

Foreign Policy and Disability:  
Legislative Strategies and  
Civil Rights Protections  
To Ensure Inclusion of People  
with Disabilities



National Council on Disability

September 9, 2003

National Council on Disability  
1331 F Street, NW, Suite 850  
Washington, DC 20004

**Foreign Policy and Disability: Legislative Strategies and Civil Rights Protections To Ensure Inclusion of People with Disabilities**

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## NATIONAL COUNCIL ON DISABILITY

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*An independent federal agency working with the President and Congress to increase the inclusion, independence, and empowerment of all Americans with disabilities.*

September 9, 2003

The President  
The White House  
Washington, D.C. 20500

Dear Mr. President:

On behalf of the National Council on Disability (NCD), I am submitting a report entitled *Foreign Policy and Disability: Legislative Strategies and Civil Rights Protections To Ensure Inclusion of People with Disabilities*. This report is a follow-up to NCD's 1996 Foreign Policy and Disability report that found continued barriers to access for people with disabilities in U.S. foreign assistance programs.

In the 1996 report, NCD recommended a series of policy changes to ensure inclusion of people with disabilities in all foreign assistance programs, including the establishment of specific objectives for inclusion with a timetable for their fulfillment. Seven years later, NCD has concluded that inclusion of people with disabilities in U.S. foreign policy will be achieved only when specific legislation is enacted to achieve that purpose. This report reviews a number of models that Congress has adopted for linking human rights and foreign policy that can be adapted to ensure the inclusion of people with disabilities. This report looks primarily at the U.S. Department of State and the United States Agency for International Development (USAID). Among the various strategies and approaches to improve foreign assistance policies and practices, NCD recommends that Congress amend the Foreign Assistance Act to ensure inclusion of people with disabilities in all U.S. programs by requiring every U.S. agency operating abroad to operate in a manner that is accessible and inclusive of people with disabilities. NCD recommends that this be accomplished by, among other reforms, amending the Foreign Assistance Act to create a Disability Advisor at the State Department and creating an office on Disability and Development at USAID.

NCD also calls on your Administration to recognize that all U.S. government operations abroad should be brought into compliance with Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.

The principles of non-discrimination, access, and inclusion of people with disabilities have been established as civil rights. The reforms discussed in this report are needed to ensure that people with disabilities can fully contribute to U.S. foreign policies and programs abroad as they have done so effectively at home.

Sincerely,

A handwritten signature in cursive script that reads "Lex Frieden".

Chairperson

(The same letter of transmittal was sent to the President Pro Tempore of the U.S. Senate and the Speaker of the U.S. House of Representatives.)



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## **PART I.**

### **Executive Summary and Conclusions**

More than 600 million people, almost 10 percent of the world's population, have a disability. This number will rise dramatically in the coming years as the population ages and as more people become disabled by AIDS. Rates of disability are particularly high in post-conflict societies, among refugee populations, and in countries with histories of political violence. Even in stable societies, however, people with disabilities make up the poorest of the poor. In some of the world's poorest countries, according to the United Nations (UN), up to 20 percent of the population has a disability.

Individuals with disabilities are subject to a broad pattern of discrimination and segregation in almost every part of the world. In most countries, people with disabilities and their families are socially stigmatized, politically marginalized, and economically disadvantaged. The economic cost to society of excluding people with disabilities is enormous. No nation in the world will achieve its full potential for economic development while it leaves out people with disabilities. No society will be a complete democracy unless people with disabilities can participate in public life. Failure to respond to the concerns of people with disabilities ignores one of the great humanitarian and human rights challenges of the world today.

The United States is well positioned to lead the world in demonstrating how to build on the tremendous human potential of people with disabilities. It is among the world leaders in protecting the civil rights of people with disabilities, with legislation that seeks to ensure their full participation in society, and in supporting their independent living. The Americans with Disabilities Act (ADA) represents a sweeping commitment on the part of the U.S. government to abolish discrimination against people with disabilities in all walks of life. Since the adoption of the Rehabilitation Act in 1973, U.S. civil rights laws have required all U.S. government programs to be inclusive of and accessible to people with disabilities. As they have exercised

their rights over the past 30 years, Americans with disabilities have broken barriers to inclusion, shattered stereotypes about their limitations, and contributed to the economic, cultural, and political life of the nation.

At present, U.S. foreign policy does not reflect the great accomplishments of people with disabilities within the United States. U.S. citizens with disabilities cannot serve in many embassies abroad because these buildings are physically inaccessible. Qualified and talented individuals may be excluded from U.S. government service abroad based on their medical history. In addition to failing to protect U.S. citizens with disabilities in foreign operations, U.S. foreign policies and programs have generally not been designed to respond to the concerns of individuals with disabilities abroad. While the Foreign Assistance Act has long established that “a principal goal of the foreign policy of the United States shall be to promote the increased observance of internationally recognized human rights by all countries,”<sup>1</sup> the rights of people with disabilities have been long ignored.

The U.S. National Council on Disability (NCD) calls on the Executive Branch and Congress to create a new foreign policy that ensures access by people with disabilities to the benefits of democracy and economic development around the world. All U.S. foreign operations abroad (including foreign assistance efforts) would be greatly improved if the principles established in U.S. civil rights law—under the Rehabilitation Act and the ADA—were applied to U.S. operations abroad. Such a policy would require U.S. foreign assistance funding to be used in a manner that is accessible to people with disabilities. Such protections would also ensure that U.S. citizens and contractors with disabilities would be protected against discrimination in the implementation of U.S. programs abroad. Leadership by U.S. citizens with disabilities in our foreign operations would greatly improve our ability to respond to the concerns of people with disabilities in other countries.

In 1996, NCD issued a report on foreign policy and disability that found that U.S. programs abroad did not conform to the letter or spirit of U.S. disability rights law. On the basis of recent legal

developments, this paper demonstrates that current U.S. disability discrimination laws may now be found to apply to U.S. foreign programs operating abroad. NCD recommends that Congress instruct the State Department and United States Agency for International Development (USAID) to apply the protections of the Rehabilitation Act and the ADA to U.S. operations abroad.

In addition to extending civil rights protections that would govern the operation of all U.S. agencies abroad, NCD recommends the adoption of specialized new legislation to ensure the inclusion of people with disabilities in foreign assistance. Such legislation would also greatly improve the effectiveness of U.S. efforts to promote human rights and economic development worldwide.

One major source of evidence that guides U.S. human rights policy is the State Department *Country Reports on Human Rights Practices*. In recent years, the State Department Bureau of Democracy, Human Rights and Labor (DRL), has made an important step in the right direction by adding a section on disability rights to the *Country Reports*. This documentation has already had a valuable impact on promoting the rights of people with disabilities.<sup>2</sup> But the information about disability rights in *Country Reports* is extremely limited and does not begin to paint a full picture of the scope of human rights violations to which people with disabilities are subjected throughout the world today: *de jure* discrimination against people with disabilities that excludes them from jobs; *de facto* discrimination that permits exclusion from inaccessible public services or transportation systems; physical and linguistic barriers to participation in public life; denial of public education to people with developmental disabilities; failure to provide medical care to children with disabilities; and arbitrary detention in psychiatric or social facilities where people with disabilities are left to languish in some of the most inhuman and degrading conditions known to humankind.

State Department DRL staff have explained that the lack of information about human rights violations against people with disabilities in the *Country Reports* is a product of the fact that there are so few nongovernmental human rights or disability rights organizations conducting investigations and documenting abuses. DRL relies extensively on such information for its

reports. Both DRL and USAID provide funding and assistance to support civil society and human rights programs abroad. To date, these programs have not sought to fill the gap in human rights documentation or advocacy for people with disabilities.

Despite the tremendous hardships faced by people with disabilities around the world, a 1991 investigation by the General Accounting Office (GAO) found that the major U.S. foreign assistance agencies do not include the concerns of people with disabilities as a priority or as a goal of specific programs. In 1996, NCD issued a report on U.S. foreign policy and disability and found continued barriers to access for people with disabilities. The 1996 NCD Report recommended a series of policy changes to ensure inclusion of people with disabilities in all foreign assistance programs, including the establishment of specific objectives for inclusion with a timetable for their fulfillment.

In response to the 1996 NCD Report, USAID adopted a Disability Policy. USAID accepted NCD's recommendation to include people with disabilities in all its programs, but it dedicated no resources for this purpose. The USAID Disability Policy includes no specific objectives or timetables, creates no new initiatives to reach out to people with disabilities, and does not require U.S. Missions abroad to change their practices. Disability experts working abroad have reported that the vast majority of staff at U.S. Missions abroad are unaware of USAID's Disability Policy.

USAID has issued a series of three valuable self-evaluations on its own efforts to include people with disabilities. These reports provide documentation of USAID's implementation of its Disability Policy—or the lack thereof. The most recent survey of activities by USAID Missions finds “inclusion of PWDs in significantly more projects than in the 2000 and 2002 reports.” The 2003 report concludes that “[a]lmost all USAID programs have the potential to prevent disability or to enhance the lives of people living with disability. Except where there is specific legislation, however, relatively few programs give systematic thought to including people with disabilities in their design and implementation. The Congress has expressed interest in programs to assist the

disabled and USAID has been responsive, for example, through the Leahy War Victims Fund and the Victims of Torture Fund.”

The 2003 USAID report describes a number of important programs for people with disabilities and finds “an increasing variety of activities that target or include people with disabilities.” These programs demonstrate how disability issues can be incorporated into USAID’s existing work where there is a will to do so. When U.S. agencies operating abroad have focused on the concerns of people with disabilities, they have demonstrated that it is both practical and cost-effective to create appropriate accommodations—even in some of the poorest countries of the world. In the post-war reconstruction of Afghanistan, for example, USAID adopted a policy of making new structures accessible to people with disabilities. This program has reportedly helped people with disabilities in Afghanistan at little additional cost to the United States. By planning ahead, U.S. assistance programs in Afghanistan avoided the future costs of retro-fitting buildings and public thoroughfares for people with disabilities. All Afghans benefit because this policy ensures that the human potential of people with disabilities contributes to the growth of the society as a whole. Without legislation to ensure an approach like the one adopted in Afghanistan, however, there is no guarantee that rebuilding efforts in other countries—such as Iraq—will follow the same pattern. Indeed, the U.S. contracts that have been awarded to large American construction companies to rebuild the infrastructure in Iraq do not require that new construction be accessible to people with disabilities. As this report goes to press, it is not too late for Congress to act to require that all reconstruction efforts by the U.S. military as well as by private U.S. contractors in Iraq be accessible to and inclusive of people with disabilities.

Seven years after NCD’s initial Report on Foreign Policy and Disability, NCD issues this follow-up paper to examine legislative options and civil rights protections to ensure inclusion of people with disabilities in U.S. foreign policy. NCD has come to the conclusion that legislation is necessary to ensure the inclusion of people with disabilities in foreign affairs. This report reviews

a number of models that Congress has adopted for linking human rights and foreign policy. These laws provide models that can be adapted to ensure the inclusion of people with disabilities.

The legislative reforms and new foreign assistance programs proposed by NCD do not amount to special privileges for people with disabilities. The principles of nondiscrimination, access, and inclusion of people with disabilities have been established as civil rights. The new initiatives NCD proposes are similar to programs already established by the United States for women and vulnerable populations. These reforms are needed to ensure that people with disabilities can fully contribute to U.S. foreign policies and programs abroad as they have done so effectively at home.

### **Summary of Recommendations**

The following is a summary of NCD's recommendations. More detailed recommendations appear in Part V of the report. While NCD's recommendations are primarily directed at Congress, the Department of State, and USAID, the Department of Defense and other agencies operating abroad can take up many of these recommendations immediately without further action by Congress.

**NCD calls on the Bush Administration** to recognize the extraterritorial application of Titles II and III of the Americans with Disabilities Act and Sections 501, 503, and 504 of the Rehabilitation Act. All U.S. government operations abroad should be brought into compliance with these laws.

### **NCD recommends that Congress:**

**Instruct the State Department and USAID** that Sections 501, 503, and 504 of the Rehabilitation Act apply to overseas operations of the U.S. government. This will ensure that civil rights protections against discrimination on the basis of disability apply to U.S. government employees and contractors working abroad. It will also ensure that all U.S.-funded programs are used in a manner that is accessible to and inclusive of people with



disabilities. Similarly, the ADA is intended to ensure that U.S. corporations operating abroad are prohibited from discriminating against U.S. citizens with disabilities.

**NCD recommends that Congress amend the Foreign Assistance Act or adapt other legislation to:**

**Create a Disability Advisor at the U.S. Department of State** to serve as a leader in the development of U.S. international disability policy and to ensure that respect for disability rights is included in U.S. bilateral and multilateral policies and programs, complete with a staff and resources to carry out the work of this advisor. The advisor and staff should be composed of a strong contingent of people who have personal experience with disability and disability advocacy as well as the necessary technical expertise.

**Require documentation of disability rights violations in Department of State *Country Reports***—Congress should act to ensure that reliable and detailed documentation of the full scope of worldwide discrimination and abuse of people with disabilities is obtained and made available to policymakers and the public. The State Department DRL, which produces annual *Country Reports on Human Rights Practices*, has already demonstrated a willingness and an ability to provide this documentation in an effective manner. Congress should provide DRL with the additional funds needed to further improve its coverage of people with disabilities in the *Country Reports*. The Department of State should be required by law to report on human rights violations against people with disabilities wherever they occur. Where reliable information about human rights conditions of people with disabilities is not available, DRL staff should (1) investigate some of the more common human rights violations against people with disabilities and/or (2) provide grants to independent nongovernmental disability organizations and mainstream human rights organizations to provide necessary documentation (grants may be coordinated with the proposed USAID Fund for Inclusion, described below).

**Ensure inclusion of people with disabilities in all U.S. programs abroad by providing a broad legal mandate to require every U.S. agency operating abroad to operate in a manner that is accessible and inclusive of people with disabilities.** This mandate should apply to all aspects of U.S. foreign assistance, including economic development, disaster relief, and human rights programs. All new investments in physical infrastructure using U.S. government funds, including U.S. military construction programs, should be accessible to people with disabilities. Legislation should require all U.S. agencies operating abroad to develop plans to ensure that the concerns of people with disabilities are among their priorities. Specific action steps for the inclusion of people with disabilities should be included in the strategic plans of all USAID divisions (including, but not limited to, such programs as democracy and governance, cultural exchange, health, economic development, disaster relief, and rebuilding post-conflict societies).

**Create an office on Disability in Development (DID) at USAID,** similar to the USAID office of Women in Development (WID), responsible for promoting the inclusion of people with disabilities in all USAID programs. As with WID, Congress should set aside funds for the operation of the DID office. Unlike WID, however, the DID office should be incorporated into one of the main substantive divisions or “pillars” of USAID to ensure the office is not isolated and that disability programs are effectively mainstreamed into a broad array of existing programs. The DID office will provide technical assistance to other USAID offices to assist them in developing appropriate accommodations and outreach programs to ensure the inclusion of people with disabilities in all existing areas of USAID programming. The DID office will ensure that annual and long-term strategic plans at all USAID offices include provisions requiring that concrete steps be taken to ensure the inclusion of people with disabilities. The DID office will administer a Disability Rights Fellowship that will place technical experts on disability issues in U.S. Missions abroad. Congress should set aside sufficient funds to permit DID to assist all U.S. Missions and to place a Disability Rights Fellow in the majority of USAID Missions

abroad. The Disability Rights Fellows should be composed of a strong contingent of people who have personal experience with disability and disability advocacy as well as the necessary technical expertise.

**Establish a Fund for Inclusion, Leadership, and Human Rights of People with Disabilities** (referred to as the Fund for Inclusion). The Fund for Inclusion will be a grants program designed to promote the participation of people with disabilities in all aspects of U.S. foreign assistance programs. The Fund for Inclusion will

- Support the creation, development, and viability of nongovernmental organizations (NGOs) made up of people with disabilities around the world;
  - Promote educational exchanges, technical assistance, and collaboration among U.S. disability rights groups, foreign governments, human rights organizations, and disability leaders abroad;
  - Assist governments in drafting enforceable disability rights legislation and assist NGOs in proposing and promoting such legislation; and
  - Establish independent human rights oversight, advocacy, and enforcement programs for people with disabilities.
- The Fund for Inclusion shall be used to support the work of U.S.-based disability organizations to provide technical assistance abroad or to serve as cooperating partners in the development of disability programs by USAID. Congress should allocate substantial resources to this program at least as large as other specialized programs for other vulnerable populations.

**New initiatives in post-conflict societies should make people with disabilities a priority**—USAID and U.S. military programs in post-conflict societies should recognize that (1) war and conflict lead to high levels of disability, (2) the health and safety of people with disabilities are particularly at risk in post-conflict societies, and (3) it is most cost-efficient to plan for the inclusion of people with disabilities when new investments

are being made in the built environment. Thus, inclusion of people with disabilities should be a priority in the immediate aftermath of major conflicts and disasters.

