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Disability Rights and United States Foreign Assistance Policy - A New Framework

Einat Hurvitz

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DISABILITY RIGHTS AND UNITED STATES FOREIGN ASSISTANCE POLICY – A NEW FRAMEWORK

EINAT HURVITZ*

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INTRODUCTION

People with disabilities constitute a significant portion of the world population.¹ Disabled people have been discriminated against, marginalized, and segregated from society for most of human history. In addition to the great social prejudice people with disabilities experience, they are discriminated against in employment, housing, health services, public accommodations, education, transportation, communication, recreation, institutionalization, voting, and access to public services.² This leads to further problems for disabled people, as the economic handicap from lack of employment for people with disabilities furthers the cycle of bad nutrition, substandard housing, and inadequate health care.³

1. See United Nations Department of Economics and Social Affairs, Statistics Division [hereinafter U.N. Statistics] (listing percentages of persons with disabilities in different countries), at <http://unstats.un.org/unsd/disability/alldata.htm> (last visited Mar. 24, 2003). The World Health Organization estimates that up to five hundred million healthy life years are lost due to disabilities associated with health conditions. See Press Release, World Health Organization, WHO Publishes New Guidelines To Measure Health, WHO/48 (Nov. 15, 2001), available at <http://www.who.int/inf-pr-2001/en/pr2001-48.html> (last visited Apr. 23, 2003). It is often stated that five to ten percent of the world's population has a disability, and the figure is higher if learning disabilities are included in the definition of disability. See Ann Elwan, *Poverty and Disability: A Survey of the Literature Social Protection*, Discussion Paper No. 993, 5 (Dec. 1999) (presenting preliminary results of a study for the World Bank's Social Protection Unit indicating that people with disabilities have lower education and income levels than the rest of the population and that they are more likely to be below poverty levels than the rest of the population in each given country), available at [http://wbln0018.worldbank.org/HDNet/HDdocs.nsf/c88c231a9f57bd2885256c050005e1bb/c112683be398a4c38525684e007787d9/\\$FILE/9932.pdf](http://wbln0018.worldbank.org/HDNet/HDdocs.nsf/c88c231a9f57bd2885256c050005e1bb/c112683be398a4c38525684e007787d9/$FILE/9932.pdf) (last visited Mar. 24, 2003). Disability rates vary from country to country because of differences in methodology, age structure, measuring instrumentalities, awareness of disability as a social problem, and the lack of agreement as to what constitutes a disability. *Id.* at 4.

2. See Elwan, *supra* note 1.

3. *Id.* at 21, 29 (finding that disabled people are less likely than others to have savings and other assets, and discussing the cycle of poverty and disease). "The

Disability takes different forms and arises from different factors, so just as the nature of the handicap experienced by a disabled person varies, so does the type of prejudice he or she encounters.⁴ Discrimination against disabled people is manifested both in social prejudice and the lack of proper facilities and resources to accommodate their special needs so that they may participate equally in society.⁵ This grim picture has changed somewhat in the last two decades, but change is very slow and is not uniform throughout the world.⁶

The United States has some of the most advanced legislation on equal rights of people with disabilities in the world.⁷ The Americans with Disabilities Act of 1990⁸ and the Rehabilitation Act of 1973⁹ provide thorough legal protection for the rights of people with

links between poverty and disability go two ways, disability adds to the risk of poverty, and conditions of poverty add to the risk of disability.” *Id.* at 1-2.

4. See ERIC ROSENTHAL ET AL., MENTAL DISABILITY RIGHTS INTERNATIONAL, NOT ON THE AGENDA: HUMAN RIGHTS OF PEOPLE WITH MENTAL DISABILITIES IN KOSOVO (2002) (revealing that people with disabilities, including those with mental health disorders and developmental disabilities experience extreme rejection from the society and are also subjected to hostility, fear, and dehumanization), available at <http://www.mdri.org/pdf/KosovoReport.pdf> (last visited Apr. 1, 2003). The treatment of people with mental disabilities has been characterized for the most part by segregation from society in closed institutions, forced detention, harsh treatment and terrible conditions. *Id.* at 9. See also AMNESTY INTERNATIONAL, BULGARIA: FAR FROM THE EYES OF SOCIETY:-SYSTEMATIC DISCRIMINATION AGAINST PEOPLE WITH MENTAL DISABILITIES (2002) (discussing the systematic discrimination against people with mental disabilities), available at <http://web.amnesty.org/ai.nsf/Index/EUR150052002?OpenDocument&of=COUNTRIES\BULGARIA> (last visited Mar. 25, 2003).

5. See Elwan, *supra* note 1 (discussing the cycle of disability and poverty and its effect on people with disabilities); Brooke Ellison, National Organization on Disability, *More About Stereotypes* (2002) (discussing causes and possible solutions for the stereotypes that define the ongoing discrimination of people with disabilities), available at <http://www.nod.org/content.cfm?id=918> (last visited Mar. 25, 2003).

6. See U.N. Statistics, *supra* note 1 (providing disability statistics for various countries).

7. See *infra* notes 8-9 and accompanying text (presenting U.S. legislation concerning people with disabilities).

8. Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 [hereinafter ADA].

9. Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355.

disabilities, although the situation of people with disabilities in America is still not one of full equality.¹⁰

The National Council on Disability ("NCD"), advises the U.S. government on issues affecting people with disabilities located in America and internationally.¹¹ The NCD issued a report indicating that the United States does not have a comprehensive foreign policy regarding disability and does not implement its domestic legislation in its programs and missions abroad.¹² Despite the United States' declared policy to advocate for equality in its foreign affairs, U.S. policy makers do not incorporate into U.S. foreign policy objectives

10. See National Organization of Disability, *Employment Facts About People With Disabilities in The United States* (2001) (providing that thirty-two percent of people with disabilities in the United States, ages eighteen to sixty-four, work full or part-time, compared to eighty-one percent of those without disabilities), at http://www.nod.org/cont/dsp_cont_item_view.cfm?contentId=14 (last visited Mar. 25, 2003). Americans with disabilities are more than twice as likely as those without disabilities to postpone needed health care due to inability to pay. *Id.* Also, twenty-two percent of Americans with disabilities fail to complete high school, compared to nine percent of those without disabilities. *Id.*; see also Patricia Thornton and Neil Lunt, *Employment Policies for Disabled People in Eighteen Countries: A Review*, University of York Social Policy Research Unit (1997) (exploring international dimensions of employment discrimination for people with disabilities), available at http://gladnet.org/infobase/employment/Policies/emp_policies_18_countries.htm (last visited Mar. 25, 2003).

