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Thematic study by the Office of the United Nations High Commissioner for Human Rights on the structure and role of national mechanisms for the implementation and monitoring of the Convention on the Rights of Persons with Disabilities

Summary

The present study focuses on national mechanisms for the implementation and monitoring of the Convention on the Rights of Persons with Disabilities.

Chapter II provides a brief overview of the Convention and its status. Chapter III provides an overview of mechanisms and procedures for monitoring the Convention at international and national level. Chapter IV focuses on national mechanisms for the implementation and monitoring of the Convention. This chapter highlights the close relation between the concepts of implementation and monitoring contained in human rights treaties, introduces the implementation and monitoring structures envisaged in article 33 of the Convention and discusses the key characteristics and roles of each of the mechanisms. On the basis of the submissions received for this study, this report provides illustrative examples of how States parties have given effect to article 33 in their domestic framework. Chapter V sets out conclusions and recommendations for the establishment or designation of effective implementation and monitoring frameworks for the Convention at national level.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 10/7 entitled “Human rights of persons with disabilities: national frameworks for the promotion and protection of the human rights of persons with disabilities”. In resolution 10/7, the Human Rights Council decided that the next interactive debate on the rights of persons with disabilities would be held at its thirteenth session and that it would focus on the structure and role of national mechanisms for the implementation and monitoring of the Convention on the Rights of Persons with Disabilities (the Convention).

2. To support this debate, the Council requested the Office of the High Commissioner for Human Rights (OHCHR) “to prepare a study to enhance awareness of the structure and role of national mechanisms for the implementation and monitoring of the Convention on the Rights of Persons with Disabilities, in consultation with relevant stakeholders, including States, regional organizations, civil society organizations, including organizations of persons with disabilities, and national human rights institutions”.

3. In consulting with stakeholders in the preparation of this study, OHCHR had received, at the time of writing this report, 95 written submissions from States, national human rights institutions, civil society organizations, including organizations of persons with disabilities, and independent experts. OHCHR also organized a one-day open-ended consultation on the theme of the study on 26 October 2009 in Geneva and participated in relevant expert and other meetings during the year.

4. The findings and recommendations which emerged from the consultative process have informed the content of the study. The full texts of all submissions received and the informal summary of the OHCHR consultation are available on the OHCHR website.¹

II. The Convention on the Rights of Persons with Disabilities

5. The Convention on the Rights of Persons with Disabilities was adopted by consensus by the General Assembly in resolution 61/106 on 13 December 2006. The Convention and its Optional Protocol were opened for signature on 30 March 2007 and entered into force on 3 May 2008 following the deposit of the twentieth instrument of ratification. The Optional Protocol also entered into force on the same date, following the deposit of the tenth instrument of ratification.

6. The Convention on the Rights of Persons with Disabilities is the first human rights treaty that comprehensively details all human rights of persons with disabilities and clarifies the obligations of States to respect, protect and fulfil these rights. Despite being entitled to protection under all human rights treaties through the cross-cutting principle of equality and non-discrimination, persons with disabilities had by and large remained “invisible” in the human rights system and absent from the human rights discourse. The entry into force of the Convention therefore fills an important protection gap in international human rights law.

7. The Convention marks a paradigm shift in attitudes and approaches to persons with disabilities. It endorses a so-called social model that recognizes disability as the result of “the interaction between persons with impairments and attitudinal and environmental

¹ <http://www2.ohchr.org/english/issues/disability/consultation26102009.htm>.

barriers”.² On this basis, article 1 states that the purpose of the Convention is “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”.³

8. The Convention reaffirms that persons with disabilities enjoy the same human rights as everyone else in the civil, cultural, economic, political and social spheres. In order to ensure an environment conducive to the fulfilment of the rights of persons with disabilities, the Convention also includes articles on awareness-raising, accessibility, situations of risk and humanitarian emergencies, access to justice, personal mobility, habilitation and rehabilitation, as well as statistics and data collection.⁴

9. At the time of the submission of the present report, 76 States had ratified the Convention and 48 the Optional Protocol, while 143 and 87 States respectively were signatories to the 2 instruments.⁵ The Convention on the Rights of Persons with Disabilities is the first human rights treaty that is open for confirmation or accession by regional integration organizations. The European Community is a signatory to the Convention.

III. Implementation and monitoring of the Convention

10. In accordance with article 4 of the Convention, States that ratify the Convention agree to promote and ensure the full respect of all human rights and fundamental freedoms for all persons with disabilities, without discrimination of any kind. For this, States Parties are required to “adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention”.⁶ Implementation is therefore the process whereby States parties take action to ensure the realization of all rights contained in a given treaty within their jurisdiction.⁷

11. In all human rights treaties, the implementation obligation is closely linked to a monitoring component. The monitoring of human rights treaties is needed to assess whether measures to implement the treaty are adopted and applied, but also to evaluate their results and therefore provide feedback for implementation. Monitoring mechanisms foster accountability and, over the long term, strengthen the capacity of parties to treaties to fulfil their commitments and obligations.

