Conflicts and Wars. In *Disability in the Global South: the Critical Handbook*. S. Grech and K. Soldatic, (eds.) (London, Springer, 2016) pp. 269-285.

could play a positive role in enabling victims to present evidence of their disabilities, which dispenses with the burden of proof when seeking redress from the regional Commission and court.⁹⁶⁴ It has been noted that in the context of the disabled victim, redress is often in the form of compassion to the injured party.

Some of the cases forwarded to the Commission and court, resulted from the consequences of using the ideas of the individual and medical models to confine persons with disabilities in institutions, such as the US bombardment of Richmond mental care home and the Ximenes case.

Finally, evidence of the medical and individual models remains a strong influence on the conceptualisation of disability matters in post-conflict States of the Inter-American Regional Human Rights System. For example, reports and recommendations concerning post-conflict States such as Colombia,⁹⁶⁵ and Nicaragua,⁹⁶⁶ indicated a strong reliance on the medical and individual models of disability. The reliance on these models tends to be predominant in relation to rehabilitating individuals who are disabled by armed conflicts. This last aspect accounts for an array of similarities, as the presence of armed conflicts is a common factor which influences the models and approaches to disability in post-conflict OAS States, as well as post-conflict African States, as examined in chapter 4.

There is a likelihood that the presence of similarities in the disabling environments of post-conflict States, might account for the growing scholarly analysis among critical disability studies which engage with those similarities based on the themes of the Global-North and the Global-South divide.⁹⁶⁷ The

⁹⁶⁴ *Ituango Massacres vs Colombia*, Series C No. 148, Inter-American Court of Human Rights (IACrHR), 1/July/2006. See also. *Dos Erres Massacre v. Guatemala*, Preliminary Objection, Merits, Reparations and Costs. Judgment of 24/November/2009. Series C No. 211, Paragraphs 140 and 141. See also. *Ximenes-Lopes v. Brazil*, Judgment of Inter-American Court of Human Rights, 4/July/2006 (Merits, Reparations and Costs). See also. *Ximenes-Lopes v. Brazil*, Judgment of Inter-American Court of Human Rights, 30/November/2005. See also. *Disabled Peoples' International v. United States*, Case 9213 (United States), Inter-American Commission on Human Rights OAS Doc. OEA/ser.L.IV/II.67, doc. 6 (1986).

⁹⁶⁵ OEA/Ser.L/V/II. Doc. 67, Organization of American States, Inter-American Commission on Human Rights, '*Violence and Discrimination of Women against Women in the armed Conflict in Colombia*. 18/October/2006. See also. Inter-American Commission on Human Rights (IACHR), '*Truth, Justice and Reparation - Report on the Situation of Human Rights in Colombia*', 31/December/2013, OEA/Ser.L/V/II. Doc.49/13

⁹⁶⁶ OEA/Ser.L/V/II.53, Doc. 25, '*Report on the Situation of Human Rights in the Republic of Nicaragua*.

⁹⁶⁷ S. Grech, 'Disability and the Majority World: A Neo-colonial Approach', in *Disability and Social Theory: New Developments and Directions*, D. Goodley, B. Hughes and L. Davis (Eds.) (Palgrave Macmillan, 2012) pp. 52-69 at pg. 52. See also. Grech, *Disability and Poverty in the Global South: Renegotiating Development in Guatemala*, (Palgrave Macmillan, 2015) pp. 20-30. See also. S. Grech, 'Disability and Development: Critical

characteristics of those problems, has enabled development of arguments that seek to contest the North American States, like the US, from imposing their post-conflict political perspectives⁹⁶⁸ and models of disability, as solutions to post-conflict disability problems of the armed conflict impacted OAS.⁹⁶⁹ Such a perspective is necessary to make adaptations to these models to make them appropriate to characterise disability in developing States.

