A picture containing logo

Description automatically generated

African Disability Forum, Arab Organization of Persons with Disabilities, ASEAN Disability Forum, Down Syndrome International, European Disability Forum, Inclusion International, International Federation of Hard of Hearing People, International Federation for Spina Bifida and Hydrocephalus, Latin American Network of Non-Governmental Organizations of Persons with Disabilities and their Families, Pacific Disability Forum, World Blind Union, World Federation of the Deaf, World Federation of the DeafBlind, World Network of Users and Survivors of Psychiatry

**IDA´s submission for the Day of General Discussion on Article 11 of the CRPD (Situation of Risk and Humanitarian Emergencies)**

March 2023

The International Disability Alliance (IDA) is a network of global and regional organisations of persons with disabilities (DPOs) comprising eight global and six regional DPOs. Established in 1999, each IDA member represents a large number of national organizations of persons with disabilities (OPDs) from around the globe, covering the whole range of disability constituencies. IDA thus represents the collective global voice of persons with disabilities counting among the more than 1 billion persons with disabilities worldwide, the world’s largest – and most frequently overlooked – minority group. IDA’s mission is to advance the human rights of persons with disabilities as a united voice of organisations of persons with disabilities utilising the Convention on the Rights of Persons with Disabilities and other human rights instruments.

[I. Introduction 3](#_Toc127436005)

[II. Disproportionate impact of different kinds of emergencies on persons with disabilities: a broad INTERPRETATION of situations of risk under Article 11 of the CRPD 3](#_Toc127436006)

[A. The CRPD and Article 4 of the ICCPR: States of public emergency and derogation of rights 5](#_Toc127436007)

[B. An intersectional approach to article 11 of the CRPD: women with disabilities, children with disabilities and other intersectional identities 7](#_Toc127436008)

[III. Inclusive disaster risk reduction and climate action to protect the lives and rights of persons with disabilities 8](#_Toc127436009)

[IV. Armed conflict and persons with disabilities 10](#_Toc127436010)

[V. Crossing borders seeking protection and safety: the IMPACT of the CRPD onrefugee and migration law](#_Toc127436011) 13

[A. Procedural accommodation for asylum-seeking, resettlement and migration procedures 14](#_Toc127436012)

[B. Considering disability in refugee status determinations: well-founded fear of persecution and specific grounds 15](#_Toc127436013)

[C. Immigration law and the CRPD: the health requirement as disability-based discrimination 16](#_Toc127436014)

[D. Ensuring the exercise of CRPD rights to asylum-seekers, refugees, stateless prsons and migrants with disabilities 17](#_Toc127436015)

[ANNEX I 19](#_Toc127436016)

# Introduction

1. The International Disability Alliance (IDA) welcomes the initiative by the Committee on the Rights of Persons with Disabilities to hold a Day of General Discussion (DGD) on Article 11 of the CRPD (Situations of Risk and Humanitarian Emergencies), as a first step towards the development of the general comment No. 9. IDA welcomes the regional focus, reflected in the DGD format comprising three regional consultations at the 28th session.
2. Given the breadth and complexity of Article 11, IDA considers that the process of elaborating the general comment would benefit from an appropriately measured pace to provide organizations of persons with disabilities, and other stakeholders, the time and opportunity to undertake consultations and roundtable discussions with their members and develop other activities that can be useful and contribute to the process. Additionally, IDA would welcome the publication of a clear plan ahead for the rest of the process towards the general comment by the CRPD Committee, which would facilitate meaningful engagement of OPDs at the international, regional, and national levels.
3. The CRPD Committee has addressed many of the key issues related to Article 11 of CRPD throughout its work. In recent years several areas have increased in relevance and momentum requiring the CRPD Committee to provide guidance to States and other actors, for them to improve existing practices and adopt new ones in the implementation of Article 11. This includes the Covid-19 pandemic, climate change/the climate crisis, as well as several new situations of armed-conflict, and the specific impacts on persons with disabilities. This necessitates elaboration of authoritative guidance through a general comment from the Committee on how States parties to the CRPD can implement Article 11.
4. IDA’s submission addresses key issues that we hope can enrich the Day of General Discussion and the future general comment, while noting that it is not possible to cover all issues that could be included, nor be exhaustive in detail on the areas we have chosen to highlight. In doing so, IDA hopes to provide main elements to frame a broad approach

# Disproportionate impact of different kinds of emergencies on persons with disabilities: for a broad understanding of situations of risk under Article 11 of the CRPD

1. Worldwide, persons with disabilities are disproportionately affected by situations of risk, including natural disasters (e.g. floods, earthquakes, etc.) and other humanitarian emergencies. Lack of participation and inclusion of persons with disabilities, and lack of accessibility (in all its dimensions) throughout the emergency cycle, including prevention, preparedness, response and recovery, leads to policies and practices largely unaware of persons with disabilities and their requirements. Consequently, persons with disabilities face higher risks of death, injuries, isolation and other violations of their rights[[1]](#footnote-1).
2. This is the case for across all kinds of emergencies. The Covid-19 pandemic confirmed the marginalization of persons with disabilities and their representative organizations, and the failure to consider their concerns through participatory and inclusive processes led to a wide range of violations of rights, and in many cases with fatal consequences. For instance, strict physical distancing measures in many countries deprived persons with disabilities from very basic personal assistance and support services required for their daily lives. Given the specific nature of this emergency (caused by a highly infectious virus), persons with disabilities residing in institutions suffered higher rates and risk of deaths than others and were more exposed to abandonment and other human rights violations.[[2]](#footnote-2) We note also that during emergencies, ableism, stigma and negative attitudes towards persons with disabilities may escalate and persons with disabilities and their families are vulnerable to abuse in such situations.
3. IDA notes that “situations of risk” as well as “humanitarian emergencies” in Article 11 can cover situations of a diverse nature or cause. It may be useful for the CRPD Committee to further delineate the scope of ‘situations of risk’ and ‘humanitarian emergencies’, noting the different temporal and substantive dimensions, and that not all situations of risk will develop into humanitarian emergencies and not all humanitarian emergencies are preceded by situation of risk. Emphasis could be placed on ‘situations of risk’ core of article 11, with further elaboration and examples of such situations, interpreted broadly and non-exhaustively, noting that there has been a tendency to focus on humanitarian emergencies in a way that does not give effect to the full scope and intent of article 11.
4. The United Nations High Commissioner for Refugees (UNHCR) definition can be adapted for the purposes of Article 11, and could be as follows: a “humanitarian emergency as any situation in which the life, rights or well-being of **persons with disabilities** [refugees and other persons of concern to UNHCR] will be threatened unless immediate and appropriate action is taken; and which demands an extraordinary response and exceptional measures ...”[[3]](#footnote-3)
5. For the reasons given above, IDA suggests that the CRPD Committee consider the following:
   1. Ensure that the Day of General Discussion and the future general comment take a comprehensive approach to cover the diversity of emergencies, together with issues relevant to the application of different legal and policy frameworks (e.g. international humanitarian law, refugee law, the Sendai Framework for Disaster Risk Reduction 2015-2030, UN Security Council resolution 2475, among others).
   2. Ensure that the future general comment advances a broad and open scope of application of Article 11 CRPD, ensuring that measures for the “safety and protection” of persons with disabilities tailored to the nature and cause of every situation.
   3. Stress that States must ensure that for persons with disabilities, “non-discrimination is respected in all situations of risk and humanitarian emergency, particularly regarding equal access to basic necessities, such as water, sanitation, healthcare, food and shelter’[[4]](#footnote-4) and that accessibility is ensured in all its dimensions and throughout the emergency cycle, in particular of information, services and shelters.[[5]](#footnote-5)
   4. In line with its consolidated jurisprudence, in particular its General Comment No. 7, urge States to closely consult and actively involve organizations of persons with disabilities in the design and implementation of laws and policies related to the implementation of article 11 of the CRPD.