12. The Convention on the Rights of Persons with Disabilities provides for monitoring of the implementation of the Convention both at the international and national level.

² Para. (e) of the preamble to the Convention.

³ For an overview of the Convention, see *From Exclusion to Equality: Realizing the Rights of Persons with Disabilities* (HR/PUB/07/6), Office of the United Nations High Commissioner for Human Rights (OHCHR), published jointly with the United Nations Department for Economic and Social Affairs (DESA) and the Inter-Parliamentary Union (IPU). Available at <http://www.ohchr.org/EN/PublicationsResources/Pages/TrainingEducation.aspx>.

⁴ OHCHR, *Monitoring the Convention on the Rights of Persons with Disabilities: Guidance for human rights monitors*, forthcoming (2010).

⁵ Information on the status of the Convention and its Optional Protocol is available at <http://www2.ohchr.org/english/issues/disability/index.htm> and <http://www.un.org/disabilities/>.

⁶ Art. 4, para. 1 (a).

⁷ For a comprehensive review of legal measures required for the implementation of the Convention on the Rights of Persons with Disabilities, refer to *Thematic study by the Office of the United Nations High Commissioner for Human Rights on enhancing awareness and understanding of the Convention on the Rights of Persons with Disabilities* (A/HRC/10/48), available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.48.pdf>.

A. International level

13. At the international level, the Convention provides for monitoring through three procedures. In the first instance, the Convention regulates, on grounds similar to other human rights treaties, a reporting procedure. States and regional integration organizations which are parties to the Convention commit to periodically reporting on measures taken to give effect to their obligations under the Convention and on the progress made in this regard.

14. These reports are examined by an international committee of independent experts, namely the Committee on the Rights of Persons with Disabilities. This Committee has the mandate to consider the reports of parties to the Convention and make suggestions and recommendations to the parties for strengthening implementation of the Convention. Monitoring also takes place through an individual communication procedure and an inquiry procedure. Both these procedures are subject to ratification of the Optional Protocol to the Convention.⁸

B. National level

15. At the national level, article 33 of the Convention requires States parties to put in place a structure tasked with implementing and monitoring the Convention. The inclusion of a norm detailing national implementation and monitoring structures and their functions at national level is unprecedented in a human rights treaty, with the partial exception of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which requires ratifying States to set up a national preventive mechanism.⁹

16. In the Convention, the implementation and monitoring functions are conceptually separated and the responsibility is assigned to distinct entities.

17. Article 33, paragraph 1, emphasizes domestic implementation, placing responsibility with governments. To avoid blurring of responsibility across government or uncoordinated action, the Convention requires States to designate one or more focal points with responsibility for the implementation of the Convention within government and to consider the establishment of a coordination mechanism.

18. Article 33, paragraph 2, on the other hand, requires States parties to have or put in place a framework to protect, promote and monitor the implementation of the Convention. The notion of independence is central to the framework, which must include an independent entity established and functioning on the basis of the principles relating to the status and functioning of national institutions for the promotion and protection of human rights (the Paris Principles).¹⁰

19. Article 33, paragraph 3 requires that civil society and in particular persons with disabilities and their respective organizations shall be involved and participate fully in the

⁸ Through the individual communications procedure, the Committee is mandated to receive communications (complaints) from an individual or a group of individuals alleging a violation of the Convention. Through the inquiry procedure, the Committee is mandated to investigate allegations of gross or systematic violations of the Convention.

⁹ For further information on the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, visit the OHCHR webpage at <http://www2.ohchr.org/english/bodies/cat/opcat/index.htm>.

¹⁰ Available at <http://www2.ohchr.org/english/law/parisprinciples.htm>.

monitoring process, in line with the principle of participation of persons with disabilities that permeates the treaty.

IV. National implementation and monitoring of article 33 of the Convention

20. In relation to other human rights treaties, treaty bodies have often addressed issues concerning the implementation and monitoring of the respective conventions at national level in their concluding observations and recommendations on the reports of States parties or in general comments. Recommendations on implementation have often highlighted the need for the establishment or strengthening of effective national machineries and institutions, for coordination within government and between government and civil society, and rigorous monitoring of implementation which “should be built into the process of government at all levels but also [requires] independent monitoring by national human rights institutions, NGOs and others”.¹¹

21. The incorporation of provisions on national implementation and monitoring in the Convention on the Rights of Persons with Disabilities has been commended as a measure to consolidate the institutional preconditions necessary to ensure the realization of the Convention at domestic level.¹²

A. Focal point(s)

22. According to the Convention, the first element of the institutional structure that States parties need to put in place is to designate one or more focal points within government for matters related to the implementation of the Convention. National focal points on disability issues are already in place in most Governments, including as a result of the implementation of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities.¹³ As such, implementation of article 33, paragraph 1 might require a reconsideration of existing structures rather than the establishment of new entities.

