**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**

**UNHCR Submission**

UNHCR welcomes the opportunity to provide comments to the United Nations Committee on the Rights of Persons with Disabilities for consideration in relation to the Day of General Discussion and the Committee’s call for written submissions on article 11.

**UNHCR’s mandate**

UNHCR is the global UN entity with a mandate to provide international protection and to work for solutions for refugees and asylum-seekers, among others. It has been granted the authority to supervise the application of international instruments for the protection of refugees and asylum-seekers, in particular the *1951 Convention* *relating to the Status of Refugees* and its *1967 Protocol* (hereinafter jointly referred to as the *1951 Convention*). State parties to these instruments are required to cooperate with UNHCR in the exercise of its functions (Art.35 of the 1951 Convention). UNHCR’s role is also reflected in many regional refugee law instruments. Over the years, the UN General Assembly has extended UNHCR’s mandate to various groups of people, who are not covered by the *1951 Convention*. Some of these people are qualified as “mandate” refugees; others are returnees, stateless persons and, in some situations, internally displaced persons (IDPs). With regard to IDPs, UNHCR was first called upon by the UN General Assembly in 1971 to extend its expertise and assistance to IDPs and since then has been mandated through various resolutions to provide protection and assistance to IDPs, in acknowledgement of the Office’s expertise in forced displacement and capacity to adapt and respond to evolving emergencies, and the need to address people displaced within their own countries as critical to resolving refugee situations.

UNHCR has a direct interest in the Committee’s elaboration of a general comment on persons with disabilities in situations of risk and humanitarian emergencies. UNHCR thus wishes to share some initial and non-exhaustive observations in response to the questions raised in the Committee’s call for inputs.

1. **Introduction**

**[Please indicate the main challenges experienced by persons with disabilities in the field of your organization’s expertise or the area of international law you work on].**

Persons with disabilities face disproportionate barriers when accessing humanitarian assistance and when trying to meaningfully contribute to planning, implementing and evaluating humanitarian interventions. In situations of risks and humanitarian emergencies, it is likely that the number of persons with disabilities is higher than the global estimate of 16 per cent, and the impact of barriers is further exacerbated.[[1]](#footnote-2)

As acknowledged in Executive Committee Conclusion No. 110 (LXI) – 2010 on refugees with disabilities and other persons with disabilities protected and assisted by UNHCR,[[2]](#footnote-3) persons with disabilities, and particularly women, children and older persons with disabilities, are exposed to discrimination, exploitation, violence (including gender-based violence) and may be excluded from support and services, especially in the early phases of humanitarian emergencies; services and facilities, including assistance programmes and protection, may be inaccessible to refugees with disabilities; refugees with disabilities may be excluded from support and services when repatriating and often have fewer opportunities for other durable solutions, namely local integration and resettlement.

It has been also highlighted that persons with disabilities experience additional barriers in obtaining refugee protection, including due to issues in ensuring the accessibility of asylum facilities and asylum procedures for persons with disabilities, gaps in understanding disability as an element in interpreting and applying the refugee definition under the *1951 Convention*, issues in accessing protections provided under the CRPD for asylum-seekers and refugees with disabilities, and in accessing basic rights, including education, social protection, healthcare and employment within their host country regardless of their status.

There needs also to be greater collaboration and opportunities for meaningful participation of organizations representing persons with disabilities and refugee-led organizations.

1. **Normative Content**

**[Under the following relevant subparagraphs, please develop narrative on the scope and meaning of the following terminology of article 11 of UNCRP, from the point of view of your organization and field of expertise]**

1. **"States parties shall take measures, in accordance with their obligations under international law, including international humanitarian law and international human rights law.**
2. **"all necessary measures to ensure the protection and safety of persons with disabilities"**
3. **"persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters"**

Article 11 underscores States’ obligations under international law related to situations of risks, including situations of armed conflict, humanitarian emergencies and natural disasters, including obligations under international human rights law and humanitarian law. Even though not explicitly mentioned in Article 11 of the CRPD, international refugee law is inherently a key legal framework and part of the international legal framework applicable in situations covered by Article 11. Situations of risks, including armed conflict and humanitarian emergencies, are some of the major causes of forced displacement requiring international protection as refugees or other, complementary, forms of international protection.

