To the Committee on the Rights of Persons with Disabilities

Submission to the general discussion on Article 11 of the CRPD

By Philippa Duell-Piening[[1]](#footnote-1) | 13 February 2023

Thank you for the opportunity to make a submission on Article 11 of the *Convention on the Rights of Persons with Disabilities* (‘*CRPD*’). This submission addresses the situation of people with disability in refugee contexts. A significant portion of this submission is from my PhD research which focuses on the *CRPD*’s Article 31 in refugee contexts.[[2]](#footnote-2)

# Background

## Refugee contexts

Refugee contexts, to various extents, are regulated by the *Convention Relating to the Status of Refugees* and associated protocol ('*Refugee Convention*').[[3]](#footnote-3) The *Refugee Convention* contains a definition of refugee,[[4]](#footnote-4) and provides rights and protections. Refugee contexts are not restricted to states that are party to the *Refugee Convention* because all states have customary international law *non-refoulement* obligations.[[5]](#footnote-5)

The Office of the High Commissioner for Refugees ('UNHCR') also has responsibilities under the *Refugee Convention*.[[6]](#footnote-6) In many refugee contexts, civil society organisations with established expertise in these contexts operate alongside states and the UNHCR to deliver services. Several non-binding instruments, such as the *Global Compact on Refugees*,[[7]](#footnote-7) serve as guidelines or policies for working in these contexts.

Refugee contexts exist in nearly all states – as is evident from the UNHCR Global Trends reports.[[8]](#footnote-8) Nevertheless, the global south has a higher proportion of people living in these contexts.[[9]](#footnote-9) UNHCR also report that more people in refugee contexts live in urban settings,[[10]](#footnote-10) and most live in protracted situations that last five or more years. [[11]](#footnote-11)

## The importance of clarifying and reaffirming disability human rights in refugee contexts

There are several reasons why refugee contexts are important sites for clarifying and reaffirming disability human rights. Firstly, the *CRPD* recognises multiple and aggravated forms of discrimination,[[12]](#footnote-12) and guarantees to people with disability ‘equal and effective legal protection against discrimination on all grounds’.[[13]](#footnote-13) People who are refugees with disability experience multiple and aggravated discrimination that can manifest in many ways, including through the absence of citizenship rights.

Human rights are not premised on citizenship rights – nonetheless, many states provide disability services exclusively to citizens and specific categories of permanent residents.[[14]](#footnote-14) This service access criterion has a cascading effect on the ability of people who are refugees with disability to access their rights. Those who can access services must often contend with material, language and cultural barriers in accessing their rights that are not recognised and accommodated.[[15]](#footnote-15) There are few or no Disabled Persons Organisations ('DPOs') speaking on behalf of this group to raise awareness of the specific barriers they experience in accessing their rights.

Further, clarification and reiteration of disability human rights are essential for people with disability living in prolonged refugee contexts. While refugee contexts are often characterised as emergencies, as highlighted earlier, many people have lived in these settings for over five years. This prolonged period of displacement requires the clarification of rights that may not be derogated during these periods,[[16]](#footnote-16) and consideration of when emergency settings that allow for derogation of rights cease. Emergency response power dynamics resemble the medical model with a tension between paternalism and individual autonomy. This exploration of when and how more autonomy may be restored to people in refugee contexts is particularly pertinent to people with disability realising their rights in these contexts.

Another reason clarification and reiteration of disability human rights in refugee contexts are important is that there has been greater attention to this space since the adoption of the *CRPD.* While the 1951 *Refugee Convention* does not mention people with disability,[[17]](#footnote-17) the 2018 *Global Compact on Refugees* contains20 references to disability across many areas.[[18]](#footnote-18) The UNHCR practice guides, *Working with Persons with Disabilities in Forced Displacement: Need to Know Guidance*,[[19]](#footnote-19) and several other instruments demonstrate the broad range of actors committed to working more inclusively with people with disability in refugee contexts. These instruments include the 2016 *Charter on Inclusion of Persons with Disabilities in Humanitarian Action*,[[20]](#footnote-20)the 2018 *Humanitarian inclusion standards for older people and people with disabilities*,[[21]](#footnote-21) and the 2019 *Inclusion of Persons with Disabilities in Humanitarian Action*.[[22]](#footnote-22) Guidance from the CRPD Committee on Article 11 rights and obligations will clarify and strengthen the implementation of these instruments.