## The CRPD and Article 4 of the International Covenant on Civil and Political Rights: States of public emergency and derogation of rights

1. The International Covenant on Civil and Political Rights is the only international human rights treaty which has explicitly addressed the extent of States’ powers to restrict rights in the exceptional circumstances of public emergencies. Article 4 of the ICCPR has provides for strict substantive and procedural conditions that must be met, including the existence of a threat to the life of the nation and official declaration of emergency[[6]](#footnote-6) in order for a derogation to be legally valid.
2. In the Human Rights Committee’s General Comment No. 21 on Article 4 of the ICCPR (2001), notably some years prior to the adoption of the CRPD, the Human Rights Committee has elaborated its views on this article, stressing the relevance of non-discrimination within the exact text and grounds foreseen (not including “disability”),[[7]](#footnote-7) and the requirement that derogations do not “entail a breach of the State’s other international obligations, whether based on treaty or general international law.”[[8]](#footnote-8)
3. The negotiations of Article 11 of the CRPD contribute partially to elucidating whether the CRPD would accept a derogation of civil and political rights of persons with disabilities which might otherwise be permitted by article 4 of the ICCPR (e.g. freedom of expression).[[9]](#footnote-9) What seems clear is that, from the standpoint of article 4 ICCPR, the CRPD and its article 11 constitute “other international obligations based on a treaty.” In other words: “States Parties’ obligations under international law now explicitly extend *to protecting* persons with disabilities in any scenario where Article 4 of the Covenant could be invoked.”[[10]](#footnote-10) But also, from the standpoint of Article 11 CRPD, article 4 ICCPR would be included in the phrase “in accordance with their obligations under international law, including international humanitarian law and *international human rights law*”. One could understand that fulfilling the non-discrimination requirement of Article 4 of the ICCPR would mean that persons with disabilities could not be discriminated against or disproportionately affected by any derogations, ensuring the basis of inclusive equality[[11]](#footnote-11) so that persons with disabilities can fully and effectively participate in society on an equal basis with others in situations of risk as at other times.
4. The interaction between provisions of different human rights treaties might benefit from additional reflection and clarification by the CRPD Committee in the upcoming general comment. Under article 11 of the CRPD, there is no doubt that States have to take “all necessary measures to ensure the protection and safety of persons with disabilities”. Still, the Committee should provide clear guidance to States on whether they can derogate and restrict rights of persons with disabilities in “time of public emergency which threatens the life of the nation,” and on the extent and limitation of their powers to do so. Also, if necessary to go more in detail, the CRPD rights that relate to the non-derogable core identified in Article 4.2 ICCPR should be clearly identified (e.g. based on article 16 ICCPR and its specification of persons with disabilities in article 12 CRPD, supported decision making can never be derogated).[[12]](#footnote-12)
5. The Special Rapporteur on the Rights of Persons with Disabilities briefly noted in a recent report that “that the Convention applies at all times and does not allow for the derogation or suspension of its provisions during national emergency, foreign occupation, natural disaster or armed conflict.”[[13]](#footnote-13)
6. IDA suggests that the CRPD Committee consider reflecting further on this issue upholding article 11 CRPD and its request for “protection and safety” of persons with disabilities. If in its reflection, the CRPD Committee would find correct that Article 4.1 ICCPR applies also to civil and political rights of persons with disabilities,[[14]](#footnote-14) the CRPD Committee could:
   1. Specify the elements of rights of persons with disabilities connected to non-derogable rights under Article 4(2) ICCPR.
   2. Request explicitly States that derogation of rights cannot have a discriminatory or disproportionate impact on persons with disabilities because of not considering disability related concerns. In other words, derogations impacting rights to person with disabilities must be done “on equal basis with others”.

## An intersectional approach to the article 11 of the CRPD: women with disabilities, children with disabilities and other intersectional identities

1. A strong intersectional approach is essential when promoting respect and implement of Article 11 CRPD, to ensure that “safety and protection” reaches the specific groups among persons with disabilities who might more exposed to risks of death and harm in specific contexts. The CRPD committee has addressed this in its jurisprudence on article 11 CRPD recognizing that children with disabilities, persons with disabilities living in institutions,women, persons with psychosocial disabilities, persons with intellectual disabilities and persons with sensory impairments are disproportionately affected by conflicts and other humanitarian emergencies**.[[15]](#footnote-15)**
2. Several examples reinforce this point. In the context of armed conflict, women and girls with disabilities, including those who are refugees or internally displaced, are exposed to multiple forms of gender-based violence, including sexual violence and abuse by intimate partners, family members and caregivers, as well as being subject to harmful practices such as forced and early marriage, forced sterilization and forced abortion.[[16]](#footnote-16) Similarly, civilians with disabilities from minority ethnic groups can face disproportionate risks in during armed conflicts, especially when racism is exacerbated, e.g. following a foreign occupation. Other examples could refer to other kinds of emergency and other groups of persons with disabilities, e.g. older persons with disabilities, persons with disabilities residing in institutions during health related emergencies, such as the Covid-19 pandemic, as this Committee explained in its “Guidelines on Deinstitutionalization, including in emergencies.”[[17]](#footnote-17)

# Inclusive disaster risk reduction and climate action to protect the lives and rights of persons with disabilities

1. The last decade has seen considerable progress in inclusion of persons with disabilities and their representative organizations in disaster risk reductiondiscussions. The most notable development has been the Sendai Framework for Disaster Risk Reduction 2015-2030, adopted atthe Third UN World Conference on Disaster Risk Reduction in Sendai, Japan, in, 2015, which gives a critical role to persons with disabilities and their representative organizations in the assessment of the disaster risk and in the designing and implementing plans tailored to their specific requirements.[[18]](#footnote-18)
2. The CRPD Committee has played a key role in identifying relevant elements in connection to disaster risk reduction throughout its concluding observations on Article 11 of the CRPD and its public statements in the event of important natural disasters. For instance, it has recommended Japan to“[a]mend the Basic Act on Disaster Management to reinforce the rights of persons with disabilities to privacy and non-discrimination, including the denial of reasonable accommodations, and issues related to disaster prevention and reduction …”. It also recommended the Lao PDR to ensure “reasonable accommodation and accessibility to information, evacuation centers, emergency relief assistance, early warning systems, community needs assessments, and assistive devices are made accessible to persons with disabilities in urban and rural areas.”[[19]](#footnote-19)
3. As OHCHR has compiled, other elements required by article 11 include emergency response plans inclusive of and accessible to persons with disabilities, mainstreaming disability in humanitarian aid channels, ensuring participation of organization of persons with disabilities in related decision making including in aid distribution, accessibility of all emergency-related information be, including to deaf persons through sign language, and in the various languages spoken in its territory, including those used by indigenous peoples, and disability-awareness training for all civil defence staff, rescue and emergency personnel.[[20]](#footnote-20)
4. In a compilation of case studies, IDA and partners documented good practices on ensuring participation of persons with disabilities in disaster risk reduction (DRR).[[21]](#footnote-21) These cases demonstrated that:

* Persons with disabilities and OPDs can have a critical role to play in DRR and preparedness.
* Partnerships between humanitarian actors and OPDs on DRR and preparedness are crucial to build OPDs’ capacity to act as first responders.
* DRR and preparedness practices that apply a person-centered and community approach facilitate the engagement between OPDs, the community and governments, and contribute to the participation of persons with disabilities in decision-making in disaster risk management and in their own communities.
* Accessibility and reasonable accommodation are preconditions to ensure meaningful participation of and access to services by persons with disabilities.
* Diverse representation within OPDs should be considered.

