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IDA submission on the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMWF) Draft Outline of general comment 6

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I. INTRODUCTION

1. The International Disability Alliance (IDA) is a unique, international network of eight global and six regional organisations of persons with disabilities (OPDs). Each IDA member represents a large number of national OPDs, covering the whole range of disability constituencies. IDA thus represents the collective global voice of persons with disabilities counting among the more than 1 billion persons with disabilities worldwide, the world's largest –and most frequently overlooked – minority group. IDA's mission is to advance the human rights of persons with disabilities as a united voice of OPDs utilising the Convention on the Rights of Persons with Disabilities (CRPD) and other human rights instruments.

2. IDA appreciates the initiative by the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (*hereinafter* "the CMWF Committee") to call for comments on the concept paper and the Draft Outline of general comment No. 6 on the Convergence between the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and the Global Compact for Safe, Orderly and Regular Migration (*hereinafter* "the Draft Outline"). Indeed, elaborating on their convergence can be very useful to promote the legal standards of the Convention on the Rights of Migrant Workers and their Families and of human rights law generally, including standards enshrined in other treaties, such as the Convention on the Rights of Persons with Disabilities (CRPD).

3. IDA welcomes that draft's reference to "disability", in the first paragraph of the Draft Outline. Yet, IDA believes that much more should be incorporated to ensure the upcoming general comment succeeds in promoting legal protection, equality, and rights of migrants with disabilities and their family members with disabilities, given the specific issues and barriers they face in the context of migration laws, policies and procedures.

4. Consequently, this brief submission tackles key issues impacting migrants with disabilities and advances human rights standards developed by the Committee on the Rights of Persons with Disabilities (*hereinafter* "the CRPD Committee") under the Convention on the Rights of Persons with Disabilities (*hereinafter* "CRPD"). Issues tackled include discrimination of persons with disabilities in the context of migration, accessibility to information, access to justice, access to social services and data collection and disaggregation.¹ IDA encourages the CMWF Committee to incorporate them in the general comment when "[f]illing the human rights and legal gaps in the Global Compact".²

5. IDA recalls the previous collaboration between the CMWF Committee and the CRPD Committee, reflected in the 2017 joint statement "Addressing disabilities in large-scale

¹ For the issue of detention of persons with disabilities in the context of migration, IDA refers to its submission to the CMWF Committee draft general comment no. 5, finally adopted.

² CMWF Committee, Draft Outline of general comment 6, title of Section VI.

movements of refugees and migrants,” and is hopeful that the CMWF Committee will do its best to reach a general comment No. 6 inclusive of persons with disabilities.

II. MAIN BARRIERS FACED MIGRANT WORKERS AND FAMILY MEMBERS WITH DISABILITIES

6. As we have discussed previously,³ migrant workers with disabilities and migrant’s relatives with disabilities face **specific legal and practical barriers, including disability-based, multiple and intersecting forms of discrimination**.⁴ Many discriminatory provisions in laws and policies are based on the prejudice that persons with disabilities will become a financial burden for the health and social protection systems, instead of seeking to recognise and support them as active agents and contributors to the development of the country. As this CMWF Committee has noted, migrant children with disabilities may suffer from multiple forms of discrimination⁵ and be in a situation of double vulnerability.⁶ Unfortunately, the full and accurate scope of the negative impact of migration laws, policies, and practices is not entirely clear as **data disaggregated by disability is scarce in area of migration**.

7. In different countries, migration laws and policies include provisions that are discriminatory, directly or indirectly, of persons with disabilities, especially by establishing **health related requirements**.⁷ Recently, the CRPD Committee criticised the New Zealand’s “Acceptable Standard of Health” (ASH) requirements applied under immigration rules, which allows for discrimination in practice, requesting its revision to prevent indirect discrimination.⁸ In addition, persons with disabilities with high support needs were directly excluded from any possibility of waiver of the ASH.⁹ These kinds of legislation exist in other countries as well¹⁰ and have led to problematic jurisprudence at odds with international human rights standards.¹¹

8. The legal restrictions based on disability impact negatively not only on individuals with disabilities seeking to migrate, but also generally on migrant families and children who, as members of a family group, can be denied visas because one of them is an applicant with disability. This can force families to decide whether to leave behind the family member with disability and other member(s) for taking care of them, even leaving

³ IDA’s previous submissions to this Committee, including the more recent submission on the CMWF Committee’s draft general comment no. 5.