**Inclusion should be a required part of the Millennium Challenge Account**—The proposed Millennium Challenge Account, which would establish a development program parallel to USAID, should be required to include people with disabilities from the outset.

**Request the GAO to document access to people with disabilities** in current U.S.

government-funded programs. GAO will complete the task it set for itself in 1991 to conduct a thorough examination of the procedures and directives that guide the Department of State in the construction and renovation of facilities abroad to ensure accessibility to people with disabilities.

**Support the drafting of a UN Disability Rights Treaty**—In addition to amending the Foreign Assistance Act, NCD calls on Congress and the Bush Administration to demonstrate their commitment to the international human rights of people with disabilities by supporting the drafting of a new UN Convention on the Rights of People with Disabilities in the spirit of the ADA and other civil rights laws that will bring about the full inclusion of people with disabilities in society.

**U.S. agencies operating abroad should establish guidelines for the implementation of the Rehabilitation Act in their programs abroad.** The Department of State and other U.S. agencies should initiate a planning process to ensure the inclusion of people with disabilities into all their programs abroad. NCD supports the principle, recognized in the current USAID Disability Policy, that people with disabilities should be included in all existing foreign assistance programs. NCD requests that USAID make this policy an agency commitment that is binding in all programs run by U.S. Missions abroad and a mandatory part of all USAID grants and contracts. USAID should establish a program for fully implementing this commitment and should incorporate this program into its main strategic plans. Other U.S. government agencies operating abroad should establish similar policies.

## PART II.

### Right to Inclusion in Foreign Policy and Assistance Programs

#### 1. Background: Discrimination and Development

People with disabilities are subject to economic and social marginalization, segregation, discrimination, and a broad range of other civil and human rights violations around the world.<sup>3</sup> Three UN Special Rapporteurs have found that individuals with disabilities experience discrimination in employment, housing, health services, public accommodations, education, transportation, communication, recreation, voting, and opportunities for political participation on every continent.<sup>4</sup> With 600 million people with disabilities in the world, of whom 80 percent are in developing countries,<sup>5</sup> the scope of this problem is enormous.<sup>6</sup> UN Special Rapporteur Leandro Despouy found in 1991 that “millions of children and adults [with disabilities] throughout the world are segregated and deprived of virtually all their rights and lead a wretched, marginal life.”<sup>7</sup> This year’s State Department *Country Reports on Human Rights Practices* refers to only a small number of the world’s human rights violations against people with disabilities, but they are valuable examples of the deprivations that could be addressed through political pressure or targeted foreign assistance.<sup>8</sup> NGOs have documented severe human rights abuses against people with disabilities—including arbitrary detention in institutions, where people are subject to inhuman and degrading treatment, and life-threatening conditions.<sup>9</sup>

People with disabilities are among the poorest of the poor in most developing nations. A recent study done by the World Bank found that people with disabilities have less access to education and lower income levels than the rest of the population and are thus more likely to live below poverty levels than the rest of the population in most countries.<sup>10</sup> A report by the British Department for International Development cites statistics that “mortality for children with disabilities may be as high as 80 percent even in countries where under-five mortality as a whole has decreased below 20 percent. In certain cases there seems to be a ‘weeding out’ of children with disabilities, the ‘missing children’.”<sup>11</sup>

The problem of AIDS in developing nations is closely linked with issues of disabilities. People living with AIDS may acquire a broad range of physical or mental disabilities. Failure to accommodate the disabilities associated with AIDS may exclude individuals from the economic and social support systems they need to care for themselves. Failure to provide education in AIDS prevention in a manner that is accessible to people who are blind, deaf, or mentally disabled leaves this population particularly at risk of AIDS.

The lack of protection against discrimination and exclusion of people with disabilities leads to economic hardship and a loss of productive capacity in every society.<sup>12</sup> Even in societies with no active exclusion of people with disabilities, the experience of human rights violations, economic hardship, stigma, and the lack of opportunities for leadership limits the access of people with disabilities to participation in public life. Without representation of the skills, experiences, and voices of people with disabilities, representative democracy in any society will not be fully effective.

The 1993 *World Development Report* of the World Bank has documented the enormous cost to society of excluding people with disabilities from economic opportunities.<sup>13</sup> Foreign assistance programs of other major donor nations are increasingly cognizant of the fact that discrimination against people with disabilities impedes economic development. As described by the British Department for International Development in its study *Disability, Poverty, and Development*,

Disability does not just affect the individual, but impacts on the whole community. The cost of excluding people with disabilities from taking an active part in the community life is high and has to be born[e] by society, particularly those who take on the burden of care. This exclusion often leads to losses in productivity and human potential. The UN estimates that 25 percent of the entire population is adversely affected in one way or another as a result of disabilities.<sup>14</sup>

The British study describes a “vicious cycle” of disability and poverty. For example, “[p]eople with disabilities who are denied education are then unable to find employment, driving them more deeply into poverty.” Thus, the British foreign assistance program recognizes that specialized programs to attack barriers to participation by people with disabilities are needed:

[G]eneral improvements in living conditions will not be enough. Specific steps are still required, not only for prevention, but also to ensure that people with disabilities

are able to participate fully in the development process, obtain a fair share in the benefits, and claim their rights as full and equal members of society.<sup>15</sup>

The British foreign assistance programs specifically target the problem of discrimination as the root cause of many of the costs associated with disability:

There is increasing recognition that the term disability does not simply express a medical condition but a complex system of social restrictions emanating from discrimination. Empowerment, participation and equal control become the means of overcoming disability, rather than medical care alone.<sup>16</sup>

The Norwegian government has adopted a similar approach that supports active participation by people with disabilities and human rights protections as a way to promote both economic and social development.<sup>17</sup>

The World Bank has also adopted a new program to incorporate disability into its activities.<sup>18</sup>

The cofounder of the World Institute on Disability and a former Assistant Secretary of Education is the newly appointed World Bank Disability Advisor. The World Bank program is premised on the idea that economic development and the inclusion of people with disabilities are closely linked.<sup>19</sup> The World Bank disability program anticipates that disability issues will become increasingly important in the years to come. The proportion of persons with disabilities is growing because of increased aging of the world population and because of the worldwide problem of AIDS/HIV. The World Bank policy also recognizes the special vulnerability of people with disabilities in war-torn countries and post-conflict societies. The World Bank policy on disability recognizes that increasing the participation and opportunities for persons with disabilities results in economic and social benefits for the whole society.<sup>20</sup>

While the United States does not have a formal disability and foreign policy program, it is one of the world's leaders in developing civil rights protections for people with disabilities at home.

In domestic U.S. law, there has been a 30-year public commitment to banning discrimination and promoting full participation of people with disabilities in public life. The Rehabilitation Act of 1973<sup>21</sup> protects people with disabilities against discrimination by the U.S. government, and it bars federal funds from programs that are not fully accessible to people with disabilities. When President Bush signed the ADA<sup>22</sup> in 1990, the United States extended its commitment to

protection against discrimination to private individuals and entities. The ADA is a powerful statement of the U.S. commitment to full inclusion, equality of opportunity, independent living, and economic self-sufficiency for people with disabilities. As described by NCD,

The unparalleled legal protection given Americans through the Rehabilitation Act, ADA, and other disability rights laws won the admiration of people with disabilities, human rights activists, and people of goodwill around the world. These laws underscore the authority of the United States to speak not only as a rich and powerful nation but also as a good and moral one. By demonstrating its strong commitment to the equality of all people, including those with disabilities, the United States strengthened its global position. Disability policy fits naturally with foreign policy.<sup>23</sup>

## **Overview**

In 1996, NCD issued a report, *Foreign Policy and Disability*, to examine the role of people with disabilities within U.S. foreign policies and programs abroad. Based on a review of federal laws and regulations as well as U.S. foreign policies and practices (including a questionnaire completed by selected U.S. embassies abroad), the 1996 NCD Report found a broad failure to include people with disabilities in foreign policy.

This report is a follow-up to the 1996 report. This paper documents the lack of progress in developing new policies since 1996 to ensure the inclusion of people with disabilities within U.S. foreign programs. This paper offers legislative and policy recommendations to ensure a legally enforceable right of access to people with disabilities—as participants in policymaking and as subjects or beneficiaries of policies and programs. Unlike the 1996 NCD *Foreign Policy and Disability* report, this paper is not an empirical analysis of the operation of programs in the field. Such an analysis is needed, and NCD recommends that Congress request the General Accounting Office (GAO) to conduct a thorough examination of the extent to which people with disabilities have access to U.S. programs abroad. This paper does draw on the field experiences and policy recommendations of a working group of disability rights, women’s rights, and international human rights experts convened by NCD in 2000 and 2002.

Part II of this paper provides background on the reasons people with disabilities should be included in U.S. foreign policy. It examines efforts over the past decade to accomplish this goal of inclusion, including NCD’s 1996 recommendations.



Part III of this paper examines current laws that may be used to ensure the inclusion of people with disabilities in foreign policies and programs, including provisions of the Foreign Assistance Act, which currently require a linkage between human rights and foreign policy. Part II also examines other legislation, such as laws requiring the inclusion of women in development, that can be used as models and adapted to promote the inclusion of people with disabilities in foreign assistance programs.

Part IV examines U.S. civil rights protections and evaluates the extent to which programs funded by the U.S. government are now legally required to protect against discrimination and ensure equal access to people with disabilities. The 1996 NCD *Foreign Policy and Disability* report found that U.S. programs abroad did not conform to the letter or spirit of U.S. disability rights law. The 1996 Report assumed, however, that U.S. disability rights laws were not binding on U.S. programs abroad. Recent developments in case law suggest that current disability discrimination law is applicable to U.S. foreign programs operating abroad. These new cases provide a basis for the extraterritorial application of both the Rehabilitation Act of 1973 and the ADA. Congress has already amended Title I of the ADA to apply to employees of American companies overseas. Congress should now instruct the State Department and USAID, as well as other federal agencies, that the Rehabilitation Act and Titles II and III of the ADA also apply overseas, require that U.S. offices and U.S.-funded buildings abroad be physically accessible, and ensure that U.S. citizens with disabilities are protected against discrimination in U.S. government programs and activities overseas.

Part V provides detailed recommendations for legislative and policy changes needed to ensure the inclusion of people with disabilities in U.S. foreign policy and programs abroad.

Part VI concludes with a look ahead to the development of a UN Convention on the Rights of People with Disabilities.

NCD recognizes that the reform of foreign assistance programs to ensure full inclusion of people with disabilities is an enormous challenge and that foreign assistance agencies are already overwhelmed by demands that require them to stretch very limited resources. The inclusion of people with disabilities will be possible only if this process is not set up as one more “special

interest” group that drains resources from the common goal of development. With appropriate planning and project design—and the incorporation of lessons learned from successful programs implemented in the United States and around the world—development for all people will be more effective if people with disabilities are included.

NCD also recognizes that inclusive development will require that accommodations be made in a broad range of programs, including programs to support economic growth, democratization, human rights, health, education, and other areas of development. The population of people with disabilities is enormously diverse in any country, and the reforms that would be needed to bring about their full participation in society are tremendously varied. Following are only a few of the most common challenges: buildings, streets, transportation, medical services, schools, and other public accommodations must be physically accessible; communication systems must be adapted for people who are deaf; public information must be accessible to people who are blind; educational programs must be appropriate for children with developmental disabilities; mental health services should not segregate people from society in closed facilities; counseling services, women’s shelters, and rights protection programs must be established to reflect the fact that women and girls with disabilities are subject to double discrimination in society and require protections against physical and sexual abuse in the family and in the very social programs created by society to serve them; workplaces should be adapted to provide qualified individuals with disabilities with the opportunity to earn a living and establish their economic independence; and all people with disabilities should have the right to vote and the opportunity to participate in cultural, social, and political life. The civil rights protections needed to ensure access for a qualified individual with a disability in an employment setting are enormously different from the human rights needs of a child with a disability living in poverty who is denied access to medical care. International development programs must respond to each of these varied challenges.

The U.S. disability movement has experience in crafting effective responses to these challenges in the United States and abroad. To date, this experience is a largely untapped resource available to the international development community. People with disabilities in the United States are eager to lend their expertise in developing accessible and appropriate programs that meet the needs of people with disabilities—and that promote the most effective development for all people.

## 2. History of Efforts to Ensure Inclusion

NCD issues this paper after more than a decade of educational and collaborative efforts to bring about changes in U.S. government policies abroad. In the early 1980s, for example, the World Institute on Disability and the Disability Rights Education and Defense Fund (DREDF) brought to the attention of the U.S. Department of State and USAID the fact that few people with disabilities had access to U.S. government-funded programs abroad. One recommendation was that Congress establish a legal commitment to include people with disabilities in international development programs modeled on the Percy Amendment of the 1970s. The Percy Amendment guaranteed the creation of programs for the inclusion of women in development.

Despite these efforts, U.S. agencies operating abroad have shown little commitment to addressing disability issues. The U.S. State Department is particularly weak in the enforcement of disability rights for its employees even within the United States. NCD has recently conducted a study of compliance with Section 504 of the Rehabilitation Act by five U.S. federal agencies with regard to the programs it funds in the United States (the study found that the Department of State provided \$139 million to 313 recipients in fiscal year 2000). This study, *Rehabilitating Section 504*, released February 12, 2003, found that the U.S. Department of State ranked the lowest among federal agency practices reviewed. The study found that

The Department of State has reported no federally assisted civil rights enforcement over the 10 years covered by this paper. It effectively has no Section 504 enforcement program. The agency reports that it has had no formal Section 504 complaints filed against recipients during the period covered by this report. The lack of complaints likely reflects the agency's lack of public education and outreach about the rights of people with disabilities under Section 504 rather than a lack of discrimination against people with disabilities.<sup>24</sup>

The lack of domestic efforts to educate its personnel about disability rights issues and to enforce disability rights law is consistent with the findings of two studies conducted in 1991 and 1996 concerning the operation of State Department programs abroad.

### **i. The 1991 GAO Report—Foreign Assistance: Assistance to Disabled Persons in Developing Countries**

In 1991, the GAO conducted an investigation of U.S. foreign assistance programs in developing countries.<sup>25</sup> The GAO report found that while many foreign assistance programs did affect the lives of people with disabilities, inclusion of people with disabilities in such programs was “sporadic.”<sup>26</sup> GAO found that the major U.S. foreign assistance agency, USAID, “does not generally attempt to target the disabled in its regular bilateral assistance programs...”<sup>27</sup> In the absence of planning or directives from its central office in Washington, DC, USAID officials observed that USAID Missions abroad could take the initiative to include people with disabilities, since USAID Missions have broad discretion as to how to program approximately 75 percent of U.S. foreign assistance funds.<sup>28</sup> As of 1991, however, the GAO report documented the lack of such programs at the Mission level. The GAO report found that “other than small, random efforts, the missions had not provided any assistance to the disabled during the past three years and that missions have no assistance projects planned for the future.”<sup>29</sup> To address this problem, USAID officials recommended programs for “heightening awareness of disability issues” among USAID Mission staff and foreign government counterparts,<sup>30</sup> including a number of proactive measures, such as providing support for NGOs to “establish sub-offices in developing countries to assist in the development of disability organizations.”<sup>31</sup> GAO recommended further study of the problem of physical access and other accommodations for people with disabilities at U.S. Missions abroad.<sup>32</sup>

### **ii. The 1996 NCD Report: Foreign Policy and Disability**

Five years after GAO’s report, the NCD issued a report entitled *Foreign Policy and Disability*. The 1996 NCD Report determined the extent to which U.S. foreign policy and foreign assistance programs conformed to the principles of nondiscrimination, independence, and full participation as represented in U.S. disability rights law. The 1996 NCD Report reviewed the activities of the Department of State, USAID, and the U.S. Information Agency (USIA) and found that “the United States does not have a comprehensive foreign policy on disability.”<sup>33</sup> As the report found,

Those responsible for creating and implementing U.S. overseas policies and programs generally are unaware of disability issues, cannot articulate our national policies with respect to people with disabilities, do not incorporate the interests of people with disabilities into U.S. foreign policy objectives, and do not see the importance of U.S. disability advances and achievements for people with disabilities in other countries.<sup>34</sup>

Accordingly, the 1996 report concluded that “neither the spirit nor the letter of U.S. disability rights laws is incorporated into the activities of the principal foreign policy agencies. People with disabilities are rarely targeted in U.S. foreign assistance programs, and few programs address disability.”<sup>35</sup>

The 1996 NCD Report examined two types of access to U.S. foreign policy and assistance programs: (1) access by U.S. personnel or contractors, including employment and physical access to U.S. embassies and other offices abroad, and (2) access in recipient countries to the benefits of U.S.-funded assistance, including participation in international organizations (such as the UN) that receive U.S. funds. The 1996 NCD Report found a broad failure to incorporate disability rights principles in both aspects of U.S. foreign policy and practice. With regard to access by U.S. personnel, many U.S. employees with disabilities have been excluded from serving abroad because embassies are inaccessible or because of the lack of enforcement of anti-discrimination laws and policies for foreign service workers.

