

Chair's Draft Elements of a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities

DRAFT ELEMENTS ON IMPLEMENTATION: APPLICATION, IMPLEMENTATION AND MONITORING OF THE CONVENTION

December 2003

INTRODUCTION

1. This document contains additional *Draft Elements on Implementation* submitted to the Working Group by the Chair of the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons. These *Draft Elements on Implementation* are intended as a further contribution to the deliberations of the Working Group in its work of elaborating a draft convention to be presented to the Ad Hoc Committee.*

2. The *Draft Elements on Implementation* offer a number of alternative models of implementation mechanism drawn from the many suggestions made in regional discussions, and in drafts proposed by governments and non-governmental organisations. Two Models are suggested here (elements from each of which might be combined with elements from the other):

Model A

3. This Model proposes that under the Convention (a) States would be obliged to establish national human rights institutions (or use existing ones) to monitor the implementation of the Convention, and monitor implementation through a national reporting process; (b) that the United Nations establish the office of United Nations Disability Ombudsman; and (c) that States undertake to report on disability issues in their reports submitted under the existing United Nations human rights treaties.

Model B

4. This Model largely replicates the position under the other major United Nations human rights instruments by proposing the establishment of a new human rights treaty body (with some modifications to existing provisions about composition of committees and methods of selection of the committee members of). The Model includes proposals for (a) a reporting procedure; (b) an individual communications procedure; and (c) an inquiry procedure.

* The numbering of the articles in the *Draft Elements on Implementation* follow on from the numbering of the *Chair's Draft Elements of a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities* (December 2003), available in English at <http://www.un.org/esa/socdev/enable/rights/wgcontrib-chair.htm>.

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* This article is intended to replace the Article 29 contained in the *Chair's Draft Elements of a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities* (December 2003), available in English at <http://www.un.org/esa/socdev/enable/rights/wgcontrib-chair.htm>. The numbering of the articles in these *Draft Elements on Implementation* follows on the numbering of the articles in the earlier document.

MODEL A

(National level reporting; reporting under existing human rights treaties and International Ombudsperson)

PART V

IMPLEMENTATION AND MONITORING OF THE CONVENTION

Article 29 bis

National implementation framework

1. Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of this Convention for that State Party an independent national institution to monitor, promote and enforce compliance with this Convention. This should be an independent national institution:
 - (a) which operates in accordance with the *Paris Principles*;¹
 - (b) which has been established in consultation with persons with disabilities and organizations representing persons with disabilities; and
 - (c) which is structured so as to facilitate the involvement on an ongoing basis of persons with disabilities in the formation of the national institution's policies and processes.
2. Each State Party shall ensure that the national institution has the functions and powers and resources necessary to monitor implementation for the Convention, including the power to:
 - (a) to receive and consider complaints from individuals who claim that their rights guaranteed by the Convention have not been observed;
 - (b) to undertake inquiries into the operation of domestic law and practice and their consistency with the Convention and to make recommendations as to the steps necessary to implement fully the Convention;
 - (c) to engage in educational and other activities in the field of disability; and
 - (d) to act as an advocate for persons and groups with disabilities, including by appearing in proceedings before courts and tribunals in appropriate cases.

Article 30

National reporting on the implementation of the Convention

1. For the purposes of this article, "responsible body" means a Government ministry or department, a national institution with responsibility for disability issues, a national human rights

¹ *Paris Principles on national institutions for the promotion and protection of human rights*, GA Res 48/134 (20 December 1993)

institution, or other appropriate body formally assigned this responsibility of preparing the reports referred to in this article.

2. Each State party shall, at the time it deposits its instrument of ratification or accession, designate the body which will be the responsible body for the purposes of this Convention.

3. Each State party undertakes to ensure that the responsible body prepares a report on the implementation of the Convention within its jurisdiction within two years of the entry into force of the convention for that State party, and thereafter every 3 years.

4. The responsible body shall submit its report to the national legislature for consideration, as well as to other appropriate public bodies, for consideration in accordance with applicable procedures, together with material submitted by other public and private organisations on the implementation of the Convention.