1. The lack of disability inclusion in climate crisis/climate change and action has gained increased visibility.[[22]](#footnote-22) The International Disability Alliance is increasingly active in this area and engaging in high level events, such as the 26th and 27th UN Climate Change Conferences (COP26/27), raising similar concerns to those related to disaster risk reduction, as well as raising specific issues connected to the impact of slow onset events, including the rise of the global temperature itself[[23]](#footnote-23). It would be of critical importance for the draft general comment on Article 11 consider how the CRPD and the UNFCCC (‘Paris agreement’) interact, and we note that there is a worrying lack of recognition of persons with disabilities and their rights in the communications by States parties to the UNFCCC and in States parties’ climate adaptation and mitigation policies. On the basis of Article 11 of the CRPD, inclusion of persons with disabilities and ensuring the rights of persons with disabilities are respected, protected and fulfilled should be an including national action, adaptation and mitigation plans, as well as in the nationally determined contributions.[[24]](#footnote-24)
2. There are various direct and indirect impacts of climate change on persons with disabilities. Some persons with disabilities might have impairments that affect “thermoregulation or make them more sensitive to heat, such as multiple sclerosis, spinal cord injuries, and cerebral palsy.”[[25]](#footnote-25)Some others might have other conditions particularly impacted by related factors, such as persons with albinism endangered by sun exposure and “individuals with allergies or respiratory conditions such as chronic obstructive pulmonary disease and asthma will experience intensified symptoms due to increased exposure to air pollutants (ozone, fine particles, and aeroallergens).”[[26]](#footnote-26)
3. Measures based on environmental concerns adopted without the participation of persons with disabilities and attention to their concerns, might have create additional barriers and restrictions of rights to persons with disabilities.A typical example: many persons with physical disabilities use straws for drinking water and beverages. Environmental concerns might prohibit the use of plastic straws. If persons with disabilities are not consulted prior to setting the prohibition, alternatives may not be proposed nor put in place (e.g., production and availability of reusable straws in places open to the public).
4. Other examples could be imagined of measures adopted based on environmental concerns without considering their negative impact on the rights of persons with disabilities. For instance, the production, commercialization, affordability, and access to already expensive high-tech electric assistive devices for mobility could be affected by measures prohibiting the use of specific components (without reflecting on alternatives) or due to restrictions related to the consumption of electricity.
5. Based on the paragraph above, IDA believes that the process of elaboration of a general comment on Article 11 CRPD gives the Committee the opportunity to review and consolidate its extensive jurisprudence on this subject. It should also allow for introducing new and emerging concerns related to climate change both as cause of sudden natural disasters as well as the impact of slow onset events on specific groups among persons with disabilities.

# Armed conflicts and persons with disabilities

1. IDA stresses the need for a general comment on article 11 of the CRPD to elaborate on the interaction with international humanitarian law (IHL), covering treaty based and customary international law. The core four IHL treaties adopted in 1949 and the additional protocols in 1977, their understanding and terminology regarding persons with disabilities is of course outdated, and this in itself calls for the CRPD Committee’s careful consideration.
2. International human rights law and international humanitarian law are different but complementary branches of law. The former always apply: “the protection offered by human rights conventions does not cease in case of armed conflict”, excepting derogations allowed under Article 4 of the International Covenant on Civil and Political Rights[[27]](#footnote-27) (see above, section II-A). IHL only applies when specific conditions are met, namely the existence of an armed conflict, with human rights law continuing to apply during such situations. [[28]](#footnote-28)
3. Recent years have seen major legal, political and policy developments on persons with disabilities and armed conflict, bringing momentum for considering this interplay between IHL and the CRPD, but not yet considering this point in sufficient detail. Among them, the Security Council’s Resolution 2475/2019, called on UN Member States to “enable the meaningful participation and representation of persons with disabilities, including their representative organizations, *in humanitarian action, conflict prevention, resolution, reconciliation, reconstruction and peacebuilding*,”[[29]](#footnote-29) and to eliminate disability-based discrimination in situations of armed conflict and, generally, to comply with the CRPD.[[30]](#footnote-30)
4. More recently, the Special Rapporteur on the Rights of Persons with Disabilities has built upon and addressed “protection and participation of persons with disabilities in the context of the broad peace continuum,” meaning “prevention, conflict resolution, peacekeeping, peacebuilding and long-term development”.[[31]](#footnote-31) The Special Rapporteur accurately explains that “emphasis has been placed in recent years on international humanitarian law and the need to […] to make them more sensitive to the situation, rights and needs of persons with disabilities”[[32]](#footnote-32) adding that it is necessary to reaffirm that “’protection’ in the Convention is part of a broader agenda of personhood, inclusion and participation: a vision of active human agency”[[33]](#footnote-33) and stress the need to “take due account of the full continuum of laws and policies connected with the maintenance of peace and the re-establishment of peace in post-conflict situations.”[[34]](#footnote-34)
5. The CRPD Committee’s views on the situation in Ukraine from the 27th session[[35]](#footnote-35) are a useful starting point in considering these issues. Since the 27th session, IDA has published a report based on testimony from persons with disabilities and Ukrainian OPDs, titled: “The situation of persons with disabilities in the context of the war of aggression by Russia against Ukraine”. That report covered a wide range of IHL and human rights violations including: indiscriminate attacks, executions, sexual and gender-based violence; lack of accessible information and warnings; inaccessible evacuations; physical barriers, lack of sign interpretation and personal assistance; inaccessible or unavailable bomb shelters; lack of disability-inclusive humanitarian assistance; institutionalisation; lack of access to assistive technologies; inadequate standard of living (water, heating, housing, social protection); and barriers in the right to enjoy the highest attainable standard of health.
6. IDA believes that a key task for the CRPD Committee is to shed light on the way in which the CRPD interacts with international humanitarian law and national frameworks, laws, policies and practice related to peace and security. This includes the extent to which national military manuals specifically address the situation of persons with disabilities and the CRPD, and the Committee may also wish to consider the impact of the CRPD on customary international law[[36]](#footnote-36), given the specific importance of this body of law in relation to non-international armed conflicts[[37]](#footnote-37).
7. We note that in 2015, the OHCHR raised some significant points that are still pending:[[38]](#footnote-38)

* International humanitarian law provisions that, following still standard medical and psychiatric practices, allow for deprivation of liberty or forced treatment based on impairment should be rejected as discriminatory of persons with psychosocial disability and contrary to Article 14 of the CRPD.[[39]](#footnote-39)
* Prisoners of war with disabilities should be provided with accessibility and reasonable accommodation in line with Article 14(2) of the CRPD.
* Ex-combatants with disabilities should access support systems and rehabilitation services, not limited to medical services, to reintegrate to the community and enjoy their right to live independently and be included in the community, in line with Article 19 of the CRPD.

