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**UNILATERAL COMMITMENTS TO PERSONS WITH DISABILITIES  
OF ARMED NON-STATE *DE FACTO* AUTHORITIES THAT GOVERN**

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**ABSTRACT**

*A central idea behind this dissertation relates to the efficacy of ‘outside’ interventions that target and/or seek to better understand the situation of persons with disabilities in territories governed by armed non-State de facto authorities. Its core premise is that such interventions are likely to be more effective if informed by deep knowledge of the disability pertinent normative environments of these authorities. Unilateral commitments of the authorities to persons with disabilities comprise an important component of these environments. To date little is known about the extent, form and genesis of such commitments – or, indeed, the situation more widely of persons with disabilities in territories under consideration.*

*This dissertation responds to this lack of knowledge through a desk-based scoping review, analysis and case study. It finds that a broad range of armed non-State de facto authorities that govern regularly and explicitly make commitments to persons with disabilities. Their analysis through two complementary lenses - models of disability and legitimacy - suggests that an individual deficit response to persons with disabilities predominates. The welfare of veterans with physical disabilities is frequently prioritized over that of civilian persons with disabilities. Evidence of persons with disabilities’ influence on the development and form of commitments made is not strong but clearly discernable in isolated instances. The possible role of commitments in legitimation processes is most apparent in commitments to physically disabled veterans and public endorsement of the Convention on the Rights of Persons with Disabilities.*

*The commitments collated, presented and analysed highlight a breadth and complexity within responses to disability by armed non-State de facto authorities that govern. This demands significant further multi-disciplinary research, research to which outside intervenors can both contribute and draw. The conclusion therefore lays out a future multiple-disciplinary research agenda for this new field of enquiry. Potential fruitful avenues of research include longitudinal studies of non-State armed de facto authorities that govern that have explicitly endorsed the Convention on the Rights of Persons with Disabilities, and ideological, diasporic and other situational influences on the development, evolution and implementation of commitments to persons with disabilities more generally.*

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## **ABBREVIATIONS**

ANSA	Armed Non-State Actor
CEDAW	Convention on the Elimination of Discrimination Against Women
CPN	Communist Party of Nepal
CPI (Maoist)	Communist Party of India (Maoist)
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
DFAG	Armed <i>de facto</i> authority that governs
DFID	United Kingdom's Department for International Development
DPO	Disabled Persons' Organisation
ELN	Ejército de Liberación Nacional
EPLF	Eritrean People's Liberation Front
EZLN	Ejercito Zapista De Liberacion Nacional
FARC	Fuerzas Armadas Revolucionarias de Colombia
GPE	Global Partnership for Education
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
IHRL	International Human Rights Law
ISIS	Islamic State of Iraq and Syria
JEM	Justice Equality Movement
KNU	Karen National Union
LTTE	Liberation Tigers of Talim Eelam

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NGO	Non-Governmental Organization
NIAC	Non-International Armed Conflict
N-KR	Nagorno-Karabakh (also known as the Republic of Artsakh)
NDFP	National Democratic Front of the Philippines
PAIGC	African party for the Independence of Guinea and Cape Verde
PFDJ	People's Front For Democracy and Justice
PLO	Palestine Liberation Organization
POLISARIO	Popular Front for the Liberation of Saguia el-Hamra and Rio de Oro
PWDs	Persons with Disabilities
RoA	Republic of Abkhazia
RoB	the Republics of Biafra
RoK	Republic of Kosovo
RoS	Republic of Somaliland
RoSO	Republic of South Ossetia
RUF	Revolutionary United Front
SNLF	Sandinista National Liberation Front
TRNC	Turkish Republic of Northern Cyprus
UN	United Nations
UNICEF	United Nations Children's Fund
US	United States
WHO	World Health Organization

## **PREAMBLE**

*'The Taliban Governor of Kandahar, Mullah Mohammed Hassan Rehmani, has a disconcerting habit of pushing the table in front of him with his one good leg. By the time any conversation with him is over, the wooden table has been pushed round and round his chair a dozen times. Hassan's nervous twitch is perhaps a psychological need to feel that he still has a leg or perhaps he is just exercising, keeping his one good leg on the move at all times.*

*Hassan's second limb is a wooden peg-leg, in the style of Long John Silver, the pirate in Robert Louis Stevenson's Treasure Island. It's an old wooden stump. The varnish rubbed off long ago, scratches cover its length and bits of wood have been gouged out – no doubt by the difficulties of negotiating the rocky terrain outside his office. Hassan, one of the oldest Taliban leaders at over 40 and one of the few who actually fought Soviet troops, was a founder member of the Taliban and is considered to be number two in the movement to his old friend Mullah Omar.*

*Hassan lost his leg in 1989 on the Kandahar front, just before Soviet troops began their withdrawal from Afghanistan. Despite the availability of new artificial limbs now being fitted to the country's millions of amputees by international aid agencies, Hassan says he prefers his peg-leg. He also lost a finger- tip, the result of another wound caused by shrapnel. The Taliban leadership can boast to be the most disabled in the world today and visitors do not know how to react, whether to laugh or to cry. Mullah Omar lost his right eye in 1989 when a rocket exploded close by. The Justice Minister Nurrudin Turabi and the former Foreign Minister Mohammed Ghaus are also one-eyed. The Mayor of Kabul, Abdul Majid, has one leg and two fingers missing. Other leaders, even military commanders, have similar disabilities.'*

The extract above opens the book *Taliban* described as ‘the most important book of the year’,<sup>1</sup> a book ‘they are all reading’.<sup>2</sup> Unnoticed, perhaps, by its author and reviewers, is the implicit assumption within its text that persons with disabilities – the Taliban leadership included – are objects of curiosity, discomfort, mirth or pity.

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<sup>1</sup> Jagger, B, ‘A Good Read’, BBC Radio 4, front cover blurb to Rashid, A, *Taliban*, (I.B. TAURIS 2010)

<sup>2</sup> The Guardian, front cover blurb to Rashid, A, *Taliban*, (I.B. TAURIS 2010)

## **INTRODUCTION**

‘And most difficult of all they came armed with laws and regulations which had not necessarily any relevance whatever to the standards by which a Pathan society lived.’<sup>3</sup>

The origin of this research lies in my work as an international lawyer. This work draws heavily on international human rights law (IHRL) and, to a slightly lesser extent, international humanitarian law (IHL) as a tool for change. The change sought is movement from non-compliant to compliant IHRL and IHL behaviours. Its main thematic and temporal scope is the right to education with an emphasis on persons with disabilities (pwds) in times of non-international armed conflict (NIAC). The behavior of armed non-State actors (ANSAs) is one component of my work. More specifically, I focus on ANSAs that govern territory. These I term armed non-State *de facto* authorities that govern territory (DFAGs). DFAGs include entities as diverse as Taiwan and the Islamic State of Iraq and Syria (ISIS).

Two core working assumptions inform my theory of change. These are that IHRL and IHL compliant behaviours are facilitated when there is both clarity within and familiarity with them, even with regards to entities who explicitly reject the authority of international law.

Over the years, I have reflected upon and increasingly questioned these assumptions, my theory of change and their combined efficacy in terms of change sought. My resultant concerns are

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<sup>3</sup> Ledwidge, F., *Rebel Law: Insurgents, Courts and Justice in Modern Conflict* (London, Hurst & Company 2017), p. 139

neatly captured by insightful observations within Frank Ledwidge's book *Rebel Law*.<sup>4</sup> Ledwidge writes as a barrister and oftentimes counterinsurgency military intelligence officer. Three observations, found primarily in his discussion on the efficacy of recent British counterinsurgent judicial strategy in Afghanistan, stand out.

First, this strategy places an emphasis on the reproduction of Western approaches to the rule of law within its State institutions. With this in mind, Ledwidge relays the disquiet of a colleague who notes that foreign rule of experts are concerned with 'shaping the environment instead of shaping themselves around the environment'.<sup>5</sup> Second, he relays the comment, 'legal experts from North America and western Europe frequently come across as more interested in promoting the merit of the latest legal contrivances than in making a genuine effort to promote civilian welfare'.<sup>6</sup> Third, he suggests that 'the reality of intervention in differently governed places requires a deep knowledge of the nuances and practices of the areas into which outsiders stray.'<sup>7</sup>

Ledwidge describes how the introduction of rule of law elements 'foreign' to a target society without deep knowledge of the 'pushes and pulls of the place'<sup>8</sup> have limited success and can make situations worse. Pushes and pulls, in his opinion, include the legal and political narratives and language of all actors implicated. Within Afghanistan, he cites as an example the rhetoric of the Taliban, a DFAG that governs large swathes of territory within its boundaries. This rhetoric, and the norms it reflects, continue to dominate the justice narrative

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<sup>4</sup> Ledwidge, F., *supra* note 3

<sup>5</sup> Ledwidge F., *supra* note 3, p. 160

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

within the territory. The effect is to directly and crucially undermine the efficacy of outside rule of law initiatives that target the government without adequate attention to its power and influence.<sup>9</sup> In terms of the future initiatives, Ledwidge is confident that similar problems and issues will arise in other areas of governance, such as education, should the current knowledge poor approach within outside interventions be replicated.<sup>10</sup>

These observations and concerns resonate with my own reflections on the likely efficacy and utility of my work on DFAGs and pwds. When applied to a possibly unique, but certainly the most current, detailed and inclusive study on disability and armed conflict<sup>11</sup> however, there are substantive hints at their veracity.

In 2019, the Geneva Academy of International Humanitarian and Human Rights Law (Geneva Academy) released a report, *Disability and Armed Conflict*.<sup>12</sup> The normative framework that directed the two-year project that preceded it and the report itself is firmly situated within IHRL and IHL. On pertinent IHRL for example it asserts:

‘The UN Convention on the Rights of Persons with Disabilities [...] cemented, in a widely endorsed international human rights law treaty, the undeniable fact that persons with disabilities are full and equal rights holders. This recognition is significant in its

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<sup>9</sup> Ibid. p. 162

<sup>10</sup> Ibid. p.163

<sup>11</sup> Priddy, A. ‘Disability and Armed Conflict’, 2019, Geneva Academy of Humanitarian Law and Human Rights, available at: <https://www.geneva-academy.ch/joomlatools-files/docman-files/Academy%20Briefing%2014-2019-interactif.pdf>. [accessed 7 July 2019]

<sup>12</sup> Ibid. p. 11

own right, since it is a position that had not previously been obvious to many actors, and that remains unapparent to some.’<sup>13</sup>

However, the report then acknowledges,

‘ANSAs participating in an armed conflict have both IHL and human rights law obligations. Although the exact scope of [these] international human rights obligations of ANSAs is difficult to determine in the abstract ...’.<sup>14</sup>

and suggests that,

‘To date, there remains huge potential to develop sophisticated jurisprudence concerning the implementation of both the CRPD and IHL with regard to persons with disabilities living in situations of armed conflict.’<sup>15</sup>

The imperative of a focus on the development of a sophisticated jurisprudence, at least in the short term, is questionable in the light of an understated - and the first - footnote within the report. This recognizes that ‘[c]ultural and social norms, as well as the inherent insecurity of armed conflict, mean that ensuring total and consistent realization of the rights and protections

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<sup>13</sup> Ibid. p. 11

<sup>14</sup> Ibid. p. 46

<sup>15</sup> Ibid. p. 77

of all persons with disabilities during armed conflict and in its aftermath is, at present, an unobtainable goal.’<sup>16</sup>

On these cultural and social norms, the report later claims within its Findings and Recommendations that ‘IHL, states and humanitarian organizations approach persons with disabilities from the medical and/or charity understanding of disability.’<sup>17</sup> The approach of ANSAs to pwds however is not formally recorded within this section despite their active participation within the project, a participation that recognizes their important role in the welfare of combatant and civilian pwds. Indeed, there is little within the report and attachments to indicate clearly the full extent of knowledge sought and gained on the normative environment – the political and legal narratives and language - of ANSAs themselves.

It is possible this lack of public information reflects political and advocacy expediency. There is after all widespread and palpable nervousness of inadvertently strengthening the legitimacy of ANSAs or triggering domestic criminal prosecutions if seen to reproduce their communications. Whether or not this is the case, it is difficult to assess if the development of the recommendations took into consideration or was influenced by the normative environment of ANSAs. What **is** clear is that the required change sought of the target audiences, which include ANSAs, is firmly situated within IHRL and/or IHL. The Committee of the CRPD is, for example, encouraged to develop a sophisticated CRPD and conflict related jurisprudence. Of more direct relevance to my own work, humanitarian actors who engage with ANSAs are, in the meantime, recommended to ‘train’ them on disability rights and inclusion. <sup>18</sup>

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<sup>16</sup> Ibid. p. 7

<sup>17</sup> The nuances within the generality of this claim could helpfully be probed further.

<sup>18</sup> Priddy, A., *supra* note 11, p. 75

This is not to say that the injection of clarity into disability pertinent IHRL and/or IHL and their use as a tool for change is not vital. Both are. The analysis of Ledwidge suggests, however, that the recommendations and their implementation, might have greater efficacy if informed by and/or shaped around the disability related normative environments of all targeted societies implicated, as ANSAs are. His case is more persuasive still in cases where humanitarian actors engage with ANSAs that reject IHRL and/or IHL.<sup>19</sup>

This therefore informs a central idea behind this dissertation. Outside interventions that draw upon disability pertinent IHRL and/or IHL to effect behavioural change within DFAGs are likely to be more effective if informed by deep knowledge of DFAG disability pertinent normative environments. These have the potential to profoundly impact the day-to-day lives of conflict affected populations with disabilities. Indeed, it is arguable that knowledge of the normative environments of DFAGs is as valuable in terms of likely efficacy, as knowledge of State legislation.

### **Research questions**

This dissertation, and where its originality lies, begins to develop this knowledge. It collates and analyses historic and current disability related norms of a range of DFAGs, specifically their unilateral commitments to pwds. In so doing, it raises and answers three questions that

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<sup>19</sup> The Islamic State of Iraq and Syria is just one example.

need early answers if its core aim to encourage and facilitate others to build upon its findings, is to succeed. The first question provides the essential foundation:

- Are pwds included in unilateral commitments of armed *de facto* authorities that govern?

From this flows the second,

- If so, what role do models of disability and legitimacy play in their development?

And the third,

- What knowledge gaps need to be filled to best advance this field of enquiry?

These questions delimit the scope of the dissertation. Three reasons are behind the decision not to answer a naturally progressing fourth question which asks, ‘How have, can or should outside interventions be shaped around commitments of DFAGs?’. To begin with, the answers to questions 1 – 3, which necessarily include making visible a selection of commitments, already exceed the dissertation’s formal word limit. Also, this is a new field of enquiry. Further research is required to inform credible answers. Finally, interventions are always context specific. Minimally informed generalizations at this preliminary stage will have limited value.

### **Structure of the dissertation**

The main body of the dissertation expands upon each of the issues raised above. It is divided into four parts. Part 1 first situates DFAG commitments to pwds within current scholarly and

grey literature. As no single discipline considers the issue directly, it begins to untangle and lay out pertinent knowledge from a complex and piecemeal multi-disciplinary body of literature. Significantly, the review demonstrates the pervasive invisibility of pwds within multi-disciplinary academic, legal and field responses to conflict.

The methodology, a desk-based scoping study of open source material which combines with a short desk-based case study, is then introduced. Both face practical but unavoidable restraints. These are discussed, as are the ANSAs and commitments surveyed.

There are many potential lenses through which the commitments can be analyzed. Two are proposed as useful starters: models of disability and legitimacy. These reflect core themes within possibly the most relevant scholarly disciplines, although there is no doubt that other analytical lenses are of importance.

The research assumptions, its value and limitations end Part 1.

Part 2 is the principle ‘findings’ component of the research. It answers the first and, more tentatively, the second question. DFAG commitments to pwds across a broad range of geopolitical, ideological, territorial and temporal contexts are discussed, as is their source. Through the application of the two analytical lenses, it teases out how these two pushes and pulls might shape them. The picture painted, however, is preliminary and piecemeal. This reflects the very diverse contexts within which commitments are found and the limited and inchoate nature of accessible data, mirrored within relevant literatures.

Part 3 attempts to apply the generalized findings of Parts 1 and 2 to N-KR. This desk-based case study briefly introduces the voices of pwds into its analysis as they are missing to this point. It tests, so far as it can, tentative prior conclusions and reflects fleetingly on the predictive value of commitments in terms of DFAG behaviour. Finally, Part 3 examines DFAGs turned State rulers. The aim is to assess whether their State legislation enacted upon their new rule, throws additional light on their prior commitments.

Parts 2 and 3 clearly demonstrate that a broad range of DFAGs do commit to pwds and that the pushes and pulls of these commitments include, to different extents, models of disability and legitimacy pressures. Consequently, the bulk of the conclusion, Part 4, focuses on a series of future research recommendations.

My hope is that researchers interested in DFAGs and disability related issues, or more generally, build upon this research and use its findings to inform their own work. It may also act as encouragement for a range of actors who engage with DFAGs to explore further if, or how, DFAG norms can shape their outside interventions and to share their thoughts and experiences publicly. This task is well beyond the scope of this dissertation. Nonetheless, *Rebel Law and Disability and Armed Conflict* bring to mind a conversation with a colleague. ‘To effect change,’ he urged, ‘search for commonalities. You will find some irrespective of divergent beliefs. Begin your conversation with those in mind, rather than from where you disagree’.

## **PART 1**

### **1.1 Introduction: context setting multi-disciplinary literatures**

Numerous interviews with Taliban fighters and officials – and civilians - enabled Jackson to detail in length Taliban governance and its ‘rules’ in vast swathes of Afghanistan. These wide-ranging rules help shape, amongst others, the provision of education and health, taxation, telecommunications, utilities and justice for Taliban members and resident populations in these areas.<sup>20</sup>

Her insights into this ‘government in waiting’<sup>21</sup> sit within an expanding multi-disciplinary body of literature on ‘civil war’ – its onset, duration, consequences, outcomes and recurrence.<sup>22</sup> In turn, acknowledgement of the significance of ANSAs, such as the Taliban, in contemporary world politics has led to more recent attention to four, often closely linked or overlapping, strands of enquiry: ANSA relationships with external (transnational) actors,<sup>23</sup> attempts made by ANSAs to regulate the behaviour of their members (primarily fighters) during armed

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<sup>20</sup> Jackson, A., ‘Life under the Taliban shadow government’, 2018, Overseas development Institute, at: <https://www.odi.org/sites/odi.org.uk/files/resource-documents/12269.pdf>. [accessed 11 August 2019]

<sup>21</sup> Ibid. p. 7

<sup>22</sup> Mason, D.T., Mitchell, M, S., (eds.). *What Do We Know about Civil Wars?* (Rowman & Littlefield Publishers 2016),

<sup>23</sup> Byman, D., Chalk, P., Hoffman, B., Rosenau., Brannan, D., ‘Trends in Outside Support for Insurgent Movements’, 2001, National Security Research Division, RAND at: [http://www.rand.org/pubs/monograph\\_reports/MR1405.html](http://www.rand.org/pubs/monograph_reports/MR1405.html). [accessed 11 August 2019]

conflict,<sup>24</sup> ANSA relationships with civilians living in territory they control and/or govern<sup>25</sup> and, finally their associated rule making.<sup>26</sup>

With rare exceptions,<sup>27</sup> excluded from this scholarship even when focused on a group such as the Taliban with a known high prevalence of disability within its leadership, is attention to pwds. Through its collation, presentation and analysis of unilateral commitments pertinent to pwds developed by DFAGs, a distinct component of ANSAs, this dissertation responds to this invisibility.

### **The invisibility of persons with disabilities in times of conflict and related literature**

It is now widely acknowledged that many pwds routinely face discrimination and isolation.<sup>28</sup> Around 15 per cent of the world's population, or an estimated 1 billion people, live with disability.<sup>29</sup> Over 500 million of these live in States affected by conflicts and natural disasters.<sup>30</sup> Conflict, in particular, causes<sup>31</sup> and can entrench and aggravate pre-

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<sup>24</sup> Bangerter, O., 'Internal Control, Codes of Conduct within Insurgent Armed Groups', 2012, Small Arms Survey, Graduate Institute of International and Development Studies, at: <http://www.smallarmssurvey.org/fileadmin/docs/B-Occasional-papers/SAS-OP31-internal-control.pdf>. [accessed 25 July 2019]

<sup>25</sup> Arjona, A., Kasfir, N., Mampilly, Z., (eds.) *Rebel Governance in Civil War*, (Cambridge University Press 2015), Fortin, K., 'The Application of Human Rights Law to Everyday Civilian Life Under Rebel Control', July 2016, *Netherlands International Law Review*, Vol. 63, Iss. 2, pp. 161-181.

<sup>26</sup> Provost, R., 'FARC Justice: Rebel Rule of Law', 2018, *UC Irvine Law Review*, Vol. 8, Issue 2, Legal Pluralism, pp. 227-274, Revkin, M., 'The legal foundations of the Islamic State, July 2016, Brookings Institution at: <https://www.brookings.edu/research/the-legal-foundations-of-the-islamic-state/>. [accessed 25 July 2019]

<sup>27</sup> See Priddy, A. *supra* note 11.

<sup>28</sup> Goodley, D., *Disability Studies: An Interdisciplinary Introduction*, 2<sup>nd</sup> edition (Sage, Los Angeles, London, New Delhi, Singapore, Washington DC, Melbourne 2017).

<sup>29</sup> As impairments are often neither reported nor recorded, some suggest the figure is in fact higher than 15%. Priddy, A. *supra* note 11.

<sup>30</sup> Mitchell, D., Karr, V., (eds.), *Crises, Conflict and Disability: Ensuring equality*, (Routledge, Taylor & Francis, London and New York 2014).

<sup>31</sup> 'The Hidden Harm: Acquired Disability During Conflict', Center for Civilians in Conflict, 4 August 2017, at: <https://civiliansinconflict.org/blog/hidden-harm-acquired-disability-conflict/> [accessed 13 July 2019]

existing disability,<sup>32</sup> increasing the proportion of pwds still higher.<sup>33</sup> The observation below is illustrative:

‘In all ‘wars’ [...] it is persons with disabilities who are first to die; persons with disabilities who are the first to get disease and infections; and it is persons with disabilities who are the last to get resources and medicines when they are handed out. They are treated as the bottom of the pile.’<sup>34</sup>

Despite recognition of this and recent enhanced attention of the international community<sup>35</sup> and international law to the rights of pwds,<sup>36</sup> often pwds remain unseen and unheard within times of conflict<sup>37</sup> and at the periphery of relevant scholarly literatures.<sup>38</sup>

Still more troubling are indications that this lack of visibility is reflected and exacerbated in States where ANSAs operate and, more specifically, where they exercise *de facto* authority over territory: in large part, the visibility of pwds is reduced in such areas to mere, often snapshot, vignettes from an eclectic mix of sources.<sup>39</sup> As the geographical and

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<sup>32</sup> Priddy, A. *supra* note 11.

<sup>33</sup> A figure of 18-20% is given by Skinner, M, in, Skinner, M., ‘The impact of displacement on disabled, injured and older Syrian refugees’, September 2014, *FMR*, p. 39 at: <https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/syria/skinner.pdf>. [accessed 11 August]

<sup>34</sup> Mitchell, D., Karr, V. *supra* note 30.

<sup>35</sup> See for instance the ‘Charter on Inclusion of Persons with Disabilities in Humanitarian Action’, 2016, endorsed by over 140 humanitarian, human rights and intergovernmental organizations, persons with disabilities, disabled persons organizations and governments, at: <https://humanitariandisabilitycharter.org>. [accessed 25 June 2019]

<sup>36</sup> Convention on the Rights of Persons with Disabilities, UN Doc. GA Res. 61/106 (2007) at: <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>. [accessed 5 July 2019]

<sup>37</sup> Rohwerder, B. ‘Intellectual disabilities, violent conflict and humanitarian assistance: Advocacy of the forgotten’, 2013, *Disability & Society*, Vol. 28, Issue 6, 770-783.

<sup>38</sup> Priddy, A. *supra* note 11.

<sup>39</sup> For example, Malathy, N., *A Fleeting Moment in My Country*, (Clear Day Book 2012), Bebarta, P., ‘Needs Assessment of Children with Disability in Naxal Affected Regions of Odisha’, *Human Journals* November 2016 Vol.5, Issue:1, ‘Disabled community takes a stand in Kosovo’, 1 September 2018, *Balkan Insight* at: <http://www.balkaninsight.com/en/article/disabled-community-takes-a-stand-in-kosovo-01-09-2018>. [accessed 11 August 2019]

temporal coverage of armed *de facto* authority is substantial and implicates many millions of people,<sup>40</sup> this represents a troubling scholarly knowledge gap.

Definitions of ANSAs vary. This dissertation views them as actors ‘that have the potential to employ arms in the use of force to achieve political, ideological or economic objectives; are not within the formal military structures of States, State-alliances or intergovernmental organizations; and are not under the control of the State (s)<sup>41</sup> in which they operate.’<sup>42</sup> ANSAs that exercise complete or significant<sup>43</sup> *de facto* authority<sup>44</sup> over territory - the level of which can fluctuate spatially and temporally<sup>45</sup> - are termed, here, armed *de facto* authorities.<sup>46</sup> Armed *de facto* authorities cover a broad spectrum of diverse actors that differ starkly also in taxonomy, behaviour, structure, purpose, ideology, resources and territorial control: the Eritrean People’s Liberation Front (EPLF), Hezbollah and the Lord’s Resistance Army are

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<sup>40</sup> Mampilly, Z. *Rebel Rulers* (Ithica, NY, Cornell University Press 2011), p.6. Also, the Islamic State alone at one stage controlled territory with a population estimated at over 12 million. See ‘The ISIS Files’, New York Times, 4 April 2018 at: <https://www.nytimes.com/interactive/2018/04/04/world/middleeast/isis-documents-mosul-iraq.html>. [accessed 11 August]

<sup>41</sup> This does not preclude tacit cooperation with states seen for instance by the Liberation Tigers of Tamil Eelam. Kasfir, N., Frerks, G., Terpstra, N., ‘Introduction: Armed Groups and Multi-layered Governance’, *Civil Wars*, 2017, Vol. 19, Issue 3, pp. 257 – 278. Nor does it preclude co-option and substantial control of state services without formal control of territory, seen for instance by the Taliban in Afghanistan. See, Jackson, A. *supra* note 20.

<sup>42</sup> McHugh, G., Bessler, M., ‘Humanitarian negotiations with armed groups: A manual for practitioners’, 2006, p. 87. Kasfir *et al* point out that a multitude of armed actors – which they deem to include actors such as paramilitaries, police, self-defence forces, clan chiefs, strongmen – can operate and interact simultaneously within a given territory, in Kasfir, N., Frerks, G., Terpstra, N. *supra* note 41.

<sup>43</sup> Kasfir, N., Frerks, G., Terpstra, N. ‘Introduction: Armed Groups and Multi-layered Governance’, *Civil Wars*, 2017, Vol. 19, Issue 3, pp. 257 – 278.

<sup>44</sup> It is not always necessary to take territory to control it. Jackson, A. *supra* note 20, pp. 25-26. See also the example of the Sahrawi Arab Democratic Republic, founded by the Polisario Front. In exile it works closely with the Polisario Front to administer the exiled Sahrawi population in refugee camps in Algeria, and also parts of western Sahara under the control of the Polisario Front. See Wilson, A., ‘Democratising elections without parties: reflections on the case of the Sahrawi Arab Democratic Republic’, 2010, *The Journal of North African Studies*, Vol., 15, Issue 4, 423-438

<sup>45</sup> Walsh, J, I Findley, M., Strandow, D., and Jean-Claude Thill, J-C, ‘Mapping Territorial Control in Civil Wars’, 10 August 2016, Political Violence at a Glance, at: <http://politicalviolenceataglance.org/2016/08/10/mapping-territorial-control-in-civil-wars/>. [accessed 11 August 2019]

<sup>46</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Agnes Callamard, UN Doc. A/HRC/38/44, 5 June 2018, paras. 46-48 in which she notes that despite the lack of a universally agreed definition, consensus on their conceptual existence is now high.

three examples. Most have operated historically or currently operate within NIACs. NIACs occur between armed forces of a State<sup>47</sup> and the forces of one or more ANSAs or between such groups, on the territory of a State.<sup>48</sup>

Explanations for the lack of visibility of pwds in territory under armed *de facto* authority control are practical and legal. Security concerns and limited access by humanitarian and other actors, particularly in areas within the throes of conflict are examples of the former. Implicated also however, and linked, is the leverage of aspects the current State centered international normative framework and IHRL more specifically. This framework has proven reluctant or unable to engage directly, substantially or adequately with ANSAs and their actions.

We now know, for example, of the legal commitments and the level of implementation of these commitments of the majority of States (177 at the time of writing) to pwds in times of peace and humanitarian emergency. This is the direct result of their ratification of the CRPD and the oversight activities of its monitoring committee (Committee CRPD). In territory within which ANSAs exert significant control, this oversight function is substantially limited, or at worst, absent. The reasons for this are legal and political. For example, ANSAs are unable to ratify UN human rights treaties and prohibited from submitting information directly to the Committee CRPD on the position of pwds within territory they control. Also, States are not immune to their instrumentalisation of the monitoring system for political purposes. The brief scenario immediately below is

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<sup>47</sup> International Committee of the Red Cross, 'Who is bound by IHL?', 13 August 2018, at: <https://blogs.icrc.org/ilot/2017/08/13/who-is-bound-by-ihl/>. [accessed 8 July 2019]

<sup>48</sup> International Committee of the Red Cross, Opinion paper, 'How is the Term "Armed Conflict" Defined in International Humanitarian Law?', March 2008, at: <https://www.icrc.org/en/doc/assets/files/other/opinion-paper-armed-conflict.pdf>. [accessed 8 July 2019]

illustrative.

In common with other human rights treaties, State parties to the Convention on the Rights of Persons with Disabilities (CRPD) are permitted to enter declarations and reservations upon ratification. In 2009 Azerbaijan declared its inability ‘to guarantee the application of the provisions of the Convention in its territories occupied by the Republic of Armenia until these territories are liberated from occupation.’<sup>49</sup> The territory in question is Nagorno-Karabakh, alternatively referred to as the Republic of Artsakh (N-KR).

Armenia, in turn, formally objected to the Declaration and asserted that, ‘the Republic of Azerbaijan has occupied several territories of the Nagorno-Karabakh Republic.’<sup>50</sup> N-KR in turn, claims independence from Azerbaijan, on the basis it is a ‘sovereign, democratic, social State governed by the rule of law.’<sup>51</sup> To that end it has formed its own government and government website,<sup>52</sup> through which it disseminates its legislation in Armenian and English.

The response of the Committee CRPD to these objectives, declarations and claims, has been to ignore them.

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<sup>49</sup> ‘Declaration’ of Azerbaijan upon ratification of the Convention on the Rights of Persons with Disabilities, United Nations Treaty Collection at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-15&chapter=4](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-15&chapter=4). [accessed 11 August 2019]

<sup>50</sup> ‘Objection to the declaration of Azerbaijan upon Ratification of the Convention’, United Nations Treaty Collection at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-15&chapter=4](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-15&chapter=4) [accessed 11 August 2019]

<sup>51</sup> ‘Constitution of the Republic of Artsakh’, 2017, Article 1.1 at: <http://president.nkr.am/en/constitution/>. [accessed 11 August 2019]

<sup>52</sup> Website of the Government of Nagorno Karabakh Republic at: <http://gov.nkr.am/en>. [accessed 11 August 2019]

As a result, neither Azerbaijan nor Armenia has felt obliged to submit information on the situation of pwds of N-KR in their State party reports.<sup>53</sup> As the N-KR is prohibited from doing so as a result of its non-State armed *de facto* authority status,<sup>54</sup> the implementation of the rights of pwds in the N-KR remain hidden, at least within the Committee CRPD's monitoring function.<sup>55</sup> Also hidden are a range of regulatory acts instigated by the N-KR<sup>56</sup> directly or indirectly pertinent to pwds within the territory.

N-KR – a DFAG - is one of a large number of armed *de facto* authorities that regularly<sup>57</sup> exercise 'some sort of governance ... forming [for example] popular assemblies, elaborate bureaucracies, schools, courts, and health clinics'.<sup>58</sup> In addition to it, the Taliban, the EPLF and Hezbollah, their substantial numbers include entities as historically and geographically diverse as the Taiwan, ISIS, Hamas, the Liberation Tigers of Tamil Eelam (LTTE) and the Wa State Army.

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<sup>53</sup> For full details of Azerbaijan's initial reporting cycle, 2011 – 2014, see Office of the High Commissioner of Human Rights at: [https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=AZE&Lang=EN](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=AZE&Lang=EN) . For Armenia's initial reporting cycle see Office of the High Commissioner of Human Rights at: [https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=ARM&Lang=EN](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=ARM&Lang=EN) [both accessed 11 August 2019]

<sup>54</sup> The definition, role and status of non-State actors and their acts in international law are the subject of decades of intense scholarly debate. A full bibliography is not possible here. See however International Law Association, Non-State Actors Committee on Non-State Actors, 'Final Report' (2016) Johannesburg Conference. See also, Ryngaert, C., 'Non-State Actors in International Law: A Rejoinder to Professor Thirlway,' April 2017, *Netherlands International Law Review*, April 2017, Volume 64, Issue 1. pp. 155 – 162 for accessible brief introductions to the principle issues of contention and theoretical standpoints, available online at: <https://link.springer.com/content/pdf/10.1007%2Fs40802-017-0083-4.pdf>.

<sup>55</sup> Priddy, A. *supra* note 11.

<sup>56</sup> Website of the Nagorno-Karabakh Republic *supra* note 52.

<sup>57</sup> Mampilly, Z. *supra* note 40 p.4., Kafir goes one step further to say, 'it is hard to find rebels who control populated territories but do not establish some form of government'. See Kafir, N., 'Rebel Governance – Constructing a Field of Inquiry: Definitions, Scope, Patterns, Order, Causes', in Arjona, A., Kasfir, N., Mampilly, Z, *supra* note 25, p. 24.

<sup>58</sup> Arjona, A., Kasfir, N., Mampilly, Z. *supra* note 25 p. 1. See also, Arjona, A., 'Wartime Institutions: A Research Agenda', 2014, *The Journal of Conflict Resolution*; Beverly Hills Vol. 58, Issue 8: 1360 – 1377.

Drawing heavily from insights on literature on ‘rebel governance’,<sup>59</sup> governance by DFAGs is viewed as the ‘set of actions [they] engage in to regulate the social, political, and economic life of the resident population within the territory they control.’<sup>60</sup> Its degrees and drivers continue to vary enormously,<sup>61</sup> as do the form, process and formality of associated regulatory actions. Critical however and more ‘than was previously recognized’, it includes the creation of rules.<sup>62</sup>

Invariably a component of DFAG political and legal language and narratives of social justice,<sup>63</sup> these rules are made orally or in writing, with<sup>64</sup> or without<sup>65</sup> constituent population consultation. Some are meant to bind, others to express moral, religious, cultural or political principles.<sup>66</sup> The rules are directed individually or in combination<sup>67</sup> at self-regulation, that of their members<sup>68</sup> or constituent populations.<sup>69</sup> Sources and level of detail range. Components may, for example, include aspects or much of formal pre-existing State law,<sup>70</sup> or with varied

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<sup>59</sup> See for instance, ‘The Organization of Rebellion: New Research Program on Rebel Governance and Legitimacy, Report on a workshop on Rebel Group Governance and Legitimacy’, Political Violence at a Glance, 16 March 2018, at: <http://politicalviolenceataglance.org/2018/03/16/the-organization-of-rebellion-new-research-program-on-rebel-governance-and-legitimacy/>.

<sup>60</sup> Drawn heavily from the discussion of Arjona, A., Kasfir, N., Mampilly, Z. *supra* note 25, p. 3.

<sup>61</sup> See for instance Péclard, D., Mechoulan, D., ‘Rebel Governance and the Politics of Civil War’, 2015, Swiss Peace Foundation at: [https://www.swisspeace.ch/assets/publications/downloads/Working-Papers/3b4a3caa24/Rebel-Governance-and-the-Politics-of-Civil-War-Working-Paper-15-swisspeace-didier\\_peclard.pdf](https://www.swisspeace.ch/assets/publications/downloads/Working-Papers/3b4a3caa24/Rebel-Governance-and-the-Politics-of-Civil-War-Working-Paper-15-swisspeace-didier_peclard.pdf). [accessed 11 August 2019]

<sup>62</sup> Revkin, M., ‘The legal foundations of the Islamic State, July 2016, Brookings Institution, p. 5 at: <https://www.brookings.edu/research/the-legal-foundations-of-the-islamic-state/>. [accessed 7 July 2019]

<sup>63</sup> See the ‘Party Constitution, Central Committee (P), CPI (Maoist)’, 2004, at: <http://www.satp.org/satporgtp/countries/india/maoist/documents/papers/partyconstitution.htm>. [accessed 19 December 2018]

<sup>64</sup> Rubin, M., ‘Rebel Territorial Control, Governance, and Political Accountability in Civil War: Evidence from the Communist Insurgency in the Philippines’, 2018, PhD submission, Columbia University at: <https://academiccommons.columbia.edu/>. [accessed 11 August 2019]

<sup>65</sup> See ‘The ISIS Files’, New York Times, 4 April 2018 at: <https://www.nytimes.com/interactive/2018/04/04/world/middleeast/isis-documents-mosul-iraq.html>. [accessed 11 August 2019]

<sup>66</sup> International Law Association, Conference Report, Non- State Actors, Johannesburg 2016, para. 62 at: <http://www.ila-hq.org/index.php/committees>. [accessed 11 August 2019]

<sup>67</sup> Rubin, M. *supra* note 64.

<sup>68</sup> Bangerter, O. *supra* note 24.

<sup>69</sup> Kasfir, N., ‘Rebel Governance – Constructing a Field of Inquiry: Definitions, Scope, Patterns, Order, Causes’, in Arjona, A., Kasfir, N., Mampilly, Z. *supra* note 25, p. 24.