11. See National Council on Disability, *Frequently Asked Questions* (describing the National Council on Disability as an independent federal agency that makes recommendations to the President and Congress on issues affecting Americans with disabilities), at <http://www.ncd.gov> (last visited Apr. 18, 2002). The agency's overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all individuals with disabilities, and to empower individuals with disabilities to achieve economic self-sufficiency, independence, and integration into all aspects of society. *Id.*; see also National Council on Disability International Watch (providing charter, bylaws, documents, reports, and meeting minutes outlining international objectives for NCD's International Watch), at <http://www.ncd.gov/newsroom/advisory/international/international.html> (last visited Feb. 26, 2003).

12. See NATIONAL COUNCIL ON DISABILITY, *FOREIGN POLICY AND DISABILITY REPORT* (1996) (finding that there is no comprehensive foreign policy to address people with disabilities), available at <http://www.ncd.gov/newsroom/publications/foreign.html> (last visited Mar. 27, 2003).

the interests of people with disabilities.¹³ Furthermore, the United States maintains trade relations and provides economic support to countries in which widespread discrimination of disabled people is prevalent, and U.S. embassies and missions abroad do not uphold the rights of disabled people guaranteed under U.S. law.¹⁴

The current U.S. approach toward disability in the context of foreign policy is one of voluntary compliance with broad policy statements regarding disability.¹⁵ This policy has achieved meager results, and there is a growing sense that absent direct guidance from Congress, people with disabilities will not be included in U.S. foreign assistance programs in the future.¹⁶ Therefore, the time has come to propose legislation that will promote the human rights of disabled people around the world through U.S. foreign assistance policy.¹⁷

This comment will address some of the relevant questions and issues involved in the pursuit of this goal. This comment begins with a survey of the international human rights considerations relevant to people with disabilities. Next, the current foreign assistance legislation is examined, with emphasis on the extent to which it could be the platform for advancing the human rights of disabled

13. *See id.* (describing the problems with U.S. foreign disability policy).

14. *See id.* (discussing the absence of disability programs in several countries receiving aid from the United States and noting that two of the embassies surveyed reported that they follow the ADA). Neither the ADA nor the Rehabilitation Act applies to the federal government. *Id.*

15. *See e.g.* U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT, GENERAL NOTICE POLICY PAPER ON DISABILITY (1997) (stating that the USAID Disability Policy's goal was to promote the inclusion of people with disabilities in USAID activities, but that no new funding was allocated for its implementation), *available at* <http://www.usaid.gov/about/disability/DISABPOL.FIN.html> (last visited Mar. 27, 2003).

16. *See infra* Part III.C (providing further discussion of USAID disability policy).

17. *See supra* Part I (describing the current situation regarding people with disabilities in both the United States and abroad); *see also* NATIONAL COUNCIL ON DISABILITY INTERNATIONAL WATCH ADVISORY COMMITTEE, MEETING REPORT (2002) [hereinafter NCD MEETING REPORT] (discussing the need to involve the United States in an International Convention on The Rights of People With Disabilities), *available at* http://www.ncd.gov/newsroom/advisory/international/iw_quarterlyreport_08-19-02.html (last visited Apr. 1, 2003).

people. Then, the factual, theoretical, and moral considerations regarding the best response to violations of human rights in general, and disability rights in particular, are analyzed. The different positions taken by U.S. foreign assistance legislation and development concerns about disabilities are considered. Using the women rights paradigm for guidance, this Comment also addresses the justifications for new legislation linking disability and foreign assistance. Lastly, the different models for tackling disability rights in the development context are reviewed to make recommendations about a preferable framework.

I. BACKGROUND

A. THE HUMAN RIGHTS OF PEOPLE WITH DISABILITIES

Disabled people¹⁸ are entitled to all the internationally recognized human rights, just like any other person.¹⁹ While there is no binding document specifically addressing the status of human rights for disabled people,²⁰ several universal and regional human rights

18. See UNITED NATIONS, STANDARD RULES ON THE EQUALIZATION OF OPPORTUNITIES FOR PERSONS WITH DISABILITIES [hereinafter U.N. STANDARD RULES] (distinguishing between the terms “handicap” and “disability” and noting that the term “disability” is used to refer to several different permanent or transitory functional limitations, including physical, intellectual, or sensory impairment, medical conditions, or mental illnesses), *available at* <http://www.un.org/esa/socdev/enable/dissre01.htm> (last visited Apr. 1, 2002). “Handicap” is the loss or limitation of opportunities to take part in the life of the community on an equal level with others because of the disability. *Id.*

19. See ROSENTHAL ET AL., *supra* note 4 (describing the basic human rights afforded to people with mental disabilities under general human rights instruments) Rosenthal also states that:

Governments must protect a person’s right to life or the right not to be subjected to cruel, inhuman or degrading treatment or punishment; the right to equal protection of the law; the right not to be deprived arbitrarily of their liberty or their right to a fair trial; the right to social security or the right to education.

Id.

20. See Debra Benko & Brittany Benowitz, *The Application of Universal Human Rights Law to People with Mental Disabilities*, 9 HUM. RTS. BRIEF (2001) (writing about recent efforts to promote an international treaty about the rights of disabled people through the United Nations), *available at* <http://www.wcl.american.edu/hrbrief/09/1mental.cfm> (last visited Apr. 1, 2003);

instruments that deal with general human rights also apply to disabled people.²¹ A prominent example is the Universal Declaration of Human Rights and especially the principles of equality and non-discrimination. There is general agreement that these provisions have become part of customary international law and can bind all states, whether or not the state has ratified the specific international instrument.²²

International bodies and individual countries have also adopted disability-specific international instruments, but they take the form of declarations, resolutions, and guidelines.²³ While not legally binding, these instruments embody some customary law and can serve as interpretations for the implementation of more general provisions in the binding human rights instruments mentioned above. In 1993, the U.N. General Assembly adopted the Standard Rules on Equalization of People with Disabilities.²⁴ The purpose of the Standard Rules is to

NCD MEETING REPORT, *supra* note 17 (discussing interest in establishing an International Convention on the The Rights of People With Disabilities).

21. See United Nations, Expert Group Meeting on International Norms and Standards Relating to Disability, List of Documents and International Instruments Relating to Disability [hereinafter U.N. Document List] (listing documents, country specific legislation and reports, international human rights instruments specifically relating to disabilities, general human rights instruments, and other international relevant regional and international instruments), available at <http://www.un.org/esa/socdev/enable/disberk8.htm> (last visited June 25, 2002). International instruments specifically relating to disabilities include The Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, the World Programme of Action Concerning Disabled Persons, the Declaration on the Rights of Disabled Persons, and the Declaration on the Rights of Mentally Retarded Persons. *Id.* Other international instruments specifically mentioning disability rights include The Universal Declaration of Human Rights, The Convention on the Rights of the Child, The African Charter of Human and Peoples' Rights, and the Additional Protocol to the American Convention on Human Rights in Relation to Economic, Social and Cultural Rights. *Id.*

22. See, e.g. *id.* (discussing issues and trends relating to the practical application of international norms and standards to promote the human rights of persons with disabilities in the international and domestic contexts).

