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## 2 Disability, Repressive Regimes, and Health Disparity: Assessing Country Conditions in North Korea

*Jae-Chun Won,\* Janet E. Lord,\*\* Michael Ashley Stein\*\*\* and  
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### Abstract

This article examines the potential of international human rights standards to account for heightened risk and vulnerability to human rights abuses for persons with disabilities in politically repressive environments. We offer a preliminary assessment of whether and how a disability-cognizant accounting of human rights in repressive regimes can lead to a more credible and comprehensive understanding of disability in such contexts. In so doing, we make the case for a more thorough and thoughtful application of international disability rights standards to better inform human rights investigations, transitional justice approaches, and international criminal law proceedings. To illustrate this methodology, we analyze health and human rights disparities for North Koreans with disabilities by framing health disparity within a socio-contextual and rights-based understanding of disability. Specifically, we consider the social determinants of health in health outcomes for persons with disabilities using the human rights frame offered by the Convention on the Rights of Persons with Disabilities. Using North Korea as a case study, we argue that assessing the social determinants of health and the disabling impact of social, physical, and other exogenous factors is likely to yield insights on health disparity in repressive (and other) environments.

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## 1 Introduction

It has been ten years since the United Nations General Assembly adopted the first core human rights treaty of this century – the Convention on the Rights of Persons with Disabilities (CRPD or Convention).<sup>1</sup> The explicit embrace of disability-specific protections represented a quantum leap in international human rights law. Before the CRPD, the rights of persons with disabilities were marginal at best, and contingent, partial, and undermined at worst, whether in the United Nations human rights system or beyond.<sup>2</sup> A decade on, some 162 countries have ratified the Convention, and some 88 its Optional Protocol,<sup>3</sup> a treaty body has travelled a reasonably substantive journey since its work commenced in 2008,<sup>4</sup> and United Nations agencies and programmes are being animated by its principles.<sup>5</sup> Nationally, legislatures are churning out a consider-

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1 This work was supported by a National Research Foundation of Korea grant funded by the Korean Government (NRF-2014S1A2A2028692). We thank Daniel Chungman Hwang, Sophia Senge, and Lauren Shryne for research assistance, and the Citizen Alliance for North Korean Human Rights for feedback and support.

Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106 (2007) [hereinafter CRPD]. The CRPD text, along with its drafting history, resolutions, and updated list of States Parties is posted on the United Nations Enable website, <[www.un.org/esa/socdev/enable/rights/convtexte.htm](http://www.un.org/esa/socdev/enable/rights/convtexte.htm)>, visited on 5 April 2016.

2 See G. Quinn and T. Degener, *Human Rights and Disability: The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability*, February 2002, OHCHR, p. 1, <[www.nhri.net/pdf/disability.pdf](http://www.nhri.net/pdf/disability.pdf)>, visited on 4 April 2016.

3 Optional Protocol to the Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106 (2007) [hereinafter Optional Protocol].

4 For information regarding the Committee's work and its sessions, see CRPD, Treaty Bodies Sessions, <[tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/SessionsList.aspx?Treaty=CRPD](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/SessionsList.aspx?Treaty=CRPD)>, visited on 4 April 2016.

5 In September 2006, the United Nations System Chief Executives Board for Coordination (CEB) established the Inter-Agency Support Group on the CRPD in recognition of the commitment of the United Nations system in “promoting, protecting, and ensuring [the CRPD’s] general principles, as defined in Article 3, both in the work of the United Nations system, and in its internal policies.” For a summary of the work of the Inter-Agency Support Group, see *Status of the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, Report of the Secretary-General* (UN Doc. A/64/128) para. 6, 7 July 2009, <[documents-dds-ny.un.org/doc/UNDOC/GEN/N09/393/77/PDF/N0939377.pdf?OpenElement](http://documents-dds-ny.un.org/doc/UNDOC/GEN/N09/393/77/PDF/N0939377.pdf?OpenElement)>, visited on 12 April 2016.

able quantity of disability rights legislation and domestic and regional courts are invoking the CRPD in their jurisprudence.<sup>6</sup>

A road less travelled in scholarship or in practice drives forward an inquiry as to how disability rights principles of the CRPD can animate and inform work on some of the most egregious human rights violations against persons with disabilities. This lacuna is ironic and paradoxical. Some of the most important human rights standards were inspired by atrocities committed against persons with disabilities – the Nuremberg Code and Article 7 of the International Covenant on Civil and Political Rights among them<sup>7</sup> – yet international criminal law, international humanitarian law, and emerging schemes covering mass atrocities, survivorship, and reintegration do not reflect the disability rights narrative espoused by the CRPD.<sup>8</sup> As such, transnational legal practice has yet to reflect the current state of human rights law in the context of disability. One historical and continuing exemplar is the differential human rights reporting on political prisoners from that of persons with disabilities experiencing identical treatment in psychiatric hospitals: the plight of political prisoners detained in psychiatric hospitals has long and correctly been deemed an egregious human rights violation, while indi-

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6 Examples abound, but to illustrate this global trend in legislative action, see Hungary, Act CXXV of 2009 on Hungarian Sign Language and the Use of Hungarian Sign Language (2009); New Zealand, Sign Language Act of 2006; Uruguay, Law 18.437, General Education Law (2008). CRPD-inspired jurisprudence is likewise too extensive to capture herein, but some diverse examples include: *Alajos Kiss v. Hungary*, 20 May 2010, EHCR, no. 38832/06, <[www.unhcr.org/refworld/pdfid/4bf665f58.pdf](http://www.unhcr.org/refworld/pdfid/4bf665f58.pdf)>, visited on 8 April 2016; *Western Cape Forum for Intellectual Disability v. Government of the Republic of South Africa and Another* 11 November 2010, Western Cape High Court, Cape Town, no. 18678/2007, <[www.saflii.org/za/cases/ZAWCHC/2010/544.html](http://www.saflii.org/za/cases/ZAWCHC/2010/544.html)>, visited on 8 April 2016.

7 See J.E. Lord, 'Genocide, Crimes against Humanity and Human Rights Abuses against People with Disabilities', in D.L. Shelton (ed.), *Encyclopedia of Genocide and Crimes Against Humanity* (Macmillan Reference, New York, USA, 2004), pp. 253-258.

8 Two notable exceptions are J.E. Lord and M.A. Stein, 'Peacebuilding and Reintegrating Ex-Combatants with Disabilities', 19 *International Journal of Human Rights* (2015) pp. 277-292; M.A. Stein and J.E. Lord, 'Implications of the UN Disability Convention for Refugees and Internally Displaced Persons with Disabilities', 28 *Arizona Journal of International & Comparative Law* (2012) pp. 401-433. See also W.I. Pons, J.E. Lord and M.A. Stein, 'Disability, Human Rights Violations, and Crimes against Humanity', *Harvard Law School Project on Disability Working Paper* (2016) (on file with authors).

viduals with mental disabilities involuntarily committed in the same conditions have been ignored.<sup>9</sup>

## 2 Framings of Disability in International Law

International standards on disability, as set forth in the CRPD, offer a distinctive conceptual framing of disability as a social-contextual phenomenon and a broad human rights issue.<sup>10</sup> The CRPD offers a corrective response to received framings of disability grounded solely in a biomedical paradigm that led inevitably to a neglect of research and analyses of the broader social, political, and environmental factors that persons with disabilities must mediate. These limiting and retrogressive perspectives are apparent in the framing of disability in international law generally.<sup>11</sup>