1. Additionally, while the disability perspective on IHL, i.e. protection during armed conflict has been discussed and considered to some extent (by the UNSC, OHCHR, the Special Rapporteur, the ICRC and others), relatively little attention has been given to implementation of the full range of CRPD rights during armed conflict – how they apply, what permissible limitations there might be if any, the precise contour and parameters of the rights within the CRPD. This would entail considering in particular the economic and social rights where maximum available resources under CRPD article 4(2) might be limited due to the exigencies of a conflict situation, as well as the scope of any derogation for civil and political rights stemming from ICCPR Article 4 as referred to above (see para 11). The concerns raised by persons with disabilities during conflict, e.g. in Ukraine, naturally relate to protection and survival, of which the material conditions of one’s life is a critical component, and this would merit the due attention of the CRPD Committee. In this regard we note UNSC resolution 2601, which “encourage Member States to take appropriate measures to ensure access to education on an equal basis provided in the context of armed conflict”[[40]](#footnote-40).
2. Besides purely standard-setting work, the CRPD Committee should also provide States with concrete suggestions for national implementation. In this vein, the Committee could suggest the adoption of national implementation plans for the inclusion of persons with disabilities throughout the peace continuum with clear targets, indicators, and accountability mechanisms, which could benefit from governance structures in place under Article 33(1) and (2). In the agenda of women, peace and security, and National Action plans were encouraged by a UNSC Presidential Statement related to UNSC resolution 1325[[41]](#footnote-41), and such initiatives have been an effective way of maintaining momentum and becoming part of the regular practice of States.[[42]](#footnote-42) The CRPD Committee could propose a similar approach, as an important tool for implementing article 11, with assessment of the development and updating of national action plans by the Committee during States parties periodic reviews.

# Crossing borders seeking protection and safety: the CRPD in coordination with refugee law and migration laws

1. Before, during and following situations of risk or emergency (whether armed-conflict, sudden natural disaster and slow onset events, many persons with disabilities, and their families, might decide to try to flee the situation, whether within or outside the country, whether it is overland or by plane, either to neighbour or non-neighbouring countries. Besides the trauma caused by the risk/emergency and its associated risks and by taking the decision to leave, practical and legal barriers might directly or indirectly cause family separation, often leading to persons with disabilities being left behind.
2. Additionally, persons with disabilities might face discrimination in refugee law and national migration laws and policies, both of which tend to overlook and/or restrict the enjoyment of rights of persons with disabilities on equal basis with others. Regarding internally displaced persons with disabilities (IDPs), IDA welcomes the recommendations of the Special Rapporteur on IDPs with disabilities, in her report to the Human Rights Council[[43]](#footnote-43), and these could be considered by the Committee in the elaboration of the General Comment.

## Procedural accommodation for asylum-seeking, resettlement and migration procedures

1. Asylum seeking (or refugee status determination), resettlement and migration procedures commonly disregard the needs and rights of persons with disabilities. Accessibility barriers of venues, information and communication, and lack of accommodation of individual needs, prevent persons with disabilities from engaging effectively in the administrative process. In refugee status determination processes, lack of support to persons with psychosocial disability or with intellectual disability coupled with attitudinal barriers of public officials might put into question the credibility of the statements funding the application, exemplifying a subtle way in which procedural concerns may impact the substance of the decision-making, which might entail the difference between safety or risk of harm or death.
2. Article 13 of the CRPD has purposefully refer to “procedural accommodation,” instead of reasonable accommodation, in the context of access to justice. In its general comment no. 6 on Article 5 of the CRPD, this CRPD Committee explained that “’Procedural accommodations’ in the context of access to justice should not be confused with reasonable accommodation; while the latter is limited by the concept of disproportionality, procedural accommodations are not.”[[44]](#footnote-44) A different criterion would allow for justifying denial of justice based on disability and an “undue or disproportionate burden”. The same rationale calls for the use of “procedural accommodation” in asylum seeking and migration procedures
3. Indeed, the CRPD Committee has clarified that “procedural accommodation” also applies to administrative procedures, including in the context of asylum-seeking and migration. The Committee has recommended Bangladesh to “[a]dopt and implement effective measures to ensure procedural, age-appropriate and gender-sensitive accommodations in judicial and administrative proceedings for persons with disabilities …”.[[45]](#footnote-45) More specifically, the Committee has requested to “[a]dopt a protocol on the provision of procedural accommodations and support during immigration procedures, refugee status determination procedures and resettlement.”[[46]](#footnote-46)
4. Given that “reasonable accommodation” and “procedural accommodation” are usually confused and incorrectly used interchangeably, disregarding the limitations of the former on account of the proportionality test, IDA believes the CRPD Committee should consolidate its criterion, by explicitly requiring “procedural accommodation” in administrative procedures generally, and in immigration procedures, refugee status determination procedures and resettlement specifically.

## Factoring “disability” in Refugee Status determination: well-founded fear of persecution and specific grounds

1. Adopted in 1951, the Convention relating to the Status of Refugeesprovides the grounds for assessing refugee status and thus providing protection from “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.”[[47]](#footnote-47) Importantly, the “refugee status determination is declaratory in nature: a person does not become a refugee because of recognition, but is recognized because he or she is a refugee.”[[48]](#footnote-48) In addition, article 33(1) establishes the principle of non-refoulement: “No Contracting State shall expel or return (“*refouler*”) a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion.”
2. We leave it to the CRPD Committee to consider refugee law in detail, IDA’s submission seeks to provide basic elements for the consideration of persons with disabilities in the context of refugee status determination[[49]](#footnote-49). Indeed, persons with disabilities can be considered a “particular social group”. While including diverse constituencies, persons with disabilities constitute not only a specific group protected by the CRPD but the largest minority globally: they represent 15% of the world’s population.[[50]](#footnote-50) The “well-founded fear” calls for an analysis of the allegations in asylum applications, and is highly case-specific, but a key point that the general comment on article 11 could address relates to the concept of “persecution,” enshrined but not defined in the 1951 Convention.
3. Indeed, the nature of ‘persecution’ in particular its indeterminacy, and the demarcation between persecution and lesser forms of discrimination and marginalization requires a careful consideration of human rights law,[[51]](#footnote-51) including the CRPD. In views on individual communications where States’ asylum procedures were at issue, as well as consideration of Article 15 of the CRPD,[[52]](#footnote-52) the CRPD Committee has recognized that the principle of non-refoulement imposes a duty on States Parties to refrain from removing a person from its territory when there is a real risk that the person would be subjected to serious violations of Convention rights amounting to a risk of irreparable harm. Specifically, the Committee found that if a health condition is severe and life threatening, then the State Party has the obligations to assess whether or not the individual asylum seeker would be able to access adequate medical care if returned,[[53]](#footnote-53) and to seek individual and sufficient assurances from the State to which an individual might be returned where serious doubts existed regarding adequate medical care.[[54]](#footnote-54)
4. IDA believes that any general comment on Article 11 of the CRPD, which calls for “all necessary measures to ensure the protection and safety of persons with disabilities,” should further refine and consolidate the cited jurisprudence enriching the concept of persecution from a CRPD perspective, including but not limited to the risk of death implied in the lack of treatment of a severe or life-threatening condition, as well as other serious human rights violations (such as risk of institutionalization). It may also be worth noting that humanitarian visas/exceptions are not a substitute for the fulfilment of the duty of non-refoulement.

