

# **At the Intersection of Childhood and Disability: Improving Human Rights Protection for Disabled Children**

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## **Introduction**

Disabled children are amongst the most marginalised individuals. As they find themselves at the intersection of childhood and disability, they experience acute forms of marginalization and are surrounded by extremely negative stereotypes. This chapter examines how to enhance human rights protection for disabled children by the aid of human rights treaties using as an example their right to education.

Disabled children can call upon two human rights treaties, namely the Convention on Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD).<sup>1</sup> Both human rights treaties not only have some resemblances but also focus extensively on disabled children. While CRC mentions disability for the first time ever in a human rights treaty, the CRPD has a ‘twin-track’ approach when it comes to childhood with both provisions on disabled children and provisions that take into account age. Disabled children are probably the group of people most considered in several human rights treaties at once. Despite this level of consideration, the intersection of childhood and age remains scantily addressed in the field of international human rights law.

The CRPD and CRC approach disabled children differently. Both of them view these children predominantly from the perspective of a single identity, that is, as children first or as disabled people first. This chapter suggests that a joint reading of them can help fill the gap left by each of them individually. It researches how international human rights law in fact operates when both disability and age intersect with each other. It therefore follows the suggestion by de Silva de Alwis that disabled women and children ‘are best protected when the CRPD is read together with the panoply of guarantees set out in other human rights treaties’ (de Silva de Alwis 2009: 295).

The article moreover builds upon the insights derived from intersectionality, which postulates that discrimination on the basis of multiple grounds can lead to a unique kind of discrimination, termed ‘intersectional discrimination’. This term was coined by Crenshaw in two seminal articles, where she explained why race and gender should be treated together rather than separately, if the specific disadvantages suffered by Black women were to be understood (Crenshaw 1989, 1991). She demonstrated why single axis discrimination is problematic, since those specific disadvantages are greater than simply the sum of their parts. While scholarship on the subject matter in the field of international human rights law has likewise tended to concentrate on race and gender, it has received much less attention with regard to disability.

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<sup>1</sup> Convention on the Rights of the Child 1989, 1577 UNTS 3; Convention on the Rights of Persons with Disabilities 2006, 46 ILM 443.

The chapter proceeds through looking at the provisions of the CRC and CRPD, taking into account their historical background, and evaluating the recommendations of their corresponding treaty bodies, namely the Committee on the Rights of the Child (CRC Committee) and the Committee on the Rights of Persons with Disabilities (CRPD Committee). It thus examines how to mitigate their respective weaknesses and to take the most out of both human rights treaties. The chapter also highlights the utility of such an intersectional approach through an analysis of the right of disabled children to education. It explains how inclusive education has gradually become the goal for the education of disabled children in international human rights law. While this goal has been endorsed in the CRPD, the CRC still contains a number of elements that remain essential with a view to bringing about inclusion.

The chapter is divided into two sections. The first section looks at the various kinds of prejudice that can result from the intersection of childhood and disability. The second section investigates how both the CRC and the CRPD protect disabled children and how the proposed joint reading can provide enhanced human rights protection for disabled children. It goes on by examining what remedies can be found for fulfilling their right to education through applying the two human rights treaties together.

## **1. Disabled Children**

Disabled children are at the crossroad of two identities that taken together reinforce their marginalized position in society. While vulnerability due to childhood is aggravated by another layer of prejudice for being disabled, young age leads to an exacerbation of the image of disabled people as dependent and inferior. Disabled children therefore face disadvantages that are higher than those faced by both children and disabled people when added up. As they are characterized by childhood and disability, they are an apt example of how intersectionality can have an impact on the particular experience of human rights.

Disabled children not only face a high level of rejection but are also victims of different forms of violence as well as punishment in order to modify their behaviour. Being perceived to bring shame to their families, they are frequently separated from their parents and placed in institutions where they live in bad conditions (UNICEF 2013). Their parents may likewise experience disadvantages, as disabled children are particularly dependent on them. As a result of increased care responsibilities, they have often little or no respite time and may have difficulties in coping with their own life (Inclusion Europe 2011). Facing challenges in combining parenthood and employment, families with disabled children often live in poverty. The parents themselves may be subject to discrimination on the basis of disability, a phenomenon called ‘discrimination by association’.