With regard to access to the benefits of U.S. foreign service programs, the U.S. government has long held—and maintains to this day—that U.S. disability rights law does not apply to its programs abroad and that the U.S. government is under no legal obligation to ensure that people with disabilities have access to benefits of foreign assistance programs.<sup>36</sup>

As a result of these findings, the 1996 NCD Report proposed a number of legal and policy initiatives, including the following recommendations:

- Create a comprehensive foreign policy on disability to advocate for people with disabilities through activities on international levels;

- Extend U.S. disability law by legislation or executive order to include unambiguously the international operations of the U.S. government;

Employ domestic standards of nondiscrimination in U.S.-sponsored international activities; Train U.S. foreign affairs agencies and their contractors to plan for programmatic accessibility; and Establish the principle that no U.S. international activity should have a lower standard of inclusion than its domestic correlate.

### **iii. USAID Disability Policy**

In response to the 1996 NCD Report *Foreign Policy and Disability*, USAID adopted a Disability Policy in consultation with U.S. disability rights organizations. The Disability Policy states a commitment to “promote the inclusion of people with disabilities both within USAID programs and in host countries where USAID has programs.”<sup>37</sup> USAID summarizes its approach as one to “avoid discrimination against people with disabilities in programs which USAID funds and to stimulate an engagement of host country counterparts, governments, implementing organizations and other donors....”<sup>38</sup>

The USAID Disability Policy falls short of addressing NCD’s 1996 recommendations in a number of key areas. It creates no measurable goals or timelines, nor does it require the creation of any disability-specific programs by USAID’s central office or U.S. Missions abroad. The Policy recommends “engagement” with disability organizations in host countries, but it does not suggest any framework for consultation. There is no requirement that U.S. Missions consult with disability organizations in the United States or abroad to develop or implement programs or to ensure access to existing programs.

The mechanism for implementation of the USAID Disability Policy is a Disability Plan of Action, in which USAID promises to raise disability issues within interagency and interdonor meetings. The Plan of Action creates an Agency Team for Disability Program that is intended to meet quarterly and “foster awareness...regarding the importance of including persons with disabilities in USAID.”<sup>39</sup> The Agency Team will issue periodic reports on the implementation of the USAID Disability Policy.

Instead of any centralized requirements, the USAID Disability Policy states that each U.S. Mission should create its own plan for outreach to people with disabilities. It promises that “USAID employees and contractors will be trained in issues of relevance to people with disabilities so that, as appropriate, USAID programs reflect those issues.”<sup>40</sup>

Pursuant to the Disability Plan of Action, USAID published annual reports in 1998 and 2000. These reports show very little progress toward real inclusion of people with disabilities in USAID programs and activities. The first annual report found that the great majority of Missions had never created any Disability Plan.<sup>41</sup> The report called for an immediate remedy to this problem and stated that by the end of the second year each USAID Mission will have a specific disability plan, and that 80 percent of the Missions will have at least one contact NGO in the disability community in that country.<sup>42</sup> In 2002,<sup>43</sup> the self-assessment report found that “while several USAID organizations have included people with disabilities in their development programs with great success, others still deny any potential linkage between disability and development issues.” The second USAID self-assessment reached the following conclusion:

Specific disability programming has taken hold *only in response to congressional mandates*: i.e., the Patrick J. Leahy War Victims Fund. ‘Sporadic’ examples of inclusion are available, and may be increasing slightly. However, egregious exclusion can also be discovered.... Efforts at promoting the USAID Disability Policy have been disjointed and minimally effective.... Opportunities for personal contact with PWDs, while fruitful, have not been deemed a priority. And, a reward structure does not exist to promote adherence to this policy.<sup>44</sup>

The 2002 USAID report recommended that, due to the enormous pressure of conflicting priorities, specific funding should be set aside for disability issues. The report also recommended that a specific “home” be established for the implementation of the disability policy; otherwise, it will never become an agencywide effort and will continue to be the campaign of a small group.<sup>45</sup>

The third report on the Implementation of the USAID Disability Policy (2003) finds significant improvements in the inclusion of people with disabilities in USAID programs. But there are still major shortcomings. Of 48 USAID Missions that responded to the survey, only 11 reported having a Mission-specific disability plan. The survey found, however, that “there is not a direct correlation between plans and projects.” A full 35 USAID Missions report having at least one

project that included people with disabilities. Despite the gains cited in the 2003 USAID report, it concludes that “[a]lmost all of USAID programs have the potential to prevent disability or to enhance the lives of people with disabilities. Except where there is specific legislation, however, relatively few programs give systematic thought to including PWDs in their design and implementation.”

The 2003 USAID report provides a valuable insight into the resistance on the part of some staff at USAID to include people with disabilities in their work. “[W]ithin the official development arena, disability is still largely considered a ‘special interest’ that requires a separate effort.”

USAID staff have similarly explained at NCD meetings that the agency has so many Congressional mandates to serve the needs of special interest groups that funds are limited to meet their core goal of promoting economic development. The 2003 USAID report responds to this perception, stating that “[d]isability is much more than a ‘special interest’ in the developing world.” The 2003 USAID report cites the United Nations World Program of Action Concerning People with Disabilities, which points out that “[a]s many as 80 percent of all disabled persons live in isolated rural areas in the developing countries. In some countries, the proportion of the disabled population is estimated to be as high as 20 percent. Thus, if families and relatives are included, 50 percent of the population could be adversely affected by disability.” The 2003 USAID report provides a valuable endorsement to the principle that overcoming barriers to the inclusion of people with disabilities must be core to USAID’s mission.

The 2003 USAID report recommends training on disability at all USAID Missions. With USAID funding, Mobility International USA has drafted a training manual to sensitize international development workers to disability issues and to provide them with guidance on developing accessible programs.

#### **iv. Recent NCD Efforts and New Policies on Foreign Affairs and Disability**

Since its 1996 *Foreign Policy and Disability* report, NCD has continuously reached out to U.S. foreign policy and foreign assistance personnel to promote collaboration and to offer technical assistance to promote inclusion in foreign assistance efforts. Furthermore, over the past three years, NCD has convened two meetings, in 2000 and 2002, to gather information from



international disability experts on the topic of foreign assistance and disability. Participants at these meetings described a number of consistent barriers to access for people with disabilities:

**International facilities remain inaccessible**—U.S. government employees, contractors, and representatives of NGOs are limited in their access to U.S. government offices throughout the world because buildings are physically inaccessible. UN offices, international policy conferences, and programs funded by U.S. government funds remain similarly inaccessible. After years of pressure by disability activists, the U.S. Department of State has recently promised to make improvements. In a September 2002 speech to the International Career Advancement Program, the Director General of the Foreign Service and the Director of Human Resources promised to make U.S. embassies abroad more accessible to people with disabilities. While this promise is extremely valuable, the Department of State still does not recognize that it is obliged to provide such access as a matter of law.

**Lack of disability-specific mandates undercuts participation by international disability organizations**—In the absence of disability-specific mandates, most large USAID requests for proposals (RFPs), requests for applications (RFAs), technical cooperation contracts, cooperative agreements, or other programs lack any mention or consideration of disability as a priority. The structure of USAID RFPs and RFAs favors large international development organizations that can respond to the broad expertise in the areas sought by USAID, such as in health, education, civil society, rule of law, small-enterprise development, or women's issues. While a number of disability rights organizations have developed an excellent international track record within the disability area, they are at a disadvantage in applying for these larger contracts or cooperative agreements—even in the rare cases when disability is one of many parts of a larger program. In theory, disability organizations can form partnerships with large mainstream development organizations. In practice, however, without any requirement that disability issues be included in RFPs and RFAs, mainstream development organizations have no incentive for including disability groups in leading roles. The development of large USAID proposals is prohibitively expensive for most disability organizations that lack other funding sources for international activities. Given these barriers to entry into international affairs by disability groups, mainstream

international development and civil society organizations do not benefit from the tremendous expertise of U.S. disability rights organizations.

Disability activists have established one new program to promote the inclusion of people with disabilities, particularly women with disabilities, in overseas development programs.<sup>46</sup> Mobility International USA (MIUSA) has worked with InterAction, a coalition of more than 165 U.S.-based international development, relief, refugee, advocacy, and environmental agencies, to create a system of voluntary standards for the inclusion of women with disabilities in development programs. While InterAction members are NGOs, 56 percent of these organizations receive funding from USAID. InterAction has recently adopted the disability standards, and their impact has not yet been fully tested. While MIUSA is optimistic about the promise for increasing the inclusion of people with disabilities in overseas development programs, these are voluntary standards that do not mandate a change in practices or create any new disability-specific programs. Rather, the standards address organization policy, management practice and human resources, the inclusion of people with disabilities in programs, accessibility of material assistance to people with disabilities, and child sponsorship.<sup>47</sup>

MIUSA has recently published a valuable companion to the new InterAction standards entitled “Gender and Disability: A Survey of InterAction Member Agencies.” Of the 165 members of InterAction, 104 organizations participated in MIUSA’s survey. The survey found that almost one-third of respondents operate disability-specific programs. Despite this, “few women and men with disabilities are employed by respondent organizations or are served in field programs aimed at general populations.”<sup>48</sup> The survey finds that “[a]lthough people with disabilities are the poorest, least enfranchised, and most discriminated-against group in almost every society, many respondent organizations tend to overlook them as a group despite the fact that they are present among the general populations they serve. This omission is paradoxical in light of the humanitarian goals of most respondent organizations.”<sup>49</sup> MIUSA describes the findings of the survey as a “clarion call for InterAction members to begin implementing” the new disability standards.<sup>50</sup>

**Field offices are unaware of USAID disability policy and concerns of people with disabilities**—As reported to GAO in 1991, USAID Missions abroad have the discretion to use

funds to support disability projects. As directed in the USAID Disability Policy, each U.S. Mission is supposed to determine how to create outreach programs for people with disabilities suited to local circumstances. Representatives of international disability organizations at the 2000 and 2002 NCD meetings reported a general lack of awareness of the USAID Disability Policy by agency officials abroad. While a few disability organizations have received contracts through U.S. Missions abroad, this situation remains the exception.

**Local disability groups lack support to compete for grants**—The USAID Disability Policy calls for local outreach to disability organizations abroad. In practice, this may be impossible in countries where disability organizations are not well developed or do not exist. Mental Disability Rights International reports, for example, that in many countries there are no organizations made up of people with psychiatric or developmental disabilities. Umbrella groups made up of people with disabilities do not always include members with mental as well as physical disabilities—or they might actively exclude certain disability groups.<sup>51</sup> USAID officials often state that civil society support programs are open to all local nongovernmental groups and that disability groups abroad can compete for funding with other local NGOs. It is difficult for many disability groups to compete, however, against other more established civil society organizations. People with disabilities and the organizations representing them—struggling with current and historical discrimination, exclusion from educational programs, and economic marginalization—often lack the necessary resources or experience to apply for competitive programs. Legal or social barriers may make it literally impossible for people with disabilities to apply for grants.<sup>52</sup>

**It has been difficult to identify and engage staff members from USAID or the Department of State, and some gains have been reversed by the lack of coordination within agencies**—Officials were designated by the Department of State and USAID on a short-term basis to coordinate with NCD on the implementation of the new Disability Policy. When these officials were transferred, no one was assigned to pick up their responsibilities. As a result, different parts of the State Department do not collaborate on this issue. At a 2000 NCD conference on disability and foreign affairs, numerous disability experts working abroad reported frustration with the lack of support or interest by Department of State and USAID officials. A high-level USAID official attending the meeting suggested an educational and outreach effort by

the disability community to educate and sensitize U.S. foreign service and development employees to disability issues. In response to this request, NCD conducted a series of roundtable discussions in 2000 and 2001 with USAID and State Department staff to develop plans for technical assistance and cooperation between the disability community and those people responsible for overseas program planning and execution. One State Department staff member with a personal interest in disability participated, but there was no official engagement of the State Department in the project. Apart from the USAID staff member assigned to liaise with NCD on this, USAID participants were generally not supportive, even indicating during the meeting that the USAID Disability Policy was never intended to become agency policy, only a “resource” for staff with an interest in disability issues. The liaison who had been supportive left USAID the week after the first roundtable, and no further events were scheduled due to lack of interest.

**Lack of coherent strategy for inclusion undermines U.S. leadership**—At NCD’s December 2002 meeting, international disability experts pointed out that the lack of a coherent international strategy for the inclusion of people with disabilities has already begun to erode U.S. leadership in the international disability field. As described above, the World Bank, the United Kingdom, and the Scandinavian countries have developed major new policy initiatives to promote the inclusion of people with disabilities in their foreign assistance programs, and they have dedicated new funds for these programs.<sup>53</sup>

The NCD 2000 meeting recommended that NCD learn from the experience of women’s rights activists and seek an amendment to the Foreign Assistance Act, similar to the Percy Amendment, which was adopted in 1973 to promote the inclusion of women in all development programs. In December 2002, NCD invited representatives of women’s organizations to meet with disability experts to provide additional advice as to how to learn from the experience of the inclusion of women in development. Participants at the meeting agreed that legislation to bring about access to people with disabilities in both foreign policy and foreign assistance should draw from a variety of legislative models developed by the human rights and women’s rights communities.

Seven years after NCD’s report *Foreign Assistance and Disability* and 12 years after GAO’s report *Foreign Assistance: Assistance to Disabled Persons in Developing Countries*, NCD has

concluded, consistent with USAID's own reports, that a legislative mandate is needed to ensure that U.S. foreign policy and assistance efforts are responsive to the concerns of people with disabilities. After years of collaborative efforts with U.S. officials to bring about the inclusion of people with disabilities in U.S. foreign policy and assistance programs, NCD now recognizes that it is necessary to enact legislation to ensure inclusion as a matter of law.

The following part reviews these legislative models to determine their potential usefulness in drafting legislative proposals to promote the inclusion of people with disabilities.



## **PART III.**

### **Current Foreign Assistance Legislation Regarding Human Rights**

The international community has long recognized the importance of human rights. While international law has traditionally been built on the core principle of state sovereignty, the United Nations Charter established that matters of human rights are of common concern and are a proper subject of international action. The basic scope and principles of modern international human rights law were established by the Universal Declaration of Human Rights (UDHR), adopted unanimously by the UN General Assembly in 1948 and now commonly accepted as part of customary international law. Since 1948, the UN has adopted a broad array of international human rights covenants, including specialized conventions to protect vulnerable groups such as women, children, and migrant workers. Regional bodies such as the Council of Europe, the African Union, and the Organization of American States (OAS) have also established regional human rights regimes, including mechanisms for promoting the domestic enforcement of human rights. By ratifying human rights conventions, governments agree to abide by international human rights standards and to subject their own practices to international scrutiny. Many human rights conventions explicitly commit governments to collaborate on the advancement of human rights. The obligations established by international human rights law entail a corresponding duty of governments to take action against violations of internationally recognized human rights at home or abroad.<sup>54</sup>

One important development in the international human rights field for people with disabilities has been the adoption of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities<sup>55</sup> by the UN General Assembly in December 1993. The UN Standard Rules establish that people with disabilities have a right to participate in public policymaking and program development on matters that concern them. The Standard Rules are nonbinding, but they “imply a strong moral and political commitment on behalf of States to take action for the equalization of opportunities for persons with disabilities.... The Rules offer an instrument for policymaking and action to persons with disabilities and their organizations. They provide a basis

for technical and economic cooperation among States, the United Nations, and other international organizations.”<sup>56</sup> The Standard Rules establish guidelines for the inclusion of people with disabilities in policymaking, human rights protection, medical care, support services, education, employment, income maintenance and social security, family life and personal integrity, culture, recreation and sports, and religion. Rule 21 of the Standard Rules states that “both industrialized and developing [nations] have the responsibility to cooperate in and take measures for the improvement of the living conditions of persons with disabilities in developing countries.” The Standard Rules have been explicitly used by other donor governments as a new framework for reforming international development and cooperation programs to ensure the inclusion of people with disabilities.<sup>57</sup> However, while an important development, the Standard Rules are but one step in the right direction—again, the Rules are nonbinding and lack timelines and other enforcement mechanisms.

