Input for the Committee on the Rights of Persons with Disabilities General Comment on Persons with Disabilities in Situations of Risk and Humanitarian Emergencies

Joint Submission:
Border Violence Monitoring Network

(15th February 2023)

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**I. Reporting Organisation:**

1. Border Violence Monitoring Network[[1]](#footnote-1) (BVMN) is a coalition of organisations working to document illegal pushbacks, collective expulsions and police violence along the EU’s external borders in the Western Balkans, Greece and Turkey. The collection of data on illegal pushbacks and police violence is done by a consortium of independent voluntary field-experts who are part of or cooperate with humanitarian support groups united through the Border Violence Monitoring Network.

**II. States Obligation under Article 11 to Ensure Safety and Protection During Migratory Transit and Border Crossings:**

**Explanatory note:**

2. Border areas and transit zones have increasingly become situations of risk for asylum seekers, refugees and migrants with disabilities. The accessibility issues, lack of accommodations, and difficulties with communication during transit or at border regions are further compounded by physical harm, exploitation, abuse, as well as lack of access to support and medical care.

3. Further to this, during humanitarian emergencies or situations of risk during transit or at border zones, migrants, refugees and asylum seekers, including those with disabilities are at an increased threat of arrest, (arbitrary) detention, or being subjected to State violence. Disabled migrants face additional risks during arrest, detention or deportation proceedings as facilities are often not accessible or equipped to accommodate their needs.

**Overview of States Obligations:**

4. Article 11 of the CRPD recognises the particular vulnerability of persons with disabilities during situations of risk and humanitarian emergencies, and obligates States to take all necessary measures to ensure the protection and safety of persons with disabilities. . BVMN reinforces that this obligation is applied to *all* persons with disabilities and reflects previous concluding observations of the Committee recognizing the rights of non-nationals such as refugees, migrants and asylum seekers under Article 11 of the CRPD[[2]](#footnote-2).

5. Further to this, we assert that the obligation to ensure the protection and safety of refugees, migrants and asylum-seeking persons with disabilities, encompasses all possible stages of migratory transit and at border crossings. Further to this, we assert that the protection must therefore also extend to all stages of deportation or removal, which is also a significant risk factor for persons with disabilities.

6. Recognising migratory transit and border crossings as a situation of risk for persons with disabilities, we affirm in line with the United Nations principles and guidelines, that State parties have an obligation to take all reasonable measures to minimise the times during which migrants and refugees, especially those with disabilities are delayed at borders or other crossing points on their journey[[3]](#footnote-3). Furthermore, we affirm that State parties have an obligation to prepare safe places for arrival and disembarkation that meet human rights standards for reception and assistance. Arrival points should provide adequate and disability responsive shelter and as well as the distribution of both food and non-food items. We affirm that in situations of risk, including conflict, humanitarian emergencies and natural-hazard events, safe places for arrival and disembarkation must be provided unconditionally, where necessary taking priority over border control, police or other enforcement procedures.

7. Recognising the explicit risk of persons with disabilities during transit or during border crossings, BVMN affirms that the obligation to ensure the protection and safety of persons with disabilities in situations of riskalso commits States to both refrain from and prevent violence occurring against internally displaced, asylum seeking and refugee persons. To date, both civil society organisations and international human rights monitoring bodies have observed how migratory transit zones and border crosses create an increased risk of violence. Migrants with disabilities have higher vulnerability to abuse, discrimination and violence at the hands of border officials and other migrants due to mental or physical impairments. Confrontations with border officials, military or unofficial personnel is highly likely due to the Europeans Unions migration management policy, which has championed pushbacks and border violence to deter and keep migrants out of the EU.

8. Recalling previous Committee statements[[4]](#footnote-4) asserting the obligations imposed by Art 11 CRPD apply both at a general legislative and policy level as well as at a more concrete level of implementation, we recommend the explicit reference to monitoring procedures is included within the General Comment. BVMN proposes the development of a national monitoring mechanism to ensure that refugees, migrants and asylum-seeking persons with disabilities rights are protected and upheld in situations of risk or humanitarian emergencies.

