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Submission made by:
Transforming Communities for Inclusion (TCI)

CALL FOR INPUTS - The obligation of States parties in situations of risk, including armed conflict, humanitarian emergencies and the occurrence of natural disasters

Initial Draft – General Comment No. 9

Submitted to the:
Committee on the Rights of Persons with Disabilities Working Group in relation to its work on Article 11 of the Convention

Transforming Communities for Inclusion (TCI) is a global organization of persons with psychosocial disabilities and is represented by its 28 members in 21 countries. TCI forecasts a future in which all human rights and full freedoms of persons with psychosocial disabilities are realized. We are guided by the United Nations Convention on the Rights of persons with Disabilities (UNCRPD).

We define 'psychosocial disabilities' inclusively: persons who identify as with psychosocial disabilities, users and survivors of psychiatry, persons with intersectional, neurodivergent, neuro-diverse identities, autistic persons, persons attributed a 'mental illness', persons deemed to

be of 'unsound mind', etc. who continue to be marginalized in the society, are at risk of institutionalization and their voices are still unheard of in highest level policy circles.

Persons with disabilities, particularly those with psychosocial disabilities continue to living on the margins, and are most marginalized, and discriminated in society. Even after 20 years of CRPD we are confined discriminatory identities such as persons living with 'mental illnesses', people who are mental patients, mentally retarded, persons of 'unsound mind', 'mad' persons, etc. This poses intractable attitudinal, legal, social, economic, cultural and program barriers to access opportunities, take risks, make our own decisions, have our will and preference respected, and enjoy all fundamental human rights for living independently and on an equal basis with others[1].

Persons with psychosocial disabilities are frequently shackled legally, by incapacity laws, mental health laws and a wide variety of civil laws, through 'civil commitment procedures' (e.g. through Vagrancy law). We are stripped of our personhood and our right to identity, further exacerbated through guardianship and conservatorship laws. We are seen as 'Non-persons' who do not have any rights in society, including the right to access justice: We are the 'civil dead', and are not seen as persons requiring reasonable accommodations at the individual level. The impact of being civil dead-on lives of persons with psychosocial disabilities is total disqualification from political participation, family life, work and employment, education, etc. This impacts how we are treated during humanitarian emergencies and disasters.

The comments below target only the paragraphs where the perspective of persons with psychosocial disabilities could be strengthened, and shared comments draw on the Committee's Guidelines on deinstitutionalization, including in emergencies (CRPD/C/5); General Comment No. 1 (art. 12); the Guidelines on article 14; the report of the Special Rapporteur on torture on abuses in health-care settings (A/HRC/22/53); and grassroots evidence from our members.

Comments and proposals to different paragraphs and sections

IMPORTANT: Overall Comment:

Transforming Communities for Inclusion (TCI) welcomes the Committee's initiative to provide authoritative guidance on States parties' obligations under article 11 and, in particular, its recognition to barriers faced by persons with disabilities should be identified, addressed and eliminated for their full inclusion in humanitarian assistance and programming.

A few overarching comments / feedback to the GC 09 are as follows:

- The committee should reconsider the pervasive use of the terms "protection" and "protect" throughout the draft. While article 11 refers to the "protection and safety" of persons with disabilities, these terms must be understood within the Convention's broader framework of autonomy, legal capacity, equality, non-discrimination and the right to live independently and be included in the community. In the current draft, the frequent use of "protection" risks reinforcing authoritarian assumptions that persons with disabilities, and particularly persons with psychosocial disabilities, are inherently vulnerable, unable to exercise autonomy, are in need of being "looked after" or rely only on medications and

[1] A/HRC/37/56 (Report of the Special Rapporteur on the rights of persons with disabilities)

rehabilitations, further increasing their risk of being institutionalized, segregated, and experience substituted decision making. Hence we suggest that the General Comment should ensure that the concept of protection where possible is replaces with “support” or “identify, address and eliminate” all forms violence, abuse, exploitation and discrimination. Protection must never become a justification for coercion, institutionalization, deprivation of liberty or other restrictions on the rights of persons with disabilities.

- Relatedly, the recurring framing of “care” as a State responsibility should also be reconsidered. The State’s obligation is not to provide care, but is to guarantee, resource and enable access to inclusive, community-based support and social protection systems that enable persons with disabilities to live independently and participate fully in the community. The states obligation is to build resilient and inclusive communities, and ensure availability, affordability, adaptability, of required needs, supports and services by persons with disabilities. Care is a natural and a human connection – that should be treated only as voluntary and should not be formalized.

- We are also concerned about the decision to address article 11 through two separate General Comments. We are not clear about the rationale for dividing the guidance between one document addressing States parties’ obligations and another addressing the impacts of situations of risk and humanitarian emergencies, and we question whether this structure will ultimately strengthen implementation. There is a significant risk that States parties and other actors will consult only the document they perceive as most directly relevant to them and will therefore miss essential obligations or context contained in the other. The obligations of States parties would, in our view, have greater practical force if they were directly connected to the concrete risks, barriers and human rights violations identified in the companion General Comment. Integrating the two documents, or at minimum ensuring strong substantive links between them, would provide a more coherent and usable framework for implementation.

- We further note that the sub-sections in this draft addressing particular groups of persons with disabilities are considerably shorter than the corresponding sections in Draft General Comment No. 10. This risks creating significant gaps in the guidance, particularly if States parties do not consult both General Comments together. The Committee should ensure that the final guidance provides sufficiently detailed and actionable analysis of the specific risks faced by different groups of persons with disabilities and does not assume that States parties will automatically cross-reference and integrate material from separate documents.

