

# Ensuring a Disability Perspective in Disaster Law

## *The Contribution of the Committee on the Rights of Persons with Disabilities*

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### 1 Introduction\*\*\*

As is well-known, disasters have an uneven burden on different population groups, and ‘pre-existing vulnerabilities and patterns of discrimination usually become exacerbated in situations of natural disasters’.<sup>1</sup> One such vulnerable group is persons with disabilities (PWD). While PWD have the same rights in the disaster context as others, in practice they are often excluded from emergency responses through lack of information, limited accessibility, and failure to provide reasonable accommodation.<sup>2</sup> Disasters affect PWD and their families ‘disproportionately and negatively’.<sup>3</sup> In the context of disaster risk reduction initiatives, PWD have historically been excluded or marginalised.

The Sendai Framework for Disaster Risk Reduction 2015–2030 (SFDRR or Sendai Framework) reflects a positive paradigm shift to a more inclusive approach to PWD with the explicit referencing of a number of core disability concepts including accessibility, inclusion and universal design. However, an earlier but sometimes overlooked development recognising the rights and roles of PWD in disaster risk reduction is found in the Convention on the Rights of Persons with Disabilities 2006 (CRPD). Art. 11 of the CRPD sets out an obligation on states parties to take measures ‘to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters’. The Committee on the Rights of Persons with Disabilities (the CRPD

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1 IASC, ‘Operational Guidelines on the Protection of Persons in Situations of Natural Disasters’ (2011) 2.

2 Stephanie Motz, ‘Article 11: Situations of Risk and Humanitarian Emergencies’ in Ilias Bantekas, Michael Ashley Stein and Dimitris Anastasiou (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (OUP 2018) 318.

3 Laura M. Stough and Ilan Kelman, ‘People with Disabilities and Disasters’ in H. Rodriguez et al. (eds), *Handbook of Disaster Research* (Springer 2017) 238.

Committee), which is the treaty body charged with monitoring states parties' implementation of their obligations under the CRPD, has made a number of comments and recommendations on state practice under art. 11.

The aim of this article is to explore the CRPD Committee's contribution to international disaster law primarily by analysing its 94 sets of concluding observations to states. Almost all of these concluding observations comment on the implementation of art. 11, and there is frequent endorsement of the Sendai Framework. We begin in section 2 by introducing the CRPD and the Sendai Framework. In section 3, we highlight the key themes emerging from the CRPD Committee's observations, and in section 4 we consider these themes in the context of the Sendai Framework and comment on how the Committee's observations contribute to understanding the situation of PWD under the SFDRR. Ultimately, the article illuminates the solid contribution of the CRPD Committee to international disaster law and recommends that the Committee should adopt a General Comment on art. 11 as a logical next step to guide future state practice.

## 2 Two Key Frameworks: the Convention on the Rights of Persons with Disabilities and the Sendai Framework

In this section of the article, we explain the two key frameworks the subject of our analysis. We begin with the CRPD, adopted by the UN General Assembly in 2006, and then consider the Sendai Framework, adopted some nine years later.

### 2.1 *The Convention on the Rights of Persons with Disabilities*

The CRPD is one of the nine core international human rights treaties, and one of the most widely ratified, with 185 states parties as at December 2022. In common with the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC), other treaties concerned with particularly vulnerable groups, the CRPD does not create new rights for PWD, but is instead designed to apply the rights found in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) to the circumstances of PWD. The purpose of the CRPD is expressed in art. 1 as 'to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity'.

The CRPD represents a fundamentally new way of conceptualising human rights for PWD. Significantly, the CRPD heralded a paradigm shift away from the medical model of disability and towards a social and human-rights based model of disability. This is illustrated in part by the definition of PWD in art. 1 which provides that '[p]ersons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others'. The Preamble outlines at a wider level that 'disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others'.<sup>4</sup> The emphasis on attitudes and environments underlies a model of disability that is not a matter of medical diagnosis but a result of how society views people.

The CRPD is underpinned by the core aims of equality and equity for PWD, and uses an expansive definition of discrimination to achieve its aims. Its foundational definition, set out in art. 2, provides:

"Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or *effect* of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of *reasonable accommodation*. (Emphases added.)

The first emphasis makes it clear that discriminatory impact, even with a benign intent, is as problematic as intentional discrimination. The second emphasised phrase is an important component of understanding discrimination in relation to PWD, namely that failing to offer reasonable accommodation is itself discriminatory. Art. 2 further defines reasonable accommodation:

"Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.

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4 Convention on the Rights of Persons with Disabilities, 13 December 2006, Preamble, para. (e).

One of the other central concepts in the CRPD is accessibility. Art. 9 provides that:

[t]o enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.

Importantly, accessibility is conceived as being relevant to both the physical environment and also to the provision of information. Another key concept underpinning the CRPD is universal design. Art. 2 defines universal design, as 'the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design'. This has to be promoted in relation to 'goods, services, equipment and facilities' by virtue of art. 4(1)(f): a greater use of universal design should reduce the need for reasonable accommodation in a number of situations.

Other key features of the CRPD reflect the importance of full inclusion of PWD in society. Accordingly, there are obligations as to independent living and inclusion in the community (art. 19), the right to education has to be secured through inclusive rather than special education (art. 24), and there is a need for awareness-raising to counter prejudiced views (art. 8). Alongside the imperative of inclusivity is the encouragement of participation by PWD and disabled peoples' organisations (DPOs). Article 4 covers consultation and specifically recognises the importance of consultation processes involving PWD and their representative organisations.

As with the other core human rights treaties, implementation of the CRPD is monitored by an expert body, the Committee on the Rights of Persons with Disabilities (the CRPD Committee). The CRPD Committee, comprised of 18 independent experts, receives periodic reports from the 185 states parties on their progress in implementing their obligations under the treaty, and, following a constructive dialogue between representatives of the state and the Committee, issues concluding observations to the state. These concluding observations comment on best practice and issues of concern, and make recommendations to the individual state. The CRPD Committee also issues General Comments on what the treaty obligations entail, which will often draw on concluding observations. The CRPD Committee is also able to

consider communications from individuals in the 100 states which have ratified the Optional Protocol to the CRPD.

## 2.2 *The Sendai Framework for Disaster Risk Reduction 2015–2030*

The text of the Sendai Framework firmly established PWD and their DPOs as ‘legitimate stakeholders and actors in the design and implementation of international disaster risk reduction policies’.<sup>5</sup> The drafting history shows the strong involvement of DPOs, and the intentional use of a number of the core concepts from the CRPD.<sup>6</sup>

PWD are referenced directly five times in the preamble, the guiding principles (two references), the priorities for action and the role of stakeholders. The Preamble refers to the need for ‘a more people-centred approach to disaster risk’ and notes that PWD are one of the relevant stakeholders with whom Governments should engage in the design and implementation of policies, plans and standards.<sup>7</sup> The Guiding Principles recognise the need for ‘an all-of-society engagement and partnership’ which includes the integration of a disability perspective in all policies and practices, and the need for decision-making based on data disaggregated by disability.<sup>8</sup> The fourth priority for action (enhancing disaster preparedness for effective response and to “Build Back Better” in recovery, rehabilitation and reconstruction) notes that ‘[e]mpowering women and persons with disabilities to publicly lead and promote gender equitable and universally accessible response, recovery, rehabilitation and reconstruction approaches is key’.<sup>9</sup> The SFDRR acknowledges that while states have overall responsibility for reducing disaster risk, a range of other stakeholders have a role to play, including PWD. Thus, PWD and their organisations are ‘critical in the assessment of disaster risk and in designing and implementing plans tailored to specific requirements taking into consideration, inter alia, the principles of universal design’.<sup>10</sup>

As well as these five specific references to either PWD or the need for a disability perspective, the Sendai Framework also draws on the key disability-related concepts of accessibility, universal design, inclusivity and participation.<sup>11</sup> For

5 Laura M. Stough and Donghyun Kang, ‘The Sendai Framework for Disaster Risk Reduction and Persons with Disabilities’ (2015) 6/2 *International Journal of Disaster Risk Science*, 140, 143.

6 *Ibid.*, 141–142.

7 Sendai Framework for Disaster Risk Reduction 2015–2030, para. 7.

8 *Ibid.*, paras. 19(d) and 19(g).

9 *Ibid.*, para. 32.

10 *Ibid.*, para. 36(a)(iii).

11 For discussion, see Stough and Kang (n 5) 146–147.

example, the Preamble notes that '[d]isaster risk reduction practices need to be multi-hazard and multisectoral, inclusive and accessible in order to be efficient and effective'.<sup>12</sup> The third priority for action (investing in disaster risk reduction for resilience) provides that it is important to strengthen disaster resilient public and private investments through 'building better from the start to withstand hazards through proper design and construction including the use of the principles of universal design'.<sup>13</sup> And, in raising public awareness and disseminating information, the media should act 'in a simple, transparent, easy-to-understand and accessible manner'.<sup>14</sup>

The incorporation of these key concepts in the Framework means that they now serve the field of disaster risk reduction as important overarching principles – relevant to the needs of all peoples impacted by disaster, not just PWD.<sup>15</sup> As a result, PWD are now firmly situated within international policy and discourse on disaster risk reduction.<sup>16</sup> One commentator has described the Sendai Framework as 'a giant leap in the right direction towards proper inclusion of vulnerable populations'.<sup>17</sup>

Recent literature considers the implementation of the Sendai Framework after the first five years.<sup>18</sup> Ilan Kelman notes that the Framework:<sup>19</sup>

is a mixed bag of advantages, disadvantages, neutral traits, missed opportunities, and bold leadership that is saving lives daily and decadal. National governments can and do act – and sometimes they cannot and do not act. The same for people, nonnational governments, inter-governmental agencies, nonprofit groups, and for-profit organizations. Ultimately, the key challenge is to find commonalities for pushing forward together and collaboratively for common goals, irrespective of a diversity of resources, interests, and pathways.

