

Article

International Law and the Protection of Migrant Children with Disabilities

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Abstract

International law has evolved to oblige states to treat children with disabilities with dignity and respect. Yet, where children with disabilities present as migrants, they face compounding challenges that are both physical and legal. This article explores key issues in general migration, including the discriminatory application of migration health rules, access to citizenship and birth registration, family reunification and access to education. There follows an account of particular challenges that face children with disabilities in forced migration and enforcement settings. The article touches briefly on the identification of disability, the vulnerabilities of these children to human trafficking and harms inherent in immigration enforcement mechanisms. The potential and limitations of protective mechanisms available in international law are explored using selective case studies most relevant to the author's research work. Drawing on compilations of jurisprudence by university scholars and key not-for-profit organizations, the article includes some reflections on treaty body oversight of state party responses to migration, disability and human rights protection. The overarching aim is to interrogate and critique the operation of international legal mechanisms and the extent to which state practice is compliant with norms of international law. In this respect, the piece aligns with a broader project to improve international law and practice around disability, human rights and displacement.

Keywords: migrants; children; human rights; disability; international law



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1. International Law, Human Rights and Vulnerable Migrants

1.1. Scoping the Problem

The story of international human rights law is replete with irony and contradictions. On the one hand, legal mechanisms for the protection of human rights have proliferated as understanding of and respect for diversity in human experience, and culture has developed. At the same time, state compliance with the legal norms articulated in a body of well-subscribed human rights treaties¹ is far from uniform or universal. Extraordinary advances in technology and global wealth have not delivered equal dividends within and across countries; in some respects, disparities in access to security, resources and good quality of life have never been greater.² Armed conflicts and the challenges of climate change are

¹ See, most notably, the Convention on the Rights of the Child, ('CRC') (and associated protocols) and the Convention on the Rights of Persons with Disabilities, ('CRPD'). See also *International Covenant on Civil and Political Rights*, ('ICCPR'); *International Covenant on Economic, Social and Cultural Rights*, ('ICESCR'); *Convention Relating to the Status of Refugees*, as modified by 1967 Protocol ('Refugee Convention'); *Convention against Torture and Other Cruel, Inhuman Degrading Treatment or Punishment*, ('Covention Against Torture'); and the *Convention on the Elimination of All Forms of Discrimination against Women*, ('CEDAW').

² See, for example, the World Inequality Database at <https://wid.world>, (accessed on 30 July 2025).

inducing unprecedented levels of involuntary human displacement.³ All are situations productive of pervasive abuse of human rights, exacerbated by the rise of right-wing governments in the United States and parts of Europe in and after 2025, which have brought an active disengagement with norms of human rights law and global equity. See, for example, (Patrick 2025; Moore 2025).

The author's research over many years has concerned human rights in migration, with a particular focus on vulnerable migrants, including children on the move and persons with disabilities (See Section 1.2 below). In this article, I draw together the threads of my various projects to reflect on the evolution and adequacy of international law mechanisms relevant to children with disabilities who present as migrants. These are children who face compounding challenges that are amplified by their physical situation and their legal status as migrants. Migrant children carry the inherent vulnerabilities of childhood in their developing physical and cognitive state. The addition of any of the many and varied forms of disability can jeopardize the child's wellbeing but also create overarching legal challenges. In this respect, migrant children with disabilities can represent an especially disadvantaged sub-group within a cohort of migrants who are readily recognized as being 'at risk'; they are truly an example of intersectional disadvantage. See (Cho et al. 2013; Handcock 2007). This article attempts to capture something of the child's compounding challenges while exploring the ways in which the mechanisms of international law have tried to respond. Both children and persons with disabilities have suffered from a tendency for society to ignore their existence as rights-bearers. See (Smith-Khan et al. 2014; Bhabha 2014, 2018).

The starting point is that, at least in theory, international human rights law now operates to obligate states to treat both citizen and non-citizen children who have disabilities in a manner that recognizes their basic human right to life, dignity and respect. See for example, (Human Rights Committee 2004), para. 10 and (Committee against Torture 2008), para. 7. See discussion in (Crock et al. 2012). The central question is whether enough has been achieved to acknowledge the intersectional and compounding challenges that face individuals by virtue of their inherent characteristics as children and as persons with disabilities as well as the exigencies of their situation.

After outlining in Section 2 critical elements of the key international instruments, Section 3 addresses particular issues that arise for children with disabilities in general migration settings. These include the discriminatory application of migration health rules; access to citizenship and birth registration; family reunification; and access to education. The account includes a brief discussion of migrant children with disabilities in enforcement settings (including detention and removal proceedings). Section 4 explores challenges facing children with disabilities in forced migration. Here, the paper touches briefly on the identification of disability in displacement populations, problems associated with children seeking protection as 'Convention' refugees and harms inherent in immigration enforcement mechanisms. Section 4 surveys the potential and limitations of protective mechanisms available at international law for refugee children with disabilities. The article concludes in Section 5 with some reflections on United Nations (UN) initiatives responding to migration, disability and human rights protection.

1.2. A Note on Research Methods and Case Study Selection

This survey article takes as its starting point the findings of two major projects led or co-led by the author between 2004–2017 across a total of nine countries. The first had as its focus the experiences and treatment of unaccompanied and separated children seeking

³ In 2024 UNHCR estimated that 123.2 million people were displaced worldwide. See UNHCR Global Trends Report (UNHCR 2024), available at www.unhcr.org/global-trends-report-2024, (accessed on 30 July 2025).

asylum in Australia, the United Kingdom and the United States. The work involved desktop, doctrinal research as well as surveys and in-person interviews conducted with children. See (Bhabha and Crock 2007) and (Crock 2006). The author has maintained engagement with issues involving migrant children through her practice, involvement in targeted programs in not-for-profit services in Australia and the United States⁴ and through ongoing desktop research. See, for example, (Crock et al. 2020) and (Crock and Benson 2018, Author of introduction, chaps. 1, 3 and 4). See also (Crock 2015).

The second project involved a study of the experience and treatment of refugees with disabilities across six countries: Indonesia, Malaysia, Pakistan, Uganda, Jordan and Turkey. Funded by the Australian Department of Foreign Affairs and a private donor, this work involved high-level interviews with government and United Nations officials, facilitated by the involvement of then-members of the Committee on the Rights of Persons with Disabilities (CRPD Committee).⁵ The project team compiled data through survey instruments distributed through refugee camps (in Uganda) as well as through face-to-face and group interviews. Collaboration with the UNHCR delivered data on close to one million refugees in the care of that organization in Pakistan. The project also led to the author establishing lasting connections with key International Non-Government Organizations such as the International Disability Alliance (IDA) and the World Health Organization (WHO).