- We are particularly concerned about the draft’s extensive reliance on academic language, including Latin legal maxims and scholarly references, which risks making the General Comment inaccessible to many OPDs and national actors. The General Comment will be used directly by States parties, organizations of persons with disabilities (OPDs), national human rights institutions, humanitarian actors and other duty bearers. It should therefore “clearly” articulate what States must do to fulfil their obligations under article 11, inline to the Convention.

- We are deeply concerned that some formulations concerning IHL, including the recognition that IHL may still permit the segregation or isolation of persons with psychosocial and intellectual disabilities, risk creating ambiguity about the legal status of such practices. The General Comment must make unequivocally clear that segregation, isolation, institutionalization, disability-based detention, forced treatment and other forms of coercion cannot be legitimized by reference to competing legal regimes or by the existence of a situation of risk.

- The draft also requires stronger recognition of the diversity and intersectionality of persons with disabilities. While it contains dedicated sub-sections on women and girls, children and Indigenous persons with disabilities, it provides insufficient dedicated attention to persons with psychosocial disabilities and remains largely silent on gender-diverse persons with disabilities, youth, older persons with disabilities and persons with disabilities from racialised communities. These groups may face distinct and compounded risks in situations of risk, including institutionalization, forced treatment, deprivation of legal capacity, violence, discrimination and exclusion from evacuation, humanitarian assistance and community-based support.

- Finally, we strongly urge the Committee to ensure that the development and finalization of the General Comment is done through a consultative process with diverse representatives and participation of OPDs in accordance with articles 4(3) and 3(c) of the Convention and General Comment No. 7.

Comment / proposal to paragraph 3

We strongly welcome the recognition that the protections of article 11 cover 'institutionalization'. This is explicitly important for our constituency of persons with psychosocial disabilities because the types of different settings in which we are confined to are ongoing situations of risks and are settings in which preventable deaths recur when disasters or emergencies strikes.

Proposed text: Add at the end of the paragraph: "The Committee underscores that for persons with disabilities institutionalization, whether in psychiatric hospitals, mental asylums, social-care institutions, nursing homes, de-addiction or rehabilitation centers, care centers, detention centers, nursing homes, special education and boarding schools, welfare homes, or through informal confinement, chaining or shackling in family and community settings — is in itself a continuing situation of risk within the meaning of article 11, exposing persons with disabilities to a heightened and often fatal risk of harm during armed conflict, disasters and other humanitarian emergencies."

Basis: CRPD/C/5, paras. 6, 15, 107–113.

Comment / proposal to paragraph 4

In our experience of persons with psychosocial disabilities protection has been used to undermine our rights, dignity and legal capacity. Historically persons wth disabilities and particularly persons with psychosocial disabilities, intellectual disabilities have been confined to institutions, care centers, group homes in the name of so called protection and understanding these issues at state

levels can also be complicated, considering the fact that institutionalization is also a very political agenda in many countries. We suggest to use alternative framing against protection, like "identifying, addressing and eliminating or "providing supports and services". Wherever the committee uses "protection", it is also important the states highlight that the concept of protection is here and across the document is grounded in autonomy, legal capacity, will, preferences and the leadership of persons with disabilities. Moreover, organizations of persons with psychosocial disabilities are very few in numbers, are under-resourced, and are routinely left out of disaster planning, capacity-building and decision-making, our peers are treated as non-persons, as civil dead, because we are stripped of our legal capacity and denied access to decision-making spaces in the name of guardianship, protection and care. We are also perceived as the lesser beings, dangerous, and incapable to make our own decisions that drives everyday exclusion of persons with psychosocial disabilities.

Proposed text: After "meaningful participation of persons with disabilities in decision-making" add: "The Committee emphasizes that States parties must ensure that participation should include leadership and reach organizations of under-represented groups, including organizations led by persons with psychosocial disabilities, youth, women, gender diverse and older persons with disabilities and that these organizations are included in capacity-building, decision-making, and training on situations of risk, in line with article 4.3 of the Convention."

Basis: CRPD, arts. 4(3), 3(c); CRPD/C/5.

Comment / proposal to paragraph 7

We welcome the recognition that persons with disabilities are not a single, uniform group, that our protection/support needs differ, and that disability based and intersectional forms of discrimination, economic exclusion leading to economic precarity social isolation and segregation shape the risks we face. For persons with psychosocial disabilities, among others, a notable loss in situations of risk is the loss of our community, supporting livelihoods, social ties, peer support, personal assistance and other support systems. These support systems are often the means by which persons with psychosocial disabilities are able to mobilize in communities and prevent institutionalization. For persons with psychosocial disabilities and experiencing these losses during situations of risk carries distinct and compounded consequences.

We are concerned, however, that listing "medical, rehabilitative, and mental health services" among the forms of humanitarian assistance whose absence must be assessed creates two problems. First, it treats psychosocial disability as a mental health matter, pathologizes legitimate psychosocial distress and revives the medical model that the Convention sets aside. Second, it risks promoting or scaling up psychiatric and related interventions, which are often delivered during humanitarian emergencies without consideration of meaningful, rights-based alternatives. The obligation under article 11 is not to expand mental-health services. It is to guarantee community inclusion through rights-based psychosocial support and community-based support, provided on the basis of the person's will and preferences.

We further note that a disability-inclusive assessment of the protection/support needs of persons with psychosocial disabilities must start from the self-identification of persons with disabilities and

from their own account of needs, will and preferences. Disability assessments must use rights-based frameworks. They must not rely on a purely functional or third-party assessment.