⁴ OHCHR, [A/HRC/43/27](#), para. 29

⁵ [CMW/C/GC/2](#), para. 76

⁶ [CMW/C/GC/3-CRC/C/GC/22](#), para. 3

⁷ See e.g. [CRPD/C/AUS/CO/2-3](#), para 35; and [CRPD/C/ECU/CO/1](#), para 32

⁸ See [CRPD/C/NZL/CO/2-3](#), paras.37 and 38.

⁹ See [CRPD/C/NZL/CO/2-3](#), paras.37 and 38. See also “[UNCRPD Shadow Report Migrants against ASH](#)”, with critics to the Acceptable Standard of Health requirements.

¹⁰ The case of Japan is quite similar to the case of the Republic of Korea and the recent recommendations by the CRPD Committee have gone in the same direction. See [CRPD/C/JPN/CO/1](#), paras. 39(a) and 40(a).

¹¹ E.g., [Hilewitz v. Canada \(Minister of Citizenship and Immigration\); De Jong v. Canada \(Minister of Citizenship and Immigration\)](#), 2005 SCC 57, [2005] 2 SCR 706

them in extremely vulnerable situations, e.g., as in war, under persecution, or civil unrest¹².

9. **Lack of accessibility** of infrastructure, services, information, and communication related to migrants' rights and of migration procedures poses barriers to persons with disabilities to successfully participate for obtaining visas and residence permits on an equal basis with others. This obstacle of the lack of accessibility extends to **lack of access to administrative and justice systems**, where persons with disabilities also have no access to **legal assistance** and **age- and gender-appropriate procedural accommodation**, in order to challenge administrative decisions rejecting their visa and/or residence requests or defend their interests in the context of migration related judicial proceedings, be them administrative, civil or criminal proceedings.

10. Finally, migrants with disabilities and family members with disabilities face **restrictions in accessing disability related support and social services and social protection schemes** based on their migration status, nationality and/or time of residence. Such situation restricts persons with disabilities of their rights and denies the opportunity to develop the full potential and being included and contributing to community life.

III. HUMAN RIGHTS STANDARDS PROTECTING THE RIGHTS OF PERSONS WITH DISABILITIES IN THE CONTEXT OF MIGRATION:

A. NON-DISCRIMINATION OF PERSONS WITH DISABILITIES IN MIGRATION LAW AND POLICIES

11. The Draft Outline refers to the impact of discrimination of multiple and intersecting forms of discrimination in making migrants vulnerable to human rights violations, together with other factors, leading to diminished and unequal levels of power, opportunities, and enjoyment of rights." It also suggests "disability" as a factor that can puts migrants in vulnerable situations, from which they deserve protection. While not perfectly crafted, these references relate to Article 7 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMWF) that establishes the principle of non-discrimination, including the residual clause "other status".

12. In any case, persons with disabilities continue to face discrimination on the basis of disability, and multiple and intersecting forms of discrimination in the area of migration.

¹² UNHCR, 'Submission No 82 to the Joint Standing Committee on Migration Inquiry into the Migration Treatment of People with a Disability: No Right to Discriminate', 2009, 12

Indirect discrimination stands out due to **health-related immigration requirements** established by laws and policies. They of course disproportionately impact persons with disabilities, due to their impairments and the strictly medical assessment implied. On this, the UN High Commissioner for Refugees (UNHCR) has explained: “[t]he present operation of the health requirement is discriminatory in effect and endangers a number of other human rights norms.”¹³