The adoption of a socio-contextual understanding of disability by the drafters of the CRPD was inspired by the “social model” of disability that evolved through disability studies literature and advocacy, and which opposed the retrograde “medical model” of disability rooted in individual biology as a condition to be cured or pitied.<sup>12</sup> The CRPD rec-

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- 9 See, e.g., Human Rights Watch, ‘Uzbekistan: Dissident Forced into Psychiatric Detention,’ 2 September 2005, <[hrw.org/english/docs/2005/09/03/uzbekin1684.htm](http://hrw.org/english/docs/2005/09/03/uzbekin1684.htm)>, visited on 8 April 2016; Human Rights Watch, ‘Uzbekistan: Psychiatric Punishment Used to Quash Dissent: Government Deploys Stalinist-Era Tactic against Leading Human Rights Defender,’ 19 October 2005, <[hrw.org/english/docs/2005/10/20/uzbekin1905.htm](http://hrw.org/english/docs/2005/10/20/uzbekin1905.htm)>, visited on 2 April 2016 (illustrating this trend of highlighting abuses against political dissidents held in unacceptable conditions in psychiatric institutions but paying no attention to the human rights situation of others held under the same conditions).
  - 10 See M.A. Stein, ‘Disability Human Rights,’ 95 *California Law Review* (2007) pp. 75-121; J.E. Lord and M.A. Stein, ‘The Domestic Incorporation of Human Rights Law and the United Nations Convention on the Rights of Persons with Disabilities,’ 83 *University of Washington Law Review* (2008) pp. 449-456.
  - 11 For further discussion of this gap, see J.E. Lord, ‘International Humanitarian Law and Disability: Paternalism, protection or rights?’, in M. Gill and C. Schlund-Vials, eds., *Disability, Human Rights and the Limits of Humanitarianism* (Ashgate, Vermont, USA, 2014), pp. 155-178.
  - 12 We note here, however, that social and medical models of disability, although frequently presented in stark opposition, can overlap. In keeping with the view expressed in the *World Report on Disability* that disability “should be viewed neither as purely medical nor as purely social”, we recognize the complexity and

ognizes that “disability is an evolving concept” and an expression of “human variation” that “results from the interaction between persons with impairments and attitudinal and environmental barriers” that impedes “their full and effective participation in society on an equal basis with others.”<sup>13</sup> In doing so, the CRPD acknowledges a social model understanding of disability and seeks to ameliorate environmental barriers that create disabling conditions. Viewing disability as contextual and dependent on exogenous factors brings to the fore an array of societal barriers that inhibit access to and enjoyment of human rights protections.<sup>14</sup>

This approach is now reflected increasingly in other spheres of research in which disability issues are being amplified. For example, research in the social, engineering, and health sciences increasingly underscores the role that physical, technological, institutional, and attitudinal barriers play in inhibiting the full and equal social participation of persons with disabilities.<sup>15</sup> The fields of social epidemiology and social medicine likewise emphasize the link between human health and the broader social contexts within which health outcomes hinge.<sup>16</sup> Likewise, scholars working at the intersection of health and disability emphasize the limitations of accounts of disability in which unsupport-

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multifaceted nature of disability that is too often glossed over in commentary on the models. World Health Organization and World Bank, *World Report on Disability* (2011), <[www.who.int/disabilities/world\\_report/2011/en/](http://www.who.int/disabilities/world_report/2011/en/)>, visited on 8 April 2016.

- 13 CRPD, *supra* note 1, preamble and art. 1. Here it should be noted that the International Classification of Functioning, Disability and Health (ICF), a framework promulgated by the World Health Organization, understands functioning and disability as a dynamic interaction between health conditions and contextual factors, both personal and environmental, and attempts to mainstream the lived experience of disability as part of universal human experience. See J.E. Bickenbach, S. Chatterji, E.M. Badley and T.B. Üstün, ‘Models of disablement, universalism and the international classification of impairments, disabilities and handicaps’, 48 *Social Science & Medicine* (1999) pp. 1173-1187.
- 14 See J.E. Lord and M.A. Stein, *supra* note 10, pp. 449-456.
- 15 See P. Blanck, *eQuality: The struggle for web accessibility by persons with cognitive disabilities* (Cambridge University Press, Cambridge, UK, 2014).
- 16 See, e.g., L.F. Berkman and I. Kawachi, *Social epidemiology*, (Oxford University Press, New York, USA, 2000); J.E. Bickenbach, S. Chatterji, E.M. Badley and T.B. Üstün, *supra* note 13.

ed empirical assumptions are made about the quality of life of persons with disabilities.<sup>17</sup>

### 2.1 *Framing Human Rights and the Right to Health*

This article examines the human rights implications for persons with disabilities engendered by politically repressive environments, with particular emphasis on public health consequences, in North Korea.<sup>18</sup> The core elements of the right to health under international human rights law compel an analysis that is acutely sensitive to environmental variables. This is in line with the concept of health found in the World Health Organization's 1946 Constitution, whose preamble defines health as "a state of complete physical, mental and social well-being."<sup>19</sup> The preamble further states that "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being."<sup>20</sup> This conceptualization invokes a broad understanding of health that goes beyond formulations as an absence of disease, and forges a link to human rights by underscoring non-discrimination in the enjoyment of the right to health.

The right to health, moreover, encompasses freedoms as well as entitlements. Freedoms, as articulated in the CRPD and other human rights instruments, include the right of persons with disabilities to be free from non-consensual medical treatment; torture and other cruel, inhuman or degrading treatment; and forced labor and detention.<sup>21</sup> In addition, the right to health mandates equal opportunity for everyone to enjoy the highest attainable level of health. This includes, among other entitlements, rights of prevention; treatment and control of diseases; access to essential medicines and assistive devices; maternal, child and reproductive health; equally timely access to basic health services; pro-

17 R. Lang, N.E. Groce and E. Cole, 'Conceptualising the linkages between the Social Determinants of Health and Disability', 19 *Leonard Cheshire Disability and Inclusive Development Centre working paper series* (2013); P. Blanck, 'The right to live in the world: Disability yesterday, today, and tomorrow', 13 *Texas Journal on Civil Liberties & Civil Rights* (2008) pp. 367-401.

18 This article is part of a larger program studying country conditions for persons with disabilities in North Korea that aims to strengthen research and documentation of their status using evidence-based methods.

19 World Health Organization, *Constitution of the World Health Organization* (1946), preamble.

20 *Ibid.*

21 CRPD, *supra* note 1, arts. 15, 17, 25, 27.

vision of health and rehabilitation-related education and information; and participation by persons with disabilities in health and rehabilitation-related decision-making at the national and community levels.<sup>22</sup>

As an inclusive, expansive right encompassing environmental factors that facilitate human health, the right to health identifies a range of underlying determinants of health. These conditions are understood as essential in protecting and promoting the right to health beyond health services, goods, and facilities, and demonstrate the interconnectedness of health and other human rights.<sup>23</sup> Examples reflected in the CRPD and other core human rights treaties include the right to an adequate standard of living (including food and nutrition, clean water, and housing); freedom from torture and other forms of abuse; freedom from discrimination; freedom of movement; disability equality; and gender equality. International human rights law in the context of disability also includes rights to privacy; health-related education and information in accessible formats; healthy working and environmental conditions inclusive of reasonable accommodations and support; participation; and benefitting from scientific progress and its applications, including, for instance, rehabilitation medicine.<sup>24</sup>

Our methodology also draws on health disparity research – meaning “differences in the incidence, prevalence, mortality, and burden of diseases and other adverse health conditions that exist among specific population groups”<sup>25</sup> – in recognition of the fact that, as demonstrated below, research on human rights in North Korea discloses environmentally-driven health disparities for North Koreans with disabilities. Our human rights analysis thus underscores the importance of social determinants in health outcomes for persons with disabilities generally, and also warrants further research into the lived experiences of persons with disabilities in North Korea and other repressive regimes.