Proposed text: In the phrase ~~"including medical, rehabilitative, mental health and psychosocial support services~~", **replace with** "community-based support systems and support services on which persons with disabilities rely, including personal assistance, psychosocial support, rights based crises support, supported decision-making and peer support".

Add at the end of the paragraph: "The Committee emphasizes that, for persons with psychosocial disabilities, ~~protection/~~support measures requires the continuity of community-based peer support provided on the basis of the free will and preferences of the person. The assessment of ~~protection/~~support needs must be done using rights based assessment mechanisms, and should be based on the self-identification of persons with disabilities and on their own account of their will and preferences." "Emergency measures must neither impose treatment nor deprive persons with disabilities of access to healthcare and support that they freely choose. Where a person voluntarily chooses to continue a particular treatment, medication or support, States parties must ensure continuity of access, based on accessible information, free and informed consent, the person's will and preferences, and the availability of safe alternatives where necessary."

Basis: CRPD, arts. 12, 19, 25; CRPD/C/GC/1; CRPD/C/5; 'Our Lessons' (2022), findings on functional-assessment tools (WG-SS Enhanced).

Comment / proposal to paragraph 8

The paragraph 8 appropriately recognizes that persons with disabilities should be recognized as active agents of change during the situations of risk, but we feel that the paragraph does not sufficiently recognize the collective role of organizations and movements of persons with disabilities, particularly those representing under-represented and multiply marginalized groups. Also, most importantly, the emphasis here on persons with disabilities being 'active agents' again runs the risk of being overshadowed by the constant use of 'protect' and 'protection'. Considering that the different movements and organizations have played an important role over the decades for organizing mutual aid, peer and community-based support, maintaining social connections and sustaining livelihoods during emergencies, it is critically important that these contributions are recognized, and could be strengthened by states parties. The below text will also strengthen the paragraph's emphasis on agency and ensure that the role of disability-led and community-based movements is acknowledged as an important component of emergency preparedness, response and recovery.

Proposed text: After "members of resistance movements" add: "The Committee also recognizes, in particular, the role of organizations and movements of persons with disabilities, including those representing under-represented and multiply marginalized groups, who have organized mutual aid, peer support and community-based support, have maintained social connections and livelihoods, and contributed to collective resilience and support for persons with disabilities during situations of risk, including during the COVID-19 pandemic. States parties should recognize and support these contributions of the movements, and ensure meaningful participation of these organizations and

movements in the planning, implementation and monitoring of measures related to situations of risk."

Proposal to Paragraph 9

"Mechanisms used to identify, locate or register persons with disabilities for evacuation, safety confirmation or assistance must respect privacy, data protection, consent and the right not to disclose a diagnosis. Access to assistance must not be made conditional on a disability certificate, diagnosis or public disclosure. Personal data must not be used for surveillance, forced intervention, institutionalization or discrimination."

Comment / proposal to paragraph 11

We welcome the recognition that risk assessments may be influenced by biases rooted in ableism. However, the paragraph could more explicitly address how discriminatory assumptions and stereotypes about persons with disabilities can directly influence the identification and assessment of risk, including assumptions about incapacity, vulnerability, dependence, dangerousness or the ability to make decisions. Such assessments can result in persons with disabilities being subjected to detention, segregation, forced interventions or exclusion from protection and humanitarian assistance, including evacuation and relief measures. These risks may be particularly pronounced for persons with psychosocial or intellectual disabilities, and are further compounded for youth, women, gender diverse and older persons with psychosocial disabilities, who face intersecting assumptions based on age, gender, gender identity and disability, but the underlying principle applies to all persons with disabilities. The Committee could clarify that risk assessments under article 11 must not be based on disability-based assumptions or perceived characteristics of persons with disabilities, but must instead be grounded in equality, non-discrimination, respect for individual autonomy, will and preferences, and the specific barriers and risks created by the environment.

Proposed text: Add: "The Committee notes that discriminatory assumptions, stereotypes and assessments based on perceived incapacity, may constitute a vehicle for ableism and result in persons with disabilities being subjected to detention, segregation, forced interventions or exclusion from support and humanitarian assistance. Such assumptions or assessments must not inform the identification of risk or the allocation of support mechanisms under article 11. Risk assessments must instead be guided by the principles of equality and non-discrimination, respect for the individual autonomy, will and preferences of persons with disabilities, and consideration of the barriers and risks created by the environment and the measures adopted in response to situations of risk." "States parties must also ensure that risk assessments and emergency responses address intersecting forms of discrimination, including racism and do not reproduce or reinforce disability-based stereotypes.

Basis: CRPD/C/GC/1; Guidelines on article 14; CRPD/C/GC/6.

Comment / proposal to paragraph 13

The paragraph 13 recognizes how ableism and paternalism reinforce perceptions of helplessness and passivity, it could more explicitly acknowledge that ableism may take different forms across

different groups of persons with disabilities. For us as persons with psychosocial disabilities, discriminatory assumptions about dangerousness, incapacity, unpredictability or "unsoundness of mind" can contribute to detention, forced psychiatric treatment, involuntary admissions to facilities, segregation and exclusion from evacuation, humanitarian assistance and other protection measures, and may result in persons with psychosocial disabilities being overlooked or abandoned during emergencies. We suggest to strongly recognize these specific manifestations that would strengthen the paragraph's analysis of how ableism increases risk and invisibility.

Proposed text: Add after "contributing to invisibility in situations of risk": "In particular, for persons with disabilities from under-represented groups, ableist and paternalistic assumptions, sometimes referred to as sanism, including assumptions of dangerousness, incapacity, unpredictability or 'unsoundness of mind', may result in detention, forced treatment, segregation or exclusion from evacuation, humanitarian assistance and other protection measures, and may contribute to their being overlooked or abandoned during emergencies."