## Immigration laws and the CRPD: the health requirement as disability-based discrimination

1. Situations of risk are a significant driver of migration, and the relevance of discriminatory immigration laws contrary to Article 18 CRPD should also be considered in the context of a general comment on Article 11. Even if not qualifying as refugees, persons with disabilities and their families might decide to cross international borders migrating to other countries prior, during and after a situation of risk or emergency, including for instance a sudden (e.g., earthquake) or foreseen (e.g. volcanic eruption) natural disaster or a slow onset even (e.g. rise in temperature and drought caused by climate change). In doing so, they might face legal barriers which prevent them from immigrating on equal basis with others. Indeed, health-related immigration requirements in laws and policies discriminate persons with disabilities on the basis of their impairments, following strict medical assessments. On this, the UN High Commissioner for Refugees (UNHCR) has explained: “[t]he present operation of the health requirement is discriminatory in effect and endangers a number of other human rights norms.”[[55]](#footnote-55)
2. The CRPD, in articles 2, 5 and 18 and related CRPD Committee jurisprudence,[[56]](#footnote-56) call for repealing health-related immigration requirements and tackle stigma and prejudice regarding migrants with disabilities, embedded in such legal provisions. Under article 18 CRPD, the CRPD Committee expressed its concern on “article 11 of the Immigration Control Act which deprives persons with disabilities, particularly persons with psychosocial disabilities, the right to enter the Republic of Korea based on their disability,” recommending the State to repeal it.[[57]](#footnote-57) It has also recommended a State to “[r]eview and harmonize the operational guidelines under the Migration Act to ensure that persons with disabilities are treated equally in the issuance of visas and entry permits.”[[58]](#footnote-58) Other national contexts have similarly discriminatory legislation.[[59]](#footnote-59) In *Sherlock vs. Australia*,[[60]](#footnote-60) the CRPD Committee carefully analysed the application of a health requirement under the Australian Migration Act, concluding that a person with multiple sclerosis, had been indirectly discriminated, given that the authorities focused “only on the potential cost of the medical treatment that and that… the author was identified as a person with multiple sclerosis.” We note that the CMWF Committee has also been clear in rejecting provisions that discriminate on the basis of disability in migration law.[[61]](#footnote-61)

## Ensuring the exercise of CRPD rights to asylum-seekers, refugees, stateless persons and migrants with disabilities

1. Asylum seekers, refugees, migrants and stateless persons with disabilities should enjoy the human rights recognized by the CRPD in the country in which they have sought international protection as refugees or where they find themselves. In many contexts, not only the face practical barriers (e.g. accessibility barriers, inaccessible information, lack of resources, etc.) but also legal barriers, especially in the area of economic, social and cultural rights, and more specifically in the area of social protection.
2. The CRPD Committee has recommended States, under article 11 CRPD, to ensure that the national disability legislation, and the rights recognized therein, applies fully to “asylum seekers, refugees, and stateless persons and enable their access to education, the health system and other social services, including by providing accessible information about these services.”[[62]](#footnote-62) Recommendations on specific rights also call to include refugees and migrants.[[63]](#footnote-63)
3. In the case of Greece, a country that receives a substantial number of asylum seekers and migrants crossing the Mediterranean Sea, the CRPD Committee not only recommended vulnerability assessments and identification upon arrival of persons with disabilities “who are refugees, asylum seekers and persons in refugee-like situations” but also called the State to “[e]nsure that persons with disabilities, particularly children with disabilities, who are refugees, asylum seekers and persons in refugee-like situations, have access to social protection, assistive technologies, information and adequate services, particularly safe shelter, sanitation and medical care through, inter alia, the provision of individualized support…”.[[64]](#footnote-64)
4. Unfortunately, in many countries refugees and migrants with disabilities have restricted access to social protection measures, social services, health care, rehabilitation services and related information. The CRPD Committee has noted the lack of appropriate social and health care services for migrant with disabilities and has also called upon States to provide with “sufficient recovery time and basic rehabilitation”[[65]](#footnote-65) to migrants who acquire impairments while in transit. Children with disabilities are also impacted.[[66]](#footnote-66) Migrant parents of children with disabilities face more difficulties in accessing services and support than nationals.[[67]](#footnote-67) Migrant children with disabilities may also face barriers to accessing social services and disability benefits,[[68]](#footnote-68) an issue also addressed by the CMWF Committee,[[69]](#footnote-69) which has also noted that migrant children with disabilities may face multiple discrimination[[70]](#footnote-70) and double vulnerability.[[71]](#footnote-71)
5. Article 28 of the CRPD requires States to take measures to ensure persons with disabilities an adequate standard of living, including their access to social protection programs and assistance from the State with disability related expenses.[[72]](#footnote-72) While social protection systems still lack comprehensive coverage of persons with disabilities and their disability related costs, the situation of refugees and migrants with disabilities in an irregular situation is worse. The CRPD Committee has recommended States to put in place social protection programmes to improve the standard of living of persons with disabilities including migrants.[[73]](#footnote-73) It has also requested to repeal “provisions that prevent persons with disabilities, including migrant workers and disabled children of migrant workers, from having equal access to social protection”[[74]](#footnote-74) and to restore rights of persons with disabilities with a foreign national origin.[[75]](#footnote-75)
6. To sum up, in the exercise of their rights as persons with disabilities, asylum seekers, refugees, stateless persons and migrants with disabilities should not be:

* discriminated on the basis of disability, both directly or indirectly, or by denial of reasonable accommodation; and/or
* discriminated on the basis of refugee or migrant status, residence period, etc., or requirements that are unreasonable, in accessing disability specific social services and benefits, depriving the right to social protection of persons with disabilities of any minimum content.

# ANNEX I

In this annex, IDA suggests specific text for consideration as part of the draft general comment, aiming at supporting and facilitating the drafting process of which the CRPD Committee is in charge and responsible, with the support of its Secretariat (staff of the Office of the High Commissioner for Human Rights).

At this initial stage of the process, prior to the Day of General Discussion, the suggestions below constitute a first contribution to provide impetus to the drafting process by the CRPD Committee. They are not exhaustive nor final positions of the International Disability Alliance, whose reflection and engagement with the process continues, while waiting for further clarity and publicity by the CRPD Committee on the stages to follow the Day of General Discussion.

\*\*\*

**Draft General Comment on the rights of persons with disabilities in situations of risks and humanitarian emergencies (article 11 of the Convention on the Rights of Persons with Disabilities)**

1. **Introduction**

Persons with disabilities are disproportionally impacted by all kinds of situations of risk, be it those explicitly mentioned in the text of Article 11, or those implied such as health related emergencies (including the Covid-19 pandemic and other pandemics). The disproportionate impact on persons with disabilities is due, among many other factors, to their lack of participation in public decision making and consequently the lack of consideration of their specific requirements when developing legislations and policies, which remain not inclusive.