<sup>70</sup> Mampilly, Z. *supra* note 40, p.201. Also, the Houthis declared, ‘The provisions of the constitution in force shall continue to apply, provided that they do not conflict with the provisions of the present Declaration’. See ‘Constitutional Declaration to organize the foundations of governance during the transitional period in Yemen’,

levels of specificity, directly reference the corpus of international and human rights law.<sup>71</sup> They are known also to invoke additional norms, such as local customs,<sup>72</sup> indigenous practices<sup>73</sup> and Islamic law to greater or lesser degrees.<sup>74</sup> Some rules, manifestos for example, can pre-date actual control or governance.

‘Rules’ is a loose concept without universal definition. Their wide array is conceptualised by DFAGs themselves, local populations<sup>75</sup> and scholars in a variety of ways. In this regard, references are made to, amongst others, law,<sup>76</sup> courts and justice systems,<sup>77</sup> legal rules,<sup>78</sup> systems,<sup>79</sup> realms,<sup>80</sup> and codes (penal, disciplinary, of conduct, civil),<sup>81</sup> standards,<sup>82</sup> manuals of obedience,<sup>83</sup> declarations,<sup>84</sup> public statements, manifestos and decrees,<sup>85</sup> charters,<sup>86</sup> norms<sup>87</sup>

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6 February 2015 at:

[http://www.constitutionnet.org/sites/default/files/constitutional\\_declaration\\_of\\_houthis\\_6\\_feb\\_2015\\_-\\_english.pdf](http://www.constitutionnet.org/sites/default/files/constitutional_declaration_of_houthis_6_feb_2015_-_english.pdf).

<sup>71</sup> For example, ‘NDFP Declaration and Program of Action for the Rights, Protection and Welfare of Children – Booklet’, 2012, Preface at: [http://theirwords.org/media/transfer/doc/1\\_ph\\_ndfp\\_2012\\_46-95b83d5994c9d675fa79541522e8c177.pdf](http://theirwords.org/media/transfer/doc/1_ph_ndfp_2012_46-95b83d5994c9d675fa79541522e8c177.pdf). [accessed 11 August 2019]

<sup>72</sup> Arjona, A., Kasfir, N., Mampilly, Z. *supra* note 25, p. 247.

<sup>73</sup> Mampilly, Z. *supra* note 40, p.156.

<sup>74</sup> Caris, C., Reynolds, S., ‘ISIS Governance in Syria’, 2014, Institute for the Study of War, pp. 4-5 at: [www.understandingwar.org/report/isis-governance-syria](http://www.understandingwar.org/report/isis-governance-syria). [accessed 15 August 2019]

<sup>75</sup> Rubin, M., *supra* note 64.

<sup>76</sup> See for instance the website of Pridnestrovskaya Moldavskaya Respublika at: <http://gov-pmr.org/government>. [accessed 15 August 2019]

<sup>77</sup> Caris, C., Reynolds, S. *supra* note 74. Ledwidge, F. *supra* note 3.

<sup>78</sup> Revkin, M. *supra* note 62.

<sup>79</sup> Mampilly, Z. *supra* note 40.

<sup>80</sup> *Ibid.*

<sup>81</sup> Bangerter, O. *supra* note 24.

<sup>82</sup> Caroe, O., *The Pathans*, (Oxford: Oxford University Press 1958), p. 347 in Ledwidge, F. *supra* note 3, p. 139.

<sup>83</sup> Provost, R. *supra* note 26.

<sup>84</sup> Sivakumaran, S., *The Law on Non-International Armed Conflict*, (Oxford University Press, Oxford 2012), p. 122.

<sup>85</sup> Bangerter, O. *supra* note 24.

<sup>86</sup> See for instance the 2017 Charter of the Islamic Resistance movement ‘ Hamas’ which refers to its Charter of 2017 as ‘A Document of General Principles and Policies at ‘Charters of 2017’, 2017, *Contemporary Review of the Middle East* 4 (4), pp. 393-418, pp. 393 - 399

<sup>87</sup> Arjona, A., ‘Wartime Institutions: A Research Agenda’, 2014, *The Journal of Conflict Resolution*; Beverly Hills Vol. 58, Issue 8, 1360 – 1377.

and finally, here, commitments.<sup>88</sup> A core commonality of these ‘rules’ is an implicit or explicit aim to define or control behaviour.<sup>89</sup>

Descriptive and analytical interest of scholars and practitioners to these rules largely revolve around three broad issues. First attention is paid to often termed *ad hoc* unilateral commitments (or declarations) of ANSAs that express their intention to respect specific humanitarian norms.

<sup>90</sup> Second are, loosely termed, ANSA military ‘codes of conduct’, measures frequently used to shape the behaviour of fighters,<sup>91</sup> and third, ANSA justice systems.<sup>92</sup> All three primarily implicate IHL, the conduct of warfare<sup>93</sup> and/or the immediate security concerns of ANSAs upon taking power.<sup>94</sup> Rules that contain explicit reference to elements or the corpus of both IHL and international human rights law (IHRL) components<sup>95</sup> are at the heart of more recent interest.<sup>96</sup> The presence of pwds within resultant literature is minimal.<sup>97</sup>

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<sup>88</sup> Sivakumaran, S., ‘Lessons for the law of armed conflict from commitments of armed groups: identification of legitimate targets and prisoners of war’, June 2011, *International Committee of the Red Cross*, Vol. 93 No. 882 at: <https://www.icrc.org/es/doc/assets/files/review/2011/irrc-882-sivakumaran.pdf>. [accessed 14 August 2019]

<sup>89</sup> Drawing from the approach of Bangerter, O. *supra* note 24.

<sup>90</sup> See further, Sivakumaran, S. *supra* note 84, pp. 108 – 125 and Kassoti, E., The Normative Status of Unilateral Ad Hoc Commitments by Non-State Armed Actors in Internal Armed Conflicts: International Legal Personality and Lawmaking Capacity Distinguished, *Journal of Conflict & Security Law*, 2017, Vol. 22 No. 1, 67 – 96.

<sup>91</sup> Bangerter, O. *supra* note 24.

<sup>92</sup> Ledwidge, F., *supra* note 3.

<sup>93</sup> Kassoti, E., ‘The Normative Status of Unilateral Ad Hoc Commitments by Non-State Armed Actors in Internal Armed Conflicts: International Legal Personality and Lawmaking Capacity Distinguished’, *Journal of Conflict & Security Law*, 2017, Vol. 22 No. 1, 67 – 96. Ch. 5.

<sup>94</sup> Caris, C., Reynolds, S. *supra* note 74.

<sup>95</sup> For example, NDFP Declaration and Program of Action for the Rights, Protection and Welfare of Children – Booklet’, 2012, Preface at: [http://theirwords.org/media/transfer/doc/1\\_ph\\_ndfp\\_2012\\_46-95b83d5994c9d675fa79541522e8c177.pdf](http://theirwords.org/media/transfer/doc/1_ph_ndfp_2012_46-95b83d5994c9d675fa79541522e8c177.pdf).

<sup>96</sup> Jo, H., *Compliant Rebels, Rebel Groups and International Law in World Politics* (Cambridge University Press 2015). Also, Kassoti, E., *Ad Hoc Commitments by Non- State Actors: The Continuing Relevance of State Consent*, in Somers, J and Gough, A., (eds.) *Non-State Actors and International Obligations: Creation, Evolution and Enforcement*, (Brill, Nijhoff 2018)

<sup>97</sup> A prominent dataset of military codes of conduct of insurgents and armed groups does not explicitly refer to disabilities although frequent references to ‘the wounded’, ‘sick’ and ‘infirm’ are made. See Bangerter, O. *supra* note 24., Priddy, A. *supra* note 11. This refers to questions its researchers asked of armed non-State actors with regards to details of their laws, policies and practices to protect persons with disabilities during and post conflict. Few explicit details are released and, of those, it is only those related to the conduct of warfare.

A common driver of these scholarly interests and lens through which they are often explored is the need to address a perceived lack of accountability<sup>98</sup> under the State centred conceptualisation and development of international law for acts of ANSAs. This attracts intense theoretical debate around the general ‘lawmaking’ capacity of ANSAs,<sup>99</sup> the extent to which they are obligation holders under IHL and IHRL more broadly<sup>100</sup> and the degree to which they comply with these international norms.<sup>101</sup>

Accountability of ANSAs in conflict under IHRL is a preoccupation of Fortin also. Her interest, however, is heavily informed by political science and anthropological research. This shows that an individual’s life in DFAG territory is not defined solely by the conduct of warfare and armed conflict more generally. She pay attention to the micropolitical and non- conflict related daily concerns of resident populations, encapsulated in her ‘life goes on driver’ idiom.<sup>102</sup> This refers to the daily details of life that continue at such times: ‘common crimes will often continue, people will get married, children will be born, couples will divorce and people will die. Wherever possible children will continue going to school or receiving an education, people will carry on going to work and taking their goods to market [...]’.<sup>103</sup> She adds that this driver,<sup>104</sup> particularly important in contracted or ‘frozen’ conflict,<sup>105</sup> is just as much a force to be reckoned with in territory controlled by ANSAs, as in territory controlled by the State’.<sup>106</sup>

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<sup>98</sup> See Fortin, K., *The Accountability of Armed Groups Under Human Rights Law* (Oxford University Press, 2017), pp. 5-8.

<sup>99</sup> For example, Sivakumaran, S *supra* note 84, pp. 108 – 125, Kassoti, E. *supra* note 93.

<sup>100</sup> Fortin, K. helpfully organizes three dominant threads within the ongoing debate in Fortin, K. *supra* note 98, p. 359.

<sup>101</sup> Berman, P., ‘A Pluralist Approach to International Law’, 2007, *Yale Journal of International Law*, Vol. 32, Issue 2, p. 311. Priddy, A, *supra* note 10.

<sup>102</sup> Fortin, K. *supra* note 98, p. 362.

<sup>103</sup> *Ibid.* p. 167-169.

<sup>104</sup> *Ibid.* p. 54.

<sup>105</sup> *Ibid.* p. 56.

<sup>106</sup> *Ibid.* p. 169.

The point, she asserts, is that the entire corpus of individual human rights remain of appreciable relevance to the daily lives of residents within ANSA controlled territory.

Ideas as to how to detangle the complex issue of the application of IHL and IHRL to ANSAs within scholarship and on the ground are much needed. Nonetheless this focus can overlook additional and potentially more immediate daily concerns of those living in DFAG territory and the DFAG promulgated rules to which they may be subject. Residents who live within ISIS controlled territory, for instance, immediately comes to mind. Publicly ISIS is unconcerned with IHRL and its international monitoring regime or, indeed, positive law.<sup>107</sup> Instead it has embraced the doctrine of *siyāsa shar‘iyya*, translated loosely as “religiously legitimate governance”, which facilitates its issue of rules and regulations that govern virtually every aspect of life in the caliphate.<sup>108</sup>

Rules of this kind and those of other DFAGs, such as N-KR, shape but are also shaped, by daily life of local populations,<sup>109</sup> to whom many DFAGs are deeply connected. They may for instance have complex ties to and relationships with social groups and networks that pre-exist their governance role.<sup>110</sup> These might include ‘political parties, religious organizations, kinship ties, veterans’ networks and other forms of collective life’.<sup>111</sup> Consequently it is difficult at times to clearly separate members of DFAGs from ‘civil society’ as often understood.<sup>112</sup> The

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<sup>107</sup> Revkin, M. *supra* note 62.

<sup>108</sup> Reynolds, S., ‘ISIS Governance in Syria’, 2014, Institute for the Study of War at: [www.understandingwar.org/report/isis-governance-syria](http://www.understandingwar.org/report/isis-governance-syria). [accessed 23 July 2019]

<sup>109</sup> Kaplan, O., ‘Nudging Armed Groups: How Civilians Transmit Norms of Protection’, 2013, *Stability: International Journal of Security and Development*, Vol. 2, Issue 3. p. Art. 62, at: <http://doi.org/10.5334/sta.cw>, [accessed 11 August 2019].

<sup>110</sup> ‘The Organization of Rebellion: New Research Program on Rebel Governance and Legitimacy, Report on a workshop on Rebel Group Governance and Legitimacy’ *supra* note 59.

<sup>111</sup> Staniland, P., ‘Organizing Insurgency: Networks, Resources, and Rebellion in South Asia’. *International Security* 37, no. 1 (2012), 142–77, p. 149.

<sup>112</sup> Haspelslagh, S., ‘Local civil society engagement of non-state armed groups’, 1 November 2013, Workshop Report, Conciliation Resources at: [https://www.c-r.org/downloads/AccordEAGJAWReportPublishMaster\\_final%20\(1\).pdf](https://www.c-r.org/downloads/AccordEAGJAWReportPublishMaster_final%20(1).pdf). [accessed 23 July 2019]

Ejercito Zapista De Liberacion Nacional (EZLN) for instance was instrumental in the foundation of, and backs the National Indigenous Congress, an organisation of communities, towns, neighborhoods and indigenous tribes in Mexico.<sup>113</sup> Hamas and Fatah in Palestine, Hezbollah in Lebanon<sup>114</sup> and a range of ethnic armed groups in Myanmar<sup>115</sup> are closely affiliated to certain ‘civil society’ organizations or have developed their own associated welfare organizations to provide social (and other) services to constituent populations. These entities have differing and fluid levels of autonomy from DFAG leadership.<sup>116</sup>

Individually or combined therefore and irrespective of their international or local conceptualisation or purpose, DFAG rules have the potential to mould profoundly the social, economic, cultural and political contexts within which DFAGs operate and the lives of their resident populations during, and post periods of DFAG governance.<sup>117</sup> Of these populations, over fifteen percent or more is likely to live with a disability.

Equally, as suggested within the Introduction to this dissertation, these rules have the potential to mould profoundly the response of DFAGs to the intervention of outside entities. These may include, for instance, interventions of humanitarian actors or international lawyers, interventions deeply embedded within their own normative framework, that of IHRL, IHL or both.

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<sup>113</sup> ‘National Indigenous Congress and Indigenous Governing Council Communiqué on the 25th Anniversary of the Armed Uprising of the Zapatista Army for National Liberation’, Radio Zapatista, 2 January 2019 at: <https://radiozapatista.org/?p=30038&lang=en> and ‘EZLN-Backed Indigenous Congress Starts Second National Assembly’, Land Portal, 11 October 2018 at: <https://landportal.org/news/2018/10/ezln-backed-indigenous-congress-starts-second-national-assembly>. [accessed 23 July 2019]

<sup>114</sup> Haspeslagh, S. *supra* note 112.

<sup>115</sup> Jagger, S., ‘Developing Civil Society in the Non-state Sphere: Welfare and Rights-based Organizations Associated with Ethnic Armed Groups in Myanmar’, 2018, *Small Wars & Insurgencies*, Vol. 29, Issue 2, 316-343.

<sup>116</sup> *Ibid.*

<sup>117</sup> Terpstra, N., Frerks, G., ‘Rebel Governance and Legitimacy: Understanding the Impact of Rebel Legitimation on Civilian Compliance with the LTTE Rule’, 2017, *Civil Wars*, Vol. 19, Issue 3, 279-307.

Despite this, current scholarly interest in the DFAG rules which may shape the lives of resident populations and DFAGs themselves is negligible. Their collation, order, description and analysis one necessary response.

This dissertation begins the process but can only scratch the surface of such a substantial undertaking. It provides however a much-needed introduction to the topic and highlights areas of fruitful future research in the hope scholars from a range of disciplines will engage with them. One hope is that it will encourage outside intervenors who engage directly with DFAGs to familiarise themselves with and utilise context relevant DFAG rules when doing so.

## **1.2 Data and methodology**

The methodology combines a desk-based scoping review and brief case study<sup>118</sup> in order to answer the three core questions discussed within the Introduction.

### **1.2.1. Desk-based scoping review**

This is a new area of research and to the best of my knowledge, no current specific or adequate pertinent data-base or collation of DFAG commitments to pwds exists. To answer Question 1 and assess whether DFAGs do commit to pwds, it was therefore necessary to start from scratch, to search for and identify commitments. This implicated the need for and the value of a desk-based scoping review. The review identified and facilitated the collation, initial assessment and

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<sup>118</sup> Swanborn, P., *Case Study Research: What, Why and How?* (1st ed.), (London: SAGE Publications 2010).

synthesis of a range of historic and current commitments of DFAGs to pwds. Once this step was complete, their analysis through the two analytical lenses chosen - models of disability and legitimacy – was possible.

### **1.2.2. Which armed non-State *de facto* authorities that govern were examined?**

The dissertation examines DFAGs as defined above: they comprise ANSAs that have or currently regulate the social, political, and economic life of the resident population within the territory they control or influence. Exceptionally diverse, their key commonality here is their inability to ratify UN human rights treaties.

To represent their diversity and include historical and contemporary movements, I have drawn largely from, but add to the ANSA dataset of Stewart<sup>119</sup> which focuses on ANSAs that provide education and health provision. Both are services frequently provided and valued by DFAGs, as demonstrated below. I have added to her dataset however as she excludes ANSAs that are not the sole providers of services. My purpose is to advance its currency (her dataset stretches from 1945 – 2003) but also to better reflect the heterogeneity, complexity and fluidity of ANSA governance functions and networks.<sup>120</sup> For example, LTTE, with its ‘impressive ability to influence the daily life even in towns outside their nominal control’<sup>121</sup> is excluded from Stewart’s dataset as ‘its’ services were often provided in conjunction with the State. LTTE are however included within the dissertation to reflect the considerable diversity in the channels through which health<sup>122</sup> and education services are delivered by DFAGs more widely. ISIS,

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<sup>119</sup> Stewart, M., ‘Civil War as State-Making: Strategic Governance in Civil War’, 2018, *International Organisation*, Vol. 72, Issue 1, 205 – 226.

<sup>120</sup> See further generally Staniland, P. *supra* note 111.

<sup>121</sup> See further generally Mampilly, Z. *supra* note 40.

<sup>122</sup> Gordon S, Cooper-Knock S, Lillywhite L., ‘Dynamics of provision of health services by non-state armed groups – an analysis of the literature’, 2015, at: <http://www.caerus-info.eu/Portals/10/Docs/Deliverables/CAERUS-D2.2->

the Taliban, Jammāt-ud-Dawa and the Donetsk and Lubansk People's Republics are illustrative of DFAGs also included as they have emerged since 2003 and regulated the lives of resident populations.

### **1.2.3. Which regulations were examined?**

The focus is on unilateral regulations or rules that aim to define and control behaviour of DFAGs towards pwds. For current purposes these are primarily referred to as 'commitments'.

As this is a new field of enquiry, it would be premature to narrow down at this stage the form of commitment reviewed. I therefore allow for an element of flexibility and subjectivity within those sought. With regards to the status of the author of the written document or oral statement, for example, if either credibly appeared to be authorized media output from the organisation (including its welfare wing) it is included, hence inclusion of a video transcript released by ISIS and a media release from the welfare arm of Hezbollah.

The commitments reviewed are unilateral. Joint peace or similar agreements are excluded, whereas unilateral commitments, even if their content evidences direct engagement by the United Nations (UN) or other international entities, are included.

The emphasis is on documents and communications that contain explicit reference to pwds (or alternative unambiguous terms). Whilst this hinders to some extent the breadth and volume of

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Dynamics%20of%20provision%20of%20health%20services%20by%20non-state%20armed%20actors-250315.pdf. [accessed 26 June 2019]

commitments collated and, as the term ‘disability’ is not globally used, embeds an element of geographical bias, it limits excessive subjectivity.

#### **1.2.4. What data was collated?**

Unilateral commitments collated were restricted to those available from a desk-based review of open sources. As no specific disability-based database exists, an eclectic and wide range of sources were examined. The starting point was the non-disability specific datasets of Geneva Call<sup>123</sup> and Bangerter,<sup>124</sup> and followed links and bibliographies within them. Searches were made through Google and Bing and included current websites of ANSAs -where available- and with requisite approval from Lancaster University. Social media searches were limited to Facebook. A general literature review through Lancaster library was a supplemental source: the links and bibliographies within this literature review proved most fruitful.

The search comprised two core stages, the first to identify unilateral commitments of DFAGs, the second to review disability related terminology within commitments identified.

#### **1.2.5. What search terms were used?**

*Unilateral commitments*

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<sup>123</sup> ‘Their Words: Directory of Armed Non-State Actor Humanitarian Commitments’, a database and commentary hosted by Geneva Call at: <http://theirwords.org/pages/geneva-call>. [accessed 14 July 2019]

<sup>124</sup> Bangerter, O. *supra* note 24.

Numerous search strings in multiple combinations of the following words in keyword fields, or abstract and title fields (if available) *included*:

Name of DFAG plus:

aim, charter, code, commit\*, constitution, document\*, goal, humanitarian, law, legislat\*, manifesto, program\*, rights, rule, text, IHL, IHRL, political.

*Disability related terminology*

Numerous search strings in multiple combinations of the following words in keyword fields, or abstract and title fields (if available) *included*:

disab\*, handicap\*, impair\*, blind, amput\*, invalid, injur\*, limb, mental, wound\*, cripple\*, veteran, health\*, health services, ed\*, physical, psycho\*, 'education services', 'service provision', assistance, protection, support, rights, 'welfare', capacity, participation, elect\*, promote, guarantee, inclu\*.

*Illustrative* examples of strings include:

name of DFAG and ....

- mental
- disab\* AND govern\*
- ed\* AND disab\*
- ed\* AND inclusive
- rehabilitation
- care AND health
- veteran AND injur\*
- 'human rights' AND (health OR ed\*)

- (invalid OR wound\* OR limb OR mental) AND (rebel OR terrorist OR insurgent)

The terms ‘wounded’ or ‘injured’ were treated with caution within the review of commitments below, despite recent broad interpretation by the International Committee of the Red Cross (ICRC) to the effect that they include pwds.<sup>125</sup> The ICRC maintains however that “being wounded or sick is typically a ‘transitory status’ and requires ‘medical care’. This excludes the experience, possibly, of the majority of persons with, at the very least, pre-conflict and long-term disabilities. Where however the terms appear on their face to be unambiguously used by DFAGs to include persons with long term disabilities (as required by the CRPD to fall within its understanding of pwds) they are incorporated into the analysis.

#### **1.2.6. Desk-based case study**

The desk-based case study explores, describes and analyses N-KR’s commitments to pwds. For the commitments it draws heavily from the findings of the scoping review. It introduces also however the voice of pwds themselves into the dissertation, a voice missing until this point. Although a review of scholarly literature on N-KR was undertaken, this ultimately served to provide mainly background, non-disability specific context only. Most disability pertinent material was found within promotional material of a UK based international non-governmental organisation (INGO) active in the territory that largely funds the only disability specialist center within the territory.

In addition to its synthesis of available desk-based evidence, the case study draws from and applies the tentative propositions within Parts 1 and 2. Its findings are context specific however and should be tested and expanded in further field- based research.

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<sup>125</sup> International Committee of the Red Cross, ‘IHL and persons with disabilities’, 4 October 2017, at: <https://www.icrc.org/en/document/ihl-and-persons-disabilities>. [accessed 8 July 2019]

### **1.2.7. Analytical approach**

The absence of a single applicable theory from which to draw for analysis of data collated, requires the dissertation to remain open to, and extract from, a range of theoretical perspectives and insights. Its two main analytical lenses, models of disability and legitimacy, themselves draw from mixed philosophical positions and offer current, multiple and complementary explanations for DFAG commitments to pwds. They are chosen above other important variables for linked practical and methodological reasons.

Within disability studies, models of disability are a long-standing and core area of analytical interest and concern. Its scholars claim that the model of disability held by an individual or entity is an important indicator of responses to it. This then is a necessary, and the first, analytical lens. The second responds to observed variations in behaviour of DFAGs. These are commonly explained in terms of an array of structural variables, situational incentives and, to a lesser extent, ideologies.<sup>126</sup> A regular thread within each, is a role – on a continuum from weak to strong - for legitimacy seeking behaviour.

Combined, these analytical lenses facilitate focused attention to DFAG practices and relationships rather than solely their individual ontology or attributes<sup>127</sup> and help identify common themes within and drivers behind the commitments examined.

### ***Models of disability***

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<sup>126</sup> Sanin, R., Wood, E., 'Ideology in civil war: Instrumental adoption and beyond', 2014, *Journal of Peace Research*, Vol. 51, Issue 2, 213 – 226.

<sup>127</sup> Podder, S., Understanding the Legitimacy of Armed Groups: A Relational Perspective, 2017, *Small Wars & Insurgencies*, Vol. 28, Issue 4-5, 686-708.

Ask fifty people how they understand the term ‘disability’ and you may receive fifty different responses. It is necessary therefore to untangle various approaches to – or models of - disability and to draw attention to the significance of their critical distances or commonalities.

Responses to disability, are based on conscious or unconscious<sup>128</sup> models of disability. Within scholarly literatures these are underpinned by numerous ontological, political and practical<sup>129</sup> arguments.<sup>130</sup> As Retief and Letsosa observe, these models are by no means value neutral,<sup>131</sup> are often rigorously contested and their serious consequences frequently political. Geographically, culturally and historically divergent, models of disability can provide strikingly divergent definitions of disability and explanations of causal and responsibility attributions. Often based on (perceived) needs, they shape also goals and forms of interventions.<sup>132</sup> These include the formulation and implementation of domestic, regional and international policy, legislation and practice.<sup>133</sup> Their primary relevance for this research, is their potential influence on the shape of DFAG commitments.

Models of disability are rarely completely static. Albeit with full acknowledgment of the difficulty of strict demarcation (or delineation), it is helpful to distinguish at the outset between those that are most dominant, at least in English language literature. Notably, these models

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<sup>128</sup> Bunbury, S., ‘Unconscious bias and the medical model: How the social model may hold the key to transformative thinking about disability discrimination’, March 2019, *International Journal of Discrimination and the Law*, Vol. 19 (1), pp. 26-47.

<sup>129</sup> Oliver, M., ‘The social model in action: if I had a hammer’, in C.Barnes and G.Mercer (eds) *Implementing the Social Model of Disability: theory and research*, (The Disability Press Leeds 2004), p. 30

<sup>130</sup> Bickenbach, J., ‘Disability, culture and the UN convention’, *Disability and Rehabilitation*, 2009, Vol. 31, Issue 14, 1111–1124.

<sup>131</sup> Beaudry, J-S., B ‘Beyond (Models of) Disability?’, Apr. 2016, *J. Med Philos*, Vol. 41, Issue 2, 210–228.

<sup>132</sup> Goodley, D. *supra* note 28, p.14.

<sup>133</sup> Retief, M., Letsosa, R., ‘Models of disability: A brief overview’, 6 March 2018, *HTS Teologiese Studies/Theological Studies* Vol, 4 Issue 1, a4738, p. 1 at: <https://hts.org.za/index.php/hts/article/view/4738/10985>. [accessed 24 August 2019]

primarily reflect the preoccupations of the global North,<sup>134</sup> despite pwds being mainly located in the global South.<sup>135</sup>

The first, the oldest of all models and still widespread, views disability through the lens of morality. Disability is considered, in this instance, to be a defect or impairment of an individual caused by moral lapse or sin/s.<sup>136</sup> From roughly the mid-1800's onwards, and again problematising the individual, rose the medical model of disability. This views disability as a biomedical issue and a condition capable of 'diagnosis' by, primarily, the medical profession. This model remains particularly influential in biomedical circles.<sup>137</sup> As both the moral and medical models hone-in on individual impairment as an aberration, from this point on they are referred to as individual deficit models.

The goals of interventions in response to the individual deficit models of disability are based upon pwds being 'understood as a problem, an abnormality and a personal tragedy'.<sup>138</sup> When not explicitly ostracised and excluded from family and society as a consequence (through, for instance, institutionalisation or segregated education), pwds are often regarded as passive, incapable objects of pity in need of care and aid through charity (which creates and perpetuates dependency), welfare (considered by some authors to be a form of compensation for exclusion from mainstream society) or medical rehabilitation (treated or returned to 'normal').<sup>139</sup>

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<sup>134</sup> Perspectives drawing from distinct regional contexts are now increasingly being heard. See Grech, K. Soldatic (eds.), *Disability in the Global South, The Critical Handbook*, (Springer International Publishing Switzerland 2016).

<sup>135</sup> Berghs, M., and Nawaf K., Disabled People in Conflict and War, in Grech, K. Soldatic. *supra* note 116.

<sup>136</sup> Goodley, D. *supra* note 28. p. 7.

<sup>137</sup> Beaudry, J-S., B *supra* note 131.

<sup>138</sup> Arnardottir, M, O, and Quinn G (Eds.) *The UN Convention on the Rights of Persons with Disabilities* (Martinus Nijhoff Publishers Leiden, Boston 2009), p. 5.

<sup>139</sup> United Nations, 'Training Guide for facilitators of training courses on the Convention on the Rights of Persons with Disabilities', 4 September 2014, at: [https://issuu.com/unpublications/docs/convention\\_rights\\_pp1\\_disabilities/15](https://issuu.com/unpublications/docs/convention_rights_pp1_disabilities/15). [accessed 28 July 2019]

In contrast and shifting focus from the ‘problemated’ individual, are the minority, social construct and human rights models of disability. The minority model considers disability through the lens of minority politics. Pwds are held to constitute a minority position in society and ‘devalued, stigmatised, discredited and discounted’ in line with other minority groups. Their denial of fundamental civil rights, equal access and protection, require interventions to secure rights and justice. These include strengthened commitment to, and implementation of non-discrimination legislation.<sup>140</sup>

A striking range of commonalities (often considered synonymous) with the minority model and most apparent within the UK, is shared by the post- World War II development of the social model of disability. This understands ‘disability as a socially created problem, where social and environmental barriers exclude persons with impairments from participating in society, and which is entirely distinguished from their individual impairment.’<sup>141</sup>

Beyond the UK, diverse social understandings of disability have been advanced by activists with disabilities and disability studies scholars in several countries. These have led to ‘a ‘family of social contextual approaches to disability’ (which includes the minority approach).<sup>142</sup>

For clarity, from this point on references to the social construct model of disability are references to this family/cluster of approaches to the concept of disablement<sup>143</sup> rather than the ‘stronger’ UK social model of disability alone. Despite deeply contested differences, at their

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<sup>140</sup> Goodley, D. *supra* note 28, p. 13-14.

<sup>141</sup> Kazou, K., ‘Analysing the Definition of Disability in the UN Convention on the Rights of Persons with Disabilities: Is it really based on a ‘social model’ approach?’ 2017, *International Journal of Mental Health and Capacity Law*, No. 23, pp. 25 – 48, at: <http://www.northumbriajournals.co.uk/index.php/IJMhMCL/article/viewFile/630/1031>, p. 26.

<sup>142</sup> Shakespeare, T., *Disability Rights and Wrongs* (Routledge 2006) p. 9.

<sup>143</sup> Oliver M., *The Politics of Disablement* (Palgrave Macmillan, London 1990)

common core is the belief that it is primarily social barriers rather than individual aberrations ‘which disables people with impairments’ and ‘therefore any meaningful solution must be directed at societal change rather than individual adjustment and rehabilitation’.<sup>144</sup> Commitment to societal changes and interventions sought under this model should take place at all levels, to include the political, legal, policy, economic and educational.

Understanding disability as a human rights issue is relatively recent and in great part the product of the social construct model of disability. Whilst it shares conspicuous commonalities with the social construct models, it responds to their critics who argue that they ignore the realities of living with an impairment and the intersectionality of disability with other identities. Degener for instance asserts, that in contrast to the social construct model, the human rights model ‘offers room for minority and cultural identification’. It recognises also that the prevention of impairment may be properly regarded as human rights protection, rather than oppression as some social construct theorists assert and, further, offers practical and constructive proposals for improving the life situation of pwds.<sup>145</sup> She maintains also that the human rights model provides for greater recognition of, and practical response to the pain or hardship arising as the result of some impairments.<sup>146</sup>

The human rights model of disability was utilised effectively as a political and advocacy platform. It persuaded many that pwds should be valued as equals with all others, entitled

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<sup>144</sup> Barnes, C., Mercer, G., and Shakespeare, T., ‘The social model of disability’, in Giddens., A and Sutton, P., (eds.), *Sociology: Introductory readings*, 3<sup>rd</sup> edition, (Polity Press, Cambridge 2010), pp. 161 – 166, Arnardottir, M, O, and Quinn G (Eds.) *The UN Convention on the Rights of Persons with Disabilities* (Martinus Nijhoff Publishers Leiden, Boston 2009), pp. 3-16.

<sup>145</sup> Degener, T., ‘A new human rights model of disability’, in Della, F., Cera, R and Palmisano, G., (eds.), *The United nations convention on the rights of persons with disabilities: A commentary*, (2017) pp. 41 – 60, (Springer, Cham, Switzerland 2017), pp. 41-60.

<sup>146</sup> On the distinction between impairment and disability see Edwards S., ‘The impairment/disability distinction: a response to Shakespeare’, *J Med Ethics*. 2008, 43 (1), 26 -27.

to enjoy human rights granted to all. Authoritatively endorsed by the UN, it was influential – eventually – in the emergence of the CRPD which formally incorporated aspects of both the social construct and human rights models. The CRPD views disability as:

‘an evolving concept and [...] results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.’<sup>147</sup>

This definition is by no means universal or without detractors.<sup>148</sup> Nonetheless, it shapes required disability related interventions by State parties to the CRPD and stands as the international normative framework against which State parties are judged by, amongst others, the international community. Inclusive education and the right to live in the community are two examples of intervention. On inclusive education the CRPD provides:

‘States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning ...’<sup>149</sup>

This provision responds to common global educational practices<sup>150</sup> based on one or a mixture of exclusion, segregation, special or integration (which requires the student with disabilities to

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<sup>147</sup> Convention on the Rights of Persons with Disabilities, UN Doc. GA Res. 61/106 (2007), Preamble, para. 5 at: <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>.

<sup>148</sup> Lawson, A., ‘The UN Draft International Convention on the Rights of Persons with Disabilities: Purpose, Progress and Potential’, 9 March 2006 at: [http://www.lse.ac.uk/humanRights/aboutUs/articlesAndTranscripts/Disability\\_human\\_rights\\_Lawson.pdf](http://www.lse.ac.uk/humanRights/aboutUs/articlesAndTranscripts/Disability_human_rights_Lawson.pdf)

<sup>149</sup> Article 24, Convention on the Rights of Persons with Disabilities, UN Doc. GA Res. 61/106 (2007)

<sup>150</sup> Haug, P., ‘Understanding inclusive education: ideals and reality’, 2017, *Scandinavian Journal of Disability Research*, 19(3), 206–217.

adapt to the educational environment rather than that environment to the student). These rest on the presupposition pwds are uneducable or do not have the right to an education equal to all others and reflect individual deficit models of disability that place the problem to be addressed within the individual as opposed to the environment within which s/he must live.

Similarly, in response to frequent institutionalisation of adults and children with disabilities, is the CRPD's expression of the right to live in the community as follows:

‘States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement.

b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community’.<sup>151</sup>

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<sup>151</sup> Article 19, Convention on the Rights of Persons with Disabilities, UN Doc. GA Res. 61/106 (2007)

In this regard, Nils Muiznieks, Council of Europe’s Commissioner for Human Rights (2012 – 2018) asserts that ‘Special Institutions for persons with disabilities are the symbols of the most severe violation of this right’<sup>152</sup> and, equally forcefully, the UN High Commissioner for Human Rights that forced institutionalization is a violation of the right to live free from torture and ill treatment.<sup>153</sup>

As demonstrated in Part 2, when DFAGs include pwds in their commitments to health provision of resident populations, they do so primarily in relation to institutional care. Few endorse inclusive education. Those that do are predominantly found in conjunction with endorsement of the CRPD. This may reflect a belief in the values inclusive education embody, the anticipated legitimacy it bestows upon them or a mixture of both.

### ***Legitimacy and armed de facto authorities that govern***

‘Kingdoms are won and lost in the realms of law and legitimacy’<sup>154</sup>

‘Legitimacy’ is an unwieldy area of study. Frequently raised in literature often in passing and without definition, Duyvesteyn observes that legitimacy, ‘in its many shapes and guises is most of the time taken for granted’.<sup>155</sup> As with disability, legitimacy does not benefit from a universally agreed definition, although its various iterations revolve around the creation,

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<sup>152</sup> Muiznieks, N., ‘Respecting the human rights of persons with psychosocial and intellectual disabilities: an obligation not yet fully understood’, 24 August 2017, [accessed 30 July 2019]

<sup>153</sup> Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, (31 January 2017), UN Doc. A/HRC/34/32, at: [https://www.un.org/.../a\\_hrc\\_34\\_32\\_mental\\_health\\_and\\_human\\_rights\\_2017.docx](https://www.un.org/.../a_hrc_34_32_mental_health_and_human_rights_2017.docx) [accessed 30 July 2019]

<sup>154</sup> Whitman, J., *The Verdict of Battle*, (Harvard University Press, Cambridge MA 2012) in Ledwidge, F. *Supra* note 75 p. 1.

<sup>155</sup> Duyvesteyn, I., ‘Rebels & Legitimacy: An Introduction’, 2017, *Small Wars & Insurgencies*, Vol. 28, Issue 4-5, 669-685, p. 672.

justification or sanctioning of political authority.<sup>156</sup> For current purposes its reference here is to the acceptance of the authority of a DFAG by a range of political elites and citizens.<sup>157</sup>

Two perspectives dominate assessments of legitimacy: the normative and descriptive. A normative assessment is through a set of ‘right standards’ and ‘entails the moral justifiability of power relations’. These standards are viewed here as those that make sense to the addressee and appeal to the same norms and values of the community from which the authorities seek legitimacy.<sup>158</sup> In contrast, an empirical assessment is made through the perceptions and actions of consent of authorities and citizens in a given community.<sup>159</sup> This has been described as a ‘psychological property of an authority, institution, or social arrangement that lead those connected to it to believe that it is appropriate, proper, and just’.<sup>160</sup> Neither approach has proven definitive or straightforward in practice.<sup>161</sup>

Legitimacy as a concept and legitimation as a process<sup>162</sup> can be distinguished. To draw again from Duyvesteyn’s helpful analytical approach to the topic, legitimacy is the quality, or the condition of being legitimate, whereas legitimation expresses the process, or the act of making legitimate.<sup>163</sup> Legitimation processes may be random or strategic. Whilst both are relevant to this dissertation, closer attention is paid to the latter.