Add in the text here or below in recommendations that: "States parties must counter such discriminatory community perceptions through specific, sustained and funded awareness-raising programmes under article 8 of the Convention, undertaken before and beyond emergencies and developed together with organizations of persons with psychosocial disabilities."

Basis: CRPD, art. 8.

Additional text proposed for the para: "Risk assessments and individual evacuation plans must be developed with the meaningful participation and consent of the person concerned. They should identify the person's will and preferences, communication methods, chosen supporters, medicines and health or welfare services, reasonable accommodation, sensory and environmental requirements, and support required for recovery and community living. The absence of a request for support must not automatically be interpreted as the absence of support needs."

Comment / proposal to paragraph 15

Proposed text: After the enumeration of groups in paragraph 15, add: "including, in particular, gender diverse persons with psychosocial disabilities, youth with psychosocial disabilities and older persons with psychosocial disabilities, whose protection/support needs arise from the intersection of psychosocial disability with gender identity, gender expression, sexual orientation and age, and who are frequently rendered invisible when these identities are addressed in isolation."

Basis: CRPD, arts. 5, 6; CRPD/C/GC/3; CRPD/C/GC/6; CRPD/C/5.

Comment / proposal to paragraph 19

We are concerned that paragraph 19, in calling on Indigenous communities to become more resilient, risks shifting the onus onto those communities rather than addressing the underlying causes of the risks indigenous communities face. The obligation to address these causes rests with States parties, not with Indigenous communities themselves.

Proposed text: Reframe paragraph 19 so that States parties are required to address the underlying causes of the risks faced by Indigenous persons with disabilities, to remedy the harms arising for them, and to ensure the availability of accessible and culturally relevant support developed and delivered under the leadership of Indigenous communities and their representative organizations.

Comment / proposal for a new sub-section after paragraph 19 — A dedicated sub-section on persons with psychosocial disabilities

The draft recognizes that different groups of persons with disabilities may experience distinct and heightened risks and therefore includes dedicated sub-sections on women and girls, children and Indigenous persons with disabilities. We recommend that the Committee similarly includes a dedicated sub-section on persons with psychosocial disabilities. Persons with psychosocial disabilities experience distinct and systemic forms of discrimination and exclusion that can significantly heighten our exposure to risk in situations of armed conflict, humanitarian emergencies and disasters. These include institutionalization, deprivation of legal capacity, involuntary hospitalization, substituted decision making and forced treatment, as well as confinement, segregation and other forms of coercion. Such practices can leave persons with psychosocial disabilities particularly exposed to abandonment, violence, abuse and neglect during emergencies, while also excluding us from evacuation, humanitarian assistance, social protection and access to justice. A dedicated subsection would ensure that these specific and intersecting risks are explicitly recognized and addressed in the interpretation and implementation of article 11. This sub-section must also make visible the situations of youth, women, gender diverse and older persons with psychosocial disabilities, whose exposure to risk is shaped by the intersection of psychosocial disability with intersecting identities.

Proposed text: Add a new heading *Persons with psychosocial disabilities* and paragraph: 20. “Persons with psychosocial disabilities face acute and distinct risks during the situations of risk and emergencies. Persons with psychosocial disabilities are disproportionately subjected to institutionalization in psychiatric and social-care institutions, mental asylums, de-addiction and rehabilitation centers, and other segregated or congregate settings, furthermore experiencing lifetime confinement, chaining or shackling in homes, communities. Persons with psychosocial disabilities in such settings may be overlooked or excluded from evacuation and emergency response and may face heightened risks of death, violence, abuse, neglect and abandonment during disasters and other emergency situations. The denial of legal capacity through incapacity and guardianship regimes, civil commitment and other discriminatory laws and practices further exclude persons with psychosocial disabilities from making decisions about their own response and from accessing evacuation, relief, cash transfers, social protection, reasonable accommodation, support services, and justice on an equal basis with others. Forced treatment, restraint and other coercive practices further undermine autonomy and, in some circumstances, impede or delay evacuation and access to emergency assistance.

States parties must ensure the availability and continuity of inclusive, community-based support systems and services, including personal assistance, peer support, crises support, supported decision-making, and self-help groups, according to the will and preferences of the person. State parties must ensure that persons with psychosocial disabilities are meaningfully involved across

humanitarian programming cycles run by states and other non-state actors to ensure their inclusion in planning, implementation and monitoring. States parties must also eliminate institutionalization, coercion, confinement, shackling and guardianship and ensure that emergency measures do not result in the establishment, continuation or expansion of segregated settings or practices that deprive persons with psychosocial disabilities of their rights. States parties must give particular attention to youth, women, gender diverse and older persons with psychosocial disabilities, who face distinct and compounded risks in situations of risk, including gender-based and sexual violence, coercive or "corrective" practices targeting gender identity or expression, and age-related neglect, isolation and abandonment. States parties must give particular attention to the protection and inclusion of persons with psychosocial disabilities in all situations of risk, in accordance with the Convention and the Committee's Guidelines on deinstitutionalization, including during emergencies."

Basis: CRPD/C/5, paras. 6, 58, 107–113.

