

PERSONS WITH DISABILITIES

Protecting disabled people during armed conflict in North Kivu: Challenges and perspectives

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Abstract

This study analyses the situation of persons with disabilities caught up in armed conflict in the Democratic Republic of the Congo, in particular in North Kivu Province. The study goes beyond the few statistics available – which show the vulnerability of persons with disabilities during humanitarian crises – to identify the obstacles to taking persons with disabilities into account in humanitarian action in North Kivu. As a result, the study provides practical recommendations to overcome these obstacles, fill in the gaps in humanitarian action and improve the situation of persons with disabilities by ensuring efficient and effective protection in times of armed conflict.

Keywords: Humanitarian action, armed conflict, disability, inclusion, protection, Democratic Republic of the Congo.

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Introduction

In 2019, around 12.8 million people (nearly 13% of the estimated population), of which 5.6 million are under 18 years old, needed humanitarian assistance and protection in the Democratic Republic of the Congo (DRC).¹ Armed conflicts are largely responsible for this humanitarian crisis, particularly in the eastern part of the country, and disproportionately affect women, children and persons with disabilities. Persons with disabilities² already endure serious violations of their rights in times of peace, but the situation becomes even more complex in a humanitarian crisis, such as an armed conflict. According to Humanity and Inclusion, a non-governmental organization previously known as Handicap International, “during humanitarian crises, the rate of disability is high. Around ten million of the displaced population in the world are disabled.”³ In addition, according to Humanity and Inclusion’s field surveys, 75% of persons with disabilities say they have difficulties in accessing humanitarian services and 92% of humanitarian actors think that they do not properly take persons with disabilities into account in their humanitarian work.⁴ Moreover, 78% of humanitarian actors do not collect data on disability and 79% do not have a separate budget for including persons with disabilities in humanitarian programmes.⁵ As a result, the authors have decided to analyse how persons with disabilities living in North Kivu Province, DRC, are protected during armed conflict under international humanitarian law.

This study draws on current national, regional and international legal instruments, as well as interviews held in September 2020 and between May and December 2021. The authors refer in particular to Article 11 of the Convention on the Rights of Persons with Disabilities (2006), which states:

States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.⁶

- 1 United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), *Plan de réponse humanitaire 2017–2019: République démocratique du Congo*, UNOCHA, December 2018, p. 6, available at: <https://reliefweb.int/report/democratic-republic-congo/r-publique-d-mocratique-du-congo-plan-de-r-ponse-humanitaire-2017-0> (all internet references were accessed in October 2022).
- 2 According to Article 1 of Convention on the Rights of Persons with Disabilities, New York, 13 December 2006 (entered into force 3 May 2008), disabled people are people “who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.
- 3 Humanity and Inclusion, *Le processus HNO/HRP: La nécessité de prendre en compte les personnes handicapées dans l’action humanitaire*, Power Point presentation, unpublished, August 2019.
- 4 Humanity and Inclusion, *Présentation au Sommet Humanitaire*, Humanity and Inclusion, Istanbul, 2016.
- 5 Humanity and Inclusion, *Analyse des barrières d’accès et de participation des personnes handicapées à la réponse humanitaire en RDC*, Humanity and Inclusion, Kinshasa, June 2020.
- 6 Convention on the Rights of Persons with Disabilities, above note 2, Art. 11

The authors also drew inspiration from other instruments of international humanitarian law that protect “people who are not, or are no longer, participating in hostilities” and which, therefore, apply to persons with disabilities: the Kampala Convention (2009), which is the most important treaty in terms of protecting persons with disabilities in Africa (including persons with disabilities that have been displaced as a result of armed conflict);⁷ the Sphère standards;⁸ the Inter-Agency Standing Committee guidelines;⁹ the Universal Declaration of Human Rights;¹⁰ and international treaties that set out guidelines and other necessary foundations for protecting persons with disabilities, although their implementation remains a problem, in particular in the context of armed conflict in North Kivu.