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<sup>156</sup> ‘Political Legitimacy’, Stanford Encyclopedia of Philosophy, , 24 April 2017, at: <https://plato.stanford.edu/entries/legitimacy/> [accessed 27 June 2019]

<sup>157</sup> This working definition draws largely from McCullough, A., ‘The legitimacy of states and armed non-state actors: Topic guide’, 2015, *Birmingham, UK: GSDRC, University of Birmingham* at: <http://www.gsdrc.org/wp-content/uploads/2015/08/Legitimacy.pdf>. [accessed 16 June 2019]

<sup>158</sup> Nagamine, Y., and *The Legitimation Strategy of the Taliban’s Code of Conduct through the one-way mirror*, (Palgrave Macmillan 2015), p. 3

<sup>159</sup> Podder, S. *supra* note 127, p. 687.

<sup>160</sup> Duyvesteyn, I. *supra* note 155 p. 671

<sup>161</sup> Gawthorpe, A., ‘All Counterinsurgency is Local: Counterinsurgency and Rebel Legitimacy’, 2017, *Small Wars & Insurgencies*, Vol. 28, Nos 4-5, pp. 839-852., Jo, H., *Compliant Rebels, Rebel Groups and International Law in World Politics* (Cambridge University Press 2015). pp.92-102.

<sup>162</sup> See legitimacy as a process ‘expresses the process, or the act of making legitimate’. Duyvesteyn, I. *supra* note 155, p. 674.

<sup>163</sup> Duyvesteyn, I. *supra* note 155, p. 674

Until recently, legitimacy and legitimation processes were dominated by interrogation of the State building agenda and the relationship of the State with its citizens. This revolved substantially around issues of social order, good governance and democracy. Insights gained are frequently viewed as a valuable research framework for scholars interested in legitimacy of ANSAs or a distinct component thereof, such as rebel governance<sup>164</sup> or *de facto* States<sup>165</sup> and are therefore directly relevant to DFAGs as defined here. These scholars are slowly building upon this framework. They seek to better explain the impact of fluidity within power relations, actors and contextual factors common in periods of NIAC and instability but which are inadequately accounted for in more established State focused legitimacy theory.<sup>166</sup>

An assumption that ANSAs seek legitimacy of some sort or degree<sup>167</sup> and engage in legitimation strategies, again of some sort or degree, underpins much of this literature.<sup>168</sup> Podder, for example, asserts that ‘considerations of legitimacy affect [the] strategic calculations and self-conceptions’ of ANSAs.<sup>169</sup> To this Schlichte and Schneckener observe that, ‘Empirically ... if one studies armed groups – and in particular the more successful cases – it soon becomes very clear that these actors are largely aware of the relevance of legitimacy. Pamphlets, programmes, field manuals, names, symbols, gestures and public speeches – all

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<sup>164</sup> See for instance, Duyvesteyn, I. *supra* note 155.

<sup>165</sup> Pacher, A., ‘Legitimacy through Diplomacy in a *De facto* State: Transnistria’s Order of Friendship’, January 2017, *SSRN Electronic Journal*, at: [https://www.researchgate.net/publication/321953801\\_Transnistria's\\_Order\\_of\\_Friendship\\_Legitimacy\\_through\\_Diplomatic\\_Practice](https://www.researchgate.net/publication/321953801_Transnistria's_Order_of_Friendship_Legitimacy_through_Diplomatic_Practice) [accessed 17 July 2019]

<sup>166</sup> von Billerbecka, S., Gippert, B., ‘Legitimacy in Conflict: Concepts, Practices, Challenges’, 2017, *Journal of Intervention and Statebuilding*, Vol. 11, No. 3, 273-285.

<sup>167</sup> Jo, H. *supra* note 96.

<sup>168</sup> Fortin, K. *supra* note 98, p. 35, Ledwidge, F. *supra* note 3, Duyvesteyn *supra* note 155.

<sup>169</sup> Podder, S. *supra* note 127, p. 686.

these practices of armed groups indicate that the issue of legitimacy plays a considerable role in their political thinking and manoeuvring.<sup>170</sup>

The current lack of conceptual clarity around legitimacy and legitimation processes of ANSAs can be explained partly by the embryonic nature of pertinent literature. Nonetheless, overlapping themes and agreement applicable to DFAGs are emerging. There is for instance, broad consensus that legitimacy, which varies in its degrees, is a dynamic<sup>171</sup> and core component within ANSA power relations. These, in combination with legitimation processes, are often discussed in terms of the interplay between coercion and consent of populations and ANSA authority.<sup>172</sup> Loosely stated, power without legitimacy, is considered more likely to be exerted by ANSAs through coercion and, with legitimacy, through compliance.<sup>173</sup>

Scholarly attempts to untangle and understand linked themes such as sources, strategies and audiences of ANSA legitimacy and legitimation processes, pay close attention to symbolic (*what is said*) and performance (*what is done*)<sup>174</sup> behaviours of ANSAs. The interpretation and importance attached to each differs considerably amongst scholars. Nonetheless, there is widespread agreement that both are context dependent, multi-faceted and audience specific.<sup>175</sup>

Sources and strategies, individual or institution based, are wide ranging. Internal legitimacy or legitimation processes for example span democratic responsiveness, justice,<sup>176</sup> nation

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<sup>170</sup> Schlichte, K., Schneckener, U., 'Armed Groups and the Politics of Legitimacy', 2015, *Civil Wars*, Vol. 17, No. 4, pp. 409-424, pp. 413 - 414.

<sup>171</sup> Duyvesteyn, I. *supra* note 155, p 674.

<sup>172</sup> See further Provost, R. *supra* note 26, pp. 180 – 202.

<sup>173</sup> For further details see Duyvesteyn, I. *supra* note 155.

<sup>174</sup> von Billerbecka, S., Gippert, B., *supra* note 166, pp. 413 - 417.

<sup>175</sup> Jo, H. *supra* note 96, p. 13., Pacher, A. *supra* note 165.

<sup>176</sup> Ledwidge, F. *supra* note 3, p. 23

building,<sup>177</sup> demonstrations of power,<sup>178</sup> individual charisma or honour, to narratives on enemy threats and the deployment of existing ideological or cultural beliefs to build a shared identity.<sup>179</sup> Close scholarly attention is also paid to the ‘social contract’ between ANSAs and local populations. In this regard, the provision of public goods and services, ‘in particular the ones that [a] population asks for’ stands out as a commonly assumed legitimisation strategy.<sup>180</sup> These ‘asks’ include justice and security,<sup>181</sup> health<sup>182</sup> and bread.<sup>183</sup>

To date, limited literature examines the selectivity of services other than in the context of recruitment. Stewart begins to fill this literature gap. She asserts that rebel group inclusive services – provided to virtually ‘all’<sup>184</sup> people, supporters and unlikely supporters alike - target domestic and international legitimisation audiences and are more likely to be seen within secessionist insurgencies.<sup>185</sup> Hezbollah, the Karen National Union (KNU) and EPLF are given as examples. The Revolutionary United Front (RUF), in contrast, restricted access to services to its internal members and other known supporters and ‘even then’, Stewart observes patrimonial principles of distribution were evident.<sup>186</sup> Such alternative theories of service provision are too rarely considered argue Gordan, Cooper Knock and Lillywhite in their study on ANSA provision of healthcare. They suggest that legitimacy specific literature fails to

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<sup>177</sup> See further Gawthorpe, A. *supra* note 161.

<sup>178</sup> See further Whitman, J. *supra* note 154.

<sup>179</sup> ‘The legitimacy of states and armed non-state actors: Topic guide’ *supra* note 139 p. 5, Arjona, A., Kasfir, N., Mampilly, Z. *supra* note 8., Schlichte, K., Schneckener, U. *supra* note 152 p.417-418

<sup>180</sup> Foster, T., ‘Dialogue Direct: Rebel Governance and Civil Order in Northern Core d’Ivoire’, in Arjona, A., Kasfir, N., Mampilly, Z. *supra* note 8.

<sup>181</sup> Ledwidge, F. *supra* note 3.

<sup>182</sup> Gordon S, Cooper-Knock S, Lillywhite L. *supra* note 122.

<sup>183</sup> Martinex, J.C., Eng., ‘Struggling to perform the state: The politics of bread in the Syrian civil war’, January 2017, *International Political Sociology*, Vol. 11, Issue 2, 130-147.

<sup>184</sup> Whether ‘all’ includes persons with disabilities is unclear.

<sup>185</sup> Hezbollah, the Karen National Union and Eritrean Liberation People’s Front are given as examples.

<sup>186</sup> Stewart, M. *supra* note 119.

consider adequately the possibility of ANSA provision of healthcare as a mode of clientelism rather than a legitimisation process of proto-State activities.<sup>187</sup>

A growing body of literature acknowledges that ANSA social relations and structures are perpetuated, yet also transformed, during conflict.<sup>188</sup> For some scholars, legitimacy is just one aspect of these relations and structures.<sup>189</sup> Hoffman argues that the practices of a rebel group are ‘always embedded in historically contingent values, norms, beliefs and forms of governance’, irrespective of how radical its political vision.<sup>190</sup> Similarly, Gawthorpe believes that ANSA legitimacy and associated processes are informed by ‘local traditions, customs, norms, social structures and economies’, albeit only at the local level.<sup>191</sup>

In contrast, Podder views legitimisation processes as present within several levels of ANSA relationships: the local, State and international. To her, for instance, public goods and service provision by an ANSA is a reflection of its relationship with its parent State: ANSA adoption of this ‘paraphernalia of the State’ often indicates an attempt to supplant the State in the popular imagination.<sup>192</sup> Other scholars, also proponents of multilevel legitimisation processes, emphasise the broad spectrum of diverse, changing and fragmented relationships, that drive complicated and potentially contradictory legitimacy pressures.<sup>193</sup>

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<sup>187</sup> Gordon S, Cooper-Knock S, Lillywhite L. *supra* note 122.

<sup>188</sup> Bultmann, D., ‘The social structure of armed groups. Reproduction and change during and after conflict’, 2018, *Small Wars & Insurgencies*, Vol. 29, No. 4., pp. 607 – 628, p. 615.

<sup>189</sup> von Billerbecka, S., Gippert, B. *supra* note 166.

<sup>190</sup> Hoffman, K., ‘Myths Set in Motion: The Moral Economy of Mai Mai Governance’, in Arjona, A., Kasfir, N., Mampilly, Z. *supra* note 25, p. 159

<sup>191</sup> Gawthorpe, A. *supra* note 161, p. 844

<sup>192</sup> Podder, S. *supra* note 127, p. 686.

<sup>193</sup> Duyvesteyn, I. *supra* note 155.

On the relationship between ANSAs and the international community, scholars widely agree that ANSAs with political arms<sup>194</sup> and secessionist aims<sup>195</sup> are most likely to seek international legitimacy<sup>196</sup> and to shape their behaviours to that end. Public expressions of commitment to international norms is one such behaviour<sup>197</sup> and one which can also build local legitimacy within communities that subscribe to human rights.<sup>198</sup> That said, efforts to secure international legitimacy may conflict with efforts to secure local legitimacy. Such a dilemma is clearly evidenced by Nagamine's analysis of the Layeha - the Taliban Code of Conduct – the text of which he believes seeks to accommodate not only the external legitimacy expectations of the international community but also that of Taliban members and fighters.<sup>199</sup>

Nagamine's detailed analysis of the rules of a DFAG albeit solely through the lens of legitimation is uncommon. His partial explanation rests on scholars who choose to distance themselves from anything which may be interpreted as granting legitimacy to ANSAs.<sup>200</sup> If so, these fears appear to have abated a little as his work has been followed by Revkin (2016),<sup>201</sup> Ledwidge<sup>202</sup> (2017) and Provost<sup>203</sup> (2018) all of whom focus on the 'law' of ANSAs and touch, with dissimilar levels of detail, upon its potential role in their legitimation processes.

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<sup>194</sup> Krieger, H., 'International Law and Governance by Armed Groups: Caught in the Legitimacy Trap?', 2018, *Journal of Intervention and Statebuilding*, Vol. 12, Issue 4, 563-583.

<sup>195</sup> Stewart, M. *supra* note 119.

<sup>196</sup> Which can bring potential funding and increased likelihood of recognition by states.

<sup>197</sup> Podder, S. *supra* note 127, p. 699., Jo, H. *supra* note 96.

<sup>198</sup> Shee, A., in 'Local Images of Global Child Rights: CRC in Taiwan', in Cohen, J., Alford, W., Lo, C-f., (eds.), *Taiwan and International Human Rights: A Story of Transformation* (Springer 2019), 625-642.

<sup>199</sup> Nagamine, *supra* note 158

<sup>200</sup> *Ibid* p. 7

<sup>201</sup> Revkin, M. *supra* note 62.

<sup>202</sup> Ledwidge, F. *supra* note 3

<sup>203</sup> Provost, R. *supra* note 26.

If, or where, pwds might fit within the DFAG legitimacy-based discourse raised above has not been considered to date. This research draws from empirical evidence and conceptual insights within multi-disciplinary literature in an early attempt to do so.

### 1.2.8. Assumptions

Several working assumptions draw from the discussion above. They concern the form and credibility of explanatory insights into DFAG behaviours an analysis of their commitments can provide.

Whilst the research is certainly not blind to potential DFAG instrumental use of their commitments, the first assumption is that the *wording of the commitments examined are deliberate and reflect DFAG designs*. On the drafting of its 2017 Charter, for instance, Hamas states:

‘This document is the product of deep deliberations that led us to a strong consensus. As a movement, we agree about both the theory and the practice of the vision that is outlined in the pages that follow.’<sup>204</sup>

The second assumption is drawn from disabilities studies. *DFAG commitments to pwds reveal preliminary insights into their drafters’ underlying models of disability*. For example, commitments to disability as a prohibited ground of discrimination,<sup>205</sup> the provision of health

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<sup>204</sup> Preamble ‘Charter of 2017’, 2017, *Contemporary Review of the Middle East*, Vol. 4, Issue 4, 393–418.

<sup>205</sup> Convention on the Rights of Persons with Disabilities, UN Doc. GA Res. 61/106 (2007), Article 5 at: <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>. [accessed 25 June 2019]

care in the community,<sup>206</sup> inclusive education and consultation with pwds within the development of legislation<sup>207</sup> indicate an underlying social construct/rights-based model of disability. In contrast, commitments underpinned by the individual deficit model will omit disability as a prohibited ground of disability, focus on institutional health care, segregated education and fail to provide for consultation with pwds.

The third assumption is that *DFAGs seek legitimacy on one or more levels*.

The final assumption is that *the content of DFAG commitments can reveal preliminary insights into their drafters' legitimacy pressures and legitimation processes*. As one example, a secessionist DFAG seeking international legitimacy is predicted to publicly declare its commitment to IHL and/or IHRL. In contrast, a reflection of local traditions, customs and cultural values or 'asks' of a resident population within commitments, points to internal legitimacy pressures and processes.

### **1.3. Value and limitations**

**Value:** the dissertation draws attention to the scholarly exclusion of pwds in DFAG pertinent discourse, so raising their visibility. Its descriptive detail and analysis lays bare the complexity and evolution of DFAG relationships with pwds and demonstrates the need for further research to test and build upon initial conclusions. It lays a solid foundation upon which future scholars can draw.

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<sup>206</sup> Ibid. Articles 14, 25

<sup>207</sup> Ibid. Article 4 (3)

DFAGs make choices in how and what they reveal about themselves. Their commitments to pwds are one manifestation of such choices. Consequently, the scrutiny of their commitments -and choices – within the dissertation contributes to current limited knowledge, understandings and predictions of DFAG behaviours towards pwds within and post NIAC. The efficacy of disability pertinent outside interventions in DFAG environments is more likely if underpinned by this knowledge.

The thematic analysis of the relationship between DFAGs and pwds is valuable in its own right. It is also an effective and complementary framework through which DFAG governance, and life for resident populations of territory implicated, can be explored more generally. In this regard, the dissertation illustrates the value of incorporation of disability as an additional layer of analysis for scholars of multiple intersecting disciplines - ‘rebel’ governance, political violence, law and legal pluralism, ideology, diaspora studies for example – who seek to advance understandings of DFAG governance.

Finally, international development, humanitarian and legal communities frequently engage with ANSAs (and DFAGs) armed with international normative standards that may have little bearing on their own.<sup>208</sup> The value for situational assessments and negotiations informed by insights gained through reflection on DFAG commitments, can add to the likely efficacy of such engagements.

***Limitations:*** this short dissertation introduces a new thematic strand of enquiry of extraordinary complexity. With this comes enforced methodological and practical compromises. Only two analytical variables are, for example, utilized but numerous others of

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<sup>208</sup> Ledwidge, F., *supra* note 3, p. 139.

equal value remain unexplored. In terms of DFAGs reviewed, historical, ideological and geographical breadth has been chosen over context specificity. This ensures that research boundaries are not set or limited prematurely and facilitates the identification of a future research agenda.

I write however as an international law practitioner conscious of the potential negative impact of the lack of this thematic strand of knowledge. I am therefore keen to encourage others with different expertise to close this knowledge gap. I fully recognize however that scholars of other and single disciplines may disagree with points made within the dissertation and will have much more to contribute on each topic raised.

Although the assessment of authenticity of commitments has not proved onerous, with many drawn from current databases,<sup>209</sup> constraints on locating data were varied. Translation was not feasible. This combines with the deliberate or accidental destruction of documents during or post conflict,<sup>210</sup> suppression by States and the ambiguity and clandestine nature of some ANSAs -also when compared to others- to limit and potentially skew results. In opting for unambiguity, relevant commitments were also likely omitted.

Finally, the voice of pwds is minimal. This will greatly disappoint disability scholars and pwds. If remedied in future research – as is urged - this will add vital nuance to this field of enquiry and assist in its appropriate maturation.

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<sup>209</sup> For instance, the database of Geneva Call *supra*, note 123.

<sup>210</sup> Wood., E., *Insurgent Collective Action and Civil War in El Salvador*, Cambridge University Press 2003) p. 326

## **PART 2: FINDINGS**

### **2.1. Introduction**

As discussed, substantial DFAG geographical, territorial and temporal coverage implicates many millions of people, including pwds. Their commitments to pwds have the potential to profoundly impact the day-to-day lives of resident populations with disabilities within the territory they govern. To this point in time those pwds and pertinent DFAG commitments have remained largely hidden within scholarly literature.

The collation and review of commitments sourced, demonstrates that DFAGs regularly explicitly include pwds within them. They place greater emphasis on commitments to individual support to and welfare of pwds than on interventions to address social barriers to inclusion. This points to their predominantly individual deficit approach to disability. The welfare of veterans with physical disabilities is prioritized over that of civilian pwds. Explicit recognition of rights of pwds is apparent in limited circumstances, although these rights invariably sit within an individual deficit paradigm with human rights elements. Explicit provision for political participation by pwds is rare. Evidence of pwds' influence on the development and form of commitments made is not strong but clearly discernable in isolated instances. Their possible role in legitimation processes is most apparent in DFAG commitments to physically disabled veterans, to IHRL and to the CRPD more specifically. This points to multiple legitimation audiences.

No firm conclusion as to the dominant driver of the commitments is offered. Clientelism<sup>211</sup> or international socialization<sup>212</sup> are promising -but unexplored- examples of alternative explanatory variables.

The structure of Part 2 mirrors the piecemeal manner in which pwds are included in DFAG commitments and the topics the commitments themselves raise. Each section is part expository and part evaluative. As scholars currently lack familiarity with DFAG commitments to pwds, description adds context and transparency to their analysis that necessarily contains elements of subjective interpretation.

## **2.2. Commitments to persons with disabilities across geopolitical, ideological, territorial and temporal contexts**

Of the 108 DFAGs reviewed, 42 were found to reference formal commitments to pwds.<sup>213</sup> They do so across geopolitical, ideological, territorial and temporal contexts and implicate groups as diverse as the Communist Party of Nepal (Maoist) (CPI (Maoist)), the EPLF, LTTE, Republics of Abkhazia and Biafra, the Sandinista National Liberation Front (SLNF), the Republics of Biafra (RoB) and Abkhazia (RoA), Hamas, the Houthis and ISIS.

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<sup>211</sup> Abdullah, S., Gray T., & Clough, E., 'Clientelism: factionalism in the allocation of public resources in Iraq after 2003', 2018, *Middle Eastern Studies*, Vol. 54, Issue 4, pp. 665-682., Gordon S, Cooper-Knock S, Lillywhite L., *supra* note 122.

<sup>212</sup> Dionigi, F., *Hezbollah, Islamist Politics, and International Society* (Palgrave MacMillan 2014).

<sup>213</sup> See Appendix 1 for a list of DFAGs reviewed.

Most DFAGs that commit to pwds are not legally recognized by any UN member State, although the Republic of Kosovo (RoK) is recognized by 108<sup>214</sup> and Taiwan by 19.<sup>215</sup> The Syrian Opposition Coalition has been recognized in at least six different capacities of varying legal significance as the ‘legitimate representative of the brotherly Syrian people’.<sup>216</sup> The non-UN member *de facto* States of Transnistria (also known as Pridnestrovskiaia Moldavskaia Respublica), N-KR, the Republics of South Ossetia (RoSO) and Abkhazia (RoA) mutually recognize each other.<sup>217</sup>

The volume and source of resources available to DFAGs that commit have access are also diverse. Taiwan for example, is listed as the 17th richest ‘country’ in the world,<sup>218</sup> ‘occupies an important position in the global economy’,<sup>219</sup> and has a population of nearly 24 million<sup>220</sup>. In contrast, the economy of the RoSO with a population estimated to be between 30,000<sup>221</sup> – 53,000, has been devastated by conflict. In June 2010, 98.7 per cent of its total budget was from its patron State Russia.<sup>222</sup>

The majority of commitments collated post-date the 2006 UN General Assembly adoption of the CRPD. The earliest found dates back to 1943 when the Ukrainian Insurgent Army claimed

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<sup>214</sup> Graphic Maps, at: <https://www.graphicmaps.com/which-countries-recognize-kosovo>. [accessed 23 July 2019]

<sup>215</sup> See at: <https://www.worldatlas.com/articles/which-countries-recognize-taiwan-as-a-country.htm>. [accessed 16 August ]

<sup>216</sup> Talmon, S., ‘Recognition of Opposition Groups as the Legitimate Representative of a People’, 3 March 2012, *Bonn Research papers on Public International Law*, Paper No. 1/2013.

<sup>217</sup> ‘On Adoption of the Foreign Policy Concept of Pridnestrovskiaia Moldavskaia Respublica’, 26 May 2005, [http://pridnestrovie.net/foreignpolicy\\_full.html](http://pridnestrovie.net/foreignpolicy_full.html). [accessed 11 July 2019]

<sup>218</sup> ‘Taiwan ranked as the 17<sup>th</sup> Richest country in the world’, Taiwan News, 7 May 2019 at: <https://www.taiwannews.com.tw/en/news/3696260>. [accessed 11 July 2019]

<sup>219</sup> Taiwan government website at: [http://www.taiwan.gov.tw/content\\_7.php](http://www.taiwan.gov.tw/content_7.php) [accessed 11 July 2019]

<sup>220</sup> Worldometers, ‘Taiwan’, at: <https://www.worldometers.info/world-population/taiwan-population/>. [accessed 11 July 2019]

<sup>221</sup> ‘South Ossetia, Old Territory, New Problems’, Geo History, 25 January 2015, at: <https://geohistory.today/south-ossetia/> [accessed 11 July 2019]

<sup>222</sup> International Crisis Group, ‘South Ossetia: The Burden of Recognition’, 7 June 2010, <https://www.refworld.org/pdfid/4c11f5452.pdf>. [accessed 11 July 2019]

that it ‘stand[s] for [...] full security of all working people in their old age and in case of illness or disability.’<sup>223</sup> Whilst the dissertation speculates this temporal bias reflects, to different degrees, increased DFAG and international attention to pwds and increased DFAG communication opportunities, no safe conclusion can be reached without further extensive research.

The number of commitments found and collated, which is by no means exhaustive, answers Question one. Many DFAGs do commit to pwds. This combined with the diversity of those that commit, suggests that a starting point for entities that engage with DFAGs on disability related issues, is to assume commitments have been made and to seek them out.

### **2.3. Where commitments to persons with disabilities are found and the significance of their medium of dissemination.**

The sample of commitments found emanate from DFAG political, military and humanitarian arms and, with a few limited exceptions, are written in or previously translated into English. They include videos, unilateral statements, legislation, orders and media releases with variable levels of detail. Whilst all were sourced electronically, their dissemination was primarily through references within scholarly literature, databases of international and national non-governmental organizations, journalists and, more recently, DFAG websites.

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<sup>223</sup> ‘Ukrainian Insurgent Army leaflet’ (August 1943) available at: <https://www.caribbeanstudies.org.uk/upa.html>. [accessed 21 January 2019].

Commitments to pwds are found in the *Constitutions*<sup>224</sup> of thirteen DFAGs<sup>225</sup> and in ten *political programmes*.<sup>226</sup> They are found also in the *Charters* of the JEM, Tehrik-E-Taliban Pakistan, Hamas and the *Manifestos* of Hezbollah, the RUF and an ISIS Cabinet Member, Abdullah Ahmed al-Meshedani, aka Abu Kassem. Abu Kassem's manifesto and vision for the ISIS, for instance, included the need to pay attention to:

Establishing health centres in Ninevah, Anbar, Salah al-Din, Diyala, Kirkuk, Tripoli specialising in the rehabilitation of the injured and handicapped, and medicine of bones and fractures to gain from Cuban superiority in this field.

Establishing health centres in Ninevah, Anbar, Salah al-Din, Diyala, Kirkuk and Tripoli specialising in the manufacturing of prosthetic limbs according to highly advanced German technology in this area.<sup>227</sup>

DFAGs also utilize *media statements*, to disseminate and draw attention to their commitments to pwds. This medium of communication is currently commonly used by, amongst others, ISIS, the Taliban, the National Coalition of Syrian Revolution and Opposition Forces and the *de facto* States within eastern Europe.

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<sup>224</sup> Of comparative interest is a 2014 analysis of 193 National (State) Constitutions which found constitutional guarantees of rights for persons with disabilities are present in only a minority of constitutions

<sup>225</sup> The non-State actors are: the Communist Party of India (Maoist), the Republic of Somaliland, Transnistria, the Republic of Abkhazia, Nagorno-Karabakh, Taiwan, the Republic of Crimea, the Republic of Donetsk, the Republic of Kosovo, and the Republic of South Ossetia, the Houthis (constitutional declaration), Sahrawi Democratic Republic, the Turkish Republic of Northern Cyprus

<sup>226</sup> The Democratic Party of Iranian Kurdistan, the Eritrean People's Liberation Front, the National Democratic Front of the Philippines, African party for the Independence of Guinea and Cape Verde, the Oromo Liberation Front, the Party for the Independence of Guinea and Cape Verde, the Patriotic Front of Kurdistan, the Sandinista National Liberation Front and the Tigrayan People's Liberation Front.

<sup>227</sup> 'Abu Kassem's Manifesto/100-Year Plan for a World Khilafah', 2014, at:

TRAC website <http://www.trackingterrorism.org/article/manifesto-caliphate-islamic-state%E2%80%99s-100-year-plan-islamic-sunni-states-isis> [accessed 28 January 2017]

The majority of commitments identified are embedded within Constitutions, Charters, Manifestos and other political program documents. These tend to be produced by higher echelons within DFAGs, bear upon and define their goals and identities and are the product of deep deliberations.<sup>228</sup> The inclusion of pwds within them is therefore significant.

A second indicator of the significance of pwds to DFAGs is their incorporation into State legislation or policy upon DFAG transition to State political parties and power. For example, upon Eritrean independence the new government, the People's Front for Democracy and Justice (PFDJ),<sup>229</sup> explicitly stated that its new national Charter was built upon the prior 'strong foundation already established by the EPLF'. This foundation included EPLF pre-independence commitments to pwds, which formed a component of the early disability policy in Eritrea.<sup>230</sup> The PLO is more specific. Having achieved non- UN member observer status and ratified the CRPD, its 2018 State of Palestine party report to the CRC, drew specific attention to the continuation of a range of its prior commitments to pwds.<sup>231</sup>

Scholars of communication studies will have many nuanced and valuable insights into, if not full explanations for the political<sup>232</sup> and/or strategic<sup>233</sup> communication goals of DFAGs. It is beyond the scope of this research to explore their theories in any depth. Nonetheless, a few key concepts provide an additional layer of explanation of the significance of the medium through

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<sup>228</sup> Bangerter, O., *supra* note 24, pp. 4-6.

<sup>229</sup> Which comprised core members of the former DFAG, EPLF,

<sup>230</sup> Michailakis, D., 'Government Action on Disability Policy: A Global Survey', 1997, at: [https://www.independentliving.org/standardrules/UN\\_Answers/UN.pdf](https://www.independentliving.org/standardrules/UN_Answers/UN.pdf). [accessed 28/02/2019]

<sup>231</sup> Convention on the Rights of the Child, State of Palestine, State party's report, CRC/C/PSE/1, 21/09/2019/ para. 286 at:

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&SymbolNo=CRC/C/&ctl00\\_PlaceHolderMain\\_radResultsGridChangePage=1\\_50](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&SymbolNo=CRC/C/&ctl00_PlaceHolderMain_radResultsGridChangePage=1_50) [accessed 8 July 2019]

<sup>232</sup> Benedetta Berti, B., 'Armed Groups as Political Parties and Their Role in Electoral Politics: The Case of Hizballah', 2011, *Studies in Conflict & Terrorism*, Vol. 34, Issue 12, 942 – 962.

<sup>233</sup> Hallahan, K., Holtzhausen, D., van Ruler, B., Verčič, D., & Sriramesh, K., 'Defining Strategic Communication', 2007, *International Journal of Strategic Communication*, Vol. 1, Issue 1, 3-35.

which the commitments to pwds are disseminated, primarily for current purposes, from the perspective of DFAG legitimation processes.

Lasswell's assertion that 'communication' entails a sender (who), a message (says what), a medium (in which channel), a receiver (to whom) and a purpose (with what effect), is a helpful starting point.<sup>234</sup> Berlo expands upon this and stresses the dynamic interconnectedness between, and influence of, sender and receiver. Matusitz applies these insights to terrorism and pays marked attention to the importance of audiences of communications to explain their medium and content. To him, single or multiple audiences are active or passive and respond in some way to a communication message, which may vary for each audience, even within the context of a single act.<sup>235</sup> For Kreiger, multiple legitimacy audiences 'with which armed groups need to communicate', lead to potential contradictory communication demands.<sup>236</sup>

Applying this discussion to legitimacy strategies of DFAGs under review, their key communication *audiences* for their unilateral commitments are viewed as communities from whom legitimacy is sought. These legitimacy communities are found at the local, State and/or international levels. Within one or all three levels is a further legitimacy community, the DFAG membership itself.<sup>237</sup>

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<sup>234</sup> Lasswell, H., 'The Structure and Function of Communication in Society', in Bryson, L., (ed.), *The Communication of Ideas* (New York, Institute for Religious and Social Studies 1948) 37-51.

<sup>235</sup> Matusitz, J., *Terrorism & Communication: A Critical Introduction*, (Sage, Los Angeles, London, New Delhi, Singapore, Washington DC 2013), p. 77.

<sup>236</sup> Krieger, H., *supra* note 194, p. 563.

<sup>237</sup> Whitman, J., *supra* note 154, pp. 25 - 31

DFAGs are not unique when they seek to control information or what is revealed about their organizations<sup>238</sup> through their chosen *dissemination* channels. These can, in certain cases, point to intended audiences and, potentially, legitimacy communities.<sup>239</sup>

The Polisario Front, for example, released a statement to the high-profile Geneva based NGO, Geneva Call which included brief details of the ‘all possible’ support it gave to children with disabilities. This statement was given in response to a request by Geneva Call for its written perspective on the protection of children from the effects of armed conflict. The Polisario Front, presumably, was aware that its statement would be disseminated internationally and electronically,<sup>240</sup> by Geneva Call, and in English. One resultant inference is that it deliberately targeted its perceived international legitimacy community through the dissemination channel of Geneva Call with its message of, amongst others, its approach to children with disabilities.

Similarly, the National Coalition of Syrian Revolution and Opposition Forces releases substantial details of its Health Authority and, amongst other information, treatment plans for pwds via its English language website and associated ListServe.<sup>241</sup> A credible conclusion is its target audience is the English-speaking international legitimacy community. In contrast, the Arabic, typed, spiral bound and chaptered Manifesto of Abu Kassem, noted above, was ‘clearly

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<sup>238</sup> Williams, S., Ricigliano, R., ‘Choosing to engage: Armed groups and peace processes’, Conciliation Resources, 2005, at: <https://www.c-r.org/accord/engaging-armed-groups/case-engagement-interview-president-carter/understanding-armed-groups>. [accessed 10 July 2019]

<sup>239</sup> Wael, A., ‘The strategic importance of the Internet for armed insurgent groups in modern warfare’, 2007, *International Review of the Red Cross*, Vol. 89, Number 868, at: <https://www.icrc.org/en/international-review/article/strategic-importance-internet-armed-insurgent-groups-modern-warfare> [accessed 10 July 2019].

<sup>240</sup> Submission of the Polisario Front to the Geneva Call publication "In Their Words: Perspectives of Armed non-State Actors on the Protection of Children from the Effects of Armed Conflict", 2010 [http://www.theirwords.org/media/transfer/doc/eh\\_polisario\\_2010\\_07-dc8490abb101d38d456711e5cb21527b.pdf](http://www.theirwords.org/media/transfer/doc/eh_polisario_2010_07-dc8490abb101d38d456711e5cb21527b.pdf). [accessed 14 July 2019]

<sup>241</sup> Website of the National Coalition of Syrian Revolution and Opposition Forces, undated, at: [n.etalaf.org/coalition-units/coalition-offices/syrian-health-authority.html](http://n.etalaf.org/coalition-units/coalition-offices/syrian-health-authority.html). [accessed 10 July 2019].

meant for distribution among the entire Islamic State senior staff,<sup>242</sup> an internal legitimacy community.

To summarize. Conspicuous across all arms of DFAG institutions and often embedded within their foundational documents, DFAG commitments to pwds are significant. They tether pwds to DFAG political processes and narratives. Both incorporate DFAG communication and, potentially linked, legitimation strategies. In certain instances, these can point to a role for pwds in DFAG single or multi-level legitimation processes.

## **2.4. The content of commitments to persons with disabilities**

### **2.4.1. Commitments to international law**

A core commonality of DFAGs reviewed is their inability to ratify IHL or IHRL treaties. A range however give instructions to their members, or publicly express their intention to comply with them and do so in a variety of formats.<sup>243</sup> For example, in 2009, Fuerzas Armadas Revolucionarias de Colombia (FARC) and Ejército de Liberación Nacional (ELN) sent the following joint message to their militants that clearly contained IHL components:

[...], the commanders of the Simón Bolívar Guerilla Coordinating Board [...] call upon Bolivarian combatants to abide by the following rules of conduct with the masses. [...]

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<sup>242</sup> ‘Abu Kassem's Manifesto/100-Year Plan for a World Khilafah’, date unknown, TRAC, at: <http://www.trackingterrorism.org/article/manifesto-caliphate-islamic-state%E2%80%99s-100-year-plan-islamic-sunni-states-isis>. [accessed 28 January 2017]

<sup>243</sup> Bangerter, O. *supra* note 24.

Leaders and combatants should study and comply with the rules of international humanitarian law that are applicable to our revolutionary war.’

Similarly, a number of DFAGs issue commitments that contain both IHL and IHRL components, with varied levels of specificity. Illustrative is the National Democratic Front of the Philippines (NDFP) which states: ‘The NDFP recognizes the 1990 Convention on the Rights of the Child. It has issued in 1996 the Declaration of Undertaking to Apply the Geneva Conventions and Protocol I, assuming the rights and duties of States parties thereunder.’<sup>244</sup> LTTE asserts that: ‘The people of the North East shall be accorded all rights as are provided under international human rights law. Every law, regulation, rule, order or decision of the ISGA (*Interim Self-Governing Authority*) shall conform to internationally accepted standards of human rights protection.’<sup>245</sup>

In contrast, few ANSAs explicitly endorse the CRPD, partly explained by the fact that many DFAGs and their commitments found pre-date its adoption. The RoK, Taiwan, Transnistria and the RoS do however make concerted efforts to be seen to be share the international approach to disability it embodies. In 2009 upon adoption of its National Disability Action Plan, for instance, the RoK noted its inability to ratify the CRPD but affirmed its intention to comply with ‘all international human rights instruments and, in particular, the Convention on the Rights of Persons with Disabilities.’<sup>246</sup> Four years later, a second national strategy

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<sup>244</sup> ‘NDFP Declaration and Program of Action for the Rights, Protection and Welfare of Children – Booklet’, 2012, Preface, at: <http://theirwords.org/?country=PHL> [accessed 15 July 2019]

<sup>245</sup> ‘The Proposal by the Liberation Tiger of Tamil Eelam, on Behalf of the Tamil People for an Agreement to Establish an Interim Self-Governing Authority for the Northeast of the Island of Sri Lanka,’ 2003, 4.1, available at: <http://theirwords.org/?country=LKA>. [accessed 15 July 2019]

<sup>246</sup> ‘National Disability Action Plan 2009 – 2011’, 2009, p. 10  
[http://www.hiproweb.org/fileadmin/cdroms/Kit\\_Formation\\_Services/documents/Additional/F-National\\_strategies/F-f](http://www.hiproweb.org/fileadmin/cdroms/Kit_Formation_Services/documents/Additional/F-National_strategies/F-f) [accessed 22 February 2019]

document, drew attention to the ‘lot of work’ still required to guarantee the rights of pwds within the territory but envisions, an ‘all- inclusive society in which persons with disabilities realize their full potential and live dignifying lives as equal citizens’.<sup>247</sup> That said, despite the repeated reference to the CRPD in both national disability strategies, the 2015 Constitution of the RoK provides for direct applicability of a large range of named human rights instruments,<sup>248</sup> but fails to mention the CRPD.

