# IDA submission on the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families’ (CMWF) draft general comment 5 on migrants’ rights to liberty and freedom from arbitrary detention

## INTRODUCTION

1. The International Disability Alliance (IDA) is a unique, international network of eight global and six regional organisations of persons with disabilities (OPDs). Each IDA member represents a large number of national OPDs, 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 OPDs utilising the Convention on the Rights of Persons with Disabilities (CRPD) and other human rights instruments.
2. IDA appreciates the initiative by the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (*hereinafter* “the Committee”) to call for comments on its draft general comment 5 on migrants’ rights to liberty and freedom from arbitrary detention. Indeed, immigration detention remains a widespread practice in many receiving States and migrants with disabilities and/or migrants’ relatives with disabilities are particularly vulnerable in such context, given the barriers and restrictions they face, the negative stereotypes associated to them and the lack of support measures.
3. IDA welcomes that draft’s references to persons with disabilities, especially in paragraph 52 that calls States to avoid detaining migrants with disabilities and family members with disabilities on account of their support needs and/or increased risk to suffer human rights violations in detention.[[1]](#endnote-1) Nevertheless, IDA believes that the draft can be enhanced to better protect the rights to liberty and security of person and freedom from arbitrary detention of migrants and relatives with disabilities.
4. This submission addresses discrimination of persons with disabilities in the context of migration and immigration detention, access to justice, measures to support alternatives to detention for migrants with disabilities and data collection and disaggregation. IDA highlights key human rights standards developed by the Committee on the Rights of Persons with Disabilities (*hereinafter* “the CRPD Committee”) under the Convention on the Rights of Persons with Disabilities (*hereinafter* “CRPD”).

## MIGRANT WORKERS AND FAMILY MEMBERS WITH DISABILITIES AND IMMIGRATION DETENTION

1. Migrant workers and members of their families with disabilities face additional barriers compared to others, including disability based, multiple and intersecting forms of discrimination.[[2]](#endnote-2) These increase their vulnerability and likelihood of being subjected to immigration detention and facing human rights violations in the context of migration. Comprehensive data disaggregated by disability is scarce in regard to migration and immigration detention. However, it has been reported that persons with disabilities tend to be overrepresented in mainstream detention centres, including immigration detention centres.[[3]](#endnote-3) In this sense, research on Australia suggested a significant proportion of asylum seekers with disabilities among those subjected to immigration detention.[[4]](#endnote-4)
2. In different countries, migration and asylum policies and regulations continue to include provisions that are discriminatory, directly or indirectly, of persons with disabilities, e.g. by establishing health related requirements.[[5]](#endnote-5) As this Committee has noted, migrant children with disabilities may suffer from multiple forms of discrimination[[6]](#endnote-6) and be in a situation of double vulnerability.[[7]](#endnote-7) In particular, the discriminatory practice of denying asylum or visas on the basis of disability is likely to increase the number of persons with disabilities in immigration detention, as highlighted for the case of children with disabilities.[[8]](#endnote-8)
3. Moreover, immigration detention impacts on persons with disabilities on account of the migrant’s impairment, lack of support and associated stigma.[[9]](#endnote-9) While some States recognise that the detention of migrants with disabilities should be avoided, this continues to occur,[[10]](#endnote-10) including due to stereotypes and prejudice against persons with psychosocial disabilities deemed “dangerous”.[[11]](#endnote-11) The ground justifying detention of migrants in an irregular situation when “a person poses a danger to himself or herself or to society” becomes an entry point for deprivation of liberty on the basis of impairments of migrants with psychosocial disabilities, contradicting Article 14 of the CRPD. Indeed, some practice shows that many of the detained migrants with disabilities are actually persons with psychosocial disabilities[[12]](#endnote-12) who may end up being placed in psychiatric institutions.[[13]](#endnote-13)
4. The CRPD Committee has noted that the “absence of suitable infrastructure for persons with disabilities and the substandard conditions of detention constitute both an affront to [their] dignity and inhuman treatment.”[[14]](#endnote-14) In that sense, inaccessibility of infrastructure, services, information and communication poses barriers to persons with disabilities. On its turn, this Committee has very well noted that immigration detention can particularly damage vulnerable migrant workers with disabilities, negatively impacting their physical and mental health.[[15]](#endnote-15) Generally, immigration detention conditions negatively impact mental health and exacerbate previously acquired mental health conditions.[[16]](#endnote-16) In particular, the Inter American Commission of Human Rights has reported that detained migrants with psychosocial disabilities also face alarming conditions of solitary confinement,[[17]](#endnote-17) which may amount to torture or ill treatment.[[18]](#endnote-18)

## PROTECTING THE RIGHTS OF PERSONS WITH DISABILITIES IN THE CONTEXT OF MIGRATION: RELEVANT STANDARDS TO PREVENT THEIR DETENTION