13. The CRPD, notably **Articles 2, 5 and 18, and related CRPD Committee jurisprudence**¹⁴, contribute to strengthening human rights standards on non-discrimination of migrant workers and/or their relatives with disabilities, and to tackle stigma and prejudice regarding all persons with disabilities, which remain embedded in many national laws. Specifically, on “health requirements,” in “*Sherlock vs. Australia*”,¹⁵ the CRPD Committee carefully analysed the application of a health requirement under the Australian Migration Act, concluding that a person with multiple sclerosis, had been indirectly discriminated, given that competent authorities “did not take into account, inter alia, the author’s full capacity to perform the functions corresponding to the position for which she had been selected; the impact of [the Visa] denial on her personal and professional life; or the alternatives that she proposed to ensure that the medical treatment she requires would not create a financial burden for the State Party.” Instead, the authorities had only focused on “the potential cost of the medical treatment that the author require[d] and that the moment the author was identified as a person with multiple sclerosis,” incurring in indirect discrimination on the basis of disability.

14. In the same way, under article 18 CRPD in the context of States’ reviews, the CRPD Committee recently expressed its concern to the Republic of Korea on “article 11 of the Immigration Control Act which deprives persons with disabilities, particularly persons with psychosocial disabilities, the right to enter the Republic of Korea based on their disability,” recommending the State to repeal it.¹⁶ In this way, the CRPD Committee has requested repealing provisions that deny the entry to the country to persons with psychosocial disabilities “who lack reason and are not accompanied by an assistant for their sojourn.”¹⁷ It has also recommended Mexico to “[r]eview and harmonize the operational guidelines under the Migration Act to ensure that persons with disabilities are treated equally in the issuance of visas and entry permits.”¹⁸ Other national contexts have similarly discriminatory legislation.¹⁹ This CMWF Committee has been clear in

¹³ UNHCR, Regional Office for Australia, New Zealand, Papua New Guinea and the Pacific, Submissions to the Joint Standing Committee on Migration, Inquiry into the migration treatment of people with a disability, 2009

¹⁴ See generally Concluding Observations of the CRPD Committee. See also, General Comment No. 6 on Article 5 of the CRPD (Equality and non-discrimination).

¹⁵ See, CRPD Committee, CRPD/C/24/D/20/2014.

¹⁶ See [CRPD/C/KOR/CO/2-3](#), paras. 39 and 40

¹⁷ See [CRPD/C/KOR/CO/1](#), para. 36

¹⁸ See [CRPD/C/MEX/CO/1](#), paras. 39 and 40(b)

¹⁹ In the United Kingdom, [Immigration Rules](#) outline possible medical grounds of exclusion for visa applicants. In the United States, according to [the Immigration and Nationality Act](#) (INA, § Sec. 221. [8 U.S.C. 1201] (d) and §212(a)(1)(A)(iii)), all individuals applying for an immigrant visa must submit to a mental and physical medical examination before the visa is issued. In Canada, the Immigration and [Refugee Protection Act Paragraph](#) 38(1)(c) of 1 reads: 38. (1) A foreign national is inadmissible on health grounds if their health condition ... (c) might reasonably be expected to cause excessive demand on health or social services.

rejecting discriminatory provisions in migration law on the basis of disability²⁰, and this should be highlighted in this draft general comment.

15. In particular, the **explicit incorporation of denial of reasonable accommodation** as a form of discrimination in the CRPD (articles 2 and 5) offers a key concept that operates in individual cases in connection to all rights.²¹ Reasonable accommodation means the “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.” If not provided for the exercise of a given right to migrants with disabilities and family members with disabilities, there is discrimination on the basis of disability.

16. Complementing each other, the CMWF Committee and the CRPD Committee have recommended to emphasize on “the policies and related regulations about the prevention of discriminatory practices towards migrant and refugee children with disabilities”²² and to “mainstream the rights of persons with disabilities in [...] migration, asylum seeking and refugee policies and programs...”²³

B. ACCESSIBILITY THROUGHOUT MIGRATION POLICIES AND PROCEDURES AND OF PROGRAMS TARGETING MIGRANTS

17. The Draft Outline refers to Objective 11 of the Global Compact requiring States that “migrants must be able to access adequate procedures at all stages of the migration journey, including access to asylum hearings at the border.” For persons with disabilities, the idea of “adequate procedures” must comprise “**accessibility**” of **procedures**, including of **information** related to migration and migrants’ rights and of **venues and communication** in immigration procedures, and **accessibility of all programs directed to migrants**.