Taiwan took more concrete steps in 2014 by passing the ‘Act to Implement the Convention on the Rights of Persons with Disabilities’.<sup>249</sup> It also made provision for international monitoring of its ‘CRPD obligations’ within its human rights review process, previously set up for, amongst others, the ICCPR, Covenant on Economic, Social and Cultural Rights (CESCR), Convention on the Rights of the Child (CRC) and Convention on the Elimination of Discrimination Against Women (CEDAW). More recently, the authorities of Transnistria declared 2018 the Year of Equal Opportunities. With the stated aim of prevention of discrimination against pwds, they committed by way of ‘Order’ to the ‘harmonization of legislation’ with the CRPD within Transnistria.<sup>250</sup> Finally, the RoS’s 2012 National Mental Health Policy calls for the passing of legislation in line with international standards, including the CRPD.<sup>251</sup> In an interview two years later however, the then Director General of the

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<sup>247</sup> ‘National Strategy on the Rights of Persons with disabilities 2013 – 2023’, at:

[https://childhub.org/en/system/tdf/library/attachments/national\\_strategy\\_on\\_the\\_rights\\_of\\_persons\\_with\\_disabilities\\_in\\_the\\_republic\\_of\\_kosovo\\_2013-2023\\_2.pdf?file=1&type=node&id=23564](https://childhub.org/en/system/tdf/library/attachments/national_strategy_on_the_rights_of_persons_with_disabilities_in_the_republic_of_kosovo_2013-2023_2.pdf?file=1&type=node&id=23564) [accessed 22 February 2019]

<sup>248</sup> ‘Constitution of the Republic of Kosovo (with amendments I-XXIV), 2015, Article 22 at:

<http://www.kuvendikosoves.org/?cid=2,1058> [accessed 26 March 2019]

<sup>249</sup> ‘Act to Implement the Convention on the Rights of Persons with Disabilities’, August 20, 2014, Hua Zong Yi Document No.10300123071

<https://www.mohw.gov.tw/sp-GS-2.html?Query=disabilities> [accessed 22 February 2019]

<sup>250</sup> ‘Order of the Government of the Transnistrian Moldovan Republic: Pridnestrovian Moldavian Republic: The Republican plan of activities for the Year of Equal Opportunities’, 20 March 2018 at: <http://mfa-pmr.org/en> [accessed 22 February 2019] Russian versions of disability pertinent legislation on file with the author.

<sup>251</sup> ‘Somaliland National Mental Health Policy, 2012’, ‘<https://www.gritalia.org/media/data/national-mental-health-policy-2-octobar-12.pdf>. [accessed 5 August 2019]

Ministry of Health, emphasised ‘The mental health policy is an aspirational document at this point’.<sup>252</sup>

At face value, endorsement of IHL, IHRL and the CRPD is also an endorsement of the disability-based approach and norms contained within them. How -or if - these are implemented within the various local contexts remains largely outside the scope of this research, albeit ripe for future exploration. Instead, just as IHL and IHRL widely excludes DFAGs, this appears in some instances, to accentuate the importance of their endorsement by DFAGs. The dominant analytical interest at this point therefore is the role such endorsement might play in DFAG legitimization strategies. Background context - the intent behind IHL and IHRL and the place of DFAGs within it - assists the analysis.

The primary concern of IHL and IHRL is the protection of individuals - in times of armed conflict and in times of peace. Although originally developed as distinct regimes, their concurrent application is now relatively widely accepted.<sup>253</sup> IHL applies specifically to international armed conflict (IAC) and NIAC.<sup>254</sup> In practice, the distinction between the two can often be difficult to draw.<sup>255</sup> IHL seeks to limit harm to individuals<sup>256</sup> from acts of ‘opposing entities confronting each other in a competition for control over territory or

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<sup>252</sup> Human Rights Watch interview with then Director General of Ministry of Health, Osman Hussein Warsame , Hargeisa, October 8, 2014. See Human Rights Watch, ‘Somaliland: People With Disabilities Abused, Neglected’, 25 October 2015, at: <https://www.hrw.org/news/2015/10/25/somaliland-people-disabilities-abused-neglected>, p. 63. [accessed 7 July 2019].

<sup>253</sup> Sassoli, M., Lubell, N., Breitegger, A., ‘Recent developments of the interplay between IHL and IHRL’, 12 June 2017, *International Review of the Red Cross*, at: <https://www.icrc.org/en/document/recent-developments-interplay-between-ihl-and-ihrl>. [accessed 15 July 2019], Qureshi, W. A., ‘Untangling the Complicated Relationship between International Humanitarian Law and Human Rights Law in Armed Conflict’, 2018, *Penn. St. J.L. & Int'l Aff.*, Vol. 6, Issue 1, 203 – 241.

<sup>254</sup> International Committee of the Red Cross, Opinion paper, ‘How is the Term "Armed Conflict" Defined in International Humanitarian Law?’, March 2008, at: <https://www.icrc.org/en/doc/assets/files/other/opinion-paper-armed-conflict.pdf>. [accessed 8 July 2019]

<sup>255</sup> Roberts, A., Guelff, R., *Documents on the Law of War* (Oxford University Press, 2000), p. 22

<sup>256</sup> And specified inanimate objects.

persons'<sup>257</sup> and affords protection based upon the specific status of individuals. For example, civilians (with special protection for certain groups such as the 'sick and wounded'), medical personnel, combatants and person hors de combat.<sup>258</sup>

NIACs occur between armed forces of a State<sup>259</sup> and the forces of one or more ANSAs or between such groups, on the territory of a State.<sup>260</sup> As previously noted, most of the DFAGs reviewed have operated within NIACs at some point in time.

IHL is only triggered when the threshold for NIAC is reached. It isn't always clear - or acknowledged - when that threshold is reached, particularly as the intensity of violence often fluctuates over time.<sup>261</sup> When reached however, parties to that conflict, including ANSAs, must respect and ensure respect for the customary and treaty based rules of IHL pertinent to NIAC.<sup>262</sup> Pwds benefit from 'the general obligation under IHL to treat every person humanely', in all circumstances, and without any adverse distinction.<sup>263</sup> In addition, argues the ICRC, pwds are afforded specific protection under provisions relating to the treatment of the 'wounded' and 'sick' (their precise meaning being a 'matter of common sense and good faith').<sup>264</sup> With regard to service provision, this implicates 'the medical care required by their condition'. The ICRC's

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<sup>257</sup> Fortin, K., *supra* note 98, p. 30

<sup>258</sup> *Ibid.*, pp. 31- 32. See also, *The Handbook of Humanitarian law in Armed Conflicts* (Fleck, D. ed.) (Oxford University Press 1999), p. 9

<sup>259</sup> International Committee of the Red Cross, 'Who is bound by IHL?', 13 August 2018, at: <https://blogs.icrc.org/ilot/2017/08/13/who-is-bound-by-ihl/>. [accessed 8 July 2019]

<sup>260</sup> International Committee of the Red Cross, Opinion paper, 'How is the Term "Armed Conflict" Defined in International Humanitarian Law?', March 2008, at: <https://www.icrc.org/en/doc/assets/files/other/opinion-paper-armed-conflict.pdf>. [accessed 8 July 2019]

<sup>261</sup> IISS, 'The Essence of Armed Conflict' in *Armed Conflict Survey*, (IISS July 2018), at <https://www.iiss.org/publications/armed-conflict-survey/2018/armed-conflict-survey-2018/acs2018-03-essay-1>, Ch. 1., 15 – 21. [accessed 8 July 2019]

<sup>262</sup> Pfanner, T. 'Various Mechanisms and Approaches for Implementing International Humanitarian law and Protecting and Assisting War Victims', 874 (2009) *International Review of the Red Cross* 279, 281.

<sup>263</sup> 'IHL and persons with disabilities' *supra* note 125.

<sup>264</sup> *Ibid.*

interpretation of IHL provisions is, however, not universally accepted and its medicalized terminology considered discordant with the understanding of disability within the CRPD.<sup>265</sup>

In contrast to IHL, IHRL applies to all situations at all times,<sup>266</sup> with specific provision within the CRPD for its continued application in times of armed conflict.<sup>267</sup> Core to IHRL is the principle that every person is born free and equal in dignity and human rights.<sup>268</sup> It operates primarily within the framework of a legal relationship between a State and individuals within its jurisdiction.<sup>269</sup> The application – the when and how<sup>270</sup> - of IHRL to ANSAs as obligation holders however lacks clarity,<sup>271</sup> with its application to ANSAs particularly strongly contested by scholars.<sup>272</sup> In this regard, Fortin’s organisation of the three dominant threads within the ongoing debate is helpful. First, she draws attention to scholars who do not believe that ANSAs have human rights obligations. Second are scholars who argue that ANSAs have obligations outside of armed conflict situations<sup>273</sup> and third those who argue that ANSAs have obligations under human rights law when they control territory and exercise government functions.<sup>274</sup> ANSAs however have little, if any,<sup>275</sup> role in the development of the norms and values over

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<sup>265</sup> Lord, J., ‘Persons with Disabilities in International Humanitarian Law – Paternalism, Protectionism or Rights?’ Chapter 9, in Michael, G., and Schlund-Vials, C., *Disability, Human Rights and the Limits of Humanitarianism*, (Taylor and Francis, 2014), p. 157

<sup>266</sup> International Committee of the Red Cross, ‘IHL and human rights law’, 29 October 2010, at: <https://www.icrc.org/en/doc/war-and-law/ihl-other-legal-regimes/ihl-human-rights/overview-ihl-and-human-rights.htm>. [accessed 8 July 2019]

<sup>267</sup> Mugabi, I., ‘Thematic study on the rights of persons with disabilities under article 11 (relating to situations of risk and humanitarian emergencies) of the Convention on the Rights of Persons with Disabilities’, 2018, *Societies* 2018, 8 (2).

<sup>268</sup> Universal Declaration of Human Rights, 1948, at: <https://www.un.org/en/universal-declaration-human-rights/>. [accessed 15 July 2019]

<sup>269</sup> *The Handbook of Humanitarian law in Armed Conflicts* (Fleck, D. ed.), Oxford University Press, 1999, p. 9

<sup>270</sup> Fortin, J., *supra* note 98, p. 374.

<sup>271</sup> Clapham, A., 2009, *Human Rights Obligations of Non-State Actors*, (Open University Press Oxford 2009).

<sup>272</sup> Alston, P., *Non-State Actors and Human Rights*, (Alston, P., ed.), Oxford University Press, 2015

<sup>273</sup> Fortin, J. *supra* note 98, p. 359

<sup>274</sup> *Ibid.*, p. 385

<sup>275</sup> See for instance, d’Aspremont, J., ‘International Law-Making by Non-State Actors: Changing the Model or Putting the Phenomenon into Perspective?’, Chapter 8 in Ryngaert, D., Noortmann, M., (eds.), *Non-State Actor Dynamics in International Law: From Law-Takers to Law Makers*, (Routledge 2016).

which this debate rages, nor in those within IHL.<sup>276</sup> They can, as previously noted, neither consent nor publicly commit to their content by way of ratification of treaties,<sup>277</sup> although no safe expectation can be made that all would wish to do so. Indeed, the relationship of ANSAs aware of IHL and IHRL is complex and context specific<sup>278</sup> with many openly indifferent to or challenging it.<sup>279</sup> ISIS, makes known, for example, ‘We aim to satisfy God, we don’t care about international standards’.<sup>280</sup>

Explanations for DFAG endorsement of IHL and IHRL (both of which contain implicit and explicit disability components) may be motivated by DFAG recognition of their inherent value or they may already share the values they embrace.<sup>281</sup> That said, as both branches of law are voluminous in themselves, it is unsafe to assume familiarity with their detail. Alternatively, and to borrow from Jo’s theory on international law ‘compliant rebels’, the political and instrumental benefit of endorsement of these norms might be of greater interest to DFAGs than the content of the norms themselves.<sup>282</sup> That interest is frequently assessed in terms of DFAG legitimacy and the relationships it entails. These are discussed below in the context of DFAG endorsement of the CRPD.

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<sup>276</sup> See however Hiemstra, H. Nohle, E., ‘The Role of Non-State Armed Groups in the Development and Interpretation of International Humanitarian Law’, 2017 *Yearbook of International Humanitarian Law*, Vol. 20, pp. 3-35.

<sup>277</sup> Saul, B., ‘Improving Respect for International Humanitarian Law by Non-state Armed Groups’, in *Humanitarian Engagement with Non-state Armed Groups*, (Chatham House 2016) p. 42 at: <https://www.chathamhouse.org/sites/default/files/publications/research/2016-04-29-NSAG.pdf>. [accessed 13 August 2019]

<sup>278</sup> Jo, H., and Niehus, J., ‘Through Rebel Eyes: Rebel Groups, Human Rights, and Humanitarian Law’, 2018, *Law and Contemporary Problems*, Vol. 81, 101-120.

<sup>279</sup> Whitman, J. *supra* note 154.

<sup>280</sup> ‘Haidara’ in Vice News, ‘Inside the Islamic State’, August 2014, as quoted in Ledwidge, F. *supra* note 3, p. 65.

<sup>281</sup> Jo, H., *supra* note 90, p. 14 and p. 270.

<sup>282</sup> Analogous motivations could explain state ratification of IHRL treaties. Hafner-Burton, E., Kiyoteru, ‘Human Rights in a Globalizing World: The Paradox of Empty Promises’, 2005 *American Journal of Sociology* Vol. 110, Issue 5, 1373–411., Vreeland, J. R., ‘Political Institutions and Human Rights: Why Dictatorships enter into the United Nations Convention Against Torture’, 2008 *International Organization*, Vol. 62, Issue 1, 65–101.

#### 2.4.2. Endorsement of the Convention on the Rights of Persons with Disabilities in the context of legitimacy processes.

Taiwan, RoK, Transnistria and the RoS have made widely known their endorsement of the CRPD. Taiwan, RoK and Transnistria disseminate their endorsement in their native language and to different extents, English, on readily available and accessible government webpages and/or via newsfeeds.<sup>283</sup> Although the RoS has a website which contains easy access to a range of English language documents, its 2012 mental health policy had to be located through a google search rather than the government website and its general disability policy remains unlocated.

Each entity approached disability as an individual deficit prior to its endorsement of the CRPD.<sup>284</sup> For each therefore, its implementation requires radical domestic legislative and policy reform. Does endorsement point to shared values amongst their authorities and the CRPD and/or are legitimisation -or other-processes at play? The identification of *possible* legitimacy pressures on and responses of DFAGs these each can contribute to an answer. These are discussed below.

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<sup>283</sup> Website of Taiwan at:

<https://www.taiwan.gov.tw/>, website of Transnistria at: <http://mfa-pmr.org/en>, website of the Republic of Kosovo at: <https://www.rks-gov.net/EN/f43/republic-of-kosovo/government> [all accessed 13 August 2019]

<sup>284</sup> Initial Report of the Republic of China (Taiwan) on the Convention on the Rights of Persons with Disabilities, 2017, para. 12, footnote 7, at: <https://www.mohw.gov.tw/sp-GS-2.html?Query=disabilities> [accessed 7 November 2018], Hammarberg, T., 'Report on Human Rights in the Transnistrian Region of the Republic of Moldova', 14 February 2013, at: [http://md.one.un.org/content/dam/unct/moldova/docs/pub/Senior\\_Expert\\_Hammarberg\\_Report\\_TN\\_Human\\_Rights.pdf](http://md.one.un.org/content/dam/unct/moldova/docs/pub/Senior_Expert_Hammarberg_Report_TN_Human_Rights.pdf) . [accessed 26 October 2018], National Action Disability Plan 2009 – 2011, 2009 [http://www.hiproweb.org/fileadmin/cdroms/Kit\\_Formation\\_Services/documents/Additional/F-National\\_strategies/F-1\\_DISABILITY\\_ACTION\\_PLAN\\_Kosovo.pdf](http://www.hiproweb.org/fileadmin/cdroms/Kit_Formation_Services/documents/Additional/F-National_strategies/F-1_DISABILITY_ACTION_PLAN_Kosovo.pdf). [accessed 19 July 2019] , Constitution of the Republic of Somaliland, 2001, at: <http://somalilandgov.com/information-4/> [http://www.somalilandlaw.com/body\\_somaliland\\_constitution.htm](http://www.somalilandlaw.com/body_somaliland_constitution.htm). [accessed 19 July 2019]

Despite marked differences, the four authorities share commonalities. Each was born out of violent struggle that created impairment in addition to that already within resident populations. Each has controlled and administered territory for some years and, now, each interacts with the international community – albeit to sizeable contrasting extents. Each aspires to UN State membership. For this, each requires full international recognition from individual States. This is more likely if they are viewed as legitimate by States and also by other components of the international community.

With the assistance of an army of translators, the development of accessible versions, outreach and training materials,<sup>285</sup> the CRPD is promoted, visible and accessible to swathes of the international population and spans geographical and cultural boundaries. The President of the European Disability Forum praised it as a ‘convention to bring those in darkness into light’ whilst the Secretary General of the United Nations hailed its adoption as ‘the dawn of a new era’.<sup>286</sup> Globally lauded, alignment with the CRPD by Taiwan, Transnistria, the RoK and the RoS, could therefore be viewed as a legitimisation act, a self-presentation of their human rights accomplishments or aspirations, State like stature and worthiness of recognition. It is credible therefore to consider the current 177 State parties to the CRPD as legitimisation pressures and targets within the strategy of all four authorities.

Taiwan, Transnistria and the RoK have relied on complex, fluctuating bonds with, and relationships of dependence on external partners or patrons. The US, with whom Taiwan has had a long term informal but now formal relationship,<sup>287</sup> vehemently refuses to ratify the CRPD. It views itself as the inspiration and a leader in disability rights, on the basis it

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<sup>285</sup> See further UN Enable at: <https://www.un.org/development/desa/disabilities> [accessed 20 July 2019]

<sup>286</sup> See further, Kayess, R., French, P, ‘Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities’, *Human Rights Law Review*, Volume 8, Issue 1, 1 January 2008, pp 1-34

<sup>287</sup> "H.R.535 - 115th Congress (2017-2018): Taiwan Travel Act". *Congress.gov*. [accessed 18 July 2019]

doesn't need to ratify a convention to demonstrate its commitments to pwds.<sup>288</sup> It has however ratified, amongst others, the ICCPR and the Convention on the Elimination of Racial Discrimination. Such mixed messages make it difficult to assume the US to be a legitimization audience for Taiwan's own 'ratification' of the CRPD unless, perhaps, it wishes to be seen by the US as supporting disability rights more generally.

This contrast markedly with the EU which has provided considerable support to the RoK and has itself ratified the CRPP. The RoK explains its endorsement as the 'fulfil[ment] of the State obligations that Kosovo has in respecting International Conventions for Human Rights and the Rights of Persons with Disabilities which are among the pre-conditions for Kosovo to move forward in the process of European integration'.<sup>289</sup> This strongly indicates the EU as a legitimization audience.

Similarly, Transnistria linked its promise of legislation prohibiting discrimination of any kind against pwds, directly to the norms of other States but specifically to Russia, its patron State.<sup>290</sup> It commented that, 'It is noteworthy that these norms [within the CRPD] have long been a daily practice in many States, including the Russian Federation'.<sup>291</sup> The authorities may not be aware of criticism directed at Russia for its 'insufficient efforts to harmonize

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<sup>288</sup> Groves, S., 'Testimony before the Committee on Foreign Relations, United States Senate on July 12, 2012', at: <https://www.heritage.org/testimony/convention-the-rights-persons-disabilities-treaty-doc-112-7> [accessed 18 July 2019]

<sup>289</sup> National Action Disability Plan 2009 – 2011, 2009, at: [http://www.hiproweb.org/fileadmin/cdroms/Kit\\_Formation\\_Services/documents/Additional/F-National\\_strategies/F-1\\_DISABILITY\\_ACTION\\_PLAN\\_Kosovo.pdf](http://www.hiproweb.org/fileadmin/cdroms/Kit_Formation_Services/documents/Additional/F-National_strategies/F-1_DISABILITY_ACTION_PLAN_Kosovo.pdf). [accessed 19 July 2019]

<sup>290</sup> Devyatkov, A., 'Russia and Transnistria in a patron-client relationship', 17 April 2019, *Universitatea 'Lucian Blaga' din Sibiu*, at: <http://www.lact.ro/2017/04/17/andrey-devyatkov-russia-and-transnistria-in-a-patron-client-relationship/> [accessed 24 July 2019]

<sup>291</sup> 'Our common goal is to make life easier for disabled people', Supreme Council of the Pridnestrovian Moldavian Republic, 22 February 2018 at: <http://en.vspmr.org/news/committees/sergey-cheban-nasha-obschaya-zadacha-oblegchitj-jiznj-invelidov-.html>. [accessed 26 October 2018]

legislation on persons with disabilities with the Convention',<sup>292</sup> and the appropriateness therefore of viewing it as an, assumed here, legitimization target for its disability related initiatives.

Equally, although the parent State of each of the four entities has ratified the CRPD, little evidence has been found that pwds feature significantly, or at all, within the complex and conflicted relationship DFAGs have with them. This refutes the parent States as specific legitimization targets. Nonetheless, as the CRPD is widely lauded by civil society, DFAG alignment with it may indicate an attempt to 'out State' the parent State in its imagination<sup>293</sup> to increase legitimacy in the eyes of its resident populations.

These latter considerations are not as pertinent to the RoS. Although it – now – receives State support from, in particular, the US and the UK and has links with some international organizations that include the EU and UN, it does not have a single domineering external patron State as such that it depends upon.<sup>294</sup> Nor does it face, at present, a military or other threat from its parent, and paradigmatic failed, State Somalia.<sup>295</sup> Somalia does however retain its power to impede attempts at UN membership.

The RoS does face significant external political intervention however, primarily through financial and political remittances from its diaspora.<sup>296</sup> This is so substantial, Bradbury refers

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<sup>292</sup> Concluding Observations in relation to the initial report of the Russian Federation, 7 March 2018, CRPD/C/RUS/CO/1 at: [http://tbinternet.ohchr.org/Treaties/CRPD/.../CRPD\\_C\\_RUS\\_CO\\_1\\_30558\\_E.doc](http://tbinternet.ohchr.org/Treaties/CRPD/.../CRPD_C_RUS_CO_1_30558_E.doc). [accessed 20 July 2019]

<sup>293</sup> Podder, S. *supra* note 127.

<sup>294</sup> Caspersen, N., 'Degrees of legitimacy: Ensuring internal and external support in the absence of recognition', 2015, *Geoforum* Vol. 66, 184-192.

<sup>295</sup> Pegg, S., Kolsto, P., 'Somaliland: Dynamics of internal legitimacy and (lack of) external sovereignty', *Geoforum*, Vol. 66, 193-202.

<sup>296</sup> Richards, R., 'Bringing the Outside In: Somaliland, Statebuilding and Dual Hybridity *Journal of Intervention and Statebuilding*, Vol. 9, Issue 1, 4-25.

to the RoS as a transnational State as ‘the participation of the diaspora in Somaliland is sufficiently influential to challenge traditional definitions of a State as a sovereign system of government within a delimited territory’.<sup>297</sup> Hansen too relates the intense RoS diaspora involvement in politics, pointing to dual lives of its politicians with homes in both the West and the RoS which combine with diaspora participation in online debates and advocacy directly with the authorities. Returnees, often with Western education or influences, are also on the increase.<sup>298</sup>

Diaspora motivations for intervention in the affairs of DFAGs tend to differ from patron States, whose interest tends to be geopolitically strategic. In contrast, diasporas are frequently motivated by the concept of their homeland and their wish to support a kinship group.<sup>299</sup> Limited scholarly attention is paid to how that support translates into disability related advocacy or regulations within DFAGs, although there are clear indications that diasporas do provide material support to pwds in their homelands. Human Rights Watch reports, for instance, on the RoS diaspora’s direct support for privately run mental health centers, treatment via remittances to individuals and families and funding for the upkeep of public mental health facilities in the RoS. Medically trained diaspora also provides in-person assistance.<sup>300</sup>

The emphasis of the diaspora on institutional care suggests an individual deficit (and charitable) approach to pwds. This accords with studies with Somali<sup>301</sup> diaspora which found that

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<sup>297</sup> Pegg, S., Kolsto, P. *supra* note 295, p.193

<sup>298</sup> Hansen, P., ‘*Khat*, Governance and Political Identity among Diaspora Returnees to Somaliland’, 2013, *Journal of Ethnic and Migration Studies*, Vol. 39, Issue 1, 143-159, p. 144.

<sup>299</sup> Byman, D., Chalk, P., Hoffman, B., Rosenau., Brannan, D. *supra* note 6.

<sup>300</sup> Human Rights Watch, ‘“Chained Like Prisoners”, Abuses Against People with Psychosocial Disabilities in Somaliland’, 2015, p. 65 – 69 at:

[https://www.hrw.org/sites/default/files/report\\_pdf/somaliland1015\\_forupload\\_0.pdf](https://www.hrw.org/sites/default/files/report_pdf/somaliland1015_forupload_0.pdf). [accessed 6August 2019]

<sup>301</sup> Authors often fail to distinguish between people from Somalia and the Republic of Somaliland.

‘disability is considered a very shameful and sensitive topic’, intellectual disabilities a taboo.<sup>302</sup>

The likelihood therefore that the diaspora generally acted as a legitimacy pressure of the RoS to endorse the CRPD is limited, although would benefit from further exploration.

As previously noted, DFAGs have multiple and evolutionary ties and relationships with local social groups and networks that pre-exist their governance role. These might include ‘political parties, religious organizations, kinship ties, veterans’ networks and other forms of collective life’,<sup>303</sup> all of which can shape and be shaped by DFAG rules. Accordingly, it’s useful to assess if their human rights awareness may have acted as a legitimation pressure on the four DFAGs to endorse the CRPD. This is considered briefly below.

Human rights awareness and support of human rights grounded law is generally high in Taiwan,<sup>304</sup> although stigma still attaches to pwds, particularly those with intellectual disabilities.<sup>305</sup> Taiwan however contains a longstanding pro-active network of disabled persons organizations (DPOs),<sup>306</sup> in the main deeply imbued with the international disability discourse. Although service provision has recently become the predominant activity of this network, its former focus was advocacy aimed at Taiwan’s ratification of the CRPD.<sup>307</sup> Its doing so, albeit five years after its ratification of the ICCPR and International Covenant on Economic Social

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<sup>302</sup> Rohwerder, B., ‘Disability in Somalia’, K4D Helpdesk Report, 19 January, 2018, at: [https://assets.publishing.service.gov.uk/media/5a744dbded915d0e8bf188ec/Disability\\_in\\_Somalia.pdf](https://assets.publishing.service.gov.uk/media/5a744dbded915d0e8bf188ec/Disability_in_Somalia.pdf). [accessed 5 August 2019]

<sup>303</sup> Staniland, P. *supra* note 111.

<sup>304</sup> For a discussion on this Shee, A. *supra* note 198, pp. 625-642.

<sup>305</sup> Chen, C-H, Hsu, K-L, Shu, B-C., & Fetzer, S, ‘The image of people with intellectual disability in Taiwan newspapers’, *Journal of Intellectual & Developmental Disability*, 2012, Vol. 37, Issue 1, 35-41.

<sup>306</sup> Alford, W., Hu, Q., Wharton, W., ‘People Over Pandas: Taiwan’s Engagement of International Human Rights Norms with Regard to Disability’, in Cohen, J., Alford, W., Lo, C-f., (eds.), *Taiwan and International Human Rights: A Story of Transformation* (Springer 2019), 643-660.

<sup>307</sup> Chang, H-h, ‘From advocacy to service provision: state transformation and the disability rights movement in Taiwan’, 2017, *Disability & Society*, Vol. 32, No. 3, 308-322.

and Cultural Rights (ICESCR),<sup>308</sup> signals the disability network as a legitimization pressure and target.

A further indication is the notable and very public efforts the government has made to draw international attention to the alleged participation of these networks in its CRPD related legislative and policy processes and reforms.<sup>309</sup> However, and in conflict with these efforts, concerns have been raised about its ‘lack of consultation with organizations of persons with disabilities in drafting legislation’,<sup>310</sup> and Taiwan’s failure to ensure deliberative consideration during the actual CRPD ratification and enacting process in Parliament. Arguments have been made that this reflects the lack of clear view of required reform of Taiwan’s national law to ensure compliance.<sup>311</sup> This points to a failure to share the norms it contains.

In contrast to Taiwan, Transnistria has, until relatively recently, been isolated from the international political community. This perpetuated a weak knowledge of human rights norms and the rights of pwds and was highlighted in a 2013 report by Senior Expert Hammarberg.<sup>312</sup> The report drew attention to a stark soviet legacy of marginalization, exclusion and institutionalization in segregated facilities of pwds who were out of sight and

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<sup>308</sup> US Library of Congress, Global Legal Monitor, at: <https://www.loc.gov/law/foreign-news/article/taiwan-two-international-human-rights-covenants-ratified/> [accessed 21 July 2019]

<sup>309</sup> Initial Report of the Republic of China (Taiwan) on the Convention on the Rights of Persons with Disabilities, 2017, para. 12, footnote 7, at: <https://www.mohw.gov.tw/sp-GS-2.html?Query=disabilities> [accessed 7 November 2018]

<sup>310</sup> Concluding Observations of the initial report of the Republic of China (Taiwan) on the Convention on the Rights of Persons with Disabilities (CRPD) adopted by the International Review Committee (IRC) on 3 November 2017, paras. 16 and 17, available at: <https://www.sfaa.gov.tw/SFAA/Pages/ashx/File.ashx?...~/...> [accessed 7 November 2018].

<sup>311</sup> Sun, N-Y., ‘On the Road to Equal Enjoyment of Human Rights for Persons with Disabilities: The Development of Domestic Laws in Taiwan and their dialogue with the CRPD’, in Cohen, J., Alford, W., Lo, C-f., (eds.), *Taiwan and International Human Rights: A Story of Transformation* (Springer 2019), 661 – 678.

<sup>312</sup> Hammarberg, T., ‘Report on Human Rights in the Transnistrian Region of the Republic of Moldova’, 14 February 2013, at: [http://md.one.un.org/content/dam/unct/moldova/docs/pub/Senior\\_Expert\\_Hammarberg\\_Report\\_TN\\_Human\\_Rights.pdf](http://md.one.un.org/content/dam/unct/moldova/docs/pub/Senior_Expert_Hammarberg_Report_TN_Human_Rights.pdf) . [accessed 26 October 2018]

out of mind of the general population. In response to the report, Transnistria undertook an internal complex stock taking exercise and sought international technical expertise to implement the report's recommendations, which included the CRPD as a benchmark framework for responses to pwds.

Rights awareness is growing in Transnistria and increased attention of its mass media to pwds, combined with its shift towards the rights-based approach in its cover of them has played a major role in changing prior discriminatory and exclusionary public perceptions.<sup>313</sup> These have contributed to the emergence of new DPOs and a vibrant civil society platform of pwds,<sup>314</sup> seemingly courted by the government. Upon announcement of its shift to a rights based approach to disability, it asserted, 'This initiative was born on the basis of numerous appeals from members of public organizations that unite people with disabilities in their ranks.'<sup>315</sup> Whether these appeals from the new Transnistrian based DPOs or the UN<sup>316</sup> that provided support in its development, was the predominant influencer is a matter of speculation, although both combine with Russia as likely legitimization audiences.

Similarly, the RoK was assisted in the development of its national disability strategies by 'a broad spectrum of local and international partners under the leadership and coordination of the Office of the Prime Minister/Office for Good Governance'. The support of Italy was singled

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<sup>313</sup> Hammarberg, T., 'Follow -up Report on Human Rights in the Transnistrian Region', 2018, [https://www.undp.org/content/dam/unct/moldova/docs/Follow-up\\_Report\\_TH\\_2018.pdf](https://www.undp.org/content/dam/unct/moldova/docs/Follow-up_Report_TH_2018.pdf). [accessed 18 July 2019]

<sup>314</sup> Hammarberg, T., *supra* note 312.

<sup>315</sup> 'Our common goal is to make life easier for disabled people', Supreme Council of the Pridnestrovian Moldavian Republic, 22 February 2018 at: <http://en.vspmr.org/news/committees/sergey-cheban-nasha-obschaya-zadacha-oblegchitj-jiznj-invelidov-.html>. [accessed 26 October 2018]

<sup>316</sup> UNDP/OHCHR/UNAIDS, 'Strengthening Human Rights in the Transnistrian region – One UN approach', April 2016, p. 3 at: [mptf.undp.org/document/download/16741](http://mptf.undp.org/document/download/16741). [accessed 7 July 2019]

out for thanks.<sup>317</sup> It wasn't until 2017 that a formal disability advocacy network, the Kosovo Disability Forum, emerged. Prior to that date individual disability organizations -heavily dependent on international organizations for funding which brought also 'ideas and practices on disability issues' - lobbied intensively for inclusion in development of the national strategies on disability.<sup>318</sup> They did so in the face of, again, multiple levels of exclusion and oppression, stigmatization of and violence towards pwds from within society generally.<sup>319</sup> As with Transnistria, little detailed data is available in English to measure accurately the level and impact of such lobbying. As with Taiwan and Transnistria, mixed legitimization audiences at the local, State and international level are likely joint drivers of the RoK's alignment with the CRPD and its *de jure* rights- based approach to pwds. States which, combined, have the power to fulfil their wish for UN membership through recognition are likely, however, to take priority.

Strong bonds of internal legitimacy were forged at the very beginning of the RoS's independence in 1991. Minimal external support and recognition by the authorities of the need to form initial political institutions which deliberately integrated customary leadership (and local political structures, norms and values) and 'thin' government authority<sup>320</sup> was the primary cause. This was reflected in its 2001 Constitution, adopted by referendum, where disability is portrayed only as a matter of last resort responsibility of the State, charity or the family.<sup>321</sup>

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<sup>317</sup> 'National Action Disability Plan 2013 – 2023', 2013 at:

[https://childhub.org/en/system/tdf/library/attachments/national\\_strategy\\_on\\_the\\_rights\\_of\\_persons\\_with\\_disabilities\\_in\\_the\\_republic\\_of\\_kosovo\\_2013-2023\\_2.pdf?file=1&type=node&id=23564](https://childhub.org/en/system/tdf/library/attachments/national_strategy_on_the_rights_of_persons_with_disabilities_in_the_republic_of_kosovo_2013-2023_2.pdf?file=1&type=node&id=23564). [accessed 19 July 2019]

<sup>318</sup> Krasniqi, V. 'Disability, Politics and Culture in Kosovo', 2014, *Socialno Delo*, Vol. 63 (3-5): 169-183.

<sup>319</sup> Ibid.

<sup>320</sup> Moe, L., 'Hybrid and 'Everyday' Political Ordering: Constructing and Contesting Legitimacy in Somaliland', 2011, *The Journal of Legal Pluralism and Unofficial Law*, Vol. 43, Issue 63, 143-177, p. 153.

<sup>321</sup> Article 19, 'Constitution of the Republic of Somaliland', 2001, at:

<http://somalilandgov.com/information-4/> [http://www.somalilandlaw.com/body\\_somaliland\\_constitution.htm](http://www.somalilandlaw.com/body_somaliland_constitution.htm). [accessed 19 July 2019], Handicap International, 'Promoting the civic and political rights of persons with disabilities & increasing their participation in the electoral process in urban and rural Somaliland', October 2014 at:

As the political system has matured however and built upon its early institutions and Western principles of democracy,<sup>322</sup> expectations of the authorities have increased. So too has human rights awareness within the resident population. In response to continued disempowerment, exclusion, stigma and violence faced by pwds, scattered self-help groups of pwds developed. These later merged into DPOs, albeit primarily located with urban centers. Manku identifies a long list of active national DPOs, which engage in human rights advocacy and service provision to various extents.<sup>323</sup> Hinting at a common pattern amongst the four entities – and a common legitimisation strategy - the consultation of DPOs in the development of the 2012 National Mental Health<sup>324</sup> and National Disability Policies,<sup>325</sup> and the 2017 Education sector Strategic Plan<sup>326</sup> (which contains a commitment to inclusive education for pwds) is acknowledged within them. So too is the extensive support from international actors including UK’s Department for International Development (DfID), the Global Partnership for Education (GPE), and UNICEF. These are possible legitimisation targets in themselves.

A tentative conclusion drawn from the above discussion is that the combined influence of multiple local and international actors and associated legitimisation pressures drove references to CRPD within disability related legislative reforms, rather than the values held by the authorities themselves. It is still too early to assess any implications. Nevertheless, the

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<https://aidstream.org/files/documents/DFID%20Inclusive%20Elections%20proposal%20FINAL%20VERSION.pdf>. [accessed 6 August 2019]

<sup>322</sup> Hansen, P. *supra* note 298.

<sup>323</sup> Manku, K., ‘Supporting Persons with Disabilities in Somalia’, K4D Helpdesk Report, 23 January 2018, at: [https://assets.publishing.service.gov.uk/media/5ab0cd27e5274a5e1d62d84e/Supporting\\_People\\_with\\_Disabilities\\_in\\_Somalia\\_Public.pdf](https://assets.publishing.service.gov.uk/media/5ab0cd27e5274a5e1d62d84e/Supporting_People_with_Disabilities_in_Somalia_Public.pdf). [accessed 5 August 2019]

<sup>324</sup> Republic of Somaliland National Mental Health Policy, 2012’, <https://www.grtitalia.org/media/data/national-mental-health-policy-2-octobar-12.pdf>. [accessed 5 August 2019]

<sup>325</sup> Human Rights Watch, ‘Somaliland: People With Disabilities Abused, Neglected’, 25 October 2015, p. 62 at: <https://www.hrw.org/news/2015/10/25/somaliland-people-disabilities-abused-neglected>. [accessed 7 July 2019]

<sup>326</sup> ‘Republic of Somaliland Ministry of Education and Higher Studies: Education Sector Strategic Plan’ (ESSP 2017 – 2021), October 2017 at: <https://www.globalpartnership.org/sites/default/files/2018-07-gpe-somaliland-esp-2017-2021.pdf>. [accessed 4 August 2019]

examples above raise many questions that will need to be answered by future longitudinal empirical case-specific data, and which will have relevance well beyond the specific DFAGs reviewed above.