Comment / proposal for a new sub-section after paragraph 19 — A dedicated sub-section on gender diverse persons with psychosocial disabilities

The intersectionality section (Section IV) includes dedicated sub-sections on women and girls, children and Indigenous persons with disabilities, but it does not address gender diverse persons with disabilities at all, and it is entirely silent on gender diverse persons with psychosocial disabilities. Gender diverse persons with psychosocial disabilities face the compounded forces of transphobia, homophobia, sanism and ableism at once. In many jurisdictions we are also institutionalized because of their gender identity or expression, and are subjected to involuntary hospitalization, forced treatment and "conversion" or "corrective" practices carried out in the name of treatment, including in family, community, faith-based and traditional-healing settings. In situations of risk, we are exposed to heightened sexual and gender-based violence in camps, shelters and evacuation settings, are frequently excluded from gender-segregated services and facilities, and are rendered invisible by humanitarian data and response systems that do not recognize them. The pathologization of gender diversity means that distress is too often attributed to gender identity itself, providing a pretext for coercion. A dedicated sub-section would ensure that these specific and intersecting risks are explicitly recognized and addressed in the interpretation and implementation of article 11.

Proposed text: Add a new heading *Gender diverse persons with psychosocial disabilities* and paragraph:

"Gender diverse persons with psychosocial disabilities experience compounded discrimination on the basis of disability, gender identity, gender expression and sexual orientation, and face acute and distinct risks in situations of risk. They are disproportionately subjected to institutionalization, involuntary hospitalization, forced treatment and "conversion" or "corrective" practices imposed on the grounds of their gender identity or expression, including in family, community, faith-based and traditional-healing settings. During armed conflict, humanitarian emergencies and disasters gender diverse persons with disabilities face heightened risks of sexual and gender-based violence, exclusion from gender-segregated shelters, evacuation and relief, denial of health care and support, and invisibility in humanitarian planning, data and response. States parties must ensure

that appropriate measures are taken in situations of risk and do not impose coercive or "corrective" interventions on gender diverse persons with disabilities; must guarantee their safety and non-discriminatory access to evacuation, shelter, protection, health care and community-based support according to their will and preferences; and must ensure their meaningful participation, and that of their representative organizations, in the planning, implementation and monitoring of all situations-of-risk measures."

Basis: CRPD, arts. 5, 6, 11, 12, 15, 16, 25; CRPD/C/5; CRPD/C/GC/3.

Add New Sub-Section for Older Persons with Disabilities

States parties must ensure that emergency preparedness, response and recovery measures identity, address and eliminate the specific and intersecting risks faced by older persons with disabilities, including through access to information and communication, access to evacuation and transportation, availability and continuity of support services and support systems, access to healthcare, medication, assistive devices, and adequate and accessible housing and shelter. States parties must ensure that older persons with disabilities are not subjected to discrimination, segregated living or evacuation arrangements, or deprioritized in evacuation, rescue, triage, healthcare or humanitarian assistance on the basis of age, disability, perceived dependence or assumptions about quality of life. Older persons with disabilities must be meaningfully consulted and actively involved, through their representative organizations, in the development and implementation of measures addressing situations of risk that affect them.

Add New Sub-Section for Asylum Seekers and Refugees

States parties must ensure that asylum seekers and refugees with disabilities can access asylum and international immigration protection procedures and exercise their rights on an equal basis with others, including through accessible information, reasonable and procedural accommodations, supported decision making, support systems, legal assistance and communication support. Disability must not be a basis for exclusion, deprivation of liberty or denial of immigration protection. Persons with disabilities must not be subjected to refoulement where this would expose them to a real risk of violations of their rights under the Convention. Reception and accommodation arrangements must be accessible, inclusive and community-based, and must not result in institutionalization or segregation in the name of protection. States parties must ensure equal access to community-based support, healthcare, social protection and other essential services, and ensure continuity of disability-related supports throughout displacement, reception and resettlement.

Comment / proposal to paragraph 21

The paragraph 21 appropriately emphasizes that protection should respect the will and preferences of persons with disabilities and should not overregulate lives of persons with disabilities, it does not explicitly address the use of coercive measures in the name of protection. This is particularly important for persons with psychosocial disabilities, including youth, women, gender diverse and older persons with psychosocial disabilities as we have historically been

subjected to involuntary hospitalization, forced treatment, deprivation of liberty and substituted decision-making on the stated grounds of "protection". The Committee should clarify that situations of risk do not justify disability-based restrictions on liberty, legal capacity or bodily integrity, and that protection must be provided through rights-based community-based support systems and services.

Proposed text: Add after "Protection in situations of risk should not overregulate the lives of persons with disabilities": "Protection must not be pursued through the deprivation of legal capacity, substituted decision-making, involuntary hospitalization, forced treatment or any other deprivation of liberty or coercive measure on the basis of disability, age, gender, and sexual orientation, including in situations of risk and emergencies. A situation of crisis experienced by persons with disabilities must not be presumed to require detention or forced intervention in the name of "protection". Support for such situations should be mobilized through community based support systems and services, and as per the will and preferences of the person.".

Add after Para 21 a new paragraph: "States parties must not evacuate persons with disabilities to disability-specific shelters, welfare shelters, hospitals, institutions or other separate settings as a substitute for providing accessibility, reasonable accommodation and community-based support in general evacuation shelters and community settings. Any relocation must be based on the free and informed choice of the person and must not result in segregation or institutionalization."

Basis: CRPD/C/GC/1; Guidelines on article 14; CRPD/C/5, paras. 8, 10.

Comment to Paragraph 25: Latin terminology used in this paragraph needs to be translated and explained, in line with the emphasis in this Draft General Comment on accessible communication.