These projects—and the author’s knowledge of law and practice in Australia—explain the choice of case studies in this article. The choices are made while recognizing that many other countries and systems would provide similar insights. The issues discussed in this article are sufficiently broad and numerous to warrant a book. For the sake of this survey piece, the examples used—including relevant concluding observations made by various treaty bodies—are necessarily select and incomplete.

2. The Evolution of International Law Norms

Changes in international law (and legal thinking) of particular relevance to child migrants with disabilities are relatively recent but quite profound. The very oldest human rights instruments such as the Refugee Convention make no express provision for either children or persons with disabilities and other vulnerable migrants. See (Pobjoy 2017, 2019; Bhabha and Crock 2007). Although things were changing by the end of the 20th Century, the Millennium Development Goals⁶ made no mention of disability. It was not until these goals were replaced by the Sustainable Development Goals that consideration of disability was normalized in international human rights and development discourses.⁷ Compliance with specific obligations by state parties is monitored by UN committees established by the key human rights treaties.⁸ These bodies can be charged with both country reviews and adjudication of individual complaints made by persons claiming that a country has not complied with treaty obligations. Although neither ‘concluding observations’ nor opinions on individual complaints bind state parties, the treaty observations and jurisprudence

⁴ Notably the Refugee Advice and Casework Service in Sydney and the Safe Passage Project in New York founded by Professor Lenni Benson.

⁵ See, for example, (Crock et al. 2017; Crock and McCallum 2022) and (Crock 2022). Other publications are referenced throughout this piece as relevant.

⁶ See Millennium Development Goals (MDGs) at [https://www.who.int/news-room/fact-sheets/detail/millennium-development-goals-\(mdgs\)](https://www.who.int/news-room/fact-sheets/detail/millennium-development-goals-(mdgs)), (accessed on 30 July 2025).

⁷ Available at: World Health Statistics (<https://www.who.int/data/gho/data/themes/world-health-statistics>, (accessed on 30 July 2025)).

⁸ For example, the Committee on the Rights of the Child (CRC Committee) monitors the CRC. The Committee on the Rights of Persons with Disabilities (CRPD Committee) monitors compliance with the CRPD, with both committees vested with power to consider complaints made by individuals. See <https://www.ohchr.org/en/treaty-bodies>, (accessed on 30 July 2025).

are ‘soft’ law and provide rich examples of state practice.⁹ Other outputs of note are the general comments issued by the treaty bodies—on occasion with more than one body combining to issue a joint comment. An example in the present context is the joint statement issued by the CRC and CRPD Committees on the Rights of Children with Disabilities.¹⁰ Another is the joint general comment issued by the CRC Committee and the Migrant Workers Committee in 2017 on the human rights of migrant children.¹¹ This document is of particular significance as it expressly references children with disabilities and addresses many of the issues of particular concern in different migration contexts. Reports by UN experts also provide important points of reference. See, for example, (Nowak 2019).

The CRC was the first human rights treaty to include a specific reference to the rights of children with disabilities (in Art 23). The CRC Committee acknowledged the significance of equal treatment for children with disabilities in its early general comments.¹² It adopted a separate general comment on the rights of children with disabilities in 2006,¹³ recognizing that the change in attitude owed much to the increasing organization of disability actors in national and international forums. See also (Rioux et al. 2011, pp. 482–83). On the role of disabled persons’ organizations in drafting the CRPD, see further (Sabatello and Schulze 2013). The CRC is rightly regarded as a super-human rights convention for children—both because of the range of rights recognized and because the instrument has been adopted by all but one of the UN nation states. The only nation that is not party to this instrument is the United States of America. This is important, if only because the CRC adopts and embeds key protective norms from treaties such as the UN Convention relating to the Status of Refugees and its related Protocol, which have not attracted the same level of ratifications.

The CRPD, which came into force on 3 May 2008,¹⁴ is modelled on the CRC in the breadth of rights recognized and in the operation of its oversight committee. Rather than creating new rights for people with disabilities, the CRPD creates a conceptual framework for ensuring equal enjoyment of rights. Most significantly, the CRPD abandons a ‘medical’ or charity approach where disability is equated simply with impairment. See (Weller 2009); (Shakespeare 2010, pp. 266–73); and (Davis 2010). Instead, it recognizes that disability involves not just physical or mental challenges but also the failure to accommodate impairment in a way that facilitates a person’s full participation in society. See generally (Kayess and French 2008; Shakespeare 2010). Article 1 states that persons with disabilities include those 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.

Paragraph (r) of the preamble recognizes that ‘children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children’ and recalls obligations undertaken by states parties to the CRC. The General Principles in Art 3 of the CRPD also give prominence to children and to the CRC. Article

⁹ It is worth noting two organizations in this context who have created online resources collecting relevant treaty body jurisprudence. In this article, I have relied heavily on the International Disability Alliance’s compilation of CRPD concluding observations available at IDA’s compilations of CRPD Committee’s Concluding Observations updated by September 2024 | International Disability Alliance (2024) and University of Leiden’s (n.d.) ‘Children’s Rights Observatory’, available at <https://www.childrensrighsobservatory.org/case-notes>, (accessed on 30 July 2025). For commentary, see, for example, (Çali et al. 2020). See also (Stein and Lord 2010).

¹⁰ During their 89th session and 26th session, respectively, the CRC and the CRPD committees adopted a Joint Statement on the Rights of Children with Disabilities, 23 August 2021. The statement was launched on 21 October 2022, available at <https://www.ohchr.org/en/treaty-bodies/crpd/statements-declarations-and-observations>, (accessed on 30 July 2025).

¹¹ See (Migrant Workers Committee and CRC Committee Joint general comments 2017).

¹² See, e.g., CRC Committee, General Comment No. 1 (2001), [10] 4; CRC Committee, General Comment No. 4 (2003); Committee, General Comment No. 7 (2005): [36(d)] 17.

¹³ CRC Committee, General Comment No. 9 (2006).

¹⁴ In accordance with CRPD, Art 45(1).

3(h) requires states parties to have ‘respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities’, echoing the language of Arts 5 and 14(2) of the CRC.

The concept of the best interests of the child is arguably the most important concept in the CRC. For an account of the historical context of this phrase, see (Van Bueren 1998). The phrase is (again) adopted expressly in the CRPD. Article 7(2) provides that children with disabilities should enjoy rights on an equal basis with other children and that their ‘best interests’ must be a primary consideration in all decisions concerning them.

Article 38 of the CRC obligates state parties ‘to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child’. It also limits the recruitment of child soldiers and demands that states parties ensure ‘protection and care of children who are affected by an armed conflict’ (See UNICEF 2018). Yet this provision says nothing about natural disasters. The CRPD is of particular significance in the context of children on the move because it adopts and extends Article 38 of the CRC. Article 11 of the CRPD requires that states parties carry out the following:

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.