While the United States has yet to craft an international disability policy, Congress has long established that human rights principles should guide our foreign policy and assistance programs. As mandated by Section 502B of the Foreign Assistance Act of 1974, “a principal goal of the foreign policy of the United States shall be to promote the increased observance of internationally recognized human rights by all countries.”<sup>58</sup>

Through a series of amendments to the Foreign Assistance Act, Congress has sought to enforce human rights protections by conditioning a foreign government’s eligibility for U.S. military assistance<sup>59</sup> or economic aid<sup>60</sup> on its human rights record, or by withholding the use of multilateral funds to governments with unsatisfactory human rights records.<sup>61</sup> In addition to creating sanctions for countries that do not enforce human rights, Congress has established a broad array of targeted foreign assistance programs to promote the efforts of governments to enforce human rights. These programs include assisting governments in implementing the rule of law, “civil society” programs to assist NGOs in advocating for human rights, and targeted assistance to assist particularly vulnerable populations.

As the rights of people with disabilities are increasingly recognized as international human rights, the U.S. government should include the concerns of people with disabilities explicitly in its



foreign policies not just as a matter of good policy—but as a matter of currently binding law. Disability organizations can learn from the lessons of international human rights organizations to leverage existing protections. Any new legislative initiative should build on links that have already been established, and new protections for people with disabilities should be mainstreamed into current foreign assistance legislation.

The human rights and foreign assistance legislation can be roughly divided into two categories: general legislation and rights-specific legislation (targeted to promote the enforcement of a particular kind of right or targeted to protect the rights of a specific population).<sup>62</sup> General protections apply to people with disabilities as they do to all other individuals. As such, they represent an untapped resource to promote international disability rights. In addition to general protections, there are a number of kinds of rights-specific legislation. Some of this legislation now protects sub-groups of people with disabilities, such as war victims. New rights-specific legislation needs to be crafted to promote the protection of the rights of all people with disabilities. This part deals with general legislation and the next one reviews rights-specific legislation.

## **1. General Legislation**

### **i. Security Assistance**

The first main article concerning human rights and foreign assistance is Section 502b of the 1961 Foreign Assistance Act,<sup>63</sup> which starts off with this proclamation:

(a) (1) The United States shall, in accordance with its international obligations as set forth in the Charter of the United Nations and in keeping with the constitutional heritage and traditions of the United States, promote and encourage increased respect for human rights and fundamental freedoms throughout the world without distinction as to race, sex, language, or religion. Accordingly, a principal goal of the foreign policy of the United States shall be to promote the increased observance of internationally recognized human rights by all countries.

The statute continues and specifies as follows:

(2) ...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...unless the President certifies in writing [to Congress] that

extraordinary circumstances exist warranting provision of such assistance and issuance of such licenses.

The President is instructed to “formulate and conduct international security assistance programs” in a manner that “will promote and advance human rights” (Section (3)).<sup>64</sup> The allocation of funds given under this article or under the Arms Export Control Act<sup>65</sup> needs to take into account significant improvement of the human rights record of the foreign country.

The definition of “gross violations of internationally recognized Human Rights” is as follows:

(d) (1) the term “gross violations of internationally recognized human rights” includes torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges and trial, causing the disappearance of persons by the abduction and clandestine detention of those persons, and other flagrant denial of the right to life, liberty, or the security of person.<sup>66</sup>

In practice, human rights conditionality under Section 502(b) of the Foreign Assistance Act is rarely invoked—yet the threat of its use has provided powerful political leverage to influence governments. Indeed, this provision can be applied to gross violations of human rights abuses against people with disabilities. Section 502(b) should be amended to include disability along with race, sex, language, and religion as appropriate for protection under the principles of human rights and fundamental freedoms.

The European Court of Human Rights<sup>67</sup> and the Inter-American Commission on Human Rights<sup>68</sup> both have found individual human rights violations against individuals with disabilities that constitute “inhuman and degrading treatment” under international human rights law. Where abuses against people with disabilities are permitted by governments to continue on a large scale—such as the detention of individuals in institutions where they are exposed to dangerous communicable diseases or left to freeze or die of starvation—abuses could certainly rise to the level of the “gross violations” of rights contemplated by Congress.<sup>69</sup>

The requirement that a specific kind of human rights abuse could trigger sanctions under the Foreign Assistance Act would not be unique to people with disabilities. Congress has indicated that a foreign government’s denial of freedom of religion to its own citizens could justify sanctions.<sup>70</sup> This was added by the International Religious Freedom Act of 1998,<sup>71</sup> which

includes “particularly severe violations of religious freedom”<sup>72</sup> as one of the human rights violations that can justify sanctions under Sections 116 and 502(b) of the Foreign Assistance Act of 1961.

## **ii. Development Assistance**

Section 116 of the Foreign Assistance Act of 1961<sup>73</sup> establishes a linkage between development assistance and human rights practices. It provides that assistance can be given to a country with a grossly repressive government only if the assistance “directly benefits” the needy people in such a country.<sup>74</sup> Given the linkage between the creation of opportunities for community integration and general economic and social development, it would be hard to justify a suspension of foreign assistance because of disability rights violations that are common in the world today. Where foreign governments are clearly unresponsive to the most extreme abuses against people with disabilities, however, Section 116 provides economic leverage that must be available to people with disabilities—as it is to all other vulnerable peoples.

## **iii. Country Reports on Human Rights Practices**

The evaluation of any country’s human rights record requires an objective foundation of documentation regarding its record of enforcing human rights. The most important source of information for U.S. government policy is the U.S. Department of State’s *Country Reports on Human Rights Practices*. Section 116, Subsection (d) creates a duty for the State Department to report annually on the human rights practices of all the countries that are members of the UN, whether or not they receive foreign assistance.<sup>75</sup> The report must include information on the government’s conduct in many human rights issues: freedom from torture and other cruel or inhuman punishment, detention without charge, disappearances, denial of right to life or liberty, religious freedom, human rights of children, trafficking of women, and treatment of refugees.<sup>76</sup>

In 1993, an amendment to the Foreign Appropriations Act was proposed to require the State Department to include in its *Country Reports* “an examination of the discrimination against people with disabilities, including whether the government has enacted legislation or otherwise mandated provision of accessibility to public buildings.” This proposal has not become law. In recent years, however, the U.S. State Department has begun to include regular reporting on the

rights of people with disabilities abroad. While this is a valuable development, reporting is often cursory. While issues of physical access are often covered, a broad array of other important disability rights issues are usually left out—including the most extreme forms of human rights violations that take place in institutions. As described above,<sup>77</sup> there is now a growing body of evidence that people with disabilities are deprived of their liberty in life-threatening conditions in psychiatric institutions, mental retardation facilities, orphanages, jails, and prisons around the world, and they are often subjected to inhuman treatment or punishment.

Officials at the Office of Democracy, Human Rights, and Labor (DRL) in the State Department who write the *Country Reports* have explained that they obtain most of their information from NGOs that document abuses. One of the main reasons the State Department does not include evidence of human rights abuses against people with disabilities in most countries, DRL officials explain, is that they are not aware of any disability rights groups documenting these abuses. In part, this is a failure of outreach, as there are some disability rights organizations in most countries. In part, it is a reflection of the same limitations that undermine the effectiveness of the current USAID Disability Policy: such limited funds are available for disability rights organizations that basic information about documentation of human rights conditions is lacking. NCD recommends that Congress remedy this problem by setting aside funds to support the development, training, and operation of disability rights organizations around the world.

A specific Congressional mandate in the Foreign Assistance Act itself that reinforces the State Department's role in documenting human rights abuses against people with disabilities in the *Country Reports* would be helpful. Congress should state in detail the kinds of abuses that should be documented. Congress should require that State Department human rights officers consult with local disability rights groups. Where local human rights or disability rights groups have not documented abuses against people with disabilities, human rights officers preparing the *Country Reports* should conduct site visits to places where they may encounter human rights abuses against children or adults with disabilities, such as orphanages, segregated schools, psychiatric facilities, or other closed institutions.

## **2. Rights-Specific Legislation**

In addition to provisions in the Foreign Assistance Act and related laws, “rights-specific” legislation provides a number of elements that can be used as models in the development of disability rights legislation. By seeking disability-specific legislation and specialized programs, people with disabilities are not seeking a privileged position within the current rights protection framework. This review demonstrates the U.S. government’s commitment to specific protections and specialized forms of assistance to aid discrete groups of people. The existence of other rights-specific legislation is evidence of the need to craft specialized enforcement mechanisms and incentives to ensure that particularly vulnerable groups are protected. The following are examples of rights-specific legislation that may provide a model for much-needed disability rights legislation:

### **i. Torture Victims Protection Act**

Section 132 of the Foreign Assistance Act<sup>78</sup> authorizes the President to provide assistance for the rehabilitation of torture victims. This assistance can be in the form of grants to treatment centers, specific projects, or other activities designed to treat victims of torture.<sup>79</sup> The aid can be used for direct services to victims or for research and training to health care providers, enabling them to provide appropriate care for torture victims.<sup>80</sup> This section is different from Section 502(b) in several ways: (1) instead of sanctions, this law provides positive measures to remedy abuses; (2) it is aimed at remedying the effect of a specific human rights violation rather than preventing future abuses; and (3) it is not directed to the government of a foreign country but to specific organizations that provide treatment or rehabilitation. Each of these elements could be valuable contributions to a disability rights legislation that seeks to provide assistance to individuals with disabilities who have been subjected to serious abuses.

Practitioners report that one of the most effective elements of the Torture Victims Protection Act is that it creates a pool of funding to which U.S. Missions abroad can apply. This provides incentive for U.S. Missions to create relevant programs, and it rewards Missions that do so by allowing them to expand the resources available to them. As described below, NCD recommends

that Congress establish a somewhat similar approach when creating a “Fund for Inclusion” of people with disabilities. The Fund could be used as an incentive for Missions abroad to create disability programs. Provisions must be established, however, for the fact that Missions abroad may not take advantage of this incentive. People with disabilities represent a much larger proportion of the world population (10 percent) than torture victims, and they live in every country of the world. Thus, special provisions must be established to ensure that people with disabilities have access to support even in countries where the Mission has not been proactive.

### **ii. War Victims Fund**

The War Victims Fund was established in 1989 through the initiative of Senator Patrick Leahy. Initially, the fund was focused on providing prosthetics and orthotics to victims of conflict. It has become a significant contributor to people with disabilities, with \$45 million spent in 14 countries during its first eight years. The fund has been particularly successful because it promotes the use of local resources and employs local technicians—including people with disabilities—to provide prosthetics and orthotics quickly and inexpensively. Since the middle of the 1990s, the fund has expanded its work by providing a broad array of rehabilitation services.<sup>81</sup>

The War Victims Fund demonstrates that U.S. foreign assistance programs can respond to the needs of specific groups, such as people with disabilities, when a specific Congressional mandate is created. The program is limited in scope, however, and does not respond to the concerns of the vast majority of people with disabilities. The program has been criticized because it is not mainstreamed into other USAID activities. In fact, the fund operates separately from USAID Missions. In some countries where the fund operates, the Mission reported that its officials were not aware that there was any USAID activity with regard to persons with disabilities.<sup>82</sup>

### **iii. Trafficking Victims Protection Act**

The Trafficking Victims Protection Act (TVPA) of 2000<sup>83</sup> is the most recent addition to assistance conditionality with respect to human rights, and it provides an example of several linkages between human rights violations associated with trafficking victims and foreign assistance.

The TVPA establishes minimum standards for evaluating foreign governments' efforts and conduct toward elimination of trafficking of people.<sup>84</sup> According to the standards, the governments of such countries should prohibit all forms of trafficking in persons and punish acts of trafficking, including setting severe punishments for traffickers. Countries must demonstrate that they are making serious and sustained efforts to eliminate trafficking.<sup>85</sup>

Section 109 of the TVPA<sup>86</sup> authorizes the President to provide assistance to foreign countries for programs, projects, or activities designed to improve the policies and conduct of the receiving country in order to eliminate trafficking. The goal of the assistance is clearly defined: to make the country meet the minimum standards for the elimination of trafficking as defined in Section 7102 of the TVPA. The legislation also specifies some of the means the country should employ to combat trafficking.<sup>87</sup>

Perhaps the most important element of the TVPA as a model for disability rights legislation is the inclusion of funding for specific programs to end the practice of trafficking and to minimize the underlying factors that lead to this practice. The TVPA provides funds through loans or training to individuals subject to trafficking. The TVPA provides support for programs to promote women's participation in economic decisionmaking; programs to keep children, especially girls, in elementary and secondary schools; programs to educate persons who have been victims of trafficking; and public education about trafficking programs and promotion of women's role in society.<sup>88</sup> Section 7105 authorizes programs to assist trafficking victims in foreign countries.<sup>89</sup>

The law creates a duty to report on each country's conduct regarding trafficking of women, as well as its policies and efforts to combat this phenomenon. Part of the report on each country proposed to receive security assistance under Section 502(b) or development assistance under Section 116 of the Foreign Assistance Act must include a detailed account of that country's policy and conduct toward trafficking of women.<sup>90</sup> Again, this detailed reporting model could be used as part of a new disability rights legislation—and reports could be mainstreamed into the current Department of State *Country Reports*.

The section that generated the most debate in Congress<sup>91</sup> and won the most attention in other countries is Section 110.<sup>92</sup> Section 110 sets up sanctions—in the form of denials of foreign

assistance and exchange programs and attempts to curtail loans from international monetary bodies, such as the IMF—against countries whose governments do not comply with the minimum standards for the elimination of trafficking or are not making significant efforts at compliance.<sup>93</sup> Similar kinds of sanctions should be a tool available to protect people with disabilities who are actively exploited.

#### **iv. Women in Development**

The challenges to promote the inclusion of women in development bear many similarities to the challenges faced by people with disabilities. People with disabilities do not make up as large a percentage of the population as women, but they are a much larger group than the other small, discrete populations protected by other rights-specific legislation. The interplay between discrimination, economic marginalization, and stereotypes that hold back women and people with disabilities means that remedies for this problem must be multifaceted and must be integrated into a wide variety of other programs. The thirty-year experience of the women in development movement provides invaluable lessons for the disability community.

In 1973, Congress passed the Percy Amendment to the Foreign Assistance Act, which requires a portion of U.S. foreign assistance for international development to be allocated to the integration of women into the economy of the recipient country.<sup>94</sup> The rationale, as stated in a USAID policy paper from the 1990s,<sup>95</sup> is to integrate women into the national economies, “thus improving their status and assisting the total development effort.” In 1974, the Women in Development (WID) office was created within USAID, and was charged with overseeing implementation of the Percy Amendment. U.S. representatives to different monetary bodies, such as the World Bank and the International Monetary Fund, were instructed to encourage the integration of women into the national economies of member and recipient countries and into professional and decisionmaking positions in such organizations.<sup>96</sup>

Both economic and social arguments were used to support the original Percy Amendment. In the early 1970s, the growing international women’s movement was committed to demonstrating that women’s contributions to society and to development went all too often unrecognized and that current development strategies deny women the benefits of being involved in the development



process.<sup>97</sup> This view was reflected in the international development strategy for the Second United Nations Development Decade (1970–1980).<sup>98</sup> Later, in the 29th Session of the UN, the General Assembly adopted the Charter of Economic Rights and Duties of States. The charter viewed the integration of women in development as an important component, stressing the need for women’s equality with men in the home and in family life so that women could take a greater part in the life of the community, and aimed to achieve effective home and work possibilities for both sexes.<sup>99</sup>

The UN called on bilateral and multilateral development agencies to reevaluate their programs according to the various declarations, charters, and plans of actions adopted by the UN, and to channel their resources to ensure greater participation and benefit of women in the development programs.<sup>100</sup> Thus, when the WID office was set up, its mission was to “help ensure that women participate fully and benefit equally from U.S. development assistance programs.”<sup>101</sup> The main concern was not women’s rights but rather achieving better development through the inclusion of women.<sup>102</sup>

In 1978, Congress added another amendment to the WID legislation authorizing up to \$10 million for economic assistance to be “used primarily to support activities which will increase the economic productivity and income earning capacity of women.”<sup>103</sup> Congress added the section later known as (b)(2), which states “[n]othing in this section shall be construed to authorize the establishment of a separate development assistance program for women.”<sup>104</sup> The House Report explains that the goal of this amendment was to promote the participation and integration of women as equal partners in the development process. The committee did not want to create a separate program for women that would become marginalized, but rather wanted to integrate the participation of women in the development programs in each of the current programs.

The original conception of WID has been criticized for its lack of attention to gender roles and women’s rights and equality.<sup>105</sup> Others have observed that the international women’s movement was able to develop and build upon many of the gains that resulted from the original WID approach.<sup>106</sup> Without question, the WID approach has shifted over the past decade from promoting women as a resource, to women as a group entitled to the protection of their human rights.

As the disability community seeks support for a new Disability in Development (DID) office, it can build on the experiences of the international women's movement. There are a variety of economic and social arguments for the inclusion of people with disabilities in development programs. In some contexts, these certainly will be persuasive. Economic arguments support a broad-based approach to disability in development that promotes the participation of people with disabilities in education, employment, and private enterprise. Many international development experts not familiar with developments in the disability rights movement may expect a DID office to be justified purely in economic terms. Proponents of a new DID program should not feel obliged to revive the old arguments for the Percy Amendment, however. U.S. disability rights legislation establishes that protection against discrimination and full inclusion in society have been established as a matter of right. Recent experience with WID demonstrates that a rights-based approach to participation in development can be effective.