Comment / proposal to paragraphs 34 and 35

Persons with psychosocial disabilities during these warnings and evacuations are completely left behind due to legal capacity issues, guardianship, institutionalization, and inaccessible communications. In these paras, the committee must also emphasize that states must ensure that warnings reach to all civilians despite their age, disability, gender, sexual orientation, etc. and we would highly recommend to remove the term "as possible" in the para 34.

Proposed text: Suggested edits to para 34 Rephrase: Cut the text as highlighted below and add the italic text as highlighted below.

"For example, inaccessible precautionary measures—such as effective advance warning of attacks and evacuation—result in disproportionately high levels of harm to persons with disabilities. To be 'effective,' IHL requires that a warning reach ~~the maximum number of~~ *all civilians despite age, disability, race, gender, sex, etc.* ~~as possible and provide them with enough time to flee.~~ The Convention further informs this IHL obligation by requiring that methods, mediums, and language formats for communicating these warnings be accessible to all people with disabilities, and that extra time, beyond the standard required, be given to allow persons with disabilities to flee *who are living in communities, or any segregated settings*.

Proposed text: Suggested edits to para 35 Rephrase: Cut the text as highlighted below and add the italic text as highlighted below.

Similarly, IHL generally obligates the evacuation of the civilian population when feasible and safe, but allows the evacuation in specific circumstances of groups at heightened risk, including persons with disabilities. The Convention adds the necessary detail to this protection by *identifying, addressing and eliminating intersectional form and disability based discrimination against persons with disabilities in compliance with the CRPD,* and requiring States parties to ensure evacuations are inclusive of people with *diverse* disabilities *(e.g., access to transportation services, trauma-related support, other support systems, transport of assistive devices, access to personal assistance, access to peer supporters)* and that when people with disabilities reach shelters, camps, or other temporary facilities, that these locations are accessible, *inclusive* and contain sufficient goods and equipment available for their specific needs. When these locations are not inclusive of *persons with disabilities* ~~inaccessible~~, the Convention requires States parties to adapt or modify the ~~physical~~ environment to accommodate all persons with disabilities and provide them with the necessary *support and* services based on their needs.

Add in para 35: "Evacuation and humanitarian assistance systems must include proactive, consent-based outreach to persons sheltering at home, in vehicles, with relatives, or any community members in informal accommodation, in isolated areas or outside established support systems. Food, water, information, general medicines, health and welfare services, personal assistance, peer support and cash or in-kind assistance must not be restricted to residents of official shelters."

Comment / proposal to paragraph 38

We strongly welcome the Committee's finding that the segregation and isolation of persons with psychosocial and intellectual disabilities, which may still be permitted under international humanitarian law, constitute discrimination on the basis of disability, contrary to article 5, and may amount to torture or inhuman treatment contrary to article 15, and that the Convention must prevail. We recommend that the Committee further clarify that this prohibition applies in all situations of risk and in all settings. In particular, emergency, humanitarian and public health measures should not rely on or create segregated settings, isolation or coercive practices for persons with disabilities, including where such measures are presented as necessary for protection or safety. The Committee should also ensure that international legal and policy frameworks applied in situations of risk do not perpetuate approaches that discriminate against persons with disabilities or create a risk of institutionalization, confinement or segregation.

Proposed text: Add: "The Committee underscores that the prohibition of segregation and isolation of persons with disabilities on the basis of disability applies in all situations of risk, including armed conflict, humanitarian emergencies, disasters and public health emergencies, and in all settings, including institutions, shelters, camps, quarantine and isolation facilities. The use of solitary confinement, seclusion, or physical, mechanical or chemical restraint against persons with disabilities on the basis of disability or as a measure of protection cannot be justified by a situation of risk."

Basis: CRPD, arts. 5, 14, 15; CRPD/C/5, paras. 8, 10.

Comment / proposal to paragraph 41

The paragraph appropriately recognizes the specific risks faced by women, children and older persons with disabilities, but does not sufficiently acknowledge the distinct and heightened risks faced by persons with psychosocial disabilities in situations of risk, including violence, sexual violence, exploitation and abuse in camps, shelters and evacuation settings. Persons with psychosocial disabilities may also face additional barriers to protection and justice where their accounts are disregarded or disbelieved because of disability-based stereotypes and assumptions about their credibility, and capacity. The paragraph should further recognize the compounded discrimination and heightened risks faced by gender-diverse persons with psychosocial disabilities, including in relation to safe evacuation, access to appropriate shelter and humanitarian assistance, and protection from violence and exploitation.

Proposed text: After "women, children, and older persons with disabilities" add: "and persons with psychosocial disabilities, who may face heightened risks of violence, racialization, sexual violence, exploitation and other forms of abuse, including in camps, shelters and evacuation settings, and whose experiences and reports may be disregarded or disbelieved as a result of disability-based stereotypes and assumptions regarding their credibility or capacity. States parties must also address the compounded risks and barriers faced by gender-diverse persons with psychosocial disabilities, including in relation to safe evacuation, access to appropriate and non-discriminatory shelter and humanitarian assistance, and protection from violence, abuse and exploitation."

Comment to paragraph 42

Add reference to Article 14 also in the main paragraph (Liberty and security of the person).

Comment / proposal to paragraph 44

Two situations of risk to our constituency are not captured here. First, a long, drawn-out transition out of conflict or militarization can keep persons in fear and deprivation for years. Second, localized disasters inside institutions — fires, flooding, building collapse — happen again and again. Also, an over comment and suggestion for committee is to add in detail that how climate change is affecting persons with disabilities.