The problematic nature of the Inter-American regional system might be partly attributable to its predisposition to apply the social model during the armed conflict in Grenada, to condemn armed attacks against civilians with disabilities and their properties. In other cases, the medical model has underpinned approaches of disabling factors by portraying war-related disabilities as admissible evidence for securing compensation by armed conflict victims. The same RHRs has a tendency to afford post-conflict redress to the consequences of disabling injuries inflicted by massacres that occurred during armed conflicts. There is limited certainty as to whether disability related obligations of a State, such as Colombia, in the post-conflict phase of the three-stage cycle, should have special disability related obligations to address vulnerability of persons with disabilities, or respond to consequences of war-related disabilities.

Connections, Gaps and Contradictions', in *Disability in the Global South: the Critical Handbook*, S. Grech and K. Soldatic (eds.) (Springer, 2016) pp. 3-19.

⁹⁶⁸ UN Doc. S/2004/616 (23/August/2003), 'The Role of law and transitional Justice in Conflict and post-conflict Societies', Report by the secretariat. Paragraph 10. N. Bhuta, 'Democratisation, State Building and Politics and technology', in *the Role of International Law in Rebuilding Societies after Conflict: Great Expectations*, B. Bowden, H. Charlesworth and J. Farrall (Eds.) (Cambridge University Press, 2012) pp. 38-63.

⁹⁶⁹ Ibid. Paragraphs 9-10. See also. Dobbins, S. G Jones and B. Cole De Grass, 'The Beginners Guide to Nation Building (Santo Monica: Rand Corporation, 2007).

RECOMMENDATIONS CONCLUSIONS AND LESSONS OF THE STUDY

Chapter 7

7.0. Introduction

The conclusion in this chapter this should be understood as suggestive and far from being conclusive of the most suitable model for disability that the UNHRTBs and RHRs should apply in advancing the protection of persons with disabilities before, during and after situations of armed conflict.

7.0.1. The Question of Protection During or After Times of Armed Conflict

It is fairly unclear from the limited sources, the examined General comments and case studies from the two regional systems whether the protection rendered to persons with disabilities during, and after times of armed conflict is compromised by the model of disability applied when guiding States. It seems as if different models of disability may tend to drive UNHRTBs and RHRs, to focus their attention on parallel conceptualisations of disabling factors, thereby making those disabling factors the basis upon which States and non-State actors understand concepts of disability.

The study concedes with observations from scholars such as In post-conflict settings, the importance of strengthening the right to rehabilitation is, in many respects, suitable for advancing the ICRC's physical disability rehabilitation programmes (as illustrated in the previous chapter of this thesis on post-conflict States). It is imperative to reiterate that in some contexts the model of disability underpinning disability rights calls for application of a hybrid-based paradigm that comprises of a combination of both models with an inward-looking approach and models with an outward-looking approach.

It is unlikely that simply rehabilitating the individual in support of their mobility would be effective without also applying perspectives from the inward-looking approach that the individual or medical models tend to adopt, as expounded in Chapter Two.

This research has also noted the possibility for models underpinning the perspectives of the UNHRTB and RHRs to cause international discrepancies in the framing of protective obligations rendered to persons with disabilities. Particularly, in relation to the *jus post-bellum* contexts during which UNHRTBs and RHRs are

unclear on the appropriate models for conceptualising the framing of disability related obligations of post conflict States. Acknowledging that there is a relationship between derogation from rights-based concepts with the medical and social models, would make these models frame and apply appropriate human rights obligations in ways that enhance the protection of persons with disabilities. The presence of armed conflicts should be given more attention as situations that must necessitate the rethinking of special obligations of States, and non-State actors, engaging in armed conflicts. Additionally, how those obligations should deal with disability-related impacts as change occurs, as States progress to the post-conflict stage. For example, humanitarian aid should be reviewed by State and non-State actors to ensure that special considerations are afforded to women and girls with war-related disabilities. That is to say, human rights institutions should call upon post-conflict States to clarify, in their respective periodic reports, what measures they are undertaking to incorporate medical and individual models based on ideas such as the duty to facilitate and coordinate post-conflict rehabilitation of individuals with disability.

