

**Comments on the draft General Comment of the Committee on the Rights of Persons with Disabilities on equality and non-discrimination.**

This submission was made on behalf of the Child Rights International Network - CRIN ([www.crin.org](http://www.crin.org)) on 30 November 2017.

The Child Rights International Network (CRIN) is a global research, policy and advocacy organisation. This submission will focus on the aspects of the draft general comment that specifically relate to children with disabilities, specifically with regards to the sections on “children with disabilities” and “situations of risk and humanitarian emergencies”.

**Article 7 - Children with disabilities (paragraphs 42 and 43)**

Best interests

Paragraph 43 currently makes reference to requirement under the Convention on the Rights of Persons with Disabilities that in all actions concerning children with disabilities, the best interests of the child shall be a primary consideration. We would urge the Committee to recognise the way this obligation interacts with the principle that children with disabilities have a right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity.<sup>1</sup> It is vital that these mutually supporting rights are read together to avoid paternalistic impositions of what is assumed to be in the interests of children, without considering whether any given child has the capacity to make a decision they are affected by.

The Committee on the Rights of the Child has developed extensive guidance on the application of the best interests principle under the Convention on the Rights of the Child, which is set out in similar terms to Article 7(2) of the CRPD.<sup>2</sup> In particular, the Committee on the Rights of the Child has been clear about the relationship between the best interests principle and the right to be heard:

*“Regarding the significant relationship between the right to be heard and the best interests of the child, the Committee on the Rights of the Child has already stated that there can be no correct application of article 3 [the best interests of the child] if the components of article 12 [the right to be heard] are not respected.”<sup>3</sup>*

We urge the Committee to explicitly recognise the mutually supportive role of the best interests principle and the right to be heard to recognise the importance of the views of

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<sup>1</sup> Convention on the Rights of Persons with Disabilities, Article 7(2).

<sup>2</sup> Convention on the Rights of the Child, Article 3(1): “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

<sup>3</sup> Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, CM”/C/GC/3-CRC/C/GC/22, 16 November 2017, para. 37.

children in ascertaining their best interests and that as children mature, their view as to what is in their best interests becomes determinative.

### Institutionalisation

The current section of the General Comment on the rights of children with disabilities addresses institutionalisation, recommending that “States parties should address violence and institutionalisation of children with disabilities as a matter of discrimination.”<sup>4</sup> In separate paragraphs, the draft also recognises that disability shall in no case justify a deprivation of liberty”.<sup>5</sup> While this recognition is welcome and sets a clear standard, the paragraphs on the rights of children with disabilities could more clearly reflect the recommendations made by the Committee within its concluding observations on this issue. We would urge the Committee to reflect the strong and clear language it has adopted in its recommendations to States to clarify how these standards apply to children within the paragraphs on children with disabilities. For example, the Committee’s recommendation to Guatemala called for the abolition of the institutionalisation of children of any age.<sup>6</sup>

### **Article 11 - Situations of risk and humanitarian emergencies (paragraphs 49 to 53)**

#### Access to services

Paragraph 51 of the draft General Comment addresses the right of persons with disabilities to access basic necessities such as water, sanitation, food and shelter. The Committee on the Rights of the Child and the Committee on Migrant Workers have expressed this obligation with regards to children in stronger terms, stating that:

*“States parties should ensure migrant children and their families are integrated into receiving societies through the effective realisation of their human rights and access to services in an equal manner with nationals.”<sup>7</sup>*

We recommend that the Committee adopt language in this general comment to recognise the right of migrant children with disabilities to access services in an equal manner with nationals.

#### Immigration detention

The current section of the draft general comment on situations of risk and humanitarian emergencies addresses access to services for internally displaced persons and refugees, but does not address the emerging consensus against the detention of children in this

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<sup>4</sup> Draft General Comment on Equality and Non-discrimination, para. 43.

<sup>5</sup> Draft General Comment on Equality and Non-discrimination, paras. 63 and 64.

<sup>6</sup> See, for example, Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Guatemala*, CRPD/C/GTM/CO/1, 30 September 2016, para. 54.

<sup>7</sup> Joint general comment No. 2 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, CMW/C/GC/3-CRC/C/GC/22, 16 November 2017, para. 23.

context. As noted by the Committee on the Rights of the Child and the Committee on Migrant Workers, “children should never be detained for reasons related to their or their parents’ migration status and States should expeditiously and completely cease or eradicate the immigration detention of children.”<sup>8</sup> This standard has also been recognised by a broad range of other international and regional human rights bodies.<sup>9</sup>

The right to liberty and security of person protected under the Convention on the Rights of Persons with Disabilities requires that children’s liberty be protected on an equal basis as any other child<sup>10</sup> and we therefore recommend that the draft general comment recognise the standard that children should never be deprived of their liberty in the context of migration.

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<sup>8</sup> Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW/C/GC/4-CRC/C/GC/23, 16 November 2017, para. 5.

<sup>9</sup> For a compendium of relevant standards, see Inter Agency Working Group on Child Immigration Detention, *Summary of normative standards and recommendations on ending child immigration detention*. Available at: [http://www.iawgendchilddetention.org/wp-content/uploads/2016/11/IAWG\\_Child-Detention-Standards\\_Aug-2016\\_FINAL.pdf](http://www.iawgendchilddetention.org/wp-content/uploads/2016/11/IAWG_Child-Detention-Standards_Aug-2016_FINAL.pdf).

<sup>10</sup> Convention on the Rights of Persons with Disabilities, Article 14(1).