A new DID program should model itself on WID's broad mandate that includes economic, human rights, and civil society components. WID has four strategic objectives: (1) enhancing the economic status of women; (2) expanding educational opportunities for girls and women; (3) improving women's legal rights and increasing their participation in civil society; and (4) integrating gender considerations throughout USAID programs.<sup>107</sup>

It is important to note that implementation of the Percy Amendment has gone through many steps and that changes in the development field have been slow.<sup>108</sup> A new DID program should not rely on a Percy type amendment alone but should attempt to create additional mechanisms to avoid the pitfalls of the early WID experience.

Two USAID studies of the WID office in 1982 and 1987<sup>109</sup> demonstrate difficulties that legislation to promote the inclusion of people with disabilities should avoid. Both studies document the difficulty of implementing gender policies by the preexisting aid bureaucracies. These studies emphasized the importance of programs sensitizing USAID staff to promote the inclusion of new concepts into their work. The 1982 paper also points to the limited mandate of the WID office, which enabled it to voice its concerns about new projects and policies but not to have genuine influence.

One analysis published in 1990 found that WID had made little impact since its budget was so low and it did not have the ability to influence other mainstream USAID programs.<sup>110</sup> This analysis cites the following figures from the mid-1980s: no more than 4 percent of development funding went to WID; one-tenth or less of the agricultural projects specified a women's component; fewer than one-fifth of all international trainees were female.

Over the years, USAID has made a number of efforts to overcome the early limitations of WID. In 1996, USAID put together a Gender Plan of Action (GPA) designed to ensure that gender considerations were institutionalized throughout its agencies' development programs and projects.<sup>111</sup> The GPA creates mandatory staff training on gender and new guidelines for USAID grantees and contractors that require grant applicants to demonstrate their abilities to address gender issues. The GPA also requires that each Mission review and revise its "mission orders" to ensure that gender issues are considered at all appropriate points in the process of planning, achieving, and evaluating program results.<sup>112</sup> These elements of the GPA are consistent with the recommendations of the 1996 NCD Report *Foreign Policy and Disability*. Full inclusion of people with disabilities in foreign assistance programs would be greatly aided by such staff training and the establishment of guidelines for contractors and grantees to ensure access to people with disabilities in all programs. A regular review of Mission activities to ensure inclusion of people with disabilities would be equally important.

In recent years, with the increase of international attention on women's rights, the issue of women in development received more attention both from NGOs working on women's rights and from the international community. There was an upgrade in the WID program: the head of the program was raised to a higher executive level and a gender officer was appointed to each regional program.<sup>113</sup> Another key lesson for a Disability in Development program: its director at USAID must be at a sufficiently high level to bring about changes in policy throughout the agency.

Despite these developments, the financial commitment to WID at USAID is still small. According to Women's Edge, a coalition of individuals and organizations concerned with promoting the economic status of women around the world, of the \$2.7 billion the United States spent on international development in 2000, only \$10 million directly supported WID. In 2002

the figure was \$14 million. The small size of the WID office itself is an argument that could favor individuals with disabilities. A coordinating Disability in Development program would similarly cost a small amount to establish (in relation to the full USAID budget and the large proportion of individuals with disabilities).

WID is supplemented by a Small Grants Program that supports the development of new NGOs representing women working on different thematic issues.<sup>114</sup> A similar small grants program for disability rights groups will be critical to promoting participation by people with disabilities in development. Women's organizations around the world are far more advanced than disability groups. Rather than thematic support, disability groups are in need of funding for basic organizational infrastructure, including membership outreach and development.<sup>115</sup>

#### **v. Democracy, Governance, and Civil Society**

USAID has established "Democracy and Governance" as one of its current priorities. In addition to assisting governments in establishing the mechanisms they require for the operation of effective democracy, the Democracy and Governance Programs include a major component of support for the activities of NGOs, commonly referred to as "civil society." A current USAID priority is to support the participation of NGOs that promote civil society in the public policy arena.<sup>116</sup> A new disability program could be established to ensure inclusion of people with disabilities within civil society programs.<sup>117</sup>

Arguments for a new civil society initiative are consistent with current USAID goals and principles established by Congress in the Foreign Assistance Act. Disability groups, like other advocacy NGOs, promote citizen participation, free flow of information, and a democratic political culture—all objectives of "Democracy and Governance." USAID itself wrote in one report<sup>118</sup> that "support of [NGOs that represent people with disabilities] fits easily within the USAID goal of strengthening civil society" and that "as a rule people with disabilities are the last to receive education and other services in developing countries."

While current civil society programs are theoretically open to people with disabilities, this is an area where a targeted outreach program is essential to ensure accessibility. Given the long history

of discrimination and exclusion of people with disabilities, as well as active discrimination in most of the world today, people with disabilities and organizations representing them are, at best, at a competitive disadvantage in applying for the very programs intended to help start new civil society organizations.

For all practical purposes, civil society programs are not currently accessible to many people with disabilities in developing countries. To take one example, individuals detained in psychiatric or other institutions are literally cut off from information or opportunities to advance their own interests. In some countries, according to Mental Disability Rights International, people with mental disabilities who live in the community can be declared “mentally incompetent” for a lifetime without any form of due process or any opportunity to challenge the deprivation of their legal rights. Such individuals with disabilities cannot take a book out of a public library—much less register a legal organization and apply for internationally supported civil society grants.

Representative democracies cannot operate effectively if large portions of the population are not in a position to participate in public life. In order to develop effective programs to respond to the needs of individuals with disabilities, governments and international development organizations must be in a position to draw on the experiences and expertise of people with disabilities. As a practical matter, any new program to “mainstream” people with disabilities into other development programs may need to begin with an investment in the education, training, and leadership of individuals with disabilities. It may also be necessary to directly attack the discrimination, segregated social structures, and other human rights abuses that create barriers to participation by people with disabilities.

The development of the full recommendations outlined in this report may be incremental. NCD recommends that one of the first steps in support of people with disabilities in development should be an initiative to support new disability organizations, leadership opportunities for individuals with disabilities, and human rights protections for people with disabilities as a whole. A civil society initiative for people with disabilities could provide the engine for participation by people with disabilities that could drive the long-term development of a much larger movement in both human rights and economic development.

One of the main recommendations of NCD is that Congress should set aside funding in the Foreign Assistance Act for the creation of a Fund for Inclusion, Leadership, and Human Rights of People with Disabilities (to be known as the Fund for Inclusion). This proposed program is described in the recommendations section of this paper.

## **PART IV.**

### **Current Civil Rights Protections**

This section of the paper examines the requirements of U.S. disability rights laws and evaluates the extent to which they require programs funded by the U.S. government as well as private entities to protect against discrimination and ensure equal access to people with disabilities.

In *Foreign Policy and Disability*, NCD found that U.S. programs abroad did not conform to the letter or spirit of U.S. disability rights laws. This study assumed that U.S. disability rights laws are not binding on U.S. programs abroad. Upon further examination, as well as a review of recent case law, it appears that American disability rights laws do indeed apply to U.S. foreign programs operating abroad and to Americans traveling and working overseas. Recent case law indicates that courts may be willing to extend the protections of American disability discrimination laws to persons and conduct overseas, even in the absence of specific legislative language, and even in the face of the long-held presumption against the extraterritorial application of American laws. Further, to the extent that there is any ambiguity about the extraterritorial application of American disability discrimination laws beyond U.S. borders, NCD recommends that Congress instruct all relevant federal agencies, including the U.S. State Department and USAID, that American disability discrimination laws apply to U.S. workers, embassies, and programs operated by or with the U.S. government overseas.

#### **1. Extraterritorial Application of the Disability Discrimination Laws**

##### **i. Background**

The United States Congress has the authority to enact laws beyond its territorial boundaries, if it so chooses.<sup>119</sup> Indeed, the Supreme Court has recognized this authority by upholding federal statutes applied to persons or activities outside of the United States, even against constitutional challenges.<sup>120</sup> However, for nearly two hundred years courts have relied upon the presumption against extraterritoriality to prohibit the application of U.S. laws overseas. The original justification for the presumption was based on principles of sovereignty. Federal laws are

generally presumed to apply only to conduct or people within the United States, absent an affirmative congressional indication to the contrary, especially if the application of such laws would conflict with the laws of another country.<sup>121</sup>

The Supreme Court reaffirmed the presumption against extraterritoriality most recently in the context of civil rights laws in *Equal Employment Opportunity Commission v. Arabian American Oil Co.* (hereinafter *Aramco*).<sup>122</sup> *Aramco* involved the application of Title VII to a foreign-born American worker employed overseas by an American corporation who alleged discrimination based on religion and national origin. Here, the Court refused to provide a remedy for the plaintiff, concluding that federal statutes are not to be construed to apply to conduct abroad “unless a contrary intent appears.”<sup>123</sup>

But the presumption against the extraterritorial application of federal law has been called into question. Especially since the Court’s decision in *Aramco*, Congress and scholars, as well as lower federal courts and the Supreme Court itself, in subsequent and conflicting decisions,<sup>124</sup> have challenged the continued legitimacy of the presumption against extraterritoriality in light of the developing global economy.<sup>125</sup> In fact, as courts have begun to look behind the words of federal statutes to determine their legislative intent, courts have found reasons either to ignore the presumption against extraterritoriality altogether or to articulate reasons for its inapplicability in certain cases.<sup>126</sup>

Congress already has acknowledged the applicability of civil rights laws to conduct overseas. Within months after the Supreme Court’s decision in *Aramco*, Congress enacted amendments to the Civil Rights Act in 1991 specifically to overturn the *Aramco* decision<sup>127</sup> and to extend coverage of Title I of the ADA and Title VII of the Civil Rights Act of 1964 to conduct overseas.<sup>128</sup> Upon enacting the 1991 Civil Rights Act (CRA) Amendments, Congress stated that its purpose was “to respond to recent decisions of the Supreme Court by expanding the scope of relevant civil rights statutes in order to provide adequate protection to victims of discrimination.”<sup>129</sup> The effect of the CRA Amendments, therefore, is to expand our nation’s civil rights protections to all Americans working for U.S. or U.S.-controlled corporations regardless of the country in which they are employed.



## **ii. Civil Rights Protections for Americans with Disabilities Traveling and Working Abroad**

With respect to protections for people with disabilities, in particular, the 1991 CRA Amendments protect Americans with disabilities who work for private employers, covered by Title I of the ADA. These Americans with disabilities working overseas are now entitled to all the accommodations, rights, and remedies provided to Americans working within the United States.

The Federal Government, however, is not covered by the ADA. Instead, the Rehabilitation Act applies to the Federal Government and entities that are funded by the Federal Government.

Section 504 of the Rehabilitation Act provides protections to individuals employed by programs that receive federal financial assistance. An individual is protected from disability discrimination under Section 504 of the Rehabilitation Act if the person is an “otherwise qualified individual[s] with a disability in the United States.” One could assume that the phrase “in the United States” expresses Congress’ intent to limit its application to actions that arise within the borders of the United States only. But upon review of recent court decisions, it appears that Section 504 also applies to conduct outside of the United States. For example, at least two courts have recently upheld the extraterritorial application of discrimination laws, even in light of the statutory phrase “in the United States.”<sup>130</sup> In one case, the court rejected a defendant college’s argument that Section 504 does not protect a student who sought accommodations in an overseas study program operated by the college. The court observed that if the law were not applied extraterritorially, “students on overseas programs would become the proverbial ‘floating sanctuaries from authority’ not unlike stateless vessels on the high seas.” And even a stateless vessel, the court continued, “may be subject to United States jurisdiction where defendants are all citizens or resident aliens of the United States.”<sup>131</sup>

In a second case involving discrimination based on gender, a federal court observed that the phrase, a “qualified individual in the United States,” applies to individuals who qualify for the law’s protection in the United States, but does not limit the law’s coverage only to programs within the United States. Rather, according to this court, the prohibition of discrimination applies to “all federally funded programs, not only those in the United States.”<sup>132</sup>

Similarly, Section 503 of the Rehabilitation Act, which prohibits discrimination by contractors with the Federal Government, may apply extraterritorially, even in the absence of a specific legislative provision. Although to date no court has addressed this issue, in the absence of legislative language limiting the geographical area of such contracts, the United States may still be obligated to comply with the nondiscrimination mandate of Section 503 in programs overseas, except insofar as such compliance would conflict with another country's laws.

Section 501 of the Rehabilitation Act, which prohibits discrimination against federal employees, may also apply to programs abroad. Section 501 contains no prohibition on its application to federal employees who are stationed abroad. Indeed, in the context of discrimination claims by federal employees, courts have held that federal employees working abroad are entitled to protection under American civil rights laws, including the Rehabilitation Act.<sup>133</sup>

### **iii. Federal Buildings and Programs Abroad**

The 1996 NCD Report indicated that federal buildings, including embassies, remain inaccessible.<sup>134</sup> The 1996 Report also observed that "... many of the officials interviewed contended that U.S. accessibility standards do not apply overseas, but federal accessibility regulations do not reflect this opinion. In fact, accessibility standards and federal disability compliance regulations make no exemption for overseas U.S. operations, and there has been no definitive jurisdictional test of disability rights statutes in court."<sup>135</sup>

All federal buildings must be made accessible under the Architectural Barriers Act of 1968.<sup>136</sup> This law requires that buildings designed, constructed, or financed by the Federal Government must ensure physical accessibility. The law contains no requirement that such buildings must be located within the United States. Therefore it is disturbing that government agencies have read into the law such a geographical limitation and that the Federal Government has not recognized its own responsibility to comply with this accessibility mandate.

In addition to the Architectural Barriers Act, the Rehabilitation Act as well as Title I of the ADA may also require that a federal building overseas be made accessible if such accessibility would be an accommodation for a worker protected under the Rehabilitation Act or Title I. Although

Title I does not apply to the Federal Government, a private employer who provides services to the Federal Government overseas would be required to provide accommodations, including an accessible workplace, to its workers under Title I.

Further, not only does federal law require the U.S. government and private employers to accommodate American workers with disabilities overseas, but a federal court recently extended the ADA's accessibility mandate. Although the ADA includes no specific provision extending the reach of the ADA to places of public accommodations overseas, a recent decision lends support for the potential application of Title III of the ADA to non-American actors. In *Stevens v. Premier Cruises Inc.*,<sup>137</sup> the United States Court of Appeals for the Eleventh Circuit held that the presumption against extraterritoriality did not preclude application of the accessibility mandate of Title III of the ADA to a foreign cruise ship which was required to provide accommodations to a patron who uses a wheelchair.<sup>138</sup>

In sum, in light of courts' recent willingness to apply American laws to conduct and persons overseas, the Federal Government is out of step with current legal developments when it acts as if American disability discrimination laws do not apply to its programs or employees overseas. To make clear that the presumption against the extraterritorial application of American disability discrimination laws does not preclude the Federal Government from complying with its own laws here and abroad, Congress should instruct all applicable federal agencies, including the U.S. State Department and USAID, that the Rehabilitation Act, as well as the ADA, prohibits discrimination against workers and in programs operated or funded by the Federal Government overseas.



## **PART V.**

### **Recommendations**

NCD recommends that Congress adopt legislation to ensure full inclusion of people with disabilities in foreign policy and foreign assistance programs.

#### **1. GAO Should Conduct a Study of Current Practices**

The 1991 GAO report on disability and foreign assistance provided a valuable description of the barriers to access by people with disabilities in U.S. agency activities abroad. The 1996 NCD Report relied heavily on these findings, which led to the establishment of a USAID Disability Policy. While no formal policy directives have been established by other U.S. government agencies operating abroad, these agencies have had ample opportunity to improve practices. A new GAO investigation would provide an opportunity to determine the extent to which U.S. agencies operating abroad have (1) developed new planning or programs to ensure the inclusion of people with disabilities as recipients of U.S. foreign assistance and (2) overcome the specific barriers to access by people with disabilities identified in the GAO study, the 1996 NCD Report, and this report.

NCD recommends that GAO's new investigation be expanded to examine whether there are barriers to people with disabilities in policymaking, program development, and implementation of U.S. programs abroad. The 1991 GAO Report recommended a follow-up report on the procedures and directives that guide the Department of State in the construction and renovation of facilities abroad to ensure accessibility to people with disabilities.<sup>139</sup> Apparently, this report has never been done. In addition to examining physical access to U.S. buildings abroad, NCD now recommends that GAO conduct a broad investigation of access for people with disabilities to full participation in U.S. policymaking and programs abroad.

In addition to U.S. programs, the GAO report examined access to people with disabilities within the United Nations system in programs directly or indirectly funded by the United States. The United Nations is now engaged in a process of drafting a new UN Convention on the Rights of

People with Disabilities, and it is a particularly appropriate time to determine whether the UN's own offices and other facilities, technical agencies, and programs abroad are accessible to people with disabilities.