A second advance made in the CRPD is that at least some attempt is made to address head-on the plight of persons with disabilities on the move or seeking to migrate. Article 18 requires ratifying nations to ‘...[R]ecognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others...’. Although the article does not attempt to assert a right to enter a foreign country, the provision does prohibit discrimination with respect to freedom of movement and nationality on grounds of disability. In this respect, the provision reinforces Article 5(1) and (2), which embody the central principle prohibiting non-discrimination on grounds of disability. Article 4 of the CRPD creates a general obligation for ratifying countries to ‘... [M]odify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities.’

As explored in the following part, migration processes pose special challenges for children with disabilities. Article 18(1)(a) addresses these directly, providing that persons with disabilities have the right to acquire and change their nationality and cannot be deprived of these rights arbitrarily or on the grounds of disability. The right to nationality testamurs, such as birth certificates and passports, is also protected (Art 18(1)(b)). The article also affirms that persons with disabilities are free to leave any country, including their nation of citizenship (Art 18(1)(c)), and cannot be prevented from entering their own country on grounds of disability (Art 18(1)(d)). Article 18(2) adopts the terms of Article 7(1) of the CRC. It provides the following:

Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

The CRPD has proved almost as popular as the CRC: initial ratifications made it the fastest ratified convention amongst all of the UN human rights treaties.¹⁵ The speedy

¹⁵ The CRPD was adopted by resolution of the General Assembly of the United Nations on 13 December 2006, and it was opened for signature on 30 March 2007. See UN General Assembly, Committee On the Rights of Persons With Disabilities, 2006). It came into force on 3 May 2008, 30 days after the 20th ratification (see CRPD Art 45(1)).

adoption of the convention underscores states' recognition that persons with disabilities are too often abused and neglected, unable to enjoy human rights that people without disabilities take for granted. Again, as explored in Section 3, children with disabilities who are on the move face compounding challenges.

3. Intersecting Challenges for Migrant Children with Disabilities

Children with disabilities face exclusion as migrants, often on bases that represent prohibited discrimination. They illustrate as well as any group the relationship between disability, poverty and the multi-dimensional factors that underlie discrimination and disadvantage, as noted in Section 2 above. For an account of the challenges of conducting research in this field, see, for example, (M. P. Q. H. Mirza 2010). Children caught in migration processes can also experience treatment that is so damaging they acquire disabilities (See for example (Nowak 2019) and (Hodes 2010)). This section begins with a discussion of the discriminatory impact of national migration health rules before turning to broader issues relating to access to birth registration and citizenship, health rules affecting family unity, access to education and problems associated with immigration law enforcement.

3.1. Disability and Access to Birth Registration and Citizenship Rights (Including Freedom of Movement)

Reinforcing the non-discrimination mandate, Article 7(1) of the CRC and 18(2) of the CRPD recognize that children with disabilities born into poverty, remote rural areas and/or conflict zones are often not registered at birth. The situation is compounded where a child's parents are irregular migrants and do not hold formal status. Here, the parents may be unable or unwilling to alert national authorities to the birth of a child. Without birth registration, children can be unable to seek the protection of any government. They can be denied the most basic rights to state support in the form of food, shelter, health care and access to education, being solely reliant on the care and support of family (UNHCR 2015). Lack of formal identity documents can also hamper participation in society by making it difficult or impossible to obtain credit cards, drivers' licenses and travel permits.

In their 2017 joint general comments on migrant children, the CRC Committee and the Migrant Workers Committee emphasized at [20] the importance of birth registration to reduce the risk of migrant children becoming stateless. They added the following:

The lack of birth registration may have many negative impacts on the enjoyment of children's rights, such as child marriage, trafficking, forced recruitment and child labor. Birth registrations may also help to achieve convictions against those who have abused a child. Unregistered children are at particular risk of becoming stateless when born to parents who are in an irregular migration situation, due to barriers to acquiring nationality in the country of origin of the parents as well as to accessing birth registration and nationality at the place of their birth.

In its country reviews, the CRPD Committee has raised concerns in its concluding observations about irregular birth registration of migrant children with disabilities in a range of signatory countries. These include Mauritania (2023, para. 31ff), Togo (2023, para. 37–38); and Bangladesh—a country with a particularly high population of refugees and stateless Rohingya (Bangladesh 2022, para. 37–38). The Rohingya have also drawn mention in the later reviews of China—one of the earliest countries to ratify the CRPD. As a state that is not party to the key protective conventions for refugees and stateless persons, China was enjoined to undertake more to both document children with disabilities from marginalized communities and to take steps to ratify relevant conventions.¹⁶ Other states called out on

¹⁶ Concluding observations on the combined second and third reports of China, 10 October 2022.

these issues include Laos, Djibouti, El Salvador (twice), India, Kuwait, Myanmar, Rwanda, Senegal, Ethiopia, Guatemala, United Arab Emirates, Uganda, Gabon and Mexico.¹⁷ The list makes plain how pervasive are the deficits in national laws and practices across the world in the case of undocumented migrants and minority groups.

3.2. Health Rules That Discriminate

The right to health is recognized as one of the most fundamental of human rights that should override nationality and legal status. See generally, (Crock 2025, chap. 84); (Cathaoir and Toebes 2022, pp. 23–51) and (Smith-Khan and Crock 2019). In practice, however, migrant children with disabilities often face serious difficulties. This is the case in avoiding removal from a country in which they lack status—even where removal will have negative consequences for their health. (See, for example, CRC Communication 110/2020 *K.K. v. Switzerland* 2023 and ECtHR 2016, *Paposhvili v. Belgium*.) They also face discrimination in seeking admission to a foreign state—even where their presence would not necessarily pose a fiscal or other burden on the receiving state. The central significance of access to health care for migrant children—including those with disabilities—is acknowledged in considerable detail by the CRC Committee and the Migrant Workers Committee in their joint general comment in 2017 (see [54]–[58]). How domestic migration laws and policies can involve impermissible discrimination against children with disabilities is seen in the Australian case. It is acknowledged here that the issue of health rules poses obstacles to family reunification in many countries and areas—notably in Europe. The Australian case is used as an illustration of the issues. See also (CRC and Migrant Workers Committee joint general comments 2017) at [28] ff. That country made an interpretive declaration in relation to Article 18 upon ratifying the CRPD that caveats Australia’s understanding of its responsibilities. See (Stratigos et al. 2014, pp. 2, 7). Australia states, relevantly, the following:

...Australia further declares its understanding that the Convention does not create a right for a person to enter or remain in a country of which he or she is not a national, nor impact on Australia’s health requirements for non-nationals seeking to enter or remain in Australia, where these requirements are based on legitimate, objective and reasonable criteria.¹⁸