23. See *id.* (reporting legal framework for existing disability instruments).

24. See U.N. STANDARD RULES, *supra* note 18 (identifying the eight target areas for equal participation of people with disabilities as accessibility, education, employment, income maintenance and social security, family life and personal integrity, culture, recreation and sports, and religion, and discussing implementation methods and monitoring mechanisms). The Standard Rules were

ensure that people with disabilities, as members of their societies, will be able to exercise the same rights and obligations as other people.²⁵

The human rights of people with disabilities is a developing field that is being shaped by actions and deeds of states as much as by formal documents. Even though many of the international instruments are not legally binding, the level to which countries will abide by them will affect their status in international law.²⁶ Therefore, at this important time, involvement of a world-leader like the United States can contribute immensely to fostering the concepts of equality, human dignity, and inclusion for people with disabilities.

B. FOREIGN ASSISTANCE LEGISLATION REGARDING HUMAN RIGHTS

Before deciding what kind of arrangement of U.S. foreign assistance would best protect the human rights of people with disabilities, an understanding of the current relevant legal framework is necessary. The legislation linking human rights concerns and foreign assistance is a mixture of very broad and very narrow legal provisions that were created over a long period of time. Due to the political nature of this issue, not only legislation but also the relevant presidential administration and its attendant foreign policy agenda, affects the policy.

Former U.S. President Jimmy Carter stressed international human rights as a central concern of his foreign policy and introduced legislation requiring human rights concerns to be part of foreign aid.²⁷ The popularity of Carter's policy forced the Reagan administration to continue to include human rights improvement as one of its goals, but during Reagan's presidency, human rights were

adopted by the United Nations General Assembly and are not binding, but can serve as a guide for policy-making and provide a basis for international cooperation. *Id.*

25. *See id.* at 1.

26. *See* FRANK NEWMAN & DAVID WEISSBRODT, INTERNATIONAL HUMAN RIGHTS: LAW, POLICY AND PROCESS 18 (2d ed. 1996) (stating that widespread acquiescence to an international norm, accompanied by the belief that it is law, makes the norm part of customary international law and binds all states).

27. *Id.* at 388.

enforced as a means to fight communism.²⁸ The Clinton administration was criticized for outwardly supporting human rights but not enforcing compliance with human rights standards when it was not politically comfortable.²⁹ George W. Bush's administration has thus far shown little inclination to get involved in human rights issues. These differences in application of human rights policy are the result of the very wide latitude Congress has granted the Executive regarding foreign assistance and human rights.³⁰

The applicable foreign assistance and human rights legislation can be roughly divided into two types: general legislation and country-specific legislation.³¹ The legislation can also be characterized as either general legislation or legislation dealing with a specific right or specific human rights issue.

1. General Legislation

The term "human rights conditionality" connotes a framework in which a specific activity (i.e., the U.S. foreign assistance) is conditioned upon the receiving country's observance of human rights standards. The two main articles in the foreign assistance legislation that embody this principle are Sections 502b and 116 of the 1961 Foreign Assistance Act.³² Section 502b, which deals with human rights and security assistance, declares the United States'

28. *Id.*

29. *See id.* at 390 (describing criticism of the Clinton administration, mainly concerning its treatment of China).

30. *But see* Foreign Relations Authorization Act, Pub. L. No. 107-228, 116 Stat. 1350 (2002) (illustrating congressional concern for human rights issues and requiring presidential administrations to report on the efforts undertaken by the United States to alleviate human rights violations that it identified).

31. *See* NEWMAN & WIESSBRODT, *supra* note 26, at 395 (recognizing within the country-specific legislation two further divisions: "negative" legislation, which set up a sanctions system, and "positive" legislation, which provides increased assistance).

32. *See* 22 U.S.C. §§ 2304, 2151n (2002), *amended by* Foreign Relations Authorization Act, Fiscal Year 2003, Pub. L. No. 107-228, 116 Stat. 1350 (2002) (adding a requirement that countries that receive security assistance to report their efforts in eliminating the "compulsory recruitment and conscription of individuals under the age of 18 by armed forces of the government," and to report the extent to which the United States has taken action to end human rights violations where reported).

commitment to promoting increased observance of internationally recognized human rights and fundamental freedoms.³³ The condition itself states that “no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights.”³⁴ Yet an exception immediately softens the seemingly strong language, allowing the President to bypass the condition if he “certifies in writing [to Congress] that extraordinary circumstances exist warranting provision of such assistance and issuance of such licenses.”³⁵ The Act does not specify the nature of the “extraordinary circumstances.” The President has authority to lift such sanctions when he finds “significant improvement” in the foreign country’s human rights record.³⁶

The Secretary of State is required to submit an annual report to Congress regarding the observance and respect for human rights in each country proposed as a recipient of security assistance.³⁷ Congress recently added an additional duty to report the extent to

33. See 22 U.S.C. § 2304(a)(1) (2002) (basing U.S. international obligations on the Charter of the United Nations and U.S. constitutional traditions). Interestingly, this leaves much room for the United States to enforce broad human rights standards, whether or not the United States is a signatory to those standards.

34. 22 U.S.C. § 2304(a)(2); *see also* 22 U.S.C. § 2304(a)(4) (stating that in determining whether the government of a country is engaging in gross human rights violations, the President shall consider “whether the government has engaged in or tolerated particularly severe violations of religious freedoms”). Particularly severe violations of religious freedoms include “torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges causing the disappearance of persons . . . or other flagrant denial of the right to life, liberty, or the security of persons.” 22 U.S.C. § 6402(11).

35. 22 U.S.C. § 6402(11). The legislation also specifies what should be done to promote human rights and charges the President with the duty to “formulate and conduct international security assistance programs . . . in a manner which will promote and advance human rights.” 22 U.S.C. § 2304(a)(3).

36. See 22 U.S.C. § 2304(e) (stating that a “significant improvement” may warrant lifting the prohibition on furnishing such assistance in the national interest of the United States”).

37. See 22 U.S.C. § 2304(b) (stating that “[w]herever applicable, such reports shall include consolidated information regarding the commission of war crimes, crimes against humanity, and evidence of acts that may constitute genocide”).

which the United States has taken or will take action to encourage an end to severe human rights violations in such countries.³⁸

Section 116 of the Foreign Assistance Act of 1961, which deals with development assistance, also links human rights violations and monetary aid.³⁹ However, since banning assistance could potentially harm the very people whom the policy seeks to protect, a country with a repressive government can still receive assistance as long as the aid “directly benefits” its needy people.⁴⁰ Congress requires that the Executive consider similar factors to those under Section 502b when deciding if a country is eligible for assistance.⁴¹ Yet, under this Section, the State Department is required to report on the human rights practices of all the countries that are members of the United Nations, whether or not they receive foreign assistance.⁴²

Most of Section 116 deals with the conditions and requirements for authorizing a ban on development assistance.⁴³ Two exceptions,

38. *See* 22 U.S.C. § 2304(b) (declaring that in countries engaging in serious human rights violations such as extrajudicial killings or torture, the report must indicate “the extent to which the United States has taken or will take action to encourage an end to such practices in the country”).

