

Exploring the intersectionality of International Refugee Protection and the 2006 Convention on the Rights of Persons with Disabilities¹

Executive Summary

In December 2020, the International Disability Alliance (IDA) and the United Nations High Commissioner for Refugees (UNHCR) signed a [Memorandum of Understanding](#) to facilitate and frame their collaboration in specific areas such as Mutual Capacity Building, Humanitarian Coordination and Advocacy and the Convention on the Rights of Persons with Disabilities (CRPD) Monitoring. To support the collaboration, this background paper explores the intersection of international refugee law and the 2006 UN Convention on the Rights of Persons with Disabilities (CRPD). The paper highlights the multitude of barriers persons with disabilities experience in obtaining refugee protection. The paper reviews the accessibility of asylum procedures for persons with disabilities, disability as an element in interpreting and applying the refugee definition under the 1951 Convention relating to the Status of Refugees (1951 Refugee Convention), and protections provided under the CRPD for asylum-seekers and refugees with disabilities. The paper formulates key questions for further exploration and consultation with relevant stakeholders on applying the CRPD, particularly in conjunction with the 1951 Refugee Convention, to asylum-seekers and refugees.

Key Findings:

- Asylum-seekers with disabilities face procedural barriers in accessing refugee status determination processes.
- There is a need to advance a disability-inclusive interpretation of persecution; one of the constituent elements of the refugee definition under the 1951 Refugee Convention.
- Asylum-seekers and refugees with disabilities are entitled to basic rights, including education, social protection, healthcare and employment within their host country regardless of their status.
- There needs to be greater collaboration and awareness with organisations representing persons with disabilities, member states, and organisations working with refugees and asylum-seekers.

Chapter 1: Introduction

There are three critical areas where the 2006 Convention on the Rights of Persons with Disabilities (CRPD) interacts with international protection and the rights of refugees. These areas are accessibility and procedural accommodations during asylum procedures, the application of CRPD rights to refugees, and disability as a relevant element for qualifying as a refugee.

The World Health Organisation has estimated that 16% of the world's population live with a significant disability.² Even though exact data on the number refugees and displaced people with disabilities is not available, there is evidence that the numbers can be higher in conflict-afflicted contexts. According to Article 1 of the CRPD persons with disabilities include "those who have long-term physical, mental, intellectual or sensory impairments which interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."³ Article 1 also provides the purpose of the CRPD: "to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity."⁴ In addition, the CRPD upholds a Human Rights Model approach to disability, which "builds on the social approach by acknowledging persons with disabilities as subjects of rights and the State and others as having responsibilities to respect these persons. It treats the barriers in society as discriminatory and provides avenues for persons with disabilities to complain when they are faced with such barriers."⁵ The CRPD protects the civil, political, cultural, economic and social rights of persons with disabilities in all areas of life,

¹ This discussion paper is based on the work done by Ms. Toju Popo and it was commissioned by the International Disability Alliance within the framework of the partnership with UNHCR. The views expressed in this paper are those of the author and do not necessarily reflect those of the International Disability Alliance, United Nations or UNHCR. This paper may be freely quoted, cited, and copied for academic, educational, or other non-commercial purposes without prior permission from IDA or UNHCR, provided that the source and author are acknowledged.

² World Health Organisation, 2022.

³ UN General Assembly, 2007.

⁴ UN General Assembly, 2007, Article 1 – Purpose.

⁵ UN Office of the High Commissioner for Human Rights (2012), page 13.

including when seeking and enjoying asylum. Asylum-seekers with disabilities face barriers when seeking and enjoying asylum, including when accessing asylum procedures in their host countries.⁶ These include procedural barriers (hearings, interviews, access to social services), communication and information barriers (easy-to-read documents, braille, provision of sign language interpreters) and physical barriers (housing, refugee camps, reception centres). In her report, "Vulnerable or Invisible? Asylum-seekers with disabilities in Europe" Clara Straimer notes that persons with disabilities face barriers in accessing international protection, which are diverse and depending on the kind of impairment and/or diverse disability constituency.⁷

The methodology for the development of this paper included desk research on the current literature conducted on refugees and asylum-seekers with disabilities, including research by Mary Crock, Michael Stein, Janet Lord, Clara Straimer and most recently, Stephanie Motz. The paper draws also from informational interviews conducted with the Division of International Protection at UNHCR, a former asylum-seeker with a disability residing in Sweden, a UNHCR Protection officer based in Cyprus, the director of Disabled Refugees Welcome, members of the International Disability Alliance, several disability rights advocates, the Office of the UN Special Rapporteur on the Rights of Persons with Disabilities, and the UN Independent Expert on the Rights of Persons with Albinism. The paper refers to academic literature on the legal application of refugee status on areas of persecution and the five convention grounds, particularly the works of James Hathaway and Michelle Foster. As part of the desk review, key policies and guidance produced by UNHCR are also referenced. For more details, please consult the non-exhaustive Bibliography at the end of this paper.

Chapter 2: Applying the CRPD to asylum procedures

Article 1 of the CRPD states that persons with disabilities are entitled to a "full and equal enjoyment of human rights", which includes the right to access and participation in all proceedings, including the asylum or refugee status determination (RSD) process and by providing reasonable accommodations. State parties to the CRPD are obligated to ensure reasonable accommodations are provided where needed. This is to avoid discrimination or to create a disadvantage in the asylum claim of an asylum-seeker with disabilities, and to ensure that they can fully participate in the process.