### CROSSCUTTING ISSUES FOR PERSONS WITH DISABILITIES IN MIGRATION LAW AND PRACTICE

#### A. 1. NON-DISCRIMINATION OF PERSONS WITH DISABILITIES IN MIGRATION LAW, REGULATIONS AND PRACTICE

1. Normative frameworks on migration usually include provisions that discriminate directly or indirectly persons with disabilities, such as provisions including health related requirements.[[19]](#endnote-19) Applicants seeking offshore humanitarian and refugee visas are also subject to health requirements.[[20]](#endnote-20) This kind of legislation exists in different countries[[21]](#endnote-21) and has been challenged.[[22]](#endnote-22) Health requirements have a significant negative impact on immigrant families and children, as members of a family group can be denied visas because one is a member with disability, forcing families to decide whether to leave behind the family member with disability and other member(s) for taking care of them. In occasions, this will mean leaving family members with disability in extremely vulnerable situations, e.g. as in war, under persecution, or civil unrest.[[23]](#endnote-23)
2. The UN High Commissioner for Refugees (UNHCR) has expressed concern about the discriminatory effect of the health requirement in the following manner: “The present operation of the health requirement is discriminatory in effect and endangers a number of other human rights norms.”[[24]](#endnote-24) The CRPD Committee recommended States to repeal provisions that denied the entry to the country to persons with psychosocial disabilities “who lack reason and are not accompanied by an assistant for their sojourn.”[[25]](#endnote-25) It has also recommended Mexico 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.”[[26]](#endnote-26) The CMWF has been clear in rejecting discriminatory provisions in migration law on the basis of disability.[[27]](#endnote-27)
3. Other legislations can include discriminatory provisions impacting migrants with disabilities and/or their family members with disabilities, e.g. by denying them access to health and social services. In this vein, the CRPD Committee has noted the lack of appropriate social and health care services for migrant, asylum seeking and refugee persons with disabilities, in particular children with disabilities.[[28]](#endnote-28) This Committee has acknowledged the discrimination faced by migrants with disabilities[[29]](#endnote-29) and has noted that migrant children with disabilities may face multiple discrimination[[30]](#endnote-30) and double vulnerability.[[31]](#endnote-31)
4. Such discriminatory frameworks and practices can extend consequences to immigration detention. For instance, denying asylum or visas on the basis of disability is likely to increase the number of persons with disabilities in immigration detention, as highlighted for the case of children with disabilities.[[32]](#endnote-32) Further, additional substantive and procedural requirements, together with the lack of support to persons with disabilities, can prolong the duration of immigration procedures extending immigration detention.[[33]](#endnote-33)
5. The CRPD, notably Articles 2, 5, 13 and 18, and the CRPD Committee jurisprudence on their regard, have contributed to strengthen human rights standards on non-discrimination of migrant workers and/or their relatives with disabilities. In particular, the explicit incorporation of denial of reasonable accommodation as a form of discrimination offers a key concept that operates in individual cases in connection to all rights.[[34]](#endnote-34)
6. Importantly, **“procedural accommodation”** is the non-discriminatory concept that applies to legal proceedings, including administrative proceedings, and thus **covering immigration related procedures, be them judicial or administrative**.[[35]](#endnote-35) The main importance of this clarification is that “reasonable accommodation” is limited by the concept of disproportionality, **procedural accommodations are not**.”[[36]](#endnote-36) Examples in practice of procedural accommodation are providing communication support assistants (e.g. for persons with intellectual disabilities, persons with psychosocial disabilities and deaf persons) adaptation of the venues, reduction of formality of procedures, etc.[[37]](#endnote-37)
7. Complementing each other, the CMWF Committee and the CRPD Committee have recommended to emphasize on “the policies and related regulations about the prevention of discriminatory practices towards migrant and refugee children with disabilities”[[38]](#endnote-38) and to “mainstream the rights of persons with disabilities in […] migration, asylum seeking and refugee policies and programs…”[[39]](#endnote-39)

#### A.2. ACCESSIBILITY THROUGHOUT MIGRATION POLICIES AND PRACTICE

1. Accessibility is a basic precondition for the exercise of rights by persons with disabilities, including to participate fully and equally in society.[[40]](#endnote-40) Article 9 of the CRPD requires States to “ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.”
2. Migration policies should ensure accessibility for persons with disabilities in its different dimensions. In particular, lack of accessible information prevents migrants with disabilities from exercising their rights and participate in migration procedures. The CRPD Committee has urged States parties “to ensure that all policies and programmes for migrant populations in the State party are fully accessible for persons with disabilities.”[[41]](#endnote-41) In addition, it stressed that materials should also be issued in “native languages of the main migrant communities”[[42]](#endnote-42) in order to enable them to exercise their rights. In connection with languages and interpretation, and in addition to the stigma they face,[[43]](#endnote-43) deaf migrants present greater risk of marginalisation due to their linguistic and social challenges,[[44]](#endnote-44) which are increased by the lack of knowledge of the national sign language of the country of destination.[[45]](#endnote-45)
3. All public facilities involved in migration policies, including immigration detention centres where they exist, should be accessible to all persons with disabilities (e.g. by including ramps, elevators, signage for blind persons, Easy to Read orientation signs, visual alarm systems for deaf people, etc.). Further, all information available and communications with persons with disabilities during immigration procedures should be provided through accessible means and formats (e.g. Braille, accessible digital documents, sign language interpretation, including deaf interpreters, tactile communication, captioning, hearing loop for hard of hearing persons, etc.).
4. The non-discrimination concepts of “reasonable accommodation”, in general, and of “procedural accommodation”, in connection with legal proceedings, can function as a means to obtain accessibility in a particular case. They do so when addressing an accessibility need of the person requesting the accommodation (see paras. 13-14 above), e.g. through communication support assistants for persons with intellectual disabilities, persons with psychosocial disabilities and deaf persons.

### DEPRIVATION OF LIBERTY OF PERSONS WITH DISABILITIES THROUGH MIGRATION DETENTION: THE IMPACT OF MIGRATION DETENTION AND ITS DERIVATION TO DISABILITY BASED DETENTION