In different emergency contexts, different groups of persons with disabilities might face heightened risks compared to others. Women with disabilities, for instance, are expose to risk of sexual violence and abuse during armed conflicts. Persons with disabilities in institutions were exposed to higher risk of death and infections during the Covid-19 pandemic. Persons with disabilities from minority ethnic groups might be particularly persecuted during armed-conflicts which include racist elements.

1. **Normative Content**

a) " States parties shall take measures, in accordance with their obligations under international law, including international humanitarian law and international human rights law.

b) "all necessary measures to ensure the protection and safety of persons with disabilities"

c) "persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters"

Article 11 of the CRPD does not strictly define “situations of risk” but adopts a non-exhaustive list (“including”) of the main three examples tackled by the international community (armed conflict, humanitarian emergencies and the occurrence of natural disasters), all of which include high risks of human, material, economic and environmental losses and impacts. In doing so, Article 11 of CRPD reflects a broad and open conceptualisation of “situations of risk”

“Armed conflict”, whether internal or international, refers to a specific category of international humanitarian law enshrined in common Articles 2 and 3 to the Geneva Conventions of 1949.

“Humanitarian emergencies” might be defined as “any situation in which the life, rights or well-being of persons with disabilities among others, will be threatened unless immediate and appropriate action is taken”, which remains an open conceptualization comprising situations of a diverse nature.

As defined by the UN Office for Disaster Risk Reduction, a “disaster” can be defined as “a serious disruption of the functioning of a community or a society at any scale due to hazardous events interacting with conditions of exposure, vulnerability and capacity, leading to one or more of the following: human, material, economic and environmental losses and impacts.” It would include earthquakes, tsunami, floods, fires, among others.

1. **States obligations under article 11.**

Human rights law and international humanitarian law are two distinct but complementary branches of international law that protect the life and rights of persons, including persons with disabilities. Human rights law applies at all times and intenrational humanitarian law applies only during armed conflicts. As part of international human rights law, the Convention on the Rights of Persons with Disabilities reflects the most advanced and detailed human rights standards protecting the rights of persons with disabilities, also being later in time than the provisions of IHL, and which must be taken into account when applying international humanitarian law provisions, as their application should be respectful of the Convention. Thus, States Parties to the Convention, and other international and national stakeholders, need to adapt their practices under humanitarian law and action to the Convention on the Rights of Persons with Disabilities.

When applying refugee law, both international and national, States should consider relevant provisions of the Convention, including in particular the need to consider disability related factors when analysing the person’s allegations and verifying whether or not of the requirements for granting refugee status are met. In particular, States should consider whether the lack of health services in the country of deportation would create a risk of death or severe harm to the person with disability applying for asylum. Deportation in that case would constitute a breach of the State’s obligations under Article 15 of the Convention (Freedom from torture and other cruel, inhuman and degrading treatments).

1. **Interrelation with other articles of the Convention**

**Article 12 of the CRPD (Equal recognition before the law)** is part of the non-derogable rights in situations of “public emergencies threatening the life of the nation”. No justification whatsoever can be used to derogate this right to persons with disabilities, in particular those with psychosocial disabilities and with intellectual disabilities, more frequently deprived of legal capacity in law and practice.

**Article 13 of the Convention on access to justice** is critical for persons with disabilities affected by situations of emergency, especially for asylum seekers, resettled and migrants with disabilities. Effective remedies should be available for them to challenge administrative decisions rejection asylum and immigration applications and to ensure access to the exercise of rights on equal basis with others. Legal assistance, language interpretation as required, and age-appropriate procedural accommodations must be provided to persons with disabilities in both administrative procedures (e.g. asylum and immigration procedures) and procedures **before the judiciary.**

**Article 14 of the Convention, on liberty and security of the person,** introduces an absolute ban of deprivation of liberty on the basis of impairment. In doing so, it requests mental health system to change their prevailing practices. This criterion, as part of human rights law always applicable, should be respected in the context of the application of Article 30 of the Geneva Convention relative to the Treatment of Prisoners of War, referring to provision of medical treatment. In addition, war prisoners with disabilities should be provided with reasonable accommodation in line with article 14(2) of the Convention, to avoid the aggravation of their conditions of detention.

**Article 18 of the Convention (Liberty of movement and nationality)** requires States to respect and refrain from engaging in discrimination on the basis of disability in the context of international migration. Its full respect, including by repealing and provision in immigration law establishing health related requirements, provides for equal treatment of and opportunities for persons with disabilities in migration and contributes to prevent other rights violations or restrictions, e.g. to the right to private and family life by preventing family separation.

For further information, please contact: [jiperezbello@ida-secretariat.org](mailto:jiperezbello@ida-secretariat.org)

International Disability Alliance

150 Route de Ferney

CH-1211 Genève 2

[www.internationaldisabilityalliance.org](http://www.internationaldisabilityalliance.org)

1. Statement of the Committee on the Rights of Persons with Disabilities on disability inclusion for the World Humanitarian Summit (Adopted during the Committee’s 14th session, held, from 17 August to 4 September 2015 in Geneva) [↑](#footnote-ref-1)
2. On this, see *Disability rights during the pandemic. A global report on findings of the COVID-19 Disability Rights Monitor*, available at <https://covid-drm.org/assets/documents/Disability-Rights-During-the-Pandemic-report-web.pdf>. [↑](#footnote-ref-2)
3. UNCHR, Website available at <https://emergency.unhcr.org/entry/124201/policy-on-emergency-preparedness-and-response> [↑](#footnote-ref-3)
4. Chapter on the situation of persons with disabilities in Ukraine and in countries where they have fled after 24 February 2022, as a result of the aggression against Ukraine by the Russian Federation-to be included in 27th Session Report, para 9d; see also concluding observations under article 11, para 9(c). [↑](#footnote-ref-4)
5. See e.g. CRPD/C/GC/2. para 36. [↑](#footnote-ref-5)
6. For more detailed presented simply, see OHCHR, EMERGENCY MEASURES AND COVID-19: GUIDANCE, available at

   [**https://www.ohchr.org/sites/default/files/Documents/Events/EmergencyMeasures\_COVID19.pdf**](https://www.ohchr.org/sites/default/files/Documents/Events/EmergencyMeasures_COVID19.pdf) [↑](#footnote-ref-6)
7. CCPR/C/21/Rev.1/Add.11, para. 8. [↑](#footnote-ref-7)
8. CCPR/C/21/Rev.1/Add.11, para. 9. [↑](#footnote-ref-8)
9. Andrew Begg, *From invisibility to positive legal protection: The drafting of Article 11 of the Convention on the Rights of Persons with Disabilities*, International Review of the Red Cross (2023), 105 (922), 135–160. Persons with disabilities in armed conflict doi:10.1017/S1816383122000698, available at <https://international-review.icrc.org/sites/default/files/reviews-pdf/2022-11/from-invisibility-to-positive-legal-protection-the-drafting-of-article-11-922.pdf> [↑](#footnote-ref-9)
10. Idem (emphasis added). [↑](#footnote-ref-10)
11. CRPD Committee General Comment No.6 (2018) on equality and non-discrimination CRPD/C/GC/6, para 11 [↑](#footnote-ref-11)
12. For this specific right, CRPD Committee, general comment no 1 on Article 12 adopts the same approach: derogation is never possible. [↑](#footnote-ref-12)
13. A/76/146, para. 10. [↑](#footnote-ref-13)
14. In this line, see OHCHR, Thematic study on the rights of persons with disabilities under article 11 of the Convention on the Rights of Persons with Disabilities, on situations of risk and humanitarian emergencies, 2015: “14. The Convention on the Rights of Persons with Disabilities applies throughout the continuum of humanitarian emergencies, whether in situations of conflict, foreign occupation or natural disaster. Exceptionally, article 4 of the International Covenant on Civil and Political Rights allows a State to derogate temporarily from a part of its obligations under the Covenant during a legally declared state of emergency.23 This is possible only in specifically designated circumstances, and under strict substantive and procedural requirements, always in compliance with the State’s obligations under international humanitarian and human rights law, without discrimination and only “to the extent strictly required by the exigencies of the situation” Importantly, it also establishes that, for certain rights, there can be no derogation in any circumstance (see para. 12 above) with regard to equal recognition before the law.”