Australia’s declaration was criticized by the CRPD Committee from the start because of concerns about how the operation of its migration health rules would affect compliance with Article 18.¹⁹

The *Migration Act* 1958 (Austl) (Migration Act) and its associated regulatory scheme do indeed discriminate against migrants and aspiring migrants on the basis of disability—a fact acknowledged in the exemption of the Migration Act from the operation of s 52 of Australia’s *Disability Discrimination Act* 1992 (Austl). This is because its rules bar applicants

¹⁷ See IDA’s compilations of CRPD Committee’s Concluding Observations updated by September 2024 | <https://www.internationaldisabilityalliance.org/content/ida%E2%80%99s-compilations-crpdc-committee%E2%80%99s-concluding-observations-updated-september-2024>, (accessed on 30 July 2025); and Committee on the Rights of Persons with Disabilities | OHCHR, <https://www.ohchr.org/en/treaty-bodies/crpd>, (accessed on 30 July 2025).

¹⁸ For the text of all reservations and interpretative declarations made in relation to the CRPD, see ‘United Nations Treaty Collection: Chapter IV Human Rights’, 15. *Convention on the Rights of Persons with Disabilities* (Website, 16 April 2014) https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-15&chapter=4&lang=en, (accessed on 30 July 2025).

¹⁹ See (CRPD Committee, Concluding observations on the combined second and third periodic reports of Australia, 2019), para. 35. The Committee’s concerns are also related to Articles 12 and 17 of the CRPD. Australia’s position also drew requests by the CRC Committee in relation to Australia’s reservation pertaining to Article 37(c) of the CRC. See CRPD Committee, Concluding observations on the combined second and third periodic reports of Australia, 2019), paras 5, 6, 63; CRPD Committee, Concluding observations on the initial report of Australia, 2013) para. 15; CRC Committee, *Concluding Observations: Australia*, 2012, paras. 8–9.

with disabilities who would otherwise be eligible for a visa, even where the applicants pose no cost or resource risk.

As a general rule,²⁰ most aspiring migrants to Australia are subject to a requirement that the minister be ‘satisfied’ that they meet applicable health criteria that include a specification that they are free from a disease or condition likely to require health care or community services that would be likely to result in a significant cost to the Australian community in the areas of health care and community services—regardless of whether the applicant would actually use the health care or community services.²¹ A waiver for close family, humanitarian and some business visas does allow for consideration of compelling and compassionate factors. For a discussion of the rules, see (Crock and Berg 2015, Chap. 6). However, assessments are made by doctors bound by actuarial data on matters such as classifications of a disease or disability, expected life spans, putative eligibility for social security assistance and nominal cost of medications and assistive devices. Relevant policies set putative cost and time spans, which operate as effective bars. The system is opaque and inflexible and has been the subject of persistent criticism. See, generally, (Joint Standing Committee on Migration, Parliament of Australia 2020). See, for example, (Saul 2010; Soldatic et al. 2015).

Just how this regime operates to discriminate against persons with disabilities (including children) is illustrated by the complaint made to the CRPD Committee by Irish woman Grainne Sherlock. CRPD Committee, (*Sherlock v Australia*) at 2 [2.2]. Ms Sherlock was denied a temporary work visa after she disclosed that she was living—healthy and symptom free—with multiple sclerosis (MS). The CRPD Committee agreed that Australia’s health rules constituted a violation of Ms Sherlock’s rights under Article 18(1) of the CRPD. This is because the rules operated to exclude her even though she met all the requirements for the skilled visa sought—and even though she would not be costing Australia any more than any other visa applicant. She noted that as an Irish national she was eligible for Australian Medicare, and she had private health insurance that would cover any immediate or exceptional cost. There was no reason to exclude her apart from her diagnosis as a person living with MS. In response, the CRPD Committee found that the Australian rules operated to render irrelevant critical matters such as Ms Sherlock’s ability to perform the job to which she was appointed, her financial independence and the impact the ruling had on her personal and professional life (see p 13, [8.7]). It concluded that Australia’s migration health rules prevented Sherlock from utilizing immigration proceedings on an equal basis with others, in contravention of Articles 4, 5 and 18 of the CRPD (See p 14, [8.8]). For a discussion of this case, see (Crock et al. 2022; Bridle 2022).

While changes have been made,²² the reliance placed on putative rather than actual costs remains. In this respect, the system continues to discriminate against persons with disabilities because of the label they carry rather than the actual burden they might represent. Discriminatory health rules do not just affect the person with disabilities. As the Australian case (again) demonstrates, such rules can operate to deny family reunification. This was the situation facing Convention refugee Shahrzad Kiane. He tried on three occasions to sponsor his family to join him in Australia, with the applications refused on the basis that one of his children suffered from cerebral palsy and was therefore deemed to represent a

²⁰ In theory, the minister holds an overriding power to grant visas. However the discretions are rarely used.

²¹ See *Migration Regulations 1994* (Austl), Schedule 4, public interest criteria (“PIC”) 4005 and 4007. PIC 4007 (2) permits a ‘waiver’ where cost and prejudice is not ‘undue’.

²² In April 2020, the rules were changed to specify that the putative costs of accessing Australia’s National Disability Insurance Scheme (‘NDIS’) should not be counted in any assessment. See (Truu 2020). In July 2024, the putative cost threshold over 10 years was raised to AUD 86,000. See Review of the Migration Health Requirement and Australia’s visa Significant Cost Threshold (SCT) <https://www.homeaffairs.gov.au/reports-and-publications/submissions-and-discussion-papers/review-of-australias-visa-significant-cost-threshold>, (accessed on 30 July 2025).

‘significant cost’ to the country. Mr. Kiane set himself on fire outside Parliament House in Canberra, eventually dying from his injuries. His family was never admitted to the country (Ombudsman 2001).

Again, the Australian case of Kayban Jamshaad demonstrates how migration health rules can operate to threaten the life of non-citizens with disabilities (threatening their ability to subsist). Kayban was born to non-citizen parents in Bunbury, Western Australia, with severe hemophilia that caused a stroke that left the baby with an acquired brain injury. The parents feared that if required to return to their home country (the Maldives) Kayban would die because he would not have access to the medical and other support he required to survive. The family’s initial application was rejected on the grounds that there were insufficient “compelling” or “compassionate” grounds for the child to be granted a health waiver. On appeal, the case was remitted to the minister for re-consideration, and the family was allowed to stay (Pancia 2020). Similar, but less factually extreme cases, have not met with the same success in Switzerland²³ and Belgium.²⁴

In Australia, periodic attempts to expel migrant children with disabilities often induce media campaigns similar to that constructed for Kayban.²⁵ The cases beg the question whether it is ever sufficient to rely on political intervention to remediate the discriminatory effects of national laws. Article 4 of the CRPD contains a general obligation for ratifying countries to ‘... [M]odify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities’. Australia is not the only signatory to the CRPD that retains migration laws which discriminate against migrants on the grounds of their disabilities. See Mute (2018, pp. 514–15) detailing the restrictive laws of Paraguay, Korea, El Salvador, Qatar, Uganda and Uruguay.