23. While it is not helpful to attempt to describe detailed national arrangements for very different systems of government, some key general considerations should be taken into account.

24. For the effective implementation of the Convention, it might be advisable to adopt a two-pronged approach and appoint focal points at the level of each or most governmental departments/ministries as well as designate one overall focal point within government responsible for the implementation of the Convention.

25. The designation of disability focal points at the level of government ministries responds to the recognition that the full and effective implementation of the Convention

¹¹ See Committee on the Rights of the Child general comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6). See also Committee on the Elimination of Discrimination against Women, general recommendation No. 6 (1988) on effective national machinery and publicity.

¹² See G. Quinn, “Resisting the ‘temptation of elegance’: can the Convention on the Rights of Persons with Disabilities socialise States to right behaviour?” in *The UN Convention on the Rights of Persons with Disabilities: European and Scandinavian Perspectives*, O.M. Arnardóttir and G. Quinn, eds. (Leiden, Martinus Nijhoff Publishers, 2009).

¹³ Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96), available at: <http://www.un.org/documents/ga/res/48/a48r096.htm>.

requires action by most, if not all, government ministries. Such focal points should represent the respective ministry in the national coordination mechanism also provided for in article 33, paragraph 1. Their mandate should include promoting awareness of the Convention within the ministry, participation in the development of an action plan on the Convention, and monitoring and reporting on implementation within their functional lines.

26. The appointment of one overall focal point for the Convention within government, at the same time responds to the need to ensure the existence of a general oversight and promotion role. In this perspective, the following considerations are of relevance.

27. In the first instance, the paradigm shift endorsed by the Convention on the understanding of disability, away from medical and social understanding to one of human rights, needs to be reflected in the choice of focal point. As such, designation of the ministry of health as the government focal point should be avoided, as should the designation of special education departments within ministries of education, as is currently the case in some systems. Similarly, placement of the focal point within ministries of welfare and labour as is the practice in the majority of States parties should be reviewed and ministries with responsibility for justice and human rights should be preferred. Australia, by way of example, designated the Attorney-General's Department as the joint focal point for implementing the Convention.¹⁴

28. Secondly, implementation of the Convention requires traction at the most senior level of government. Placing the focal point on the Convention close to the heart of government, such as in the Office of the President or the Prime Minister, or the Cabinet Office, would be ideal. Some States parties have already implemented this approach, in accordance with their own system of government. In South Africa, for example, the Office on the Status of Disabled Persons (OSDP) is one of the Directorates in the Presidency, alongside the Office on the Status of Women and the Office on the Rights of the Child.¹⁵ Australia has a Parliamentary Secretary for Disabilities, who reports to the Prime Minister.¹⁶ Where ministers in charge of disability are not part of the Cabinet, this might hamper the robustness of the focal points structure.

29. Thirdly, the mandate of the focal point should clearly focus on developing and coordinating a coherent national policy on the Convention. As such, the focal point should promote, guide, inform and advise government on matters related to the implementation of the Convention but arguably not implement it by delivering disability support services. The mandate of the focal point could also include coordination of government action on the Convention in respect of reporting, monitoring, awareness-raising and liaising with the independent monitoring framework designated under article 33, paragraph 2 of the Convention. Furthermore, the focal point should represent the channel for civil society and organizations of persons with disabilities to communicate with government on the implementation of the Convention.

30. In the fourth instance, the focal point within government needs to be adequately supported in terms of technical staff and resources. Therefore maintaining the structure supporting the focal point within large ministries so as to take advantage of economies of

¹⁴ See Australian Government website at: http://www.fahcsia.gov.au/sa/disability/progserv/govtint/Pages/policy-international_disability_issues.aspx.

¹⁵ See Presidency of the Republic of South Africa website at <http://www.thepresidency.gov.za/about/organogrambig.htm>.

¹⁶ See Australian Prime Minister website at: http://www.pm.gov.au/PM_Connect/Community_Cabinet.

scale could in some cases be helpful.¹⁷ In such cases, it might be useful to explicitly recognize the independence of the focal point structure from the parent ministry.¹⁸

31. Few States have so far proceeded to formally designate focal points for the Convention and some of the responses received for this study seemed to suggest that such functions would fall “implicitly” amongst the tasks carried out by existing disability focal points within government. However, the good practice of States, such as Guatemala or Slovenia, that have formally designated entities as focal points for the Convention should be highlighted, as well as the practice of States such as Spain that have officially revised the mandate of existing entities to explicitly include the focal point function.¹⁹

32. Beside functional focal points in concerned ministries, article 33, paragraph 1 should also be read to refer to States with multiple levels of government, so that disability focal points could be designated at the local, regional and national/federal level.

B. Coordination mechanisms

33. In addition to the establishment of focal points, article 33, paragraph 1 also requests States to “give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels”.