39. *See* 22 U.S.C. § 2151n (barring assistance to the government of any country that engages in a consistent pattern of gross violations of internationally recognized human rights).

40. *See* 22 U.S.C. § 2151n (providing an exception if “such assistance will directly benefit the needy people in such country”). *But see* 22 U.S.C. § 2151n(b) (stating the uncompromising condition that any government “failing to take appropriate and adequate measures, within their means, to protect children from exploitation, abuse or forced conscription into military or paramilitary services” may not receive assistance).

41. *See* 22 U.S.C. § 2151n(c) (considering factors such as the “the extent of cooperation of such government in permitting an unimpeded investigation of alleged violations of internationally recognized human rights,” and whether the government has “engaged in or tolerated particularly severe violations of religious freedom”).

42. *See* 22 U.S.C. § 2151n(d) (requiring the Secretary of State to provide a full and complete report on the status of internationally recognized human rights in “countries that receive assistance under subchapter I of this chapter and in all other foreign countries which are members of the United Nations and which are not otherwise the subject of a human rights report under this chapter”).

43. *See e.g.* 22 U.S.C. § 2151n(a) (barring assistance to the government of any country that engages in a “consistent pattern of gross violations of internationally recognized human rights”); 22 U.S.C. § 2151n(c) (providing a list of factors to consider in determining whether a country is banned from receiving assistance).

which provide positive measures, include: (a) authorization to fund programs that will promote increased adherence to civil and political rights;⁴⁴ and (b) establishment of a human rights and democracy fund that will support human rights defenders and human rights violations victims, and respond to human rights emergencies.⁴⁵

In sum, the conditional framework of human rights in the security assistance field, and even more so in the development aid field, is very broad and is easily bypassed whenever there is an imperative political interest or international inconvenience.⁴⁶ In addition, the United States has used the sanctions under this legislation when it finds evidence of human rights abuses linked to political and democratic repression, or the use of the military and its equipment.⁴⁷ This is not the case with violations of the rights of people with disabilities.

2. Country Specific Legislation

Another kind of human rights conditionality is one that targets a specific country and attempts to regulate its human rights conduct, whether by creating positive incentives for upholding human rights, setting goals related to human rights, or threatening a ban on

44. See 22 U.S.C. § 2151n(e) (authorizing the President to use funds for “studies to identify, and for openly carrying out programs and activities which will encourage or promote increased adherence to civil and political rights, including the right to free religious belief and practice, as set forth in the Universal Declaration of Human Rights”).

45. 22 U.S.C. §2151n-2 (stating that the Assistant Secretary of State will administer the fund for its stated purposes).

46. See *supra* notes 31-45 and accompanying text (providing an overview of Sections 502b and 166 of the 1961 Foreign Assistance Act, and discussing ways in which the law allows for countries engaging in human rights abuses to receive aid, regardless of the conditionality requirement).

47. See Arturo Carrillo Suarez, *Hors de Logique: Contemporary Issues in International Humanitarian Law as Applied to Internal Armed Conflict*, 15 AM. U. INT'L L. REV. 1, 127 (citing the Leahy amendment, which states that no anti-narcotic assistance can be “provided to any unit of the security forces of a foreign country if the Secretary of State has credible evidence to believe such unit has committed gross violations of human rights”).

assistance if no improvements are made.⁴⁸ This legislation naturally changes each year.

3. *Right Specific Legislation*

Since the enactment of the legislation containing the two main general provisions regarding human rights and foreign assistance, a new paradigm has developed that ties U.S. foreign assistance to a specific human right. Most of the legislation in this category authorizes spending money for the advancement of a certain right rather than mandating some sort of sanction for violations of rights.⁴⁹ One of the earlier examples is Section 132 of the Foreign Assistance Act, which authorizes the President to provide assistance for the rehabilitation of torture victims.⁵⁰ A significant difference is that the grants are given not to the government of a foreign country but to specific organizations that provide such treatment to torture victims.⁵¹ A similar arrangement is the War Victims Fund,

48. See e.g. Foreign Relations Authorization Act, Fiscal Year 2003, Pub. L. 107-228, §§ 611-14, 116 Stat. 1350 (2002) (requiring the President to deal with China's treatment of Tibetan independence demands by encouraging negotiation between the Chinese government and the Dalai Lama and setting a specific reporting requirement regarding Tibet); Foreign Relations Authorization Act at § 632 (authorizing the support of broad programs to develop democratic institutions in East Timor, including such human rights issues as health care, educational infrastructure, and the role of women in society).

49. See *infra* notes 51-53 and accompanying text (providing examples of legislation that ties U.S. foreign assistance to a specific human right). There is a third kind of conditionality centered on trade relations. See e.g. 19 U.S.C. § 2411(d)(3)(B)(IV) (2003) (specifying that the U.S. Trade Representative may take action to impose economic sanctions on any country in which there is a persistent pattern of conduct that denies workers the right of association, collective bargaining, permits forced labor, does not have minimum age for the employment of children, or fails to provide standards for minimum wages, hours of work, and occupational safety and health of workers).

50. See 22 U.S.C. § 2152 (stating that "[s]uch assistance shall be provided in the form of grants to treatment centers and programs in foreign countries that are carrying out projects or activities specifically designed to treat victims of torture for the physical and psychological effects of the torture").

51. See 22 U.S.C. § 2152(c) (providing that aid can be used for direct services to victims or for research and training to health care providers that will enable them to provide such care for victims).

established in 1989 through the initiative of Senator Patrick Leahy.⁵² The fund mainly provides prosthetics and orthotics to victims of conflict and operates within United States Agency for International Development ("USAID").⁵³

One of the latest additions to the field of human rights conditionality is the Victims of Trafficking and Violence Protection Act of 2000.⁵⁴ It involves several different links between this pattern of human rights violations and foreign assistance.⁵⁵ The act establishes minimum standards for evaluating foreign governments' efforts toward eliminating the trafficking of people.⁵⁶ It authorizes the President to provide assistance to foreign countries for programs or projects designed to improve the policies and conduct of the receiving country regarding elimination of trafficking.⁵⁷ The main goal of the assistance is to make individual countries meet the minimum standards for the elimination of trafficking, but the law is also concerned with promoting programs to minimize the underlying

52. See *infra* note 53 and accompanying text (providing a summary of previous USAID experience with disability, including the efforts of Patrick J. Leahy's War Victim's Fund).