1. Immigration detention can have a disproportionate impact on persons with disabilities on account of the migrant’s impairment, lack of support and associated stigma.[[46]](#endnote-46) While some States recognise that the detention of migrants with disabilities should be avoided, this continues to occur,[[47]](#endnote-47) most likely because of the stereotypes and prejudice against persons with psychosocial disabilities deemed “dangerous”.[[48]](#endnote-48) Indeed, some practice shows that many of the detained migrants with disabilities are actually persons with psychosocial disabilities[[49]](#endnote-49) who may end up being placed in psychiatric institutions.[[50]](#endnote-50) In Canada, for instance, migrant detainees with psychosocial disabilities[[51]](#endnote-51) are routinely transferred from immigration detention centres to maximum security jails based on their impairments.[[52]](#endnote-52)
2. IDA welcomes that the CMWF Committee stresses on the need to avoid recurring to immigration detention of persons with disabilities (para. 52 of the draft). This criterion would prevent exposing many persons with disabilities to human rights violations and abuses they usually face when deprived of their liberty (see section D below), and needs to be accompanied with measures to support persons with disabilities to live independently and in the community (see section E below).
3. **However, IDA remains extremely concerned at the inclusion, as a justification of immigration detention, of the ground of posing “a danger to himself or herself or to society” (para. 23 of the draft).** This concern is neither compensated nor eliminated by the clause requiring that “the threat posed […] must be substantiated by proven facts,” which would seek to increase the protection against immigration detention.
4. This ground of posing “a danger to himself or herself or to society” constitutes a typical ground of deprivation of liberty on the basis of impairments, regardless of the migration status, leading to forced hospitalisation and/or institutionalization of persons with psychosocial disabilities and persons with intellectual disabilities, be it under civil legislation and/or criminal legislation. In any case, these constitute discriminatory practices based on negative stereotypes and prejudice against persons with psychosocial disabilities who are deemed “dangerous,” leading to deprivation of liberty, most of the times, without any time limitation and based on a medical diagnosis by a psychiatric professional. IDA is worried that such diagnoses would be considered in practice enough to suggest the detention has been “substantiated by proven facts.”
5. These practices are always contrary to Article 14(1) of the CRPD on the right to liberty and security of person. On this regard, the CRPD Committee has explicitly established the absolute ban on deprivation of liberty on the basis of impairments: “article 14 does not permit any exceptions whereby persons may be detained on the grounds of their actual or perceived impairment.”[[53]](#endnote-53) In the words of the former Special Rapporteur on the Rights of Persons with Disabilities, Ms Catalina Devandas Aguilar:

“85. The **deprivation of liberty on the basis of impairment is a human rights violation on a massive scale**. Persons with disabilities are systematically placed into institutions and psychiatric facilities, or detained at home and other community settings, based on the existence or presumption of having an impairment. **They are also overrepresented in traditional places of deprivation of liberty, such as prisons, immigration detention centres,** juvenile detention facilities and children’s residential institutions. In all these settings, they are exposed to additional human rights violations, such as forced treatment, seclusion and restraints.”[[54]](#endnote-54)

1. The inclusion of the ground “a danger to himself or herself or to society” provides a clear entry point for the deprivation of liberty on the basis of impairments of migrants with psychosocial disabilities in an irregular situation. While limited to these migrants, the ground would offer a legitimisation, through the concept of “immigration detention,” of deprivation of liberty on the basis of impairment, contradicting CRPD standards under Article 14 and disproportionally impacting persons with psychosocial disabilities.
2. To sum up, IDA believes that this ground of detention (“posing a danger to himself or herself or to society”) should be removed from the draft altogether, given that it ends up legitimising the practice of deprivation of liberty of persons with disabilities on the basis of impairments, asserted by psychiatric practice of diagnosis, in contradiction to current human rights standards under Article 14 of the CRPD.

### ACCESS TO JUSTICE FOR MIGRANTS WITH DISABILITIES: ACCESSIBILITY, PROCEDURAL ACCOMMODATION AND TRAINING OF GOVERNMENT AND JUDICIAL STAFF

1. As any other migrant or asylum seeker, migrants with disabilities must have legal remedies available to challenge any restriction to their right to liberty, including through immigration detention. However, lack of accessibility of information and procedures, in the most appropriate languages, including sign languages, and of support and procedural accommodation, prevents migrants with disabilities to access legal remedies, if available, on equal basis with others. Moreover, lack of a statutory right to legal assistance also remains an important challenge.**[[55]](#endnote-55)** Research highlights deficiencies in deportation proceedings, including lack of court appointed lawyers and lack of guidance to legal practitioners on accommodations available.[[56]](#endnote-56) In regards to asylum seekers and refugees, legislations and regulations do not usually address the requirements of persons with disabilities in terms of recognition before the law and access to justice.[[57]](#endnote-57)
2. Article 13 of the CRPD requires States to ensure “effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants…”, as well as to “promote appropriate training for those working in the field of administration of justice, including police and prison staff.” In connection with migrants with disabilities, the CRPD Committee has requested States to amend “migration laws and policies to ensure that persons with disabilities do not face discrimination in any of the formalities and procedures relating to migration and asylum,”**[[58]](#endnote-58)** as well as to “[s]trengthen the support and individualized accommodations available to migrants, refugees and asylum seekers with disabilities in immigration proceedings.” **[[59]](#endnote-59)**
3. As stated above (paras. 14 and 19), States should ensure **“procedural accommodation”** for persons with disabilities who require them to fully participate in immigration related procedures, **be them judicial or administrative**.[[60]](#endnote-60) Distinguishing from “reasonable accommodation”, “procedural accommodation” is not limited by the concept of disproportionality,[[61]](#endnote-61) and can be utilised to obtain accessibility in a particular case. Examples include providing communication assistants, sign language interpretation, adaptation of the venues, reduction of formality of procedures, etc.[[62]](#endnote-62) Additionally, States of origin should ensure that their citizens with disabilities benefit from **consular assistance** available in the State of destination, on equal basis with others.
4. The draft general comment should better reflect the kind of barriers that persons with disabilities face in participating in legal administrative proceedings and in accessing justice, as well as including explicitly the need for accessibility, provision of procedural accommodation to individuals with disabilities and the need to provide adequate training to governmental and judicial officials and staff.