## **2. Amend the Foreign Assistance Act**

Congress should amend the Foreign Assistance Act to ensure the full inclusion of people with disabilities in U.S. policies and foreign assistance programs. Congress should identify its commitment to protecting the rights of people with disabilities by establishing targeted protections within the human rights mandates of the respective foreign assistance programs and laws. NCD recommends the following specific amendments to the Foreign Assistance Act:

**Create a disability advisor at the U.S. Department of State** to serve as a leader in the development of U.S. international disability policy, to ensure that respect for disability rights is included as a priority in U.S. bilateral and multilateral policies and programs (including United Nations programs and activities), to advise and assist the State Department Office of Democracy, Human Rights and Labor (DRL) in preparing a section on disability rights in the *Country Reports on Human Rights Practices*, to ensure the inclusion of people with disabilities in policymaking, program development, and implementation within the United States and abroad, and to coordinate the work of the Department of State with the Inter-Agency Task Force on Foreign Policy and Disability.

### **Require documentation of disability rights in State Department *Country***

**Reports**—State Department *Country Reports on Human Rights Practices* should be required to include specific information on the rights of people with disabilities, such as information about improper detention in institutions and conditions of confinement in psychiatric or mental retardation facilities, orphanages, and other institutions where human rights abuses may be particularly egregious. DRL should be required to establish guidelines for staff abroad to assist them in identifying human rights abuses against people with disabilities. These guidelines should require that U.S. human rights officers abroad make contact with nongovernmental disability rights organizations abroad representing the major groups of people with physical, mental, and sensory disabilities. In

countries in which such groups cannot be identified or operate without adequate public support, DRL should ensure that assistance is provided to create or support human rights groups run by people with disabilities through the Fund for Inclusion (described below). In countries in which effective documentation by domestic disability rights groups has not yet been established, DRL's guidelines should suggest that human rights officers conduct site visits to institutions where people with disabilities are detained. Congress should set aside funds for DRL to make this possible.

**Ensure inclusion in foreign assistance programs**—Create a broad mandate to “mainstream” people with disabilities into all aspects of U.S. foreign assistance and human rights programs. In addition to guaranteeing that all programs be accessible to people with disabilities, legislation should require planning to ensure that the concerns of people with disabilities are among the priorities of U.S. foreign assistance programs. This will require amending 22 U.S.C. 2151(n)(d) to include a new paragraph (10) addressing the rights of people with disabilities to be free from human rights abuses and discrimination; and by amending 22 U.S.C. 2304 (1)(1) to include the word “disability” following race, sex, language, and religion.

**Create an Office on Disability in Development (DID) at USAID**, similar to the USAID office on Women in Development, responsible for promoting the inclusion of people with disabilities in all USAID programs. The DID office will provide technical assistance to other USAID offices to assist them in developing appropriate accommodations and outreach programs to ensure the inclusion of people with disabilities in all existing areas of USAID programming. In addition, the DID office will provide workshops for USAID staff to provide the knowledge of disability issues necessary for active collaboration in these efforts on the part of USAID staff and will collect data on people with disabilities who are included in programs supported by USAID funds. The DID office will establish a long-term Strategic Plan for Inclusion to reform agency programs and will develop an annual Disability Plan of Action to begin immediate implementation of the Strategic Plan for Inclusion. The DID office will establish minimum standards for the inclusion of

people with disabilities in all current USAID Requests for Proposals, Requests for Applications, cooperative agreements, grants, and contracts.

The DID office will administer a Disability Rights Fellowship that will place technical experts in disability issues in U.S. Missions abroad that apply for this assistance to meet the requirement of creating a Disability Plan of Action for the Mission. Congress should set aside sufficient funds to permit the placement of a Disability Rights Fellow in a majority of USAID Missions abroad.

To avoid the problems of isolation experienced by the WID office over the years, and to promote the mainstreaming of disabilities into substantive programs of USAID, NCD recommends that the DID office be integrated into one of the largest substantive divisions or “pillars” of USAID, such as the Democracy, Conflict, and Humanitarian Assistance Division, as this is where civil society issues are addressed. The DID office should be guided by a civil rights approach that seeks to bring about the full inclusion of people with disabilities into all USAID programs.

**Create regional and Mission-level Disability Program Officers**—Every regional program of USAID and every U.S. Mission abroad will be required to identify a Disability Program Officer. The Disability Program Officer will create a Mission Disability Plan of Action and will oversee its implementation in collaboration with Mission staff.

**Establish a Fund for Inclusion, Leadership, and Human Rights of People with Disabilities** (referred to as the Fund for Inclusion)—The Fund for Inclusion will permit USAID to provide grants and fellowships to promote the inclusion of people with disabilities in foreign assistance programs. Until such time as discriminatory practices are dismantled around the world, a targeted program to promote leadership and participation by people with disabilities will be essential. As a practical matter, governments and development organizations will not be able to effectively overcome barriers to full participation by people with disabilities until targeted programs are created. These targeted programs can provide education, training, and leadership experience that will help people with disabilities overcome discriminatory barriers throughout their own societies. NCD recommends that Congress allocate substantial support to the Fund for Inclusion that will



allow an appropriate response to the scope of the issue and capacity building, recognizing that people with disabilities make up at least 10 percent of the population of any country. Funding should be at least as large as Congress now allocates for more specialized programs that respond to the needs of particular vulnerable populations.<sup>140</sup>

This fund will:

**Support the creation of new nongovernmental organizations and strengthen existing ones** made up of people with disabilities around the world. The Fund for Inclusion should be used to support the work of U.S.-based disability organizations to provide technical assistance abroad and to serve as cooperating partners in the development of disability programs by USAID. People with disabilities who run organizations in the United States have a broad range of valuable skills that should be tapped for the development of participation by counterparts abroad.

Notwithstanding the important participation by people with disabilities from the United States, at least half of the Fund for Inclusion shall go directly to organizations run by people with disabilities abroad in the form of small grants, training, fellowships, or technical assistance. The Fund for Inclusion will provide support to strengthen existing organizations, including cross-disability organizations, and promote their active participation in civil society and public policymaking. The Fund for Inclusion will target support for the development of organizations run by individuals with disabilities that currently have no organizations representing them or are under-represented in umbrella disability organizations as well as cross-disability organizations. In many developing countries, for example, there are no organizations run by people with psychiatric disabilities.

**Promote educational exchanges, technical assistance, and collaboration** between U.S. disability rights groups, foreign governments, human rights organizations, and disability leaders abroad and build on successes that already exist in regional and interregional training programs occurring between disability policy organizations.

**Provide technical assistance to governments and nongovernmental disability organizations** in the methodology of disability rights legislation, implementation mechanisms, and legal advocacy.

**Assist governments in creating independent human rights oversight or ombudsman programs** to monitor and protect the internationally recognized human rights of people with disabilities in institutions and in the community. Ombudsman or human rights oversight programs should be independent of government authorities service programs they monitor; these programs should report directly to independent advisory boards that include representation by leading local disability organizations; and these programs shall publish annual reports on the conditions of people with disabilities.

The DID office will create guidelines for the operation of the Fund for Inclusion and will oversee its operation. Grants will be administered directly by U.S. Missions abroad. Individuals and disability groups may apply directly to the Fund for Inclusion from any country in which USAID has a Mission.

**New initiatives in post-conflict societies should include people with disabilities**—USAID programs in post-conflict societies, and any legislation establishing new programs in post-conflict societies, should recognize that (1) war and conflict lead to high levels of disability, (2) the health and safety of people with disabilities are particularly at-risk in post-conflict societies, and (3) it is most cost efficient to plan for the inclusion of people with disabilities when new investments are being made in the built environment. Thus, inclusion of people with disabilities should be a priority in the immediate aftermath of major conflicts and disasters.

**Inclusion should be a required part of the Millennium Challenge Account**—The proposed Millennium Challenge Account, which would establish a development program parallel to USAID, should be required to include people with disabilities from the outset. Since education is a proposed component of the Millennium Challenge Account, the requirement of inclusive and appropriate education of all people with disabilities should be a particularly important priority of this program.

### **3. Enforce the Application of the Rehabilitation Act of 1973 to U.S. Government Programs Overseas**

The Rehabilitation Act, including Sections 501, 503, and 504, should be applied specifically to all U.S. government-funded programs abroad.



## **PART VI.**

### **Looking Ahead: The UN Disability Rights Convention**

In the past two years, NCD has identified a major new policy priority in the area of foreign affairs: the support of a new United Nations Convention on the Rights of People with Disabilities. In December 2001, the United Nations General Assembly adopted resolution 56/88 creating an Ad Hoc Committee to draft a convention. NCD has endorsed the idea of drafting a new convention, and has published a white paper entitled *Understanding the Role of an International Convention on the Human Rights of People with Disabilities*.<sup>141</sup> Among the many important reasons for supporting a new convention,<sup>142</sup> a disability-specific human rights instrument will (1) guide the practice of the U.S. government and international agencies to ensure inclusion of people with disabilities in international affairs and (2) promote collaboration between disability rights leaders in the United States and abroad.

U.S. government support for a strong UN Disability Rights Convention will be a test of the country's commitment to include disability issues as a meaningful priority of U.S. foreign policy. The process by which the U.S. government develops and advances its position on the convention will demonstrate the U.S. commitment to full participation of people with disabilities on matters that affect them. Effective international collaboration in the drafting process will require consultation and full participation of disability leaders in the United States and abroad. Given the lack of funds for disability groups to participate in the drafting process, NCD recommends that the United States set aside funding from its current contributions to the United Nations to support the UN Voluntary Fund on Disability to facilitate consultation and dialogue with international experts, national institutions, and leaders of NGOs concerned with the rights of people with disabilities. By supporting a strong new UN Disability Rights Convention, by consulting with disability groups, and by setting aside funds necessary to ensure access to the consultative process by people with disabilities, the U.S. will establish its role as a leader in international disability rights consistent with its commitments to citizens with disabilities at home.



## **PART VII.**

### **Appendix**

#### **Mission of the National Council on Disability**

##### **Overview and Purpose**

The National Council on Disability (NCD) is an independent federal agency with 15 members appointed by the President of the United States and confirmed by the U.S. Senate. The overall purpose of NCD is to promote policies, programs, practices and procedures that guarantee equal opportunity for all individuals with disabilities, regardless of the nature or significance of the disability, and to empower individuals with disabilities to achieve economic self-sufficiency, independent living and inclusion and integration into all aspects of society.

##### **Specific Duties**

The current statutory mandate of NCD includes the following:

Reviewing and evaluating, on a continuing basis, policies, programs, practices and procedures concerning individuals with disabilities conducted or assisted by federal departments and agencies, including programs established or assisted under the Rehabilitation Act of 1973, as amended, or under the Developmental Disabilities Assistance and Bill of Rights Act, as well as all statutes and regulations pertaining to federal programs that assist such individuals with disabilities, in order to assess the effectiveness of such policies, programs, practices, procedures, statutes and regulations in meeting the needs of individuals with disabilities.

Reviewing and evaluating, on a continuing basis, new and emerging disability policy issues affecting individuals with disabilities at the federal, state and local levels and in the private sector, including the need for and coordination of adult services, access to personal assistance services, school reform efforts and the impact of such efforts on

individuals with disabilities, access to health care, and policies that act as disincentives for individuals to seek and retain employment.

Making recommendations to the President, Congress, the Secretary of Education, the director of the National Institute on Disability and Rehabilitation Research, and other officials of federal agencies about ways to better promote equal opportunity, economic self-sufficiency, independent living and inclusion and integration into all aspects of society for Americans with disabilities.

Providing Congress, on a continuing basis, with advice, recommendations, legislative proposals and any additional information that NCD or Congress deems appropriate.

Gathering information about the implementation, effectiveness and impact of the Americans with Disabilities Act of 1990 (42 USC 12101 et seq.).

Advising the President, Congress, the commissioner of the Rehabilitation Services Administration, the assistant secretary for Special Education and Rehabilitative Services within the Department of Education, and the director of the National Institute on Disability and Rehabilitation Research on the development of the programs to be carried out under the Rehabilitation Act of 1973, as amended.

Providing advice to the commissioner of the Rehabilitation Services Administration with respect to the policies and conduct of the administration.

Making recommendations to the director of the National Institute on Disability and Rehabilitation Research on ways to improve research, service, administration and the collection, dissemination and implementation of research findings affecting persons with disabilities.

Providing advice regarding priorities for the activities of the Interagency Disability Coordinating Council and reviewing the recommendations of this council for legislative and administrative changes to ensure that such recommendations are consistent with



NCD's purpose of promoting the full integration, independence and productivity of individuals with disabilities.

Preparing and submitting to the President and Congress an annual report titled *National Disability Policy: A Progress Report*.

## **International**

In 1995, NCD was designated by the Department of State to be the U.S. government's official contact point for disability issues. Specifically, NCD interacts with the special rapporteur of the United Nations Commission for Social Development on disability matters.

## **Consumers Served and Current Activities**

Although many government agencies deal with issues and programs affecting people with disabilities, NCD is the only federal agency charged with addressing, analyzing and making recommendations on issues of public policy that affect people with disabilities regardless of age, disability type, perceived employment potential, economic need, specific functional ability, veteran status or other individual circumstance. NCD recognizes its unique opportunity to facilitate independent living, community integration and employment opportunities for people with disabilities by ensuring an informed and coordinated approach to addressing the concerns of people with disabilities and eliminating barriers to their active participation in community and family life.

NCD plays a major role in developing disability policy in America. In fact, NCD originally proposed what eventually became the Americans with Disabilities Act. NCD's present list of key issues includes improving personal assistance services, promoting health-care reform, including students with disabilities in high-quality programs in typical neighborhood schools, promoting equal employment and community housing opportunities, monitoring the implementation of ADA, improving assistive technology and ensuring that those persons with disabilities who are members of diverse cultures fully participate in society.

## **Statutory History**

NCD was initially established in 1978 as an advisory board within the Department of Education (P.L. 95-602). The Rehabilitation Act Amendments of 1984 (P.L. 98-221) transformed NCD into an independent agency.

## PART VIII.

### Endnotes

<sup>1</sup> 22 U.S.C.A. § 2304 (1979) (Supp. 2001).

<sup>2</sup> The 2000 and 2001 State Department *Country Reports* on Hungary both included a reference to the fact that people with mental disabilities are detained in cages in Hungarian social care facilities. Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, Country Reports On Human Rights Practices 2000, Hungary, available at <http://www.state.gov/g/drl/rls/hrrpt/2000/eur/774.htm> (viewed on June 1, 2003) [hereinafter Country Reports]; Country Reports 2001, Hungary, available at <http://www.state.gov/g/drl/rls/hrrpt/2001/eur/8264.htm>. Mental Disability Rights International (MDRI) had documented this problem in its 1997 report, *Human Rights and Mental Health: Hungary*, but Hungarian psychiatric authorities consistently defended the use of cages. *Mental Disability Rights Int'l, Human Rights And Mental Health: Hungary* (Washington College of Law, American University 1997) available at <http://www.mdri.org/reportpercent20documents/Hungary.doc> (viewed June 1, 2003). Two days after the release of the 2000 State Department Report, officials at the Hungarian Ministry of Welfare contacted MDRI and disability activists in Hungary to begin a collaborative process of drafting new regulations that would ban the use of cages. Since then, the use of cages in Hungary has rapidly declined. The practice has not yet been outlawed.

<sup>3</sup> While there is currently no international convention on the rights of people with disabilities, existing human rights law provides a broad range of protections for people with disabilities. Report of the United Nations Consultative Expert Group Meeting on International Norms and Standards Relating to Disability, Convened by the United Nations in Cooperation With Boalt Hall School of Law, University of California at Berkeley and the World Institute on Disability (Oakland, California USA) at Boalt Hall School of Law, University of California at Berkeley 8-12 December 1998 (part 3—legal framework), available at <http://www.un.org/esa/socdev/enable/disberk0.htm> (viewed on May 30, 2003) (this meeting set out to review and discuss 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).

<sup>4</sup> As part of the Decade for Disabled Persons from 1983 to 1992, the UN Human Rights Commission appointed two special rapporteurs, Leandro Despouy and Erica-Irene Daes, who documented a worldwide pattern of abuse. *Leandro Despouy, U.N. Ctr. for Human Rights & U.N. Sub-comm'n on Prevention of Discrimination and Prot. of Minorities, Human Rights and Disabled Persons, U.N. Sales no. E92.xiv.4* (1993); *United Nations Sub-comm'n on Prevention of Discrimination and Prot. of Minorities, Principles, Guidelines and Guarantees for the Prot. of Persons Detained on Grounds of Mental Ill-Health or Suffering from Mental Disorder*, United Nations, Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Human Rights And Disability*, U.N.