The study is divided into three parts: the first part presents the situation of persons with disabilities in armed conflict in North Kivu; the second identifies the hurdles to ensuring that persons with disabilities are taken into account in the protection of victims in armed conflict in North Kivu; the third sets out some recommendations to take persons with disabilities effectively into account in humanitarian action for the armed conflict in North Kivu.

The situation of persons with disabilities during armed conflict in North Kivu

Alongside women and children, persons with disabilities are the hardest hit by armed conflicts. In North Kivu, they are heavily exposed to the effects of these conflicts, and many more become disabled as a result of armed conflict and traffic accidents. The authors spoke to several organizations, some of which were disabled people’s organizations (DPOs), including l’Organisation Féminine de la Recherche pour le Développement Intégral (OFERDI), l’Action de Charité pour l’Intégration et le Développement (ACID) Les Kapitula, and the Synergie des Associations des Personnes Handicapées (SYAPH). The information presented below was collected from the interviews conducted in relation to North Kivu between January 2019 and December 2021.

Many persons with disabilities died because they were not able to flee, unlike able-bodied people. An OFERDI representative said:

7 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), Kampala, 23 October 2009 (entered into force 6 December 2012), available at: www.unhcr.org/uk/about-us/background/4ae9bede9/african-union-convention-protection-assistance-internally-displaced-persons.html.

8 Sphère, *Le manuel Sphère: La Charte humanitaire et les Standards minimum de l’intervention humanitaire*, 4th ed., Sphère, Geneva, 2018.

9 Inter-Agency Standing Committee (IASC), *IASC Guidelines, Inclusion of Persons with Disabilities in Humanitarian Action*, 2019, 19 November 2019, available at: <https://interagencystandingcommittee.org/iasc-guidelines-on-inclusion-of-persons-with-disabilities-in-humanitarian-action-2019>.

10 United Nations General Assembly, Universal Declaration of Human Rights, Paris, 10 December 1948.

When the shooting starts, people panic and run in all directions. It is everyone for themselves and no one has the time or the strength to take care of a person with disability. When attackers overrun an area, those who stay in their homes (particularly persons with disabilities, the elderly and the sick) are killed. If they aren't killed by weapons or fire, they die of hunger, stuck in the house with no way of getting something to drink or to eat because the other members of their family and community have fled the violence. Others try to get away with their loved ones but end up abandoned along the way because they can't keep up with the others. On top of harassment of all sorts, they are also insulted and discriminated against.¹¹

This situation is an everyday experience not only in Masisi Territory, but also in other areas of North Kivu.

There are worrying cases of persons with disabilities being attacked and raped in North Kivu, although cases are rarely reported to the authorities (for fear of reprisals, the weakness or almost complete lack of systems for managing complaints, local customs, impunity, ignorance, the difficulty of bringing charges by people who are, for example, partially sighted or mute, etc.). "Some die as a result, others catch diseases or have unwanted pregnancies, yet others are left traumatized and without any help," said an ACID Les Kapitula representative.¹² A representative of civil society stated:

In Bambo and Tongo, in Rutshuru Territory, for example, men are subjected to forced labour, and others are sexually abused by armed men, while trying to get to their fields. Women and girls are turned into instruments for sexual gratification by the heads of armed groups, who take them out to the bush and, if they try to escape, kill them. Once persons with disabilities have been abused by weapon bearers, they are abandoned and have no choice but to go back home, despite all the risks that that entails.¹³

According to a SYAPH representative:

Even when they try to make ends meet and to provide for their and their families' livelihoods and find how to meet their own needs in times of peace (through income-generating activities), persons with disabilities are left empty-handed in the aftermath of armed conflicts. ... Their property, houses and tools are stolen and/or set on fire, all the activities and initiatives wiped out.¹⁴

As both representatives of ACID Les Kapitula and SYAPH mentioned, the income-generating activities they carry out on behalf of persons with disabilities have been

11 Anonymous interview with an OFERDI representative, a DPO active in Kitshanga/Mweso, Masisi Territory, North Kivu, November 2021.

12 Anonymous interview with an ACID Les Kapitula representative, a DPO active in Kiwanja, Rutshuru Territory, North Kivu, November 2021.