18. Accessibility is a basic precondition for the exercise of rights by persons with disabilities.²⁴ **Article 9 of the CRPD** requires States 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.”

19. Migration policies should ensure accessibility for persons with disabilities in its different dimensions. In particular, a lack of accessible information prevents migrants with disabilities from exercising their rights and being able to participate in migration procedures. The CRPD Committee has urged States parties “to ensure that all policies

²⁰ See [CMW/C/GC/4-CRC/C/GC/23](#), para. 25

²¹ [CRPD/C/GC/6](#), paras. 23 to 27

²² [CMW/C/GC/3-CRC/C/GC/22](#), para. 25

²³ See [CRPD/C/SYC/CO/1](#), para. 30

²⁴ [CRPD/C/GC/2](#), para. 1

and programmes for migrant populations in the State party are fully accessible for persons with disabilities.”²⁵ In addition, it stressed that materials should also be issued in “native languages of the main migrant communities”²⁶ to enable them to exercise their rights. In connection with languages and interpretation, and in addition to the stigma they face,²⁷ deaf migrants present greater risk of marginalisation due to their linguistic and social challenges,²⁸ which are increased by the lack of knowledge of the national sign language of the country of destination.²⁹

20. All public facilities involved in migration policies should be accessible to all persons with disabilities (e.g., by including ramps, elevators, signage for blind persons, Easy to Read orientation signs, visual alarm systems for deaf people, etc.). Further, all information available and communications with persons with disabilities during immigration procedures should be provided through accessible means and formats (e.g., Braille, accessible digital documents, sign language interpretation, including deaf interpreters, tactile communication, captioning, hearing loop for hard of hearing persons, etc.).

21. The non-discrimination concepts of “reasonable accommodation”, in general, and of “procedural accommodation”, in connection with legal proceedings, can operate **as a means to ensure accessibility in a particular case**. They do so when addressing an accessibility need of the person requesting the accommodation (see para. 15 above), e.g., through communication support assistants for persons with intellectual disabilities, persons with psychosocial disabilities and deaf persons.

22. Regarding **administrative procedures**, as IDA shared in its previous submission to this Committee, the very similar concept of “**procedural accommodation**,” emanating from **article 13 of the CRPD**, is the non-discriminatory concept that applies to legal proceedings, including **administrative proceedings, and thus covering immigration related procedures**.³⁰ The main importance of this clarification is that “reasonable accommodation” is limited by the concept of ‘undue burden’, **procedural accommodations are not**,³¹ as that limitation would entail a denial of justice. Examples in practice of procedural accommodation are providing communication support assistants (e.g., for persons with intellectual disabilities, persons with psychosocial disabilities and deaf persons) adaptation of the venues, reduction of formality of procedures, etc.³²

²⁵ [CRPD/C/DEU/CO/1, para. 40](#)

²⁶ [CRPD/C/DEU/CO/1, para. 40](#)

²⁷ Seck, J. [Deaf & In Detention: Challenges to Outreach, Advocacy & Support](#), *IMMPRINT 2018*

²⁸ Sivunen, N. An Ethnographic Study of Deaf Refugees Seeking Asylum in Finland. *Societies* 2019, 9, 2.

²⁹ Olsen, E. T. (2019). Cooperation as coping mechanism when interpreting between deaf refugees and hearing professionals. *International Journal of Interpreter Education*, 11(2), 16-27.

³⁰ Special Rapporteur on the Rights of Persons with disabilities, CRPD Committee and UN Special Envoy on Disability and Accessibility, *International Principles and Guidelines on access to justice for persons with disabilities*, Principle 3, pp. 7, 32

³¹ [CRPD/C/GC/6](#), para. 25(d)

³² Special Rapporteur on the Rights of Persons with disabilities et al (n. 35), Principle 3, p. 32

C. ACCESS TO JUSTICE FOR MIGRANTS WITH DISABILITIES: ACCESSIBILITY, PROCEDURAL ACCOMMODATION AND TRAINING OF GOVERNMENT AND JUDICIAL STAFF

23. The Draft Outline highlights articles 18 and 83 of the CMWF, related to access to justice, in criminal processes when accused and to an effective remedy to challenge administrative decisions and redress the rights violations they suffer, respectively.

