**Draft General Comment on the rights of persons with disabilities in situations of risks and humanitarian emergencies (article 11 of the Convention on the Rights of Persons with Disabilities)**

**Written submission by Disability Rights International**

**February 27, 2023**

1. **Introduction**
2. Disability Rights International (DRI) welcomes the initiative of the UN Committee on the Rights of Persons with Disabilities to hold the Day of General Discussion on persons with disabilities in situations of risk and humanitarian emergencies under CRPD article 11.
This submission highlights the fact that placement in an institution for any person with a disability, or deprivation of the right to grow up in a family environment for a child, constitutes a “situation of risk” protected under article 11 of the CRPD that is likely to lead to dangers and further deprivation of rights in situations of armed conflict, humanitarian emergencies, and occurrence of natural disasters. Given this predictable situation of risk, there is an urgent need and an obligation under international law for the protection and enforcement of the CRPD in advance of and during times of emergency for children and adults with disabilities placed or detained in institutions or residential care as well as individuals at-risk of such placement. This situation of risk is heightened for any child deprived of the opportunity to live in the community in a family setting, as protected by CRPD articles 19 and 23.
3. As a member of the Global Coalition on Deinstitutionalization (GC-DI), DRI supports the submission of that coalition related to the implementation of the UN Guidelines on Deinstitutionalization in times of emergency. This submission complements the GC-DI contribution, which focused especially on rights issues in the context of the global public health emergency created by the COVID-19 pandemic.
4. This submission especially addresses issues of risk and emergency relating to war and migration. Our experiences are drawn from the experience of closely monitoring the situation of children and adults with disabilities affected by the war in Ukraine. They are also informed by our observations of the risks to children and adults with disabilities as migrants in the Americas, especially in Mexico and at the US border.
5. This submission also focuses on the obligations of donors and international humanitarian relief organizations, CRPD under article 32 and article 11, to prepare for and respond to the needs of children and adults with disabilities in institutions in advance of and during times of emergency.
6. DRI’s findings in Europe and the Americas demonstrate that most of the emergencies that have occurred were largely predictable, or emergencies are so long and protracted, that advance planning can prevent much of the discrimination, abuse, and dangers we observed. The dangers of children in institutions in wartime Ukraine, described in detail here, are likely to be experienced by children in Turkey’s institutions and migrants from Syria following the earthquake in those countries. Thus, advance planning by governments and international donors and humanitarian relief agencies is especially important, in line with the requirements of the UN Guidelines on Deinstitutionalization, including times of emergencies. Once a disaster strikes, it is essential that that the CRPD protections of community inclusion and family for children be fully maintained in crisis response.

**Observations drawn from times of war in Ukraine**

1. The dangers facing children with disabilities in the country’s vast system of institutions include more than 100,000 children in what are called residential care facilities, orphanages, group homes, and boarding schools. In a report published in 2015, [No Way Home](https://www.driadvocacy.org/wp-content/uploads/No-Way-Home-final.pdf), DRI documented the human rights concerns of these children who were living at significant risk, segregated from society, and denied the opportunity to live and grow up with a family. In 2014, as the initial stages of the war with Russia began, DRI warned [publicly](https://www.chicagotribune.com/opinion/ct-xpm-2014-05-08-ct-ukraine-disabled-children-perspec-0508-20140508-story.html) about the increased dangers of children with disabilities in institutions. If taken into consideration more effectively by Ukraine and the international community, including emergency relief preparation by donors and humanitarian relief organizations, these findings and recommendations could have been used to plan ahead, create more effective emergency response plans by both Ukraine and international authorities, and accelerate the pace and implementation of reform plans.
2. DRI’s 2015 report, No Way Home, documented dangerous and pervasive neglect, atrocious conditions, forced labor, and trafficking from institutions. Due to the lack of support in the community for families of children with disabilities, many parents who wished to keep children with disabilities were forced to place them in institutions. Based on our investigations in Ukraine and a survey of hundreds of families in Ukraine in 2022-23, DRI finds that this lack of community-based support for families has continued and gotten worse during the war – continuing to force families to place children in already dangerous institutions.