## People with disability in refugee contexts

Disability may pre-exist, be caused by or be exacerbated by the circumstances that pre-empt the search for protection, the refugee flight, or the asylum location. Disability may be caused by the persecution and violence people are escaping, such as torture or war.[[23]](#footnote-23) Disability may be exacerbated because support mechanisms that enable rights attainment are ruptured due to war, disappearances of family members, or denial of access to services.[[24]](#footnote-24) The *CRPD* model of disability recognises the interaction between an impairment and the environment causes disability.[[25]](#footnote-25) As part of the refugee experience, impairments may or may not change, but the environment will undoubtedly change; therefore, the degree of disability that people experience will certainly be impacted throughout the refugee experience.

People who are refugees with disability may be part of a large exodus from a region due to systematic violence or be individuals fleeing due to targeted persecution.[[26]](#footnote-26) They may travel across land, sea or sky by various modes of transport.[[27]](#footnote-27) People often report having little time to plan their escape and leave with few belongings.[[28]](#footnote-28) For people with disability, this may include leaving without aids and equipment necessary for facilitating independence.[[29]](#footnote-29) On arrival in a country of asylum, there is often a phase of acute need.[[30]](#footnote-30) Host countries are often overwhelmed, and vital services may be interrupted, delayed, or unavailable.[[31]](#footnote-31)

Providing accessible services in refugee contexts presents logistical challenges. These challenges differ depending on whether someone lives in an urban or refugee camp setting. Typically, in an urban context, people who are refugees are dispersed throughout cities and are challenging to identify. This invisibility may be compounded for people with disability who may be confined to their homes for various reasons, such as inaccessible environments or families who believe their relative with disability should remain at home for their safety or because of concerns regarding stigma.[[32]](#footnote-32) Undertaking population needs assessments through household censuses or surveys is often more straightforward in refugee camp contexts. Likewise, services may be more targeted and accessible because camps have a 'captive audience'. However, within these contexts, camp populations often must deal with the challenges of rural, low-infrastructure environments, characterised by rugged inaccessible pathways that people with disability need to navigate to secure life-sustaining resources such as food rations.

In addition to the multiple and aggravated discrimination caused by disability and refugee experiences, organisations working with people who are refugees with disability have noted that other intersectional identities, such as gender, age, sexuality, and type of disability, impact people's ability to access their rights.[[33]](#footnote-33)

# Interrelation with other articles of the Convention

## Article 4(3)

**My PhD research recommends**

1. **States should resource and adopt creative approaches to enable the development of self-advocacy organisations for people with disability in refugee contexts.**  Representation for people with disability in refugee contexts may be facilitated by refugee self-led agencies that have developed methods of engaging with people in refugee contexts.[[34]](#footnote-34) Refugee self-led agencies may use their experience of overcoming barriers faced by people who are refugees to support the development of DPOs for people with disability in refugee contexts. For refugee self-led agencies to undertake this work effectively, they will likely require capacity building and awareness-raising of disability human rights and disability inclusion.[[35]](#footnote-35) Alternatively, host community DPOs may require capacity building in cross-cultural and trauma-informed approaches to welcome people who are refugees with disability into their organisations. Effectively including people who are refugees with disability in the host community DPOs, requires the recognition and creation of space for the different priorities the former group may have compared to the host community (i.e. resolution of status, language services access, concerns about family still at home or in transit, experiences of racism, among others).