Disability has its own specificity. It is a diverse characteristic that results from the interaction of different kinds of impairments with physical and social barriers embedded in society. Not only there are many kinds of impairments, but considerable variations also exist within certain types of disabilities (Garland-Thomson 2009). Disabled people, therefore, represent a largely heterogeneous group (Siebers 2008). Whatever is done in order to distinguish them, it is impossible to capture the phenomenon as a whole.

This heterogeneity must be put into further perspective, as disabled people (as any group of people) can simultaneously belong to other groups, such as racial minorities, women and children. Any additional characteristic alters the way in which an individual lives a particular

kind of impairment. The race-, gender-, age- or other dimension it brings with it may impact differently upon this individual in terms of human rights (de Silva de Alwis 2009).

A notable example is the lack of education for disabled children (which will be discussed in the next section). In many of parts of the world, these children simply cannot go to school because of their disability (UNICEF 2013). In Western democracies, they are often referred to so-called 'special schools', which generally offer them lower standards of education (UNICEF Innocenti Research Centre 2007). Although the importance of inclusive education has been recognized at the international level, there appears to be no real evolution in the situation on the ground (Moore and Slee 2012). While most State Parties have changed their domestic legislation so that disabled children can enrol in regular schools, there are no or limited resources to make it work.

Barriers are hard to overcome both in low-income countries, where resources are an ongoing challenge, and in high-income countries, where disabled children continue to be segregated. The support provided is either missing or inadequate compared to those children's needs (Inclusion International 2009). Teachers are not equipped to deal with issues related to disability and get considerable pressure to meet targets (UNICEF 2013). More generally, these children are seen as unable to fit into the general education system. There is a belief that they may compromise the quality of education, a view exacerbated by the fact that standard tests to measure educational attainment are inappropriate for the purpose of inclusive education (Slee 2011). As a result, disabled children may feel unaccepted by regular schools and are sometimes subject to harassment and bullying (Rioux and Pinto 2010).

While education systems can exert pressure on some groups of pupils, it goes to the extremes with those who are disabled, especially in a landscape characterized by competition and self-entrepreneurship. The exclusion of disabled children from education highlights these education systems' inadequacy in meeting the varied needs of such children. This inadequacy is usually attributed to those children's lack of capacity or simply the costs involved in creating more convenient settings. It is however the educational environment that leads to the exclusion of disabled children from education by imposing restrictions on certain groups of pupils, but States consider that the barriers emerge because these children are inherently less capable than others. Rather than removing obstacles to inclusive education, they opt then for the segregation of disabled children.

## **2. Human Rights Protection**

### **2.1. The CRC and CRPD**

International human rights law recognized more explicitly over time the human rights of certain historically marginalized individuals. Following the adoption of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>2</sup> the international human rights framework developed towards the adoption of several group-specific human rights treaties. Thus, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the

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<sup>2</sup> International Covenant on Civil and Political Rights 1966, 999 UNTS 171; International Covenant on Economic, Social and Cultural Rights 1966, 993 UNTS 3. With the Universal Declaration of Human Rights, the ICCPR and ICESCR are said to form the International Bill of Human Rights.

Elimination of All Forms of Discrimination against Women (CEDAW), the CRC and, finally, the CRPD were drafted to provide human rights protection for racial minorities, women, children and disabled people.<sup>3</sup>

Initially, the prohibition of discrimination had the role of reaching out to these group of peoples, and therefore it served as a springboard for the adoption of the afore-mentioned human rights treaties. The latter have broadened this prohibition, but they have done so divergently. The ICERD and CEDAW, which came first, elaborate on race and gender discrimination in provisions addressing civil and political rights and economic and social rights (even though CEDAW further provides for ‘temporary special measures’ to achieve *de facto* equality for women).<sup>4</sup> The CRC and CRPD, which came later, proclaim a full catalogue of rights relating specifically to children and disabled people. They are therefore fully-fleshed human rights treaties which go much further than just prohibiting discrimination on the basis of age and disability.