3. Following the release of DRI’s report, Ukraine adopted a National Strategy to Reform the Institutional Childcare System to reform institutional care for children 2017–2026.[[1]](#footnote-1) Yet there was never political will to implement it – and the disability advocacy and family advocacy community was able to hold the government accountable for its implementation. Whole portions were suspended, and children with disabilities were systematically left out of reforms. At the time some government officials blamed some families for being neglectful or inadequate and rationalised thus: that families of children with disabilities lacked adequate support to keep children with disabilities at home with them. There was inadequate international support for the community inclusion of children with disabilities – and aid that was provided never required the government to implement its own reform policies or obligations under CRPD article 19 and 23.
4. In 2019–2020, the government of Ukraine delayed the deinstitutionalization policy and that translated into the country’s de facto policy of leaving children with disabilities to languish in institutions without the hope of returning to the community, explicitly stating that children with disabilities would be left out of deinstitutionalization reforms.[[2]](#footnote-2) DRI and other disability and children’s rights groups protested this dangerous and discriminatory policy of segregation.[[3]](#footnote-3) In June 2021 and again in August 2022, the United Nations special rapporteurs on human rights and disability sent Joint Communications to the Government of Ukraine raising concerns about human rights violations in Ukraine’s institutions and objecting to the proposed policy – and actual practice – of systematically segregating children and adults with disabilities from society.[[4]](#footnote-4)
5. As war came to Ukraine, children with disabilities already at risk because of a dangerous policy and practice of segregation, are now in even more grave danger. In August 2022, the CRPD Committee held hearings on the situation of people with disabilities during the war in Ukraine,[[5]](#footnote-5) and the government testified that more than 7,700 persons with disabilities remain in institutions in the areas of hostilities or under temporary occupation by Russian forces. Those children and adults are clearly in great danger in a war that has threatened the lives of millions of Ukrainians.
6. DRI is deeply concerned about the practice of rapid discharge without preparing adequate follow-up or community-based support. At the start of the war, Ukraine reported that they “sent home” at least 42,000 children[[6]](#footnote-6) from institutions (including boarding schools). According to the government, children were sent back to their families. These were the very same families who, just two years earlier, the government said were incapable of keeping their children at home or lacked adequate support. In practice, many of these children were out of contact with families for months or years, and there has been no systematic effort to ensure that the children actually made it back to safe family placements. Authorities report that responsibility for follow-up lies with the social workers at the local level (the ‘oblast territorial unit’) but the number of social workers is woefully insufficient. In June 2022, authorities in one oblast reported to DRI that a majority of local authorities do not have any social workers on staff to do this work.[[7]](#footnote-7) During a CRPD Committee hearing on Ukraine on August 15, 2022, UNICEF testified that there is already evidence that such children are abandoned and neglected, and some children have starved to death without support. Immediate international assistance is needed to help Ukraine find, identify, and support these children.

**Immediate risks to the health and safety of children in Ukraine’s institutions**

1. DRI’s investigations in institutions, as well as recent contacts with children and adults in these facilities, demonstrate that on-going neglect, lack of medical care, and dangerous conditions continue in these facilities.
2. Early in the war, DRI learned of international efforts to evacuate children from Ukraine’s institutions and noted that most of the children appeared to be children without disabilities. DRI, therefore, conducted investigations into facilities administered by the Ministry of Social Policy – where children labelled/deemed ‘uneducable’ were placed. DRI’s investigations confirmed that children with disabilities were transferred from facilities in the war-torn east to already inadequate facilities for children with disabilities in the western parts of the country. Some children with no disabilities or few support needs were evacuated abroad – but children with the greatest needs were left behind in already abusive facilities.[[8]](#footnote-8)
3. The report after the initial investigation, [***Left Behind in the War***](https://www.driadvocacy.org/wp-content/uploads/DRI-Ukraine-Left-Behind.pdf), documented the threats to children moved from orphanages in the east when placed in the now crowded and overwhelmed facilities in the west of the country. In addition to experiencing the trauma of being relocated to places where they did not know anyone, some children reported losing contact with relatives whom they no longer knew how to reach. The children with high support needs were transferred without any medical records and the local staff reported to DRI not only being overwhelmed by the number of new children, but also by the fact that they arrived with impairments and support needs they did not know how to respond to.