12 Sendai Framework, para. 7.

13 *Ibid.*, para. 30(c).

14 *Ibid.*, para. 36(d).

15 Stough and Kang (n 5) 148.

16 *Ibid.*, 146.

17 DeeDee Bennett, 'Five Years Later: Assessing the Implementation of the Four Priorities of the Sendai Framework for Inclusion of People with Disabilities' (2020) 11/2 *International Journal of Disaster Risk Science*, 155, 164.

18 See generally 'Special Issue: Five Years of the Sendai Framework for Disaster Risk Reduction' (2020) 11/2 *International Journal of Disaster Risk Science*.

19 Ilan Kelman, 'Introduction to "Five Years of the Sendai Framework for Disaster Risk Reduction"' (2020) 11/2 *International Journal of Disaster Risk Science*, 145, 146.

For PWD specifically, Bennett assesses the implementation of the Framework for inclusion of PWD and concludes that initial application of the SFDRR around the world has ‘compelled purposeful actions’ but there is still considerable variability amongst states and stakeholders and ‘room for improvement’.<sup>20</sup> She highlights three issues in particular as needing further attention – the intersection of disability with other dimensions of vulnerability, building capacity for disaster preparedness to empower PWD, and negative cultural attitudes towards PWD.<sup>21</sup>

Our focus in this article is to consider the intersection between art. 11 of the CRPD, which concerns the rights of PWD in disaster situations, and the approach in the Sendai Framework to PWD. As can be seen already, the core disability concepts found in the CRPD are admirably reflected in the Sendai Framework. What we aim to do is to shift the focus back to the CRPD and explore how the CRPD Committee is now contributing to understandings of the rights of PWD under the Sendai Framework. We therefore investigate the connections that have developed via the concluding observations of the CRPD Committee, between the treaty-based hard law obligations of states under the CRPD and the soft law commitments under the Sendai Framework.

### 3 Article 11 CRPD and the Contributions of the CRPD Committee to Disaster Law

Due in part to space constraints, we have focussed in this article primarily on the contributions of the CRPD Committee to disaster law under the auspices of art. 11 of the CRPD. However, it is important to note at the outset that the Committee has made other contributions to disaster law via some of its other work. For example, for a short period around 2011 the Committee had an informal working group for monitoring the protection of PWD in disasters which issued statements on earthquakes and tsunamis in Haiti, Chile, and Qinghai province in China.<sup>22</sup> In addition, although it has not yet issued a General Comment on art. 11 itself, some of its General Comments on other articles have made useful references to the Committee’s approach to disaster risk reduction and management.<sup>23</sup> For example, in its General Comment on accessibility, the

20 See Bennett (n 17) 155.

21 *Ibid.*, 155.

22 Dug Cubie and Marlies Hesselman, ‘Accountability for the Human Rights Implications of Natural Disasters’ (2015) 33/1 *Netherlands Quarterly of Human Rights* 9, 30.

23 See for example CRPD Committee, ‘General Comment No. 3 on women and girls with disabilities’ (25 November 2016) CRPD/C/GC/3, paras. 49–50; CRPD Committee, ‘General

CRPD Committee noted that '[a]ccessibility must be incorporated as a priority in post-disaster reconstruction efforts' and that 'disaster risk reduction must be accessible and disability-inclusive'.<sup>24</sup> Further in commenting on the rights of PWD to live independently and be included in the community, the Committee observed that '[a]fter situations of disaster, it is important not to rebuild barriers, as an element of implementing article 11 of the Convention'.<sup>25</sup> These additional contributions of the Committee further help to explicate states' obligations under art. 11.

### 3.1 *Article 11 CRPD: Text, Origins and Rationale*

Art. 11 itself is novel among the core human rights treaties for explicitly invoking international humanitarian law and international human rights law as being applicable in all forms of natural and man-made disasters.<sup>26</sup> Art. 11 is titled 'Situations of risk and humanitarian emergencies' and its full text provides:

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

Art. 11 originated with a proposal of the Costa Rica delegation following the 2004 Boxing Day tsunami.<sup>27</sup> During the negotiations for the CRPD, discussions were closely linked to the right to life, with initial suggestions that mention of situations of particular risk be included in the article on the right to life.<sup>28</sup> An initial focus was the situation of PWD in armed conflict, with suggestions made that there should be a separate article on PWD and armed conflict similar

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Comment No. 6 on equality and non-discrimination' (26 April 2018) CRPD/C/GC/6, paras. 43–46.

24 CRPD Committee, 'General Comment No. 2 on Article 9: Accessibility' (22 May 2014) CRPD/C/GC/2, para. 36.

25 CRPD Committee, 'General Comment No. 5 on living independently and being included in the community' (27 October 2017) CRPD/C/GC/5, para. 65.

26 Mary Crock, 'The protection of vulnerable groups' in Susan C. Breau and Katja L.H. Samuel (eds), *Research Handbook on Disasters and International Law* (Edward Elgar 2016) 400.

27 *Ibid.*, 399–400.

28 For discussion of the drafting history, see Giovanni Carlo Bruno, 'Article 11: Situations of Risk and Humanitarian Emergencies' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary* (Springer 2017) 255–257; Motz (n 2) 316–318.

to that found in art. 38(4) CRC. However, an early draft referred more broadly to the vulnerability of PWD in 'situations of risk to the general population'. Subsequently, three specific situations of risk were enumerated, i.e. armed conflict, humanitarian emergencies and natural disasters.

As shown by the drafting history, Art. 11 is closely linked to the right to life. It immediately follows the CRPD's recognition of the right to life, where it is reaffirmed that 'every human being has the inherent right to life' and states are required to take 'all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others'.<sup>29</sup> This connection to the right to life is important given the significantly higher mortality rates of PWD in situations of risk, including natural hazards, with PWD being one of the most disproportionately affected groups in situations of disaster, conflict or emergency.<sup>30</sup> PWD are often excluded from emergency responses through lack of information, accessibility and reasonable accommodation.<sup>31</sup> Hence, the rationale for art. 11 is clear.

What is also clear is that art. 11 requires authoritative interpretation to give it meaning. What, for example, are the measures that are necessary to achieve the aims? Hence, our approach in this article has been to review the concluding observations of the CRPD Committee on art. 11 in order to assess its views as to the substantive content of art. 11.

### 3.2 *Reporting Guidelines for States on Article 11 CRPD*

A useful starting point in considering the CRPD Committee's approach to art. 11 is an examination of its guidelines to states as to how they should report on their implementation of art. 11. In the initial 2009 guidelines as to what should be included in state reports, the CRPD Committee suggested that states should report on measures to provide 'protection and safety including measures taken to include persons with disabilities in national emergency protocols', and on the accessibility of humanitarian aid, particularly of sanitation in emergency shelters and refugee camps.<sup>32</sup> Notably, there is no mention in the 2009 guidelines of the Hyogo Framework for Action, the predecessor to the Sendai Framework. However, in 2014, the Committee noted that it had been 'attentively following' the preparations for the meeting that would produce the

<sup>29</sup> CRPD, art. 10.

<sup>30</sup> Motz (n 2) 318.

<sup>31</sup> Motz (n 2) 318.

<sup>32</sup> CRPD Committee, 'Guidelines on treaty-specific document to be submitted by states parties' (18 November 2009) CRPD/C/2/3, 9.

Sendai Framework, noting that the preparatory work had been giving priority to art. 11 of the CRPD, and welcoming steps to include a disability perspective.<sup>33</sup>

Subsequently, when the CRPD Committee issued its revised reporting guidelines in 2016, a much more comprehensive approach – including reference to the Sendai Framework – is evident. The Committee now requires states to report on what has been done:<sup>34</sup>

- (a) to include persons with disabilities in designing, implementing, monitoring and evaluating relevant plans for disaster risk reduction and humanitarian emergencies;
- (b) to make accessible and inclusive disaster risk reduction and management, as set out in the Sendai Framework, and to do so for the diverse range of impairments;
- (c) to provide timely information on disaster risk and humanitarian emergencies through mass media;
- (d) to have accessible protection in humanitarian emergencies, including communications, shelters and support;
- (e) to ensure inclusive rehabilitation, resettlement and reconstruction, using universal design;
- (f) to train relevant personnel with a disability perspective based on human rights and the principle of leaving no one behind in situations of risk and humanitarian emergencies.

The 2016 guidelines are thus much more comprehensive than the 2009 guidelines, and, importantly, explicitly reference the Sendai Framework. They reflect the range of concluding observations that the Committee had made at that time as it developed its understanding of what is needed for states to comply with art. 11.<sup>35</sup>

33 CRPD Committee, 'Report on its Twelfth Session (15 September–3 October 2014)' (5 November 2014) CRPD/C/12/2, 13.

34 CRPD Committee, 'Guidelines on treaty-specific document to be submitted by states parties' (17 November 2016) CRPD/C/3, para. 13(a)(f).

35 For useful reporting guidelines for DPOs on art. 11, see International Disability Alliance, Humanity & Inclusion and CBM, 'Article 11 of the Convention on the Rights of Persons with Disabilities (CRPD): Legal frameworks guiding inclusive humanitarian action and guidance for CRPD reporting' (May 2020) 43–52.