3.3. Access to Education

Migrant children with disabilities can face obvious physical challenges in accessing education. However, like all migrant children, they can also fall between cracks in the protective measures that exist in international law.

It is well to recall in this context that some of the very first human rights mechanisms were established after World War II to promote education as a strategy for peace, recovery and development. The United Nations Educational, Scientific and Cultural Organization (UNESCO)²⁶ has authority to prepare and adopt conventions that are binding on state parties and make recommendations. UNESCO’s Constitution commits the governments of state parties to declare that ‘education of humanity for justice and liberty and peace are indispensable to the dignity of man and constitute a sacred duty which all the nations must fulfill in a spirit of mutual assistance and concern’.²⁷ One of the first and perhaps most important UNESCO Convention is the 1960 Convention Against Discrimination in Education. See Convention Against Discrimination in Education 1960. Article 3(e) requires state parties to give foreign nationals within their territory ‘the same access to

²³ See CRC Communication 110/2020 *K.K. v. Switzerland* 2023. This involved a child with disabilities with a complex migration/asylum history, fighting return to Georgia.

²⁴ See ECtHR 2016, *Paposhvili v. Belgium*.

²⁵ Another example in point is the campaign around attempts by Dr Bernhard Moeller to transition to permanent residence when his son Lukas was born with Down’s Syndrome. See Britt (Smith and Cooke 2008).

²⁶ ‘UNESCO in brief—mission and mandate’ (UNESCO) <<https://en.unesco.org/about-us/introducing-unesco>> accessed on 30 July 2025. See also (Duedahl 2016). It is worth noting that the membership of UNESCO is almost co-extensive with the United Nations itself. The Vatican is the only state not to be either a full member (of 163 states) or an associate member (11 states).

²⁷ See Constitution of the United Nations Educational, Scientific and Cultural Organization (opened for signature 16 November 1945). See also UNESCO, ‘General Introduction to the Standard-Setting Instruments of UNESCO’ <https://didattica.uniroma2.it/files/scarica/insegnamento/183829-International-Protection-Of-Cultural-Heritage/70720-Readings-3-General-introduction-to-standard-setting-instruments-of-UNESCO>, accessed on 30 July 2025.

education as that given to their own nationals'. Articles 4 and 5 obligate states to make primary education free and attendance compulsory, to make secondary education 'generally available and accessible to all' and to make higher education 'equally accessible to all on the basis of individual capacity'. See Article 4(a) (this article also contains provisions on ensuring equivalence in standards and efforts to educate persons denied a primary education). Article 5 respects some rights in parents and minority groups to preserve language and culture.

In the decades following this instrument, UNESCO's work in education seems to have focused strongly on the promotion of education from the point of early childhood onwards. The institution itself seems to have enjoyed success in monitoring and data collection, recognizing the importance of statistics in measuring accountability.²⁸ At the same time, the organization has not carried out as much work on issues around enforcement of convention norms or the protection of internationally mobile students. For a discussion of these issues, especially in the context of foreign students during the COVID-19 pandemic, see (Crock and Nutter 2021).

Both the CRC and the CRPD recognize the centrality of education for a child's development and fulfilment of their potential, dignity and sense of self-worth. The most important provision, however, is Article 24 of the CRPD, which details the accommodations required if children with disabilities are to realize their right to education. These range from the (physical) accessibility of school facilities and the provision of assistive technologies through to attitudinal matters or presumptions made about the abilities of children with impairments. For scholarly commentary, see (Babbitt and Lee 2016). The CRC Committee and the Migrant Workers Committee devote some time to the issue of education in their 2017 general comments, although no express reference is made to migrant children with disabilities. See CRC Committee and Migrant Workers Committee Joint General Comments 2017, at [59]–[63]. INGO Reports- see, for example, (Human Rights Watch 2018) and CRPD country reviews reveal that children with disabilities often struggle to access education in developing countries, both because of lack of resources and because of prejudicial attitudes to disability, which can result in children being excluded from education. See CRPD Committee, concluding observations on Uganda, (2016), paras. 48–49. In developed countries, the CRPD Committee has frequently criticized tendencies to segregate children with disabilities in special schools that perpetuate discrimination and stifle potential for advancement and full participation in society. See CRPD Committee, concluding observations on Japan, (2022), paras. 51–52. Where children with disabilities are also migrants, the Committee has only singled out a few countries for specific criticism. In Europe, France²⁹ and Greece³⁰ have been questioned about their failure to provide inclusive education for children with disabilities, especially refugees or asylum seekers and from the Roma community. Iran and Ecuador were also criticized for their failure to provide universal, inclusive education for children with disabilities regardless of migration status. See CRPD Committee, concluding observations on Iran (2017), paras. 46–47; and CRPD Committee, concluding observations on Ecuador (2019), paras. 36–37.

²⁸ The UNESCO Institute for Statistics (UIS) is the statistical office of UNESCO and is the UN depository for global statistics in the fields of education, science, technology and innovation, culture and communication. The UIS is the official source of internationally comparable data used to monitor progress towards the Sustainable Development Goal (SDG) on education and key targets related to science, culture, communication and gender equality.

²⁹ See CRPD Committee, concluding observations on France 1 (2021), paras. 50–51.

³⁰ See CRPD Committee, concluding observations on Greece (2019), paras. 34–35.

3.4. Disability and Immigration Law Enforcement

If events prompting irregular migration itself can cause disabilities—particularly in the very old and the very young—state practices in the form of immigration detention, interdiction and ‘offshore processing’ can also be inherently and egregiously harmful to children. See, e.g., HelpAge International and Handicap International (2014); Crock (2016), p. 383; (UNICEF 2018). International human rights law has long shown an awareness of these harms. All are practices that intuitively contradict notions of the ‘best interests of the child’.³¹

Article 9(1) of the ICCPR sets the scene by prohibiting any form of arbitrary detention. The UN Human Rights Committee has interpreted this to mean that detention must be lawful but also necessary, reasonable and appropriate and an ‘proportionate means of achieving a legitimate aim’. See Human Rights Committee, *Van Alphen v Netherlands*, (1990) at [5.8]; Human Rights Committee, *A v Australia*, (1997) at [9.4]. Article 37(b) of the CRC also prohibits arbitrary detention of children, stipulating that the detention ‘be used only as a measure of last resort and for the shortest appropriate period of time’. CRC, art 37(b). Children must be treated with humanity and respect and in an age-appropriate manner, and their right to family unity must be respected. See CRC, Art 37(c) and Art 37(d), which concerns the right to challenge the legality of their detention. In 2012, the CRC Committee affirmed that the detention of a child because of their or their parent’s migration status constitutes a child rights violation and always contravenes the principle of the best interests of the child. [States should..] expeditiously and completely cease the detention of children on the basis of their immigration status. See CRC Committee, Report of the 2012 Day of General Discussion: The rights of all children in the context of international migration (2012) at [78].