In 2010, the Executive Committee of the High Commissioner's Programme (ExCoM) produced several recommendations on the intersection of the 1951 Refugee Convention and the CRPD. The recommendations included encouraging State parties to adopt accessible asylum identification and registration⁸ systems to protect and assist asylum-seekers and other persons with disabilities and provide sustainable and appropriate support in addressing all their needs.⁹ The recommendations highlighted the importance of applying the CRPD to asylum procedures and understanding the vulnerabilities and barriers that asylum-seekers with disabilities face. In 2020, UNHCR reissued its Procedural Standards for Refugee Status Determination under UNHCR's Mandate (the RSD Procedural Standards) acknowledging that some applicants are, or may find themselves, at heightened protection risks, and hence in a vulnerable situation, because of their specific needs. While some categories of persons with specific needs have been highlighted in the RSD Procedural Standards it states clearly that the list is not exhaustive.¹⁰

The RSD Procedural Standards set out as core principles and standards that all applicants undergoing individual RSD must have the opportunity to present their claim,¹¹ and that all offices must design and implement procedures

⁶ European Disability Forum, 2022. UN High Commissioner for Refugees, 2022. These barriers were also recognised by the Independent Expert on the rights of persons with albinism in the report regarding people with albinism on the move. See, A/77/199: People with albinism on the move - Report of the Independent Expert on the enjoyment of human rights by persons with albinism.

⁷ Straimer, 2010.

⁸ Executive Committee of the United Nations High Commissioner for Refugees, 2010, Section C.

⁹ Executive Committee of the United Nations High Commissioner for Refugees, 2010, Section A.

¹⁰ See, RSD Procedural Standards, Unit 3: Reception and Registration for Mandate RSD, para. 3.4 Applicants with Specific Needs: Applicants with specific needs, include but are not limited to: Persons manifestly in need of a protection intervention; Survivors of torture and persons suffering from trauma; Women with specific needs; Child Applicants, in particular unaccompanied and separated children; Older persons; LGBTI persons; Persons with mental health conditions, or intellectual or physical disabilities; and Applicants who require medical or psycho-social support and assistance.

¹¹ Such an approach applies whether the Applicant is making an individual refugee status claim. See, RSD Procedural Standards Unit 4.3 – The RSD Interview and Assessment or applying for derivative refugee status as a dependant of a recognized refugee, for guidance on derivative refugee status see Unit 5 – Processing Claims based on the Right to Family Unity.

conducive to the identification and assistance of applicants with specific needs, as early as possible in the process and, depending on individual circumstances, at all stages of the process.

Specific guidance on persons with mental health conditions and intellectual disabilities in the RSD procedure is further included in Unit 2.9 with a focus on ensuring the meaningful participation of persons with mental health conditions and of persons with intellectual disabilities relating to the “ability and willingness to recall and recount the events leading up to their departure from the country of origin, as well as their capacity to understand the RSD process and procedures, including the rights and obligations they entail”. Other relevant provisions are referred to in Unit 2.3 on accessibility of physical facilities relating to the RSD process, Unit 2.5 on access to trained and qualified interpreters at all stages of the process, Unit 3.4 covering measures to be taken during reception and registration procedures, Unit 4 on considerations during the adjudication of asylum claims (interview and assessment) and Unit 5 on processing claims based on right to family unity.

Identifying persons with disabilities is another systematic barrier in addressing the needs of applicants with disabilities, as asylum-seekers with disabilities remain under-reported. In recent years there have been initiatives designed to address this gap. For example, the Washington Group on Disability Statistics has produced specific questions concerning the individual's "functionality rather than focusing on the impairment".¹² These questions were introduced in UNHCR's registration system for refugees, proGres, in July 2021 to improve the identification of asylum-seekers with disabilities at registration.¹³ In 2019 the Needs Assessment Tool (NAT) developed by the European project AMiD¹⁴ was designed to support the efficient management of reception and integration of asylum-seekers and migrants with disabilities in the European Union. The European Union Asylum Agency (EUAA) has also issued [Tools For Identification Of Persons With Special Needs \(IPSN tool\)](#) to strengthen the protection and facilitate the timely identification of persons with additional procedural and/or reception needs, including applicants with disabilities, in the asylum procedure in the EU member states. Not identifying an asylum-seeker with disabilities could adversely impact their determination if they cannot participate fully throughout the process. Unit 2.9.2 or Unit 3.4 of the UNHCR procedural standards make clear references throughout the document to early identification of applicants with disabilities as it would ensure greater participation and protection for such individuals.

As another example, a blind or visually impaired person may face procedural barriers when completing written forms and receiving written communications, which would exacerbate their challenges in participating in the refugee status determination process. To accommodate this, it would be recommended to identify communication preferences, in consultation with the applicant, and provide the individual with information in accordance with these preferences, for example, via braille or screen reader if digital. In some cases, individuals may not be aware of more accessible formats for themselves as they may never have had access to this. Therefore, there would be a need to strengthen the capacity to identify information about specific impairments and individual needs of persons with disabilities, and on available tools to assist asylum-seekers. For an asylum-seeker with intellectual disability and difficulties understanding questions and instructions, adaptations may include accessing information in easy-to-read and digestible formats. During the interviews and hearings, the case officer may also have to extend the time with regular breaks or do multiple/shorter interviews; this could also benefit applicants with psychosocial disabilities. For individuals who are deaf or hard of hearing, adjustments may include the provision of quality and qualified sign language interpreters from the initial interviews, if that is their preference. It should be noted that if deaf asylum-seekers communicate in their national sign language, the allocated sign language interpreter must be able to communicate in the corresponding national sign language.

Concerning legal assistance, some asylum-seekers with disabilities may face challenges finding legal representation in their new host country and ensuring that their lawyer understands how their impairment and the barriers in the environment could impede their full participation in the process. The RSD Procedural Standards' Unit 2.9 includes recommendations on legal representation and designating a support person to facilitate participation in the process. In some countries, asylum-seekers with disabilities have to undergo an arduous process of proving their disability in what can be, in some cases, a short timeline. Asylum procedures connect with

¹² Crock et al., 2017. See more on The Washington Group on Disability Statistics at <https://www.washingtongroup-disability.com/>

¹³ UN High Commissioner for Refugees, [Guidance: Identification of Persons with Disabilities at Registration and other data collection efforts, 2022](#).

