# 

# **CBM Global Federation submission on Article 11 to the CRPD committee**

**Introduction**

CBM Global is a dual mandate organisation. Our main humanitarian goal is to support and facilitate locally driven people-centred, timely, appropriate and effective humanitarian assistance to some of the poorest and most at-risk men, women and children affected by natural and human-caused disasters. This support is delivered in partnership with Organisations of Persons with Disabilities (OPDs) and in close coordination with the humanitarian sector at global, regional, national and local levels.

Very often we find ourselves working at the humanitarian and development nexus. Over the past 10 years CBM Global has observed and experienced a significant sector shift and consideration of the centrality of inclusion in humanitarian action which has been translated in the development of numerous new policies, guidance, and tools, as well as an enhanced and more inclusive coordination model at both global and country level. However, whilst there is in theory more awareness and sensitisation on disability inclusion broadly speaking, practice has not followed through at pace. The lack of disability data collection and inclusive feedback mechanisms, the difficult access to information about persons with disabilities and their representative organisations (OPDs), lack of disability inclusion focal points in existing coordination mechanisms, and limited resources dedicated to capacity strengthening of both OPDs (particularly institutional capacity development) and humanitarian actors (understanding disability rights and practical application of existing guidance and standards), among other things, continue representing barriers to inclusion and collaboration between OPDs and mainstream humanitarian actors. In addition, the humanitarian funding system is still structured and set up to meet primarily the absorption and management capacities of large actors significantly reducing the ability of smaller organisations, such as OPDs, to directly engage in, as well as access funding; making them very dependent on intermediary organisations that do not understand priorities of persons with disabilities, nor meaningfully engage with their representative organisations.

**Key Recommendations for the Committee**

It is critical to recognise though that since the CRPDs adoption in 2006, the world has gone through significant change geo-politically and environmentally. This creates the need for a reflection on the implementation of Article 11 and how it can meet these changing realities. CBMG makes the following recommendation for the Committee’s consideration as it reaches out for inputs.

State Parties in their implementation of Article 11 should;

* take steps to ensure that disability inclusive humanitarian action is adequately resourced through applying minimal standards for disability inclusion in bilateral humanitarian funding mechanisms including direct funding to Organisations of Persons with Disabilities;
* take measures to support main humanitarian actors and responders on the ground, including OPDs, have the means to deliver their responsibilities as described in the IASC Guidelines on Inclusion of Persons with Disabilities in Humanitarian Action, and in particular the “must do actions” (promoting meaningful participation, removing barriers, empowering persons with disabilities and support them develop their capacities and disaggregating data for monitoring inclusion;
* engage OPDs in review of emergency preparedness and response policies and procedures to ensure they are fully inclusive of persons with disabilities, and/or ensure that all disaster preparedness and response is inclusive of persons with disabilities, including through accessible risk information, evacuation processes, shelter and food/NFI distributions;
* ensure inclusive prevention of risk, disaster preparedness and response are inclusive of persons with disabilities, including through accessible risk information, evacuation processes and access to humanitarian aid and recovery support programmes;
* take steps to ensure that lives of persons with disabilities are recognised as equal value to others in times of emergency triage, and in times of limited resources (e.g., medical equipment etc).[[1]](#footnote-1)
* take measures to ensure the effective engagement of all persons with disabilities, including children and women with disabilities, and underrepresented groups in the planning, execution, monitoring of all matters affecting them in situations of risk and humanitarian emergencies. Especially important is the effective engagement of persons with disabilities in the design of humanitarian response plans, including feedback mechanisms to ensure effective accountability and protection of the rights of persons with disabilities in situations of crisis;
* take measures to ensure the trauma persons with disabilities face because of conflict, climate or other emergencies is treated with a rights-based approach;
* take measures to protect persons with disabilities from violence, exploitation, and abuse, by taking measures to ensure that Gender Based Violence risk mitigation and response, including sexual and reproductive health services are inclusive of and accessible to women and youth with disabilities. This includes removing physical, communication, attitudinal and institutional barriers to access; meaningfully engaging women and young persons with disabilities in the design, implementation, and monitoring of risk mitigation and response; and strengthening the capacity of national and local actors to provide disability inclusive SRH and GBV services;
* take measures to ensure that child protection interventions are fully inclusive of children with disabilities, including through training for child protection actors, review and adaptation of policies and procedures, making physical spaces and activities safe and accessible, and ensuring that reporting and referral mechanisms are inclusive;
* take measures to ensure that persons with disabilities who are displaced through disasters or through refugee programmes are not placed in institutions as a temporary measure for shelter through the implementation of Guidelines on Deinstitutionalization, including in emergencies (2022);[[2]](#footnote-2)
* adopt and implement appropriate Mental Health and Psychosocial Support measures in situation of risks and humanitarian emergencies. These measures must be delivered in an inclusive and non-discriminatory way by ensuring they respect inherent dignity and personal autonomy of all persons with disabilities. A multi-sectoral approach needs to be adopted in the design, implementation and monitoring of all Mental Health and Psychosocial Support Services in full compliance with the CRPD and other international human rights frameworks;
* take measures to include persons with disabilities in Climate Action through meaningful participation of OPDs, including youth-led networks and indigenous persons, in all processes to develop, implement and monitor national climate adaptation and climate mitigation policies and processes, and in development of disaster preparedness plans, and/or conduct thorough research on impact of climate change on persons with disabilities including under-represented groups;
* ensure that persons with disabilities and their representative organizations, including women, older persons, and youth-led networks, participate meaningfully in peace continuum including conflict prevention, resolution, reconciliation, reconstruction, and peacebuilding.