4. In institutions, DRI documented lack of medical care and dangerous treatment practices (e.g. feeding people in bed at risk of choking, allowing the spread of disease by the sharing of bottles and utensils, failure to check or monitor the effects of medications), malnutrition, inactivity, and limited human contact as children were left to rock back and forth alone in beds on filthy mattresses, or in yards eating grass and dirt in a situation of total neglect. Without staff to monitor basic safety, children are left tied down to beds, chairs, and benches for long periods of time in a manner that constitutes nothing less than torture. Residents of some of these facilities are forced to work in fields and in building new wards for the expected new arrivals from the East as the war progresses.

**Impact of international assistance on institutions**

1. Despite abundant international assistance, the government of Ukraine and international relief agencies have failed to ensure the safety and protect the lives of children with disabilities still detained in institutions – or to ensure their safe return to families in the community. Unless urgent action is taken to support families, bring children from institutions back to safe family environments and prevent new placements in institutions, the international support flowing to institutions will inevitably result in a strengthening of the country’s system of institutions, perpetuating segregation and discrimination – in violation of international law.
2. Many institutions DRI visited received various forms of financial or in-kind support from international charities before and during the war. At the same time, DRI’s investigation found a striking lack of international assistance to address the human rights concerns of children with disabilities in Ukraine’s institutions. Support included funding for an electric generator and washing machines. In another facility, an international relief organisation now funds six of the Ukrainian direct care staff, one physical therapist, and one massage therapist at the facility. Nevertheless, the staff was already overwhelmed by feeding, changing diapers, and attempting to keep the children clean. Despite the international support for staff, DRI investigators observed children lined up in wheelchairs and strollers for hours in total inactivity. Children were tied down to benches and beds.
3. During the war, DRI observed international humanitarian relief organizations providing support within institutions in a manner that helped normalize and perpetuate abuses within those same facilities. This included funding staff and programs at institutions, allowing the facility to hire more staff and accept more children with disabilities. Once one highly regarded international organization begins investing in an institution, it provides credibility to that facility and appears easier for that institution to raise funds from other donors. After one major international organization invested in increased staffing at one facility, DRI observed smaller charities making donations to the same facility for improved infrastructure. International support for facilities where neglect and abuse take place signals to the facility that abusive practices will be tolerated – or will certainly not stop a facility from receiving funding.
4. International donors have explained to DRI that aid in the context of the institution is the only way the lives of children with disabilities could be saved in a time of war. DRI’s observations at the facility suggest the opposite conclusion. In one of the facilities receiving international support, for example, DRI found a child tied to a bench who had parents living fifteen minutes away. The international staff supervisors interviewed by DRI reported that the war was not the reason for the delay in returning children back to families if support were available and nothing about the war conditions would have stopped a program to get children into families.[[9]](#footnote-9) They reported that the decision to support the institution instead of the family was made at the headquarters of the organisation outside of Ukraine. Two senior supervisors for the organisation said they would be pleased to begin immediate efforts to help children return to families if they received support and direction from their organisational headquarters to do so.
5. In the same facility, DRI investigators encountered other internationally funded experts who assumed that all international support had to be provided at the facility and not the community. Researchers from a local university were conducting a ‘needs assessment’ of children at the facility funded by UNICEF. When asked whether there was any effort to assess the steps necessary to get children back into families, the experts said that this was outside the mandate of their assessment. When asked why they were not examining how to get children into families, their only answer was: ‘this is Ukraine’. It is understood in Ukraine that these children would need to remain inside institutions.
6. As winter approached in Ukraine in 2022, there was an active effort on the part of non-government organisations to raise money to rebuild and refurbish institutions for people with disabilities of all ages. Such a call went out, for example, on the Age and Disability Technical Working Group on August 22, 2022. The request for funds came from a non-governmental organisation, but the working group is itself organised by the United Nations. Further documentation is needed to examine and show how winterization funds were used. DRI is deeply concerned that these funds were used to rebuild and strengthen segregated systems of institutional care.

**Failure to reach families of children with disabilities**

1. DRI has been in contact with more than 400 families of children with disabilities since the start of the war. DRI was able to make contact with these individuals through others included in training programs conducted years earlier and through contacts made on social media. The great majority of these individuals report great hardship and difficulties in surviving – but have received no form of international aid or support. DRI was able to put them in contact with Save the Children who have been able to provide some cash assistance to these families. Some international assistance programs have, to their credit, provided direct support to a small number of existing disability advocacy groups who have been able to distribute aid to their members. The reality is, however, that many families of children with disabilities were not affiliated with any particular community-based organisation. As a result, these families were left out of international support programs.