9. Lastly, reflecting the scope of Article 11 of the Convention on the Rights of Persons with Disabilities, to apply to situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters, BVMN recommends the explicit reference to the obligation of State parties to recognise the non-derogability of Article 11.

**III. States Obligation under Article 11 to Prevent Refoulement and Ensure Safety and Protection During Deportation or Return:**

**Explanatory note:**

10. BVMN affirms that migrants with disabilities are subjected to a systematic lack of access to asylum procedures, including legal and administrative barriers. Migrants with disabilities lack legal protection, due to the lack of enforcement of laws and regulations which protect the rights of persons with disabilities, and their appliance to migrants. There is also a significant lack of training of border officials at locations to uphold these, or they are negligent or unwilling to do so.

11. BVMN reported instances of pushbacks whereby 89% of testimonials collected in 2022 included one or more forms of violence that amount to torture or to cruel, inhuman or degrading treatment or punishment. We affirm that the documentation of a systematic and widespread pattern of rights violations carried out against asylum seekers, refugees and migrants, including those with a disability highlights a failure on State parties to ensure the safety and protection of persons with disabilities and as such should be highlighted within the General Comment as an area of priority. 19. Furthermore, we affirm that any form of pushback, refoulement or deportation creates a significant situation of risk for irregular disabled migrants. Their vulnerabilities are exacerbated in these situations of risk, as per Article 11, due to the nature of the border regions and transit zones and therefore we affirm an obligation on State parties to take all reasonable measures to minimise this risk and ensure the safety and protection of person

**Overview of States Obligations:**

12. Recognising that in situations of risk or humanitarian emergencies, asylum-seeking and refugee persons with disabilities may be subjected to deportations or return procedures, BVMN recommends explicit reference to the obligation of state parties to protect persons with disability from refoulement during deportation or return.

13. BVMN affirms that the obligation of State parties to ensure the safety and protection of persons, such asylum-seeking and refugee persons with disabilities disproportionately affected and experiencing disadvantages in situations of risk, has an extra-territorial effect and therefore obliges them to take all necessary steps to prevent refoulement.

14. In situations where States initiate deportation or return initiatives for asylum seeking and refugee persons with disabilities, BVMN affirms an implicit obligation to consider the health needs of the affected. Furthermore, to ensure that States comply with the principle of non-refoulement, States must not initiate a removal that directly or indirectly places an individual in danger or risks torture. We affirm this obligation must recognise the threats of torture or inhuman degrading treatment posed by a lack of, inadequate, or repressive health care for persons with disabilities in the country of return.

15. BVMN affirms that the prohibition of refoulement and the extraterritorial effect of the Convention has also been established by the Committee including in O.O.J v. Sweden[[5]](#footnote-5) and CRPD: N.K v. Sweden:

15.1. BVMN recalls statements issued by the Committee in O.O.J v. Sweden states: “The Committee is of the view that the removal by a State party of an individual to a jurisdiction where he or she would risk facing violations of the Convention may, under certain circumstances, engage the responsibility of the removing State under the Convention which has no territorial restriction clause. The Committee therefore considers that the principle of extraterritorial effect would not prevent it from examining the present communication under article 1 of the Optional Protocol.”

15.2. Furthermore, recalling statements issued by the Committee in N.K v. Sweden, the Committee found that despite proving a medical condition that without treatment would be severe and life–threatening, the State party failed to assess where the complainant would be able to access adequate medical care if removed to their home country. The case specifically highlights the risk of persons with disabilities in relation to torture and ill-treatment in their country of origin.”

**IV. States Obligation under Article 11 to Ensure Disaggregated Data Collection on Persons with Disabilities in Situations of Risk**

17. BVMN recalls previous statements issued by the Committee that assert in order to ensure the effective protection and safety of persons with disabilities, States have an obligation under Article 11 to instrumentalise effective data collection on persons with disabilities in risk situations[[6]](#footnote-6).