For instance, whilst courting international legitimacy through endorsement of the CRPD has the potential to strengthen legitimacy within local or diasporic audiences, its effects may be more ambivalent on audiences that don't understand the complexity of the principles behind its provisions or explicitly eschew them. It may also strengthen or raise unrealistic expectations – of all actors. As Schlichte and Schneckener observe, what is required for a 'pleasant representation in the global media, might be quite different from the normative setting and political demands domestically'.<sup>327</sup> Even in well-resourced States, implementation of the CRPD requires complex and often profound legislative and policy change with problematical resource implications. If its endorsement is more than rhetoric and DFAGs try to transform its provisions into the domestic arena, what if these conflict with multi-level expectations or priorities? Which legitimacy audience will then take priority?

If no effort is made or insufficient financial resources or technical knowledge are made available, how does this impact internal or external legitimacy? Is it strategically wiser not to endorse disability related international norms if these can't be achieved? Taiwan is already facing vocal domestic criticism for the 'continuing discrimination occurring behind the façade of [CRPD compliant] legislative progress'.<sup>328</sup> The RoK has criticized itself for failing to

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<sup>327</sup> Schlichte, K., Schneckener, U., *supra* note 170.

<sup>328</sup> Sun, N-Y., 'On the Road to Equal Enjoyment of Human Rights for Persons with Disabilities: The Development of Domestic Laws in Taiwan and their dialogue with the CRPD', in Cohen, J., Alford, W., Lo, C-f., (eds.), *Taiwan and International Human Rights: A Story of Transformation* (Springer 2019), 661 – 678.

comply with its own CRPD commitments<sup>329</sup> as have disability activists,<sup>330</sup> and a consortium of domestic NGOs from ‘Somaliland’, supported by UN Assistance Mission in Somaliland/Somalia, submitted a report to the Universal Periodic Review of Somalia on the human rights situation in Somaliland. This included a section briefly detailing the RoS’s disability related legislation but also the continued discrimination and exclusion faced by pwds ‘in all aspects of society’.<sup>331</sup> It is still too early to begin to assess Transnistria’s efforts to comply with its self-proclaimed ‘obligations’.

#### **2.4.3. Piecemeal commitments to persons with disabilities rarely embedded within rights discourse for most armed non-State *de facto* authorities that govern**

There is of course some truth in the claim of the US that ratification of the CRPD is not imperative to demonstrate its commitment to the rights of pwds and, on the flip side, many CRPD State parties loudly express their devotion to the rights of pwds, but face considerable political, financial and technical challenges in transforming its wide ranging provisions into domestic law.<sup>332</sup> Ironically, in common with the US, most DFAGs express their commitment to pwds without reference to it (one obvious reason being its short history). How they do so is strikingly resonant with much of State practice that pre-dated the CRPD. CRPD. This is detailed in an influential 2002 report on the use of UN human rights mechanisms in the context of disability at that time.

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<sup>329</sup> ‘National Action Disability Plan 2013 – 2023’, 2013, at: [https://childhub.org/en/system/tdf/library/attachments/national\\_strategy\\_on\\_the\\_rights\\_of\\_persons\\_with\\_disabilities\\_in\\_the\\_republic\\_of\\_kosovo\\_2013-2023\\_2.pdf?file=1&type=node&id=23564](https://childhub.org/en/system/tdf/library/attachments/national_strategy_on_the_rights_of_persons_with_disabilities_in_the_republic_of_kosovo_2013-2023_2.pdf?file=1&type=node&id=23564). [accessed 19 July 2019]

<sup>330</sup> ‘Disabled Community Takes a Stand in Kosovo’, BalkanInsight, 10 January 2018, at: <https://balkaninsight.com/2018/01/10/disabled-community-takes-a-stand-in-kosovo-01-09-2018/> [accessed 13 August 2019]

<sup>331</sup> ‘Universal Periodic Review Somaliland Civil Society Organizations Submission’, 1 July 2015, at: <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=2407&file>. [accessed 13 August 2019].

<sup>332</sup> Sun, N-Y., ‘On the Road to Equal Enjoyment of Human Rights for Persons with Disabilities: The Development of Domestic Laws in Taiwan and their dialogue with the CRPD’, in Cohen, J., Alford, W., Lo, C-f., (eds.), *Taiwan and International Human Rights: A Story of Transformation* (Springer 2019), 661 – 678.

This thorough report observed, particularly with regards to ICESCR obligations, that despite excellent examples to the contrary, State coverage of pwds within State party reports tended to be piecemeal. Terminology varied and references to pwds were often juxtaposed with other groups perceived to be helpless, innocent or dependent. Pwds related policies and measures were frequently framed in terms of general welfare, with the term ‘right’ seldom used in descriptions of measures to meet their needs. Under half aimed at ensuring inclusion and participation of pwds.<sup>333</sup> Almost identical wording is apposite to describe how most DFAG frame commitments to pwds. Their own piecemeal nature dictates the, piecemeal, structure of the review below. This begins with terminology and definitions used.

#### **2.4.4. Terminology and definitions**

##### **Terminology used**

As noted in the Introduction, in the absence of agreement as to its meaning, the CRPD avoids defining disability or pwds completely. Instead it recognizes the term as an evolving concept but one that results from the interaction between persons with impairments and attitudinal and environmental barriers.<sup>334</sup> Whilst the Australian Network on Disability, amongst others, notes the difficulty in keeping up with ‘acceptable’ terminology in relation to disability, it advises that use of person-first language is most appropriate: the person should be referenced before

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<sup>333</sup> Bruce, A., Quinn, G., Kenna, P., ‘Disability and social justice: the International Covenant on Economic, Social and Cultural Rights’, in Quinn, G., and Degener, T., (eds.), *Human Rights and Disability: The current use and future potential of United nations human rights instruments in the context of disability* (United Nations New York and Geneva 2002), p. 130, at: <http://lup.lub.lu.se/search/ws/files/11124103/HRDisabilityen.pdf>. [accessed 22 July 2019]

<sup>334</sup> See Convention on the Rights of Persons with Disabilities, UN Doc. GA Res. 61/106 (2007), Preamble, para. 5 at: <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>.

the impairment, if indeed the impairment is relevant.<sup>335</sup> The CRPD usage of the term ‘person with disabilities’ is illustrative. In contrast, examples of impairment first language include ‘the blind’, the ‘handicapped’, the ‘amputee’. The Network advises also the avoidance of terminology that might imply victimhood, vulnerability or pity, such as ‘suffering from ...’, ‘afflicted with ...’,<sup>336</sup> an anathema to the CRPD. Language centered on impairment or victimhood reflects exclusionary individual deficit models of pwds, as does the use of the term ‘the disabled’ which implies a homogeneous group separate from the rest of society.<sup>337</sup>

The term ‘the disabled’ is more commonly seen within DFAG commitments than alternative terminology such as handicapped, infirm, incapacitated, invalid, deaf, blind, the blind and disabled, amputee, maimed: alternate terms are used interchangeably. A caveat is however necessary. For commitments translated into English, it is not possible to assess with any certainty whether the exact terminology used represents that of the translator or the DFAG in question.

The Democratic Party of Iranian Kurdistan refers to its workers and farmers with ‘disability’,<sup>338</sup> ISIS to its ‘disabled brothers’.<sup>339</sup> The Polisario Front speaks of its ‘handicapped’<sup>340</sup> and the

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<sup>335</sup> Australian Network on Disability, at: <https://www.and.org.au/pages/inclusive-language.html>. [accessed 12 July 2019]

<sup>336</sup> Ibid.

<sup>337</sup> Barking and Dagenham Centre for Independent, Integrated, Inclusive Living Consortium and Barking and Dagenham Council, ‘Disability Language and Etiquette’, July 2001, at: <https://www.disability.co.uk/sites/default/files/resources/disability-language-01-07.pdf>. [accessed 13 July 2017]

<sup>338</sup> ‘Programme and Internal Regulations Adopted in the XIIIth Congress’, 2004, at:

<http://www.pdk-iran.org/english/doc/Programme%20and%20Internal%20Regulations%2013th%20congress.htm> [accessed 17 February 2019]

<sup>339</sup> ‘A Letter to The Muslim Doctors In The West’, By Abu Sa’eed Al-Britani (From the video, “Message Of A Mujahid”), 2015, at:

<http://www.trackingterrorism.org/chat/letter-muslim-doctors-west-abu-saeed-al-britani>. [accessed 3 December 2016].

<sup>340</sup> “In Their Words: Perspectives of Armed non-State Actors on the Protection of Children from the Effects of Armed Conflict”, 2010, at: [https://www.genevacall.org/wp-content/uploads/2019/02/2010\\_GC\\_CANSA\\_InTheirWords.pdf](https://www.genevacall.org/wp-content/uploads/2019/02/2010_GC_CANSA_InTheirWords.pdf) [accessed 15 July 2019]

United Wa State Army the ‘blind and disabled’<sup>341</sup>, phraseology shared by EPLF.<sup>342</sup> Donetsk People’s Republic commits to assistance of persons with ‘reduced capabilities’ but also with ‘disabilities’.<sup>343</sup>

Physical, mental and intellectual disabilities are infrequently differentiated but when they are, reference to physical disabilities is more prevalent than mental disability. Intellectual disability is rarely explicitly mentioned. In some instances, terminology within commitments of a single actor does change over time.<sup>344</sup> Very few DFAGs<sup>345</sup> speak of ‘persons with disabilities’.

From terminology used, initial indications are that the large majority of DFAGs approach disability as an individual deficit. Proposed interventions in response could reasonably be expected, therefore, to target measures of individual support rather than improved accessibility and widespread removal of social barriers to full inclusion.

## Definitions

Attribution of meaning from terminology albeit from a current and Western perspective, does provide some useful insights into the level of attention and DFAG approaches to pwds. It is nonetheless inconclusive. Definitions of disability have the potential to be more so but are rare for DFAGs. Those sourced from within the commitments however do provide further

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<sup>341</sup> ‘The Bondage of Opium: the Agony of the Wa People. A Proposal and a Plea’ (date unknown)  
<http://www.ibiblio.org/obl/docs/BONDAGE.htm> [accessed 23/02/2019]

<sup>342</sup> EPLF: Political Report & National Democratic Programme, 1987  
[http://www.snitna.com/Second%20Congress\\_English.pdf](http://www.snitna.com/Second%20Congress_English.pdf). [accessed 15 July 2019]

<sup>343</sup> Official website of the Donetsk People’s Republic, 24/01/2019, available at: <https://dnrsoviet.su/donetsk-republic-faction-holds-organizational-meeting/> [accessed 17/03/2019]

<sup>344</sup> See for example Nagorno Karabakh below at Part 3.

<sup>345</sup> Primarily those with whom the international community actively and openly engages, Taiwan, the Republic of Kosovo and Transnistria

indications of the predominance of the individual deficit approach. The RoSO 2017 Law on Education, for example, defines a student with disabilities as ‘an individual who has deficiencies in physical and (or) psychological development, confirmed by the psychological, medical and pedagogical commission [...]’.<sup>346</sup> More nuanced is the PLO’s definition of pwds as ‘any individual suffering from a permanent partial or total disability whether congenital or not in his/her senses or in his/her physical, psychological, or mental capabilities to the extent that it restricts the fulfillment of his/her normal living requirements in a manner not usually faced by those without disabilities.’<sup>347</sup>

On legitimation processes, weak inferences only can be drawn from single point in time terminology, more so when not accompanied by context specific knowledge. Deliberate, discernable and publicly disseminated changes in language use to better accord with international norms is a stronger indication of strategic legitimation processes at play. Taiwan,<sup>348</sup> the RoK,<sup>349</sup> Transnistria<sup>350</sup> and the RoS,<sup>351</sup> have taken this step through their adoption and, now, use of the internationally endorsed phrase ‘persons with disabilities’.

#### 2.4.5. Helpless, dependent and vulnerable?

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<sup>346</sup> ‘Law of the Republic of South Ossetia "On Education"', 2017, available at: <http://www.parliamentroso.org/node/1299>. [accessed 19/02/2019]

<sup>347</sup> ‘Law Number 4 for the Year 1999 Concerning the Rights of the Disabled’, 1999, at: <https://siteresources.worldbank.org/DISABILITY/Resources/Regions/MENA/PalestinianDisLaw.pdf> [accessed 17 February 2019]

<sup>348</sup> Republic of China (Taiwan) responses to the list of issues on its initial report on the Convention on the Rights of Persons with Disabilities (CRPD), 24 July 2017, at: <https://www.sfaa.gov.tw/SFAA/Pages/ashx/File.ashx?...~/...> [accessed 17/02/2017]

<sup>349</sup> ‘National Strategy on the Rights of Persons with Disabilities in the Republic of Kosovo, 2013 – 2023’, [https://childhub.org/en/system/tdf/library/attachments/national\\_strategy\\_on\\_the\\_rights\\_of\\_persons\\_with\\_disabilities\\_in\\_the\\_republic\\_of\\_kosovo\\_2013-2023\\_2.pdf?file=1&type=node&id=23564](https://childhub.org/en/system/tdf/library/attachments/national_strategy_on_the_rights_of_persons_with_disabilities_in_the_republic_of_kosovo_2013-2023_2.pdf?file=1&type=node&id=23564) [accessed 14 July 2019]

<sup>350</sup> UNDP/OHCHR/UNAIDS, ‘Strengthening Human Rights in the Transnistrian region – One UN approach’, April 2016, p. 3 at: [mptf.undp.org/document/download/16741](http://mptf.undp.org/document/download/16741). [accessed 7 July 2019]

<sup>351</sup> ‘Republic of Somaliland Ministry of Education and Higher Studies: Education Sector Strategic Plan’ *supra* note 308.

The Taliban's description of its Department for the Affairs of the Needy, Orphans and Disabled in 2018 states:

'This organ is active in all provinces of the country as well as in areas where the Afghans live as immigrants where they help the needy, orphans, disabled and helpless people according to its working policies.'<sup>352</sup>

This image of inherent helplessness and individual deficit resonates with an earlier media release that claims, 'It is a reality that there are present many good men in the world enriched with wealth, particularly in the Muslim world who want to give in charity with their wealth in the right way and at the right time on the basis of Islamic sympathy. [...] hundreds of thousands of people have become orphans, widows, disabled and diseased. [...] Such people remain awaiting the help of good people'.<sup>353</sup>

In a similar vein, the CPI (Maoist) refers to 'all those who are physically handicapped, mentally handicapped, old persons, orphans and the helpless',<sup>354</sup> and the Justice Equality Movement (JEM) declares, amongst its general objectives, its 'Provision of care for the weakest members of the society including children, orphans, widowed, elderly, displaced and the disabled'.<sup>355</sup>

The KNU in turn refers to 'welfare programs for the elderly, disabled and vulnerable'.<sup>356</sup>

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<sup>352</sup> 'Brief report by Department for the Affairs of Needy, Orphans and Disabled', October 2018, *alemarah-English*. [accessed 30 July 2019]

<sup>353</sup> 'Unique opportunity of spending for the sake of Allah', *alemarah-English*, 17 September 2018. [accessed 30 July 2019]

<sup>354</sup> 'Policy Programme of Janathana Sarkar', 2004, at: <http://www.satp.org/satporgtp/countries/india/maoist/documents/papers/JANATHANA%20SARKARS.htm>. [accessed 13 August 2019]

<sup>355</sup> 'A proposal for change: towards a Sudan of Justice and Equality', 2005, at: [https://sudanjem.com/sudan-alt/english/books/pamjemlst-1\\_1.htm](https://sudanjem.com/sudan-alt/english/books/pamjemlst-1_1.htm), [accessed 24 July 2019]

<sup>356</sup> 'Karen National Union Department of Health and Welfare Health and Welfare Policy', February 2013, at: <https://kdhwttestsites.files.wordpress.com/2008/02/1-kdhw-hw-policy-feb-2013-final-k-e-b.pdf>. [accessed 24 July 2019]

Analogously, the Constitutions of Afghanistan,<sup>357</sup> India,<sup>358</sup> Sudan<sup>359</sup> and Myanmar,<sup>360</sup> parent States of the Taliban, the CPI (Maoist), JEM and KNU respectively all juxtapose ‘the disabled’ with other perceived vulnerable groups. The Constitution of Afghanistan for example speaks of ‘aid to the elderly, women without caretaker, disabled and handicapped as well as poor orphans’<sup>361</sup> and India’s of public assistance in cases of ‘unemployment, old age, sickness and disablement, and in other cases of undeserved want’.<sup>362</sup>

This homogeneity with parent State Constitutional norms accords with claims that DFAGs are embedded within historically contingent values and norms. From a legitimation perspective it can be explained as inconsequential chance or random or strategic legitimation processes. If as suggested above, commitments to pwds are significant, legitimation processes are more likely. As the four DFAGs in question do not specifically seek to emulate the normative frameworks of their parent States, random legitimation processes are the most likely.

The individual deficit approach to disability - and associated charitable and welfare responses - locates the ‘problem’ to be addressed within the individual, rather than exclusionary societal barriers. As social barriers include discrimination, the presence or otherwise of pwds within DFAG non-discrimination clauses is an additional indicator of models of disability held.

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<sup>357</sup> ‘The Constitution of Afghanistan (Ratified) January 26’, 2004 at:

<http://www.afghanembassy.com.pl/afg/images/pliki/TheConstitution.pdf> [accessed 24 July 2019]

<sup>358</sup> ‘Constitution of India’ 1949 (and amendments) at: <https://www.india.gov.in/my-government/constitution-india/constitution-india-full-text> [accessed 24 July 2019]

<sup>359</sup> ‘Sudan Constitution of 2005: subsequently amended’ at:

[https://www.constituteproject.org/constitution/Sudan\\_2005.pdf?lang=en](https://www.constituteproject.org/constitution/Sudan_2005.pdf?lang=en) [accessed 24 July 2019]

<sup>360</sup> ‘Constitution of Myanmar, 2008’ at: [http://www.burmalibrary.org/docs5/Myanmar\\_Constitution-2008-en.pdf](http://www.burmalibrary.org/docs5/Myanmar_Constitution-2008-en.pdf). [accessed 24 July 2019]

<sup>361</sup> Article 53 ‘Constitution of Afghanistan’. *supra* note 393.

<sup>362</sup> Article 41. ‘Constitution of India’ *supra* note 341.

#### 2.4.6. Non-discrimination and persons with disabilities

Non-discrimination, frequently coupled with equality, is a fundamental principle of international law<sup>363</sup> and IHRL specifically. When disability, therefore, is included in a general non-discrimination clause within the political and legal language and narratives of a DFAG and pwds are, consequently, expressly entitled to enjoy equally all the protections offered, it can be a powerful statement. Nonetheless, non-discrimination clauses do not work alone. Without more, affirmative measures or reasonable accommodation<sup>364</sup>, for example, they can prove ineffective if the philosophy that underpins the provision views ‘equality as neutrality’.<sup>365</sup>

The exclusion of disability from non-discrimination clauses should not nonetheless automatically be viewed as a deprivation of, for instance, protected rights or service provision. After all, both the ICCPR and the ICESCR failed explicitly to include disability in their non-discrimination clauses. In response, Degener, amongst others, claims it is now generally accepted that disability is covered by the term ‘other status’ often found in such clauses.<sup>366</sup> Despite the now common assumption by scholars and lawyers that ‘other status’ includes pwds, the omission from non-discrimination clauses of pwds still can evidence two closely connected, mind frames: a failure to recognize or understand disability related discrimination and/or an individual impairment/medicalized approach to pwds.

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<sup>363</sup> See for instance, Maucec, G., ‘Tackling disability-based discrimination in international and European law’, *International Journal of Discrimination and the Law*, Vol., 13 Issue 1, 34-49

<sup>364</sup> Lawson, A., *Disability and Equality Law in Equality in Britain*, (Bloomsbury Publishing PLC 2008)

<sup>365</sup> Quinn, G., ‘The moral authority for change: human rights values and the worldwide process of disability reform Gerard Quinn’, in Bruce, A., Quinn, G., and Degener, T. *supra* note 333, p. 16.

<sup>366</sup> Quinn and Degener, *supra* note 315, p. 54. See also Maucec, G. *supra* note 345 p. 36.

Non-discrimination clauses are not uncommon in DFAGs commitments reviewed. The CPI (Maoist) commits to non-discrimination ‘in terms of tribe, caste, religion, nationality, gender, language, region, education, post and status. It shall deal all as equals. It shall give equal opportunities to all’<sup>367</sup> and the Democratic Party of Kurdistan guarantees ‘all the inhabitants of Kurdistan [...] equal social, economic, political and cultural rights without any discrimination based on sex, race, ethnicity and religion’.<sup>368</sup>

Only seven DFAGs however include pwds in their non-discrimination clauses. This initially signals a failure of the majority to recognize disability related discrimination. Taiwan, the RoK and Transnistria account for three of the seven, as might be expected in view of their endorsement of the CRPD. The TRNC lists areas in which discrimination against pwds is prohibited: employment, education, air travel and other transportation, access to health care, the judicial system, or the provision of other state services.<sup>369</sup> The PLO approach differs slightly in that in 1999 it asserts equal rights of pwds with ‘other citizens’ although negates its efficacy by adding that, ‘he/she shall have the same rights and obligations that are *within his/her capabilities* [emphasis added]’.<sup>370</sup> This limitation is mitigated by its later 2003 Basic Law (endorsed also by Hamas) which asserts all are ‘equal before the law and the judiciary, without

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<sup>367</sup> ‘Policy Programme of Janathana Sarkar’, 2004, Article 5.2, at:

<http://www.satp.org/satporgtp/countries/india/maoist/documents/papers/JANATHANA%20SARKARS.htm>  
[accessed 25 July 2019]

<sup>368</sup> ‘Programme and Internal Regulations Adopted in the XIIIth Congress’, 2004, Article 19, at: <http://www.pdk-iran.org/english/doc/Programme%20and%20Internal%20Regulations%2013th%20congress.htm>

<sup>369</sup> US BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, 2016 Human Rights Report, Cyprus – the Area Administered by Turkish Cypriots at:

<https://www.state.gov/j/drl/rls/hrrpt/2016/eur/265410.htm>. [accessed 19 February 2019]

<sup>370</sup> ‘Law Number 4 for the Year 1999 Concerning the Rights of the Disabled, The Chairman of the Executive Committee of the Palestine Liberation Organization, The President of the Palestinian National Authority’, 1999, at:

<https://siteresources.worldbank.org/DISABILITY/Resources/Regions/MENA/PalestinianDisLaw.pdf>. [accessed 13 August 2019]

distinction based upon race, sex, color, religion, political views or disability.’<sup>371</sup> Finally, is N-KR, discussed in greater depth by way of case study in Part 3.

These findings accord to some extent with research undertaken by Geneva Call on the topic of gender discrimination. Its internal review of its database *Their Words*,<sup>372</sup> undertaken to better understand how ANSAs approach sexual violence and gender discrimination, found sparse evidence of prohibition of either and a tendency to group women with other ‘victims’ [Geneva Call terminology].<sup>373</sup> During subsequent related training, some ANSA participants expressed a wish to address sexual violence and increase women’s participation in leadership decisions. Of these, one ANSA is quoted as saying, ‘In our own organization, we do not have a code of conduct or rules and regulations on how to protect women and girls because we are more focused on political issues. However, we realize that gender issues are as important as political issues’. They sought further technical and other support on the topic in recognition of their lack of knowledge of the pertinent international normative framework. By 2016, 16 ANSAs had signed Geneva Call’s ‘Deed of Commitment for the Prohibition of Sexual Violence in Situations of Armed Conflict and Towards the Elimination of Gender Discrimination.’ This includes commitments to non-discrimination towards women.<sup>374</sup>

As Geneva Call makes public few details of the substance or its interpretation of its discussions with ANSAs, scholars offer their own assessment of drivers of endorsement of its Deeds of

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<sup>371</sup> ‘The Basic Law, 2003’, at:

[https://web.archive.org/web/20080801054229/http://www.usaid.gov/wbg/misc/Amended\\_Basic\\_Law.pdf](https://web.archive.org/web/20080801054229/http://www.usaid.gov/wbg/misc/Amended_Basic_Law.pdf). [accessed 15 July 2019]

<sup>372</sup> *Their Words*, available at: <http://theirwords.org/pages/geneva-cal>, [accessed 22 January 2020]

<sup>373</sup> Lamaziere, A., ‘Engaging armed non-state actors on the prohibition of sexual violence in armed conflict’, February 2014, HPN, at: <https://odihpn.org/magazine/engaging-armed-non-state-actors-on-the-prohibition-of-sexual-violence-in-armed-conflict/>. [accessed 26 July 2019]

<sup>374</sup> ‘DEED OF COMMITMENT UNDER GENEVA CALL FOR THE PROHIBITION OF SEXUAL VIOLENCE IN SITUATIONS OF ARMED CONFLICT AND TOWARDS THE ELIMINATION OF GENDER DISCRIMINATION’ at: <https://www.genevacall.org/wp-content/uploads/2019/07/DoC-Prohibiting-sexual-violence-and-gender-discrimination.pdf>. [accessed 26 July 2019]

Commitment. These frequently revolve around strategic legitimation processes.<sup>375</sup> Tentatively analogizing from the discussion above, one conjecture is that DFAGs largely have limited knowledge or understanding of the international community's approach to, and interest in disability related discrimination. They would not therefore consider it as a potential legitimation source until they became so aware, potentially as a result of international or engagement by resident populations.

On international engagement, the report *Disability and Armed Conflict* discussed in the Introduction to this dissertation makes a similar point but takes it further. It states:

‘A similar deed of commitment related to the prohibition of discrimination against persons with disabilities in armed conflict would add clarity to and improve protection of ANSA obligations vis-à-vis persons with disabilities.’<sup>376</sup>

Its additional observations however suggest that the development and wide signature of such a deed of commitment might be a premature endeavor at this early stage. The three most relevant observations in this respect are therefore reiterated here. First, there remains a significant divergence between still dominant current global cultural and social norms and those embodied within the CRPD. Second, conflict creates considerable insecurity and uncertainty and third, that current confusion abounds as to the scope of the complex disability related IHRL and IHL obligations and their application to ANSAs. A final note is made of the report's opening footnote recognizing that full and consistent realization of the rights and protections of pwds is an unobtainable goal.

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<sup>375</sup> Krieger, H., *supra* note 194.

<sup>376</sup> Priddy, A., *supra* note 11, p. 46.

In recognition of these challenges and the too frequently forgotten intersectionality of disability, a potential – and current - entry point for raising the issue of discrimination faced by pwds might be within current Geneva Call's Deed of Commitment Training. Two Deeds immediately come to mind: the *Deed of Commitment on the prohibition of sexual violence in situations of armed conflict and towards the elimination of gender discrimination*<sup>377</sup> and the *Deed of Commitments under Geneva Call for the Protection of Children from the effects of armed conflict*.<sup>378</sup>

In this regard, Geneva Call's work on the strengthening of respect for 'humanitarian norms' adopts an approach that might usefully be emulated in outside interventions to counter discrimination faced by pwds, albeit appropriately amended to suit the context in question. This approach 'relate[s] international humanitarian norms to religious norms which armed groups would more likely understand, recognize, and respect. Hence, the cooperation with Islamic religious leaders in Central Mindanao to come up with the most relevant Islamic references for the Key rules of behaviour for fighters in armed conflict.'<sup>379</sup>

By analogy, to strengthen respect for the disability related norms within the CRPD (and IHL), there is potential value in outside intervenors relating these to the norms of DFAGs which they are more likely to understand, recognize and respect. This requires knowledge of DFAG commitments to pwds. We now know that many DFAGs commit to pwds, irrespective of their

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<sup>377</sup> DEED OF COMMITMENT UNDER GENEVA CALL FOR THE PROHIBITION OF SEXUAL VIOLENCE IN SITUATIONS OF ARMED CONFLICT AND TOWARDS THE ELIMINATION OF GENDER DISCRIMINATION', *supra* note 374.

<sup>378</sup> DEED OF COMMITMENT UNDER GENEVA CALL FOR THE PROTECTION OF CHILDREN FROM THE EFFECTS OF ARMED CONFLICT' at: <https://www.genevacall.org/wp-content/uploads/2019/11/DOC-Children.pdf> [accessed 22 January 2020]

<sup>379</sup> See 'Protecting Civilians in Mindanao through Islamic Principles and International Humanitarian Law, 17 December 2019, at: <https://www.genevacall.org/protecting-civilians-in-mindanao-through-islamic-principles-and-international-humanitarian-law/> [accessed 22 January 2020].

ideological, religious or other position. There is value in seeking these commitments out and, where appropriate, shaping interventions in response. The review of commitments of the Taliban to pwds below, extends this discussion further.

The engagement of resident populations in response to disability related discrimination has been raised in the discussion on DFAG endorsement of the CRPD and the legitimization pressures and processes this engagement implicates. Part 3 revisits the issue briefly also. Other than through future research recommendations, the issue is not discussed further.

#### **2.4.7. Public goods and services pledged: general welfare, education, health and veterans with disabilities**

In literature on service provision by ANSAs, welfare, health and education are often discussed as a homogenous whole and, notably, in relation to strategic legitimacy processes. Here public goods and services are separated into four: general welfare, education, health and veterans with disabilities. This reflects the appearance of pwds within commitments, helps identify disability related priorities of DFAGs and allows attention to characteristics unique to each service.

DFAGs provide or influence a range of services to their resident populations, alone, with parent States, through humanitarian aid or a combination thereof. These include, for instance, the distribution of money, vouchers, food and clothes, health, water, education, gas and radio stations and religious services,<sup>380</sup> of which some are explicitly referenced within their

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<sup>380</sup> Heger, L., Jung., 'Negotiating with Rebels: The Effect of Rebel Service Provision on Conflict Negotiations', 2017, *Journal of Conflict Resolution*, Vol. 61, Issue 6, 1203-1229.

commitments.. Within those reviewed that refer to pwds, most relate to needs base welfare or shelter and the provision of education and healthcare.

### *Commitments to welfare*

Through the analytical lens of models of disability, the majority of DFAGs commitments to the welfare of pwds embody an individual deficit policy. Although 11 explicitly reference rights, six do so within their non-discrimination clauses as discussed above. Proposed interventions of the remaining five are not embedded within a coherent rights-based policy and largely better reflect needs-based approaches. As one aim of this dissertation is to present commitments in order to avoid their discussion in the abstract, examples are given in Table 1 below.

**Table 1: Selected examples of commitments of armed *de facto* authorities that govern to general welfare provision**

Commitments to general welfare provision
<p><b>Communist Party of Nepal (Maoist), 2001</b></p> <p>‘Rights of disabled persons, the elderly, destitute and children shall be protected and special attention shall be given to their care.’<sup>381</sup></p>

<sup>381</sup> ‘Common Minimum Policy & Programme of United Revolutionary People’s Council (Adopted by the First National Convention of the Revolutionary United Front consisting of the representatives of the C.P.N. (Maoist), the PLA, various class and mass organizations, local People’s Committees and prominent personalities in September 2001, which founded the United Revolutionary People’s Council, Nepal)’, 2001, at: <http://www.bannedthought.net/Nepal/UCPNM-Docs/1998/ExperiencesOfPW-9808.pdf>. [accessed 15 July 2019]

**Eritrean People's National Front, 1987**

'Provide necessary care and assistance to all fighters and other nationals who, in the course of the struggle against Ethiopian colonialism and for national salvation, have suffered disability in combat or in jails.'<sup>382</sup>

**Federation of Northern Syria – Rojova, 2016**

'The rights of people with special needs shall be guaranteed, and a decent living for the disabled and old people shall be secured.'<sup>383</sup>

**Hezbollah, 2002**

'Established in 1989, the association, [Hezbollah's run Al-Jarha Association] located in Beirut's southern suburbs,<sup>384</sup> cares for over 3,000 men, women and children. Eighty percent of the men the association assists were resistance fighters. The rest were wounded during the civil war or by Israeli aggressions in the South. Once a fighter or civilian is hurt, the association steps in and pays all medical bills, including trips abroad for any needed surgery or therapy.'<sup>385</sup>

**Islamic Emirate of Afghanistan (Taliban), 2018**

'Since its establishment, [the Department for the Affairs of Needy, Orphans and Disabled] has twice given aid to orphans, needy and disabled worth of hundreds millions of Afghanis

<sup>382</sup> 'EPLF: Political Report & National Democratic Programme', 1987 at: [http://www.snitna.com/Second%20Congress\\_English.pdf](http://www.snitna.com/Second%20Congress_English.pdf). [accessed 15 July 2019]

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'Social Contract of the Democratic Federalism of Northern Syria (ENG)', 2016 at: <https://internationalistcommune.com/social-contract/>. [accessed 19 July 2019]

<sup>384</sup> Beirut's Al-Jarha Association

<sup>385</sup> Getting by with a little help from a friend, Beirut's Al-Jarha Association helps wounded resistance fighters build themselves a future, Special to The Daily Star, 17 January 2002, <http://almashriq.hiof.no/lebanon/300/320/324/324.2/hizballah/jarha/index.html>. [accessed 15 July 2019]

throughout our own country and in the country of their migration. It is worth reminding that this is the general aid given to the orphans, needy and disabled... Similarly, in a number of cases where the orphans, needy and disabled are severely poor, they are provided assistance on the monthly basis by the workers and representatives of this organ according to its rules and regulations.’<sup>386</sup>

### **Party for the Independence of Guinea and Cape Verde, 1969**

‘Social assistance for all citizens who need it for reasons beyond their control, because of unemployment, disability or sickness.’<sup>387</sup>

### **People’s Democratic Programme of the Tigray People’s Liberation Front, 1983**

‘There shall be enough pension for the old and the handicap.’<sup>388</sup>

### **Republic of Biafra, 1969**

‘[t]he revolution, has imposed on the state of Biafra extra responsibility for the welfare of its people. Biafra will give special care and assistance to soldiers and civilians disabled in the course of the pogrom and the war. It will develop special schemes for resettlement and rehabilitation. The nation will assume responsibility for the dependents of the heroes of the revolution who have lost their lives in defence of the fatherland.’<sup>389</sup>

<sup>386</sup> ‘Brief report by Department for the Affairs of Needy, Orphans and Disabled’, October 2018, alemarah-English. [accessed 23 October 2018]

<sup>387</sup> ‘The PAIGC Programme: Appendix, published 1969’, at:

<https://www.marxists.org/subject/africa/cabral/paigcpgm.htm>. [accessed 19 December 2018]

<sup>388</sup> ‘People’s Democratic Programme of the Tigray People’s Liberation Front’ (TPLF), 1983, at:

<https://www.marxists.org/history/erol/ethiopia/tigray-program.pdf>. [19 December 2018]

<sup>389</sup> ‘The Ahiara Declaration: The Principles of the Biafran Revolution, By Colonel Chukweumeke Odumegwu Ojukwu’, 1 June 1969, at:

<https://web.archive.org/web/20140811030417/http://biafra.org/Ahiara.htm>. [accessed 28 July 2019]

### **Ukrainian Insurgent Army, 1944**

‘For a full pension support of all workers, including the sickness and disability allowances.’<sup>390</sup>

Through the analytical lens of legitimacy, if legitimacy scholars are correct in their claims that legitimization strategies include commitments grounded in local traditions and norms, these commitments can be viewed in alternate ways. They may simply reflect local individual deficit approaches to pwds within local communities, constitute random or strategic legitimization processes or combine a mixture of both. The Taliban is chosen to test this further. Reasons for doing so include the Taliban’s currency and extent of influence, to extend geographical coverage within this dissertation, the negligible scholarly interest in its approach to pwds and the extensive direct personal experience of physical<sup>391</sup> and mental<sup>392</sup> impairment of its former and current leaders and membership.

### *Taliban: background, legitimization pressures and processes*

The Taliban are the predominant umbrella group for the Afghan insurgency.<sup>393</sup> They turned an initial insurgency into a government in 1996, were overthrown in 2001 but by April 2019, reportedly controlled or contested up to 60-70 percent of Afghanistan much of it within the countryside.<sup>394</sup> Jackson and Weigand refer to them as a ‘full-fledged parallel political order’,

<sup>390</sup> ‘Text from Small Pamphlet Printed by Ukrainian UPA, High Command Of Ukrainian Insurgent Army’, Printing of UPA, Kyiv, Ukraine, September, 1944, at: [www.lucorg.com/news.php/news/898](http://www.lucorg.com/news.php/news/898). [accessed 10 March 2017]

<sup>391</sup> Rashid, A., *Taliban*, (I.B. TAURIS 2010) *supra* note 1.

<sup>392</sup> ‘The Taliban’s psychiatrist’, 26 November 2014, BBC News, at: <https://www.bbc.co.uk/news/magazine-29944329>. [accessed 02 August 2019]

<sup>393</sup> Counter Extremism Project, ‘Taliban’ at: <https://www.counterextremism.com/threat/taliban>. [accessed 13 August 2019]

<sup>394</sup> Jackson, A., Weigand, F., ‘The Taliban’s war for legitimacy in Afghanistan’, 2019, *Current History*, Vol. 118, Issue 807, 143-148.

which includes the collection of taxes, regulation of education and health and dispensing justice.<sup>395</sup> They have now reverted back to self-reference as the Islamic Emirate of Afghanistan.<sup>396</sup>

The evolution of its leadership from traditionalist village fighters to, in many respects, a modernist Islamist movement by 2015<sup>397</sup> is well noted. Scholars from a range of disciplines - peacebuilding, State building, development, counterinsurgency<sup>398</sup> and law<sup>399</sup> for example - assume multi-level legitimacy is, now, pro-actively sought.<sup>400</sup> Their legitimation pressures, processes and priorities have evolved with changes within the leadership and the increased education and international interconnectedness of portions of the population it contends with.<sup>401</sup>

The early years of the insurgency saw the 1989 Soviet withdrawal from Afghanistan. This resulted in devastating internecine fighting amongst warlords, lawlessness and chaos. The imposition of Sharia law and order by the Taliban, combined with the perception of its commitment to the end of governmental corruption, resonated with many Afghans. This contributed to their local legitimacy base. International legitimacy was not, then, a priority. In time however, their own excesses and those of others in its name, combined with the contrasting hearts and minds strategy of the Coalition Forces to damage their reputation. It damaged also their legitimacy base and led the leadership to recognize the need to attune more

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<sup>395</sup> Ibid.