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22 *Ibid.*, arts. 25 and 26.

23 World Conference on Human Rights, *Vienna Declaration and Programme of Action*, 1993, <[www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx)>, visited on 4 April 2016.

24 J.E. Lord, D. Souzzi and A. Taylor, ‘Lessons from the Experience of the UN Convention on the Rights of Persons with Disabilities: Addressing the Democratic Deficit in Global Health Governance’, 38 *J. Law, Med. & Ethics* (2010) p. 564.

25 United States, *An Act to Amend the Public Health Service Act to Improve the Health of Minority Individuals* (G.P.O., Washington, D.C., USA, 2000) pp. 2495-2511.



We therefore conclude that adopting a socio-contextual model of disability together with a rights-based analysis yields deeper knowledge of the social and environmental determinants of public health for individuals with disabilities than does a traditional approach concentrating on access to medical and rehabilitation services. Such methodology is also better suited to address the impact of social, physical, and environmental factors on human health and elicit greater insight into the determinants of health disparity.<sup>26</sup>

### 3 Repressive Regimes and the Case of North Korea

Repressive regimes are environments in which States exert pervasive control over daily life, severely restrict freedom of speech and assembly, are intolerant of political opposition, and practice severe human rights violations. People living in repressive regimes often find their health to be the single asset on which they can draw to exercise other economic and social rights, for example the right to work or education.<sup>27</sup> In repressive regimes where access to basic needs is restricted, physical and mental health enables adults to work and children to learn, whereas ill health is a liability to the individuals themselves and to those who must care for them. And individuals' right to health cannot be achieved without realizing other rights such as the right to information, food, housing, and to be free from discrimination. Notably, repressive regimes create disability and exacerbate risk, disadvantage, and secondary disabilities for persons with existing disabilities.

Emerging testamentary evidence suggests that the health disparity among persons with disabilities in North Korea is significant and renders those individuals and their families at particular risk. Yet little comprehensive evidence-based documentation exists to provide a detailed and coherent picture of the situation of persons with disabilities.<sup>28</sup> The

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26 See M.A. Stein, J.E. Lord, and D.W. Tolchin, 'Equal Access to Health Care under the UN Disability Rights Convention,' in R. Rhodes, M. Battin and A. Silvers, eds., *Medicine and Social Justice: Essays on the Distribution and Care* (Oxford University Press, New York, USA, 2d ed. 2012), pp. 245-254.

27 A. Puddington, *Freedom in the World 2007: Freedom stagnation amid pushback against democracy* (Freedom House, Washington, DC, USA, 2007).

28 In our literature review, we examined existing material on the nexus between health disparity, repressive environments, and disability in order to see to

United Nations Human Rights Council adopted a resolution in March 2013 establishing a Commission of Inquiry to investigate human rights country conditions in the Democratic People's Republic of Korea and to determine whether such circumstances constituted crimes against humanity.<sup>29</sup> The Commission's first report was published in early 2014.<sup>30</sup> While it paid some attention to discrimination on the basis of disability and referenced reports of grave violations, it also noted that some of the reporting could not be verified by eyewitnesses. Further, it pointed to the adoption of national legislation in 2003 as evidence of a possible improvement in status of persons with disabilities, even though testimony on disability discrimination suggested otherwise.<sup>31</sup>

The Commission's scant recommendations on disability reaffirm the need for more focused attention on the human rights status of North Koreans with disabilities. It points also to the broader need to ensure that international inquiries take into account the experience of disabled populations living in other repressive regimes. Further, it begs the need for

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whether extant research addressed this area. Second, we examined existing documentation on country conditions in North Korea to assess whether and how health disparity for individuals with disabilities was included. To evaluate the links between health disparity and disability in repressive regimes, we conducted a comprehensive literature review of the coverage of disability as a risk factor for health disparity in repressive regimes. We searched the following major legal, social science, and international development databases: *Abstracts in Anthropology*; Google Scholar; EconLit; Disability and Society Studies; IBBS; Index of Foreign Legal Periodicals; JSTOR; JSTOR Anthropology; Legal Journals Index; PubMed; PsychInfo; SSCI; Web of Science; Women's Studies International. In addition, we examined the principal journals on disability, including: *Disability Studies Quarterly*, *Disability and Society*, *Review of Disability Studies*, and *Scandinavian Journal of Disability Research*, and performed a detailed scan of human rights reporting going back ten years (with particular emphasis on reports issued by Amnesty International and Human Rights Watch).

29 UN General Assembly, *Situation of Human Rights in the Democratic People's Republic of Korea* (Sixty-sixth Session Third Committee, 2015), <[www.ohchr.org/EN/HRBodies/HRC/CoIDPRK/Pages/Documents.aspx](http://www.ohchr.org/EN/HRBodies/HRC/CoIDPRK/Pages/Documents.aspx)>, visited on 25 March 2015.

30 UN Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea, *Report of the detailed findings of the commission of inquiry on human rights in the Democratic People's Republic of Korea* (February 2014), <[www.ohchr.org/EN/HRBodies/HRC/CoIDPRK/Pages/CommissionInquiryonHRinDPRK.aspx](http://www.ohchr.org/EN/HRBodies/HRC/CoIDPRK/Pages/CommissionInquiryonHRinDPRK.aspx)>, visited on 8 April 2016.

31 *Ibid.*, paras. 321-329.

rigorous empirical research conducted through a disability-cognizant framework likely to elicit information specifically relating to persons with disabilities. The existing lacunae can only be filled by utilizing a rights-based, social model framing of disability to effectively document country conditions for individuals with disabilities. The development of human rights standards in the CRPD and the emerging jurisprudence of human rights bodies specifically addressing obligations in the context of disability offer the framework for doing so.<sup>32</sup> Accordingly, the account that follows seeks to amplify how disability works as a marker of heightened risk and vulnerability in repressive regimes and how application of a new international law frameworks establishes these links.

### 3.1 *Accounting for Disability-related Persecution*

Research into the literature on and first-person accounts of country conditions for persons with disabilities in North Korea yields a relatively clear and coherent picture, albeit pieced together from fragmented and limited data and lacking disability-specific legal analysis.<sup>33</sup> However, aligning evidence against the categorization provided by international human rights law and adopting a lens that refocuses on socio-contextual understanding of disability provides a preliminary set of results, and a useful framework for assessing country conditions in repressive regimes for disabled persons.<sup>34</sup> The discussion below is organized by us-

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32 See, e.g., J. Mendez, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Human Rights Council, 22nd Session, 1 February 2013 (UN Doc. A/HRC/22/53), <[www.un.org/Docs/journal/asp/ws.asp?m=A/HRC/22/53](http://www.un.org/Docs/journal/asp/ws.asp?m=A/HRC/22/53)>, visited on 8 April 2016.