### 3.3 *Concluding Observations on Article 11 CRPD*

In the period from 2011 to the end of 2021, there have been 94 sets of concluding observations issued by the CRPD Committee.<sup>36</sup> In almost all of these, the Committee has made comments on art. 11. Moreover, since the Sendai Framework was adopted in 2015, the majority of these comments have also included comments on the Sendai Framework. The following Table summarises the position:

Year	Number of concluding observations	References to Article 11	Express references to the Sendai Framework
2011	2	1	0
2012	4 <sup>a</sup>	0	0
2013	4	4	0
2014	9	5	0
2015	14	12	1
2016	13	13	9
2017	14	14	10 <sup>b</sup>
2018	13	12	10
2019	19	19	14
2021	2	2	0
<b>Total</b>	<b>94</b>	<b>82</b>	<b>44</b>

a These four sets of concluding observations related to six jurisdictions.

b There are also two additional references to the Sendai Framework in 2017 where the Committee commended Canada and Luxembourg for their commitment to SFDRR in another part of the concluding observations, but not under the art. 11 comments.

### 3.4 *General Endorsement of the Sendai Framework*

As shown numerically in the Table above, the CRPD Committee is clearly of the view that the Sendai Framework is an integral part of understanding the obligations on states that arise under art. 11. The Committee has expressly endorsed the Sendai Framework in several different ways. This has included commenting

<sup>36</sup> Ninety-two concluding observations had been issued to the end of 2019, none were issued in 2020 and only two were issued in 2021, reflecting the impact of the Covid-19 pandemic. Most are first reviews, but four are second reviews, relating to Spain, El Salvador, Australia and Ecuador.

positively on states that endorsed it. For example, the Committee welcomed the endorsement of the Sendai Framework by Canada and Luxembourg.<sup>37</sup>

Most of the Committee's endorsement of the Sendai Framework is in the form of recommendations for steps to be taken to comply with art. 11. In 2015, soon after the adoption of the Sendai Framework, the CRPD Committee indicated its endorsement by recommending that the EU 'adopt an implementation plan in line with the Council conclusions on disability-inclusive disaster management of February 2015 and the Sendai Framework'.<sup>38</sup> General phrases of support for the Sendai Framework appeared in various other observations, including recommendations that states 'take into account',<sup>39</sup> 'consider implementing',<sup>40</sup> take '[a]dditional measures' to implement,<sup>41</sup> include a disability perspective 'and take measures in line with',<sup>42</sup> or 'adopt measures in line with'<sup>43</sup> the Sendai Framework. Making the Sendai Framework a specific policy goal was evident as a recommendation to Australia on its second review: it was asked to 'in close consultation with representative organizations of persons with disabilities, establish a fully accessible and inclusive mechanism to engage with persons with disabilities in the implementation and monitoring of the Sendai Framework'.<sup>44</sup>

For other states, the Committee has expressed concern that the national regulatory framework did not sufficiently reflect the Sendai Framework. For example, in its concluding observations to Thailand, the CRPD Committee noted 'the lack of specific plans of prevention, protection and assistance for persons with disabilities in situations of risk and humanitarian emergencies,

37 See CRPD Committee, 'Concluding Observations to Canada' (8 May 2017) CRPD/C/CAN/CO/1, para. 5; 'Concluding Observations to Luxembourg' (10 October 2017) CRPD/C/LUX/CO/1, para. 5(c).

38 CRPD Committee, 'Concluding Observations to the EU' (2 October 2015) CRPD/C/EU/CO/1, para. 33(a).

39 CRPD Committee, 'Concluding Observations to Chile' (13 April 2016) CRPD/C/CHL/CO/1, para. 22.

40 CRPD Committee, 'Concluding Observations to Uganda' (12 May 2016) CRPD/C/UGA/CO/1, para. 21(d).

41 CRPD Committee, 'Concluding Observations to Serbia' (23 May 2016) CRPD/C/SRB/CO/1, para. 20.

42 CRPD Committee, 'Concluding Observations to Armenia' (8 May 2017) CRPD/C/ARM/CO/1, para. 18.

43 CRPD Committee, 'Concluding Observations to Moldova' (18 May 2017) CRPD/C/MDA/CO/1, para. 23.

44 CRPD Committee, 'Concluding Observations to Australia' (15 October 2019) CRPD/C/AUS/CO/2-3, para. 22.

prepared in accordance with the Sendai Framework'.<sup>45</sup> In the case of Greece, the concern related to standards in 'general situations of risk and in refugee and asylum processes', including that they were not compliant with the Sendai Framework.<sup>46</sup>

### 3.5 *Endorsement of the Sendai Framework in Specific Contexts*

Beyond its regular positive endorsement of the Sendai Framework, the CRPD Committee also clearly sees state compliance with the Framework as a practical way in which states can implement their concurrent obligations under art. 11 towards PWD. The Committee has also provided a number of quite specific illustrations of what is required to incorporate the Sendai Framework in practice in different contexts.<sup>47</sup>

#### 3.5.1 Inclusivity

The inclusion and participation of PWD in disaster risk reduction is not only an equity goal, it is also a pragmatic goal.<sup>48</sup> As noted by Stough and Kang:<sup>49</sup>

[i]nput from PWD is grounded in their own experiences. Their knowledge is first hand and [they are] thus able to propose strategies that appropriately address barriers. PWD are also knowledgeable about what approaches will result in effective methods for DRR for the disability community.

This philosophy is regularly emphasised by the CRPD Committee in many different contexts. In the Committee's observations on art. 11, there were consistent references to the need for inclusivity of persons with disabilities in disaster risk reduction and emergency management plans. For instance, Ethiopia was recommended to have a 'risk and emergency strategy' and 'ensure that disability issues are integrated into the strategy, in compliance with the

45 CRPD Committee, 'Concluding Observations to Thailand' (12 May 2016) CRPD/C/THA/CO/1, para. 23; and to Latvia (10 October 2017) CRPD/C/LVA/CO/1, para. 18.

46 CRPD Committee, 'Concluding Observations to Greece' (29 October 2019) CRPD/C/GRC/CO/1, para. 15.

47 See, for example, CRPD Committee, 'Concluding Observations to Colombia' (30 September 2016) CRPD/C/COL/CO/1, para. 27; to Bolivia (4 November 2016) CRPD/C/BOL/CO/1, para. 26; to Panama (29 September 2017) CRPD/C/PAN/CO/1, para. 29; and to India (29 October 2019) CRPD/C/IND/CO/1, para. 25.

48 Stough and Kang (n 5) 143.

49 *Ibid.*

Sendai Framework'.<sup>50</sup> Panama was urged to have a suitable national plan 'that provides for priority assistance for all persons with disabilities'.<sup>51</sup> Many other states received recommendations to include persons with disabilities, including in the case of Algeria the need for the strategy to be adopted 'according to a clear timeline'.<sup>52</sup>

This inclusivity also extended to groups and areas within a country. Accordingly, Jordan was asked to 'take into account the Sendai Framework' in relation to inclusive and accessible emergency and disaster risk reduction 'including [for] refugees with disabilities'.<sup>53</sup> Reference was made in the case of Panama to the need to cover all areas in the country, particularly rural areas and indigenous regions,<sup>54</sup> and in the case of India to the need to make provision – following a 'human rights-based response' – for persons with disabilities who are internally displaced, including from 'violence and armed conflict, natural disasters or the exploitation of natural resources', to ensure 'assistance and accessible and safe shelters', with specific concern relating to Jammu and Kashmir.<sup>55</sup> Vanuatu was asked to ensure that disaster risk reduction was at the 'national, provincial and community levels'.<sup>56</sup>

### 3.5.2 Participation: Engagement with DPOs

One key means to ensure inclusion is by the participation of PWD or their representative organisations. Art. 4(3) of the CRPD sets an important general principle that, in the 'development and implementation of legislation and policies to implement' the CRPD 'and in other decision-making processes concerning issues relating to persons with disabilities', there is an obligation to 'closely consult with and actively involve persons with disabilities, including

50 CRPD Committee, 'Concluding Observations to Ethiopia' (4 November 2016) CRPD/C/ETH/CO/1, para. 24.

51 CRPD Committee, 'Concluding Observations to Panama' (29 September 2017) CRPD/C/PAN/CO/1, para. 29(a).

52 CRPD Committee, 'Concluding Observations to Algeria' (26 June 2019) CRPD/C/DZA/CO/1, para. 23.

53 CRPD Committee, 'Concluding Observations to Jordan' (15 May 2017) CRPD/C/JOR/CO/1, para. 24.

54 CRPD Committee, 'Concluding Observations to Panama' (29 September 2017) CRPD/C/PAN/CO/1, para. 29(a).

55 CRPD Committee, 'Concluding Observations to India' (29 October 2019) CRPD/C/IND/CO/1, para. 25(c) and (d).

56 CRPD Committee, 'Concluding Observations to Vanuatu' (13 May 2019) CRPD/C/VUT/CO/1, para. 21(b).

children with disabilities, through their representative organizations'. General Comment No. 7 summarises how this intersects with art. 11 to make it:<sup>57</sup>

important for States parties and humanitarian actors to ensure the active participation of and coordination and meaningful consultation with organizations of persons with disabilities, including those at all levels representing women, men and children with disabilities of all ages. This requires the active involvement of organizations of persons with disabilities in the development, implementation and monitoring of emergency-related legislation and policies, and the establishment of priorities for aid distribution, in accordance with article 4 (3). States parties should promote the establishment of organizations of internally displaced persons or refugees with disabilities that are enabled to promote their rights in any situation of risk, including during armed conflicts.