¹⁴ AMiD Project, 2018. Note also the European Union Agency for Asylum (EUAA) Tool on Identification persons with specific need, available at <https://ipsn.euaa.europa.eu/ipsn-tool>.

the CRPD Article 12 emphasising that persons with disabilities have the legal capacity or, in some cases, should have support in exercising decision-making and having equal recognition everywhere as persons before the law.¹⁵ Most importantly, the need for support in some cases for asylum seekers with disabilities should in no way be used as a basis to call into question the credibility of the claimant in an asylum-seeking procedure.

Chapter 3: Disability and Refugee Status Determination

The definition of a refugee under the Refugee Convention, as found in Article 1A (2), is any person “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality [or, in the context of a stateless person, his country of former habitual residence] and is unable or, owing to such fear, is unwilling to return to [it].”¹⁶ The Refugee Convention outlined the five grounds to apply for asylum; race, religion, nationality, membership of a particular social group and political opinion. The five grounds are one element of the definition of a refugee. The Refugee Convention does not define the grounds; its interpretation is within the remit of the Contracting States. However, while state parties to the Refugee Convention are the primary authority to interpret the definition, they are not the only ones, as UNHCR has supervisory responsibility and, therefore, the authority to interpret the Convention.

Credibility and establishing the facts

Before determining eligibility for refugee status, it is important to conduct a credibility assessment and establish the material facts of an Applicant’s claim. The credibility assessment involves a determination of whether and which of the applicants’ statements and other evidence can be accepted, and therefore taken into account in the analysis of a well-founded fear of persecution.¹⁷ While in general the burden of proof lies with the person submitting the claim, the obligation to gather and analyse all relevant facts and supporting evidence is shared between the applicant and the decision-maker.¹⁸ Following the RSD interviews, which are used to establish facts of the claims, the case officer should prepare a reasoned written decision using an RSD assessment form.

Assessing the credibility of statements often depends on their consistency. Barriers faced by persons with disabilities in the asylum process, including attitudinal barriers and lack of support, might lead to lack of consistency and difficulties in articulating the refugee claim. Applicants with disabilities may have great difficulties to recall and recount what have happened to them or what they fear upon return to their country of origin. This may be due to a variety of reasons, including but not limited to a lack of understanding of the RSD process and ensuing obligations, fear or distrust of authorities, impaired memory, the traumatic nature of the events underlying his/her claim, reduced attention and concentration, mood disturbances, diminished cognitive functions, etc.¹⁹ and lack of accommodations to address these challenges. Under those conditions, procedural accommodations would need to be implemented; the UNHCR Procedural Standard section 2.9 provides examples such as regular breaks or multiple or shorter RSD interviews as well as the presence of a support person.²⁰ It is a recommended good practice that RSD procedures involving individuals with mental health conditions and/or persons with intellectual disabilities should be carried out by trained staff who have the knowledge and, wherever possible, experience in interviewing and assisting asylum-seekers with such conditions or disabilities to promote a meaningful participation in the RSD process, including the interview, in order to not jeopardise access to protection.

Well-Founded Fear

A person’s fear of persecution is well-founded if it can be established, to a reasonable degree, that their continued stay in the country of origin has become, or would become, intolerable. This requires an analysis of the situation

¹⁵ United Nations, 2007, Article 12.

¹⁶ UN High Commissioner for Refugees, 1951.

¹⁷ UN High Commissioner for Refugees (UNHCR), Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report, May 2013, available at: <https://www.refworld.org/docid/519b1fb54.html>

¹⁸ Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, April 2019, para. 196, available at: <https://www.refworld.org/docid/5cb474b27.html> [accessed 3 February 2023]

¹⁹ 2020 RSD PS, Unit 2.9, para 2.9.2

²⁰ United Nations High Commissioner for Refugees, 2020.

in the country of origin assessed against the person's circumstances. In the case of persons with disabilities, this includes the country or origin's policies and practices under the CRPD.

Persecution

The 1951 Refugee Convention does not define persecution, which was a deliberate decision by the drafters of the Convention to ensure flexibility. The definition of persecution and its interpretation is left up to the individual member states' judicial and political systems and UNHCR.

One scholar, Professor James Hathaway, argues that persecution can be defined as "the sustained or systematic denial of basic or core human rights such as to be demonstrative of failure of state protection."²¹ He outlined the three categories of human rights; the first - human rights that are non-derogable even in times of national emergency this include the right to life and the prohibition against torture and inhuman or degrading punishment or treatment. The second category is human rights that are derogable during a life-threatening public emergency by the state. The final category is human rights, covering other areas such as the right to earn livelihood and primary education, food, housing, and medical care. Any behaviour that impedes individual rights can, at an extreme level, be tantamount to persecution if denied. A violation of rights in the first category will always be persecutory. A violation of rights in the second category will be persecutory if the state cannot demonstrate any valid justification for their temporary curtailment.

While the above approach is still conducted in some national jurisdictions, UNHCR has since moved away from this definition as stated in UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status, referred to Article 33 of the Refugee Convention, stating in paragraph 51, "it may be inferred that a threat to life or freedom on account of race, religion, nationality, political opinion or membership of a particular social group is always persecution. Other serious violations of human rights for the same reasons would also constitute persecution."²²

Also, Straimer explains that "Disability-specific forms of persecution may also include the systematic denial of socio-economic rights such as access to healthcare or education, and the personal circumstances of the applicant may lead to persecution on cumulative grounds."²³ This particular style of persecution can include confinement outside clinical institutions, such as chaining in place by relatives or at holy sites; faith or traditional healing or exorcism procedures which are inhuman and degrading and potentially harmful and exploitation and human trafficking risk as forced begging.²⁴ The denial of personal dignity and freedom without the consent of individuals with disabilities can be persecutory.

Failure or lack of state protection from persecution within the country of origin, because the state is either unable or unwilling to provide protection, can cause individuals to turn to the international community for international protection.²⁵ Motz points to a specific problem concerning persons with disabilities, whereby the failure of state protection relates to an "unwillingness of the country of origin to prevent and protect against both state and societal abuse, discrimination and violence"²⁶ or the "denial of socio-economic rights."²⁷ Decision makers within the RSD process need to assess whether the country of origin is complying with their CRPD state party obligations to protect disability rights within their territory.