24. As any other migrant, migrants with disabilities must have access to legal remedies. However, lack of a right to legal assistance³³ and support, lack of accessibility of information, procedures and procedural accommodation, prevents migrants with disabilities to access legal remedies, on equal basis with others. Research highlights deficiencies in deportation proceedings, including lack of court appointed lawyers and lack of guidance to legal practitioners on accommodations that are available.³⁴

25. Article 13 of the CRPD requires States to ensure “effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants...”, as well as to “promote appropriate training for those working in the field of administration of justice, including police and prison staff.” In connection with migrants with disabilities, the CRPD Committee has requested States to amend “migration laws and policies to ensure that persons with disabilities do not face discrimination in any of the formalities and procedures relating to migration and asylum.”³⁵

26. As stated above (paras. 22), States should ensure “**procedural accommodation**” for persons with disabilities who require them to fully participate in immigration related procedures,³⁶ distinguishing that concept from “reasonable accommodation.” Additionally, States of origin should ensure that their citizens with disabilities benefit from **consular assistance** available in the State of destination, on equal basis with others.

27. The draft general comment should reflect the kind of barriers that persons with disabilities face in accessing justice, as well as including explicitly the need for legal assistance, accessibility, provision of procedural accommodation to individuals with disabilities and the need to provide adequate training to governmental and judicial officials and staff.

³³ Mark C. Weber, [Immigration and Disability in the United States and Canada](#), (2015) pp. 28

³⁴ Human Rights Watch & ACLU (n. 9), p. 2

³⁵ See e.g. [CRPD/C/AUS/CO/2-3](#), paras. 35 and 36

³⁶ Special Rapporteur on the Rights of Persons with disabilities et al (n. 35), Principle 3, p. 32

D. ACCESS TO SERVICES AND SOCIAL PROTECTION SCHEMES FOR MIGRANTS WITH DISABILITIES AND MIGRANTS' RELATIVES WITH DISABILITIES

28. The Draft Outline generally calls to ensure the rights of migrant workers, which is also an objective reflected throughout the Global Compact. However, when going into more detail, the document only refers to “services in immigration detention” (e.g., adequate sanitary, bathing and shower facilities; adequate food and drinking water and access to qualified medical personnel) and “gender-specific health care services”.

29. Importantly, article 45 of the CMWF provides that

“1. Members of the families of migrant workers shall, in the State of employment, enjoy equality of treatment with nationals of that State in relation to:

- (a) Access to **educational institutions and services**, subject to the admission requirements and other regulations of the institutions and services concerned;
- (b) Access to **vocational guidance and training institutions** and services, provided that requirements for participation are met; and
- (c) Access to **social and health services**, provided that requirements for participation in the respective schemes are met” (emphasis added).”

30. IDA believes that the general comment should stress the need to strengthen access to these services and schemes, including the diversity of mainstream and disability specific social services, and to ensure they are all inclusive of persons with disabilities. To do so, IDA encourages the CMWF Committee to include **explicit references to articles 24 (Education), 27 (Work and employment), 19 (living independently and being included in the community), 23 (Respect for the home and the family) and 28 (Adequate standard of living and social protection) and their language in line with the CRPD Committee jurisprudence** (e.g. refer to inclusive education and vocational training, disability support services, personal assistance services, etc.).³⁷ In this way, States would be reminded of the need to improve their systems for the sake of both their nationals with disabilities and migrants with disabilities.

31. Focusing on the scope of **Article 45(c) of the CMWF (social and health services)**, in many contexts, migrants with disabilities have restricted to no access to social protection measures, social services, health care, rehabilitation services and related information in general, including in the national sign language. The CRPD Committee has noted the lack of appropriate social and health care services for migrant with disabilities and has also called upon States to provide with “sufficient recovery time and basic rehabilitation”³⁸ to migrants who acquire impairments while in transit. This CMWF Committee has acknowledged the discrimination faced by migrants with disabilities.³⁹

³⁷ References to CRPD Committee’s general comments, e.g., no 4 on article 24 (right to inclusive education).