As noted earlier, Article 22 of the CRC extends enjoyment of Convention rights to children seeking refugee protection. (See Triggs (2018) and Crock and Yule (2018)). Again, the CRC and the CRPD acknowledge that children with disabilities have a ‘right to special care’ so as to achieve their full potential and individual development (CRC, Article 23(2)–(3)), being entitled to enjoy equal rights and freedoms with other children. (See CRPD, Article 7(1)). Such children are vested with all of the rights vested by the CRPD on persons with disabilities generally.

Detention of migrant children has become alarmingly common across wealthy developed countries,³² including the United States³³ and Australia. The issue has been a concern to UN treaty bodies for many years. The issue features in general comments³⁴ as well as in opinions issued in response to individual complaints. It is the subject of extensive academic (including scientific) literature.³⁵ Nowak cites as a cause for concern the lack of disability awareness training of staff working in immigration enforcement and asylum processes. He writes the following (Nowak 2019 (references omitted)):

It is especially alarming that children with disabilities are often detained without acknowledgment of their impairments, meaning they are not accommodated or supported in any way. The existence of procedures that allow for the segregation

³¹ CRC, Article 3(1) and CRPD, Article 7(2). See also Mary Crock and Hannah Martin, ‘First Things First: International Law and the Protection of Migrant Child Children’ in (Crock and Benson 2018, chap. 4; Crock et al. 2017, p. 26); and *Minister for Immigration and Ethnic Affairs v Ah Hin Teoh* (1995) at 292 per Mason CJ and Deane J.

³² See Nowak, above n 23.

³³ See, for example, (Schrag 2020).

³⁴ See, for example, See CRC Committee and Migrant Workers Committee Joint General Comment 2017, above n 22, at [5] ff.

³⁵ See, for example, (Sweileh 2023) and the work of the International Detention Coalition at <https://idcoalition.org> (accessed on 30 July 2025). It is beyond the scope of this article to engage with the extensive literature on this subject.

of children (including children with disabilities), from their families within and outside migration detention centers, is also a matter of grave concern. There are reports of children who were forcibly separated from their parents needing mental health and psycho-social support, yet being placed in excessively harsh conditions, including forced medication, overmedication, restraint and threats. Finally, discrimination within migration and asylum laws and policies of States restrict or deny asylum or the issuance of a visa on the basis of disability. This is contrary to the CRPD, and is likely to lead to an unduly high quota of persons with disabilities in immigration detention centers.

State practice in Australia³⁶ confirms that long periods of detention and inadequate health care and support can lead to deterioration of pre-existing conditions.³⁷ Case studies reveal that children in both onshore and offshore detention facilities without pre-existing disabilities have developed ‘Resignation Syndrome’. See e.g., Shayan Badraie—see (Everitt 2008); *DWE18 as litigation representative for DWD18 v Minister for Home Affairs* [2018]; *FJG18 by his litigation representative FJH18 v Minister for Immigration* [2018]. This is a life-threatening psychiatric condition, in which children mentally and physically withdraw from life to the point they can enter an unconscious state and require hospitalization. See (Bodegard 2007) and (Newman 2018).

Research conducted in 2000–2004, when Australia was detaining a great number of children, showed that the incidence of psychiatric disorders in asylum-seeking children, prior to their arrival at detention centers, was low. After two years in custody, however, all children were found to exhibit at least one psychiatric disorder, and most displayed multiple psychiatric disorders. (Steel et al. 2004, pp. 532–33). The children were exposed to the same distressing situations as adults, with some experiencing their own parents attempting suicide. By 2014, 34 percent of children in closed detention were found to have mental health issues to a degree which required outpatient mental health services in Australia. (See AHRC 2014 at p. 29). Less than two percent of children required such services in the Australian population. Furthermore, many people who were formerly detained as children experience ongoing symptoms of PTSD, which continue well into adulthood. (ibid, at p. 205).

The pervasive problem with immigration law enforcement is that states’ assertion of territorial sovereignty continues to prevail over the established international legal rights that vest in migrant children. What the international community can do about the deficits in state practice go to the heart of the international human rights project.

4. Key Issues Facing Children with Disabilities in Forced Migration

4.1. Seeing, Counting and Educating Refugee Children with Disabilities

The CRC/CRPD joint statement on children with disabilities issued on 18 March 2022 made particular mention of children with disabilities in ‘...migration and asylum or situations of risk and humanitarian emergencies’. Paragraph 7 is concerned with violence against children with disabilities. It states the following:

Children with disabilities are also especially vulnerable to all types of exploitation, such as exploitation for begging purposes, sexual exploitation, trafficking, and

³⁶ Mandatory immigration detention laws in Australia saw the incarceration of many children between 1989 and 2019. See generally (Australian Human Rights Commission 2004) and (Australian Human Rights Commission 2014).

³⁷ See (Multicultural Disability Advocacy Association of NSW 2002). Mental health services: see e.g., *FRX17 as litigation representative for FRM17 v Minister for Immigration and Border Protection* [2018]; *AYX18 v Minister for Home Affairs* [2018]; *BAF18 as litigation representative for BAG18 v Minister for Home Affairs* [2018]; *EMK18 v Minister for Home Affairs* [2018]. Pediatric treatment: see e.g., *DJA18 as litigation representative for DIZ18 v Minister for Home Affairs* [2018].

forced labor, including domestic work. Girls with disabilities are often subjected to specific ill-treatment or harmful practices because of their gender.

The CRC Committee and the Migrant Workers Committee 2017 general comments make similar observations at p. 22, [44].