In individual communications the CRPD Committee has recognized that the principle of non-refoulement is part of CRPD jurisprudence, and the Committee considers that the principle of non-refoulement imposes a duty on a State party 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, it found that if a health condition is severe and life threatening, then the State party must assess whether or not the individual applicant would be able to access adequate medical care if returned.²⁸

²¹ Hathaway & Foster, 2015, Page 292.

²² UN High Commissioner for Refugees, 2019, Page 21.

²³ Straimer, 2010, Page 194.

²⁴ Blair & Neale, 2021.

²⁵ *Horvath v Secretary of State for the Home Department* [2001] 1 AC 489 (UK House of Lords) 495 (Lord Hope), also cited in (Hathaway & Foster, 2015) Page 288.

²⁶ Motz, 2021, Page 190.

²⁷ Motz, 2021, Page 191.

²⁸ Committee on the Rights of Persons with Disabilities, 28 August 2020, *N.L. v. Sweden*, Communication No. 60/2019, para 7.8

Furthermore, the CRPD has principles outlined in Article 3 that relates to independence, participation and inclusion differing from specific domestic policies which are still often grounded in the medical approach, including institutionalisation. Linking to the medical approach, in country-of-origin contexts where institutionalisation is the prevailing policy and frequently the only option, the CRPD establishes that such policies could be well grounded in the claims of disability-related persecution. Furthermore, in certain countries, there is a systemic denial of personal dignity and freedom without the consent of individuals with disabilities.

Race

UNHCR Handbook understands that the category of race is thought to include ethnic minorities in relation to the larger population.²⁹ An asylum-seeker who would face racial discrimination in their country of origin where there is an established systemic behaviour of violence and persecution by either the state or non-state actors such as Kurdish, Syrians or Rohingya. In such situations, having a disability on top of racial discrimination would be considered a risk multiplier and a contributing factor in the decision to return, as the individuals would be extremely vulnerable to danger.

Religion

There have been cases where the country's way of life and identity is primarily dominated by religion, with a close relationship between the State and religious institutions. This can be linked to the national beliefs and culture promoting the belief that disability is a sign of black magic and other superstitions, which can create a hostile environment for persons with disabilities, as seen in Ghana, Nigeria, and Pakistan^{30 31} and a few others. In such country and contexts, an example of religious persecution is the treatment of people with albinism, a rare, non-contagious, congenital, genetically inherited condition, resulting in a "lack of pigmentation (melanin) in the hair, skin and eyes, causing vulnerability to the sun and bright light".³² In some countries, persons with albinism face increased discrimination and violence, where members of the general population believe that albinism is shrouded in myth, black magic and witchcraft which leads to stigmatisation and extreme levels of isolation.³³ In some cases, a person with albinism could face persecution on ritual sacrificial killings as in some countries albinism brings luck to the individual family or village.

Nationality

UNHCR Handbook explains nationality as "[...] not only citizenship. It refers to membership of an ethnic or linguistic group and may occasionally overlap with the term race."³⁴ Persecution for reasons of nationality may consist of adverse attitudes and measures directed against a national (ethnic, linguistic) minority. Deaf persons are a linguistic minority, with an estimated 446 million persons worldwide. Systemic failure or lack of state protection or state responsibility to ensure deaf persons access to socio-economic rights or prevent individual use of sign language while facing the stigma and being ostracised by the wider society could be grounds of persecution. A recent case has been brought to the US case of deaf refugees fleeing persecution from Mexico. They faced being denied the right to appropriate education, having no access to formal sign language until a later age and facing abuse from family and police.³⁵ As stated earlier in the report, denying fundamental human rights can be considered persecutory treatment.

Political Opinion

²⁹ UN High Commissioner for Refugees, 2019, Page 23.

³⁰ CBS News, 2001.

³¹ In the United States, the Chicago Immigration Court granted refugee protection to an autistic boy from Pakistan, Umair Choudhry, who had obsessive-compulsive disorder. The boy's mother made the application and cited Umair as a refugee due to fear of persecution because of his mental disability. The case outlined that Umair Choudhry developed autism at the age of three. Umair's behaviour included violent self-abusive outbursts, and he suffered; as the case reported, "he was forced to undergo various degrading and dangerous mystical treatments consistent with the 'curse of Allah' which is how the Islamic majority in Pakistan viewed his condition." This treatment by his relatives and neighbours, who said that he was cursed by Allah and possessed by demons, stemmed from the shared cultural and religious beliefs surrounding those with a disability in Pakistan. In the application, Umair's mother feared that if he were sent back to Pakistan, he would be taken to a pagal khana which is known to be a mental institution where he would be locked away in a cage. The Chicago Immigration Court concluded that Umair fit the classic refugee definition. Robert Esbrook, the director of the INS Chicago Office of Asylum, argued that "Umair was granted asylum not based on being disabled or autistic, but rather, because of the persecution his disability itself caused."

³² UN, 2022.

³³ UN, 2022.

³⁴ UN High Commissioner for Refugees, 2019, Page 24.

³⁵ Castillo, 2011.

UNHCR Handbook explained in paragraph 80 that political persecution arises when the applicants hold “opinions not tolerated by the authorities which are critical of their policies or methods”³⁶ that are not welcomed in that country. The authors of *Bridging a Protection Gap: Disability and the Refugee Convention* argue that persecution based on political opinion for asylum-seekers with disabilities would be based on how that individual's disability would interact with the political system.³⁷ For example, a person with a disability may be more likely to be targeted if they were acting atypically or has psychosocial disabilities that make it a high risk of vulnerability when questioned by authorities in a tense political environment such as an authoritarian regime.