Proposed text: Add: "The Committee further considers that situations of risk within the meaning of article 11 may persist beyond the immediate phase of an emergency, including during protracted transitions following armed conflict, militarization or civil strife, where persons with disabilities, particularly those experiencing multiple and intersecting forms of discrimination, may continue to face fear, deprivation and insecurity. The Committee also recognizes that localized disasters occurring within institutions and other segregated or congregate settings, including fires, flooding and building collapse, constitute situations of risk under article 11. States parties must take all necessary measures to prevent such risks and ensure the effective evacuation, protection

and safety of persons with disabilities in such settings, while ensuring that emergency measures do not perpetuate or reinforce institutionalization or segregation."

Comment / proposal to paragraph 47

We strongly welcome paragraph 47 and its recognition of the interdependence between the right to live independently and in the community, legal capacity and deinstitutionalization. We propose strengthening the paragraph by explicitly addressing the legal and policy frameworks that create or perpetuate heightened risks for persons with psychosocial disabilities, including formal and informal forms of denial of legal capacity. In many contexts, informal guardianship and other practices deny persons with psychosocial disabilities recognition and decision-making authority and can leave people without effective protection or recourse during emergencies. The paragraph should also make clear that situations of risk must not be used to introduce, reactivate or expand coercive legal regimes or practices that result in institutionalization, involuntary psychiatric commitment or forced treatment.

The Committee should further recognize that these risks may be compounded by intersecting forms of discrimination. Women, children and young persons, older persons, and gender-diverse persons with psychosocial disabilities may face additional barriers to exercising legal capacity, living independently and accessing community-based supports, and services and may be at heightened risk of institutionalization or placement in segregated settings. Persons with disabilities from racialized communities, including persons with psychosocial disabilities, may experience compounded discrimination and heightened barriers to exercising legal capacity, living independently and accessing community-based supports and services, particularly where racism and ableism intersect. States parties should therefore ensure that deinstitutionalization and emergency preparedness measures address these intersecting forms of discrimination and are developed with the meaningful participation of the persons concerned and their representative organizations.

Proposed text: Add: "States parties must repeal incapacity, guardianship, mental health, civil commitment and vagrancy laws and other legal frameworks that authorize or facilitate the detention, institutionalization or forced treatment of persons with disabilities on the basis of impairment, and must not use situations of risk to enact, reactivate or expand involuntary psychiatric commitment or other forms of disability-based deprivation of liberty. States parties must address both formal and informal denial of legal capacity, including informal guardianship and other practices that prevent persons with disabilities from exercising their legal capacity can leave persons with psychosocial disabilities without recognition, protection or effective recourse during emergencies. States parties must also ensure that women, children and young persons, older persons and gender-diverse persons with psychosocial disabilities are not disproportionately subjected to institutionalization, segregation or other restrictions on their rights as a result of intersecting forms of discrimination, and must ensure access to inclusive, community-based support systems and services that enables them to live independently and participate fully in the community." States parties must also address the compounded discrimination faced by persons with disabilities from racialized communities, including persons with psychosocial disabilities, and ensure that intersecting forms of racism and ableism do not result in heightened risks of

institutionalization, segregation, denial of legal capacity or exclusion from community-based supports and services."

Basis: CRPD/C/5, para. 58; CRPD/C/GC/1.

Comment / proposal to paragraph 51

We welcome the Committee's recognition that the duty to protect requires States parties to accelerate deinstitutionalization and identify persons with disabilities in institutions. But we would like to emphasize to explain the types of institutions along with suggesting immediate halt of any approach that may promote medical approaches to psychosocial disabilities.

Proposed text: Add: "Efforts to identify persons with disabilities in institutions must extend to persons confined, chained or shackled in homes, prayer camps and faith-based and traditional-healing settings, who are frequently invisible to authorities. These also include group homes, social care institutions, care centers, recovery centers, special education centers, rehabilitation centers, etc. During emergencies, persons with disabilities at the highest risk, including those subjected to prolonged forced medication, should be prioritized for deinstitutionalization and evacuation, and the effects of forced treatment and over-medication that impede mobility and evacuation must be actively addressed. States parties must immediately halt any approach that promotes psychiatry or the medical model, adopt a moratorium on new admissions and on the construction, refurbishment or renovation of institutions in all their forms, and recognize institutionalization as a form of violence that exposes persons with psychosocial disabilities to restraint, forced medication, ill-treatment and death."

Basis: CRPD/C/5, paras. 8, 13, 107, 110.

Comment / proposal to paragraph 52

The harm caused by institutions to persons leaving institutions during an emergency should be recognized as harms caused by institutionalization. Persons with disabilities leaving institutions should be provided with reparation, and their legal capacity, support arrangements and social capital should be restored.

Proposed text: Add: "The Committee recalls that persons with disabilities leaving institutions during or after an emergency are entitled to remedies and reparation for the harm of institutionalization, including individualized funding, restoration of legal capacity, personal assistance, peer support, crises support and the rebuilding of community networks and supported-decision-making arrangements disrupted by institutionalization and by the emergency itself."

Basis: CRPD/C/5, paras. 86, 96.

Comment / proposal to paragraph 53

Our constituency's experience of COVID-19 was catastrophic. Institutions became closed with high death rates and no data on survivors, while community members lost peer support, personal

assistance and social ties under lockdown. Provisions on continuity of support must name these losses.

Proposed text: Add: "In public health emergencies, States parties must ensure the uninterrupted availability community support systems and services on which persons with disabilities rely — including personal assistance, supported decision-making, individualized funding, peer support, self-help and mutual-aid groups, and family and community networks — and must prevent the isolation and mass infection of persons with disabilities in institutions. States must ensure that supports and services are based on the will and preferences of the person, and provided within disability-inclusion and community-development frameworks rather than medical or 'mental health' frameworks. States must also ensure that person during such emergencies persons with disabilities have access to accurate, timely, accessible and easy-to-understand information, provided through multiple communication formats and channels regarding the situation of public health emergency and measure made available to support persons with disabilities. The information should also clearly explain the measures adopted, the support systems and services available, and how persons with disabilities can access them.