In its concluding observations on art. 11, the Committee regularly called for the involvement of persons with disabilities or their representative organisations. For instance, Lithuania was asked to:

implement, in close collaboration with organizations of persons with disabilities, initiatives securing the inclusion of persons who are deaf, deaf blind or hard of hearing in emergency response and mitigation plans and adapt emergency call lines to respond to the requirements of persons who are deaf, deaf blind or hard of hearing through the implementation of the Sendai Framework.<sup>58</sup>

Similarly, Panama was urged to '[i]nclude persons with disabilities in all stages of disaster management with a view to ensuring that their needs and rights are respected' revealing both the need for consultation and its purpose.<sup>59</sup> Malta was asked to 'ensure that persons with disabilities are included in the planning, implementation and monitoring processes of disaster risk reduction',

57 CRPD Committee, 'General comment No. 7 on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention' (9 November 2018) CRPD/C/GC/7, para. 78.

58 CRPD Committee, 'Concluding Observations to Lithuania' (11 May 2016) CRPD/C/LTU/CO/1, para. 24.

59 CRPD Committee, 'Concluding Observations to Panama' (29 September 2017) CRPD/C/PAN/CO/1, para. 29(c).

which was said to follow from the Sendai Framework.<sup>60</sup> Recommendations as to consultation were made in several other concluding observations.<sup>61</sup> In the case of Uganda, the Committee suggested that involvement of PWD in a monitoring process was ‘to ensure that the requirements of persons with disabilities, including refugees with disabilities, are addressed’.<sup>62</sup> This suggests that it leads to better outcomes: but it also reflects a general theme of the CRPD that a rights-based approach entails that those most directly affected should be participants, summed up by the aphorism “nothing about us without us”.

### 3.5.3 Accessibility

Art. 9 of the CRPD sets out a general right to accessibility which should be ‘to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas’. In its 2014 General Comment on art. 9, the Committee noted the importance of accessibility in situations of risk, including natural disasters, commenting that:<sup>63</sup>

In situations of risk, natural disasters and armed conflict, the emergency services must be accessible to persons with disabilities, or their lives cannot be saved or their well-being protected (art. 11). Accessibility must be incorporated as a priority in post-disaster reconstruction efforts. Therefore, disaster risk reduction must be accessible and disability-inclusive.

The CRPD Committee has since built on this General Comment in a number of its concluding observations by drawing on the Sendai Framework to explicate

60 CRPD Committee, ‘Concluding Observations to Malta’ (17 October 2018) CRPD/C/MLT/CO/1, para. 18.

61 See for example CRPD Committee, ‘Concluding Observations to UK’ (3 October 2017) CRPD/C/GBR/CO/1, para. 29(a); to Slovenia (16 April 2018) CRPD/C/SVN/CO/1, para. 17; to Poland (20 October 2018) CRPD/C/POL/CO/1, para. 18; to Seychelles (16 April 2018) CRPD/C/SYC/CO/1, para. 23; to Vanuatu (13 May 2019) CRPD/C/VUT/CO/1, para. 21(b); to Spain (13 May 2019) CRPD/C/ESP/CO/2–3, para. 21; and to India (29 October 2019) CRPD/C/IND/CO/1, para. 25(a).

62 CRPD Committee, ‘Concluding Observations to Uganda’ (12 May 2016) CRPD/C/UGA/CO/1, para. 21(c).

63 CRPD Committee, ‘General comment No. 2 (2014): Article 9: Accessibility’ (22 May 2014) CRPD/C/GC/2, para. 36.

its approach to accessibility in the disaster context.<sup>64</sup> For example, the recommendation to South Africa was to 'ensure universal accessibility and inclusion for persons with disabilities at all levels of disaster risk reduction policies and their implementation in line with the Committee's General Comment No. 2 and the Sendai Framework for Disaster Risk Reduction 2015–2030'.<sup>65</sup> A much-repeated call has been for policies that ensure the accessibility of arrangements for disasters, often combined with the need for inclusivity. For instance, Norway was asked to comply with the Sendai Framework by having an emergency information and warning system that is accessible 'for all persons with disabilities regardless of the type of impairment' and 'a comprehensive disaster risk reduction strategy that guarantees accessibility for and the inclusion of persons with disabilities in all situations of risk'.<sup>66</sup> Specific concerns were also raised in relation to Albania given the lack of 'accessible information (...) on how to react in situations of risk, humanitarian emergencies and natural disasters in accordance with the Sendai Framework'.<sup>67</sup>

The need for information in particular accessible formats has been referenced on occasion. For example, Colombia and Bolivia both received recommendations that information on disaster risk reduction and management plans be available in 'Braille and sign language and using alternative modes and formats of communication'.<sup>68</sup> Similarly, Panama was advised to use 'sign language, Easy Read and Braille' for its early warning procedures,<sup>69</sup> and Nepal was encouraged to adopt 'an accessible communication strategy (including hotlines, a text message warning application and general manuals in sign language and Braille)'.<sup>70</sup>

64 See for example CRPD Committee, 'Concluding Observations to the Philippines' (16 October 2018) CRPD/C/PHL/CO/1, para. 23(a); to Bosnia and Herzegovina (2 May 2017) CRPD/C/BIH/CO/1, para. 21; to Montenegro (22 September 2017) CRPD/C/MNE/CO/1, para. 23; to Lithuania (11 May 2016) CRPD/C/LTU/CO/1, para. 24; to Iraq (23 October 2019) CRPD/C/IRQ/CO/1, para. 22(b); and to India (29 October 2019) CRPD/C/IND/CO/1, para. 25(b).

65 CRPD Committee, 'Concluding Observations to South Africa' (23 October 2018) CRPD/C/ZAF/CO/1, para. 21(a).

66 CRPD Committee, 'Concluding Observations to Norway' (7 May 2019) CRPD/C/NOR/CO/1, para. 18(a) and (b).

67 CRPD Committee, 'Concluding Observations to Albania' (14 October 2019) CRPD/C/ALB/CO/1, para. 21.

68 CRPD Committee, 'Concluding Observations to Colombia' (30 September 2016) CRPD/C/COL/CO/1, para. 27; and to Bolivia (4 November 2016) CRPD/C/BOL/CO/1, para. 26.

69 CRPD Committee, 'Concluding Observations to Panama' (29 September 2017) CRPD/C/PAN/CO/1, para. 29(a).

70 CRPD Committee, 'Concluding Observations to Nepal' (16 April 2018) CRPD/C/NPL/CO/1, para. 20.

As well as the need for accessible information, the CRPD Committee has also emphasised the need for accessibility of physical infrastructure. For example, Bolivia and Colombia both received recommendations to take measures ‘in the light of the Sendai Framework’ for the accessibility of infrastructure and evacuation routes.<sup>71</sup>

### 3.5.4 Climate Change

The Committee has made a number of references to the Sendai Framework in the context of climate change adaptation under the umbrella of art. 11. Accordingly, for Colombia there was a need for ‘measures, in the light of the Sendai Framework (...), for the inclusion of persons with disabilities in strategies for climate change adaptation and disaster risk reduction.’<sup>72</sup> The Committee recommended that Panama ‘[i]ncorporate a disability perspective in its policies and programmes on climate change.’<sup>73</sup> The call for the Seychelles to consult with DPOs was ‘to ensure that the requirements of persons with disabilities are included in the design and implementation of all disaster risk reduction and management plans and climate change adaptation, (...) in accordance with the Sendai Framework.’<sup>74</sup> In the case of Guatemala, the only recommendation that referenced the Sendai Framework was ‘mainstreaming disability in its climate change policies and programmes, taking into consideration the outcomes of the Sendai Framework (...) with regard to persons with disabilities, the outcome document of the Climate Summit and the Charter on Inclusion of Persons with Disabilities in Humanitarian Action.’<sup>75</sup>

### 3.5.5 Other References to the Sendai Framework

The CRPD Committee has made various other references to the Sendai Framework in discrete contexts. For example, Panama was urged to provide training to first responders in line with the Sendai Framework.<sup>76</sup> The Committee made recommendations to a number of states about having a single point of

71 CRPD Committee, ‘Concluding Observations to Colombia’ (30 September 2016) CRPD/C/COL/CO/1, para. 27; and to Bolivia (4 November 2016) CRPD/C/BOL/CO/1, para. 26.

72 CRPD Committee, ‘Concluding Observations to Colombia’ (30 September 2016) CRPD/C/COL/CO/1, para. 27; and to Bolivia (4 November 2016) CRPD/C/BOL/CO/1, para. 26.

73 CRPD Committee, ‘Concluding Observations to Panama’ (29 September 2017) CRPD/C/PAN/CO/1, para. 29(b).

74 CRPD Committee, ‘Concluding Observations to Seychelles’ (16 April 2018) CRPD/C/SYC/CO/1, para. 23.

75 CRPD Committee, ‘Concluding Observations to Guatemala’ (30 September 2016) CRPD/C/GTM/CO/1, para. 30.

76 CRPD Committee, ‘Concluding Observations to Panama’ (29 September 2017) CRPD/C/PAN/CO/1, para. 29(a).

contact in situations of emergency and disasters in accordance with the Sendai Framework.<sup>77</sup> A number of states also received recommendations on having safe plans for evacuation of PWD. For example, the Committee recommended that Montenegro adopt an effective mechanism in accordance with the Sendai Framework in order to require public services to develop plans for the safe evacuation of PWD.<sup>78</sup>

### 3.6 *Endorsement of Core Principles from the Sendai Framework*

The previous section set out key areas where the CRPD Committee has expressly mentioned the Sendai Framework in its concluding observations. Aside from these specific references to the Framework, other comments of the Committee clearly echo key principles in Sendai, albeit without specific reference. In part, this can be explained by the remarkable coherence between the core principles underpinning both the CRPD and the Sendai Framework. As noted above, the role of DPOs in the drafting of the Sendai Framework resulted in many of the core CRPD principles underpinning the Framework. In addition, the CRPD Committee has whole-heartedly adopted the Sendai Framework as central to how it conceives state obligations under art. 11. As a result, we see the Committee making recommendations on state obligations under art. 11 on universal design and reconstruction, and data disaggregated by disability in the post-disaster context without explicitly referencing Sendai, but with the comments clearly reflecting Sendai principles.