2. Immediate action is needed to protect children with disabilities to live in the community and remain with families now, even during the war. DRI interviews on the ground with staff and directors of institutions, international aid workers, and Ukrainian disability and family activists, demonstrate a common sense that – if decisions were made at the top to promote family inclusion – the war would not be a hindrance to immediate efforts to reintegrate children into families and provide them with the support they need to live in the community. Complete safety cannot be assured for anyone during a war or emergency, but children with disabilities and their families should not be denied the opportunity to live as safely as all others.
3. **Normative Content**
4. **States obligations under article 11.**
5. States Parties are under an obligation to ensure protection and safety in “situations of risk” including but not limited to “situations of armed conflict, humanitarian emergencies, and the occurrence of natural disasters.” **Under article 11, a “situation of risk” should be understood to include the placement or detention of any person with disability in a residential institution.** Protections under article 11 for this population extend to situations that have not yet developed into actual emergencies. Children or adults in this situation of risk are at increased danger for their safety of deprivation of rights even before emergencies developed. In the event of war, humanitarian emergency, or natural disaster, this risk will be greatly increased over and above that faced by the population at large. This is why proactive steps are needed to protect the rights of this population. The UN Guidelines on Deinstitutionalization describe these proactive measures, which must be understood to apply before and during situations of emergency.
6. For children, the situation of risk includes any circumstance in which a child is deprived of the opportunity to live “within the community in a family setting” as protected by article 23(5). Institutionalization of children, including separation of children from families and placement in any form of congregate setting, even for a short period of time during a crisis, must be seen as a situation of risk requiring emergency action.
7. Institutionalization is dangerous for all children – whether or not they are medically diagnosed with an impairment or identified as having a disability. Separation from family is likely to create psychological impairments and lead to further deprivation of the right to full participation in society. The impact of emotional neglect will create long-term damage to a child’s emotional and physical health. Even when adequate food and care are available in a congregated setting, children often suffer from a global “failure to thrive” as a result of this emotional neglect. Children are more prone to abuse when family and friends are not available to look out for them. Institutionalization of all children creates disabilities by depriving them of the opportunity to live and grow up in the community in a family setting.
8. When an emergency takes place, the protection of people in institutions and prevention of new institutionalization must be part of immediate, emergency action and not relegated to post-conflict recovery operations. Protection of the right to live in the community, as well as steps toward deinstitutionalization, should not be seen as a form of progressive realization of rights that can be delayed during a time of emergency. Failure to address the needs of people in institutions or to assist families in preventing the institutionalization of children during times of emergency is a form of discrimination in violation of the core requirement of article 11 and the CRPD.
9. Prevention of institutionalization is an essential part of emergency preparation. Given the inherent dangers of institutions and the situation of risk that they create for children and adults with disabilities, article 11 requires advance planning to prevent institutionalization. Children and adults with disabilities in institutions are especially at risk of death, severe rights abuses, and further family break-ups in times of emergency. In practice, these risks are known ahead of time as is the risk of war, conflict, and mass migration in much of the world. In addition, these “emergency” conditions may last so long that they are normalized into an ongoing pattern of delay and failure to enforce basic rights. Both advance preparation for emergency and principles of full enforcement in times of emergency must be incorporated into emergency response and must be understood as obligations under article 11 of the CRPD.
10. Institutionalization has long been treated as a temporary or transitional solution to protect rights during times of crisis, and deinstitutionalization is often viewed as a form of change that can be relegated to long-term planning or progressive realization. As the COVID pandemic and recent war in Ukraine have shown, institutions are not safe places during times of crisis.
11. Advance planning and preparation are needed to protect people with disabilities in institutions during times of emergencies. In any place where war or emergency is likely to occur, it is especially important for governments and humanitarian relief agencies to engage in advance preparation before conflict or emergency may ensue. Such planning should especially focus on full community inclusion and family support for children. Partially completed reform of deinstitutionalization leaves people with disabilities in institutions, especially at risk. Deinstitutionalization may take years to complete in any society, but efforts must be accelerated in societies where disruption is likely to occur, given the broad human rights implications of institutionalization during an emergency. Planning for the protection of people with disabilities in institutions, including ongoing deinstitutionalization and emergency community placement, must be incorporated, in advance, into emergency relief planning by governments, international donors, and international relief agencies.
