**DAY OF GENERAL DISCUSSION ON ARTICLE 11 GENERAL COMMENT**

**Disability Rights International’s oral presentation**

The following observations and requests for strengthened international protections derive from Disability Rights International’s (DRI) observations in institutions and the community throughout the Americas over the last thirty years.

1. **Recognize institutionalization as a situation of risk/emergency and plan for responses that for children ensure family-based solutions regardless of the type of risk and emergency.**

Article 11 requires that “all necessary measures” must be taken to ensure the protection and safety of persons with disabilities in “situations of risk,” and we ask the Committee to recognize that this includes any person with a disability placed in an institution and any child with a disability separated from family. These situations must be recognized as *inherently* situations in which almost very right protected by the CRPD is threatened, whether or not a state of emergency is actually taking place. When emergencies do come, these individuals are also inherently at increased risk over the population at-large, including the broad population of individuals with disabilities living in the community. For these reasons, we ask the Committee to call for increased obligations to prioritize this population and take preventative action before crises occur to fully integrate children and adults with disabilities fully into the community.

1. **Recognize institutionalization of any child as a situation of risk that is inherently disabling**

Extensive scientific research, strongly supported by the findings of Disability Rights International (DRI) over 30 years of fact-finding in institutions, shows that raising *any* child in congregate care outside a family-based setting, as required by articles 19 and 23, is likely to lead to psychological and cognitive impairments and expose children to increased risk of torture, ill-treatment, violence, exploitation, and trafficking. We therefore ask this Committee to recognize that the placement of any child in an institution – whether or not that child has been diagnosed with an illness or identified with a visible impairment – is *itself disabling* due to this situation of risk and deprivation of the opportunity for full and effective participation in society on an equal basis with others.

1. **Address the situation of people with disabilities who are migrants, refugees, asylum seekers or have been internally displaced, and of children being left behind as a result of humanitarian crises.**

We urge this Honorable Committee to address the situation of children and people with disabilities who are migrants, refugees, asylum seekers or have been internally displaced as a result of humanitarian, health, economic or political crises. The High Commission of Nationals Unit for Refugees (UNHCR) has pointed out the scant information on records of people with disabilities.[[1]](#footnote-1) In Mexico, unaccompanied minors and adults with disabilities who are migrants, refugees or asylum seekers face detention in migration and other centers where they are at risk of abuse.[[2]](#footnote-2)

Children are also being left behind at unprecedented rates as their parents are forced to migrate without their children -with hopes of being reunited with them in the future. According to estimates, one in five Venezuelan migrants leaves a child behind -with close to one million children in Venezuela have become orphaned due to the migratory crisis.[[3]](#footnote-3) Cuba is experiencing a migration exodus with hundreds of thousands of leaving the country and parents facing the difficult choice to leave their children behind.[[4]](#footnote-4) DRI has interviewed unaccompanied minors in the Mexico-US border seeking to reunite with their parents - who were forced to migrate and them behind. According to UNICEF, children who are deprived of parental care can endure “physical, psychological, emotional and social harm – with consequences that last a lifetime.”[[5]](#footnote-5)

As stated in the UN Guidelines on Deinstitutionalization, refugees with disabilities should be protected from return to institutions in their home countries. If there are not family-based placements available or promised in the country of origin, children must be recognized as having a right to asylum abroad. For any child or adult with a disability, placement in an institution where they are likely to be subject to ill-treatment or torture should be explicitly recognized as grounds for asylum.

1. **Fill in the gaps left by international standards on children with disabilities in crises.**

The Inter-Agency Standing Committee Guidelines on the Inclusion of Persons with Disabilities in Humanitarian Action (IASC Guidelines) is a standard that is often considered by international relief agencies and organizations in relation to persons with disabilities. While they are relevant in many respects, in relation to children with disabilities detained in institutions they do not go as far as the CRPD to guarantee their rights and protections. The IASC Guidelines call for an identification of children living in residential facilities and to include them in family tracing and reunification when in ‘their best interest.’ This leaves open the possibility of excluding children with disabilities from family tracing efforts and for their continued institutionalization when it is not in their ‘best interest.’ As stated in the UN Guidelines on Deinstitutionalization, children should always be included in family tracing, and it must always be assumed that they need to be placed in a family environment. Explicit correction in the language of the IASC Guidelines would help to address this concern.

1. United Nations High Commissioner for Refugees (2021) <https://www.acnur.org/60f887544.pdf> (Last visit Febrary 20th, 2023) [↑](#footnote-ref-1)
2. Network for the Rights of Children in Mexico*, Detentions of migrant children and adolescents in Mexico* (2022) <https://blog.derechosinfancia.org.mx/2022/09/05/detenciones-de-infancia-y-adolescencia-migrante-en-mexico-2/> (Last visit Febrary 20th, 2023); Migration Law, DOF 29-04-2022, Art. 73, *valid since* May 25, 2011. Available at <https://www.diputados.gob.mx/LeyesBiblio/pdf/LMigra.pdf> [↑](#footnote-ref-2)
3. Gustavo Alex-Ocando “Why A Venezuelan Girl Wants Her Dad To Send Money So She Can Buy A Helicopter” NPR, March 2019. https://www.npr.org/sections/goatsandsoda/2019/03/08/699341685/the-left-behind-kids-of-venezuel [↑](#footnote-ref-3)
4. <https://www.bbc.com/news/world-latin-america-64811310> [↑](#footnote-ref-4)
5. UNICEF “Children in Alternative Care”<https://www.unicef.org/protection/children-in-alternative-care> [↑](#footnote-ref-5)