#### 3.6.1 Universal Design and Reconstruction

In its General Comment No. 5, relating to the art. 19 right to live independently and be included in the community, the CRPD Committee noted that '[a]fter situations of disaster, it is important not to rebuild barriers, as an element of implementing article 11 of the Convention'.<sup>79</sup> The Committee added, commenting on the relationship between arts. 11 and 19, that states 'must take into account in advance the obligation to provide support services to persons with disabilities in all disaster risk management activities (art. 11) and make sure that they are not left behind or forgotten', adding '[i]t is also important that barriers are not rebuilt after situations of armed conflict, humanitarian

77 See for example CRPD Committee, 'Concluding Observations to Thailand' (12 May 2016) CRPD/C/THA/CO/1, para. 24; to Latvia (10 October 2017) CRPD/C/LVA/CO/1, para. 19; and to Seychelles (16 April 2018) CRPD/C/SYC/CO/1, para. 23.

78 CRPD Committee, 'Concluding Observations to Montenegro' (22 September 2017) CRPD/C/MNE/CO/1, para. 23.

79 CRPD Committee, 'General comment No. 5 (2017) on living independently and being included in the community' (27 October 2017) CRPD/C/GC/5, para. 65.

emergencies or the occurrence of a natural disaster. Reconstruction processes must ensure full accessibility for the independent life in the community of persons with disabilities.<sup>80</sup>

Reconstruction and the importance of “building back better”, for example in accordance with universal design principles, has featured in several of the Committee’s concluding observations. Accordingly, Australia was asked to consult with PWD as part of setting standards for, inter alia, ‘recovery and rebuilding’.<sup>81</sup> Turkmenistan was asked to include accessibility standards in reconstruction programmes,<sup>82</sup> and Serbia was urged to take into account ‘accessibility standards and universal design’ in reconstruction programmes.<sup>83</sup> Nepal was asked to ‘ensure that post-disaster recovery and rehabilitation efforts follow a human rights-based approach in order to protect all persons with disabilities effectively’,<sup>84</sup> and Turkey was recommended to ‘ensure the continuous provision of human, financial and technical resources for post-emergency rehabilitation, resettlement, reconstruction and rebuilding processes that are accessible and responsive to the specific requirements of persons with disabilities’.<sup>85</sup>

### 3.6.2 Data Disaggregated by Disability

Art. 31 of the CRPD requires the collection of ‘appropriate information, including statistical and research data’, using it as part of policy formulation, implementation, monitoring and identifying and addressing barriers (with disaggregation as appropriate). In its initial reporting guidelines to states, the CRPD Committee requested information on measures to collect and disseminate ‘disaggregated appropriate information’ in accessible forms, and involve persons with disabilities in the process.<sup>86</sup> In its revised guidelines, the Committee sought similar information, but supplemented by reference to the use of data collection tools based on the human rights approach to disability, and

80 *Ibid.*, para. 79.

81 CRPD Committee, ‘Concluding Observations to Australia’ (21 October 2013) CRPD/C/AUS/CO/1, para. 23.

82 CRPD Committee, ‘Concluding Observations to Turkmenistan’ (13 May 2015) CRPD/C/TKM/CO/1, para. 20.

83 CRPD Committee, ‘Concluding Observations to Serbia’ (23 May 2016) CRPD/C/SRB/CO/1, para. 20.

84 CRPD Committee, ‘Concluding Observations to Nepal’ (16 April 2018) CRPD/C/NPL/CO/1, para. 20.

85 CRPD Committee, ‘Concluding Observations to Turkey’ (1 October 2019) CRPD/C/TUR/CO/1, para. 24(c).

86 Committee on the Rights of Persons with Disabilities, ‘Guidelines on treaty-specific document to be submitted by states parties’ (18 November 2009) CRPD/C/2/3, 18.

hence with a focus on the barriers placed in the way of PWD.<sup>87</sup> This helps position the importance of data. The lack of information – both generally, which impinges on the monitoring function of the Committee, and of the disaggregated data for policy development and monitoring by states themselves – has been a regular feature of the Committee's concluding observations on art. 11.

On a variety of occasions, the Committee has used language similar to that in art. 31, referencing data or disaggregated data. Accordingly, the EU was urged to 'establish a monitoring and accountability framework for the implementation of European Union policies and programmes, including the collection of data disaggregated by sex, disability and age'.<sup>88</sup> Similarly, the Cook Islands was recommended to 'conduct systematic collection of disaggregated data to inform the development of accessible and inclusive protocols, especially for deaf persons, by implementing and funding the Joint National Action Plan for Disaster Risk Management'.<sup>89</sup> One of the suggestions to Turkey was to involve persons with disabilities in 'data collection efforts'.<sup>90</sup> Monitoring was also called for in several concluding observations, covering specific settings, including refugee camps,<sup>91</sup> a post-conflict recovery plan,<sup>92</sup> and emergency shelters.<sup>93</sup> Australia was asked to work with DPOs to 'establish a fully accessible and inclusive mechanism to engage with persons with disabilities in the implementation and monitoring of the Sendai Framework'.<sup>94</sup>

The Committee has regularly pointed to the lack of information provided to it, both general and specific. For example, in relation to Austria there was concern at the lack of information on support available in a disaster situation.<sup>95</sup>

87 Committee on the Rights of Persons with Disabilities, 'Guidelines on treaty-specific document to be submitted by states parties' (17 November 2016) CRPD/C/3, para. 33.

88 CRPD Committee, 'Concluding Observations to the EU' (2 October 2015) CRPD/C/EU/CO/1, para. 33(c).

89 CRPD Committee, 'Concluding Observations to the Cook Islands' (15 May 2015) CRPD/C/COK/CO/1, para. 22.

90 CRPD Committee, 'Concluding Observations to Turkey' (1 October 2019) CRPD/C/TUR/CO/1, para. 24(b).

91 CRPD Committee, 'Concluding Observations to Kenya' (30 September 2015) CRPD/C/KEN/CO/1, para. 22(c).

92 CRPD Committee, 'Concluding Observations to Uganda' (12 May 2016) CRPD/C/UGA/CO/1, para. 21(c).

93 CRPD Committee, 'Concluding Observations to El Salvador' (1 October 2019) CRPD/C/SVL/CO/2–3, para. 23(b).

94 CRPD Committee, 'Concluding Observations to Australia' (15 October 2019) CRPD/C/AUS/CO/2–3, para. 22.

95 CRPD Committee, 'Concluding Observations to Austria' (30 September 2013) CRPD/C/AUT/CO/1, para. 25; to Sweden (12 May 2014) CRPD/C/SWE/CO/1, para. 31; to Morocco (25 September 2017) CRPD/C/MAR/CO/1, para. 24; to Oman (17 April 2018) CRPD/C/

More specific concerns included lack of information ‘about accessibility of shelters and evacuation routes’,<sup>96</sup> or the involvement of persons with disabilities in the necessary plans and processes.<sup>97</sup> There were several concerns about the lack of information relating to refugees or internally displaced persons.<sup>98</sup>

### 3.7 *Going beyond the Sendai Framework*

We now discuss three areas where the CRPD Committee has gone beyond the parameters of the Sendai Framework in its concluding observations on art. 11 and added significant value in terms of what states are required to do to protect PWD. It has made a number of detailed comments on those PWD who face multiple and intersecting forms of discrimination and their particular needs and rights. It has also looked at the importance of specific impairments, or ‘differential disparities’,<sup>99</sup> and the need to account for diversity of disability, so as to take a holistic approach to the individual. Finally, as well as its regular endorsement and direction to states to act in accordance with the Sendai Framework, the Committee has also been diligent in referring states to other international frameworks of particular use for PWD in situations of risk, so emphasising the need to read provisions together rather than treating frameworks in silos. We conclude this part by discussing the two most recent sets of concluding observations of the Committee which are concerned with the ‘situation of risk’ arising from the impact of the Covid-19 pandemic on PWD.

#### 3.7.1 Intersectionality

Significantly, PWD are not a homogenous group as ‘[d]isability intersects with a range of other individual, social, economic and cultural factors, leading to differing vulnerabilities and inequalities’.<sup>100</sup> A central feature of the CRPD is the need to avoid discrimination on the basis of disability, including by providing reasonable accommodation; art. 5 of the CRPD sets out this basic obligation.

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OMN/CO/1, para. 23; to the Philippines (16 October 2018) CRPD/C/PHL/CO/1, para. 22; and to Turkey (1 October 2019) CRPD/C/TUR/CO/1, para. 23.

96 CRPD Committee, ‘Concluding Observations to Iran’ (10 May 2017) CRPD/C/IRN/CO/1, para. 24; and to Niger (1 May 2019) CRPD/C/NER/CO/1, para. 17.

97 CRPD Committee, ‘Concluding Observations to Malta’ (17 October 2013) CRPD/C/MLT/CO/1, para. 17; and to Albania (14 October 2019) CRPD/C/ALB/CO/1, para. 21.