18. Furthermore, Principle 19 of the *OHCHR Principles and Guidelines on the Human Rights Protection of Migrants in Vulnerable Situations* specifies “undertake and support quantitative and qualitative research on migrants’ experiences to: [...] raise awareness of risks; and prevent and sanction abuses of migrants’ human rights”[[7]](#footnote-7). Under Article 11, BVMN asserts that States must prioritise these guidelines to ensure minimisation of risk of irregular persons of disabilities.

19. BVMN affirms the importance of collecting both quantitative and qualitative data on persons with disabilities[[8]](#footnote-8) that can be disaggregated by disability, sex and age[[9]](#footnote-9) and highlights previous recommendations issued by the committee affirming a States obligation to collect data on displacement, causalities, and injuries among persons with disabilities during armed conflict[[10]](#footnote-10).

20. Furthermore, Principle 19 detailed research priorities must include “Data on complaints, investigations, prosecutions, and convictions with regard to all human rights violations perpetrated by State or non-State actors against migrants”. BVMN recommends the UN CRPD ensure independent investigation and research into the non-compliance of state and non-state actors in facilitating pushbacks and borders, leading to the violation of the rights of persons with disabilities.

4. Lastly Recalling previous recommendations issued by the Committee[[11]](#footnote-11) for the systematic registration of internally displaced persons with disabilities, BVMN recommends the implementation of effective ‘firewalls’ to ensure the explicit separation of any data collected on internally displaced persons required to monitor their access to rights and services, from data used by services to implement migration controls. BVMN asserts that the failure to implement data firewalls may exacerbate any threats faced by migrants, refugees and asylum seekers with disabilities in situations of risk of humanitarian emergencies.

 **V. States Obligation under Article 11 to Ensure Dignity, Safety and Protection whilst in Detention Centres, Camps or State Facilities.**

**Explanatory note:**

21. Situations of poverty or extreme poverty can be exacerbated in camps. Camps are often overcrowded and past their maximum capacity. The lack or poor planning of infrastructure within these camp structures result in limiting mobility around the camp, as well as access to services. Sewage networks become under pressure, there is a lack of clean and running water, and often in short supply of necessary medications, education and other support and services. Migrants with disabilities find themselves being acutely affected by these issues, more so than migrants without disabilities.

22. Within the European Union, camps have become a permanent component of their migration management and externalisation policies. Migrants can often spend years, sometimes decades in camps, having to endure these conditions for the long term.

**Overview of States Obligations:**

23. BVMN affirms that in situations of risk, State parties are obliged to take all necessary measures to provide appropriate and disability responsive accommodation to internally displaced, asylum seeking and refugee persons. BVMN affirms this obligation extends to persons in transit, under humanitarian protection or of whom have been regularised within the State.

24. Reflecting the importance of the inclusion of reference of situation of internally displaced, asylum seeking and refugee persons with disabilities, BVMN recalls previous concluding observations of the Committee that expressed deep concern at refugees, migrants and asylum seekers with disabilities living in conditions of poverty[[12]](#footnote-12), in precarious situations or those taken into detention[[13]](#footnote-13).

25. As reflecting CRPD reporting guidelines[[14]](#footnote-14) we affirm that States have a non-derogable obligation during situations of risk to ensure accessible and available sanitation and latrine facilities in emergency shelters and refugee camps for persons with disabilities. We further affirm this obligation to ensure accessible and available sanitation or latrine facilities is also extended to places of detention, of which we recognise that refugees, migrants and asylum-seeking persons, including those with disabilities, in situations of risk are disproportionately subjected to.

26. Furthermore BVMN also reaffirms the previous statement issued by the committee[[15]](#footnote-15) that the administrative detention of persons with disabilities in migration and asylum-seeking contexts is not consistent with the convention when it is applied without the provision of adequate support and reasonable accommodation.

**VI. Persons with disabilities disproportionately affected and experiencing particular disadvantages in situations of risk: Internally displaced persons with disabilities, asylum-seeking and refugee persons with disabilities.**

 **A. Vulnerability of asylum seeking and refugee persons with disabilities facing instances of border violence or pushbacks:**

27. BVMN affirms that the inadequacy of border measures, protocols and policies specifically aimed at protecting vulnerable groups leaves persons with disabilities without access to the support that would enable them to cross the border safely. It also restricts their access to information on rights, services, and assistance they’re entitled to, and interferes with their ability to navigate the asylum system accordingly.