**The Changing context and Article 11 implementation**

Reviewing Article 11 for this submission, almost 17 years after the adoption of the CRPD, it is critical to recognise that there have been various policy instruments which help support the implementation of Article 11 in the specific areas within its remit. These include the Sendai Framework, the Interagency Standing Committee Guidelines (IASC) on the Inclusion of Persons with Disabilities in Humanitarian Action, the Security Council Resolution 2475 on protection of persons with disabilities in conflict, the Global Compact for Refugees and the 5 guiding principles of the Charter on Inclusion of Persons with Disabilities in Humanitarian Action. All these policy developments and frameworks have been important in elaborating how Article 11 can be practically applied in practice. The development of the UN Disability Inclusion Strategy is a good example in the right direction.

Since the CRPD’s adoption, there have been many high-profile disasters and conflicts which have shone a spotlight on the continuing gapsthat exist between theory and practice in ensuring the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict and displacement, natural hazards, and health emergencies such as pandemics.

* the climate crisis has become a major contributor into increased humanitarian emergencies, loss of life and displacement of communities and evidence available highlights how persons with disabilities are one of the groups most significantly impacted. Climate crisis also has a profound effect on people's mental wellbeing especially on marginalized groups like persons with disabilities. Gaps existing in inclusive and accessible humanitarian responses, lack of protocols on accessible communication, evacuation strategies and temporary shelter and housing and lack of MHPSS which are essential to a comprehensive response;
* the COVID19 pandemic has challenged every country on their commitment to protecting persons with disabilities in situations of risk and the systemic gaps that exists within national level plans. The response to the pandemic across both high- and low-income countries shared the universal challenges of inaccessible communication strategies, lack of access to much needed community services and more worrying established an acceptability of persons with disabilities lives being of lesser value when it came to triage and limited lifesaving machines;
* the Russian invasion of Ukraine has put a spotlight on the inadequacies of the humanitarian response in Ukraine and the protocols for the relocation of refugees with disabilities to other countries. Examples of persons with disabilities being left behind in communities due to inaccessible evacuation protocols have been highlighted as a gap. Relocation to inappropriate temporary shelters such as institutions highlight gaps to accessibility and independent living.

While the context is changing and the crises emerging challenge the fundamentals of Article 11 implementation, the overall argument for inclusion has been won. The articulation though of how Article 11 works in practice is yet to be fully worked out. OPD led research by Stakeholder Group of Persons with Disabilities, the World Blind Union and the World Federation of the Deaf point to continuing gaps in practice. Many of these gaps are caused because of failure to include persons with disabilities and their representative organisations in key decision making, meaning that State Parties and other duty bears are not complying with CRPD Article 4.3 and Article 33.3 and persons with disabilities. Support to OPDs to be actively engaged in decision making is an area which is under resourced and requires investment.

