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Contribution for General Comment on Article 11 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

Submitted by:

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This document may be published or reframed by the committee to the extent that it may serve the objective of the intended general comment.

## Introduction

It is sad trajectory of conflict and disaster that disturbs human conscience that drive us for prompt action at the minimum through legal and policy processes that yet require consultation and consensus and determination of internal and external factors to maintain the intention of the drafters of ta legal instrument such as the United Nations Convention on the Rights of Persons with Disabilities.

Unfortunately with natural disaster sometimes exist an aspect of human omission or neglect, more sadly manmade disasters including armed conflict, terrorism, perceptions such as killing of people with albinism for sacrifice, oppression are a result of selfishness.

Noting that emergency and disaster peculiar circumstances as incidents that occur suddenly may exceed government and local community’s capacity or create massive harm whether or not it was or could have been anticipated, mitigated or prevented.

The threshold of human responsibility when they are under eminent threat of death or grave harm in law during disaster and humanitarian emergency requires in-depth analysis.

The state obligation to protect the right to live is also endangered by the disaster.

Unequal distribution of resources, social vulnerabilities, the scale and magnitude of disaster are critical factors in the disaster and emergency cycles since disaster often reinforce existing inequalities and discrimination.

Therefore, it is worth noting that discrimination, inaccessibility of services during and after disaster, lack of reasonable accommodation, equality between men and women, data, international cooperation, right to live, right to adequate standard of living, social protection, right to health, equality before the law and access to justice, education, independent living, access to information state obligations, budgeting in a sense of unequal distribution of resources as enshrined in UNCRPD are not to be ignored or justified when disregarded during disaster but rather all efforts possible must be exhausted to ensure they are not ignored.

Covid 19, conflict including subnational or communal violence, climate change, water contamination, air pollution, health emergencies, economic crises, food insecurity, climate change including extreme heat, floods, drought, effect of deforestation, Soil degradation and others pose a significant threat to entire humanity effecting psychological wellbeing, livelihoods, reproductive health, rights, freedom / conscience in a dramatic level to naturally or manmade that could sometimes exceed the capacity of domestic institutions.

And any other conditions that may create situations of risk and humanitarian emergencies.

Situations of risk and humanitarian emergencies are among leading causes of deaths, displacement, hunger, and poverty. In light of their dynamic nature, and that persons with disabilities also experience the disproportionate effects often being among the worse hit.

This contribution does not create additional obligation on state and non-state actor but rather seeks to work in complementarity with existing laws, policies, and guidelines worldwide and as well as the domestic level and reinforce the existing obligation with disability lens. Conversantly, as it has been part of the neglected aspect of legal system.

Article 11 of UNCRPD represents a paradigm shift in international legal system as a whole by merging aspects of human rights on the virtue of primarily being a human rights instrument, humanitarian law as contained in the 4 Geneva Conventions and their additional protocols and international criminal law on aspect of potential individual responsibility in ensuring accountability.

It covers the entire humanitarian cycle from preparedness, mitigation, emergency response and recovery as guided by Sendai Framework for disaster risk reduction 2015 to 2030.

## Objectives

* To create universal certainty and minimum standards for explanation, understanding and application of this article by clarifying ambiguities, doubts and removing misconceptions.
* To mitigate all forms of deaths and any harm resulting from humanitarian emergencies and situations of risk including their disproportionate effect on the basis of gender, age, disability, social or economic status, geographical location, nationality, ethnic affiliation, believe / conscience and etc.
* To affirm and reinforce state obligations towards persons with disabilities and the community at large under humanitarian law, disaster law and human rights law in situations of emergency.
* To ensure accountable and responsive disaster and emergency system that fully embody disability inclusion by among others : promulgation of relevant legal and policy framework that fully take into account the aspect of disability inclusive humanitarian cycle which include full and effective participation of persons with disabilities and taking their needs into consideration, and affirming where necessary state responsibility, collective responsibility and individual liability as the case may be.

## Specific areas covered

This articles may be construed to cover the following aspects:

Resource mobilization, allocation and management in disaster and emergency.

Rescue efforts including relocation, provision of services, early recovery and any other matters related thereto.

Full and effective participation of persons with disabilities in planning, design, implementation, monitoring and evaluation of programs and policies including contingency plan.

Hence, the following should be undertaken during disaster:

Information concerning those who have been left behind should be collected from those fleeing once they have arrived to areas of safety including the characteristics of those left behind in order to guide the rescue team in their search for survivors.

States should undertake thorough and prompt investigation into the circumstances and manner in which the disaster has occurred and hold accountable any person / entity unduly found guilty.

Lives lost should be properly accounted for by the state including the reasons for them to be left behind in the whole accountability processes such as compensation, public apology for lives lost.

States should ensure adequate preparedness and fully equipped rescue team.

The state may take all measures to prevent and address sexual violence and gender based violence.

The state may use available resources and capacity to ensure settlement and construction plans are disaster conscious.

Research is key to update disaster resilience capability.

The state may declare state of emergency when it is unable to reach to some areas.

Resilience building, this entails that preparedness for disaster should always account for disability inclusion at policy, programing and implementation stages.

The government may design a pre-disaster relocation plans for vulnerable groups.

The state have the obligation to provide safety and security for all its citizens and foreigners on its land.

The estate must establish conflict resolution mechanism and proper accountability procedure.

Where applicable the state may utilize community based solution and local community setting including by forming community based watch groups.

Ensuring effective communication and transfer of information that is accessible and in diverse formats.

Inclusive and comprehensive data on disaster for aiding the planning, implementation and monitoring.

Ensuring meaningful participation of persons with disabilities and their OPDs including building the capacity of persons with disabilities on peace building and ensuring their full and effective participation.

Inter-communal and intra-communal conflict such as Conflict between farmers and pastoralists.

This provision applies to among others internally displaced persons, refugees, stateless and migrant workers.

## **Conclusion**

Disaster reinforce discrimination on the basis of disability as well as negative perceptions including early and forced marriage female genital mutilation toward women with disabilities.

Therefore, there is need for robust and clear legal framework that can be equally applied in all context similarly.