53. See FIRST ANNUAL REPORT ON IMPLEMENTATION OF THE USAID DISABILITY POLICY (Dec. 23, 1998) (discussing the success of the War Victims Fund in providing rehabilitation services and including people with disabilities in various activities dealing with economic growth), available at <http://www.usaid.gov/about/disability/disrept.htm#Status> (last visited Mar. 26, 2003).

54. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000) (establishing a comprehensive act designed to combat trafficking in persons, especially into the sex trade, slavery, and involuntary servitude).

55. See Victims of Trafficking and Violence Protection Act §§ 109-10 (providing minimum standards for the elimination of trafficking in persons and mandating actions against governments failing to meet minimum standards).

56. See Victims of Trafficking and Violence Protection Act § 108 (requiring governments to prohibit through legislation severe forms of trafficking in persons, to punish with appropriate severity acts of trafficking, and to make "serious and sustained" efforts to eliminate severe forms of trafficking in persons).

57. See Victims of Trafficking and Violence Protection Act § 134 (authorizing the President "to provide assistance to foreign countries directly, or through nongovernmental and multilateral organizations, for programs, projects, and activities designed to meet the minimum standards for the elimination of trafficking and nongovernmental personnel to combat trafficking").

economic reasons for trafficking and programs that assist trafficking victims in foreign countries.⁵⁸

The section that generated the most debate in Congress and won the most attention in other countries was Section 110.⁵⁹ This Section established sanctions in the form of denials of foreign assistance and exchange programs and attempts to curtail loans from international monetary bodies such as the International Monetary Fund. These Section 110 sanctions are implemented against countries whose governments do not comply with the minimum standards for the elimination of trafficking and are not making significant efforts to comply with them.⁶⁰ Even before the sanction system began to operate, the threat of sanctions significantly contributed to serious governmental efforts to eliminate trafficking and provide support for victims.⁶¹

58. See Victims of Trafficking and Violence Protection Act § 134 (providing a list of options toward which countries may use funds received to combat trafficking). These activities could include drafting of laws to prohibit trafficking, investigating and prosecuting traffickers, creating facilities to protect victims, and expanding exchange programs designed to combat trafficking. *Id.*; see also *TRAFFICKING IN PERSON: USAID'S RESPONSE* (Sept. 2002) (noting that USAID supports a wide range of efforts designed to combat trafficking, including collecting reliable information on trafficking, promoting campaigns to raise public awareness of trafficking, and providing protection to victims), available at http://www.usaid.gov/wid/pubs/trafficking_pub_final.pdf (last visited Mar. 26, 2003).

59. See Victims of Trafficking and Violence Protection Act § 110 (mandating actions against governments failing to meet minimum standards). See generally Sabrina Feve & Christina Finzel, *Recent Development: Trafficking of People*, 38 HARV. J. ON LEGIS. 279 (2001) (providing a general overview of the response of Congress to the growing problem of trafficking).

60. See Victims of Trafficking and Violence Protection Act § 110 (stating that “[i]t is the policy of the United States not to provide nonhumanitarian, nontrade-related foreign assistance to any government that does not comply with minimum standards for the elimination of trafficking; and is not making significant efforts to bring itself into compliance with such standards”). The decision is made according to a ranking of all the states. The law provides for three groups: the governments that comply with the standards fully, the governments that do not yet fully comply but are making significant efforts, and the governments that do not comply and are not making any significant efforts to bring themselves to compliance. *Id.* Beginning in January 2003, sanctions can apply to the third group, subject to American national interest and considerations of counter productiveness. *Id.*

61. See Nina Gilbert, *Knesset Report: 3,000 Women ‘Sold’ by White Slavers Here Every Year*, JERUSALEM POST, Dec. 9, 2002 (reporting the Israeli

II. ANALYSIS – THE CONSIDERATIONS FOR A PROPOSAL OF A NEW FRAMEWORK FOR HUMAN RIGHTS AND FOREIGN ASSISTANCE

A. SANCTIONS VS. DEVELOPMENT ASSISTANCE

The current legal framework for promotion of human rights is the conditionality framework, or the sanctions strategy.⁶² This is not an adequate solution in the case of people with disabilities because its effectiveness and justness are questionable.⁶³

The effectiveness and justness of withdrawing assistance for non-compliance with U.S. standards raises serious concerns.⁶⁴ Regardless of the general controversy, the practice is undesirable in the context of the human rights of people with disabilities.⁶⁵ Since there is usually no nexus between the human rights violations of people with disabilities and the use of the military or security equipment, the result would be to harm the state's security and not necessarily improve the status of people with disabilities.⁶⁶ Three significant

government's anxiety after it was listed in the third group in 2000). The government of Israel appointed an intergovernmental committee to draft policy guidelines and increased law enforcement resources, while the parliament created an investigatory committee. *Id.*

62. See *supra* Part II.B (providing an overview of human rights conditionality frameworks).

63. See *e.g. supra* note 36 and accompanying text (providing an example of how the President can use his discretion to bypass the conditionality requirement set forth in Section 502b of the 1961 Foreign Assistance Act).

64. See *supra* note 14 (noting the limits of the forceful application of human rights standards to developing countries).

65. See *infra* notes 67-69 and accompanying text (providing an argument for how the human conditionality framework does not advance the rights of people with disabilities).

66. See *e.g.* Carrillo Suarez, *supra* note 47, at 127-29 (describing how security assistance has been strictly conditioned on the compliance of military units with human rights standards). Limiting security assistance would force countries to take the money for defense from other sources, and this would probably mean reducing budgets for social programs, hence further harming the weakest people in the population (among them people with disabilities). *Id.*; see also National Council on Disability, Foreign Policy and Disability (Aug. 1, 1996) (noting that a study found the United States lacks a comprehensive foreign policy on disabilities, and those responsible for implementing U.S. overseas initiatives lack awareness of

factors are at play in this context. First, upholding human rights of people with disabilities requires significant investment in human and physical resources that would enable people with disabilities to participate equally in regular life activities.⁶⁷ Second, governments by and large do not purposefully violate the human rights of disabled people. Rather, violations occur out of lack of awareness, lack of knowledge about successful ways to integrate people with disabilities, and inadequate allocation of resources.⁶⁸ Finally, the rights of disabled people are not necessarily controversial. No claims of “cultural relativity” are invoked to explain inadequate treatment of people with disabilities.⁶⁹ Therefore, the most effective method, apart from international political pressure, is to provide development assistance.⁷⁰ Withholding assistance on the basis of noncompliance with international standards, as a main strategy, would obviously be counterproductive.⁷¹

B. DEVELOPMENT AND DISABILITY RIGHTS

Eighty percent of disabled people are estimated to live in developing countries⁷² and most of the disability is due to preventable handicap associated with communicable, maternal, and

disability issues), available at <http://www.ncd.gov/newsroom/publications/foreign.html> (last visited Mar. 28, 2003).