**Normative content of Article 11 and its intersection with other CRPD articles**

**Article 11 its definitions**

At the time of CRPD negotiations, the thinking on Article 11 was influenced by high profile disasters including the Indian Ocean Tsunami of 2004 and the Hurricane Katrina Disaster (2005). This prompted the drafters of the Article 11 to not only think about humanitarian emergencies in the context of conflict situations, which has already been firmly established in international humanitarian law and human rights law, but to also think about the need for inclusive humanitarian responses and the evacuation and shelter of persons with disabilities during times of disaster. The final text of Article 11 reflected this:

“*States Parties shall 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*”.

Unpacking the definitions contained in Article 11, the term “situation of risk” is loosely defined in the article itself as encompassing “armed conflict, humanitarian emergencies and natural disasters.” In addition, the preamble to the CRPD mentions “foreign occupations” and states that “conditions of peace and security…. are indispensable for the full protection of persons with disabilities.” The other important term to define in Article 11 is what is meant by “necessary means.” Under Article 11 states parties are obligated to take “necessary means” to ensure protection of persons with disabilities in situations of risk. Within the context of Article 11 itself then states would be required to take all measures essential to the protection and safety of persons with disabilities regardless of cost. This includes providing the resources to humanitarian actors to deliver inclusive programming and creating the spaces and platforms to support inclusive decision making. This has been highlighted above to have been challenged by the health care decisions made during the COVID 19 pandemic.

**Article 11 and the intersection of CRPD articles**

**Article 4 and 5** : their implications for non-discrimination and participation create obligations to ensure participation of persons with disabilities on an equal basis with others and mandate State Parties/duty bearers to ensure persons with disabilities are included in decision making.

In particular, General Comment (GC) No.2 on Accessibility & GC No.5 on the Right to Independent Living reiterates state obligations / duty bearers to ensure full access to the physical, environment, transportation, information and communication and services in advance of crisis, during emergencies, and in post disaster reconstruction efforts.

Further under GC No.7 on participation of persons in the implementation and monitoring of the Convention States are obliged to ensure meaningful participation of persons with disabilities as a minimum requirement to ensure the active engagement of persons with disabilities in the development, implementation, monitoring of emergency-related legislation, policies, planning and delivery of humanitarian assistance. There is also a critical obligation that internally disabled persons or refugees are enabled to establish, coordinate, and promote their rights in any situation of risk including during armed conflict.

**Article 6**: situations of risk and humanitarian emergencies can jeopardise the safety and protection of women and girls with disabilities, notably reducing their chances of survival. Women and girls with disabilities are more at risk before, during and after the occurrence of risks such as armed conflict, occupation of territories, natural hazards and humanitarian emergencies. They are at increased risk of experiencing sexual violence, including rape, and abuse. Humanitarian aid efforts must prevent such situations and address them if they do occur, including provision health care and mental health services to overcome psychological trauma. Appropriate services for women and girls with disabilities in situations of risk and humanitarian emergency, based on their individual needs, should be made available and their accessibility should be secured by removing physical, communicative, social, cultural, economic, political and other barriers, including the expansion of quality services in rural and remote areas.[[3]](#footnote-3)

**Article 9**: in situations of risk, natural disasters and armed conflict, humanitarian response and emergency services must be accessible to all persons with disabilities, or their lives cannot be saved, or their well-being protected. Article 9 mandates equal access for persons with disabilities with regards to the built environment, transportation, information, communication, technology, and services as a pre-condition. Accessibility is a pre-requisite for effective engagement of persons with disabilities for consultation on design but also implementation and monitoring of humanitarian assistance.

**Article 16**: in situations of humanitarian emergencies all appropriate measures must be adopted to prevent all forms of exploitation, violence and abuse against persons with disabilities. State and non-state actors must take cognizant of the fact that women and girls with disabilities are at a higher risk of Gender Based Violence, sexual abuse and exploitation and other harmful practices during situation of risks and humanitarian emergencies this requires State parties to develop measures to promote the right to freedom from exploitation, violence and abuse from a gender inclusive lens in all humanitarian policies and interventions. These measures must include independent monitoring of all programs and facilities in all humanitarian settings, availability of services for victimized persons which must respect autonomy, investigation and, where appropriate, prosecution. In all situations of risk, natural disasters and armed conflicts the States have the obligation to promote, protect and fulfill the human rights of women and girls with disabilities from a human rights-based approach and development perspective this is reinforced by Article 6 of the CRPD and General Comment No 3 of the CRPD Committee.