33 Because we were interested in identifying any information on topic, we looked beyond peer reviewed journals and international and human rights law reviews to autobiographies and biographies, newspapers, online web articles and publications, and other articles and book chapters, including, for instance, a general Google and Nexis search. Searches were also conducted of UN documents on websites (e.g., Refworld) to track related documentation.

34 Our research gauged existing documentation on country conditions in North Korea to assess the extent to which such work could yield more concrete findings about health disparity among North Koreans with disabilities by utilizing a socio-contextual frame of analysis. A socio-contextual understanding of disability human rights is sensitive to the range of environmental barriers exogenous to the individual that enhance health and human rights risk for individuals with disabilities. We applied that conceptual model to evidence-based accounts of country conditions in North Korea and analyzed that documentation against international legal standards on the rights of persons with disabilities. Thus,

ing disability rights typology as set forth in the CRPD, and aligning the results alongside its legal benchmarks.

Our principal method of analysis for the country assessment employs the international human rights law framework reflected in the CRPD, with particular emphasis on health-related conditions and their impact on persons with disabilities in North Korea as it is in this context that much of the extant research yields evidence regarding individuals with disabilities. That said, we acknowledge the shortcomings of existing research insofar as it cabins disability issues within a narrow, medical model conceptualization unlikely to yield a more comprehensive and holistic understanding of country conditions for person with disabilities in repressive regimes. It is precisely this shortcoming that developments in international human rights law regarding persons with disabilities are designed to redress.<sup>35</sup> As set forth below, findings based on extant documentation explain characteristics relating to disability and to general human rights issues. These findings very often connect back to maintaining regime power and control. Societies that are closed and repressive heighten risk for persons with disabilities and thus merit careful application of international human rights law in the context of disability.

#### 4 Disability Human Rights Violations as Framed by the CRPD

This Part presents the findings from our research on disability human rights violations, and in particular those implicating the right to health and engendering health disparities, through the framework of the CRPD's articles. In so doing, we offer preliminary evidence of how an accounting of human rights conditions for persons with disabilities in repressive regimes can inform human rights investigations and other

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we used the CRPD and related international human rights law standards as a benchmark for assessing country conditions reported by eye-witness accounts and surveys, and through an analysis of North Korean law and policy.

35 For more on the failure of the mainstream human rights movement to account for the human rights of persons with disabilities in human rights documentation exercises, see J.E. Lord, 'Forging an International Advocacy Network on Disability Rights', in C. Bob, ed., *The International Struggle for New Human Rights* (University of Pennsylvania Press, Philadelphia, USA, 2008), p. 161.

international law processes in ways that prior accounts of repressive regimes have failed to do.

#### 4.1 *Stigma, Stereotyping, and Discrimination – Articles 5 and 8*

Repressive regimes often seek to bolster their grip on power by exercising extreme control over their populations. Under some models of repression, status is determined, in part, on perceived utility of citizenry in maintaining regime order and control. In North Korea, the social and political status of individuals hinges on the extent to which citizens are perceived as being “fit” and thus to be contributors to the regime. Moreover, under the strong social caste system in North Korea, which classifies citizens based on their family background, ability, and loyalty towards the regime, individuals with disabilities historically have been subjected to discrimination. Perceptions of physical and mental health are therefore highly determinative of one’s standing in society. According to one defector:

For the Party, all that counts is the degree of a person’s usefulness... The notion of ‘usefulness’ beams harshly on the fate of the ‘handicapped’ [who are] seen as sub-humans, useless to society, and no one speaks to them in the street... This attitude, molded by the propaganda which puts them at the bottom of the social ladder, is very widespread.<sup>36</sup>

In addition, disability traditionally has been understood as a curse in North Korean society. Taken together, these stereotypes reinforce deep-seated social conventions whereby disabled persons are routinely removed from society and/or neglected by their home communities and the authorities. This marginalization impacts the well-being of persons with disabilities and their families who struggle with shame, helplessness, denial, and depression in response to mental and physical disabilities.<sup>37</sup>

One manifestation of disability-based animus in North Korea is stigmatization through the use of degrading terminology that centers on a perceived characteristic of impairment. Thus, interviews with defectors

36 H. Kang and P. Grangereau, *This is Paradise! My North Korean Childhood* (Abacus, London, UK, 2007), p. 21.

37 See K. Zellweger, *People with Disabilities in a Changing North Korea* (Walter H. Shorenstein Asia-Pacific Research Center, 2013).

reveal the prevalent use of terminology that roughly translates into pejorative terms such as “idiot” and “imbecile.”<sup>38</sup> Other accounts disclose that persons with intellectual disabilities are routinely referred to as “No. 49 patient” or “Hospital 49” or similar variant, referring to the location of psychiatric wards.<sup>39</sup> This contrasts with the terminology used in Article 19 of the *Protection of Persons with Disabilities Act* which roughly corresponds to less pejorative terms like: “blind or deaf, or developmental delays” to describe persons with disabilities.<sup>40</sup> Accounts from recent North Korean defectors indicate that children with disabilities are more likely to experience bullying or isolation in their social networks than their non-disabled counterparts, such as being called derogatory names related to their disabilities by peers.<sup>41</sup>

The most serious and notorious disability-based discrimination in North Korea is widespread segregation and isolation. Testimony by North Korean defectors reveals that State authorities limit the areas where persons with certain disabilities are allowed to move within and reside, especially in cities exposed to foreign scrutiny such as Pyongyang, Nampo, Kaeseong, and Chongjin.<sup>42</sup> Defectors consistently report that controlling freedom to choose one’s residence impacts individuals with disabilities as well as their families and is driven by concern that the existence of disability will reflect poorly on the regime (which touts genetic superiority) and leave an unpleasant impression on visiting foreigners. While some defectors report that persons with disabilities appear in Pyongyang more frequently than elsewhere, they remain largely

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38 Y. Song, Interview Data (Syracuse University, Syracuse, New York, USA) (interview data from March 2015 interviews with North Korean defectors in Seoul, Korea).

39 D. McElroy, ‘North Korea locks up disabled in ‘subhuman’ gulags, says UN’, *The Daily Telegraph*, 21 October, 2006, <[www.telegraph.co.uk/news/world-news/1532036/North-Korea-locks-up-disabled-in-subhuman-gulags-says-UN.html](http://www.telegraph.co.uk/news/world-news/1532036/North-Korea-locks-up-disabled-in-subhuman-gulags-says-UN.html)>, visited on 4 April 2016.

40 Democratic Republic of North Korea, *Protection of Persons with Disabilities Act*, June 2003, art. 9.

41 Korean Institute for National Unification, *White Paper on Human Rights in North Korea* (2012), <[www.kinu.or.kr/eng/pub/pub\\_04\\_01.jsp](http://www.kinu.or.kr/eng/pub/pub_04_01.jsp)>, visited on 4 April 2016. See also UN Commission of Inquiry on Human Rights in the Democratic People’s Republic of Korea, *supra* note 30, para. 323.