Article 31

Disability Ombudsperson

1. There shall be a United Nations Disability Ombudsperson.

2. The Secretary-General shall appoint the Disability Ombudsperson no later six months after the entry into force of this Convention, after consultation with disability groups and other relevant groups.

3. The term of office of the Disability Ombudsperson shall be three years, and may be renewed only once.

4. The Disability Ombudsperson shall:

(a) promote the full enjoyment of all human rights by persons with disabilities by means of advocacy, awareness-raising, the provision of technical assistance and other appropriate activities;

(b) promote the implementation of this Convention by appropriate activities at the international and national level, including by working with United Nations human rights treaty bodies and other mechanisms to encourage them to integrate fully in their work the human rights of persons with disabilities;

(c) may receive and respond to communications by individuals or groups concerning alleged violations of the human rights of persons with disabilities, and may raise such allegations with the States Parties concerned;

(d) may represent a person with a disability or a group of such persons in submitting a communication or complaint alleging the violation of their human rights under any procedures established under United Nations human rights treaties or similar procedures established by the specialised agencies, as well as in any follow-up actions under those procedures; and

(e) shall carry out such other functions as are conferred on the office of Disability Ombudsperson by the General Assembly.

5. The Disability Ombudsperson shall present an annual report on his or her work to the General Assembly of the United Nations.

Article 32

Reporting on disability issues under other United Nations human rights treaties

States Parties to this Convention undertake to include in their reports submitted pursuant to the provisions of other United Nations human rights treaties, and in accordance with the applicable guidelines, detailed information on the measures they have adopted to give effect to the full enjoyment of human rights by persons with disabilities and the progress made in the implementation of the provisions of this Convention.

MODEL B

(Establishment of new human rights treaty body with reporting procedures, individual communications procedure and inquiry procedure)

PART V

APPLICATION OF THE CONVENTION

Article 29 bis*

National implementation framework

1. Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of this Convention for that State Party an independent national institution to monitor, promote and enforce compliance with this Convention. This should be an independent national institution:

- (a) which operates in accordance with the *Paris Principles*;²
- (b) which has been established in consultation with persons with disabilities and organizations representing persons with disabilities; and

* This article is intended to replace the Article 29 contained in the *Chair's Draft Elements of a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities* (December 2003), available in English at <http://www.un.org/esa/socdev/enable/rights/wgcontrib-chair.htm>. The numbering of the articles in these *Draft Elements on Implementation* follows on the numbering of the articles in the earlier document.

² *Paris Principles on national institutions for the promotion and protection of human rights*, GA Res 48/134 (20 December 1993)

- (c) which is structured so as to facilitate the involvement on an ongoing basis of persons with disabilities in the formation of the national institution's policies and processes.
2. Each State Party shall ensure that the national institution has the functions and powers and resources necessary to monitor implementation for the Convention, including the power to:
- (e) to receive and consider complaints from individuals who claim that their rights guaranteed by the Convention have not been observed;
 - (f) to undertake inquiries into the operation of domestic law and practice and their consistency with the Convention and to make recommendations as to the steps necessary to implement fully the Convention;
 - (g) to engage in educational and other activities in the field of disability; and
 - (h) to act as an advocate for persons and groups with disabilities, including by appearing in proceedings before courts and tribunals in appropriate cases.

Article 30 bis

Establishment of Committee

1. For the purpose of reviewing the implementation of this Convention, there shall be established a Committee on the Human Rights of Persons with Disabilities (hereinafter referred to as "the Committee");
- 2 (1) The Committee shall comprise ten experts of high moral standing, impartiality and with a recognized competence in the fields covered by the Convention. The members of the Committee shall:
- (a) include a majority of members with disabilities;
 - (b) comprise an equal number of women and men members ;
 - (c) not hold any position which is incompatible with the appearance of independence and impartiality which is expected of the Committee; and
 - (d) serve in their individual capacity as independent experts.
- (2) No more than one national of any State may serve on the Committee at any one time.
3. Members of the Committee shall be elected by secret ballot by the States Parties as follows:
- (a) (i) Five members of the Committee shall be elected from a list of persons nominated by States Parties; and
 - (ii) the other five members shall be elected from a list of no fewer than ten persons nominated by the UN High Commissioner for Human Rights [on the recommendation of the United Nations Disability Ombudsperson]^{*}, after consultation with representative disability and other appropriate groups.
4. In the nomination and election of members of the Committee, due consideration should be given to the candidates' experience of disability, equitable geographical distribution, and to the representation of the principal legal systems.
5. Each State Party may nominate one person from among its own nationals, chosen from a list of individuals proposed by organizations of persons with disabilities in that State. If no individuals are nominated by organizations of persons with disabilities in a State Party, the State