98 CRPD Committee, ‘Concluding Observations to Kenya’ (30 September 2015) CRPD/C/KEN/CO/1, para. 21; to Ukraine (2 October 2015) CRPD/C/UKR/CO/1, para. 22; to Iran (10 May 2017) CRPD/C/IRN/CO/1, para. 24; and to India (29 October 2019) CRPD/C/IND/CO/1, para. 24.

99 Bennett (n 17) 161.

100 John Twigg, Maria Kett and Emma Lovell, ‘Disability inclusion and disaster risk reduction’ (Overseas Development Institute 2018) 1.

What is a necessary accommodation will differ according to the impairment or impairments involved, which, given the social construction of disability used in the Convention means that account must also be taken of intersectionality. Hence, art. 6 of the CRPD makes the point that action is also required to counter the additional barriers often faced by women and girls; and there are various references made in the Committee's materials to the position of refugees with disabilities.

In its General Comment on equality, the Committee has noted in relation to art. 11 that 'Non-discrimination must be ensured in situations of risk and humanitarian emergencies, based also on obligations in international humanitarian law, including humanitarian disarmament law, to address the increased risk inherent in such situations, of discrimination against persons with disabilities'.<sup>101</sup> The Committee also recognised that '[w]omen and girls with disabilities in situations of risk and humanitarian emergencies are at a particularly increased risk of violence, including sexual violence, exploitation or abuse and are less likely to be able to have access to recovery and rehabilitation services or access to justice'.<sup>102</sup> This features also in General Comment No. 3, in which the Committee notes:<sup>103</sup>

In situations of armed conflict, occupation of territories, natural disasters and humanitarian emergencies, women with disabilities are at an increased risk of sexual violence and are less likely to have access to recovery and rehabilitation services or access to justice. Women refugees, migrants and asylum seekers with disabilities may also face an increased risk of violence because they are denied the right to access health and justice systems because of their citizenship status.

The Committee also points to various other problems with several aspects of humanitarian aid for women and girls including the lack of sanitation facilities, the impact of violence, exploitation or abuse and barriers in accessing education.<sup>104</sup>

<sup>101</sup> CRPD Committee, 'General comment No. 6 (2018) on equality and non-discrimination' (26 April 2018) CRPD/C/GC/6, para. 43.

<sup>102</sup> CRPD Committee, 'General comment No. 6 (2018) on equality and non-discrimination' (26 April 2018) CRPD/C/GC/6, para. 45.

<sup>103</sup> CRPD Committee, 'General comment No. 3 (2016) on women and girls with disabilities' (25 November 2016) CRPD/C/GC/3, para. 49.

<sup>104</sup> CRPD Committee, 'General comment No. 3 (2016) on women and girls with disabilities' (25 November 2016) CRPD/C/GC/3, para. 50.

In its concluding observations on art. 11, the CRPD Committee has drawn on these General Comments to reference intersectional discrimination on multiple occasions. This has included regular reference to PWD who are also refugees, asylum seekers and migrants, which featured in various comments to European countries, with concerns raised as to inadequate provision made for their needs, including the inaccessibility of reception centres and information, and recommendations made for improved provision.<sup>105</sup> Outside Europe, there were similar concerns and recommendations for action.<sup>106</sup> Internally displaced PWD also featured in several concluding observations.<sup>107</sup>

In the case of Iraq, there was a recognition of multiple grounds of discrimination in the Committee's recommendation to provide adequate resources and facilities for 'persons with disabilities, particularly women and children with disabilities, who are victims of violence in the context of armed conflict or who are internally displaced, migrants or refugees', particularly in Kurdistan.<sup>108</sup> Myanmar was asked to do more for PWD affected by conflict 'including those belonging to ethnic and religious minorities, particularly in northern Rakhine, Shan and Kachin States',<sup>109</sup> and the recommendation to Greece relating to refugees had a focus on 'particularly children with disabilities'.<sup>110</sup> Intersectionality was also recognised in other settings including the need for accessible information to be aimed at women and children with disabilities in Oman and

105 CRPD Committee, 'Concluding Observations to the EU' (2 October 2015) CRPD/C/EU/CO/1, paras. 34–35; to Slovakia (17 May 2016) CRPD/C/SVK/CO/1, paras. 36–37; to Portugal (20 May 2016) CRPD/C/PRT/CO/1, paras. 26–27; to Italy (6 October 2016) CRPD/C/ITA/CO/1, paras. 25–26; to Luxembourg (10 October 2017) CRPD/C/LUX/CO/1, paras. 22–23; to Malta (17 October 2018) CRPD/C/MLT/CO/1, paras. 17–18; to Greece (29 October 2019) CRPD/C/GRC/CO/1, paras. 15–16; and to France (4 October 2021) CRPD/C/FRA/CO/1, paras. 23(d) and 24(d).

106 CRPD Committee, 'Concluding Observations to Kenya' (30 September 2015) CRPD/C/KEN/CO/1, para. 22(c); to Uganda (12 May 2016) CRPD/C/UGA/CO/1, para. 21(c); to Canada (8 May 2017) CRPD/C/CA/CO/1, para. 26; to Jordan (15 May 2017) CRPD/C/JOR/CO/1, paras. 23–24; to Sudan (10 April 2018) CRPD/C/SUD/CO/1, paras. 21(b) and 22(b); to Iran (10 May 2017) CRPD/C/IRN/CO/1, paras. 24–25; and to Algeria (27 June 2019) CRPD/C/DZA/CO/1, para. 22.

107 CRPD Committee, 'Concluding Observations to Ukraine' (2 October 2015) CRPD/C/UKR/CO/1, para. 25; to Sudan (10 April 2018) CRPD/C/SUD/CO/1, paras. 21(b) and 22(b); and to India (29 October 2019) CRPD/C/IND/CO/1, paras. 25(c)–(d).

108 CRPD Committee, 'Concluding Observations to Iraq' (23 October 2019) CRPD/C/IRQ/CO/1, para. 22(a).

109 CRPD Committee, 'Concluding Observations to Myanmar' (22 October 2019) CRPD/C/MMR/CO/1, para. 22(b).

110 CRPD Committee, 'Concluding Observations to Greece' (29 October 2019) CRPD/C/GRC/CO/1, para. 16(b) and (c).

Senegal.<sup>111</sup> France was asked to make particular provision for assistance to Roma people with disabilities.<sup>112</sup>

### 3.7.2 Specific Impairments

As well as being alive to the impact of intersecting and multiple forms of discrimination on PWD, the CRPD Committee has also paid particular attention in its comments on art. 11 to specific impairments and the need for differential treatment and reasonable accommodation according to the specific impairment.

A number of states were urged to make adequate provision for people with hearing impairments, for example in relation to early warning systems or the provision of information.<sup>113</sup> Some states were chastised for their inadequate provision for those with either or both hearing and vision impairments.<sup>114</sup> The Committee also raised concerns about provision for those with intellectual disabilities, which was often mentioned together with those with visual or audio impairments, sometimes also supplemented by reference to those with psycho-social impairments (the Committee's preferred term for mental illness).<sup>115</sup>

The need to consider multiple or diverse disabilities also featured for a number of states. Australia was urged to consider diverse disabilities in the

111 CRPD Committee, 'Concluding Observations to Oman' (17 April 2018) CRPD/C/OMN/CO/1, para. 24; to Senegal (13 May 2019) CRPD/C/SEN/CO/1, para. 20(c).

112 CRPD Committee, 'Concluding Observations to France' (4 October 2021) CRPD/C/FRA/CO/1, para. 24(d).

113 CRPD Committee, 'Concluding Observations to the Czech Republic' (15 May 2015) CRPD/C/CZE/CO/1, para. 20; to the Dominican Republic (8 May 2015) CRPD/C/DOM/CO/1, para. 19; to Germany (13 May 2015) CRPD/C/DEU/CO/1, paras. 23(a) and 24; to Mongolia (13 May 2015) CRPD/C/MNG/CO/1, para. 19; to Turkmenistan (13 May 2015) CRPD/C/TKM/CO/1, para. 20; to Uganda (12 May 2016) CRPD/C/UGA/CO/1, para. 21(b); to Slovakia (17 May 2016) CRPD/C/SVK/CO/1, para. 35; and to Jordan (15 May 2017) CRPD/C/JOR/CO/1, paras. 23–24.

114 CRPD Committee, 'Concluding Observations to Lithuania' (11 May 2016) CRPD/C/LTU/CO/1, para. 23; to Colombia (30 September 2016) CRPD/C/COL/CO/1, para. 27; to Nepal (16 April 2018) CRPD/C/NPL/CO/1, para. 20; to the Philippines (16 October 2018) CRPD/C/PHL/CO/1, para. 23(a); and to France (4 October 2021) CRPD/C/FRA/CO/1, para. 23(c).