67. See *infra* Part III.B (discussing development and disability rights); *supra* notes 2-3 (noting the grave socio-economic condition of many disabled people).

68. See *infra* notes 80-81 and accompanying text (noting that current USAID work on disabilities points to the lack of outreach to people with disabilities and to grant-related discrimination against NGOs that work on disabilities issues).

69. See *infra* Part III.B (discussing data related to people with disabilities status and economics). The data do not include claims of “cultural relativity.” *Id.*

70. See *infra* Part III (providing recommendations on models and framework for disability rights and foreign assistance).

71. But see Part III.A (exploring the possibility of human rights conditionality as one component of a foreign assistance policy).

72. See James Wolfensohn, Editorial, WASH. POST, Dec. 3, 2002 (stating that four hundred million people with disabilities live in the world’s developing countries); SECOND ANNUAL REPORT ON THE IMPLEMENTATION OF USAID DISABILITY POLICY, available at http://www.usaid.gov/about/disability/2ar_imp_policy.html#background (last visited Mar. 28, 2003).

prenatal disease and injuries.⁷³ Recognizing the need to advance people with disabilities' rights through development assistance, the World Bank⁷⁴ and other development agencies⁷⁵ are formulating comprehensive disability policies. The World Bank reports that the number of persons with disabilities may grow in the future due to increased aging and violent conflict, malnutrition, natural disasters, and AIDS/HIV.⁷⁶ While this raises human rights concerns, it also has economic ramifications. Because disability in the household usually results in higher incidence of poverty,⁷⁷ it is crucial to increase the opportunities for and participation of persons with disabilities in the economic arena.⁷⁸ Thus, any successful development must include a disability component. USAID is the U.S. agency that oversees most of the foreign development assistance practices and policies that are crucial stepping stones for promoting the rights of disabled people.

73. See Elwan, *supra* note 1 (concluding that prevention of disabilities has to remain the primary focus of programs that seek to target disability and development).

74. See The World Bank, *The World Bank and Disability* (defining disability as more than a description of a specific health issue), at <http://wbIn0018.worldbank.org/HDNet/hddocs.nsf/2d5135ecbf351de6852566a90069b8b6/a16f1100a7ae28ff852567f600636b11?OpenDocument> (last visited Mar. 28, 2003). The World Bank defines disability as affecting people's cultures, social institutions, and physical environments. *Id.*

75. See Nordic Development Cooperation, *Inclusion of the Disability Dimension in Nordic Development Cooperation* (reporting and consolidating the Nordic countries' joint disability and development policy), available at http://www.disability.dk/images/docpics/1006794750_Conference_report.doc (last visited Apr. 7, 2003).

76. See *The World Bank and Disability*, *supra* note 74.

77. See Deborah Stienstra et al., *Baseline Assessment: Inclusion and Disability in World Bank Activities*, Canadian Centre on Disability Studies, June 2002, (stating that persons with disabilities are often excluded from school or the workplace), available at <http://wbIn0018.worldbank.org/hdnet/hddocs.nsf/View+to+Link+WebPages/841239FD3C23B7FD85256C07006824FE?OpenDocument> (last visited Mar. 28, 2003). Consequently, some may depend on others in the family for care and the earning capability of the family is diminished, whether the disabled person is a parent or a child. *Id.*

78. See *id.* (asserting that society benefits from a rise in the standard of living of families of people with disabilities because they make up ten percent of the population and their dependants/supporters make up a significant percentage as well).

C. USAID DISABILITY POLICY

USAID has an official policy on disability⁷⁹ that applies to all of the agency's departments and regions, but compliance is voluntary. Its goal is to alleviate the danger of segregation of disabled people in USAID activities and to minimize discrimination toward people with disabilities both within USAID organs and in the countries that receive assistance.⁸⁰ However, the first and second annual reports on the implementation of the Disability Policy showed very little progress toward real inclusion of people with disabilities in USAID programs and activities.⁸¹

USAID currently does not consider promotion of people with disabilities rights as a critical development goal. USAID provides inadequate assistance to people with disabilities and discriminates against NGOs that work on disability issues when apportioning grants.⁸²

79. See USAID, *USAID Disability Policy Paper*, at <http://www.usaid.gov/about/disability/DISABPOL.FIN.html> (last visited Mar. 28, 2003).

80. See USAID, *FIRST ANNUAL REPORT ON IMPLEMENTATION OF THE USAID DISABILITY POLICY*, Dec. 23 1998 (reporting the progress toward implementation of the USAID Disability Policy), available at <http://www.usaid.gov/about/disability/disrept.htm> (last visited Mar. 27, 2003).

81. See *id.* (outlining specific recommendations for implementation of the policy); see also USAID, *SECOND ANNUAL REPORT ON THE IMPLEMENTATION OF THE USAID DISABILITY POLICY*, Feb. 15, 2000 (concluding that sporadic efforts, while commendable, are not enough and that disability needs to become a priority), available at http://www.usaid.gov/about/disability/2ar_imp_policy.html#toc (last visited Mar. 27, 2003). The report recommended that specific funding be set aside for this issue and a "home" be located for the project to implement the disability policy. *Id.* Otherwise, disability rights promotion will never become an agency-wide effort and will continue to be the campaign of a small group. *Id.*

82. See National Council on Disability ("NCD") Strategy Session, Washington, D.C., Dec. 6, 2002 (describing the efforts of NCD to develop a successful legislative strategy) (on file with author). Testimonies of NGOs reveal that suggested projects targeted at disabilities compete with all other social change projects for the same grants - and they almost always lose the competition. *Id.*

D. USAID AND HUMAN RIGHTS - THE WOMEN IN DEVELOPMENT PROGRAM

To establish the best framework for securing disability rights through USAID, it is crucial to understand the strengths and weaknesses of such a framework. Prior studies of similar frameworks are instrumental in developing such a framework.

The Women in Development ("WID") Program is the oldest program at USAID that links human rights and economic development.⁸³ It was developed through a 1973 amendment, known as the Percy Amendment,⁸⁴ to the Foreign Assistance Act that required that a portion of U.S. foreign assistance for international development be allocated to promote efforts directed at integrating women into society.⁸⁵ In 1974, an office within USAID was created to implement this law.⁸⁶

The Percy Amendment was part of an emerging international trend at a time when women's contribution to society and economic development was unrecognized.⁸⁷ Development strategies of the time also denied women the benefits of the development process.⁸⁸ The approach adopted through the Percy Amendment was known as

83. See 22 U.S.C. § 2151k (2000) (establishing the Women in Development Program).

84. See 22 U.S.C. § 2151(k) (noting strong support for efforts to encourage and promote the participation of women in development, as mandated in Section 113 of the Foreign Assistance Act of 1961).