13 Anonymous interview with a representative of civil society in Bambo/Rutshuru, May 2021.

14 Anonymous interview with a SYAPH representative, a platform for DPOs in Goma, North Kivu, November 2021.

destroyed several times in the armed conflicts, making their members yet more vulnerable. For example, pigs and goats raised by OFERDI were stolen by attackers in Kitshanga in 2020. In addition, a public secretariat set up by SYAPH in Goma had its equipment stolen by bandits.

In interviews carried out for this study, the authors have heard several statements that bore witness to the situation of persons with disabilities in armed conflict in North Kivu. Here are two:

When the shooting starts, we often don't know in which direction it's coming from. So, people start running in every direction, but all with the same idea of plunging into the bush to hide out of sight. For more than 17 years, I've been wheelchair-bound. I can't go anywhere without my wheelchair. When people run off into the bush, I can't follow them because I can't find any way through the bush in my wheelchair. Plus, it's often night-time, so it's hard to see and check where you're going. And in such a situation, everybody wants to be quick to run away. Even my wife and children abandon me and run away, though I don't hold it against them.¹⁵

We're used to it, especially me. When they start shooting, I just pray to God that he'll save my soul, because I can't run away. My family already knows that after a few rounds have been shot, even the people from the village will start looting the houses of those who've fled. So, they ask me every time to stay in the house, given that in my state I can't run away. (I'm blind, I can't see anything with either of my eyes.) If I hear anyone come near the house, I shout out, and if it's a thief, they run off. So, when the shooting starts, I'm the guardian of the house and the goods. In my family's eyes, they're more valuable than I am.¹⁶

Challenges to protecting persons with disabilities during the armed conflict in North Kivu

Protecting persons with disabilities during the armed conflicts in North Kivu faces several challenges in general, which become even tougher when the individual needs of each person with disability is taken into account. Here are some of the key challenges that the authors have identified.

Communities', States' and humanitarian actors' ignorance about inclusion and the lack of awareness of the rights of persons with disabilities

A defender of disabled people's human rights, Théophile Shukuru, has said:

15 Anonymous interview with a person with reduced mobility, Bambo/Rutshuru, November 2021.

16 Anonymous interview with a visually impaired person, Mangina/Beni, November 2021.

Many people think that protecting persons with disabilities is an act of charity, done out of pity for them; they are unaware that there are not only general but also specific legal instruments that guarantee the protection of persons with disabilities both in situations of peace and during humanitarian crises (such as armed conflicts).¹⁷

On the basis of its field surveys, Overseas Advising Group (OAG) states:

The quantitative data indicates a low awareness of the legal framework (40% of actors said they knew about the legal framework). Some actors also state that they do not know the legal framework very well, but that is not indispensable for fulfilling their role.¹⁸

The use of tools, policies and strategies that exclude persons with disabilities

Although efforts are beginning to be made by the Protection Cluster¹⁹ to take persons with disabilities into account in humanitarian action, many humanitarian actors use tools, policies and strategies that do not consider the specific needs of persons with disabilities during operations designed to protect victims of armed conflict in North Kivu. For example, before 2019 identification and distribution cards, used to select beneficiaries, excluded disability almost entirely. Partially as a result, persons with disabilities are forgotten during most activities. Humanity and Inclusion found that “47 per cent of actors believed that disability is taken into account in policy and strategy documents, 29 per cent thought that these documents do not take disability into account, and 24 per cent did not know”.²⁰ Furthermore:

in general, persons with disabilities are not taken into consideration in humanitarian strategies and putting them in the category of vulnerable people or people with specific needs is not likely to lead to their specific needs being taken into consideration, and hence becoming a risk to championing their rights. This leads *de facto* to risks of discrimination and exclusion.²¹

17 Théophile Shukuru, defender of disabled people’s human rights, interview on raising awareness of the Convention on the Rights of Persons with Disabilities, Goma, December 2021.