Disabled children fall within the remit of both the CRC and the CRPD. Finding themselves at the crossroad of childhood and disability, they get human rights protection from two fully-fleshed human rights treaties that chronologically follow each other.

As the CRPD largely borrowed and expanded upon the CRC, both human rights treaties have several common features. The CRC bridged civil and political as well as economic and social rights (Brett 2009), a move that was replicated in the CRPD (de Beco 2019). Unlike the ICERD and CEDAW, the CRC prohibits discrimination on the basis of a non-exhaustive number of grounds,<sup>5</sup> while the CRPD also prohibits discrimination ‘on all grounds’.<sup>6</sup> The CRC consists of four general principles which were identified the CRC Committee, including the principle of the ‘best interests’ of the child and respect for children’s views about all matters affecting them.<sup>7</sup> The CRPD has similarly a number of general principles, which are not only more numerous but also enumerated in the human rights treaty itself.<sup>8</sup> Noteworthy is also the fact that the CRPD has been ratified at an extremely rapid pace with 182 parties (at the time of writing),<sup>9</sup> while the CRC has achieved almost universal ratification, that is, all countries except one (namely the US).<sup>10</sup>

Both human rights treaties give disabled children a lot of consideration. Despite this high level of consideration, disabled children fall between two stools. The reason is that both the CRC and the CRPD view these children predominantly from the perspective of a single identity, that is, as children first or as disabled people first. Disabled children are protected both by a human rights treaty for children and by a human rights treaty for disabled people, but they are actually characterized by both childhood *and* disability. The question is: How is this intersection addressed under international human rights law?

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<sup>3</sup> International Convention on the Elimination of All Forms of Racial Discrimination 1965, 660 UNTS 195; Convention on the Elimination of All Forms of Discrimination against Women 1979, 1249 UNTS 13.

<sup>4</sup> Article 4(1), CEDAW.

<sup>5</sup> Article 2(1), CRC.

<sup>6</sup> Article 5(2), CRPD. The Preamble, which also refers to ‘multiple or aggravated forms of discrimination’, lists an non-exhaustive number of grounds (Preamble(p), CRPD).

<sup>7</sup> Article 3 and 12, CRC. The two other ones are: non-discrimination (Article 2) and the right to life, survival and development (Article 6).

<sup>8</sup> Article 3, CRPD.

<sup>9</sup> [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=en).

<sup>10</sup> [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&clang=en).

The CRC provides for a whole range of rights attached to children. It promotes their wellbeing and stresses the role of families in the advancement of the child's rights. The Convention draws particular attention to disabled children. It not only lists disability in the prohibited grounds of its general non-discrimination clause (for the first time ever in a human rights treaty),<sup>11</sup> but it also includes a separate article on disabled children.<sup>12</sup> The CRC Committee has been particularly sensitive to issues related to disability and, shortly before the CRPD's adoption, issued a general comment on the situation of disabled children (CRC Committee 2007), which remains a point of reference on the rights of disabled children in international human rights law.

The CRC has nonetheless some drawbacks with regard to disability. It aims more at protecting disabled children than guaranteeing their inclusion in society (Sabatello 2013). Its separate article on disabled children mentions 'special care' as well as 'subject to available resources ... assistance for which application is made' and 'assistance ... free of charge, whenever possible'.<sup>13</sup> This wording reflects the welfarist approach to dealing with disability, which has now been revoked by the CRPD. While it can be regarded as 'the dominant language of the time' (Byrne 2019: 871), it shows the way that was still ahead to regard disability as a human rights issue. The CRC is quite weak regarding disabled children in comparison with the standards it provides for children in general. It is arguably underpinned by the medical model of disability, which sees disability as a problem with the individual rather than one related to society.

Notwithstanding its limitations, the CRC has provisions that to some extent compensates for such drawbacks. Its separate article on disabled children provides that the disabled child should live in 'conditions which ensure ... the child's active participation in the community',<sup>14</sup> thereby showing an inclination towards inclusiveness. Other provisions that do not explicitly refer to disability can also be called upon towards this end (Quinn and Degener 2002), including the requirement to 'provide material assistance and support programmes' in order to protect children's right to an adequate standard of living.<sup>15</sup> The CRC Committee, moreover, slowly but surely moved away from the medical model of disability, especially after issuing its general comment on the situation of disabled children (Byrne 2019). In this general comment, it clarified (concerning its separate article on disabled children) that '[t]he core message ... is that children with disabilities should be included in the society' (CRC Committee 2007: para. 11). It has also made recommendations on matters especially affecting such children, although not always so in a consistent manner (Skarstad and Stein 2018).