<sup>396</sup> Roggio, B., 'At Moscow conference Taliban refers to itself as the 'Islamic Emirate' 61 times, 9 November 2018, Long War Journal at: <https://www.longwarjournal.org/archives/2018/11/at-moscow-conference-taliban-refers-to-itself-as-the-islamic-emirate-61-times.php>. [accessed 31 July 2019]

<sup>397</sup> Jackson, A., Weigand, F. *supra* note 394.

<sup>398</sup> Weigand, F., 'Afghanistan's Taliban – Legitimate Jihadists or Coercive Extremists?', 2017, *Journal of Intervention and Statebuilding*, Vol. 11, Issue 3, 359-381.

<sup>399</sup> Whitman, J. *supra* note 154.

<sup>400</sup> Jackson, A., Weigand, F. *supra* note 394.

<sup>401</sup> Ibid

fully with local expectations, wishes and norms and better align with responsible governance.<sup>402</sup> In this regard, a Taliban official observed in 2017 that its leadership ‘had time to think about their [prior] mistakes. They have seen more of the world and have learned. They were simple fighters then but are more worldly now’.<sup>403</sup>

The presumed resurgence of the Taliban’s local legitimacy is thought to rest upon, amongst others, continued State corruption, the offer of ‘employment’ in the absence of other employment opportunities, its perceived defense of the drug trade and its provision of -or influence over - public goods and services<sup>404</sup> in contrast to the government’s own failure to provide.

The Taliban’s international outreach, in contrast to its early years, is now pro-active. In addition to Pakistan, it engages with humanitarian INGOs and routinely with the UN. Its political office in Qatar remains open -for certain matters- and US-Taliban peace talks continue.<sup>405</sup>

Concomitant with the above is its increased management of internal<sup>406</sup> and external<sup>407</sup> perceptions. As one ex-Taliban official commented, ‘they know the rules now. [...] and they know how to manipulate the media’.<sup>408</sup> This includes communication through Twitter, SMS

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<sup>402</sup> Whitman, J. *supra* note 154.

<sup>403</sup> Jackson, A., Weigand, F. *supra* note 394.

<sup>404</sup> ‘The Taliban’s fight for Hearts and Minds’, *Foreign Policy*, 12 September 2018 at: <https://foreignpolicy.com/2018/09/12/the-talibans-fight-for-hearts-and-minds-afghanistan/>. [accessed 13 August 2019]

<sup>405</sup> ‘U.S. Taliban talks for peace in Afghanistan: What we know so far’, *Aljazeera*, 29 June 2019, at: <https://www.aljazeera.com/.../taliban-talks-peace-afghanistan-190510062940394.html>. [accessed 3 August 2029]

<sup>406</sup> Nagamine, Y. *supra* note 158.

<sup>407</sup> Jackson, A., Weigand, F. *supra* note 394.

<sup>408</sup> *Ibid.*

instant messages, Facebook and the radio. As Bockstette asserts, strategic communication is a vital part of the Taliban's war fighting campaign.<sup>409</sup>

Nagamine comments on the influence of legitimation pressures on the development of the Taliban's rules. He concludes a need for the Taliban to develop normative language to appeal to both the international community, whose normative reference is international law, and to its own members, whose normative reference is Pashtunwali and Islamic Law.<sup>410</sup> The Layeha for instance reflects principles of IHL. In this way it appeals to an international audience but to its intended internal audience, appears grounded in Islamic principles.

Of final background note is the opinion of the Center on International Cooperation (Center). In 2016 it interviewed with members of the Taliban's political wing on the issue of general principles for governing Afghanistan. The Center believes that the Taliban sees the role for the State being limited: whilst it should act as guardian of cultural and moral values, and provide security, the promotion of political and social equality, or human rights, were not considered necessary features of the State.<sup>411</sup> By analogy, it is possible to speculate this might reflect its current prioritizes within its current governance.

### *Taliban commitments to persons with disabilities*

The Taliban are, now, forthcoming with their viewpoints. Wardak for instance refers to a trove of online information - edicts, orders, fatwas, and manifestos – in the Pashto language, all

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<sup>409</sup> Bockstette, C., 'Taliban and Jihadist Terrorist Use of Strategic Communication', *Connections*, Vol. 89, No. 3, 1-24.

<sup>410</sup> Nagamine, Y. *supra* note 158. p 3-4

<sup>411</sup> Osman, B., Gopal, A., 'Taliban Views on a Future State', July 2016, Center on International Cooperation, at: [https://cic.nyu.edu/sites/default/files/taliban\\_future\\_state\\_final.pdf](https://cic.nyu.edu/sites/default/files/taliban_future_state_final.pdf). [accessed 31 July 2019]

waiting to be examined<sup>412</sup> and, for the English reader, translated. Analysis is restricted here to information found in English and publicly accessible. Whilst limited therefore, there is enough to develop embryonic insights into the model of disability that underpins the English language disability related communications of the Taliban and, also, possible legitimization processes that drives them. Nonetheless, far more work is needed to test and develop conclusions reached.

Most information was found within The Taliban's English language website Alemarah.<sup>413</sup> Within this, reports on civilian deaths (the responsibility of which is placed on enemy violence), the Taliban's provision of education and its proactive response to domestic violence against women predominate. Disability is discussed within a series of fairly vague and largely repetitive reports from the Department for the Affairs of the Needy, Orphans and Disabled. The Department was formed so that, 'the charity of good people can reach the deserving persons [which includes pwds] with complete honesty and transparency'.<sup>414</sup> As noted above, it often portrays pwds as helpless, dependent and vulnerable.<sup>415</sup>

A 2016 video from the website depicts the distribution of aid packages (flour, rice, sugar and cooking oil) during Ramadan. Accompanied by footage that acknowledges the quantity of aid as 'meager', it emphasizes the distribution is viewed by the leadership as 'a form of worship'.<sup>416</sup> The video 'reminds' the reader of the aid the Taliban has provided to those disabled 'as a result of American brutality' over the past 37 years. A later 2017 video, over one hour long, opens

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<sup>412</sup> Wardak, B., 'Understanding the Adversary: What the Taliban Think About Afghanistan Peace', 13 February 2019, at: <https://warontherocks.com/2019/02/understanding-the-adversary-what-the-taliban-think-about-afghanistan-peace-negotiations/>. [accessed 2 August 2019]

<sup>413</sup> Johnson, T., *Taliban Narratives: The Use and Power of Stories in the Afghanistan Conflict*, (New York, NY, Oxford University Press 2018)

<sup>414</sup> 'Unique opportunity of spending for the sake of Allah', alemarah-English, 17 September 2018. [accessed 30 July 2019]

<sup>415</sup> 'Brief report by Department for the Affairs of Needy, Orphans and Disabled', October 2018, alemarah-English. [accessed 30 July 2019]

<sup>416</sup> 'Islamic Emirate of Afghanistan distributes food packages to thousands of poor families in various provinces', alemarah-English, 16 August 2016, [accessed 30 July 2019]

with an introduction emphasizing the responsibility of Muslims to aid, amongst others, the needy and crippled.<sup>417</sup> In 2018, a further call addressed to ‘all Muslims of the world!’ was made for ‘all kinds of support’ for those disabled by the ‘wicked and brutal foreign infidel forces’, accompanied by an e mail address and contact number.<sup>418</sup>

Finally, note is made of a short biography of Al-Haj Moulavi Jaluddin Haqqani, the ‘Islamic World’s prominent Jihad and Scholarly personality’. He is noted as having a, ‘deep love and respect for religious scholars, students and other people, particularly for the disabled ones, by fulfilling all their needs and requirements. He left no stone unturned for getting aid for orphans, widows and other needy people.’<sup>419</sup>

### *Disability in Islamic Law*

Numerous scholars from the West write, primarily in English, on pwds, the CRPD and its implementation. More recent attention is now paid to pwds from an Islamic perspective, pertinent here as the Taliban assert that ‘Sharia’ guides their jihad.<sup>420</sup> Ghaly highlights the exceptional wealth and complexity of concepts and ideas on pwds contained in the Islamic tradition,<sup>421</sup> each influenced by time, place, culture<sup>422</sup> and circumstances.<sup>423</sup> Selected topics are *introduced* very briefly below.

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<sup>417</sup> ‘Aiding the Needy, release no. 81 by Al Emarah Studio, Al Emarah Studio, part of Multimedia Branch of Islamic Emirate of Afghanistan’s Cultural Commission, presents video release no. 81 entitled ‘Aiding the Needy’, 27 August 2017. [accessed 30 July 2019]

<sup>418</sup> ‘For the consideration of all Muslims of the world!’, alemarah-English, 12 September 2018. [accessed 30 July 2019]

<sup>419</sup> ‘Short Biography of Islamic World’s prominent Jihadi and Scholarly personality, Al-Haj Moulavi Jalaluddin Haqqani (may his soul rest in peace)’, alemarah-English, 19 September 2018. [accessed 30 July 2019]

<sup>420</sup> Wardak, B. *supra* note 391.

<sup>421</sup> Ghaly, M., *Islam and Disability: Perspectives in theology and jurisprudence*, (Routledge 2010).

<sup>422</sup> Al-Aoufi, H., Al-Zyoud, N., & Shahminan, N., ‘Islam and the cultural conceptualisation of disability’, 2012, *International Journal of Adolescence and Youth*, Vol. 17, Issue 4, 205-219.

<sup>423</sup> Ghaly, M. *supra* note 421. p. 154

Discussions of disability terminology in the legal sources of Islam indicate a lack of equivalent to the English term disability – itself subject to intense disagreement - most particularly within classical sources.<sup>424</sup> Bazna and Hatab argue that whilst the generic term ‘disability’ was not mentioned in the Qur’an, the term ‘disadvantaged people’ was used to refer to those with ‘special needs’. Words such as ‘ajiz’ (weak), person with ‘*uyub*’ (impairments) and the ‘*marid*’ (sick)<sup>425</sup> are used and often mentioned in conjunction ‘orphan’, ‘destitute/needy’ and ‘wayfarer’.<sup>426</sup> Bhatti, Moten, Tawakkul and Amer point however to what they refer to as contemporary Arabic law and literature in the Muslim world that utilizes broader terms to refer to individuals with disabilities that more closely aligns with the English usage.<sup>427</sup>

Rispler-Chaim concurs with Bhatti *et al* that Islamic texts affirm the moral neutrality and normalcy of disability (and disease) as a natural part of the health continuum, a fact of life to which no stigma or evil is attached. Disability is, rather, viewed as a trial from Allah.<sup>428</sup> Disability is recognized in the context of individual condition and social disadvantage. Disadvantage (lack of some physical, economic or social characteristic) is believed to be a result of barriers produced by society. Whilst Islamic law requires disabled persons to participate in obligations incumbent upon all Muslims (for example religious responsibilities tailored to their ‘ability’, to access available support and participate in Jihad), obligations of social responsibility and duties towards them are imposed on the community. Community is defined as a group of people living together and/or united by shared interest, religion,

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<sup>424</sup> Bhatti, I., Moten, A., Tawakkul, M., and Amer, M., 'Disability in Islam: Insights in Islam: Insights into Theology, Law, History, and Practice', in Banks, M., Gover, M., Kendall, E., Marshall, C., (eds.) *Disabilities: Insights from across Fields and around the World*, (Praeger, Westport, Connecticut, London 2009), ch. 13.

<sup>425</sup> Padela, A., 'A Review of "Disability in Islamic Law"', 2011, *Journal of Religion, Disability & Health*, Vol. 15, Issue 3, 331-332.

<sup>426</sup> Bazna, M., Hatab, T., 2005, *Journal of Religion, Disability & Health*, Volume 9, Issue 1, 5-27.

<sup>427</sup> Bhatti, I., Moten, A., Tawakkul, M., Amer, M. *supra* note 424.

<sup>428</sup> Rispler-Chaim, *Disability in Islamic Law* (Dordrecht, The Netherlands, Springer 2007).

nationality, *etc.*<sup>429</sup> Responsibility of communities can be grouped into three key pillars: equity in treatment, social welfare and, for some, as an issue of rights derived from God.<sup>430</sup>

A highly complicated system elaborating in detail who is responsible for rectifying inequity and the provision of social welfare of pwds is provided within Islamic sources.<sup>431</sup> Crudely stated, if the family institution fails to meet the financial need of pwds, it becomes the collective duty of the Muslim community at large to do so. If they don't, all members will be in a state of sin.<sup>432</sup> This includes the obligation upon Muslims to give a small percentage of their income to charity or Zakat: pwds are considered to have a rightful share of this.

Finally, Ripler-Chaim, again amongst others, argues that Islamic law addresses several issues that fall today within the human rights discourse.<sup>433</sup> This claim is based on the view that as Islam is committed to the shared humanity of all humans, pwds have the right to be treated with equity and dignity. The rights to marriage, to participation in communal and religious life, to own property or inherit property, to protection and social welfare are often given as examples of specific rights.<sup>434</sup> Ghaly is less sure. He points to the lack of terminology central to the concept of the rights of pwds, such as 'human rights', 'autonomy' and 'independence', but does accept that rights form a not insignificant part of Muslim scholars' debates on the issue.<sup>435</sup>

Nonetheless, despite these interpretations of Islamic law to pwds, discriminatory attitudes towards pwds have found their way into a range of scholarly articles and also are seen within

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<sup>429</sup> Ghaly, M., *supra* note 421, p. 154

<sup>430</sup> Bhatti, I., Moten, A., Tawakkul, M., Amer, M. *supra* note 424.

<sup>431</sup> Ghaly, M. *supra* note 421. p. 161

<sup>432</sup> *Ibid.* p. 154

<sup>433</sup> Ripler-Chaim., *supra* note 428.

<sup>434</sup> *Ibid.*

<sup>435</sup> Ghaly, M. *supra* note 421 p. 164

society more widely.<sup>436</sup> With this divergence in mind, Ghaly urges scholars from varied disciplines to interrogate the extent to which Islamic texts drive societal responses to pwds, and to what extent society drives the texts.<sup>437</sup> Rispler-Chaim, from a slightly different angle, claims that analysis of Islamic texts provide important insights into the basic perceptions of pwds in those societies that follow the Islamic path: the texts have developed within Islamic societies, absorbed their culture and ideology and mirror, at least partially, some of its outlook and traits.<sup>438</sup>

In partial response to Ghaly, the congruence of Islamic law edicts on ‘disabilities’ and the English language media releases of the Taliban’s Department for the Affairs of the Needy, Orphans and Disabled reveals that the Taliban draw heavily from the approach of Islamic law to pwds in, at least, its English language disability related public communications. Western and Islamic disability scholars and commentators may interpret their edicts differently. The former might choose to concentrate on its perceived derogatory language<sup>439</sup> and discriminatory individual deficit and needs based welfare approach and the latter on its perceived focus on support, equality and fairness.<sup>440</sup>

Rispler-Chaim’s claim that Islamic texts (and, by analogy, the Taliban’s commitments above) absorb and mirror components of societal culture and ideology, accords with legitimacy theorists’ broad agreement that ANSA acts – which include their rule-making - reflect historically contingent and local values, norms and beliefs. Relevant is Jackson and Weigand

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<sup>436</sup> Ibid.

<sup>437</sup> Ibid.

<sup>438</sup> Rispler-Chaim., *supra* note 421, p. 94

<sup>439</sup> ‘I Am Equally Human: Discrimination and Lack of Accessibility for People with Disabilities in Iran’, Human Rights Watch at: <https://www.hrw.org/report/2018/06/26/i-am-equally-human/discrimination-and-lack-accessibility-people-disabilities-iran>, accessed 2 August 2019]

<sup>440</sup> ‘Supporting the Elderly and Disabled in Islam’, Muslim Aid, <https://www.muslimaid.org/media-centre/blog/supporting-the-elderly-and-disabled-in-islam/>.

observation that the, ‘Taliban are local people. They are from the same villages that they rule, which gives them a deep understanding of the specific local context and the people’s problems, grievances and expectations.’<sup>441</sup>

Nevertheless, indications that local population responses to disability in Taliban governed or influenced territory, might not align with those of the Taliban as detailed above, adds greater nuance to the picture. It is difficult to gain a complete picture of disability prevalence and, more specifically, local approaches to pwds in such territory. However, a generalized Afghanistan overview can signal their likelihood. This reveals high levels of physical and mental disability within resident populations,<sup>442</sup> with very limited services to assist and support pwds currently in place. Community mechanisms - traditional social assistance networks- are eroding, although the extent varies between regions. Stigma frequently attaches to impairment which is often viewed negatively as ‘a punishment from God’, although preference is shown to pwds with conflict created impairments over those born with impairment.<sup>443</sup> Whilst numerous appeals for zakat are made by INGOs,<sup>444</sup> (and the Taliban) responses to pwds in receipt of it are ambivalent: pwds have expressed a feeling of shame of their reliance upon and receipt of ‘charity’.<sup>445</sup>

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<sup>441</sup> Rashid, A., *supra* note 391.

<sup>442</sup> International Committee of the Red Cross, ‘Afghanistan: Record number of disabled Afghans seek assistance in ICRC’s 30<sup>th</sup> year, 23 January 2019, at: <https://www.icrc.org/en/document/afghanistan-record-number-disabled-afghans-see-assistance-icrcs-30th-year>. [accessed 2 August 2019]

<sup>443</sup> Anderson, C., ‘Overcoming Stigma Against Disabilities in Afghanistan’, 2 November 2016, The Asia Foundation at: <https://asiafoundation.org/2016/11/02/overcoming-stigma-disabilities-afghanistan/>. [accessed 1 August 2019]

<sup>444</sup> ‘Supporting the Elderly and Disabled in Islam’, Thu al-Hijjah 1, 1440, Muslim Aid, <https://www.muslimaid.org/media-centre/blog/supporting-the-elderly-and-disabled-in-islam/>. [accessed 2 August 2019]

<sup>445</sup> Altai Consulting, ‘Disability Assistance in Afghanistan: Afghan Perceptions on Disability’, 2004, [https://www.gichd.org/fileadmin/GICHD-resources/rec-documents/Disability\\_Assistance\\_in\\_Afghanistan.pdf](https://www.gichd.org/fileadmin/GICHD-resources/rec-documents/Disability_Assistance_in_Afghanistan.pdf). [accessed 2 August 2019]

The apparent incongruency between the Taliban's English language communications/commitments detailed above and possible local approaches to pwds, may be partly explained through the lens of legitimation processes as follows.

The communications and the commitments to pwds they contain, target and resonate primarily with the international community, whilst minimizing any risk of the alienation of the Taliban's own members or local populations. The intended messages segment their intended audiences. Their content draws implicit attention to the failure of the Afghanistan government to provide for pwds, and explicit attention to the Taliban's own advocacy and welfare support on their behalf. The latter is framed within, largely non contentious interpretations of disability pertinent Islamic law but also closely aligns with increased global attention to pwds, if not its complete account. Finally, Coalition forces are attributed with the creation of a range of disabilities and consequent increased need.

Four simultaneous instrumental purposes of this narrative are proposed and in potential order of priority. The first is a continuation of the Taliban's broad attempt to delegitimize the Afghanistan government whilst building its own international legitimacy<sup>446</sup> within primarily, Muslim communities.<sup>447</sup> These communities include Muslims resident in the West. This links to the second aim, the delegitimization of Coalition forces. A third, and again linked aim is to garner sympathy and support more broadly from receptive Muslim and non-Muslim audiences, and finally, to mobilize financial support from both.

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<sup>446</sup> Drissel, D., 'Reframing the Taliban insurgency in Afghanistan: new communication and mobilization strategies for the Twitter generation', 2015, *Behavioral Sciences of Terrorism and Political Aggression*, Vol. 7, Issue 2, 97-128.

<sup>447</sup> 99% of the Afghanistan population is Muslim at <http://worldpopulationreview.com/countries/afghanistan-population/>. [accessed 4 August 2019]

A caveat, the result of limiting analytical lenses to two variables, is necessary. This relates to the role of ideology in DFAG behaviour and which may - or may not - dictate to varied degrees responses to pwds. Jackson asserts that the Taliban's regulations on personal behaviour, combined with the form of goods provided are designed to control the population but are also driven by ideology.<sup>448</sup> Sanin and Wood argue the importance of ideology in the analysis of civil war to explain observed variation in ANSA behaviour. They convincingly claim that whilst ideology can have an instrumental value – as suggested above - some ANSAs make strategic choices for ideological reasons, often normative concerns prescribed by their ideology.<sup>449</sup> Whilst they, like many scholars, pay close attention to drivers of violence in the development of their hypothesis, their conclusions have broader relevance. In this specific context, whilst the medium of its disability related communications suggests an instrumentalisation of the Taliban's ideology, the influence of its normative prescriptions cannot be discounted. Analogous reasoning is potentially equally applicable to alternative ideologies that drive NIACs.<sup>450</sup>

*A brief reflection on disability related outside interventions in Afghanistan*

As detailed in the Introduction, Ledwidge ruminates on the problems that have faced outside rule of law initiatives in Afghanistan that have led to the domination of the Taliban's rhetoric and justice narrative. He believes the problems that have faced these initiatives will arise in other areas of governance interventions unless underpinned by deep knowledge of the environment within which change, or impact, is sought and shaped around that environment. If he is correct, this has implications for the likely efficacy of outside humanitarian

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<sup>448</sup> Jackson, A., Weigand, F. *supra* note 394.

<sup>449</sup> Sanin, R., Wood, E., *supra* note 126.

<sup>450</sup> Bengtsson, S., 'Out of the frame: disability and the body in the writings of Karl Marx', 2017, *Scandinavian Journal of Disability Research*, Vol. 19, Issue 2., 151-160.

interventions grounded within the CRPD (or IHL) aimed at increased protection of pwds within Taliban governed territory.

As noted in the Introduction this dissertation shies away from premature suggestions as to how to shape outside interventions. Instead it limits itself to a few basic observations drawn from discussions to this point. These observations have the potential to be pertinent to outside interventions such as humanitarian negotiations with the Taliban on the issue of access to -and the form of- humanitarian aid that includes resident pwds as target beneficiaries.

The first observation is that the efficacy of interventions grounded in IHRL or IHL may increase if underpinned by knowledge of and, importantly, the interaction between the following: disability related IHRL and IHL, Islamic Law's approach to disability, current challenges faced by and the approach of resident populations to pwds and the Taliban's own disability related commitments and communications, and the model of disability and associated legitimacy processes they potentially reflect.

The second is that outside interveners have the opportunity to utilise potential areas of agreement or close agreement between Islamic Law and IHRL and IHL in their work. For instance, as previously noted, Islamic Law refers to disability in terms of moral neutrality, a fact of life to which stigma should not be attached. It refers also to the dignity, equality and rights of pwds and draws attention to the responsibility of the Muslim community to serve pwds or otherwise live in a state of sin. Equally, public communications of the Taliban refer to its own and the community's fulfilment of their obligations to pwds as being a 'form of worship'. This language and/or rhetoric are potential constructive entry points around which outside intervenors wedded to the CRPD can shape their negotiations and interventions.

A final observation here relates to the frequent practice of the facilitation of humanitarian access with the Taliban through community elders. As noted above, some communities attach stigma to pwds who lack service and other provision. Again, the language within Islamic Law and Taliban communications, can be utilised by outside intervenors to shape their interventions in response.

### ***Education, health and veterans with disabilities***

In contrast to the Taliban's approach to welfare provision for pwds, their approach to education and the importance the movement attaches to it has been extensively documented.<sup>451</sup> Whilst women's perceived place within its education provision is frequently discussed, little accessible data is available on their approach to the education of pwds. A similar lack of detail pertains to most DFAGs reviewed here, albeit with notable exceptions, as discussed below.

The aims of education have long been debated,<sup>452</sup> dominated by a rift between those who view education as a process of personal development and those who focus on the many forms of its instrumental value.<sup>453</sup> On its instrumentalization by States, a UN Special Rapporteur on the right of education decries its commercialization',<sup>454</sup> another its instrumentalization for the reduction of poverty and the consequent decision- making power of banks over education

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<sup>451</sup> Giustozzi A., France C., 'The Ongoing Battle for Education, Uprisings, Negotiations and Taleban Tactics', 10 June 2013, Afghanistan Analysis Network, at: <https://www.afghanistan-analysts.org/publication/aan-papers/the-ongoing-battle-for-education-uprisings-negotiations-and-taleban-tactics-2/>. [accessed 4 August 2019]

<sup>452</sup> Mearsheimer, J., 'The Aims of Education', 1998, *Philosophy and Literature*, Vol. 22, Number 1, 137-155.

<sup>453</sup> Higgins, C., 'The Possibility of Public Education in an Instrumentalist Age', 2011, *Educational Theory; Urbana*, Vol. 61, Issue 4, 451-466.

<sup>454</sup> Report of the Special Rapporteur on the right to education, Kishore Singh, Protecting the right to education against commercialization, 10 June 2015, UN Doc. No. A/HRC/29/30, at: [https://www.right-to-education.org/.../protecting-right-education-against-commercializaiton A/HRC/29/30](https://www.right-to-education.org/.../protecting-right-education-against-commercializaiton-A/HRC/29/30). [accessed 25 June 2019]

policy.<sup>455</sup> Macintyre asserts the ‘instrumentalist ideal of productivity and a chilling conception of the school’<sup>456</sup> and Rohwerder the general agreement that its provision can promote State legitimacy.<sup>457</sup>

In contrast, very little is known about education provision of ANSAs although Somers writes that approximately one-third of ‘insurgencies’ in recent history have provided education and half of those who have controlled territory have done so.<sup>458</sup> Its extent, quality and inclusiveness largely remains an enigma.

Some isolated and scattered insights, including into the instrumentalization of education by DFAFs are nonetheless available. Somers for instance reports on ANSAs rejecting the national curriculum and replacing it with their own to reflect elements of the core values of their movements.<sup>459</sup> ISIS, when active in Iraq, Syria and Libya, is reported to have taken steps to control the education system within the territories it controlled and designed its regulations to socialize children with Islamic values. Boys were separated from girls and changes to the curriculum were imposed.<sup>460</sup> Horgan *et al* argue ISIS has ‘filled a void, seducing children and their families with the prospect of a free education in a setting where there is no existing system of education. While ISIS does not force parents to send their children to ISIS-sponsored

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<sup>455</sup> Tomasevski, K., *The State of the Right to Education Worldwide Free or Fee: 2006 Global Report*, 2006, at: [http://www.katarinatomasevski.com/images/Global\\_Report.pdf](http://www.katarinatomasevski.com/images/Global_Report.pdf) [accessed 4 August 2019]

<sup>456</sup> MacIntyre, A., Dunne, J., ‘Alasdair Macintyre on Education: In Dialogue with Joseph Dunne,’ in *Education and Practice: Upholding the Integrity of Teaching and Learning*, 2004, ed. Joseph Dunne, J., and Hogan, P., Maiden, Massachusetts: Blackwell, 2004, 3.

<sup>457</sup> Rohwerder, B., ‘Education and building legitimacy during conflict’, K4D Helpdesk Report 1213, 27 March 2015, at: <https://assets.publishing.service.gov.uk/media/57a0896640f0b652dd0001ea/HDQ1213.pdf>. [accessed 10 August 2015]

<sup>458</sup> Somers, J., ‘Education and Armed Non-State Actors: Towards a Comprehensive Agenda, Background Paper for the PEIC/Geneva Call Workshop, Geneva, Switzerland, 23-25 June, 2015’, p. 2 at: <https://educationandconflict.org/publications/index.html>. [accessed 10 August 2019]

<sup>459</sup> *Ibid.* p. 11

<sup>460</sup> See for instance, ‘ISIS and the sectarian conflict in the Middle East’, House of Commons Research Paper 15/16, 19 March 2015, at: <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/RP15-16#fullreport>. [accessed 10 August 2019] and Revkin, M. *supra* note 45.

schools, by providing the only alternative, its “curriculum” represents *de-facto* recruitment.’<sup>461</sup> Finally, the education branch is considered a critical component of Hezbollah’s organization, which spent \$14 million on scholarships and financial aid during the years of 1996 to 2001 and successfully marginalized the Lebanese Department of Education.<sup>462</sup>

To try to better understand the value placed on education by ANSAs more widely, Geneva Call approached ten active ANSAs for their views on the protection of education. All ten stressed the long-term importance of education for societal development. Some described it as lifesaving or a basic need and others a means of safeguarding children from ignorance and destructive ideologies.<sup>463</sup> Although unable to factually verify these claims and statements, which might not fully reflect the situation in practice, Geneva Call suggests the views expressed should be taken ‘as a way to address the ANSAs understanding of the protection of education’.<sup>464</sup> No reference to the education of pwds is within Geneva Call’s subsequent report. Speculative explanations include the invisibility of pwds in the questions asked by the organization, the invisibility of pwds in the minds of the DFAGs involved or a combination of both.

As noted above, State approaches to the education of pwds varies. These include complete exclusion for pwds considered uneducable or segregated, special, vocational, integrated,

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<sup>461</sup> Horgan, J., Taylor, M., Bloom, M., & Winter, C., 2017, ‘From Cubs to Lions: A Six Stage Model of Child Socialization into the Islamic State’, *Studies in Conflict & Terrorism*, Vol. 7, 645-664, p. 653.

<sup>462</sup> Love, J., ‘Hezbollah: Social Services as a Source of Power’, Joint Special Operations University, p. 25-26 at: [https://www.globalsecurity.org/military/library/report/2010/1006\\_jsou-report-10-5.pdf](https://www.globalsecurity.org/military/library/report/2010/1006_jsou-report-10-5.pdf). [accessed 10 August 2019]

<sup>463</sup> ‘In Their Words, Armed non-State actors share their policies and practice with regards to education in armed conflict’ *supra* note 340.

<sup>464</sup> *Ibid.*

inclusive and/or a combination of one or more.<sup>465</sup> Even for proponents of inclusive education - which should include State parties to the CRPD -<sup>466</sup> understandings of and its implementation of differ widely between States, regions and schools.<sup>467</sup> In this regard Haug, in 2017, contends, ‘Most nations still practice a dichotomy between special and ordinary education within the concept of inclusion’. He adds, ‘No country has yet succeeded in constructing a school system that lives up to the ideals and intentions of inclusion, as defined by different international organizations’.<sup>468</sup>

As apparent from the selected extracts below, similar varied, confused and conflicted provisions of education for pwds are embedded within DFAG commitments. These include the four DFAGs which have endorsed the CRPD,<sup>469</sup> the four which include disability in their non-discrimination clauses,<sup>470</sup> Hamas, LTTE, the RoSO and the Revolutionary United Front of Sierra Leone. Table 2 below provides extracts of the final three listed above, again simply for illustrative purposes.

**Table 2: Selected examples of commitments of armed *de facto* authorities that govern to the provision of education**

<b>Liberation Tigers of Tamil Eelam</b>
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<sup>465</sup> For further information see, for example, the website of the UN Special Rapporteur on the right to education at: <https://www.ohchr.org/EN/Issues/Education/SREducation/.../SREducationIndex.aspx>. [accessed 4 August 2019]

<sup>466</sup> Committee on the Rights of Persons with Disabilities, General Comment No. 4 (2016), Article 24: Right to inclusive education, CRPD/C/GC/4, at: <https://www.ohchr.org/Documents/.../CRPD/GC/RighttoEducation/CRPD-C-GC-4.doc>. [accessed 25 June 2019]

<sup>467</sup> Haug, P. *supra* note 150.

<sup>468</sup> *Ibid*

<sup>469</sup> Taiwan, Transnistria, the Republic of Kosovo and the Republic of Somaliland.

<sup>470</sup> Hamas, Nagorno-Karabakh, the Palestine Liberation Organisation and the Turkish Republic of Northern Cyprus.

[A]ll children have the right for education. Therefore, the Tamil Eelam Education Department shall make arrangements to provide Primary Education free to all children.

[M]ake vocational education and training available to the children who are physically and mentally handicapped.<sup>471</sup>

### **Revolutionary United Front of Sierra Leone, 1995**

‘The way to end exploitation and oppression, economic and social injustice, ignorance, backwardness and superstition is to make education available to all - both the young and old, male and female, and also the disabled. We need to create a new educational system that is more purposeful, dynamic and relevant, which will take into consideration the demands of the present scientific and technological world and value of research, critical thinking and creativity.’<sup>472</sup>

### **Republic of South Ossetia, 2017** (extracted in part)

‘In order to realize the right of every person to education by public authorities and local public authorities:

[T]he necessary conditions are created for receiving, without discrimination, quality education for persons with disabilities, for correcting developmental disorders and social adaptation, providing early correctional care on the basis of special pedagogical approaches and the most suitable languages for these individuals, methods and methods of

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<sup>471</sup> ‘Child Protection Law of Tamil Eelam, 2006’, at: <http://theirwords.org/?country=LKA>. [accessed 15 July 2019]

<sup>472</sup> ‘Manifesto: Footpaths to Democracy: towards a new Sierra Leone’, 1995, at: <http://www.sierra-leone.org/AFRC-RUF/footpaths.html> [accessed 19 February 2019]

communication and conditions, to the maximum extent conducive to obtaining a certain level of education and a certain direction, as well as the social development of these persons, including through the organization anizatsii [*sic translation*] inclusive education of persons with disabilities'.<sup>473</sup>

Within all 11 DFAGs noted above, references are made to training, education, the right to education, special education, vocational and inclusive education, with the use of two or more within one commitment. Inclusive education is referenced five times although when juxtaposed with the language of 'capacity', 'special education', 'special education schools', 'adaptation of the student', DFAGs, like States, also appear to reflect the dichotomy between special and ordinary education within the concept of inclusion. The prevalent pattern of an educational paradigm in response to individual deficit, rather than affirmative action to remove social barriers to its access and quality, reinforces initial observations above on that the charity and medical models of disability are dominate DFAGs commitments.

A similar pattern is seen within DFAG health provisions. Gordon *et al* argue that ANSAs face significant internal pressures to establish military healthcare institutions and to expand these to civilians. These pressures include ideology, the need for legitimacy, patronage and clientelism.<sup>474</sup> Literature is scarce on how their health care provision approaches pwds, a gap that is filled, in small part, by this review of their commitments.

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<sup>473</sup> 'Law of the Republic of South Ossetia "On Education"', 2017, at: <http://www.parliamentroso.org/node/1299> [accessed 19 February 2019]

<sup>474</sup> Gordon S, Cooper-Knock S, Lillywhite L. *supra* note 122.

Excluding DFAGs which loudly draw attention to their service provision for veterans with disabilities (vwds) – discussed further below - and those which endorse the CRPD, only the TRNC commits to equality in access to health care.<sup>475</sup>

In contrast, the Democratic Party of Iranian Kurdistan refers to its intention to ‘establish specialized institutions for the protection of the disabled and the solitary elderly people’, the Polisario Front/Sahrawi Arab Democratic Republic ‘caters’ for ‘disabled persons and the mentally retarded’ by establishing ‘special centres for them’<sup>476</sup> and the United Wa State army promises to ‘establish sixteen care centers for the blind and the disabled.’<sup>477</sup> ‘Accommodation centers’ (amongst other services) for pwds are prioritized in JEM controlled territory and for the ‘elderly and disabled’, the KNU assert its provision of ‘nursing homes and long-term care institutions’ ‘as necessary’.<sup>478</sup>

Vwds stand out as a clear priority for DFAG attention, with commitments publicized in different formats and specificity. Their extent is striking when compared to those that target civilian pwds.