85. See GLORIA NIKOI, GENDER AND DEVELOPMENT 20 (1998) (requiring U.S. representatives of various monetary bodies to encourage the integration of women into the national economies of member and recipient countries and into professional and decision making positions in such organizations).

86. See 22 U.S.C. § 2225 (2000).

87. See NIKOI, *supra* note 85, at 11-12 (stating that the United Nations began treating the integration of women into development efforts as a goal in the beginning of the 1970s). There was a call "to bring about a more equitable distribution of income and wealth for promoting both social justice and efficiency of production." *Id.*

88. See Celestine I. Nyamu, *How Should Human Rights and Development Respond to Cultural Legitimization of Gender Hierarchy in Developing Countries*, 41 HARV. INT'L L.J. 381, 384 (2000) (contending that the established system at the time did not recognize women's work outside the formal workplace and that the negative stereotypes nurtured through socialization are responsible for holding women back).

WID. It was not concerned so much with women's rights and women's economic status as it was concerned with achieving better development through the inclusion of women, who make up fifty percent of the population.⁸⁹

WID was criticized in later years for its lack of attention to gender roles and women's equality, as well as women's role in society in the broader social context of development.⁹⁰ On the practical level, some criticize implementation of the Percy Amendment as slow and unsubstantial.⁹¹ However, the international women's movement on advancing women's rights and equality was predicated on the WID approach.⁹² In the 1990s, the WID program shifted its focus from promoting women as resource to advocating women's rights.⁹³ Today, WID is credited with integrating gender considerations into development projects.⁹⁴ Nonetheless, some activists still maintain

89. See Katherine Spengler, *Expansion of Third World Women's Empowerment: The Emergence of Sustainable Development and the Evolution of International Economic Strategy*, 12 COLO. J. INT'L ENV'L. L. & POL'Y 303, 313-314 (2001) (asserting that micro-finance programs were promoted as a means of empowering women, thereby increasing the productivity of the third world's workforce). *But see* UNITED NATIONS: 3281 (XXIX) CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES 52, *reprinted in* NIKOI, *supra* note 85, at 13 (stressing the need for equality of women with men in the home and in family life, in order to enable women to take greater part in the life of the community).

90. See Nyamu, *supra* note 88, at 385-386.

91. See KATHLEEN STAUDT, WOMEN, INTERNATIONAL DEVELOPMENT, AND POLITICS – THE BUREAUCRATIC MIRE 9 (1997) (arguing that the WID office has made little impact during the first twenty years when its budget was low and its ability to affect all the AID programs was small); *see also* Ossai Miazad, *Legislative Focus: Gains Act*, 9 HUM. RTS. BR. 37 (2002) (asserting that gender equality is a core development issue that enhances U.S. global interests).

92. See Spengler, *supra* note 89, at 315 (describing how, in the 1970s and early 1980s, a slew of international conventions recognized that in order to effectively use women as an economic resource, gender inequalities and discrimination would have to be addressed).

93. See 22 U.S.C. § 2151k(b)(2) (2000) (providing no separate development assistance program for women); *see also* International Development and Food Assistance Act of 1978, Pub. L. No. 95-424, H.R. REP. NO. 95-1087 (1978) (stating its goal as promoting the participation and integration of women and prohibiting the segregation of women in different programs).

94. See Miazad, *supra* note 91 (noting that USAID established a Gender Plan of Action ("GPA") in 1996 to ensure that gender considerations were institutionalized throughout its agencies' development programs and projects); *see*

that the budget is too low and the goals need to be more directly focused on empowerment of women and their human rights.⁹⁵

The lessons from the WID program as it applies to disability can be summed up as: (1) it is crucial from the start to gather enough resources to achieve actual change in the organizational culture regarding disability; and (2) USAID should emphasize the underlying moral and legal premise for the new framework concerning people with disabilities – i.e. human rights - in its effort to construe the issue as one of development. Similarly to the WID case, the economic and the human rights aspects of disability are closely linked. For both women and disabled people, the “indivisibility of human rights” is not just a slogan, but a reality. Without political power, women were left outside of decision making processes and their needs were ignored. Thus, incorporating people with disabilities’ needs in all USAID programs is crucial in any real effect on equality, just as incorporating gender into all USAID programs was necessary.

III. RECOMMENDATIONS: MODELS AND FRAMEWORK FOR DISABILITY RIGHTS AND FOREIGN ASSISTANCE

A. SUBSTANCE

The first issue the United States should consider is the kind of change the project is set out to achieve. While the main focus for developing a good and sustainable local framework is to include people with disabilities in societies around the world, the founding principle should remain freeing people with disabilities from

also USAID Women In Development Office, Gender Plan of Action Outline, *available at* <http://www.usaid.gov/wid/pubs/actionfs.htm> (last visited Mar. 28, 2003).

95. *See* The Global Action and Investments for Success for Women and Girls (GAINS) Act, *reintroduced in* April 2002 (advocating for legislation to ensure implementation of the GPA and broadening the scope of the WID program); *see also* H.R. 4114, 107th Cong. (2001) (increasing support for programs aiding women and girls).

discrimination and abuse.⁹⁶ Therefore, it is crucial for the foreign assistance legislation and U.S. foreign policies to address discrimination based on disability as any other kind of human rights violation.

The United States should adopt a policy that incorporates both a development approach and a human rights conditionality component. Aid should be provided to promote compliance with minimum standards of inclusion of people with disability in all countries that receive U.S. assistance.⁹⁷ These minimum standards will set the goals for development, as well as provide an effective basis for determining eligibility for continued assistance.⁹⁸ Corresponding duties to report to Congress and the President on the progress or inaction of foreign governments should also be established.

Also, part of the foreign assistance should go directly to non-governmental organizations ("NGOs") that promote disability rights in the receiving country. NGOs would both engage the local government in advocacy efforts to better the situation and provide services necessary to enhance disability rights.⁹⁹

Aside from the International Covenant on Civil and Political Rights,¹⁰⁰ the United States is not a party to any other human rights standards that promote the rights of the disabled. Yet the United States has developed comprehensive domestic legislation concerning the disabled. Therefore, the United States could provide the

96. *See supra* notes 1-5 and accompanying text (discussing the different forms of social prejudice and discriminations to which people with disabilities are subjected).

97. *See supra* notes 26-30 and accompanying text (providing information on current foreign assistance legislation regarding human rights).

98. *See infra* Part I.B.1 (reporting that development assistance provides links between human rights violations and monetary aid received). Similar to the trafficking example, it would be wise to set a number of years in which compliance with the standards will be facilitated through assistance programs, followed by threat of sanction if no significant efforts are made to better the situation.