The CRPD's purpose is to 'promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities'.<sup>16</sup> It provides that disabled people are rights-holders entitled to exercise their rights with respect for their autonomy. Underscoring the 'various barriers [which] may hinder their full and effective participation in society', the Convention is viewed as inspired by the social model of disability (Kayess 2008; Bartlett 2012; Harpur 2012). In contrast to the medical model, the social model

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<sup>11</sup> Article 2, CRC.

<sup>12</sup> Article 23, CRC. Article 23(1) of the CRC provides that the disabled child must 'enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community'.

<sup>13</sup> Article 23(2) and (3), CRC.

<sup>14</sup> Article 23(1), CRC.

<sup>15</sup> Article 27(3), CRC.

<sup>16</sup> Article 1, CRPD.

considers that disability is a consequence of how society is actually organized, something to be distinguished from the notion of impairment (Oliver 2009).

The CRPD also devotes much attention to disabled children. Like the CRC, it not only has a separate article on disabled children,<sup>17</sup> but also it contains several articles that address issues related to age.<sup>18</sup> The CRPD thus has a so-called ‘twin-track’ approach when it comes to childhood, that is, provisions on disabled children as such as well as provisions that take into account age. Its separate article on disabled children reiterates some of the CRC’s general principles. It further adds that they should ‘be provided with disability and age-appropriate assistance’ to enjoy their right to express their views about all matters affecting them.<sup>19</sup> While this article was nearly left out for the sake of consistency during the negotiation of the CRPD (Quinn 2009), it actually maintains and builds upon the gains of the CRC.

However, the CRPD approaches disabled children in a way that does not fully contemplate the life experience of disabled children. While it protects such children against separation from their parents,<sup>20</sup> it does not consider the role of families with disabled children (Rimmerman 2015). One of the reasons is the fear that such families would exploit these children and jeopardise their autonomy. While there can be conflicts of interest between them, this fails to acknowledge that support to the family itself is key to securing life opportunities for disabled children. The CRPD revolves essentially around the individual, regarding the family more as an obstacle to participation in society than a channel towards disabled people’s self-realization. The CRPD Committee yet pointed to the need to ‘provide adequate support services to family carers so they can in turn support their child ... to live independently’ (CRPD Committee 2017: para. 67).

As both the CRC and CRPD are each in their own way incomplete regarding disabled children, there is a need not only to investigate the synergy between both human rights treaties but also to explore whether it is possible have their respective perspective combined. While the CRC paved the way with its focus on disability as never done before in the field of international human rights law, the CRPD’s gives a prominent place to childhood as testified by its ‘twin-track’ approach. Given that the two human rights treaties draw particular attention to disabled children, joint reading of these human rights treaties might help fill the gap left by each of them individually. While both of them serve disabled children’s interests, the human rights protection they provide to these children is partly lost without such a joint reading (Landsdown 2014). Both the CRC and CRPD indeed have a single identity as perspective in mind that predominates the way in which they approach such children, which is why they need to be applied together.

On the one hand, the CRC provides for ‘assistance to parents ... in the performance of their child-rearing responsibilities’.<sup>21</sup> Its consideration of parental involvement speaks to the reality that disabled children mostly rely on their families for their development and that these families must often cope with additional costs (World Health Organization and World Bank 2011). Managing disabilities remains a responsibility that rests on parents’ shoulders, who receive little assistance. Families with disabled children not only require information on how to cope

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<sup>17</sup> Articles 7, CRPD.

<sup>18</sup> Articles 8, 13, 16 and 23, CRPD.

<sup>19</sup> Article 7(3), CRPD.

<sup>20</sup> Article 23(4), CRPD.