42 Korean Institute for National Unification (2012), *supra* note 41, p. 472.

invisible in the capital.<sup>43</sup> Even more egregiously, North Korea operates segregated facilities for people with dwarfism and forces their sterilization. In 2011, 80% of refugee respondents indicated that North Korea segregated and relocated little people, and 67% indicated that the State forced these individuals to undergo sterilization.<sup>44</sup>

#### 4.2 *Adequate Standard of Living – Article 28*

Repressive regimes very often channel resources toward maintenance of regime control, thereby adversely impacting adequate living for the general population. The consequences of such neglect are aggravated for groups already at risk in addition to propelling new entrants into vulnerable categories. Due to nationwide famine attributable to major abuses of power by the country's dictatorship,<sup>45</sup> North Korea decreased food rations in 1996 and ceased them for individual families in 1998.<sup>46</sup> In consequence, 16% of children were acutely malnourished and 62% were suffering chronic malnutrition.<sup>47</sup> The account of one defector of the death of two secondary school classmates is typical of famine survivors and points to the vulnerability of children with disabilities:

One of the two boys was called Kang Jin. His elder brother, who had done everything they could to help him, also died shortly afterwards. His name was Chang Song-Ho, and he had a slight mental handicap. I don't know what happened to him, but he stopped coming to school, and a few days later we learned that he had perished at home.<sup>48</sup>

Consistent with research in other parts of the world, accounts by survivors of the famine indicate that persons with disabilities fared markedly

43 K. Zellweger, *supra* note 36; J. Hosaniak, *Status of Women's Rights in the Context of Socio-Economic Changes in the DPRK* (Citizens' Alliance for North Korean Human Rights, Seoul, South Korea, 2013).

44 Korean Institute for National Unification (2012), *supra* note 41, p. 482.

45 H. Kang and P. Grangereau, *supra* note 36, p. xii.

46 See Amnesty International, *North Korea: Starved of Rights-Human Rights and the Food Crisis in the Democratic People's Republic of Korea (North Korea)* (2004), <[www.refworld.org/docid/402f8d6f4.html](http://www.refworld.org/docid/402f8d6f4.html)>, visited on 4 April 2016.

47 EU, UNICEF and WFP, *Nutrition Survey of the Democratic People's Republic of Korea* (1998), <[www.pwdigby.co.uk/pdf/Report\\_on\\_the\\_DPRK\\_Nutrition\\_Assessment\\_1998.pdf](http://www.pwdigby.co.uk/pdf/Report_on_the_DPRK_Nutrition_Assessment_1998.pdf)>, visited on 4 April 2016.

48 H. Kang, and P. Grangereau, *supra* note 36, p. 105.

poorer, especially those without family support. One defector spoke of a man in his fifties with mental disability who would walk around without pants, his crotch exposed:

His clothes were in rags and he was always scratching lice from his head... Everyone would always laugh at him, but he was one of the first victims of the famine. He would get thinner and thinner and he was one day found with his nose in the snow.<sup>49</sup>

While the overall number of starvation deaths has fallen since 2000, reports and studies indicate that large portions of the population still face hunger and malnutrition. Notably, up to one third of recent military recruits were deemed unfit for service based on cognitive disability rooted in poor nutrition and general health.<sup>50</sup> Such evidence implicates disability on several fronts and underscores the need to appropriately account for disability in human rights investigations, whether those directed at improving conditions, shaping transitional justice strategies or other ends.

#### 4.3 *Children with Disabilities – Article 6*

Research on developing countries generally reveals that children under the age of five face numerous risks, including poverty, malnutrition, poor health, and home environments with little stimulation, all of which can compromise cognitive, motor, and social-emotional development.<sup>51</sup> Research further discloses that under-nutrition renders children more likely to acquire a disability,<sup>52</sup> and negatively impacts physical growth and psychosocial development in young children.<sup>53</sup>

49 *Ibid.*, p. 81.

50 Korean Central News Agency, <<http://www.kcna.kp/kcna.user.home.retrieve-HomeInfoList.kcmsf>>, visited on 4 April 2016; Korean Institute for National Unification, *White Paper on Human Rights in North Korea* (2014), <[http://www.kinu.or.kr/eng/pub/pub\\_04\\_01.jsp](http://www.kinu.or.kr/eng/pub/pub_04_01.jsp)>, visited on 4 April 2016.

51 World Health Organization and World Bank, *supra* note 12, p. 36.

52 *Ibid.* See also N. Groce, E. Challenger and M. Kerac, *Stronger Together: Nutrition-Disability Links and Synergies - Briefing Note*, <[www.unicef.org/disabilities/files/Stronger-Together\\_Nutrition\\_Disability\\_Groce\\_Challenger\\_Kerac.pdf](http://www.unicef.org/disabilities/files/Stronger-Together_Nutrition_Disability_Groce_Challenger_Kerac.pdf)>, visited on 15 April 2016.

53 UNICEF and University of Wisconsin. *Monitoring child disability in developing countries: results from the multiple indicator cluster surveys* (United Nations Children's Fund, New York, USA, 2008).



As defined by UNICEF, under-nutrition is “the outcome of insufficient food intake (hunger)” and includes being underweight for one’s age, too short for one’s age (stunted), dangerously thin (wasted), and deficient in vitamins and minerals (micronutrient malnutrition), all of which are chronic in North Korea.<sup>54</sup>

The UN Committee on the Rights of the Child repeatedly expressed concern over discrimination against children with disabilities and the inadequacy of North Korean measures to ensure their effective access to health, education, and social services.<sup>55</sup> Despite slight improvements in dietary nutrition, as of 2012, one in four North Korean children experienced chronic malnutrition and its effects, including stunted growth.<sup>56</sup> According to an American neurosurgeon who has visited Pyongyang Medical College yearly since 2007, malnutrition-related disabilities like spina bifida are highly prevalent.<sup>57</sup> Girls with disabilities in North Korea are arguably at greater risk for complications arising from malnutrition: it is well established that in communities with limited resources and food shortages, families will frequently adhere to cultural norms and prioritize the nutritional needs of boys over that of girls.<sup>58</sup> Moreover, links between malnutrition and disability in highly repressive regimes are well-established, for instance, malnutrition in utero in the Netherlands during World War II resulted in impaired cognitive function,

54 UNICEF, *Progress for Children, A Report Card on Nutrition* (2006), p. 4, <[www.unicef.org/progressforchildren/2006n4/index\\_undernutrition.html](http://www.unicef.org/progressforchildren/2006n4/index_undernutrition.html)>, visited on 15 July 2015.

55 UN Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: concluding observations: Democratic People’s Republic of Korea* (27 March 2009, CRC/C/PRK/CO/4), <[www.refworld.org/docid/49d5f79e0.html](http://www.refworld.org/docid/49d5f79e0.html)>, visited on 4 April 2016; UN Committee on the Rights of the Child, *UN Committee on the Rights of the Child: Concluding Observations: Democratic People’s Republic of Korea* (1 July 2004, CRC/C/15/Add.239), <[www.refworld.org/docid/42d3b1ac4.htm](http://www.refworld.org/docid/42d3b1ac4.htm)>, visited on 4 April 2016; UN Committee on the Rights of the Child, *UN Committee on the Rights of the Child: Concluding Observations: Democratic People’s Republic of Korea* (24 June 1998, CRC/C/15/Add.88), <[www.refworld.org/docid/3ae6af5a4.html](http://www.refworld.org/docid/3ae6af5a4.html)>, visited on 4 April 2016.

56 UNICEF, *supra* note 54.

57 M. Hill, ‘North Korea’s treatment of disabled improving: organization’, *NKNews.org*, 28 March 2015, <[www.nknews.org/2015/03/north-koreas-treatment-of-disabled-improving-organization](http://www.nknews.org/2015/03/north-koreas-treatment-of-disabled-improving-organization)>, visited on 4 April 2016.