18 OAG, *Prise en compte des Personnes Handicapées dans la réponse humanitaire en RDC : Enquête CAP multisectorielle couplée avec les Questions du Washington Group*, Humanity and Inclusion, Kinshasa, October 2021, pp. 21–7, available at: <https://reliefweb.int/report/democratic-republic-congo/prise-en-compte-des-personnes-handicap-es-dans-la-r-ponse>.

19 The Protection Cluster, led by the United Nations High Commissioner for Refugees (UNHCR) in North Kivu, coordinates the protection response of humanitarian actors. The co-lead is the Norwegian Refugee Council. It holds a meeting once a month and provides technical guidance on taking protection into account in humanitarian operations. See Protection Cluster, *Orientations du Cluster Protection au Nord-Kivu*, PowerPoint presentation, Goma, February 2021, slides 5–15.

20 Humanity and Inclusion, above note 5, p. 21.

21 *Ibid.*, p. 28.

The lack of data on disability and the lack of indicators specifically linked to disability

The United Nations found that the “lack of disability-related data, including qualitative and disaggregated data, is one of the major barriers to the accurate assessment of disability inclusion in the development and humanitarian contexts”.²² Humanity and Inclusion’s studies confirm this, underlining that “humanitarian and state actors alike recognize that there are no statistics on persons with disabilities”.²³ Censuses are not carried out by government authorities, and even humanitarian actors rarely pass on data on people they have identified as disabled. DPOs do not themselves know how many persons with disabilities there are in the areas they cover. This applies in particular to North Kivu, and to the DRC in general, where there are almost no data on disability. Data on disability are generally not collected (even the tools used are not suitable for this) and “many actors justify this by stating they do not have the time or the budget given how urgent the operation is”.²⁴

The absence of data makes it difficult to make decisions about how to protect persons with disabilities

One of the people the authors interviewed said:

The state does not have the means to carry out a census – it’s too expensive. The state needs to turn to its international partners. Some protection actors ask us for the disaggregated data as we are the ones who centralize data collection; but we can’t provide the data as even we don’t have them. So, without the statistics, they cannot take disability into account.²⁵

Persons with disabilities and DPOs are not involved

Humanitarian and State actors who involve persons with disabilities and DPOs in activities to protect victims of armed conflict (identifying beneficiaries, awareness-raising, training, etc.) are rare. In addition, DPOs do not regularly seek contact with humanitarian actors or State actors to ask for support. DPOs keep their distance because every time they request meetings from non-governmental organizations, they are rebuffed. They are neglected, and humanitarian actors think that DPOs only approach them to beg.²⁶ Humanitarian actors acknowledge the “lack of inclusion of persons with disabilities at the stage of the conception of

22 United Nations, United Nations Disability Inclusion Strategy, available at: www.un.org/en/content/disabilitystrategy/assets/documentation/UN_Disability_Inclusion_Strategy_english.pdf.

23 Humanity and Inclusion, above note 5, p. 28.

24 Statement by a humanitarian actor while drawing up the Humanitarian Response Plan in the DRC, UNOCHA, Goma, June 2020.

25 Anonymous interview with an official at the Institut National de la Statistique, Goma, November 2021.

26 Statement by DPO representative in North Kivu while drawing up Humanitarian Response Plan in the DRC, UNOCHA, Goma, June 2020.

projects, which thereby excludes them from the programming stage and hence the activities”.²⁷ This is one of the barriers preventing persons with disabilities from getting access to humanitarian action in the DRC.

The non-inclusive nature of budgets in relation to disability (budgets do not take specific needs of persons with disabilities into account)

During activities to protect victims of armed conflict in North Kivu, several actors do not take the specific needs of persons with disabilities into account. Budgets do not cover disability and are less flexible; as a result, persons with disabilities find it hard to access humanitarian aid. For example, during distribution of essential items, most humanitarian actors do not take specific needs into account when putting kits together and do not take any measures to transport the kits from the place of distribution to the home of persons with disabilities. In this regard, OAG states that “actors also mention budgetary issues”²⁸ as obstacles to the inclusion of persons with disabilities.

The inaccessibility of infrastructure and means of communication (offices, media, etc.)