Membership of a particular social group

The definition of the fifth ground is far broader and arguably less clear than the previous grounds. The UNHCR’s definition of the fifth ground is “a particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable or which is otherwise fundamental to identity, consciences, or the exercise of human rights.”³⁸ Several countries have passed legislation in which disability is recognised as a particular social group, such as The Refugees Act 1998 in South Africa³⁹, this is also being recognised through legal precedent cases such as *Liagat V Canada*.⁴⁰ Another example is recognising albinism as an innate characteristic of this group, and their distinct identity because they are perceived as being different by the surrounding society as they can be accused of witchcraft for example in the context of Nigeria.⁴¹

Defining the fifth ground can be divided into two approaches: Protected characteristics and Social Perception. The Protected Characteristics approach originated from a decision of the US Board of Immigration Appeals in *Re Acosta* in 1985.⁴² The approach is interpreted “to mean persecution directed toward an individual who is a member of a group of persons, all of whom share a common, immutable characteristic. The shared characteristic might be an innate one such as sex, colour, or kinship ties, or in some circumstances, it might be a shared experience such as former military leadership or land ownership.”⁴³ The ‘Protected Characteristics’ approach is the dominant approach among common law countries as this particular approach is widely used in Canada, New Zealand, South Africa, the United States and the United Kingdom. In addition, the protected characteristic approach can be summarised in a three-part test: “1. Groups defined by an innate or unchangeable characteristic; 2. Groups defined by a characteristic that is fundamental to human dignity such that persons should not be forced to relinquish it; and 3. Groups defined by a prior status, unalterable due to its historical permanence.”⁴⁴ Most of the times, disability would remain an “immutable characteristic”,⁴⁵ meaning that persons with disabilities would not be in a position to remove themselves from disability given their impairments and the unavoidable barriers in the environment.

The ‘Social Perception’ Approach originated in Australia and is also used in France and, in some cases, the United States.⁴⁶ This approach “examines whether or not a group shares a common characteristic which sets it apart from society at large.”⁴⁷ Applicants are compelled to complete the three-part test: “1. The group must have a distinct characteristic that makes them socially identifiable or a characteristic common to all members of the group; 2. All members of the group must share the characteristics or attributes. These shared characteristics must be separate from the shared fear of persecution. 3. The ownership of that particular characteristic or attribute must distinguish the group from the rest of society.”⁴⁸ This approach is not as popular as the protected characteristics as it heavily relies on the perception of society and their perceptions of disability. This means that those with hidden

³⁶ UN High Commissioner for Refugees, 2019, Page 24.

³⁷ Blair & Neale, 2021, Page 11.

³⁸ UN High Commissioner for Refugees, Handbook, 2019, Page 95. See also, UN High Commissioner for Refugees (UNHCR), *Guidelines on international protection no. 2: "membership of a particular social group" within the context of article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees* (7 May 2002) HCR/GIP/02/02.

³⁹ The Refugee Act of 1998, South Africa.

⁴⁰ Foster, 2012.

⁴¹ EUAA, 2021.

⁴² Board of Immigration Appeals, 1985.

⁴³ Board of Immigration Appeals, 1985.

⁴⁴ Board of Immigration Appeals, 1985.

⁴⁵ Blair & Neale, 2021.

⁴⁶ Foster, 2012.

⁴⁷ Feller et al., 2005) Page 17.

⁴⁸ Hathaway & Foster, 2015.

impairments may be excluded from refugee status despite having a lived experience of persecution based on disability.

Chapter 4: CRPD Protections for Asylum-Seekers and Refugees with disabilities

The Article 11 of the CRPD is often referred in relation to asylum-seekers and refugee with disabilities as it reinforces the obligations of states to ensure protection and safety in situations of risk, including armed conflict, humanitarian emergencies and natural disasters.⁴⁹ Beyond that, the protections of CRPD for asylum-seekers and refugees with disabilities fall to the state party or host country to ensure the provision of reasonable accommodations (Art 2 and 5), as well as a duty to ensure accessibility measures (Art 9) and, if necessary, ensure services provided by international partners centred around asylum-seekers, refugees and migrants are accessible and inclusive (Art 32). The Refugee Convention does outline rights for refugees, such as the right to access to court, housing, education, and employment. It is important to mention that the Refugee Convention rarely mentions implicit protection for persons with disability apart from Article 24 – Labour legislation and social security. Article 24 outlines that state parties are to ensure that refugees have the same treatment and access to social security concerning legal provisions in respect of [...] disability as nationals in their host country. Even though the 1951 Convention does not specifically mention persons with disabilities, all refugees should enjoy these rights, which implies refugees with disabilities as well.

Article 5 on non-discrimination states that Parties should prohibit all discrimination based on disability (Art 5 (2)) and take steps to ensure reasonable accommodation. General Comment No. 6 on equality and non-discrimination unambiguously recognises the need for providing “accessibility through universal design or assistive technologies as an *ex ante* duty”, and for providing individualised measures of reasonable accommodations and support for persons with disabilities to prevent discrimination as *ex nunc* duties, which “must be provided from the moment that a person with a disability requires access to non-accessible situations or environments, or wants to exercise his or her rights”.⁵⁰ These duties would apply, for example, to ensuring accessible housing (Art 28) for refugees with disabilities and preventing situations where “wheelchair users would live in a building without a lift or doors that are not wide enough, which would inhibit their ability to have an adequate standard of living”, as stated by an informant. As also highlighted in key informant interviews, some countries only allow asylum-seekers with disabilities access to basic services; asylum-seekers with a disability can only gain specialized support accommodations after they have been recognized as refugees.

Article 9 on Accessibility focuses on enabling persons with disabilities to live independently and participate fully in all aspects of life. State Parties should ensure that persons with disabilities have access, on an equal basis with others, to physical spaces, information and communications, facilities, and services, which would include reception facilities and related services. There have been cases where asylum-seekers and refugees with disabilities have not enjoyed equal access to services in reception centres, such as in Greece.⁵¹ Human Rights Watch has reported that asylum-seekers and migrants with disabilities face extra barriers in getting essential services such as shelter, sanitation, medical care, and services for mental health and psychosocial support. Additionally, depending on the country, there can be differences in access to services depending on whether they are asylum-seekers, refugees, or migrants with disabilities.