58 N. Groce, E. Challenger and M. Kerac, *supra* note 52.

increased response to stress, and an increased risk of serious mental illness including schizophrenia.<sup>59</sup>

In addition, North Korea lags far behind international standards with respect to eliminating barriers to education for children with disabilities. For instance, in its second regular report to the Committee on Economic, Social, and Cultural Rights, North Korea claimed they maintained three specialized schools for “blind, deaf and mute” children, as well as nine schools for children with speech impairment, thereby providing very limited and segregated access.<sup>60</sup> Moreover, regional training facilities for persons with disabilities are not functioning properly and there is vast disparity in the operation of special education facilities depending on location.<sup>61</sup> Testimony by North Korean defectors suggests that students with disabilities are rarely seen in regular schools. A lack of common devices and assistive equipment for people with disabilities, as well as the inaccessibility of streets and buildings, pose environmental barriers for persons with disabilities and contribute to their exclusion from participation in North Korean society, including schools.<sup>62</sup>

Further, many North Korean interviewees believed that children with genetic disabilities are not being born in that country.<sup>63</sup> However, testimony by women defectors reveals that parents often decide to kill or abandon the child with disabilities because of the social discrimination and economic hardship that accompanies raising such a child in North Korean society. Doctors have informed parents that placing a child face down will cause quick death through suffocation.<sup>64</sup> In addition, human rights reports recount that children with multiple disabilities are confined to their homes because of stigma, maltreatment, and

59 N. Groce *et al.*, ‘Malnutrition and disability: unexplored opportunities for collaboration’, 34(4) *Pediatrics and International Child Health* (2014) pp. 308-314.

60 UN Committee on Economic, Social and Cultural Rights, *Concluding Observations: Democratic People’s Republic of Korea* (2003), <[www.refworld.org/publisher/CESCR,,PRK,403f20524,0.html](http://www.refworld.org/publisher/CESCR,,PRK,403f20524,0.html)>, visited on 11 April 2016.

61 Korean Institute for National Unification, *White Paper on Human Rights in North Korea* (2013), <[http://www.kinu.or.kr/eng/pub/pub\\_04\\_01.jsp](http://www.kinu.or.kr/eng/pub/pub_04_01.jsp)>, visited on 4 April 2016.

62 J. Hosaniak, *supra* note 43.

63 *Ibid.*

64 *Ibid.*

feared social repercussions.<sup>65</sup> There are, however, cases of resistance. One defector reported:

A family looked after their young, mentally disabled son very lovingly. One day his uncle came by from the city with a view to subjecting him to euthanasia. However, the child's parents refused to let him do it, and in the end he left...<sup>66</sup>

Finally, North Korean defectors who were formerly high ranking officials in the People's Safety Agency (i.e., police) and in government posts spoke of the existence of a facility named "Hospital 83." Allegedly located on an island under the administration of the South Hamgyong Province, Hospital 83 is purportedly an institution to which children with disabilities are sent for medical experiments such as the dissection of body parts and tests of biological and chemical weapons.<sup>67</sup> Such accounts cannot be verified as they were not based on eyewitness testimony. However, credible accounts of segregation and quarantine and extreme disability-based stigma render such accounts certainly plausible. Lack of access to institutions housing persons with disabilities is a primary risk factor for institutionalized persons and is a closed society, is all the more dangerous.<sup>68</sup> Put simply, international standards on disability are as crucial for analyzing country conditions for children in repressive regimes as are standards concerning the human rights implications of, for instance, child soldiering.

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65 Citizens' Alliance for North Korean Human Rights, *Publications and Related Content* <eng.nkhumanrights.or.kr/nkhr/bbs/board.php?bo\_table=r\_content>, visited on 4 April 2016.

66 See H. Kang, and P. Grangereau, *supra* note 36, p. 23.

67 UN Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea, *supra* note 29, para. 328; UN Special Rapporteur, *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, 14 August 2013, paras. 32-34.

68 For more on the inherent dangers of institutionalization of children with disabilities, see E. Rosenthal and L. Ahern, 'Segregation of children worldwide: the human rights imperative to end institutionalization,' 12(4) *Journal of Public Mental Health* (2013) pp. 193-200.

#### 4.4 *Access to Health and Rehabilitation Services – Articles 25 and 26*

Autobiographical accounts of defectors and defector interviews suggest that persons with disabilities are particularly disadvantaged in their access to health and rehabilitation services.<sup>69</sup> North Korea purports to provide free access to medical services for all citizens but in practice provides protection for special groups related to military operations.<sup>70</sup> While in theory patients may access hospitals for free, medical equipment and medication are unavailable to the masses and must be bought on the private market by those who can afford them.<sup>71</sup> In other instances medicines and first aid supplies are smuggled into North Korea from China and only are available on the black market.<sup>72</sup> All evidence indicates that medicine and medical equipment “rarely went to the people who needed them”.<sup>73</sup>

In 2007, North Korea opened its first rehabilitation center for persons with disabilities, which is operated jointly with North Korea's Chosun Disabled Persons Protection League.<sup>74</sup> However, according to a 2012 survey of North Korean defectors, only 6% were aware of organizations and rehabilitation facilities for people with disabilities.<sup>75</sup> In 2013, the Korean Federation for Protection of Persons with Disabilities opened the Munsu Recovery Center, a rehabilitation facility for individuals with disabilities in Pyongyang. With modern technology and medical equipment, Munsu Recovery Center serves individuals with disabilities in Pyongyang at no cost.<sup>76</sup> However, the opportunity for people with disabilities to access either of these facilities remains in question, especially given the severe restrictions on movement for North Koreans generally, the poor state of infrastructure making transport difficult and the historical and possibly persisting restriction on persons with disabilities living and being seen in the capital city. In addition, access to information is se-

69 Korean Institute for National Unification (2014), *supra* note 51.

70 *Ibid.*

71 K. Yong and K. Suk-Young, *Long Road Home—Testimony of a North Korean Camp Survivor* (Columbia University Press, New York, USA, 2009), p. 116.

72 *Ibid.*, p. 134.

73 *Ibid.*, p. 116.

74 Radio Free Asia, <[www.rfa.org/english/news/korea/nkorea\\_disabled-20080305.html](http://www.rfa.org/english/news/korea/nkorea_disabled-20080305.html)>, visited on 4 April 2016.

75 Korean Institute for National Unification (2012), *supra* note 41.

76 Korean Central News Agency, <[www.kcna.kp/kcna.user.home.retrieveHomeInfoList.kcmsf](http://www.kcna.kp/kcna.user.home.retrieveHomeInfoList.kcmsf)>, visited on 4 April 2016.

verely restricted in North Korea as are other means of communication, such as the use of computers, cell phones and other methods of receiving information which present additional barriers to individuals with disabilities. The failure to capture salient information on access to such services will undoubtedly compromise efforts to improve country conditions and, in the case of North Korea, inform agendas for the future.