Thus, UNHRTBs and RHRs should consider the medical and individual models as inevitable in shaping a disability-based understanding of the *jus post-bellum* obligations that post-conflict States should be rendering to persons with disabilities. This shall assist relevant institutions in using distinct models of disability as a means of acknowledging that the presence, and absence, of an armed conflict is a factor that must be taken into account while determining disability related obligations of States. The armed conflict as a possible determinant in shaping special disability related obligations, should be justified by the disparities in vulnerability of persons with disabilities to cases of violence in the presence and absence of armed conflicts. Preferably, if those duties are to address the disabling impact and implications of the *jus ad bellum/jus in bello* and *jus post-bellum* paradigm, there will be a need for special obligations with considerations of the heightened threshold of risks posed to persons with disabilities and readdress to related problems

7.1. Lessons for UN Human Rights Treaty Bodies and Models of Disability

Bearing in mind the criticisms of the different models of disability contained in Chapter Two of this thesis, it is highly unlikely that there is a model of disability

whose approach to disability would be universally suitable in guiding post conflict States as those of the medical model and its inward-looking approach to disability-related obligations. This study has demonstrated that UNHRTBs should reconsider the reliability and suitability of disability-related obligations based upon the social model and its outward disability looking approach in addressing problems associated with the disabling environments of post-armed conflict States before, during and situations of armed conflict. This observation also contests a growing tendency for UNHRTBs to conduct their roles in ways that are suggestive of the social model's rights-based ideas of the CRPD and must represent a universal model worth promoting in the evolution of international disability law. However, the varied problems of persons with disabilities, especially if contextualised before, during, and after situations of armed conflict, exposes the inadequacies relying too heavily on rights-based ideas of the social model for addressing problems of persons with disabilities. Accordingly, other UNHRTBs need to perceive the CRPD as a more useful human rights instrument to direct the most prioritised model of disability for conceptualising rights-based ideas for disability related obligations in peacetime. However, UNHRTBs must learn some attributes of the medical model from international humanitarian law, and the ICRC must be the starting point to understand models of disability that must underpin rights-based obligations of States during, and post armed conflicts.

The above position recognises that the CRPD is like any other international instrument, with its own limitations that impede its suitability to protect persons with disabilities in States undergoing armed conflicts, as well as post-conflict States. There is a likelihood that the process of imitating rights-based approaches of the social model might extend the limitations of the CRPD to various UNHRTBs. For example, conceptualising obligations owed to persons with disabilities based on the problems of more developed WENA States, might lead to overlooking the localised or regionalised armed conflict-related characteristics and problems of disability. Such characteristics are also more particular to a number of armed conflict-affected States in the Global South, thus impeding the development of international disability law through models or approaches to disability that are more appropriate to the disabling experiences that characterise the paradigm of TWAIL.

This study has also noticed that the paradigm of TWAIL in relation to experiences of disability, has been more identifiable through approaches and models of disability that are applied by RHRs than by those of the UN. Regional regimes tend to understand the model of disability's localised and regionalised problems, such as those attributed to armed conflicts as man-made situations that cause and impact persons with disabilities, as demonstrated in Chapters 5 and 6 (part four of the thesis). An example noted in Chapter 5, was that the draft African Disability Protocol seems clearer than the CRPD in acknowledging the existence of State parties with post-conflict disability concerns, and it stipulates the special obligations that those post-conflict States should consider. The application of the medical model of rehabilitating persons with disabilities seems apparent from Reports which post conflict African (post conflict Northern Uganda) and Inter-American States (post conflict Colombia) have submitted to their respective RHRs. The same model medical is evident from reports of the ICRC concerning its physical rehabilitation programme in post-conflict States.⁹⁷⁰ States at the armed conflict phase of the cycle have also clearly benefited from the rehabilitation programme that is characterised by framing protective undertaking owed to persons with disabilities based on medical model.⁹⁷¹ Those *jus post-bellum* armed conflict characteristics of disability seem irreconcilable with underpinnings of disability in mainstream debates which may have developed based on the influences of the social care centred on understanding of disabling environments in WENA States. Those WENA States are also the most vocal architects of crafting models underpinning the institutional understanding of environments of disability, and disability related obligations as often conceived representations of UNHRTBs.