## Article 27

I want to draw the Committee's attention to the submission Amir Abdi and I made to the General Discussion on Article 27 that addresses the situation of people who are refugees with disability in realising their right to work.[[36]](#footnote-36) For the Committee’s convenience, I have included our Article 27 submission as an appendix.

## Article 31

The *CRPD*'sArticle 31 is used as a legal basis to produce and process data about the bodies and lives of people who are refugees with disability by civil society, legal scholars and the CRPD Committee.[[37]](#footnote-37) The CRPD Committee has used Article 31's authority to recommend disaggregating data by refugee status in Concluding Observations to nine states.[[38]](#footnote-38) In addition, the Committee have also recommended data production and processing about people who are refugees with disability under other substantive rights, including Article 6,[[39]](#footnote-39) Article 11,[[40]](#footnote-40) Article 16,[[41]](#footnote-41) Article 17,[[42]](#footnote-42) Article 18,[[43]](#footnote-43) and Article 24.[[44]](#footnote-44) In one instance, the Committee recommended extra-territorial data production and processing: 'Collect disaggregated data on disability in all humanitarian and development programmes'.[[45]](#footnote-45)

Nonetheless, there is evidence that being identified may be particularly harmful to some groups. The International Committee on the Red Cross’ *Handbook on data protection in humanitarian action* identified the possibility of group harm through de-identified aggregated data:

…in armed conflicts and other situations of violence, many threats are collective rather than individual… just focusing on the proper management of Personal Data may not be sufficient. In some cases, Processing of non-Personal Data may raise specific threats at the collective level.[[46]](#footnote-46)

An example of aggregated data that may identify certain groups at risk of harm includes data about specific impairments characteristic of combat or torture injuries. Data production and processing in refugee contexts should be treated cautiously. My PhD raises concerns that some data practices in refugee contexts, though well-intentioned, are not adhering to human rights norms.

**My PhD research recommends:**

1. **States, international organisations and civil society must adhere to existing human rights principles and guidance relevant to data production and processing.**  My PhD research demonstrated poor adherence to human rights principles that enable self-identification and self-defining.[[47]](#footnote-47) Both principles promote increased autonomy and allow for strategic anonymity. All surveys being conducted under the Article 31 authority should immediately allow people to self-identify by including the response – 'I'd prefer not to say'. Further work is required to understand how self-defining may be achieved – i.e. how to determine which groups represent certain interests. Further, amongst the enthusiasm to harness data for good, a core principle of personal data protection appears to have been neglected: data minimisation. Data minimisation relates to whether it is necessary to collect data.[[48]](#footnote-48) The lack of attention to data minimisation is likely related to the content of the following recommendation.
2. **The CRPD Committee, States, DPOs, international organisations and scholars work together to clarify how to determine when it is 'appropriate' to produce and process various data variables about people with disability’s bodies and lives.**  My PhD research observes that the safeguard 'as appropriate' in the *CRPD*'s Article 31(2) is omitted from operational guides that recommend producing and processing disability data in refugee contexts.[[49]](#footnote-49) This omission is likely because no guidance exists about when collecting various data variables is appropriate and inappropriate. A test and guidance are urgently required to determine when it is 'appropriate' to produce data about the bodies and lives of people with disability in refugee contexts and, conversely, when it is inappropriate. Consideration is also needed for contexts where people cannot consent, i.e. a person has 'no real choice to refuse Consent due to a situation of need and vulnerability, including a lack of alternative to the specific assistance being offered and the data Processing involved'.[[50]](#footnote-50) If consent cannot be obtained, only information that is 'truly necessary, rather than just convenient, to fulfil the relevant purpose' should be produced and processed.[[51]](#footnote-51)
3. **DPOs, the CRPD Committee and States, should develop metrics about state actions to implement the *CRPD* and ameliorate barriers to rights attainment.** Close consultation and active involvement of people with disability in refugee contexts is necessary to identifythe barriers they experience to rights attainment,[[52]](#footnote-52) reinforcing the importance of the above recommendation (no.1). Statistics about state actions to implement the *CRPD* and address barriers to rights attainment must be disseminated in accessible formats to people with disability in refugee contexts.[[53]](#footnote-53)

