

Diplomacy Training Program

Refugee and Asylum Seeking Children: Australia's Obligations under International Law and UN oversight mechanisms

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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.

International oversight mechanisms

- CRC Committee – state parties reviewed every 4 years (in theory)
- Optional Protocols allow individuals to bring complaints re state practice
- CRPD Committee – now has reports and jurisprudence on Australia
- Human Rights Committee – jurisprudence most important function
- Human Rights Council – Universal Periodic Review

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

- 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

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

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

- Modelled on the CRC and makes special mention of children with disabilities