In the context of humanitarian situations, protection is understood as all activities aimed at achieving full respect for the rights of the individual in accordance with the letter and spirit of international human rights, refugee, and humanitarian law. Protection involves creating an environment conducive to respect for human beings, preventing and/or alleviating the immediate effects of a specific pattern of abuse, and restoring dignified conditions of life through reparation, restitution, and rehabilitation.

All necessary measures for protection would entail also ensuring equal access to international protection, when applicable, for persons with disabilities in situations defined under Article 11. The need for international protection arises when a person is outside their country of origin and unable to return due to being at risk of serious harm and their country is unable or unwilling to protect them. Individuals who meet the refugee definition under international, regional, or domestic laws or under the mandate of UNHCR are entitled to international protection. There is a need to advance a disability-inclusive interpretation of persecution, one of the constituent elements of the refugee definition under the *1951 Convention*, to ensure the protection and safety of persons with disabilities who may face disability-specific forms of persecution.

1. **States obligations under article 11.**

**[Under this chapter, please kindly indicate what concrete obligations State parties and other actors have in the area of international law of your organization’s expertise – IHL, environmental law, refugee law, disaster, e.t.c and the obligations under article 11 of the UNCRPD]**

States are encouraged to ensure ratification of international human rights, humanitarian, refugee law and environmental treaties and adoption/endorsement of international commitments relevant to the protection of persons with disabilities in situations of risk and emergencies. Where applicable, agreements, legislation and policies related to internal or international conflicts, explicitly refer to persons with disabilities, including those who seek international protection, are refugees, are internally displaced persons, or have been otherwise affected. These policies should also ensure their active involvement as agents of change in the development and implementation of provisions and policies.

The obligations of States under international refugee law can be derived particularly from the *1951 Convention* and its *1967 Protocol*, in conjunction with international and regional human rights law instruments. Obligations for States to ensure the protection of refugees and asylum-seekers under article 11 may include, non-exhaustively:

1. Ensuring equal access to asylum, including by acknowledging disability-specific forms of persecution in national asylum laws and procedures.
2. Providing additional procedural safeguards for persons with disabilities in asylum procedures.
3. Providing reasonable accommodation for asylum-seekers beyond procedural requirements.
4. Granting access to rights and national systems for refugees with disabilities.
5. Granting protection for refugees with disabilities under national legislation against discrimination on the basis of disability.

Noting the different situations of displacement, States’ obligations also include ensuring the protection and access to rights and national services for internally displaced persons with disabilities in situations of risks.

Additionally, to ensure protection and inclusion of persons with disabilities in situations of risks, States and other humanitarian actors are to build inclusive coordination mechanisms for responding to the needs of all affected people. Participation is built in policies and standards that specifically refer to participation of persons with disabilities in humanitarian needs assessments, related monitoring processes, and in all programmes and projects related to situations of risk and humanitarian emergencies.

Inclusive humanitarian and refugee responses require the collection of disaggregated data, including in refugee registration systems, as well as the adequate use of data for the planning and implementation of the response, including data on persons with disabilities reached by the measures taken. All actors should strive to disaggregate data by age, gender, and disability.

It is acknowledged that host States have limited resources and face various challenges in providing adequate services and facilities, which underscores the role of the international community, in the spirit of international cooperation and burden sharing, as highlighted in the Global Compact on Refugees.[[3]](#footnote-4)

1. **Persons with disabilities disproportionately affected and experiencing particular disadvantages in situations of risks, such as:**

**[Under this chapter, please kindly provide narrative indicating which of the below groups, and for which reasons are at a particular disadvantage in situations of risks; are there other groups which are not mentioned which deserve particular attention?; what measures should be adopted under the UNCRPD to address their situation]**

Persons with disabilities are not a homogeneous group. It is important to recognize the diversity of persons with disabilities and that women, men, youth, older persons, and persons with diverse types of disabilities are affected differently by situations of risks and humanitarian emergencies.