# Appendix



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.[[54]](#footnote-54) Over three-quarters of this population, 77%, lived in protracted situations.[[55]](#footnote-55) 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.[[56]](#footnote-56)

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.[[57]](#footnote-57) 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’.[[58]](#footnote-58) 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.[[59]](#footnote-59)

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’.[[60]](#footnote-60) 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’.[[61]](#footnote-61)

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’.[[62]](#footnote-62) 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.[[63]](#footnote-63)

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.[[64]](#footnote-64) 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.[[65]](#footnote-65) The Specialised and Intensive Services program is available to humanitarian entrants ‘who have complex needs’, including disability, to ‘help them access appropriate mainstream services’.[[66]](#footnote-66)

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.[[67]](#footnote-67)

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.[[68]](#footnote-68) 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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Amir Abdi is an advocate for people from refugee backgrounds and those seeking asylum, as well as a champion for people living with vision loss. Amir was presented with the Victorian Award from Friends of Refugees by Professor Gillian Triggs, in 2018, for his outstanding contribution to the Australian Community for All Abilities Sports and Community Service. Amir works in a large construction company in social procurement and recently began a role with Football Victoria. He is also studying psychology part-time. Amir is legally blind.

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1. Philippa Duell-Piening is a [PhD candidate at the Melbourne Law School](https://law.unimelb.edu.au/students/grd/students/philippa-duell-piening) with support from the [Melbourne Social Equity Institute](https://socialequity.unimelb.edu.au/). Her research is primarily in the field of human rights law with a focus on disability and refugee rights. Prior to commencing her PhD candidature in 2019, Philippa worked at the [Victorian Foundation for Survivors of Torture](https://foundationhouse.org.au/) coordinating the [Victorian Refugee Health Network](https://refugeehealthnetwork.org.au/). The focus of Philippa’s work was on health sector development and government engagement to reduce health inequalities and improve access to health services for people who are refugees. Philippa has worked in the forced-migration contexts of Timor-Leste in 2002 and on the Thai-Myanmar border in 2012. She has a Graduate Diploma in International Law, a Master in Community and International Development, and a Bachelor of Occupational Therapy. She has published in[Disability and Society about refugee settlement and disability](https://www.tandfonline.com/doi/abs/10.1080/09687599.2018.1444582), and [about refugee health in a wide range of journals](https://scholar.google.com/citations?user=vYMHU1gAAAAJ&hl=en). [↑](#footnote-ref-1)
2. This research is conducted under the supervision of Professor Michelle Foster and Associate Professor Anna Arstein-Kerlake and will be submitted for examination in April 2023. [↑](#footnote-ref-2)
3. The 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees are interrelated treaties as the intent of the latter was to increase the temporal and geographical reach of the earlier instrument. The latter instrument includes all the rights from the earlier, so it is a standalone instrument. Both will be referred to as the Refugee Convention, unless there is a purpose to differentiate them. *Convention Relating to the Status of Refugees,* Opened for Signature 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954) (‘*Refugee Convention*’); *Protocol Relating to the Status of Refugees,* Opened for Signature 31 January 1967, 606 UNTS 267 (entered into force 4 October 1967) (‘*Refugee Protocol*’). [↑](#footnote-ref-3)