12. In countries where deinstitutionalization is in progress or incomplete before an emergency occurs, priority areas of protection can be prepared in advance. This may include, for example:
	1. protecting families of children with disabilities so that, during an emergency, these families will not be forced to abandon or institutionalize their children,
	2. the creation of additional or surplus capacity for emergency placement of children in foster or substitute families,
	3. investments in training and supporting disability or peer-run organizations, to identify, monitor, and advocate for the rights of institutionalized persons with disabilities during times of emergency, including establishing points of contact with emergency health care, social service providers, and humanitarian relief agencies.
13. State parties should permit monitoring to continue during emergency situations, ensuring that risks are mitigated to the maximum extent possible. Video, photo, and documentary evidence about conditions in institutions are especially important during times of emergency to inform governments, humanitarian relief organizations, and the public about immediate steps that are necessary to protect rights in an emergency context. Human rights monitors should be given access to obtain such documentation for this purpose. Especially where in-person monitoring becomes impossible because of the emergency, State parties should promote alternatives, such as digital, electronic, or other modes of remote communication and monitoring.
14. Independent monitoring of residential institutions, including migration detention centres, should continue until all institutions are closed, and should not be suspended in times of emergency. Consistent with articles 16 and 33 (3) of the Convention, persons with disabilities, particularly survivors of institutionalization, including children with disabilities, their representative organizations, and independent civil society organizations should be included in independent monitoring.
15. Teams for conducting independent monitoring of all residential care facilities must be inclusive of people living with disabilities and the family members of people with disabilities (teams must be funded vs. voluntary). The results of the findings of the monitoring teams must be publicly posted. Locally based, independent advocacy organisations, including organisations run by people with disabilities and family members of children with disabilities, should be engaged in monitoring institutions. These independent organisations should be given full access to observe, monitor, and offer advice and assistance on plans for reform and community inclusion.
16. **Persons with disabilities disproportionately affected and experiencing particular disadvantages in situations of risks**
17. **Children and adults with disabilities in institutions**
18. Children and adults with disabilities in institutions are especially at risk of death, severe rights abuses, and further family break-ups in times of emergency. In practice, these risks are known ahead of time as is the risk of war, conflict, and mass migration in much of the world. In addition, these “emergency” conditions may last so long that they are normalized into an ongoing pattern of delay and failure to enforce basic rights. Both advance preparation for emergency and principles of full enforcement in times of emergency must be incorporated into emergency response and must be understood as obligations under article 11 of the CRPD.
19. **Protection of internally displaced and migrants**
20. Situations of emergency and mass migration may result in the discharge or release of children or adults with disabilities from the residential institutions where they were detained before the emergency. Follow-up is needed to ensure basic support and protection of these individuals in the community. Immediate discharge without planning is not a form of deinstitutionalization that protects rights and may result in immediate life-threatening circumstances. Individuals discharged from institutions as a result of emergencies have an increased need for family and community support. It is especially important for children to maintain connections with individuals they have come to know and trust. Children or adults with disabilities removed to a foreign environment should receive support from people in a language and manner that helps them communicate and experience emotional stability and safety.
21. Children discharged or removed from facilities must not be held in congregate settings but be placed in a family environment. It is essential that situations of segregation or congregate placement should not be reproduced as part of emergency response. And once children or adults with disabilities are removed from institutions, they have a right to protection against re-institutionalization.
22. Migrant children with disabilities and their families need to have access to services in the community during their transit through countries.
23. As required by the Convention Against Torture, persons with disabilities should not be returned to a country where they are likely to experience torture or ill-treatment. Children or adults with disabilities should not be returned to their home country where they face the risk of institutionalization, which is inevitably associated with increased torture and ill-treatment.
24. **Interrelation with other articles of the Convention**
25. Article 4(3) - States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organization:
26. Ensure the humanitarian response is disability inclusive and incorporates long-term sustainable solutions. Ensure a disability-first approach to reform work that is led by persons with disabilities.
27. Promote the active participation of children and adults with disabilities across the response. Disability organisations are often unfunded and have often been left out of international civil society support programmes. Given the historic lack of support, discrimination, and marginalisation of disability and family groups, targeted funding for these organisations is essential for protecting children with disabilities, ensuring their full inclusion in society, and ensuring the sustainability of reform efforts.