In some cases, the regional human rights institutions have maintained the rights-based ideas of the medical and individual models as the fundamental basis for framing disability related obligations after situations of armed conflict. This was

⁹⁷⁰ International Committee for the Red Cross, *Physical Rehabilitation Programme Annual Report 2013 of the International Committee of the Red Cross*, Geneva, Switzerland, pg. 8.

⁹⁷¹ International Committee of the Red Cross *Physical Rehabilitation Programme Annual Report 2014*. See also *Physical Rehabilitation Programme Annual Report 2013* and *ICRC Humanity in Action Annual Review 2016*, Geneva, Switzerland. See also. HQ/PEC/ERM/SCT/2015.9/PHRA, from the, *'Humanitarian Crisis in Libya Public Health Risk Assessment and Interventions'*, (WHO, 2015) pp. 12, 15. See also. International Committee of the Red Cross, *'Humanity in Action' Annual Review 2016*, Geneva, Switzerland. pp. 1-19.

identified in Chapter Five, where the African Disability Protocol enshrines an obligation that applies rights-based ideas of a medical model for specifically importing a disability related post conflict rehabilitation obligation. The readiness to vividly curve out specific disability related obligations of States in the aftermath of armed conflict reflects an important feature that must be developed using TWAIL scholars to ensure that obligations of international cooperation and international assistance apply compatible models of disability for enhancing the protection of persons with disabilities across the three stage cycle. This is also vital in developing obligations that would improve the protection that Global South States.

7.1.1. The Significance and Concluding remarks

In recent times, the understanding of disability and aspects of disabled related rights-based ideas, reflect the social model's outward-looking approach which has dominated the conversation on disability in most treaty bodies. The growth in the social model overshadows merits of the inward-looking approaches of the medical and individual models. The trend of emphasising the outward-looking approach of the social model is also problematic considering that several Human Rights Treaties like the CRPD, CEDAW and CRC have States parties that are undergoing, or have undergone, situations of armed conflict. After experiencing the disabling impacts of armed conflict environments, States are more likely to benefit considerably from approaches of the medical and individual models of disability in post-conflict situations.

The influence of disability movements from WENA States in framing the contemporary trends of international disability law, could account for less attention being afforded to the approach of the medical model as a globally desirable model of disability (as explained in Chapter Two of this thesis). The best interests and concerns of persons with disabilities from WENA States have influenced international disability movements hence making UNHRTBs such as the HRC, CESCR and Committees for specific groups prioritise agendas of those individuals than those of persons with disabilities from the developing regions. The occurrence of armed conflicts and their aftermath period is a typical example of environments likely to characterise one key attribute of disabilities in developing States of the Global-South. This is less of a leading characteristic of disabilities and experiences of disability in the majority of the largely peaceful WENA States. This point is derived from Chapter

Three, where General Comment No.3 of the CESCR was used to demonstrate how TWAIL might be a starting point for rethinking models of disability upon which the affected States should conceive the obligations to persons with disabilities before, during and after situations of armed conflicts.

The strong reliance of the CPRD on rights-based underpinnings of the social model and, particularly, in most of its obligations, has attracted critics who question the effectiveness and adequacy of this UNHRTB in advancing the protection of person with disabilities within post-conflict settings.⁹⁷² This study has used the disabling experiences in post-conflict States to demonstrate why the above critics have a valid argument in casting doubts on the suitability of the CRPD in addressing disability-related problems that arise in the context of post-conflict States.

It must be borne in mind that this study acknowledges the difficulties of what criteria can be used to determine, with any certainty, the legal standing of a State: from being considered as undergoing peacetime, the beginning of an armed conflict period, the climax of the armed conflict and commencement of post-conflict and the eventual return to peacetime of a stable state, after its reconstruction, rehabilitation and reparations. For example, it might be unclear where to place territories with prolonged disputed armed conflicts especially of cross border nature. Similarly, regions undergoing foreign occupation might be harder to fit precisely in the arrangement of models for framing disability related obligations during the three-stage cycle.