**Article 19:** reading Article 11 with Article 19 (c) State Parties are obliged to ensure that services and facilities during emergency situations and reconstruction processes must be inclusive of and available to persons with disabilities, and responsive to their needs. Furthermore General Co. No 5 (para 79) highlights that State Parties must consider in advance the obligation to provide support services to persons with disabilities in all distastes risk management activities – this also includes the importance that barriers are not rebuilt after situations of risk. This also includes being aware of potential harm that may occur during times of emergency response. States have an obligation to ensure training of personnel so that emergency response mechanisms protect but do not increase harm, or unnecessarily reduce the choice, autonomy, and control of persons with disabilities, including women and children with disabilities. Whilst it is recognized that in many situations of risk and emergencies families and persons with disabilities can be separated and face higher risks, states have a responsibility to mitigate these and uphold the rights of persons with disabilities to remain with their families and communities. It is critical that humanitarian architecture does not create additional risk for persons with disabilities or harm them. Shelter and housing in emergencies should not inadvertently reinforce stigma and barriers facing persons with disability, nor establish characteristics of an institution. Children also orphaned or separated have the right to family life. Measures taken to ensure immediate safety at times of crisis, which may require hospitalization, community housing, should not be maintained longer term.

**Article 25 and Article 26**: the right to health for persons with disabilities living in humanitarian/refugee settings (including mental health and well-being) and the right to rehabilitation needed in post conflict and emergency settings. Access to health and rehabilitation services during disruption caused due to hazardous events and conflicts is vital for persons with disabilities to maintain maximum independence and access humanitarian aid in dignified way. Health and rehabilitation preparedness plans should include pre-positioning of assistive products, training of health and rehabilitation staff on inclusive consultation and health service provision. This preparedness is critical for continued inclusive and accessible health and rehabilitation services during humanitarian crises

**Article 31:** the importance of data on persons with disabilities during humanitarian crisis. States are obligated to carry out their responsibility to collect and disaggregate data on persons with disabilities in line with the UN Convention on the Rights of Persons with Disabilities under Article 31. To ensure that persons with disabilities are protected and assisted during humanitarian emergencies, reliable and accessible current information are needed on the number of persons with disabilities in the affected population and the barriers they face. Yet, persons with disabilities in humanitarian emergencies, including internally displaced persons and migrants with disabilities, continue to be at risk of exclusion from data collection, decision making, planning and responses to displacement. Data on persons with disabilities in humanitarian emergencies are often not included in official statistics and data disaggregation at global level tends to be low. The lack of comprehensive, reliable and comparable data on the number of persons with disabilities in humanitarian situations and their diverse experiences amplifies their invisibility and hampers efforts to monitor their inclusion.

**Article 32:** International cooperation is an important source of funds for emergency response to conflict, natural hazards, and disaster. OHCHR thematic study on Article 11, highlights how Article 32 obliges humanitarian actors when using international cooperation funds to implement inclusive and accessible emergency programmes. This means providing reasonable accommodation and ensuring the participation persons with disabilities in decision-making, to prevent, for example, persons with disabilities who face inaccessibility from returning to conflict areas owing to a lack of effective options.

**Key resource for Humanitarian Practitioners**

Mindful that humanitarian actors, and particularly field practitioners work in highly complex and difficult situations, trying to meet many demands and coping with lots of pressure CBM Global has developed a tool that can help humanitarian responders apply minimum requirements for disability inclusion to their interventions.

The Humanitarian Hands on Tool (HHoT) is a free-of-charge web application targeting workers in the field with a simple one-page guideline on all issues relevant to the design and implementation of inclusive Humanitarian Action.

The whole app is fully accessible and can be downloaded to any mobile device to ensure availability without internet or mobile connection. It can be accessed at <https://hhot.cbm.org/>

1. UK Gov (2020), COVID-19: deaths of people with learning disabilities, available at this link <https://www.gov.uk/government/publications/covid-19-deaths-of-people-with-learning-disabilities> [↑](#footnote-ref-1)
2. ## CRPD/C/5: Guidelines on deinstitutionalization, including in emergencies (2022)

   [↑](#footnote-ref-2)
3. See CRPD/C/GC/3

   General comment No. 3 (2016) on women and girls with disabilities, [↑](#footnote-ref-3)