In general, persons with disabilities might be experiencing barriers in accessing safety from ongoing hostilities, in travelling long distances to flee hostilities, in accessing adequate bomb shelters and in crossing borders. Refugees and asylum-seekers with disabilities may find additional attitudinal and administrative barriers that result in their exclusion from legislation and programmes addressed to other protected grounds such as those based on age or gender characteristics.

1. Women with disabilities.

Women with disabilities encounter increased risks of gender-based violence in situations of risks. Especially in situations of conflict and displacement, the risks of gender-based violence increase. Therefore, ensuring the accessibility of mitigation and response mechanisms and services is essential in addition to training the stakeholders to identify women with disabilities at risk. States should ensure that national legislation and programs to protect women with and without disabilities apply to refugee and asylum-seeker women and girls with disabilities; for example, GBV prevention and response legislation and programs, and laws to enhance access to education or employment.

1. Persons with disabilities in institutions.

Persons with disabilities, including children with disabilities, living in residential facilities before a conflict or humanitarian emergency might be evacuated within their country or to neighbouring countries through private and government initiatives, where they face new and similar challenges. However, many children and adults with disabilities, who continue to live in institutions during conflicts, may face the risk of being abandoned or of serious neglect. Adults and children living in institutions who are evacuated outside of their country may also face risks of separation from family and community support, and face administrative, and political, barriers for family tracing and unification.

1. Children with disabilities.

Access to education should be also provided for refugee children with disabilities. By its very nature, displacement disrupts children’s education, however education protects refugee and displaced children and youth from forced recruitment into armed groups, child labour, sexual exploitation, and child marriage. Education also strengthens community resilience. Ensuring access to inclusive national education is a key protection component for children with disabilities.

1. Older persons with disabilities.

Older persons face specific challenges in situations of humanitarian crises and displacement. They might be left behind as they may considered as a burden or unwilling to leave. In case they end up staying, they may face violence, the absence of family and friends, and the loss of services such as healthcare, housing, electricity, and water supplies. On the other hand, if they decide to join their family later, they may find available support resources are greatly diminished, and/or become separated from their family or community. They are at risk of being excluded from protection and assistance if humanitarian actors do not fully understand these needs and do not involve them actively in decisions that concern them.

Displaced, refugee, asylum-seeking and stateless older persons with disabilities may face extreme economic disadvantages as they may have lost land and property, livelihood opportunities and access to pensions. This once again requires that the inclusion of persons with disabilities impacted by conflict, crisis and displacement to national social protection systems is adequately addressed. [[4]](#footnote-5)

1. Internally displaced persons with disabilities, asylum-seeking and refugee persons with disabilities.

Early identification and referral to needed services is essential for displaced persons, including persons with disabilities. The risks of invisibility and under-identification in urban settings of displacement are higher compared to camp settings. When fleeing hostilities, including to neighbouring countries, displaced persons with disabilities may face major challenges due the limited of interpretation capacity, inadequate accessibility of basic services, information, accommodation, and reception facilities. All States should to ensure accessible and adapted reception and accommodation centres for persons with disabilities fleeing from conflict or persecution. The use of accessibility audits in reception and accommodation centres can support to ensure that these are suitable to all persons. Institutional care should be avoided.

Accessing asylum procedures may pose additional barriers for persons with disabilities in need for international protection. There is still limited understanding on how disability can be an intersecting ground in a claim for international protection. During at times lengthy procedures, asylum-seekers with disabilities have reported inadequate access to services and procedural accommodations. Once refugee status is recognised, refugees with disabilities may encounter continued barriers in accessing national support systems.