28. Article 5 - Anti-discrimination:
29. Both during Covid-19 pandemic and war in Ukraine we witnessed children with disabilities being excluded and left out from emergency response efforts. Children with most complex disabilities were triaged and left to die during Covid-19 pandemic; children from Ukraine institutions were left out from evacuation efforts or transferred to overcrowded facilities in west of the country while children without disabilities and children with “mild disabilities” were evacuated abroad.
30. During an emergency, it is not justifiable to support institutions that segregate people with disabilities from society on the grounds that such support is needed to save the lives of individuals in institutions under emergency conditions. The same funding can be provided to community-based services, including NGOs and DPOs, that are given access to institutions to provide life-saving care to the individual without supporting the institution. Such community-based programs must be mandated to seek community inclusion and create opportunities for family and community-based placement.
31. Article 7 - Children with disabilities:
32. Ensure systematic reforms – aimed at full family inclusion for all children with disabilities – are included in the humanitarian response plan, linking up with the various humanitarian coordination mechanisms. States parties to the CRPD must plan for responses that for children ensure family-based solutions regardless of the type of risk and emergency.
33. Article 16 - Freedom from exploitation, violence and abuse:
34. While institutions are dangerous places at all times, neglect and abuse significantly increase with any emergency situation. Decrease in staffing, increased isolation and lack of external oversight during emergencies are putting children under increased risk to life and safety.
35. Urgent support is needed for disability groups, family peer support programs, medical and psychological support, and other programs based in the community. Such programs can immediately reach out to and help stop abuses and save the lives of children living in institutions, without directly supporting the institution in which the child is placed. An essential component of these programs would be to find and identify families in the community – the children’s original family, extended family, or foster families – and provide them the support needed to bring children out of institutions into a loving, caring, and supportive family-based situation. Even in times of emergencies and among internally displaced populations – especially during times of war – family structures continue to operate and are in need of immediate support.
36. Article 19 - Live independently and being included in the community and article 23 - Respect for home and the family:
37. Complete safety cannot be assured for anyone during a war or emergency, but children with disabilities and their families should not be denied the opportunity to live as safely as all others. If decisions were made at the top to promote family inclusion – the war would not be a hindrance to immediate efforts to reintegrate children into families and provide them with the support they need to live in the community. Immediate action is needed to protect children with disabilities to live in the community and remain with their families, even during the war.
38. Create family alternatives for unaccompanied migrant children – The recent migration crisis in the Americas forces families and children to travel from their place of origin to their destination under very adverse conditions. Many of these children travel alone and are detained in residential institutions, which have been shown to be highly dangerous, so it is important to urge countries to create family alternatives for children in transit through countries and avoid detention in residential institutions. Children with disabilities must be the priority.
39. Educate other human rights activists and civil society organizations about the risk of institutionalization to prevent channelling people with disabilities, including children to congregate settings.
40. Article 26 - Habilitation and rehabilitation:
41. Funding for immediate life-saving and necessary habilitation and support measures should be established for children currently residing in institutions. Such funding should be provided to independent authorities so that the funding “follows the child” (or adult) rather than supports the institution. As soon as family placement can be arranged, such funding should be shifted to support family-based care.
42. Article 32 - International cooperation:
43. Article 32 of the Convention extends State Obligations under article 11 to international cooperation, requiring that international support advance “the purpose and objectives of the convention”. Special attention and proactive steps are required, therefore, to protect persons with disabilities in institutions as well as children deprived of the opportunity to live in the community in a family setting. As international donors and relief agencies prepare for future emergencies, advanced planning is needed to provide such action in any country and in any conflict.
44. **Please indicate at least 5 issues, topics, comments, or recommendations your organization considers critical for the Committee to include in the draft general comment.**
45. DRI’s findings in Europe and the Americas demonstrate that most of the emergencies that have occurred were largely predictable, or emergencies are so long and protracted, that advance planning can prevent much of the discrimination, abuse, and dangers we observed. Thus, advance planning by governments and international donors and humanitarian relief agencies is especially important, in line with the requirements of the UN Guidelines on Deinstitutionalization, including times of emergencies. International assistance should not perpetuate segregation, discrimination, and abuse in congregate settings.
46. Under article 11, a “situation of risk” should be understood to include the placement or detention of any person with disability in a residential institution. Protections under article 11 for this population extend to situations that have not yet developed into actual emergencies. Children or adults in this situation of risk are at increased danger for their safety of deprivation of rights even before emergencies developed. In the event of war, humanitarian emergency, or natural disaster, this risk will be greatly increased over and above that faced by the population at large. This is why proactive steps are needed to protect the rights of this population. The UN Guidelines on Deinstitutionalization describe these proactive measures, which must be understood to apply before and during situations of emergency.