    [↑](#footnote-ref-14)
15. See, e.g., CRPD/C/SGP/CO/1, para 22 (a) [↑](#footnote-ref-15)
16. A/76/146, para. 34. See also, Committee on the Rights of Persons with Disabilities, Statement of the Committee on the Rights of Persons with Disabilities on disability inclusion for the World Humanitarian Summit, (Adopted during the Committee’s 14th session, held, from 17 August to 4 September 2015 in Geneva). [↑](#footnote-ref-16)
17. The current submission will not focus on this particular topic, given the recent development by the CRPD Committee mentioned calling for “emergency deinstitutionalization” and the awareness that other submissions for the Day of General Discussion will tackle such area. [↑](#footnote-ref-17)
18. Sendai Framework for Disaster Risk Reduction 2015-2030, para. 36(a)(iii). [↑](#footnote-ref-18)
19. CCPR/C/LAO/CO/1, para 19 (b). [↑](#footnote-ref-19)
20. A/HRC/31/30, paras. [↑](#footnote-ref-20)
21. CBM International, Humanity & Inclusion (HI) and the International Disability Alliance (IDA) Inclusion of persons with disabilities in humanitarian action, 39 examples of field practices, and learnings from 20 countries, for all phases of humanitarian response (CASE STUDIES COLLECTION 2019) available at < <https://reliefweb.int/report/world/inclusion-persons-disabilities-humanitarian-action-39-examples-field-practices-and>> ; See also the revivew of DRR policies and practice in Europe by the European Disability Forum https://www.edf-feph.org/publications/review-of-disability-inclusive-disaster-risk-reduction-policy-and-practice-across-europe-and-central-asia/ [↑](#footnote-ref-21)
22. Other UN Treaty Bodies have also started to focus on this area, e.g. the CRC Committee with its ongoing process for a general comment on children rights and the environment with a focus on climate change. [↑](#footnote-ref-22)
23. See this paper on disability-inclusive climate IDA position paper for COP26 <https://www.internationaldisabilityalliance.org/sites/default/files/cop26_advocacy_paper_0.pdf> and this update from COP27 <https://www.internationaldisabilityalliance.org/blog/some-good-news-persons-disabilities-cop27> [↑](#footnote-ref-23)
24. See joint IDA-McGill University report

    <https://www.internationaldisabilityalliance.org/sites/default/files/drcc_status_report_english_0.pdf> [↑](#footnote-ref-24)
25. See Jodoin, Sébastien and Lofts, Katherine A and Lofts, Katherine A and Ananthamoorthy, Nilani, A Disability Rights Approach to Climate Governance (May 25, 2020). Ecology Law Quarterly, Vol. 47, No. 1, 2020, Available at <https://ssrn.com/abstract=3610193> or [http://dx.doi.org/10.2139/ssrn.3610193](https://dx.doi.org/10.2139/ssrn.3610193) [↑](#footnote-ref-25)
26. Idem. [↑](#footnote-ref-26)
27. International Court of Justice, *Advisory Opinion. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 2003, para 106. The ICJ elaborated further: “As regards the relationship between international humanitarian law and human rights law, there are thus three possible situations: some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law. In order to answer the question put to it, the Court will have to take into consideration both these branches of international law, namely human rights law and, as *lex specialis*, international humanitarian law.” [↑](#footnote-ref-27)
28. See *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, International Court of Justice (ICJ), 9 July 2004, para 106; See also OHCHR, International Legal Protection of Human Rights in Armed Conflict, 2011, page 34, available at

