

# Children, Migration and the Right to Health

## Practical strategies to ensure health and good protection outcomes

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# *The International Human Right to Health*

- The International Covenant on Economic, Social and Cultural Rights (ICESCR) enshrines in Article 12:

“the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”

- This sets a baseline for minimum acceptable standards of living in the area of health which flows inevitably to other human rights essential to survival including:
  - The rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement

# Children: Convention on the Rights of the Child (CRC)

- CRC most subscribed of all human rights conventions
- The CRC now has three optional protocols covering:
  - Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2002);
  - Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2002);
  - Optional Protocol to the Convention on the Rights of the Child on a communications procedure (2014).
- Supplemented by the traditional human rights treaties + the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption (1995).

# The Convention on the Rights of the Child (CRC)

- Super human rights convention for children
- Article 12 CESCR reflected in Article 24(1):
  - States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

# Capabilities and the CRC

- The CRC is focused on children as *autonomous rights bearers*.
- Article 3 The notion of best interests underpins everything as a ‘right, an interest and a rule of procedure’
- Article 12 makes it clear that children have a right to participate in decision making
- CRC represents the first move away from a **bio-medical approach** to health

# CRC

- No derogation clauses for emergencies
- Article 3: Best interests of the Child
- Article 7: Child's right to an identity and nationality in the form of birth registration
- Article 19: Obliges states parties to protect children against all forms of violence, abuse and neglect, negligent treatment, maltreatment or exploitation, including sexual abuse.
- Article 22: Protection of refugee children
- Article 38: requires states parties 'to respect and to ensure respect' for IHL applicable in armed conflicts which are relevant to children. States parties must ensure 'protection and care of children who are affected by an armed conflict', and avoid using children as soldiers

# Convention on the Rights of Persons with Disabilities (2006) (CRPD)

## **Article 1 – Purpose**

“...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.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which *in interaction with various barriers* may hinder their full and effective participation in society on an equal basis with others”

# CRPD

- No derogation clause for emergencies
- Article 11 of the CRPD requires that States Parties to:

Take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.

# CRPD

- Articles 25 and 26 of the CRPD adopt and reinforce the ICESCR provisions, *affirming* in all persons with disabilities the right to enjoy the highest attainable standard of physical and mental health.

# Capabilities I: Seeing the migrant child

- Identifying need and vulnerability
- How do we identify vulnerability/ trafficked children
- Are they with family?
- Travelling solo?
- Do they have a disability or special needs?



# Washington Group on Disability statistics

## **Washington Group Short Question Set**

1. Do you have difficulty seeing, even if wearing glasses?
2. Do you have difficulty hearing, even when using a hearing aid?
3. Do you have difficulty walking or climbing steps?
4. Do you have difficulty remembering or concentrating?
5. Do you have difficulty with self-care, such as washing all over or dressing?
6. Using your usual (customary) language, do you have difficulty communicating (for example, understanding or being understood by others)?

**Appendix A  
NEEDS AND WELFARE QUESTIONNAIRE**

Function	No difficulty	Some difficulty but have assistance	I need help	Cannot do at all/ Overwhelming problem
<b>Sensory</b>				
1 Seeing/eyesight				
2 Hearing				
3 Mobility - walking				
4 Mobility – fine motor				
<b>Communication</b>				
5 Native Language				
6 English language				
7 Language for deaf - signing				
8 Cognition (remembering)				
<b>Welfare</b>				
9 Feelings (anxiety/ depression)				
10 Pain				
11 Fatigue/ tiredness				
12 Illness				
<b>Access to support</b>				
13 Housing				
14 Health care				
15 Food				
16 Education				
17 Employment				
18 Income				

# Capabilities II: Hearing the migrant child

- How do you determine the capacity of a child
- To be interviewed
- To give evidence
- How do you win the trust of a child
- How do you accommodate children who are young?, disabled?
- What is cultural competence

# Capabilities III: Substantive care

- What are the risk factors?
  - Detention
  - Lethal hopelessness
- What services?
- What expertise is out there?

# Taking up the fight

- Strategic litigation vs Public advocacy
  - What is most effective?
- Migrant Children in our lives
  - The importance of education
  - Awareness of how children are affected by immigration processes



Community-run learning centre  
KL, Malaysia