28. BVMN further affirms that persons with disabilities are particularly vulnerable to the active denial of the right to claim international protection by state authorities, as the evasion of asylum claims during pushbacks directly impedes access to urgent medical care and support that persons with disabilities in particular, necessitate. The trauma and stress they experience as a result of this can exacerbate the severity of their existing conditions, and can sometimes lead to preventable death.

29. BVMN asserts that the harsh terrain and adverse weather conditions that people on the move with disabilities must navigate through at borders and migratory routes makes them particularly vulnerable to interception and apprehension by authorities due to difficulties in mobility, slower transitory paces and more pronounced challenges in communication. Thus, they have less accessibility to asylum as they are more at risk of being pushed back when crossing landscapes, territories, and borders while trying to claim international protection.

30. Moreover, pushbacks increase the risk of exploitation by smugglers, organised criminal groups and other actors operating at borders or transit zones. Persons with disabilities are particularly vulnerable to such abuse due to their physical and mental impairments.

31. BVMN notes that persons with disabilities are adversely affected by the physical violence and human rights abuses perpetrated by authorities while carrying out pushbacks. Their disability makes them a target because they have less capacity to defend themselves or fight back, thus exacerbating the risk of physical violence during pushbacks. Moreover, because pushbacks are often orchestrated in isolated and remote areas, attempts to seek help are futile.

32. BVMN asserts that pushbacks often entail extended periods of detainment in filthy and secluded locations without access to food, water, toilets, translation, or legal counsels. These sites are particularly dangerous for persons with disabilities. They do not provide medical assistance or medicine, they do not provide support for specific physical or mental impairments, and they expose people to extreme temperatures that persons with disabilities may be particularly sensitive to, thus exacerbating their already existing health conditions and possibly leading to death.

33. Lastly BVMN is concerned over the lack of access to resources and support for migrant persons of disabilities. There is a limited access of support, which would enable them to cross borders safely. Coupled with this, there is a limited access to information about the rights of migrants with disabilities and border processes, which leads to difficulty in navigating the system and accessing these services. BVMN believes it is necessary to ensure all persons with disabilities have access to support they require to facilitate their situation - whether evacuation, relocation or immediate resettlement in an event of evacuation, displacement or migration caused by disasters or other emergencies. BVMN asserts it is crucial to take all necessary measures in situations of emergency and the evacuation/ displacement/ migration which follows that the provision of information in accessible formats and provision of personal and assistive devices as well as necessary and appropriate assistance.

 **B. Vulnerability of asylum seeking and refugee persons during transit or at border zones:**

34. BVMN asserts that member states do not provide effective reception facilities at border and transit zones which immediately identify vulnerable groups at risk, including persons with disabilities, through trained personnel. They do not provide them with access to social protection, assistive technologies, information and adequate services, and particularly: safe shelter, sanitation and medical care, all of which are recommended in the Committee’s General Comment No.2.

35. BVMN further affirms that the illegal expulsion of people on the move including persons with disabilities by EU members states is systematically orchestrated by state actors, despite their duty under Article 11 of the CRPD to take 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.

36. BVMN notes that the obligation to ensure protection and safety of persons with disability in situations of risk under Article 11 also encompasses migratory transits and border zones. In 2022, 40% of pushback testimonies affecting 116 people included a claim for asylum that was actively ignored or denied by state authorities.

37. Principle 6 of OHCHR Principles and Guidelines on the human rights protection of migrants in vulnerable situations states: “Implement the legal obligation to ensure that no arbitrary or collective expulsions occur, for example by tow-backs or push-backs, in any area over which the State exercises jurisdiction or effective control, including areas outside the territory of the expelling State, border areas, and on the high seas”.[[16]](#footnote-16)

38. Irrespective of the right under Article 15 of the CRPD to be free from torture or cruel, inhuman or degrading treatment or punishment, the orchestration of pushbacks by state authorities often follows a predetermined pattern that subjects people on the move including those with disabilities to apprehension, violence and refoulement. BVMN records show that in 2022, 89% of all pushback testimonies collected from such areas include one or more incidents of violence that amounts to torture or to cruel, inhuman or degrading treatment or punishment.