4. A refugee is defined as ‘owing to 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; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it’. *Refugee Convention* (n 3) art 1[A(2)] as modified by the; *Refugee Protocol* (n 3) art 1[2]. [↑](#footnote-ref-4)
5. Non-refoulement while not explicitly stated in the Refugee Convention is viewed as a core principle of the Convention and ‘embedded in customary international law’. Ministerial meeting of state parties, *Declaration of State Parties to the 1951 Convention and/or Its 1967 Protocol Relating to the Status of Refugees* 12 December 2001, Preamble [4]; See also Cathryn Costello and Michelle Foster, ‘Non-Refoulement as Custom and Jus Cogens? Putting the Prohibition to the Test’ in Maarten den Heijer and Harmen van der Wilt (eds), *Netherlands Yearbook of International Law 2015: Jus Cogens: Quo Vadis?* (T.M.C. Asser Press, 2016) 273, 282–306; For the UNHCR’s guidance on the matter see United Nations High Commissioner for Refugees, *The Principle of Non-Refoulement as a Norm of Customary International Law. Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93*, 31 January 1994, <https://www.refworld.org/docid/437b6db64.html>. [↑](#footnote-ref-5)
6. *Refugee Convention* (n 3) art 35; *Statute of the Office of the United Nations High Commissioner for Refugees*, UNGA Res 428(V), UN Doc A/RES/428(V) (adopted 14 December 1950). [↑](#footnote-ref-6)
7. Office of the United Nations High Commissioner for Refugees (UNHCR), *Report of the United Nations High Commissioner for Refugees: Part II Global Compact on Refugees* 2018 (‘*Global Compact on Refugees*’). [↑](#footnote-ref-7)
8. UNHCR Global Data Services, *Global Trends: Forced Displacement in 2021* (Office of the High Commissioner for Refugees (UNHCR), 2022). [↑](#footnote-ref-8)
9. At the end of 2021, 83% of people who are refugees and ‘Venezuelans displaced abroad’ are hosted by ‘low- and middle-income countries’ ibid 2. [↑](#footnote-ref-9)
10. Office of the United Nations High Commissioner for Refugees (UNHCR), ‘Refugee Camps Explained’, *USA for UNHCR Rhw UN Refugee Agency* (6 April 2021) <https://www.unrefugees.org/news/refugee-camps-explained/>. [↑](#footnote-ref-10)
11. At the end of 2021, 74% of people who were refugees lived in protracted situations. Protracted situations are defined by UNHCR as ‘where more than 25,000 refugees from the same country of origin have been in exile in a given low- or middle-income host country for at least five consecutive years’ UNHCR Global Data Services (n 8) 20. [↑](#footnote-ref-11)
12. *Convention on the Rights of Persons with Disabilities,* Opened for Signature 24 January 2007, 2515 UNTS 3 (entered into force 3 May 2008) Preamble (p), art 6, 7 (‘*CRPD*’). [↑](#footnote-ref-12)
13. Ibid art 5. [↑](#footnote-ref-13)
14. See, eg, Soldatic et al who discuss the complexity of different service entitlement according to visa migration category. Karen Soldatic et al, ‘Disability and Migration in Urban Australia: The Case of Liverpool’ (2020) 55(4) *Australian Journal of Social Issues* 456 (‘Disability and Migration in Urban Australia’); In an earlier piece Soldatic uses doctrine and theory to argue that ‘While the CRPD was made at the international level, the claiming of disability justice and the realization of disability rights firmly depends on one being a citizen of a nation state and making claims for justice upon that state’. Karen Soldatic, ‘The Transnational Sphere of Justice: Disability Praxis and the Politics of Impairment’ (2013) 28(6) *Disability & Society* 744, 746 (‘The Transnational Sphere of Justice’); The author describes in this submission the gap in services for people with disability who are temporary protection visa holders. Philippa Duell-Piening, *Response to a Discussion Paper of the Victorian State Disability Plan 2017-2020* (Victorian Refugee Health Network, July 2016); For a description of service access for people with disability who are refugees or seeking asylum in the UK see Jennifer Harris and Keri Roberts, ‘Not Our Problem: The Provision of Services to Disabled Refugees and Asylum-Seekers’ [2004] *Social work, immigration and asylum: Debates, dilemmas and ethical issues for social work and social care practice* 151 (‘Not Our Problem’). [↑](#footnote-ref-14)