There should be some flexibility and complementarity in the models of disability underpinning the approaches of the CPRD. Considering that the models of disability that inform the approaches of the CPRD might be shaping international disability law by influencing models of disability underpinning other UNHRTBs, then perhaps flexibility and complementarity in models of disability could enable the evolution of international disability law more relevant to post-conflict States through engaging with concerns of persons with disabilities in such States. This is especially the case with rights-based ideas related to individuals disabled during,

⁹⁷² K. K. Nagata, 'Disability and Development: Is the Rights Model of Disability Valid in the Arab Region? An Evidence Based Field Survey in Lebanon and Jordan', *Asia Pacific Disability Rehabilitation Journal* (2008) 19 (1) pg. 60, 78. See also. R. Habasch, 'Is the Rights Model of Disability Valid in Post-conflict Lebanon? A Participatory Pilot Survey', *Journal of Palestine Studies* (1997) 27 (1) pg. 126,135.

and after armed conflict. Arguably, rights-based obligations, such as those related to rehabilitation rights under the CRPD, can still be suitable as demonstrated in part three and part four of this thesis.

This observation is also a call to RHRs to be more selective in embracing the emulation of recommendations from UNHRTBs. Simply because by emulating such recommendations, the RHRs might tend to overlook disability during, and after situations of armed conflicts by applying the same models of disability for conceptualising the protection of persons with disabilities, as those mainly used in peaceful States.

Additionally, given that some of those second-generation rights that the social model underlies are subject to derogation during situations of armed conflict, this makes the credibility of these rights fairly weak in some stages of the three-phase cycle. This study notes that there is little justification as to why a model of disability, underpinning a single specialised UNHRTB, such as the CRPD, is regarded as worthwhile emulating, especially those associated with non-derogable rights.

Moving forward, this research asserts that applying human rights concepts in regional systems with post-conflict states, the medical and individual models would render better protection, through guaranteeing the right to rehabilitation and compensation for persons with disabilities, thus including reparations in post-conflict remedial measures. Therefore, the above models can make international disability law more efficient in affording legal safeguards to individuals disabled before, during, or after situations of armed conflict.

7.1.2. [Limitations of the methods and resources.](#)

This research has some limitations due to the availability of sources and materials. The reliance on only General Comments without concluding Observations among other sources is one of the factors worth pointing out as an aspect that might affect the comprehensiveness of the study. This limitation of course tends to cause more difficulties in terms of the inability for the results to establish model of disability that are associated with concluding observations and State reports that would be

equally important in ensuring better understanding of how persons with disabilities are protected before, during and after situations of armed conflict.

The limited number of case studies that have been considered by this research is another factor worthwhile pointing out. The observations made, and recommendations drawn are far from being conclusive considering that only two case studies of armed conflict affected States were considered by this study. Only Colombia and Northern Uganda have been considered as the illustrative case studies of the problems and models for protecting persons with disabilities. It is vital to acknowledge that in as much as the above two case studies are important, they are far from enabling this study to make conclusive findings on the protection of persons with disabilities in certain respects.

Bearing in mind that this research has been founded upon the paradigm before, during and after the occurrence of armed conflict, the intermittent continuation of armed conflicts in certain States poses some challenges for this research as a result of ambiguities regarding the start and end of an armed conflict. However, there is a high likelihood for both periods to be associated with a common characteristic of an increase in disabilities due to conflict, as well as intensified vulnerability of persons with disabilities.⁹⁷³ However, the implications of these periods on models of disability that UNHCRs and RHRs should apply when approaching disability related obligations, remains generally unclear and little investigated. Most research is more interested in refugees with disabilities,⁹⁷⁴ rather than clarifying the appropriate models for addressing disability related issues that are found arising from post-conflict States.

7.2. Observations on Armed Conflict-Disability Contexts Disability Models

⁹⁷³ M. George and Clifford III, 'Jus Post Bellum: Foundational, Principles and a Proposed Model', *Journal of Military Ethics*, (2012) 11 : (1), pp. 42-57 at 46. See also. C. Bosanquet, 'Refining Jus Post Bellum', Philosophy Department, Boston College Available at <<http://isme.tamu.edu/ISME07/Bosanquet07.html>> (Accessed 13/April/2017).