47. Prevention of institutionalization is an essential part of emergency preparation. Given the inherent dangers of institutions and the situation of risk that they create for children and adults with disabilities, article 11 requires advance planning to prevent institutionalization. Children and adults with disabilities in institutions are especially at risk of death, severe rights abuses, and further family break-ups in times of emergency. In practice, these risks are known ahead of time as is the risk of war, conflict, and mass migration in much of the world. In addition, these “emergency” conditions may last so long that they are normalized into an ongoing pattern of delay and failure to enforce basic rights. Both advance preparation for emergency and principles of full enforcement in times of emergency must be incorporated into emergency response and must be understood as obligations under article 11 of the CRPD.
48. States parties to the CRPD must plan for responses that for children ensure family-based solutions regardless of the type of risk and emergency. Immediate action is needed to protect children with disabilities to live in the community and remain with families now, even during the war. DRI interviews on the ground with staff and directors of institutions, international aid workers, and Ukrainian disability and family activists, demonstrate a common sense that – if decisions were made at the top to promote family inclusion – the war would not be a hindrance to immediate efforts to reintegrate children into families and provide them with the support they need to live in the community. Complete safety cannot be assured for anyone during a war or emergency, but children with disabilities and their families should not be denied the opportunity to live as safely as all others.
49. Ensure human rights monitoring and unfettered access to independent national human rights authorities, including National Human Rights Institutions (NHRIs) and National Preventative Mechanisms (NPMs), *as well as* non-governmental human rights organizations. Human rights monitoring and the provision of essential support and advocacy services, especially by national or governmental authorities, is likely to break down in times of emergency. A broad range of non-governmental organizations, including but not limited to organizations of persons with disabilities, should be trained, supported, and given access to institutions and community programs in advance of emergencies to help them prepare to fill gaps in times of emergency.

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1. <https://zakon.rada.gov.ua/laws/show/526-2017-p#Text> (accessed 21/09/22) [↑](#footnote-ref-1)
2. Deinstitutionalization for Children with Disabilities in Ukraine Brief // the Global Study of Children Deprived of Liberty <http://regionalmaster.net/wp-content/uploads/2021/11/Country-Brief_Ukraine.pdf> (accessed 21/09/22) [↑](#footnote-ref-2)
3. See, for example, <https://enil.eu/wp-content/uploads/2021/04/2021-EU_Ukraine_HRD-by-disability-rights-organisations.pdf> (accessed 21/09/22) [↑](#footnote-ref-3)
4. UN Special Rapporteur, letter to Ukraine government, Ref AL UKR 5/2021, 30 June 2021, at <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=26477> (last accessed 29/09/22). The August 11, 2022 report also raises concerns about discharge of children without adequate follow-up and about Ukraine’s efforts to keep refugee children in congregate settings. See <https://www.ohchr.org/en/press-releases/2022/08/ukraine-un-experts-sound-alarm-situation-children-disabilities> (accessed 21/09/22) [↑](#footnote-ref-4)
5. Recording available at <https://media.un.org/en/asset/k1w/k1wbnlvoct> (accessed 21/09/22) [↑](#footnote-ref-5)
6. Naira Avetisyan’s presentation on July 7, 2022 DRI and BCN joint webinar; Sarah Slobin and Joanna Plucinska, ‘Emptying Ukraine’s Orphanages: Ukraine seeks to trace thousands of “orphans” scattered by war,’ 09/09/2022 (updated 12/09/22), available at <https://graphics.reuters.com/UKRAINE-CRISIS/ORPHANS/dwpkrxzwwvm/index.html> (accessed 27/09/22) [↑](#footnote-ref-6)
7. DRI interview with authorities in the Chernivtsi Oblast, June 9, 2022 [↑](#footnote-ref-7)
8. DRI, No Way Home (2022), available at <https://docs.google.com/document/d/1nIlZcAN8g50AnqVTwW5r0vFFH0BkgHDC/edit> (accessed 21/09/22) [↑](#footnote-ref-8)
9. Interview with the director of the facility, June 7, 2022, Chernivtsi oblast [↑](#footnote-ref-9)