<sup>21</sup> Articles 18(2), CRC. Article 23(2) of the CRC also refers to and assistance to ‘those responsible for his or her care’.

with a particular disability but also struggle for access to the various services that are needed for supporting their children. Because of their personal struggles and reduced employment opportunities, parents generally face chronic hardship (Rimmerman 2015). They may have to sacrifice full-time employment in order to find time for their children while at the same time facing increased costs due to the particular needs of these very children. The CRC recognizes the dependency of those children, which does not necessarily hinders asserting their autonomy.

On the other hand, the CRPD's objective is to foster participation in society,<sup>22</sup> which is particularly important when it comes to disabled children who have been marginalized for long time. It calls for relinquishing the kind of 'separate-but-equal' status that has come to epitomize human rights protection for disabled people. It focuses on inclusion and the promotion of independence. The CRPD thus upholds the view that disabled children are rights-holders, guaranteeing the enforcement of their rights via access to justice 'through the provision of procedural and age-appropriate accommodations'.<sup>23</sup> Its sweeping scope can be seen in its affirmation that disabled people 'include those who have long-term physical, mental, intellectual or sensory impairments',<sup>24</sup> while its Preamble recognises that disability is 'an evolving concept'.<sup>25</sup> The Convention therefore has a dynamic approach to understanding disability, whereas the CRC provides a static definition of a child based on purely biological or medical terms.<sup>26</sup> Hence, it has been suggested that the social model of disability could enrich the way of considering childhood in general and contribute to further discerning its intersection with disability (Sandland 2017).

The CRC was written at a time where inclusiveness was not yet an objective for disabled children. This may explain its out-dated terminology in addressing issues related to disability. At the same time, the CRPD's attention to childhood would not have been as extensive had the CRC overlooked disability altogether (as done by previous human rights treaties) (Byrne 2012). The CRPD's drafters subsequently endorsed the new direction of travel regarding disabled children, although they lost somewhat sight of the role of families in so doing. While the CRC should now be read in a different way than when it was adopted, it remains complementary to the CRPD.

A joint reading of the two human rights treaties, which combines their respective perspective, can therefore bear more fruit than applying each of these human rights treaties in an isolated manner. While there is some synergy between the CRC and CRPD, such a joint reading can help resolve their inconsistencies in considering the intersectional position of disabled children. The CRC places emphasis on parental involvement in the realisation of children's rights, which is crucial with regard to disability, but it does not recognise inclusion for its own sake. The CRPD has '[f]ull and effective participation and inclusion in society' amongst its general principles,<sup>27</sup> but it has little regard for the role of families with disabled children. The problem is that both the CRC and the CRPD does not fully account in their own right for the specific situation in which disabled children find themselves, because they view such children from the perspective of a single identity, as children first or as disabled people first. It is therefore only

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<sup>22</sup> Article 1, CRPD.

<sup>23</sup> Article 13(2), CRPD.

<sup>24</sup> Article 1, CRPD.

<sup>25</sup> Preamble(e), CRPD.

<sup>26</sup> By contrast, Article 1 of the CRC defines the child as being 'every human being below the age of eighteen'.

<sup>27</sup> Article 3(c), CRPD.

by adopting an intersectional approach that the full range of human rights protection may be released for those children.

## 2.2. Education

The right to education is of the utmost importance for all individuals. It works as a multiplier by facilitating the enjoyment of economic and social rights, such as the right to work and right to food, as well civil and political rights, such as the right to vote and freedom of expression. This is particularly true for disabled people whose right to education can empower them to take control of their life and move them out of their marginalized position in society. While this right is generally protected by the CRC as well as the ICESCR,<sup>28</sup> the CRPD provides for the right of disabled children to education in Article 24.

The aim here is to combine the respective perspective of the CRC as well as the CRPD with a view to determining what is expected from States Parties in order to tackle the exclusion of disabled children from education. An assessment of the right of disabled people to education may shed light on what a joint reading of the two human rights treaties could deliver in terms of human rights protection for disabled children.

The education of disabled children spurred heated debate during the CRPD's negotiation process and continues to stir controversy amongst stakeholders. This Convention has transformed the original significance of the right to education by adding a new emphasis on inclusion that was hitherto unknown in the field of international human rights law. By incorporating the goal of inclusive education in international human rights law, the CRPD has redefined this right for disabled people.