⁹⁷⁴ M. Crock, C. Ernest and R. McCallum, 'Where disability and Displacement Intersect: Asylum Seekers and Refugees with Disabilities', *International Journal of Refugee Law* (2012) 24, pp. 735–741. See also. L. Smith-Khan, M. Crock, B. Saul and R. McCallum, *The Legal Protection of Refugees with Disabilities*, (Edward Elgar Publishers: Cheltenham, UK, 2017) pp. 2-3.

Regional systems, in Chapters 5 and 6 of this thesis, have maintained the conceptualisation of disability related obligations, particularly in dealing with disability within post-conflict States, on underpinnings of the individual/medical models and the outward-looking approach. Such models are proving to be of greater influence in the proposed draft of the African disability of the African regional system, than the disability Protocol under the Inter-American system. Although the reason remains unclear, it can possibly be attributed to the fact that the African regional systems have more post-conflict States that have experienced problems of armed conflict-related disabilities.

The above observation may be attributable to the consequences of an armed conflict and its disabling surroundings that are inevitable, in particular, to all post-conflict States. That is why the draft African Protocol contains an obligation, specifically directed to post-conflict States such as South Sudan, Central African Republic, in relation to their duty of accommodating and consulting persons with disabilities when developing post-conflict rehabilitation. It should also be borne in mind, that the post-conflict rehabilitation of individuals with disabilities is a typical feature of the inward-looking approach of the medical model of disability.

Additionally, the above observation also implies that approaches based on ideas of the individual and medical models, are relevant in promoting a rights-based approach among post-conflict States, particularly, if adopted to protect persons with disabilities, during and after, situations of armed conflicts.

7.3. Conclusions on Models of Disability before during and after armed conflicts

The limited number of General Comments and the two case studies from the regional indicate that the obligations underpinned by approaches of medical models of disability, could seem to play a key role in ensuring the respect and dignity of persons with disabilities in post-conflict States. Those obligations could enable UNHRTB and RHRS to reconstruct human rights obligations in ways that consider models of disability that are most suited to guide duties of armed conflict affected and post-conflict States.

Furthermore although Article 11 of CRPD, and the post-conflict duty of the draft African Protocol, have similarities in referring to disability in relation to situations of

armed conflict, the obligations in the draft African Disability Protocol go beyond those of Article 11 of the CRPD in two respects: Firstly, the post-conflict duty, as enshrined under the draft African Disability Protocol, clearly emphasises the idea of rehabilitating individuals in post-conflict States that mirror an individual model, rather than the social model. The CRPD Committee needs to devote a General Committee to clarify obligations under Article 11 of the CRPD, that remain silent and largely unclear on whether the prevalence of war related disabilities and vulnerability of persons with disabilities during armed conflict should call for specific disability related obligations under UN Human Right treaties. It is therefore unsurprising that some proponents have already expressed concerns about the inability of the social model to address the expectations of persons with disabilities in post-conflict regions.⁹⁷⁵ The inward-looking approach, and the medical/individual model, seem important in dealing with physical injuries sustained in combat, as well as the care of emotional and physiological disabilities that are prevalent in post-conflict States.⁹⁷⁶

Those observations have practical significance for the roles of the main actors in the chain of rehabilitation, both in the international and national fields. Through models or approaches to disability, this thesis has also noted that the presence of the armed conflict settings is an example of the key factors influencing and accounting for regional variances in international law, in as far as the understanding of disability rights is concerned.⁹⁷⁷ Similarly the individual and medical models of disability when treating and rehabilitating the many mutilated individuals in post-conflict States.⁹⁷⁸

The above regional variances must be born in mind by the HRC, CESCR and other relevant Committee for the Convention on the Rights of Persons with Disabilities when comprehending the obligations owed by States to persons with disabilities. NGOs and international organisations must also acknowledge the

⁹⁷⁵ N. Kabbara and K. K. Nagata, 'Is the "Rights Model of Disability Valid in Post-conflict Lebanon? A Participatory Pilot Survey in Beirut', *A Review of Disability Studies, An International Journal*. 2014 (5) 3

⁹⁷⁶ M. J. Allman and T. L. Winright, *After the Smoke Clears: The Just War Tradition and Post War Justice*, (Maryknoll, New York: Orbis, 2010) pg. 142.