For asylum-seekers and refugees with disabilities, having access to health and support services is extremely important. Article 25 of the CRPD “recognises that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination based on disability”.⁵² Signatories to the CRPD should take measures to ensure access for persons with disabilities to health services, including health-related rehabilitation in displacement settings. The baseline support for all asylum-seekers and refugees would not apply to asylum-seekers and refugees with disabilities as they would have additional needs that could be exacerbated depending on their migration journey. This would require equal access to health (Article 25) and social protection systems (Article 28 of the CRPD).

⁴⁹ See for example UN Human Rights Council, *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*, 30 November 2015, A/HRC/31/30, available at: <https://www.refworld.org/docid/56c42c744.html>.

⁵⁰ UN Committee on the Convention on the Rights of Persons with Disabilities, 2018.

⁵¹ Barriga, 2017.

⁵² UN General Assembly, 2007.

Interviews conducted for this paper highlight these challenges. Julius Mvenyi Ntobuah, chairman of [Newcomers to Sweden with disabilities](#), provided insights on barriers shared by refugees with disabilities to access social protection schemes in Sweden. The establishment period of two years was not realistic and accessible for refugees with disabilities as, in some cases, it could take up to nine months or even longer to do specific tasks that are needed to participate in society fully, e.g., transportation cards, medical certificate, labour access. Access to support in Sweden dependent on migration status, e.g., if an asylum-seeker with mobility problems would only have access to a crutch or brace, once their status has been determined, they can request a wheelchair.

In a separate interview, Jamie Bolling, from the Independent Living Institute in Sweden and running the project [Disabled Refugees Welcome – The right to employment and mutual integration](#), explained that access to social services is not automatic and largely depends on the municipality of the individual refugee. She also noted the lack of cooperation or understanding between migration authorities and organisations for persons with disabilities supporting refugees and asylum seekers with disabilities, which results in missed opportunities for inclusion.

In other contexts, like Cyprus, while both asylum-seekers and refugees had similar treatment and access to social protection, asylum-seekers were excluded from disability allowance and social protections.⁵³ Following the intervention of the UN Committee of on the Rights of Persons with Disabilities in 2017⁵⁴, the Cypriot government changed the conditions by allowing those with international protection status to access disability schemes on an equal basis as nationals. Still, individuals waiting for a decision regarding their refugee status are essentially excluded from disability allowances or assistance as the system is not automatic and requires individual advocacy to access the service.

Language and communication barriers can also hamper the ability to navigate the host country's system for refugees with disabilities. There have been good practices in ensuring access for refugees with disabilities, such as the BEAM Project in Austria.⁵⁵ It focuses on caregivers from refugee backgrounds with children with disabilities. The BEAM Project highlighted the importance of providing culturally sensitive support for refugee families using 'parent guides' with lived experience and a common native tongue in addition to German as well as knowledge of the Austrian social support system. The 'parent guides' role bridges the gap in social services procedures and provides targeted support for families with persons with disabilities. Another example of a good practice in reducing the barriers in ensuring access for refugees with disabilities is the Polish government's program for Ukrainian refugees with disabilities to support their medical expenses. It also allowed persons with disabilities to access their certification process using documentation from the Ukrainian disability certification system.⁵⁶

Finally, Article 32 of the CRPD requires State parties to ensure that all their actions within the framework of international cooperation, including development programs, are inclusive and accessible to persons with disabilities, which would as well apply to international cooperation on resettlement opportunities. The UNHCR Integration Handbook provides actions to identify and address the needs of resettled refugees with disabilities in several vital areas, such as support services ensuring appropriate income support for refugees with disabilities.⁵⁷ UNHCR has also produced training materials⁵⁸ and guidance⁵⁹ on working with persons with disabilities in forced displacement focusing on fundamental guiding principles.

The [Global Compact on Refugees](#) and the [Global Refugee Forum 2023](#) can also provide further avenues to promote disability-inclusive solutions to refugee situations through international cooperation.

Chapter 5: The way forward

Refugees and asylum-seekers with disabilities are placed between two fundamental legal instruments the 1951 Refugee Convention and the CRPD that seek to protect this group. They are entitled to claim international protection and be protected as refugees. The CRPD has provisions that can be applied to asylum procedures, from the identification process to integration and resettlement procedures to ensure equal access. This paper briefly

⁵³ Based on an interview with UNHCR protection staff in Cyprus.

⁵⁴ UN Committee on the Rights of Persons with Disabilities, 2017.

⁵⁵ Bešić & Hochgatterer, 2020.

⁵⁶ PFRON (National Disabled Persons' Rehabilitation Fund (Poland)), pfron.org.pl, 2022.

⁵⁷ UN High Commissioner for Refugees, Integration Handbook.

⁵⁸ UN High Commissioner for Refugees, Training package on disability inclusion, 2022.

⁵⁹ UN High Commissioner for Refugee, Need to Know Guidance, 2019.

explored the interpretation of the definition of a refugee through disability specific lens concerning persecution and the five Convention grounds. Finally, this paper explored the three barriers, the first being the procedural barriers related to hearings, reception centres and RSD interviews. The second barrier focused on communication and information, outlining that asylum-seekers with disabilities are entitled to and state parties are obligated to provide information in either easy-to-read format, braille, sign language interpretation or other forms of communication. The final barrier was the attitudinal and knowledge barriers, exploring the lack of understanding among decision-makers deciding upon claims of disability and persecution. Furthermore, also outlines the attitudinal behaviour concerning the needs of asylum-seekers and refugees with disabilities to integrate with the broader society. This background paper serves to further the conversation in addressing the barriers faced by refugees and asylum-seekers with disabilities on a broader scale.

Key Questions:

1. Which technical and financial resources would be required to address the issues identified in the different chapters of this paper?
2. Which tangible opportunities could provide mid- and long- term ground for finding solutions for the gaps identified?
3. Which would be the different stakeholders required to find solutions for the issues identified in this paper? Which would be their roles?
4. How to better accommodate the needs of asylum-seekers with disability in the asylum procedures (e.g. identification of disability-related needs; accommodate access to hearings, etc.)?
5. What can be done to mainstream access for refugees and asylum-seekers with disabilities within the asylum process?
6. What would be a disability-inclusive interpretation of the definition of a refugee?
7. What would be the threshold gap for disability-related persecution and discrimination?
8. What could be done to ensure greater collaboration between organisations of persons with disabilities, refugee-led organizations and host countries to ensure greater integration for refugees with disabilities?
9. How to ensure that access to basic rights enshrined in both the CRPD and the Refugee Convention is provided in a non-discriminatory way?

