Committee on the Rights of Persons with Disabilities

Submission to the **CRPD General discussion on article 27**

The Refugee Council of Australia (RCOA) is the national umbrella body for refugees, people seeking asylum and the organisations and individuals who work with them. RCOA consults regularly with its members, community leaders and people from refugee backgrounds, and this submission is informed by their views.

We thank the Committee for the opportunity to make a written submission to the Committee’s General Discussion on *Convention on the Rights of Persons with Disabilities* (‘*CRPD*’) article 27 about the right to work. This submission addresses the situation of people who are refugees with disability in realising their right to work. It is based on the lived experience of refugees and people seeking asylum with disability in Australia.

People who are refugees with disability face multiple and aggravated forms of discrimination in realising their right to work. This submission makes recommendations for how this discrimination may be addressed in the Committee’s forthcoming General Comment on *CRPD* article 27.

# Background

At the end of 2019, the UNHCR had 20.4 million people who were refugees under its mandate and another 4.2 million people waiting for the outcome of their asylum applications.[[1]](#footnote-1) Over three-quarters of this population, 77%, lived in protracted situations.[[2]](#footnote-2) Data about disability and displacement is improving but still not comprehensive, and no global statistics are available. A recent survey of Syrian’s living in Lebanon found that 9% of people had a disability.[[3]](#footnote-3)

People who are refugees with disability are subject to a specific international law regime.

# The Refugee Convention and the rights of people who are refugee with disability

The 1951 *Convention Relating to the Status of Refugees* (‘*Refugee Convention*’) and the associated 1967 protocol defines a refugee and enumerate the rights of refugees. The *Refugee Convention* does not refer to people with disability. Nonetheless, interpretation of the Convention evolves within the context of new international human rights law instruments.[[4]](#footnote-4) Eminent refugee law scholar James Hathaway noted that refugee rights are ‘derived from two primary sources - general standards of international human rights law, and the Refugee Convention’.[[5]](#footnote-5) Hence, the *CRPD* and the Committee’s general comments have a significant bearing on understanding the rights of people who are refugees with disability. The *CRPD* has informed access to status determination for people with disability, the interpretation of the refugee definition, and has raised the profile of the rights of people who are refugee with disability.[[6]](#footnote-6)

The right to work under the *Refugee Convention* is an incrementally realised entitlement. Hathaway summarised that the right to ‘engage in independent economic activity’ … ‘accrues at an earlier stage than the right of refugees either to be employed or to engage in professional practice’.[[7]](#footnote-7) Recognising the 1951 *Refugee Convention*'s limitation,the United Nations General Assembly endorsed the Global Compact on Refugees in 2018. The Compact promotes international cooperation to support people who are refugees to ‘lead productive lives’.[[8]](#footnote-8)

# The Global Compact on Refugees and the right to work

The Global Compact on Refugees acknowledges multiple and aggravated forms of discrimination. It also acknowledges the tensions between the economic development needs of host countries and those of communities seeking protection. It outlines the global communities’ commitment to ‘promote economic opportunities, decent work, job creation and entrepreneurship programmes for host community members and refugees, including women, young adults, older persons and persons with disabilities’.[[9]](#footnote-9) The Compact goes on to specify:

Depending on the context, resources and expertise could be contributed to support: labour market analysis to identify gaps and opportunities for employment creation and income generation; mapping and recognition of skills and qualifications among refugees and host communities; and strengthening of these skills and qualifications through specific training programmes, including language and vocational training, linked to market opportunities, in particular for women, **persons with disabilities**, and youth.[[10]](#footnote-10)

Despite this recent commitment, people who are refugee with disability experience significant hurdles in realising the rights to work. The following section describes the experiences of people who are refugee with disability in Australia.

# People who are refugees with disability and the right to work in Australia

People who are refugees experience many hurdles in finding work. These include the inability to transfer their previous skills to the new context and having to take work below their qualification level. They often experience language barriers and stigma. Some people may also experience difficulties related to short-term visas that limit their employment options.

People who engage Australia’s humanitarian protection obligations are issued with a range of visas with various entitlements.[[11]](#footnote-11) The Australian Government Humanitarian Settlement Support program assists humanitarian entrants to settle in Australia. The key objectives of this program are based around self-reliance through learning English, gaining employment or accessing employment and training.[[12]](#footnote-12) The Specialised and Intensive Services program is available to humanitarian entrants ‘who have complex needs’, including disability, to ‘help them access appropriate mainstream services’.[[13]](#footnote-13)

Despite these services, people who are refugees report significant barriers to realising their right to work. Refugee services and disability services have traditionally been specialist services, with specialist skills and knowledge to meet the specific needs of their client group. Traditionally these services have been siloed due to funding models and government policies that underpin these programs that view the client groups through a single lens. This lead to people with disabilities from refugee backgrounds not having their needs sufficiently met by either sector. Due to the siloing, services were often uninformed about the specific situation of people who are refugees with disability; they often do not see this ‘client group’ as their responsibility, leading to people being unsupported. Due to the complexity of visas and entitlements, services were often unaware of the needs and supports available, i.e. refugee specialist services were unaware of the disability-specific supports, and disability agencies were unaware of the intricacies of visa. Due to a growing awareness of this gap, good practice examples have emerged in recent years.[[14]](#footnote-14)

While the Australian Government has programs to provide reasonable accommodation for people with disability in the workplace, not all people who are refugees with disability are eligible for this support. People on temporary visas are not eligible for the National Disability Insurance Scheme and Job Access. The uneven access to reasonable accommodation in the workplace is discriminatory, as people with temporary protection visas have engaged Australia’s protection obligations; nonetheless, due to their mode and date of arrival, they are denied the same support. Further to this, it is difficult to get clear information about people's entitlements. Service providers and government departments provide conflicting information. Prospective employers are overwhelmed by the complexity of information about entitlements for people who are refugees with disability.[[15]](#footnote-15) The lack of clear information about entitlements for people who are refugees with disability creates a significant barrier when seeking work.