In its surveys, OAG states that only 30% of actors state that their programmes and information are accessible.²⁹ In relation to armed conflict in North Kivu, information is mainly transmitted by radio or is carried by word of mouth after awareness-raising sessions, but this does not take into account the specific needs of persons with disabilities who may be partially deaf or visually impaired. Moreover, during awareness-raising sessions or distributions, sites are often inaccessible and not in line with the needs of persons with disabilities. In addition, most offices and other kinds of infrastructure used by humanitarian and State actors are inaccessible: for example, there are too many stairs, which hinders access for people with reduced mobility. Access to sanitary facilities is even more complicated, both in humanitarian and State actors’ offices and sites where displaced people are located. When persons with disabilities try to use these facilities, they are exposed to greater risks (falling, fractures, infection, etc.). World Vision draws attention to water, sanitation and hygiene practices in schools that do not generally meet accessibility standards (classes and latrines).³⁰ The United Nations Office for the Coordination of Humanitarian Affairs, meanwhile, recognizes that the buildings housing its offices in Goma, North Kivu, are not accessible (in particular, there are many stairs and no ramps) and that they need to adapt them to make them so.³¹

27 OAG, above note 18, p. 23.

28 *Ibid.*

29 *Ibid.*, p. 27.

30 *Ibid.*, p. 24.

31 Statement by UNOCHA official while drawing up Humanitarian Response Plan in the DRC, Goma, June 2020.

These situations require transformative action to ensure the inclusion of persons with disabilities in the protection of victims of armed conflict in North Kivu.

For inclusive humanitarian action in armed conflict in North Kivu

The challenges to protecting persons with disabilities during armed conflict in North Kivu no doubt have solutions. To achieve them, all those involved (the DRC's government – who are first and foremost responsible for protecting all individuals within the country's borders – members of armed groups, humanitarian actors, who support the government as partners, the community in general, and disabled people and DPOs) need to show goodwill and to uphold their duties under Article 11 of the Convention on the Rights of Persons with Disabilities. In this regard, the authors make several recommendations.

Raise the awareness of the local population and community leaders regarding the inclusion of persons with disabilities

In North Kivu, it is important that humanitarian actors (in particular via the Protection Cluster) and State actors (via technical services such as the Division of Social Affairs) raise awareness of the communities regarding respect for the rights of persons with disabilities and their protection. At the same time, they must work on building solidarity among communities in order to protect persons with disabilities in armed conflicts.

Strengthen the capacities of humanitarian and State actors and DPOs to include persons with disabilities in humanitarian action, in particular during humanitarian crises like armed conflicts

As Humanity and Inclusion reported:

State and humanitarian actors in the DRC are not sufficiently aware of persons with disabilities and consequently of their specific needs, and therefore cannot make reasonable changes and adapt their response. For the most part, they have little awareness and knowledge of disability, which prevents them from having a positive view of persons with disabilities. Awareness-raising and capacity strengthening projects are therefore needed in order to make humanitarian actors see persons with disabilities in the appropriate light, in line with the recommendations of the Convention on the Rights of Persons with Disabilities.³²

Make tools, policies and strategies inclusive

All the various policies, plans, strategies, etc. should include ideas on disability from the onset; otherwise, disability will not be taken into account in practice.

³² Humanity and Inclusion, above note 5, p. 17.

Systematically disaggregate data by age, sex and disability

Disaggregating data by disability (in reports, on identification, distribution and follow-up cards, etc.) will attract the attention of actors and, as a result, enable actors to put in place inclusive activities. Efforts have been made to disaggregate data by age and sex; the same can, therefore, be done for disability.

Involve persons with disabilities and DPOs directly and at all stages of the operation

Persons with disabilities are experts when it comes to what they need. They should not be side-lined but rather systematically involved in determining what their needs are. Some humanitarian actors think that persons with disabilities are invisible. The authors, however, believe that this attitude reveals a lack of determination and of engagement with inclusion; persons with disabilities are found among different categories of people (men, women, boys, girls, the elderly, etc.). In addition, there are more and more groups of persons with disabilities forming associations, which represents a step forward for accessibility. However, DPOs need stronger technical, operational and financial capacities to reach their objectives, hence their need for support from humanitarian and State actors. It is also important to mention that persons with disabilities and DPOs have to try harder to reach out to humanitarian and State actors (in particular, by taking part in humanitarian coordination meetings, registering with State technical services, etc.) in order to boost their inclusion in humanitarian action.