34. Several States have in place coordination mechanisms on disability issues, pre-dating in some cases the ratification of the Convention. Notwithstanding existing differences, coordinating committees usually include representatives from various ministries and organizations of persons with disabilities, and also other civil society organizations, the private sector and trade unions. Their mandate often focuses on policy development, promotion of dialogue in the disability field, awareness-raising and similar functions. Often these committees have a staffed secretariat, in several cases housed within ministries of social welfare.

35. As noted in some of the submissions received, effectiveness of existing coordination mechanisms is often low, according to organizations of persons with disabilities.²⁰ Lack of a clear legal mandate, lack of resources made available for the functioning of the coordination mechanisms, limited involvement of persons with disabilities or exclusion of persons with certain types of disabilities, are some of the obstacles most commonly faced by existing structures.²¹ Furthermore, laws establishing coordinating structures have often not been operationalized through the adoptions of rules and regulations. In some cases this also applies to coordinating frameworks established by States upon ratification of the Convention, with the result that such structures are in reality not operational or functioning.

¹⁷ See submission by New Zealand at: <http://www2.ohchr.org/english/issues/disability/docs/NewZealand.doc>.

¹⁸ See submission by the United Kingdom Equality and Human Rights Commission to the Joint Committee on Human Rights, at <http://www.equalityhumanrights.com/legislative-framework/human-rights-submissions/rights-of-disabled-people/submission-to-the-joint-committee-on-human-rights/>.

¹⁹ See submissions by Guatemala, Slovenia and Spain at <http://www2.ohchr.org/english/issues/disability/submissions.htm>.

²⁰ Submission to this study by the International Disability Alliance, available at <http://www2.ohchr.org/english/issues/disability/docs/InternationalDisabilityAllianceDACRPFForum.doc>.

²¹ See for example South-North Center for Dialogue & Development, *Global Survey on Government Action on the Implementation of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, pp. 74 and 75, available at http://www.escwa.un.org/divisions/sdd/news/GlobalSurvey_Report_Jan30_07_ReadOnly.pdf.

36. Ratification of the Convention offers an important opportunity for the strengthening of existing structures where necessary or for their establishment. Where more than one focal point within government is appointed, it would seem appropriate that such focal points participate in the coordination mechanism. The mechanism should ideally be chaired by the focal point within government with the key responsibility for the implementation of the Convention. Through inter-ministerial action and participation in the mechanism, government agencies will be able to focus their activity and policy development on areas where they have an added value, avoid duplication and make the best use of limited resources.

C. Monitoring framework

37. Article 33, paragraph 2 of the Convention requires States to have or put in place at national level a framework that includes one or more independent mechanisms, to promote, protect and monitor implementation of the Convention. The Convention specifies that when designating or establishing the independent mechanism/s to be included in the framework, States shall take into account the Paris Principles.

38. Article 33 does not prescribe a unique organizational form for the national monitoring framework and States parties are free to determine the appropriate structure according to their political and organizational context. Options can range from the attribution of the monitoring function to a single entity, i.e. one independent mechanism; a framework consisting of more than one independent mechanism; or a framework consisting of various entities, amongst which one or more independent mechanisms are included.

39. Suitable entities are already in place in some States. In others, implementation of article 33, paragraph 2 requires the establishment of a new entity or the transformation of existing entities.

40. The experience of the States that, according to submissions received, have taken formal steps towards the implementation of the monitoring framework shows that they have all assigned the function to a single-entity framework and not to multiple entities. With regard to the choice of such entities, however, the approach has been diverse: for example, Germany and the United Kingdom of Great Britain and Northern Ireland have designated their existing national human rights institutions; Spain has designated the national federation of organizations of persons with disabilities, CERMI; and Austria has established a new mechanism, the Independent Monitoring Committee.²²

41. Whatever the organizational structure, three key requirements need to be given effect in the monitoring framework:

(a) The framework must include one or more independent mechanisms that take into account the Paris Principles. This does not mean that only entities complying with the Paris Principles should be included in the framework, but that at least one mechanism that is established and functions on the basis of the Paris Principles must be part of the framework;²³

(b) The framework established or designated must be capable of adequately carrying out its mandate to promote, protect and monitor the implementation of the

²² See submissions by Austria, Germany, Spain and the United Kingdom at <http://www2.ohchr.org/english/issues/disability/submissions.htm>.

²³ Australian Human Rights Commission, paper on *National human rights institutions and national implementation and monitoring of the Convention on the Rights of Persons with Disabilities*, Sydney 2007, available at http://www.hreoc.gov.au/disability_rights/convention/apf07.htm

Convention. This means that the framework needs to be given an adequate mandate and the institutional capacity required to effectively perform its functions.

(c) Civil society and in particular persons with disabilities and their representative organizations need to be involved and fully participate in the monitoring process.