Doc. E/CN.4/Sub.2/1991/31 (prepared by Leandro Despouy) [hereinafter Despouy Report]. United Nations, Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Principles, Guidelines, and Guarantees for the Protection of Persons Detained on Grounds of Mental Ill-Health or Suffering from Mental Disorder*, U.N. Doc. E/CN.4/Sub.2/1983/17 (prepared by Erica-Irene Daes) [hereinafter Daes Report].

<sup>5</sup> *Second Annual Report on the Implementation of USAID Disability Policy*, available at [http://www.usaid.gov/about/disability/2ar\\_imp\\_policy.html#background](http://www.usaid.gov/about/disability/2ar_imp_policy.html#background) (viewed June 1, 2003).

<sup>6</sup> *Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities*, 3rd Comm., 56th Sess., Agenda Item 119(b), U.N. Doc. A/C.3/56/L.67/Rev.1 (28 Nov. 2001). See United Nations–Department Of Economics And Social Affairs, Statistics Division, available at <http://unstats.un.org/unsd/disability/default.asp> (viewed on June 1, 2003) (listing percentages of persons with disability in different countries. Examples, in percent, are United States 1994 Survey - 15.0; Canada 1991 Survey -15.5; China 1987 Survey - 5.0; New Zealand 1996 Survey - 20.0; Germany 1992 Survey - 8.4; Sweden 1988 Survey - 12.1; United Kingdom 1991 Census - 12.2; Zambia 1990 Census - 0.9; Uganda 1991 Census - 1.2; Bangladesh 1982 Survey - 0.8; India 1981 Census - 0.2. It seems that the percentage of people with disabilities increases the more developed the country is and the more recent the survey is. This is probably due to higher levels of awareness about disabilities and what constitutes disability. For the questions used in the surveys, see <http://unstats.un.org/unsd/disability/allquest.htm> (viewed on June 1, 2003). “Existing disability data is woefully inadequate, with published estimates of national, regional, and global populations of people with disabilities being highly speculative.” The United States Agency for International Development (USAID) estimates the global population of people with disabilities to be 10 percent or more, and the Roeher Institute in Toronto, Canada, estimates the global population to be 10 to 13 percent.” See Robert L. Metts, *Disability Issues, Trends and Recommendations for the World Bank*, Discussion Paper No. 0007, 6 (February 2000); Marcia Rioux, *Enabling the Well-Being of Persons With Disabilities 2* (Roeher Institute 1998), cited in National Council on Disability, *Understanding the Role of an International Convention on the Human Rights of People with Disabilities 5* (June 12, 2002) [hereinafter *UN Convention White Paper*].

<sup>7</sup> *Despouy Report*, *supra* note 4 at para. 3.

<sup>8</sup> In Bulgaria, for example, the *Country Reports* note that people in psychiatric facilities are held in cages. See *Country Reports 2002, Bulgaria*, available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18358.htm> (viewed on June 1, 2003). In Kosovo, the *Country Reports* note that physical and sexual abuses have gone unchecked in psychiatric facilities. In Albania, “[w]idespread poverty, unregulated working conditions, and poor medical care posed significant problems for many persons with disabilities.” *Country Reports 2000, Albania*, available at <http://www.state.gov/g/drl/rls/hrrpt/2000/eur/668.htm> (viewed on June 1, 2003).

<sup>9</sup> See, e.g., Mental Disability Rights International, *Not On The Agenda: Human Rights Of People With Mental Disabilities In Kosovo* (2002), available at <http://www.mdri.org/pdf/>

KosovoReport.pdf (viewed on June 1, 2003); Mental Disability Rights International, *Human Rights & Mental Health: Mexico* (2000), available at <http://www.mdri.org/publications/index.htm>, (viewed on June 4, 2003); Mental Disability Rights International, *Children in Russia's Institutions: Human Rights and Opportunities for Reform* (1999), available at <http://www.mdri.org/publications/Russia.html> (viewed on June 4, 2003); Mental Disability Rights International, *Human Rights & Mental Health: Hungary* (1997), available at [http://www.mdri.org/report percent20documents/Hungary.doc](http://www.mdri.org/report%20documents/Hungary.doc) (viewed on June 4, 2003). Mental Disability Rights International, *Human Rights & Mental Health: Uruguay* (1995), available at <http://www.mdri.org/publications/index.htm> (viewed on June 1, 2003). See also Amnesty International Urgent Action on Bulgaria at <http://www.amnesty.org>. See also Los Derechos Humanos De Las Personas Con Discapacidad (compiled by Rodrigo Jimenez, 1996).

<sup>10</sup> Ann Elwan, *Poverty and Disability: A Survey of the Literature Social Protection Discussion Paper No. 9932*, The World Bank Group, available at <http://wbln0018.worldbank.org/HDNet/hddocs.nsf/2d5135ecbf351de6852566a90069b8b6/a16f1100a7ae28ff852567f600636b11?OpenDocument> (viewed on June 4, 2003). (*Elwan Report*). According to figures of the National Organization on Disability, the education levels of people with disabilities in the United States are also below those of nondisabled: 22 percent of Americans with disabilities fail to complete high school, compared to 9 percent of those without disabilities. See National Organization on Disability Web site, at [http://www.nod.org/cont/dsp\\_cont\\_item\\_view.cfm?contentId=14](http://www.nod.org/cont/dsp_cont_item_view.cfm?contentId=14) (viewed on June 4, 2003).

<sup>11</sup> Department for International Development, *Disability, Poverty and Development 5* (2000), citing B. Hariss-White, Presentation to the Development Studies Association Annual Conference, University of Bath (September 13, 1999).

<sup>12</sup> See Elwan Report *supra*, note 10. The report found that “the links between poverty and disability go two ways—not only does disability add to the risk of poverty, but conditions of poverty add to the risk of disability.”

<sup>13</sup> The World Bank, *World Development Report: Investing in Health* (1993).

<sup>14</sup> Department for International Development, *Disability, Poverty and Development 4* (2000), citing Leandro Despouey, *Human Rights and Disabled Persons—United Nations Centre for Human Rights Study Series 6* (1993).

<sup>15</sup> *Disability, Poverty, and Development, Id.* at 1.

<sup>16</sup> *Id.* at 8.

<sup>17</sup> Norwegian Association of the Disabled, *Aid to the Disabled in Developing Countries* (1994).

<sup>18</sup> The World Bank Web site: [www.worldbank.org](http://www.worldbank.org) (viewed on October 26, 2002).

<sup>19</sup> A recent study done by the World Bank concludes that “People with disabilities in the developing world are among the poorest of the poor. . . . With disabled people invisible in development initiatives, hundreds of thousands of people who see themselves as potential and willing contributors to family and national economic activity are instead relegated to the margins of society where they are perceived as an actual burden. The result can be devastating, both to the individual and to the economy.” Deborah Stienstra, Yutta Fricke, April D’Aubin *Baseline Assessment: Inclusion and Disability in World Bank Activities*, Canadian Centre on Disability Studies, June 2002, available at <http://wbln0018.worldbank.org/hdnet/hddocs.nsf/View+to+Link+WebPages/841239FD3C23B7FD85256C07006824FE?OpenDocument> (viewed on June 4, 2003).

<sup>20</sup> For more information on World Bank projects concerning disabled people see World Bank, Support for Project Design at <http://wbln0018.worldbank.org/HDNet/hddocs.nsf/2d5135ecbf351de6852566a90069b8b6/9ba0357c78adaadc8525683c00588c7c?OpenDocument> (viewed on June 4, 2003).

<sup>21</sup> Rehabilitation Act of 1973, P.L. No. 93-112, 87 Stat. 355 (1973).

<sup>22</sup> Americans with Disabilities Act of 1990 (ADA), P.L. No. 101-336, 104 Stat. 327 (1990).

<sup>23</sup> National Council on Disability, *Foreign Policy and Disability* at 1 (1996), available at <http://www.ncd.gov/newsroom/publications/foreign/html>.

<sup>24</sup> National Council on Disability, *Rehabilitating Section 504* at 76 (February 12, 2003), available at <http://www.ncd.gov/newsroom/publications/section504.html> (viewed on June 4, 2003).

<sup>25</sup> U.S. General Accounting Office, *Foreign Assistance: Assistance to Disabled Persons in Developing Countries* (February 1991), Report #NSIAD-91-82, at 2. The report also examined activities of the United Nations, other international organizations, and efforts by nongovernmental organizations.

<sup>26</sup> The exception to the rule identified by the GAO report was the Peace Corps. “Among US Agencies, only the Peace Corps has a specific mandate to assist disabled persons, and it has emphasized special education and rehabilitation in the programs it has provided. Assistance from other agencies has generally been sporadic rather than part of planned programs with specific objectives to target disabled people.” *Id.* at 3.

<sup>27</sup> *Id.* at 26.

<sup>28</sup> *Id.* at 48.

<sup>29</sup> *Id.* at 26.

<sup>30</sup> *Id.* at 48.

<sup>31</sup> *Id.*

<sup>32</sup> Transmittal letter of the GAO Report from Harold Johnson, Director, Foreign Economic Assistance Issues, to the Honorable Claiborne Pell, Chairman, Committee on Foreign Relations, United States Senate, and the Honorable Jesse A. Helms, Ranking Minority Member, Committee on Foreign Relations, United States Senate, February 15, 1991.

<sup>33</sup> *Id.* at 23.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> The current USAID Policy Paper on Disability states that “[t]he Americans with Disabilities Act of 1990 (ADA) is generally not applicable to USAID’s overseas programs. While the ADA applies to US citizens (including USAID employees) overseas, it does not apply to non-US citizens, who are the primary beneficiaries of USAID programs. The USAID Disability Policy is thus in part an effort to extend the spirit of the ADA in areas beyond the jurisdiction of U.S. law.” *U.S. Agency for International Development, Policy Guidance: USAID Disability Policy Paper*, September 12, 1997, at 3, available at <http://www.usaid.gov/about/disability/DISABPOL.FIN.html> (viewed on June 4, 2003).

<sup>37</sup> Policy states the following: “To avoid discrimination against people with disabilities in programs which USAID funds and to stimulate an engagement of host country counterparts, governments, implementing organizations and other donors in promoting a climate of nondiscrimination against and equal opportunity for people with disabilities.” *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 9.

<sup>40</sup> *Id.*, at Section D.

<sup>41</sup> US Agency for International Development, *First Annual Report on Implementation of US AID Disability Policy*, December 23, 1998, available at <http://www.usaid.gov/about/disability/disrept.htm#Status> (viewed on June 4, 2003).

<sup>42</sup> *Id.*

<sup>43</sup> US Agency for International Development, *The Second Annual Report on the Implementation of the USAID Disability Policy*, February 15, 2000, available at [http://www.usaid.gov/about/disability/2ar\\_imp\\_policy.html#toc](http://www.usaid.gov/about/disability/2ar_imp_policy.html#toc) (viewed on June 4, 2003).

<sup>44</sup> Emphasis added.

<sup>45</sup> *Id.*

<sup>46</sup> At the December 6, 2002, meeting, Tina Singleton of Mobility International USA (MIUSA) reported on one positive effort to promote the inclusion of women with disabilities in current USAID programs.

<sup>47</sup> *Id.*

<sup>48</sup> Mobility International USA, *Gender and Disability: A Survey of Inter-Action Member Agencies* (2003), at ix, available at <http://www.miusa.org/development/resources/genderdisabilityreport.PDF> (viewed on June 4, 2003).

<sup>49</sup> *Id.* at xv.

<sup>50</sup> *Id.* at ix.

<sup>51</sup> In parts of the world, psychiatric disability is considered an “illness” rather than a disability, and people with psychiatric disabilities are not included in umbrella disability organizations. In much of the world, family members represent people with disabilities—to the exclusion of individuals with disabilities themselves. In Kosovo, MDRI documented international development programs theoretically directed to support the inclusion of people with disabilities that excluded individuals with mental disabilities. A national Disability Task Force established by the United Nations with international funds to promote the inclusion of people with disabilities in public policies did not include representation by people with mental disabilities because there were no mental disability advocacy organizations in Kosovo. Instead, UN officials invited the chief technician working at the psychiatric ward to represent people with mental disabilities. MDRI, *Kosovo Report*, *supra* note 9.

<sup>52</sup> MDRI reports that in some countries, a person with a mental disability can be declared “mentally incompetent” for a lifetime without any form of judicial review. Such individuals may have their identity papers taken away from them, may be excluded from educational or vocational programs, and may be prohibited from making contracts. In some countries, large numbers of people with disabilities are segregated from society in institutions that control every aspect of their lives. Such individuals are cut off from the assistance of mainstream nongovernmental organizations and lack information about foreign assistance programs that may be open to them.

<sup>53</sup> See, e.g., *The Inclusion of Disability in Norwegian Development Cooperation: Planning and Monitoring for the Inclusion of Disability Issues in Mainstream Development Activities* (January 2002).



<sup>54</sup> Stephen B. Cohen, *Conditioning U.S. Security Assistance on Human Rights Practices*, 76 A.J.I.L. 246 (1982).

<sup>55</sup> *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, adopted by the General Assembly 85th plenary meeting, 20 December 1993.

<sup>56</sup> *Id.* at para 14.

<sup>57</sup> See Nordic Disabled Person Organisations, *Inclusion of the Disability Dimension in Nordic Development Cooperation*, 2000, available at [http://www.disability.dk/images/docpics/1006794750\\_Conference\\_report.doc](http://www.disability.dk/images/docpics/1006794750_Conference_report.doc) (reporting and consolidating the Nordic countries' joint disability and development policy) (viewed June 6, 2003).

<sup>58</sup> 22 U.S.C.A. § 2304 (1979) (Supp. 2001), as updated by Foreign Relations Authorization Act, Fiscal Year 2003, P. L. No. 107-228, 116 Stat. 1350 (2002); P.L. 108-23, approved May 19, 2003.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> 22 U.S.C.A. § 262d-1(1979) (Supp. 2001).

<sup>62</sup> Frank Newman & David Weissbrodt, *International Human Rights: Law, Policy and Process*, 395 (1996). This textbook about international human rights contains a specific chapter titled "How Can the U.S. Government Influence Respect for Human Rights in Other Countries?" (Chapter 9), which surveys the policies of different U.S governments concerning foreign assistance and human rights and notes different lectures and articles of various Secretaries of State about this issue as well as legislation.

<sup>63</sup> 22 U.S.C.A. § 2304 (2001), as updated by Foreign Relations Authorization Act, Fiscal Year 2003, P. L. No. 107-228, 116 Stat. 1350 (2002); P.L. 108-23, approved May 19, 2003.

<sup>64</sup> Congress, it appears, was concerned not only with justice but also with the appearance of it. Another section of this clause says that the assistance should be given in a manner which would "avoid identification of the United States, through such programs, with governments which deny to their people internationally recognized human rights and fundamental freedoms, in violation of international law or in contravention of the policy of the United States as expressed in this section or otherwise" (22 U.S.C.A. § 2304). The President has authority to lift such sanctions when he finds that a significant improvement in the foreign country's human rights record has occurred. 22 U.S.C.A. § 2304 (e). The term "significant improvement" of a country's human rights record lacks a real definition, apart from specification that changes must "[warrant] lifting the prohibition on furnishing such assistance in the national interest of the United States."

<sup>65</sup> 22 U.S.C.A. § 2751 (2001).

<sup>66</sup> 22 U.S.C.A. § 2304 (d) (1).

<sup>67</sup> *Price v. United Kingdom*, 53 Eur.Ct. H.R., (2001) (in which a woman in a wheelchair detained in jail overnight was denied accessible toilet facilities). This is obviously not the kind of “flagrant denial” of human rights envisioned by the Foreign Assistance Act, but the case demonstrates that international human rights bodies have recognized that denial of accessibility can cause great suffering and this can rise to the level of suffering necessary to trigger the protections of the most strict provisions of international human rights conventions. See generally Eric Rosenthal & Clarence Sundram, *The Role of International Human Rights in Mental Health Legislation*, 21 N.Y.L.Sch.J.Int’l & Comp. L. 469.

<sup>68</sup> *The Case of Victor Rosario Congo*, Inter-American Commission on Human Rights Report 29/99, Case 11,427, Ecuador, adopted in Sess. 1424, OEA/Ser/L.V/II.) Doc. 26, March 9, 1999 (a case from Ecuador in which a man with a psychiatric disability died in detention after he was denied appropriate medical treatment).

<sup>69</sup> MDRI has documented conditions in psychiatric facilities where conditions are so inhuman and dangerous that annual mortality rates are above 20 percent. MDRI has received reports of institutions for children with disabilities with mortality rates as high as 80 percent. In some institutions MDRI has investigated, there is no oversight or protection. People are left covered in their own feces, detained in cages, tied to beds for long periods of time, or subjected to sexual abuses. See MDRI reports, *supra* note 9.