Bibliography

- AMiD Project (2018) AMiD - Access to services for migrants with disabilities, AMiD. Available at: <https://amidproject.eu/en/> (Accessed: November 14, 2022).
- Barriga, S.R. (2014) The (in)human dimension of Ghana's prayer camps, Human Rights Watch. Available at: <https://www.hrw.org/news/2014/10/10/inhuman-dimension-ghanas-prayer-camps> (Accessed: November 14, 2022).
- Barriga, S.R. (2017) Greece: Refugees with disabilities overlooked, underserved, Human Rights Watch. Available at: <https://www.hrw.org/news/2017/01/18/greece-refugees-disabilities-overlooked-underserved> (Accessed: October 10, 2022).
- Bešić, E. and Hochgatterer, L. (2020) Refugee families with children with disabilities: Exploring their social network and support needs. A good practice example, Frontiers. Frontiers. Available at: <https://www.frontiersin.org/articles/10.3389/feduc.2020.00061/full> (Accessed: September 15, 2022).
- Blair, J. and Neale, D. (2021) BRIDGING A PROTECTION GAP: DISABILITY AND THE REFUGEE CONVENTION, Bridging a Protection Gap: Disability and the Refugee Convention | Helen Bamber. Available at: <https://www.helenbamber.org/resources/reportsbriefings/bridging-protection-gap-disability-and-refugee-convention> (Accessed: September 28, 2022).
- Board of Immigration Appeals (1985) Matter of Acosta, Refworld. United States Board of Immigration Appeals. Available at: https://www.refworld.org/cases,USA_BIA,3ae6b6b910.html (Accessed: November 14, 2022).
- Candanosa, P. by I. (2020) The experiences of deaf Mexican Americans, Hearing Like Me. Available at: <https://www.hearinglikeme.com/the-experiences-of-deaf-mexican-americans/> (Accessed: September 28, 2022).
- Castillo, M. (2011) Claiming persecution, deaf immigrants seek US asylum, CNN. Cable News Network. Available at: <https://edition.cnn.com/2011/10/04/us/california-deaf-asylum-seekers/index.html> (Accessed: September 28, 2022).
- CBS News (2001) US grants autistic child asylum, CBS News. CBS Interactive. Available at: <https://www.cbsnews.com/news/us-grants-autistic-child-asylum/> (Accessed: November 14, 2022).
- Crock, M., Ernst, C. and AO, RM (2012) "Where disability and displacement intersect: Asylum-seekers and refugees with disabilities," International Journal of Refugee Law, 24(4), pp. 735–764. Available at: <https://doi.org/10.1093/ijrl/ees049>.
- Crock, M., Smith-Khan, L., McCallum, R. and Saul, B., 2017. The legal protection of refugees with disabilities: Forgotten and invisible? Edward Elgar Publishing.
- EUAA (2021) 2.10. *individuals with albinism*, European Union Agency for Asylum. Available at: <https://euaa.europa.eu/country-guidance-nigeria-2021/210-individuals-albinism> (Accessed: November 28, 2022).
- European Disability Forum. (2022) Migration and refugees with disabilities, European Disability Forum. Available at: <https://www.edf-feph.org/migration-and-refugees-with-disabilities/> Accessed: October 24, 2022).
- Executive Committee of the United Nations High Commissioner for Refugees (2010) Conclusion on refugees with disabilities and other persons with Disabilities Protected and assisted by UNHCR, The UN Refugee Agency. Available at: <http://www.unhcr.org/4cbeb1a99.html> (Accessed: October 14, 2022).
- Feller, E., Türk Volker and Nicholson, F. (2005) "Refugee Protection in International Law: an overall perspective," in Refugee protection in international law: UNHCR's Global Consultations on International Protection. Cambridge: Cambridge University Press, pp. 3–45.
- Foster, M. (2012) The 'ground with the least clarity': A comparative study of jurisprudential developments relating to 'membership of a particular social group', Refworld. United Nations High Commissioner for Refugees. Available at: <https://www.refworld.org/docid/4f7d94722.html> (Accessed: November 14, 2022).
- Hathaway, J.C. and Foster, M. (2015) The law of refugee status. Cambridge, United Kingdom: Cambridge University Press.
- Horvath v. Secretary of State for the Home Department [2001] 1 AC 489, [2000] UKHL 37; [2000] 3 WLR 379; [2000] 3 All ER 577; [2000] Imm AR 552; [2000] INLR 239, United Kingdom: House of Lords (Judicial Committee), July 6 2000, available at: https://www.refworld.org/cases,GBR_HL,3ae6b6e04.html [accessed November 14 2022]

Independent Expert on the enjoyment of human rights by persons with albinism (2022), A/77/199: People with albinism on the move - Report of the Independent Expert on the enjoyment of human rights by persons with albinism. Available at <https://www.ohchr.org/en/documents/thematic-reports/a77199-people-albinism-move-report-independent-expert-enjoyment-human>.

Immigration and Refugee Board of Canada (2021) Chapter 3 - Persecution, Immigration and Refugee Board of Canada. Immigration and Refugee Board of Canada. Available at: <https://irb.gc.ca/en/legal-policy/legal-concepts/Pages/RefDef03.aspx> (Accessed: September 28, 2022).

Motz, S. (2021) The Refugee Status of Persons with Disabilities. Leiden; Boston: Brill. PFRON National Disabled Persons' Rehabilitation Fund, pfron.org.pl (2022) Pomoc dla obywateli Ukrainy Z Niepełnosprawnością na Zaopatrzenie w ... pfron.org.pl. Available at: https://www.pfron.org.pl/fileadmin/user_upload/ULOTKA_informacyjna_swadczenie_na_zaopatrzenie_w_wyroby_medyczne_modul_I_programu_Pomoc_obywatelom_Ukrainy_z_niepelnosprawnoscia_.pdf (Accessed: November 12, 2022).