42. Only a few States that have made written submissions to this study provided detailed information as to the process and steps taken at national level towards establishing or designating a monitoring framework. Formal designation has taken place only in a few countries such as Austria, Germany, Spain and the United Kingdom. On the other hand, several States indicated that consultations to explore options and make recommendations on the structure and role of the framework were ongoing at national level, such as in the Republic of Korea, Mexico, and Oman.²⁴

1. The independent mechanism and the Paris Principles

43. States that have conducted consultations have explored the suitability of existing entities as possible components of the monitoring framework. Entities that have been considered include legislative committees, national human rights institutions, organizations of persons with disabilities, parliamentary ombudsmen, national disability councils, government agencies delivering disability-related services, government agencies for disability policy coordination, and others.

44. While allowing States to consider their legal and administrative specificities in the establishment of such frameworks, article 33, paragraph 2 harnesses government accountability by requiring the presence of independent entities in the framework. From this perspective, the Paris Principles provide important guidance to identify the characteristics the framework should overall possess, while accepting that not all components of the framework need to be fully compliant with the Paris Principles. At the very minimum, paragraph 2 requires that the framework shall include at least one independent mechanism that functions on the basis of the Paris Principles.

45. The Paris Principles identify four main characteristics which should apply to the independent mechanisms under article 33 of the Convention and should be considered to apply to the overall framework:

(a) Competence and responsibilities: national human rights institution, and, in the context of article 33, the independent mechanism established under the Convention, shall be given as broad a mandate as possible which shall be clearly set forth in a constitutional or legislative text. Responsibilities shall include: reporting to the Government on human rights matters; harmonization of national legislation, regulations and practices with international human rights standards; encouraging ratification of international human rights instruments; contributing to report of State to United Nations treaty bodies and committees; cooperating with international, regional and other national human rights institutions; assisting in human rights education; and publicizing and promoting human rights;

(b) Composition, independence and pluralism: independence is guaranteed through the means of: composition, which should ensure the pluralist representation of social forces in the country; sufficient funding and infrastructure, not to be subject to financial control by government; and appointment by official act, establishing the mandate;

²⁴ See submissions by Korea, Mexico and Oman at <http://www2.ohchr.org/english/issues/disability/submissions.htm>.

(c) Methods of operation: the Principles require that a national human rights institution, and the independent framework in article 33, shall freely consider any questions falling within its/their competence from whatever source it/they see/s fit. There is also a reference to maintaining consultation with the other bodies responsible for human rights issues and with non-governmental organizations;

(d) The fourth characteristic concerns the status of institutions with quasi-judicial competence, which are authorized to hear and consider complaints and petitions. In the exercise of these functions, institutions can conciliate or issue binding decisions, hear any complaints or petitions or transmit them, inform the party of remedies available and promote access to them.

46. On the basis of these criteria, it is apparent that some of the entities considered by States in the context of the establishment of the monitoring framework do not meet the criteria to be designated as the independent mechanism. Guarantees of independence, for example, would disqualify government commissions as well as some national observatories on disabilities that have recently been established in some countries. Similar concerns have been raised by some national disability secretariats that include government representatives on their executive boards as well as national disability councils. Non-governmental organizations, by definition, generally enjoy great structural independence from executive government. However, the degree of independence of a non-governmental organization in reality can vary, and generally is not legally guaranteed.

47. These entities can nevertheless make an important contribution to promoting, protecting and monitoring implementation of the Convention, in their own right and as an element of the framework. The opportunities resulting from cooperation with the monitoring framework are well highlighted in some submissions, one of which notes, that “a key task in the remit to monitor implementation of the Convention is to gather and coordinate material from other initiatives and analyse this in relation to human rights”. There is ample potential for information collected by other government agencies, with mandates in sectors related to the Convention, to be used in the monitoring framework.²⁵

2. A role for national human rights institutions

48. Existing national human rights institutions have the potential to be designated as the independent mechanism performing functions under paragraph 2, and in fact, it has been said the default setting lies in favour of National Institutions doing the heavy lifting with respect to the article 33.2 tasks.²⁶ Nowadays, over a hundred national human rights institutions have been established worldwide, 64 of which are accredited with the International Coordinating Committee of National Human Rights Institutions (ICC).²⁷ Notwithstanding existing differences, the majority of existing national human rights institutions can be grouped together in three broad categories: “human rights commissions”, “ombudsmen” and “institutes”.

²⁵ Submission by the Delegation for Human Rights in Sweden, p. 43, available at http://www2.ohchr.org/english/issues/disability/docs/SWEDEN_Equality_Ombudsmen.pdf.

²⁶ G. Quinn, “The UN Convention on the Rights of Persons with Disabilities. National institutions as key catalysts of change” in *National Monitoring Mechanisms on the Convention on the Rights of Persons with Disabilities*, OHCHR, the National Human Rights Commission of Mexico and the Network of National Institutions for the Promotion and Protection of Human Rights of the Americas, May 2008, p. 130, available at http://www.nhri.net/2008/0805_libro_discapacidad.pdf.