### CONDITIONS OF DETENTIONS OF PERSONS WITH DISABILITIES SUBJECTED TO MIGRATION DETENTION: ACCESSIBILITY, SUPPORT MEASURES AND REASONABLE ACCOMMODATION

1. While IDA appreciates that this Committee requests States to avoid the immigration detention of persons with disabilities (para. 52 of the draft), our concerns expressed in section B, and the fact that detention occurs explain this section on conditions of detentions.
2. Persons with disabilities deprived of their liberty are at high risk of human rights violations and abuses, especially in psychiatric and residential institutions, including being subjected to violence, abuse, physical and chemical constraints, isolation, solitary confinement, electroconvulsive therapy, forced medication, sexual and physical violence, sterilization and human trafficking.[[63]](#endnote-63) In particular, deaf migrants in detention centres are often in isolation without any opportunities to interact with other deaf people, or signing people, which can contribute to the development mental health conditions.[[64]](#endnote-64) They may stay in detention longer than others due to the lack of communication with the staff[[65]](#endnote-65) and they may not even access the health specialist they require.[[66]](#endnote-66)
3. The CRPD Committee has stated, under Article 14(2) of the CRPD, that the lack of suitable infrastructure and the substandard conditions of detentions, including due to the lack of reasonable accommodation, can amount to torture or cruel, inhuman or degrading treatment or punishment. [[67]](#endnote-67) This Committee has also made clear that “[d]etention can be particularly damaging to vulnerable categories of migrant workers, impacting negatively on their physical and mental health” including “persons with disabilities.” [[68]](#endnote-68) It has also called for special measures to protect them, including the provision of reasonable accommodation to ensure the enjoyment of rights on equal basis with others.[[69]](#endnote-69) **This important reference to “reasonable accommodation” in the context of detention remains absent from the text of the draft general comment.**
4. Article 14(2) of the CRPD requests States to “ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and […] be treated in compliance with the objectives and principles of the [CRPD] Convention, including by provision of reasonable accommodation.” In this vein, the CRPD Committee has requested States to ensure that “[d]etention and deportation centres are accessible to migrant workers with disabilities and that [they] are provided with reasonable accommodation”**[[70]](#endnote-70)** as well as to “establish a minimum standard of health care and support for persons with disabilities held in immigration detention.”[[71]](#endnote-71) Training of staff in immigration detention centers is also key to ensure that the rights of detained migrants with disabilities are respected. Accordingly, the CRPD Committee has urged States to “appoint **trained** staff to assist persons with disabilities in migrant holding centres.” [[72]](#endnote-72)
5. Persons with psychosocial disabilities are particularly at risk of being deprived of their liberty on the basis of their impairment (see section B above) and suffer human rights violations. In addition, poor conditions and the length of the detention, without clear timeframes, contribute to exacerbate any earlier acquired mental health condition. On their regard, the Inter American Commission of Human Rights has reported that detained migrants with psychosocial disabilities face alarming conditions of solitary confinement,[[73]](#endnote-73) which may amount to torture or ill treatment.[[74]](#endnote-74)
6. In line with paragraph 52 of the draft, the COVID19 pandemic came to add a paramount factor to avoid the detention of persons with disabilities, who face the risks and suffer disproportionally the effects of the pandemic and of the response measures (e.g. lack of personal assistance services due to restrictions of movement and physical distancing, lack of provision of access to information in national sign languages for deaf people). Such situation highlights the need to seek for human rights compliant alternatives to immigration detention of persons with disabilities.
7. Yet, to face the fact that immigration detention of persons with disabilities continues to occur, the draft general comment should make explicit references to the elements referred in this section, notably the need for humane conditions of detention, including the provision of reasonable accommodation.

### ALTERNATIVES TO IMMIGRATION DETENTION: SUPPORT AND ACCESS TO SERVICES AND SOCIAL PROTECTION SCHEMES FOR PERSONS WITH DISABILITIES

1. IDA welcomes the stress put on the obligation of States to develop human rights compliant alternatives to immigration detention which are less restrictive and invasive of migrants’ rights, and which have proven less costly and more effective for the State purpose of controlling migration, as well as more humane and less damaging towards migrants.[[75]](#endnote-75) As put by this Committee, alternative measures would allow migrants to “live freely in their communities.”[[76]](#endnote-76)
2. Persons with disabilities generally, however, face discrimination, exclusion and many barriers to the exercise of their rights and to live a fulfilling life in the community, which is aggravated by restrictions based on their migrant status. For example, in many contexts, migrants with disabilities have very restricted to no access to social protection measures, social services, health care, rehabilitation services and information in general, including in the national sign language. The CRPD Committee has called upon States to provide with “sufficient recovery time and basic rehabilitation”[[77]](#endnote-77) to migrants who acquire impairments while in transit. In the same vein, migrant parents of children with disabilities face more difficulties in accessing services and support than other citizens.[[78]](#endnote-78) Migrant children with disabilities may also face barriers to accessing social services and disability benefits, issue[[79]](#endnote-79) already addressed by this Committee.[[80]](#endnote-80)

1. Hence, alternatives to immigration detention need to be inclusive of persons with disabilities and consider key rights of persons with disabilities, whose implementation would allow them to live in the community, while immigration procedures are resolved. Articles 19 (living independently and being included in the community), 23 (right to privacy and to family life) 28 (social protection) of the CRPD become essential for migrants with disabilities.
2. Article 19 of the CRPD recognises the right of persons with disabilities to decide where and with whom to live on equal basis with others and to access support services (e.g. personal assistance services) and the State’s duty to ensure that mainstream community services and facilities are accessible and responsive to the needs of persons with disabilities.[[81]](#endnote-81) In regards to migrants, the CRPD Committee has recommended to address the lack of information on and the inaccessibility of independent living support services to migrants and refugees with disabilities.**[[82]](#endnote-82)** Implementing this right in the context of migrants with disabilities demands that **any housing arrangement provided to migrants and asylum seekers with disabilities does not become a form of institutionalisation nor segregation based on disability**.
3. Article 23 of the CRPD (respect for the home and the family) is very relevant for the situation of migrant parents with children with disabilities and of migrant parents with disabilities. Both should count with support measures, including social protection schemes, to fulfil their parental responsibilities, including in the context of migration. Both this Committee and the CRPD Committee have criticised a provision establishing the requisite of 20 years of residence in the country for migrants with disabilities to be entitled to the disability allowance.[[83]](#endnote-83)
4. Article 28 of the CRPD requires States to strive 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.[[84]](#endnote-84) While social protection systems still lack comprehensive coverage of persons with disabilities **and their disability related costs**, the situation of migrants with disabilities in an irregular situation can only be worse. The CRPD Committee has addressed their situation recommending States to put in place social protection programmes for persons with disabilities to improve the standard of living of persons with disabilities, including migrants.[[85]](#endnote-85) That Committee has also requested to repeal “the provisions that prevent persons with disabilities, including migrant workers and disabled children of migrant workers, from having equal access to social protection”[[86]](#endnote-86) and to restore the rights of persons with disabilities with a foreign national origin.[[87]](#endnote-87)
5. Immigration detention of persons with disabilities must not occur. Hence, human rights compliant alternatives must be in place. To be inclusive of migrants with disabilities and respect their rights, those measures need to be framed, budgeted and implemented in line with CRPD standards, not becoming new forms of institutionalisation or segregation, nor being dismissive of their requirements, in terms of services and disability related expenses.