People who are refugees with a disability report experiencing stigma about their disability within the workplace and stigma related to being a refugee. Further, people who are refugee with disability are often called upon to use their expertise and skills for free to provide cultural and disability awareness training, advocate for their community and provide interpreting services.

These barriers to the right to work have a cascading effect. People who are refugees with disability became used to rejection and have low esteem and therefore anticipate rejection when attending job interviews. They report feeling judged according to their disability and not their abilities and skills. This process leaves job applicants who are refugees with disability emotionally tired all the time due to the stress of constant judgement, be it low or high. It contributes to poor sleep habits, lack of motivation to exercise and stay physically fit and a feeling of constant fatigue. People report not having the motivation and courage to wake up in the morning. A history of trauma compounds these experiences.

People who are refugees with disability cite their determination to contribute to the workplace and general community as reasons for their success in finding and keeping work. Engaging with a broad spectrum of people and not being judgemental towards others has been helpful. They feel they must take risks and try to accept opportunities positively. They try to learn fast and have the ability to change quickly. They believe that their resilience has a significant impact on future job prospects.

# Recommendations for the General Comment on Article 27.

For consideration of the Committee, we recommend the following for inclusion in the General Comment on Article 27:

1. An acknowledgement that people with disability experience multiple and aggravated discrimination in realising their rights to work, including people who are refugees with a disability. The General Comment should specify that uneven discrimination is experienced within this cohort; temporary protection visa holders face more significant challenges to realising their right to work.
2. State laws, policies and service providers need to better cater to the needs of people who experience multiple and aggravated forms of discrimination. Disability employment services should be equipped to work with people who experience multiple discrimination, including people who are refugees.
3. Accessible information should be available about visa entitlements. This information should be accessible to people with disability, service providers, government departments and employers.
4. Vocational training, including language classes for new migrants, should be accessible to people who are refugees with disability.
5. State laws, policies and services should reflect that reasonable accommodation is provided to all people in the workplace without discrimination, including people who are refugees with temporary protection visas.
6. The right to work requires people to have adequate housing, transport, and disability support services. States should not expect people with disability to move for work to areas where these needs cannot be adequately met.
7. States should support capacity building for workforces to work with people who experience multiple and aggravated forms of discrimination.
8. States should engage in awareness-raising to counter disability and refugee stigma, highlighting the valuable contribution and human potential of people who are refugees with disability.
9. The General Comment should recognise the unpaid work of people with disability, including people from refugee backgrounds. It should direct states and services to pay for this expertise and not expect it for free.
10. The General Comment should recognise the value of peer-to-peer support in realising the right to work.

# Authors

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1. Global trends United Nations High Commissioner for Refugees (UNHCR), *Global Trends: Forced Displacement in 2019* (UNHCR, 2020) 2. [↑](#footnote-ref-1)
2. ‘UNHCR defines a protracted refugee situation as one in which 25,000 or more refugees from the same nationality have been in exile for at least five consecutive years in a given host country’. Ibid 24. [↑](#footnote-ref-2)
3. The Washington Group Short Set on Functioning questions were used in the household survey. United Nations Children’s Fund (UNICEF), United Nations High Commissioner for Refugees (UNHCR), and United Nations World Food Program (WFP), *VASyR2020: Vulnerability Assessment of Syrian Refugees in Lebanon* (UNICEF, UNHCR and WFP, February 2021) 24. [↑](#footnote-ref-3)
4. Stephanie Anna Motz, *The Refugee Status of Persons with Disabilities* (Brill - Nijhoff, 2020) 10–11. [↑](#footnote-ref-4)
5. James C Hathaway, *The Rights of Refugees under International Law* (Cambridge University Press, 2005) 154. [↑](#footnote-ref-5)
6. Mary Crock et al, *The Legal Protection of Refugees with Disabilities: Forgotten and Invisible?* (Edwards Elgar Publishing Limited, 2017); Motz (n 4). [↑](#footnote-ref-6)
7. Ibid 719. [↑](#footnote-ref-7)
8. United Nations High Commissioner for Refugees, ‘The Global Compact on Refugees’, *UNHCR* <https://www.unhcr.org/the-global-compact-on-refugees.html>. [↑](#footnote-ref-8)
9. United Nations High Commissioner for Refugees, *Report of the United Nations High Commissioner for Refugees: Part II Global Compact on Refugees* 2018, [70] (footnotes omitted). [↑](#footnote-ref-9)
10. Ibid [71] (emphasis added). [↑](#footnote-ref-10)
11. For e.g.: Safe Haven Enterprise Visas require holders to work or study in regional areas for three and a half years out of five years and not access welfare to be eligible for a pathway to permanent residency. [↑](#footnote-ref-11)
12. Australian Government Department of Home Affairs, ‘Humanitarian Settlement Program’ <https://immi.homeaffairs.gov.au/settling-in-australia/humanitarian-settlement-program/overview>. [↑](#footnote-ref-12)
13. Australian Government Department of Home Affairs, ‘Specialised and Intensive Services’ <https://immi.homeaffairs.gov.au/settling-in-australia/humanitarian-settlement-program/specialised-and-intensive-services>. [↑](#footnote-ref-13)
14. https://www.ssi.org.au/services/local-area-coordination, https://www.ames.net.au/blogs/ndis-community-connectors [↑](#footnote-ref-14)
15. Refugee and Humanitarian visas may be temporary or permanent. Temporary visas have different lengths. Entitlements vary depending on the visas. [↑](#footnote-ref-15)