

# The case for a Conclusion

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## Why support UNHCR's proposed ExCom Conclusion on Disability?

The current understanding of disability, known as the 'social model', holds that the root causes of the disadvantages experienced by persons with disabilities do not lie with individuals or their impairment but rather with the discrimination inherent in facilities which are not accessible, attitudes which fail to recognise the rights, capacities and dignity of persons with disabilities, and a system which fails to notice and account for variation from the 'ableist' norm.

Advocacy efforts by disabled persons, disability NGOs and disabled persons organisations (DPOs) resulted in the creation of the Convention on the Rights of Persons with Disabilities (CRPD) in 2006 – but the vast majority of UNHCR's policies and operational tools were written before the CRPD. As a result, most tools either fail to consider disability at all or maintain a 'medical model' view of disability, which equates disability to impairment.

In fact, UNHCR's 1996 publication, *Assisting Disabled Refugees: A Community-Based Approach*, provides some practical advice to field staff in line with the social model of disability. It advises on implementation of community-based rehabilitation and promotes the importance of participation and accessibility. Unfortunately, many other sections revert to the medical model, stressing individual treatment over structural and social change. These guidelines have also been criticised as not drawing on the lived experience of persons with disabilities and not making specific enough recommendations. Furthermore, the majority of UNHCR staff are unaware of its existence and until recently it was only available in hard copy in Geneva. Ironically, since this criticism was made, the guidelines have been uploaded to UNHCR's Refworld website in a format inaccessible to the screen readers used by visually impaired people.<sup>1</sup>

UNHCR's 2004 *Resettlement Handbook* equates disability to injury or severe

trauma and offers resettlement as a protection tool only when a person is "in need of specialised treatment unavailable in their country of refuge." By contrast, UNHCR's *Handbook for the Protection of Women and Girls*, published in 2008, comprehensively discusses disability and reflects current approaches to disability.<sup>2</sup>

At the time of writing (May 2010), following extensive lobbying,<sup>3</sup> a draft text for an ExCom Conclusion on 'the protection of and assistance to asylum seekers, refugees, stateless and displaced persons of concern to UNHCR with disabilities' (title still under debate) is being prepared.

### Why a Conclusion on Disability?

Executive Committee (ExCom) Conclusions constitute broad expressions of consensus regarding the principles of international protection. As 'soft law', they are not legally binding in the same way as CRPD but are "relevant to the interpretation of the international protection regime".<sup>4</sup> ExCom Conclusions can serve a number of functions including:

- introducing or reinforcing principles which may later be accepted as binding parts of customary law
- supplementing the Refugee Convention and Protocol to cover protection gaps
- providing interpretative guidance of refugee law to states and judiciaries
- providing operational guidance to UNHCR and NGO staff
- serving as lobbying and advocacy instruments
- setting standards of behaviour for non-state actors.

Conclusions 105 and 107 are informative examples of the potential value of a Conclusion of Disability. They reiterate rights articulated in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) respectively and extend the principle of non-discrimination beyond the

very limited definition provided in the 1951 Refugee Convention. Conclusion 107 introduced a number of accepted child protection principles, such as 'the best interests of the child', to the refugee law discourse. Conclusion 105 led to the 2008 *Handbook on the Protection of Women and Girls* and the establishment, by the Centre for Refugee Research which was involved significantly in the creation of the Conclusion, of an advocacy and monitoring body for the protection of refugee women and children. Conclusion 105 even led to a target of 10% of resettlement places for women at risk. Each of these Conclusions addresses a gap in the refugee protection framework and provides operational guidance to UNHCR staff, making them amongst the most utilised of all ExCom Conclusions.<sup>5</sup>

The necessity and appropriateness of a Conclusion on Persons with Disabilities becomes apparent, therefore, given:

- the significant unmet protection needs of refugees and other displaced persons with disabilities
- the lack of attention to disability and use of outdated models of disability in UNHCR's policies, guidelines and tools
- the 'invisibility' of persons with disabilities and the lack of UNHCR staff properly sensitised to their needs, rights, capacities and dignity
- the active discrimination in resettlement policies by some states and UNHCR
- the recent entering into force of CRPD and the need to reinforce and normalise its principles.

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1. See <http://www.unhcr.org/refworld/pdfid/49997ae41f.pdf>

2. <http://www.unhcr.org/protect/PROTECTION/47cfae612.html>

3. E.g. lobbying paper prepared for UNHCR/NGO Consultations June 2009: <http://tinyurl.com/lobby09>

4. See <http://www.unhcr.org/pages/49e6e6dd6.html>

5. Bryan Deschamp, *Review of the use of UNHCR Executive Committee Conclusions on international protection*, 2008 <http://www.unhcr.org/483d701f2.pdf>