15. See, eg, Samantha Furneaux and Dina Korkees, *‘We Need to Raise Our Voices’: Advice from People of Refugee Backgrounds Living with Disabilities and Their Carers* (The Victorian Foundation for Survivors of Torture Inc. 2019, 2019). [↑](#footnote-ref-15)
16. Motz observed that Article 11 recognises people with disability ‘as holders of non-derogable human rights also in risk situations’. Stephanie Motz, ‘Article 11: Situations of Risk and Humanitarian Emergencies’ in Ilias Bantekas et al (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (OUP Oxford, First edition, 2018) 315. [↑](#footnote-ref-16)
17. *Refugee Convention* (n 3). [↑](#footnote-ref-17)
18. Office of the United Nations High Commissioner for Refugees (UNHCR), *Global Compact on Refugees* (n 7). [↑](#footnote-ref-18)
19. Office of the United Nations High Commissioner for Refugees (UNHCR), *Working with Persons with Disabilities in Forced Displacement: Need to Know Guidance* (2011); Office of the United Nations High Commissioner for Refugees (UNHCR), *Working with Persons with Disabilities in Forced Displacement: Need to Know Guidance* (2019). [↑](#footnote-ref-19)
20. *Charter on Inclusion of Persons with Disabilities in Humanitarian Action* 2016 <http://humanitariandisabilitycharter.org/>. [↑](#footnote-ref-20)
21. CBM International, HelpAge International, and Handicap International, *Humanitarian Inclusion Standards for Older People and People with Disabilities* (CBM International, HelpAge International and Handicap International, 2018). [↑](#footnote-ref-21)
22. Inter-Agency Standing Committee (IASC), *Guidelines on Inclusion of Persons with Disabilities in Humanitarian Action* (IASC, 2019). [↑](#footnote-ref-22)
23. ‘Among persons who reported illness/disease, injury and malnutrition as causes of their disabilities, 24.7% considered the causes were related to the Syrian conflict’. Humanity & Inclusion and iMMAP, *Removing Barriers: The Path towards Inclusive Access: Disability Assessment among Syrian Refugees in Jordan and Lebanon: Jordan Report* (July 2018) 1; For a description of the prevalence, types and impact of torture on people who are refugees see Ida Kaplan, *Rebuilding Shattered Lives: Integrated Trauma Recovery for People of Refugee Background* (The Victorian Foundation for Survivors of Torture Inc., 2nd ed, 2020) 54–63. [↑](#footnote-ref-23)
24. ‘Moreover, traditional community coping mechanisms, including extended families, neighbors and other caregivers, often break down during displacement. The loss of caregivers can leave persons with disabilities extremely vulnerable and exposed to protection risks’. Women’s Refugee Commission, *Disabilities among Refugees and Conflict-Affected Populations* (June 2008) 2. [↑](#footnote-ref-24)
25. *CRPD* (n 12) art 1. [↑](#footnote-ref-25)
26. In 2022, almost 200,000 people a day left the Ukraine in search of protection in the early days of the war. United Nations High Commissioner for Refugees (UNHCR), *Mid-Year Trends 2022* (UNHCR, 2022) 6; Cf the approximately 80 women from Saudi Arabia who have sought asylum in Australia over a number of years. ‘Australian Border Force Accused of Targeting Women Suspected of Fleeing Saudi Arabia’, *ABC News* (online, 3 February 2019) <https://www.abc.net.au/news/2019-02-04/border-force-accused-of-targeting-saudi-women-traveling-alone/10768036>. [↑](#footnote-ref-26)