    <https://www.ohchr.org/sites/default/files/Documents/Publications/HR_in_armed_conflict.pdf> (““The concurrent applicability of international human rights and humanitarian law depends on the objective legal conditions required for the corresponding legal norms to apply. In this particular case of the relationship between international human rights law and international humanitarian law, it is the existence of an armed conflict that will trigger the application of the latter and, thus, of the complementary application of international human rights and international humanitarian protections.”) [↑](#footnote-ref-28)
29. Security Council’s Resolution 2475/2019, para. 6 (emphasis added). [↑](#footnote-ref-29)
30. Idem, paras 8 and 11. [↑](#footnote-ref-30)
31. A/76/146, para. 1. [↑](#footnote-ref-31)
32. A/76/146, para. 1. [↑](#footnote-ref-32)
33. A/76/146, para. 8. [↑](#footnote-ref-33)
34. A/76/146, para. 9. [↑](#footnote-ref-34)
35. Chapter on the situation of persons with disabilities in Ukraine and in countries where they have fled after 24 February 2022, as a result of the aggression against Ukraine by the Russian Federation-to be included in 27th Session Report [↑](#footnote-ref-35)
36. See <https://ihl-databases.icrc.org/en/customary-ihl> including lists of practice with detail from military manuals [↑](#footnote-ref-36)
37. See https://www.icrc.org/en/download/file/56906/ihl\_and\_persons\_with\_disabilities\_en\_clean.pdf [↑](#footnote-ref-37)
38. A/HRC/31/30, paras. 47 to 49. [↑](#footnote-ref-38)
39. See for instance, See Geneva Convention relative to the Treatment of Prisoners of War, art. 30: “Prisoners of war suffering from serious disease, or whose condition necessitates special treatment, a surgical operation or hospital care, must be admitted to any military or civilian medical unit where such treatment can be given, even if their repatriation is contemplated in the near future.” [↑](#footnote-ref-39)
40. UN Security Council resolution [S/RES/2601](https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2601.pdf) (2021), para 13 “*Underlines* the importance of providing sustainable, timely, appropriate, inclusive and accessible assistance to children with disabilities who are affected by armed conflict, including reintegration, rehabilitation, and psychosocial support, to ensure that their specific needs are effectively addressed, and encourages Member States to take appropriate measures to ensure access to education on an equal basis provided in the context of armed conflict” [↑](#footnote-ref-40)
41. S/PRST/2004/40 [↑](#footnote-ref-41)
42. See for instance <http://1325naps.peacewomen.org/index.php/nap-overview/>. [↑](#footnote-ref-42)
43. A/HRC/44/41 <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/HRC/44/41&Lang=E> [↑](#footnote-ref-43)
44. CRPD/C/GC/6, para. 25(g) [↑](#footnote-ref-44)
45. CRPD/C/BGD/CO/1, para. 28(a) (on article 13 CDPD), emphasis added. [↑](#footnote-ref-45)
46. See CRPD/C/TUR/CO/1, para. 39(b), (on article 18 CDPD); see also CRPD/C/CHE/CO/1, para. 37(b) and 38(b) (on article 18 CDPD). [↑](#footnote-ref-46)
47. Convention relating to the Status of Refugees. Article 1(A)(2). [↑](#footnote-ref-47)
48. UNCHR, Advisory Opinion on the Extraterritorial Application of *Non-Refoulement* Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, para. 6. [↑](#footnote-ref-48)
49. For an initial background paper exploring some of these issues see https://www.internationaldisabilityalliance.org/blog/discussion-paper-exploring-intersectionality-international-refugee-protection-and-2006 [↑](#footnote-ref-49)
50. WHO and World Bank, World Disability Report, 2011. [↑](#footnote-ref-50)
51. See, e.g., Francesco Maiani, « The Concept of “Persecution” in Refugee Law: Indeterminacy, Context-sensitivity, and the Quest for a Principled Approach », *Les Dossiers du Grihl* [En ligne], Hors-série n°4 | 2022, mis en ligne le 28 février 2010, consulté le 13 février 2023. URL : http://journals.openedition.org/dossiersgrihl/3896 ; DOI : <https://doi.org/10.4000/dossiersgrihl.3896> [↑](#footnote-ref-51)
52. Article 15, Freedom from torture or cruel, inhuman or degrading treatment or punishment. [↑](#footnote-ref-52)
53. CRPD Committee, N.L. v. Sweden, Communication No. 60/2019, para 7.8, 28.08.2020 [↑](#footnote-ref-53)
54. CRPD Committee, Z.H. v. Sweden, Communication No. 58/2019, para 10.9, 10.10, 06.09.2021.  [↑](#footnote-ref-54)
55. UNHCR, Regional Office for Australia, New Zealand, Papua New Guinea and the Pacific, Submissions to the Joint Standing Committee on Migration, Inquiry into the migration treatment of people with a disability, 2009 [↑](#footnote-ref-55)
56. See generally Concluding Observations of the CRPD Committee. See also, General Comment No. 6 on Article 5 of the CRPD (Equality and non-discrimination). [↑](#footnote-ref-56)
57. See [CRPD/C/KOR/CO/2-3](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fKOR%2fCO%2f2-3&Lang=en), paras. 39 and 40. [↑](#footnote-ref-57)
58. See [CRPD/C/MEX/CO/1](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhskE4iNFvKWCCGr4TiTUdbhp1hRBVKZKZHlLwRNlRdjmM5HXlP6Xo1vIipxOztb9bY7YaCPATa6I3Og%2fSZcx%2bDeRsTabqXSgSqMmz%2fHMR02Oi), paras. 39 and 40(b) [↑](#footnote-ref-58)
59. In the United Kingdom, [Immigration Rules](http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part1/) outline possible medical grounds of exclusion for visa applicants. In the United States, according to [the Immigration and Nationality Act](http://www.uscis.gov/portal/site/uscis/menuitem.f6da51a2342135be7e9d7a10e0dc91a0/?vgnextoid=fa7e539dc4bed010VgnVCM1000000ecd190aRCRD&vgnextchannel=fa7e539dc4bed010VgnVCM1000000ecd190aRCRD&CH=act) (INA, § Sec. 221. [8 U.S.C. 1201] (d) and §212(a)(1)(A)(iii)), all individuals applying for an immigrant visa must submit to a mental and physical medical examination before the visa is issued. In Canada, the Immigration and [Refugee Protection Act Paragraph](http://laws-lois.justice.gc.ca/eng/acts/I-2.5/page-12.html#docCont) 38(1)(c) of 1 reads: 38. (1) A foreign national is inadmissible on health grounds if their health condition … (c) might reasonably be expected to cause excessive demand on health or social services. [↑](#footnote-ref-59)
60. See, CRPD Committee, CRPD/C/24/D/20/2014. [↑](#footnote-ref-60)
61. See [CMW/C/GC/4-CRC/C/GC/23](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CMW%2fC%2fGC%2f4&Lang=en), para. 25 [↑](#footnote-ref-61)
62. CRPD/C/IDN/CO/1, para. 25. [↑](#footnote-ref-62)
63. See e.g. CRPD/C/FRA/CO/1, para. 51(a) and CRPD/C/GRC/CO/1, para. 35(c); on article 24 (education); CRPD/C/BGD/CO/1, para. 50(a) on article 25 CRPD (health); among many others. [↑](#footnote-ref-63)
64. CRPD/C/GRC/CO/1, para. 16(b) and (c). [↑](#footnote-ref-64)
65. [CRPD/C/MEX/CO/1](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhskE4iNFvKWCCGr4TiTUdbhp1hRBVKZKZHlLwRNlRdjmM5HXlP6Xo1vIipxOztb9bY7YaCPATa6I3Og%2fSZcx%2bDeRsTabqXSgSqMmz%2fHMR02Oi), para 40(c) [↑](#footnote-ref-65)
66. See e.g. [CRPD/C/SYC/CO/1](http://tbinternet.ohchr.org/Treaties/CRPD/Shared%20Documents/SYC/CRPD_C_SYC_CO_1_30547_E.docx), paras. 29 and 30 [↑](#footnote-ref-66)
67. See [A/HRC/17/33/Add.3](http://uhri.ohchr.org/Document/File/d1652c85-fa7a-4db5-b0bf-77ac3f88fbac/2de85fca-abc7-403f-ba5a-969fa3387816), 2011, para 69. “Migrant parents have difficulties in obtaining the financial support to which they are entitled for their disabled children, and children who require urgent psychological attention must wait eight months to one year in order to receive it.” See also its para. 81 [↑](#footnote-ref-67)
68. Supreme Court of Argentina, decision *Reyes Aguilera, D v National Government*, 7 September 2007 [↑](#footnote-ref-68)
69. [CMW/C/ARG/CO/1](http://www2.ohchr.org/english/bodies/cmw/docs/CMW.C.ARG.CO.1_en.pdf), paras. 4 and 30. In Argentina, article 9 of Law no 13478 for the assignment of allowances for the elderly and persons with disabilities, deprives equal access to benefits for children with disabilities due to a prerequisite of 20 years residence before being permitted to access disability benefits [↑](#footnote-ref-69)
70. [CMW/C/GC/2](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/464/60/PDF/G1346460.pdf?OpenElement), para. 76 [↑](#footnote-ref-70)
71. [CMW/C/GC/3-CRC/C/GC/22](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CMW%2fC%2fGC%2f3&Lang=en), para. 3 [↑](#footnote-ref-71)
72. See [A/70/297](https://undocs.org/en/A/70/297), paras. 29-33 [↑](#footnote-ref-72)
73. See e.g., [CRPD/C/ECU/CO/2-3](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/ECU/CO/2-3&Lang=Sp), paras. 49 and 50(a); [CRPD/C/SLV/CO/2-3](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/SLV/CO/2-3&Lang=En), paras. 52 and 53(b) [↑](#footnote-ref-73)
74. See [CRPD/C/ARG/CO/1](http://www.ohchr.org/Documents/HRBodies/CRPD/8thSession/CRPD-C-ARG-CO-1_en.doc), para. 46 [↑](#footnote-ref-74)
75. See [CRPD/C/DOM/CO/1](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fDOM%2fCO%2f1&Lang=en), paras. 36 and 37 [↑](#footnote-ref-75)