⁹⁷⁷ V. Nampala and M. Odeng, *Adopt African protocol on disability, government told: The protocol will help address exclusion, harmful practices and discrimination of PWD*, Published in the New Vision on the 16th November 2017, Available at < https://www.newvision.co.ug/new_vision/news/1465882/adopt-african-protocol-disability-govt-told > (Accessed 21/05/2018).

⁹⁷⁸ See the African Disability Protocol, Adopted 30/ January/2018, and Article 7(b) in conjunction with 14.

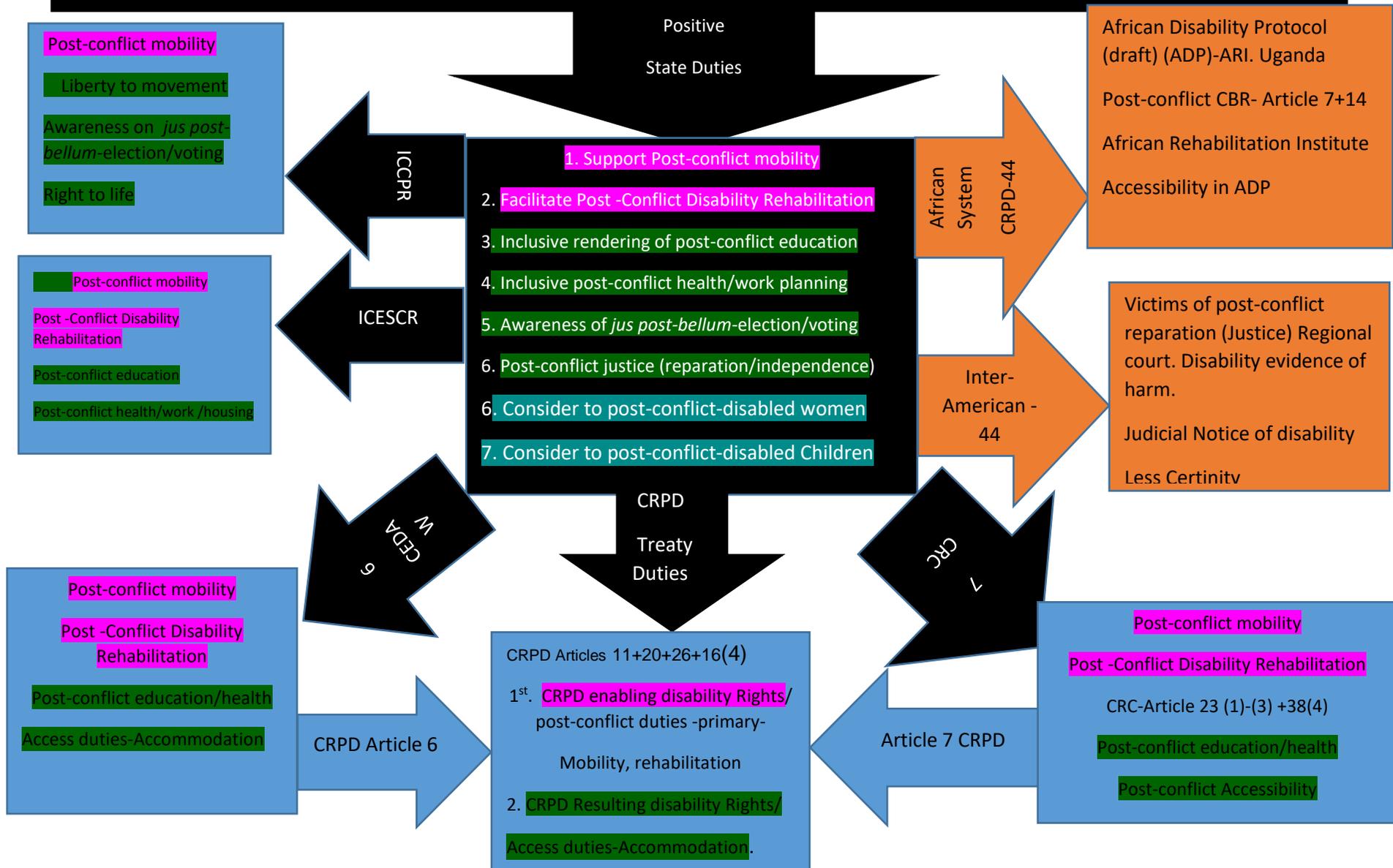
impacts and implications of disability that underlie armed conflict settings or post-conflict States, in light of their growing role in rendering post-conflict humanitarian rehabilitation.⁹⁷⁹ Particular emphasis must also be placed on the work done by the International Committee of the Red Cross (ICRC), in particular its mission statement, which advocates rendering assistance and capacity-building.⁹⁸⁰