39. BVMN notes that during pushbacks, people on the move including those with disabilities are frequently exposed to unruly and indefinite periods of detention in police stations, abandoned buildings and vehicles. BVMN recorded 72 testimonies referring to detention in 2022, simultaneously reported with the denial of food, water, access to a toilet, and lack of a translator.

40. BVMN states that detention is contrary to the CPRD, as noted in the 2015 Concluding Statements of the Committee on the Rights of Persons with Disabilities recommended, “the European Union issue guidelines to its agencies and member States that restrictive detention of persons with disabilities in the context of migration and asylum seeking is not in line with the Convention.”[[17]](#footnote-17)

**C. Vulnerability of asylum seeking and refugee persons in camp facilities or detention:**

41. BVMN has affirmed the practice of the detention of migrants, asylum seekers, refugees, and internally displaced persons as a mode of regulating irregular migration in the Western Balkan states, Greece, and Turkiye, impacts the protection and safety of persons with disabilities in situations of risk and humanitarian emergencies. BVMN has documented testimonies providing evidence of cases in which individuals, including persons with disabilities are placed at risk with this practice through inadequate detention conditions, specifically the state authorities’ failure to provide satisfactory healthcare, food and water, toilet and sanitary, and space conditions for detainees.

42. Testimonies recorded by BVMN have indicated authorities have consistently denied medical attention to migrants while in detention, including refusing to follow requests to treat prior health conditions[[18]](#footnote-18) and injuries.[[19]](#footnote-19) In a report published by Oxfam and the Greek Council for Refugee, included a case study on the denied access to medical assistance to treat their eye and detention conditions played a crucial role in the mental health of a detainee.[[20]](#footnote-20) The individual was able to receive sufficient medical care in detention upon a regional court decision, but with the extension of their detention term, they attempted suicide in their cell and later transferred to a psychiatric clinic through assistance by the Greek Council for Refugee.[[21]](#footnote-21) The Asylum Information Database and the Greek Council for Refugees conducted a research finding a lack of medical personnel or the substantial shortage of doctors, nurses, psychologists and social workers to treat detainees.[[22]](#footnote-22) The inadequate medical assistance provided for detained migrants is a correlation to the lack of proper care to accommodate with the needs of persons with disabilities in detention, and therefore placing them at risk of being vulnerable to deteriorating health conditions.

43. Moreover, BVMN has recorded numerous testimonies reported by migrants on the removal of personal items, including the confiscation of medication from detained migrants with health needs during detention. BVMN has documented instances in which detained migrants have informed state authorities of the necessity of their medications, but have been repetitively met with refusal to comply with their needs, including the destruction of medications[[23]](#footnote-23) and responding with physical violence.[[24]](#footnote-24) The authorities’ response in these situations is indicative of their inadequate support to situations in which persons with disabilities may be required to take medications. Furthermore, the use of violence by authorities in detention conditions may impose risks of migrants developing mental or physical disabilities as a result of these actions.

44. BVMN has documented evidence of the extensive use of detention facilities lacking proper means of rest and overcrowded nature of detention space. In 2021, the Greek Ombudsperson affirmed evidence of continuous and systemic breaches of international detention standards, including highlighting the presence of overcrowding and poor conditions of detention facilities. Therefore, BVMN asserts such conditions are detrimental and pose serious risks for the health and necessary accommodation for persons with disabilities.

45. BVMN has collected testimonies presenting migrants, including children, being denied to access food and water while detained. These testimonies reported detained migrants were coerced to starve for several days to drinking unclean water from toilets overflowing with human waste. Moreover, BVMN has received testimonies from migrants stating being denied access to toilet facilities, and has recalled experiencing physical assault or violence by authorities when requesting access. We assert that denied access to food and water may negatively affect and impose further health conditions of persons with disabilities.