115 CRPD Committee, 'Concluding Observations to Cyprus' (8 May 2017) CRPD/C/CYP/CO/1, para. 31; to Oman (17 April 2018) CRPD/C/OMN/CO/1, para. 24; to South Africa (23 October 2018) CRPD/C/ZAF/CO/1, para. 20; to Senegal (13 May 2019) CRPD/C/SEN/CO/1, paras. 19(a) and 20(c); to Vanuatu (13 May 2019) CRPD/C/VUT/CO/1, para. 21(a); to Rwanda (3 May 2019) CRPD/C/RWA/CO/1, para. 22(c); to Cuba (10 May 2019) CRPD/C/CUB/CO/1, para. 24(a).

context of emergency management.<sup>116</sup> Korea was urged to give ‘consideration of the characteristics of their disabilities’.<sup>117</sup> The European Union was advised to ensure that emergency telephone and all risk reduction policies and programmes are accessible ‘to all persons with all types of disabilities’.<sup>118</sup> The Committee recommended that Turkmenistan needed strategies for people with multiple forms of disabilities.<sup>119</sup> For Ukraine, the Committee identified concerns that there were ‘no warning systems for deaf and blind people and that persons with multiple forms of disabilities could not use bomb shelters’.<sup>120</sup>

### 3.7.3 Connection with Other International Frameworks

In several concluding observations on art. 11, the Committee has drawn on other international frameworks. This has included the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families,<sup>121</sup> the outcome document of the Climate Summit,<sup>122</sup> the 2016 World Humanitarian Summit,<sup>123</sup> the Guiding Principles on Internal Displacement,<sup>124</sup> and the Sustainable Development Goals.<sup>125</sup>

Several states were also asked to endorse or at least consider the Charter on Inclusion of Persons with Disabilities in Humanitarian Action.<sup>126</sup> The

116 CRPD Committee, ‘Concluding Observations to Australia’ (21 October 2013) CRPD/C/AUS/CO/1, para. 23.

117 CRPD Committee, ‘Concluding Observations to the Republic of Korea’ (29 October 2014) CRPD/C/KOR/CO/1, para. 20.

118 CRPD Committee, ‘Concluding Observations to the EU’ (2 October 2015) CRPD/C/EU/CO/1, para. 31.

119 CRPD Committee, ‘Concluding Observations to Turkmenistan’ (13 May 2015) CRPD/C/TKM/CO/1, para. 20.

120 CRPD Committee, ‘Concluding Observations to Ukraine’ (2 October 2015) CRPD/C/UKR/CO/1, para. 22. The CRPD Committee has since raised specific concerns about the risks posed to PWD by the Russian aggression in a press release of 14 April 2022: <<https://www.ohchr.org/en/statements/2022/04/ukraine-27-million-people-disabilities-risk-un-committee-warns>>, last accessed (as any subsequent URL) on 28 June 2022.

121 CRPD Committee, ‘Concluding Observations to Italy’ (6 October 2016) CRPD/C/ITA/CO/1, para. 26.

122 CRPD Committee, ‘Concluding Observations to Guatemala’ (30 September 2016) CRPD/C/GTM/CO/1, para. 30.

123 CRPD Committee, ‘Concluding Observations to the Philippines’ (16 October 2018) CRPD/C/PHL/CO/1, para. 23(b).

124 CRPD Committee, ‘Concluding Observations to India’ (29 October 2019) CRPD/C/IND/CO/1, para. 25.

125 CRPD Committee, ‘Concluding Observations to Vanuatu’ (13 May 2019) CRPD/C/VUT/CO/1, para. 21(b).

126 See for example CRPD Committee, ‘Concluding Observations to Italy’ (6 October 2016) CRPD/C/ITA/CO/1, para. 26; to Guatemala (30 September 2016) CRPD/C/GTM/CO/1,

Charter, which has been endorsed by multiple states, the EU, various UN bodies and other organisations,<sup>127</sup> calls for non-discrimination and inclusivity in humanitarian policies and operations, and specifically calls for the involvement of DPOs and inclusive policies and guidelines, supported by improved quantitative and qualitative data collection to assist the propriety of the policies and guidelines.

The Committee's reference to and endorsement of these frameworks as well as the Sendai Framework emphasises the interconnectedness of both binding hard law frameworks such as the CRPD and non-binding soft law frameworks. These references also serve to endorse the importance of a single coherent framework of international law and standards in the area of disaster risk reduction for PWD. As noted recently by the Special Rapporteur on PWD, 'the trend of reading the Convention on the Rights of Persons with Disabilities alongside other treaty regimes, policies or programmes should be continued in the interests of avoiding fragmentation and increasing the coherence of international law'.<sup>128</sup> The Committee's endorsement of other frameworks also illustrates that while the Sendai Framework is now a crucial, and even dominant, measure by which the Committee interprets state obligations under art. 11, there are other frameworks which remain valuable in understanding disaster risk reduction for PWD. This impetus for a comprehensive approach is mirrored in the Sendai Framework which also endorses the importance of 'coherence across agendas' and the need to 'foster collaboration across global and regional mechanisms and institutions for the implementation and coherence of instruments and tools relevant to disaster risk reduction'.<sup>129</sup>

#### 3.7.4 Covid-19

The Committee's work has been affected by the Covid-19 pandemic, with no concluding observations issued in 2020 and only two concluding observations in 2021. In both sets of 2021 observations, the Committee's art. 11 comments related to the pandemic, indicating that 'situations of risk' include health-related ones. In relation to Estonia, there was concern about the disproportionate

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para. 30; to Canada (8 May 2017) CRPD/C/CAN/CO/1, para. 26; to the UK (3 October 2017) CRPD/C/GBR/CO/1, para. 29(b); to Philippines (16 October 2018) CRPD/C/PHL/CO/1, para. 23(b); and to India (29 October 2019) CRPD/C/IND/CO/1, para. 25(d). Luxembourg was also congratulated for endorsing the Charter, see 'Concluding Observations to Luxembourg' (10 October 2017) CRPD/C/LUX/CO/1, para. 5(b).

127 See <<https://humanitariandisabilitycharter.org/>>.

128 'Report of the Special Rapporteur on the Rights of Persons with Disabilities' A/76/146 (19 July 2021) para. 82.

129 Sendai Framework, p 5 and para. 28(b).

effect on those in institutions, both of being infected and being isolated.<sup>130</sup> The concerns for France were both of high infection rates in institutions but also reports of refusals to offer hospital treatment for infected persons with disability and the general ‘lack of a disability-inclusive response’.<sup>131</sup> Both states were encouraged to release people from institutions with appropriate support for community living, and more generally to adopt a disability perspective, of which examples given included equal access to vaccines, information in accessible formats, transparent masks to assist communication with deaf people, and support for online environments.<sup>132</sup> France was also asked to support refugees, asylum seekers and Roma with disabilities. The Committee also endorsed the guidelines of the UN High Commissioner for Human Rights on Covid-19,<sup>133</sup> and those of the Secretary-General.<sup>134</sup>

#### 4 The Contribution of the CRPD Committee to Disaster Law

In recent years, the CRPD Committee and other treaty bodies have increasingly touched upon disaster issues, taking into account how human rights have been affected in disasters.<sup>135</sup> Although treaty bodies have considered such issues in a rather ‘non-systematic fashion’, the potential for using treaty bodies as a means for enhancing accountability for disaster risk reduction is being

130 CRPD Committee, ‘Concluding Observations to Estonia’ (5 May 2021) CRPD/C/EST/CO/1, para. 21(a).

131 CRPD Committee, ‘Concluding Observations to France’ (4 October 2021) CRPD/C/FRA/CO/1, para. 23.

132 CRPD Committee, ‘Concluding Observations to Estonia’ (5 May 2021) CRPD/C/EST/CO/1, para. 22; CRPD Committee, ‘Concluding Observations to France’ (4 October 2021) CRPD/C/FRA/CO/1, para. 24.

133 See ‘Covid-19 and the Rights of Persons with Disabilities’ (29 April 2020), which collates instances of the problems arising (including disability being a factor in refusing treatment, the additional risks applicable to those in institutions, and the rights at risk of being infringed in pandemic situations), but also gives instances of good practice in ensuring a disability-sensitive approach. Several documents providing guidance in relation to groups often subject to discrimination, including this one, are collated at <<https://www.ohchr.org/EN/NewsEvents/Pages/COVID19Guidance.aspx>>.

134 See ‘Policy Brief: A Disability-Inclusive Response to Covid-19’ (May 2020), available at <<https://www.un.org/en/coronavirus/disability-inclusion>>; it calls on states to (i) mainstream disability in the response to the pandemic, including by taking specific measures to assist, (ii) ensure accessibility to relevant domains, including information, communications, services and facilities, (iii) ensure that persons with disabilities are involved in all stages, and (iv) specifically, involve persons with disabilities in the response and monitoring of the response.

135 Cubie and Hesselman (n 22) 24–30.

increasingly acknowledged.<sup>136</sup> As can be seen from the discussion above, the CRPD Committee is using the umbrella of art. 11 to do just that, with many of the Committee's observations now aimed at comprehensive disaster risk reduction.

Notably, the Sendai Framework explicitly contemplates a role for international human rights treaty bodies in its implementation, by referring to the need for treaty bodies 'to support developing countries, at their request, in the implementation of the present Framework, in coordination with other relevant frameworks'.<sup>137</sup> The role of treaty bodies is however potentially significantly wider than the relatively narrow role suggested in the Sendai Framework. The first point is that treaty bodies monitor all states parties, not just developing states. More fundamentally though, as we can see from the contributions of the CRPD Committee on art. 11, treaty bodies have an important role to play beyond just supporting states to implement the Framework as their task includes interpreting and enforcing the legal elements of disaster risk reduction.

A key point is that international human rights law can be used to enforce obligations in support of disaster risk reduction.<sup>138</sup> This is particularly important in the absence of a comprehensive binding treaty on the protection of people during disasters.<sup>139</sup> Thus, recommendations by the CRPD Committee in its concluding observations to states under art. 11 may provide a means of legal enforcement of elements of the Sendai Framework. As described above, there is significant coherence and overlap between what is required to implement the Sendai Framework for PWD and what is required to implement art. 11 of the CRPD. This is particularly the case for the core principles of inclusion, participation, accessibility, universal design and the requirement for data disaggregated by disability. As discussed above, the Committee has regularly and comprehensively urged states to do better in implementing these core principles in the context of disaster risk reduction for PWD. Thus, the CRPD

136 Karen da Costa and Paulina Pospieszna, 'The Relationship between Human Rights and Disaster Risk Reduction Revisited: Bringing the Legal Perspective into the Discussion' (2015) 6 *Journal of International Humanitarian Legal Studies*, 64, 83–84.