³⁸ [CRPD/C/MEX/CO/1](#), para 40(c)

³⁹ [CMW/C/GC/3-CRC/C/GC/22](#), paras. 21, 25 and 42

32. Children with disabilities are also impacted.⁴⁰ Migrant parents of children with disabilities face more difficulties in accessing services and support than nationals.⁴¹ Migrant children with disabilities may also face barriers to accessing social services and disability benefits,⁴² an issue already addressed by this CMWF Committee,⁴³ which has also noted that migrant children with disabilities may face multiple discrimination⁴⁴ and double vulnerability.⁴⁵

33. **All this requires that the phrase “provided that requirements for participation in the respective schemes are met” in article 45(c), and the similar ones in 45(a) and 45(b), CMWF are interpreted as excluding requirements that:**

- a. **discriminate on the basis of disability, both directly or indirectly, or by denial of reasonable accommodation; and/or**
- b. **discriminate among persons with disabilities on the basis of migrant status, residence period, etc., or that are unreasonable, in accessing disability specific social services and benefits, depriving the right to social protection of persons with disabilities of any minimum content.**

34. **Article 28 of the CRPD** requires States to strive to ensure persons with disabilities an adequate standard of living, including their access to social protection programs and **assistance from the State with disability related expenses.**⁴⁶ While social protection systems still lack comprehensive coverage of persons with disabilities **and their disability related costs**, the situation of migrants with disabilities in an irregular situation can only be worse.

35. The CRPD Committee has addressed their situation recommending States to put in place social protection programmes for persons with disabilities to improve the standard of living of persons with disabilities, including migrants.⁴⁷ That Committee has also requested to repeal “the provisions that prevent persons with disabilities, including migrant workers and disabled children of migrant workers, from having equal access to social protection”⁴⁸ and to restore the rights of persons with disabilities with a foreign national origin.⁴⁹

⁴⁰ See e.g. [CRPD/C/SYC/CO/1](#), paras. 29 and 30

⁴¹ See [A/HRC/17/33/Add.3](#), 2011, para 69. “Migrant parents have difficulties in obtaining the financial support to which they are entitled for their disabled children, and children who require urgent psychological attention must wait eight months to one year in order to receive it.” See also its para. 81

⁴² Supreme Court of Argentina, decision *Reyes Aguilera, D v National Government*, 7 September 2007

⁴³ [CMW/C/ARG/CO/1](#), paras. 4 and 30. In Argentina, article 9 of Law no 13478 for the assignment of allowances for the elderly and persons with disabilities, deprives equal access to benefits for children with disabilities due to a prerequisite of 20 years residence before being permitted to access disability benefits

⁴⁴ [CMW/C/GC/2](#), para. 76

⁴⁵ [CMW/C/GC/3-CRC/C/GC/22](#), para. 3

⁴⁶ See [A/70/297](#), paras. 29-33

⁴⁷ See e.g., [CRPD/C/ECU/CO/2-3](#), paras. 49 and 50(a); [CRPD/C/SLV/CO/2-3](#), paras. 52 and 53(b)

⁴⁸ See [CRPD/C/ARG/CO/1](#), para. 46

⁴⁹ See [CRPD/C/DOM/CO/1](#), paras. 36 and 37

E. ENHANCING DATA COLLECTION ON MIGRANTS WITH DISABILITIES

36. The Draft Outline does not seem to adequately stress the need to ensure data collection with a level of disaggregation to identify specific sub-groups among migrants. For persons with disabilities, usually not identified nor accounted for in this context, this is particularly relevant. Indeed, as IDA pointed out in the last submission to this CMWF Committee, lack of systematised data disaggregated by disability prevents the development of migration policies compliant with the rights of migrants with disabilities, issue that had been acknowledged by the CMWF Committee.⁵⁰ Similarly, the CRPD Committee has expressed its concern on the lack of data on migrants with disabilities for other countries.⁵¹