46. BVMN has recorded numerous testimonies indicating the frequent use of unofficial and informal detention sites such as, stables or abandoned derelict buildings, to process detained migrants.[[25]](#footnote-25) These testimonies highlight the lack of provision of basic necessities, namely food and water, and health care, in informal detention settings to sustain health and inflict inaccessible conditions which would impact persons with disabilities. BVMN asserts migrants are rendered extremely vulnerable to inhuman treatment by state authorities.

**D. Vulnerability of asylum seeking and refugee persons in camp during and after refoulement, return or deportation:**

47. BVMN asserts that situations of risk may arise for disabled asylum seekers, refugees and internally displaced persons during and after refoulement or formal removal proceedings. In particular, we affirm an implicit obligation under Article 11 for State Parties to comply with the principle of non-refoulement and refrain from initiating a removal that directly or indirectly places an individual in danger or at risk of torture.

48. In order to identify persons with disabilities in situations within the scope of Article 11, including both formal and informal returns proceedings, BVMN reaffirms the need to institute formal identification procedures and individualized assessments to gauge the risk of torture or inhuman or degrading treatment posed by a lack of adequate healthcare for persons with disabilities in the country of return.

49. BVMN affirms that the obligation on State parties to ensure that asylum seekers, refugees or internally displaced persons with disabilities are not refouled into situations of risk applies not only to the point of entry, but throughout the entire duration of an individual’s asylum procedure or detention.

50. BVMM notes that the use of illegal pushbacks and arbitrary return decisions to countries such as Turkey, Syria and Libya is increasingly placing persons with disabilities at significant risk. In Syria, Human Rights Watch affirmed that persons with disabilities are among the most at risk of abuse and violence in Syria. [[26]](#footnote-26) In Libya, failure to effectively enforce disability rights provisions had left refugees with disabilities especially vulnerable to poor treatment in detention facilities, including torture and violence. [[27]](#footnote-27) In Turkey, refugees with disabilities are at significant risk of physical and sexual violence, exploitation, human trafficking, harassment, and discrimination, [[28]](#footnote-28) with a historic use of subjective disabled persons electric shock treatment without anaesthesia. [[29]](#footnote-29)

51. BVMN notes that previous decisions adopted by the Committee establish the prohibition of refoulement and highlight the risks of persons with disabilities in relation to torture and ill-treatment in their country of origin. For instance, in the case of CRPR: O.O.J v. Sweden, [[30]](#footnote-30) the Committee found that despite the complainant proving a medical condition that without treatment would be severe and life-threatening, the State Party failed to assess whether the complainant would be able to access adequate medical care if removed to their country of nationality.

52. Interpreting Article 11 within the context of formal deportation proceedings, BVMN additionally reaffirms the need for State Parties to carry out individualised disability assessments prior to an individual’s return. Noting the case of ICCPR: Abdilafir Abubakar Ali and Mayul Ali Mohamad v. Denmark,[[31]](#footnote-31) BVMN echoes the Committee’s ruling that State Parties must undertake an individualised assessment of the risk in case of removal, which includes access to adequate medical care.

53. BVMN notes the Committee’s recommendation to Greece to provide individualised support to refugees, asylum seekers and internally displaced persons with disabilities and asserts that this support should be extended to situations of return or deportation initiated by States. BVMN further asserts the importance of persons with disabilities being provided with information about their removal in accessible formats for all persons regardless of type of impairment, in accordance with the Committee’s general comment No. 2 (2014), in addition to the need for training of personnel involved in deportation or other removals on the human rights-based approach to disability.

**VII. Interrelation with Other Articles of the Convention**

 **Article 6: Women with Disabilities**

54. Article 6 recognises that women and girls with disabilities are subject to discrimination, which includes discrimination against refugees, migrants, or asylum seekers.[[32]](#footnote-32) BVMN asserts that migrant women with disabilities are at a significant risk of harm in situations of risk such as transit zones or during humanitarian emergency Including but not limited to, trafficking, harassment and sexual and gender-based violence. Women with disabilities are also more likely to be isolated from access to appropriate healthcare, access to legal representation and access to a translator whilst being detained with the intention of refoulement by state parties.