#### 4.5 *Occupational Safety and Health – Article 27*

Many North Korean defectors described working conditions in the military and prisons as seriously deficient in terms of health and occupational safety, with little to no enforcement of regulations. During military enrollment, where mandatory service can extend to some dozen years, inherently dangerous and grueling labor exposed soldiers to enhanced risk of injury. In addition, neither adequate treatment nor compensation was provided for soldiers disabled while serving military duty. As an example, one veteran who lost vision in an eye from an accident while on military duty in a mine testified that his compensation from the government was two pounds of rice.<sup>77</sup>

Successive accounts of the prison system suggest that all people were expected to work in the labor camps, with little to no relief given to those for whom harsh labor would be difficult and even more dangerous than for others.<sup>78</sup> No accommodations were provided for prisoners with disabilities, and prisoners were expected to redouble their efforts even during the famine.<sup>79</sup> Conditions for guards are likewise grim, especially in the prison camps for political prisoners. According to one account, there was a high prevalence of disability among the children of prison guards, and prisoners believed this was a consequence of exposure to chemicals at a lab reportedly used for medical experimentation.<sup>80</sup>

Numerous accounts tell of forced prison labor resulting in frequent accidents, with some of the worst occurring in gypsum and copper mines and logging operations that lacked adequate medical facilities: “The work unit’s hospital took charge of everything on such occasions,

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77 Y. Song (Syracuse University, Syracuse, New York, USA). Personal communication, 2015.

78 B. Harden, *Escape from Camp 14: One man’s remarkable odyssey from North Korea to Freedom in the West* (Viking, New York, USA, 2012).

79 *Ibid.*

80 K. Zellweger, *supra* note 37.

but its methods were pretty basic. Amputation was the general rule, and medication was still impossible to find.”<sup>81</sup>

#### 4.6 *Exile and Quarantine*

According to a 2013 survey of North Korean defectors, 58.7% of respondents indicated that persons with disabilities are subjected to segregation in North Korea.<sup>82</sup> Many accounts by North Korean defectors support the prevalence of a practice where people with disabilities are removed from their communities in popular tourist cities such as Pyongyang, Nampo, Gaeseong, and Chongjjin, and forced to relocate to a more remote city or town.<sup>83</sup> And, as noted previously, a number of witness testimonies collected provide evidence of segregating individuals with short stature to isolated areas. Besides forced segregation, other examples of inhumane discrimination include forced abortion and sterilization upon this segment of the disabled population. Further, such persons reportedly do not receive citizen cards, meaning they are not recognized as North Korean citizens that compromises what little access they may have to government supports. These practices fall afoul of numerous provisions in the CRPD, including the prohibition against discrimination on the basis of disability, the right to community integration, freedom of liberty and movement on an equal basis with others, legal recognition before the law, among others.

Of serious concern are reports of the existence of “Hospital 49” a reportedly segregated institution for people with mental health issues or severe intellectual disabilities. Although the primary purpose is the rehabilitation and treatment of mental health, inhumane conditions for the patients are disclosed by many North Korean defectors.<sup>84</sup> Thus, a former worker in “Hospital 49” revealed the inhumane conditions and treatment of patients in the institution. He also testified that individuals lose their citizenship once they are institutionalized in the hospital. The public knowledge of “Hospital 49” has led to increased stigma for persons with mental health issues or intellectual disabilities in North

81 See H. Kang, and P. Grangereau, *supra* note 35, pp. 31-32. See also C. Kang and P. Rigoulot, *The Aquariums of Pyongyang: Ten Years in the North Korean Gulag* (Basic Books, New York, USA, 2005), pp. 122-123.

82 Korean Institute for National Unification (2013), *supra* note 61.

83 Korean Institute for National Unification (2014), *supra* note 51.

84 D. McElroy, *supra* note 39.

Korean society.<sup>85</sup> Here, as in other accounts of disability-based persecution, human rights violations must be brought to the fore, fully investigated and addressed in any justice mechanism established.

#### 4.7 *Forced Sterilization – Articles 15, 23 and 25*

Research appears to support a widespread practice according to which North Korean authorities pursued the practice of forced sterilization, especially the population of “little people” or persons with Dwarfism. Numerous witnesses reported that involuntary vasectomy was performed against males in government-run facilities.<sup>86</sup> Other accounts point to deception whereby persons of short stature who have intellectual disability received a sterility injection, as they were told the treatment would make them grow taller.<sup>87</sup> Some of these victims of forced sterilization reportedly learned what happened to them and made appeals to the government which were unsuccessful as compulsory sterilization of such individuals was made by order of the Party. This practice violates international human rights standards, including the right to health and provisions protecting reproductive rights, including Article 23(1) of the CRPD, “persons with disabilities, including children, retain their fertility on an equal basis with others” and most surely constitutes a violation of the prohibition against torture or other cruel, inhuman or degrading treatment.<sup>88</sup> The practice of isolating and segregating segments of the population deemed threatening to the North Korean regime on account of an undesired characteristic, therefore further facilitates the practice of sterilization among persons with disabilities who are put into a facility or who end up in the prison system. While the extent of this practice is not known, consistent reporting by defectors suggests that it is relatively common. Further research could clarify the extent to which sterilization and disability-based persecution serves eugenic State policies in North Korea akin to those well-documented in Nazi Germany.<sup>89</sup>

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85 Y. Song, *supra* note 38.

86 Korean Institute for National Unification, *White Paper on Human Rights in North Korea* (2007), <[www.kinu.or.kr/eng/pub/pub\\_04\\_01.jsp](http://www.kinu.or.kr/eng/pub/pub_04_01.jsp)>, visited on 4 April 2016.

87 Korean Institute for National Unification (2013), *supra* note 61.

88 CRPD, *supra* note 1, art. 23(1).

89 See, e.g., J.E. Lord, *supra* note 7.

#### 4.8 *Access to Medical Care in Prison System – Articles 15 and 25*

Numerous autobiographical accounts and human rights reports speak in detail about the disabling effects of the prison system in North Korea. People in prison camps are not regarded as human beings and are denied internationally recognized standards on prisoner rights.<sup>90</sup> Due to severe forced labor in poor surroundings, prisoners in the prison camp system are at high risk of disease, including pneumonia, tuberculosis, and the ill effects of malnutrition which can contribute to long term disability.<sup>91</sup> Prisoners are mobilized to the workplace without exception, however research discloses a consistent practice of quarantining of sick and disabled prisoners in “medical rooms” without medical help or medicine in what former prisoners have called “death rooms,” particularly in the most severe prison camps.<sup>92</sup>

Labor in the political prison camps is particularly harsh. With no equipment, prisoners must perform intensive manual labor daily and low productivity in the prison camp becomes a reason for torture or public punishment, which often results in physical disability or death. Minimal access to food for prisoners is a primary cause of persistent malnutrition. According to the testimony by former prisoners, no consideration for the wellbeing of the prisoners exists. Prisoners, who are judged by foremen when they are no longer able to work, are sent to sanitarium, where critical patients are confined. Because there are no doctors or medicine to treat their disease, the prisoners are usually left alone in an isolated accommodation.<sup>93</sup>

In the prison camps, disability prevalence is high, based on the accounts of defectors. This is attributed to extremely dangerous working conditions, for instance in coal mines and other high risk labor in the absence of occupational safety and health measures. Injuries are not

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90 See, e.g., *Standard Minimum Rules for the Treatment of Prisoners*, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and amended by ECS Res. 2076 (LXII) of 13 May 1977; *Code of Conduct for Law Enforcement Officials*, adopted by General Assembly resolution 34/169 of 17 December 1979.

91 Korean Institute for National Unification (2014), *supra* note 51.

92 UN Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea, *supra* note 30, para. 328. See also B. Harden, *supra* note 78.