Quinn, G., (2009) A short guide to the United Nations Convention on the Rights of Persons with Disabilities. Eur. YB Disability L., 1, p.89.

Sharma, K. (2020) Living in chains: Shackling of People with Psychosocial Disabilities Worldwide, Human Rights Watch. Available at: <https://www.hrw.org/report/2020/10/06/living-chains/shackling-people-psychosocial-disabilities-worldwide> (Accessed: November 23, 2022).

Shimada, Y. (1975) The concept of the political refugee in international law. Tokyo: The International Law Association of Japan.

Ssengooba, M. (2012) "Like a Death Sentence" | Abuses Against Persons With Mental Disabilities In Ghana, Human Rights Watch. Available at: <https://www.hrw.org/report/2012/10/02/death-sentence/abuses-against-persons-mental-disabilities-ghana> (Accessed: November 14, 2022).

Straimer, C. (2010) Vulnerable or invisible? asylum-seekers with disabilities in Europe., Refworld. UN High Commissioner for Refugees (UNHCR). Available at: <https://www.refworld.org/docid/4fe033712.html> (Accessed: October 24, 2022).

UN Committee on the Rights of Persons with Disabilities (2017) Concluding observations on the initial report of Cyprus, Convention on the Rights of Persons with Disabilities. Office of the United Nations high commissioner for human rights. Available at: <https://docstore.ohchr.org/SelfServices/FilesHandler.Ashx> (Accessed: November 12, 2022).

UN Committee on the Convention on the Rights of Persons with Disabilities (2018). General comment No.6 on equality and non-discrimination. Available at: [General comment No.6 on equality and non-discrimination | OHCHR](#)

UN General Assembly (1948) Universal declaration of human rights, Refworld. Available at: <https://www.refworld.org/docid/3ae6b3712c.html> (Accessed: November 14, 2022).

UN General Assembly (2007) Convention on the rights of persons with disabilities: Resolution / adopted by the General Assembly, Refworld. UN General Assembly. Available at: <https://www.refworld.org/docid/45f973632.html> (Accessed: October 14, 2022).

UN Human Rights Council (2014) Report of the special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, addendum: Mission to Ghana, Refworld. UN Human Rights Council. Available at: <https://www.refworld.org/docid/531f11244.html> (Accessed: November 14, 2022).

UN High Commissioner for Refugees (1951) Convention relating to the status of refugees, Refworld. Available at: <https://www.refworld.org/docid/3be01b964.html> (Accessed: September 14, 2022).

United Nations High Commissioner for Refugees (2018) UNHCR Age, Gender and Diversity Policy, UNHCR. The UN Refugee Agency. Available at: <https://www.unhcr.org/protection/women/5aa13c0c7/policy-age-gender-diversity-accountability-2018.html> (Accessed: November 14, 2022).

UN High Commissioner for Refugees (2019) *Meeting immediate material needs*, UNHCR. United Nations High Commissioners for Refugees. Available at: <https://www.unhcr.org/handbooks/ih/support-services/meeting-immediate-material-needs> (Accessed: November 6, 2022).

UN High Commissioner for Refugees (2019), *Need to Know Guidance: Working with Persons with Disabilities in Forced Displacement*, available at: <https://www.refworld.org/docid/5ce271164.html> (Accessed 12 January 2023).

UN High Commissioner for Refugees, *Integration Handbook*, available at: <https://www.unhcr.org/handbooks/ih/> (Accessed: November 14, 2022).

UN High Commissioner for Refugees (2019) *Handbook on procedures and criteria for determining refugee status under the 1951 Convention and the 1967 Protocol Relating to the status of refugees*. Geneva: UNHCR.

UN High Commissioner for Refugees (2020) *Procedural standards for refugee status determination under UNHCR's mandate*, UNHCR. The UN Refugee Agency. Available at: <https://www.unhcr.org/publications/legal/4317223c9/procedural-standards-refugee-status-determination-under-unhcrs-mandate.html> (Accessed: September 15, 2022).

UN High Commissioner for Refugees (2022) *UNHCR's approach to forcibly displaced and stateless persons with disabilities – 2022*. Available at <https://www.unhcr.org/620672664/unhcrs-approach-forcibly-displaced-stateless-persons-disabilities-2022> (Accessed: January 12, 2023).

UN High Commissioner for Refugees (2022), *UNHCR Specific Needs Codes Disability Guidance*. Available at: <https://www.unhcr.org/63a4504219>. (Accessed: January 12, 2023).

UN High Commissioner for Refugees (2022), *Training Package on Strengthening Protection of Persons with Disabilities in Forced Displacement*. Available at <https://www.unhcr.org/disability-inclusion-training-package.html>.

UN Office of the High Commissioner for Human Rights (2012) *Training Guide on the Convention on the Rights of Persons with Disabilities*. Available at [Training Package on the Convention on the Rights of Persons with Disabilities | OHCHR](#)

United Nations Convention on the rights of persons with disabilities (2007). United Nations. Available at: [Convention on the Rights of Persons with Disabilities | OHCHR](#) (Accessed: November 14, 2022).

UN (2022) *International albinism awareness day, United Nations*. United Nations. Available at: <https://www.un.org/en/observances/albinism-day#:~:text=The%20worst%20expression%20of%20discrimination,be%20used%20for%20witchcraft%20rituals>. (Accessed: November 28, 2022).

World Health Organization (2022) *Global report on health equity for persons with disabilities*. Available at: <https://www.who.int/publications/i/item/9789240063600> (Accessed February 2023).

Zimmermann, A., Dörschner Jonas and Machts, F. (2011) *The 1951 Convention Relating to the status of refugees and its 1967 protocol: A commentary*. Oxford: Oxford University Press.