⁹⁷⁹ Ibid Article 7(b) and 14. See also. L. Chenwi, 'Protection of Economic Social and Cultural Rights of Older Persons and Persons with Disabilities', in *the Protection of Economic, Social and Cultural Rights in Africa: International Regional and National Perspectives*, D. M. Chirwa and L. Chenwi (eds.) (Cambridge University Press, 2016.) Cambridge UK. pp. 118-211 at pg. 205.

⁹⁸⁰ International Committee of the Red Cross, '*Humanity in Action*' Annual Review 2016, Geneva, Switzerland. pp. 18-19.

Summary Diagram of *Jus Post-Bellum* Duties and Models of Post-Conflict-Disability

DISABILITY IN PEACETIME OF A POST-CONFLICT STATE //JUS POST-BELLUM CONTEXT



DISABILITY IN PEACETIMES OF A POST-CONFLICT STATE /JUS POST-BELLUM CONTEXT

Positive
State Duties

1. Support Post-conflict mobility
2. Facilitate Post -Conflict Disability Rehabilitation
3. Inclusive rendering of post-conflict education
4. Inclusive post-conflict health/work planning
5. Awareness of *jus post-bellum*-election/voting
6. Post-conflict justice (reparation/independence)
6. Consider to post-conflict-disabled women
7. Consider to post-conflict-disabled Children

Medical Individual (ILA)

Liberty to movement

Awareness of *jus post-bellum*-election/voting

Right to life

OLA Model Social

Medical Individual (ILA)

Post-conflict mobility

Post -Conflict Disability Rehabilitation

Post-conflict education

Post-conflict health/work /housing

OLA Model Social

Medical Individual (ILA)

Post-conflict mobility

Post -Conflict Disability Rehabilitation

Post-conflict education/health

Access duties-Accommodation

(OLA) Model Social

ICCPDR

ICESCR

CEDAW 6

CRPD Articles 6 + 11+20+26+16 (4)

Medical Individual (ILA)

CRPD Articles 11+20+26+16(4)

1st. CRPD enabling disability Rights/ post-conflict duties -primary- Mobility, rehabilitation

2. CRPD Resulting disability Rights/ Access duties-Accommodation

(OLA) model Social

CRPD Treaty Duties

CRC 7

CRPD Articles: 7+ 11+20+26+16(4)

African System 44

Inter-American+44

Medical Individual (ILA)

African Disability Protocol (draft) (ADP)-ARI.

Post-conflict CBR- 7(b)+14

African Rehabilitation Institute

Accessibility in ADP

OLA Model Social

Medical Individual (ILA)

Victims of post-conflict reparation (Justice) Regional court. Disability evidence of harm.

Judicial Notice of disability

Model Uncertain

OLA Model Social

Medical Individual (ILA)

Post-conflict mobility

Post -Conflict Disability Rehabilitation

CRC-Article 23 (1)-(3) +38(4)

Post-conflict education/health

Post-conflict Accessibility

OLA Model Social

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