As noted in Section 1.2, the author's research has had a strong focus on refugees with disability in different displacement contexts. Fieldwork across six countries hosting substantial populations of refugees and asylum seekers, including Indonesia, Malaysia, Uganda, Pakistan, Jordan and Turkey (see [Crock et al. 2017](#)), confirms the Joint Committees' observations. Findings across all six of the fieldwork countries identified children with disabilities as facing compounding challenges. Children born with a disability are disproportionately at risk of abandonment, increasing their socio-economic and social vulnerability. They are less likely to have their birth registered. They are less likely to be given access to any schooling. They are more likely to be sexually assaulted—particularly in remote settlements or places where there is poor social policing. See ([Smith-Khan et al. 2015](#)); and Handicap International and Save the Children, (2011). A key focus for our initial work was the extent to which any data was collected on these children. In many instances, the children were not only forgotten: they were invisible to the responsible authorities. The reasons for the failure to identify disability were multiple. In some instances, disabilities were hidden because of a cultural sense of shame. Refugee parents also showed an awareness of prescriptive health rules, leading to a belief that disclosure of disability in a family member could reduce chances of resettlement for the whole family. ([Crock et al. 2017](#), chap. 11) In this context, it is worth noting that the UNHCR Resettlement Handbook in 2004 actively discouraged officials from selecting persons with disabilities for resettlement unless they met criteria for medical evacuation. Paragraph 4.4.4 of the 2004 handbook reads:

Disabled refugees who are well-adjusted to their disability and are functioning at a satisfactory level are generally not to be considered for resettlement . . . Only when such disabilities are untreatable locally.

A more widespread problem emerged in a tendency to 'medicalize' and objectify disability, such that only persons with obvious impairments or needs requiring medical intervention were considered. In Malaysia, only 201 individuals out of a population of more than 100,000 were identified as having disabilities. ([Smith-Khan et al. 2014](#)). Poor 'counting' methods meant that populations of refugees in Malaysia³⁸ and Uganda³⁹ were assessed as including a far smaller percentage of persons with disabilities than the averages found by the World Health Organization (WHO) in its global survey in 2011. ([World Health Organization and World Bank 2011](#)). The situation seems to have improved over time, although the CRPD continues to highlight failures in state parties to collect good, disaggregated data on disability. See the International Disability Alliance compilation of concluding observations on CRPD Article 31. The simple point is that little can be undertaken to accommodate disability if authorities are ignorant of the existence or nature of impairments in relevant populations.

A challenge for all refugee children, access to education proved particularly severe for those with a disability. In our study, Uganda stood out as a country where a real effort is made to educate all children with disabilities. We were shown special schools for the deaf and schools for the blind within or near the big refugee settlement areas. See [Crock et al. \(2017, p. 56ff\)](#). Having said this, the schools were not well resourced: in 2014, the school for the blind had little material in braille and the teachers seemed ignorant of free access text

³⁸ [Crock et al. \(2017\)](#) at pp. 46ff and pp. 73–74.

³⁹ [Crock et al. \(2017\)](#) at pp. 56ff and pp. 77–79.

to speech technology such as NVDA. Access to such schools (or any school) was reduced dramatically for those housed in the further reaches of settlements.

In our research, Pakistan stood out as a country where good data had been collected on disability following a verification exercise conducted by UNHCR in 2015 in respect of nearly a million refugees and persons of concern. Data on Afghan refugees in Pakistan identified gender, age and disability as determinants of literacy. Older females with a disability were least likely to be literate. For refugee boys between the ages of 12–14 years, 70.2 percent could read and write. However, only 61.9 percent of boys with a disability in this age group were reported as literate.⁴⁰ Again, lack of education entrenches inequality and exacerbates experiences of disability. It is truly a vicious circle.

4.2. Legal Issues for Children with Disabilities in Protection Applications

The application of international refugee and human rights law to children, including children with disabilities, is now the subject of considerable study. See (Bantekas et al. 2018; Motz 2021); Crock, Ernst and McCallum above n 11. On children as refugees, see (Bhabha and Crock 2007); (Pobjoy 2017); (Crock and Yule 2018, chap. 5); and (Crock 2006, 2008). In this survey piece, it suffices to acknowledge the extensive work already carried out in this field and to provide a very brief overview of the issues that arise. Arguments are now being made that children, including those with disabilities in situations of displacement, have an inherent right to protection. See (Pobjoy 2017); (Pobjoy 2019); (Motz 2015); (Motz 2021); and (Chetail 2021). In most instances, however, the starting point remains the definition of refugee set out in the UN Convention relating to the Status of Refugees, as amended by the 1967 Protocol (the Refugee Convention). Article 1A(2) defines a refugee as a person who:

...owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.

The following short survey briefly sketches the issues that arise for children with disabilities in seeking to meet the terms of this much litigated definition. See (Hathaway and Foster 2014; Goodwin-Gill and McAdam 2021). The topic is the subject of a vast literature that is beyond the scope of this article. Nor is an attempt made to examine the work of the UNHCR in its various operation guidelines. Other refugee protection mechanisms—for example in Africa and in the Americas—have also developed law and practice relevant to the topic. Again, it is beyond the scope of this piece.

4.2.1. Well-Founded Fear

The first matter for children displaced from their country is to demonstrate that they are afraid to return to their country of origin. The phrase ‘well-founded fear’ has been interpreted to require individuals to show that they are (subjectively) afraid and that there is an objectively verifiable ground for the fear articulated. See (Hathaway and Foster 2014; Bhabha and Crock 2007; Evenhuis 2013). Both these elements can pose obvious problems for children and for persons with disabilities. Lack of capacity to articulate fear or to substantiate fear can pose a critical barrier to protection. The UNHCR, some courts and many commentators argue that in these cases, decision makers should look simply for objective evidence of why a young person might be at risk. UNHCR (2019) at [37]–[38] and paras. [210]–[11], [217]–[19]; *Yusuf v Canada*. Note that a whole industry has grown around finding and evaluating country information in asylum claims. Motz and others

⁴⁰ Smith-Khan et al., ‘Refugees with disabilities in Pakistan: An introductory report’, pp. 27–29 (unpublished report on file with author).

argue that the ‘reasonable accommodation’ requirement in Art 5(3) of the CRPD should operate to give persons with disabilities the benefit of the doubt so that claims are always considered in context. (See [Motz 2022](#)). See also the discussion in [Hathaway and Foster \(2014, pp. 169ff, 189\)](#); and [Crock et al. \(2012\)](#).

4.2.2. Persecution

One of the more limiting aspects of the Refugee Convention is that refugees must be able to show that they fear ‘persecution’. The term is not defined but it has been understood to require discrimination or targeting, serious harm and the failure of state protection. See *R v Immigration Appeal Tribunal, Ex parte Shah* [1999] at p. 653; *Perampalam v Minister for Immigration and Multicultural Affairs* (1999). Put another way, it does not include natural disasters and general civil conflict where individuals are at risk of random harm.