²⁷ See http://www.nhri.net/2009/Chart%20of%20the%20Status%20of%20NIs%20_2%20June%202009_final.pdf.

49. The Convention on the Rights of Persons with Disabilities is the first human rights convention that includes an explicit role for national human rights institutions in promoting, protecting and monitoring implementation of a treaty at national level. Treaty bodies monitoring other human rights treaties have however often interpreted the general obligation to adopt all measures necessary to give effect to the treaty to include the establishment of a national human rights institution.²⁸ The Committee on the Rights of the Child, in particular, issued a general comment on the role of national human rights institutions in the promotion and protection of the rights of the child in which it clarified that it “considers the establishment of such bodies to fall within the commitment made by States parties upon ratification to ensure the implementation of the Convention”²⁹ and that “the role of national human rights institutions is to monitor independently the State’s compliance and progress towards implementation [of the Convention] and to do all it can to ensure full respect for children’s rights”.³⁰

50. On the basis of the submissions received, there seems to be a fair awareness amongst States parties of the role their national human rights institutions can play with regard to the protection, promotion and monitoring of the implementation of the Convention. Several national human rights institutions in fact have long-established records of engagement on the theme which derive from their broad human rights mandate and often precede the ratification of the Convention in their respective countries. To illustrate this, several national human rights commissions such as those in Kenya, Mexico, Nigeria, South Africa and Togo have focal points or departments on the rights of persons with disabilities. Several ombudsmen have similar experiences for instance in Ecuador, El Salvador, Guatemala and Peru.³¹

51. Notwithstanding this wide engagement of national human rights institutions in the rights of persons with disabilities, only a few States have taken formal steps to designate their national human rights institutions as the independent mechanism of the framework. Positive examples include Germany³² which has formally designated the German Institute for Human Rights as the independent mechanism and the United Kingdom³³ which has designated the Equality and Human Rights Commissions, the Scottish Human Rights Commission and the Northern Ireland Human Rights and Equality Commissions in the devolved administrations, in accordance with article 33, paragraph 2. Other States, such as Latvia, have reported that they are taking formal steps in this same direction.³⁴

52. On the other hand, some submissions seem to implicitly assume the attribution of the promotion, protection and monitoring functions of the Convention to the national human rights institution without a formal designation. Naturally, national institutions do not have to wait for the Convention to be ratified to become engaged in the rights of persons with disabilities. However, formal designation can represent an important opportunity for strengthening the entity concerned and contribute to the effective implementation of its functions.

²⁸ See for example Committee on the Elimination of Racial Discrimination, general recommendation No. 17 (1993) on the establishment of national institutions to facilitate the implementation of the Convention and Committee on Economic, Social and Cultural Rights, general comment No. 10 (1998) on the role of national human rights institutions in the protection of economic, social and cultural rights.

²⁹ General comment No. 2 (2002), para. 1.

³⁰ *Ibid.*, para. 25.

³¹ See submissions at <http://www2.ohchr.org/english/issues/disability/submissions.htm>.

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

53. The process of formally designating a national human rights institution can include a reflection on the adequacy of the mandate of the institution for the purpose of article 33, which in some cases might reveal opportunities for strengthening compliance with the Paris Principles. The submission of Sweden, for example, notes that the current mandate of the Equality Ombudsman is limited in scope and suggests its expansion.³⁵

54. In other cases, a review of how persons with disabilities participate in existing national human rights institutions may highlight the need to revise the composition of the institution and strengthen pluralism. The German Institute for Human Rights, for example, upon its designation expanded the composition of its board to include an organization of persons with disabilities.³⁶

55. It should also be noted that the designation of a national human rights institution as the independent mechanism will most likely require internal structural changes, and that additional financial and human resources will almost always be required. The Ombudsman of Azerbaijan, the Guatemalan Ombudsman, the Kenyan Human Rights Commission and the New Zealand Human Rights Commission all highlight in their submissions organizational issues and in some cases concern at the impact the designation could have on existing limited resources.³⁷

56. Where no entities exist at national level in line with the Paris Principles, consideration should be given to establishing such an institution. The submission by the Netherlands, for example, states that a national human rights institution that complies with the Paris Principles will be established for the tasks arising from article 33, paragraph 2.³⁸ Similarly, the Austrian Independent Monitoring Committee on the Convention, on the basis of its self-assessment of non-compliance with the Paris Principles, has recommended the establishment of a national human rights institution that complies with the Principles.³⁹

3. Organizational form

57. As mentioned earlier, article 33 of the Convention does not prescribe a unique organizational form for the national monitoring framework. Beside appointment of a single independent mechanism to carry out functions under article 33, paragraph 2, the Convention also foresees the possibility that more than one independent mechanism be appointed in the framework, as appropriate, with the effect that States in fact establish a “mechanism of mechanisms” to promote, protect and monitor implementation.