### ENHANCING DATA COLLECTION ON MIGRANTS WITH DISABILITIES

1. Lack of systematised data disaggregated by disability prevents the development of migration policies compliant with the rights of migrants and asylum seekers with disabilities. This problem has been highlighted by this Committee before.**[[88]](#endnote-88)** However, the current draft general comment does not allude explicitly to migrants with disabilities and family members with disabilities in its paragraph 105. Given the complexities of data collection and disaggregation by disability and the lack of widespread practice regarding migrants, **IDA would appreciate an explicit reference to raise the attention data collection on persons with disabilities.**
2. In 2016, the European Union Fundamental Rights Agency stressed that “[t]here are **no systematic data** on the numbers of persons with disabilities among arrivals and the breakdown per type of disability.” **[[89]](#endnote-89)** It was only “anecdotal evidence” that allowed it to suggest that there was a great number of persons with psychosocial disabilities amongst these persons.[[90]](#endnote-90) Similarly, the CRPD Committee has expressed its concern on the lack of data on migrants with disabilities for other countries.**[[91]](#endnote-91)** The lack of data follows “the lack of procedures to identify migrants and refugees with disabilities,”[[92]](#endnote-92) and the fact “that [certain] impairments that are not immediately noticeable are often undetected.”[[93]](#endnote-93)
3. Article 31 of the CRPD (statistics and data collection) requires States “to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect” to the Convention. This includes data disaggregation by disability (Article 31, paragraph 2). The CRPD Committee has systematically suggested the use of the methodology ofthe Washington Group on Disability Statistics,[[94]](#endnote-94) which proposes different tools for different purposes. In this vein, the required attempts to improve identification and information systems must allow for disaggregation of data by disability. Only identifying and measuring disability in the context of migration, allows putting in place the adequate general and particular measures.

## RECOMMENDATIONS

1. In order to enhance the draft general comment no.5 in regards to persons with disabilities, IDA recommends this Committee to:
	1. Call on States to review the migration related legislations and repeal all legal provisions that discriminate based on disability, either directly or indirectly, preventing consequently their effects on immigration detention. In particular, IDA recommends including explicitly the non-discrimination concepts of reasonable accommodation and procedural accommodation, considering their scopes of application, as well as provisions providing for accessibility in all its dimensions and for all persons with disabilities.
	2. Review paragraph 23 of the draft general comment and remove the ground of detention (“posing a danger to himself or herself or to society”), inasmuch as it legitimises deprivation of liberty based on impairments, in contradiction of Article 14 of the CRPD; and call upon States to ensure grounds authorising immigration detention do not impact disproportionally on persons with disabilities in practice.
	3. Call on States explicitly to ensure access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations in immigration related procedures, be them judicial or administrative, the provision of legal assistance and consular assistance, and the training of public staff of the justice system on the requirements of persons with disabilities.
	4. Call on States to ensure proper conditions of detention to those persons with disabilities who might still be deprived of their liberty through immigration detention. Accessibility and reasonable accommodation must be ensured and training on the requirements of persons with disabilities should be provided to detention centres’ staff, including guards and medical doctors.
	5. Call on States to develop human rights compliant alternatives to immigration detention that implement the rights of persons with disabilities under Articles 19 (right to live independently and be included in the community), 23 (respect for the home and the family), and 28 (adequate standard of living and social protection) of the CRPD, including by repealing restrictions in accessing support and social services on the basis of migrant status.
	6. Call on States to develop information systems that ensure data collection and disaggregation by disability to account for the proportion and situation of migrant workers and relatives with disabilities and inform policy design and responses, in line with Article 31 of the CRPD. The use of the methodology ofthe Washington Group on Disability Statistics[[95]](#endnote-95) should be suggested for the design of data collection efforts.