Put in place inclusive budgets

To meet the costs of making adjustments and adapting facilities to be more disability-friendly, between 2 and 7% of the overall budget needs to be set aside.³³ If this is budgeted in from the beginning, a lack of funds will no longer be an obstacle to including persons with disabilities in humanitarian action. Even if no persons with disabilities are identified among the beneficiaries in the needs assessments (which is very rare), the relatively low cost of inclusion should always be budgeted for. After all, “disability can hit anybody at any moment, as we are all potentially persons with disabilities”.³⁴

33 Age and Disability Consortium, *Humanitarian Inclusion Standards for Older People and People with Disabilities*, CBM International, HelpAge International and Handicap International, Bensheim, London and Lyon, 2018, available at: <https://reliefweb.int/report/world/humanitarian-inclusion-standards-older-people-and-people-disabilities>; and Light for the World, *Resource Book on Disability Inclusion*, 2017, p. 36, available at: www.light-for-the-world.org/publications/resource-book-on-disability-inclusion/.

34 Humanity and Inclusion, “Messages de sensibilisation sur le handicap et l’inclusion”, unpublished, Goma, June 2020.

Create indicators to monitor how persons with disabilities are being taken into account in the prevention and response to crises

Indicators ensure that disabled people are taken into account in humanitarian response; for example, the number of people affected by the response, the number of adjustments made, etc.

Make reasonable adjustments

It is important to adapt inaccessible facilities by making reasonable adjustments. This could entail, for example, installing ramps, guardrails and handrails, optimizing space, and translating important texts into sign language or Braille.

Turn to inclusion specialists

In emergency operations, such as the armed conflict in North Kivu, humanitarian actors should request the support of technical inclusion specialists (e.g. Humanity and Inclusion's technical advisers) or hire permanent staff or consultants who are experts in inclusion in order to ensure that inclusive humanitarian action is put in place.

Diversify the means of communication to take into account the different types of disability

To avoid every form of exclusion and discrimination, humanitarian actors need to diversify the means of communication that they use. For example, for awareness-raising campaigns, sign-language interpreters and various communication methods should be used (images, sounds, posters, body language, hand gestures, etc.).

Conclusion

As shown above, persons with disabilities are especially vulnerable in the armed conflict in North Kivu. Although they face many difficulties in times of peace (discrimination, violence, sexual and economic exploitation and abuse), these difficulties are made worse in times of war, which has been the case for several decades in North Kivu. In addition to being victims of armed conflict, persons with disabilities have specific needs that require particular attention on the part of protection actors. Since they are not, or are no longer, taking part in hostilities, persons with disabilities have a right to special protection under various national, regional and international legal instruments, in particular international humanitarian law, the Convention on the Rights of Persons with Disabilities and the Kampala Convention (2009).

Most of the lacunae and challenges identified in taking persons with disabilities into account in the protection of victims of armed conflict are interlinked – and are in addition to ignorance, a lack of political will and a lack of flexibility on the part of protection actors. Providing assistance to victims of armed conflict is essential for saving lives. However, it is also essential to ensure that assistance is accessible, upholds human dignity and is adapted to the specific needs of beneficiaries. The authors hope that the recommendations set out in this study will effectively and efficiently take persons with disabilities into account for protection work on behalf of victims of armed conflict. All actors should take these recommendations as their own to ensure inclusive humanitarian action.

As this study did not and could not aim to cover all the complexities of disability and vulnerability in humanitarian crises (such as armed conflict), it remains open to further investigation. Contributions by other researchers would ensure that the gaps left by this study were filled, and thereby help improve the quality of the protection of persons with disabilities caught up in armed conflict in North Kivu and around the world.