^{*} Adoption of this provision would be linked to the establishment of the office of the United Nations Disability Ombudsperson as proposed in article 31 above.

Party may select a nominee, wherever possible in consultation with organizations of persons with disabilities or other appropriate groups.

5. The initial election and subsequent elections shall be conducted in accordance with rules of procedure adopted by the States Parties in order to give effect to the provisions of this article.

6. The initial election shall be held no later than six months after the date of the entry into force of this Convention and subsequent elections every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to all States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons nominated, indicating the States Parties that have nominated them, and shall submit it to the States Parties not later than one month before the date of the corresponding election, together with a separate list in alphabetical order of persons nominated by the UN High Commissioner for Human Rights [on the recommendation of the Disability Ombudsperson], and the curricula vitae of all nominees.

6. Elections of members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum.

7. The members of the Committee shall serve for a term of four years. However, the terms of five of the members elected in the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting of States Parties;

8. The members of the Committee shall be eligible for re-election if renominated, but no person may serve more than two full terms on the Committee.

9 (1) If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee:

(a) where the expert was nominated by a State Party, that State Party, shall appoint another expert from among its own nationals for the remaining part of the term; and

(b) where the expert was nominated by the [UN High Commissioner for Human Rights] [Disability Ombudsperson], the [UN High Commissioner for Human Rights] [Disability Ombudsperson] shall appoint another expert for the remaining part of the term.

(2) New appointments are subject to the approval of the Committee.

10. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee.

11. The members of the Committee shall receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide.

12. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 31 bis

Reporting by States Parties

1. States Parties undertake to submit to the Secretary-General of the United Nations for consideration by the Committee a report on the legislative, judicial, administrative and other measures they have taken to give effect to the provisions of the present Convention.

2. States Parties shall submit an initial report within one year of the entry into force of the Convention for the State Party concerned and thereafter every 5 years or whenever the Committee so requests.
3. Reports prepared under the present article shall also indicate factors and difficulties, if any, affecting the implementation of the Convention in the State Party concerned, and shall be prepared with extensive and wide-ranging consultation with organizations of persons with disabilities.
4. The Committee shall adopt any further guidelines relating to the to the content of the reports which it considers appropriate.
5. Each State Party shall make its reports widely available to the public in their own countries in local languages and in accessible formats no later than when it submit each report to the Secretary-General..

Article 32 bis

Consideration of reports

1. The Committee shall examine the reports submitted by each State Party and shall transmit such comments and recommendations as it considers appropriate to the State Party concerned. This State Party may submit to the Committee observations on any comment or recommendation made by the Committee in accordance with the present article. The Committee may request supplementary information from States Parties when considering these reports.
2. The Committee shall invite representatives of States Parties to participate in its consideration of the report. Where a State Party is significantly overdue with the submission of its report, the Committee may consider the situation in that State Party in the absence of a report.
3. The Committee may also adopt such general comments as it sees fit, and may also address recommendations to the United Nations and other bodies as it considers appropriate.
4. The Secretary-General of the United Nations may also, after consultation with the Committee, transmit to the specialized agencies as well as to intergovernmental organizations, copies of such parts of these reports as may fall within their competence.
5. The Committee shall request the specialized agencies and organs of the United Nations, regional commissions of the United Nations, as well as intergovernmental organizations and other concerned bodies to submit, for consideration by the Committee, written information on such matters dealt with in the present Convention as fall within the scope of their activities.
- 6.. The Committee may invite representatives of specialized agencies and organs of the United Nations, as well as of intergovernmental organizations, to be present and to be heard in its meetings whenever matters falling within their field of competence are considered.
- 7 The Committee may seek technical assistance from the specialized agencies of the United Nations and other relevant bodies to assist it in its consideration of the reports of States Parties.
8. The Committee may invite representatives of non-governmental organizations with expertise in the field of disability issues or other relevant fields to submit relevant information to the Committee to assist it in its work and to be present and to be heard in its meetings.
10. The Committee shall present an annual report to the General Assembly of the United Nations on the implementation of the present Convention, containing its own considerations and recommendations, based, in particular, on the examination of the reports and any observations presented by States Parties.