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1. See, CMWF Committee, draft general comment 5, para. 52 [↑](#endnote-ref-1)
2. OHCHR, [A/HRC/43/27](https://undocs.org/en/A/HRC/43/27), para. 29 [↑](#endnote-ref-2)
3. Special Rapporteur on the rights of persons with disabilities, [A/HRC/40/54](https://undocs.org/en/A/HRC/40/54), para. 13 [↑](#endnote-ref-3)
4. Karen Soldatic et al. ‘[Nowhere to be found’: disabled refugees and asylum seekers within the Australian resettlement landscape](https://researchdirect.westernsydney.edu.au/islandora/object/uws%3A36812), Disability and the Global South 2015, p. 511 [↑](#endnote-ref-4)
5. See e.g. [CRPD/C/AUS/CO/2-3](https://tbinternet.ohchr.org/Treaties/CRPD/Shared%20Documents/AUS/CRPD_C_AUS_CO_2-3_37221_E.docx), para 35; and [CRPD/C/ECU/CO/1](http://daccess-ods.un.org/access.nsf/Get?Open&DS=CRPD/C/ECU/CO/1&Lang=E), para 32 [↑](#endnote-ref-5)
6. [CMW/C/GC/2](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/464/60/PDF/G1346460.pdf?OpenElement), para. 76 [↑](#endnote-ref-6)
7. [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 [↑](#endnote-ref-7)
8. [UN Global Study on Children Deprived of Liberty](https://childrendeprivedofliberty.info/wp-content/uploads/2020/09/Full-Global-Study_Revised-Version.pdf) (2019), p. 192 [↑](#endnote-ref-8)
9. See e.g., Human Rights Watch & ACLU, [Deportation By Default](https://www.aclu.org/files/assets/usdeportation0710_0.pdf): Mental Disability, Unfair Hearings, and Indefinite Detention in the Us Immigration System, 2010, p. 69 [↑](#endnote-ref-9)
10. Disability Rights California, Aquí No Hay Seguridad, [Informe Investigativo](https://www.disabilityrightsca.org/system/files/file-attachments/DRC_REPORT_ADELANTO-IMMIG_DETENTION-ACCESSIBLE_Spanish.pdf), 2019 [↑](#endnote-ref-10)
11. See OHCHR, [A/HRC/43/27](https://undocs.org/en/A/HRC/43/27), para. 18, stating that “fear-based reactions tend to increase the number of instances of arbitrary detention, the ratio of persons with psychosocial disabilities in prisons and violations of the right to due process, among others”; See also e.g. Human Rights Watch & ACLU (n. 9), p. 69 [↑](#endnote-ref-11)
12. Human Rights Watch & ACLU (n. 9), p. 17 [↑](#endnote-ref-12)
13. Human Rights Watch & ACLU (n. 9), p. 69 [↑](#endnote-ref-13)
14. CRPD Committee, Mr X vs Argentina (2014), [CRPD/C/11/D/8/2012](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhshZEsQpq2VmlaFuT3ws7ySG0tusxMhIs5xrQnpbfrqnciF%2fuTYUqOOdVccS0ag4xDCIN4N%2fPcQcZ6z5T0Ogd2QSApE7eucMYZZ2lt2GO3Y3wrqulsBn4x%2bVmx3QsaLKdk5cGgbnNRqIASq7R%2b4v9C6c%3d), para. 8.4 [↑](#endnote-ref-14)
15. [CMW/C/GC/2](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/464/60/PDF/G1346460.pdf?OpenElement), para. 46; See also, current draft general comment 5, para. 52 [↑](#endnote-ref-15)
16. M. von Werthem et. al., The impact of immigration detention on mental health, BMC Psychiatry, 2018, p. 16 [↑](#endnote-ref-16)
17. CIDH - [Informe sobre Inmigración en Estados Unidos](https://www.oas.org/es/cidh/migrantes/docs/pdf/migrantes2011.pdf): Detenciones y Debido Proceso, 2010, para. 340 [↑](#endnote-ref-17)
18. [A/HRC/43/49](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session43/Documents/A_HRC_43_49_AdvanceEditedVersion.docx), para. 57 [↑](#endnote-ref-18)
19. See e.g. [CRPD/C/AUS/CO/2-3](https://tbinternet.ohchr.org/Treaties/CRPD/Shared%20Documents/AUS/CRPD_C_AUS_CO_2-3_37221_E.docx), para 35; See also Migration Act 1958, available at <http://www.austlii.edu.au/au/legis/cth/consol_act/ma1958118/>, and [CRPD/C/ECU/CO/1](http://daccess-ods.un.org/access.nsf/Get?Open&DS=CRPD/C/ECU/CO/1&Lang=E), para 32 [↑](#endnote-ref-19)
20. [Enabling Australia, Inquiry into the Migration Treatment of Disability](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=mig/disability/report.htm), Joint Standing Committee on Migration, The Parliament of the Commonwealth of Australia, 2010 Canberra, paras. 3,10 [↑](#endnote-ref-20)
21. 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 [↑](#endnote-ref-21)
22. E.g. [*Hilewitz v. Canada* (Minister of Citizenship and Immigration); De Jong v. Canada (Minister of Citizenship and Immigration), 2005 SCC 57, [2005] 2 SCR 706](http://scc.lexum.org/en/2005/2005scc57/2005scc57.html) [↑](#endnote-ref-22)
23. UNHCR, ‘Submission No 82 to the Joint Standing Committee on Migration Inquiry into the Migration Treatment of People with a Disability: No Right to Discriminate’, 2009, 23 [↑](#endnote-ref-23)
24. 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 [↑](#endnote-ref-24)
25. See [CRPD/C/KOR/CO/1](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsoxt94eoN8sNkD3vNzr%2bPXZtiTUZC2xkNs96PtQyIfVry6P%2b8CiWN9mJ%2fPvpi4kybwosx%2fNqU54wUxrhhxCOpHHjzBAqDiPeX63%2f00rhLm28), para. 36 [↑](#endnote-ref-25)
26. See [CRPD/C/MEX/CO/1](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhskE4iNFvKWCCGr4TiTUdbhp1hRBVKZKZHlLwRNlRdjmM5HXlP6Xo1vIipxOztb9bY7YaCPATa6I3Og%2fSZcx%2bDeRsTabqXSgSqMmz%2fHMR02Oi), paras. 39 and 40(b) [↑](#endnote-ref-26)
27. 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 [↑](#endnote-ref-27)
28. 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 [↑](#endnote-ref-28)
29. [CMW/C/GC/3-CRC/C/GC/22](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CMW%2fC%2fGC%2f3&Lang=en), paras. 21, 25 and 42 [↑](#endnote-ref-29)