Earlier international instruments advanced the goal of inclusive education in a way that would give shape to disabled children's right to education. The World Declaration on Education for All: Meeting Basic Learning Needs (Jomtien Declaration) declared that '[s]teps need to be taken to provide equal access to education to every category of disabled persons as an integral part of the education system'.<sup>29</sup> In a similar wording, the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (Standard Rules) adopted in 1993 provided that '[e]ducation for persons with disabilities should form an integral part of national educational planning, curriculum development and school organization'.<sup>30</sup> Another milestone was the Salamanca Statement and Framework for Action on Special Needs Education (Salamanca Statement) enacted at the UNESCO World Conference on Special Needs Education: Access and Equality held in 1994. The Salamanca Statement stated that 'those with special educational needs must have access to regular schools which should accommodate them within a child-centred pedagogy capable of meeting these needs'.<sup>31</sup> It thus laid down the concept of inclusive education, which would find its way more than two decades later into the CRPD.

The CRC did not take into account these developments, as it was drafted before the Salamanca Statement was adopted. In interesting interaction, the CRC Committee adjusted its understanding of the right to education in relation to disability. In its general comment on the

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<sup>28</sup> Articles 28 and 29, CRC; 13 and 14, ICESCR. The CRC repeats most of the standards enunciated in the ICESCR, although it adds several new elements, including measures on vocational guidance (Article 28(1)(d)), drop-out rates (Article 28(1)(e)) and school discipline (Article 28(2)).

<sup>29</sup> Article 3(5), Jomtien Declaration.

<sup>30</sup> Rules 6(1), Standard Rules.

<sup>31</sup> Para. 2, Salamanca Statement.



situation of disabled children, which was elaborated precisely when the negotiating parties discussed the matter, the CRC Committee not only supported the adoption of future convention but also declared that ‘[i]nclusive education should be the goal of educating children with disabilities’ (CRC Committee 2007: para. 66). It nonetheless recognized that ‘the measure in which the inclusion occurs, may vary’ and that ‘[a] continuum of services and programme options must be maintained in circumstances where fully inclusive education is not feasible to achieve in the immediate future’.<sup>32</sup> It therefore expressed the view that exceptions should still be allowed to the rule, which view reflected the persistent disagreement between the negotiating parties.

Consensus however started to emerge that inclusiveness be should the objective for the right of disabled children to education even though special education could still be provided if their needs so required (de Beco 2019). The drafters was eventually be decided that inclusive education had to feature as an explicit guarantee for all disabled people.

Article 24 of the CRPD starts by stipulating that ‘[w]ith a view to realizing [the right of disabled people to education]..., States Parties shall ensure an inclusive education system at all levels and life long learning’.<sup>33</sup> It then not only prohibits the exclusion of disabled people from education but also sets out a series of steps to be taken towards the goal of inclusive education. The Convention requires that States Parties ensure that ‘[p]ersons with disabilities are not excluded from the general education system on the basis of disability’.<sup>34</sup> Refusal to enrol on such a basis amounts to direct discrimination (OHCHR 2013). States Parties must also ensure that ‘children with disabilities are not excluded from free and compulsory primary education’,<sup>35</sup> which echoes the CRC’s provision that primary education be made ‘compulsory and available free to all’.<sup>36</sup> The CRPD goes on by providing that ‘[p]ersons with disabilities can access an inclusive, quality and free primary education and secondary education ... in the communities in which they live’.<sup>37</sup> Infrastructure, including classrooms and toilets, as well as transport to school must therefore be fully accessible to them (UNICEF Innocenti Research Centre 2017; Inclusion International 2009 82). The Convention also requires that States Parties ensure that disabled children ‘receive the support required, within the general education system, to facilitate their effective education’.<sup>38</sup> Disabled children should not just be ‘placed’ in regular schools, but be offered the necessary support so that they develop their skills and talents like any other children.