58. This possibility seems to address States parties with multiple levels of government, such as federal states and analogous entities. The United Kingdom, for example, which has in place a system of devolved executive and legislative powers in Scotland and Northern Ireland, has designated as independent mechanisms institutions operating both at central government level and in the devolved administrations.⁴⁰ Some federal states such as Argentina or Mexico already have in place State-level human rights commissions or ombudsmen which could be potentially designated as the independent mechanism. Belgium

³⁵ Ibid.

³⁶ Presentation by Valentin Aichele, head of the national monitoring body for the Convention on the Rights of Persons with Disabilities, German Institute for Human Rights, at the meeting on national implementation and monitoring bodies, European Foundation Centre and European Disability Forum seminar, Brussels, 28 October 2009.

³⁷ See submissions at <http://www2.ohchr.org/english/issues/disability/submissions.htm>.

³⁸ See http://www2.ohchr.org/english/issues/disability/docs/Netherlands_10909.doc.

³⁹ See <http://www2.ohchr.org/english/issues/disability/docs/AustrianMonitoringBody.pdf>.

⁴⁰ See <http://www2.ohchr.org/english/issues/disability/docs/UnitedKingdom061009.doc>.

is also consulting with regions and communities with a view to designating the mechanisms and the structure of the framework at national and local levels.⁴¹

59. Based on the particular constitutional structure and other political and geographic considerations in a State, the independent mechanism of a federal State could arguably be either a unified federal body, or a system with multiple bodies. Furthermore, designation could come from either the federal government and/or the devolved administration within the limits of its territorial jurisdiction and competence. In all cases, it should be remembered that ultimate responsibility for the implementation of the treaty lies at State party level. While acknowledging the differences between the conventions, the experiences of some decentralized States in establishing or designating national preventive mechanisms under the Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment could be a useful reference for exploring suitable approaches in the implementation of article 33.⁴²

60. Article 33, paragraph 2, appears also to allow States to designate multiple mechanisms by thematic divisions of responsibility, so that, “conceivably, a plurality of such mechanisms might be engaged depending on the function to be performed”.⁴³ In Northern Ireland, the Equality Commission and the Human Rights Commission have been jointly designated as mechanisms in the framework.⁴⁴ On the one hand, it is clear that the scope of the Convention goes beyond anti-discrimination; on the other, the experience of the Equality Commission in terms of promotion and enforcement of anti-discrimination law on the grounds of disability appears central to the effective implementation of the promotion, protection and monitoring mandate assigned to the framework.

61. As noted in some submissions, a range of other entities could also play a significant role in the context of the framework, beside the central role played by the national human rights institution. The submission of New Zealand, by way of example, highlights the role of the Health and Disability Commissioner, the Ombudsman, the Children’s Commissioner and the Mental Health Commission.⁴⁵

4. Protect, promote and monitor implementation

62. Besides taking into account the Paris Principle in the status and functioning of the independent mechanism, the monitoring framework needs also to be equipped with a mandate adequate to effectively perform its functions under the Convention.

63. Although the heading of article 33 uses the term monitoring, it is important to note that paragraph 2 actually refers to States establishing a framework to “promote, protect and monitor” implementation of the Convention and its Optional Protocol. An examination of the activities that can be considered to fall under these three general headings can help States parties in deciding the organizational structure of the framework and in highlighting opportunities for institutional strengthening.

64. Promotion of the implementation of the Convention includes a broad range of activities. These activities should include not only awareness-raising activities such as the ones highlighted in article 8 of the Convention, but also express a more strategic

⁴¹ See http://www2.ohchr.org/english/issues/disability/docs/Belgium_260809.doc.

⁴² See for reference Association for the Prevention of Torture *Guide to the Establishment and Designation of National Preventive Mechanisms*, available at http://www.apt.ch/index2.php?option=com_docman&task=doc_view&gid=102&Itemid=59.

⁴³ See footnote 26, page 129.

⁴⁴ See <http://www2.ohchr.org/english/issues/disability/docs/UnitedKingdom061009.doc>.

⁴⁵ See <http://www2.ohchr.org/english/issues/disability/docs/NewZealand.doc>.

engagement in the promotion of the implementation of the Convention. For example, this could include: scrutiny for compliance of existing national legislation, regulations and practices, as well as draft bills and other proposals, to ensure they are consistent with the requirements of the Convention; and provisions of technical advice to public authorities or other agencies in construing and applying the Convention, including on the basis of observations and recommendations and general comments issued by the Committee on the Rights of Persons with Disabilities.