37. The lack of data follows “the lack of procedures to identify migrants and refugees with disabilities,”⁵² and the fact “that [certain] impairments that are not immediately noticeable are often undetected.”⁵³ Years ago, the European Union Fundamental Rights Agency stressed that “[t]here are **no systematic data** on the numbers of persons with disabilities among arrivals and the breakdown per type of disability.”⁵⁴ Based only on “anecdotal evidence,” EU-FRA suggested that there was a great number of persons with psychosocial disabilities amongst migrants.⁵⁵

38. Article 31 of the CRPD (statistics and data collection) requires States “to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect” to the Convention, including data disaggregation by disability (Article 31, paragraph 2). The CRPD Committee has systematically suggested the use of the methodology of the Washington Group on Disability Statistics.⁵⁶ Given the complexities of data collection and disaggregation by disability and the lack of widespread practice regarding migrants, **IDA would appreciate an explicit reference to raise the attention to data collection on persons with disabilities, promoting the use of Washington Group on Disability Statistics when technically relevant.**⁵⁷

IV. RECOMMENDATIONS

⁵⁰ See [CMW/C/GC/3-CRC/C/GC/22](#), para. 16

⁵¹ See e.g. [CRPD/C/ARE/CO/1](#), paras. 35 and 36

⁵² FRA (n. 89)

⁵³ FRA (n. 89)

⁵⁴ FRA - [Monthly data collection on the current migration situation in the EU](#), 2016 monthly report 1–31 July 2016

⁵⁵ FRA (n. 89), stating: “Anecdotal evidence suggests that mental health issues, and notably post-traumatic stress disorder (PTSD), are particularly prevalent, tied both to traumas experienced in the country of origin and on the journey [...]”

⁵⁶ See e.g. [CRPD/C/ALB/CO/1](#), para. 52(b). These tools have been tested also in the context of humanitarian action. See e.g., <https://humanity-inclusion.org.uk/en/projects/disability-data-in-humanitarian-action>

⁵⁷ See e.g. [CRPD/C/ALB/CO/1](#), para. 52(b). These tools have been tested also in the context of humanitarian action. See e.g., <https://humanity-inclusion.org.uk/en/projects/disability-data-in-humanitarian-action>

39. For a robust general comment No. 6 providing guidance complementing the “Global Compact” from a human rights perspective in general, and from a disability rights perspective in particular, IDA recommends this CMWF Committee to call on States Parties to the Convention and to those who adopted the “Global Compact for Safe, Orderly and Regular Migration,” in close consultation with and with the active involvement of organizations of persons with disabilities in line with Article 4(3) of the CRPD and CRPD Committee’s General Comment No. 7, to:

a. Review migration related laws and policies and repeal all legal provisions that discriminate based on disability, either directly or indirectly, and to explicitly incorporate the non-discrimination concepts of reasonable accommodation and procedural accommodation, considering accurately their scopes of application.

b. Ensure accessibility in all its dimensions (especially of the built environment, information and communication) for all persons with disabilities, of all migration policies and procedures and of all programs targeting and/or including migrants.

c. Ensure access to justice for migrants with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, the provision of legal assistance and consular assistance, and the training of public staff of the justice system on the requirements of persons with disabilities.

d. Ensure migrants with disabilities access to inclusive education, vocational training, healthcare, rehabilitation, social services and social protection schemes, including the coverage of disability related costs, to ensure them an adequate standard of living and their inclusion in the community in line with the many relevant provisions of the CRPD. In particular, repeal restrictions in accessing:

- Mainstream support and social services on the basis of disability; and
- Disability related support and social services on the basis of migrant status or period of residence, or any unreasonable criterion that deprives the right to social protection of any content.

e. Call on States to develop information systems that ensure data collection and disaggregation by disability to account for the proportion and situation of migrant workers and relatives with disabilities and inform policy design and responses, in line with Article 31 of the CRPD. The use of the methodology of the Washington Group on Disability Statistics should be suggested for the design of data collection efforts.

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