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<sup>475</sup> ‘2016 Country Reports on Human Rights Practices’, US Department of State, 2016 Human Rights Reports: Cyprus - the Area Administered by Turkish Cypriots, 2017, at: <https://www.state.gov/j/drl/rls/hrrpt/2016/eur/265410.htm> [accessed 19 February 2019]

<sup>476</sup> ‘Constitution of the Sahrawi Democratic Republic’, 2015, at: [http://www.usc.es/export9/sites/webinstitucional/gl/institutos/ceso/descargas/RASD\\_Constitution-of-SADR-2015\\_en.pdf](http://www.usc.es/export9/sites/webinstitucional/gl/institutos/ceso/descargas/RASD_Constitution-of-SADR-2015_en.pdf). [accessed 28 July 2019]

‘Periodic Report of the Sahrawi Arab Democratic Republic to the African Commission on Human and People’s Rights Containing all the Outstanding Reports in Accordance with Article 62 of the Charter’, 2011, at: [http://www.achpr.org/files/sessions/55th/state-reports/2nd-2002-2012/periodic\\_report\\_sahrawi\\_eng.pdf](http://www.achpr.org/files/sessions/55th/state-reports/2nd-2002-2012/periodic_report_sahrawi_eng.pdf)., [accessed 19 December 2018]

<sup>477</sup> The Bondage of Opium: the Agony of the Wa People. A Proposal and a Plea, date unknown, at: <http://www.ibiblio.org/obl/docs/BONDAGE.htm>. [accessed 22 February 2019]

<sup>478</sup> Health and Welfare Policy, 2013 at: <https://kdhwtestsite.files.wordpress.com/2008/02/1-kdhw-hw-policy-feb-2013-final-k-e-b.pdf>. [accessed 15 July 2019]

Illustrative examples include ISIS which goes to considerable efforts (in Arabic) to publicly demonstrate and detail in some length its commitment to, primarily, the medical care of its vwd. In a video dedicated to the issue, it draws attention to its ‘rehabilitation office for our disabled brothers in the state of Al Jazeera which provides care for those of our brothers who were injured in battle to the extent that they are unable to continue the fight’.<sup>479</sup> Similarly, the EPNF pledges care and assistance to all fighters and *other nationals* [emphasis added] who, in the course of the struggle against Ethiopian colonialism and for national salvation, have suffered disability in combat’.<sup>480</sup>

The RoSO and the Program of the Patriotic Union of Kurdistan (PUK) are more expansive. RoSO promises awards of honour to its vwd and social support to them and their families, the right to join garden co-operatives, the prohibition of eviction and the provision of phones and plots for hay and grazing.<sup>481</sup> The PUK too commits to far ranging symbolic and practical measures of support. Under the heading ‘Disabled Peshmarga veterans, political prisoners and people with special needs’, it refers to its establishment of a ‘special directorate for disabled veterans in the KRG ministry of Peshmarga’. Their support is to include medical treatment and financial aid for ongoing medicines and the award of medals, land, and preferential employment in the ‘government’ or ‘political parties.’ ‘Social, entertainment and vocational

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<sup>479</sup> ‘New video from the Islamic State. Rehabilitation of the Disabled – Wilāyat al-Jazīrah’, Islamic State video, 2015, at: <https://archive.org/details/AlJazeera20151129>. [accessed 3 December 2016] Translation on file with author. Media releases of the Islamic State suggest that persons with disabilities are expected to fight or contribute actively to the fight in whatever capacity they are able. Johnson, B., ‘What’s Behind ISIS’ Recent Video Use of Jihadists with Disabilities’, Homeland Security Today.US, 6 March 2018, at: <https://www.hstoday.us/subject-matter-areas/terrorism-study/whats-behind-isis-recent-video-use-jihadists-disabilities/> [accessed 30 June 2019]

<sup>480</sup> ‘Eritrean People’s Liberation Front, EPLF: Political Report & National Democratic Programme, 1987’, [http://www.snitna.com/Second%20Congress\\_English.pdf](http://www.snitna.com/Second%20Congress_English.pdf). [accessed 2 July 2019]

<sup>481</sup> ‘Law of the Republic of South Ossetia: about veterans, March 20, 2013 №83’, at: <http://www.parliamentso.org/node/57>. [accessed 2 July 2019]

training centers to more fully integrate disabled veterans into society’ are pledged as is their consideration in public infrastructure (transport and buildings).<sup>482</sup>

Hezbollah seemingly seeks independence for its disabled fighters. Its Al-Jarha (Wounded) Association for instance supports persons disabled by conflict, of which 80% are, it asserts, veterans. Its spokesperson claims that ‘Once their health is taken care of, we turn to looking at how to make them a functional part of society again’.<sup>483</sup> In contrast is LTTE’s establishment of a camp for former fighters who ‘cannot be sent out to do useful service for their community’. Accommodation in the camp is basic and there is no physiotherapy, no trauma counselling and no disability pension. Nonetheless, ‘the Tigers do their best to look after their disabled. [...] Today many disabled fighters prefer to stay in the rebel movement, where they have respect and moral support rather than return home and be a burden on their families’.<sup>484</sup>

Literature within disability studies currently fails to provide full explanations for the prioritization of vwds within DFAG commitments. Through its analytical tool - models of disability – it points to an individual deficit approach to vwds. This in turn helps account for the primary focus on medical care and social welfare following physical injury in battle. In contrast to the explanatory gaps within disability studies Gerber’s observations on State practice towards vwds provide helpful insights, despite inherent risks in analogizing too closely from literature on State practice with regards to their vwds, Gerber claims for instance that vwds are a ‘major project of the modern State, which endow[s] them with recognition as a

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<sup>482</sup> ‘Program of the Patriotic Union of Kurdistan’ (2016?) at: <http://www.pukpb.org/english/program> [accessed 19 February 2019]

<sup>483</sup> ‘Getting by with a little help from a friend: Beirut’s Al-Jarha Association helps wounded resistance fighters build themselves a future.’, Daily Star, 17 January 2002, at: <http://almashriq.hiof.no/lebanon/300/320/324/324.2/hizballah/jarha/index.html>. [accessed 25 June 2019].

<sup>484</sup> ‘Caring for Sri Lanka’s wounded rebels’, BBC News, 11 January 2004, at: [http://news.bbc.co.uk/1/hi/world/south\\_asia/3343287.stm](http://news.bbc.co.uk/1/hi/world/south_asia/3343287.stm). [accessed 25 June 2019]

group worthy of continuing medical, social or financial assistance’,<sup>485</sup> at least until conflict ends.<sup>486</sup> Viewed as an earned reward for personal sacrifice (which can act as an implicit incentive to inspire future service), this assistance is therefore to be differentiated from charity or generalized needs based welfare payments.

Impairments gained on the battlefield are regularly viewed as ‘a red badge of courage’. They lead to the frequent representation of vwds as heroic warriors who usefully serve as a particularly potent symbol for inspiring war efforts<sup>487</sup> and are easily transformed into ‘poster boys’ for various political agendas. More specifically, governments of every type are ‘eager to exploit the symbolism of the disabled veteran to win legitimacy and public loyalty for the state’.<sup>488</sup>

The destiny of those injured fighting for forces such as the Taliban or Hamas, or numerous other DFAGs, is not widely known<sup>489</sup> and Gerber’s claims may not apply fully in their specific contexts. Nevertheless, his explanation of the relationship between vwds and States touch upon relevant intersecting themes discussed within ANSA literature. These include recruitment, legitimacy and ANSA health services, each of which has the potential to drive DFAG prioritization of vwds within their commitments.

Relevant is ICRC’s claim that should an ANSA wish to survive, ‘a few basic requirements must be met’. These include, ‘reliable fighters - requiring recruitment’.<sup>490</sup> Public goods and

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<sup>485</sup> Gerber, D. A., (ed.) *Disabled Veterans in History*, (The University of Michigan Press 2015), p. 3.

<sup>486</sup> Dunn, E., ‘Disabled Russian War Veterans: Surviving the Collapse of the Soviet Union’, in *Disabled Veterans in History*, (Gerber, D. A., ed.), (The University of Michigan Press, 2015), pp. 251 – 174.

<sup>487</sup> Gerber, D. A., *supra* note 485, p. 6.

<sup>488</sup> *Ibid.* p. 13.

<sup>489</sup> *Ibid.* p. x

<sup>490</sup> International Committee of the Red Cross ICRC, ‘The Roots of Restraint in War’, <https://www.icrc.org/en/publication/roots-restraint-war>. [accessed 8 July 2019]

services are considered as selective incentives to facilitate ANSA recruitment.<sup>491</sup> Prioritized services for vwds is one such selective incentive at the domestic and international level, particularly if portrayed as a reward for personal sacrifice on the battlefield.

Prioritization of vwds as a distinct legitimation strategy is more difficult to assess and raises some tensions with claims that legitimation processes of rebels are deeply rooted in local norms and values. If the current widely held belief that pwds face, to varied degrees, exclusion, pity or stigmatization globally, these norms and values sit uncomfortably with vwds being singled out for service provision in terms of local legitimization processes. This suggests that the need for recruitment trumps local norms or, alternatively, that vwds are perceived differently from civilian pwds within local communities. What little evidence exists, primarily from media reports, on this is mixed. Reports from Lebanon, for example, indicate valorization of Hezbollah vwds,<sup>492</sup> whilst civilian pwds more generally, particularly those with intellectual disabilities, face considerable ignorance, prejudice and stigma.<sup>493</sup> In contrast, as noted above, LTTE vwds prefer not to return to family life where they are viewed, or view themselves, as a family burden.<sup>494</sup> Much, therefore, depends on the context.

Gordan *et al* provide alternative explanations. In addition to health care for militaries for military and security concerns,<sup>495</sup> they suggest that healthcare in general is provided as a mode of clientelism, linked to strategies for electoral mobilization, rather than simply a legitimation

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<sup>491</sup> Stewart, M. *supra* note 119.

<sup>492</sup> 'Getting by with a little help from a friend: Beirut's Al-Jarha Association helps wounded resistance fighters build themselves a future.' *supra* note 462

<sup>493</sup> Combaz, E., 'Situation of Persons with disabilities in Lebanon', K4D Helpdesk Report, 15 July 2018, at: [https://assets.publishing.service.gov.uk/media/5b584da340f0b633af812655/Disability\\_in\\_Lebanon.pdf](https://assets.publishing.service.gov.uk/media/5b584da340f0b633af812655/Disability_in_Lebanon.pdf). [accessed 4 July 2019]

<sup>494</sup> 'Caring for Sri Lanka's wounded rebels', *supra* note 484

<sup>495</sup> Gordon S, Cooper-Knock S, Lillywhite L. *supra* note 122.

process. Hezbollah's healthcare delivery is given as an example.<sup>496</sup> As clientelism is known to significantly impact disability services in Lebanon,<sup>497</sup> their claims might stand in that context. Nonetheless, as clientelism is infrequently explored in literature on ANSA governance and pertinent data is limited, any conclusion reached here as to its linkages to legitimation processes (and models of disability) and generalizability would be speculation alone. For this reason, it is raised as a credible possibility only and one to be tested in case specific contexts.

*A final brief reflection on the need for multi-disciplinary knowledge*

Much of this dissertation is deliberately descriptive, the aim being to identify and present a broad range of previously hidden DFAG commitments to pwds. It also provides a preliminary analysis of their genesis and form. Single disciplinary knowledge is inadequate to explain either. As such, the analysis necessarily drew upon multi-disciplinary knowledge to obtain credible insights into both.

For entities interested in outside interventions aimed at pwds in DFAG territory, this suggests that the deep knowledge required for their efficacy would also benefit from being multi-disciplinary. This is the case even if the interventions are firmly embedded within IHRL and IHL. In addition to these strands of international law, this implicates at the very least, drawing from veteran studies, political science, rebel governance, disability studies and anthropology.

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<sup>496</sup> Ibid.

<sup>497</sup> Kingston, P., *Reproducing Sectarianism: Advocacy Networks and the Politics of Civil Society in Postwar Lebanon*, (State University of New York Press 2013).

### **PART 3. CASE STUDY: NAGORNO-KARABAKH**

This short case study underscores and builds upon a selection of key points raised above. N-KR is chosen for review for practical and evaluative benefits which *include*: the negligible attention to pwds within the extensive body of scholarly literature on the territory; the longevity and -relative -stability of its governance provides an opportunity to assess evolution in its approach to pwds over a period of time;<sup>498</sup>it is broadly isolated from the direct influence of the international humanitarian community.<sup>499</sup> Auch, it is credible to attribute the wording of commitments it makes to pwds to the authorities themselves. Finally, an English- speaking NGO pro-actively and publicly supports and advocates on behalf of pwds in the territory.<sup>500</sup> This enables access, albeit limited, to relevant data frequently denied in other contexts.

The inclusion of the voice of pwds within N-KR seeks to counter, albeit sadly to a minimal extent only, the frequent silence of pwds within territories under consideration and associated literatures.<sup>501</sup>

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<sup>498</sup> Groce, N. E., Framing Disability Issues in Local Concepts and Beliefs, *Asia Pacific Disability Rehabilitation Journal*, Vol. 10, No. 1, 1999

<sup>499</sup> '5 Things to Know About Human Rights in Nagorno-Karabakh', the Borgen Project, 1 October 2018, at: <https://borgenproject.org/human-rights-in-nagorno-karabakh/>. [accessed 15 August 2019]

<sup>500</sup> Humanitarian Aid Relief Trust at:

<https://www.hart-uk.org/locations/nagorno-karabakh/>. [accessed 15 August 2019]

<sup>501</sup> On the importance but also challenges of eliciting the voice of civilians in the context of non-State actor contested territory, see Webb, J., Hogg, C., 'Eliciting the Voices of Civilians in Armed Conflict', in *Humanitarian Engagement with Non-state Armed Groups*, 2016, Chatham House available at: <https://www.chathamhouse.org/publication/humanitarian-engagement-non-state-armed-groups>. [accessed 15 August 2019]

### **3.1. Context**

One of the longest-lasting conflicts<sup>502</sup> in the former Soviet Union and in the Caucasus is between Armenia and Azerbaijan and revolves around the landlocked and mountainous region of N-KR.<sup>503</sup> The Organisation of Security and Cooperation in Europe, through the Minsk Group, co-chaired by France, the Russian Federation and the United States (US), works to find a peaceful solution to the conflict: N-KR is prohibited from joining the negotiations.<sup>504</sup>

The recent origins of the conflict can be traced back to 1921 when Stalin allocated the majority ethnic Armenia Region to Azerbaijan.<sup>505</sup> Fighting was triggered in 1988 upon ethnic Armenians in N-KR calling for self-determination from Azerbaijan. They proclaimed independence on the 6<sup>th</sup> January 1992. The dispute remains unresolved to this day with the continued risk of renewed flare ups<sup>506</sup> and a consequent high degree of militarization.

At the time of a ceasefire in 1994, over 25,000 people had been killed and nearly 500,000 Azeris had fled from N-KR and other regions of Azerbaijan. It is characterized by considerable ethnic, religious, cultural and linguistic homogeneity. In its 2005 census, only six persons in the N-KR stated 'Azeri' as their ethnic identification. No indication is given as to whether this was a reflection of true numbers or a fear of identifying as Azeri.<sup>507</sup>

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<sup>502</sup> Atlantic Council event transcript, 'Russia's Aims and Priorities in Nagorno-Karabakh', 1 October 2012, at: <https://www.atlanticcouncil.org/news/transcripts/russias-aims-and-priorities-in-nagornokarabakh-10-1-12-transcript>. [accessed 15 August 2019]

<sup>503</sup> The region is also known as Nagorno-Karabakh

<sup>504</sup> Organization for Security and Co-operation in Europe at: <https://www.osce.org/mg> [accessed 15 August 2019].

<sup>505</sup> de Waal, 'The Nagorny Karabakh conflict: origins, dynamics and misperceptions', Conciliation Resources, 'The limits of leadership Elites and societies in the Nagorno-Karabakh peace process', 2015, at: [https://www.c-r.org/downloads/17\\_Nagorny\\_Karabakh.pdf](https://www.c-r.org/downloads/17_Nagorny_Karabakh.pdf) [accessed 15 August 2019], pp. 12 - 17

<sup>506</sup> 'Nagorno-Karabakh violence: Worst clashes in decades kill dozens,' BBC, 3 April 2016, at: <https://www.bbc.co.uk/news/world-europe-35949991> [accessed 25 June 2019]

<sup>507</sup> Kolstø, P., and Blakkisrud, H., 'De facto states and democracy: The case of Nagorno-Karabakh', 2012, *Communist and Post-Communist Studies*, Vol. 45, Issues 1–2, 141–51, pp. 142-143.

The Office of the Nagorno Karabakh Republic in the United States describes the economy and lists legislation in force up to 2005. The ‘industrial complex’ of the territory is depicted as completely destroyed, with agriculture greatly damaged and thousands of hectares of land uncultivable due to the presence of mines. It asserts that although progress had been ‘made towards stable economic growth rates and increased living standards of the population, the N-KR economy faces some serious problems, such as low salaries, pensions, insufficient development of market infrastructure, [...] etc’.<sup>508</sup>

The financial focus of the N-KR authorities is on security issues. In 2014, for instance, it defended its lack of support to schools, hospitals and ‘democratic structures’ on the cost of ongoing security.<sup>509</sup> Significant financial assistance is, however, provided by a limited range of external actors. Armenia finances over a half of its yearly operating budget which, Broeg asserts, lends the authorities a ‘rentier’ profile,<sup>510</sup> so less accountable to constituent residents. The Armenia diaspora, one of the largest in the world and active worldwide but particularly in the US, provides significant finance to both N-KR and Armenia. For example, it has funded several infrastructure projects and has been estimated that half of all public construction in N-KR, including schools, hospitals<sup>511</sup> and water supply, was to be financed by the diaspora.<sup>512</sup>

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<sup>508</sup> ‘Nagorno-Karabakh: state building: Progress Toward Freedom, Democracy and Economic Development’, 2005, Office of the Nagorno Karabakh Republic in the USA, p. 26, at:

[http://www.nkrusa.org/nk\\_conflict/assets/nkr-state-building.pdf](http://www.nkrusa.org/nk_conflict/assets/nkr-state-building.pdf) [accessed 15 August 2019]

<sup>509</sup> Humanitarian Aid Relief Trust, ‘Nagorno-Karabakh Visit Report’, 2014, p. 9 at:

<https://www.hart-uk.org/locations/nagorno-karabakh/>. [accessed 8 July 2019].

<sup>510</sup> Broers, L., ‘The politics of non-recognition and democratization’, in Conciliation Resources, ‘The limits of leadership Elites and societies in the Nagorno-Karabakh peace process’, 2015, at: [https://www.c-r.org/downloads/17\\_Nagorny\\_Karabakh.pdf](https://www.c-r.org/downloads/17_Nagorny_Karabakh.pdf) [accessed 15 August 2019], p. 69)

<sup>511</sup> ‘Nagorno-Karabakh: state building: Progress Toward Freedom, Democracy and Economic Development’ *supra* note 508.

<sup>512</sup> Caspersen, N., *supra* note 294.

The N-KR's approach to local civil society is mixed. Kopecek, Hoch & Baar suggest it's a 'relatively free sphere'<sup>513</sup> but Pleydell-Bouveriem that the government makes 'worryingly little effort to engage with' it.<sup>514</sup> Organizations that deliver social services, which include NGOs supporting 'disabled or mentally ill people',<sup>515</sup> are generally accepted by the government, organizations that are more politicised or critical of the government, less so.<sup>516</sup> Its US Office, listed at least four disability focused NGOs within its list of 87 publicly registered 'public organisations'.<sup>517</sup> Only a tenth of the latter are thought to be active and Broers observes that civil society faces 'difficulties in influencing the State' and subject to 'the overpowering influence of diaspora funded and run activities'.<sup>518</sup>

Often referred to as an independent *de facto* State, N-KR lack international recognition.<sup>519</sup> A 'democratization-for-recognition' strategy has seen elections – generally characterised as fair - held intermittently since 1994, with the government using the language of democratization to further its claim to independence.<sup>520</sup> The lack of recognition combined with a homogenised population locates, Broers asserts, internal legitimacy in its mere existence, as opposed to responsiveness to society.<sup>521</sup>

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<sup>513</sup> Kopecek, V., Hoch T., & Baar, V., 'Conflict Transformation and Civil Society: The Case of Nagorno-Karabakh', 2016, *Europe-Asia Studies*, Vol. 68, Issue 3, 441-459.

<sup>514</sup> Pleydell-Bouveriem J., 'The Role of Civil Society in the Nagorno Karabakh Conflict, in 'Nagorno Karabakh: Understanding Conflict 2013', Johns Hopkins University, School for Advanced International Studies, at: [accessed 15 August 2019]

[https://sais.jhu.edu/sites/default/files/CM%20Field%20Trip%20NK%20March%2029%20Final\\_1.pdf](https://sais.jhu.edu/sites/default/files/CM%20Field%20Trip%20NK%20March%2029%20Final_1.pdf)

<sup>515</sup> Kopecek, V., Hoch T., & Baar, V. *supra* note 513.

<sup>516</sup> Kolstø, P., Blakkisrud, H. *supra* note 507, p. 147

<sup>517</sup> 'The Union of Artsakh Freedom Fighters', 'Vita' an NGO that provides support to wounded soldiers of the Artsakh National Liberation War, Zangak" Union of Artsakh Disabled Children and the "Hishatak" Relief Fund for the Families of Deceased and Disabled Soldiers of Artsakh War', 'Nagorno-Karabakh: state building: Progress Toward Freedom, Democracy and Economic Development' *supra* note 487, p. 51-52

<sup>518</sup> Broers, L. *supra* note 510.

<sup>519</sup> O'Loughlin, J & Kolosov, V., 'Building identities in post-Soviet "*de facto* states": cultural and political icons in Nagorno-Karabakh, South Ossetia, Transdnistria, and Abkhazia', 2017, *Eurasian Geography and Economics*, Vol. 58, Issue 6, 691-715.

<sup>520</sup> Broers, L. *supra* note 510.

<sup>521</sup> Broers, L. *supra* note 510.

In 2014, the Humanitarian Aid and Relief Trust (HART) reported a conversation with the President of N-KR in which he indicated that N-KR is ‘moving along the path towards universal European values’ and ‘international recognition and engagement is a central issue’.<sup>522</sup> Caspersen, in 2015, in turn contends that improving public services is one of the key strategies undertaken by the N-KR authorities. He relays an interview with the then President, Araik Harutyunyan, who referred to increased levels of social benefits as an attempt to ‘increase popular satisfaction, boost the entity’s birth rate and reverse the negative demographic trend.’<sup>523</sup> Finally, in 2018 the Minister of Foreign Affairs stated, ‘We have two priorities: first, to make our society open to the world. We are seeking open relations in education, culture, education, health and in other areas. We want to enhance our relationship with other nations; second, for our country to be internationally recognised.’<sup>524</sup>

### **3.2. Commitments of Nagorno- Karabakh to persons with disabilities**

**The historical legacy:** As a former territory within the Soviet Union, the N-KR shares with its patron State, Armenia, a historical legacy of official responses to pwds that broadly sought to exclude them from mainstream society.<sup>525</sup> Pwds -or ‘invalids’- were largely valued by their ability to work and if deemed unable to do so were systematically warehoused in secluded and ill-funded institutions. To this, Clements adds:

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<sup>522</sup> ‘Nagorno-Karabakh Visit Report’, 2014, *supra* note 509, p. 9.

<sup>523</sup> Caspersen, N. *supra* note 294, p. 188.

<sup>524</sup> Humanitarian Aid Relief Trust, ‘Nagorno-Karabakh Fact Sheet 2017/2018’, at: <https://www.hart-uk.org/wp-content/uploads/2017/10/Nagorno-Karabakh-fact-sheet.pdf>. [accessed 8 July 2019]

<sup>525</sup> Rasell, M., Iarskaia-Smirnova, E., (eds.) *Disability in Eastern Europe and the Former Soviet Union: History, policy and everyday life* (Routledge, London and New York 2014).

‘It is in such places that they were often left to live and die in dismal conditions – their lives unrecorded, their hopes, dreams, and talents lost in the vacuum of an isolated and forgotten existence.’<sup>526</sup>

In this context the Soviet Union official who assured a Western journalist in 1980 that ‘there are no disabled people in the USSR’<sup>527</sup> was partially correct.

**Commitments:** Other than its Constitutions, legislation of N-KR is in Armenian, although freely available from the President of the N-KR’s website.<sup>528</sup> Translation into English to assess the relevance of the legislation to pwds is not feasible. Reliance is therefore on commitments or commentary already available in English through web searches and, in the case of the President of Republic of Artsakh’s (N-KR) 2017 – 2020 Program, a partial google translation.<sup>529</sup>

The N-KR declared its independence in its 1992 *Proclamation of the Nagorno Karabakh Republic*, asserting the constitution and legislation of the USSR, ‘as well as existing laws shall be in effect on the territory of the NKR unless they contradict the purposes and principles of ... the specific nature of the republic’.<sup>530</sup> These laws are not explored here on the assumption they were a temporary measure, were not drafted by the N-KR government and its disability related detail possibly unfamiliar to it.

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<sup>526</sup> Clements, L, ‘Silenced Lives: Empowering the Disabled in Post-Soviet Karabakh’, Humanitarian Aid Relief Trust, undated at: <https://www.hart-uk.org/wp-content/uploads/2013/.../HART-Article-Silenced-Lives.pdf>. [accessed 7 July 2019]

<sup>527</sup> Phillips, S., ‘There are No Invalides in the USSR!’: A Missing Soviet Chapter in the New Disability History’, 2009, *Disability Studies Quarterly*, Vol. 29., No. 3. at : <http://www.dsqsds.org/article/view/936/1111>

<sup>528</sup> ‘Official website of the President of the Nagorno Karabagh Republic’ at: <http://president.nkr.am/>. [accessed 15 August 2019]

<sup>529</sup> On file with the author.

<sup>530</sup> ‘Proclamation of the Nagorno Karabakh Republic, 1992’, at: [http://www.nkrusa.org/nk\\_conflict/declaration\\_independence.shtml](http://www.nkrusa.org/nk_conflict/declaration_independence.shtml) [accessed 11 February 2019]

By 2005, 279 laws had been adopted by the then ‘N-KR Assembly’. These included legislation on matters such as ‘NKR Holidays and Commemorative Days’, ‘Children’s Rights’, ‘Mass Media rights’ and ‘Wastes’.<sup>531</sup> As legislation pertinent to pwds has not been translated into English, reliance is placed on the government’s own 2005 precis as follows:

‘According to the NKR Law ‘On social security of invalids’<sup>532</sup> and a number of governmental decrees invalids enjoy a number of privileges. Together with pension they are provided with different kinds of compensations, financial assistance, insurance, etc. The same law and other governmental decrees provide one-time insurance assistance to war invalids and families of perished soldiers.’<sup>533</sup>

For support provided to ‘the family’ generally, ‘[a] number of programs have been carrying [sic] out by the NKR government ... Since July 1997 a state assistance program has been functioning in the republic. The program provides assistance to families in need and a special group of children. The beneficiaries of the aforementioned program are: 1. invalids under 18 years; ... first and second group invalids ...’<sup>534</sup>

A year later, the government declared in its 2006 Constitution that ‘Laws and other legal acts of the Nagorno Karabakh Republic shall correspond with the principles and norms of international law.’<sup>535</sup> Disability was included within the Constitution’s non-discrimination

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<sup>531</sup> ‘The limits of leadership Elites and societies in the Nagorno-Karabakh peace process’, 2015, pp. 44-50 at: [https://www.c-r.org/downloads/17\\_Nagorny\\_Karabakh.pdf](https://www.c-r.org/downloads/17_Nagorny_Karabakh.pdf) [accessed 15 August 2019]

<sup>532</sup> Legislation detailed as ‘*On Social Security of Disabled People in NKR, 20/11/1997*’ in ‘Nagorno-Karabakh: state building: Progress Toward Freedom, Democracy and Economic Development’ *supra* note 489.

<sup>533</sup> ‘Nagorno-Karabakh: state building: Progress Toward Freedom, Democracy and Economic Development’ *supra* note 508.

<sup>534</sup> *Ibid.*

<sup>535</sup> Article 7(6). ‘Constitution of Nagorno-Karabakh 2006’, at: [http://www.nkrusa.org/country\\_profile/constitution.shtml](http://www.nkrusa.org/country_profile/constitution.shtml) [accessed 11 March 2019]

clause,<sup>536</sup> which referenced also the right to social security in the event of disability<sup>537</sup> and an intention to provide ‘special care for the disabled freedom fighters ... and employ programs for the treatment of the disabled and enhance their participation in social life’.<sup>538</sup>

In 2012, the President emphasized the special focus N-KR paid to ‘disabled’ freedom-fighters. He quoted the figure of 88 million drams paid out to ‘socially vulnerable families and fighters who perished or were disabled during the conflict.’<sup>539</sup> He noted also in May 2013 the ‘extensive and hard work’ carried out to eliminate ‘violations’ towards pwds, insisting on the need for respect to be shown towards them. Two NGOs were singled out for congratulations on their work - the Union of Artsakh Freedom Fighters” and “Vita”, an NGO that provides support to wounded soldiers of the Artsakh National Liberation War - as he urged the engagement of civil society in disability related matters.<sup>540</sup>

A few months later, marking the International Day of Persons with Disabilities,<sup>541</sup> the Ministry of Social Welfare again drew attention to social programs to improve the quality of life for pwds and the provision of office and digital equipment to ‘invalids ... within the state programme of ensuring equal rights and opportunities for persons with disabilities and their integration into the society’.<sup>542</sup>

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<sup>536</sup> Ibid. Article 21.

<sup>537</sup> Ibid. Article 39.

<sup>538</sup> Ibid. Article 60.

<sup>539</sup> ‘Speech of Artsakh Republic President Bako Sahakyan delivered at a meeting of the Defence Army's Military Council dedicated to summing-up the 2012 annual activities’, 25 December 2012, at: <http://www.president.nkr.am/en/speeches/speeches/1924/>. [accessed 15 August 2019]

<sup>540</sup> ‘On May 23 Artsakh Republic President Bako Sahakyan held a working consultation on the process of establishing disability groups by the Center of medical and social expertise.’ YEREVAN, MAY 23, 2013 ARMENPRESS, at: <https://armenpress.am/eng/news/719989> [accessed 15 August 2019]

<sup>541</sup> Always on the 3<sup>rd</sup> December, see further United Nations website at: <https://www.un.org/en/events/disabilitiesday/>. [accessed 15 August 2019]

<sup>542</sup> ‘Beglaryan: lack of jobs and technical means hamper integration of Nagorno-Karabakh disabled people into society’, Caucasian Knot, 5 December 2013, at: <http://www.eng.kavkaz-uzel.eu/articles/26568/> [accessed 11 March 2019]

A second, 2017, Constitution, pledged the protection of fundamental human and civil rights in conformity with the common principles and norms of the international law.<sup>543</sup> Its disability related provisions mirror closely those adopted 11 years earlier: disability remains a prohibited ground of discrimination,<sup>544</sup> pwds continue in their right to social security and families of disabled veterans are to receive special care.<sup>545</sup> Slightly greater provision is made through the commitment to ‘implement programmes for disability prevention, treatment, rehabilitation of persons with disability, promoting the participation of persons with disability in public life.’<sup>546</sup>

A little more detail is found the 2017 – 2020 Program of the President<sup>547</sup> a google translation of which describes a Social Fund. The aim of the Fund is to provide mortgage and energy costs relief for, amongst other ‘special’ groups.<sup>548</sup> Compensation is to be provided for lost income due to disability<sup>549</sup> and steps towards social inclusion, equal conditions and opportunities<sup>550</sup> are to be taken. Finally, disabled fighters are to receive special social protection measures.<sup>551</sup>

Again marking the International Day of Persons with Disabilities, Artsakh Press reported in 2018 on a round-table discussion on the protection of rights of pwds, initiated and attended by the Human Rights Defender’s (Ombudsman) Office, the Minister of Labor, Social Affairs and Resettlement of Artsakh Republic, NGOs and DPOs. The government focused its attention to its provision of benefits and improved employment prospects for pwds, the NGOs and DPOs,

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<sup>543</sup> Article 3 (4) Constitution of the Republic of Artsakh, *supra* note 34.

<sup>544</sup> *Ibid.* Article 29.

<sup>545</sup> *Ibid.* Article 85

<sup>546</sup> *Ibid.*

<sup>547</sup> ‘2017 – 2020 Program of the President of Artsakh’ on file with author.

<sup>548</sup> *Ibid.* Section 7.

<sup>549</sup> *Ibid.* Section 9.

<sup>550</sup> *Ibid.* Section 14.

<sup>551</sup> *Ibid.* Section 15.

in contrast, on ‘psychological and physical violence against the disabled children [and] rights of parents of children ...’.<sup>552</sup> The meeting ended with a government commitment to ‘always be in contact with NGOs in accordance with international experience and standards’ and to ‘seek to find solutions to all the raised problems’.

### **3.3. The lived experience of persons with disabilities within Nagorno-Karabakh**

‘Many people know about Karabakh from the point of view of the conflict but know nothing about the lives of the ordinary people. The media pays very little attention to their lives, opinions and emotions. It’s rare to find material which doesn’t contain overtones of the official line or, even more so, of propaganda.’<sup>553</sup>

Available data on the lives of ‘ordinary people’ and pwds specifically is limited. In 2005, the population of N-KR was, according to its census, 137,737<sup>554</sup> and its US office reported on ‘one old people's home in the republic. Fifty old people and first group bedridden invalids live there under state custody’.<sup>555</sup> For ‘invalids’ more generally it records:

‘The number of disabled persons in the N-KR drastically increased as a result of the war. Currently there are 9,183 disabled persons, 43 percent of them are disabled as a

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<sup>552</sup> ‘Round-table discussion on the protection of rights of disabled persons was held in Stepanakert’, Artsakh press, 3 December 2019 at: <https://artsakhpress.am/eng/news/97228/round-table-discussion-on-the-protection-of-rights-of-disabled-persons-was-held-in-stepanakert.html> [accessed 12 March 2019].

<sup>553</sup> ‘Unheard Voices: understanding conflict. Building peace’, International Alert, 2015, at: <http://www.epnk.org/sites/default/files/page-files/Unheard%20voices%20ENGLISH%20LINKS.pdf>. [accessed 7 July 2019]

<sup>554</sup> ‘About the first population census of the Nagorno-Karabakh Republic 2005’ at: [http://census.stat-nkr.am/nkr/pervaya\\_perepis.pdf](http://census.stat-nkr.am/nkr/pervaya_perepis.pdf) [accessed 11 March 2019]. The current population was estimated at around 150,000 in 2017/2018, Humanitarian Aid Relief Trust, ‘Nagorno-Karabakh Fact Sheet 2017/2018’, at: <https://www.hart-uk.org/wp-content/uploads/2017/10/Nagorno-Karabakh-fact-sheet.pdf>. [accessed 8 July 2019]]

<sup>555</sup> ‘Nagorno-Karabakh: state building: Progress Toward Freedom, Democracy and Economic Development’, *supra* note 508, p. 27.

result of illness and 31,8 percent – as a result of the war or during military service. 22 per cent of the disabled people constitute invalids since childhood.<sup>556</sup>

The Minister of Labor, Social Affairs and Resettlement of Artsakh Republic, assessed the figure of pwds in the region at 8,800 in 2018.<sup>557</sup>

Additional accessible data is publicised primarily by I/NGOs, including the HALO Trust,<sup>558</sup> International Alert,<sup>559</sup> the ICRC<sup>560</sup> and the Humanitarian Aid Relief Trust (HART).<sup>561</sup> The voice or words of pwds from the N-KR themselves is limited, heard primarily from men and, more specifically, male veterans wounded during the conflict. They express their experiences very differently. In 2015 for example, the Deputy Director of an NGO for disabled veterans of the ‘Karabakh’ voiced his frustration at the lack of government support for heroes of the conflict. He asked:

‘How can we expect a woman to spend her whole life looking after a disabled man who can’t get out of bed, dressing the suppurating wounds on his legs, arms or eyes, and being nurse, carer, wife and mother to his children? And what man would want to look so pathetic in front of his wife? Surely the government has a duty to provide 24- hour, well-paid nursing care to people who sacrificed their health in the name of their

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<sup>556</sup> Ibid. p. 28

<sup>557</sup> Round-table discussion on the protection of rights of disabled persons was held in Stepanakert’, Artsakh press, 3 December 2019 at: <https://artsakhpress.am/eng/news/97228/round-table-discussion-on-the-protection-of-rights-of-disabled-persons-was-held-in-stepanakert.html> [accessed 12 March 2019].

<sup>558</sup> HALO Trust at: <https://www.halotrust.org/>, [accessed 15 August 2019]

<sup>559</sup> ‘Unheard Voices: understanding conflict. Building peace’ *supra* note 553.

<sup>560</sup> International Committee of the Red Cross, ‘Nagorno-Karabakh conflict: Landmines, a disturbing reminder of war’, 31 May 2019, at: <https://www.icrc.org/en/document/nagorno-karabakh-conflict-landmines-disturbing-reminder-war>. [accessed 15 August 2019]

<sup>561</sup> Humanitarian Aid and Relief Trust at: <https://www.hart-uk.org/>. [accessed 15 August 2019]

motherland? After all, these people haven't just lost their health, they've lost their youth and all their hopes for the future!'<sup>562</sup>

Another disabled veteran wounded in 1993 at the age of 20 suffers still from psychological problems which he struggles with daily. "There is no place to go, nothing to do here" he says, 'I'm ashamed. I know how I used to be and how I am now'.<sup>563</sup> A third, received an adapted car from the government, partially financed by the Armenian diaspora. Categorised as 'disabled of the first degree', he is however prohibited from working although finds ways of raising some funds to help support his family. Finally, another disabled veteran, also in receipt of a government car provided in 2008 following injuries sustained during the conflict. A former weightlifter, he visits the Lady Cox Rehabilitation Centre (Centre) twice a week to weight train. He asserts his readiness to serve again in the army should conflict arise again, 'I still have two hands and a head, I can be useful'.

Other disabled patients, female and male, and users of the Centre speak of their experiences in its own recent promotional and advocacy material. They all express significant gratitude to the Centre and – some - optimism about the future, their education, possibility of future employment and feelings of self-worth. At the same time, they all emphasise a dearth of support beyond the Centre.<sup>564</sup>

The Centre itself is the region's first and only rehabilitation facility for pwds. It is based in a bomb- damaged building reconstructed between 1998 and 2000 in response to the lack of infrastructure – and basic pain medication and anaesthetics -to support wounded and disabled

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<sup>562</sup> 'Unheard Voices: understanding conflict. Building peace' *supra* note 553.

<sup>563</sup> Colin, A., 'The scars of Nagorno-Karabakh', on file with the author

<sup>564</sup> '20 Years of the Lady Cox Rehabilitation Centre, 2018, at: <https://www.youtube.com/watch?v=0d07auch3Ok> [accessed 10 March 2019]

veteran fighters. Funds for the Centre were originally raised by the UK's Baroness Cox at the government's request,<sup>565</sup> although:

'The community and government initially offered little support for the endeavor of establishing a centre in Stepanakert and many locals expressed confusion over [...] efforts to rehabilitate war veterans and other disabled people, a few suggesting that if he simply gave donated money to the disabled people of Karabakh they would be happy and secure.'<sup>566</sup>

In 2014, Baroness Cox, the founder of HART, visited the N-KR government. A core objective was to secure funds from the government to support the Centre. HART subsequently reported assurances of N-KR President of his support for a new building for the Centre and agreement work with HART to develop a dossier for potential funders.<sup>567</sup> Funding has also been sought by the HART through the internet JustGiving initiative to enable the purchase of a van for the Centre.<sup>568</sup> By 2018, it had over 60 members of staff, drawn from within N-KR but also internationally. It includes 25 nurse specialists and now provides care to over 1,000 patients annually. Its Home Visits Division provides services to more than 100 people with severe disabilities. Nonetheless, Armenian Vardan Tadevosyan, invited by HART to run the Centre, estimates that they are still able to treat only about one tenth of those needing help.<sup>569</sup>

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<sup>565</sup> Baroness Cox was asked by the N-KR government to focus her offer of assistance on wounded veterans. Interview with author, 2017. The Armenian Diaspora are donors to the Centre. For instance the Jinishian memorial Foundation has provided funds to the Lady Cox Rehabilitation Centre, see <http://www.jinishian.org/support-to-disabled-in-karabakh-phase-5> [accessed 15 August 2019]. The Centre also benefits from an on-going collaboration with the French organisation Kinésithérapeutes du Monde an NGO that provides temporary medical staff to the Centre. 'Nagorno-Karabakh Visit Report' *supra* note 509.