93 Korean Institute for National Unification (2014), *supra* note 51. See also UN Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea, *supra* note 30, para. 774.



treated adequately, where they are treated at all. Harsh living conditions as well as punishment constituting torture other inhuman treatment also leads to disabling conditions for prisoners. According to one defector, there are two types of hospitals in the prison camps: one is for security service agents or guards, and another is for prisoners. The hospital for security service agents or guards is equal to hospital facilities in Pyeongyang, but the hospital for prisoners is extremely inferior because its purpose is not for medical treatment but for keeping prisoners in labor.<sup>94</sup>

Access to health care for women prisoners is likewise inadequate and can expose women of child-bearing age to particular health hazards which can result in disability. Coerced infanticide by new mothers and forced abortion for female prisoners is an ongoing and consistent practice.<sup>95</sup> Numerous accounts from defectors detail their time in the camps, in which they were eyewitnesses to forced abortions and killing of babies born to prisoners. These practices enhance risk of disability by exposing women to mental anguish and disabling injury.

#### 4.9 *Psychosocial Effects of Repression – Article 15*

The *World Report on Disability* describes the disabling effects of trauma and repression.<sup>96</sup> Psychosocial disability reportedly contributes high suicide rates for prisoners facing transfer to notorious camps. According to one North Korean prison survivor, “what was really killing us was psychological and emotional torture” especially separation from family for whom “there was no way of knowing whether other members were dead or alive.”<sup>97</sup> Inside the camps, conditions were detrimental to emotional and mental well-being:

I could hear numerous voices of other detainees suffering from physical torture, solitary confinement, and nervous breakdown, but I never had a chance to talk to them. The guards were watching us all the time. At some moments when I was not being tortured, I thought of committing suicide, but there was simply no way.

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94 J. Won (Handong Global University, Pohang, South Korea). Personal communication, 2015.

95 See J. Hosaniak, *supra* note 43.

96 World Health Organization and World Bank, *supra* note 12.

97 K. Yong and K. Suk-Young, *supra* note 71, p. 74.

Guards were watching detainees everywhere around the clock, so there was hardly any moment of privacy.<sup>98</sup>

There were other disabling effects of repression, most pronounced in the prison camps. A survivor of the prison camp system revealed that “[a] nother psychological punishment was the complete absence of any kind of media- newspapers, TV, radio... the separation from the rest of the world was unbearable.”<sup>99</sup>

#### 4.10 *Deficient Legal Framework – Article 4*

North Korea has signed but not ratified the CRPD.<sup>100</sup> It is incumbent upon a signatory to undertake no measures that would undercut the object and purpose of the treaty.<sup>101</sup> In addition, North Korea is obliged to respect the rights of persons with disabilities through its ratification of other treaties, such as the International Covenant on Civil and Political Rights, which is applicable to all human beings.<sup>102</sup> Moreover, the CRPD aims to reflect existing human rights law within the context of disability, meaning that the CRPD reflects existing human rights standards, such as those in the ICCPR, but places them within a disability framework.

Much has been made in human rights commentary about a 2003 disability law on the books. Assessing that law against the social model of disability and the standards set forth in the CRPD would likely result in a more nuanced and meaningful account of human rights country conditions in North Korea. It would, for example, examine the utility of the law in the absence of implementing regulations and the adequacy of institutional structures to support implementation of the national law. It would also scrutinize the substantive obligations set out in the legislation. It does not, however, lay out even the most basic obligations attaching to State Parties. An illustration makes the point: using Article

<sup>98</sup> *Ibid.* p. 80.

<sup>99</sup> *Ibid.* p. 87.

<sup>100</sup> On the current status of CRPD signature and ratification for DPRK, see United Nations Enable website, <[www.un.org/esa/socdev/enable/rights/convtexte.htm](http://www.un.org/esa/socdev/enable/rights/convtexte.htm)>, visited on 5 April 2016.

<sup>101</sup> See Vienna Convention on the Law of Treaties, G.A. Res. 2166 (XXI, 5 December 1966) and 2287 (XXII, 6 December 1967), 1150 U.N.T.S. 331.

<sup>102</sup> International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, Supp. No. 16 at 52, U.N. Doc. A/6316 (1966).

25 (Health) and 26 (Habilitation and rehabilitation) of the CRPD as a benchmark, the 2003 law provides no protection to ensure equal access to health and rehabilitation services for persons with disabilities without discrimination, does not provide for mechanisms of international cooperation so that education, employment, health and rehabilitation rights are achieved progressively, does not include persons with disabilities in the formulation of law, policy and programming, does not afford services that are accessible, available, acceptable and of good quality, and does not protect privacy and confidentiality or adhere to informed consent in the health sphere. In sum, the law does not meet even bare minimum thresholds for compliance with the CRPD and should not, in any instance, be cited as evidence of an improving legal – or other – environment for North Koreans with disabilities. However, paying due account of international disability law standards can yield concrete recommendations for the regime and inform more credible and reliable human rights reporting.

## 5 Conclusions

Responses to disability have transformed during the past few decades. It is now recognized that environmental barriers and disability-based discrimination collectively increase the vulnerability of persons with disabilities to poverty and exclusion. These conditions are likely to be exacerbated in repressive and closed societies where citizens face often insurmountable barriers in accessing health and rehabilitation, adequate sanitation and shelter, and other basic needs. Put simply, disability can operate as an aggravating risk factor for disabled persons in repressive regimes and repression likewise elevates the risk of acquiring a disability. Understanding these dynamics and exposing country conditions for persons with disabilities requires a conceptualization of human rights and disability not captured by traditional framings of either disability or human rights and too often ignored in international legal processes seeking to account for abuses by repressive regimes.

The human rights standards on disability outlined by the CRPD provide a conceptual framework for thinking about disability. The human rights reporting on North Korea reveals that the underlying social determinants of health for persons with disabilities in North Korea are severely compromised and transgress not only the core obligations of the right to the highest attainable standard of health, but also the gamut of

human rights as set forth in the core human rights conventions. Consistent witness accounts disclose exposure to poor sanitation, malnutrition, and lack of access to health care or rehabilitation. These conditions, combined with other social phenomena in North Korea, deepen the disadvantage for persons with disabilities and, additionally, enhance risk factors for acquiring disability. Such factors, when combined with the additional environmental barriers imposed by repressive government that severely restricts access to information, liberty of movement and directs expenditures to maintaining regime control as opposed to improvement in infrastructure or education, create additional risks for individuals with disabilities.

The results of our desk review suggest that country conditions in North Korea result in disability (and aggravate pre-existing disability) and, further, make life exceedingly difficult – and dangerous – for persons with disabilities. Evidence suggests that they are often denied the basic human rights and fundamental freedoms to work, pursue an education, live where they choose, move freely about physical and cyber society, and generally participate in the lives of their communities. More research is required to expose whether and how in repressive regimes persons with disabilities face a greater risk of being exposed to violence, higher risk of injury, greater vulnerability to injury at work, higher risk of premature death, enhanced risk of violations of physical and mental integrity and elevated risk of developing secondary conditions.

Understanding disability within the broader contexts of the social determinants of health, along with a disability rights lens, should also yield greater understanding of the relationship between disability and health promotional strategies, such as the inclusion of disability awareness training for health professionals, and an improvement in the overall quality of health care services provided for people with disabilities. The adoption of a legally binding treaty on the rights of persons with disabilities should help to inform assessments of risk, vulnerability and human rights enjoyment for individuals with disabilities and is particularly needed to expose country conditions in repressive regimes of which North Korea is a paradigmatic case.



## *Public International Law*