30. [CMW/C/GC/2](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/464/60/PDF/G1346460.pdf?OpenElement), para. 76 [↑](#endnote-ref-30)
31. [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 [↑](#endnote-ref-31)
32. [UN Global Study on Children Deprived of Liberty](https://childrendeprivedofliberty.info/wp-content/uploads/2020/09/Full-Global-Study_Revised-Version.pdf) (2019), p. 192 [↑](#endnote-ref-32)
33. See Human Rights Watch & ACLU (n. 9), p. 72 [↑](#endnote-ref-33)
34. [CRPD/C/GC/6](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/6&Lang=en), paras. 23 to 27 [↑](#endnote-ref-34)
35. Special Rapporteur on the Rights of Persons with disabilities, CRPD Committee and UN Special Envoy on Disability and Accessibility, *International Principles and Guidelines on access to justice for persons with disabilities*, Principle 3, pp. 7, 32 [↑](#endnote-ref-35)
36. [CRPD/C/GC/6](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/6&Lang=en), para. 25(d) [↑](#endnote-ref-36)
37. Special Rapporteur on the Rights of Persons with disabilities et al (n. 35), Principle 3, p. 32 [↑](#endnote-ref-37)
38. [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. 25 [↑](#endnote-ref-38)
39. See [CRPD/C/SYC/CO/1](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fDEU%2fCO%2f1&Lang=en), para. 30 [↑](#endnote-ref-39)
40. [CRPD/C/GC/2](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/2&Lang=en), para. 1 [↑](#endnote-ref-40)
41. [CRPD/C/DEU/CO/1](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fDEU%2fCO%2f1&Lang=en), para. 40 [↑](#endnote-ref-41)
42. [CRPD/C/DEU/CO/1](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fDEU%2fCO%2f1&Lang=en), para. 40 [↑](#endnote-ref-42)
43. Seck, J. [Deaf & In Detention: Challenges to Outreach, Advocacy & Support](https://imm-print.com/deaf-in-detention-challenges-to-outreach-advocacy-support-bed693de35f2/), *IMMPRINT 2018* [↑](#endnote-ref-43)
44. Sivunen, N. An Ethnographic Study of Deaf Refugees Seeking Asylum in Finland. Societies 2019, 9, 2. [↑](#endnote-ref-44)
45. Olsen, E. T. (2019). Cooperation as coping mechanism when interpreting between deaf refugees and hearing professionals. International Journal of Interpreter Education, 11(2), 16-27. [↑](#endnote-ref-45)
46. See e.g., Human Rights Watch & ACLU (n. 9), p. 69. [↑](#endnote-ref-46)
47. Disability Rights California (n. 10) [↑](#endnote-ref-47)
48. See OHCHR, [A/HRC/43/27](https://undocs.org/en/A/HRC/43/27), para. 18, stating that “fear-based reactions tend to increase the number of instances of arbitrary detention, the ratio of persons with psychosocial disabilities in prisons and violations of the right to due process, among others”. See also Human Rights Watch & ACLU (n. 9), p. 69 [↑](#endnote-ref-48)
49. Human Rights Watch & ACLU (n. 9), p. 17 [↑](#endnote-ref-49)
50. Human Rights Watch & ACLU (n. 9), p. 69 [↑](#endnote-ref-50)
51. Or “mental health conditions”. [↑](#endnote-ref-51)
52. University of Toronto Faculty of Law, [“We Have No Rights” Arbitrary imprisonment and cruel treatment of migrants with mental health issues in Canada](https://tspace.library.utoronto.ca/bitstream/1807/80128/1/Gros%20and%20Groll_2015_%20We%20Have%20No%20Rights.pdf), (2015), pp. 94; It also highlights the ground “disruptive behaviour” as one justifying the practice of transferring persons with psychosocial disabilities to more secure facilities [↑](#endnote-ref-52)
53. CRPD Committee, *Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities*, 2015, para. 6 [↑](#endnote-ref-53)
54. See, [A/HRC/40/54](https://undocs.org/en/A/HRC/40/54), para. 85 [↑](#endnote-ref-54)
55. Mark C. Weber, [Immigration and Disability in the United States and Canada](https://works.bepress.com/mark_weber/18/), (2015) pp. 28 [↑](#endnote-ref-55)
56. Human Rights Watch & ACLU (n. 9), p. 2 [↑](#endnote-ref-56)
57. See e.g., Michael AddaneyI et. al., [Legal capacity of and access to justice for refugees with disabilities in Africa](http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2225-71602019000100020), 2019 [↑](#endnote-ref-57)
58. See e.g. [CRPD/C/AUS/CO/2-3](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/AUS/CO/2-3&Lang=En), paras. 35 and 36 [↑](#endnote-ref-58)
59. See e.g. [CRPD/C/KWT/CO/1](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/KWT/CO/1&Lang=En), paras. 36 and 37 [↑](#endnote-ref-59)
60. Special Rapporteur on the Rights of Persons with disabilities et al (n. 35), Principle 3, p. 32 [↑](#endnote-ref-60)
61. [CRPD/C/GC/6](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/6&Lang=en), paras. 25(d) [↑](#endnote-ref-61)
62. Special Rapporteur on the Rights of Persons with disabilities et al (n. 35), Principle 3, p. 32 [↑](#endnote-ref-62)
63. [A/HRC/40/54](https://undocs.org/en/A/HRC/40/54), para. 24 [↑](#endnote-ref-63)
64. Sivunen, N. An Ethnographic Study of Deaf Refugees Seeking Asylum in Finland. Societies 2019, 9, 2. [↑](#endnote-ref-64)
65. Seck, J. [Deaf & In Detention: Challenges to Outreach, Advocacy & Support](https://imm-print.com/deaf-in-detention-challenges-to-outreach-advocacy-support-bed693de35f2/), *IMMPRINT 2018* (see case of Abreham Zemedageghu, a deaf immigrant from Ethiopia) [↑](#endnote-ref-65)