The right of disabled people to education has received increased attention in recent years (de Beco 2018; 2014; Kayess and Green 2016; Byrne 2013) It was the subject of a resolution by the UN Human Rights Council (HRC) in 2014 (HRC. 2014). The CRPD Committee adopted a general comment on the issue in 2016, which is entitled ‘The Right to Inclusive Education’ (CRPD Committee 2016). In this general comment, it not only identified the ‘core features’ of inclusive education but also indicated what the goal of inclusive education entails for States Parties to the CRPD (CRPD Committee 2016). It furthermore stressed the need to take measure in order to provide access to education for the benefit of all disabled children. It considered that accessibility involves that ‘[t]he entire education system must be accessible’ (CRPD

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<sup>32</sup> Ibid.

<sup>33</sup> Article 24(1), CRPD.

<sup>34</sup> Articles 24(2)(a), CRPD.

<sup>35</sup> Articles 24(2)(a), CRPD.

<sup>36</sup> Article 28(1)(a), CRC.

<sup>37</sup> Article 24(2)(b), CRPD.

<sup>38</sup> Article 24(2)(d), CRPD.

Committee 2016: para. 8)), which applies to ‘not just buildings, but all information and communication’ and also the ‘[m]odes and means of teaching’ (CRPD Committee 2014: para. 39). As accessibility in respect of education has usually been interpreted as a matter of non-discrimination or as relating to physical and economic obstacles (CESCR Committee 1999), this interpretation of access goes further than what is traditionally understood in the field of international human rights law.

Even though the CRC does not refer to disability in relation to education, it can still contribute to realising the right of disabled children to education. It provides that such children must be assisted in education ‘in a manner conducive to the child’s achieving the fullest possible social integration’.<sup>39</sup> Despite the old-dated terminology, this provision can be seen as opposing the segregation of disabled children (Byrne 2019),<sup>40</sup> especially if the CRPD’s perspective is brought into play. The CRC further contains several elements that are overlooked in the CRPD, which confirm the need for this intersectional approach. Three of these elements are worth mentioning.

First, the CRC includes a list of values that should inform the ‘preparation of the child for responsible life’ including ‘understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin’,<sup>41</sup> all of which encourage an attitude of tolerance for all people regardless of any of their characteristic (Lundy and Tobin 2019). This list of values highlights the importance of promoting positive social attitudes towards disabled people in the delivery of education. The CRC thereby adds a normative dimension to the education of disabled children as it points out what the purpose of strengthening ‘human diversity’ exactly involves for the education system,<sup>42</sup> although the list does not explicitly refer to disabled people. The CRC therefore dovetails with obligation to raise awareness by ‘[f]ostering at all levels of the education system ... an attitude of respect for the rights of persons with disabilities’ provided for in the CRPD.<sup>43</sup>

Second, the CRC highlights a number of principles and aims that underlie the right of disabled children to education or facilitate its realisation. For instance, it sets out the general principle of the right to life, survival and development,<sup>44</sup> which is reiterated in its separate article on disabled children.<sup>45</sup> As families with disabled children struggle with worries and rejection, this principle is fundamental in order to enable such children to be educated. Another important issue concerns one of the aims of education set out in the CRC, namely the ‘[t]development of the child’s personality, talents and mental and physical abilities to their fullest potential’.<sup>46</sup> This serves as a reminder that these ‘mental and physical abilities’ must be enhanced notwithstanding disability beyond any form of rehabilitation. The CRC Committee further recommends that ‘teaching methods should be tailored to the different needs of different children’ (CRC Committee 2001: para. 9), which is crucial so that these methods can work for all those who are disabled.

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<sup>39</sup> Article 23(3), CRC.

<sup>40</sup> Note that the CRC Committee replaced the term ‘integration’ by the term ‘inclusion’ in its general comment on the situation of disabled children (CRC Committee 2007, para. 11).

<sup>41</sup> Article 29(1)(d), CRC. This list of values was not taken over in the CRPD.

<sup>42</sup> Article 24(1)(a), CRPD.

<sup>43</sup> Article 8(2)(b), CRPD.

<sup>44</sup> Article 6 (2), CRC.

<sup>45</sup> Article 23(3), CRC.

<sup>46</sup> Article 29(1), CRC. This provision was reiterated in 24(1)(b) of the CRPD in which is added ‘creativity’.