99. *See* Foreign Relations Authorization Act of 2003, Pub. L. No. 107-228, 116 Stat. 1350 (2002) (reporting that Congress recently adopted amendments to the Trafficking Act that specifically targets NGOs that provide services to trafficking victims as recipients of funds).

100. GA Res. 2200A (XXI) 21, U.N. GAOR, Supp. No. 16, 52, U.N. Doc. A/6316 (1966).

necessary leadership to advance the human rights of the disabled abroad. In choosing the basis for the minimum standards against which other countries are measured, however, it would be best to adopt an international instrument¹⁰¹ as a framework, rather than the U.S. domestic legislation.

Finally, the United States should consider designing a program that fosters not only improvement in the conditions of people with disabilities, but also development of permanent domestic structures to uphold rights of people with disabilities. The process would require the government and the public to promote the inclusion of people with disabilities in all realms of society. This commitment must be grounded in altered legal norms and social attitudes, as well as proper allocation of resources so that the change is sustainable.

B. FORM

The second equally important issue for the United States to consider is the form that the project of meshing human rights of people with disabilities with development agencies will take. One option could be to establish a specialized agency (similar to the WID program) that deals exclusively with disability rights. Another option could be to design project aimed at mainstreaming disability considerations in all USAID programs and missions.

An office of disability would have a separate budget set aside for programs that promote the human rights of the disabled. The obvious advantage to this is that disability projects will not have to compete with other projects for funding. However, there is a probable risk that other departments would not deal with issues relating to disability rights in their programs because departments will consider them covered.¹⁰² Another disadvantage could be that while a professional

101. The U.N. Standard Rules on the Equalization of Opportunities for Persons with Disabilities can serve as such basis, as could another declaration or resolution or a combination thereof.

102. See STAUDT, *supra* note 91, at 8 (arguing that separate women's projects or departments rarely empowered women socially or economically). Separate programs lack the resources to influence other government programs and their formation tends to cause other departments to shift their "gender" or "women" responsibilities to them, thus creating the illusion that the issue is "covered" and the government as a whole ceases to be accountable for the issue. *Id.*

office would have greater expertise than the rest of the regional programs, its position in the organization could be such that it would not have much effect on other departments.¹⁰³

A mainstreaming model implies that each program would be required to promote the rights of the disabled in its field of expertise. A successful mainstreaming project would end the isolation of disability as a “special group interest” and make it a valid concern for the whole organization. Another factor to consider is that all USAID programs have bearing on some component in the rights of disabled people. Therefore only by incorporating disability considerations in all of the programs simultaneously USAID would achieve a significant change in the inclusion of disabled people. Thus, putting specific emphasis on people with disabilities would enhance USAID’s overall development goals.¹⁰⁴ The risk is that in reality inadequate funding and resources would actually be allocated to disability since the allocation would depend upon the commitment and awareness of individual staff.¹⁰⁵

In light of the current state of implementation of USAID Disability Policy, it seems that taking the mainstreaming course by itself would be very risky and probably would not advance the issue. Currently, the formation of a new office on disabilities is the better option.¹⁰⁶

103. See Kathleen Staudt & Alice Stewart Carloni, *Women in Development: AID's Experience, 1973-1985*, A-14, reprinted in NIKOI *supra* note 85, at 20-21 (reporting studies USAID conducted in 1982 and 1987 that pointed to the limited mandate of the office). While the office was able to voice its concerns about new projects and policies, it did not have any veto power. *Id.*

104. See, e.g. Office of Democracy and Governance, USAID “Civil Society” Section (asserting that the USAID priority was to support those NGOs that enter the public policy arena and advocate for social change), at <http://www.usaid.gov/democracy/office/civ.html> (last visited Mar. 28, 2003). Thus, an example of a case where promoting disability rights contributes to the overall development goal is empowering groups of people with disabilities and their families to form advocacy organizations. These would engage the government in debate about disability rights and promote the rights of disabled people, an activity that fosters democratic social change. *Id.*

105. See Staudt & Carloni, *supra* note 103 (pointing to the difficulty of implementing gender policies by the preexisting aid bureaucracies, and stressing the importance of personnel-sensitizing programs so that staff would not be hostile to integrating the new concepts into their work).

106. To establish a successful new office on disability, an interim model should not be a large legislative effort for more funds, but rather, an effort to establish an

The office would be in charge of the issue in general, including technical assistance, professional knowledge, and awareness-raising programs for the organization. The office on disability would set annual and long-term plans of action, conduct research,¹⁰⁷ and oversee compliance with the disability policy.

Additionally, several factors are crucial for successful operation of the new office: (a) official commitment from the heads of USAID to disability rights and an official recognition that people with disabilities are a bona fide subject for development; (b) mandatory inclusion of disability concerns and projects in each USAID program; and (c) a tangible, real, awareness-raising program for USAID staff, both in the United States and abroad.

USAID cannot achieve any change without a critical mass of people within USAID who are aware of and knowledgeable about disabilities, and the relation between disability, human rights, and development. Therefore, the establishment of an office that not only implements independent projects, but also oversees mainstreaming, is necessary.

CONCLUSION

The convergence of foreign assistance and disability involves two fields, each constantly reshaped by new paradigms and practice. Increasingly, foreign assistance legislation has emphasized the need to protect specific human rights violations and has created new frameworks in an effective manner.¹⁰⁸ Human rights of people with

Advisor on Disabilities position at USAID or at the State Department. The appointment would be of one person, with some assisting staff, who will examine ways in which to integrate disability rights into all existing programs. This will establish awareness raising programs and provide research on disability in the context of development efforts. This will likely pave the way to establishing a permanent office in the near future.

107. There is a real need to provide more on-the-ground research, specifically on the relationship between poverty and disability, in order to design better programs that would best affect economic development. However, for tactical and principled reasons, the human rights community should advocate for an advisor who will push for an office on disability with authority and independent budget.

108. See *supra* notes 32-42 and accompanying text (discussing legislation that provides development assistance to recipient countries with respect for human rights).

disability is an emerging field of international law and one which has gained growing attention. The United States has an opportunity to lead a campaign for human dignity and inclusion of disabled people.¹⁰⁹ This campaign is consistent with domestic values and legislation and would eliminate the credibility problem that currently hangs over the United States as a result of the double standard toward disability at home and abroad. Therefore, a new framework is essential to address disability and foreign policy. The new framework should be mandatory, both for U.S. agencies that would apply it and for the foreign countries that would be guided by it. People with disability around the world should enjoy the full spectrum of human rights that the rest of the population enjoys and the United States should harness its considerable political weight to achieve this goal.

109. *See supra* notes 103-104 and accompanying text (asserting that the United States is in the best position to provide the necessary leadership in advancing the rights of the disabled).