66. NEDA (National Ethnic Disability Alliance), [*The Plight of People Living with Disabilities within Australian Immigration Detention: Demonised, Detained and Disowned*](http://www.aph.gov.au/~/media/Committees/Senate/committee/ndis_ctte/Canberra%20Tabled%20Docs/NEDA%20Report_People%20living%20with%20Disability%20in%20Immigration%20Detention.pdf?la=en), (2015), p. 26. [↑](#endnote-ref-66)
67. CRPD Committee, Mr X vs Argentina (2014), [CRPD/C/11/D/8/2012](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhshZEsQpq2VmlaFuT3ws7ySG0tusxMhIs5xrQnpbfrqnciF%2fuTYUqOOdVccS0ag4xDCIN4N%2fPcQcZ6z5T0Ogd2QSApE7eucMYZZ2lt2GO3Y3wrqulsBn4x%2bVmx3QsaLKdk5cGgbnNRqIASq7R%2b4v9C6c%3d), para. 8.4 and, notably, 8.7 [↑](#endnote-ref-67)
68. [CMW/C/GC/2](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/464/60/PDF/G1346460.pdf?OpenElement), para. 46 [↑](#endnote-ref-68)
69. [CMW/C/GC/2](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/464/60/PDF/G1346460.pdf?OpenElement), para. 46 [↑](#endnote-ref-69)
70. See e.g. [CRPD/C/ARE/CO/1](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhspZQ2sppBOANJSxHHwrsEJZ4a%2bF%2bFWSbDTUGUYYZeFghBZozoBf0FbDFMU6tzX3CaoEoWWa9un1ajOd5y69IEF8T5%2bIBZljFf0%2bMXTPuQmCh), paras. 35 and 36; [CRPD/C/QAT/CO/1](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fQAT%2fCO%2f1&Lang=en), paras. 35 and 36 [↑](#endnote-ref-70)
71. See e.g. [CRPD/C/AUS/CO/2-3](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/AUS/CO/2-3&Lang=En), paras. 35 and 36 [↑](#endnote-ref-71)
72. See e.g. [CRPD/C/MEX/CO/1](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhskE4iNFvKWCCGr4TiTUdbhp1hRBVKZKZHlLwRNlRdjmM5HXlP6Xo1vIipxOztb9bY7YaCPATa6I3Og%2fSZcx%2bDeRsTabqXSgSqMmz%2fHMR02Oi), paras. 39 and 40 [↑](#endnote-ref-72)
73. CIDH(n. 17), para. 340 [↑](#endnote-ref-73)
74. Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, [A/HRC/43/49](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session43/Documents/A_HRC_43_49_AdvanceEditedVersion.docx), para. 57 [↑](#endnote-ref-74)
75. See, CMWF, draft general comment 5, para. 61 [↑](#endnote-ref-75)
76. See, CMWF, draft general comment 5, para. 62 [↑](#endnote-ref-76)
77. [CRPD/C/MEX/CO/1](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhskE4iNFvKWCCGr4TiTUdbhp1hRBVKZKZHlLwRNlRdjmM5HXlP6Xo1vIipxOztb9bY7YaCPATa6I3Og%2fSZcx%2bDeRsTabqXSgSqMmz%2fHMR02Oi), para 40(c) [↑](#endnote-ref-77)
78. 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 [↑](#endnote-ref-78)
79. Supreme Court of Argentina, decision *Reyes Aguilera, D v National Government*, 7 September 2007 [↑](#endnote-ref-79)
80. [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 [↑](#endnote-ref-80)
81. See [CRPD/C/GC/5](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/5&Lang=en) [↑](#endnote-ref-81)
82. See e.g. [CRPD/C/NER/CO/1](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fNER%2fCO%2f1&Lang=en), paras. 31 and 32(a); [CRPD/C/SEN/CO/1](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fSEN%2fCO%2f1&Lang=en), paras. 33 and 34; and See e.g. [CRPD/C/OMN/CO/1](http://tbinternet.ohchr.org/Treaties/CRPD/Shared%20Documents/OMN/CRPD_C_OMN_CO_1_30557_E.docx), paras. 35 and 36 [↑](#endnote-ref-82)
83. See [CMW/C/ARG/CO/1](http://www2.ohchr.org/english/bodies/cmw/docs/CMW.C.ARG.CO.1_en.pdf), Paras. 4 and 30, and [CRPD/C/ARG/CO/1](http://www.ohchr.org/Documents/HRBodies/CRPD/8thSession/CRPD-C-ARG-CO-1_en.doc), para. 46 [↑](#endnote-ref-83)
84. See [A/70/297](https://undocs.org/en/A/70/297), paras. 29-33 [↑](#endnote-ref-84)
85. 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) [↑](#endnote-ref-85)
86. See [CRPD/C/ARG/CO/1](http://www.ohchr.org/Documents/HRBodies/CRPD/8thSession/CRPD-C-ARG-CO-1_en.doc), para. 46 [↑](#endnote-ref-86)
87. 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 [↑](#endnote-ref-87)
88. See [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. 16 [↑](#endnote-ref-88)
89. FRA - [Monthly data collection on the current migration situation in the EU](https://fra.europa.eu/sites/default/files/fra_uploads/fra-august-2016-monthly-migration-disability-focus_en.pdf.), 2016 monthly report 1–31 July 2016 [↑](#endnote-ref-89)
90. FRA (n. 89)*,* stating: “Anecdotal evidence suggests that mental health issues, and notably post-traumatic stress disorder (PTSD), are particularly prevalent, tied both to traumas experienced in the country of origin and on the journey […]” [↑](#endnote-ref-90)
91. See e.g. [CRPD/C/ARE/CO/1](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhspZQ2sppBOANJSxHHwrsEJZ4a%2bF%2bFWSbDTUGUYYZeFghBZozoBf0FbDFMU6tzX3CaoEoWWa9un1ajOd5y69IEF8T5%2bIBZljFf0%2bMXTPuQmCh), paras. 35 and 36 [↑](#endnote-ref-91)
92. FRA (n. 89) [↑](#endnote-ref-92)
93. FRA (n. 89) [↑](#endnote-ref-93)
94. See e.g. [CRPD/C/ALB/CO/1](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/ALB/CO/1&Lang=En), para. 52(b). These tools have been tested also in the context of humanitarian action. See e.g. <https://humanity-inclusion.org.uk/en/projects/disability-data-in-humanitarian-action> [↑](#endnote-ref-94)
95. See e.g. [CRPD/C/ALB/CO/1](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/ALB/CO/1&Lang=En), para. 52(b). These tools have been tested also in the context of humanitarian action. See e.g. <https://humanity-inclusion.org.uk/en/projects/disability-data-in-humanitarian-action> [↑](#endnote-ref-95)