Third, the CRC again underscores the role of families, which is fundamental regarding education. As mentioned earlier, this Convention guarantees that parents are given ‘appropriate assistance ... in the performance of their child-rearing responsibilities’.<sup>47</sup> It reminds States of the family as a trusted source for recognition, assistance and identity-building. It thus acknowledges that schools are not the only entry point into the right to education, but that families provide the context in which children are nurtured and through which they receive education. It is here that awareness and understanding of the different needs of disabled children will also be at its highest. The CRC therefore brings home the fact that parental involvement is crucial not only in the education of their children but in all aspects of life and that a good relationship with families as a whole is imperative for achieving inclusive education. The aspect is sometimes ignored with regard to disability, and the Convention helps fill the gap.

In turn, the CRPD not only focuses expansively on education, but it also redefined the significance of the right to education by endorsing the goal of inclusive education. It thereby responded to the persistent exclusion of disabled children from education. In doing so, it adopts a human rights-based approach to dealing with disability, which is missing in the CRC’s provisions on disabled children. Rather than providing ‘special care’ as well as ‘subject to available resources ... assistance for which application is made’ and ‘assistance ... free of charge, whenever possible’<sup>48</sup>, the CRPD requires that States Parties ensure that ‘individualized support measures are provided ... consistent with the goal of full inclusion’.<sup>49</sup> This Convention brings along a difference in tone in international human rights law both by offering stronger standards for achieving its objectives and by confirming the necessity to consider disability as a human rights issue.

As seen in the analysis above, it is only by applying together the CRPD and CRC that a set of remedies can be spelt out in order to fulfil the right to education for disabled children. These remedies range from the guarantee of access to education and provision of support to the enhancement of skills and abilities and improvement of social attitudes as well as the awareness of the role of families. It will be hard for international human rights law to pursue further the goal of inclusive education without contemplating the intersection between children and disability. While the CRC and CRPD each draw particular attention to disabled children, they do so from their own perspective which should be combined through a joint reading of the two human rights treaties.

## Conclusion

Disabled children suffer from disadvantages that are more than the sum of those experienced by both children and disabled people. As pointed out by the CRC Committee, they ‘belong to one of the most vulnerable groups of children’ (CRC Committee 2007: para. 8). As disabled children face rejection and stigma in a way unique to them, they are amongst the most marginalised individuals. In order to address the intersection of childhood and disability, the present chapter argued for the necessity to consider their life experience *as* disabled children. This concerns all areas of life but particularly that of education which they are denied because education systems fail to meet their particular needs.

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<sup>47</sup> Article 18(2), CRC.

<sup>48</sup> Article 23(2) and (3), CRC.

<sup>49</sup> Article 24(2)(e), CRPD.

Disabled children can call upon two group-specific human rights treaties: the CRC and the CRPD. Even though the latter treaty is more advanced in its way of approaching disabled children than the former treaty, this chapter has argued that there is an added-value in applying them together. Although they approach disabled children differently, they should not be seen as opposed but as complementary to one another. As illustrated with the analysis of the education of disabled children, such an intersectional approach can be particularly useful in fully grasping the intersection of childhood and disability. The chapter has revealed that there are therefore gains to be made in showing more dedication to this intersection in international human rights law. So doing will still require that the UN treaty bodies cooperate in order to have an open dialogue and to attain mutually acknowledged standards. This could lead to the adoption of common general comments, as already done at different occasions by the CRC Committee (CMW Committee and CRC Committee 2017; CMW Committee and CRC Committee 2017; CEDAW Committee and CRC Committee 2014). It is welcome in this regard to note that the CRPD and CRC Committees have likewise decided to work on a common general comment on the situation of disabled children.<sup>50</sup>

Finally, engagement with the intersection between childhood and disability is still limited in the field of international human rights law. This is a missed opportunity, as both the CRC and the CRPD focus on disabled children, and there is probably no other group is covered to such an extent by different human rights treaties. Further exploration of how to improve human rights protection for such children would not only allow develop strategies tailored to their specific situation but also foster a better appreciation of intersectionality in international human rights law more broadly.

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<sup>50</sup> The author is grateful to the CRC and CRPD Committee members who have provided him with this information.

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