27. The citations above, n 11, also demonstrate different modes of leaving the country and seeking asylum by land border or air travel. United Nations High Commissioner for Refugees (UNHCR), ‘Mid-Year Trends 2022’ (n 26) 6; ‘Australian Border Force Accused of Targeting Women Suspected of Fleeing Saudi Arabia’ (n 26). [↑](#footnote-ref-27)
28. Kaplan (n 23) 29. [↑](#footnote-ref-28)
29. See generally Victorian Refugee Health Network, *Service Responses for People with Disabilities from Refugee Backgrounds in Northern Melbourne* (Victorian Foundation for Survivors of Torture, 2018). [↑](#footnote-ref-29)
30. See, eg, United Nations High Commissioner for Refugees (UNHCR) and European Disability Forum, *Ensuring the Protection of Persons with Disabilities Fleeing from Ukraine* (UNHCR and European Disability Forum, 2022). [↑](#footnote-ref-30)
31. Ibid. [↑](#footnote-ref-31)
32. My PhD research Stakeholder Advisory Group spoke about the stigma associated with disability within their communities and how people with disability were hidden away in family homes and not taken into the community. Stakeholder Advisory Group meeting minutes 20 August 2021; An ExCom report also noted that ‘…[A]dults and children with disabilities often face ostracism or marginalization within their immediate families and communities, which exacerbate their protection problems... Some families and communities see “disability” as a punishment, and parents may hide children with disabilities at home, or even tie them up’. Executive Committee of the High Commissioner’s Programme, *The Protection of Older Persons and Persons with Disabilities*, UN Doc EC/58/SC/CRP.14 (6 June 2007), [12]. [↑](#footnote-ref-32)
33. See, eg, Women’s Refugee Commission (n 24); The Executive Committee of the High Commissioner’s Programme ('ExCom’) identified that women and girls with disability who have been forcibly displaced might be at greater risk due to interruptions in their support services. United Nations High Commissioner for Refugees, *Conclusion on Women and Girls at Risk*, UN Doc A/AC.96/1035 (10 October 2006), para 17(f). [↑](#footnote-ref-33)
34. Mustafa Alio et al, ‘By Refugees, for Refugees: Refugee Leadership during COVID-19, and Beyond’ (2020) 32(2) *International Journal of Refugee Law* 370. [↑](#footnote-ref-34)
35. CRPD art 8 [↑](#footnote-ref-35)
36. Amir Abdi and Philippa Duell-Piening, *Submission to the CRPD General Discussion on Article 27* (Refugee Council of Australia, 2021) <https://www.ohchr.org/Documents/HRBodies/CRPD/DGD/2021/RCA.docx>. [↑](#footnote-ref-36)
37. See, eg, ‘In recent years, there have been considerable efforts to collect, analyse and use data on persons with disabilities catalysed by data collection requirements called for in Article 31 of the UN Convention on the Rights of Persons with Disabilities (CRPD)’ Handicap International, *Data on Persons with Disabilities in Humanitarian Action: Collecting Quantitative Data with the Washington Group Questions* (Handicap International, May 2019) 2; See also Mary Crock and Laura Smith-Khan, ‘Swift and Systematic? Identifying and Recording Disability in Forced Migration’ in Barbara M Altman (ed), *International Measurement of Disability: Purpose, Method and Application* (Springer International Publishing : Imprint: Springer, 2016). [↑](#footnote-ref-37)
38. Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Combined Second and Third Periodic Reports of Hungary* 20 May 2022, [61(a)]; Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of Iraq* 19 September 2019, [59-60]; Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of the Former Yugoslav Republic of Macedonia* 29 October 2018, [54]; Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of the United Kingdom of Great Britain and Northern Ireland* 3 October 2017, [65]; Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of the Islamic Republic of Iran* 10 May 2017, [58-9]; Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of Morocco* 25 September 2017, [59]; Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of Uganda* 12 May 2016, [60]; Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of Kenya* 30 September 2015, [56]. [↑](#footnote-ref-38)
39. Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of Germany* 13 May 2015, [16(b)]. [↑](#footnote-ref-39)
40. Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of Canada* 8 May 2017, [25-6]. [↑](#footnote-ref-40)
41. Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of Switzerland* 13 April 2022, [33-4]. [↑](#footnote-ref-41)
42. Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of France* 4 October 2021, [39]. [↑](#footnote-ref-42)
43. Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Combined Second and Third Periodic Reports of Hungary* (n 38) [37(e),38(e)]; Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Combined Second and Third Periodic Reports of Mexico* 20 April 2022, [48-9]; Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of Turkey* 9 April 2019, [38-9]. [↑](#footnote-ref-43)
44. Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of the Islamic Republic of Iran* (n 38) [47(b)]. [↑](#footnote-ref-44)
45. Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of Switzerland* (n 41) [60(c)]. [↑](#footnote-ref-45)
46. *Handbook on Data Protection in Humanitarian Action* (International Committee of the Red Cross, 2nd ed, 2020) 24. [↑](#footnote-ref-46)
47. For more on the human rights principles of self-identification and self-defining see Office of the High Commissioner for Human Rights (OHCHR), *A Human Rights-Based Approach to Data: Leaving No One behind in the 2030 Agenda for Sustainable Development* (OHCHR, 2018) 11–13 <https://www.ohchr.org/Documents/Issues/HRIndicators/GuidanceNoteonApproachtoData.pdf>. [↑](#footnote-ref-47)
48. United Nations High Commissioner for Refugees (UNHCR), *Guidance on the Protection of Personal Data of Persons of Concern to UNHCR* (UNHCR, 2018) 19. [↑](#footnote-ref-48)
49. *CRPD* (n 12) art 31[2]. [↑](#footnote-ref-49)
50. *Handbook on Data Protection in Humanitarian Action* (n 46) 61. [↑](#footnote-ref-50)
51. Ibid 67. [↑](#footnote-ref-51)
52. *CRPD* (n 12) art 4[3]. [↑](#footnote-ref-52)
53. Ibid art 31[3]. [↑](#footnote-ref-53)
54. Global trends United Nations High Commissioner for Refugees (UNHCR), *Global Trends: Forced Displacement in 2019* (UNHCR, 2020) 2. [↑](#footnote-ref-54)
55. ‘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-55)
56. 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-56)
57. Stephanie Anna Motz, *The Refugee Status of Persons with Disabilities* (Brill - Nijhoff, 2020) 10–11. [↑](#footnote-ref-57)
58. James C Hathaway, *The Rights of Refugees under International Law* (Cambridge University Press, 2005) 154. [↑](#footnote-ref-58)
59. Mary Crock et al, *The Legal Protection of Refugees with Disabilities: Forgotten and Invisible?* (Edwards Elgar Publishing Limited, 2017); Motz (n 57). [↑](#footnote-ref-59)
60. Hathaway (n 58) 719. [↑](#footnote-ref-60)
61. United Nations High Commissioner for Refugees, ‘The Global Compact on Refugees’, *UNHCR* <https://www.unhcr.org/the-global-compact-on-refugees.html>. [↑](#footnote-ref-61)
62. Office of the United Nations High Commissioner for Refugees (UNHCR), *Global Compact on Refugees* (n 7) [70] (footnotes omitted). [↑](#footnote-ref-62)
63. Ibid [71] (emphasis added). [↑](#footnote-ref-63)
64. 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-64)
65. Australian Government Department of Home Affairs, ‘Humanitarian Settlement Program’ <https://immi.homeaffairs.gov.au/settling-in-australia/humanitarian-settlement-program/overview>. [↑](#footnote-ref-65)
66. 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-66)
67. https://www.ssi.org.au/services/local-area-coordination, https://www.ames.net.au/blogs/ndis-community-connectors [↑](#footnote-ref-67)
68. Refugee and Humanitarian visas may be temporary or permanent. Temporary visas have different lengths. Entitlements vary depending on the visas. [↑](#footnote-ref-68)