<sup>566</sup> Clements, L. *supra* note 526.

<sup>567</sup> 'Nagorno-Karabakh Visit Report' *supra* note 509.

<sup>568</sup> Just Giving at: <https://www.justgiving.com/campaign/Van4Vardan>. [accessed 1 July 2019]

<sup>569</sup> Cohen, B., Out of the Shadows and Building Peace, Tearfund, 10 May 2018, at: [https://www.tearfund.org/en/2018/05/broken\\_peacemakers/](https://www.tearfund.org/en/2018/05/broken_peacemakers/) [accessed 10 March 2019]

A current additional aim of the Centre is to reduce the inherited prevailing Soviet stigma associated with disabilities.<sup>570</sup> This included ‘a total absence of a concept of rehabilitation, a traditional lack of government support for disability rights initiatives, and a generally poor level of education among the public and health officials alike about individuals with disabilities’.<sup>571</sup> As a consequence, pwds were either hidden away in institutions or inside the family home. Tadevosyan observes, ‘Even today [2018] in Nagorno-Karabakh, there’s still no concept of disabled people having any rights, or of them being properly integrated into society’.<sup>572</sup> Twenty-five year old Artak Beglaryan, blind from childhood, echoes this sentiment. ‘In Artsakh,’ he states, ‘it is difficult to find a job for an invalid, as there are moods in the society that disabled persons are unable to work; therefore, they should sit at home and receive their pensions’. He adds, “In urban planning, in most cases, they fail to address the needs of persons with disabilities’.<sup>573</sup>

### **3.4. Brief reflections**

Through the lens of models of disability, at first glance the discussion above indicates N-KR is deeply influenced by and has difficulties in moving beyond Soviet Union *de facto* and *de jure* practices towards pwds. Its commitments and associated practices evince vwds (and, to a lesser extent) workers as continued favored cohorts of the general population but one still

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<sup>570</sup> ‘ANCA Defends U.S. Artsakh Aid against Azerbaijani Attack’, Armenia Weekly, 21 May 2018, at: <https://armenianweekly.com/2018/04/21/anca-defends-u-s-artsakh-aid-against-azerbaijani-attack/>. [accessed 25 June 2019]

<sup>571</sup> Clements, L. *supra* note 526.

<sup>572</sup> Cohen, B., *supra* note 569

<sup>573</sup> ‘Beglaryan: lack of jobs and technical means hamper integration of Nagorno-Karabakh disabled people into society’ *supra* note 542.

subject to the authority's individual deficit approach to pwds more generally.<sup>574</sup> Although currently without a developed explanation for the prioritization shown to vwds, disability social construct theorists might therefore interpret the commitments as a demonstration of deeply embedded disability related discrimination, rooted in personal, interpersonal and institutional process of exclusion and oppression, endemic to many – if not all - societies.<sup>575</sup>

There is however some evidence of evolutionary steps within the disability related commitments and within pockets of its resident populations also. Whilst a full translation of recent commitments is not available, those that have been sourced and translated point to terminology occasionally – not always - a little more in tune with that heard within the international community (and the CRPD). Its former Soviet Union influenced disability pertinent systems and approaches appear, therefore, to be reconfiguring in line with newer internal and external influences,<sup>576</sup> albeit slowly.

By way of example, N-KR shares many local and international legitimacy seeking characteristics of DFAGs considered in Parts 1 and 2. These include its secessionist aims, concerted efforts to make its wish for international recognition known,<sup>577</sup> and its electoral processes which display its democratic credentials. N-KR endorses the entire corpus of international law, albeit with limited evidence of full familiarity with it, which combines with pledges of public goods and services within its commitments and a communication strategy that unambiguously targets an international audience. Individually and combined these signal

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<sup>574</sup> See Phillips, S., *supra* note 527 and Wiedlack., K and Neufeld, M., 2016, Dunn, E., 'Disabled Russian War Veterans: Surviving the Collapse of the Soviet Union', in *Disabled Veterans in History*, (Gerber, D. A., ed.), The University of Michigan Press, 2015, pp. 251 - 274

<sup>575</sup> Ghosh, N., 2017, Chapter 1: Introduction *Interrogating Disability in India*, Springer India (2016). e

<sup>576</sup> Rasell, M., larskaia-Smirnova, E. *supra* note 525, p. 5.

<sup>577</sup> Minasyan, S., 'Nagorno-Karabakh After Two Decades of Conflict: Is Prolongation of the Status Quo Inevitable?', Caucasus Institute Research Papers, 2 August 2010, at: [http://c-i.am/research/paper%202\\_eng.pdf](http://c-i.am/research/paper%202_eng.pdf). [accessed 25 June 2019]

international legitimation processes at play. Specific disability local legitimacy pressures include a number of DPOs comprised of vwd and civilians impaired through conflict and uncleared mines, whose voices are incrementally disseminated locally and internationally.

Funded initially almost entirely by the UK based HART, the Centre and its Director create additional and decisive local and international legitimacy pressures through local and international outreach. The latter is driven substantially by HART which continues to court international attention and funding streams. This in turn strengthens the Centre's and HART's strong advocacy position for inclusion of pwds within services – and funding - with the N-K authorities. Insufficient data is available to assess if this advocacy stretches to attempts to influence the content of legislation generally, or if HART is fully familiar with, for instance, the CRPD. As it is a humanitarian rather than disability focused organization, this cannot be assumed. The negligible engagement of more dominant entities within the international development and humanitarian community, which has been so pro-active in the provision of technical support to Transnistria, the RoK and RoS, suggests that N-KR is also not fully cognizant of the approach towards pwds embedded within the CRPD and associated interventions.

Limited data is available as to whether the Armenian diaspora considers disability in its homeland politics,<sup>578</sup> despite its own funding for the Centre, following a direct approach by HART. Its motivations and approaches to disability are not made highly visible, with a consequent a lack of clarity as to whether the primary motivation behind the funding is to support 'war heroes' or pwds more generally. Nor is it clear if it advocates on behalf of vwd,

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<sup>578</sup>Baser, B., Swain, A., 'Caucasian Review of International Affairs', 2009, Vol. 3, Issue 1.

civilian pwds or both with N-KR authorities directly. The lack of media or other reports, suggest it might not.

Similar considerations apply to Armenia although in contrast to the diaspora, its approach to pwds within its own territory has been evaluated at some length and by the Committee CRPD. The latter's many 'principal areas of concerns and recommendations' include the following concerns:

'The medically based determination of disability, which relies on impairments without considering social barriers and individual requirements for social participation.'<sup>579</sup>

and

'The lack of concrete, effective and transparent measures taken by the National Commission for Persons with Disabilities to implement the Convention.'<sup>580</sup>

There is little to suggest in this that Armenia has or will in future, play any significant role in disability related reform within N-KR, unless encouraged to do so by, specifically, the international community.

Through description and analysis, this short case study confirms and illustrates the common individual deficit approach encountered in DFAG commitments to pwds in Part 2, yet also the diversity and influence of legitimacy pressures and legitimation processes. It underscores the critical need for knowledge of its distinctive local context in the interpretation of developments

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<sup>579</sup> Concluding observations on the initial report of Armenia, CRPD/C/ARM/CO/1, 8 May 2017, para. 5 (e) at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/ARM/CO/1&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/ARM/CO/1&Lang=En). [accessed 16 August 2019]

<sup>580</sup> Ibid. para. 5 (g).

and opportunities for change.<sup>581</sup> This is particularly apposite where authorities, as in N-KR, ‘lack the resources to provide even basic education and healthcare, let alone personal assistants, occupational therapy and an accessible built environment’<sup>582</sup> as exemplified in the CRPD, the standard against which the international community assesses pwd provision. Finally, the study identifies lost opportunities for meaningful change for pwds within N-KR, most specifically from within its diaspora, Armenia and the Committee CRPD.

The future trajectory of N-KR’s legislative response to disability can be little more than speculation: much depends on the outcome of current peace negotiations and the future level of interest of outside intervenors. Nevertheless, the current lived experiences of most (9/10ths) of pwds within its resident population appears at odds with even the limited level of formal commitment made to pwds by N-KR. This implicates current literature pertinent to the influence and role of commitments in DFAG observed behaviours. These behaviours include the implementation or otherwise of commitments to pwds.

In this regard, the work of Collier adds to the literature visited in Part 1,<sup>583</sup> specifically his intuition that hard facts trump ‘soft’ ideas.<sup>584</sup> Collier explains, ‘If someone says ‘I don’t like chocolates’, but keeps on eating them, we infer that she really likes them, and the question of why she says the opposite is then usually relegated to being of secondary importance.’<sup>585</sup> Through his lens – shared by other scholars<sup>586</sup> – public commitments of the N-KR authorities

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<sup>581</sup> Rasell, M., larskaia-Smirnova, E. *supra* note 525, p. 6.

<sup>582</sup> *Ibid.*

<sup>583</sup> For example, Fortin, J., *supra* note 98, Jo, H., *supra* note 96, Priddy, A., *supra* note 11,

<sup>584</sup> Sanin R, Wood, E., *supra* note 126.

<sup>585</sup> Collier, P., ‘Doing Well Our of War’, 1999, The World Bank, p. 2 at:

<http://documents.worldbank.org/curated/en/504671468762020790/pdf/28137.pdf>. [accessed 16 August 2019]

<sup>586</sup> See for instance the discussion in Mampilly, Z. *supra* note 40, pp. 13-15

to pwds, and their analysis, are of limited predictive importance, relegated perhaps to rhetorical, instrumental devices.<sup>587</sup>

Interrogation of hard facts (however defined) is, of course, important but it is not enough. In this context, in addition to their reflection of often powerful political ideology of their drafters, the interrogation of commitments is necessary also because of their very instrumentality and the potential predictive insights into behaviours this provides.

Apposite here is Sanin and Woods' extension of Collier's logic. They ask, 'If as a result of advertising, a person comes to not only endorse an image of himself as slim but to value that image highly, then this will affect his chocolate eating practices.'<sup>588</sup> Hafner-Burton *et al.* in turn draw attention to the influence of norms on State and non-State behaviour by setting standards and creating expectations and social pressures that encourage compliance with those standards<sup>589</sup> and Elster to the 'civilizing force of hypocrisy'.<sup>590</sup> By analogy, in their view, the commitments may in time have an influential momentum of their own.

The discussion above points to a natural research progression: an extension of the N-KR case study. This would test its conclusions and add valuable depth and nuance to the findings of this dissertation and, importantly, beyond. It supports also its contention that deep knowledge of outside intervenors in DFAG territory, includes knowledge of DFAG commitments, their pushes and pulls.

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<sup>587</sup> Sanin R, Wood, E., *supra* note 126.

<sup>588</sup> *Ibid.*

<sup>589</sup> Hafner-Burton, E., Victor, D, and Lupu, Y., 2012, 'Political Science Research on International Law: The State of the Field' *The American Journal of International Law*, Vol. 106, No. 1 (January 2012), pp. 89-90, p.54

<sup>590</sup> Stanford Encyclopedia of Philosophy, 'Publicity', at: <https://plato.stanford.edu/entries/publicity/>. [accessed 17 August 2019]

### 3.5. From armed non-State *de facto* authorities that govern to State political ruling party: a final layer of analysis

The focus of this final section of Part 3 is narrow. It tracks commitments of four former DFAGs upon or shortly after transition to State political ruling party. It does not discuss literature on post-conflict reconstruction or related issues as this too is beyond the scope of the dissertation. The primary aim is to assess empirically if post transition legislation throws any light on prior DFAG commitments and whether these commitments have predictive value in terms of likely post transition legislation.

For cross representation, the four DFAGs were chosen for their mix of prior high volume and detail of commitments made to pwds (PLO), their purported inclusivity (PAIGC and EPLF) or exclusivity<sup>591</sup> of service provision (FSLN) for pwds and finally isolation (EPLF)<sup>592</sup> from or active engagement<sup>593</sup> with the international community (PLO). They shared a prior individual deficit approach to pwds,<sup>594</sup> although for the PLO, this was accompanied by rights language.<sup>595</sup> A further commonality was their prioritization of vwds, workers with disabilities<sup>596</sup> or both, in needs- based welfare provision.

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<sup>591</sup> Stewart, M. *supra* note p. 119.

<sup>592</sup> Desta, Y., 'Does the EPLF (Eritrean People's Liberation Front) qualify to be a learning organization? A modern systems theory perspective: A modern systems theory perspective', 2009, *Journal of Organisational Transformation & Social Change*, Vol. 6, Issue 1, 5-28.

<sup>593</sup> Permanent Observer Mission of The State of Palestine to the United Nations, New York, Diplomatic Relations, at: <http://palestineun.org/about-palestine/diplomatic-relations/>. [accessed 22 August 2019]

<sup>594</sup> See above in Part 2

<sup>595</sup> 'The Basic Law, 2003', *supra* note 371

<sup>596</sup> For example, 'The historic program of the Sandinista National Liberation Front (FSLN), 1969, at: [www.pathfinderpress.com/core/media/media.n!id=15173&c=ACCT136348](http://www.pathfinderpress.com/core/media/media.n!id=15173&c=ACCT136348). [accessed 25 January 2019]

Three transitioned prior to adoption of the CRPD<sup>597</sup> and one, the PLO<sup>598</sup> post-dates it. From this point on, they are referred to by their State names, Guinea-Bissau (formerly PAIGC), Eritrea (its governing party upon Statehood comprised key members of the EPLF), Nicaragua (FSLN) and the State of Palestine (PLO).

The volume of legislation and policy pertinent to pwds upon transition differed considerably between the States. For Eritrea, for example, its 1994 Charter acted as the primary disability legislation whereas the State of Palestine developed a raft of detailed disability specific or inclusive legislation.

Two of the four entities reviewed (the States of Palestine and Eritrea) refer to their prior commitments as informing their legislation upon or shortly after taking power.<sup>599</sup> Two tentative observations are drawn from this. In these two contexts at least, their DFAG commitments reflected their vision for their own future State provision for pwds. They also directly informed legislation for such provision upon taking power. Knowledge of DFAG commitments to pwds therefore, has potential predictive value with regards to their post transition legislation.

The review found also that upon or shortly after transition, the legislation of all four States better reflected language used by UN member States at the time than their prior commitments. For example, shortly after transition Eritrea, Guinea-Bissau and Nicaragua (1993, 1974, 1979 respectively) introduced, to different degrees, the language of rights of pwds into their

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<sup>597</sup> Guinea-Bissau, Eritrea, Nicaragua

<sup>598</sup> The State of Palestine

<sup>599</sup> See *supra* notes 230 and 231

legislation. Nonetheless, as with their prior piecemeal commitments, veterans<sup>600</sup> and workers were singled out for specific attention, with interventions situated within the individual deficit approach:<sup>601</sup> prior underpinning models of disability survived transition despite somewhat broad-brush references to rights. Illustrative examples are Eritrea and Guinea-Bissau. Eritrea asserts it is:

‘striving to make Eritrea a country of justice and equality where dignity and basic human rights are respected. In Eritrea, social rights of women, workers, children, refugees, the handicapped and others who deserve assistance, must be respected.’<sup>602</sup>

and Guinea-Bissau that, ‘Workers have a right to protection, security and hygiene at work. [...] The state will gradually establish a system capable of guaranteeing workers social security pensions in sickness or when incapacitated.’<sup>603</sup>

These provisions accord closely with practices of other UN member States recorded, as detailed above, by Bruce *et al*,<sup>604</sup> in 2002. In turn, the State of Palestine upon achieving UN non-

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<sup>600</sup> Meyers, S., ‘Nicaragua’s legacy of war shaping disability rights today’, in Mitchell, D., and Karr, V., (eds.) *Crises, Conflict and Disability: Ensuring equality*, (Routledge, London and New York, 2014). p. 197.

<sup>601</sup> For instance, ‘PFDJ NATIONAL CHARTER Adopted by the 3rd Congress of the EPLF/PFDJ Naqfa, February 10-16, 1994, at: <http://ecss-online.com/data/pdfs/PFDJ-national-charter.pdf>. at: <http://ecss-online.com/data/pdfs/PFDJ-national-charter.pdf>. [accessed 8 January 2019],

‘Constitution of the Republic of Guinea-Bissau, Adopted in 1984, Amended in 1991, 1993, 1996,’ at: <https://wipolex.wipo.int/fr/text/315266>. [accessed 8 January 2019]

Political Constitution of the Republic of Nicaragua, 1987, at:

<http://janda.org/politxts/Major%20Democratic%20Documents/nicaragua.htm>. [accessed 8 January 2019]

<sup>602</sup> ‘PFDJ NATIONAL CHARTER’ *supra* note 601.

<sup>603</sup> ‘CONSTITUTION OF THE REPUBLIC OF GUINEA-BISSAU Adopted in 1984, Amended in 1991, 1993, 1996’ at: <https://wipolex.wipo.int/fr/text/315266>. [accessed 25 February 2019]

<sup>604</sup> Bruce *et al*, *supra* note 333

member observer status in 2012 extended significantly its prior use of rights language<sup>605</sup> and swiftly ratified the CRPD alongside other UN human rights treaties.<sup>606</sup> This too reflects the early rush of UN States to ratify the CRPD, possibly without full appreciation of the extent of policy and legislative changes its implementation required.

The discussion above also implicates two current pertinent, ongoing and potentially linked scholarly interests. Lake asserts that concerns motivating the behaviour of ‘wartime elites’ are often reflected in their concerns post conflict.<sup>607</sup> These concerns include the perceived need for legitimacy. Nielson and Simmons, in turn, examine in some depth the commonly held assumption that rewards for State ratification of international human rights treaties include increased legitimacy.<sup>608</sup> This literature can only be noted in passing here. It does however further support the contention that knowledge of DFAG commitments may assist in the prediction of pwds relevant post transition legislation and the shaping of outside interventions to that end.

A third and linked observation relates to the recorded absence or limited implementation of commitments to pwds of each of the four States<sup>609</sup> and associated future research implications.

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<sup>605</sup> For example, ‘Inclusive Education Policy 2015’, at: <https://www.eenet.org.uk/resources/docs/English%20-%20IE%20Policy.pdf>, ‘National Strategic Framework for Disability, 2012’, at: [https://www.academia.edu/10347097/The\\_National\\_Strategic\\_Plan\\_of\\_the\\_Disability\\_Sector\\_in\\_the\\_Occupied\\_Palestinian\\_Territories?auto=download](https://www.academia.edu/10347097/The_National_Strategic_Plan_of_the_Disability_Sector_in_the_Occupied_Palestinian_Territories?auto=download). [accessed 8 January 2019]

<sup>606</sup> Including the ICESCR, CAT, CRC, CEDAW, ICCPR.

<sup>607</sup> Lake, M., ‘Building the Rule of War: Postconflict Institutions and the Micro-Dynamics of Conflict in Eastern DR Congo’, Spring 2017, *International Organization* 71, pp. 281-315, p. 282.

<sup>608</sup> Nielsen R., A and Simmons, B. A., ‘Rewards for ratification payoffs for participating in the international human rights regime’, 18 January 2014, available online at: <https://core.ac.uk/download/pdf/78055839.pdf> [accessed 8 January 2019]

<sup>609</sup> Abbay, F., ‘Country report: Eritrea’, 2015, *African Disability Rights Yearbook*, pp. 163-182., COMMITTEE ON THE RIGHTS OF THE CHILD CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION, Nicaragua, CRC/C/3/Add.25 9 March 1994, para. 105, at: [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f3%2fAdd.25](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f3%2fAdd.25)

Application of potential scholarly explanatory variables for lack of implementation is beyond the current research scope. Nonetheless, reflections by Nicaragua and the State of Palestine themselves are relevant. Nicaragua in 1994 muses on the ‘profound crisis in values and standards’ within Nicaragua upon the FSLN’s assumption of State power, and adds, ‘[G]overnment officials, private enterprises, families, individuals, and even those sectors that claim to fulfil a spiritual mission, manifest discriminatory attitudes [...] Little attention to children [with disabilities] so far as rehabilitation is concerned’ was paid to them.’<sup>610</sup>

The State of Palestine comments upon itself. It refers in 2017 to its National Plans as a ‘series of promises to citizens’ but adds under the heading ‘Keeping Our Promises’:

‘Unfortunately, many of the promises set out in past National Plans have not been realized. Most often, the implementation gap results from barriers imposed by occupation; in other cases, because of insufficient funding or overambitious planning.[...] In place of a lengthy list of unaffordable promises, we will need to identify a small number of spending priorities while establishing future policy directions in all sectors to be pursued as the fiscal situation improves.’<sup>611</sup>

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&Lang=en [accessed 28 February 2019], US Department of State, 2017 Human Rights Reports: Guinea-Bissau, at: <https://www.state.gov/documents/organization/277253.pdf>. [accessed 27 February 2019], State of Palestine, ‘National Policy Agenda, 2017 – 2022, Putting Citizens First’, 2016, p. 52 at: [https://eeas.europa.eu/sites/eeas/files/npa\\_english\\_final\\_approved\\_20\\_2\\_2017\\_printed.pdf](https://eeas.europa.eu/sites/eeas/files/npa_english_final_approved_20_2_2017_printed.pdf). [accessed 13 March 2019]

<sup>610</sup> COMMITTEE ON THE RIGHTS OF THE CHILD CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION, Nicaragua, CRC/C/3/Add.25 9 March 1994, para. 105, at:

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f3%2fAdd.25&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f3%2fAdd.25&Lang=en) [accessed 28 February 2019]

<sup>611</sup> ‘National Policy Agenda, 2017 – 2022, Putting Citizens First’, 2016, p. 52 at: [https://eeas.europa.eu/sites/eeas/files/npa\\_english\\_final\\_approved\\_20\\_2\\_2017\\_printed.pdf](https://eeas.europa.eu/sites/eeas/files/npa_english_final_approved_20_2_2017_printed.pdf). [accessed 13 March 2019]

It seems unlikely that disability will fall within the chosen small number of spending priorities. Even before the need for prioritization, pwds were of low priority to decision makers in Palestine. Legislation and policies remained unimplemented, and disability programs often ‘constructed as short-term interventions with heavy reliance on external funding’.<sup>612</sup> A continued focus of the authorities on security and defense, combined with the minimal power of DPOs to hold authorities to account can only contribute to the inertia of the authorities towards pwds, as can continued commonly heard degrading terminology and needs-based approaches to disability.<sup>613</sup>

These statements of the State of Palestine and Nicaragua deserve further interrogation. Whilst they point initially to the veracity of hard facts trumping soft ideas, they also identify additional multiple, context specific variables to explain lack of implementation of ‘promises’ made to pwds. As one of the possible overpromises of the State of Palestine is implementation of the CRPD, this has direct predictive relevance to Transnistria, the RoK and the RoS and, possibly also the far wealthier Taiwan.

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<sup>612</sup>Swedish International Development Cooperation Agency, ‘Disability Rights in Palestine’, December 2015, at: <https://www.sida.se/globalassets/sida/eng/partners/human-rights-based-approach/disability/rights-of-persons-with-disabilities-palestine.pdf>. [accessed 3 March 2019]

<sup>613</sup> ‘Playing Ping Pong with Disability’, Inter Press Service, 28 April 2019 at: <http://www.ipsnews.net/2016/04/playing-ping-pong-with-disability>. [accessed 25 June 2019]

## **PART 4. CONCLUDING COMMENTS AND A FUTURE RESEARCH AGENDA**

This dissertation draws attention to the invisibility of pwds within territory governed by DFAGs and within pertinent multi-disciplinary scholarly literature. It argues that the efficacy of outside interventions focused on pwds in territory governed by DFAGs may increase if shaped around the disability pertinent normative environment into which they intervene. This requires knowledge of that normative environment, which includes knowledge of DFAG unilateral commitments to pwds. Little, if anything, is known about these commitments.

The Introduction points to three questions that need answers before this knowledge gap can even begin to be filled. To what extent are pwds included in DFAG commitments? What role do models of disability and legitimacy tell us about their development and on what issues should a future research agenda focus? These questions delimit the scope of the dissertation. The application of their answers to how outside disability related interventions might be shaped, or in some instances, better shaped around them in practice has largely and deliberately been kept outside its scope. Further research is needed to increase the credibility of any suggestions in this regard.

Part 2 provides answers to Questions 1 and 2. There is now very clear evidence, for instance, that DFAGs from diverse geopolitical, ideological, territorial and temporal contexts and at various stages of their existence frequently make formal commitments to pwds. Despite their diversity, they commonly share an individual deficit model of disability which dictates in large part the form of commitment made. Some DFAGs publicly defer to the international normative framework and the CRPD specifically. This is most apparent in those that are well-resourced

and/or with whom the international humanitarian and development communities openly engage. Legitimacy pressures and processes at domestic, State and/or international levels are shown to play a potential role in the development of the commitments and influence their dissemination. The influence of legitimation processes is, however, very much context dependent.

The active interaction between the two analytical lenses utilized is not explored in any depth. Nonetheless, there are indications that legitimation pressures may in certain instances contribute to a change in approach towards pwds - even if only at the rhetorical level. DFAGs that demonstrate a clear individual deficit model of disability but who later endorse the CRPD, are illustrative examples.

The research has been undertaken in full acknowledgement of methodological challenges within a contextually very complex topic with forced methodological compromises. It provides therefore only preliminary insights. These should be tested and expanded. As such, throughout the dissertation areas of future fruitful research have been noted. To answer the third question fully, these are reiterated and expanded upon below. The consequent research agenda tries to marry disciplinary interests that largely travel along parallel paths, fail to learn from methodological and theoretical expertise and interests of each but would benefit the other if carried out in collaboration.

First, longitudinal research into the implementation – or otherwise – of DFAGs' CRPD commitments is needed. These include Taiwan, Transnistria, the RoK and the RoS. Issues to explore include the level -and key drivers- of required policy and legislative reforms, the related role of international organizations and civil society and, if possible, the impact on legitimation

processes as suggested above. Do, for instance, the authorities of each DFAG fully understand the conceptualization of disability within the CRPD? How do they interpret it within their own very different contexts? Are they fully aware of the corpus of ‘obligations’ its endorsement imposes? In terms of proposed legitimization pressures that lead to endorsement, do these ameliorate upon endorsement of the CRPD or increase as local or international expectations increase? How does a DFAG navigate potentially conflicting pressures from a majority resident population that is non-disabled and has alternative ‘asks’? A further question relates to the driver of endorsement of the CRPD. If a core driver is the international development or humanitarian community - and perhaps the incentive of financial and technical aid – does this impact internal legitimacy, predicted implementation or both? Finally, as noted previously, civil society from within the RoS directly engaged the UN human rights Universal Periodic Review mechanism through the submission of data on the human rights situation within the territory. How this was received within the UN and RoS, its impact -and the feasibility of similar initiatives- should be probed further.

Equally, in view of the isolation from dominant international humanitarian and development organizations and the international community more widely, implementation of N-KR’s commitments to pwds is a promising future empirical case study, alone or in combination with Taiwan, the RoK, Transnistria and RoS.

Only two analytical variables were applied to the commitments collated. Nonetheless, the role of religious and political ideology was lightly touched upon within the discussion on the Taliban and N-KR, and clientelism in passing with regards to Hezbollah. The role of ideology and clientelism would benefit from far deeper enquiry than was possible within this dissertation. On the former, the Taliban is a constructive future case study on the role of

religious ideology within commitments, as the research hints at a strong role for Islamic Law within its commitments to pwds and, more practically, as its presence and influence in Afghanistan increases. Scholars of Islamic law and disability, already curious about the interrelationship between both and the local contexts within which they are situated, might valuably explore the issue within the context of the Taliban and its own interpretation – and utilization of - Islamic law. This geographical focus also responds to the necessary and intensified interest in the experience of pwds within non-Western contexts and conceptualizations of disability.

Valuable alone, the Taliban as a case study would also act as a comparator against examination of the role of political (and military) ideology as a predictor of the development and evolution of DFAG commitments to pwds. Mampilly,<sup>614</sup> for example, calls attention to the current and historical utilization of Maoism, Marxism and Leninism within a range of ANSA movements and organizational structures. Each emphasizes the importance of a demonstration of their concern for the social welfare of local populations through the provision of public services: CPI-I (Maoist) and EZLN are illustrative examples.

Further research is needed to better understand how this utilization impacts approaches to disability. This might be of specific interest, perhaps, to scholars who endorse the UK social model of disability, influences of which include a Marxist perspective.<sup>615</sup> What insights can they provide, for instance, on the intersection between the specific situational and ideological influences on the development of CPI-I (Maoist) or EZLN commitments to pwds? Might, and

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<sup>614</sup> Mampilly, Z. *supra* note 40, p. 12

<sup>615</sup> Bengtsson, S. *supra* note 450, pp. 151-160.

if so, how might these commitments and their implementation -or lack of – add nuance to their own strongly held theoretical positions?

Increased recent scholarly interest has been shown in the study of diasporas.<sup>616</sup> Whilst there is some evidence of their engagement with the CRPD,<sup>617</sup> this rarely extends to their approach to and impact on pwds beyond the borders of their host States or, more specifically, DFAG governed territory. This remains the case despite evidence of their immense influence and power in certain contexts. The N-KR and the RoS are prime examples. A broad review of historical, current and potential future engagement of diaspora with the issue of disability in their home DFAG governed territories would be add a constructive dimension to the current focus of attention.

As noted above, DFAGs largely try to control what information is released about them. Their communication strategies are therefore subject to intense scrutiny. This scrutiny rarely includes consideration of DFAG representations of pwds. In turn, social media interpretations of DFAG disability related communications often emulate the preamble to this dissertation – approaching pwds as objects of curiosity, discomfort, mirth or pity -, contain inaccurate, partial or misleading assumptions or both.<sup>618</sup> In contrast, the representation of pwds is a substantial preoccupation within disability studies and also within studies of vwds.<sup>619</sup> Collaboration

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<sup>616</sup> For instance, the Centre for Migration and Diaspora Studies at: <https://www.soas.ac.uk/migrationdiaspora/>. [accessed 18 August 2019]

<sup>617</sup> ‘Africans and African Diaspora – Implementation of the UN CRPD to break barriers toward disability-inclusive development’, International Diaspora Engagement Alliance, 4 December 2014, at: <http://www.diasporaalliance.org/implementation-of-the-un-crpd/>. [accessed 18 August 2019]

<sup>618</sup> Johnson, B., ‘What’s Behind ISIS’ Recent Video Use of Jihadists with Disabilities’, Homeland Security Today.US, 6 March 2018, at: <https://www.hstoday.us/subject-matter-areas/terrorism-study/whats-behind-isis-recent-video-use-jihadists-disabilities/> [accessed 30 June 2019]

<sup>619</sup> For example, Norden, M., ‘Bitterness, Rage, and Redemption: Hollywood Constructs the Disabled Vietnam Veteran’, in Gerber, D. *supra* note 485, pp. 96 - 116.

between disciplines to examine DFAG communications (to include their commitments) that draw upon disability will benefit all involved.

Finally, pwds with disabilities are not a homogenous group. They differ in age, gender, ethnicity, wealth, race, ideology, aspirations and experience of disability *etc* or a combination thereof: disability may or may not dominate life experiences. In addition, DFAG actions can directly introduce ‘hierarchies’ of disability – as demonstrated for example through the prioritization of service provision within commitments to vwds or workers with disabilities. Consideration of additional intersectionalities would highlight still further the complexity within all resident populations under DFAG influence. A feasible starting point might be to link into extant initiatives on gender and ANSAs – for instance within discussions on the Geneva Call’s Deed of Commitment for the Prohibition of Sexual Violence in Situations of Armed Conflict and Towards the Elimination of Gender Discrimination.

Interrogation of the place of disability within DFAG commitments is not straightforward from either a theoretical or practical perspective. Its potential contribution to explanations of DFAG responses to pwds and informed appropriate responses is currently untapped. Scholars and international development, humanitarian and legal practitioners are urged to embrace this challenging but important field of enquiry.



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## **APPENDIX 1**

### **Armed non-State *de facto* armed authorities that govern reviewed**

Alliance of Democratic Forces for the Liberation of Congo

Anya Nya

Armed Forces of the North Fuerzas Armadas Revolucionarias de Colombia

Bougainville Revolutionary Army

Burmese Communist Party

Conseil National de Liberation

Communist Party of India (Maoist)

Communist Party of Nepal-Maoist/United People's Front

Communist Party of Malaya

Congolese National Liberation Front

Croatian Republic of Bosnia and Herzegovina

Democratic Army of Greece

Democratic Movement for Malagasy Restoration

Democratic Party of Iranian Kurdistan

Dniestr Republic

Donesk People's Republic

Ejercito Zapista De Liberacion Nacional

Eritrean Liberation Front

Eritrean People's Liberation Front

Ethiopian People's Revolutionary Party

Farabundo Marti National Liberation Front

Federation of Northern Syria – Rojova

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Free Aceh Movement

Free Oman Movement

Free Papua Movement

Front for the Restoration of Unity and Democracy

Hamas

Hezbollah

Houthis

Islamic State of Iraq and Syria

Independent National Patriotic Front of Liberia

Indonesian Peoples Army

Justice Equality Movement

Kachin Independence Army

Karen National Union

Katanga

Khmer Issarak

Kurdistan/KDPI (1946)

Kurdistan Democratic Party - Iran

Lebanese Front

Lebanese National Movement

Liberation Tamil Tigers of Eelam

Liberians United for Reconciliation and Democracy

Movement of Democratic Forces of Casamance

Mouvement Populaire de l'Azaouad

Mong Tai Army

Moro Islamic Liberation Front

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Mukti Bahini: Liberation Force

Mouvement Pour la Justice et la Paix

Mouvement pour la Liberation du Congo

Mouvement Patriotique de Cote d'Ivoire

Mon People's Front

Mouvement Populaire des Ivoiriens du Grand Ouest

Movement of the Taliban in Pakistan

Mozambique Liberation Front

Muslim Brotherhood

National Coalition of Syrian Revolutionary and Opposition Forces

National Democratic Front of the Philippines

National Liberation Army

National Liberation Front

National Patriotic Front of Liberia

National Revolutionary Movement

National Union for the Total Independence of Angola

National United Front of Kampuchea

Nasserite Movement

New People's Army

Oromo Liberation Front

Palestine Liberation Organisation in Lebanon

Party for the Independence of Guinea and Cape Verde

Pathet Lao People's Liberation Army

Patriotic Union of Kurdistan

People's Front for the Liberation of Oman and the Arab Gulf

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Polisario Front/Sahrawi Arab Democratic Republic

Rally for Congolese Democracy

Rally for Congolese Democracy (Faction)

Renamo

Republic of Abkhazia

Republic of Biafra

Republic of Chechnya

Republic of China

Republic of Crimea

Republic Kosovo

Republic of Nagorno-Karabakh (Artsakh)

Republic of Somaliland

Republic of South Moluccas

Republic of South Ossetia

Resistencia Nacional Mocambique

Revolutionary United Front of Sierra Leone

Sandinistas

Shan State Independence Army

Shan State Army

Somali National Movement

Sudanese People's Liberation Movement

Sudan People's Liberation Movement – North

Taiwan (Republic of China)

Taliban (Islamic Emirate of Afghanistan)

Tigrayan People's Liberation Front

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Transnistrian Republic of Moldova (Pridnestrovian Moldavian Republic)

Turkish Republic of Northern Cyprus

Ukrainian Insurgent Army

United Front for the Liberation of Assam

United Front for the Liberation of Assam Faction

United Islamic Front for the Salvation of Afghanistan

United Lao National Liberation Front

United Somali Congress (Faction)

United Wa State Army

Viet Nam Doc Dong Min Hoi

Zviadists

## **APPENDIX 2**

### **Armed non-State *de facto* authorities that govern that commit to persons with disabilities**

Communist Party of India (Maoist)

Communist Party of Nepal-Maoist/United People's Front

Democratic Party of Iranian Kurdistan

Donesk People's Republic

Ejercito Zapista De Liberacion Nacional

Eritrean People's Liberation Front

Hamas

Hezbollah

Houthis

Islamic State of Iraq and Syria

Justice Equality Movement

Kachin Independence Army

Karen National Union

Liberation Tamil Tigers of Eelam

Movement of the Taliban in Pakistan

Muslim Brotherhood

National Coalition of Syrian Revolutionary and Opposition Forces

National Democratic Front of the Philippines

Oromo Liberation Front

Palestine Liberation Organisation

Party for the Independence of Guinea and Cape Verde

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Patriotic Union of Kurdistan

Polisario Front/Sahrawi Arab Democratic Republic

Republic of Abkhazia

Republic of Biafra

Republic of Chechnya

Republic of China

Republic of Crimea

Republic of Kosovo

Republic of Nagorno-Karabakh (Artsakh)

Republic of Somaliland

Republic of South Ossetia

Revolutionary United Front of Sierra Leone

Sandinistas

Sudan People's Liberation Movement – North

Taiwan (Republic of China)

Taliban (Islamic Emirate of Afghanistan)

Tigrayan People's Liberation Front

Transnistrian Republic of Moldova (Pridnestrovian Moldavian Republic)

Turkish Republic of Northern Cyprus

Ukrainian Insurgent Army

United Front for the Liberation of Assam

United Wa State Army