<sup>70</sup> 22 U.S.C.A. § 2304 (a)(4). “In determining whether the Government of a country engages in a consistent pattern of gross violations of internationally recognized human rights, the President shall give particular consideration to whether the government (A) has engaged in or tolerated particularly severe violations of religious freedom, as defined in section 6402 of this title; or (B) has failed to undertake serious and sustained efforts to combat particularly severe violations of religious freedom when such efforts could have been reasonably undertaken.”

<sup>71</sup> Pub.L. 105-292, Oct. 27, 1998, 112 Stat. 2787 (22 U.S.C.A. §§ 6401, 6402).

<sup>72</sup> Subsection 11 to § 6402 reads: “The term ‘particularly severe violations of religious freedom’ means systematic, ongoing, egregious violations of religious freedom, including violations such as—(A) torture or cruel, inhuman, or degrading treatment or punishment; (B) prolonged detention without charges; (C) causing the disappearance of persons by the abduction or clandestine detention of those persons; or (D) other flagrant denial of the right to life, liberty, or the security of persons.” 22 U.S.C.A. § 6402 (11).

<sup>73</sup> 22 U.S.C.A. § 2151n, as updated by the Foreign Relations Authorization Act, Fiscal Year 2003, P. L. No. 107-228, 116 Stat. 1350 (2002); P.L. 108-23, approved May 19, 2003.

<sup>74</sup> Donald M. Fraser, “Congress’s Role in the Making of International Human Rights Policy,” in *Human Rights and American Foreign Policy* 247, 247-54 (Donald P. Kommers & Gilbert D. Loescher, eds. 1979) in Frank Newman & David Weissbrodt at 393, *supra* note 62.

<sup>75</sup> *Country Reports* are submitted to the Congress by the Department of State in compliance with sections 116(d)(1) and 502B(b) of the Foreign Assistance Act of 1961 (FAA), as amended, and Section 505 (c) of the Trade Act of 1974, as amended. As stated in Section 116(d)(1) of the FAA: “The Secretary of State shall transmit to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate, by January 31 of each year, a full and complete report regarding the status of internationally recognized human rights, within the meaning of subsection (A) in countries that received assistance under this part, and (B) 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 Act.” 22 U.S.C.A. § 2151n (d). Section (a) provides: No assistance may be provided under this part to the government of any country which engages in a consistent pattern of gross violations of internationally recognized human rights, including torture, or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges, causing the disappearance of persons by the abduction and clandestine detention of those persons, or other flagrant denial of the right to life, liberty, and the security of person, unless such assistance will directly benefit the needy people in such country.

<sup>76</sup> 22 U.S.C.A. § 2151n (d) and (f).

<sup>77</sup> See MDRI Reports *supra* note 9.

<sup>78</sup> 22 U.S.C.A. § 2152.

<sup>79</sup> 22 U.S.C.A. § 2152 (b).

<sup>80</sup> 22 U.S.C.A. § 2152 (c).

<sup>81</sup> *First Annual Report on Implementation of USAID Disability Policy*, *supra* note 41.

<sup>82</sup> *Id.*

<sup>83</sup> P.L. 106-386, Div. A, Oct. 28, 2000, 114 Stat. 1464.

<sup>84</sup> 22 U.S.C.A. § 7106.

<sup>85</sup> More details concerning the criteria for determination that the government is making “serious and sustained efforts” to eliminate trafficking are set up in subsection (c). *Id.*

<sup>86</sup> 22 U.S.C.A. § 2152d.

<sup>87</sup> 22 U.S.C.A. § 2152d (a) (1)–(4). These include drafting of legislation, law enforcement measures, and creation of facilities and programs to protect victims of trafficking and exchange programs for learning how to combat trafficking.

<sup>88</sup> 22 U.S.C.A. § 7104.

<sup>89</sup> 22 U.S.C.A. § 7105 as amended by Foreign Relations Authorization Act, Fiscal Year 2003, P.L. No. 107-228, 116 Stat. 1350 (2002) (these recent changes specifically target NGOs that provide services to trafficking victims as recipients of foreign assistance funds). And see USAID WID office report about its activities regarding trafficking: *Trafficking in Persons: USAID's Response*, available at [http://www.usaid.gov/wid/pubs/trafficking\\_pub\\_final.pdf](http://www.usaid.gov/wid/pubs/trafficking_pub_final.pdf) (viewed June 5, 2003).

<sup>90</sup> 22 U.S.C.A. § 2304 (h).

<sup>91</sup> Sabrina Feve & Christina Finzel, *Recent Development: Trafficking of People*, 38 *Harv. J. on Legis.* 279 (2001).

<sup>92</sup> 22 U.S.C. A. § 7107.

<sup>93</sup> The President can decide to continue the foreign assistance despite noncompliance with the minimum standards in two cases: (a) American national interest requires it or (b) continuation of assistance would promote the objective of the legislation. § 7107 (d)(4) Subsection (5) further decrees that the President will use his discretion when there will be an adverse effect on women and children.

<sup>94</sup> 22 U.S.C.A. § 2151k.

<sup>95</sup> USAID, Policy Paper: Women In Development, Washington, D.C., October 1992 at 2, reprinted in Gloria Nikoi, *Gender and Development*, at 20 (1998).

<sup>96</sup> 22 U.S.C. § 2225.

<sup>97</sup> 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).

<sup>98</sup> *United Nations: International Development Strategy–Action Programme of the General Assembly for the Second UN Development Decade*, 5, reprinted in Nikoi, *supra* note 95, at 11. Following the statement of goals and objectives came this: “As the ultimate purpose of development is to provide increasing opportunities for a better life, it is essential to bring about a more equitable distribution of income and wealth for promoting both social justice and efficiency of production.... Thus, qualitative and structural changes in the society must go hand in hand

with rapid economic growth; and existing disparities—regional, sectoral, and social—should be substantially reduced.” *Id.* at 12.

<sup>99</sup> United Nations: 3281 (XXIX) *Charter of Economic Rights and Duties of States* 52, reprinted in Nikoi, *supra* note 95, at 13. The Charter stated further: “The right of women to work, to receive equal pay for work of equal value, to be provided with equal conditions and opportunities for advancement in work, and all other women’s rights to full and satisfying economic activity are strongly re-affirmed.” *Id.*

<sup>100</sup> Nikoi, *supra* note 95, at 19.

<sup>101</sup> WID Web site, available at [www.usaid.gov/wid](http://www.usaid.gov/wid) (viewed on June 5, 2003).

<sup>102</sup> 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 Envl. L. & Pol’y* 303, 313–314 (2001).

<sup>103</sup> P.L. 95-424, 1978 HR 12222 §108.

<sup>104</sup> *Id.*

<sup>105</sup> Nyamu, *supra* note 97 at 385-386.

<sup>106</sup> Spengler, *supra* note 102 at 315.

<sup>107</sup> *supra* note 101.

<sup>108</sup> At the December 6, 2002, NCD meeting, Elise Smith of Women’s Edge, a coalition of individuals and organizations concerned with promoting the economic status of women around the world, observed that the Percy Amendment opened the door to women in development programs, but that a number of subsequent initiatives were needed to bring about effective inclusion. See also Ossai Miazad, *Legislative Focus: Gains Act*, 9 *Hum. Rts. Br.* 37 (2002).

<sup>109</sup> Kathleen Staudt and Alice Stewart Carloni, *Women in Development: AID’s Experience, 1973–1985*, A-14, reprinted in Nikoi, *supra* note 95 at 20-21.

<sup>110</sup> *Women, International Development, and Politics—The Bureaucratic Mire*, updated and expanded ninth edition (Kathleen Staudt, ed., 1997).

<sup>111</sup> Miazad, *supra* note 108.

<sup>112</sup> USAID Office of Women In Development, *Gender Plan of Action: Fact Sheet*, March 1997, available at <http://www.usaid.gov/wid/pubs/actionfs.htm> (viewed on June 5, 2003).

<sup>113</sup> Elise Smith, Women's Edge, Coalition of Individuals and Organizations Concerned With Promoting the Economic Status of Women Around The World, *National Council on Disability Strategy Session*, Washington, D.C., December 6, 2002.

<sup>114</sup> *Id.*

<sup>115</sup> MDRI has developed detailed recommendations to funders for the development of nongovernmental advocacy groups. See MDRI, *Kosovo Report*, *supra* note 9, and MDRI, *Children in Russia's Institutions*, *supra* note 9.

<sup>116</sup> See "Civil Society" section in the Office of Democracy and Governance on USAID Web site, <http://www.usaid.gov/democracy/office/civ.html> (viewed on June 5, 2003).

<sup>117</sup> The term "civil society" means the independent, nongovernmental, nonprofit realm of citizen activity. Within civil society are all those nonprofit organizations formed of the free association of people and to create social support or other community work, express views, debate issues, and advocate for public policies on matters that affect them.

<sup>118</sup> *First Annual Report on Implementation of the USAID Disability Policy*, *supra* note 41.

<sup>119</sup> Art. I, § 8, cl. 3 of the Constitution gives Congress broad powers "to regulate Commerce with foreign Nations." See *EEOC v. Arabian Am. Oil Co.*, 499 U.S. at 248 (1991) [hereinafter *Aramco*] (citing *Foley Bros. v. Filardo*, 336 U.S. 281, 284-85 (1949)).

<sup>120</sup> See *Hartford Fire Ins. v. Cal.*, 509 U.S. 764 (1949); *Ford v. United States*, 273 U.S. 593 (1927); *American Banana Co. v. United Fruit Co.* 213 U.S. 341, 356 (1909); *Lauritzen v. Larsen*, 345 U.S. 571, 579 n.7 (1953); *Steele v. Bulova Watch Co.*, 344 U.S. 280, 282-86 (1952) (rejecting constitutional challenge to application of Lanham Act to conduct occurring in Mexico).

<sup>121</sup> See *Aramco*, 499 U.S. at 248; *Hartford Fire Ins.*, 509 U.S. at 764 (Scalia, J., dissenting).

<sup>122</sup> *Aramco*, 499 U.S. 244, superseded by P.L. No. 102-166 (1991).

<sup>123</sup> *Id.* at 248 (discussing *Foley Bros.*, 336 U.S. at 285, quoted in William S. Dodge, *Understanding the Presumption Against Extraterritoriality*, 16 *Berkeley J. Int'l L.* 85, 92 (1998); Curtis A. Bradley, *Territorial Intellectual Property Rights in an Age of Globalism*, 37 *VA. J. Int'l L.* 505, 507 (1997).

<sup>124</sup> See, e.g., *Hartford Fire Ins. Co.*, 509 U.S. at 794-96 (applying Sherman Act to conduct abroad without referring to presumption against extraterritoriality).

<sup>125</sup> See, e.g., Jonathan Turley, "When in Rome" *Multinational Misconduct and the Presumption Against Extraterritoriality*, 84 *NW. U. L. Rev.* 598, 663-64 (1990).

<sup>126</sup> See, e.g., *Env'tl. Def. Fund v. Massey*, 986 F.2d 528 (D.C. Cir. 1993). For a thorough discussion of the questionable relevance of the presumption against extraterritoriality to disability discrimination laws, see Arlene S. Kanter, *Taking it on the Road: The Extraterritorial Reach of Disability Discrimination Laws to Students Studying Abroad*, *Stanford J. Leg. and Pol.* 2003 (forthcoming).

<sup>127</sup> Following the Court's decision in *Aramco*, Representative Jefferson (D-LA) introduced H.R. 1694, American Employees Equity Act of 1991, Representative Mfume (D-MD) introduced H.R. 1741, Extraterritorial Employment Protection Amendments of 1991, and Senator Danforth (R-MO) introduced S. 1407, Protection of Extraterritorial Employment, together with Senator Kennedy's (D-MA) bills comprising the Civil Rights Act.

<sup>128</sup> Congress amended the Civil Rights Act in 1991 to give extraterritorial protection to American citizens working overseas for American employers in Section 109. See P.L. No. 102-166, 105 Stat. 1071 (codified as amended at 42 U.S.C. § 1981 (1991)), 136 *Cong. Rec.* S15, 235 (daily ed. Oct. 25, 1991) (statement of Sen. Kennedy). Senator Grassley, a sponsor of the amendments, remarked that the 1984 amendments to the Age Discrimination in Employment Act "close a loophole created by several court decisions." See 130 *Cong. Rec.* S65, 46 (daily ed. May 24, 1984) (statement of Sen. Charles Grassley). 42 U.S.C. 12111-117 (1990).

<sup>129</sup> Civil Rights Act of 1991, P.L. No. 102-166, § 109, 105 Stat. 1071 (codified in sections of 42 U.S.C.). For a comprehensive review of the enactment of the Civil Rights Act of 1991, and cases applying that law, see Maher, *supra* note 49.

<sup>130</sup> See *Bird v. Lewis & Clark College*, 104 F. Supp. 2d 1271 (D. Or. 2000) *aff'd* 303 F.3d 1015 (9th Cir. 2002), *cert. denied*, 123 S.Ct. 1583 (March 24, 2003) (trial court upheld extraterritorial application of the ADA and Section 504 but denied relief under these laws to student who uses a wheelchair and claimed the University had failed to accommodate her disability in its overseas program, although the Court of Appeals for the Ninth Circuit did not reach the issue of extraterritoriality). 2002 U.S. App. Lexis 10842. See also *King v. Bd. of Control of E. Mich. Univ.*, 221 F.Supp.2d 783 (2002).

<sup>131</sup> *Order Ruling on Extraterritoriality*, 9 (D.Or. Oct. 13, 1999) (on file with author, citing *United States v. Juda*, 46 F. 3d- 961,067 (9th Cir. 1995).

<sup>132</sup> *King*, 221 F. Supp. 2d 783 (2002).

<sup>133</sup> See, e.g., *Barth v. Gelb*, in which the court held that the State Department's Foreign Service is subject to the requirements of the Rehabilitation Act, in a case involving an insulin-dependent Foreign Service specialist who had alleged he was denied a reasonable accommodation in the form of flexibility in assignments. Although the court found for the defendant, Voice of America, the court specifically recognized the applicability of the Rehab Act to foreign service workers. *Barth v. Gelb* 761 F. Supp. 830 (D.C. Cir. 1991). See also *Local 1812 American Fed. of Government Employees v. US Department of State*, 662 F. Supp. 50 (D.C. Cir. 1987) (court

recognized that the Foreign Service Act is made subject to the Rehab Act in 22 U.S.C. 3905(e)(4)); *Guerriero v. Schultz*, 557 F. Supp. 511 (D.D.C. 1983) (foreign service worker covered by the Rehabilitation Act); *Mendez v. Gearan*, 956 F. Supp. 1520 N.D. Ca. 1997) (Peace Corps worker covered by Rehabilitation Act); *Barrera v. Dalton*, 1997 U.S. App. Lexis 17611 (4th Cir. 1997) (Navy employee covered by Rehabilitation Act).

<sup>134</sup> NCD Report at 21.

<sup>135</sup> *Id.* at 23.

<sup>136</sup> 42 U.S.C. 4151-4157.

<sup>137</sup> *Stevens v. Premier Cruises Inc.* 215 F.3d 1237 (11th Cir. 2000).

<sup>138</sup> The Department of Justice and the Department of Transportation have taken the position that foreign flag cruise ships are subject to Title III of the ADA when they dock in U.S. ports by virtue of their contacts with the United States. See U.S. Dept of Justice Letter re: Foreign Flag Cruise Ships, 18 *Nat'l Disability L. Rep.* (Lab. Rel. Press) ¶ 31 (July 13, 1999); Letter re: Cruise ships, 3 *Nat'l Disability L. Rep.* (Lab. Rel. Press) 330 (Dec. 7, 1992). □

<sup>139</sup> Transmittal letter accompanying the 1991 GAO Report, *Foreign Assistance: Assistance to Disabled Persons in Developing Countries*, from Harold J. Johnson, Director, Foreign Economic Assistance Issues of the GAO National Security and International Affairs Division, to the Honorable Claiborne Pell, Chairman, Committee on Foreign Relations, U.S. Senate and The Honorable Jesse A. Helms, Ranking Minority Member, Committee on Foreign Relations, U.S. Senate, dated February 15, 1991. □

<sup>140</sup> For example, in USAID's FY 2002 budget there exists the following congressional mandated programs: □

Blind Children—1.3 million □

ALL Vulnerable Children—25 million □

Children with HIV—14.9 million □

Victims of Torture—10 million □

War Victims Fund—12 million □

Women in Development—11 million □

Trafficking of Women—6 million □

<sup>141</sup> *UN Convention White Paper*, *supra* note 6.

<sup>142</sup> The most important reasons for supporting a convention are (1) to improve protections under international law for the human rights of people with disabilities around the world; and (2) to create an international mechanism to monitor human rights enforcement for people with disabilities. Other reasons for supporting a convention are described fully in the *UN Convention White Paper* at 2, *supra* note 6.









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