65. Human rights impact assessments, as tools that measure the impact of policies or other interventions on human rights, could prove particularly useful to Governments in assessing what measures to adopt for the purpose of promoting implementation of the Convention.⁴⁶ By way of reference, it should be noted that some treaty bodies have recommended that States parties conduct human rights impact assessments in relation to their treaty obligations. The Committee on Economic, Social and Cultural Rights has recommended that human rights impact assessments “be made an integral part of every proposed piece of legislation or policy initiative”.⁴⁷

66. Protection under the Convention can include a broad range of different activities that range from the investigation and examination of individual and group complaints to taking cases to court, to the conducting of inquiries and issuance of reports.

67. Monitoring the implementation of the Convention can be approached from multiple perspectives. On one hand, it can be achieved through assessing progress, stagnation or retrogression in the enjoyment of rights over a certain period of time. The development of indicators and benchmarks is a particularly effective way to monitor implementation, particularly with regard to the progressive realization of economic, social and cultural rights in the Convention.⁴⁸

68. Another approach with which many human rights institutions are familiar is that of monitoring human rights violations, a common methodology of which is the collection or keeping of records of the complaints filed by alleged victims before relevant judicial or quasi-judicial complaints mechanisms. Considering the specific barriers persons with disabilities have traditionally faced in accessing justice, this data should be integrated with information on violations from other sources, such as civil society organizations and organizations of persons with disabilities participating in the framework.

D. The participation of civil society

69. Article 33, paragraph 3, requires the involvement and full participation of civil society and in particular of persons with disabilities and their representative organizations in the monitoring process. This requirement further specifies the general principle of participation of persons with disabilities in article 3 of the Convention and the general obligation in article 4, paragraph 3, of the Convention to closely consult with and actively involve persons with disabilities through their representative organizations in the

⁴⁶ See report of the United Nations High Commissioner for Human Rights on implementation of economic, social and cultural rights (E/2009/90), paras. 35–38.

⁴⁷ Concluding observations on the report of the United Kingdom E/C.12/1/Add.19, para. 33; see also concluding observations of the Committee on the Rights of the Child on the report of the Netherlands, CRC/C/15/Add.114, para. 13.

⁴⁸ OHCHR has made important progress in developing a conceptual framework of qualitative and quantitative human rights indicators and produced several reports in this regard. See for example HRI/MC/2006/7 and HRI/MC/2008/3.

development and implementation of legislation and policies to implement the Convention and in all decision-making processes relating to persons with disabilities.

70. The requirement to involve persons with disabilities applies to all parts of article 33, and not only to the monitoring process. In this sense, any consultation on the establishment of the monitoring framework should naturally involve representative organizations of persons with disabilities.

71. Article 33, paragraph 3, arguably seems to include both direct participation of persons with disabilities in the monitoring process, as well as indirect participation, through representative organizations. Direct participation of persons with disabilities in the monitoring process can take place for example by having experts who are persons with disabilities to participate in the work of the monitoring framework. Some national human rights institutions have commissioners who are persons with disabilities or have persons with disabilities on their executive boards.

72. At the same time, the requirement to ensure that organizations representing persons with disabilities be included in the monitoring process should also be noted. It is recommended that an open discussion take place with organizations of persons with disabilities to identify the criteria on which organizations could be considered to be representative of such constituencies. Various consultations held with organizations of persons with disabilities indicate a strong preference in favour of national umbrella organizations.⁴⁹

73. The potential of having both national human rights institutions and organizations of persons with disabilities as the independent mechanism and as a participating entity of the monitoring framework respectively, should be duly explored.

V. Conclusions and recommendations

74. **The Convention on the Rights of Persons with Disabilities is the first treaty that contains specific requirements on its national implementation and monitoring.**

75. **The establishment or designation of adequate implementation and monitoring structures, in accordance with article 33, will strengthen the implementation of the Convention at national level. Monitoring is particularly needed to assess the adoption and effective implementation of measures and their actual impact.**

76. **The Convention distinguishes implementation of the Convention from protection, promotion and monitoring of its implementation. While implementation is the responsibility of government, protection, promotion and monitoring requires the leadership of national entities established in line with the Paris Principles and the participation of persons with disabilities and their representative organizations. According to the Convention, the two functions should not be assigned to one single entity.**

77. **Government agencies responsible for the implementation of the Convention need to be provided with effective institutional arrangements that include a focal point system and a coordination structure.**

⁴⁹ Informal report of the OHCHR consultation on national frameworks for the implementation and monitoring of the Convention held on 26 October 2009, available at <http://www2.ohchr.org/english/issues/disability/docs/ReportConsultation26102009.doc>.

78. A broad mandate, independence, pluralistic composition and adequate resources are essential requirements for an effective monitoring framework. The Paris Principles clarify all aspects of such requirements. National human rights institutions established on the basis of the Paris Principles are natural core entities of the monitoring framework at the national level.

79. In implementing article 33 of the Convention, States should take the opportunity to establish entities that are compliant with the Paris Principles. Where such entities already exist, implementation of article 33 might require their mandate and capacity to be strengthened.

80. Persons with disabilities and their representative organizations need to take part in the monitoring process, as well as in any other decision-making processes that concerns them.