Additionally, refugees, asylum-seekers, migrants, and internally displaced persons with disabilities may also be stateless or become stateless during their displacement. Having a nationality is an important part of a person’s identity and becoming stateless can have enormous practical and emotional implications on the wellbeing of the individual. Persons with disabilities may face specific barriers to obtaining nationality if they are stateless. Legislation in some countries imposes conditions for naturalisation that some people with disabilities may not be considered to meet, such as that people be “of sound mind and body”. In addition, naturalisation may be dependent on passing language and other exams that may pose challenges for some people with disabilities. Stateless persons can also be at high risk of arrest and/or prolonged detention as they may not have identity or residence documents.

1. **Interrelation with other articles of the Convention**

[**Please kindly develop narrative, from the field of your organization’s expertise and the area of international law you work on, about the interrelation of article 11 with other provisions of the Convention, e.g. what States should do in situations of risks with regard to art 6 (women with disabilities), art.7 (children with disabilities, art 9 (accessibility), etc**-

Persons with disabilities in situations described in Article 11 should still be enjoying the rights related to the other provisions of the CRPD to the extent possible.

Accessibility (Art.9). Information not only related to the emergency but to assistance and legal avenues is made available in formats accessible for persons with disabilities. Information provision and communication needs to be adapted to different communication needs and preferences. This requires disseminating accessible information through a wide range of channels, including audio-visual and easy to read material, sign language, captioning etc. This is critical to ensure that information reaches everyone, including on how to register for temporary protection or asylum, where to go for help, rights, and obligations, and how to raise complaints or concerns.

Living independently and being included in the community (Art. 19). The right of displaced persons with disabilities to choose their place of residence may be affected by their legal status and limit autonomy.

Employment (art. 27). Refugees and asylum-seekers with disabilities encounter additional barriers when trying to exercise their right to work.

1. **Please indicate topics, comments, or recommendations your organization considers critical for the Committee to include in the draft general comment.**
2. Equality and non-discrimination in accessing international protection

States ensure that persons with disabilities fleeing from situations of conflict or persecution have equal access to international protection in host countries. The procedures are accessible and persons with disabilities are provided with services and accommodation enabling them to enjoy their rights.

1. Identification and inclusion in national services

States are encouraged to use the Washington Group questions among other tools to facilitate early identification of persons with disabilities displaced due situations of risks and ensure equal access to emergency support services. In situations where people are crossing borders, receiving countries, and assisting humanitarian actors, identification of persons with disabilities should be encouraged at border crossing, key transit points and accommodation or reception centres. States should make efforts to provide equal access and inclusion into national services for all persons with disabilities, including asylum-seekers and refugees with disabilities, regardless of the displacement status.

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1. See for example [Summer Report Series - Disability Overview](https://data.unhcr.org/en/documents/details/85895) (HNAP Syria, 2020), which highlights that up to 29 per cent of internally displaced Syrians had a disability, and [Vulnerability Assessment Framework - Jordan](https://data.unhcr.org/en/working-group/54) (UNHCR) which in 2019 reports a 21% of Syrian refugees having a disability, and up to 45 per cent of Syrian refugee households having at least one member with a disability. [↑](#footnote-ref-2)
2. Conclusion on refugees with disabilities and other persons with disabilities protected and assisted by UNHCR

No. 110 (LXI) – 2010, available at: <https://www.unhcr.org/excom/exconc/4cbeb1a99/conclusion-refugees-disabilities-other-persons-disabilities-protected-assisted.html>. ExCom - Conclusion on refugees with disabilities and other persons with disabilities protected and assisted by UNHCR [↑](#footnote-ref-3)
3. [The Global Compact on Refugees | The Global Compact on Refugees | UNHCR (globalcompactrefugees.org)](https://globalcompactrefugees.org/) [↑](#footnote-ref-4)
4. UN High Commissioner for Refugees (UNHCR), *Working with Older Persons in Forced Displacement*, 2021, available at: <https://www.refworld.org/docid/4ee72aaf2.html> [↑](#footnote-ref-5)