55. The Committee states that ‘all appropriate measures’ must be taken to ensure the guaranteeing women with disabilities the ‘exercise and enjoyment of human rights and fundamental freedoms’ by state parties. States are further obliged through General Recommendation No. 30 on the Convention on the Elimination of All Forms of Discrimination against Women to adopt a ‘comprehensive gender-sensitive and rights-based policy’ that protects women and girls coming from conflict-affected areas from being subject to trafficking, including adopting a policy of ‘zero tolerance’ of sexual exploitation and abuse which also addresses border police and immigration officials.[[33]](#footnote-33)

**Article 7: Children with Disabilities**

56. The obligation imposed by Article 11 on states to guarantee the protection and safety of persons with disabilities must be given particular weight with respect to vulnerable classes within this group. Irregular migrant children require unique support on the basis of both their minor and legal status. Article 7(1) imposes a strong positive obligation on states to undertake “all necessary measures” to ensure that children with disabilities enjoy the same human rights and fundamental freedoms as other children. States thus must provide irregular migrant children with disabilities the support and resources necessary to exercise their capacities as rights holders, including but not limited to healthcare and freedom from arbitrary deprivation of liberty. As irregular migrant children interact with stake systems and actors, their best interest must be a primary consideration (Art. 7(2)).

**Article 10: Right to Life**

57. The guarantee of the “effective enjoyment” of the right to life on an “equal basis with others” provided by Article 10 must not be abrogated in situations of risk and humanitarian emergencies. As an extension of the right to life enshrined in other human rights instruments, Article 10 imposes a positive obligation on states to ensure that persons with disabilities receive the support necessary for its commensurate realisation. State responses to situations of risk must incorporate the provision of particularised resources to ensure that the right to life is not disproportionately threatened for persons with disabilities. This responsibility extends to the support of irregular migrants in situations of risk, including at borders and as they navigate asylum systems. The provision of necessary healthcare, mobility devices, and accessible accommodations, facilities, and transportation is integral to ensuring that migrants with disabilities are able to equally exercise the right to life.

**Article 12: Equal recognition before the law**

58. The Committee observed in General comment No. 1 that, under Article 12(3), states must facilitate access to and provide support for the exercise of legal capacity, which comprises legal standing (the recognition of legal personhood and its accompanying rights and obligations) and legal agency (recognition by the law of the exercise of such rights). While the latter is more commonly threatened for persons with disabilities, legal standing is often jeopardised for irregular migrants and stateless individuals. The rights protected by Article 12 are, thus, under particularly severe threat in situations of risk which involve the migration of individuals from their countries of origin.

59. The obligation to provide equal recognition before the law requires states to ensure that persons with disabilities navigating detention and asylum systems are fully recognized as individuals with legal standing. Furthermore, they must be provided the support necessary to fully exercise the rights associated with their legal status. Article 12(4) requires states to “respect the rights, will and preferences” of individuals, requiring supportive measures tailored to their individual needs. Paramountly, disability may not be used as a basis for discrimination during irregular migrants’ engagement with asylum and detention processes, as to do otherwise would deprive those with disabilities of equal recognition before the law compared to others in similar status. **Article 14: Liberty and Security of person**

60. In both situations of risk and humanitarian emergencies, State parties must ensure that detention of persons with disabilities, particularly those who are seeking asylum or are in immigration detention, is not arbitrary or discriminatory. Appropriate accommodations and support must be provided for people with disabilities in immigration detention. State parties must take into account the specific needs of persons with disabilities in their border management policies and practices, and to ensure fundamental rights for persons with disabilities are respected and protected at any point at all times. The absolute prohibition of detention on the basis of actual or perceived disability must be respected also in situations of risk and humanitarian emergencies under article 11.[[34]](#footnote-34)

61. Furthermore, to ensure full access to legal safeguards and prevent arbitrary detention, we assert that in situations of risk or humanitarian emergencies, migrants, asylum seekers and refugees must be provided with adaptive or disability accessible legal services.