11. The Secretary-General of the United Nations shall transmit the annual reports of the Committee to the States Parties to the present Convention, the Economic and Social Council, the Commission on Human Rights of the United Nations, the Commission on Social Development of the United Nations and other relevant organizations.

Article 33

Administration of the Committee

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.
3. The Committee shall meet for such time as is necessary for it to undertake its work, and this shall involve at least one meeting every year.
4. The meetings of the Committee shall be held at United Nations Headquarters and such other locations as the Committee considers appropriate.

Article 34

Acceptance of competence of the Committee to receive individual communications

1. A State Party to the Convention may at any time declare under the present article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim that their individual rights as established by the present Convention have been violated by that State Party.
2. Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.
3. Communications shall be in writing and shall not be anonymous. No communication shall be received by the Committee if it concerns a State Party to the Convention that has not made a declaration under article [34].

Article 35

Exhaustion of domestic remedies and admissibility conditions

1. The Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted, unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief. In deciding whether domestic remedies are available or have been exhausted, the Committee may take into account the particular difficulties which may face persons with disabilities in exercising their legal rights.
2. The Committee shall declare a communication inadmissible where:

- (a) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;
- (b) It is incompatible with the provisions of the Convention;
- (c) It is manifestly ill-founded or not sufficiently substantiated;
- (d) It is an abuse of the right to submit a communication;
- (e) The facts that are the subject of the communication occurred prior to the entry into force of the individual communications under the Convention for the State Party concerned unless those facts continued after that date.

Article 36

Requests for interim measures

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation.
2. Where the Committee exercises its discretion under paragraph 1 of the present article, this does not imply a determination on admissibility or on the merits of the communication.

Article 37

Transmission of communication to State Party

1. Unless the Committee considers a communication inadmissible without reference to the State Party concerned, and provided that the individual or individuals consent to the disclosure of their identity to that State Party, the Committee shall bring any communication submitted to it under the present Convention confidentially to the attention of the State Party concerned.
2. Within three months, the receiving State Party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been provided by that State Party.

Article 38

Consideration of communications, adoption of views and follow-up

1. The Committee shall consider communications received under this Convention in the light of all information made available to it by or on behalf of individuals or groups of individuals and by the State Party concerned, provided that this information is transmitted to the parties concerned.
2. The Committee shall hold closed meetings when examining communications under the individual communications procedure.
3. After examining a communication, the Committee shall transmit its views on the communication, together with its recommendations, if any, to the parties concerned.

4. The State Party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee.

5. The Committee may invite the State Party to submit further information about any measures the State Party has taken in response to its views or recommendations, if any, including as deemed appropriate by the Committee, in the State Party's subsequent reports under article [31 *bis*] of the Convention.

Article 39

Inquiry procedure

1. If the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.

3. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.

4. The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.

5. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.

Article 40

Follow-up to report of inquiry

1. The Committee may invite the State Party concerned to include in its report under article [31 *bis*] of the Convention details of any measures taken in response to an inquiry conducted under article [39] of the Convention.

2. The Committee may, if necessary, after the end of the period of six months referred to in the preceding article, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.

Article 41

Provision for State Party to opt out of inquiry procedure

1. A State Party may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article [39] of the Convention.
2. Any State Party having made a declaration in accordance with paragraph 1 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General.

Article 42

Protection against retaliation

A State Party shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to ill treatment or intimidation as a consequence of communicating with the Committee pursuant to the Convention.

Article 43

Annual report of the Committee

The Committee shall include in its annual report under article [31 *bis*] of the Convention a summary of its activities under the individual communications procedure and the inquiry procedure.