137 Sendai Framework, para. 48(e).

138 Marie Aronsson-Storrier, 'Sendai Five Years On: Reflections on the Role of International Law in the Creation and Reduction of Disaster Risk' (2020) 11/2 *International Journal of Disaster Risk Science*, 230, 230.

139 International Disability Alliance, Humanity & Inclusion and CBM, 'Article 11 of the Convention on the Rights of Persons with Disabilities (CRPD): Legal frameworks guiding inclusive humanitarian action and guidance for CRPD reporting' (May 2020) 12.

Committee is a mechanism by which to enforce states' obligations under not only art. 11, but also the Sendai Framework.

In addition to enforcement of obligations, the CRPD Committee also plays a key role as a monitoring mechanism to periodically review state action for PWD in the context of disaster risk reduction and management. Since 2018, when 38 indicators were adopted to assess progress on its seven global targets, the Sendai Framework has included a monitoring system.<sup>140</sup> However, monitoring under the Framework is at the meta-level and does not enable detailed assessment of how individual states are acting in relation to particularly vulnerable groups such as PWD. The CRPD Committee therefore offers a means to shine a light on individual state action – both in terms of failure to implement, or implement sufficiently, art. 11 and the concurrent failure to implement, or implement sufficiently, the Sendai Framework in relation to PWD.

Although the CRPD Committee also offers a platform for the sharing of best practices, the concluding observations are a rather awkward tool for achieving this. At the beginning of most concluding observations, the Committee commends states on its positive actions in the reporting period under review. As noted earlier, both Canada and Luxembourg were commended in this way for their adoption and endorsement of the Sendai Framework. However, the detail of state actions which demonstrate best practice is not found in the concluding observations themselves, but rather in the individual state reports. The work of other UN human rights actors such as the analytical and thematic studies of the Office of the High Commissioner of Human Rights, or the work of the Special Rapporteur on the Rights of Persons with Disabilities offer better avenues for the collation and sharing of best practices. For example, in its 2020 study on the promotion and protection of the rights of PWD in the context of climate change, the Office of the High Commissioner for Human Rights identified a number of good practices by states for the promotion of disability-inclusive, human rights-based climate action.<sup>141</sup> The CRPD

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140 See generally <<https://sendaimonitor.undrr.org/>>. For the first report, see United Nations Office of Disaster Risk Reduction, 'Monitoring the Implementation of Sendai Framework for Disaster Risk Reduction 2015–2030: A Snapshot of Reporting for 2018' (2020).

141 OHCHR, 'Analytical study on the promotion and protection of the rights of persons with disabilities in the context of climate change: Report of the Office of the United Nations High Commissioner for Human Rights' (22 April 2020) A/HRC/44/30 paras. 48–57. For discussion, see Marlies Hesselman, 'International Human Rights Law' (2020) 3 Yearbook of International Disaster Law, 536, 538–539. See also OHCHR 'Thematic study on the rights of persons with disabilities under article 11 of the Convention on the Rights of Persons with Disabilities, on situations of risk and humanitarian emergencies: Report of the Office of the United Nations High Commissioner for Human Rights' (30 November 2015) A/HRC/31/30.

Committee recognises the valuable role other organisations can play in sharing good practices. For example, the Committee urged the EU to ‘establish a mechanism to build capacity and share good practices’ among EU institutions and member states ‘on disability-inclusive and accessible humanitarian aid’.<sup>142</sup>

A logical next step would be for the CRPD Committee to issue a General Comment on art. 11. Amongst the international human rights treaty bodies, the CEDAW Committee has been prominent in explicating the human rights dimensions of disaster risk reduction. In 2018, it released its General Recommendation on the ‘Gender Related Dimensions of Disaster Risk Reduction in the Context of Climate Change’.<sup>143</sup> Although this General Recommendation has not been without critique, especially in relation to its use of the concept of vulnerability and its stereotyping of women,<sup>144</sup> it is nevertheless a valiant attempt to engage with the intersections between human rights, gender and disaster risk reduction. In its work on the right to life in art. 6 of the ICCPR, the Human Rights Committee has also commented that ‘environmental degradation, climate change and unsustainable development’ are now among ‘the most pressing and serious threats’ to the right to life.<sup>145</sup> The Committee has specifically noted that states should develop ‘contingency plans and disaster management plans designed to increase preparedness and address natural and man-made disasters that may adversely affect enjoyment of the right to life’.<sup>146</sup>

In any future General Comment on art. 11, in addition to the matters outlined in this article, we hope that the CRPD Committee might also address aspects of disaster risk management and reduction for PWD which have not to date featured highly in its concluding observations. One such aspect is the concept of reasonable accommodation. As noted earlier, reasonable accommodation is fundamental to the rights of PWD, but it has hardly featured in the Committee’s comments on art. 11. In many cases, the Committee urges states to take actions which amount to reasonable accommodation in practice, for example by

142 CRPD Committee, ‘Concluding Observations to the EU’ (2 October 2015) CRPD/C/EU/CO/1, para. 33.

143 CEDAW Committee, ‘General Recommendation No 37 on Gender Related Dimensions of Disaster Risk Reduction in the Context of Climate Change’ (7 February 2018) CEDAW/C/GC/37.

144 Monika Mayrhofer, ‘Gender (In)equality, Disaster and Human Rights – the CEDAW Committee and General Recommendation No. 37’ (2018) 1 Yearbook of International Disaster Law, 233; Natalie Baird, ‘Disasters, Human Rights and Vulnerability: Reflections from the Experiences of Older Persons in Post-Quake Canterbury’, (2019) 2 Yearbook of International Disaster Law, 314, 322.

145 Human Rights Committee, ‘General Comment No 36 on Article 6 of the International Covenant on Civil and Political Rights, on the right to life’ (October 2018) CCRP/C/GC/36, para. 62.

146 *Ibid.*, para. 26.

requiring states to use Braille to provide accessible disaster related communications to people with visual impairments, but more explicit articulation of the concept itself would be useful. In addition, a General Comment may also enable some discussion of the root causes of disaster risk for PWD. While the Committee has commented on root causes in the context of large-scale movement of refugees and migrants with disabilities,<sup>147</sup> its concluding observations, like the Sendai Framework, tend to focus primarily on situations of immediate marginalisation of and discrimination against PWD rather than consider the broader root causes of disaster risk creation.<sup>148</sup> Any General Comment on art. 11 should also draw on the growing body of research on people with disabilities and disasters.<sup>149</sup>

Finally, we note that another avenue for the CRPD Committee to develop its authoritative interpretation of art. 11 is by way of decisions on individual communications. As noted by Bruno, 'more effective results' on the implementation of art. 11 could be achieved via decisions of the CRPD Committee on individual communications.<sup>150</sup> However, as at June 2022, there have been no decisions of the Committee concerning art. 11,<sup>151</sup> and although there are now a number of pending cases raising issues under art. 11, these all appear to be in the context of situations of armed conflict and humanitarian emergencies rather than natural disasters.<sup>152</sup>

## 5 Conclusion

As noted by the Disability Caucus in the preparatory work in the lead-up to Sendai, it was important to align the SFDRR with art. 11 of the CRPD.<sup>153</sup> Now that the Sendai Framework is in place, it remains important to ensure alignment between the approach to PWD in disasters under these two separate, but complementary, frameworks. This is particularly so given that the Sendai

147 See Joint Statement by the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and the CRPD Committee, 'Addressing Disabilities in Large-Scale Movements of Refugees and Migrants' (12 April 2017).

148 For an interesting recent discussion, see Ben Wisner, 'Five Years Beyond Sendai – Can We Get Beyond Frameworks?' (2020) 11 *International Journal of Disaster Risk Science*, 239.

149 See Stough and Kelman (n 5).

150 Bruno (n 28) 261.

151 'Jurisprudence Database' at <[www.ohchr.org](http://www.ohchr.org)>.

152 See 'Table of pending cases before the Committee on the Rights of Persons with Disabilities (CRPD)' (undated, accessed 28 June 2022). See Sweden 62/2019, Palestine 67/2019, Palestine 68/2019, Sweden 75/2020, Sweden 80/2020, Saudi Arabia 84/2020, and Saudi Arabia 87/2021.

153 Stough and Kang (n 5) 142.

Framework is 'not a toolbox for concrete practices'.<sup>154</sup> It is the umbrella under which disaster risk reduction occurs. Hence, it is important to consider the work of the CRPD Committee and its contribution to fulfilling the aspirations in the Sendai Framework for PWD.

The value and novelty of art. 11 CRPD lies in being a treaty-based source of international legal obligations, translating the rights already established under the ICCPR to explain what they mean in the context of PWD in situations of risk, but also referencing international humanitarian law and covering armed conflict as well as natural disasters. The CRPD Committee has, by recommending steps to implement art. 11 in the vast majority of concluding observations, emphasised the importance of the right. Further, by regularly endorsing the Sendai Framework as a method for implementing art. 11, the CRPD Committee has cloaked the Framework itself with a hard law status and provided examples of steps needed to implement a disability-inclusive approach to securing rights for all in the context of disasters. Since this is where vulnerable groups are at risk of being left behind, this approach reinforces a central feature of the human rights framework, namely that rights belong equally to all human beings and this requires equitable steps to fulfil this promise.

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154 Stough and Kang (n 5) 147.