**Article 15: Freedom from torture or cruel, inhuman or degrading treatment or punishment**

62. The systemic use of violent pushbacks at Europe’s borders has potential to aggravate or even cause mental disabilities such as post-traumatic stress disorder. All authorities involved in the reception of migrants, refugees and asylum seekers, including border police officers, should receive training on the needs of persons with disabilities in order to ensure the guarantee of their rights under Article 15 in the context of humanitarian emergency addressed in Article 11.

**Article 16: Freedom from exploitation, violence and abuse**

63. During situations of risk such as transit or border crossings, migrants and asylum seekers with with disabilities may be exposed to significant violence and abuse from state actors if pushed back, including: beatings; theft of personal belongings; kicking; destruction of personal belongings (including medications); threatening with automatic weapons; use of dogs; exposure to weather; and water immersion. Article 16 commits state parties to ensuring that appropriate measures must be taken to prevent all forms of exploitation, violence and abuse towards people with disabilities and their families and caregivers. Therefore, states must also commit to ending violent pushbacks and border controls in order to provide the protections for migrants and asylum seekers with disabilities.

64. The committee further requires State Parties to take all required measures to ensure physical, cognitive and psychological recovery and rehabilitation of persons with disabilities who are victims of any form of exploitation, violence and abuse. BVMN asserts that during violent pushbacks, migrants with disabilities are routinely denied any form of respite or recovery by state actors.

**Article 28 – Adequate standard of living and social protection**

65. . Migrants, asylum seekers and refugees with physical impairments often cannot access basic services such as sanitary facilities which are equipped for people with disabilities.[[35]](#footnote-35) The lack of accessible washrooms for people in wheelchairs in temporary reception centres as well as in detention is incompatible with the provisions of section 2(a) of Article 28 as well as the requirements of equal access and reasonable accommodations under Article 2. BVMN asserts that state parties must ensure that migrants, asylum seekers and refugees are provided with equal access to food assistance, shelter, wash programs, psychosocial support, livelihoods as well as self-reliance activities.[[36]](#footnote-36) The information to access these supports needs to be provided in an accessible format which is adjusted to the needs of the individual such as visual formats for people who are blind or partially sighted.

1. Border Violence Monitoring Network. n.d. *About Us.* Available from: <https://www.borderviolence.eu/about/> [↑](#footnote-ref-1)
2. Concluding observations on the initial report of Canada. 2017. CRPD/C/CAN/CO/1
 Concluding observations on the initial report of Portugal. 2016. CRPD/C/PRT/CO/1 [↑](#footnote-ref-2)
3. OHCHR: Principles and Guidelines, Supported by Practical Guidance on the Human Rights Protection of Migrants in Vulnerable Situations. Available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf> [↑](#footnote-ref-3)
4. Statement of the Committee on the Rights of Persons with Disabilities on disability inclusion for the World Humanitarian Summit [↑](#footnote-ref-4)
5. Committee on the Rights of Persons with Disabilities: CRPD/C/18/D/28/2015: Decision adopted by the Committee under article 2 of the Optional Protocol, concerning communication No. 28/2015. [↑](#footnote-ref-5)
6. Concluding observations on the initial report of Canada. 2017. CRPD/C/CAN/CO/1
 Concluding observations on the initial report of Iran. 2017. CRPD/C/IRN/CO/1 [↑](#footnote-ref-6)
7. OHCHR: Principles and Guidelines, Supported by Practical Guidance on the Human Rights Protection of Migrants in Vulnerable Situations. Available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf> [↑](#footnote-ref-7)
8. Charter on Inclusion of Persons with Disabilities in Humanitarian Action (n 29) para 2.3c. Available at:
<https://humanitariandisabilitycharter.org/> [↑](#footnote-ref-8)
9. Ibid [↑](#footnote-ref-9)
10. Concluding observations on the initial report of Ukraine. 2015. CRPD/C/UKR/CO/1 [↑](#footnote-ref-10)
11. Concluding observations on the initial report of Kenya. 2015. CRPD/C/KEN/CO/1 [↑](#footnote-ref-11)
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