In the case of children, arguments have been made that consideration must be given to how the characteristics of childhood render an individual particularly susceptible to harm. First, children are vulnerable to specific forms of harmful targeting such as child marriage and other forms of sexual or physical exploitation. They can also be inherently more susceptible to harm. An action that might injure an adult can be catastrophic when inflicted on a child. If you add disability to the mix, the same considerations should apply, and with greater force. See Tamberlin J comments in *SZBQJ v Minister for Immigration and Multicultural and Indigenous Affairs* [2005] at para. 21. For children with disabilities Article 5(3) of the CRPD operates to underscore the need to consider the context of an individual seeking protection. A child’s impairment may reduce or remove the ability to escape persecution.

Disability makes children more susceptible to abuse and exploitation and attracts harms linked directly to the person’s impairments. See (Handicap International and Save the Children 2011); and ([Smith-Khan et al. 2014](#)). Children with psycho-social disabilities can face state-sanctioned discrimination, segregation and even incarceration and cruel and degrading treatment. The treatment will only amount to persecution if it produces what UNHCR describes as ‘consequences of a substantially prejudicial nature’. ([UNHCR 2019](#)) at para. 54. For children with disabilities, it can be difficult to show that policies of general application (including institutionalization) are more than responses to lack of resources.

4.2.3. The Five Convention Grounds

The final challenge facing children with disabilities is making a connection between their persecution and one of the five convention grounds. Of course, children with disabilities can face persecution for all of the same reasons as any other refugee. Those belonging to minority groups or characterized as adherents to the ‘wrong’ religious or political group can use their identity to base their claim in the same way as anyone else. Because they are often easy to identify by virtue of physical or objective characteristics, children with disabilities are superficially able to show that they belong to a ‘particular social group’. See ([Hathaway and Foster 2014, p. 452](#); [Bhabha and Crock 2007](#)).

Disability does not only make children more susceptible to abuse: it also attracts harms linked directly to the person’s impairments. Children with psycho-social disabilities can face state-sanctioned discrimination, segregation and even incarceration and cruel and degrading treatment. For children with disabilities, it can be difficult to show that policies of general application (including institutionalization) are more than responses to lack of resources. The problems often lie at the point of demonstrating that their treatment amounts to persecution *because of* their social group (rather than simply a feature of circumstances and scarce resources). The question is one of fact and degree. See *Minister for Immigration and Multicultural Affairs v Khawar* (2002) and [Hathaway and Foster \(2014\)](#) at p. 367.

4.2.4. The Importance of Process

One final point is worth noting in this context. If the law itself is complicated, children with disabilities are also at risk of falling through the cracks if status determination processes are not sensitive to the needs and capacities of the individual making a claim. This is a separate matter that, again, has been the subject of considerable study. For an example of good practice, see (Judicial College 2019) app B. The simple point is that one process does not suit all. If accommodations need to be made to engage with children in ways that will facilitate understanding of the child's history, situation and needs, the same is true but magnified where a child presents with disabilities (in their many and varied manifestations). See for e.g., (Bhabha and Young 1999), Bhabha and Crock 2007 at chap. 5 and (Crock 2013). While blindness and gross motor impairments are easy to identify, a child who is hard of hearing or suffering from psycho-social and cognitive impairments can be less obvious and harder to accommodate. See (Crock et al. 2017), especially at chap. 4; (Crock et al. 2012). It is well to recall again that accommodating young ones with impairments is not a question of charity but of legal rights. The failure to assist children seeking protection can have catastrophic consequences where rejection of a claim can lead to expulsion and *refoulement*. See further (Crock 2022, Part 4).

5. State Engagement with the International Legal Rights of Children with Disabilities in Displacement

It is difficult to deny the fact that the CRPD has (ultimately) had a substantive impact on international and transnational initiatives involving migrant children displaced by armed conflict and other emergencies. While people with disabilities were paid little or no attention in IOM's 2012 *Operational Framework* or the 'Protection Agenda' of the Nansen Initiative on Disaster-Induced Cross-Border Displacement (Nansen Initiative 2015), 2015 marked a turning point of sorts. This was the year civil war in Syria saw mass migration across Europe not seen since the end of World War II. IOM's *Migrants in Countries in Crisis Initiative* acknowledged the impact of forced migration on 'particularly vulnerable populations'. See (IOM Migrants in Countries in Crisis Initiative (MICIC) 2016; MICIC 2016). It released guidelines that reference the needs of migrants with physical, visual or auditory impairments. In the same year, Turkey hosted the World Humanitarian Summit, which produced the Charter on Inclusion of Persons with Disabilities (2016) while the US hosted a parallel event. This involved the New York Declaration for Refugees and Migrants, which also called on states to acknowledge the needs of persons with disabilities in displacement (at [58]). The cascade of international meetings that followed have confirmed that disability inclusiveness has been adopted as a mainstream issue. See (Chetail 2019, chap. 6, pp. 299 ff). For a discussion of international protection initiatives, including the Global Compacts on Refugees and on Migrants, see (Crock 2022) at part 2.

References to disability and to the special vulnerabilities of children in the Global Compacts on Refugees and Migrants are echoed in revisions to a whole range of guidance documents used by major humanitarian agencies such as the IOM and UNHCR. Examples include the 2018 ADCAP *Minimum Standards for Age and Disability Inclusion in Humanitarian Action*, the UN Inter Agency Standing Committee (IASC) Guidelines on Inclusion of Persons with Disabilities in Humanitarian Action and Multi-cluster/sector Initial Rapid Needs Assessment tool (IASC 2015) and the so-called 'Grand Bargain' stream convened to improve and integrate needs assessment techniques. See (UNHCR Operational Datasets n.d.) and (Crock 2022) at part 2. It is well to note that UNHCR also responded to the CRPD by both removing the offensive reference to refugees with disabilities from its Resettlement Handbook (suggesting that only medical emergency cases be prioritized) See above Section 4.1 and (Crock et al. 2017, above n 15, chap. 11). It issued a revised assessment tool that

is more compliant with the spirit of CRPD. (UNHCR 2013). See also (M. Mirza 2011). Until the dramatic changes made to US aid programs in 2025 (Steakin and Bruggeman 2025), the US included disability as a ‘priority one’ factor for identifying refugees in situations of heightened need. For discussion, see (M. Mirza 2010). UNHCR has also introduced a raft of operational guidelines aimed at improving the identification and inclusion of refugees with disabilities in its fieldwork operations. See (Crock 2021, chap. 43) (discussing UNHCR policy changes and UN reforms to collecting data disaggregated to capture vulnerabilities; and the ‘Grand Bargain’ process relating to needs assessment techniques).

As the world continues to be shaken by conflict, global pandemics and other disasters (including those associated with climate change), children with disabilities displaced with and without their families will continue to represent some of the most vulnerable of the world’s migrants. International legal frameworks remain imperfect in their form and protective function. If this briefest of accounts demonstrates anything, however, it is that children and disability are slowly being recognized as important subjects of mainstream human rights law and national and international frameworks for aid and development.

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