Basis: Joint Statement of the Committee and the Special Envoy on COVID-19 (2020); COVID-19 Disability Rights Monitor (2020).

Comment / proposal to paragraph 54

Registration procedures concerning migrants, refugees and internally displaced persons with disabilities may create risks of discrimination, surveillance and coercion, particularly for persons with psychosocial, intellectual or cognitive disabilities. Registration should be voluntary, accessible and based on free and informed consent. Access to protection, reasonable accommodation, humanitarian assistance and support should not depend on disclosure of a diagnosis, disability certification or formal registration. Information collected must remain confidential and must not be used or shared in ways that may facilitate deprivation of liberty, institutionalization, forced treatment, deportation or removal, refoulement, persecution, retaliation or other adverse immigration decisions.

Proposed text: Add: "The Committee emphasizes that procedures for the registration of migrants, refugees and internally displaced persons with disabilities must be voluntary, accessible and based on free and informed consent, with safeguards for confidentiality and data protection. Access to protection, reasonable accommodation, humanitarian assistance and support must not be made conditional on disclosure of a diagnosis, disability certification or formal registration. Information collected must not be used or shared in ways that may facilitate discrimination, deprivation of liberty, institutionalization, forced treatment, deportation or removal, refoulement, persecution, retaliation or other adverse immigration decisions."

Basis: CRPD, arts. 5, 18, 22 and 31.

Paragraphs 57 and 58: Latin terminology used in these paragraph needs to be translated and explained, in line with the emphasis in this Draft General Comment on accessible communication.

Comment / proposal to paragraph 63

We welcome the requirement that armed non-State actors may not segregate or isolate persons with disabilities. We are concerned, however, that the obligation to "provide access… to specialist treatment, medication, rehabilitation, and psychosocial services in detention settings" could be read as allowing interventions that are led by service delivery professionals and based on the medical model of disability and may lead to coercive interventions. Any such services must not be encouraged by the states obligations. Also, any support systems, services or alternatives must not be provided inside detention settings. These should be promoted and must be made available in community settings. The paragraph should clarify that "detention settings" encompasses all forms of deprivation of liberty, including prisons, police and military detention, immigration detention, psychiatric institutions and other institutional or segregated settings.

Proposed text rephrase as follows: 63. The Committee finds that armed non-State actors must also provide reasonable accommodations to ensure the humane treatment of persons with disabilities and compliance with the prohibition against adverse distinction. Armed non-State actors must, therefore, take all feasible measures to provide assistive devices, *support services, modification of the environment, and use accessible and easy to understand formats to communicate.* Additionally, armed non-State actors, in order to ensure humane treatment, cannot segregate or isolate persons with disabilities and must provide access to support systems, and services, general heath, trauma support, and other supports in compliance to UNCRPD. ~~specialist treatment, medication, rehabilitation, and psychosocial services in detention settings.~~

Basis: CRPD, arts. 12, 15, 25; CRPD/C/GC/1.

Comment / proposal to the Recommendations (paragraphs 69–71) — Additional recommendations essential to our constituency

We propose the following further recommendations.

Proposed text: (i) States parties should repeal, as a matter of priority and including during situations of risk, all incapacity, guardianship, mental health, civil-commitment and vagrancy laws that permit deprivation of liberty or forced treatment based on disability. Additionally, repeal any other policies, medical guidelines, hospital protocols etc., that permit coercive procedures or enable overriding of will, preferences and choices of persons with disabilities.

(ii) States parties should redirect emergency, recovery and reconstruction funding away from institutions and invest towards promoting and setting up formal and informal community-based support systems and services — including personal assistance, supported decision-making and peer support — and must not rebuild or repopulate institutions after emergencies. States must also ensure that the process of deinstitutionalization process is initiated immediately, and is not paused or stopped during the emergency situations.

(iii) States parties should ensure that organizations of persons with psychosocial disabilities, including organizations of youth, women, older persons and gender diverse communities, which are under-resourced, are specifically identified, resourced and included in the design,

implementation and monitoring of all situations-of-risk measures, and that data are disaggregated to include persons in institutions and persons subjected to informal confinement.

(iv) States parties should, under article 8 of the Convention, undertake specific, sustained and funded awareness-raising programs, before and beyond emergencies and developed with organizations of persons with psychosocial disabilities to sensitize the communities, and transform community, family and institutional attitudes, and end informal guardianship, confinement and shackling.

(v) States parties must establish accessible, independent and adequately resourced monitoring, complaint, investigation and remedy mechanisms covering denial of evacuation or shelter access, failure to provide reasonable accommodation, interruption of required needs or support, unauthorized disclosure of disability information, forced psychiatric intervention, segregation and institutionalization. Organizations led by persons with disabilities and survivors of institutionalization must participate in the design, implementation and review of these mechanisms."

(vi) States parties should ensure that situations-of-risk measures explicitly address the intersecting forms of discrimination faced by persons with disabilities from racialized communities, including persons with psychosocial disabilities. States parties should take measures to prevent racism and ableism from compounding barriers to evacuation, humanitarian assistance, shelter, social protection and community-based support, and ensure the meaningful participation and representation of organizations of persons with disabilities from racialized communities in the design, implementation and monitoring of emergency preparedness, response and recovery measures.